

**IN THE MATTER OF SECTION 12  
OF THE *TELECOMMUNICATIONS ACT***

**PETITION OF THE GOVERNMENT OF MANITOBA AND THE  
GOVERNMENT OF SASKATCHEWAN  
TO HIS EXCELLENCY, THE GOVERNOR GENERAL IN COUNCIL  
DATED: JANUARY 14, 2000**

***RE: Telecom Decision CRTC 99-16 Telephone Service to High-Cost Serving Areas***

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## SUMMARY

The Governments of Manitoba and Saskatchewan submit that *Telecom Decision CRTC 99-16 Telephone Service to High-Cost Serving Areas* fails to address key issues raised in the Commission's proceedings, will have effects that are inconsistent with policy objectives set out in the *Telecommunications Act* as well as federal policy, and is contrary to the long term interests of rural and northern residents throughout Canada for the following reasons:

1. The Decision is likely to lead to much higher local rates for telecommunications users in northern and rural areas of Canada.
2. The definition of basic service identified in the Decision limits the level of service to little more than the existing levels of service in the vast majority of northern and rural communities and, therefore, is inadequate in addressing the availability of future technological advances in northern and rural areas in a timely manner.
3. The Decision does not provide a stable national funding mechanism to support the cost of service in northern and rural areas.

The Governments of Manitoba and Saskatchewan do not oppose the improvements to be made under the Decision with respect to unserved and underserved areas; however, they view such improvements as being inadequate for the long term. In short, the Commission simply has not gone far enough to ensure that the future needs of northern and rural Canadians can be met in the long term.

In the light of these considerations, Manitoba and Saskatchewan request that the Governor in Council vary those parts of the Decision that are inadequate in meeting the needs of northern and rural telecommunications users, while preserving those that address the needs of unserved and underserved areas of Canada. The variances requested include a commitment by the Commission to a national universal service fund modeled on the principles articulated in the U.S. Telecommunications Act of 1996. These principles can be outlined as follows:

- Quality services should be available at just, reasonable, and affordable rates to all Canadians;
- Consumers in all regions of Canada, including those in rural and northern regions of provinces, should have access to telecommunications and information services,

including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;

- All providers of telecommunications services, regardless of their location within Canada, should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service;
- There should be a specific, predictable, competitively neutral and transparent mechanism to advance and preserve universal service in all regions of Canada; and
- Access to advanced telecommunications services by elementary and secondary schools and classrooms, health care providers, and libraries should be included within the definitions of the eligibility for universal service funding.

The variances requested also ask that the rulings to improve unserved and underserved areas proceed, but be implemented as interim measures pending the outcome of a proceeding to be held in regard to the implementation of the national universal service fund. In that proceeding, the definition of high-cost areas will include all northern and rural areas in both provinces and territories.

The Provinces stress the urgency of achieving and maintaining affordable access to quality telecommunications for all Canadians living in rural and northern areas. In the absence of a telecommunications network to which everyone is connected at comparable rates, rural and northern regions, and the provinces and territories in which they are disproportionately located, will be further disadvantaged in competing in the global economy and in particular with their American counterparts. The Provinces contend that rural and northern Canadians should have a level playing field with their counterparts in urban Canada and the United States. Allowing a national regulatory agency such as the CRTC to limit the promise of equal opportunity afforded by the new information-based economy for rural and northern residents is contrary to the goal of common economic citizenship for all Canadians.

## **INTRODUCTION**

The Government of Manitoba (Manitoba) and the Government of Saskatchewan (Saskatchewan), hereinafter referred to as The Provinces, hereby petition His Excellency the Governor in Council pursuant to section 12 (1) of the *Telecommunications Act*, and requests the Governor in Council make an Order varying a decision of the Canadian Radio-television and Telecommunications Commission ("CRTC" or "Commission") dated October 19, 1999 entitled, *Telecom Decision CRTC 99-16, Telephone Service to High-Cost Serving Areas* (the Decision).

## **THE CRTC PROCESS**

The Provinces contend that the CRTC Decision has failed to respond adequately to certain basic questions asked during the public process. The failure to deal with these questions means that Canadians living in northern and rural areas will continue to be deprived of the new economic opportunities, and the social and community development benefits, that universal and affordable access to the Information Highway can and should provide.

The Commission explained the purpose of Telecom Public Notice CRTC 97-42 (PN97-42), issued on December 18, 1997, verbatim as follows:

- *The Telecommunications Act* (the Act), in subsection 7(b), identifies as a policy objective for Canadian telecommunications the need “to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada.”
- In *Local Service Pricing Options*, Telecom Decision CRTC 96-10, 15 November 1996, the Commission stated that it considers the matter of service to high-cost areas, including the extension of service to unserved areas and the upgrading of existing service to underserved areas to be important. In that Decision the Commission stated its intention to consider these issues following the conclusion of the local competition proceeding, to the extent that they had not been addressed in that proceeding.
- In *Local Competition*, Telecom Decision CRTC 97-8, 1 May 1997, the Commission noted that the advent of competition in all telecommunications markets raises the

issue of the appropriate regulatory approach to the continued achievement of the policy objectives set out in subsection 7(b) of the Act. As well, the Commission noted that there was discussion during the proceeding with respect to the meaning and significance for regulatory purposes of the terms “obligation to serve”, “universal service obligation” and “carrier of last resort”. The Commission concluded that the most appropriate way to ensure these goals is to maintain the incumbent local exchange carriers’ (ILECs) current obligation to serve, pending further investigation through a public process into an approach for serving high-cost areas that is more suited to a fully competitive environment.

