THE CRTC AS A POLICY-MAKER: 1968-1982

by

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ABSTRACT

The Canadian Radio-television and Telecommission Commission (CRTC) is the body which regulates communications activity in Canada. It has become almost a cliché to say that in addition to simply formulating regulations, the Commission has also been the dominant policy-maker in the communications field. The allegation has been made that the CRTC is "out of control", usurping a policy-making role more properly exercised by elected government officials, while also defying their attempts to constrain its behaviour. It has further been argued that this Commission usurpation and defiance has meant that both the minister and Parliament have little or no influence to direct the agency.

The study demonstrates that the Commission has often acted as a policy-maker but that this role has been in response to the existence of a policy vacuum and lack of leadership from elected government. Furthermore, the agency has assumed a policy-making role not through an act of usurpation but with the tacit consent of elected officials. For these officials, the CRTC performs a useful function "insulating" them from the need to make a decision (and accept responsibility) on policy issues which often involve difficult political choices. The study also shows that the agency's "political masters", Cabinet and Parliament, possess a variety of both formal and informal control mechanisms which effectively prevent the CRTC from maintaining a policy position independent from government.

RESUME

La Commission Canadienne de la Radio-télévision et des Télécommunications (CRTC) est l'agence qui règlemente les communications au Canada. Il est presque devenu un cliché d'affirmer que le CRTC, en plus de formuler la règlementation, est aussi l'organe législatif dans le domaine des communications. Il a déjà été dit que le CRTC est hors de contrôl; que ce dernier usurpe un rôle de législateur qui conviendrait mieux à des officiels élus tout en defiant les tentatives de rappels à l'ordre de ces derniers. Il a aussi été prétendu que l'usurpation des pouvoirs et la défiance des autorités par le CRTC signifie que le ministre et le Parlement ont peu ou pas d'influence sur l'agence.

La présente étude démontre que la Commission a souvent assumé le rôle de législateur suite au manque de politique et de leadership de la part du gouvernement. Qui plus est, l'agence a assumé le rôle de législateur avec l'accord tacite des officiels élus. En effet, pour ces derniers, le CRTC joue le rôle de relais "législatif", leur évitant de prendre des décisions sur des questions qui impliquent de douloureux choix politiques. Cette étude démontre aussi que les supérieurs politiques de l'agence, le Cabinet et le Parlement, possedent une multitude de mécanismes de contrôle, formels et informels, qui empêchent de manière efficace le CRTC de maintenir une position dans ses politiques qui serait indépendente de celle du gouvernement.

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TABLE OF CONTENTS

CHAPTER ONE

THE CRTC AS A POLICY-MAKER: 1968-1982

Introduction

In Canada, the Canadian Radio-television and Telecommunications Commission (CRTC) is the government body which regulates broadcasting and telecommunication activity. As a "regulatory agency" the CRTC is supposedly independent from both elected and non-elected government officials for the licensing decisions and other regulatory functions it performs in fulfilling its assigned role. However it is widely acknowledged that regulatory agencies often take actions which possess significant policy overtones. The rendering of a specific license for instance, can have immense implications for government policy in that area; given a policy vacuum, regulatory agency judgments may set government policy and constitute "the" government position. In the case of the CRTC, it is almost a cliché to say that the regulatory agency has been the dominant policy-maker in the communications field.

It has been alleged that the Commission has been, in effect, "out of control". Many have claimed that this body of non-elected officials, from its establishment in 1968 through to the present day, has assumed a policy-making role often overshadowing that held by the government. In doing so, it is asserted, the agency has usurped ministerial

powers and has also, on occasion, defied the minister. Moreover, it has been argued that this "usurpation" of a policy-making role has meant that both ministers and Parliament have little or no influence to direct an agency that, through its regulatory activity, has assumed a role more properly fulfilled by elected officials. In becoming the de facto policy-maker in broadcasting, and increasingly fulfilling the same role in telecommunications, the agency has been charged with supplanting the Cabinet, cabinet ministers, their departments and officials, and the provinces, from fulfilling this policy-making role. These charges have been made by a great variety of sources: academics, politicians, federal officials, industrial groups, provinces and media observers of the communications sector.

The literature on this topic shares several characteristics. The extensive amount written on the CRTC and the communications policy-making process primarily emphasizes both the theoretical (and thus idealized) role and procedures of both the regulatory process in general and the CRTC in particular. Other studies focus on the important political consequences and policy implications for government policy flowing from certain Commission decisions. While noting the frequently conspicuous absence of the Department of Communications (DOC), which ought to figure prominently in this policy-making process, most of the existing studies neglect to question the process by which these important regulatory decisions are made. The recent

Sauvageau-Caplan Task Force on Broadcasting Policy in Canada argues that research on both policy development and regulatory methods have been lacking in this country (1). This study will attempt to fill some of the existing knowledge lacunae by studying the process by which the regulatory process has contributed to the formulation of Canadian communications policy.

This study will consider the hypothesis that the CRTC has acted as an "independent policy-maker" during the period 1968-1982. It thus accepts a conventional view that the agency has usurped a governmental policy-making role. The thesis also examines the validity of the claim that the CRTC has been "out of control". In doing so, an assessment will be made of how much independent power the CRTC exercises as a policy-maker. The evidence of this study demands rejection of the hypothesis. The agency, instead of being demonstrated as a policy-maker with a high degree of independence in its actions, is shown instead to be a severely fettered actor in its ability to independently make policy and to maintain a position of authority in the face of opposition. The study reveals that although the agency possesses significant agenda-setting powers, creating an impression of exerting great influence, the CRTC must ultimately defer to its political masters. This deference occurs regardless of the strength of the institution's point of view on the particular issue in question.

The "insulating" function of the regulatory agency, in terms of its ability to handle politically controversial

issues until such time as its political masters are prepared to address the situation, is also demonstrated. The evidence furthermore shows that while the agency is often able to initiate a policy position for the government on a specific issue - as a result of a combination of its statutory powers and the lack of a public position on the part of other state officials - the agency is nevertheless dependent on political support to maintain its preferred policy positions. The granting or withholding of political support will be seen to occur in a variety of ways, both formal and informal. In terms of the notion of "ministerial responsibility", it is shown that although the minister may possess only suasive powers over the agency in certain areas of Commission activity, the CRTC is still susceptible to influence through the exercise of informal mechanisms of control. This is equally true of informal controls deployed by powerful interest groups when they are able to sustain their efforts to influence the Commission. The "imperative" of technological change at times can aid in this endeavour. Indeed, the prominent role played by interest groups in the case studies of this thesis, along with that of the impact of technological change, suggests more study is needed into the effect both interest groups and technological change have in shaping the CRTC's behaviour specifically and the Canadian communications policy development process in general. Nevertheless, the current study, working from what are the known instruments of control possessed over the regulatory agency by Cabinet, Parliament, and the

bureaucracy, will begin to uncover how these instruments of control are used and to what effect. This work also more adequately illuminates the policy-making environment in the field of communications in Canada and the role typically performed by the CRTC.

This thesis is not a theoretical study. Issues such as the Americanization of Canadian broadcasting, which is frequently present in the case studies, are not a focal point of concern. None of the regulatory theories which currently exist are sufficiently developed to address these types of issues. Instead this study will consider the claims made for a priori regulatory agency policy-making independence which are postulated by conceptual frameworks such as capture theory and economic regulatory theory. These are perspectives which accept agency policy-making independence and would likely argue that the CRTC has been a typical example. Nevertheless there is a lack of detailed information by which to assess the claim that the CRTC has "independently made policy" and indeed is "out of control" in this function. The objective of this thesis is to fill this void The case studies of this work are a necessary step towards the development of a more encompassing theory on regulatory agency independence. Such theory could eventually address questions which relate to the regulation of Canadian communications such as the influence of societal and political values and the role played by elites.

This chapter has four sections. Part One examines the sources of the grievances made against the CRTC and the

agency's alleged assumption of a policy-making role. The problems created when a regulatory agency such as the CRTC functions as a policy-maker in a parliamentary system are the means by which a regulatory agency in general, and the CRTC in particular, can assume a policy-making role. The relevant literature on the regulatory process, the CRTC, and the Canadian communications policy environment is examined. Part Three presents details of the methodology and sources used in the research. Part Four briefly summarizes the conceptual and methodological arguments and outlines the study's chapters.

Part 1

A variety of agency observers have charged the CRTC with creating a pattern of independent policy-making for over a period of almost twenty years. Moreover, the academic literature displays an ongoing debate which questions policy-making behaviour by regulatory agencies given the problems which have arisen with their performing such a role in a parliamentary system of government. A more detailed discussion of these issues will follow a survey of the accusations directed at the CRTC.

The first major discussion of independent policy-making activity by the CRTC appeared only two years after the agency's creation, in a 1970 Canadian Communications Law Review article by Ronald Penny. After observing early Commission efforts to arrive at a cable policy for Canada, Penny concluded that the CRTC was becoming a

"mini-Parliament". Indeed, he found its influence becoming so extensive that he speculated whether the agency would leave Parliament any significant role to perform in the setting of broadcast policy (2). During the same period the Broadcaster pursued this theme of agency-legislator relations and the issue of policy-making. An editorial entitled "The CRTC's Rampage Must Be Stopped", considered the CRTC's attempts to formulate a new series of Canadian content regulations. It rhetorically stated that the Commission's lack of need to seek "permission" from either Parliament or Cabinet in the matter "makes one wonder why we bother with elections when more and more power is being handed to appointed bureaucrats" (3). This theme of the omnipotent Commission was pursued in a Saturday Night article on the agency and its chairman at the time, Pierre Juneau. Here it was asserted that by courtesy of its mandate and Juneau's personal connections with the government, "no one tells the CRTC what to do" (4). A little later, in 1975, the Broadcaster reconfirmed its opinion that the CRTC was free to set policies in the area of broadcasting (5).

By this period CRTC activity had attracted renewed academic interest and the apparent phenomenon of a powerful regulator independently setting policy by making decisions that possess wide-ranging consequences came under increasing study. Thus Saunderson in 1972 wrote of the broadcasting industry's need to learn "to deal with the regulatory authority and not the Cabinet" (6). Political scientist

John Meisel, later to be a Commission chairman, spoke of the tremendous impact of CRTC actions:

> ... one small decision of the CRTC may have political consequences far exceeding those of, say, several volumes of Globe and Mail editorials (7).

One of these "small" decisions that Meisel may have had in mind was that commented on by the pre-eminent Canadian broadcasting historian/political analyst Frank Peers in 1974: the Commission's attempt to prompt the Canadian Broadcasting Corporation (CBC), at the time of its license renewal, to schedule greater amounts of Canadian programming on the network. Here Peers sympathized with CBC protestations that CRTC actions appeared to attempt to decide, in effect, operational objectives for the state corporation. For Peers this was "a role that should be played by the CBC's own board of directors, a board also responsible to Parliament" (8). In short, if anyone was to set these objectives for the CBC other than the organization itself, it should be Parliament and not the regulatory agency.

