eastlink

August 31, 2018

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Greg Lang
Major Case Director
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Competition Bureau
Place du Portage Phase I
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Dear Mr. Lang,

**Re: Market Study: Competition in Broadband Services – Submission of Eastlink**

Bragg Communications Inc., operating as "Eastlink" (Eastlink) hereby provides comments in relation to the *Market Study Notice: Competition in Broadband Services* (Notice), issued by the Competition Bureau (the Bureau) on May 31, 2018.

Sincerely,

Natalie MacDonald
Vice President, Regulatory
Eastlink

**Market Study: Competition in Broadband Services**
**Eastlink Submission**

**August 31, 2018**

# Contents

## ***Introductory Comments***

1. The purpose of the study, as described by the Bureau, is to better understand the competitive dynamics of the Canadian broadband services industry. The basis for this study, as we understand it, comes from the Bureau's interest in ensuring that competition in broadband markets is "healthy", as referenced in paragraph 3 of the Notice, recognizing that "healthy competition can help to ensure that all Canadians prosper in a competitive an innovative marketplace".

2. The Notice refers to a number of characteristics of a competitive market which we feel are important to address; in addition there are also other issues that we submit are worth consideration in this review. In this submission we address some key issues worth noting, followed by our responses to some specific questions from the Notice.

### ***Competition before service availability?***

3. The future success of Canada's broadband industry will be dependent on having high quality, robust networks on which Canadians can access the content and services they want. Accordingly, it is critical that Canada's regulatory environment supports continued investment by facilities-based providers like Eastlink in expanding and upgrading our networks. Eastlink primarily serves rural areas where the costs of building and maintaining networks are significantly higher, and the customer bases are significantly smaller. In light of the economic realities associated with building networks in rural areas, government must be careful that policies focused on encouraging more competition do not impede the ability of facilities-based providers like Eastlink to assume the risks of building and upgrading such networks. If the business case for Eastlink and other rural providers to invest in their networks is compromised consumers in rural areas will no longer be able to access the content and services that they need and want.

4. Eastlink submits that the federal government has been focused on initiatives to ensure that broadband service is provided to all Canadians, noting the concern that broadband is not available in some smaller, rural areas of our country. In other smaller communities, Canadians may have access to some internet service, but it may not meet

the minimum requirements of basic broadband service to which the CRTC has recently established[1]. The federal government has established funds under past initiatives such as *Connecting Canadians* and *Connect to Innovate* to expand the availability of broadband to remote and rural areas. The CRTC is also in the midst of establishing a process whereby the contribution funding mechanism will be applied to the expansion of rural broadband. This mechanism will be paid for by Canadians through a percentage of their telecommunications service fees charged by most telecom providers in the country.

5. We appreciate that the Bureau's focus is on competition, as it should be, but any such focus on establishing an environment to encourage competition and in ensuring such competition is healthy should not take priority over ensuring basic robust broadband is available to rural Canada. In some cases, the regime of trying to encourage competition through resale models (that have abandoned a requirement to build facilities) is compromising the business of the very companies who have taken on the risks of building out these areas.

6. Eastlink submits that a review of the wholesale regime that applies to smaller facilities-based providers, particularly those serving rural communities, must be undertaken, as the current mandatory wholesale access regime applied to these areas will surely risk impeding the very existence of service providers or their ability to improve their services. And it certainly will not encourage entry of healthy competition on a sustainable basis. Simply put, if there are no networks – there can also be no entry by non-facilities based providers who rely on those networks. As such, the mere existence of a network in a community should not justify a mandated wholesale regime where the economic considerations of operating in many of these areas cannot support it. While the Bureau may be focusing on healthy competition, we urge the Bureau to consider that it is more important for Canadians in these smaller areas to have robust, high quality networks before non-facilities based competitive entry is even considered; and indeed, in some cases those communities could not economically support a resale regime.

[1] Telecom Regulatory Policy 2016-496: *Modern Telecommunications Services.* The CRTC set new speed targets of 50Mbps for all Canadians and is creating a new fund that will invest up to $750 million over and above existing government programs.

***"Healthy competition" must consider sustainability of such competition, and whether it brings value to consumers***

7. Eastlink submits that any analysis of whether competition is "healthy" must consider the value that competition brings to consumers (in terms of service quality, innovation, investment) but it must also consider whether the competitor entering the market is serious about being a long-term, sustainable service provider that wants to advance competition, or whether it is simply entering the market for quick profit, such as by competing mainly on price without much of its own input or business risk. In a case where there are no, or few, barriers to entry by a competitor there is also an increased risk of entry by parties who are not serious about improving the state of services or sustaining a long term business. We address these concerns in more detail below.

***"Reasonable price" vs "low price"***

8. The ultimate objective of establishing a framework to encourage competition is to ensure that Canadians have access to high quality broadband services, with service providers continuing to innovate and offer reasonable prices for those services that are reflective of a competitive market. We note the Notice refers to "low prices" as a relevant characteristic of a competitive market when describing the purpose of the study. We submit that instead, the guide by which any assessment of pricing in a competitive market is made should be "reasonable prices".

9. While "low prices" are without doubt ideal for any Canadian consumer of any service or product, we submit that "reasonable" pricing in a market that is characterized by significant capital costs of deployment, maintenance, expansion and ongoing operational costs (including increasing regulatory compliance costs) is a more appropriate reference point as to whether the market is properly serving consumers in relation to the price charged. Indeed, in our view, when one refers to a price being "low" it may often be interpreted as a price that is actually lower in comparison to the amount one would typically expect to pay for a given service or product. As such, a focus on "low" pricing as

determinative of characterizing competitive markets runs the risk of making inappropriate findings about the state of the markets and which could impede the future development and innovation sought by our government.

