

March 9, 2000

Mr. Mel Cappe
Clerk of the Privy Council and
Secretary to the Cabinet
Privy Council Office of the Clerk of the Privy Council
and Secretary to the Cabinet
Langevin Block, 80 Wellington Street
Ottawa, Canada K1A0A3

We the undersigned, pursuant to Section 12(1) of the Telecommunications Act, hereby request the Governor in Council to vary Telecom CRTC Decision 99-20, The Review of Frozen Rate Policy, December 15, 1999, in accordance with the two attached documents:

- Telecom Decision 99-20: The Decision in the Context of Today's Market Realities
- Petition to Her Excellency the Governor in Council

Sincerely,

J. J. Meenan
Vice Chair and CEO
AT&T Canada Corp

K. J. Bennis
President and CEO
Call-Net Enterprises Inc.

T. Chislett
President
Primus Telecommunications Canada Inc.

D. J. Alsop
President and CEO
RSL Com Canada Inc.

**PETITION TO HER
EXCELLENCY THE GOVERNOR
IN COUNCIL, PURSUANT
TO SECTION 12(1) OF
THE TELECOMMUNICATIONS ACT
IN THE MATTER OF
TELECOM DECISION CRTC 99-20,
REVIEW OF FROZEN RATE POLICY
DECEMBER 15, 1999**

**AT&T Canada Corp.
Call-Net Enterprises Inc.
Primus Telecommunications Canada Inc.
RSL Com Canada Inc.**

MARCH 10, 2000

Summary

- This petition is filed by AT&T Canada Corp., Call-Net Enterprises Inc., parent of Sprint Canada Inc., Primus Telecommunications Canada Inc. and RSL Com Canada Inc.
- The petition requests that the Governor in Council vary Telecom Decision CRTC 99-20, in which the CRTC determined to continue its freeze on toll contribution rates assessed on toll minutes carried by providers of toll – i.e., long distance – services.
- The purpose of toll contribution is to subsidize universal access to telephone service at affordable rates, an important policy of the Government's that is supported by the petitioners. However, the CRTC's decision to continue its freeze on toll contribution rates sanctions the collection of toll contribution revenues above and beyond those necessary to achieve this policy goal.
- In the decision, the CRTC for the first time de-linked the issue of how much toll contribution is being collected from the issue of how much is needed to subsidize local service. It did this by focusing solely on the question of whether the growth in toll minutes (and consequently, in the amount of toll contribution revenues assessed on these minutes) is exceptional. It did this to the complete exclusion of the question of whether the requirement for these subsidy payments is growing, remaining constant, or shrinking. Consequently, the evidence of a shrinking requirement for toll contribution revenues was completely ignored by the CRTC.
- Because toll contribution is paid by toll providers to providers of local residence services, and because the incumbent telcos – i.e., the former provincial monopolists – retain virtually 100% of this market, virtually all toll contribution is paid to them. As a consequence, the over-collection of toll contribution sanctioned by the CRTC provides the incumbent telcos with a windfall. This windfall for the incumbent telcos has had a disastrous impact on new entrants in the long distance market, has threatened the sustainability of competition in this market and has undermined the Government's policy in favour of competition in telecommunications generally.
- This petition accordingly requests that the Governor in Council partially remedy this situation of over-collection, by capping the amount of toll contribution collected and refunding the over-collection from the beginning of 1998. In addition, this petition requests that the Governor in Council place a temporary hold on the increase in the contribution surcharge for direct access lines payable by the new entrants, pending the CRTC's review of the contribution collection mechanism.

