

Call-Net Enterprises Inc.
2235 Sheppard Ave. East
Atrium II, Suite 1800
North York, Ontario M2J 5G1
Tel: (416) 718-6400
Fax: (416) 718-6477

CallNet

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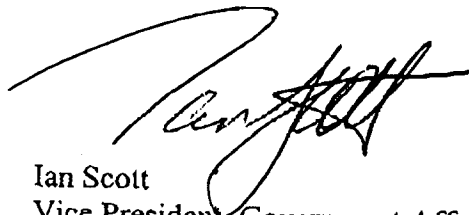
December 24, 1999

Mr. Mel Cappe
Clerk of the Privy Council and
Secretary to the Cabinet
Langevin Block, 80 Wellington Street
Ottawa, Ontario
Canada
K1A 0A3

Dear Mr. Cappe:

Please find attached a petition filed by Call-Net Enterprises Inc. on its own behalf and on behalf of its wholly-owned subsidiary, Call-Net Communications Inc. requesting that Her Excellency, the Governor in Council vary Unbundled Local Loop Fixed Rate Service Order Charges, Telecom Decision CRTC 99-15, September 29, 1999, pursuant to subsection 12(1) of the *Telecommunications Act*.

Sincerely,



Ian Scott
Vice President, Government Affairs
Call-Net Enterprises Inc.

c.c.: Ursula Menke, Secretary General CRTC

PETITION TO HER
EXCELLENCY THE GOVERNOR
IN COUNCIL, PURSUANT
TO SECTION 12(1) OF
THE TELECOMMUNICATIONS ACT
IN THE MATTER OF
TELECOM DECISION CRTC 99-15,
UNBUNDLED LOCAL LOOP FIXED-RATE
SERVICE ORDER CHARGES,
SEPTEMBER 29, 1999

CALL-NET ENTERPRISES INC.

DECEMBER 24, 1999

Executive Summary

- This petition concerns a decision of the Canadian Radio-television and Telecommunications Commission (the CRTC), which clarified the amount and method of application of the fixed charges new entrants must pay each time they order local loops, i.e., "last-mile" facilities, from the former monopoly telephone companies (the Incumbents).
- In the decision, the CRTC refused to require the Incumbents to modernize their order processing systems and methods. In fact, the fixed charges reward the outdated, inefficient order processing systems and methods of the Incumbents, which were developed in a monopoly environment. Given the high turnover among residential customers, the amount and method of application of the fixed charges established by the CRTC will foreclose meaningful competitive entry into the residential market for local exchange services.
- Moreover, by serving as a significant barrier to competitive entry in the residence market for local exchange services, the fixed charges place at risk the Government's policies to actively promote and foster the development of competition in all telecommunications markets, as well as its connectedness agenda.
- Broadly-based local competition, which is essential to competition in telecommunications markets generally, and to the delivery of innovative new services which will serve the Government's connectedness agenda, cannot occur unless new entrants can access local network elements, including local loops, from incumbent telephone companies at rates and on terms which make competition sustainable.
- Call-Net is therefore requesting the Governor in Council to vary the decision to direct the Incumbents to amend their fixed-rate service order charges to \$10 per order as a reasonable proxy rate until such time as the CRTC has approved new fixed charges based on revised, more efficient order processing systems and methods.

