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April 16, 2008

Mr. Kevin Lynch
Clerk of the Privy Council and
Secretary to the Cabinet
Privy Council Office
Langevin Block
80 Wellington Street
Ottawa, Ontario
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Dear. Mr. Lynch:

**Subject: Petition to the Governor in Council Concerning Telecom Decision
CRTC 2008-1**

Introduction

1. In accordance with section 12(1) of the *Telecommunications Act*, TELUS Communications Company ("TELUS") hereby files this petition to the Governor in Council seeking the partial rescission and variation of *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*, Telecom Decision CRTC 2008-1, issued on January 17, 2008 ("Decision 2008-1").
2. TELUS respectfully requests that
 - (i) the Governor in Council rescind paragraphs 113 and 114 of Decision 2008-1 which prevent the use of remaining deferral account funds for broadband expansion; and

- (ii) the Governor in Council vary Decision 2008-1 so as to allow the incumbent local exchange carriers to file additional proposals to use all of the available remaining deferral account funds for the purpose of funding broadband extension in their respective serving territories where it would be otherwise uneconomic to do so.¹
3. The Commission's determination to deny TELUS the opportunity to apply for further broadband expansion to unserved communities was completely unexpected and was a significant departure from the Commission's earlier statements that deferral account funds should be used to expand broadband services to rural and remote communities to the greatest extent possible. This determination, issued with no advance warning, effectively prevents the use of remaining deferral account funds for broadband expansion.

Background

4. The issue at hand in this petition is the use of monies set aside in deferral accounts created by the Canadian Radio-television and Telecommunications Commission (the "CRTC" or the "Commission"). The deferral accounts at issue were created in 2002 when the CRTC established rates and pricing rules for the incumbent local exchange carriers.² In order to encourage competition in urban areas, the CRTC maintained existing rates and directed each incumbent local exchange carrier to place amounts equal to otherwise mandated rate reductions into deferral accounts. In 2004, the CRTC initiated a public proceeding as to how to dispose of the outstanding amounts in these accounts.³

¹ With the exception of funds that have been ordered to be set aside for the funding of improved access to telecommunications services for persons with disabilities as required in Decision 2006-9.

² *Regulatory Framework for second price cap period*, Telecom Decision CRTC 2002-34, para. 403ff.

³ *Review and disposition of deferral accounts for the second price cap period*, Telecom Public Notice CRTC 2004-1. See also Decision 2006-9, para. 1, 4-8.

5. Following the 2004 proceeding, the CRTC issued *Disposition of funds in the deferral accounts*, Telecom Decision CRTC 2006-9 ("Decision 2006-9"), in which it determined the guidelines for the disposition of funds remaining in the deferral accounts. The CRTC concluded that each incumbent local exchange carrier "should, to the greatest extent possible, use funds in their deferral accounts for initiatives to expand broadband services to rural and remote communities and to improve accessibility to telecommunications services for persons with disabilities."⁴
6. With respect to the expansion of broadband services to rural and remote areas the Commission stated:
 73. Canada's vast geography and relatively dispersed population makes telecommunications an essential link, both socially and economically, in the everyday life of Canadians. It provides the foundation for Canada's participation in the global information market and greater opportunities for Canadians to participate in the "new economy."
 74. There has been a significant shift towards high-speed Internet and broadband access over the past several years. Although Canada is a global leader in the deployment of broadband infrastructure, it ranked sixth in June 2005 in terms of broadband penetration rate per 100 inhabitants when compared to the more than 30 member countries of the Organization for Economic Co-operation and Development (OECD), slipping from its second-place standing in December 2003.
 75. Broadband service is available to most Canadians living in urban areas; however, the same cannot be said of those living in rural and remote communities. The Commission notes that one of the objectives set out in the price cap decisions was to "render reliable and affordable services of high quality, accessible to both urban and rural area

⁴ Decision 2006-9, para. 116. The Commission specified that a minimum of 5% of the funds should be allocated to improved accessibility to telecommunications services for persons with disabilities (para. 210).

customers," an objective that was, in turn, derived directly from section 7(b) of the Act. The Commission considers that expansion of broadband services is an initiative that would meet this objective since it would improve the quality of telecommunications services to customers, particularly in those communities.

76. The Commission further considers that the social and economic development of rural and remote communities would be enhanced through the establishment of broadband services. In addition, the Commission considers that committing funds in the deferral accounts to assist in the expansion of broadband services would be an effective way to reduce the disparity that exists between urban communities and most rural and remote communities.
77. The Commission notes that some parties have indicated that IP-based technologies, accessed via broadband, could enable persons with disabilities to use existing and new telecommunications services. The Commission considers that increased broadband service availability would also promote community development by providing access to the same services and products for all subscribers, including persons with disabilities and those living in isolated areas.
78. The Commission agrees that considerable benefits would accrue to subscribers from the greater availability of broadband services, such as expanding Canadians' capacity to access, create, communicate, and share information, knowledge, and entertainment. Other benefits to subscribers could include improved access to health care, education, and electronic services, and the potential for enriched relationships between individuals and among communities.
79. The Commission notes that the federal and provincial governments have initiated or participated in several broadband expansion projects over the past few years. The Commission considers that subsidizing broadband expansion through the

funds in the deferral accounts would provide an important complement to existing government initiatives to extend broadband services to a greater percentage of the population.

80. In light of the above, the Commission concludes that enabling Canadians to have access to broadband services, wherever they live, is an important goal. The Commission therefore concludes that expansion of broadband services is an appropriate use of the funds remaining in the deferral accounts...⁵

7. The CRTC specified guidelines for the disposition of funds in the deferral accounts which stated, among other things, that only the uneconomic portion of the incumbent local exchange carriers' initiatives to expand broadband services should be recovered using funds in the deferral accounts,⁶ using least-cost technology,⁷ for both backbone (inter-exchange transport) facilities and access facilities.⁸
8. As is clearly evidenced by the above, the CRTC considered that, among other things, expanding broadband services to rural and remote communities from deferral account funds would enhance the economic and social development of these communities and be an effective way to reduce the disparity that exists with urban communities. Notably, the CRTC also stated that such action would also complement existing government initiatives in this regard. The incumbent local exchange carriers would not otherwise consider such investments through the normal course of business given the uneconomic conditions in most rural and remote locations.
9. In Decision 2006-9, the CRTC also suggested the possibility of rebating outstanding amounts in the deferral accounts to subscribers. However, the CRTC noted the serious practical difficulties in doing so, while at the same

⁵ Decision 2006-9, para. 73-80.

⁶ Decision 2006-9, para. 191.

⁷ Decision 2006-9, para. 192.

⁸ Decision 2006-9, para. 191.

time pointing out the “longer term and more permanent benefits” of expanding broadband services instead.

112. The Commission notes that in the price cap decisions, rebates to consumers in non-HCSAs [High-cost Serving Areas] were identified as a possible use for the funds in the deferral accounts. The Commission considers that subscriber rebates would be consistent with section 7 of the Act and the objectives set out in the price cap decisions.

...

114. However, the Commission has concerns with respect to the implementation of any rebates and the potential inter-generational inequity issues associated with the disposition of the funds in the deferral accounts. The Commission considers that it would be overly complex and not cost-effective to try to estimate a rebate amount proportionate to the amount contributed by an individual subscriber to the deferral accounts. The Commission also considers that the cost of attempting to locate those residential subscribers who were customers during the current price cap period but are no longer customers would likely outweigh any benefits that might be derived from such an exercise.
115. As indicated earlier in this Decision, the Commission intends to clear the funds in the deferral accounts in a manner that contributes to achieving the objectives of the current price regulation framework, including balancing the interests of the three main stakeholders in the telecommunications markets. The Commission considers that initiatives to expand broadband services and to improve accessibility to telecommunications services for persons with disabilities will provide longer-term and more permanent benefits than a one-time rebate.
116. Accordingly, the Commission concludes that each ILEC should, to the greatest extent possible, use funds in their deferral accounts for initiatives to expand broadband services to rural and remote

communities and to improve accessibility to telecommunications services for persons with disabilities. The Commission also concludes that should any accumulated balance remain in the ILEC's deferral account after these initiatives have been approved by the Commission, this amount will be rebated to the ILEC's residential local subscribers in non-HCSAs.⁹ [emphasis added]

10. Pursuant to these findings, the CRTC directed the incumbent local exchange carriers to file their respective broadband plans. This was done on September 1, 2006. The Commission subsequently issued *Review of proposals to dispose of the funds accumulated in the deferral accounts*, Telecom Public Notice CRTC 2006-15 (“Public Notice 2006-15”), in November of 2006 to consider these proposals. Consistent with its findings in Decision 2006-9, Public Notice 2006-15 stated that the incumbent local exchange carriers “should, to the greatest extent possible, propose to use funds accumulated in their deferral accounts for initiatives to expand broadband services to rural and remote communities and to improve accessibility to telecommunications services for persons with disabilities.”¹⁰ As noted above, the proposed broadband expansion would be to areas where it would be otherwise uneconomic to do so.
11. In *Telecom Public Notice CRTC 2006-15 – Use of deferral account funds to expand broadband services to certain rural and remote communities*, Telecom Decision CRTC 2007-50, issued on July 6, 2007, the Commission approved the use of deferral account funds by Bell Aliant Regional Communications, Limited Partnership, Bell Canada, MTS Allstream Inc., and TELUS Communications Company to expand broadband services to uncontested communities in certain rural and remote communities in British Columbia, Manitoba, Ontario, and Quebec. The Commission stated that it would address issues related to the deployment of broadband services in all other contested communities proposed by the

⁹ Telecom Decision CRTC 2006-9, para. 112-116.

¹⁰ Public Notice 2006-15, para. 1. See also Decision 2008-1, para. 1.

incumbent local exchange carriers in a further decision to be issued within 180 days after the close of record of the Public Notice CRTC 2006-15.¹¹ The Commission subsequently released Telecom Decision CRTC 2008-1 on January 17, 2008, in which it addressed deployment of broadband in these other communities. To the extent that broadband expansion to a number of communities was denied, it was TELUS' expectation and indeed the expectation of many other communities that the Company would be able to subsequently submit *future additional communities* for broadband expansion.¹² To this end, TELUS (and Bell Canada) had submitted that, should funds remain, the CRTC should initiate an *additional process* to allow them to propose other communities for broadband extension.¹³

12. However, in Decision CRTC 2008-1, the Commission arbitrarily ordered the incumbent local exchange carriers to file detailed plans for rolling out

¹¹ The record for the proceeding initiated by Public Notice 2006-15 closed on August 14, 2007.

¹² TELUS stated the following in its Final Comments to the proceeding initiated by Public Notice 2006-15:

11. TELUS proposes that the Commission take the following steps to implement and expand the ILECs' broadband expansion proposals ...:
 - TELUS requests approval for the remaining communities in its broadband expansion proposal where no ABSP [Alternative Broadband Service Provider] is serving or has immediate plans to serve.
 - Following a decision in the PN 2006-15 proceeding, TELUS proposes that the Commission invite further proposals from the ILECs for broadband expansion where they have funds remaining in their deferral accounts.
 - Consistent with the reporting process outlined by the Commission in its letter dated 10 March 2006, TELUS recommends that an annual process be established to update the ILECs' broadband expansion proposals. TELUS supports the Commission's statement that "[i]f no alternative broadband service provider is providing services to any of the communities included in the ILEC's proposed annual roll-out plan, the Commission intends to approve the updated plan by 15 December of each year." In this manner, TELUS and the other ILECs will be able to establish an annual planning cycle for broadband expansion funded from their respective deferral accounts. (footnote omitted)

¹³ Telecom Decision CRTC 2008-1, para. 112.

broadband service to only those communities approved in that decision by December 31, 2011 (including construction start date and service introduction date)¹⁴ *with no ongoing requirement to file new annual roll-out plans*.¹⁵ The Commission also ordered rebates to urban subscribers for the remaining balance of deferral account funds.

113. The Commission notes that its determinations in Telecom Decision 2007-50 and this Decision will improve access to telecommunications services for people with disabilities and bring the benefits of broadband services to hundreds of rural and remote communities. Consistent with Telecom Decision 2006-9 the Commission is of the view that any balance remaining in the deferral accounts should be rebated to consumers.

114. In light of the above, the Commission **denies** the request of Bell Canada and TCC [TELUS] to allow additional process for the submission of new communities. Bell Canada (on behalf of itself and Bell Aliant for their Ontario and Quebec territories), MTS Allstream, and TCC are directed to file, by **25 March 2008**, proposals to rebate the funds remaining in their deferral accounts to their residential subscribers in non-high-cost serving areas of record as of the date of this Decision. [bold emphasis in original]

13. The Commission's determination in paragraphs 113 and 114 denying the opportunity to apply for further broadband expansion to unserved communities was completely unexpected and was a significant departure from the Commission's earlier statements to use deferral account funds to expand broadband services to rural and remote communities to the greatest extent possible. This determination, issued with no advance warning, effectively prevents the use of remaining deferral account funds for broadband expansion.

¹⁴ Telecom Decision CRTC 2008-1, para. 110.

¹⁵ Telecom Decision CRTC 2008-1, para. 109.

CRTC Decision Is Contrary to Its Original Determination

14. The CRTC's decision to prevent further extension of broadband services to uneconomic areas by use of the remaining funds from the deferral accounts is contrary to its original determination to do that very thing. Even a cursory reading of the CRTC's rulings prior to Decision 2008-1, cited above, evidences the fact that it is now inexplicably, unexpectedly and arbitrarily reversing its course on broadband expansion.

15. While stating in Decision 2006-9 that

- “the social and economic development of rural and remote communities would be enhanced through the establishment of broadband services,”
- “committing funds in the deferral accounts to assist in the expansion of broadband services would be an effective way to reduce the disparity that exists between urban communities and most rural and remote communities,”
- “increased broadband service availability would also promote community development by providing access to the same services and products for all subscribers, including persons with disabilities and those living in isolated areas,” and
- “considerable benefits would accrue to subscribers from the greater availability of broadband services,

the CRTC has now decided to prevent the use of remaining deferral account funds for broadband expansion.

16. In doing so, the CRTC has effectively undermined “the foundation for Canada's participation in the global information market and greater

opportunities for Canadians to participate in the ‘new economy.’”¹⁶ The Commission has also effectively decided unilaterally that it is no longer appropriate to complement existing government initiatives in this regard. Such an action is of fundamental concern: not only has the Commission contradicted its own original determinations with respect to broadband expansion, it has also contradicted important government public policy statements with respect to broadband access service for Canadians in rural and remote areas.

The CRTC’s Decision Is Contrary to the Government’s Public Policy Goal of Providing Broadband Access to Canadians in Rural and Remote Areas

17. The CRTC’s decision to prevent the use of remaining deferral account funds for broadband expansion fundamentally contradicts the Government of Canada’s (and most provincial governments’) public policy goal of providing broadband access service to Canadians in rural and remote areas.
18. It does so in several ways. In the first instance, the CRTC’s decision is contrary to the telecommunications policy objectives for Canada set out in the *Telecommunications Act*. These objectives, approved by Parliament, include policy objective 7(a) “to facilitate orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich, strengthen the social and economic fabric of Canada and its regions,” policy objective 7(b) “to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada,” and policy objective 7(h) “to respond to the economic and social requirements of users of telecommunications services.” Ironically, in Decision 2006-9, the Commission itself stated that the extension of broadband services meets these (and other) policy objectives.¹⁷

¹⁶ Decision 2006-9, para. 73.

¹⁷ Decision 2006-9, para. 75ff.

19. Second, the CRTC's decision contradicts the Governor in Council's decision to deny a petition filed by Barrett Xplore Inc. to overturn Decision 2006-9. In denying that petition, the Governor in Council upheld the Commission's original decision for a competitively and technologically neutral approach to promote broadband expansion to rural and remote areas.¹⁸
20. Third, the CRTC's decision runs contrary to the recommendations of the Telecommunications Policy Review Panel. In its March 2006 Final Report, the Panel, among other things, recommended that affordable and reliable broadband services be made available in all regions of Canada, including rural and remote areas, by 2010 at the latest.¹⁹ Decision 2008-1 serves to thwart this goal.
21. Fourth, the CRTC's decision also runs contrary to the longstanding public policy goal of providing broadband access service for Canadians in rural and remote areas. This is a stated goal of both the Federal Government and most provincial governments. As noted by the Telecommunications Policy Review Panel, "[s]ince 1993, it has been the policy of the Government of Canada and most provinces to increase the level of electronic 'connectedness' of Canadian consumers and business to each other and to the world."²⁰ Further in this regard, the Panel also noted that "[i]n July 2001, following the report of the National Broadband Task Force, the Government of Canada set a critical new goal towards realizing its connectivity agenda; ensuring that broadband networks and services would be available to business and residents in every Canadian community."²¹

¹⁸ Decision 2006-9, para. 195.

¹⁹ Telecommunications Policy Review Panel Final Report 2006, Recommendation 8-1.

²⁰ Telecommunications Policy Review Panel Consultation Paper, June 6, 2005, page 30.

²¹ *Ibid.*

22. Notably, the Government of Canada has yet to formally respond to the recommendations set out in the Telecommunications Policy Review Panel Final Report 2006 concerning broadband expansion (Chapter 8, Connectivity: Completing the Job). It is also notable that no additional rounds of funding are planned under its Broadband for Rural and Northern Development Pilot Program (“BRAND”).²² Although limited funding continues for broadband expansion under the National Satellite Initiative (“NSI”),²³ this will not be sufficient to “complete the job” by 2010 as recommended the Telecommunications Policy Review Panel. Similarly, provincial initiatives also will not suffice.
23. In short, the goal of broadband extension to rural and remote areas is not yet complete. These facts serve to further underscore the need for continuing funding for broadband expansion from the deferral accounts.

The CRTC’s Decision Is Contrary to the Policy Direction

24. In addition to the foregoing ways in which the CRTC has contradicted previous stated public policy statements with respect to broadband access, the Commission’s recent determination also runs counter to another important public policy instrument, namely the Policy Direction.²⁴
25. The Policy Direction requires that the CRTC, when exercising its powers and performing its duties under the *Telecommunications Act*, to implement the telecommunications policy objectives in accordance with a number of factors set out therein. These factors include that when relying on regulation (which is necessary in the case of broadband deployment to rural and remote areas where it is uneconomic to do so) the Commission should use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the

²² As indicated at <http://broadband.gc.ca/pub/program/index.html>.

²³ As indicated at <http://broadband.gc.ca/pub/program/ansi/aboutus.html#nsiround3>.

²⁴ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, Order in Council P.C. 2006-1534, December 14, 2006.

minimum extent necessary to meet the policy objectives. The Policy Direction also requires that the Commission, when relying on regulation, should use measures that satisfy a number of criteria, including specifying the telecommunications policy objective that is advanced by those measures and demonstrating their compliance with the Policy Direction.

26. The CRTC's decision to prevent the use of remaining deferral account funds for broadband expansion fails to specify the telecommunications policy objective that is advanced. As noted above, the CRTC previously concurred that the use of the deferral account funds for broadband extension is consistent with several telecommunications policy objectives. In view of this fact, the CRTC's decision fails to invoke a measure that is efficient or proportionate to the Commission's hitherto expressly stated purpose of encouraging broadband extension to rural and remote areas where it is otherwise uneconomic to do so. As a result, the CRTC's decision fails to demonstrate compliance with the Policy Direction.
27. Although the Policy Direction was not in existence when the deferral accounts were established in 2002 and when the CRTC approved use of deferral account funds for broadband extension in 2006, the Policy Direction was in existence at the time of the issuance of Decision 2008-1 and is, therefore, applicable to that decision. It is clear from the above that the CRTC's decision to prevent the use of remaining deferral account funds for broadband expansion runs contrary to the express intent of this important public policy instrument that is meant to inform the Canadian telecommunications policy objectives.

Conclusion and Requested Relief

28. The important public policy goal of broadband expansion should not be set aside or otherwise allowed to slip away. Decision 2008-1 precludes TELUS from using the remaining amount in the Company's deferral account for further broadband expansion to rural and remote areas where it

would be otherwise uneconomic to do so. Instead, TELUS is required to rebate tens of millions of dollars to local telephone subscribers in urban areas, who already have access to broadband service, rather than to use these funds for much needed broadband expansion in rural and remote areas where it is uneconomic to otherwise provide these services. The nominal benefit of rebates to urban subscribers pales in comparison to the economic opportunities that would be provided by the extension of broadband to unserved rural and remote communities that have been overlooked since they are uneconomic to serve.

29. The CRTC's determination in Decision 2008-1 to prevent the use of remaining deferral account funds for broadband expansion is contrary to the CRTC's conclusions in Decision 2006-9 that each incumbent local exchange carrier should, to the greatest extent possible, use funds in their deferral accounts for initiatives to expand broadband services to rural and remote communities, that broadband expansion would improve accessibility to telecommunications services for persons with disabilities, and that such a use of these funds would provide longer-term and more permanent benefits than a one-time rebate. In addition, this decision runs contrary to numerous public policy statements including the Government of Canada's telecommunications policy objectives, its policy to expand broadband services to Canadians in rural and remote areas supported in its denial of the Barrett Xplore Inc. petition to Cabinet, the views of the Telecommunications Policy Review Panel, and longstanding federal and provincial policies for broadband expansion going back to the early 1990's.
30. There are numerous communities in its serving territories of British Columbia and Alberta that still lack badly-needed and much desired broadband services. For example, in Alberta, although the Alberta SuperNet network provides backbone facilities to 429 communities, numerous communities remain unserved as they have not been successful

in attracting a local service Internet Service Provider to provide access facilities to local residents. In British Columbia, in excess of fifty First Nations communities still urgently require connectivity, over and above those already approved by the CRTC. TELUS is ready and willing to file additional proposals to continue to extend broadband facilities to these communities.

31. The fact that the CRTC has decided to truncate broadband deployment does not mean that the job is done. It is not. In light of this fact, and the concerns raised above, TELUS requests that

- (iii) the Governor in Council rescind paragraphs 113 and 114 of Decision 2008-1 which prevent the use of remaining deferral account funds for broadband expansion; and
- (iv) the Governor in Council vary Decision 2008-1 so as to allow the incumbent local exchange carriers to file additional proposals to use all of the available remaining deferral account funds for the purpose of funding broadband extension in their respective serving territories where it would be otherwise uneconomic to do so.²⁵

32. TELUS notes that section 13 of the *Telecommunications Act* provides for provincial consultation by the Minister of Industry before making a recommendation to the Governor in Council with respect to Cabinet petitions. In the present case, the consultation process will allow for provincial governments to further elaborate upon the extent of the connectivity gap that remains in their respective provinces.

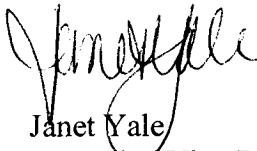
33. In TELUS' case, the granting of this petition by the Governor in Council will allow for a further CRTC process to consider the deployment of the

remaining funds in the deferral account for further broadband expansion in Alberta and British Columbia in accordance with the CRTC's previously established guidelines. Of course, TELUS will work with the CRTC and provincial authorities to achieve this goal and respectfully submits that such an alternative would serve a greater and better purpose than simply providing urban subscribers a nominal one-time rebate.

34. In conclusion, TELUS respectfully requests that the Governor in Council expeditiously grant the relief requested in this petition.

All of which is respectfully submitted.

Yours truly,



Janet Yale
Executive Vice-President
Corporate Affairs

AH/sa

c.c.: The Honourable Jim Prentice, Minister of Industry
The Honourable Josée Verner, Minister of Canadian Heritage
Mr. Robert Morin, Secretary General, CRTC

²⁵ With the exception of funds that have been ordered to be set aside for the funding of improved access to telecommunications services for persons with disabilities as required in Decision 2006-9.