10. Eastlink submits that over past decades the CRTC has issued decisions regarding what a reasonable price is for basic telephone service, and even in a forborne environment, the CRTC determined that incumbents were required to continue providing standalone basic phone service at a capped rate, noting the importance of ensuring that Canadians could obtain the service at affordable rates. In fact, in Telecom Decision 2006-15, the Commission recognized a concern with respect to vulnerable residential customers and that it is "important to ensure that the affordability of essential basic residential PES (primary exchange service) not be compromised in a forborne market"[2] . Given concerns about affordability the Commission determined in that decision that in forborne markets, a ceiling on incumbent telephone companies' standalone phone rates would apply. They directed that the standalone basic phone rate was to be capped at the most recent approved standalone PES rates in the applicable incumbent market. This regime still applies today, and we see incumbent phone companies charging standalone PES rates in the $30-$38 range[3] in forborne markets. Incumbent operators in high cost serving areas that are still regulated are able to charge this rate, and higher, in some cases to reflect inflation.

11. Clearly broadband costs justify rates that are higher than a basic copper phone line. Unlike copper-based phone service (which once in place requires little or no ongoing upgrades or maintenance costs etc.) the cost to expand and to maintain a broadband service that is robust enough to meet the increasing needs of consumers is significant, with capacity demands increasing by up to 50% year over year. We address the pricing issue in more detail below.

[2] Telecom Decision 20016-15, paragraph 450.

[3] For instance, in Nova Scotia, Bell's standalone rate is $31.95 (see: http://www.bce.ca/aboutbce/regulatory/standaloneresidentialservice/bellaliant ); we note also that the 2017 Telecommunications Monitoring Report, Figure 5.2.3 illustrates that the price of basic local telephone service in Canada ranges from $22/month to $38/month in many Canadian urban centres (with rates as high as $38 in Windsor, Kitchener, ON for instance), while it may be up to $40 in northern areas of Canada.

***A competitive market is characterized by "high levels of innovation" (paragraph 4 of the Notice)***

12. There is significant innovation by facilities based broadband providers. Conversely, in our experience, many resellers are only competing on price with very little to offer in terms of functionality, quality of service or customer care. While increasing capacity of networks and redundancy are important, along with increased speeds, facilities-based providers do not just stop there. We continue to try to find ways to differentiate our service from competitors, and to respond to consumers' needs and interests. One way Eastlink does this is by focusing on the whole home experience. Recognizing that WiFi is being used extensively throughout the home by multiple devices we have introduced a number of products aimed at ensuring that our customers receive the best coverage. This is in contrast to third party internet access (TPIA) providers and resellers who, in our experience, tend to rely on outdated modems, some of which are not even able to reach the advertised speeds[4]. Conversely, Eastlink has made significant investments into our "WiFi Perfected" services, which comes from investment in a technology that provides our customers with not only a significant improvement in the quality of their in-home connection, but it gives them other functionality and control over the services that they previously did not have. These investments are made solely in an effort to provide our customers with a higher quality of service and value.[5] Eastlink's history has been one of innovation as a facilities-based provider, noting that while we are only a fraction of the size of larger providers, we are willing to take on risks to be the first in Canada to implement new technologies in some cases. For instance, we were one of the first in Canada to use the latest internet technology and we have continued to increase speeds of service in addition to the innovations described above.

13. Eastlink submits that the Bureau's expectation of "high levels" of innovation is being met by facilities-based providers like us and such levels of innovation cannot

[4] Eastlink has recently had to notify certain TPIA customers that the modems they are using are not capable of providing the speeds they are claiming to deliver.

[5] https://www.eastlink.ca/internet/wifiperfected.aspx

reasonably be expected of resellers who are not investing in their own networks or services. Nor can it continue for facilities-based providers who face ongoing increased costs, while also required to provide below cost access to their networks to competitors. Innovation will continue to come from facilities-based competitors provided they can earn a reasonable return on investment, and some profit to justify it.

***Low penetration of reseller services, notwithstanding discounted rates***

14. The Notice refers to the latest CRTC Monitoring Report which notes that as at 2016 87% of retail internet subscriptions in Canada were purchased from a traditional telephone or cable company, notwithstanding that resellers are offering what appear to be comparable services for up to 30% price discounts. The Bureau seems to imply in the Notice that the market could function better in order to enable resellers to place more competitive discipline on traditional facilities-based service providers. We are concerned if this statement implies that more protection or intervention is necessary to help out these resellers.

15. Eastlink submits that these statistics may be more indicative of consumers not receiving the quality or level of customer service, responsiveness etc. from some resellers, which is unrelated to the wholesale access service they are receiving and instead based on the reseller's approach to running its business. In addition to the significant network investments and the costs of operating the network, the cost of high quality and responsive customer care is also significant and companies who have taken on the financial risk of investing in networks are equally committed to improving the services and keeping customers happy so they can receive a reasonable return on those investments.