I. INTRODUCTION

1. This petition is filed by Call-Net Enterprises Inc. ("Call-Net") on its own behalf and on behalf of its wholly-owned subsidiary, Call-Net Communications Inc., a new entrant in the market for local telephone services.
2. Call-Net respectfully requests that Her Excellency, the Governor in Council, vary Unbundled Local Loop Fixed-Rate Service Order Charges, Telecom Decision CRTC 99-15, September 29, 1999 (the "Decision"), pursuant to subsection 12(1) of the *Telecommunications Act*. The Decision clarified the amount and method of application of the fixed-rate service order charges (the "Fixed Charges") new entrants must pay each time they order local loops, i.e., "last-mile" facilities, from the incumbent telephone companies (the "Incumbents").
3. Specifically, Call-Net asks that the Governor in Council vary the Decision to direct the Incumbents to amend their Fixed Charges to \$10 per order, as a reasonable proxy rate until such time as the CRTC has approved new Fixed Charges based on revised, more efficient order processing systems and methods. In Call-Net's view, the establishment of this rate will provide an appropriate incentive for the modernization of the Incumbents' systems and methods.
4. Call-Net petitions the Governor in Council because it believes the serious consequences of the Decision will be to foreclose sustainable, broadly-based competition in the local telephone market. In Call-Net's view, this in turn will place at risk the Government's policies in favour of connectedness and the provision to all Canadians of a wide range of communications services, on innovative terms and at reasonable prices.
5. New entrants wishing to serve residential customers have no viable alternative but to lease local loops from Incumbents, and the loop rates, including the Fixed Charges, represent the single largest element in a new entrant's cost structure. Therefore, it is critical that the rates for leasing the loops reflect the true economic cost of provisioning these facilities. The effect of the Decision, however, is to uphold the Incumbents' inefficient, outdated order processing systems — legacy systems developed for a monopoly environment — and, as a consequence, force new entrants to pay Fixed Charges completely out of proportion with the revenues that can be earned in all but a very few of the residential markets in Canada.
6. Call-Net has played an active role in all regulatory proceedings aimed at removing barriers to entry in the local telecommunications market and has invested significant sums in order to roll-out its competitive local service to Canadians in all telecommunications markets, including residence markets across the country. Unfortunately, the Decision greatly jeopardizes Call-Net's continued ability to do so.

II. GOVERNMENT POLICY

7. The telecommunications policy articulated by the Government of Canada recognizes that the ability of Canadians to access the widest possible range of communications services, in a competitive environment, is vital to Canada's competitiveness in a knowledge-based global economy. In addition, the Government has announced a forward-looking connectedness agenda that seeks to make Canada the most connected nation in the world. As the Government has observed, this agenda extends beyond connected businesses, to connected citizens:

"Connected businesses are well positioned to take advantage of local and global opportunities and innovations that lead to increased productivity and prosperity. Connected citizens have access to the knowledge they need to develop their skills, stay abreast of new technological developments, and acquire ideas that lead to new and more effective ways of contributing to economy and society."¹

8. Broadly-based local competition will generate demand for new products and services, spurring innovation and the roll-out of new technologies by competing service providers. This in turn will help to achieve the Government's connectedness agenda, by making available to all Canadians a competitive supply of "value-added" services, such as high-speed Internet access, in addition to basic local access. In Call-Net's submission, ensuring that local competition extends to the residential market, and is therefore broadly-based, is the key to achievement of the Government's policy of fostering competition and connectedness.

III. THE DECISION FAILS TO PROMOTE SUSTAINABLE, BROADLY-BASED COMPETITION IN THE LOCAL TELEPHONE MARKET

9. The CRTC put in place the basic framework for local competition in early 1997, in Telecom Decision CRTC 97-8, Local Competition, May 1, 1997 ("Decision 97-8"). Since that time, it has made numerous incremental determinations aimed at implementing this regulatory framework.
10. The CRTC acknowledged in Decision 97-8 that access to Incumbents' local loops is essential to the development of competition in the market for local exchange services. The CRTC recognized that local competition would be unlikely to develop without the availability of these facilities, even in areas (i.e., bands) where there is evidence of alternative supply:

¹ *Connectedness: Making Canada the Most Connected Nation in the World*. (Ottawa: Industry Canada, 1999) at 1.

