

**PETITION TO THE GOVERNOR IN COUNCIL TO VARY  
TELECOM DECISION CRTC 2008-1, *USE OF DEFERRAL ACCOUNT FUNDS  
TO IMPROVE ACCESS TO TELECOMMUNICATIONS SERVICES FOR  
PERSONS WITH DISABILITIES AND TO EXPAND BROADBAND SERVICES  
TO RURAL AND REMOTE COMMUNITIES***

**By:**

**AXIA SUPERNET LTD.**

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## OVERVIEW

1. With this Petition, filed pursuant to section 12 of the *Telecommunications Act*, Axia SuperNet Ltd. (“Axia”) is asking the Governor in Council to address an issue of national importance arising from Telecom Decision CRTC 2008-1, *Use of deferral account funds to improve access to telecommunications services for persons with disabilities and to expand broadband services to rural and remote communities* (18 January 2008) (the “Decision”), a decision rendered by the Canadian Radio-television and Telecommunications Commission (“CRTC”) on January 18, 2008.
2. The Decision approves the use of deferral account funds by the incumbent local exchange carriers (“ILECs”) to extend broadband services to specific rural and remote communities. Deferral account funds are revenues collected by the ILECs as a result of an earlier CRTC decision in 2002 which permitted the ILECs to charge residential telephone subscribers in urban areas higher prices than were justified under the CRTC’s price cap formula and to accumulate these funds in “deferral accounts” pending a decision by the CRTC on how to spend them.
3. Axia is an investor, manager and operator of the Alberta SuperNet, a high-speed broadband IP network that links 429 rural and remote communities in Alberta. The SuperNet is unique in Canada. It is the brainchild of the Government of Alberta (“GoA”) and was funded in significant part by the GoA. The purpose of the SuperNet is to establish cost-effective broadband transport facilities to rural and remote communities and to facilitate the extension of competition in broadband services to these communities by ensuring that all Internet Service Providers (“ISPs”), including TELUS Communications Company (“TELUS” or “TCC”), have access to SuperNet transport facilities at reasonable and non-discriminatory rates. To date, the SuperNet has been a tremendous

success story, with 61 ISPs establishing interconnection with SuperNet in 242 rural and remote SuperNet communities.

4. In the Decision, the Commission approved the use by TELUS of deferral account funds to build **duplicate** broadband transport facilities to 69 communities in Alberta that are already served by SuperNet, subject to TELUS demonstrating that construction of its own facilities is less costly to TELUS than use of SuperNet.
5. While Axia wholeheartedly supports the use of public funds to **complement** SuperNet and extend broadband access services to additional communities and users, the use of public funds to subsidize the construction of duplicate transport facilities to SuperNet communities – when SuperNet transport facilities to these communities are not being utilized – is not an efficient or effective use of public funds.
6. Contrary to the basic requirements of complementarity and competitive neutrality – which the CRTC has itself previously recognized as fundamental principles that should guide access to deferral account funds for ILEC broadband expansion programs – use of deferral account funds to subsidize the construction of duplicate transport services to SuperNet communities will compromise SuperNet funding and investment and the phenomenal success achieved by SuperNet to date. It will also undermine Axia and ISP investment in SuperNet communities and preclude future ISP investment and competition.
7. The use of public funds to subsidize the construction of duplicate transport facilities to SuperNet communities also flies in the face of the requirements of the *Direction to the CRTC on Implementing Canadian Telecommunications Policy Objectives* (the “Policy Direction”). The Policy Direction provides that regulatory measures shall be efficient and

proportionate to their purpose and interfere with market forces to the minimum extent necessary to achieve the Canadian telecommunications policy objectives and shall not deter economically efficient entry or promote economically inefficient entry.

8. In Telecom Decision CRTC 2006-9, *Disposition of funds in the deferral accounts* (“Decision 2006-9”), the CRTC established guidelines for the use by the ILECs of deferral account funds for the extension of broadband service to rural and remote communities. Although Decision 2006-9 predated the Policy Direction, the CRTC expressly recognized in Decision 2006-9 that deferral account funding should be **complementary** to other government funding of broadband services and respect the principle of **competitive neutrality**. These two principles were implemented by the CRTC in Decision 2006-9 through the following two specific requirements:
  - Deferral account funds should not be used for the extension of broadband services by ILECs to communities that have already received funding from any government broadband expansion programs; and
  - Deferral account funds should not be used for the extension of broadband service to communities where broadband service is available from an alternative broadband service provider (“ABSP”).
  