Introduction

1. This petition is filed by AT&T Canada Corp., Call-Net Enterprises Inc., parent of Sprint Canada Inc., Primus Telecommunications Canada Inc. and RSL Com Canada Inc. (collectively referred to as the New Entrants).
2. The New Entrants respectfully request that Her Excellency, the Governor in Council, vary a decision of the Canadian Radio-television and Telecommunications Commission (the CRTC), Review of Frozen Rate Policy, Telecom Decision CRTC 99-20, December 15, 1999 (the Decision), pursuant to subsection 12(1) of the *Telecommunications Act*.
3. The Decision deals with the subsidy regime known as toll contribution. Toll contribution is collected by means of per-minute contribution charges assessed on minutes of long distance traffic. Under the CRTC's current framework, subsidy funds collected from toll providers are then distributed to local service providers based on the number of residence access lines they serve in subsidy-receiving areas. Because the incumbents retain virtually 100% of the residence local market, they receive virtually 100% of the subsidy. This subsidy is aimed at supporting the universal access by Canadians to telecommunications services, a policy goal endorsed by the New Entrants. The Decision, however, fails to address a significant anti-competitive effect of this regime caused by the CRTC's decision to freeze toll contribution rates for four years commencing 1998.
4. In the Decision, the CRTC declined to change its frozen contribution rate policy in the face of clear evidence that the incumbent telcos (i.e., the former provincial monopolists) are being unjustly enriched as a result of their significant over-collection of toll contribution revenues, totalling approximately \$78 million for 1998 and \$175 million for 1999. It is important to bear in mind that these revenues are above and beyond those necessary to achieve the goal of universal access and represent a windfall to the incumbent telcos. While representing a growing source of windfall gains for the incumbents, the over-collection of the subsidy has had a disastrous impact on new entrants in the long distance market, threatened the sustainability of competition in the long distance market and undermined the Government's policy in favour of competition in telecommunications.
5. Accordingly, the New Entrants request that the Governor in Council vary the Decision to:
 - (a) unfreeze contribution rates and instead cap the total contribution revenues collected in any year at the amount of the going-in contribution requirement¹; and
 - (b) require the refunding to all long distance service providers of their proportionate share of all over-collected contribution revenues from January 1, 1998.

¹ As established in Implementation of Price Cap Regulation and Related Issues, Telecom Decision CRTC 98-2, 5 March 1998, for 1998 and modified for the former TELUS Communications Inc. and TELUS Communications (Edmonton) Inc. for 1999.

Once the Decision has been varied in this manner, the actual calculation of the rates necessary to cap the total contribution revenues on a going-forward basis, as well as the refund owed to the different service providers, can be performed by the CRTC.

6. In addition, the New Entrants request that the Governor in Council place a temporary hold on the increase in the contribution surcharge on direct access lines, pending the CRTC's review of the contribution collection mechanism.
7. The New Entrants note that since the inception of the subsidy regime, new entrants have paid approximately \$2 billion in contribution payments to the incumbent telcos. By contrast, the remedy requested would require the incumbent telcos to refund approximately \$71 million to new entrants for 1998 and 1999.

Background

8. Toll contribution is a subsidy paid by all providers of long distance service on the number of minutes of long distance traffic carried by them. This explicit subsidy from long distance services to local services was established by the CRTC in 1992 for the sole purpose of ensuring "an adequate subsidy source for basic local service at affordable rates".² Accordingly, from 1992 through 1997, the CRTC set contribution rates annually by reference to the amount of the subsidy necessary for this purpose, known as the contribution requirement. The methodology used was to take this contribution requirement and divide it by the market minutes in order to arrive at a per-minute rate. In this manner, contribution charges were designed to generate subsidy revenues that would not exceed the requirement for toll contribution.
9. When the CRTC established the regulatory framework for local competition and the price cap regime applicable to the incumbent telcos in 1997, it decided, in spite of alternate proposals advanced by new entrants, to freeze the contribution rate commencing January 1, 1998 for Bell, BCTEL, Island Tel, MT&T, NBTel, New Tel and MTS, and commencing March 1, 1999 for TELUS Communications Inc. It also decided that toll contribution would remain the only explicit source of subsidy flowing to local service.
10. The CRTC's decision to freeze contribution rates put an end to the year-over-year declines in contribution charges that had been a feature of the previous approach since 1992. Although the CRTC was aware at the time that long distance traffic levels were increasing, and that a frozen per minute rate would therefore yield an increasing amount of toll contribution revenues, it nonetheless froze the rate for a four-year period. In doing so, and in subsequent decisions, the CRTC reasoned that a growing amount of toll contribution revenues would be necessary to fund universal access, given the introduction of local competition. In the CRTC's expectation, local competition would erode the incumbent telcos' revenues earned on optional services (for example, call-waiting and call-answer), which also provided an implicit subsidy towards rates for basic local service. In this environment, a growing amount of contribution revenues from the sole

² The Decision, under "Background".

explicit subsidy source, long distance services, would counter-balance this erosion in implicit subsidies.