The relationship of the Commission to Parliament, and politicians in general, was the theme of Baum's 1975 paper entitled "Broadcasting Regulation in Canada: the Power of Decision". As with the Penny article five years earlier, it was charged that the CRTC was becoming Canada's "Parliament of Broadcasting". Baum argued that the agency had assumed a role as a "legislator" not unlike that of Parliament. Considering the agency behaviour exemplified in both deciding the CBC's programming orientation and in imposing measures such as commercial deletion, Baum questioned whether this was the proper part for the Commission to play. Agency actions which included

the use of sanctions, prompted Baum to conclude that the agency had gone beyond its jurisdiction and had taken "power unto itself" in order to shape a broadcasting policy for Canada (9). The type of Commission action that Baum described led Babe in 1976 to state that the CRTC "appears to have assumed wide-ranging powers beyond those intended by Parliament" (10). In another article, on a theme that will recur throughout the thesis, Babe partially attributed the Commission's influential role to the fact that the federal DOC was "by and large an advisory body only with little or no power to influence the decisions of the CRTC" (11). By 1977 Hallman and Hindley in Broadcasting in Canada simply concluded that the CRTC was the federal entity which developed national broadcasting policy - a state of affairs that the government at that point was not content to allow to continue (12).

Initially, reservations about the powerfulness of the CRTC were expressed during the parliamentary debate of the new broadcasting act in late 1967. It was this act which established the CRTC to replace the Board of Broadcast Governors (BBG) (for more discussion on this debate see below). By the mid-1970s widespread parliamentary concern that the CRTC was "out of control" as a policy-maker was evident in proceedings of the Standing Committee on Broadcasting. Commission actions at the time of the CBC license renewal in 1974 led a House Member to label the Commission "arrogant" for not seeking parliamentary approval of its intentions beforehand (13). Parliament's resentment of CRTC actions has also been expressed in the Standing Committee's continuing sense of inability to effectively

influence the agency (14). Government members also said that the agency was deciding questions of broad policy properly the prerogative of the Cabinet (15). In general, parliamentary concern was summed up by the remarks of a committee member who said that "the CRTC may be exercising an authority which it does not have in certain areas" (16).

The provinces have also expressed considerable annoyance with the CRTC. They perceive the agency to have assumed a policy-making role beyond its mandate, an usurpation of power that has preempted their own planning processes and forestalled chances to arrive at political arrangements on jurisdictional questions with the federal DOC. This opinion was made most clear in the "Western Premiers' Task Force on Constitutional Trends", a series of reports in the late 1970s. The 1978 report spoke of the CRTC continuing "to expand its conceptual framework so as to mandate itself to supervise Canadian telecommunications" in a fashion which, according to the 1979 report, preempted "the practicality and effectiveness of provincial planning in this area" (17). A corresponding frustration on the part of federal officials was that the agency had usurped a federal planning role. In The Cultural Connection, the author, then a DOC deputy minister, writes that the CRTC had "fused regulation with policy-making" to the extent that the government believed "that the Commission was exceeding its authority" (18). Meanwhile, one of his officials publicly announced in 1977 that although the Commission may have had a free hand in setting broadcasting policy in the past, the government was now determined to redress this situation by reasserting a "degree of control" over this

process and would correct the mistake it had committed in 1968 of establishing a (overly) powerful independent regulator (19).

Rising annoyance with the CRTC policy-making role is evident in comments made by various DOC ministers throughout the 1970s and 1980s. The first tentative remarks were made by Gérard Pelletier in 1974 (20). His successor, Jeanne Sauvé, was much more strident in her complaints when she stated by 1977 that the agency had assumed a "major" policy-making role properly the prerogative of elected government (21). David MacDonald, her replacement during the short-lived Conservative government of 1979, announced that the CRTC was to lose the policy-making role it had assumed (22). This ministerial intention was repeated by Francis Fox who, upon his appointment as DOC minister with the return of the Trudeau government, asserted: "the CRTC is to operate only within the existing legislative framework" (23). Thus ministerial feelings of impotency vis-a-vis the CRTC and the setting of communications policy have long been evident. By 1980 Johnston, in a study of the Commission, enumerated the "major broadcasting policies" the CRTC had formulated during the 1970s; these included the topics of cable television, Canadian content requirements, and the growing FM broadcast industry (24). Indeed, because of Commission initiative in these and other areas, incoming CRTC Chairman John Meisel was quoted as saying in 1980 that Commission relations with the DOC had often been strained, with considerable "back-biting in the old days" of the 1970s between the minister and the Commission chairman", as the Commission had possessed too free a hand in setting communications policy (25).

During the present decade academics have continued to characterize the CRTC as "expansive". It "overshadows" the DOC in making telecommunication and broadcasting policy due to its greater "policy-making ability". It is also said to overstep its authority and trespass into areas of provincial jurisdiction (26). The image of a "proactive" CRTC which creates political and other problems, which require political solutions to control its actions, is a view present not just in industry, but also in academia and in the media (27). These calls are based on, in the words of a recent commentator, the Commission's "extraordinary and frightening powers (which are) arbitrarily dispensed" (28). Gerald Caplan, co-chairman of the recent "Task Force on Broadcasting Policy" has remarked that "a great deal" of the subject of his study group's report was "not in the hands of the government but in the hands of André Bureau" (then CRTC chairman). At the time he made this comment, the media characterized then DOC Minister Flora MacDonald as needing to "come to the CRTC to ask it to postpone its policy agenda" while her government considered the Task Force's recommendations for a new broadcasting policy (29). Collectively these remarks invoke the image of an omnipotent regulator that to the current day sets communications policy for the country, does so without government acquiescence and is seemingly beyond the control of both elected and non-elected officials.

Thus the charge that the CRTC has surreptitiously made policy comes from a great variety of sources: academics, politicians, federal officials, industrial groups, provinces and media observers of the communications scene. But why should the

possibility that the Commission has assumed an inappropriate policy-making role be of concern?

Within the Canadian parliamentary system, which is based on the Westminister model of government, the government is politically responsible for the broader policies it follows, "and to a lesser extent, for each individual act of administration". Interest in the role of the CRTC within the academic literature and elsewhere reflects the apprehension that this process of accountability has gone astray in the area of communications policy. According to the Westminister model, the Cabinet is collectively responsible for the policy of the government. The individual minister is responsible in turn for all policy decisions made in the department he/she heads "and must also answer for every act of maladministration that occurs" (30). This notion reflects "our political tradition (which) stresses that power and responsibility should be placed in elected officials"; concomitantly, non-elected officials should not exercise governmental authority "unless some basis for responsiveness and accountability to the Cabinet and Parliament is retained" (31). As Janisch notes:

> Active policy-making by an independent agency immediately raises questions as to the political accountability for the policy that it formulates and implements and the legitimacy of non-elected officials making major policy determinations for which there will be no ministerial responsibility (32).

The concept of ministerial responsibility however is not absolute in either practice or principle:

> There is a need to balance ministerial control for the purposes of political accountability with managerial and professional expertise, the exercise of which requires considerable autonomy.

> The separation of what is "policy" (usually assumed to be the province of the politicians) from what is purely an administrative matter (the responsibility of public servants) is artificial in most cases (33).

This "artificial separation" between "policy" and "administrative functions" makes it difficult to link the concept of responsible government with management of the bureaucracy. One of the areas of public administration where the linkage has been most difficult to clearly make concerns the functioning of regulatory agencies, of which the CRTC is an example.

As Slatter notes, "no thought was ever given to setting up a 'system' of agencies to help run the government, rather each agency was created ad hoc in response to a particular perceived need" (34). This fact has led to a variance in the powers and functions of the regulatory agencies created in Canada over the years; nevertheless, all were charged, with varying degrees of authority, to supervise and regulate the industries which fall under their jurisdiction. As Janisch points out, the unique fact that these agencies lie outside established departmental hierarchies and are operated by commissioners holding tenured appointments gives rise to the appellation "independent". This independence is commonly justified on two bases: regulation requires a high degree of expertise, continuity and stability, which traditional government departments cannot provide and, secondly, insulation of regulatory activity such as license granting is required from the political process in order to ensure impartiality. The delegation of administrative responsibility to an "independent" agency however is "not an easy thing to do in a parliamentary system of government" - indeed,

for the constitutional purist, independent regulatory agencies are "structural heretics which do violence to the constituted system of ministerial responsibility" (35). This violence is done" as administrative agencies which have been given a degree of independence by statute may be appointed a "designated minister", or "spokes-minister" to speak for the agency in the House but this minister nevertheless may have little, if any, control over its daily operations. At the same time however this particular minister is responsible for providing information to the House and responding to House questions on the agencies that they represent (36).

Generally in Canada, while administrative agencies have been granted a considerable amount of autonomy for their day-to-day regulation activity, specifically the tasks which require "full-time, detached professionalism", governments nonetheless have obviously not been willing to allow non-elected bodies to act as final decision-makers. Thus appeal and review provisions, reserved for the Cabinet, usually accompany the establishment of these agencies. This compromise between regulatory independence and political control, the academic literature makes clear, has led to a great deal of confusion and tension. The principal focus of this ambiguity has been the question "who should make regulatory policy?" This question is particularly important when the policy-making of a regulatory agency substitutes for government policy activity. Moreover it is with agencies that enjoy a relatively large degree of autonomy that the issue of political accountability and responsibility for policy-making takes on greater importance (37). Overall, the history of

regulation in Canada, as Janisch describes this process, has largely been a "constant one" of:

> ... working out the tensions inherent to our commitment to parliamentary responsibility and the need for regulatory tribunals which fall to some degree outside the sphere of immediate political control (38).

The seriousness of the task of ensuring accountability was made clear by the Lambert Commission which asserted:

> Delegation of authority without accountability is an abdication of responsibility on the part of those conferring it, whether government or Parliament (39).

and the earlier McRuer Commission which stated:

> ... in accordance with constitutional principles ... the exercise of power to make decisions affecting rights of individuals on grounds of policy by persons or bodies other than the Legislature should be subject to political control (40).

Nevertheless, despite the concern expressed regarding the appropriateness of regulatory agencies making policy, it has also been argued that it is not necessarily undesirable if agencies make some policy. This point of view is premised on the assumption that:

> ... Parliament and Cabinet are usually in a better position to react to policy issues in administrative decision-making than to lay down detailed direction for agencies to follow (41).

Such a process would appear to cast a regulator in a policy-making role; yet it is not always easy to define what constitutes "policy" versus the actions that compose "regulation-making". Indeed, an emanation from government may come in the guise of "regulation" or "policy", even though both possess the impact of what can only be called "policy". Roman suggests that the word "policy", as used by government:

> ... is incapable of any precise definition, it can mean anything from a loose collection of meaningless generalities to a precise plan. The former has no operational significance; the latter is part of the process of implementation and somewhere in the grey area between the two is the slippery slope of policy. Often, it would appear that the word "policy" is used to conceal a lack of precision of thought, an unwillingness or inability to define whether, in the context, the user means "attitude" or "intention" or "objective" of "plan" of all or none of the above. There are, of course, considerable advantages to this semantic vagueness: such fuzzy but authoritative-sounding language permits its user to lay claim to a variety of meanings as it suits his purpose (42).

Nevertheless "policy" is usually recognizable, whatever label or form it may take, because it entails a government body making a real choice amongst the available options for action. Furthermore the choice made is legitimized because it is sanctioned by the power of the state. By such a definition, it would appear that the CRTC has, indeed, made "policy". Thus while in much of the literature a consensus exists that the "the CRTC makes a good deal of policy and does so in an open manner", the question nevertheless remains "is it appropriate that this non-elected body make policy in as politically sensitive an area as broadcasting and telecommunications?"

As will be demonstrated in the next section, the CRTC enjoys "a relatively great degree of autonomy". Furthermore, it will be argued that one reason why the CRTC has made policy is because politicians have largely abdicated this role to the agency. However, while elected officials have largely left responsibility for policy-making to the agency, they have not lost what at times becomes great interest in individual regulatory decisions made by the Commission. This abandonment of policy-making was noted by

Penny in his 1970 article where he remarked that "broadcasting is an important area" and he questioned whether the establishment of the CRTC justified Parliament leaving the area "alone" (43). However, it has also been remarked that Parliamentarians "have demonstrated little reluctance to resist a minister's inclination to farm-out complex issues to statutory agencies" (44). Thus it is perhaps not surprising to find Baum stating in 1975 that the CRTC's need to deal with the growing cable industry placed the agency in a dilemma - as no guidelines on the topic had been issued by the government (45). Similarly, ten years later, the Commission considered competing long-distance phone service in the absence of government telecommunications policy (46).