***Increased regulation is not needed***

16. The Notice seems to imply that resellers have been unable to discipline incumbents and perhaps there is further regulatory intervention that must occur to enable resellers to improve their position. <u>Eastlink strongly opposes any suggestion that further</u>

regulatory intervention needs to occur to make the market function better. The Bureau needs to consider the very real possibility (and we believe it applies in a number of cases, based on our experience) that many resellers are not in this business to sustain a long term, innovative competitive position – some just want to enter the market with ease, mark up the low (below cost) wholesale rate they are charged while still profiting by selling at a discount, with no service improvements to consumers. While there may be some exceptions to this scenario, we address below our experience in the case of some resellers whose business model seems to be just that. In our view, the current wholesale internet access regulatory regime has created this issue by encouraging an environment where anyone can enter the market in reliance on below-cost wholesale rates.

17. We disagree with any assumption that consumers' lack of interest in lower priced services from resellers implies that more needs to be done to improve the business model for resellers. Although price may be an important consideration for consumers, the fact that the market share for resellers remains low could equally be evidence that consumers also value the other benefits provided by the incumbent providers. Incumbent providers undoubtedly offer a higher level of service because they have made significant investments into their networks, including ensuring that they hire network engineers who know the importance of designing a network to ensure redundancy, security, proper capacity management, etc. They also have departments who focus on customer care, billing, and product development so that they are continually looking at ways to innovate, improve and advance their product and service offerings. Incumbent providers also spend significant time and resources trying to determine ways to reduce downtime during service outages and ensuring that customers have a consistently reliable service. Conversely, we have experienced a number of reseller ISPs who have:

- taken shortcuts to provide service;
- entered markets without any retail location or adequate staffing levels;
- not fulfilled basic consumer protection requirements for clear and relevant service policies;
- are not aware of the requirement to register with, or follow the CRTC's policies regarding resale;

- no meaningful understanding of the communications business;
- not hired appropriate network engineers, or individuals who have experience in network planning so they do not know that it is important to ensure redundancy in their network, nor do they have any knowledge on adequate levels of capacity needed to ensure customers are receiving their subscribed to speeds; and
- limited their customer service to restricted hours and are non-responsive to their customers' issues.

These issues can greatly impact customer demand, even though not the result of anything we, as wholesale providers to our network, have done.

***The broadband industry is a costly business***

18. This is a fact, and yet it seems to be one that is either glossed over or not well understood in the various commentaries about the pricing or competiveness of broadband service. While we do not have the resources to research and comment on a comparison between Canada and other much smaller countries that have much higher populations, we urge the Bureau in this review not to disregard the fact that given Canada's sheer size and small population spanning our vast country, there are significantly higher costs to provide service of the quality that we have been able to provide in this industry.

19. Broadband service requires significant capital investment for deployment, expansion, maintenance of networks, as well as ongoing capital investment to keep up with demand. Increased regulatory compliance issues, albeit with the objective of addressing the increasing impacts to consumers of advanced technology (i.e. privacy, piracy, accessibility etc.) over recent years have also increased costs of operating and managing our networks and services.

20. Within this backdrop, any resale model that allows a competitor to enter the market without any material investment, without taking on any risk, without any knowledge of the industry and solely in reliance on the significant and ongoing investments made by facilities-based operators, will not contribute in any meaningful way to a properly

functioning marketplace. The obligation on facilities-based providers to make their networks available to resellers at below-cost rates (which is the current status of wholesale pricing for broadband access) has already impeded the advancement of existing broadband services in some communities, or expansion into other communities, as we address in more detail below. This does not only impact competition, but it also impacts the ability to sustain 1 or 2 operators in some of these communities. We urge the Bureau not to make findings and recommendations that compromise existing basic services in rural Canadian communities, at a time when our federal government is seeking expansion of basic broadband service to many of these communities in Canada.

***Over- regulating discourages efficient business models***

21. In recent years, the attention placed by our governments and regulators on broadband services and pricing has caused a shift in focus away from creating a properly functioning competitive marketplace (i.e. encouraging facilities-based investment), in favour of an approach focused on short term outcomes and ease of entry by resellers who are not investing. This compromises the goal of establishing a healthy, vibrant and sustainable broadband market. Resellers have instead learned that being vocal and applying pressure to regulate can result in changes to the regime whenever they decide it is needed.

22. Eastlink submits that constant changes in wholesale internet access regulatory approaches causes ongoing, lengthy, resource-intensive proceedings year over year, which have created an attitude of entitlement by ISP resellers rather than one of expecting them to contribute in any meaningful way to their own business (we are careful to state that there may be some exceptions, as described later in our submission). We don't have the resources to even keep up with some of these proceedings but we are forced to participate in them because we have been directed to provide wholesale internet access. The amount of time, resources, costs (including experts to engage in the costing processes) takes important staff and resources away from where our focus otherwise should be, which is improving our core business for our customers. If the outcome of the proceedings resulted in reasonably compensable rates and a process that could be relied

upon over a longer term, it may not be so problematic at least in more urban areas, but when the outcome of a one or two-year process ends up being overturned in a new proceeding that is initiated at the request of these very resellers, it makes the entire process seem frivolous and wasteful.

***About Eastlink***

23. It is important that we provide some background about Eastlink, our services and our story of competition and innovation to help illustrate the benefits of a regulatory framework that promotes facilities-based investment and the disadvantages of a resale regime that does not encourage or require facilities investment. The Notice seems to group cable carriers like Eastlink into the category with incumbent telcos as successful incumbent operators while placing the resellers in a separate category that seems to be described as more deserving of regulatory protection or initiatives to improve their business.

24. Although Eastlink got our start 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, rural provider 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, in effect, rebuild our entire network in rural Canadian communities. In our view, Eastlink is the success story of what true competition means.