11. Therefore, while the CRTC made no systematic attempt in 1997, as it previously had done since 1992, to ensure that contribution collected was aligned on a going-forward basis for 1998-2001 with the level of contribution actually required, it was clear that the contribution charges that were to remain in effect over the price cap period were nonetheless based on an expectation of the total toll contribution required.
12. The CRTC's reasoning that growing toll contribution revenues were necessary to compensate for anticipated erosion in implicit subsidies to be brought about by the introduction of local competition, was also central to its rejection of an early application to review and vary its frozen contribution rate policy filed by AT&T Canada in September, 1997. The CRTC wrote:

“...The Commission considers that contribution from growth in toll minutes will compensate in part for the erosion of implicit subsidies caused by competitive pressures.”
13. Call-Net and AT&T Canada each filed an application with the CRTC in the fall of 1998 requesting that contribution rates be unfrozen because the total amount of contribution being collected was greatly in excess of the amount necessary to subsidize basic local service. Call-Net and AT&T Canada made two points. First, a significant increase in toll contribution revenues was being collected due to the dramatic increase in toll minutes ushered in by the introduction of flat-rate calling plans in the middle of 1998. Second, the evidence was that revenue from optional services were growing, rather than shrinking, as the CRTC had anticipated. In response to these applications filed by Call-Net and AT&T Canada, in February of 1999 the CRTC initiated a proceeding to review its frozen contribution rate policy (the Proceeding) which led to the Decision.

The Decision Fails to Address the Real Issue

14. In the Proceeding, the New Entrants argued:
 - (a) there had been, and there was continuing, growth in long-distance minutes above and beyond that which the CRTC anticipated when it made the determination to freeze the contribution rates;
 - (b) this growth was leading to increased toll contribution revenues;
 - (c) at the same time, and regardless of the increase in toll contribution revenues, the incumbent telcos were enjoying an increase in revenues from their optional services which meant that *any* growth in toll contribution revenues (whether anticipated or not) represented, and continues to represent a windfall to the incumbent telcos; and
 - (d) because the incumbent telcos receive the lion's share of toll contribution revenues, and because long distance revenues are flat, if not declining, the over-collection of toll contribution i) unjustly enriches the incumbent telcos at the expense of new entrants, and ii) has anti-competitive effects as detailed further below.
15. In the Decision, the CRTC dismissed the claims made by new entrants regarding the growth in toll minutes and contribution revenues. Conveniently, the CRTC

quantified, for the very first time, what growth it “could have” anticipated at the time it set the frozen rate, and then held that the actual increase in traffic over that growth rate was not material enough to warrant a change to its policy.