Yet, the apparent ceding of large amounts of policy responsibility to an agency is not unproblematic because at some point elected and non-elected officials may want to repatriate a policy-making role. The temptation to use clandestine means in an attempt to influence the agency may prove irresistible, with consequent damaging effects for the integrity of the regulatory process. As will become clear when the powers and functions of the CRTC are discussed, the government possesses few direct means to control the Commission. This is particularly the case in broadcasting matters. Thus Janisch, when writing of the Commission decision to drop its "commercial substitution" plan, which had become a matter of some tension between the United States and Canada in the mid-1970s, speculated whether this agency action had been the result of covert government pressure employed on this "independent agency", a body the government could not openly direct on the matter (47).

The fact that regulatory agencies are involved in decision-making in a process which is "intensely political", is reflected in the controversy surrounding several CRTC rulings recently referred back to the agency by the current government (48). These decisions presumably contravened government policy but the actions have cast doubt on the CRTC's competency and independent decision-making ability. The decisions reviewed have been in the fields of both broadcasting and telecommunications and have involved actors as diverse as a private Ottawa broadcaster, Bell Canada, and the CBC (49). These controversies well illustrate Janisch's remark that the regulatory process requires political support to be effective and that the independence of that process will be respected until such time as an unpopular decision is made, at which point the political process will be invoked (50).

This study will demonstrate that the CRTC enjoys only "measured independence" as a policy-maker. The evidence presented will verify the accuracy of Baum's 1975 prediction that the agency would necessarily fail to maintain its policy preferences "due to other government actions" even if the existing policy vacuum had allowed "the CRTC to stretch and go beyond its mandate" (51). But first, the question "how can the allegations lodged against the Commission be made?" needs to be addressed. The allegations are particularly interesting to explore given that the agency operates within a parliamentary system which maintains the firmly entrenched principle of ministerial responsibility, a consensus that policy-making should lay with government, and the notion that great public policy

controversies require political solution (52). To answer this question Part Two will begin by considering how a regulatory agency can independently make policy in terms of the powers and functions granted this bureaucratic entity by Parliament. Following this general discussion, attention will turn to the specific case of the CRTC.

Part 2

This section will explore how a regulatory agency can assume a policy-making role by considering three aspects of the mandate typically conferred on these bodies by Parliament: 1) the delineation of agency jurisdiction and functions, and here particular stress will be placed on the importance of the "policy statement" contained within its mandate; 2) the adjudicative and legislative powers delegated to the agency; and, 3) the agency's statutory relationship to its responsible minister and Cabinet. On this last point, mechanisms to direct the behaviour of the agency, of both a "formal" and "informal" nature, will be examined. A few concrete examples will be presented using different regulatory agencies in order to illustrate the points made while discussing the mandate of regulatory agencies. The mandate of the CRTC will in turn be examined along the lines of the tripartite scheme laid out above. But first discussion turns to a consideration of how a regulatory agency in general can assume a policy-making role courtesy of the mandate conferred by Parliament.

Generic Regulatory Agency Policy-Making

Regulatory agencies perform their designated functions by virtue of jurisdiction granted by Parliament. This jurisdiction is normally expressed in the "policy statement" of the statute governing the exercise of administrative functions delegated to the agency. The nature of the statutory policy statement is crucial in determining the scope of the discretionary power possessed by the agency. This is the case because, as Schultz notes, the "absence of specific policy statements, or ambiguity in such statements, increases the independence of the regulatory agency by virtue of the regulators' power either to fill in policy vacuums or to reconcile competing or conflicting policy goals" (53). Reconciling differing statutory objectives allows regulatory agencies the opportunity to be "policy-makers" because "it is a question of policy as to which goal receives the greatest attention at any given time" (54). Moreover, government failure to articulate its policy objectives clearly and in a consistent fashion does not absolve regulatory agencies from their statutory responsibility to make decisions, because "decisions have to be made or institutional paralysis results" (55). Thus the combination of a broad regulatory mandate, along with the responsibility to take decisions, can result in agencies filling a "policy vacuum" and "making public policy". The Lambert Commission concluded that agencies can become "primary policy-makers" through this process of "developing and refining" their ill-defined mandates, a process that can take them to the point where they "play a role not unlike Parliament itself" (56).

Meanwhile the vigilance of Parliament over the behaviour of regulatory agencies is suspect: it has the opportunity to review the substance, clarity and consistency of the initial agency mandate, but no mechanism provides for the periodic parliamentary review and updating of agencies' mandates (57).

The agency mandate will list the specific powers granted the agency within the confines of its delegated jurisdiction and assigned functions. Here, a distinction needs to be drawn between the "adjudicative" and "legislative" powers the agency may be assigned by Parliament. In implementing its adjudicative powers, the agency proceeds on a case-by-case basis. It will decide on the basis of individual applications matters concerning, for instance, licenses, routes, tariffs or standards of service (58). As Janisch notes, fulfilling an adjudicative role conceivably leaves little room for agency policy-making as the assumption is made that "the policy to be implemented is that contained in the empowering legislation and the agency simply has to apply it in the particular case" (59). Legislative powers, on the other hand, allow the agency "to enact general rules of conduct having the force of law and being applicable to a class of applicants" (60). This power can effectively grant the agency policy-making powers: the role of "policy-maker" is assumed after the agency has set out in advance the factors it will take into account in deciding individual cases. Nevertheless granting a regulator solely adjudicative powers can still enable such an agency to become a "policy-maker". Janisch makes the distinction between policy resulting from the exercise of adjudicative versus legislative powers: an agency empowered by statute to discharge

an adjudicative role and to issue licenses in fulfillment of a series of legislative standards will wait for license applications and then proceed to deal with them one at a time on their individual merits. Nevertheless, "over time a certain pattern may develop and the agency may treat its decisions to some degree as precedents; this means that a policy on the issuance of licenses will eventually emerge". An agency would take on the role of conscious policy-maker however, on the basis of possessing a legislative power and by announcing at the outset the factors it was going to apply to determine how its statutory provisions were to be fulfilled.

The discretion that exists with piecemeal elaboration of regulatory policy in the exercise of an adjudicative power is problematic because the agency might have a policy on the issue concerned but not be willing to label it as such. Nevertheless, Evans et al. discern merit in developing policy via adjudication, as it:

> ... allows an administrative body to deal with cases as they arise and to build its commitments gradually, and even to change its mind (61).

Indeed, this facility is to be encouraged in order to promote agencies' 'willingness to venture out and deal with problems" before they arrive as concrete cases demanding immediate solution (62). The beneficial aspect of this "willingness to experiment" helps Janisch to argue against establishing all government policy-making capacity solely in a Ministry or Department as it is questionable whether the responsible cabinet minister would be prepared to experiment in a similar fashion. According to Janisch, the propensity to gamble is noticeably absent in the

political sphere, where the minister will prefer to preserve freedom of play "until the last possible moment", as:

> It is one thing for the minister to ask someone else to formulate a policy decision and then review it in the light of political reaction, (and) quite another for the minister to do so on his own (63).

The initiative that regulatory agencies can display causes Roman to support their policy-making endeavours, particularly because if an agency was to wait for a government policy to be announced before taking a decision, little would occur "as in most areas there is no government policy" (64). Indeed, Roman is supportive of incremental regulatory policy-making to the extent that in a later article he declares that within the area of its delegated powers, a regulatory agency cannot be fettered in any way by the opinions of the minister or government of the day. Furthermore, any evidence submitted from the government on a particular issue is to be treated in the same manner as that from any other source (65).

This remark introduces a third facet of the formal mandate of regulatory agencies that needs to be considered: their statutory relationships with their minister and Cabinet. Following Schultz (1978), this relationship can be examined according to three aspects: 1) the political control exercised by ministers, whether individually or collectively, over agency adjudicative decisions by virtue of reviewing, setting aside, or changing agency decisions; 2) the degree of political control exerted over the legislative powers of the agency; and, 3) the ability of the minister and Cabinet to issue binding directions concerning policy matters to a regulatory agency.

The first aspect of the statutory relationship between the minister and Cabinet to the agency is the ministerial review of agency adjudicative decisions. This is a process involving essentially "political" appeals made to the Cabinet in the wake of an agency decision and has been justified on the grounds that "elected officials must be ultimately responsible for the determination of public policies" (66). As the Law Reform Commission (LRC) has noted, the provision for Cabinet appeals allows for policy to be changed reactively: "an agency may have decided a case on the basis of existing policy, only to have the decision reversed on a policy newly enunciated by the Cabinet" (67). Where there had been no existing government policy, Cabinet intervention at this stage can serve to clarify the government's stance. This process of Cabinet review has been open to much criticism however, due to its secretive nature. No formal rules structure the process to afford all parties involved, including the regulatory agency, a chance to speak to the petition for review received by Cabinet. Nevertheless, despite the fact that how one views ministerial appeals (and policy directives, still to be discussed) depends on one's positioning in the policy process, consensus is emerging that Cabinet review needs to be more structured (68).

The second aspect of the ministerial-cabinet statutory relationship involves Cabinet attempts to control the "legislative" ability of the agency. This power of the agency to make policy is primarily based on its ability to make regulations. Cabinet attempts to control this function of the agency in essence entails the government providing a clear

statement of the policy the agency is to follow in fulfilling its responsibilities. This can be done by the statutory policy statement provided to the agency and subsequent directions issued to the agency by its designated minister. This direction can be "informal or even secret"; indeed confidential communications by ministers to regulatory agencies have been documented (69). A review of typical ministerial control powers over regulatory agencies uncovers the irony, as Janisch has noted, that ministerial power of review is more often held over adjudicatively determined decisions, precisely the area in greatest need of unfettered judgment-making, while the government is often unable to control the legislative powers of an agency because it lacks ability to implement "legislative enactments of a general policy nature where the need for political accountability is greatest" (70). This state of affairs can lead to the situation that:

> In the present topsy-turvy world of regulation in Canada, the government may well have no control over a regulation made by a regulatory agency, but may be able to reverse an individual decision that applies that regulation (71).

Thus, as Schultz es, the government may be able to reject the individual regulatory decisions of the agency but possess no opportunity to develop or clarify the policy that regulators are mandated to implement; "furthermore, even if individual decisions are rejected on policy grounds, there is no guarantee that the policy considerations will set precedents with regulators for future decisions" (72).

The ability by statute of the minister and Cabinet to issue binding policy directives to agencies, the third facet of the

agency-minister/cabinet statutory relationship, offers the government the potential to increase its policy-making role prior to an agency taking an adjudicative or legislative decision. At present however few regulatory agency enabling statutes provide the government with the opportunity to issue these directives (73). As Schultz notes, a long list of groups including the Lambert Commission, the Economic Council, the LRC, and provincial governments have endorsed proposals calling for statutory provisions that will empower the government to issue policy directives to agencies regarding the implementation and interpretation of the policy objectives contained in the statute. This government desire for a broad policy directive power is partially justified on the basis that circumstances in many fields change rapidly and Parliament is too slow to amend legislation as often as necessary; the argument is made that the government requires the ability to react quickly to these changing demands and that the directive power will retain or restore accountability to elected officials for an otherwise unaccountable regulatory agency (74). Nevertheless an on-going debate in the literature points out the problems awaiting any government which tries to frame and legislate a broad policy directive power over a regulatory agency which can be effectively implemented (75). Meanwhile, lacking a broad policy directive power, the government often possesses only indirect means to control the actions and policy-making behaviour of agencies.

