August 15, 2006

Director General,
Telecommunications Policy Branch
Industry Canada,
16th Floor, 350 Slater Street
Ottawa, ON
K1A 0C8


We are pleased to attach the representations of Vonage Canada Corp. in respect of the above referenced Policy Direction.

C. William (Bill) Rainey
President
Vonage
IN THE MATTER OF A PROPOSED ORDER UNDER SECTION 8 OF THE TELECOMMUNICATIONS ACT – POLICY DIRECTION TO THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION


REPRESENTATIONS OF VONAGE CANADA CORP.
Introduction

1. These are the representations of Vonage Canada Corp. ("Vonage Canada") with respect to the proposed Order under Section 8 of the Telecommunications Act – Policy Direction to the Canadian Radio-television and Telecommunications Commission (the "Proposed Order"), published in Canada Gazette, Part 1, Vol. 140, No. 24 – June 17, 2006.

2. Vonage Canada is a leading independent provider of broadband telephone services, also known as Voice over Internet Protocol ("VoIP"). Vonage Canada and its sister company in the U.S., Vonage Holdings, pioneered the commercialization of IP technology and were the first to bring VoIP to consumers in North America. Vonage Canada’s VoIP service enables anyone to make and receive phone calls using standard touch tone telephones almost anywhere a broadband Internet connection is available, and offers innovative features that add value to local voice services. We provide feature-rich and cost effective communication services that offer users an experience similar to traditional telephone services.

3. Vonage Canada strongly agrees with the comments of Minister Bernier, consequent on the release of the Proposed Order, "[a]ll Canadian consumers will benefit from a stronger competitive environment that will bring greater choice and even lower prices and services." Vonage Canada further applauds the Department of Industry for its timely response to the report of the Telecommunications Policy Review Panel (the "TPRP"), and specifically for its endorsement of a number of the principles articulated in that report, such as a more competitively neutral regulatory environment and greater efficiency and transparency in regulation.

4. Vonage Canada notes from the Regulatory Impact Analysis Statement accompanying the Proposed Order (the "RIAS") that the Government has determined to proceed with the Proposed Direction while studying the longer term recommendations for reform of Canada’s telecommunications regulatory regime contained in the TPRP’s report. In this regard, it is important to bear in mind that the TPRP’s report presented the Government with a comprehensive set of recommendations for this reform. In Vonage Canada’s view, it is important therefore that the Proposed Direction not be considered in isolation from these broader recommendations, and also that the Government move as quickly as
reasonably possible to act on other elements of the TPRP's recommendations relating to additional barriers to a fully competitive telecommunications marketplace. One such example is the elimination of foreign ownership restrictions; another, of particular relevance to independent VoIP providers, is the amendment of the *Telecommunications Act* "to confirm the right of Canadian consumers to access publicly available Internet applications and content of their choice by means of all public telecommunications networks providing access to the Internet."\(^1\)

5. These representations reflect Vonage Canada's strong support for moving Canada's telecommunications industry to a competitive and deregulated environment as quickly as possible. In Vonage Canada's view, however, full account must be taken in this process of the former monopoly providers' significant market power ("SMP") and incumbency advantages. As the Canadian Radio-television and Telecommunications Commission (the "Commission" or the "CRTC") has recognized, if ignored or left unchecked, the dominance of the former monopolies can actively undermine the emergence and sustainability of an effectively competitive market. The need to confront the former monopolies' SMP was also recognized by the TPRP, which did not blindly recommend the eradication of regulation for those services over which the former monopolies continue to possess SMP. Therefore, the Government should ensure that competitive market forces specifically, and not market forces in general, are relied upon, in order for Canadian consumers to realize the benefits of competition identified by the Minister.

6. As a reseller, Vonage Canada is particularly supportive of the direction for technological and competitive neutrality in relation to interconnection arrangements and access regimes. In this regard, Vonage Canada believes that a stronger competitive environment can result from broader access to important resources such as number portability, to all industry players.

7. Vonage Canada is concerned, however, that concepts of competitive neutrality not be confused with formal symmetry and also that the open principles of competitive and technological neutrality be applied equally to access to wholesale services. Without such

\(^1\) TPRP Final Report, Recommendation 6-5.
an open approach, regulation, or the lack thereof, could determine who the winners and losers will be in a competitive environment, to the detriment of users. For example, by phasing out or limiting wholesale access to a rigid meaning of "essential services" as suggested by language contained in the Proposed Order (paragraph 1(c)(ii)), the Proposed Order could have the effect of determining the industry structure, and thereby preventing entry and innovation from the broadest range of providers possible. This would have a ripple effect, as providers like Vonage Canada, who currently can choose between different providers, would no longer have competitive alternatives to the former monopolies for purchase of wholesale services. This would negatively affect choice, innovation and Canada's productivity.

