
Eastlink Intervention

21 December 2015
1. Bragg Communications Inc., operating as Eastlink, hereby submits our intervention regarding Bell Canada’s Petition to the Governor in Council (GIC) relating to Telecom Regulatory Policy CRTC 2015-326 (the Decision). Eastlink’s failure to address any specific aspect of the Petition should not be interpreted in any way as support where doing so would be contrary to Eastlink’s interests.

Bell’s Petition

2. In its Petition, Bell asks the GIC to vary the Decision that requires carriers to provide wholesale high speed access (HSA) service to their fibre to the premise (FTTP) networks. If granted, Bell would not be required to provide competitors wholesale HSA service to their FTTP network, but they would remain required to provide HSA to their legacy copper networks or their fibre to the node (FTTN) networks. In Atlantic Canada Bell does not provide a FTTN service, and as such, if Bell’s Petition is granted wholesale HSA service would only be provided by Bell over its ADSL service (at speeds of up to 7Mbps). In other provinces where Bell operates, it would also have DSL service in place at comparably low internet speeds, and in some communities where Bell has deployed service over FTTN, it is provided at speed up to 50Mbps.

3. Bell’s Petition also recognizes that competitive equity is an important consideration in any regulatory decisions, and as such Bell proposes that the Decision be varied so that cable carriers are not required to provide wholesale access over DOCSIS 3.1 technology, but they would remain obligated to provide wholesale access to their services using DOCSIS 3.0 technology at speeds up to 100Mbps. This would mean in areas where cable carriers are competing with Bell they would be mandated to offer wholesale access at all speeds of up to 100Mbps, while Bell would be required to provide much lower speeds. As noted above, in the Atlantic Canada Bell would only be offering ADSL HSA at speeds of 7Mbps and in FTTN serving areas outside Atlantic Canada they would have to provide HSA at speeds up to 50Mbps. In Atlantic Canada, where Bell does not provide service over FTTN (noting it has instead already built out over 65% of this region with FTTP), Eastlink would be the only carrier with the requirement to offer high speed wholesale access services to competitor ISPs in the serving areas where we operate (with Rogers being the only provider in serving areas where

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1 Based on publicly available information, it seems that the highest DSL speeds Bell offers in Atlantic Canada are at 7Mbps. This is also supported by Bell’s wholesale HSA tariff.

2 Bell’s Petition Paragraph 3
they operate), while our primary competitor would be exempt from such obligations and be able to focus on its own network expansion and aggressive retail competition against its facilities-based competitors.

4. Bell notes that government and CRTC policies have recognized the importance of facilities-based investment in establishing policy objectives that seek to encourage sustainable competition. In this regard, Bell notes that investing in broadband infrastructure to maintain Canada’s place as an international leader in the provision of high-speed broadband deployment is important and that the Decision mandating wholesale access to such facilities will impede such investment. While Bell’s focus is the impact of the Decision specifically on FTTP investment, many of Bell’s arguments are not specific to FTTP, but they also apply to mandated access to other broadband networks, such as cable carriers’ networks.

Overview of Eastlink’s position

5. At the outset it is important to outline Eastlink’s general position regarding the regulation of wholesale broadband access service. During the proceeding leading to this Decision Eastlink’s position was that retail internet markets already appear to be very competitive and that the mandated provision of HSA services did not appear to be fulfilling the objectives of increasing facilities-based competition. In this regard, Eastlink submitted that any decision to continue mandating HSA service should require ISP competitors (Competitors) to show that they have a plan for investing in facilities in order to ensure that the objective of sustainable, facilities-based competition is fulfilled and that regulation is appropriate for its purpose.

6. The other key aspect of Eastlink’s submissions was the importance that the Decision be technology neutral and competitively equitable. In the context of HSA services Eastlink submits that both cable carriers’ broadband networks and FTTP networks require significant investments in order to remain competitive in the provision of higher capacity broadband services, particularly as consumers’ usage is increasing exponentially. The policy objectives under the Telecommunications Act and the Policy Direction support principles of relying on market forces to the maximum extent (i.e. regulating only to the extent necessary to achieve the intended objectives), regulating in a technology-neutral manner, and ensuring regulation is consistent
with principles of competitive equity. In the Decision, the Commission also recognized that these objectives should be taken into consideration\(^3\).

7. In this regard, Eastlink agrees with the arguments Bell makes that HSA regulation has not shown to increase facilities-based investment by Competitors in Canada and in fact Bell describes how mandated HSA access regimes have not worked in other countries, where they have instead had the effect of impeding investment by existing facilities-based carriers in some cases. Again, those arguments are applicable to all facilities-based broadband providers and it is worth considering whether the impact to investment on all facilities-based broadband providers is justifiable given the limited success the regime has had to expanding facilities-based investments by those Competitors.