These "indirect powers" comprise several forms. The possibility of the government issuing "policy statements" has already been mentioned. These indications of government policy

can take the form of a document released by the department concerned, but can also be expressed in both ministerial speeches and personal contracts maintained between the minister, departmental officials and agency representatives (76). There is no guarantee however that "policy statements", in whatever form, will be respected and implemented by the agency involved. Influence of a sort can also be exerted through the appointments made to agencies, along with government control over the setting of the budget and funding levels of the agency. The ability of these powers to control agency behaviour, both as an adjudicator and policy-maker, are suspect however. While the government has complete control over the appointment of commissioners, and the process tends to be a highly secretive affair "with often even the agency head not consulted about the appointments the government is contemplating", new appointees nevertheless "usually absorb the professional norms of an agency rather quickly" (77). Likewise, "the use of the purse strings on an annual basis to effect the government's policy control over regulatory agencies seems a crude tool at best" (78). Government can also intercede in particular cases and potentially influence policy application by having the minister or departmental officials make representations during agency proceedings (79). The government conceivably is also able to affect the behaviour of agencies and "exercise a degree of political control", by the extension or withholding of ministerial support in light of the response to contested agency decisions. Ministers can "vigorously defend an agency" or press for court (or Cabinet) review of an agency decision. Government support for an agency and its

commissioners can also be noted by whether the government has implemented incremental changes to the agency's statute which are beneficial to increasing of the organization's influence, or has ensured that the remedial powers of the agency are adequate to give effect to its decisions; "in short, by giving or withholding its moral and political support, the government can influence its statutory regulatory agencies" (80).

While formal controls such as policy directive powers are theoretically more effective in controlling the policy-making behaviour of regulatory agencies, governments may be tempted to rely upon informal methods as "some degree of control can be exercised without having to accept responsibility" (81). As will be seen shortly, this remark is particularly a propos with respect to the CRTC, where the government possesses few formal controls over the agency. The temptation to create a regulatory agency over which few formal controls exist and thus leave little recourse but to use "informal" mechanisms, reflects the fact that politicians often possess sufficient incentive to "take the politics out of regulation" and give responsibility for what are often "no-win" situations to a regulatory agency (82). This "de-politicization" of sensitive areas in administrative decision-making, such as the issuing of licenses, which relieves ministers from the need to publicly account for the policy choices made in such decisions, is also the result of a desire to have Parliament direct its attention to matters of "policy and general principle" rather than individual regulatory decisions (83). Nevertheless, while agencies may have been created to "de-politicize" certain types of administrative decisions,

agencies themselves possess incentive to narrowly interpret their mandate, even one allowing for much discretion, by refusing to be drawn into broader political conflicts and placing stress on the importance of precedent decision-making (84).

Schultz cites Canada's first regulatory agency, the Board of Railway Commissioners, as an example of a regulatory agency which refused to act as a policy-maker. Here he finds the agency maintained an extremely narrow view of its powers and limited itself to dealing with transportation matters only. It refused to make public policy, believing Parliament to be the "proper place" for such decisions (85). If an agency possesses discretion in terms of how widely it interprets its mandate, it also possesses discretion in deciding how to react to government attempts to exert "indirect" control. On this point Janisch recounts the agency-government relationship of the Canadian Transport Commission (CTC) with the Department of Transport (DOT). Here the government, on a periodic basis, issued policy statements which the agency proceeded to accept as the "policy framework" within which its future regulatory decisions were to be taken. Thus within the framework of the broad statutory standard possessed by the CTC, ministerial initiative to provide more concise meaning to that statute was met by a regulatory agency willingness to implement the stated ministerial policy. Consequently, a policy vacuum was filled (86). The example of the modus operandi achieved between the CTC and the DOT bespeaks the utility for a regulator to assume a narrow view of its mandate as this places responsibility for public policy decisions on the shoulders of elected officials. The agency then is presumably able to

function most effectively, devising and implementing the regulations which give force to the policy goals set by government and Parliament. Additionally, agency operation within a narrow mandate and avoidance of broader issues can prevent bureaucratic conflicts occurring between the agency and a government department that may also feel it has an interest in the policy area involved.

Schultz writes that the "insulation of the regulator function from other political processes" is aided through the use of legislative mandates which are "tightly defined"; these though, appear more representative of another, earlier era, when regulatory agencies exercised more of a "policing" (adjudicative) function over their respective industries than a more encompassing "planning" (legislative) role. The statutory restriction of the regulator, combined with a self-imposed will to remain within those limits, such as demonstrated by the Board of Railway Commissioners' refusal to be drawn into wider political conflicts, produced the potentially useful compensation for regulators that "successive Cabinets during the policing era were evidently mindful of the need to defer to the regulatory authority" (87). The Cabinet had reason to support a board's decisions and the consequential insulation of the regulatory process "served to protect both the regulators and Cabinet". The regulator was served in the sense that respect for its judgements preserved both its reputation for competency and the integrity of the regulatory process. The Cabinet was served in the sense that it "could pass the buck" for an unpopular licensing or other regulatory decision to an "apolitical" decision-maker and thus

avoid having to bear responsibility for any political ramifications resulting from an unpopular decision. The result of this modus operandi in the case of the Board of Transport Commissioners was the maintenance of a norm of political non-interference in the functioning of the agency. This norm was derived in sum from an institutional rationale which encouraged regulatory "policing" decision-making only, the presence of tight legislative mandates conferred on the regulators, and "an incentive system that encouraged other decision-makers to respect institutional boundaries" (88).

The shift from "policing" to "planning" regulation, Schultz asserts, profoundly affected linkages between regulatory authorities and other decision-makers:

> Instead of being relatively autonomous, regulators found themselves involved in much more complex relationships. While, in some respects, such interdependencies broadened the scope of their decision-making authority, they acted concomitantly to reduce regulatory autonomy (89).

There have been significant changes in the legislative mandate of regulatory agencies during the transition from a "policing" to a "planning" regulatory role which has characterized the post-war period in Canada: "open-ended mandates that give only the vaguest of guidance, but also, in the process, confer considerable enhanced discretion on the regulatory decision-makers" have become the norm (90). A concomitant aspect to the increased comprehensiveness of the regulatory role, however, has been greater ambiguity in the division of responsibility for decision-taking and policy-making between organizations within the government. A "dilution of institutional specialization" has occurred so that "planning" regulatory authorities have found

"other public organizations are allocated tasks identical to, or significantly overlapping, theirs" (91). Indeed, this has been the case in communications where the federal department was created after the regulatory agency "and given responsibilities identical in some respects to those earlier conferred on the agency" (92).

The incorporation of the regulatory process into wider political processes has significant ramifications given the "decline in institutional specialization": deference to the regulator on the part of other, now-competing, state officials may disappear. The actions of other state actors may invoke the agency's "territorial sensitivity to threats, real or imagined", to its jurisdication (93). In sum, the transition from a "policing" to a "planning" capacity for the regulator can have a significant impact on the decision-making process:

> In a regime of policing regulation, notwithstanding the political appeal mechanism, the norm was for the regulator to have the ultimate decision-maker within its area of authority. Under planning regulation, decision-making may be regarded more as segmented or sequential. The notion that the regulator is only the first in a series but not the ultimate decision-maker, becomes the norm (94).

This situation can come about because despite the evident incentives which exist for a regulatory board to take a narrow view of its mandate and responsibilities, a regulator can assume that a broad reading of its mandate is required. Compounding the broad interpretation of its mandate, an agency self-perception of being "independent", necessary for its adjudicative functions, may overlap into its "legislative" or "policy-making" role. This transference, when combined with an agency self-view of being an

"expert" in the particular field concerned, and compounded with negligent or deferential elected and non-elected officials, can lead to sizable amounts of policy-making by the agency - with inevitable conflicts when the government seeks to reassert a policy-making role for itself. A byproduct of this struggle can be the emergence of "tandem proceedings" within the government decision-making process. This is a phenomenon characterized "by two sets of public decision-makers coincidentally grappling with the same set of issues" (95). Indeed, many of the factors discussed above appear to provoke questions regarding policy-making in the domain of communications and the role of the regulatory agency. It is to a consideration of the communications regulatory agency, and the CRTC in particular, that the discussion now turns.

CRTC Policy-Making

Penny lists four "major areas" that require regulation in broadcasting regardless of "whatever body is charged with its supervision": 1) activities concerning licensing, 2) monitoring of licensees' performances, 3) monitoring of the provision of a national service, and, 4) supervision of the financial affairs and ownership transfers of broadcasters (96). Nevertheless, as Janisch notes, "the regulation of broadcasting in Canada has run the entire spectrum from departmental control to independent agency". The evolution to a more independent status for the regulatory authority in Canada was caused, according to Penny, by "the politically touchy nature of broadcasting ... (for)

broadcasting is like politics; everyone is an expert" (97). The initial shift of responsibility for broadcasting regulation from direct ministerial control to a separate authority came as the result of this "politically touchy nature of broadcasting". During the late 1920s, a controversy arose, incited by the defamatory remarks made by a religious group of another denomination. The group which made the disparaging remarks owned and operated a radio station, the operating license for which the minister responsible for broadcasting cancelled. A difficult political situation ensued where questions regarding freedom of expression and the government's right to intervene in broadcasting issues were raised. As a result of these events the government made the announcement that:

> We have made up our minds that a change must be made in the broadcasting system in Canada. We have reached a point where it is impossible for a member of the government or for the government itself to exercise the discretionary power it is given by law .... for the reason that the moment the minister in charge exercises his discretion, the matter becomes a political football and a political issue all over Canada ... We should change the situation and take broadcasting away from the influences of all sorts which are brought to bear by all shades of political parties (98).

As Janisch points out, this was a opinion shared by then Secretary of State LaMarsh forty years later during House debate in 1967 of the current broadcasting act which established the CRTC:

> There is, I believe, generally widespread agreement that the regulation and supervision of the broadcasting system should be delegated to an independent regulatory authority and that this body and its decisions should be as free as possible from partisan political influence and the pressures of vested interests (99).

In all, both political necessity and idealism encourage the

delegation of broadcasting regulation to an independent agency; "from a realistic point of view broadcasting simply throws up too many hot potatoes for the politicians, while from an idealistic view point it can be said that broadcasting is too sensitive an area for direct government regulation" (100).

There have been several authorities responsible for broadcasting regulation since the decision was taken in the late 1920s to delegate some ministerial powers in this area to a separate bureaucratic entity. The Board of Broadcast Governors (BBG) preceded establishment of the CRTC and was operational during the period of 1958-1968. The BBG was characterized by a more narrow set of powers than the CRTC because power to regulate the broadcasting industry was shared with the CBC. The BBG was also characterized by board members who were content to function within a restricted interpretation of their mandate. The Board nevertheless found itself dealing with some highly political problems. These included the "onerous responsibility" after its founding in 1958 of deciding the "very sensitive" issue of second television stations for Canada and the formulation of new content regulations for the industry. The general inexperience of board members, (amongst who ranked Prime Minister Diefenbaker's dentist from Prince Albert, Saskatchewan), along with some licensing awards and decisions "that were thought to be politically motivated", had greatly discredited the BBG by the mid-1960s; simultaneously, both elected and non-elected government officials showed little evidence that they knew how to manage the changing broadcast environment and particularly the developing cable industry (101).