- The Commission hereby initiates a proceeding to consider the issues associated with service to high-cost serving areas (HCSAs). The Commission seeks comments associated with service to HCSAs, including: (i) the criteria for establishing HCSAs [including for example, whether different categories of HCSAs are appropriate, e.g., remote areas]; (ii) the criteria and mechanism for extending and upgrading service in a competitive environment; (iii) whether changes are required to current obligations to serve; (iv) the appropriate costing methodology to use to establish service costs in HCSAs; (v) whether HCSAs should be subsidized and if so, what would be the appropriate funding mechanism [e.g., a high-cost service fund]; (vi) services [with definitions as required] and facilities to be funded from a high-cost service fund [to include, where appropriate, consideration of uneconomic toll service and unusual expenses required for sustainable toll competition]; (vii) what are the appropriate sources of funding for any funding mechanism that may be established; (viii) eligibility and mechanism for receiving funding and whether there should be any limits on funding; (ix) the funding level per service [e.g., maximum subsidy, need for uniformity between regions, etc.] and the annual total value of any high-cost service fund or other funding mechanism that may be established, reflecting the funding level and the timing of any non-recurring investments [to include an inventory of existing services, future service extensions, future service upgrades, etc.]; (x) frequency of review of the parameters of any funding mechanism; (xi) any relationship to or impact on the existing contribution mechanism and price cap regime; (xii) implementation, operation and administration of any funding mechanism; (xiii) an appropriate mechanism for evaluating any funding mechanism vis-à-vis achieving the objectives of subsection 7(b) of the Act; and (xiv) any other issues that the Commission should consider.

- It is the Commission's intention to implement by 1 January 2000 any safeguards or mechanisms required to address the issue of service to HCSAs.

It is obvious that the Commission, in conducting its proceeding, recognized that Canadians living in northern and rural communities are particularly at risk of facing the possibility of unaffordable telecommunications services if steps were not taken to prevent such an outcome. Indeed, it was this recognition that directly prompted the Commission to conduct its proceeding on high-cost serving areas. In its Telecom Decision CRTC 96-10, the Commission wrote:

"In this proceeding, submissions were received from various parties including B.C., MKO and Saskatchewan, expressing concerns regarding service to rural and remote communities. Moreover, at the Vancouver Regional Hearing, the Commission heard from Mr. John Kerr representing the Tatlayoko Think Tank as well as other organizations and individuals, and at the Whitehorse Regional Hearing, from the Yukon Government, the Marsh Lake Telephone Committee, and the Yukon Utilities Consumer Group and at the Toronto Regional Hearing from OFA. All commented on the need for reliable and affordable communications in remote communities. Some parties further commented on the need for specific mechanisms to ensure service to high-cost areas as rates move towards costs as a result of competition in the provision of telecommunications services...The Commission considers that the matter of service to high-cost areas, including the extension of service to unserved areas and the upgrading of existing service to underserved areas is an important one. The Commission intends to consider these issues following the conclusion of the local competition proceeding, to the extent that these issues have not been addressed in that proceeding."

Nearly two years after issuing PN97-42, the Commission published its Decision, which the Provinces contend is not commensurate with the Commission's own recognition of the importance of the matter. The Provinces submit that the Decision fails to address key issues raised in the Commission's proceeding, is inconsistent with policy objectives set out in the *Telecommunications Act* as well as federal policy, and is contrary to the long term interests of rural and northern residents throughout Canada for the following reasons:

1. The Decision means increased rates for northern and rural Canadians and the creation of a new inequity between these Canadians and urban telecommunications users.

2. The Decision undermines the future economic and social well-being of northern and rural areas.
3. The Decision means continuing to depend on an inappropriate and fragile subsidy mechanism.
4. The Decision creates an unfair competitive environment for those companies with high numbers of northern and rural residents.
5. The Decision creates a condition where companies driven by competitive imperatives will be reluctant to make the investments needed in rural and northern areas beyond the required minimal or basic services prescribed by the Decision.
6. The Decision is inconsistent with the *Telecommunications Act* and federal policy.

## **THE TELECOMMUNICATIONS ACT AND FEDERAL POLICY**

Federal legislation and policy are clear and unequivocal in terms of defining obligations to Canadians in rural and remote areas relative to telecommunications services. Section 7 of the *Telecommunications Act* is entitled, "*Canadian Telecommunications Policy Objectives*".

The Commission, in PN97-42, cited one of the policy objectives that is specifically relevant to Canadians in northern and rural areas, namely section 7(b) which reads: "to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada."

There are other policy objectives included under Section 7 that are equally relevant with respect to the Commission's Decision. They are:

- *to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; and*
- *to respond to the economic and social requirements of users of telecommunications services.*

Despite increasing reliance on national and international market forces, the commitment to telecommunications as a public good cannot be abandoned as a core principle in the

regulation of this industry. Nor can telecommunications and its “*essential role in the maintenance of Canada’s identity and sovereignty*”<sup>i</sup> be compromised by excluding the long-term needs of residents in northern and rural areas of this country.