8. The representations that follow contain a description of the competitive landscape from the perspective of a leading independent VoIP provider, including a description of the barriers to entry and expansion still experienced in the local services market, as well as a perspective on the role that competitive entry plays in innovation. These representations are followed by suggestions for improvements to the language of the Proposed Order to ensure that the competitive environment is indeed strengthened, and not inadvertently weakened, as a result of implementation of the Proposed Order.

The Importance of Competitive Market Forces and Confronting the ILECs' SMP

9. The Regulatory Impact Analysis Statement accompanying the Proposed Order stresses the finding of the TRPR that competition in telecommunications markets has evolved to the point where market forces can be relied upon to achieve many telecommunications policy objectives and the need for regulation should no longer be presumed. Vonage Canada agrees that is the case in many telecommunications markets such as long distance, but notes that this is still not the case in respect of the market for local voice services, the most critical segment in which it competes.

10. It is important to note that the TPRP based its conclusions respecting economic regulation on the lynchpin of competition law analysis: market power. While recommending the removal of economic regulation in telecommunications markets as soon as practicable, the TPRP also made it clear that regulation would still be required
where there is a finding that the service provider has SMP in the market for a service.\textsuperscript{2}

11. The simple fact is that the former monopolies (incumbent local exchange carriers or "ILECs") still overwhelmingly dominate the retail market for local exchange services. According to current statistics recently released by the Commission, the ILECs held \textbf{92.4\% of local residential access lines and 86\% of business access lines across the country} at the end of 2005.\textsuperscript{3} Although there are a few areas where competitive market forces have begun to make inroads, such as in Halifax, the ILECs continue to exercise SMP in the vast majority of geographic markets in Canada.

12. Moreover, these same monopolies continue to demonstrate, through their actions, that they continue to possess SMP. Bell Canada and Aliant, for example, have recently proposed rate increases to their local voice services, an increase that demonstrates they believe they continue to have the ability to impose a 5\% non-transitory price increase – the very definition of SMP.\textsuperscript{4}

13. In a market which is not yet workably competitive, and where the former monopolies continue to exercise SMP, regulation continues to be critical to the transition toward a state where competitive market forces can one day be relied upon to achieve the benefits sought by the Government, of greater efficiency and productivity. Until that time, it is important to recognize the very relevant distinction between market forces generally, which include a dominant provider's ability to either raise prices to users, or to target low prices in order to foreclose competitive entry or expansion, and competitive market forces. Only competitive market forces are capable of bringing about lower prices, a sustainable choice of providers, and constant innovation through the introduction of disruptive technologies.

\textsuperscript{2} TPRP Final Report, p. 3-13.
\textsuperscript{4} See for example, Bell Tariff Notice No. 6967, filed 7 July 2006.
14. Indeed, reliance on competitive market forces assumes both that such forces exist and that they are robust enough to overcome the enormous historical advantages enjoyed by the former monopolies, which are the source of the ILECs' continued dominance in the market for local voice services. Where a market is workably competitive, such competitive market forces will be sufficient to overcome these advantages and dominance. Where, however, a market is not yet workably competitive, barriers to entry and expansion will still exist that require regulatory solutions that do not rely on competitive market forces, because these are not yet sufficient.

15. The ILECs have placed VoIP services, and VoIP providers like Vonage Canada, at the centre of their arguments for deregulating their local services. Essentially, they argue that because the barriers to entry are low in terms of the network investment required to offer local VoIP services, a low market share loss figure is sufficient to indicate competition is workable. This is an over-simplistic mischaracterization of the barriers to entry and expansion faced by new entrants such as Vonage Canada.

16. To an independent VoIP provider like Vonage Canada, the ILECs' SMP is not merely an academic construct, but a practical reality it confronts daily. First, Vonage Canada faces significant barriers to entry and expansion that are ignored by the ILECs when making their case for deregulation. These barriers are very real and center around the significant costs incurred by new entrants to acquire customers – costs not faced by the ILECs, which continue to enjoy all of the very significant advantages of incumbency. In the case of VoIP services provided by independent providers, these barriers also center around the fact that the addressable market is limited to customers with broadband connections, i.e. high-speed Internet access services, and the significant difficulties in permitting an ILEC customer to keep its digital subscriber line ("DSL") Internet access service provided by the ILEC while switching to another provider’s local voice service.

