Executive Summary

1. The largest and most vocal participants in this review, Bell Canada and TELUS, represent their shareholders, not the Canadian public. Their submissions are designed to maximize shareholder value, not to promote the public interest.

2. The regulatory principles and policy objectives proposed by Bell and Telus may be in keeping with their narrow corporate mandate, but are seriously lacking from a public interest perspective. Dr. Johannes Bauer, an expert in economic policy and telecommunications regulation, has responded to each of the ILECs' proposed principles in Appendices A and B to the Consumer Groups' reply.

3. The Consumer Groups have proposed, in reply, a set of regulatory principles based solidly in economic theory. The Consumer Groups' proposed Regulatory Principles are as follows:

   Guiding Principle:

   Telecommunications policy should be designed to achieve specified social and economic policy goals through effective regulation where market forces alone are not effective in achieving those goals.

   Regulatory Principles:

   1. Regulation is appropriate whenever it is the most efficient means of realizing the public interest.

   2. Regulatory institutions should be designed with a clear assignment of duties for general policy-making, implementation and adjudication, and judicial oversight.

   3. Regulatory instruments should align the incentives of the service providers with the public interest.

   4. Economic regulation should strive to be symmetric as well as competitively-, technologically-, and provider-neutral.

   5. Social objectives should be clearly stated in enabling legislation and should be pursued in a manner that is competitively-, technologically-, and provider-neutral.

   6. As far as possible, economic regulation should strive to be symmetric, as well as competitively-, technologically-, and provider-neutral.

7. Social objectives should be defined in enabling legislation and should be pursued in a manner that is, as far as possible, competitively-, technologically-, and provider-neutral.

8. Technical objectives should be pursued in a manner that is, as far as possible, competitively-, technologically-, and provider-neutral.

9. Regulation needs to be supported by effective enforcement tools as well as complaint and dispute resolution mechanisms.

10. The effectiveness of regulation should be periodically evaluated.

4. Bell's proposed new statement of policy objectives fails to recognize the critical role that telecommunications plays in the maintenance and development of the Canadian economy and society. It would inappropriately limit the regulator's ability to intervene where necessary to achieve broad social and public interest goals.

5. Bell's proposed policy goals are also inconsistent with Bell's own policy statements as part of the National Broadband Task Force, as well as with the results of Bell's own commissioned research (the Decima survey; Appendix D-12 to Bell's Submission). They do not reflect the values and views of Canadians.

6. Bell's proposed policy goals do not reflect international norms. The “social objectives” that Bell and TELUS would ignore or relegate to second tier status are in fact well-represented and viewed as a necessary complement to a competitive telecommunications market by other countries with similar democratic values.

7. In pursuit of its remarkable propositions, Bell Canada relies upon an analysis of approaches in other selected jurisdictions. However, in the countries it has selected, Bell focuses only on those regulatory approaches useful to its arguments, and fails to acknowledge the regulatory context in which those approaches function.

8. Dr. Bauer's counter-evidence, "The role and limits of international comparisons in guiding national telecommunications policy" (Appendix C), highlights a number of problems with Bell's international comparative analysis, explains key differences in regulatory context, and provides a different interpretation of the same countries' regulatory regimes.

9. Bell confuses the issue of *ex post* vs. *ex ante* regulation. The important question is not whether *ex ante r*egulation should be replaced by *ex post* regulation but which mix of *ex ante* and *ex post* measures is the most appropriate to address the problems at stake. In order to use *ex post* regulation effectively, the CRTC must have sufficient enforcement power, including the ability to impose economically relevant fines.

10. Bell Canada proposes to shift significant tasks from the regulator to the general competition authority. Whereas there are some reasons to consider such an institutional change, not least the need to better integrate regulatory principles with

competition law, there are also serious reasons against such a model. Most importantly, telecommunications regulation requires a level of technical expertise that is not available in competition authorities (although such expertise could be developed it sufficient additional resources are made available). Furthermore, involvement of two agencies almost certainly will increase the transaction costs of regulation. For that reason, most countries continue to rely on the regulatory agency to assess the state and the prospects of competition.

11. Canada's Competition Bureau has the narrow responsibility of being the steward of Canadian competition law. It is far from clear that the Competition Bureau's superintendence or adjudication of competition related matters will lead to a superior result for telecommunications in the public interest. What does seem clear is that it would likely mean fewer obligations imposed upon the dominant industry players. The CRTC's mandate is to ensure that competitive markets produce the objectives of the *Telecommunications Act*. In contrast, the Competition Bureau is not charged with achievement of such public interest objectives in achieving competition. Moreover, the CRTC, as an expert sectoral regulator, is better attuned to the market realities and conditions that will produce competition in this industry, than is the Competition Bureau.

12. Bell points to the use of the Australian Competition and Consumer Commission (ACCC) as a telecommunications-specific regulation of anti-competitive conduct as well as a general competition regulator in an effort to convince the Panel that Canada's Competition Bureau is also more suited to this role than the CRTC. Bell neglects, however, to mention that the ACCC has broad powers not only over telecommunications specifically, but also over consumer protection (unlike in Canada where this is a largely provincial responsibility).

13. Bell's experts also describe the "more light-handed approach" of Australian telecommunications retail regulation without explaining unique Australian approach to "self-regulation" (which involves significant regulatory oversight) and without mentioning extensive Australian telecommunication consumer protection countermeasures such as the Telecommunications Industry Ombudsman (TIO) and the role of the Australian Communications and Media Authority (ACMA) in monitoring and enforcing telecom providers' adherence to extensive industry self-regulatory codes.

14. While Australia's approach to telecom regulation has much to commend it, it is clearly not a "holy grail" even from the perspective of Australians. Coincidentally, a major inquiry into the effectiveness of Australia's telecommunications regime has just been completed, and the report is now available. As noted above, the Senate Committee conducting the inquiry found that the regime is significantly flawed and requires extensive reforms in order to achieve the goals of competition and consumer protection.

15. Also remarkable is Bell Canada's citation of the deregulation of the Canadian rail and air transportation system as a model for telecommunications regulatory reform. The

state of the regulated networks, the economic drivers of network success, the presence of intermodal competition and the degree of knowledge about the requirements in restructured industries are substantially different between transport and telecom. There also seems little reason to import the transportation regulatory frameworks in terms of performance parameters.

16. While deregulation enabled the rail industry to rationalize its operations through abandonment of track and reduction of employees, the long-term effect of such deregulation on regional disparities and public transportation has yet to be determined. The results associated with the transportation deregulation have been questionable at best, and occasionally calamitous for stakeholders in the airline industry. Benefits in terms of choice, quality and price are difficult to perceive. Consumer stakeholders, in particular, lack the ability to obtain meaningful redress in the airline system.

17. On consumer redress, the ILECS pay no serious attention whatever. The Consumer Groups repeat their suggestion of a Telecommunications Ombudsman, based on the successful Australian model.

18. On Voice over Internet Protocol, the ILECs' fear of, yet enthusiasm for, VoIP leads them to overstate the effect of the supposedly world-changing technology on typical residential customers and to call for radical reform of the whole regulatory system. VoIP is best viewed at this stage simply as a new technology that does not fundamentally alter the actual realities of the present market share of the ILECs nor the realities of the need for economic regulation of the ILECs until sustainable competition exists.

19. On privacy, Bell and TELUS call for a generalist oversight of customer privacy by the Privacy Commissioner of Canada, despite important privacy-enhancing results of CRTC decisions based on the *Telecommunications Act*. This position can only be motivated by a desire to weaken customer privacy in telecommunications – an area where the public is most sensitive to personal privacy.