Since passage of the *Telecommunications Act* in 1993, the Government of Canada has continued to formulate its policies around the evolution of the Information Highway, affirming that “*all Canadians must have affordable access to the Information Highway, no matter where they live.*”<sup>ii</sup> The federal government has further stated that, where market forces cannot provide access to essential telecommunications services, a national strategy should be developed to “*identify the means—regulatory, financial or otherwise—of providing them to people living in rural, remote and northern communities.*”<sup>iii</sup>

The Information Highway Advisory Council (IHAC), a broadly representative council that advised the federal government, similarly concluded that: “*Access to the Information Highway is critical to Canada’s future as a knowledge society and its success as a knowledge economy.*”<sup>iv</sup> IHAC recommended that the federal government address the challenge of “*ensuring affordable access to basic telecommunications and broadcasting services, which represent Canadians’ ‘on-ramps’ to the Information Highway.*”<sup>v</sup>

These statements of Canadian policy have been reiterated in other venues. As examples:

In 1997, the Liberal Party of Canada wrote:

*The Liberal government believes that rural Canada needs a strong information technology infrastructure. People living in rural Canada should have access to the same enabling tools and information resources as their urban counterparts.*<sup>vi</sup>

The October 15, 1999 Speech from the Throne again emphasized telecommunications as a critical tool for rural communities. The Secretary of State for Rural Development, Andy Mitchell, stated: “*technology can open new doors to all Canadians, tearing down the old barriers of distance or access and allow rural and urban communities the opportunity to compete globally*”.<sup>vii</sup>

This statement was reinforced by the Parliamentary Committee on Natural Resources which recommended that:



*To meet the objectives of providing adequate access by rural residents to the information highway, the federal government should attempt to ensure that the communications systems in rural Canada keep pace with available technology. The cost of upgrading rural telecommunications infrastructure should be borne by all subscribers, both urban and rural.*<sup>viii</sup>

At a meeting of Federal-Provincial-Territorial Ministers responsible for the Information Highway held in Fredericton, New Brunswick on June 12, 1998, the federal minister joined provincial and territorial ministers in endorsing a resolution which included the following statements:

*At the first meeting of Ministers Responsible for the Information Highway [held in Winnipeg in September 1996], Ministers agreed that Canada's future as an information society depends on its remaining a world leader in providing access to the Information Highway for all its citizens. To achieve this objective Ministers agreed that Canadians should have affordable access to essential Information Highway services - regardless of geographical location, income or special needs - and to a critical mass of products and services in the French language.*

*While agreeing that market forces are likely to ensure affordable access to Information Highway services for a large majority of Canadians, Ministers also recognized the possible need for selective government action where market mechanisms are not adequate. While fully respecting individual governmental jurisdictions, and recognizing that policies, practices, priorities and timetables may differ from government to government, Ministers agreed to support, within their respective areas of responsibility and consistent with their governments' priorities, a collaborative federal-provincial-territorial approach to programs and initiatives to improve access to the Information Highway.*

*In light of these considerations and on the basis of further work by officials, Ministers:*

*1.a) recognized that access to the Information Highway in rural and remote areas, at affordable prices and service levels reasonably comparable to those in urban areas, is a fundamental goal of economic and social policy;*

*b) agreed to:*

- i) encourage telecommunications carriers to intensify their efforts to upgrade and extend rural networks;*
- ii) encourage telecommunications carriers and Internet service providers to extend local calling access to the Internet to rural areas, where this is not already available.*

The Provinces strongly support these policies and have demonstrated their support in both policy and action.

### **NORTHERN AND RURAL TELECOMMUNICATIONS DEVELOPMENT IN SASKATCHEWAN AND MANITOBA**

While federal policy is designed to advance general telecommunications policy objectives that are of importance to Canadians living in northern and rural areas, the Provinces have taken specific steps to meet their needs:

Saskatchewan has, among other initiatives, taken the following major steps:

- A \$227 million investment to create a province-wide, all digital network that links Saskatchewan's 12 cities with more than 670 smaller communities and surrounding rural areas;
- A \$364 million investment to eliminate party lines by establishing 100 per cent individual line service;
- Established province-wide Internet access service that is available at affordable rates for both rural and urban customers; and
- A \$50 million investment to upgrade telecommunications service to the north and to Indian Reserves.

Manitoba, through an eight-year, \$620 million program, completed these major initiatives:

- Upgraded all telecommunications exchanges to digital technology;
- Implemented universal individual single line service; and

- Reduced the then-existing 160 toll free calling areas in Manitoba to about 60 areas.

## **NEW WORLD, NEW DEMANDS**

Saskatchewan and Manitoba took these major initiatives because they recognized that telecommunications is critical to the survival of rural and northern communities, and that the nature and sweep of telecommunications does not remain static. In their respective submissions to the Commission, both Manitoba and Saskatchewan emphasized that it is not possible "to render reliable and affordable telecommunications services of high quality accessible to Canadians" in rural and northern areas by looking to the past. They stressed that while basic telecommunications is essential to Canadians living in rural and northern areas, they must have access to advanced services or risk the prospect of being left behind in a global economy supported by an Information Highway.

Manitoba told the Commission that:

"...the extent and level of service in rural and remote areas should not be limited to basic telecommunications services formerly defined as POTS, or Plain Old Telephone Service. In an Information Age, that definition necessarily must change with changing needs and expectations. We would join other participants who have argued that advanced services are required in these areas of Canada in order to allow individuals, families, and businesses to reap the benefits, and pursue the opportunities, made possible by advanced technology. If the Commission were to set the standard so low as to allow support only for dial tone, it will have made it impossible for Canadians in rural and remote regions ever to catch up to their fellow-citizens traveling on the Information Highway."

Saskatchewan wrote:

"The telephone is at the core of today's social, cultural and economic life.<sup>ix</sup> For residents of rural and remote communities, in particular, the value of their telecommunications system is greater than the ability to simply make routine telephone calls. Increasingly, the ability to be competitive within a global economy and to progress and prosper in one's own community is reliant on telecommunications....Economic and technological trends

emerging on the global stage are increasingly forcing rural and remote communities into the information age, with the following result:

No rural community...can long remain a peaceful backwater in this river of global change. To remain viable as communities, all must adapt to the changed environment by using information and information technology to keep their communities competitive. Communities that fail to do so will have fates similar to small communities that were bypassed by...railroads and highways in earlier times."<sup>x</sup>

### **AFFORDABLE NORTHERN AND RURAL SERVICE IN A COMPETITIVE ENVIRONMENT**

The Provinces recognize and accept that the telecommunications market has undergone far-reaching changes not only in technology and services, but also in its basic economic structure. Not the least of these changes has been its transformation from a monopoly to a competitive model. The Provinces reminded the Commission that this model does not apply itself well to northern and rural regions.

Saskatchewan said in its submission to the Commission that:

"...competition is not a panacea and will not in and of itself achieve our common goals of universal, affordable service; comparable access; and community development. In fact, an example of a fully competitive market that is effective in truly high-cost service areas has not been found....By reducing margins in order to compete with national companies in the more profitable markets, companies serving rural and remote areas can not economically serve all of their customers at current rate levels, nor can they continue to expand service into these areas or upgrade existing infrastructure. In Saskatchewan, for example, without subsidies many rural subscribers would have to pay as much as four or five times more than they currently do. Under these circumstances, if required to pay in excess of one hundred dollars a month just to acquire dial tone, many residents and businesses would not be able to retain access to even basic telephone services."

Manitoba wrote:

"While the Commission has taken steps to encourage the introduction of local service competition in all areas, it would seem to go without saying that it is unlikely that market forces will allow consumers in high-cost areas to reap the benefits of competition anytime soon."

The Provinces noted, in particular, that the Commission has recognized that competitive market forces will not work where population densities are low and service areas are large:

"...the Commission considers it unlikely that.. competition will develop in all areas in the near term. Even with a fuller realization of local competition...it is likely that market forces will not, on their own, achieve the Act's accessibility objective in all regions of Canada. In establishing the rules to foster competition in all market segments, the Commission must therefore ensure it has regulatory tools through which to ensure the continued achievement of this objective.<sup>xi</sup>

## **GUIDING PRINCIPLES & SPECIFIC REQUIREMENTS**

Manitoba and Saskatchewan urged the Commission to adopt guiding principles, modeled on the principles articulated in the U.S. Telecommunications Act of 1996, in establishing a framework necessary to address the question of service to northern and rural areas of Canada. The Provinces believe that these principles should be applicable to regulatory decisions regarding service in northern and rural areas of Canada:

1. Quality services should be available at just, reasonable, and affordable rates;
2. Consumers in all regions of Canada, including those in rural and northern regions of provinces, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;

3. All providers of telecommunications services, regardless of their location within Canada, should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service;
4. A specific, predictable, competitively neutral and transparent mechanism should be established to advance and preserve universal service in all regions of Canada; and
5. Access to advanced telecommunications services by elementary and secondary schools and classrooms, health care providers, and libraries should be included within the definitions of the eligibility for universal service funding.

In addition to guiding principles, the Provinces submit that it is imperative to ensure that these additional specific requirements be met:

1. Saskatchewan and Manitoba are provinces of great geographic diversity. They have relatively small populations. Many of their small communities are widely dispersed. Indeed, such population patterns are not unknown in all provinces. Areas in the northern regions of the Provinces are similar to most of the remote areas of Canada, where the cost of service is very high and the prospect of competition is unlikely. However, the Provinces are as concerned about the present and future provision of service to their northern and rural areas as they are remote communities. For this reason the Provinces called upon the Commission to set its definition of high-cost serving areas in such a way as to ensure that Canadians living in northern and rural areas would not be denied the benefits of any service support mechanism that it might implement.
2. Much of the substance of the Commission's public proceeding focussed on how the benefits of a northern and rural service support mechanism might flow to residential customers. The Provinces believe, however, that small businesses in these areas could be placed at severe disadvantages if they are not protected from major price increases for telecommunications services. They submit that as a consequence of such increases, the economies of whole communities in northern and rural areas could be in jeopardy. Therefore, the Provinces urged the Commission not to exclude small businesses from those who might benefit from a northern and rural support mechanism. The Provinces also submit that access to advanced telecommunications services by elementary and secondary schools, libraries and health care facilities

should be included within the definitions of the eligibility for universal service funding.

3. Canadians living and working in northern and rural communities must have confidence that service will not be terminated or reduced no matter how market conditions and corporate structures might change. The Provinces assert that it was critical for the Commission to adopt a methodology or policy that provides for an obligation to serve, recognizing, of course, that such an obligation need not necessarily fall solely to incumbent providers, and that a service provider, so obliged to serve, has the right to receive appropriate compensation through a northern and rural service support mechanism.

## **A NATIONAL FUND**

Saskatchewan and Manitoba were among the majority of participants of the Commission's public proceeding who urged the adoption of a national fund as a mechanism to serve the principles required to meet the telecommunications needs of Canadians living in northern and rural areas.

Manitoba told the Commission there are powerful reasons why such a fund is needed. It wrote that:

"...a national rural and remote support fund concept is consistent with the policy objectives set out in the Telecommunications Act. It also would create the broad base of sustainable inter-territorial funding needed to maintain and advance rural and remote service without imposing an undue or unreasonable burden on telecommunications users. Such a fund would have the additional benefit of being easily understood and administered. A national fund also can be made to be competitively-neutral and governed to ensure that the benefits flow where they are required."

Saskatchewan wrote that:

"...a national Universal Service Fund is the most effective method of achieving these principles. The Province suggests that this approach is an effective method of transcending provincial and territorial boundaries, balancing social and commercial interests, and fairly distributing the financial

responsibility to serve all Canadian citizens regardless of where they may reside in Canada."

Clearly, both the Government of Canada and Parliament, when considering Bill C-17, *An Act to amend the Telecommunications Act and the Teleglobe Canada Reorganization and Divestiture Act*, foresaw the benefits of the creation of a national fund when they adopted section 46.5 (1), which reads:

"The Commission may require any telecommunications service provider to contribute, subject to any conditions that the Commission may set, to a fund to support continuing access by Canadians to basic telecommunications services."

The Provinces submitted during the proceeding that it is vitally important not to make the definition of high-cost serving areas too narrow, thereby placing service to even more Canadians at risk. The mechanism provided for in section 46.5 (1) provides precisely the necessary mechanism for the Commission to ensure Canadians living in northern and rural areas will continue to have access to affordable telecommunications services.

The Provinces contended during the Commission's proceeding that as the definition of basic telecommunications services ultimately is defined by the regulator, subject to any directions it may receive under sections 8<sup>xiii</sup> or 12 of the Act, and as that definition has been, and should continue to be adapted and adjusted over time, there is every reason that a national fund be used not only to ensure the continued affordability of services for Canadians living in northern and rural areas, but also that those services include advanced telecommunications services.

## **THE COMMISSION'S DECISION**

The Provinces contend that the CRTC Decision has failed to respond adequately to certain basic questions asked during the public process. The failure to deal adequately with these questions will mean that Canadians living in northern and rural areas will continue to be deprived of the new economic opportunities and social and community development benefits that universal and affordable access to the Information Highway can and should provide.

Specifically, the CRTC has chosen to ignore these questions it posed in PN97-42:



- (iv) the appropriate costing methodology to use to establish service costs in HCSAs;
- (v) whether HCSAs should be subsidized and if so, what would be the appropriate funding mechanism [e.g., a high-cost service fund]; and
- (xiii) an appropriate mechanism for evaluating any funding mechanism vis-à-vis achieving the objectives of subsection 7(b) of the Act.

The CRTC was well aware of the intent of the 1998 changes to the *Telecommunications Act* which enable it to establish a universal service fund. In making their amendment in 1998, federal legislators wished to give the CRTC the tools to ensure that the interests of rural and remote residents would be adequately met. As Industry Canada stated in reference to Section 46.5: “with this kind of provision the Commission has the power to establish a mechanism to ensure that access in this country remains a priority.”<sup>xiii</sup>

The CRTC was cognizant of its obligations under the *Telecommunications Act* when it stated in its 1999-2000 Estimates:

*Finally, new statutory responsibilities have been conferred on the CRTC as a result of changes to the Telecommunications Act. They concern a licensing regime for international telecommunications services, the administration of numbering and the establishment and operation of a universal service fund for Canada, that would ensure the delivery of basic telecommunications services to every part of Canada.”<sup>xiv</sup> (our emphasis)*

Despite the acknowledgement of a virtual federal policy directive via amendments to the Act, the CRTC chose not to address the issues and questions surrounding the development of a universal service fund.

The CRTC's failure to address these issues adequately will have a number of critical consequences if the Decision is allowed to stand:

1. **The Decision means continuing to depend on an inappropriate and fragile subsidy mechanism.**

The current subsidy regime is widely recognized as being unsustainable due to technological change, and because it is increasingly being bypassed through the growth of private networks. In addition, the blend of long distance contribution and attribution

from a variety of sources within a given company is simply incompatible with an environment where all services are now competitive. As Call-Net has indicated: “*The subsidy regime, as it exists today is at serious risk.*”<sup>xv</sup> Call-Net further stated:

*It is not possible to have a subsidy regime that, from year to year requires an increasingly complex set of rules to maintain its integrity while at the same time introducing initiatives designed to make the industry more reliant on market forces.*<sup>xvi</sup>

At the root of the matter, it plainly makes no sense to base the sustainability of affordable access to current and future telecommunications service by Canadians in northern and rural areas on a mechanism grounded on a single competitive service that is subject to constant, and often justified, bickering among competitors, and the vagaries of the marketplace.

The Commission itself has made it plain that it wants to "minimize" subsidies, as shown in these passages in the Decision:

- *In addressing these goals, the Commission must balance competing priorities, such as improving service, keeping rates reasonable, and minimizing subsidies in order to foster fair competition* (our emphasis) [Summary, page 1]
- *Subsidies to achieve the basic service objective will eventually be targeted only to high-cost areas* (our emphasis) [Summary, page 2]
- *subsidies are being driven out of the system* [paragraph 6]
- *To fulfil the requirements of the Act, the Commission must balance social policy objectives (for example, high quality, affordable service) with competitive ones (for example, minimizing subsidies)* (our emphasis) [paragraph 22]

The Commission clearly believes that, except for the most difficult and costly-to-serve areas, there will be no need for subsidies because competition and technology will restrain prices everywhere in Canada except the far north. It is for this reason that it wants to "minimize" subsidies, and target their application solely to the highest of high-cost areas. The Provinces contend that competition in local service is not a likely

possibility for the vast majority of northern and rural telecommunications users, including those south of the far north, and it is unreasonable to expect competition, and the prospect of new cost-effective technologies, by themselves to restrain prices in these areas.

World telecommunications market liberalization, technological change and market developments brought on by competition have prompted regulators and government agencies in many countries, including several of Canada's major trading partners, to conduct comprehensive reviews of their existing universal service policies. A common outcome of these reviews is the development of explicit national universal service programs.<sup>xvii</sup> Canada's current system of requiring each high-cost service region to be responsible for its own universal service support is the antithesis of any sustainable national universal service policy.

**2. The Decision means increased rates for northern and rural Canadians and the creation of a new inequity between these Canadians and urban telecommunications users.**

In the absence of a sufficiently large and stable national fund to subsidize the cost of service to northern and rural telecommunications users, it is probable that they will look forward to constantly higher rates.

The CRTC recognized that the cost for consumers in rural and northern areas will be higher when it allowed basic service rates to rise to \$34.75 for companies such as Telebec.<sup>xviii</sup> This rate is almost double those of Alberta, Manitoba and Saskatchewan.

Moreover, when it issued the Decision on October 19, 1999, the CRTC recognized that under the environment established by the Decision, those subscribers living in other than high-cost areas can expect rate reductions, whereas when the telephone companies submit their service improvement plans, other subscribers will be expected to pay more.<sup>xix</sup>

The CRTC was told by participants in its regional meetings that high rates simply were unacceptable. For example, the Member of the Manitoba Legislature representing the constituency of Rupertsland put the following on the record:

*In 1995, MTS [Manitoba Telephone System] stated that the actual cost of providing basic monthly phone service to most northern communities ranged from \$41.48 to \$49.27. I would like to point out, Honourable Commissioners, that most*

*single people in First Nations communities are living on Social Assistance, by no choice of their own. This is because of the economic situation in many of our First Nations communities in the province of Manitoba. Because of the high-cost of living in the north, their monthly income is roughly \$200.00 on Social Assistance. So to suggest that they could afford to pay \$40.00 or more for telephone service is highly unrealistic.*

There has been an inequity between northern and rural telecommunications users and those in more highly populated areas. Traditionally, urban users paid more for their service, but the value of their service was enhanced by their access to greater numbers of users within a local serving area. Moreover, they normally had access to a greater range and often higher quality of service. In less populated areas, the price of basic monthly service was lower, but subscribers had access to fewer subscribers and had access to fewer advanced services.

In its Decision, the Commission is creating a new inequity. Northern and rural users are likely to see higher rates, which may, in fact, be higher than urban rates. In exchange for these higher rates, except for users in entirely unserved areas, they will receive a level of service that is little better than what they now have, and with virtually no way of being assured of access to advanced technologies as they emerge. Meanwhile, urban users can expect to see rates restrained and can look forward to having access to all new services. In fact, the Commission has fired the starting gun on a race to create a new telecommunications divide between urban Canadians and those living elsewhere in the country.

### **3. The Decision undermines the future economic and social well-being of northern and rural areas.**

Allowing rates in specific serving areas with high numbers of rural and northern residents to rise to more than double those found in urban areas would be inconsistent with any definition of “comparable” costs. Such increases will only compound the significant challenges being experienced by those currently residing and conducting business in rural and northern areas of Canada. These challenges include the negative social and economic consequences of rural depopulation, the rapid deterioration of rural transportation infrastructures, increased transportation costs to access markets and services, and the continual withdrawal of numerous services such as banking and postal services, which further reduces local employment opportunities.

**4. The Decision creates an unfair competitive environment for those companies with high numbers of northern and rural residents.**

The endorsement by the CRTC of the current regional or company specific contribution regime places those telecommunications companies that serve significant numbers of northern and rural subscribers in proportion to their urban subscribers in an untenable position. Under the current system, companies with the least ability to balance costs between low and high-cost service areas pay the highest contribution costs. Because there is not a sufficient ratio of lower cost to higher cost customers, it is difficult to generate sufficient revenue to cover shortfalls while competing within a national and North American marketplace.

Under the current system reinforced by the Decision, implicit cross-subsidies such as local business service surpluses and regulatory adjustments; e.g., directory profit attribution, continue to play a critical role in reducing the financial burden associated with high-cost serving areas. As competition increases, the opportunities to provide these implicit subsidies to rural and remote areas will decrease. This will, in turn, either force contribution rates to rise or service levels to decline due to curtailment of investment.

**5. The Decision creates a condition where companies driven by competitive imperatives will be reluctant to make the investments needed in rural and northern areas beyond the required minimal or basic services prescribed by the Decision.**

Given the blend of implicit and explicit subsidies reinforced by the Decision, the CRTC has established an environment where the provision of service to northern and rural residents will become a drain on any company required to serve them. As stated by Telus, given the status quo, *“no one would invest the large amounts of capital in local loops required to provide service.”*

The Provinces contend that in reaction to the Decision, companies will decide either to invest the minimal amount to meet basic service requirements within their obligation to serve within their traditional serving territories or seek to change their traditional serving areas to exclude more high-cost areas.

The Provinces contend that the telecommunications infrastructure in rural and remote areas is already failing to keep pace with new technological developments and will begin to deteriorate under current market and regulatory conditions established by the Decision.

**6. The Decision is inconsistent with the *Telecommunications Act* and federal policy.**

The Provinces contend that in the light of the consequences of the Decision cited above, it is not possible to reconcile it with the *Canadian Telecommunications Policy Objectives* of the *Telecommunications Act*. The Decision will not make it possible "*to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada.*"<sup>xxx</sup> Nor will the Decision:

- *facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; and*
- *respond to the economic and social requirements of users of telecommunications services.*

The Decision also will make it difficult if not impossible to meet the public policy goal that: "*all Canadians must have affordable access to the Information Highway, no matter where they live.*"<sup>xxxi</sup> Nor does the Decision adequately "*identify the means--regulatory, financial or otherwise--of providing them to people living in rural, remote and northern communities.*"<sup>xxxii</sup>

The Decision represents a rejection of the position of the Liberal Party of Canada when it wrote:

*The Liberal government believes that rural Canada needs a strong information technology infrastructure. People living in rural Canada should have access to the same enabling tools and information resources as their urban counterparts.*<sup>xxxiii</sup>

Equally, the Decision turned its back on the recommendation of the Parliamentary Committee on Natural Resources: "*To meet the objectives of providing adequate access by rural residents to the Information Highway, the federal government should attempt to ensure that the communications systems in rural Canada keep pace with available*

*technology. The costs of upgrading rural telecommunications infrastructure should be borne by all subscribers, both urban and rural.*<sup>xxiv</sup>

The Provinces support the Commission's effort to address the urgent needs of Canadians in the unserved areas of the far north and to upgrade underserved areas. But by severely limiting the scope and effect of its Decision, and by adopting the narrowest possible definitions of a high-cost area and basic service, it has condemned the vast majority of Canadians in northern and rural areas to a form of telecommunications second class citizenship. At the same time, it has set the stage for a new form of inequity between northern and rural Canadians and urban Canadians because it has accepted the premise of higher rates for the former and lower rates for the latter.

Because the Decision will create significant new divisions between and among Canadians, it is impossible to reconcile this consequence of the Commission's action with Parliament's recognition in the *Telecommunications Act* that telecommunications play an "essential role in the maintenance of Canada's identity and sovereignty".

The Commission, in short, has rejected the concept of a fair and equitable national telecommunications system for all regions of Canada. The Provinces, therefore, strongly agree with this portion of the dissenting opinion of CRTC Commissioner Cardoza, who stated:

*"Since the basic service objective is a national objective, the mechanisms for its implementation should be accessible to all Canadians, regardless of which part of the country they reside in. That is what a national objective is. For me it is central to the meaning of national Canadian public policy...The lack of specified access to supplementary funding (or an alternate but equally effective mechanism) for the south leaves me unconvinced that the end result will be the same."*

## **CONCLUSION**

Rather than building the regulatory means to, "develop a national access strategy to ensure affordable access by all Canadians to essential communications,"<sup>xxv</sup> the Decision will only widen regional disparities both within and among provinces. The Provinces urge the Governor in Council to establish a regulatory environment targeted at reducing regional disparities in service quality, accessibility and affordability, so that all Canadians have an equal opportunity to participate in the information/knowledge economy of the future, regardless of where they might live in the country.

The Provinces stress the urgency of achieving and maintaining affordable access to quality telecommunications for all Canadians living in rural and northern areas of both provinces and territories. In the absence of a telecommunications network to which everyone is connected at comparable rates, rural and northern regions and the provinces and territories in which they are disproportionately located, will experience further isolation and social and economic decline. The telecommunications system cannot be allowed to focus solely upon the development of major urban centres which is oblivious to the need to create and maintain accessible and affordable service for rural and northern residents.

The Provinces believe that telecommunications, notwithstanding a competitive environment, is a public good, universal access to which is absolutely necessary to support social and economic participation in contemporary society. Historically, universal service has been maintained on the basis of the revenues generated by the industry itself. There is no reason in theory or in practice that internally generated revenues by the industry cannot or should not continue to be used to maintain high quality universal service at affordable rates for all Canadians—even in a competitive environment.

Rural and northern communities continue to make a very important social and economic contribution to the well-being of Canada. They are part of the political, economic and cultural fabric of the nation, which, in turn, increasingly depends on communications to maintain its identity and unity. As part of their common citizenship in Canada, all Canadian residents expect, and must be provided with, universal and affordable access to quality telecommunications services in order to realize the promise of equal opportunity afforded by the new information-based economy.

In summary, the Provinces assert that the Decision is contrary to the long term interests of rural and northern residents throughout Canada for the following reasons:

1. The Decision is likely to lead to much higher local rates for telecommunications users in northern and rural areas of Canada.
2. The definition of basic service identified in the Decision limits the level of service to little more than the existing levels of service in the vast majority of northern and rural



communities and, therefore, is inadequate in addressing the availability of future technological advances in northern and rural areas.

3. The Decision does not provide a stable national funding mechanism to support the cost of service in northern and rural areas.

The Governments of Manitoba and Saskatchewan do not oppose the improvements to be made under the Decision with respect to unserved and underserved areas; however, they see such improvements as being inadequate for the long term. In short, the Commission simply has not gone far enough to ensure that the future needs of northern and rural Canadians are met.

Accordingly, the Provinces request that the Governor in Council vary *Telecom Decision 99-16 Telephone Service to High-Cost Serving Areas* as follows:

- a) Replace the wording of paragraph 17 with the following and number it as paragraph 22(a):

*The Commission will adopt the following definition of a high-cost area:*

*“A clearly defined geographical area where the incumbent local exchange carrier’s monthly costs to provide basic service are greater than the associated revenues generated by a rate comparable to those of Canadian urban centres.”*

- b) Replace the wording of paragraph 18 with the following:

*Pursuant to Section 46.5 of the Telecommunications Act the Commission will create a national universal service fund to support the cost of service in all northern and rural areas of Canada that will be administered on the following principles:*

- *Quality services should be available at just, reasonable, and affordable rates;*
- *Consumers in all regions of Canada, including those in rural and northern regions of provinces, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable*

*to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;*

- *All providers of telecommunications services, regardless of their location within Canada, should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service;*
- *There should be a specific, predictable, competitively neutral and transparent mechanism to advance and preserve universal service to all regions of Canada; and*
- *Access to advanced telecommunications services by elementary and secondary schools and classrooms, health care providers, and libraries should be included within the definitions of the eligibility for universal service funding.*

c) Replace the wording of paragraph 22 with the following:

*The Commission's challenge is to establish an acceptable level of service and to determine how, in a competitive era, all Canadians may gain access to that service. Recognizing the complexity of this challenge, the Commission will conduct a public proceeding to commence no later than July 1, 2000, to assist it in the establishment of the national universal service fund. This proceeding, among other things, will address the question of an acceptable level of service that is consistent with the principles upon which the fund is to be administered. Notwithstanding the definition of a high-cost area used in this Decision, in the proceeding to be held with respect to the national universal fund, and all decisions flowing thereafter from that proceeding, the definition of a high-cost area will include all northern and rural areas in both provinces and territories. However, it is recognized that it is necessary to address the needs of unserved and underserved areas of Canada without further delay. The remaining parts of this Decision, that is, paragraphs 22(a) to 90 inclusively, therefore, are intended to address those urgent needs, but only on a temporary basis and only as interim measures; they are not to be construed as being the Commission's final determinations with respect to service in northern and rural areas of Canada.*

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END NOTES

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- <sup>i</sup> Telecommunications Act, 1993, Section 7.
- <sup>ii</sup> Government of Canada. Building the Information Society: Moving Canada into the 21<sup>st</sup> Century. (Industry Canada: Distribution Services, 1996), p. 2.
- <sup>iii</sup> Ibid. p. 24.
- <sup>iv</sup> Federal Information Highway Advisory Council. Preparing Canada for a Digital World. (Industry Canada: Distribution Services, 1997) , p. 41.
- <sup>v</sup> Ibid, p. 42.
- <sup>vi</sup> Liberal Party of Canada, Securing Our Future Together: Preparing Canada for the 21st Century, 1997, p. 45.
- <sup>vii</sup> News Release by Secretary of State for Rural Development Andy Mitchell Throne Speech continues Commitment to Rural Canadians October 15, 1999.
- <sup>viii</sup> Report of the Standing Committee on Natural Resources, Think Rural! March 1997, p.16.
- <sup>ix</sup> Graham, S., Cornford, J., and Marvin, S. Telecommunications Policy, Vol. 20, No. 1. 1996, p. 5-6.
- <sup>x</sup> Parker, E. Telecommunications and Rural Development: Threats and Opportunities, “Global Transformations,” TVA Rural Studies, University of Kentucky, May, 1996, p. 2.
- <sup>xi</sup> Telecom Decision CRTC 97-8. Local Competition. May, 1997, paragraph 146.
- <sup>xii</sup> "The Governor in Council may, by order, issue to the Commission directions of general application on broad policy matters with respect to the Canadian telecommunications policy objectives."
- <sup>xiii</sup> Standing Committee on Industry, “*C-17: An Act to Amend the Telecommunications Act and the Teleglobe Canada Reorganization and Divestiture Act*,” statement by Michael Binder, Associate Deputy Minister Industry Canada, November 27, 1997.
- <sup>xiv</sup> *Canadian Radio-television and Telecommunications Commission, 1999-2000 Estimates, Part III - Report on Plans and Priorities, p 9-10.*
- <sup>xv</sup> Call-Net, Letter to CRTC on Telecom Public Notice CRTC 97-37. December 8, 1997, p. 4.
- <sup>xvi</sup> Ibid, p. 2.
- <sup>xvii</sup> AT&T Canada Long Distance Services Company, et al, “Application for the Implementation of a Revenue-Based Contribution Collection Mechanism,” before the Canadian Radio-television and Telecommunications Commission, September 17, 1998, pp. 18-24.
- <sup>xviii</sup> Telebec decision
- <sup>xix</sup> CRTC Information Backgrounder “Telephone Service to High-cost Areas: Did You Know?” October 19, 1999 pg.2
- <sup>xx</sup> Telecommunications Act, 1993, Section 7(b).
- <sup>xxi</sup> Government of Canada. Building the Information Society: Moving Canada into the 21<sup>st</sup> Century. (Industry Canada: Distribution Services, 1996), p. 2.
- <sup>xxii</sup> Ibid. p. 24
- <sup>xxiii</sup> Liberal Party of Canada. Securing our Future Together: Preparing Canada for the 21<sup>st</sup> Century. 1997, p. 45
- <sup>xxiv</sup> Report of the Standing Committee on Natural Resources. Think Rural! March 1997, p. 16.
- <sup>xxv</sup> Building the Information Society; Moving Canada into the 21<sup>st</sup> Century, Industry Canada, 1996, p. 2.