8. In its Petition Bell spends a significant amount of time trying to distinguish why it views FTTP technology as unique compared to the other broadband technologies deployed in Canada, primarily because Bell is seeking specific exemption from the obligation to provide wholesale access to its FTTP services. Eastlink takes issue with Bell’s arguments that regulatory policies should differentiate broadband services provided over FTTP from the broadband services offered by cable carriers over our fibre or hybrid fibre-coaxial networks (both of which we will refer to as “cable carriers’ fibre networks”). We dispute that the investment Bell has had to make into FTTP somehow warrants unique and special regulatory treatment as compared to the ongoing significant investments cable carriers have been making into our fibre networks, described in more detail below. The time, resources, and business decisions required to justify FTTP investments are no different from that of the cable carriers who have had to make significant and ongoing investments in our networks in order to remain competitive and improve the service speeds and quality of service to our customers.

9. Notwithstanding the foregoing, Bell has recognized the importance of the underlying policy objectives – that is, the need for competitive and technological neutrality in Commission Decisions. In this regard, while Bell has proposed an inadequate solution - that only cable carriers’ DOCSIS 3.1 technology be exempt from regulation, Bell is correct in recognizing the importance of competitive equity. As such, if the GIC is persuaded that higher speed services should be exempt from mandated access, it is critical that any exemption for FTTP carriers also apply to the same extent (i.e. for the same speeds) to cable carriers who compete with FTTP

\(^3\) TRP 2015-326, Paragraph 14.
providers. Eastlink submits that the error in Bell’s Petition is in its tying the exemption to a type of technology instead of to the speeds offered in the market for broadband, noting that all facilities based carriers invest heavily into their broadband networks and must continue to do so (where the business case exists) in order to respond to increasing capacity demands of consumers. Tying HSA regulation to the speeds offered in an area would result in a more competitive equitable application of regulation, while also ensuring the Decision is technology-neutral.

10. Moreover, it is critical that the regulatory regime regulate the services similarly in order to ensure that existing competition is not impaired by granting FTTP providers an undue preference over other broadband facilities-based providers. Principles of competitive equity and technological neutrality under the Act support this approach. The Policy Direction also supports it. In fact, it is not just a matter of fulfilling the policy objectives, but it is necessary in order to preserve the current competitive environment. Granting Eastlink’s direct competitor (and the largest communications company in the country), Bell, exemptions from these wholesale obligations while maintaining them for Bell’s much smaller competitors will put at risk the sustainability of existing competition. A regime requiring only Eastlink to offer wholesale access to higher speeds in our serving areas in Atlantic Canada would limit our ability to compete against Bell in these largely rural retail markets.

11. For example, the more wholesale customers we serve, the more our retail end-customers’ revenue will be replaced by lower revenues from wholesale Competitors’ end-customers. If wholesale Competitors can only receive higher speed services from cable carriers in the market, the impact of wholesale access on cable carriers’ business will be much greater because we will be selling more services to Competitors at reduced margins while our direct competitors like Bell can maximize their profits by only selling to retail customers. Since the Decision was intended to regulate with a view to improving or expanding future internet competition, the goals of the government, to ensure robust facilities-based competition in the provision of higher speed broadband services, would certainly not be achieved where existing competition is impaired by these Decisions.

12. Eastlink maintains that any outcome of this Petition should not be narrowly applied only to the cable carriers’ DOCSIS 3.1 services as proposed by Bell. Bell may have limited its proposed exemption to DOCSIS 3.1 services due to a lack of full understanding of the
technology or to the fact that cable carriers have and continue to make significant and material ongoing investments in their networks, whether via ongoing upgrades to systems, including to DOCSIS 3.0 technology, or in transition to DOCSIS 3.1. Unlike our traditional cable networks which were able to operate independently of one another through multiple ‘head end’ locations across a province, to provide internet service and local phone, Eastlink had to rebuild hundreds of those systems and to interconnect our networks through major investments in fibre transport. And we must continue investing in our internet networks in order to bring the fastest speeds, increased redundancy (through build of redundant fibre routes) and improved quality of services. In fact, cable carriers like Eastlink are currently offering speeds up to 400Mbps and will soon be offering up to 1Gbps speeds over DOCSIS 3.0 – some of the highest speeds currently available in Canadian markets – and we are offering those speeds to Canadians living in smaller and rural communities. It is critical that any determinations from this proceeding to maintain a regulated HSA regime while exempting advanced broadband services from such regulation ensure that the revised regulatory regime is competitively and technologically neutral.

In Eastlink’s view, this means that cable carriers should not be mandated to provide wholesale access services at speeds that are any higher than the speeds offered by our direct competitors over their regulated technology in the applicable markets. Specifically, this means that we support Bell’s request that advanced broadband services be exempt from regulation, but reiterate that this must include not only DOCSIS 3.1, but also the advanced services provided over the DOCSIS 3.0 networks. In order to ensure competitive symmetry cable carriers should only have to offer wholesale access over DOCSIS 3.0 networks at speeds matching the highest available DSL or FTTN technology in any exchange/market/province. If not, there is real risk of impeding the state of existing facilities-based competition.