25. Eastlink is a small privately owned communications company which got our start in the cable business in the early 1970s, with the first system being purchased in Amherst, NS. Through a series of unrelated acquisitions over 3 decades we purchased hundreds of non-connected smaller systems throughout PEI and NS (with later acquisitions to expand to other provinces so that we now provide our services in 7 provinces). The cable systems during that time were not robust as they are today. Over the years we invested significantly to interconnect systems and to upgrade the facilities with fibre and hybrid

fibre/coaxial cable. In fact, when we decided to offer internet and telephone service, our cable network was not capable of provisioning it. The investments needed to build the infrastructure to support internet and phone did not just include incremental investment to improve our cable plant – rather, the upgrades involved rebuilding most of our network to provision it for two-way capacity (which is needed to provide both phone and internet) as well as interconnecting many of our systems with fibre to improve quality and service.

26. Entry into the local phone business was risky business 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 take a risk with a new telephone service provider since telephone service was so critical to their everyday connection to lifeline services and to 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 in their campaign against us.

27. Conversely, the incumbent telco companies, whose business began offering essential lifeline phone service, were able to rely on decades of rate of return regulation promised 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, and so their network costs were at a guaranteed rate of return, meaning they had to incur zero risks in building their networks. 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.

28. Eastlink continued to take on the risk of building our network and we did so at a time when the regulatory environment, and the underlying principles established by our regulator, recognized the importance of supporting and encouraging facilities-based investment. As a private company and family owned business, Eastlink invested 100% of profits back into the business, a practice we still follow today. 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 at or above those available to residents living in some of the larger urban centers including in areas such as Cochrane and Opasatika, 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.

29. 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 competitors[6]. 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. Most of the other communication companies in Canada are focused on more limited geographic boundaries (e.g., they provide service within a single province), or they have the advantage of serving densely populated urban centers, which helps them defray the costs and risks of expansion into rural areas. However, despite not having similar advantages, Eastlink has been able to expand the provision of 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

[6] For instance, an article in the October 2016 issue of Canadian Geographic noted that Halifax has a population density of 71 people/km$^2$, while Toronto and Vancouver have population densities of 4,149 people/ km$^2$ and 5,249 people/ km$^2$, respectively. (Kylie, Aaron, "City Views, Charting the municipal boundaries of Canada's major cities", *Canadian Geographic*, October 2016, Pages 57-64. Print.)

population density, and increasing support structures 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 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.

30. Given the many 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 specific and useful example of the impacts, noting these costs are just one of numerous. 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 $41.28/pole per year (with the OEB permitting a rate increase 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.

31. Consider, the price to attach to a hydro pole in Ontario will be almost $4/pole/month. In a rural area we may require multiple pole attachments to serve one home, such that the cost per household just for the poles can be at least $8 or more. And, this cost per home increases if you lose a customer at an adjacent home due to competition. Also, pole attachments costs do not include costs payable for make-ready fees to those very utilities, in addition to all other costs of actually building the network, customer care and other back office services. Given these costs which are completely outside of Eastlink's control, along with other regulatory requirements, Eastlink has serious concerns about arbitrary assumptions that the price of internet is too high.

32. In light of all of these costs, it is critical to understand the severe impact that a mandated wholesale regime has on our business, particularly where the pricing of those services are below costs and there are effectively no barriers to entry.

33. Investments don't 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 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 networks to ensure that we provide sufficient capacity to the 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.

### ***Costs of regulatory compliance over recent years***

34. With the objective of improving the Bureau's understanding of the industry, Eastlink submits it may be useful to provide some information to describe the level of regulatory intervention and government involvement over the past number of years which has drastically increased service providers' costs. This is not to make any commentary about these new requirements, but it is to simply acknowledge the reality that our industry has been facing in terms of increased costs of compliance. 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, online systems to minimize risk of security breach, increased costs of implementing privacy policies, and staff training to manage privacy and customer information etc.

(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.

(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 establishes 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 professional time interacting with plaintiff representatives. Our company 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; not to mention, that the claimants/rights holders are not required to pay for time involved in ISPs providing access to the information if they seek a court order for disclosure of records. That the industry has to bear these costs is of concern, particularly when one considers that in typical litigation a plaintiff can include recovery of those costs in the claim against defendants (such that ISPs should be entitled to charge for them).

(e) Various CRTC rulings governing the industry which have established codes of conduct for wireless service, TV service and some requirements over Internet (with a new review pending for the upcoming year). These have been for the benefit of consumers, but it is relevant to at least recognize that the rules have in many cases required new systems for billing information, new email systems 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.

(f) The CCTS was established as ombudsman to address complaints by consumers. Again, while a benefit to consumers, the industry is also paying for these costs which are increasing year over year due to expansion of the CCTS mandate.

(g) Additional CRTC processes that must be funded by the industry, including implementation of the Video Relay Services, a broadband fund being developed to invest in broadband in rural Canada currently unserved; a new requirement to implement technology to address the concerns about call spoofing and unwanted calls.

35. These requirements are important to take under consideration as they cost millions of dollars in implementation and ongoing operations cost, which have a significant impact on smaller companies like Eastlink. Operating a communications company relies on numerous systems for various parts of the business; 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.

36. 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), needs to be considered when assessing whether a mandated wholesale regime for non-facilities based entities to compete in smaller communities is really providing the outcomes hoped for.

***The price of broadband***

37. As noted above, Eastlink takes issue with assumptions and statements that the price of broadband today is too high. We refer again to the fact that the CRTC in its regulation of standalone basic wireline phone rates, even from as early as the 80s and 90s, approved rates whereby basic phone service in the $30-38 range has been deemed reasonable for urban areas. Noting that a copper based phone service, with no increased capacity needs, will not require the level of maintenance or investment into the future, it is obvious that any broadband internet service costs more than a basic copper phone line to build and maintain.

38. In our view, considering how far consumers' communications and entertainment dollars are really going compared to a few short decades ago may be worthwhile. While we do not have the resources or time to engage in an in-depth analysis of this issue, we cannot help but note that in this age when advances in technology have made our lives so efficient, and information and entertainment so accessible, the value that the price of our communication services brings today (whether standalone internet or wireless service, or even bundled with TV) far exceeds what a consumer even 20 or 30 years ago received from paying for many more products or services to provide access to comparable content.

39. For instance, when Eastlink became the first company in 2000 to bundle wireline telephone service, internet service and TV we offered it at a promotional price of $99 a month. This was a huge price discount in the market at the time considering that no other provider in Canada was even bundling any services (indeed, no other cable carriers were offering wireline phone over their network by then) and the incumbent telephone companies only offered their services on a standalone basis. Plus, the incumbent telco phone service was in the $27-30 range/month. Eastlink's $99 bundle included basic TV service consisting of approximately 65 channels (even at a time when we were not paying

vertically integrated competitors the significant amounts we do today for sports and related content), a 5Mbps internet service and a phone service with all features (also not included in the incumbent's standalone phone rate, which were charged at about another $7-14 by the incumbent).

40. Yet, today, an Eastlink starter bundle[7] can be purchased for the price of $99 for 3 months and regular price of $116.95. This includes 100Mbps internet service, Basic TV service in High definition, an HD receiver, and Wi-Fi for all devices. **Based on the bank of Canada inflation calculator, the 2018 price of our $99 bundle that we offered in 2000 would now be $138.50. Yet, today, our customers are accessing far more with 100Mbps service, unlimited internet data and TV and phone for regular price of $116.95!** To suggest that our internet services in Canada are not competitive and are overpriced is simply wrong when one considers this reality. It seems that with the government focus on bringing high quality and reasonably priced services to Canadians, we may have all lost touch with the cost of services even 20 or 30 years ago.

41. We think it is also worth considering how technology has enabled consumers to reduce the number of products and services they may have required even 30 years ago in order to experience access to the comparable information and entertainment that they now have with just a couple of devices or services. Again, while we have not taken the time to investigate every price charged for these products and services in the 1980s, for those of us who do recall how we had to access content in the '80s, the costs add up. By simply considering that for today's basic internet service, or even a combined broadband (via wireless phone or internet) and TV service subscription (or a standalone subscription over the internet to programming service), a customer no longer has to incur additional costs for the following (unless they want to):

[7] Based on advertised rate August 16, 2018 in Halifax, NS (comparable in other serving areas) at: https://www.eastlink.ca/bundles.aspx

- Movies - Purchase or rental of a VCR and movies. Movie rentals in the 1980s included movies priced at $4.99 and daily VCR rental of $49.99 with 3 movies, or $69.99 for a weekend[8].

- Music - Purchase of the cassette or DVD player, and individual cassettes or DVDs (at a price of over $25/album).

- Computers - The cost of computers in the ‘80s was in some cases much higher and less affordable for many families compared to computers today. While a consumer today can certainly find a costly personal computer if they want one, in the 1980s a home computer was far more costly. For instance, based on information we were able to locate online, in the 80’s, “*Apple's iconic Macintosh PC retailed for $2,500 ($6,081 in today's dollars). Dell's Turbo PC -- the tech company's first computer -- was considered a steal at the time because of its $795 price tag ($1,867 today, adjusted for inflation).Now, desktop computers are much sleeker in design and more affordable for the everyday consumer. Apple's iMac desktop computer starts at $1,300, while Dell's Inspiron 22 3000 All-in-One desktop system can be had for as little as $400*” [9]

- Long distance – in the 1980s lack of long distance competition meant that customers had to wait until after 10:00 pm to place a call in Canada to benefit from reduced rates, but any lengthy use of long distance even at after-hours rates could run a family into the hundreds per month for service. With internet access, sites like WhatsApp, Skype and Facetime allow customers to not only talk across countries, but to do so face to face at no extra charge.

- Home phones - while families began purchasing their own phones from local retailers, incumbent carriers still charged a rental fee for a home phone.  As early

[8] Based on pricing confirmed from a competitive video store operator in NS the 1980s.

[9] https://www.kiplinger.com/slideshow/spending/T050-S001-how-much-did-things-cost-in-the-1980s/index.htm

as 1996 Bell's tariffed rental rate for a home phone was $2.95/month[10]. An annual rental price of $36.40/year in 1996 equates to $53.14/year in 2018. While perhaps not a huge impact, given that consumers pay for a mobile phone today, it is notable that costs were still applied for such equipment in the 1980s.

- Car phones/pagers – again these devices are now replaced with one device, which can do far more than provide access while in a car or at a work site.

- Camcorders, cameras – these costs are no longer necessary given the multi-tasking nature of wireless devices and computer technology. While some consumers may still choose to purchase these devices, the functionality of one device that can meet these demands cannot be ignored when we consider how many devices and products a customer may have paid for a number of years ago.

- Travel time – we cannot discount the added value that online access to government services, education, shopping and the like have saved in travel and free time.

42. The above examples are provided mainly to illustrate that if a full and detailed assessment of a consumer's actual spend in the 1980s (for instance) for all types of activities they may have engaged in was compared to what they spend today for access to comparable content, information or services, we may find that our advancements in networks and technology have not only made our lives more efficient and easier, but they may result in some savings by replacing multiple products and services with only one or two which fulfill the same purpose. Of course there will always be a subset of consumers who will want the latest and greatest technology at higher prices.

43. On a separate note, the wireless service industry is often blamed for the cost of wireless services, while every consumer vies for the latest and greatest wireless device

[10] See: https://www.piac.ca/our-specialities/bell-overcharging-for-party-line-rental-phone-sets/ "The Bell Canada tariff for rental sets, Item 2300 in Bell's General Tariff, gives a rate of $2.95 for 500-type telephone sets provided to party-line subscribers. This tariff has an effective date of 1996 02 01"

which can come with a price tag of up to $1,300, a price which is not determined by Eastlink. Because wireless service providers are the direct avenue by which consumers obtain their wireless service *and their device*, the cost of that $1,300 device is often attributed to the wireless provider's fees, even if that provider may not be making any profit from the device.

***The impact of unreasonably low TPIA rates on rural broadband***

44. As noted above, 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, mobile phone, we continue to expand our network into more regions in Canada where we have spectrum). If the costs to provision 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.

45. The case to upgrade a community is shaken when one considers the impact of a mandated HSA regime at the rates provided that are below cost. Under that regime, a TPIA customer would be entitled to start selling the TPIA service to residents in one of 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.

46. 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.

47. 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 telephony 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 those pro-competition policies aimed at facilities-based development in order to expand our networks and improve upon them. 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.

## ***Eastlink's experience with internet resale regime***

### ***Flaws with resale regime***

48. In Eastlink's experience, the regulatory regime governing wholesale internet access services which enables resellers to sell our services to retail customers is flawed. When the mandated access regime was first established, the goal was for wholesale access providers to charge a reasonable cost-based rate plus markup to recover a return on investment, while ensuring that the wholesale ISP customers, or resellers, would be

able to enter the market and begin to take steps to build a business, with the objective being eventually investing in facilities. It was neither intended to be perpetual wholesale access (and hence the mandated regime has been established as “conditional mandated non-essential”), nor was it intended to subsidize a reseller’s business at such a low cost that they would not be incentivized to build their own networks.

49. Eastlink does have experience with one reseller who entered the market under earlier rulings, whereby the rates were at least more compensatory than they are now, and that reseller is an exception to what we are experiencing now. For instance, that reseller has been able to enter the market and, contrary to many other resellers, has also been able to invest in their own facilities. They are a wholesale customer whose success is not based in reliance on below cost rates and that customer has begun building its own network (hence, using the regime as a “ladder of investment” which was the promise of resellers years ago). Its focus has appropriately been on the aspects of its expansion and facilities build-outs over which it has more control rather than on disputing every single issue on the resale regime. We have found that customers who understand the business because they did not enter it at below-cost rates, and who have not been spending their time and resources pushing the Commission for changes to policy only months after they get the policies they already sought, are instead operating like reputable businesses who are focused on their own business investments, the customer and advancing in the market. However, this company is, in our experience, the exception.

50. When it became obvious that many if not most of the resellers would not invest in facilities in any meaningful way, it seems that the underlying principle of encouraging facilities builds has been forgotten in favour of simply trying to find ways to make it easier for them to operate their business, regardless of the impact on facilities-based providers or on the sustainability of such a model on a long-term basis.

51. This approach has resulted in carriers like Eastlink being mandated to provide access to our networks at below-cost interim rates for the past number of years. To date Eastlink has been waiting for almost two years for final rates to be determined, and we

do not anticipate a final decision will be coming any time soon. It is very difficult to make investment decisions in an environment that remains so uncertain.

52. Eastlink's concern is with wholesale models that mandate the provision of the service at below-cost rates, and that mandate smaller operators to provide wholesale service in communities where the cost to serve and the population base make it barely economical to maintain one or two networks in the area, let alone allowing a reseller to sell service based on price competition without any commitment or risk on its part.

53. Eastlink has recently been directed to provide TPIA access in Atlantic Canada and our experience with the provision of this service (and also in Ontario based on the below-cost rates we are mandated to provide) illustrates what we believe are serious flaws in the wholesale regime today. These below cost rates have led to a drastic increase in the number of new TPIA customers[11]. This is not a positive sign of encouraging competition – rather, it is a sign of inefficient and inexperienced individuals entering this market because there are no barriers or risks to them in entry. In most cases, our experience has been that these customers are not at all familiar with the communications industry, or with running any business. They have been able to enter the business with little more than the initial deposit and start up fees as permitted under our tariff, and beyond that they have no risk of entry. We have had to deal with a number of nonpay and late pay issues, such that we have had to spend time and resources in meetings with our accounts receivable staff and other staff involved with the customers, including regulatory staff to assess how to manage the non-compliance. These situations are not simple to deal with because they have involved many assurances of payment, while we have had to balance the concern that disconnections would result in innocent end customers being without service, or a regulatory dispute that would force us to maintain service longer than necessary while the regulator sorts it out. In such cases, the resellers may and often do, lay inappropriate blame on the underlying provider when communicating with their end customers, resulting in impacts to our reputation and goodwill in the market as well.