"In the Commission's view, CLECs would not be able to provide a significant number of loops in these bands in the early stages of competition. The Commission therefore concludes that CLECs must have access to ILEC loops in these bands if they are to compete effectively in the short term."²

11. The Incumbents' local loops represent the only viable option for new entrants to serve residential customers and hence bring the benefits of competition to ordinary Canadians. Moreover, the Fixed Charges represent a significant element of the rates charged to new entrants for local loops. Accordingly, the Fixed Charges are critical to the success of the Government's policy in favour of broadly-based competition and connectedness.
12. In Call-Net's respectful submission, the Decision will foreclose meaningful competitive entry into the residential market for local telephone services.
13. The Decision was the result of Call-Net's request for clarification of Final Rates for Unbundled Local Network Components, Telecom Decision CRTC 98-22, November 20, 1998 (the "Unbundled Loop Decision"), in which the CRTC first established rates to be paid by new entrants for use of the Incumbents' local loops. In particular, Call-Net asked the CRTC to clarify the application of the Fixed Charge which a new entrant must pay to an Incumbent each time it orders a local loop from the Incumbent in order to serve a customer.
14. In its request for clarification, Call-Net submitted that the Fixed Charge should only apply once where multiple unbundled local loops are ordered simultaneously, provided that the due dates are the same, the loops are of the same type, and loops all originate from the same wire centre. This modest request regarding the application of the Fixed Charges first established in the Unbundled Loop Decision would have yielded a reasonable average Fixed Charge per customer to new entrants.
15. In the Decision, the CRTC reduced the Fixed Charges by approximately 50%, based on a finding that the costs filed by the Incumbents were inflated.³ However, it denied Call-Net's request for clarification that it need only pay one Fixed Charge for a batch of orders which are submitted simultaneously, for the same due date, for the same type of loop and originating from the same wire centre.

² At paragraph 85.

³ In the Unbundled Loop Decision, the CRTC originally set the Fixed Charges for all loops at \$112.50 for Bell Canada and \$84.50 for other Incumbents. The rate for residence loops was reduced in the Decision to \$50 for Bell Canada and \$40 for other Incumbents.

16. Significantly, the CRTC did not find that Call-Net's proposal for the processing of batched orders was either unworkable or contrary to the public interest. Rather it simply reiterated the Incumbent's position that to implement the proposal "would require the companies to undertake significant costs to revise the existing order processing systems and methods." The CRTC also stated that "the impact of the fixed-rate service order charge on the viability of entrants into local markets is not an appropriate consideration in determining rates."
17. In Call-Net's submission, the CRTC should have gone beyond the exercise of costing the Incumbents' existing order processing systems to tackle the real issue – that is, the inefficiency of those systems and the need for them to be updated to accommodate competition. Call-Net did not ask the CRTC to determine rates based on the viability of entrants. It asked the CRTC – and it is now asking the Governor in Council – to acknowledge that the Incumbents' order processing systems are outdated and inefficient and constitute an overwhelming barrier to entry in the residential local market by needlessly inflating new entrants' costs.
18. There are a number of compelling reasons why the Incumbents should be required to implement new order processing systems and methods.
19. The Fixed Charges, on their own, represent a significant barrier to entry. When combined with residential retail rates and portable subsidy levels, and given the high turnover rates of residential customers, the result is terms and conditions that will prevent new entrants from competing for residential customers in all but the most densely populated areas of Canada's largest cities. This was clearly borne out by the extensive information submitted by Call-Net during the process leading to the Decision.
20. The Fixed Charges, even as reduced by the Decision, make up a significant cost to a new entrant of acquiring a customer. Because these are "one-time" charges, they must be amortized over the average period of time a customer can be expected to stay with the new entrant to assess what impact they will have on competitive entry. Unfortunately, the telecommunications market is characterized by a high turnover of customers or "churn" rate. In addition, new entrants can be expected to face a higher turnover of customers than Incumbents since their customer base comes from that portion of the market which is most sensitive to price and inducements to switch. New entrants' customers are, for example, very sensitive to the winback inducements employed by the Incumbents. In addition, regardless of whether a new entrant's customer changes service provider, every time that customer re-locates, the new entrant must pay a new Fixed Charge to the Incumbent. Finally, the Fixed Charges affect Incumbents and new entrants asymmetrically, because the Incumbents begin with all the customers and, therefore, have no initial customer acquisition costs. Accordingly, unsustainably high Fixed Charges serve as a barrier to competitive entry.