The outcome was a new Broadcasting Act in 1968 which established the CRTC, a regulatory agency with significantly greater powers to replace the BBG. The powers and policy-making ability to be delegated to the new agency were discussed during both a Standing Committee study of the recommendations of the 1966 White Paper on Broadcasting, and in later House debate of the 1968 legislation. During this process some MPs displayed evident concern over the functions and powers proposed for the new agency; one termed them "indeed frightening", while another remarked that the proposed commission was being placed "far beyond the reach of Parliament". Nevertheless, the ultimate passage of the bill and creation of the CRTC presumably signified MP acceptance of the balance in power and authority between the agency and government which was proposed by the legislation.

The intentions of the government in formulating the new bill were revealed in Secretary of State Judy LaMarsh's remark that:

> ... the legislation has been formed in such a way as to establish a statutory policy for broadcasting in Canada and to assign the responsibility for interpretation and implementation of that policy to an independent public authority (102).

That in the government's view the policy and guidance offered the regulatory agency were sufficiently delineated in the act was made clear in another parliamentary statement by LaMarsh:

> The bill accordingly sets out in clear language a broadcasting policy for Canada .... The mandate set out is more than just a preamble; it is an integral part of the measure, expressing the intentions of parliament, and it will have the force of law. Thus, the whole of the rest of the bill must be considered in the context of this declaration of policy. The objects of the regulatory authority ... will quite simply be to regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing

this policy (103).

While the new agency was given important powers and responsibilities (for a description of these, see below), the government and Parliament were unwilling to give up checks that would allow an element of control over what was to become the CRTC; indeed, a Senator was to remark that if the government cared to exercise responsibility, the Governor-in-Council review power provisioned by the bill would allow the Cabinet to:

> ... find in almost all cases the power to do so ... It will of course, be a matter of political judgement .... as to when, where and whether it should invoke any of those powers (104).

Inclusion of these review powers maintains what Baum describes as one of the "constants in Canadian broadcasting":

> An independent agency should have some, but not complete power to make those decisions necessary to implement broadcasting policy. Parliament, or more particularly, the government of the day, has felt a real need to insulate itself from the public while, at the same time, preserving for itself the power to take certain initiatives (105).

In terms of jurisdiction and function, the new CRTC was empowered to "regulate and supervise all aspects of the Canadian broadcasting system" with a view to implementing the broadcasting policy enunciated in section 3 of the new Broadcasting Act. The more important aspects of this policy are contained in the following passages:

> (a) broadcasting undertakings in Canada make use of radio frequencies that are public property and such undertakings constitute a single system, herein referred to as the Canadian broadcasting system, comprising public and private elements;
>
> (b) the Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of

> Canada;
>
> (d) the programming provided by the Canadian broadcasting system should be varied and comprehensive and should provide responsible, balanced opportunity for the expression of differing views on matters of public concern, and the programming provided by each broadcaster should be of high standard, using predominantly Canadian creative and other resources;
>
> (e) all Canadians are entitled to broadcasting service in English and French as public funds become available;
>
> (f) there should be provided, through a corporation established by Parliament for the purpose, a national broadcasting service that is predominantly Canadian in content and character;
>
> (h) where any conflict arises between the objectives of the national broadcasting service and the interests of the private element of the Canadian broadcasting system it shall be resolved in the public interest but paramount consideration shall be given to the objectives of the national broadcasting service (106).

This policy framework for the regulatory activity of the Commission, according to the Economic Council, while "appearing at first glance to be a quite detailed 'Broadcasting Policy for Canada', on closer inspection reveals a number of competing goals for regulation"; because of this, in the words of Ellis, the policy statement in section 3 of the Broadcasting Act "requires interpretation" (107). In all, the vague and ambiguous nature of the statutory guidance provided for regulatory implementation of a "Broadcasting Policy for Canada" allows the CRTC sizeable policy-making opportunities (108). This outcome results from the process of reconciling the conflicting goals which appear in the statutory purpose section; these conflicts make it "a question of policy as to which goal receives the greatest attention at any given time" (109).

Apart from the jurisdiction and functions of the CRTC, the powers of the regulatory agency in broadcasting matters are laid out in section 16 of the Broadcasting Act. In an adjudicative sense, the Executive Committee of the Commission is empowered to issue, amend, renew, suspend and revoke broadcast licenses. This is the basic mechanism for the exercise of agency power (110). The "legislative" powers of the Commission allow it to "prescribe classes of broadcasting licenses" and to "make regulations applicable to all persons holding broadcasting licenses". These regulation-making powers of the CRTC are "quite comprehensive" (111). Furthermore, in both the establishment of classes of broadcast licenses and the making of regulations, the agency is given wide discretion as it does not need to seek ministerial approval; decisions on these matters must nevertheless relate to policy provisions of the Act (112). In the exercising of its "legislative" supervisory powers, "the Commission has been very active in formulating policy principles as a guide to its licensing decisions and publishing these as White Papers" (113). While Johnston claims that this practice has helped to create a "more certain and consistent regulatory environment" in an area where there is a great deal of discretion, Baum expresses concern that these statements, "having the force of law" are "untouchable", beyond the reach of anyone but the CRTC. Overall, in using its ability to devise "policy statements" as a guide to its regulatory activity, without the need to seek permission, "the CRTC has laid the foundation for the exercise of substantial power"; furthermore, the Supreme Court of Canada has endorsed the Commission's use of policy guidelines (114). These statements

compel consideration of a corollary to the CRTC "exercising substantial power" - the nature of the control mechanisms possessed by other policy actors which can be used to direct this agency power.

The statutory relationship of the CRTC to its designated minister and the Cabinet is contained in section 23 of the Broadcasting Act; here the Cabinet is empowered to entertain appeals arising from Commission licensing decisions and the discretion to refer back license decisions to the agency for reconsideration. Such decisions can ultimately be set aside. The Cabinet however is not allowed to either substitute or vary a decision of the Commission (115). Furthermore, the Cabinet has no power whatsoever in a case where the Commission refuses to grant a license (116). In addition, the Cabinet possesses no guarantee that when a license decision is sent back to the agency for rehearing that the agency will take into consideration, and consider as binding for implementation in both this, and future licensing decisions, any given Cabinet reasons for the initial referral back. Meanwhile with respect to the legislative decisions of the Commission, the Cabinet has no power to control the agency's activities, as regulations neither require ministerial approval nor can be changed by the minister. This amount of independence enjoyed by the CRTC is highly unusual amongst regulatory agencies (117). This gives rise to the situation, as Janisch has noted, that while the government has no control over the regulations the Commission might make, it has a power of review over agency ajudicative decisions; thus the government cannot direct the Commission in its regulation-making

except to reverse an individual decision which applies that regulation (118). Due to this arrangement of Cabinet powers, when the agency takes a decision which causes political problems of one kind or another, government response is limited, in the words of Roman, to "an embarrassed disclaimer by the minister that he has no power to (direct) the agency, or a usually controversial after-the-fact (over-)ruling" of the agency's decision (119).

An element of control over CRTC regulation-making is also present in the subjection of proposed regulations to public hearings. CRTC regulations must also be formulated in accordance with the Statutory Instruments Act and examined by the clerk of the Privy Council in consultation with the deputy minister of Justice (120). Apart from an ability to set classes of eligibility for broadcasting licenses and to mediate certain aspects of the the CRTC-CBC relationship, the DOC minister also possesses the power to issue technical licenses under the Radio Act, an act required before CRTC-granted licenses can take effect (121). Meanwhile, the manner in which the Commission conducts its business, in terms of rules of procedure, is left almost completely to the discretion of the agency. Nevertheless, the Commission is required to publish proposed regulations or amendments to current regulations in the Canada Gazette, and to allow "a reasonable opportunity ... to licensees and other interested persons to make representations" with respect to the proposed changes.

Peers makes the point that the powers of the CRTC under the Broadcasting Act are "stated more clearly and comprehensively

that those of the BBG in the 1958 act" (122). A comparison of the two acts reveals that with the 1968 legislation, the power to issue licenses for the first time resided exclusively with the regulatory agency; until 1968 the Cabinet had reserved to itself the power to issue broadcasting licenses. Nevertheless in terms of the policy statement to be implemented via regulation by the independent authority, Penny remarks that the 1968 act is no more precise than the 1958 legislation which simply read that the broadcasting system should be "basically Canadian in content and character". Penny quotes Peter Grant's observation of the 1958 act and asserts the remarks are equally true for the 1968 legislation and the mandate given the CRTC:

> ... by failing to make any further statements of policy which might have clarified the board's mandate, the government in effect left it to the board to both define and solve the current problems (123).

The discretion allowed the Commission by the language of the 1968 act, "which it has not declined to exercise expansively ... has tended to insulate the Commission against legal attack" as the courts in turn have supported "a broad interpretation of the agency's powers" under the Broadcasting Act (124). Thus the broad mandate of the CRTC, combined with its independent regulation-making powers, limited government directive power and controls over the granting of licenses, and narrowly focussed appeal powers, have provided the Commission with a sizeable amount of discretion in the area of broadcasting regulation. Due to the granting of this discretionary power to the CRTC, Penny concludes in the same vein as Schultz that, regarding the general evolution of the regulatory process from a "policing" to a

"planning" role, the 1968 legislation delegates to the Commission important policy questions that "are not the traditional subjects of independent regulation" and that "this delegation seems to have been an act designed to eliminate areas of potential political conflict from the public arena". For Penny, "one can certainly question Parliament's abdication of its role" in providing guidance and leadership (125).

Meanwhile, in the field of telecommunications, for which the CRTC has been responsible since 1976, the Commission's political independence and ability to independently make policy takes on different forms. Here the CRTC derives its jurisdiction and functions from the National Transportation Act and the Railway Act. Its powers are drawn principally from sections 320 and 321 of the Railway Act, powers which are primarily rate-based as they authorize the Commission to approve all tariffs charged by federally-regulated telecommunications companies. Reflecting the statutory objectives laid out for railway regulation at the turn of the century, the Commission is empowered to ensure that rates are "just and reasonable" and that telephone companies under federal jurisdiction do not engage in "unjust discrimination" or "undue preference" (126). These briefly stated statutory objectives essentially comprise government guidance to the Commission in telecommunication matters. Neither act is furnished with a policy statement equivalent to that of section 3 of the Broadcasting Act. Examination of the Commission's telecommunications powers, in both an "adjudicative" and "legislative" sense, finds that the relevant legislation is again less comprehensive than that on the broadcasting side. The

agency's adjudicative powers grant it the authority to suspend, postpone, or disallow any tariff charged by a telecommunications carrier that is not "just and reasonable" or that is "discriminatory". Meanwhile, no "policy-making" legislative powers, in terms of being able to independently set regulations, are conferred on the agency by either the Railway or National Transportation Acts (127). Nevertheless, these legislative acts have failed to state policy principles which can govern CRTC decisions; in their absence the Commission has interpreted:

> The statutory criteria in relation to rates in a broad fashion; for example, the justness and reasonableness of rates has been strongly linked by the CRTC to the quality of the services for which the rates are being charged (128).

A consideration of the control mechanisms over CRTC activity in the telecommunications domain finds that Cabinet review of Commission decisions is provided by section 64 of the National Transportation Act. Provisions here allow the Governor-in-Council "at any time, on his own motion or on the petition of any party, to vary or rescind an adjudicative decision of the Commission" (129). Overall, these ministerial/cabinet review powers are highly extensive, especially when set against those provided by the Broadcasters Act. These political powers probably explain why, as Johnston points out, those desiring to contest a CRTC telecommunications decision "have tended to choose the avenue of a petition to Cabinet rather than a legal appeal to the Federal Court of Appeal" (130). In terms of the political control possessed over telecommunications legislative decisions of the agency, there are no provisions under the relevant legislation which allow for the

issuance of policy directives to the CRTC.

