



**Responding to the New Environment: A Call for Comments
Review of the Canadian Communications Legislative Framework**

Submission by Bragg Communications Inc. (Eastlink)

January 11, 2019

1. Eastlink is pleased to provide comments to the Government of Canada's review of the Canadian Communications Legislative Framework, which involves a consideration of the existing legislative framework and tools in the context of the digital age and what changes may be needed to support our future communications regime.

2. Eastlink is a facilities based, privately owned, company that provides TV services, high speed internet, local wireline telephone and mobile services throughout our serving areas in seven Canadian provinces. In order to provide context for our submission, it is helpful to provide some background on our company.

The current framework has served us well

3. At the outset, we note that the current regime has served us well, indeed it has served our country well - and we would not be here today if it were not for the important legislative provisions and the support of our regulators and government for facilities-based competition in Canada. The regime is not broken, nor does it require substantial changes; however, it could benefit from some modification, as described herein.

4. The policies and decisions that were made in recognition of the importance of investment were (and remain) critical to Canada's success in boasting the presence of extensive network coverage and the provision of high quality communications services across this country. For Eastlink, the CRTC's policies supporting facilities-based investment into wireline telephone networks, its regulation over interconnection and access to essential inputs to support facilities builds, and more recently its support for ongoing expansion of our wireless network by regulating wholesale roaming terms and rates have been critical to our ability to build and/or expand our networks. And, ISED's spectrum policies, such as auction set-asides for incumbents, which have supported and recognized the challenge that new facilities-based entrants have in acquiring spectrum when competing against massive incumbents for such spectrum have been critical for our entry into the wireless markets. Indeed, such policies continue to be important to enable continued buildout and expansion of competitive facilities-based networks by operators like Eastlink.

5. It is facilities-based competition that has driven the larger incumbents to respond with their own innovation, competitive offers and further investments into new products and services. This is evidenced by the increase in companies offering bundled services after Eastlink's introduction of our TV, phone and internet bundles at a reduced price in 2001; by the build out of fibre to the home by our largest competitor in Atlantic Canada in response to Eastlink's robust high speed internet network; and the advancement of LTE service investments by wireless incumbents in our smaller communities as Eastlink began to build the first 100% LTE network upon our entry into the wireless business.

6. As we noted in our submissions on December 1, 2017, in the Broadcasting Notice of Consultation 2017-359: *Call for comments on the Governor in Council's request for a report on future programming distribution models, a discussion about the future of broadcasting*, a consideration about the future of Canadian content and the technologies that Canadians will choose to access this content is moot if there are no facilities-based

networks to provide access to Canadians. Simply put, without adequate networks there can be no discussion. And networks require not only the initial build out, but they require ongoing investment to maintain the quality and level of service that Canadians have come to expect.

7. This is also true of foreign operators and other companies that are bringing new and innovative products and services to Canadians and which compete with Canadian service providers – without the networks that we are building, Canadians would have no such access to these additional services or providers. In this regard, one of the top priorities of the Government and the Panel’s review, should be a consideration of the issues that currently impede, threaten or minimize the ability of facilities-based providers to invest, build and expand their networks, maintain their networks, receive a reasonable return on investment within a reasonable time, and innovate with new services and products provided over those networks.

8. Eastlink’s submission is intended to contribute to the Panel’s review of these important issues, by helping to describe the ongoing challenges we face today. To the extent that the legislation, policies and approaches to the regime are not able to address these challenges, we submit there should be change. Having said that, we do not think the entire system is broken, nor do we think that a major overhaul of all legislation is necessary. To the contrary, even today many of the existing objectives and provisions of the legislation are drafted in a general, principled manner which can survive the test of time, and continue to serve as useful tools on which the industry can be regulated, and decisions can be made. We therefore caution against overly prescriptive approaches to changes to the legislation where more general principles will be more useful in a constantly changing environment.

About Eastlink

9. It is important to share some background about Eastlink, and our story of competition and innovation to help illustrate the benefits of the regulatory framework that promotes facilities-based investment. Although Eastlink started out as an incumbent cable carrier, the provision of services beyond the basic cable services we offered in the 1970s and 1980s was the result of major investments and risk-taking that others were unwilling to take at the time. Our story is not one of incumbency, but rather, one of a small, privately owned communications company who raised the bar by taking on the risks and challenges of bringing facilities-based competition to Canadians in the telecommunications markets at a time when no other cable carrier had yet done so. The investments we made were high risk and it meant having to rebuild our entire network with most of our serving areas being smaller and rural communities. Eastlink is the success story of what true competition means.