13. Eastlink’s intervention addresses the following issues:

(a) **Bell’s Petition makes a stronger case against regulation over all wholesale HSA services than it does for exempting only FTTP from such regulation.** Bell’s Petition appropriately questions the logic to the Decision which appears to favour a resale internet regime over investment, and Bell raises valid arguments that providing wholesale access service to internet Competitors will not achieve the objectives of the Act or the government’s policy objectives of increased facilities-based competition (noting, for instance, that Bell refers to the lack of any material investments made by resellers after two decades of reliance on resale).
However, these arguments are not only applicable to FTTP regulation. They apply equally to regulated HSA service over all broadband networks.

(b) **Bell’s FTTP service is not unique as compared to the high speed services offered over cable fibre networks in terms of the risk, investment and impact that competitive access would have on them.** In this regard, it is important to understand Eastlink’s business, the risks taken, and the investments that carriers much smaller than Bell are contributing to Canada’s internet success story. Any Decision should recognize that the broadband investments and risks made by existing facilities-based competitors like Eastlink should in no way take a second seat to the recognition of the FTTP investments made by Bell.

(c) **Bell appropriately recognizes the importance of competitive equity. However, the specific relief Bell seeks does not go far enough to ensure competitive equity with cable carriers.** In fact, if Bell’s request was granted in its current form it would actually cause competitive harm to facilities-based carriers competing with Bell, such as Eastlink. The impact of asymmetrical regulation in favour of Bell would further the competitive divide between independent carriers like Eastlink and large vertically integrated carriers, and risks impacting the existing state of facilities based competition.

(a) **Bell’s Petition makes a stronger case against the regulation of wholesale access service than it does for exempting only FTTP**

14. Notwithstanding that Bell’s Petition seeks relief from regulation over FTTP, many of its arguments are not specific only to FTTP. In fact, while Bell tries to argue FTTP is unique, most of the issues or concerns Bell raises about the regulation of FTTP are equally applicable to broadband next generation networks (NGNs) generally. In this regard, we don’t dispute that mandated HSA will impede or delay the ability of facilities-based carriers to expand their networks. We agree that mandated HSA can affect retail margins such that increases to the number of wholesale Competitors’ end-customers using our networks will mean reduced revenues that could be otherwise obtained by selling our services directly to retail customers, thus reducing the available profits that could be re-invested back into our business.
15. Bell’s submission describes in detail the negative impact mandated broadband access has on facilities-based competition and the resultant impact this could have on Canada’s leading position in broadband services. Bell’s Petition includes strong arguments against a regime that favours resale service competitors over facilities based broadband providers, claiming it is not consistent with regulatory or government policy objectives, with the Act or the Policy Direction. In our view, Bell’s arguments in this regard are valid, although the arguments do not justify different treatment of FTTP as compared to other broadband networks. Bell’s comments are more applicable to the impact that mandated wholesale HSA to broadband has on facilities-based investment, not just FTTP investment. Even where Bell suggests the impact relates specifically to mandating FTTP, the examples it uses to support that position are still applicable to all broadband networks. Some examples include:

- Paragraph E9 – Bell refers to government, CRTC and Competition Bureau support of the principles that the only way to sustainably deliver price, quality and innovation benefits of competition is through facilities-based competition; and E11 – “Canadians have benefited from the build out of broadband infrastructure by facilities-based providers”. This is true of cable carriers and other facilities-based carriers, many of whom may have fibre-based networks, but are not building FTTP.

- Paragraph E12 – Bell references broadband leaders like the U.S who have rejected regulation over FTTP networks – yet on closer review it appears these countries rejected wholesale access over broadband services generally, not just FTTP. For instance, the FCC, in its Order defines broadband internet access service to include services “provided over any technology platform” and it “encompasses all providers of broadband internet access service”4.

- Paragraph 1.1 - Bell specifically identified a number of facilities-based providers, including Eastlink, who are investing in facilities and upgrades; and, while Eastlink has not announced that we are building FTTP facilities, we are clearly providing some of the highest speed internet services to Canadians and investing in fibre networks across the country. While Bell goes on to state (in paragraph 1.2) that without access to FTTP Canadians in smaller and rural areas will not enjoy the benefits of new technologies and

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4 FCC, In the matter of Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket. No. 14-28 (March 12, 2015) at paragraph 17 and 18.
innovations, this is simply not true since many rural Canadians currently enjoy these services through the ongoing fibre investments made by cable carriers like Eastlink. However, we do agree that where any broadband providers’ revenues are impacted by mandated HSA it will inevitably mean less capital is available to reinvest and continue to upgrade and build out networks, so once again the argument is applicable to broadband investment, not FTTP. The primary and more accurate point is that facilities based investment and upgrades being made by FTTP providers and cable carriers alike are necessary for the future – this is not limited just to the specific type of technology which Bell seeks to exempt.