The limited policy directive power under broadcasting legislation and its non-existence in telecommunications matters has encouraged both the DOC and its ministers, dating from the mid-1970s, to propose legislation which would grant the minister and Cabinet this power. The catalyst for this legislation has been a provincial demand that policy issues be discussed at a government-to-government level and a DOC desire that it and the government, and not the regulatory agency, set communications policy (131). These proposals for an enhanced broad policy directive power have both arisen out of, and contributed to, the "bureaucratic guerilla war" the DOC and the CRTC are said to have waged (132). Janisch describes this type of conflict as common in situations where there is no fundamental agreement between a department and regulatory agency as to where the allocation of policy-making ability should lie (133). The legislation establishing the DOC and CRTC partially account for this state of affairs as both entities possess statutory mandates that by their broadness, encourage bureaucratic rivalry over "policy territory".

The broadness of legislative mandates will be a consistent theme throughout this study and is linked to the semantic inexactitude which often accompanies use of the word "policy", as discussed above. In the first case study of the thesis, for example, where the issue of microwave importation of distant signals was at stake and accusations were made that the Commission was making policy without permission Commission Chairman Pierre Juneau responded that the CRTC "did not make

policy" but simply devised regulations to implement the statutory policy to be found, in this case, in the Broadcasting Act. The discretion, however, which surrounds use of the word "policy" and how well this word describes the "statement" in the statutory act, is demonstrated by the fact that while the Commission was prepared to deal with the issue of microwave importation, an issue not mentioned in the Act, the agency a little later in the 1970s refused to deal with the topic of children's advertising, saying that as the issue was not included in the broadcasting policy of the Act it "required legislation" (134). This Commission response infuriated certain members of the House who wanted the agency to regulate in the area. The issue further demonstrates the flexibility allowed the Commission in reading the issues the 1968 act does and does not encompass.

As a summary to this review of how a regulatory agency can independently make policy, it is almost trite to cite Baum's remark that the CRTC derives its power "only from its statute" (135). Nevertheless the vagueness of the concerned statutes in terms of stated policy objectives has been demonstrated to afford the Commission sizable discretion. In the case of cable, which provides three of the four case studies of this thesis, although the government may have thought with the 1968 Broadcasting Act it had provided the agency with sufficient direction and policy objectives to deny the Commission a large policy role, the fact that the 1968 legislation "attacked few of the basic problems of Canadian broadcasting" provided the CRTC with both the occasion and necessity to give further substance to the legislation through the process of its implementation (136). Thus, apart

from the inclusion of cable under the Act, the 1968 legislation said nothing about major issues the Commission would face in managing cable, such as: the importation of distant Canadian and American signals (and the use of microwave relay), the ownership of cable hardware and, the parallel broadcasting service the implementation of pay-television would introduce.

Finally, in addition to proffered legislative reasons in terms of vague statutes and agency regulation-making ability as to why the CRTC has come to be a "policy-maker", it should also be mentioned that this behaviour has also been cultivated by virtue of the "collective inability" of successive governments to act and gain control of the communications policy situation, thus allowing the CRTC to "occupy policy territory" in cable television policy and, more recently, telecommunications (137). In these instances, both levels of government have been "sidestepped" and "fundamental policies made for them" (138).

These "fundamental policies" have been made for government on occasion because in resolving the major policy questions it faced, in the absence of a locus for communications planning provided by legislation in Canada, "the CRTC will stretch, and sometimes go beyond, the limits of its jurisdiction to achieve what it conceives to be the policy objectives of the Broadcasting Act". Much the same can be said in connection with the telecommunication issues faced by the agency after its 1976 assumption of telecommunications regulation; this is clear in the telecommunications case study of the thesis. Baum predicated in 1975, in terms of Commission regulation of broadcasting, that:

> Inevitably, however, the Commission must fall short of its objectives. This result is

> compelled, not only by the limiting words of the Commission's only source of power, the Broadcasting Act, but also by other actions of government that very directly touch broadcasting (139).

This study will explore and document how these "other actions of government" constrain the policy-making activity of the CRTC.

It is to a consideration of the methodology of the study and how it assesses the struggle to direct the regulatory process's policy-making aspect that the discussion now turns.

Part 3

To test the validitv of the claim that the CRTC has "been out of control" and usurped a policy-making role more properly the prerogative of the government or Parliament, this study will assess the independence the CRTC possesses as a policy-maker. The assertions leveled at the agency are subject to examination in four case studies which span a period of fourteen years, 1968 to 1982. The particular cases were chosen because they all involve contentious policy issues. One study covers the first few years of the Commission's existence while two others span a period of changing agency-government relations. A fourth case study ranges over a period of more than a decade. Collectively, the case studies also involve relations between the Commission and a multitude of actors: Parliament, the federal and provincial governments, powerful and well-organized interest groups such as the telephone companies and broadcasters and also more amorphous interest groups as the voting public and ordinary consumer.

The case studies have also been chosen as they involve a

variety of CRTC functions and powers. One study, which concerns the importation of American television signals via microwave relay, focuses on the Commission's regulation-making activity and accompanying use of "policy statements". A second case, involving the issuance of cable licenses for Saskatchewan and Manitoba, has an emphasis on Commission use of "conditions of license". In the third study, involving telecommunications, Commission use of its adjudicative powers is highlighted. The last study examines the process leading to introduction of pay-television in Canada and finds the Commission using a series of "policy statements" to say "no" to the service while concurrently refusing to make an adjudicative (licensing) decision on the matter. This use of "policy statements" is in contrast to the second and third case studies where no "policy statements" were issued although Commission "policy" on the questions involved equally existed. The choice of case studies also allows for a comparison of the effectiveness of different control mechanisms over the Commission. With the microwave importation issue, parliamentary pressure on the CRTC is predominant. In the case of cable licenses issued for Manitoba, the Cabinet appeal and review power is notably involved. In the telecommunications case study, a different type of appeal power is the chief issue, one which allows not simply for ministerial rejection of an agency decision, but its substitution. As concerns the study on pay-television, the use of suasion by the minister and others as a means to influence the Commission is the principal mechanism of control featured.

Sources for the case studies include CRTC decisions, policy

statements, annual reports, hearing transcripts and submissions; press releases, annual reports and ministerial speeches from the DOC are consulted. Newspapers and periodicals are also referred to, as is Hansard and proceedings from both House and Senate Standing Committees. Documentation has also been obtained from the National Archives of Canada in Ottawa. Interviews, where appropriate or necessary, have been conducted with key participants.

The variety of involvement by different groups of participants introduced across the case studies, along with diverse aspects of the Commission's jurisdiction and powers, and the use of various control mechanisms to direct the agency's behaviour, allows conclusions to be drawn as to: 1) what power the CRTC exercised that can be said to be related to a policy-making function; 2) what the strengths and weaknesses of the controls external to the Commission are that are administerable either individually or collectively over the agency; and, 3) whether the allegations made of the CRTC as an "out of control" policy-maker can be substantiated. The use of the case studies will subject the claims made of the CRTC not to a general discussion as has most often been the case, but to an examination which is historically-grounded and examines both the behaviour of the CRTC and other participants and also explores the constraints which exist and are exercised on an agency policy-making role.

Part 4

The claim has been made on numerous occasions that the CRTC has been "out of control": it has exercised policy-making powers not intended by Parliament when its mandate was granted and in so doing has both usurped ministerial prerogatives in this regard and has also defied ministerial directions on occasion. The hypothesis of the thesis accepts the conventional view that the agency has acted as an "independent policy-maker" during the period 1968-1982. In considering the validity of the claims and accusations made of the Commission, assessment has been made of the amount of independent policy-making power possessed by the CRTC. An examination of the relevant literature finds an emphasis on the known mechanisms of control commanded over the functioning of the agency, along with the factors which allow for CRTC discretion and activity as a "policy-maker". The literature has been less insightful on how these control mechanisms are used and to what effect. This study attempts to more fully document their use. The historical accounting provided by the case studies compels rejection of the stated hypothesis because the CRTC emerges as a highly fettered policy-maker.

While issues identified in the literature such as independent regulation-making powers, vague policy statements in statutory mandates, broad Commission interpretation of these mandates and the existence of a certain regulatory ethos which views the agency as "independent" and "expert" are demonstrated to facilitate a CRTC policy-making role, the Commission is also shown to be ultimately constrained by the control mechanisms

possessed by its political masters. Some of these "control" powers have been identified in the literature: the Cabinet prerogative permitting review of (certain) agency decisions and the making of appointments to the agency. The role of ministerial suasion is also shown to be particularly important. In addition, the study demonstrates other factors which can either contribute to an expansive policy role for the Commission or conversely act to fetter its influence and which have largely been neglected by the literature. Factors which allow for a Commission policy-making role include the agency possessing much of the government's expertise in communications matters, the ability of the CRTC to convene public hearings, the Commission need to arrive at decisions even in the absence of government policy, lobbyists agitating about the role of the CRTC, and the importance, at times, of the "personal factor" of the relation of the agency head to the elected government. Factors which act to constrain the agency's discretion in setting policy are much the same as those which allow it a policy-making role: the action of lobbyists, evidence produced at CRTC public hearings and the nature of the chairman-minister relationship. Thus many of the factors which either allow for a Commission policy-making role or act to constrain the influence of the agency are shown to be both informal and issue specific.

In sum, while the government at the time of passage of the Broadcasting Act appears not to have seen itself granting the agency a large policy role, the inclusion of an ambiguous and broad mandate which requires interpretation, meshed with an agency which considered itself from the time of its establishment

as "independent" and "expert", has led to the existence of an "active" CRTC - and the periodic agency-government conflict. These conflicts have largely arisen as a result of the agency dealing with policy issues that at times are highly political and on which the government typically provides the agency with insufficient guidance. While nothing is said in the Broadcasting Act, for instance, on the issues of microwave importation, pay-television, or cable hardware ownership or, in the area of telecommunication legislation, the amount of competition desirable, these issues have come before the Commission. In dealing with them the agency has inevitably made policy in the absence of government legislation or guidelines. Nevertheless the study demonstrates that once a firm opinion has been formed on an issue which has come before the Commission, the CRTC's political masters, whether this be Cabinet or Parliament, get what they want in the end - although they may have to wait a little in the instances where no direct controls on the agency exist, for the Commission's point of view "to come around".
A case study methodology has been used to examine the CRTC as an independent policy-maker and the extent of its power in this role. The evidence to support the study's conclusions is presented in Chapters Two through Five with the final conclusion in Chapter Six. They are organized in the following manner.

Chapter Two.

On 3 December 1969 the Commission announced that it would continue the prohibition of the importation of American television signals by Canadian cable systems jointly introduced six years previously by the Secretary of State and Department of Transport. The CRTC attempt to maintain the freeze as part of its early cable policy laid the Commission open to the wrath of both the general public and MPs whose constituencies were affected by the CRTC stance. These pressures culminated in the Commission ultimately abandoning the preferred policy position it had attempted to put into place via regulation. The effectiveness of the Commission as an "insulator" to the Cabinet is demonstrated as are certain informal control mechanisms over the Commission.

Chapter Three.

In 1976 the Commission issued cable licenses for the Province of Manitoba which included certain conditions of license involving cable licensee ownership of cable hardware. These CRTC ownership requirements however directly countered a provincial policy in Manitoba. Events in this chapter demonstrate the effectiveness of various formal and informal mechanisms of control that the Cabinet, provinces, and other participants can invoke to persuade the Commission to alter a licensing decision.