17. Second, Vonage Canada has experienced the real, tangible and destructive consequences on its business of the ILECs' – Bell Canada ("Bell") in particular – real power and influence in the market place. When a Goliath the size of Bell – with its ubiquitous networks, ownership of key online media properties and customer base of 12.6 million
local phone lines—decides to take on a competitor, it has the means, the resources and
the incentive to crush it. Regardless of whether these tactics are each strictly illegal
under existing competition laws, they represent a myriad of ways in which an ILEC can
abuse its power in the market over competitors, customers and suppliers, so as to quash
competition, against the public interest. Indeed, even in the absence of intentional actions,
the company’s interests in maximizing shareholder value are not aligned with the public
interest: it is “rational” for a profit-motivated, former monopoly to attempt to eliminate
competitive threats.

(i) Barriers to entry

18. New entrants, including VoIP providers, continue to face substantial barriers to entry.

19. It is true, in the case of access-independent VoIP providers such as Vonage Canada, that
entry into the market does not require a high capital expenditure for network facilities.
However, this is the case only when compared to the initial – and long-ago depreciated –
investment in network infrastructure made by the ILECs, who earned significant returns
on their investments over the years under a guaranteed rate-of-return regime. In fact,
Vonage Canada and other independent VoIP providers remain significant purchasers of
network access facilities purchased from the ILECs, and do not simply ride "free" on the
Internet as the ILECs would have policy-makers believe.

20. In any event, the initial cost of entry tells only a small part of the story, for in order for a
competitor, in particular, an independent VoIP provider, to succeed, far more is required
than this initial expenditure.

21. The ILECs start not only with a ubiquitous network, but also all of the customers – they
therefore do not require the substantial cost or time to build a customer base. Vonage
Canada and other access-independent VoIP providers start with neither the network nor
the customers.

5 Source: BCE 2005 Annual Report
22. Like other entrants, access-independent VoIP providers must build their business one customer at a time. In order to do so, they must overcome numerous hurdles. While Vonage Canada is confident that on a level playing field it will be able to clear these hurdles, they nonetheless represent real barriers to entry that cannot simply be wished away.

23. The first of these barriers to entry is customer inertia. In order to succeed as a VoIP provider, Vonage Canada must be able to win away a customer's local business from the ILEC. Local service is the primary connection Canadians maintain with each other, with emergency services and indeed with the world. Vonage Canada has to earn the trust of Canadians one at a time, and must do it despite the efforts of the ILECs to exploit their historic monopoly position (witness Bell’s advertising campaign celebrating its 125th anniversary, punctuated with slogans such as "Trust isn't something you build in months").

24. The second of these barriers is customer acquisition costs. Although access-independent VoIP providers' customer acquisition costs do not match those of entrants who must pay service charges associated with the rental of the local loop, there are nonetheless substantial, sunk costs of building a customer base, including the significant cost of building brand awareness and trust to compete with some of the strongest and best-established brands in the country.

25. VoIP entrants like Vonage Canada cannot take advantage of the same marketing opportunities available to the ILECs and cable companies, of inexpensively emailing or writing to their significant established customer bases, which cover hundreds of thousands, if not millions of customers. The risk and reward profile could not be more divergent between an ILEC, which has a low cost of marketing in order to stem any loss of its entrenched customer base, and an independent VoIP provider, which must spend heavily for the opportunity to provide Canadians with innovative services, choice and lower prices and must then struggle to keep the customer long enough to demonstrate its customer service and products, and to thereby avoid expensive churn. In other words, Vonage Canada must spread its marketing costs across the entire market, while the ILECs
can focus their substantial resources on just that small part of the market they are losing, or at risk of losing, to competition.

26. The third of these significant barriers is resisting or surviving the churn generated by the ILECs' own conduct in the market. Unconstrained by, or in violation of, regulatory rules, the ILECs have proven their ability to stem market share loss: it is called winback. This strategy permits the ILEC to focus virtually all of its marketing efforts on those customers who (a) are thinking about leaving; (b) have decided to leave; or (c) have in fact left. The churn statistics and other data on the basis of which the Commission has repeatedly restated and modified the winback no-contact rules (the Winback Rules) prove that this is a successful strategy in the hands of an ILEC. This behaviour represents a significant barrier to entry to be overcome, regardless of the entrant's chosen strategy.

27. In addition to the barriers to entry described above, there is a significant limitation in terms of the addressable market for VoIP services that affects demand conditions in the market for Vonage Canada. In order to subscribe for VoIP service, a customer must have, or be willing to purchase, broadband access, i.e., a high-speed Internet connection. Although Canada enjoys comparatively high penetration levels of broadband service, the market is still roughly half the size of the overall market for wireline local exchange services.

