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April 29, 2013

Mr. John Traversy  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, ON K1A 0N2

Dear Mr. Traversy:

**Re: The Companies' Part 1 application to Review and Vary Telecom Decision CRTC 2013-72, *Canadian Network Operators Consortium Inc. – Application requesting relief to address implementation of the capacity model approved in Telecom Regulatory Policy 2011-703* and Telecom Decision CRTC 2013-73, *Canadian Network Operators Consortium Inc. – Application to review and vary Telecom Regulatory Policies 2011-703 and 2011-704* – TELUS' Intervention**

1. TELUS Communications Company ("TELUS") is in receipt of an application filed by Bell Aliant Regional Communications, Limited Partnership, and Bell Canada (collectively, the "Companies") pursuant to Part 1 of the *CRTC Rules of Practice and Procedure* (the "Rules"). In their application, the Companies seek the Commission to review and vary certain determinations of *Canadian Network Operators Consortium Inc. – Application requesting relief to address implementation of the capacity model approved in Telecom Regulatory Policy 2011-703*, Telecom Decision CRTC 2013-72 ("Decision 2013-72"), and of *Canadian Network Operators Consortium Inc. – Application to review and vary Telecom Regulatory Policies 2011-703 and 2011-704*, Telecom Decision CRTC 2013-73 ("Decision 2013-73"), both dated February 21, 2013. Pursuant to Rule

26 of the Rules, TELUS states that it wishes to be considered as an Intervener in this proceeding and files this Intervention.

2. In their application, the Companies seek two variances:
  - i) that ILECs retain the flexibility to choose to separately apply the flat-rate or capacity based billing (CBB) model to their residential and business wholesale high-speed access (HSA) services, contrary to the Commission's requirement from Decision 2013-72 that they must instead use the same model for both residential and business HSA services; and
  - ii) that the mark-up applied to the Companies' wholesale business HSA services provided over fibre to the node (FTTN) infrastructure be raised from 40% to 50% in order to properly maintain the Companies' incentives to invest at the level they were under the previously approved mark-ups, contrary to the Commission's conclusions in Part II of Decision 2013-73 that effectively set a common mark-up of 40% on all such FTTN-HSA services. The Companies' business HSA services' rates should be adjusted to reflect this new mark-up.
3. The Companies submit that the Commission made a number of errors in fact and in law in Decisions 2013-72 and 2013-73, raising substantial doubt as to the correctness of these Decisions. TELUS agrees, and provides its comments below.

**ILECs should retain the flexibility to apply the flat-rate or capacity based billing model to their residential and business wholesale high-speed access services**

4. In Decision 2013-72, the Commission imposed a single billing model for residential and business wholesale high-speed Internet services. In their application, the Companies note that by imposing a single billing model for wholesale residential and business end-users, the Commission made errors in law and in fact, because, among other things, this imposition (1) violates the Policy Direction that requires minimally intrusive regulation to achieve its objectives, and (2) contradicts clear public statements that usage based billing decisions would not apply to business customers.
5. Although TELUS is not currently proposing different billing models for its wholesale high-speed Internet service, TELUS agrees with the Companies that

ILECs should retain the flexibility to choose whether to apply the flat-rate or capacity based billing model to their residential and business wholesale high-speed access services, and that the same billing model need not be implemented for both residential and business services. This principle allows the ILECs to apply the billing model that takes into account the differences between residential and business wholesale high-speed services. The fact that an ILEC chooses to apply the CBB billing model to the residential end-users should not automatically create the same obligation in a different market.

6. TELUS agrees with the Companies that imposing a single billing model for both residential and business wholesale high-speed Internet services, without allowing the incumbent an option to provide CBB for residential services and not for business services, is not minimally intrusive, contrary to the Policy Direction.
7. Moreover, as noted by the Companies, the Commission made public statements that made it clear that a usage based billing model would not apply to business customers.<sup>1</sup> TELUS notes that public statements made by the Commission create a certain assurance of constancy regarding the overall direction of a specific policy. In turn, this provides parties the ability to make effective operational decisions that will not be overturned, unless there is a major change in the market that would render the policy no longer effective in meeting the Commission's policy objectives. Otherwise, it creates the situation we have now where there is confusion in relation to an overall policy that was previously made clear by the Commission. As noted by the Companies, this is an error in fact.
8. As a result, TELUS agrees with the Companies that the Commission made errors in fact and in law in Decision 2013-72 when it imposed a common billing model for residential and business wholesale high-speed Internet services. TELUS supports the Companies request for flexibility to apply the flat-rate or capacity based billing model to residential and business wholesale high-speed access services, and for the Commission to rescind its determination that removes the flexibility to apply the appropriate billing model.

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<sup>1</sup> The Companies' review and vary application, dated March 25, 2013, para. 10.

**The Companies propose a common mark-up of 50% for the wholesale high-speed Internet service for business and residential services**

9. In its review and vary application, the Companies request that

the mark-up applied to the Companies' wholesale business HSA services provided over fibre to the node (FTTN) infrastructure be raised from 40% to 50% in order to properly maintain the Companies' incentives to invest at the level they were under the previously approved mark-ups, contrary to the Commission's conclusions in Part II of Decision 2013-73 that effectively set a common mark-up of 40% on all such FTTN-HSA services.<sup>2</sup>

10. The Companies note that they “disagree with the principle that residential and business FTTN-HSA services should have the same mark-up.”<sup>3</sup> However, they note that “to the extent the Commission requires a common mark-up, in choosing the low residential mark-up as the just and reasonable value for all FTTN-HSA services, the Commission has erred in law by ignoring a clear direction from the Governor-in-Council to consider incentives to invest in broadband infrastructure.”<sup>4</sup>

11. TELUS agrees with the Companies that different mark-ups for residential and business wholesale high-speed Internet services would be sound regulatory policy. Such mark-ups would take into account the different value placed on the services, and a common markup does not. Therefore, TELUS does not agree with this aspect of the Commission’s determinations.

12. If a single common mark-up is to be employed, TELUS also supports the Companies’ proposal of a single common markup of 50% for residential and business wholesale Internet services. A single mark-up for residential and business wholesale high-speed Internet access services cannot be the 40% mark-up the Commission approved for the residential wholesale high-speed Internet service, because that mark-up associated with the residential service does not

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<sup>2</sup> The Companies’ review and vary application, dated March 25, 2013, para. 2 and 23.

<sup>3</sup> The Companies’ review and vary application, dated March 25, 2013, para 14.

<sup>4</sup> The Companies’ review and vary application, dated March 25, 2013, para 14.

provide an appropriate rate of return for wholesale high-speed Internet services in total.

13. ISPs use the wholesale high-speed Internet service to provide their business end-customers with services that are more complex than Internet access and e-mail services. For example, wholesale ISPs currently lease wholesale Internet services, a consumer-grade "best efforts" service, to provide to their business end-customers managed services such as point-of-sale connectivity, Voice over Internet Protocol, virtual private network services, high-definition video conferencing, and connectivity requiring service level agreements. These services create a greater demand for support on TELUS' operational teams that would be compensated with an appropriate mark-up for the business wholesale high-speed Internet access service. As a result, a lower mark-up for both services, residential and business, does not adequately compensate the ILECs from wholesale high-speed Internet service.
14. As TELUS explained many times, these end-users are provided with services that require more support from their ISPs, which in turn require more support from TELUS. TELUS has no issues in providing more support as long as it is compensated for this added support, added support that is not required for the residential wholesale high-speed Internet end-users.
15. TELUS provided comments on this issue as part of the review and vary proceeding that led to Decision 2013-73. In their application, the Companies agreed with TELUS' view, which is included below, because it is correct and consistent with the Order in Council that directs the Commission to consider incentives to invest in broadband infrastructure.

If the mark-up for wholesale business access services were to be decreased, the Commission would be required to raise the wholesale residential access services mark-up, meaning that the new wholesale access rate for both residential and business services would fall somewhere between the current rates approved for wholesale business and wholesale residential access services. Of course, this would require a fundamental review of both wholesale residential and business access services to arrive at new just and reasonable rates. To believe that business rates would

automatically decrease to the level of the rates approved for residential rates in Policy 2011-703 is incorrect because it will not allow for the suitable mark-up that is required for all wholesale Internet access facilities.<sup>5</sup>

TELUS also noted that the total mark-up should fall between 45 and 50%.<sup>6</sup>

16. For the Commission to set just and reasonable rates for wholesale Internet services, the rates for wholesale residential and business access services must be considered together. The Commission cannot overlook the fact that the wholesale high-speed Internet access service is used by ISPs for more than Internet services when it makes its determination of just and reasonable rates. Moreover, the Commission must also consider incentives to invest in broadband infrastructure.

17. In light of the above, TELUS agrees with the Companies that the Commission made an error in law in Decision 2013-73 when it imposed a 40% common mark-up for both residential and business wholesale high-speed Internet services.

Yours truly,

*{Original signed by Ted Woodhead}*

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Senior Vice-President  
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MD/cs

cc: Parties to TNC 2011-77  
Lynne Fancy, CRTC  
Michelle Dupuis, TELUS, (613) 683-1585

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<sup>5</sup> TELUS' Answer to Part 1 Applications from Telesave Communications Ltd. ("Telesave") and from the Canadian Network Operators Consortium Inc. ("CNOC") to Review and Vary Telecom Regulatory Policy CRTC 2011-703 and Telecom Regulatory Policy CRTC 2011-704 ("CNOC's review and vary application"), dated April 5, 2012, para. 10.

<sup>6</sup> TELUS' Comments to CNOC's review and vary application, para.11.