- Paragraph E6 – facilities-based providers have always led the way in terms of service investments. Bell notes that the CRTC’s “decision is premised on the assumption that mandated access will encourage Reseller ISPs to invest in their own facilities”. Yet it appropriately notes this has not happened in Canada, even after the CRTC mandated access to FTTN. Bell refers to Teksavvy, who made no new investments in facilities when increased access to higher speeds was ordered in the Commission’s 2010 Decision. Eastlink agrees that it appears that mandated wholesale HSA to higher speed services has not resulted in any material investment by Competitors into facilities.

- Paragraph E31 – “the evidence before the CRTC was that decisions that favour Reseller ISPs do not result in any change in the retail rates paid by consumers and, despite their claims, actually result in Reseller ISPs abandoning any plans for investments in infrastructure…”. [While Bell adds, “like fibre to the home” to this statement, Bell is referring to FTTP as merely an example of broadband infrastructure investment. Bell’s statement is equally applicable to mandated access to all broadband facilities].

16. In fact, upon review of Bell’s Petition one could easily replace Bell’s reference to FTTP with “broadband networks” and the arguments would be much the same. Bell’s arguments that mandated wholesale HSA will impede or delay investment apply also to the current and ongoing investments other fibre based carriers are making. The time, resources, and business decisions required to justify FTTP investments are no different from that of the cable carriers who have had to make significant and ongoing investments in their networks in order to remain competitive and improve the service speeds and quality of service to our customers. Other (non-FTTP) fibre networks, such as Eastlink’s, currently provide some of the highest speeds
available in Canada. Bell may attempt to distinguish FTTP on the basis primarily that they are required to overbuild their entire copper network and hence the cost is high for a FTTP build. However, cable carriers have been upgrading and investing in our broadband networks on an ongoing basis. Bell should not now receive special treatment for FTTP simply because it delayed its broadband investments until recent years. In fact, the risk and efforts cable carriers have been making in our existing networks has been just as significant. It will be important for both telco broadband providers (using FTTP) and cable carriers (using our fibre networks) to continue investing in our networks and expanding if Canadians are to be assured high quality broadband services into the future. It is further critical that neither technology be disadvantaged if Canadians are to have access to competitive facilities-based services, which is the only path to advanced technology development and price competition.

(b) Bell’s FTTP service is not unique as compared to the high speed services offered over cable fibre networks at least in terms of the risk, investment and impact that competitive access would have on them.

17. FTTP broadband service is not so unique as to grant it preferential treatment over cable carriers’ fibre broadband services. Bell inappropriately links the impact on investment solely with the requirement to provide access to its FTTP technology. Yet, the Decision to mandate HSA impacts all facilities-based providers to the extent they provide access to their facilities to Competitors at wholesale rates lower than we would receive by selling direct to retail customers. In fact, FTTP, FTTN and cable fibre networks are all robust fibre based broadband networks that require significant investment. Broadband facilities-based providers, regardless of type, need to make significant (and ongoing) investments to sustain a business. Regulated wholesale HSA reduces profits that could otherwise go back into network expansion, which will delay or alter some investment decisions.

18. While facilities-based providers will not necessary stop investing, it cannot be disputed that impacts to business decisions or investment could result from regulated wholesale HSA. In some cases, those impacts may impede the pace at which facilities-based carriers can improve or expand their services. Such delays or impacts should only be justified if the benefits of mandating HSA are proven to exceed the negative impacts to facilities-based competition. When these impacts are not justified by resultant increases in facilities-based investment by
Competitor ISPs, the value of the wholesale regime is put into doubt. Specifically, HSA wholesale customers are not required to – and have indicated no commitment to – build their own competitive networks. This means that the HSA wholesale customers will not generate new technologies and will not deploy advanced networks to rural areas; only facilities-based providers can meet these *Telecommunications Act* objectives, whether FTTP or cable companies’ via upgrades to our existing networks. It is in this regard that there is a reasonable basis to question the merits of ongoing mandated HSA services. In the case of this Petition, a decision by the GIC to exempt only FTTP broadband providers while maintaining regulation over cable broadband providers raises another concern – it prevents cable carriers from competing fairly with the FTTP providers.

*Bell’s differentiation between FTTH and “legacy” networks relates to its legacy copper*

19. Although Bell’s Petition makes a distinction between FTTP and “legacy” networks, the distinction made is based on its investment in FTTP necessitated by the need to replace its copper network, which was paid for through rate of return regulation and a monopoly environment. However, Bell’s investment in FTTP is not any different from cable companies’ ongoing investments in our own fibre networks. In fact, in its last Petition to the GIC\(^5\), Bell stated:

> ILECs, including the Companies, have been building networks which, until quite recently, were based upon copper wire technology. In most cases, it took more than a hundred years to build what is commonly referred to as the legacy copper network. The invention and adaptation of fibre optic technology has allowed for the design of new telecommunications services characterized by broadband networks at much higher speeds… the ubiquitous high-speed broadband networks utilizing fibre optic technology are commonly described in a collective fashion as NGNs“.