28. And this addressable market, which is smaller to begin with, is further suppressed artificially by the unavailability of, and lack of customer awareness regarding, the opportunity for customers to truly "cut the cord" with their local service provider by cancelling their primary exchange voice service altogether and obtaining DSL Internet access from the ILEC on a stand-alone, "naked DSL" basis (otherwise known as "dry loops"). Customers of ILECs who want to keep their local telephone number and switch to an independent VoIP service have experienced numerous difficulties, particularly in Bell territory; customers have been disconnected from both their telephone and their DSL connections (leaving them in the untenable and unsafe position of lacking any access to even emergency communications) and, adding insult to injury, have then on occasion faced reconnection charges when they sought to rectify the situation. These activities, and their negative impact on customers who attempt to switch, harm the Vonage Canada
brand much more than the ILEC brand, and make it less likely that a customer will switch away from the ILEC in future, regardless of the many benefits a customer will enjoy from their Vonage Canada service.

29. The result of this phenomenon is that Vonage Canada has experienced much greater difficulty in winning customers who receive their high-speed connection from the ILECs than the cable companies. This is a significant persisting barrier to entry.6

(iv) Bell's Actions in the on-line advertising market

30. It is clear that where possible, the ILECs take advantage of their scope and scale, as well as their incumbency advantages, to target competitors. Bell, in particular, while waging a public relations battle to immediately deregulate the industry, and while accepting substantial payments from competitors for leasing network services, is at the same time waging a parallel war against competitors like Vonage Canada in the on-line advertising market – the life-blood of growth for VoIP providers. In doing so, Bell is not only drawing on its position as a communications and media conglomerate and a subsidiary of the largest corporation in the country – it is also taking advantage of exclusive arrangements it has secured as a direct result of its historical monopoly over the provision of local services.

31. In order to seek to overcome the incumbency advantages enjoyed by the ILECs, including those enjoyed by Bell as a result of its brand and 125-year history in the market, Vonage Canada advertises its services through various media, primarily on Internet properties. Online advertising is a particularly effective means of reaching potential customers for VoIP services, as by definition these customers already possess and use high-speed Internet connections.

32. Vonage Canada has repeatedly been denied access to various Bell-related and non-related platforms for on-line advertising of its VoIP services. First, Vonage Canada representatives have been informed by Sympatico/MSN that it is the msn.ca site's

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6 Vonage Canada has been negotiating with each ILEC in an effort to make this process seamless to the customer, and is optimistic respecting its discussions with Telus and MTS Allstream. However, Bell continues to drag its feet on the provision of naked DSL and on communicating its availability to the customer.
"policy" not to accept advertising from companies competing with Bell Canada in the telephony or other markets. 7

33. The msn.ca property is the most visited and significant site in Canada, with a dominant reach. Indeed, Sympatico/MSN's own promotional material describes the property in the following language: "Sympatico/MSN is the number one site in Canada with over 15.5 million unique visitors a month, more than 7.8 million unique visitors a day. We effectively reach 83.5% of the online population." (emphasis in the original)

34. Vonage Canada’s sister corporation, Vonage Holdings, advertises extensively on the MSN.com site in the U.S., where it enjoys a very positive partnership with Microsoft and is actually one of MSN's largest customers. Notably, a significant portion of its new customers are driven to its service by advertising on that site. A significant distinction from the situation in the U.S. is the fact that in Canada, a division of Bell Canada – Sympatico – controls the MSN site. In this context, Vonage Canada believes Bell’s refusal to deal with it is anti-competitive and has an adverse affect on competition in the market by impeding Vonage Canada’s ability to reach potential customers. In Vonage Canada’s submission, Bell is also granting itself an undue preference in relation to its local telephony business, by refusing to accept advertising on its msn.ca site. Bell’s actions in this regard belie the positions it has taken before the Commission and in the Telecom Policy Review, where it has argued the barriers to entry to the local telephony market are low, and has implied that the Internet presents an open access environment in which no party controls any bottlenecks of any significance. That is simply not the case, as demonstrated by Bell’s own conduct.

7 After many attempts to obtain a resolution to this issue, Vonage Canada took this situation up with senior Bell executives. Only then did Vonage Canada's calls to Bell Sympatico receive any response, and access was provided to certain marginal properties, including Instant Messenger and Hot Mail, at higher prices that would make it difficult to meet Vonage Canada's business objectives in terms of cost per acquisition. After further discussions and efforts the “offer” was expanded to include a very small group of conventional display advertising properties on some selected sections of the overall site. Again, pricing on these sites was offered at rates that are significantly higher than similar properties on other sites. As well, Vonage Canada’s display advertising will not be presented anywhere in Bell operating territory. As a show of good faith, Vonage Canada has proceeded with these arrangements, despite its scepticism that this will yield acceptable results, and despite the fact that these arrangements still deny Vonage Canada crucial access to the most attractive sites.
35. Second, Vonage Canada had successfully negotiated an opportunity to purchase display advertising on a number of NHL online properties, and had commenced creative work on those advertisements. Apparently, due to its exclusivity, Bell intervened and prevented our potential partner from executing the deal.