9. Neither of these conditions is satisfied by the extension of deferral account funds to subsidize the construction of duplicate transport facilities to SuperNet communities. As discussed more fully below, transport to each of the SuperNet communities has received funding from the GoA’s SuperNet program. In addition, the GoA’s SuperNet model ensures that every residential and business customer in SuperNet communities can receive broadband service. Finally, ISPs are actively providing residential Internet service in 15 SuperNet communities that have been approved for

deferral account funding and business Internet service is already available in four other communities.

10. In practice, the extension of deferral account funding to TELUS to build duplicate transport facilities will strand SuperNet, Axia and ISP investment, thwart competitive ISP entry in the SuperNet communities, undermine the pro-competitive model adopted by the GoA, and deny consumers in the communities the benefits of competition. It will do so without advancing any telecommunications policy objective. Clearly, this is not consistent with the requirements of the Policy Direction.

### **BACKGROUND ON AXIA AND THE ALBERTA SUPERNET**

11. Axia is the manager and operator of the Alberta SuperNet. The Alberta SuperNet is a high-speed broadband IP network that links 429 communities in Alberta. Attached as Exhibit "A" to this Petition is a map depicting the SuperNet as well as a list of all of the communities in which the SuperNet has an established point of presence ("POP").
12. The Government of Alberta invested \$193 million in the construction of the Alberta SuperNet. Axia and Bell invested in excess of \$150 million in the SuperNet.
13. The GoA has stated that "One of the main principles of Alberta SuperNet is to enable and encourage competition in the delivery of high-speed services to the province's smaller communities, where high-speed access, service options and competition don't exist." To achieve this objective, the GoA subsidized the construction of SuperNet and has entered into agreements with Axia that require Axia to offer transport services to all ISPs, including TELUS, at reasonable and uniform rates. Axia is not a retail service provider and does not compete with ABSPs (or, to use Axia's

terminology, local access service providers (“LASPs”)). Axia is therefore dependent on creating a vibrant and sustainable ABSP or LASP sector and speaks on behalf of the many LASPs players which are compromised by the Decision. TELUS, by contrast, seeks to promote its own retail broadband services.

14. Another integral component of the SuperNet model is to eliminate cost disparities between rural and urban Alberta. SuperNet rates are benchmarked to rates for comparable inter-city services provided by TELUS and other carriers in Edmonton and Calgary. If urban rates fall, then SuperNet rates are adjusted to match those urban rates. Since Axia does not apply distance or dislocation charges, either SuperNet is the least cost alternative, or TELUS’ urban connection and transport rates are not competitive. If the latter, TELUS’ urban transport rates should be reduced to competitive cost-based levels and SuperNet rates, in consequence, must fall by an equivalent amount.
15. By all measures, the SuperNet open access and rating approach has been a tremendous success, with retail Internet access services now available in 242 of the 402<sup>1</sup> rural and remote communities served by SuperNet. Until the CRTC decision this LASP penetration of rural markets was continuing to grow. There are multiple LASPs that offer competitive retail services in SuperNet communities. By contrast, TELUS has failed to promote LASP competition in any rural Alberta community. The CRTC decision has compromised further evolution of this market by these many LASP parties.
16. The GoA SuperNet model also ensures that **all** residential and business customers in SuperNet communities will have access to broadband services. In this regard, Bell is required by the SuperNet agreements to

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<sup>1</sup> The remaining 27 SuperNet communities are larger urban centres.

operate as a provider of last resort for high-speed Internet services in SuperNet communities. This is described on the GOA's Alberta SuperNet website in the following terms:

**Provider of Last Resort:  
Internet Service over Alberta SuperNet**

In the Master Agreement for SuperNet, Bell is designated as the Provider of Last Resort (POLR) for high-speed Internet services in SuperNet communities.

This means that Bell is responsible to ensure high speed service in a SuperNet community, with the following stipulations:

If no service provider opts to provide high-speed service in a connected community by April 2006, (in a SuperNet community where high-speed Internet access services are not available), Bell shall, upon reasonable request\* of a resident or business located within said community, ensure access services at a minimum access speed equivalent to xDSL, or cable.

These access services shall be provided at rates equivalent to urban rates offered by Bell or other major suppliers and using whichever access technology Bell deems appropriate, such as cable, satellite or wireless services.

\* NOTE: A "reasonable request of a resident or business" includes allowing for a reasonable installation interval consistent with industry standards, and consideration of the applicant's location in the community.

(<http://www.albertasupernet.ca/the+project/the+network/network+access+.htm>)

## **THE DECISION**

17. In the Decision, the Commission approved the use by TELUS of deferral account funds to subsidize the provision of broadband services in Alberta to 86 communities in Alberta in which, according to the evidence before the CRTC, retail broadband services are not currently available at rates

and terms that are comparable to broadband services offered in ILEC areas. **69 of these communities are already served by SuperNet transport.**

18. With respect to the subsidized duplication of backbone or transport services to the 69 Alberta communities which are already served by SuperNet, the Commission stated as follows in the Decision:

45. Concerning the duplication of backbone facilities in Alberta, the Commission notes that despite the presence of SuperNet in many communities in TCC's proposal, broadband services have not been deployed. The Commission considers that while government funding may have extended transport facilities to a community, as long as broadband services are not widely available to end-users, the community will not benefit from government funding in the manner envisioned in Telecom Decision 2006-9.

46. The Commission notes TCC's submission that it does not support a broadband service model which utilizes SuperNet for broadband transport facilities. However, TCC has proposed to build access facilities to connect ABSPs with either the SuperNet transport facilities or its own transport facilities. The Commission also notes Axia's submission that TCC interconnects with SuperNet in other areas. Therefore, the Commission considers that there is no serious impediment to TCC's use of SuperNet. The Commission notes, however, that if TCC were to use SuperNet, its cost structure would reflect the ongoing rates for that use. The Commission also notes that the work required for TCC to use its own backbone would vary between upgrading existing facilities and installing entirely new ones, which may make it least costly for TCC to use its own backbone in certain communities and to rely on SuperNet in others.

47. In light of the above, the Commission directs TCC to use the least-cost solution for each community where interconnection with the SuperNet backbone is available (i.e. SuperNet or its own backbone facilities). The Commission considers that TCC should include the results of this analysis in its updated cost studies to be filed as a follow-up to this Decision.

19. The Commission also approved in the Decision TELUS' proposed rate for a TELUS SuperNet Connect Service that will connect an ISP POP to the



TELUS central office and from there to the SuperNet POP in a SuperNet community. Although this service might, on its own, provide an important **complement** to SuperNet (by reducing LASP access costs), the potential benefits of TELUS SuperNet Connect Service are entirely undermined by subsidization of duplicate broadband transport facilities.

20. Finally, the Commission approved a TELUS wholesale broadband transport rate set equal to the rate for TELUS' SuperNet Connect Service plus Axia's transport rate. This is intended to ensure that TELUS' wholesale broadband transport rate is not less than the rate for SuperNet transport. Clearly, such a rate will do nothing to promote LASP entry and competition.

#### **CONSTRUCTION OF DUPLICATE TRANSPORT FACILITIES IS NOT AN EFFICIENT OR EFFECTIVE USE OF PUBLIC FUNDS**

21. The 69 SuperNet communities that have been approved in the Decision for deferral account funding are communities where, according to the evidence before the CRTC, no ISP is providing retail broadband service.
22. If there are no ISPs providing retail broadband service in a SuperNet community, this means that the existing publicly funded SuperNet transport facilities to the community are **not** being fully utilized. Furthermore, if there are no ISPs providing retail broadband service in a SuperNet community, it is not because cost-effective **transport** services do not exist; it is because cost-effective **access** facilities are not available. This barrier can only be addressed by mandating TELUS to provide access facilities at cost-effective rates. Subsidizing the construction of duplicate transport facilities to these SuperNet communities does nothing to address the **access** barrier.

23. Simply put, subsidization of duplicate broadband facilities to the 69 SuperNet communities that are approved in the Decision for deferral account funds will mean that there will be two **under-utilized publicly-funded** broadband transport networks to these communities.

### **THERE IS NO PUBLIC BENEFIT TO OVER-BUILDING EXISTING FACILITIES**

24. There is no evidence of a transport problem to SuperNet communities and the Decision implicitly confirms this by approving TELUS transport rates that are ostensibly equal to SuperNet transport rates. Clearly, if transport to SuperNet communities is a problem, this framework cannot address it.
25. There is in practice no problem with existing transport services to SuperNet communities. As noted above, SuperNet rates are mandated to be benchmarked to urban transport rates.
26. In the absence of a transport problem, there is no public benefit to using public funds to over-build existing facilities, and TELUS should be mandated to use SuperNet transport in order to provide retail broadband services in SuperNet communities.

### **DEFERRAL ACCOUNT FUNDING OF BROADBAND TRANSPORT TO SUPERNET COMMUNITIES VIOLATES THE CRTC'S OWN COMPLEMENTARITY REQUIREMENT**

27. In Decision 2006-9, the Commission established the requirement that deferral account funds would only be available for communities which have **not** received funding from a government broadband expansion program. This requirement implements the Commission's conclusion that "deferral accounts would provide an important *complement* to existing government initiatives to extend broadband services to a greater

percentage of the population.” (Decision 2006-9, para. 79, emphasis added)

28. The SuperNet transport facilities serving all 69 of the SuperNet communities that the Decision approves for deferral account funding have clearly received funding from a government broadband expansion program and therefore should be ineligible for deferral account funding.

**THE SUBSIDIZATION OF DUPLICATE TRANSPORT FACILITIES VIOLATES THE PRINCIPLE OF COMPETITIVE NEUTRALITY AND WILL ELIMINATE THE BUSINESS CASE FOR COMPETITIVE ENTRY**

29. Subsidization of duplicate transport facilities to SuperNet communities will eliminate any business case for competitive entry in these communities. If TELUS is permitted to use public funds to lower its wholesale transport costs below those of other ISPs and to subsidize its (and only its) access costs, no other ISP will be able to compete with TELUS and the principle of competitive neutrality is violated.

**THE SUBSIDIZATION OF DUPLICATE TRANSPORT FACILITIES WILL STRAND SUPERNET AND ISP INVESTMENT**

30. The subsidized construction of duplicate TELUS transport facilities to SuperNet communities will mean SuperNet transport facilities are underutilized, stranding SuperNet investment, including the investments by the GoA and Axia in SuperNet transport facilities and services.
31. In addition, the subsidized entry of TELUS in SuperNet communities will strand existing ISP investment in some of these communities. In 15 of the 69 SuperNet communities that have been approved for deferral account funding, there is currently an ISP offering comparable residential

broadband services. In four other communities, ISPs are already offering business broadband services. None of these ISPs has had access to deferral account subsidies or will be able to compete with subsidized TELUS services. All of this ISP investment will be compromised by duplicate public funding of TELUS transport facilities. (Attached as Exhibit “B” to this Petition are letters from ISPs describing the services they offer in the relevant communities.)

32. Thus if TELUS is to be permitted to use deferral account funding to subsidize its access costs in SuperNet communities which are currently served by ISPs, these same subsidies must also be extended to ISPs and TELUS must be required to establish that its access costs (excluding deferral account subsidies) are less than those of ISPs.

**THE SUBSIDIZATION OF DUPLICATE TRANSPORT FACILITIES THWARTS THE PRO-COMPETITIVE MODEL THAT SUPERNET HAS BEEN EXPRESSLY DESIGNED TO FACILITATE**

33. As discussed above, the SuperNet program has been expressly designed to facilitate the competitive provision of broadband services in rural and remote communities. Instead of complementing this model and enhancing the scope for competitive entry, subsidization of duplicate transport facilities will eliminate any business case for competitive entry. Future investment and entry will be stifled despite – indeed, in the face of – the evident and growing success of the SuperNet program to date.

**THE SUBSIDIZATION OF DUPLICATE TRANSPORT FACILITIES WILL DENY CONSUMERS IN SUPERNET COMMUNITIES THE BENEFIT OF COMPETITION**

34. The subsidization of duplicate transport facilities will undermine one of the CRTC's over-arching objectives in Decision 2006-9 – to allow residents in rural and remote communities to reap the same potential benefits from competition in broadband services as urban dwellers and allow these subscribers to have “the widest possible choice of service providers”. (Decision 2006-9, para. 190) Residents of SuperNet deferral account communities served by duplicate subsidized transport services will only be served by TELUS.

**THE SUBSIDIZATION OF DUPLICATE TRANSPORT FACILITIES CONTRAVENES THE POLICY DIRECTION**

35. The Policy Direction states that:
1. In exercising its powers and performing its duties under the *Telecommunications Act*, the Canadian Radio-television and Telecommunications Commission (the “Commission”) shall implement the Canadian telecommunications policy objectives set out in section 7 of the Act, in accordance with the following:
    - (a) the Commission should
      - (i) rely on market forces to the maximum extent feasible as the means of achieving telecommunications policy objectives, and
      - (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives;
    - (b) the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that

(ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.

(iii) if they are not of an economic nature, to the greatest extent possible, are implemented in a symmetrical and competitively neutral manner,

36. The subsidization of duplicate broadband transport facilities to SuperNet communities is clearly not a measure that maximizes reliance on market forces, is not efficient nor proportionate to its purpose and does not interfere to the minimum extent necessary with market forces in order to meet the Canadian telecommunications policy objectives. As discussed above, this measure will undercut existing and future competition in the provision of broadband services in SuperNet communities, undermine the pro-competitive structure of the SuperNet, and strand public and private investment in the SuperNet.
37. Similarly, subsidization of duplicate broadband transport facilities is not a measure that neither deters economically efficient entry nor promotes economically inefficient entry, or that is implemented in a symmetrical and competitive neutral manner. This is a measure that compromises existing competitive entry and enhances the barriers to future entry.
38. Finally, the subsidization of duplicate transport facilities effectively does nothing to advance the objectives of Canadian telecommunications policy. It simply replaces the existing SuperNet supplier of last resort with TELUS without offering any benefits to consumers. As discussed above the GoA's SuperNet program includes a supplier of last resort so as to ensure that **all** SuperNet communities benefit from SuperNet government funding and that customers in these communities have access to broadband services that are comparable to those available in urban areas.

Therefore, there is absolutely no **public** benefit to funding duplicate transport facilities to these communities.

## **REQUIREMENT FOR TRANSPARENCY**

39. In the Decision, the Commission has granted to TELUS the option of filing costing information to show that construction of its own duplicate transport facilities is less costly than use of SuperNet. No public process is established for scrutinizing the costing information filed by TELUS.
40. In Axia's submission it is imperative that there be complete disclosure of TELUS' costing information and a open and transparent public process to assess any proposal by TELUS that construction of its own duplicate facilities is less costly than using SuperNet. TELUS is seeking to use public funds for its own benefit with the result that existing public and private investment will be stranded and existing and future competition stifled. The public interest in disclosure in these circumstances clearly outweighs any conceivable harm to TELUS from disclosure – harm which is in any event highly unlikely since the Commission has found that there is no present competition in the relevant communities, and no competition can expected in the future if TELUS is allowed to proceed.
41. TELUS' cost estimates for constructing transport facilities to SuperNet communities were not disclosed in the 2008-1 proceeding. This means that it has been impossible for Axia, GoA or any other interested party to comment on TELUS' projected costs of constructing duplicate transport facilities to SuperNet communities. Nor has there been disclosure of information that would be necessary for Axia and GoA to assess the costs of SuperNet transport services to these communities. An assessment of SuperNet rates and cost comparison is not a simple mechanical exercise. SuperNet rates vary with bandwidth consumption and competitive urban

transport rates. A realistic demand and bandwidth forecast is therefore critical to proper assessment of SuperNet costs. In addition, since SuperNet transport can be sized and re-sized according to actual demand over time, use of SuperNet significantly reduces risk. This too must be properly reflected in the costing exercise.

42. As discussed above, SuperNet rates are established by Axia through a benchmarking process. Axia sets its wholesale rates in rural communities at the competitive rates established for comparable services in Calgary or Edmonton and does not apply any dislocation or distance charges. If TELUS believes that Axia's wholesale rates in these communities do not fairly reflect the competitive rates in Calgary or Edmonton it can present information to Axia or the GoA to this effect and Axia will review its rates. TELUS has not participated to date in this process.
43. TELUS' transport costs of serving a SuperNet community must, at a minimum, be equal to its costs of interconnecting and using its urban transport facilities plus the costs of extending its broadband infrastructure to the SuperNet community. If urban transport markets are competitive, then TELUS' urban transport rates should equal its costs of providing these services. In addition, as noted above, SuperNet rates must be benchmarked to urban transport rates. This means that if there are any costs to TELUS building out broadband infrastructure to a SuperNet community – and there must be some – then SuperNet must be the least cost transport alternative.
44. Finally, as a matter of principle public policy demands that TELUS be required to provide to Axia and the GoA the opportunity to offer SuperNet rates that meet the costs of constructing duplicate facilities, before approving any use of deferral account funds to build duplicate transport facilities.



**REQUEST FOR RELIEF**

45. For these reasons, Axia submits that the Decision raises an issue of national importance and a variance is critical to ensuring compliance with the directions of the Governor in Council in the Policy Direction. Axia therefore respectfully requests the Governor in Council to vary the Decision, by directing that TELUS may not use deferral account funds to subsidize the construction of its own transport facilities to SuperNet communities.
46. Alternatively, in the event that the Governor in Council declines to vary the Decision so as to preclude the use of deferral account funds to subsidize the construction of duplicate transport facilities to SuperNet communities. Axia requests the Governor in Council:
- to vary the Decision by removing the 19 SuperNet communities where retail broadband service is available from the list of approved deferral account communities;
  - to direct the Commission to establish a public process, with full disclosure of TELUS costing information and assumptions, to scrutinize any information filed by TELUS purporting to establish that construction of its own duplicate facilities is less costly than use of SuperNet; and
  - to direct the Commission to require TELUS to provide Axia and the GoA the opportunity to offer SuperNet rates that meet the costs of constructing duplicate facilities, before approving any use of deferral account funds to build duplicate transport facilities.
47. Axia thanks the Governor in Council for considering this Petition.