10. Entering into the local phone business was a risky decision in the late 1990s because we were the first cable company in Canada to take on that challenge, and the nature of phone service was such that consumers were afraid to switch providers since telephone service was so critical to their everyday connection to lifeline services, family and friends. So, in addition to the significant investment costs, learning the business, and

managing issues such as interconnection and access to incumbent networks (including the cost of numerous regulatory proceedings and disputes), we also had to address the public perception that our telephone service was not reliable, a perception that was encouraged by our competitors at the time.

11. Conversely, the incumbent telco companies were able to rely on decades of rate of return regulation via the regulatory regime which guaranteed revenues in exchange for the promise to build basic phone service to all communities. In essence, they were funded to build the service, so their network costs were at a guaranteed rate of return, meaning they had little if no risk to building their networks. This fulfilled the important objective of bringing essential telephone service to all Canadians. When the internet became more prevalent, they were able to build their DSL based internet service over those same copper networks such that a complete overbuild of their networks was not necessary in order to provide internet service and receive a return on that already paid-for investment. That is not to say that the telcos did not have to make any investments, but in the early days of provisioning internet service, they were able to benefit from earning additional revenues over their copper DSL networks for provision of both services. This guaranteed return allowed them to raise capital needed to make additional investments later via the provision of TV services and later in the fibre deployments.

12. Since entering into the telephone and internet market, Eastlink continues to take on the investment risks, expanding into new communities, and improving our service. We have done so in a regulatory environment that recognizes the importance of supporting and encouraging facilities-based investment. As a private company and family owned business, Eastlink invests 100% of profits back into the business. As a result, across many parts of the country including in small, rural communities residents have access to some of the highest internet speeds available comparable to those available to residents living in some of the larger urban centers. Our serving areas include communities like Cochrane and Opatatika, ON and Deep Bight, NL. Eastlink offers TV service (100s of HD channels, with VOD and streaming), high speed internet (at up to 1Gig speeds), local wireline telephone and we have been investing heavily into building and expanding our LTE wireless network, with recent launches in Sudbury and Timmins, ON and Fredericton and St. John NB, and more to follow – investments into our wireless network are extensive and also require a disciplined approach to business planning.

13. The largest urban centers Eastlink serves are Halifax, NS and Sudbury, ON areas which are significantly less densely populated than the major urban centers served by our larger competitors¹. Otherwise, we generally serve very small, rural communities (in roughly one third of our cable systems, we have fewer than 50 customers). We pride ourselves on being one of the few smaller communications companies whose focus is on rural Canada. Many of the other communications companies in Canada are either focused on more limited geographic boundaries (e.g., they provide service within a single

¹ For instance, an article in the October 2016 issue of Canadian Geographic noted that Halifax has a population density of 71 people/km², while Toronto and Vancouver have population densities of 4,149 people/ km² and 5,249 people/ km², respectively. (Kylie, Aaron, "City Views, Charting the municipal boundaries of Canada's major cities", *Canadian Geographic*, October 2016, Pages 57-64. Print.)

province) or they have the advantage of serving densely populated urban centers, which helps them defray the costs and risks of expansion into smaller areas. However, despite not having similar advantages, Eastlink has been able to expand our exceptional services to hundreds of rural communities. Yet, Eastlink's investments into these areas has not been without risk. The distance to reach rural communities with fibre transport builds, and hybrid fiber coaxial technology to the home, combined with very small population density, and increasing support structures costs and other infrastructure costs, means that a decision to build into these areas must be carefully considered. It requires an assessment of the costs to build, the ability to sell services to a meaningful penetration of households, the ability to sell more than one service (TV, phone, wireless and internet) and the ability to do so at a rate that will provide a reasonable return on investment. Each of these factors impact the business case to build in a new area, and if any one of these factors are not met we may need to reconsider expanding service.

14. Given the significant and ongoing costs of maintaining our networks, and the low population density, which translates into fewer subscribers from whom Eastlink can recover costs, increases to costs via new regulatory requirements, operational cost increases such as extreme and unsubstantiated pole rate increases can seriously impact operations, to the tune of many millions of dollars per year. Pole increase costs provide a useful example of the impacts, noting these costs are just one of many. In fact, pole attachment increase costs alone can be sufficient to cause us to reconsider business plans. For example, in Ontario, when the Hydro One pole rates recently increased from \$22.35/pole per year to \$43.63 effective January 1, 2019, Eastlink's payments to that company almost doubled. The impact to us resulted in millions of additional costs per year and this figure will continue to increase under the Ontario Energy Board's recent decisions. These costs would otherwise have allowed Eastlink to upgrade internet services in a number of small communities.

15. This increase will translated to a cost of close to \$4 per pole per month. An increase like this in rural areas will have a significant impact on the cost providing service. Unlike in urban areas where one pole is usually sufficient to serve a home, in rural areas we are often required to attach to multiple poles to serve one home, such that the cost per household just for the poles can be at least \$8 month. These pole attachments rates do not include additional costs that are payable to these utilities, such as make-ready fees², in addition to all other costs of building the network.