36. Third, on or about the beginning of April, Vonage Canada completed an agreement with WhitePages.com (located in the US) and began an online campaign, with a contract, that displayed its ads on www.whitepages.ca [<http://www.whitepages.ca/>] and www.yellowpages.ca [<http://www.yellowpages.ca/>]. It quickly became one of Vonage Canada's best performing online properties, generating significant subscribers at very efficient rates. On 4 May 2006, White Pages was contacted by Yellow Pages Group ("YPG") and was told that the Vonage Canada advertising violated their agreement not to market ads from any firm on the "competitor list." Vonage Canada's online campaign was removed from both sites by the following day. Vonage Canada saw an immediate adverse impact on its online sales results.

37. Notably, YPG is a spin-off from Bell's directory business. Under the terms of the relevant agreements, the new owners were granted a 30 year royalty-free right to use a number of Bell trademarks, logos, etc. Bell apparently retained a 10% equity stake in the new organization. A search of the senior management reveals that the President/CEO (Tellier) and many of the other senior managers were senior Bell employees. It is clear that YPG is the "successor" to Bell's directory operations, a direct and integral part of its former local service monopoly. Bell's exclusivity with YPG, and the consequent prevention of competitors from advertising on properties controlled or related to YPG, clearly flow from Bell's former and continuing dominant position in the market for local services. While Vonage Canada has subsequently been able to negotiate exposure on the yellowpages.ca site, this incident demonstrates the ability of Bell to extend its

8 Vonage Canada understands that YPG and White Pages have a business arrangement whereby White Pages publishes and monetizes a number of YPG online properties (including the two at issue, as well as 411.ca, CanadaPlus.ca, web sites, etc.). As part of that contractual agreement, apparently there is a requirement not to accept advertising from any firm that is included on the "competitors list".

9 See www.yellowpages.ca [<http://www.yellowpages.ca/>] site by clicking on the top banner, going to the corporate site and reviewing corporate history and other items.
incumbency in local services into the local VoIP market, and points out the absurdity of a situation in which Vonage Canada must pay its biggest competitor, Bell Canada, with the largest combined degree of telecommunications/media concentration in Canada - in order to advertise its product.

38. In Vonage Canada's submission, its experiences of being thwarted by Bell in its efforts to obtain invaluable access to online advertising properties necessary to overcome customer inertia is but another example of the long anti-competitive reach, of the incumbency advantages and of the continued dominance enjoyed by ILECs in connection with local telephony services in their serving territories.

39. These examples of anti-competitive behaviour, and of ongoing barriers to entry, make it clear that the ILECs' significant market power continues to exist and present ongoing challenges to the free reign of competitive market forces.

(iii) Competitive Market Forces should be the Goal

40. As articulated above, Vonage Canada shares the Government's preference for market forces over regulation, where the market forces at play are those of a workably competitive market. Vonage Canada further shares the Government's goal of driving innovation and investment in the telecommunications sector, and thereby increasing productivity in the Canadian economy.

41. However, without independent VoIP providers and other competitors, there will be precious little innovation in telecommunications markets if regulation is prematurely replaced by reliance on market forces, including the ILECs' SMP. And Vonage Canada believes this will be the case regardless of whether the ILECs are successful in driving cable companies out of the market for local services, where it is clear they are making inroads.

42. In Vonage Canada's submission, it is clear that neither the ILECs nor the cable companies have proven to be a source of disruptive innovation in the telecommunications market that is required to spur it towards new standards of efficiency and increased service offerings and productivity for Canadians. Both the ILECs and cable companies
are skilled at adopting and implementing the ideas of others; however, they lack the necessary incentives in order to become the source of these ideas themselves.

43. The history of the roll-out of VoIP services in Canada is a case in point. Independent VoIP service providers, including Vonage Canada, Primus and Skype, have been first to market and have driven the adoption of new technologies and business models.