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[11] For instance, Eastlink offered TPIA in Ontario prior to the interim decision, where we had only 3 customers; after the interim decision Eastlink has received 6 new TPIA applications from customers seeking to provide service in Ontario, highlighting the impact that such below-cost rates are having on entry.

54. Our experience suggests that some resellers know little about the business, often inappropriately asking our engineers for advice or recommendations on how to run a network. Many also do not have any knowledge on the requirements needed to provide a high quality internet service so they do not buy sufficient capacity to meet their end-users needs, nor do they ensure they have adequate redundancy to deal with unexpected service interruptions. We have also had cases where resellers have engaged in fraudulent behaviour whereby they installed Eastlink's retail internet service to their end-users to take advantage of promotional rates and free install services, with the intention of transferring the end-user to their own resale service after a couple of months. Another example of fraudulent behavoiur occurred with the same customer who set up one single residential TPIA service in multiple apartment buildings, and used that one connection to resell internet to all units in the building (which included up to 40 units in one building). In this case Eastlink did not only receive below-cost rates for the one connection but we were losing wholesale revenues for every other unit in the buildings. This was discovered inadvertently, and to be clear, the amount of time and work associated with trying to police these kinds of activities is significant. As a small company with few resources, when our internet engineers and technicians, regulatory staff, wholesale service staff and Executive, are spending time investigating such behaviour, it takes focus away from our own business. Furthermore, there is very little Eastlink can do to disconnect resellers when they engage in this type of behavior as the TPIA Tariff typically requires Eastlink to reconnect end-users as soon as the illegal behavior has ceased. As such, Eastlink has the responsibility to ensure their ongoing compliance with the rules.

55. 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 so little risk. While the Bureau's role may be to consider whether there are 'barriers to entry' such that one would expect the Bureau to find ways to encourage entry, Eastlink urges the Bureau to consider the negative impacts to consumers and to facilities based providers when the regime provides absolutely no, or nominal, barriers to entry to provide the service in the market. In fact, we recently had a reseller who failed to pay significant amounts owed to Eastlink and through a long process of providing notices that service

would be terminated, they left a number of end customers without any internet service, despite repeated attempts on our part to minimize the impact to their end users by reminders of disconnection and to inform their customers.

***The regime hurts consumers in the long term***

56. 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 merely receive price discounts based on the unreasonably low prices at which resellers have to pay for the service but will eventually experience service problems due to not obtaining sufficient capacity, redundancy or customer care;

- 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. These customers increase our costs and expect us to fix the problems they have, although the problem lies with the reseller or the reseller should be responsible to address it;

- Focus is taken away from areas of our business where it could be better utilized. As noted previously, the significant amount of work dealing with reseller trouble issues (including fraudulent behaviour) 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 TPIA 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, we may choose to shut down the network. We have also recently had to close a number of smaller cable systems where the access to signals was too high, for instance.

## ***Specific Questions Raised in the Notice***

57. **Resellers have had little or no competitive influence to date on our business**. Given the below cost rates we are mandated to charge, Eastlink is not able to compete on price with resellers who are able to access our services at a significant discount. We cannot compete with a below cost wholesale competitor by also offering below-cost services to our own retail customers as our business would suffer further. In fact, one might argue that when wholesale competitors access our service at below cost rates, our other retail customers pay the price of it by not benefiting from the latest upgrade, which is ironic in an environment where the federal government is concerned about quality service and reasonable rates.

58. Eastlink has always prided ourselves in our high quality service and the quality of our customer care has always been a strong differentiator for our business. As such, we maintain that customers who care about service quality, and the availability of high quality customer care will continue to select Eastlink. In cases where a reseller is looking to simply make easy profit on a model that involves little effort, there will be no long term benefit to consumers, as noted above and in some cases, Eastlink may have to suspend investing or focus on other areas of the business, as we noted previously we have had to do in some communities.

59. **As to how this competitive influence could change in the future**, Eastlink submits that as long as competitors entering the market are able to do so with little or no risk, such that they are only paying below cost prices, they have nothing to lose. Having nothing to lose creates no incentives for improvement, or to innovate to keep customers.

As such, at a minimum, competitive influence can only change where resellers are required to pay more reasonable prices for the service, and where they are required to assume some risk into their own business. Ultimately, paying more may incentivize them to start investing themselves, which is where true competition comes from as it will weed out the wholesale entrants who are not really serious about competing, or who are incapable of managing a business and ensuring consumers are receiving reasonable service.

60. Effective competition comes from companies who are competing on a level playing field. Where companies enter the market and each have taken on financial risk to build their business, they are incentivized to win customers and keep them. In order to recover a return on investment, it requires a long term commitment from loyal customers, which requires companies like Eastlink and other facilities-based providers to keep innovating and improving their services. When a company has taken on little or no financial risk, there is less of an appetite for improvement or to ensure that all customers are happy with the service. Eastlink strongly believes that facilities-based investment is the primary means by which companies will fight to win the customers and to keep them.

61. **Consumers' reaction to new competitive alternatives.** It goes without saying that there will always be a select group of customers who are extremely price sensitive and who will switch providers frequently to enjoy the latest promotion. Even between facilities-based competitors, we see switching behaviour for certain customers who are willing to make the change month after month. While Eastlink has not studied this issue, we can say that over time, there may also be customers who choose to come back to facilities-based providers where price is the only advantage offered by the reseller, in cases where their value proposition may be more about customer service and new features, etc.