16. It is important to note that investments do not stop once the facility is built. Unlike the traditional phone networks, for which a one-time build could sustain all telephone usage indefinitely (a call is a call, and usage does not put a strain on the network), internet and wireless networks are characterized by substantial and ongoing investment requirements. It has been stated many times that the amount of internet usage by Canadians has exploded such that service providers must continue to invest in our

² Make-ready fees are additional fees we pay the utility for them to inspect the area, and for our company to do the work to be able to attach to the pole, including any necessary "make-ready" costs such as tree trimming, reinforcement of the pole etc.)

networks to ensure that we provide sufficient capacity to the extent of 40-50% year over year increase in usage. It is erroneous to assume that once a facility is built, it is a sunk investment so a service provider is not likely to abandon it or stop offering service. While Eastlink prides ourselves in our willingness to assume risk and invest into our business, we still need to recover our investment within a reasonable period of time. Unfortunately where costs increase, and the customer base is too small to support a return on such investment, difficult decisions have been made to suspend investment or stop providing service.

17. Eastlink began providing wireless services in 2013 and we have experienced the extensive costs of deploying a wireless network well beyond the initial significant investment in obtaining spectrum. This includes building the entire core network, radio access network, the need to build and/or negotiate access to passive infrastructure like towers, rooftops and antenna systems, and access to roaming as well as other billing system and back office costs. Similar to broadband internet networks, the costs and ongoing investments into wireless networks is substantial and ongoing. In Eastlink's experience, while we appreciate the government policies that have supported our facilities-based entry, there is room for improvement, which we propose below. The primary areas for improvement relate to providing jurisdiction to one body to determine issues relating to access, assist with disputes and clarify terms and rates. Timelines for access to passive infrastructure, and the process for negotiating rates and terms, can be slow and unproductive, particularly when negotiating with third party tower owners who have preferential elevations on the towers and who may compete in the same retail market. Clear rules and expectations, and access to timely rulings on disputes, terms and rates will assist in reducing timelines and unnecessary costs which will further improve the case for facilities-based investment.

Costs of regulatory compliance over recent years

18. It is helpful to describe the increased legal and/or regulatory compliance requirements over the past number of years which has also significantly increased service providers' costs. This is not intended as judgement or commentary about the validity of these new requirements, but it is to simply acknowledge the reality that our industry has been facing in terms of increased costs of compliance – a reality brought on by the increased access and use by consumers of this technology. As technology has evolved, more consumers have come to rely on the internet and on other communications services to fulfill many of their needs, this has created new issues that our governments have had to deal with, including the following:

- (a) Due to the proliferation of information being shared over technology – **privacy and security issues** have created a need for investments into enhanced security systems, network engineers to manage security attacks, building more robust billing, payment, and online systems to minimize risk of security breach, increased costs of implementing privacy policies, and staff training to manage customer

communications etc. We also participate in industry groups that establish best practices for security standards.

- (b) **Canada's anti-spam laws (CASL)**, have imposed significant costs on the industry through many new and onerous compliance requirements. This has not only limited some of the sales activity that was once permitted, but it has increased the cost of selling service and has forced service providers to invest in systems and processes to manage consent processes, manage marketing processes electronically, train staff etc. and increased costs of evaluating and marketing new products and services.
- (c) The CRTC established **telemarketing rules**, which required implementation of new systems and processes for managing calls to consumers; management of internal do not call lists and do not market lists and associated training;
- (d) The **Notice and Notice** regime was established as a result of the proliferation of copyright infringement over the internet. Compliance with the Notice and Notice regime under the *Copyright Modernization Act* required significant investments into systems to automate sending notices electronically, time and resources into updating and managing email addresses with the notice regime across multiple non-connected internal systems to send notices to consumers as required. This legislation continues to require ongoing resources, including time spent interacting with plaintiff representatives. Eastlink receives millions of these notices a year (and we are one of the smaller ISPs), and the cost of compliance with this process has been significant.
- (e) Various CRTC rulings governing the industry have established **codes of conduct** for wireless service, TV service and some current requirements governing the Internet (with a recent Internet Code proceeding still underway). These codes have been for the benefit of consumers, but it is relevant to at least recognize that they have in many cases required new systems for billing information, new email system changes to send contracts and associated systems upgrades and changes (at a cost for internal resources and to software/systems vendors), establishing processes for updating and managing contracts, etc. We also note that each code of conduct has introduced variations in the required information, such that each time a new code is introduced the above modifications are required.
- (f) The **CCTS was established as ombudsman** to address complaints by consumers. Again, while a benefit to consumers, the industry is responsible for funding the CCTS and their costs have been increasing year over year due to expansion of their mandate.
- (g) Additional CRTC processes that must be funded by the industry, including implementation of the Video Relay Services, the broadband fund being developed for broadband expansion in rural Canada currently funded from telecom service

revenues; enhanced 911 and new requirements to implement technology to address the concerns about call spoofing and unwanted calls.