44. It is the pinnacle of understatement to observe the ILECs have not been the source of innovation in the VoIP market:

- Bell's principal so-called VoIP product, "Bell Digital Voice", in reality has little to do with IP technology at all, and is being used as a way to retain customers who are willing to try an alternative IP-based service – this is evidenced by the fact that the service is priced to match Vonage Canada's price plans almost exactly;

- Despite the fact the Commission issued the VoIP Decision more than one year ago, Telus, like other ILECs (other than Bell and SaskTel), has yet to roll out a VoIP product at all; and

- Despite Aliant's constant woe-begotten tale of having to endure competition from Eastlink, it has done virtually nothing in the market place to meet this competition.

45. In the place of innovating, and providing Canadians with better services, the ILECs have instead focused on seeking relief from regulation that they claim to be onerous, but in reality has little if anything to do with their lack of innovation or investment.

46. Nor have the cable companies been the subject of innovation in local telephone service. Until third party supply of VoIP services had become a reality, the largest Canadian cable companies delayed their entry into the ILECs' core telephony business despite their possession of upgraded second connections to the home. Indeed, once the cable companies did enter this market, they did so with products that do not provide innovation over, or differentiation from, the ILECs' local voice product, but rather which are specifically designed to replicate, as closely as possible, the ILECs' local voice service. This may make sense as a business strategy for the cable companies, who are anxious to combat the ILECs' potential to bundle digital television services with their other
telecommunications offerings, but it is insufficient to provide Canadians with the choice they deserve and the Canadian economy with the innovation and increased productivity it requires.

47. It should not surprise anyone that the ILECs and cable companies are not innovators. They lack the incentive to innovate, and in fact have the opposite incentive. ILECs, for example, would be cannibalizing their own services and revenue base if they were to replace established and well entrenched “cash cows” such as local phone service with cheaper, more innovative services driven by disruptive technologies. In contrast to the ILECs and cable companies, however, new entrants must innovate or die. New entrants must provide more innovative features, at lower prices and with better customer service if they are even to have a hope of prying a customer loose from the ILEC, or competing with a cable company which already provides the customer with its high-speed Internet access service. Simply put, competitors depend on innovation for their very survival.

48. Growth in the competitive market for local services has been slow since the CRTC introduced measures to foster it in 1997,\(^1\) and has only recently begun to thrive in selected areas across the country. Where competition is sustainable and genuinely competitive market forces are at work, Canadians will reap the benefits: greater innovation in products in services, more rapid adoption of information and communications technologies, more job creation, lower prices, and more choice. With sustainable competition come innumerable benefits, beginning with innovation, greater consumer choice and lower prices. A competitive market will engender discipline and efficiency, and encourage investment in, and greater availability of, information and communications technologies. This in turn will create jobs at the same time as it increases Canada’s productivity. Vonage Canada itself has grown from fewer than 10 employees late in 2004, to well over 120 by the end of the third quarter of 2006.

49. Competitive market forces are particularly fundamental to the success of small and medium-sized enterprises (“SMEs”), who are the engines of the Canadian economy. Over and over again, studies have found that the adoption of technology by SMEs is a critically

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\(^{1}\) Telecom Decision CRTC 97-8, *Local competition*, 1 May 1997.
important driver of productivity growth. And just as dynamic new entrants in the telecommunications industry drive innovation, so too do smaller companies in every field. Advanced telecommunications infrastructure and ICT solutions developed by innovative telecommunications competitors (many of which are SMEs themselves) allows other SMEs to develop core competencies through digital technology and become more competitive in markets at home and abroad, with commensurate benefits to the Canadian economy. Thus, sustainable competition sets into motion a profitable chain reaction of innovation, investment and productivity.

50. With the foregoing in mind, Vonage Canada will address its suggestions for amendments to the text of the Proposed Order that will promote greater innovation, investment and productivity, in furtherance of the Government’s goals.

Suggested Changes to the Proposed Order

(i) Reliance on Competitive Market Forces

51. As demonstrated by the foregoing discussion, only competitive market forces will meet the Government's goals. However, paragraph 1(a)(i) of the Proposed Order, as currently drafted, directs the CRTC to rely, to the maximum extent feasible, on "market forces" in general, and doesn't specifically reference "competitive market forces." In this regard, Vonage Canada believes the text of paragraph 1(a)(i) could be misconstrued as suggesting a reliance on market forces independent from the level of competition present.