Chapter Four.

The issue history of the Commission's consideration of Telesat's proposal to become a member of the TransCanada Telephone System (TCTS, now Telecom Canada) is examined. The potency of Cabinet's formal controls over the Commission in the area of telecommunications is demonstrated although ministerial attempts to apply suasion are also evident.

Chapter Five.

The events surrounding the twelve year Commission consideration of pay-television and the merits of its introduction in Canada are considered. The evidence demonstrates that as the Cabinet lacks authority to direct the Commission to take the adjudicative decision which would license pay-television service, the DOC, cable industry and others favourable to the service's implementation, were reliant on the use of suasive methods to overcome the CRTC's resistance to license. The numerous forms these "suasive methods" can take are shown.

Chapter Six. The final chapter summarizes the conceptual and empirical evidence of the thesis. The role of the Commission as an "agenda-setter", usually assumed because of a lack of government policy on the issue at hand, is discussed. The patterns and relative influence of various factors which both grant the Commission a policy-making role and conversely restrict its independence in this function, are considered. The conclusion suggests the usefulness of the Commission as a "front line" planning regulatory agency to political actors and other policy

participants. During a process where the Commission takes "correct decisions", for which there is either political support or indifference, it is allowed to function unimpeded as a policy-maker. The rendering of a politically-insupportable decision, however, finds the Commission ultimately having to abandon its own position and bow to the pressure exerted by its political masters.

CHAPTER TWO

THE CRTC'S MICROWAVE SIGNAL IMPORTATION DECISION OF 1969

Introduction

This case study will examine the CRTC announcement in December 1969 of its intention to continue a 1963 government ban on the microwave importation of American television signals by Canadian cable systems. This was an instance where the agency was to interpret its mandate broadly. Although nothing is said in the Broadcasting Act concerning microwave importation, the agency found itself having to develop both a policy on the issue and a method of implementing it due to the growth of the cable industry. The Commission decision provoked the wrath of both the general public and, more importantly, political commentators and MPs. Charges of "overwhelming authoritarianism", "regional discrimination" and faceless bureaucrats taking power onto themselves all arose. In the end, however, political pressure on the agency was sufficient to cause it to reverse its position on the issue.

The microwave case provides an occasion to examine the hypothesis that the Commission has been an independent and uncontrolled actor in the setting of Canadian communications policy and has usurped policy-making prerogatives properly belonging to other participants in the decision-making process (ministers, government or Parliament). The three

and half year history of this story illustrates that the Commission definitely had its own views on how to handle the issue. Attempting to implement its chosen solution in the absence of input from other state actors, the agency opted for a response to the question of microwave importation that proved to be politically unacceptable. The Commission's political masters eventually prevailed upon it to abandon its position completely. This process of formulating and then abandoning a policy position reveals many of the traits ascribed to the CRTC: its diverse roles as technical expert, rule (regulation)-maker, policy-maker and political insulator. Overall, a scenario emerges where an "activist Commission" operates in a communications policy vacuum and yet is accused of going beyond its mandate as it handles an issue which requires attention. Its actions give rise to the question of whether it is appropriate for a regulatory agency to set policy in a sensitive area such as microwave signal importation. Additionally, the issue of the limited formal power of the minister and of Parliament over the CRTC appears in the case study.

This case study is important because of the scenario which emerges of a Commission ultimately dependent on its political masters. It shows that a number of "informal" control mechanisms exist, which, when exploited by different participants (such as ministers, departments, MPs or industry lobbyists), can force a change in agency position. The CRTC is revealed to be highly sensitive to public pressure. When the elected government is called upon to

make a difficult political decision, as in the present case study, the usefulness of regulatory agencies as "insulators" is also apparent. This chapter will also uncover a pattern of Commission policy-making which involves approximately five stages that will be evident in the other case studies: a) the gradual development of a policy issue, b) the initial CRTC response, c) the reaction to that early commission response, d) a period of stalemate then settling in as policy participants search for a compromise, and finally e) resolution/conclusion to the issue based on the Commission's acceptance of some variant of political will.

Emergence of the Issue

Before it was brought within the purview of the 1968 Broadcasting Act, cable television had been allowed to grow topsy-turvy in the absence of a government policy. Typical of early federal government treatment of cable was the handling of the question of cable system importation of American signals.

The relaying of distant stations through the means of cable television first appeared as an issue with the introduction of a federal Department of Transport (DOT) policy of September 1959. This policy allowed for the microwave relay of a remote Canadian television signal only if the receiving community had no off-the-air service. Furthermore, the Board of Broadcast Governors (BBG), the regulatory agency at the time, also had to allow such

relaying. In deciding whether to grant permission, the BBG would consider whether the market in question was able to support a local broadcasting station. The BBG preference for extending the broadcasting system in Canada was to augment the number of broadcasting stations in operation, rather than extend the reach of already-existing signals, through rebroadcasting, further into the hinterland. Thus the DOT policy effectively acted as a ban on the long-distance relay of signals via microwave (1).

The government desire to nurture local Canadian broadcasting produced a second federal policy statement in December 1963 when the Secretary of State and the Minister of Transport jointly announced a freeze on cable system microwave importation of American signals. The Secretary of State's interest in this matter reflected his responsibilities for the development of the Canadian broadcasting system. This government declaration asked the BBG for recommendations on possible legislative action and said the sanction was to continue "until the government has had the chance to formulate a long term policy" (2). This freeze on microwave use was actually part of a general freeze on the licensing of new cable systems in Canada which were obviously designed to import distant (and primarily American) signals. Thus the government action of December 1963 reflected not just a concern with the issue of microwave importation but indeed with the general development of the industry itself. The government had decided to act by the fall of 1963 since the proliferation

of cable systems licensed to that time was causing worry to the CBC and the Canadian Television Network (CTV). The two organizations viewed the new delivery systems as a threat to their economic viability since Canadians could now get American programs directly from their American network source. Additionally, the BBG had a great investment in ensuring the success of the new CTV network, which was then experiencing financial difficulty. Indeed, the possibility of helping the private organization through its difficult period with public funds was considered. The DOT also wanted the freeze as it was overwhelmed with the number of new cable applications and was experiencing difficulty keeping up with the backlog. Thus the basic point of the cable freeze was to stop the situation from developing any further until the government understood what the cable industry's likely effect on the ownership, Canadian content and general maintenance of the "official" (ie. over-the-air) Canadian broadcasting system would be. No time limit was set on either the general freeze on new cable licenses or the halt to further importation of American signals by existing cable systems. The freeze was to last as long as the government needed to study the situation.

In the end, the general freeze on the granting of new cable licenses was lifted by the government after a period of six months. The government found the political pressure to reverse its position impossible to withstand. While there were some legislative changes which affected cable during the mid-60s, during this period government attempted

largely to deal with the developing cable situation through the use of ministerial decrees and administrative techniques rather than any legislative approach (3). Meanwhile the BBG did not produce the recommendations asked of it on the particular issue of microwave importation of American signals and the situation hung in abeyance (4). Within government the issue and its political ramifications continued to be discussed. Nevertheless, while the use of microwave relay was discussed in the 1966 White Paper on Broadcasting, which preceded the 1968 Broadcasting Act, the issue ultimately did not receive any legislative attention (5). Thus during the 1960s, government legislative inaction on cable gave the impression that cable development was something which interested only a few entrepreneurs. In the words of former CRTC Chairman Harry Boyle, "Bell didn't care, the government didn't care, the bureaucracy didn't care" about cable and the possible consequences of its development except that "it was a kind of a nuisance"... (6).

During this period of benign neglect (1963-68), the cable industry experienced steady growth and the DOT-Secretary of State freeze on American importation continued. The industry was still small, in comparison to the dimensions it was to acquire in the 1970s. Its development concentrated for the most part in major urban centres close to the American border such as Toronto and Vancouver where cable systems could capture any desired American television signals directly off-the-air from the

near-by U.S. border stations (7). During the 1960s cable investors focused their efforts on installing systems in the larger and more lucrative Canadian urban centres. The cable industry, still in its infancy for the most part, was not easily able to finance the costs of microwave transmission in order to bring in distant American signals and thus establish and make attractive cable systems in Canadian cities further from the border. Nevertheless, by the time of the enactment of the Broadcasting Act in 1968, cable was becoming firmly installed in the larger Canadian centres of Toronto, Montreal and Vancouver. The industry was poised for a move into the less lucrative markets of smaller cities. The growth of the cable industry during the period immediately preceding and following the CRTC's assumption of its regulation is impressive. Total revenues increased from $22.1 million in 1967 to $81.4 million in 1972 (or by 268 percent). Meanwhile operating profits increased from $8.42 million in 1967 to $39.46 million in 1972 (369 percent) (8).

Initial Commission Policy

The establishment of the Commission prompted the first systematic attempt to deal with the development of the cable industry. The DOT had continued to issue cable permits up until the eve of the inauguration of the new CRTC on April 1st, 1968, which would henceforth be the cable licensing body (9). The licensing process of the DOT had created a confusing situation with the occasional overlapping of

licenses. The new CRTC was directed by the Broadcasting Act to "transfer these $100 permits into broadcast-receiving undertakings" (10). The transfer of responsibility for cable regulation from the DOT to the new CRTC, gave the agency the mandate to supervise the industry from the point of view that both the private and public broadcasting sectors, along with the cable industry, formed a "single system". This notion of a "single system" presumably meant that cable, previously regulated only on technical grounds, would henceforth need to serve the objectives laid out for the broadcasting system in section 3 of the new Broadcasting Act (which involved issues such as promoting national unity and various social/cultural goals). With regard to this point, the government management of cable gave the impression of political decision-makers lacking any idea of how to handle its growth. The federal government had instituted a general ban on the industry in 1963 only to have to lift it shortly thereafter. Furthermore, while a "partial" ban on the specific issue of microwave importation of American signals had continued, the assumption seemed to be that the newly-created CRTC would now take action on cable (as part of a "single system").

One of the first tasks of the Commission was to discern which holders of yet unimplemented DOT cable licenses intended to start up a system. The lucrative aspect of cable had become more apparent as the industry developed. Licensees were beginning to retain their unrealized cable system licenses until a resell allowed them to turn a

sizable profit (11). Those who had done nothing with their permit (perhaps having taken it in the first place with the expectation that the microwave policy was soon to be revised) were to be "weeded out" by the Commission. During this early period, the CRTC arrived at some basic decisions regarding the operation of cable (12). These decisions, along with sorting out the areas for which licenses had been issued, all dealt with cable in areas of the country where over-the-air broadcasting was sufficiently developed to allow the cablecaster to build his business delivering enhanced off-air signals. The Commission had rationalized the operation of existing cable systems by early 1970. The situation then arose that householders for instance in Toronto could receive reliable Canadian and American signals through their cable system while their co-workers living a little to the north (Thornhill for example) could not, since the local cablecaster was unable to receive the American network signals off-air. Thus the Commission was faced immediately with the dilemma that people living in the same basic geographical area were receiving different cable-television service.

Meanwhile, in its consideration of cable, the new Commission was intensely concerned with preserving the "logic of the broadcast license". The CRTC was preoccupied with preserving the basis on which broadcasting licenses had been granted (13). Indeed, the idea of the sanctity of the local broadcast station and its corresponding coverage area "was paramount in all CRTC considerations of cable" (14).