62. **Industry contractual practices, contract lengths and bundle discounts are not the issue.** While we cannot speak for practices of other companies, Eastlink offers customers services on a month to month basis, in which case the customer is free to change their service or disconnect it at any time; we also offer 2 year service agreements,

which includes a fixed-price guarantee, for a variety of service offerings – including standalone internet, and bundled services. Customers are provided a service agreement which clearly outlines the customer's service, their commitment period and the customer's obligations upon cancellation.

63. Provincial consumer laws, the Competition Laws regarding clarity in offers and in advertising, CRTC consumer codes and the CCTS have all reinforced the importance of providing clear information to consumers, clear terms and language in policies. And any disputes or areas of confusion are typically resolved in favour of the customer; as such, Eastlink submits contract practices should raise no concern and requires little analysis by the Bureau. Any problems with certain entity's practices are more appropriately addressed as a breach of the existing rules rather than a need for increased rules.

***The impact of regulation***

64. Regulation can be useful and necessary **where a company seeking to invest in facilities needs essential service inputs from another carrier** – in these cases the necessity of regulation ensures that the new entrant is able to also make its necessary investments and obtains essential facilities at reasonable cost-based rates to build a business. But in a regulatory model characterized by support for non-facilities based investment, the regime is flawed. Simply put, under the current framework that supports/protects non-facilities based providers, regulation has:

(a) created regulatory uncertainty (given the ongoing changes year over year to the wholesale rules and pricing), as well as an inability to assess how the existing rules will be applied when a decision needs to be made;

(b) impacted investment by facilities-based providers where the regime does not provide for compensatory wholesale rates;

(c) customers of facilities-based providers subsidizing the cost of wholesale access when the rates are below cost; while not intentional, this is the realistic effect if a company that must invest in facilities is not being compensated by reseller end user rates, the cost recovery must come from the existing subscriber base.

65. Eastlink submits that **the ideal type of regulation is regulation that encourages an environment where companies are incentivized to invest in facilities** – for example, in the case of regulating wholesale inputs such as access to support structures, rules around interconnecting with other carriers where interconnection is necessary (such as in the phone business) and wholesale access to essential facilities.

66. The flaw with the current regulatory regime over wholesale internet access services is that the regime and the principles on which it was initially established, that is access was intended to encourage facilities builds, never really materialized. So what we have now, is a model whereby resellers have stopped making the promise that the low rate for wholesale access is to help them build a business so they can invest in facilities, and instead, they use the regulatory process year after year when they change their minds as to how access could be less costly for them.

67. Our observation has been that many years ago resellers argued that they needed wholesale access at reasonable rates, which was provided on a disaggregated model (whereby we would be required to provide access at various locations in our network) with a promise that with reasonable cost inputs they would eventually build facilities. They later argued they needed aggregated access so they could reduce their costs for the same purpose[12]. An aggregated access model meant they merely needed to incur the cost to interconnect at one point of interconnection to serve many areas, based on the level of network aggregation of the wholesale provider. Yet, following the aggregated model came changes to the billing practices for wholesale access that also meant the resellers would have to pay for additional capacity they incurred to provide the service. When the resellers discovered they would need to manage their business better, including paying for additional capacity, they then pressured the regulator for a change to the

[12] For instance, in Telecom Decision CRTC 2010-632 the Commission directed that cable carriers have to make network modifications to allow greater aggregation of end-customer traffic for their TPIA services. This resulted in years of CRTC follow up process and operational work by carriers to provide aggregated TPIA service.

regime once again, whereby they argued that they should be entitled to disaggregated service as well, such that wholesale providers needed to overhaul their provision of TPIA service once again. They argued that this would give them more control over their costs, because they could then negotiate their own transport between the various points in the network. In fact, they argued they would begin to invest in middle mile facilities. Again, the intent was this may encourage “further investment in telecommunications facilities”. The Commission mandated that carriers implement a disaggregated service beginning with its 2015 policy, with the processes still underway today. [13]

68. The disaggregated model was initiated in Quebec and Ontario first, where the Commission established some interim rates for services offered by the carriers in these areas, but we are not sure if the resellers have been as interested in using the disaggregated model, given that they may view the rates as not being as low as they would prefer. In effect, Eastlink submits that the ongoing time spent at regulatory proceedings at the prompting of the resellers to once again change the model seems like an ongoing phenomenon. These regulatory proceedings are not simple or short processes. They take many months if not years to conclude, with decisions taking longer.

69. **As a network owner Eastlink has not used the reseller regime to expand our reach outside of our incumbency 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, other than perhaps some price savings. 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 some profit off an existing service can enter the market and compete on price. But they typically have no interest in further innovation or investment. Yet, a proper resale regime would distinguish between urban areas, where demographics can more readily support a wholesale access regime, and

[13] In Telecom Regulatory Policy 2016-326, the Commission moved from mandating an aggregated model and implemented disaggregated high-speed access service. This has resulted in ongoing processes since then to determine the nature of service and rates. In Decision 2016-379 the Commission noted one purpose was to enable resellers to “have greater control over their costs and ability to offer high-quality innovative retail services” and “rapid implementation”.

rural areas where the business case to justify 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, while the cost is reasonable enough and not so low such that it incentivizes resellers to actually make their own investments rather than perpetual reliance on wholesale providers. Perpetual reliance on wholesale providers encourages ongoing regulatory process and wastes resources rather than enticing investment.

***END OF DOCUMENT***