52. Vonage Canada also notes that this text appears to be inconsistent with the language of paragraph 1(a)(ii) of the Proposed Order, which does refer specifically to "competitive market forces" in particular, and not "market forces" in general. Lastly, Vonage Canada notes that the corresponding recommendation contained in the TPRP’s report,

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Recommendation 3-1, likewise mentioned competition, as follows: "The regulatory framework for Canada’s telecommunications sector should rely on competition and market forces rather than on economic regulation, to the maximum extent feasible.” (emphasis added)

53. Vonage Canada therefore respectfully submits that the word "competitive" should be inserted before the words "market forces", in paragraph 1(a)(i) of the Proposed Order. Paragraph 1(a)(i) as amended would read:

"rely on competitive market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives"

(ii) Symmetry is not Necessarily Consistent with Competitive Neutrality

54. Paragraph 1(b)(iii) of the Proposed Order deals with regulatory measures designed to advance non-economic objectives. It calls for these measures to be implemented, to the greatest extent possible, in a symmetrical and competitively neutral manner. Vonage Canada strongly supports the call for competitive neutrality in the implementation of regulatory measures designed to advance these non-economic objectives. However, in Vonage Canada’s view, it will frequently be the case that the requirement for symmetry will work at cross-purposes with the requirement for competitive neutrality.

55. A good example of one such measure is the critical public safety requirement for emergency calling, i.e. 9-1-1, service. In Telecom Decision 2005-21 (the “VoIP 911 Decision”) the Commission held that it should be mandatory for all local VoIP service providers to provide 9-1-1/E9-1-1 service, MRS, and privacy safeguards as soon as practicable.12 Vonage Canada has worked tirelessly to implement these requirements in recognition of their importance, devoting both human and financial resources to the task. Indeed, the implementation of these requirements represents another barrier to entry for VoIP competitors, since they have to start from the beginning whereas the ILECs need only extend existing capabilities to a new area.

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56. Vonage Canada believes strongly that these requirements should be implemented in a competitively-neutral manner that does not permit any class of provider to claim an advantage that is a result of a different regulatory requirement, or a regulatory requirement implemented differently as between different classes of providers. However, this principle of competitive neutrality will sometimes conflict with symmetry.

57. The ILECs own and operate the existing 911 infrastructure which was put in place over many years and paid for by rate payers through guaranteed returns. The ILECs are properly required to provide competitors with access to this infrastructure in order to ensure the achievement of these public safety goals, and also to ensure competitive neutrality. This requires an asymmetrical obligation on the part of the ILECs to provide access to these facilities, at cost-based rates. As can be seen, the principle of symmetry conflicts with competitive neutrality, in this example. In Vonage Canada's view, in a market which was once a monopoly there will be other examples where the principle of symmetry will not be consistent with competitive neutrality.

58. Vonage Canada believes strongly that the principle of competitive neutrality (along with technological neutrality, referred to elsewhere in the Proposed Order) should take precedence over the principle of symmetry, where the two conflict. Indeed, in Vonage Canada's respectful submission the principle of symmetry, as such, is of limited usefulness in the context of this provision of the Proposed Order. Vonage Canada notes in this regard that the TPRP's report did not make a recommendation that symmetry be a principle employed in respect of either social or technical regulation, the two sub-categories of "non-economic" regulation.13

59. Vonage Canada therefore respectfully submits that the word "symmetrical" should be deleted from paragraph 1(b)(iii) of the Proposed Order. Paragraph 1(b)(ii) as amended would read:

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13 By contrast, the TPRP did recommend that "All forms of economic regulation should be applied symmetrically to all telecommunications service providers having significant market power in any telecommunications market." See recommendation 3-10.
"regulatory measures designed to advance non-economic objectives of regulation should, to the greatest extent possible, be implemented in a competitively neutral manner"

(iii) The Principles of Competitive and Technological Neutrality Should Apply to Wholesale Access, as Well

60. Vonage Canada strongly supports recommendations of the TPRP aimed at making Canada’s regulatory regime more technologically and competitively neutral. In this regard, Vonage Canada also applauds the Government for including paragraph 1(b)(iv) of the Proposed Order (dealing with interconnection arrangements and access regimes), which is aimed at enabling competition from new technologies and preventing the artificial favouring of either Canadian carriers or resellers.

61. In Vonage Canada’s view, technological and competitive neutrality are key elements of a regulatory framework that will succeed in ensuring Canadians have access to the widest choice of innovative services, offered at the most competitive rates. In the discussion above, Vonage Canada has described the role of competitors in bringing innovation to the market place for telecommunications services, for the benefit of Canadian consumers, and the productivity of the Canadian economy. The principles of technological and competitive neutrality ensure that this competitive process, and not regulation, is the determinant of innovation and success in the market place. That is why the direction in paragraph 1(b)(iv) of the Proposed Order is aimed at ensuring that neither Canadian carriers nor resellers are artificially favoured.