21. The Incumbents' existing order processing systems and methods lead to absurd results. For instance, the Incumbents' response to Call-Net's proposal was that one Fixed Charge could be levied against multiple orders meeting the criteria suggested by Call-Net only where the loops all terminated at the same street address. According to this system, a new entrant would only have to pay the Fixed Charge once for ten orders from ten different apartments located in the same building but would have to pay the Fixed Charge ten times for ten orders from ten houses on the same street – even though in both cases there is a separate, individual loop connected to each different unit or house. In other words, there is no logical, economic reason why the Incumbents' order processing systems are based on one order per subscriber address other than that is the way it has traditionally been done in a monopoly environment.
22. The importance of the Fixed Charges to the introduction of sustainable competition cannot be overstated. In the United States, the Federal Communications Commission (the "FCC") and Congress have firmly established that operating support systems, including order processing, are an integral component of ensuring that a competitive environment exists. The FCC has accordingly required local incumbents in the U.S. to modernize these systems to make them suitable to a competitive environment as a pre-condition to permitting these same companies to compete in the interstate market for long distance services.
23. As recognized by the FCC, inefficient order processing systems constitute a barrier to entry. Given that barrier, the cost of updating those systems should not have prevented the CRTC from requiring the Incumbents to take all necessary action in this regard. This is particularly the case as the CRTC has provided for the Incumbents' recovery of other costs associated with the introduction of local competition.⁴
24. Call-Net submits that the Decision is symptomatic of the CRTC's approach to competition in the telecommunications industry. While the CRTC has taken a number of arguably pro-competitive broad policy decisions, it has failed to take the necessary steps to ensure that effective and sustainable competition, in fact, occurs. Simply put, it fails to actively promote competition, as is necessary, instead of merely permitting competition. This distinction between permitting and promoting competition places at risk the Government's policies for competition and connectedness.

IV. CONCLUSION

25. In the Unbundled Loops Decision, the CRTC agreed with the Incumbents that "setting rates at the level required to make entrants profitable, if that level is below appropriate Phase II costs, would not encourage economically efficient

⁴ Telecom Order CRTC 99-239, Local Competition Start-Up Costs Proceeding, 12 March 1999.

entry and would only serve to subsidize entrants." Call-Net is in full agreement with that statement. It is not asking the Government to ensure its profitability or subsidize its entrance; it is only asking that pro-active steps be taken to ensure that the inefficient order processing systems and methods of the Incumbents do not stand in the way of sustainable competition and the public good.

26. Call-Net took the decision to launch local competition in numerous residential markets and that decision is becoming an increasingly costly one. Failure to establish Fixed Charges that will enable sustainable competitive entry will force Call-Net to reconsider its continued roll-out of competition in residential local markets throughout Canada.
27. In Call-Net's respectful submission, this petition raises issues meriting the intervention of Her Excellency the Governor in Council. Order processing and similar administrative practices that evolved in a monopoly environment should not be allowed to foreclose the deployment of broadly-based local competition. Allowing the Incumbents' order processing systems to go unchallenged will not merely subsidize inefficiency, it will effectively foreclose competition in the residential local market. The unfortunate consequences of this will be to leave the vast majority of Canadians without the benefits of competition, to require additional regulation of Incumbents in order to discipline their behaviour, and to undermine the competitiveness of the industry as a whole and, indeed, Canada's position in the new global economy.

Accordingly, Call-Net respectfully requests that this petition be accepted and the Decision be varied as requested.