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## Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from the requirement to include historical financial statements of an acquired business in a short form prospectus where acquired business resulted from a reorganization under the Companies Creditors Arrangement Act – financial statements of predecessor issuer to be included in prospectus

## Applicable British Columbia Provisions

National Instrument 44-101 *Short Form Prospectus Distributions*, s. 15.1

National Instrument 44-102 *Shelf Distributions*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,  
ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA,  
PRINCE EDWARD ISLAND, AND NEWFOUNDLAND AND LABRADOR**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM  
FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF MANITOBA TELECOM SERVICES INC.**

## MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Manitoba Telecom Services Inc. (“MTS”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that MTS be exempt from requirements to provide certain historical financial statements of a business that constitutes a significant acquisition, together with an auditor’s report on such financial statements:

- a) except in British Columbia and Prince Edward Island, in the business acquisition report to be filed by MTS under National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”), and in Québec, by a revision of the general order that will provide the same result as an exemption order, and

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- b) in a short form prospectus which will be filed by MTS with each of the Decision Makers under National Instrument 44-101 *Short Form Prospectus Distributions* (“NI 44-101”) as a shelf prospectus under National Instrument 44-102 *Shelf Distributions* (“NI 44-102”),

in connection with MTS’s acquisition of Allstream Inc. (“Allstream”).

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) created pursuant to National Policy 12-201, The Manitoba Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;

AND WHEREAS MTS has represented to the Decision Makers that:

*Manitoba Telecom Services Inc.*

1. MTS is the successor corporation to The Manitoba Telephone System, a Crown corporation that was incorporated by special statute of the Province of Manitoba on April 28, 1933. On January 7, 1997, MTS was reorganized and continued as a share capital corporation pursuant to *The Manitoba Telephone System Reorganization and Consequential Amendments Act* (Manitoba). MTS subsequently was continued as a corporation under *The Corporations Act* (Manitoba) pursuant to a Certificate and Articles of Continuance dated April 5, 2000. MTS’s Articles, as amended, were restated by Certificates and Restated Articles of Incorporation dated May 15, 2001 and June 28, 2004. MTS and its wholly owned subsidiary, Qunara Inc. amalgamated effective August 3, 2004 pursuant to a Certificate and Articles of Amalgamation dated August 3, 2004 to form an amalgamated corporation operating under the name Manitoba Telecom Services Inc. The head and registered office of MTS are located at MP19A – 333 Main Street, PO Box 6666, Winnipeg, Manitoba R3C 3V6.
2. MTS’s authorized capital consists of an unlimited number of common shares (the “Common Shares”), an unlimited number of convertible Class A preference shares (the “Class A Preference Shares”), and an unlimited number of convertible non-voting Class B preference shares (the “Class B Preference Shares”). As at July 21, 2004, 74,944,087 Common Shares, 1,379,556 Class A Preference Shares and 9,098,931 Class B Preference Shares were issued and outstanding. The Common Shares and the Class B Preference

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Shares trade on The Toronto Stock Exchange under the symbols “MBT” and “MBT.B”, respectively.

3. MTS is a reporting issuer, or the equivalent, in each of the Jurisdictions and is not in default of its obligations as a reporting issuer. MTS has filed a current Annual Information Form for the purposes of NI 44-101.