19. These requirements are important to take into consideration as they cost millions of dollars in implementation and ongoing operational costs, which have a significant impact on the industry and on smaller companies like Eastlink. Operating a communications company involves relying on numerous systems for various aspects of the business; as such when decisions are made to resolve a new challenge that our regulator or governments are concerned about, the level of work involved in addressing some of those issues via a technological solution can be significant, with costs of integrating systems across a company being prohibitive at times.

20. In an environment where our governments are very focused on access to and the price of communications services, a consideration of the cost impacts of numerous new legislative and regulatory requirements layered over the already increasing costs to maintain and upgrade networks to meet capacity demands (and to respond to increased operational costs like pole attachments), is worth noting, particularly as the Panel considers the important issue of what changes are necessary to our legislative framework. Although Eastlink understands that many of these cost have become the new reality of doing business we offer below some proposals which may help the industry minimize some costs or at least provide more certainty around them.

Impact of Resale Regimes

21. Before we provide proposals for consideration, it is important to explain our significant concern with the current wholesale internet access regime, referred to as the high speed access (“HSA”) regime. Aside from the typical costs of running our business as described above resale regimes have, increasingly been the cause of significant, increased costs to the industry by permitting persons or entities who in many cases have little interest in any type of facilities-based investment, to compete against companies who are making these investments into Canada’s networks.

22. The resale regime should not be compared with the regime regulating terms and rates to essential inputs for facilities-based providers who invest in networks. The resale regime currently requires that facilities-based operators provide wholesale access to their network to competitors *who do not build networks* and who, for the most part, have no interest or intention of investing into networks in the future. Under the current resale regime, Eastlink has been mandated to provide wholesale access to our internet network to such competitors at below-cost wholesale rates for over two years. Eastlink has serious concerns that the framework on which this regime exists has abandoned the objective that a resale model would be a stepping stone to the resellers eventually building their own networks, and instead, it has become a model for competitors to operate in the market without taking on any risk, and simply reaping the profits from reselling services. It seems as if the desired outcome for a greater number of service providers in retail markets may have created the false impression that any competition is good and it must be supported at any cost. This thinking has the effect of neglecting to fully comprehend

the impact these decisions have on facilities-based providers. There are real impacts that will be seen in reduced or delayed investments, and perhaps in some cases companies pulling services out of higher cost areas. While the legislative regime may currently provide the tools to support and encourage facilities-based investment, we encourage the Panel in this review to consider whether more direct and clear provisions supporting facilities-based competition in priority over other models (resale) should be made.

23. Because there are little to no barriers to entry in the current resale regime, Eastlink has noticed an increase in the number of competitors that do not have any knowledge of the CRTC rules governing this service. This results in increased costs to Eastlink as we are required to monitor their action in the market to ensure compliance. These competitors also know nothing about running a communications business, and are not familiar with the related laws and policies in place to protect consumers. Some of them appear to be unaware of, or non-compliant with, the privacy, consumer and legal requirements recently imposed to protect Canadians (such as those noted in paragraph 19 above).³ In addition, the CRTC has suggested in its proposed Internet Code that the outcome of that proceeding not apply to resellers. As such, although this regime may have increased the total number of internet service providers, there does not appear to be any protections in place to protect consumers who subscribe to these services.

24. Moreover, the regime does not differentiate wholesale access requirements between small communities where the population density makes it challenging to justify an investment and where the costs to build networks are significantly higher and larger urban centres. In such respect, while Eastlink has been spending decades slowly, but aggressively, building out our network to rural and small communities in Canada and upgrading our network year over year, in some cases with populations of fewer than 50 homes, as soon as we make such investment we must make access available to third party resellers at below-cost rates, and they can enter the market at the same time at a discount and with no investment to recover. Under that regime, a HSA customer would be entitled to start selling the internet service to customers in these communities using Eastlink's newly upgraded network, at a much lower price than the retail rate required to recover a reasonable return on the investment. Where a reseller's primary, if not only tool, to compete in the market is on price, it would be reasonable to expect a reseller to increase penetration of customers, thereby further impeding the business case to recover a reasonable return on investment. Simply put, the economics begin to look less attractive for any upgrade. The entire business case to enter that market is altered, and the recovery of investment becomes substantially delayed, such that in some cases there is simply no business case to build. We have had to suspend or stop expansion or investment plans in some communities for this very reason.