20. In the 2009 Petition Bell states that its NGNs (in the case of Bell’s technology) include FTTN and FTTP. According to Bell’s own description of NGNs, it was the fibre optic nature of the technology Bell referred to, and not specifically that subset of technology Bell now seeks to exempt – FTTP, that required new investments. Eastlink submits that cable networks are also

\(^5\) Bell’s Petition to GIC dated March 11, 2009, paragraph 10.
built and upgraded with fibre optic technology and major fibre facilities are built throughout our networks to connect our serving areas and to bring services to our customers’ homes. Eastlink strongly disputes any suggestion in Bell’s Petition, whether inadvertently or not, that cable carriers’ facilities fall within the definition of “legacy” networks.

21. Cable networks were not built as incumbency networks over a hundred years ago like copper. Traditional cable networks were incapable of even offering internet service or local telephone, which is why Eastlink’s move to begin providing competitive internet and telephone service required extensive overhauls of our network in order to enable the provision of these services. Unlike our traditional cable networks which were able to operate independently of one another through multiple ‘head end’ locations across a province, to provide internet service and local phone, Eastlink (and other cable carriers as well) had to interconnect our networks through major investments in fibre transport. Eastlink’s work over the past fifteen years to expand our internet service across all serving areas has involved extensive investment to upgrade our cable infrastructure and interconnect as many rural communities as possible with fibre connectivity. In fact, Eastlink historically had over 300 separate individual cable systems and most of these systems have now been interconnected with fibre infrastructure in order to improve the quality, speed, and number of services offered to Canadians in these communities.

22. And the investment in our facilities did not stop with the complete overhaul of our networks as described above. As competitive pressures increase, as well as our desire to keep improving services for our customers, we must continue supplementing our networks through additional investment in order to bring the fastest speeds, increased redundancy (through build of redundant fibre routes) and improved quality of services. In fact, cable carriers today continue to invest in our networks and will do so into the future to bring DOCSIS 3.1 and/or FTTP. All of these investments are ongoing and they all require capital and a business case to justify expansion. It would be entirely inappropriate to apply unique treatment for FTTP simply because Bell waited an additional 10-15 years before beginning to make investments that cable companies have been making for years.

23. To be clear, cable carriers’ DOCSIS networks should never be grouped with the telco’s legacy copper networks. The application of the policies on which these decisions are based must, by nature, consider broadband networks irrespective of the chosen technology. To
disregard the impact of such investments by cable carriers and to exempt only a subset of technologies (i.e. FTTP and only DOCSIS 3.1) is not consistent with principles of competitive equity and technological neutrality, and would harm existing competition in Canada’s broadband retail market.

24. Bells’ Petition suggests that all cable carriers are moving to DOCSIS 3.1 technology so exempting services over DOCSIS 3.1 would provide competitive symmetry. While cable carriers will eventually move to DOCSIS 3.1, this may take some time for certain carriers. In the meantime, they continue to invest in and upgrade their networks to provide advanced services over DOCSIS 3.0. As already stated, broadband services at higher speeds should be regulated in a similar manner, regardless of technology type or the timing of investment.

About Eastlink - a facilities based Communications Company Investing in Rural Canada

25. Given the detailed description Bell has offered regarding its investments into FTTP, it is important that the GIC also understands how cable carriers such as Eastlink have taken similar, if not greater, risks to serve rural Canada. Eastlink’s story is important to share because we believe it illustrates the importance that appropriate government policies, regulatory support, and fair treatment of facilities-based competitors play in building a vibrant and healthy competitive market.

26. It also highlights the importance that facilities-based investment has played in bringing serious competition and the highest quality of services to rural Canada. While many of the largest operators in the country focus on the largest urban centers so they can benefit from the return on investment in those areas to justify expansion, if any, to less-populated parts of the country, Eastlink is a true example of facilities-based providers bringing competition to rural Canada where we do not have the same advantage of size, vertical integration or reliance on the largest urban centers in the country. Our success has come from a combination of a culture of entrepreneurship and risk-taking, a philosophy of wanting to provide better services and to expand the business, and a belief that success comes from investment and ownership in facilities. But, it has also been through government policies and a regulator who, at appropriate and critical times throughout our corporate history, created or enabled an environment that supported our ability to make such investments. Our own experience shapes our views about
the true benefits that the right government policies, combined with a spirit and drive to build a business, can have.