### *Significant Acquisition – Allstream Inc.*

4. Effective June 4, 2004, MTS acquired all of the issued and outstanding Class A voting shares and Class B limited voting shares of Allstream pursuant to a court-approved plan of arrangement (the “Arrangement”) under the *Canada Business Corporations Act*, which Arrangement was approved by Allstream’s shareholders on May 12, 2004.
5. Prior to June 4, 2004, Allstream was a reporting issuer, or the equivalent, in each of the Jurisdictions. On October 15, 2002, AT&T Canada Inc., the predecessor to the business of Allstream (the “Predecessor”), and certain of its subsidiaries (collectively, the “AT&T Canada Companies”), filed an application for creditor protection under the *Companies’ Creditors Arrangement Act* (Canada) (“CCAA”) with the Ontario Superior Court of Justice, and obtained an order from the Bankruptcy Court in the Southern District of New York under section 304 of the *U.S. Bankruptcy Code* to recognize the CCAA proceedings in the United States (the “CCAA Proceedings”).
6. As part of the CCAA Proceedings, the Predecessor formulated a consolidated Plan of Arrangement and Reorganization (the “CCAA Plan”). The purpose of the CCAA Plan was to restructure the balance sheet and equity of the AT&T Canada Companies, and to provide for the compromise, settlement and payment of liabilities of certain creditors of the AT&T Canada Companies. The CCAA Plan also simplified the operating corporate structure of the AT&T Canada Companies through the creation of a new parent company (“New AT&T Canada Inc.”), which was incorporated under the *Canada Business Corporations Act* on April 1, 2003. The Predecessor became a wholly owned subsidiary of New AT&T Canada Inc. on that date. On June 18, 2003, New AT&T Canada Inc. changed its name to Allstream Inc.

### *Required Historical Financial Information and Auditor’s Reports*

7. MTS’s acquisition of Allstream constitutes a significant acquisition in accordance with the significance tests set out in each of section 8.3 of

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NI 51-102 and section 1.2 of NI 44-101. Under each of these significance tests, the level of significance of this acquisition is greater than 50%.

8. In accordance with sections 8.4 and 8.5 of NI 51-102, MTS is required to include historical financial information for Allstream, together with an auditor's report, in the Business Acquisition Report that must be filed by August 18, 2004, which is 75 days from the date of MTS's acquisition of Allstream. With respect to the Prospectus that MTS intends to file as a shelf prospectus under NI 44-102 in late August 2004 after the Business Acquisition Report has been filed, MTS is required to include in this Prospectus historical financial information for Allstream, together with an auditor's report, in accordance with sections 4.3, 4.6 and 4.12 of NI 44-101.
9. Since the level of significance of MTS's acquisition of Allstream is greater than 50%, MTS, in accordance with subsection 8.4(1) and paragraph 8.5(1)2(A) of NI 51-102, must include in its Business Acquisition Report relating to this acquisition (i) an income statement, statement of retained earnings and a cash flow statement for Allstream for each of the financial years ended December 31, 2003 and December 31, 2002, which represent the two most recently completed financial years of Allstream ended more than 45 days before the date of the acquisition; (ii) a balance sheet as at December 31, 2003 and December 31, 2002, which dates are the end of the two most recently completed financial years of Allstream ended more than 45 days before the date of the acquisition; and (iii) an auditor's report on the financial statements for each of the financial years ended December 31, 2003 and December 31, 2002.
10. Based on the 50% significance level of MTS's acquisition of Allstream, similar historical financial statements disclosure and auditor's report requirements apply in relation to the Prospectus that MTS intends to file. In accordance with paragraphs 4.3(1)1, 4.3(1)2 and 4.6(3)3(a) and section 4.12 of NI 44-101, MTS must include in the Prospectus the same historical financial statements for Allstream, together with an auditor's report on these financial statements, as are required under subsection 8.4(1) and paragraph 8.5(1)2(A) of NI 51-102, except that these historical financial statements are required for the three most recently completed financial years of Allstream ended more than 90 days before the date of the Prospectus.

### *Available Historical Financial Statements and Auditor's Reports*

11. Since Allstream was incorporated on April 1, 2003 as part of the CCAA Proceedings, Allstream's operating history only began on that date. However, as the Predecessor is a wholly owned subsidiary of Allstream, its assets and

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liabilities on the April 1, 2003 implementation date of the CCAA Plan were indirectly also assets and liabilities of Allstream. Accordingly, the audited consolidated financial statements of the Predecessor, as at and for the two years ended December 31, 2002, and the unaudited consolidated financial statements of the Predecessor for the three months ended March 31, 2003 (collectively, the “Available Statements”) are the only financial statements available in respect of the business and assets of Allstream for such periods.