16. More importantly, however, the CRTC restricted its analysis in the Decision to an assessment of whether, over the price cap period, contribution revenues resulting from growth in toll minutes had been or were expected to be significantly in excess of what could reasonably have been anticipated at the start of the price cap period and if so, what remedy or remedies would be appropriate. This narrow approach makes no provision for the impact of growing optional local revenues. In fact, based on the text of the public notice initiating the Proceeding, the Commission appears to have made up its mind in advance to restrict its analysis in that manner, despite the issue of growing optional local revenues having been raised in Call-Net’s Fall 1998 application.
17. The applications filed by Call-Net and AT&T Canada in the Fall of 1998 had been prompted by the dramatic increase in long distance calling volumes that commenced during the summer of that year. However, as Call-Net made clear in its Fall 1998 application, and as the New Entrants made clear in the Proceeding, the real issue before the CRTC was the overall combined effect on the incumbent telcos’ contribution revenues and on new entrants of a) this growth, coupled with b) the failure of local competition to erode the incumbent telcos’ optional local service revenues.
18. The CRTC’s narrow analysis in the Decision entirely ignored the fundamental importance ascribed by the CRTC itself, in previous decisions, to the impact of optional local revenue on the amount of toll contribution that should be collected.
19. Therefore, conspicuously absent from the Decision is any mention whatsoever of the clear evidence on the record of the Proceeding that the incumbent telcos’ optional service revenues had been increasing since the rates were frozen, rather than decreasing as anticipated by the CRTC. The significance of this fact is that the incumbent telcos have been collecting more toll contribution revenues than necessary in order to subsidize basic local service *regardless* of whether there has been any growth in long distance minutes, let alone growth in excess of that which the CRTC “could have” anticipated. The lack of erosion in the incumbent telcos’ optional service revenues implies, using the CRTC’s own framework, that there is no need whatsoever for toll contribution to grow over time, whether in line with historical growth or not.
20. Thus, in the Decision, the CRTC, for the first time, abandoned any attempt to ensure that total toll contribution collected reflected the amount of toll contribution needed. At no time prior to the Decision has the CRTC ever considered the amount of toll contribution revenues being collected in isolation from the amount of subsidy required. Indeed, as indicated above, when it determined to freeze the toll contribution rates for 1998 through 2001, the CRTC made an assessment that a growing amount of toll contribution revenues would have to be collected from all long distance service providers in order to compensate for the erosion of implicit subsidies provided by the incumbent telcos’ high margin optional local services.

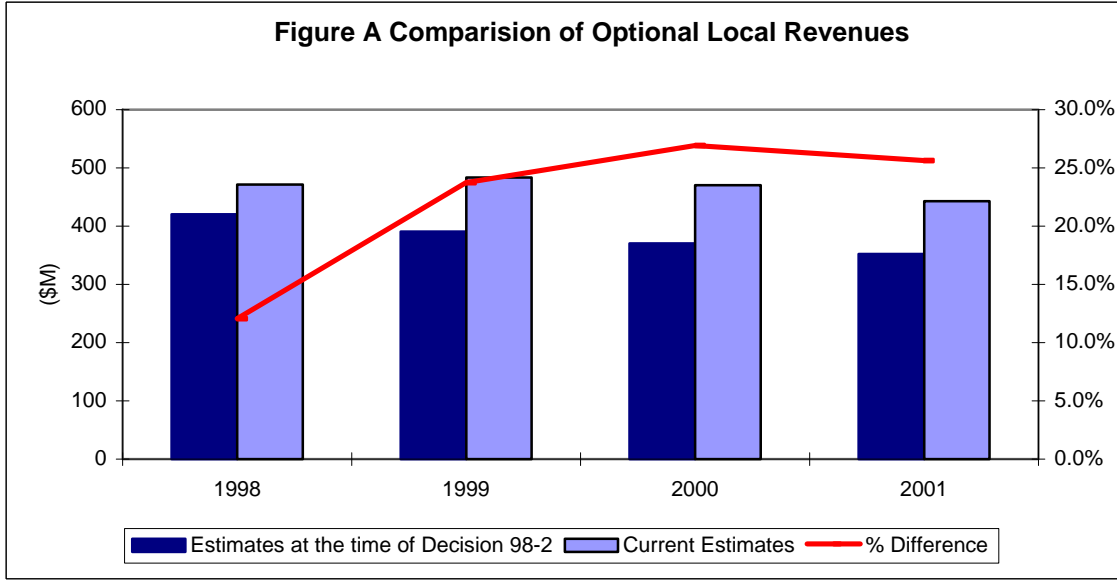
21. The evidence regarding the incumbent telcos' revenues from optional services will be reviewed in the following section.