Additionally, the Commission, knowing that both the CBC and CTV signals at that time reached only 70% of the Canadian population, felt that its mandate compelled its initial priority to be the extension of the national service (CBC/RC) and then that of the private service (CTV/TVA) to as many Canadians as quickly as feasible (15). Thus given the Commission's concern for the continued health of the Canadian broadcasting industry and the domestic programming it provided, the CRTC's attitude to cable (and to microwave in particular), was to "dampen, cool the whole thing down until (it was) realized what the ramifications were" (16).

Nevertheless, having spent 1968 and the first part of 1969 rationalizing the cable scene, the Commission was about to discover that the Canadian public's appetite for increased viewing choice could not be retarded simply because the CRTC harboured misgivings about cable's possible consequences for the broadcasting system. With respect to microwave importation, the Commission had initially decided to maintain the status quo (the DOT-Secretary of State freeze). However with dependable cable systems now operating in the larger urban centres along the American border, the Commission prepared to hear cable applications for as yet unserved smaller and more remote Canadian cities. These applications could contain proposals which would contemplate the use of microwave to relay distant Canadian signals (17). Prompted to action as the result of industry representations, the agency begun work to examine the issue of microwave in the spring of 1969 (18). Cablecasters,

while happy that the agency was considering larger-scale microwave relay of Canadian signals, had also asked whether the existing microwave policy could be changed to allow for the importation of American signals (19).

The Commission announcement that it was considering the question of microwave relay was accompanied by another in which the CRTC requested written views on the use of microwave in "advance of considering individual applications" (20). Simultaneously the Commission invited cable system applications for Kamloops, BC and Sudbury, Ontario which would involve use of microwave to deliver distant Canadian broadcast signals (the signals for Sudbury were to emanate from Toronto while those for Kamloops were to be from Vancouver). Hearings for these applications were slated for the fall of 1969. The Commission wanted to be satisfied before authorizing any such retransmission, however, that permission to microwave distant signals would not abort the establishment of possible broadcasting outlets in those localities. The day following these announcements, in a speech before the Canadian Cable Television Association (CCTA), Commission Chairman Pierre Juneau made it clear that cable was not to be injurious to the further development of the broadcasting system (21).

While the freeze of 1963 had only prohibited the further development of microwave relay, while existing microwave importation in the provinces of Quebec and New Brunswick continued, technological advances during the 1960s had progressively reduced the cost of microwave

transmission, thereby making the relay of a television signal over a considerable distance economically more feasible. Thus the Commission had issued an invitation for cable applications involving microwave relay of Canadian signals only to find, because of the existence of this increasingly favourable cost factor, applicants including in their proposals the microwave importation of American signals (22). The cablecasters wanted the American signals in order to render their "product" more attractive as they prepared to move into the unserved communities further from the American border. The broadcasters meanwhile made their opposition to any relaxation of the 1963 policy very clear to the Commission. They feared the deleterious effect the cablecasters' plan for direct importation of US network signals would have on their advertising revenues. This could happen because up to that point the CBC and CTV networks had possessed a monopoly in providing American programming to non-border Canadian markets and direct importation could do away with this lucrative practice (23).

By the time the Commission had invited discussion on the topic, the issue of microwave relay had come to be identified as needing to be fought before the CRTC. Yet the agency was only one site at which the traditionally powerful broadcaster and the increasingly important cablecaster could do battle on this question. The Commission was not the only entity within the federal government with an interest in the matter. The freeze of 1963 had been jointly introduced by the DOT and the Secretary of State, and under the provisions

of the 1968 Broadcasting Act the CRTC had come to take over the cable responsibilities previously held by the DOT. Therefore, the Secretary of State continued to hold responsibility for the broad thrust of broadcasting policy in Canada. However, during the period of 1968-1971, the "Broadcasting Unit" at the Secretary of State effectively possessed only one member and thus had a limited capacity to perform research in this area, even in comparison with the Commission (24). The DOC, which possessed final licensing power over microwave systems, did not consider the issue belonged to it since "programming content" was involved, an area which belonged to the CRTC. The CRTC for its part considered microwave as an end point in the cable system; therefore it fell within the prerogative of the agency's responsibilities for cable (25).

Despite the question of who had responsibility for the microwave question, it was the Commission which held public hearings, which, as will be seen, the cablecasters were skillfully able to use to their advantage. The CRTC's energetic willingness to hold hearings on the topic as part of its review of cable helped ensure that henceforth the issue would be publicly perceived as implicating the Commission. Thus very early in its life the question of microwave importation was "considered to be clearly a Commission issue" (26).

The combination of the Commission's concern to extend Canadian broadcasting signals to the unserved population, cable industry prompting for a reconsideration of the

American microwave importation policy, and, the enthusiastic energy of a new regulatory agency eager to bring order to the cable picture, led the Commission to provide the topic of American signal importation with the public exposure attendant upon a public hearing. This public review, however, was to be held against the backdrop of the federal government giving evidence that it wanted to continue the 1963 freeze. Indeed, during this period, the DOC shut down a cablecaster who had illegally begun importing American signals from Maine to his system in New Brunswick (27). Thus, beginning its review of microwave relay while "intrusions" of American signals into Canada were already occurring, and in light of an apparent governmental position on the matter, the Commission was to find itself in the incongruous position of trying to devise means by which to bolster the production of Canadian broadcast programming. This was a primary concern of the organization, while it dealt with proposals to bring American network programming directly into the country.

Two sets of hearings were held during the fall of 1969. The first, in October, dealt with the applications for Kamloops and allowed discussion of the basic issues concerning the use of microwave. Although Chairman Juneau of the Commission stressed that this hearing was intended "just to determine the need for microwave", this "exploratory" discussion was held while applications which proposed the use of microwave were submitted to the Commission (28). As could be predicted, at the hearing the

broadcasters were against long-distance microwave signal importation (although not unanimously), while the cable association and individual cable applicants were in its favour. Also supporting microwave transmission were the Province of Alberta and AGT (Alberta Government Telephone, the provincial telephone company), along with municipal representatives such as the Mayor and Chamber of Commerce officials for the City of Calgary (29). The pivotal position of the Commission in determining whether this broad support for microwave would be translated into service was acknowledged during the hearing (30). Also acknowledged was the Commission's dilemma of being concerned with the economic health of the broadcasting sector while the public was likely to insist on enjoying the benefits microwave service could bring in terms of expanded viewing choice (31). This predicament, regarded as a conflict between the individual's "happiness quotient" (desire for the viewing variety that microwave service proffered), versus the national well-being (in terms of Canadian broadcasting and its related production industry), was recognized by individual Commission members. The Chairman himself asked whether denial of microwave service was feasible (32).

The second hearing was held the following month (November 1969) and provided further demonstration of the popular desire for microwave-supported cable systems. James Jerome, the Liberal MP for Sudbury, presented the Commission with two petitions in favour of the service which carried "in excess of 20,000 signatures" (33). If the Commission

had invited applications for cable systems employing microwave "as a test" to gauge its popular support, it now possessed ample evidence of the desire for the service.

During this time the pressure from local and municipal officials, along with MPs, for the Commission to grant permission for microwave retransmission by cable systems took the form of representations made to the Secretary of State. The CRTC was kept informed of visits made to the ministry on behalf of the microwave importation issue. Talks between the ministry and the agency reflected the latter's concerns about the issue in terms of its possible impact on the broadcasting system (34). The Secretary of State expressed its opinion that the topic had become one of some political concern and that the ban on importation was politically impossible to maintain. The Secretary of State, Gérard Pelletier, who was responsible for broadcasting policy (and who was also the designated minister for the CRTC in the House), had to contend with the civic pressure developed by cablecasters in certain cities for the use of microwave. This pressure was often expressed in terms of local pride and the sentiment that "if Toronto can have American signals so should we". The activity of the cablecasters had resulted in a chain of events where civic representatives and citizens who wanted microwave service pressured their local MP on the point, who in turn made a "courtesy call" on Secretary of State Pelletier. Pelletier's concern at that time had to be the re-election of those caucus members elected from traditionally

non-Liberal ridings. These were also the areas where the question of microwave importation was most likely to become an issue in any forthcoming election.

In light of the events of that fall's hearings and the success of cable entrepreneurs in generating political support for microwave use on several levels, there was wide-spread surprise when Commission Chairman Juneau announced on 3 December (1969) that the CRTC would continue the old Secretary of State-DOT policy and deny the use of microwave in connection with cable systems to import American signals (35). The Commission claimed that at least for the moment, the importation of American signals was unacceptable. The fall 1969 hearings had persuaded the Commission of the potential danger of direct importation of American signals to the revenue base of the Canadian broadcasting system. Accordingly, the CRTC announcement was meant to be a "very strong affirmation" of the existing policy (36). The announcement was certainly the most elaborate decision the Commission had produced to date. It included the background studies which had been commissioned on the topic, along with their extensive charts and graphs. The Commission intention, however, to make it very clear that microwave relay of American signals had to be a "no-go", and to have this decision stick, was to run into much opposition. The CRTC had done no "pre-selling" job before making its announcement; the agency appeared to believe it could expect government support for its position and/or it could ride out any storm that might arise over the

issue (37). However, as a senior aide to Juneau was later to say, "the CRTC was naive in what it believed would be the public reaction" (38).

The Reaction

The Commission decision was met with howls of outrage from many quarters. As a result, the finer points of the Commission announcement were lost: specifically, plans for a future national cable policy that could incorporate the use of microwave, but with a strong Canadian signal (39). The strength of the western response was apparent in newspaper reports on the Commission ruling which remained first section news for several days. Writers called for western members of the Cabinet to pressure for cabinet review of the Commission decision (40). One newspaper editorial admonished Parliament to overcome its reluctance to meddle in the affairs of the CRTC and to "keep the pressure on (this) fog-bound commission" (41). The tone of the journalistic reaction had an element, as a CRTC staffer was later to remark (tongue-in-cheek), that "one way to create a demand for something is to say you can't have it" (42). At any rate, the western media made it clear that they wanted their region to receive the American network signals that were available in Toronto. Meanwhile the Alberta Liberal leader, Jack Lowrey, said that the decision would encourage "western separatism" (43).

On being asked whether he was going to review the CRTC

decision on microwave, Pelletier responded that the Commission was "highly independent .... but the Broadcasting Act allows for certain kinds of action". He nevertheless stated that he wanted first to examine the Commission's reasons before making a decision on possible future action (44). How much Pelletier needed to "examine" the argument behind the decision seems questionable given that both he and his department knew of the Commission's intentions in this regard beforehand (45). During the weeks following the CRTC announcement no more mention was made of Broadcasting Act provisions allowing "for action" on the Commission decision and Pelletier instead progressively disclaimed any ability to affect the Commission decision.

However, a shift of government stance was evident upon Parliament's return from the Christmas recess. In January (1970), the Parliamentary Secretary to Pelletier, Robert Stanbury, rose in the House to say that due to "concern expressed" the CRTC annual report was to be referred to the House Standing Committee on Broadcasting in order to allow the Commission the opportunity to "explain" its decision (46). This announcement came after Stanbury had held a series of consultations on Pelletier's behalf with MPs on the topic of the CRTC microwave decision. Those MPs expressing concern over the CRTC decision included not only vocal opposition members from remote areas but also a sizeable number of representatives from the government's own caucus. All felt very strongly that the CRTC had been discriminatory in its ruling (47). The member for the

Kenora-Rainy River riding in northern Ontario, John Reid, was one of these concerned caucus members (48). He was also the chairman of the Standing Committee on Broadcasting and head of its "steering committee".

It is evident that cable operators desirous of establishing systems in more remote locations, and needing the microwave facility to do this, had been able to attract the interest of MPs in the involved ridings. