



## Telecom Decision CRTC 2008-87

Ottawa, 9 September 2008

### **Axia SuperNet Ltd. – Application to review and vary part of Telecom Decision 2008-1 related to the use of deferral account funds for broadband expansion**

Reference: 8662-A90-200805864

*In this Decision, the Commission denies an application by Axia SuperNet Ltd. (Axia) to review and vary the portion of Telecom Decision 2008-1 related to the approval granted to TELUS Communications Company (TCC) to use deferral account funds to construct transport facilities to communities served by the Alberta SuperNet network where it would be less costly than interconnecting with the Alberta SuperNet network.*

*With respect to Axia's request to exclude certain Alberta communities from the list of communities approved for broadband expansion by TCC in Telecom Decision 2008-1, the Commission approves Axia's request to exclude Coutts, but denies Axia's request to exclude Alder Flats, Chipewyan Lake, Heinsburg, and Peers. The Commission also approves Axia's request to exclude 30 other communities listed in the Appendix to this Decision, subject to further review in a follow-up proceeding.*

### **Introduction**

1. The Commission received an application from Axia SuperNet Ltd. (Axia), dated 21 April 2008, requesting that the Commission review and vary<sup>1</sup> the portion of Telecom Decision 2008-1 permitting TELUS Communications Company (TCC) to use deferral account funds to subsidize the construction of broadband transport facilities to communities where Alberta SuperNet network transport facilities are already available.
2. In the alternative, Axia requested that Telecom Decision 2008-1 be modified to remove 19 communities from the list of communities approved where retail residential and/or business broadband service are already available. In a subsequent submission, dated 8 May 2008, Axia requested that an additional 16 communities be removed from the list of communities approved for the same reason.
3. Axia further requested that a public process be established to examine TCC's costing information and assumptions for any community where the Commission approved deferral account funding for TCC to construct its own transport facilities instead of connecting to the Alberta SuperNet network.
4. Finally, Axia sought clarification from TCC with respect to certain terms and conditions of its SuperNet Connect Service.
5. The Commission received comments from TCC and Platinum Communications Corporation (Platinum). The public record of the proceeding, which closed on 2 June 2008, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

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<sup>1</sup> The Commission set out the criteria to consider review and vary applications in Telecom Public Notice 98-6.

## Background

6. In Telecom Decision 2006-9, the Commission set out guidelines for the incumbent local exchange carriers (ILECs)<sup>2</sup> concerning the disposition of funds that had accumulated in their deferral accounts. The funds had been assigned to the deferral accounts instead of providing certain rate reductions to residential customers in non-high-cost serving areas. The Commission determined, among other things, that initiatives to expand broadband services to rural and remote communities would be an appropriate use of those funds. Accordingly, the Commission directed each ILEC that planned to pursue broadband expansion to file, by 30 June 2006,<sup>3</sup> proposals to expand broadband services to the customer premises in communities in high-cost serving areas, where service was not available and where it was unlikely that those areas would receive such services from any service provider in the near future.
7. In Telecom Public Notice 2006-15, the Commission initiated a proceeding to consider the ILECs' proposals. As part of that proceeding, alternative broadband service providers (ABSPs) had the opportunity to file submissions with respect to the exclusion of any community identified in the ILECs' proposals, on the basis that it was already served or likely to be served in the near future. ABSPs were directed to file certain information regarding their current and proposed service areas by 19 January 2007. This date was subsequently extended to 19 February 2007.
8. In Telecom Decision 2008-1, the Commission approved the use of deferral account funds by Bell Aliant Regional Communications, Limited Partnership, Bell Canada, MTS Allstream Inc., and TCC to expand broadband services to certain rural and remote communities in British Columbia, Alberta, Manitoba, Ontario, and Quebec. The 35 Alberta communities identified in Axia's submissions were included in the approved list of communities contained in Appendix B of that Decision. With respect to communities where the Alberta SuperNet backbone network is available, the Commission directed TCC to use the least-cost solution (i.e. whether SuperNet or its own backbone facilities). The Commission further directed TCC to include the results of its cost comparison analysis in updated cost studies to be filed as a follow-up to that Decision.

## Issues

9. The Commission has identified the following two issues to be addressed in its determinations:
  - I. Is there substantial doubt as to the correctness of the Commission's determination that TCC be permitted to construct its own transport facilities in any community where it can demonstrate that it would be less costly than using the Alberta SuperNet network?
  - II. Should any of the 35 communities identified in Axia's submissions be removed from the list of communities approved for broadband expansion by TCC in Telecom Decision 2008-1?

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<sup>2</sup> The ILECs referred to in Telecom Decision 2006-9 were Aliant Telecom Inc., now part of Bell Aliant Regional Communications, Limited Partnership; Bell Canada; MTS Communications Inc., now MTS Allstream Inc.; Saskatchewan Telecommunications; TELUS Communications Inc., now TELUS Communications Company (TCC); Société en commandite Télébec, now Télébec, Limited Partnership; and TELUS Communications (Québec) Inc., now part of TCC.

<sup>3</sup> The deadline was later extended to 1 September 2006.

**I. Is there substantial doubt as to the correctness of the Commission's determination that TCC be permitted to construct its own transport facilities in any community where it can demonstrate that it would be less costly than using the Alberta SuperNet network?**

10. Axia submitted that building duplicate transport facilities into communities where the Alberta SuperNet network is available would be contrary to the requirements of Telecom Decision 2006-9. Specifically, Axia argued that it would be inconsistent with the prohibition on using deferral account funds to extend broadband service to communities that have already received government funding to expand broadband service, and with the prohibition on servicing communities where broadband service is already provided by an ABSP.
11. Axia also submitted that the construction of such transport facilities would be inconsistent with the Governor in Council's Policy Direction,<sup>4</sup> while acknowledging that the Policy Direction post-dates Telecom Decision 2006-9. Specifically, Axia argued that the subsidized construction of TCC transport facilities to communities where the Alberta SuperNet is located is not a measure that: (a) is efficient, (b) is proportionate to its purpose, and (c) interferes, to the minimum extent necessary, with market forces in order to meet the Canadian telecommunications policy objectives. Axia submitted that the construction of duplicate transport facilities will undermine the principle of competitive neutrality and will compromise Alberta SuperNet investment.
12. TCC argued that by using the least-cost alternative, the greatest number of communities would benefit from broadband expansion. At the same time, TCC noted that in most communities where the Alberta SuperNet network is available, it will be less costly for TCC to interconnect with the Alberta SuperNet backbone than to construct or upgrade its own backbone facilities.
13. The Commission notes that the Alberta communities approved for deferral account funding in Telecom Decision 2008-1 represent areas where, based on the record of the Telecom Public Notice 2006-15 proceeding, the provision of broadband service was not identified as being available to the general population in the near term, notwithstanding the existence of the Alberta SuperNet network. Further, the Commission notes TCC's admission that, in most cases, it will be less costly to interconnect with the Alberta SuperNet network than to construct its own network, which will ensure that the government's investment in the Alberta SuperNet network will be complemented by deferral account funding connecting TCC's customers to that network.
14. The Commission considers that its requirement that TCC use the lowest-cost alternative to provide its broadband services is efficient and proportionate to its purpose and strikes an appropriate balance between the mandate to provide service in as many communities as possible, while still avoiding the duplication of facilities by promoting the use of the Alberta SuperNet network wherever economically justified.
15. Accordingly, the Commission **denies** Axia's request to modify Telecom Decision 2008-1 to prevent TCC from constructing its own transport network where it can demonstrate that this would be less costly than using the Alberta SuperNet network.

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<sup>4</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006.

## II. Should any of the 35 communities identified in Axia's submissions be removed from the list of communities approved for broadband expansion by TCC in Telecom Decision 2008-1?

16. Axia submitted that broadband service is currently being offered in 35 communities such that these communities should be removed from the list of communities approved for broadband expansion by TCC in Telecom Decision 2008-1. Included among the 35 communities are four communities, Alder Flats, Chipewyan Lake, Heinsburg, and Peers, where Axia submitted that broadband access service is available only to businesses in these communities.
17. With respect to the four communities where only business broadband service is provided, TCC disagreed that they should be removed from its approved list. TCC submitted that Telecom Decision 2006-9 required that residential customers be the primary beneficiaries of initiatives funded by the deferral accounts.
18. The Commission notes that no evidence has been provided to indicate that broadband service is available from ABSPs to residential subscribers in these four communities. The Commission considers that broadband service must be available to residential subscribers, consistent with the Telecom Decision 2006-9 determination that residential customers should be the primary beneficiaries of the funds remaining in the deferral accounts.<sup>5</sup>
19. In light of the foregoing, the Commission **denies** Axia's request to remove Alder Flats, Chipewyan Lake, Heinsburg, and Peers from the list of approved communities in Appendix B of Telecom Decision 2008-1.
20. With respect to the remaining 31 communities, TCC noted that 29 of these communities might be removed from its list of approved communities on the basis that residential customers could obtain broadband service from an ABSP. TCC argued that one of the two remaining communities, identified by Axia as Morinville, could only be removed if it could be confirmed that residential customers in the Cardiff Echos subdivision would have access to broadband service. In response to TCC, Axia provided correspondence from Platinum indicating that its coverage area included the Cardiff Echos subdivision of Morinville.
21. With respect to the final community, Coutts, TCC confirmed that it had already removed the community from its list of communities for broadband expansion in a letter to the ABSP serving the community, the Milk River Cable Club, dated 16 April 2008. In light of the concurrence of Axia and TCC, the Commission concludes that there is substantial doubt as to the correctness of Telecom Decision 2008-1 insofar as it relates to Coutts, Alberta. Accordingly, the Commission **approves** Axia's application to review and vary Telecom Decision 2008-1 with respect to this community and concludes that no further process is required to consider Axia's claim. The Commission therefore excludes Coutts from the list of communities in Appendix B of Telecom Decision 2008-1.

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<sup>5</sup> See Telecom Decision 2006-9, paragraphs 38 and 39.

22. The Commission notes that the remaining 30 communities<sup>6</sup> were approved for broadband expansion by TCC because no ABSP requested exclusion on the record of the Telecom Public Notice 2006-15 proceeding, within the prescribed deadline of 19 February 2007, on the basis that it was currently serving or planned to serve these communities.
23. The Commission also notes that the evidence provided in this proceeding is insufficient to conclude that broadband service that satisfies the requirements established in the Telecom Public Notice 2006-15 proceeding was being provided in these 30 communities, as of 19 February 2007. However, the Commission considers that while the information submitted by Axia and other parties to this proceeding provides some evidence that residential service is available from an ABSP in these communities, it does not demonstrate whether service comparable to TCC's was available, in at least some of these communities, within the time frames established in the Telecom Public Notice 2006-15 proceeding for the identification of such communities.
24. In light of the above, the Commission concludes that there is substantial doubt as to the correctness of Telecom Decision 2008-1 insofar as it relates to these 30 communities. Accordingly, the Commission **approves** Axia's application to review and vary Telecom Decision 2008-1 with respect to these 30 communities, and excludes them from the list of approved communities in Appendix B of Telecom Decision 2008-1. In the interest of fairness, the Commission will consider these communities using the same criteria used for other communities as part of the Telecom Public Notice 2006-15 proceeding. A list of these communities is provided in the Appendix to this Decision.
25. In order to have a full record on which to base the Commission's final decision regarding these 30 communities, the ABSPs that provide the broadband service are directed to file with the Commission, and serve on all parties to the Telecom Public Notice 2006-15 proceeding, the information identified in paragraph 9(a) of Telecom Public Notice 2006-15 as well as answers to interrogatories issued concurrent with this Decision by **22 September 2008**.
26. TCC and any other interested party to the Telecom Public Notice 2006-15 proceeding who wish to comment on the ABSPs' submissions or responses to interrogatories may do so, serving a copy on all other parties, by **29 September 2008**.
27. The ABSPs may file reply comments with the Commission, serving a copy on all other parties, by **6 October 2008**.
28. The Commission expects to render its determination with respect to the further process by 1 December 2008.

## **Other matters**

### **Costing process**

29. Axia requested that the Commission establish a public process to disclose TCC's costing information and assumptions to allow public comment where TCC might claim that the cost of construction of its own transport facilities is less costly than the use of the Alberta SuperNet

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<sup>6</sup> Comprised of the 29 communities referred to in paragraph 20 of the Decision and Cardiff Echos (Morinville).

network. TCC indicated that it is prepared to provide Axia with an abridged cost study with cost information disclosed at the level of detail consistent with similar cost studies previously submitted by TCC to the Commission.

30. In the Telecom Public Notice 2006-15 proceeding, the Commission established that TCC should disclose to the general public certain Phase II costing information on an aggregate basis for each province. In this regard, TCC was directed, in a letter dated 16 March 2007, to provide certain additional costing information on the public record. The Commission considers that disclosure on the public record at the level of detail required in the Telecom Public Notice 2006-15 proceeding continues to be appropriate. Accordingly, TCC is directed to disclose this level of detail of costing information when it files its revised cost studies associated with its broadband expansion rollout plan, pursuant to the Commission's directives in Telecom Decision 2008-1.
31. In light of the above, the Commission **denies** Axia's request to establish a public process to disclose TCC's costing information and assumptions.

#### **Rate matching**

32. Axia has also requested that where TCC might propose to construct its own transport network, it be given the opportunity to offer rates that match TCC's estimated costs of constructing its own network. In this respect, the Commission considers that this is a matter involving a potential commercial agreement between the parties, which would not normally require Commission approval.

#### **Clarifications**

33. Axia requested that TCC clarify certain aspects of its SuperNet Connect Service. TCC confirmed that its SuperNet Connect Service would be available to multiple Internet service providers in any community approved for broadband expansion. TCC also noted the Commission's determination in Telecom Decision 2008-1 that the waiver of construction charges would apply for the construction of Ethernet access facilities for its SuperNet Connect Service and that the charges could be recovered from its deferral account.
34. The Commission notes that Axia has acknowledged TCC's explanations related to its SuperNet Connect Service, and considers that these matters have been adequately clarified.

Secretary General

#### **Related documents**

- *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, 17 January 2008

- *Review of proposals to dispose of the funds accumulated in the deferral accounts*, Telecom Public Notice CRTC 2006-15, 30 November 2006
- *Disposition of funds in the deferral accounts*, Telecom Decision CRTC 2006-9, 16 February 2006
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*

**Appendix**

<b>PROVINCE</b>	<b>TCC COMMUNITY</b>	<b>EXCHANGE NAME</b>
Alberta	Ashmont	Ashmont
Alberta	Cardiff Echos (Morinville)	Morinville
Alberta	Derwent	Derwent
Alberta	Dixonville	Dixonville
Alberta	Elkwater	Elkwater
Alberta	Flatbush	Flatbush
Alberta	Gift Lake	Gift Lake
Alberta	Gleichen	Gleichen
Alberta	Hines Creek	Hines Creek
Alberta	Hobbema	Hobbema
Alberta	Jarvie	Jarvie
Alberta	Joussard	Joussard
Alberta	Leslieville	Leslieville
Alberta	Longview	Longview
Alberta	McLennan	McLennan
Alberta	Mundare	Mundare
Alberta	Saddle Lake I.R.	Ashmont
Alberta	Smokey Lake	Smokey Lake
Alberta	Stirling	Stirling
Alberta	St. Michael	St. Michael
Alberta	Tilley	Tilley
Alberta	Vilna	Vilna
<b>SUPPLEMENTAL COMMUNITIES</b>		
Alberta	Clyde	Clyde
Alberta	English Bay	Cold Lake
Alberta	Legal	Legal
Alberta	Pickardville	Westlock
Alberta	Rochester	Rochester
Alberta	Warspite	Warspite
Alberta	Waskatenau	Waskatenau
Alberta	Whitelaw	Whitelaw