12. Pursuant to the CCAA Plan, there was a substantial realignment in the equity interests and capital structure of the Predecessor. The reorganization and opening balance sheet of Allstream as at April 1, 2003 were accounted for under Section 1625 of the Handbook, Comprehensive Revaluation of Assets and Liabilities (“fresh start accounting”). Due to the significant changes in the financial structure of Allstream and the application of fresh start accounting, the consolidated financial statements of Allstream subsequent to the CCAA Plan implementation are not directly comparable with the Available Statements. While the Available Statements are not directly comparable to the consolidated financial statements of Allstream, they do provide certain relevant information relating to the business, assets and operations of Allstream in respect of such periods, in that they apply to the Predecessor which is a wholly owned subsidiary of Allstream and carried on the business of Allstream prior to the implementation date of the CCAA Plan. As well, the Available Statements are the only statements available in respect of the periods covered by these statements.
13. In an MRRS Decision Document dated May 12, 2004 issued by the Decision Makers (excluding the Decision Makers in Manitoba and New Brunswick where relief was not required) in relation to an application filed by Allstream, the Decision Makers exempted Allstream from the requirement in the securities legislation of certain of the Jurisdictions to include a reporting issuer’s historical financial statements in an information circular in relation to the management information circular filed by Allstream in connection with its meeting of shareholders held on May 12, 2004 to consider MTS’s acquisition of Allstream, provided that Allstream incorporated by reference in its circular, *inter alia*:
  - (a) the audited consolidated financial statements of Allstream for the period from April 1, 2003 to December 31, 2003;
  - (b) the unaudited consolidated financial statements of the Predecessor for the three months ended March 31, 2003; and

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- (c) the audited consolidated financial statements of the Predecessor as at and for the two years ended December 31, 2002 (excluding the Predecessor's balance sheet as at December 31, 2001).

14. As a result of the implementation of the CCAA Plan effective April 1, 2003, no auditor's report was prepared in respect of the consolidated financial statements of the Predecessor for the three months ended March 31, 2003, as this was an interim period only. Accordingly, there is no auditor's report available in respect of this three-month period.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that:

1. Except in British Columbia and Prince Edward Island, under section 13.1 of NI 51-102, and in Québec, pursuant to a revision of the general order that will provide the same result as an exemption order:
  - a) MTS is exempt from the requirement of paragraphs 8.4(1)(a), (b) and (c) of NI 51-102 to include the historical financial statements of Allstream in relation to MTS's Business Acquisition Report provided that MTS includes in its Business Acquisition Report:
    - i. the audited consolidated financial statements of Allstream for the period from April 1, 2003 to December 31, 2003;
    - ii. the unaudited consolidated financial statements of the Predecessor as at March 31, 2003 and for the three months ended March 31, 2003 and 2002; and
    - iii. the audited consolidated financial statements of the Predecessor as at December 31, 2002, and for the two-year period ended December 31, 2002, together with the auditor's report thereon;
  - b) MTS is exempt from the requirement of paragraph 8.4(1)(d) of NI 51-102 to provide an auditor's report in respect of the consolidated financial statements of the Predecessor for the three months ended March 31, 2003.

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2. Under section 15.1 of NI 44-101:

- a) MTS is exempt from the requirement of paragraphs 4.3(1)1 4.3(1)2 and 4.6(3)3(a) of NI 44-101 to include the historical financial statements of Allstream in relation to MTS's Prospectus provided that MTS incorporates by reference in its Prospectus:
  - i. the audited consolidated financial statements of Allstream for the period from April 1, 2003 to December 31, 2003;
  - ii. the unaudited consolidated financial statements of the Predecessor as at and for the three months ended March 31, 2003; and
  - iii. the audited consolidated financial statements of the Predecessor as at December 31, 2002, and for the two-year period ended December 31, 2002, together with the auditor's report thereon;
- b) MTS is exempt from the requirement of section 4.12 of NI 44-101 to provide an auditor's report in respect of the consolidated financial statements of the Predecessor for the three months ended March 31, 2003.

Dated this 18<sup>th</sup> day of August, 2004.

R.A. Bouchard  
Director – Corporate Finance