25. It is also worth noting that the government's various funding programs to support broadband rollout (whether via government funded ISED programs or the CRTC broadband fund which is funded by telecom service revenue), require the recipient of

³ Eastlink's comments about resale are based on specific experience. We provide more detail and specific examples about our experience with such resellers in our submission to the Competition Bureau at: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04387.html>

such funding to provide wholesale access to their networks to resellers, once built. Such a policy is entirely inconsistent with the fact that there has been no business case on which any company was able to justify an investment into these serving areas without a funding contribution (noting funding regimes still also require substantial investment by the operator). A requirement to provide wholesale access to resellers at a lower regulated rate as soon as the investment into an underserved or unserved area is made would significantly compromise the government's objective of expanding services into these areas. Given the high cost and small population bases, even one provider in the area may struggle to sustain a business and reasonably recover its investment. Losing a segment of that subscriber base to a reseller who competes at a lower price on the same network will in many cases destroy the business case to serve. While these policies may be intended to give the appearance of providing competitive options to these communities, consumers in these areas may be left without any network or network improvements.

26. In rural communities, every factor needs to be considered when assessing where to invest. We have hundreds of communities across rural Canada, where we offer up to four telecom services today (noting that for our fourth service, wireless, we continue to expand our network into more regions in Canada where we have spectrum). If the costs to provide certain services are prohibitive we will reallocate the investment into areas that make sense for the business and which can allow us to receive a reasonable return. Recovering reasonable returns allows us to further our business through increased facilities-based investments. Every dollar we make has an impact on what we can do to expand and sustain our business.

27. Because of the significant and ongoing investments that rural providers such as Eastlink must make in our networks, it is vital that our regulatory environment fosters the type of facilities-based investments made by Eastlink and other companies who take on the risk to build out to rural communities, and continue to invest in those networks year after year to ensure that Canadians are able to access the services and content that they need and want.

28. Eastlink and other facilities-based providers who serve rural areas are for-profit businesses. As a result, imposing regulatory obligations that do not recognize the need for cost recovery and a reasonable profit will significantly impair our ability to continue investing in rural areas. Eastlink has always supported measures aimed at improving competition within the Canadian communications industry. Indeed, the Commission's pro-facilities-based competition policies allowed Eastlink to assume the risks of being the first cable company in Canada to upgrade our facilities to launch local telephone services, to bring much needed competition to that market. More recently, similar government policies recognizing the value of facilities-based investment in bringing true innovation and competition have enabled Eastlink to successfully acquire spectrum and build out our advanced LTE wireless networks and leading edge VoLTE technology into rural areas. We continue to rely on these pro-competition policies aimed at facilities-based development in order to expand and improve our networks. However, we submit that a regulatory framework that continues to support the entry by non-facilities-based

competitors, particularly in smaller communities like those served by Eastlink, is flawed and will only continue to undermine the Commission's and the Federal Government's objectives of improving Canada's telecommunications facilities and networks, and ensuring that Canada remains competitive in the future. Indeed, as noted above, the current framework has already impeded Eastlink's ability to continue investing in its rural networks.

29. In Eastlink's view, it is problematic when a person seeking to enter a resale market to sell services as important as communications services can do so while taking on little risk. While the government and regulators may consider whether there are 'barriers to entry' such that one would expect policies that support ways to encourage entry, it is critical that government consider the negative impacts to consumers and to facilities based providers when the regime provides absolutely no, or nominal, barriers to entry for resellers to provide the service in the market.

30. The lack of barriers to entry not only hurts facilities-based operators, but it ultimately hurts consumers in a number of ways:

- Consumers are not benefiting from innovation by resellers; they may more often just receive price discounts based on the unreasonably low prices at which resellers have to pay for the service. They may eventually experience service problems due to not obtaining sufficient capacity, redundancy or customer care;
- Many resellers do not, in our experience, focus on customer service nor have they been willing to invest in ensuring they have adequate levels of customer care. Their availability for receiving customer calls is limited and in many cases Eastlink has received calls from reseller end-customers who know we are the underlying provider and who have been unable to connect with their service provider;
- Focus is taken away from areas of our business where it could be better utilized. The significant amount of work dealing with resellers' repeated violations of the TPIA Tariff and Service Agreement (including non-pay and failure to comply with terms), in addition to the numerous regulatory proceedings that are the result of the resellers ongoing requests to change to the regime, takes valuable time away from our own business, which in the long term can result in delays in investing in products or in our own responses to customers;
- The loss of customers in small communities where our costs are high and the subscriber numbers are low make it difficult to justify the investment. As mentioned above, we have had to suspend or stop investment plans in a number of communities over the past 2 years as a result of the below-cost HSA rates – this is not good for consumers in these areas; and
- Maintenance or upgrades to networks may be affected. Again, where the cost to maintain a network is too high in light of the customer base, it may be necessary

to suspend activity or to shut down the services in that area. We have also recently had to close a number of smaller cable systems where the access to signals was too high, for instance.

31. As a network owner Eastlink has not used the reseller regime to expand our service area. Eastlink is a facilities-based provider; we do not believe in the long term sustainability of a resale regime whereby we have little or no control over our cost and service inputs, and are fully reliant on the service provider. In our view, the flaw with the current system is that the approach to no-barrier entry, at below-cost rates means resellers without any business acumen or interest in doing more than making a profit off an existing service can enter the market and compete on price, without any expectation to further innovation or investment. Moreover, if extensive reliance on resale occurred, there would be no incentive for companies to invest at all. An incumbent will be incentivized to invest when faced with another independent facilities-based entrant; if there is no such entrant, an incumbent whose only competitor is a reseller using its network at lower costs will have little incentive to improve the network or services, particularly in smaller communities where the subscriber base cannot support it.

32. While Eastlink does not believe resale models are sustainable, if they do remain in place, a proper resale regime should distinguish between urban areas, where demographics can more readily support a wholesale access regime, and rural areas where the business case to justify maintaining or expanding existing facilities is already challenged. A proper regime also must ensure rates are significant enough such that facilities-based service providers can reasonably recover their costs of investments plus some markup and resellers are incentivized to actually make their own investments rather than perpetually relying on wholesale providers. Perpetual reliance on wholesale providers encourages ongoing regulatory process and wastes resources rather than enticing investment.

33. With the above context in mind, Eastlink offers our views on specific issues raised in the Terms of Reference.

Universal Access and Deployment

The focus of the legislative and policy regime should be on facilities-based service providers and investment

34. As noted previously, building, expanding, maintaining and upgrading networks in Canada is critical. Without networks there is no discussion about competition, nor is there discussion about access to entertainment, information or other services and products which Canadians now demand.

- The regime must continue to recognize the importance of supporting facilities-based investment and policies. In fact, it should make clear that facilities-based investment

takes priority over resale models in meeting the objective of expanding competition and services to Canadians.

- The legislative regime and policies must continue to support reasonable terms and rates for access to passive infrastructure such as support structures, telco and hydro poles and other infrastructure owned by third parties; access to wireless towers, spectrum policies such as set asides for spectrum licenses that support entry by facilities-based operators who are not national incumbents, spectrum license fees that are reasonable and consider the impact of costs on investment, particularly for smaller operators who may have higher costs to serve in smaller communities; and continued access to wholesale roaming with regular reviews of rates as technologies change or retail costs go down.
- A regime that encourages resale models (such as wholesale internet access) as a solution to increasing the number of retail competitors will not bring about the investments where those models are not compensatory, do not require resellers to take on any risk or investment obligation, and where they compromise the business case of facilities-based investment (whether entry, expansion or upgrading) in smaller communities. This will compromise the very investment builds that are critical for our future. Eastlink also submits that mandated resale models for wireless services such as MVNO access, raise similar concerns about investment, including for smaller facilities based providers who are still in the process of investing in and building their facilities.
- Resale regimes, at minimum should not apply in smaller and rural communities where the cost to build compared to the size of the population is significant and where the business case of investing would be compromised.

The regulation over access to (and disputes over) passive infrastructure should be with one body

35. There are a number of areas where the regulation of infrastructure lies with multiple government bodies. This makes it challenging when operating in multiple jurisdictions and creates inefficiencies and inequities across the country.

- Under the current regime, the CRTC regulates access to telco support structures which provides a thorough process for reviewing costs and establishing rates for carriers' attachments to poles. This process provides certainty, consistency, and has reduced significant timelines for access and potential for disputes over the years of regulation. Yet, for electric utility poles, we are subject to the rates established by separate provincial utility boards. The utility boards' mandate is about ensuring reasonable electricity rates to ratepayers, and not on the impact of pole attachment rates to federally regulated carriers. As noted earlier in this submission, costs to access poles under a recent determination by the Ontario Energy Board has had a significant and prejudicial impact on our costs to serve

our customers in our Ontario communities. Eastlink fully supports transferring the jurisdiction over electric utility poles, to the CRTC, through changes to the definition of transmission facilities under the *Telecommunication Act*.

- ISED's conditions of license (COLs) to wireless service providers includes important provisions mandating access to towers at commercially reasonable terms and rates, a policy consistent with ensuring facilities-based providers can access these structures on reasonable terms to expand their networks and to minimize proliferation of towers, noting the government policy to minimize duplicate tower builds. While the COLs mandate that access be provided, and while ISED has provided some clarification on the COLs from time to time, these requirements and the clarifications tend to be broader principles that cannot readily resolve issues when there is a dispute. Eastlink submits that issues concerning access disputes, disputes over rates, or other disputes that arise (whether relating to head lease fees imposed via incumbents or their failure to permit access to towers at higher elevations based on claims of imminent futures while not actually making any use of such space on the tower in the future) are all issues that facilities-based providers like Eastlink have had in trying to negotiate reasonable access to infrastructure to build our network. The lack of a clear regulatory mechanism to determine such disputes has the effect of suspending or delaying important network expansion. Such delays can even impact a licensee's spectrum license renewal in cases where access to certain infrastructure is critical for meeting deployment targets. Regulation over disputes or clarification of terms and conditions regarding access to towers, including rates should fall under the jurisdiction of the CRTC who already has similar experience and processes in place for these very issues.
- In the case of attaching wireless equipment to any passive infrastructure, the regulation over access to such equipment and disputes concerning such access should continue to fall under the CRTC's jurisdiction. The CRTC already has such jurisdiction as it pertains to wireless attachments to telco poles, under the existing support structure regulatory regime. It is reasonable that they govern all such wireless attachments to all passive infrastructure as such policies and principles are generally similar. This raises no concerns about safety issues or related requirements pursuant to the *Radiocommunications Act*, since all wireless carriers remain subject to the technical and safety requirements as established by ISED pursuant to that legislation.
- ISED should continue to set the conditions of licence mandating access to infrastructure and roaming. ISED issues the spectrum licenses and determines the process for spectrum allocation, and it establishes the COLs for spectrum licenses. Eastlink submits this is an appropriate role for ISED's continued responsibility, in addition to its current responsibilities including *inter alia*, governing spectrum, radiocommunications and related technical issues. Indeed it remains important that incumbents be subject to license conditions mandating

such access regardless of whether the CRTC makes additional determinations relating to rates and terms for such access.

- Eastlink has been encouraged by the spectrum policies on which we have been able to acquire spectrum to enter the wireless business. These policies such as auction set asides for non-national incumbents, will continue to be critical for smaller entrants like Eastlink, so we can continue to build and expand our wireless networks. We also submit that spectrum license fee policies now and in the future should be implemented that recognize the impact of higher costs on investment, particularly for smaller less populated, higher cost areas.

Universal access to service

36. The federal government's focus on access to services to all Canadians, including recent initiatives such as Connecting Canadians and more recently, the Innovate-to-Connect program is already advancing the objectives of expanding broadband services to further reaches within Canada. The CRTC's recent decision to establish the broadband fund with telecom service revenues to be invested into further expansion of broadband to unserved and underserved communities is also underway. Provincial governments are also interested in these issues and have been working with various carriers to contribute to separate initiatives. As well, carriers like Eastlink continue to invest in our networks and will continue to do so where the business case exists.

37. As Eastlink has referenced in this submission, increasing universal access by Canadians to service can be supported through policies and legislation that improve the cost inputs for facilities-based operators to continue to build and expand their networks.

38. As to pricing of services, the legislation already includes tools to regulate pricing of certain regulated telecom services, and on the broadcasting side, the CRTC has also regulated the provision of basic cable service at a capped rate, so we see no need for changes to legislative regimes in this regard as decisions can already be made under current jurisdiction.

39. Given these issues, other than a focus on streamlining regulatory oversight over access to key infrastructure and services, including over disputes (both of which we would hope will improve rates, terms and access as well as timing for buildouts), there are no additional changes required.

Safety security and privacy

40. We note the Terms of Reference also refers to issues of safety, security and privacy given the increased use of online services wherein consumers access, share, distribute and manage a variety of personal information. While Eastlink agrees these are all valid concerns, we also note that our regulators and governments have been establishing mechanisms that already require communications companies to address

many of these issues. For instance, as noted above, companies must now comply with additional requirements via various service provider codes intended to ensure consumers are aware of the services they have, understand the impacts of them, and are protected from other activities online. Additionally, we have legislation such as CASL, enhanced privacy requirements regarding online activities (consent and clear information to be provided to customers about how their personal information will be collected, used or disclosed); new breach notification requirements under PIPEDA; a Notice and Notice regime (while not dealing with security, it includes new processes and requirements to minimize copyright infringement); and increased responsibility for managing security breaches on our networks in order to ensure protection over consumers and customers' information, along with the increased costs for us in managing it.

41. Companies like Eastlink have been investing in enhancements to security systems governing our technology, we have a security department to ensure we are aware of and ahead of any new risks to systems, and we comply with the numerous best practices and standards established for our industry for all services. In this regard, Eastlink submits no further requirements or changes are necessary.

42. We believe a relevant concern, however, is the increasing use by consumers who are not learning about the impacts and risks to them of certain online behaviour; the first priority should be including these kinds of issues (risks of sharing information, information about online predators, impacts of using technology without caution, etc.) as a core curriculum item within our education system. The responsibility for these issues must be with parents and educators who should consistently teach about the risks of online activity in this digital world. Technology changes too quickly to keep up with the rogue individuals who seek to take advantage of consumers online. In some respects, an attempt to manage all risks via imposing more obligations on the industry will mean costly processes that won't stay ahead of the game, and cannot really control for those intent on committing fraud or other bad actors.

Governance and Effective Administration

43. The Terms of Reference refer to the issue of the Governor in Council's ("GIC") current powers under the *Telecommunications Act*, which permit the GIC to issue a binding, broad policy direction to the CRTC, to vary or rescind or refer back a CRTC decision or require the CRTC to make a report on an issue. Eastlink submits that given the existing right to appeal Commission decisions under the legislation, the existing provisions allowing the GIC to intervene should be very carefully and rarely used. Eastlink supports a regime where the regulator has independence to fulfill its mandate provided by the legislation through a fair, reasonable and thorough process in order to arrive at its determinations. Government intervention may have a place where there is a serious need to intervene, but it could compromise the thorough regulatory process as a result of pressures to government through lobbying efforts of individuals or interest groups, limitations in the facts that the government may have, or other factors that may drive certain directives.

44. Eastlink takes no position on the specific format of the legislation (i.e whether there is one or more pieces of legislation governing the industry); as noted, the existing regime has worked and does not, in our view, require a major overhaul. If there were other areas for improvement in the existing legislation or processes it would involve a consideration as to whether specific provisions are necessary to ensure a more expedient and timely process for issuing determinations and other rulings.

Broadcasting Issues

45. Eastlink is a broadcasting distribution undertaking and as such, we are not a major content creator (other than via our community TV channel) so we have not offered comments specific to programming service or content related issues. However, as an independent BDU who has no affiliation with any programming services, we are in a weaker position in relation to our provision of competitive TV services in comparison to our larger vertically integrated (VI) TV competitors who also own programming services. Our broadcasting environment in Canada is characterized by a very small number of large companies owning the vast majority of Canadian programming services and most of those services are owned by larger VI companies who compete directly with us in retail TV markets via their own TV services – via traditional TV technology and over the internet. Smaller independent BDUs like Eastlink have very limited ability to negotiate terms of carriage with these programming services. They are simply too large and powerful, and we cannot risk dropping the service to stand our ground in negotiations for improved terms, as the impact would be a direct hit to our retail TV distribution business, loss of subscribers and effective transfer of subscribers over to the very competitor's TV service who also owns the content.

46. While the Commission has attempted many times to try to address this inequity, the tools in place have not been working well. Certain larger VI programming services who also compete in retail markets and online, are in a direct conflict of interest in providing their competitors with access to these programming services on reasonable terms and rates. Yet, these VI entities are able to offer their own content online or for free to consumers.

47. We have begun to experience the VI entities disputing the Commission's jurisdiction over programming services – (a) disputing that the CRTC can impose a wholesale code of conduct to ensure that programming content is made available to BDUs on fair terms and rates; (b) disputing that the CRTC has jurisdiction over business customers of programming content – which would effectively allow them to shut out access by their retail competitors to larger business customers who may want to purchase TV content along with their telecommunications services (which could also result in loss of a suite of business services); (c) and in effect by disputing the CRTC's jurisdiction, some have also refused to participate in CRTC dispute process – illustrating they have no desire to even resolve a dispute in a mediated or negotiated manner – but rather, the service is to be provided on their terms.

48. Eastlink has serious concerns about the recent drive by these VI programming services to chip away at the CRTC's jurisdiction over programming content. In our view, if a Canadian programming service seeks to be licensed to operate, then it must also acknowledge that all Canadians should be entitled to access that content via the service provider of their choice. As such, the legislation should enable the CRTC to enforce the objectives of the broadcasting regulatory regime in such a way that gives Canadians choice over their service provider. As such, the CRTC needs clear jurisdiction to mandate that all programming services licensed to operate in Canada must be made available on reasonable terms and conditions to all BDUs who wish to provide them. To ensure reasonable terms and conditions, the CRTC should be able to enforce through license conditions, wholesale codes or otherwise, terms and policies established to fulfill these objectives. The legislation must be clarified in this regard so that future efforts by VI programmers and powerful communications companies can no longer chip away at the jurisdiction of our regulator due to unclear or ambiguous provisions.

49. As to foreign operators, Eastlink also seeks equitable regulatory treatment to ensure that our own Canadian service providers and programming services are not prejudiced by onerous obligations imposed on them, while foreign operators can avoid any contribution to the system. Much has been said about these issues in various proceeding and to government, including on the right to impose taxes on these entities, and so we need not restate it, other than to say that this review should incorporate mechanisms or recommendation to address these inequities.

Other issues

50. The consultation document raises issues regarding whether changes are required for other areas of the industry, including on issues of Network Neutrality, consumer protection issues, and accessibility. Eastlink submits that the existing legislation has enabled our regulator to establish policies and requirements in keeping with these objectives and there is no need to modify them.

We appreciate the opportunity to contribute to this important review.

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