The Decision Ignores the Clear Evidence of a Declining Requirement for Toll Contribution Revenues

22. Even if the dramatic increase in toll minutes and toll contribution revenues over expected levels which occurred in 1998 – and which the New Entrants submit is still occurring – is ignored, there is another side to the contribution story which must be considered before any determination about over-contribution can possibly be made.
23. For the purposes of the following discussion, it is useful to note that the CRTC's regulation of incumbent telco prices divides the regulated services into two broad categories – those which are subject to the CRTC's price cap regime (Capped Services) and those which are not (Uncapped Services). The costs of basic local services are recovered by revenues from both Capped and Uncapped Services.
24. With respect to Capped Services, a portion of the costs of basic local services is obviously recovered by the rates charged for basic local residence services. A portion is also recovered from implicit subsidies from other Capped Services, such as some business local services. However, over time, the operation of the price cap formula is intended to ensure that prices for Capped Services, in aggregate, move in tandem with the underlying portion of costs they recover. Put another way, price movements for Capped Services flowing from the operation of the price cap regime cannot increase the requirement for a subsidy from the toll market.
25. The remaining portion of the costs of providing basic local services not already recovered by revenues from Capped Services is largely recovered by two uncapped revenue sources: i) an explicit subsidy from the toll market in the form of toll contribution; and ii) an implicit subsidy from optional local services.
26. Therefore, the amount of total toll contribution required depends on the magnitude of the implicit subsidy from optional local services and any changes in the amount of underlying basic local service costs not already recovered by capped revenues.
27. Over time, any changes in the amount of underlying basic local service costs to be recovered by both incumbent telcos and potential new local entrants will be determined in large part by the following two factors, the first of which increases costs and the second of which decreases costs:
 - (a) growth, if any, in the number of access lines that require a subsidy; and
 - (b) productivity gains in the provision of the subsidized services.
28. The productivity gains achieved by the incumbent telcos in the provision of the subsidized services offset the modest growth in the number of access lines requiring a subsidy, which is in the neighbourhood of 2% annually. As a result, there is no overall increase in the total underlying basic local service costs to be recovered. Consequently, the total amount of subsidy required, from both explicit toll contribution and the implicit optional local subsidy, should, in any given year of the current price cap period (1998-2001 inclusive) remain more or less unchanged from that required at the beginning of the price cap period.

29. The above discussion explains why the CRTC, in various decisions preceding the Decision, took the view that erosion of the implicit optional local subsidy would increase the requirement for toll contribution.
30. The decline in revenues from optional local services anticipated by the CRTC in 1997 has not occurred. In fact, in some cases incumbent telcos' revenues from these services have increased. This is due to a number of factors. First, local competition has been significantly delayed. While there has been some success in rolling-out local competition for business customers, there has been very limited competitive entry in the residence market for local services. There is not now, nor will there be by the end of the price cap period, competition sufficient to reduce the incumbent telcos' optional local service revenues from current levels, let alone below their levels at the start of the price cap period.
31. Given the magnitude of growth over the price cap period, detailed below, and the other factors having a positive effect on optional local services revenues, also described below, competition sufficient to reduce optional local service revenues below their initial price cap levels is unlikely to develop in the foreseeable future. Furthermore, there are a number of other factors influencing the level of optional local revenues and the resulting implicit subsidy that would offset any potential negative impact of competition, should such an impact materialize, not only during the remainder of the price cap period but beyond as well. These other factors are a) growth in the number of access lines, thus expanding the potential market for optional services, b) growth in the market penetration of optional services over time, and c) the introduction of new optional services.
32. The lack of erosion in, and in fact the growth of, the incumbent telcos' revenues from optional services was borne out by the evidence on the record of the Proceeding. Ironically - given the fact that it ignored this evidence in the Decision - this evidence was gathered by the CRTC itself, which asked interrogatories of the incumbent telcos respecting their revenues from optional local services. Figure A, below demonstrates the growth in optional local revenue over those anticipated by the incumbent telcos at the time the CRTC set the frozen contribution rates.³

³ Current Optional Local Revenue estimates were retrieved from ____ (CRTC)24Feb99-108 Supplemental and The Companies (Call-Net)07May99-13. Data included is for the ILECs who have reported all the required data for this analysis. BC Tel and Telus provided no estimates of optional local at the time of Decision 98-2 and NB Tel did not have a forecast of optional local revenues for 2001 at the time of Decision 98-2. NB Tel's expectation at the time of Decision 98-2 for 1998, 1999 and 2000 were \$22.5 M, \$22.7M and \$23 M respectively. As such BC Tel, NB Tel and Telus have been excluded from this analysis.