27. Eastlink is a family-owned private business which got our start offering cable TV services to residents in Nova Scotia and Prince Edward Island, and part of New Brunswick since the early 1970s. Through acquisitions of other small cable companies, Eastlink expanded to serve most of these provinces and as a result of investments in our network, Eastlink expanded our services to offer high speed internet and by 1999 Eastlink became the first cable company in Canada to bring local telephone competition to Canadians. In fact, it was Eastlink’s innovation and approach to bringing higher internet speeds and local phone competition that prompted Eastlink to become the first communications company in the country to bring bundled services to Canadians. Prior to this period, incumbent telco residential rates were regulated, but were much higher than the competitive offers we brought to market. For the first time residents living in the Maritimes began to experience the significant benefits that facilities-based competition brought to them. In reaction to Eastlink’s popular bundle offers our incumbent telco competitor, Bell (formerly Aliant), began to respond by changing its offers, improving available features included in its services, and reducing prices, while also competing in the market for bundles.

28. In 2007 Eastlink took a major step in expanding our business by doubling the size of our wireline business and customer base through the acquisition of Persona Communications, which was a communications company offering cable TV services and in some cases internet service to smaller and rural communities such as throughout rural Newfoundland (in fact, covering hundreds of rural communities throughout the province including places like Stephenville, Baie Verte, and Deep Byte, but not the major center St. John’s), Quebec, Ontario (covering Southwestern Ontario, and communities in Northern Ontario (including to Timmins, Kapuskasing, Cochrane) Northern Alberta (including to Grand Prairie, Cold Lake and many much smaller communities), Saskatchewan, Manitoba and British Columbia (including Oliver, the Sunshine Coast and Delta BC)\(^6\). The investments we made to acquire these systems was just the beginning. Although hundreds of these systems were operated by Persona as separate non-interconnected systems with basic cable service and relatively low internet speeds (and hence the network and the services over them were in need of serious upgrades or replacement at the time), Eastlink accepted the challenge of investing heavily into these areas to fully

\(^6\) Eastlink subsequently sold our Manitoba, Saskatchewan and Quebec systems; we continue to expand and upgrade our systems in the remaining provinces.
interconnect them with fibre, to upgrade or overbuild the network to make it two-way for both internet and the provision of competitive local telephone service, and to significantly upgrade the cable systems in order to bring digital TV, HD TV and now the hundreds of HD channels we offer today.

29. Given the rural nature of these communities the task was not a small one. Unlike operators who focus primarily in the larger centers of Toronto, Vancouver and Calgary, Eastlink did not have the population base or the geographical advantages to support these upgrades. What we had was the spirit and culture described above, along with a business case that told us if we could make the investments and sell three high quality services to our existing cable-only customers, we could justify the investment. We also had an owner who was willing to take the risk to re-invest all profit back into the business, which is what Eastlink has consistently done. While we had the experience of expanding into communities in Nova Scotia and PEI, those communities were typically much easier than the task at hand, given that there was only one incumbent operator in those existing systems, with whom we had an existing relationship. In the case of our expansions from southwestern Ontario up to Northern Ontario, and into Northern Alberta and BC, those areas were operated by dozens of different incumbent telephone operators and municipally owned incumbents with no experience operating on an interconnected basis. The experience entering into many of these higher cost areas, where local phone competition was not even permitted yet, meant Eastlink was hitting a new learning curve for every single new serving area. Moreover, the geographic diversity of our builds into many of these areas, and the new issues faced with different utilities, governments and competitors made for a very significant undertaking. Eastlink recognizes that such is the reality for smaller systems operators who are serious about building networks and forging ahead to provide improved services to consumers. We describe this experience mainly to illustrate that such decisions are not taken lightly, and most certainly we still need to make a business case to invest into these areas and to undertake the time, work, and investment and engage in the entry and access disputes and other issues that arise along the way.

Bell's Petition states that “facilities-based providers invest half or more of their operating margins in their networks”. As a private company, Eastlink does not answer to shareholders and we re-invest 100% of our profits back into the business – any impacts to our margins directly affects us in this regard. When companies like Eastlink are investing 100% of our profits back into our business it highlights not only the importance we place on trying to maintain a sustainable business, but also the level of risk involved in doing so.
30. In 2007 and since then, Eastlink also took another major leap, and business risk, investing in wireless spectrum through a number of government spectrum auctions and making even greater investments to build our leading-edge wireless network. We have made significant investments in our wireless business where we currently provide the most advanced wireless services in Canada, over the country’s only 100% LTE network throughout Nova Scotia and Prince Edward Island. We are continuing to invest, with full service launches in New Brunswick, Newfoundland, and northern Ontario in the near future. Again, taking risks as a fully facilities-based provider means we are willing to compete, even with the likes of incumbent competitors against whom we are dwarfed in size. And given our expansion plans for this business, our investments will continue, and we will continue to put resources and time toward these objectives. It is notable that until Eastlink became a serious regional wireless contender in the Atlantic, the major incumbent wireless providers had little reason to be competitive in this region. Many of the service plans and contract terms were similar, LTE network builds were essentially non-existent, and even the flanker brands (which the incumbent wireless providers use to undercut the competition, while maintaining their higher margins on the core business) did not enter our markets until after it became evident that we would bring serious competition. Since our entry, competition has become more aggressive and Canadians are benefitting. It was, in part, the threat of us as a facilities-based, and serious, provider that competition in the markets really began to develop and that led to a race to cover Atlantic Canada in competing LTE networks.