62. Unfortunately, however, paragraph 1(c)(ii) of the Proposed Order, dealing with wholesale access, eschews the principles of technological and competitive neutrality articulated elsewhere in the Proposed Order, in favour of what could be interpreted to be a direction to the Commission to greatly restrict the availability of mandated wholesale services, as well as review the cost-based rates currently mandated for competitors’ access to these services. In Vonage Canada’s submission, the result of such a mandate would be to take Canada in the wrong direction.

63. VoIP providers like Vonage Canada do not resell the ILECs’ local loops; nevertheless, like other resellers, Vonage Canada relies heavily on resold services obtained ultimately
from the ILECs in order to provide service.\footnote{These services include DID, PRI, DS-1, DS-3, OC-3 to OC-48, IP transit and related circuitry.} In many cases, these services are not currently classified as “essential services” by the Commission, and therefore, their availability, and the price at which they could be obtained, would clearly be placed in jeopardy if this paragraph of the Proposed Order were to come into force. Moreover, as Vonage Canada typically purchases these facilities from competitors who themselves often purchase them from the ILECs, it will face a single source of supply in the event that these competitors are no longer able to obtain these necessary inputs at cost-based rates. This will inevitably raise Vonage Canada’s costs and jeopardize its business case. A good example of this phenomenon is Saskatchewan, in which there is no competitor who is providing an alternative source of these facilities, and where the cost is therefore so prohibitive that Vonage Canada cannot make a business case for entering the market. The result is that consumers in Saskatchewan are being denied a range of innovative, lower cost services to their detriment.

64. In Vonage Canada’s view, the language of paragraph 1(c)(ii) can be ameliorated, and made more consistent with the remainder of the Proposed Order if it is made clear that when considering whether to mandate access, and at what rates, to a wholesale service, the Commission takes into account the principles of technological and competitive neutrality. In this manner, the notion of what is an essential facility will be permitted to retain the necessary flexibility to respond to evolving technologies and market conditions that is necessary to ensure Canada’s telecommunications industry stays at the forefront of the rapid pace of change in the telecommunications industry. In Vonage Canada’s view, this amendment would also make paragraph 1(c)(ii) more consistent with the report of the TPRP, which clearly contemplated that facilities and services which are not essential could become essential, or that new facilities and services could become essential.\footnote{TPRP Final Report, at page 3-37: “The set of facilities and related services that meet the essential facilities definition will not be static. Technological and market developments over time may result in a shift of facilities from essential to non-essential status. It is conceivable, although less likely, that shifts may also occur in the other direction. In addition, new essential facilities may emerge.”}

65. As with paragraph 1(b)(iv) of the Proposed Order dealing with interconnection arrangements and access regimes, the articulation of the guiding principles of
technological and competitive neutrality will enable competition from new technologies and prevent the artificial favouring of either Canadian carriers or resellers.

66. Vonage Canada therefore respectfully submits that paragraph 1(c)(iv) of the Proposed Order be revised to include the guiding principles of technological and competitive neutrality. Paragraph 1(c)(iv) as amended would read:

"with a view to providing increased incentives for innovation, investment in and construction of competition telecommunications facilities while applying, to the greatest extent possible, the principles of technological and competitive neutrality, conduct a review of its regulatory framework regarding mandated access to wholesale services, in order to determine the extent to which mandated access to wholesale services that are not essential services should be phased out and the appropriate pricing of mandated services to encourage investment and innovation in network infrastructure," (emphasis on the language added)

Conclusion

67. These representations reflect Vonage Canada's strong support for moving Canada's telecommunications industry to a competitive and deregulated environment as quickly as possible. In Vonage Canada's view, however, full account must be taken in this process of the former monopoly providers' SMP and incumbency advantages. As the Commission has recognized, if ignored or left unchecked, the dominance of the former monopolies can actively undermine the emergence and sustainability of an effectively competitive market. The need to confront the former monopolies' SMP was also recognized by the TPRP, which did not blindly recommend the eradication of regulation for those services over which the former monopolies continue to possess SMP. Therefore, the Government should ensure that competitive market forces specifically, and not market forces in general, are relied upon, in order for Canadian consumers to realize the benefits of competition identified by the Minister.

68. As a reseller, Vonage Canada is particularly supportive of the direction for technological and competitive neutrality in relation to interconnection arrangements and access regimes. In this regard, Vonage Canada believes that a stronger competitive environment
can result from broader access to important resources such as number portability, to all industry players.

69. Vonage Canada is concerned, however, that concepts of competitive neutrality not be confused with formal symmetry and also that the open principles of competitive and technological neutrality be applied equally to access to wholesale services. Without such an open approach, regulation, or the lack thereof, could determine who the winners and losers will be in a competitive environment, to the detriment of users and consequently, to the productivity of Canada’s economy.