33. And if the evidence on the record of the Proceeding was not enough to awaken the CRTC to the fact that competition was not threatening the incumbent telcos' revenues from optional services, Bell Canada's behaviour at the time surely should have been. Before the CRTC had issued the Decision, Bell Canada secretly filed with the regulator a request for permission to *raise* its rates for these very services. This is a clear sign of the lack of competitive pressure on prices for these services. This tariff notice, relating to Bell Canada's "SmartTouch" suite of optional services, has since received interim approval from the CRTC on an *ex parte*, i.e., confidential, basis, without any person being given an opportunity to comment.
34. Further, updated information recently provided by the incumbent telcos in the context of the proceeding initiated by Review of Contribution Collection Mechanism and Related Issues, Telecom Public Notice CRTC 99-6, 1 March 1999, indicates that optional local revenues are currently forecast to grow, on average for all incumbents, by a cumulative 32.5% over the price cap period.⁴
35. The significance of the CRTC's failure to address the compelling evidence before it of the lack of erosion in implicit subsidies cannot be overstated. Simply put, if the implicit subsidy from these services has not decreased, then *no* growth in the explicit toll subsidy above initial price cap levels is required to subsidize basic local service. Therefore, *any* growth in the explicit subsidy (not just growth greater than historic levels) becomes a windfall for the incumbent telcos. At most, total toll contribution collected should have been limited to initial price cap levels.
36. The CRTC's approach in the Decision was fundamentally inconsistent with the basis on which it had originally decided to freeze toll contribution rates. As noted above, the CRTC's actions are contrary to the principle that the toll contribution collected should be no more than the amount needed to subsidize basic local service.
37. It is important to note that, while the New Entrants are not requesting that the total toll contribution collected be reduced below initial price cap levels – only that it be reduced down to those levels – such a request would be fully justified. In fact, the CRTC's own logic would dictate that the actual and expected future growth in the implicit optional local subsidy should have resulted in a reduction in total toll contribution collected below the initial price cap levels.
38. The remedy requested is therefore conservative in that it only partially addresses the over-collection of toll contribution over the price cap period. It does so by capping the toll contribution collected in 1998 at the going-in contribution requirements established by the CRTC for 1998.

⁴ The Companies(AT&T Canada)14Jan00-1 RCM and TELUS(AT&T Canada)14Jan00-14 RCM.

39. In each of 1999-2001, the toll contribution collected would be capped at the going-in contribution requirements established by the CRTC for 1998, as modified for the former TELUS Communications Inc. and TELUS Communications (Edmonton) Inc. for 1999. For 1998 and 1999, this would involve refunding all long distance service providers their share of over-collected toll contribution. For the years 2000 and 2001, it would involve establishing revised contribution charges based on the capped contribution requirements.

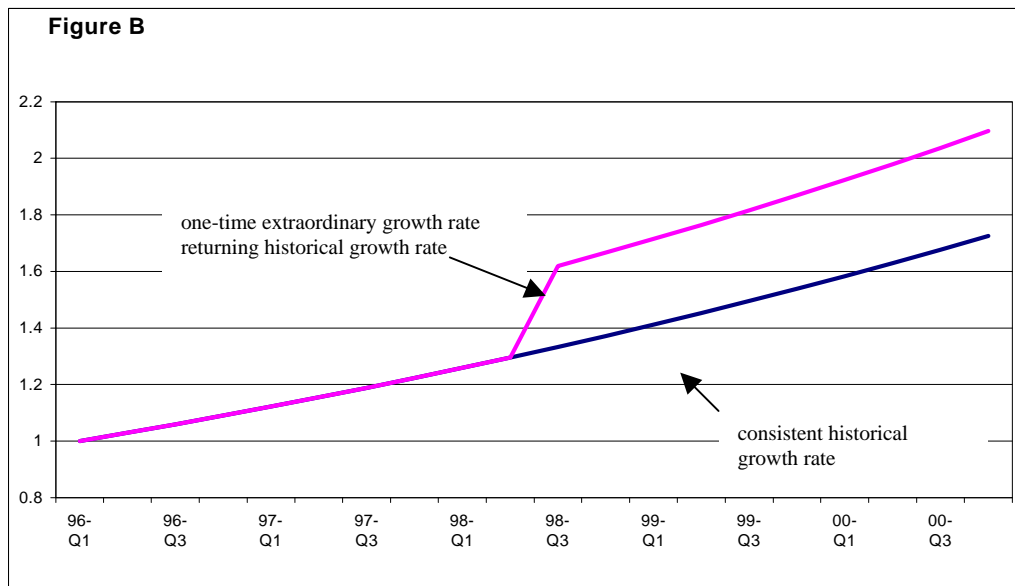
Toll Minute Growth Compounds the Problem

40. After considering the actual growth in toll minutes over 1998 and early 1999, and forecast growth for the remainder of the price cap period, the CRTC concluded in the Decision that contribution revenues during the price cap period would not be materially in excess of the growth rate it “could have” expected.
41. When the CRTC decided to freeze contribution rates in May 1997, it expected that toll minutes, and hence contribution revenues, would experience some growth over the price cap period. In the Decision, the CRTC stated, for the first time, that this expected growth would have been in the range of 9% per annum.⁵ This growth, which the CRTC stated it “could have” expected at the time it set the frozen contribution rates (which it did in March 1998, not in May 1997) was used by it as the “benchmark” against which it compared the growth which actually occurred.
42. In the Proceeding, the New Entrants provided ample evidence before the CRTC of growth in 1998 and 1999 well in excess of the 9% historical average.
43. In the middle of 1998, flat-rate calling plans were introduced for the first time to the Canadian market for long distance services. These calling plans were introduced by new entrants as a result of two developments. First, in the wake of the CRTC’s decision to forbear from regulating the incumbent telcos’ long distance rates, these companies had begun to aggressively price their services in order to reverse the downward trend in their market share.⁶ By March 1998, this strategy had halted the market share growth new entrants depended upon for the continued rollout of their competitive services and new entrants were forced to respond. Second, national and international trends in the pricing of telecommunications services, including pricing trends in the market for mobile wireless services in Canada, were creating expectations among consumers for flat-rated offerings.
44. The effect of the introduction of flat-rate calling plans was a dramatic, unprecedented upsurge in the total number of long distance minutes in 1998, while overall long distance revenues remained flat, if not declining. By their nature, flat-rate plans do not typically convert higher usage into higher revenue.

⁵ This was the average growth in long distance minutes over in the years 1993-1996.

⁶ “Aggressive savings plans for residence and business customers allowed Bell Canada to stem the erosion of market share in the long distance telephone market for the first year since the introduction of competition”. “Bell Canada’s long distance market share stabilized and finished the year at 64.3%, mainly due to the success of its residence and business long distance savings plans”. (BCE Announces 1998 Year End and Fourth Quarter Results – News Release and Quarterly Report.)

45. In fact, Bell Canada and other incumbent telcos themselves acknowledged in the Proceeding that growth in minutes between the second quarter of 1998 and the fourth quarter of 1998 (only one-half of one year), amounted to over 20%, while growth in revenues for that same period totalled almost 15%.⁷ Even using these numbers (which the New Entrants submit are overly conservative), growth of 15 to 20% over half a year is significantly greater than 9% annual growth.
46. The New Entrants maintain that growth in long distance minutes is likely to continue to exceed 9% per annum for a host of reasons, including the continued popularity of flat-rate plans and the introduction of flat-rate plans during peak periods.
47. However, even if toll minute growth returns to historical norms, which the New Entrants do not anticipate, the mathematical consequence of a one-time increase in the growth rate that “levels off” again to 9% is a *permanent* increase in the amount of contribution being over-collected, as demonstrated in Figure B below. The CRTC failed to account for the fact that this is a “step function”; Growth is measured as growth over and above the immediately previous period. In other words, this unexpected jump in 1998 and 1999 volumes will be “locked-in” and therefore form part of the base for future growth both in toll minutes and toll subsidy collected.



⁷ Reply comments of Bell Canada et al., dated August 3, 1999, at pages 34-35.

The Decision Jeopardizes the Industry's Competitiveness

48. The Decision has far-reaching, adverse consequences for the sustainability of competition in the telecommunications market place, and in turn, for the Government's policy in favour of competition. Specifically, the Decision fails to take into account the importance to competition of financially viable new entrants, and the need to minimize the anti-competitive effects of subsidy regimes.
49. Because the incumbent telcos' long distance operations were not structurally separated when long distance competition was introduced, any over-collection of toll contribution affects incumbent telcos and new entrants asymmetrically and thereby not only affects the financial viability of new entrants, but also has a distinctly anti-competitive effect. Because incumbent telcos provide and will continue to provide for the next few years almost 100% of residential basic local service, they retain almost all of the contribution revenues. If those revenues are greater than the amount needed to subsidize local service, the Incumbent companies are essentially being handed a windfall, over the spending of which there is no regulatory oversight. By contrast, since new entrants pay, but do not receive contribution in any significant amounts, they are disproportionately affected by any over-collection. In essence, therefore, over-collection of contribution provides a source of funds that the incumbent telcos can use to finance highly aggressive, targeted competitive strategies. New entrants are unable to sustain similar competitive market strategies because they do not enjoy a similar windfall. This compromises new entrants' ability both to compete with incumbents in markets in which entrants currently participate and to finance entry into new markets. The net result is that entrants' costs are increased, their revenues are reduced and both existing and potential new entry is threatened. Clearly such a process cannot be sustained.
50. As discussed above, any such over-collection is *not* needed to subsidize local service, and so does not affect the affordability of telephone service. Therefore, the remedy requested in this petition, by partially addressing the over-collection, will in no way detrimentally affect the Government's policy in favour of universal access at affordable rates.

Conclusion

51. In the Decision, the CRTC concluded that changing the contribution regime would require a material deviation from that which was originally expected and an unfavourable impact on the competitive environment. Current circumstances represent exactly that. Not only are contribution revenues significantly higher than originally anticipated, the expected decrease in the implicit subsidy has not materialized. The result is that new entrants are being required to provide the incumbent telcos with vast sums of money that are not required to subsidize basic local service.
52. The New Entrants submit that there is a simple, fair and effective way of ensuring that all three goals of the frozen contribution decision – full subsidization of basic local service, avoidance of complicated annual hearings and certainty for competitors – are met, while ensuring that new entrants are not over-subsidizing the incumbent telcos. That method is to replace the freeze on contribution rates with a cap on the subsidy requirement. Allowing the Decision to stand will mean that the incumbent telcos will be able to retain, for whatever purpose, money that

was meant only to be used to subsidize basic local service. To allow that is a perversion of the public policy goals of the contribution regime and is already having a negative impact on the sustainability of telecommunications competition in Canada.

53. Accordingly, the New Entrants respectfully request that the Petition be accepted and the Decision be varied to:
- (a) unfreeze contribution rates and instead cap the total contribution revenues collected in any year at the amount of the going-in contribution requirement⁸; and
 - (b) require the refunding to all long distance service providers of their proportionate share of all over-collected contribution revenues from January 1, 1998.

In addition, the New Entrants request that the Governor in Council place a temporary hold on the increase in the contribution surcharge on direct access lines, pending the CRTC's review of the contribution collection mechanism.

Dated and signed this 10th day of March 2000 at Ottawa, Canada

Chris Peirce
Vice-President Government Affairs, AT&T Canada Corp.

on behalf of :

- J. J. Meenan, Vice Chair and CEO, AT&T Canada Corp
- K. J. Bennis, President and CEO, Call-Net Enterprises Inc.
- T. Chislet, President, Primus Telecommunications Canada Inc.
- D. J. Alsop, President and CEO, RSL Com Canada Inc.

⁸ As established in Implementation of Price Cap Regulation and Related Issues, Telecom Decision CRTC 98-2, 5 March 1998, for 1998 and modified for the former TELUS Communications Inc. and TELUS Communications (Edmonton) Inc. for 1999.