31. The supportive government policies and the decisions of our regulator that helped the new entrants like Eastlink enter the markets have created an environment that has enabled full facilities-based regional carriers to play a serious role in changing the competitive landscape for wireless services. It is through facilities-based investment and the incentive to recover that investment that makes the importance of success and expansion all the more meaningful. This is also why we truly believe in facilities-based investment, and we do not believe that a resale model will bring those same competitive advantages in relation to broadband competition.

(c) The importance of competitive equity - the specific relief Bell seeks does not go far enough to ensure regulatory symmetry with cable carriers
32. Eastlink submits any Decision to alter the regulation over HSA services should be applied in a competitively equitable and technologically neutral manner. To do otherwise would enable the largest communications company in the country to simply grow larger by focusing on selling all of its services direct to its retail customers at full margins, while cable carriers like Eastlink would end up bearing the burden of most, if not all, wholesale HSA requirements in our markets. Eastlink would lose margins on those services, while also losing potential opportunities to sell bundled services to those end-customers of our wholesale Competitors (noting, as Bell does, that bundling was the basis on which we were able to make many of these investments into the smaller serving areas we currently serve and we would lose a core driver of our bundle).

33. Moreover, with Bell not required to provide wholesale HSA\(^8\), their ability to maximize their margins will also provide increased flexibility for them to offer even deeper retail promotions in our markets in the short-term, thereby targeting our existing retail subscribers. Over the long-term, this would provide Bell with even more control over the retail markets than it already has as a result of its size and vertically integrated structure. Eastlink submits that such market control never benefits Canadians.

34. Consumers are increasingly relying on the internet for content and entertainment, and hence, internet service providers like Bell recognize that winning in the future retail market means winning the retail internet customer. While we believe entirely in facilities-based competition as the means to get there, Bell’s proposal falls short in that it benefits only FTTP providers like Bell and the limited number of cable carriers who may be planning to move to DOCSIS 3.1 technology in the immediate-future and who will be able to benefit from similar exemptions for a period of time. Meanwhile smaller, innovative facilities-based cable operators would be forced to bear increased wholesale obligations while also trying to compete in small rural markets across Canada. Making one type of facilities-based broadband providers solely responsible for providing wholesale HSA service while they must compete with larger broadband providers who do not have such requirements would establish a significant competitive disadvantage in the market. If the GIC accepts Bell’s argument that wholesale HSA service impairs investment, then only exempting FTTP carriers will surely impair cable carriers’ ability to invest and sustain a competitive service while competing against unregulated broadband carriers whose FTTP broadband is not subject to such requirements.

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\(^8\) For any broadband services at speeds greater than 7Mbps in the Atlantic and 50Mbbs in other provinces.
35. It is critical that any determination by the GIC to vary the Decision in response to Bell’s Petition address the significant harm that would be caused to cable carriers from the ongoing regulation of cable carriers’ fibre networks if FTTP networks are not regulated. To grant Bell’s relief without expanding it, as proposed by Eastlink herein, would jeopardize the existing internet competition that exists in Canada today. To be clear, unless all facilities-based providers who are currently subject to wholesale access rules are treated the same (in terms of mandating access to their higher speed services) the real risk is a reduction to the existing state of competition in the retail internet markets.

36. Principles of competitive equity require that regulation not prefer one type of technology over the other. Rather, any regulation that requires one party to provide certain service speeds to wholesale Competitors must apply a technology-neutral approach. Should the GIC determine that the higher speed broadband services should not be regulated on the basis they will impede facilities-based competitors from expanding or investing in their networks at the pace necessary to remain competitive, then it should apply to all higher speed facilities-based broadband providers, not just FTTP.

37. The Decision in its current form already creates an undue disadvantage against cable carriers, who must provide wholesale access to Competitors at the highest speeds we offer in the market (up to 400Mbps and, soon, 1Gig) for at least the next two years before telco carriers are even required to implement broadband FTTP wholesale access at the same speeds. As noted above, in markets where Eastlink is required to provide Competitors with access to our network at speeds up to 400Mbps or 1Gig, the highest speeds Bell has to offer Competitors in the same serving areas is 7 Mbps.

38. Pursuant to the Decision, Bell is only required to offer higher speeds via FTTP after the newly regulated FTTP HSA is in place. The timeframe for implementation will likely be no earlier than two years (noting the process to implement it involves significant regulatory proceedings and costing studies). So, for at least the next two years, Bell’s wholesale access services in Atlantic Canada will be offered at speeds up to 7Mbps, and outside Atlantic Canada in the FTTN serving areas, it will only be offered at up to 50Mbps.\footnote{In provinces outside Atlantic Canada the FTTN may also only be in certain communities, meaning the provision of wholesale access may be at significantly lower speeds in other provinces as well.}
39. In this regard, the Decision requires cable carriers to provide mandated wholesale HSA service at some of the highest of speeds in market (those offered at 200Mbps, 400Mbps and higher) for at least the next two years, while Bell is only required to provide speeds of up to 7Mbps in Atlantic Canada, and in some other regions it may have to offer speeds up to 50Mbps. If unchanged, this Decision means cable carriers may be the only entities making their broadband networks available at wholesale prices to Competitors over the next couple of years, while carriers whose higher speeds are only offered through FTTP can focus on selling their internet services at retail rates, to all customers.

40. This asymmetrical regulation would be more likely to cause a transition of most internet resale competitors over to cable carriers’ networks which offer faster speeds, while freeing up our much larger FTTP competitors to focus on retail markets and target our remaining competitors, as already described earlier in this submission. Giving FTTP providers a two-year head start, as currently set out in the Decision, will have a significant impact and could impede competitive expansion by cable carriers.

41. In this regard, a review of the Decision and the potential impacts on competition should not only consider Bell’s arguments about mandated access impeding future facilities-based expansion, but it should also consider how the Decision as currently framed will impede existing facilities-based competitors who will be the primary providers of higher speed services at wholesale rates until, or if, DBS is implemented. If the GIC accepts that the Decision in its current form raise concerns about the impact on facilities-based providers, it should also address the inequity in the requirement that cable carriers must provide Competitors with access to their higher speed services now. This can be accomplished by ensuring that any exemptions provided to FTTP providers are extended to all broadband service providers, regardless of network technology, and regardless of how early the service provider began investing in fibre.

Summary

42. The Commission’s Decision was intended to encourage Competitors to begin building their own facilities. However, we agree with Bell’s comment that, if over twenty years of such

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10 Given Bell's publicly stated intent to only continue to invest in FTTP, it is likely that Bell will not offer new, higher speeds over its DSL or its FTTN technologies. As such, it is likely that only the current speeds in market will be available over this technology.
regulation has not brought about the kind of facilities-investment those Competitors need to be making, then providing them with expanded access to higher speed services is not going to get them there either. Rather, it will mean that facilities-based competitors will be left offering their networks up for HSA at lower margins, and hence some business decisions may be impacted.

43. Eastlink supports true competition - facilities-based competition. However we are operating at a time when we are not even close in size to our biggest competitors – unlike our experience twenty some years ago, our competitors are much larger than we are, they are vertically integrated, they have control over the media content we sell, we must interconnect with them, rely on them to attach to their support structures and towers throughout the country and compete every day to win our customers’ business, all the while investing in our facilities in a consumer environment driven by increased capacity usage. Yet, we are willing to compete, and build and invest – as long as there is a business case to do so (i.e. if we can recover our investment within a reasonable period of time and make a reasonable profit), and if the playing field is as fair as it can reasonably be (given our clearly disparate size and the conditions under which we operate) and especially where we are not disadvantaged by regulations. In this regard, while we agree that Bell raises valid arguments against mandated wholesale access to higher speed services, it is critical that they apply to cable carriers like Eastlink as well.

44. In our view, if the GIC considers that the Decision warrants reconsideration or variation, we submit that the following relief should be considered:

(a) If the Petition, and the interventions raise valid concerns about the impact that mandated wholesale HSA regulation has on facilities-based investment and strong, sustainable competition, then any decision to exempt certain services from regulation must be applied in a competitive and technologically neutral manner. To do otherwise would be inconsistent with the Policy Direction, and the objectives of the Act. Moreover, it would impair existing facilities-based competition by limiting the ability of cable carriers to compete against FTTP providers in our markets.

(b) If FTTP service is exempted from wholesale HSA regulation, then cable carriers should also be exempt from providing higher speed access to Competitors at the same speeds that are exempt from the FTTP providers. This means in our markets where Bell’s highest wholesale access speed offered is 7Mbps, then cable carriers should only have to provide that speed. In
markets where Bell’s highest speed is 50Mbps, then cable carriers should not have to provide Competitors with speeds higher than that.

(c) Such a determination will ensure that the facilities-based competitors who are actually investing in Canada’s broadband networks (and whom are subject to wholesale access requirements) are treated in a symmetrical manner. The contribution that non-facilities-based Competitors make to Canada’s broadband competition is nominal relative to the value that facilities-based cable and telco carriers provide and it is unsustainable - without our facilities, these Competitors would not operate. We reiterate that, even with access to our networks, these Competitors have not deployed advanced new technologies or built advanced networks into rural areas, such that they are not adding value for Canadians. Any decisions that impair one facilities-based carrier’s ability to fairly compete against another simply to support these Competitors will cause severe risk to the improvement of existing broadband networks in the country, and hence the state of existing facilities-based competition.

All of which is respectfully submitted.

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Eastlink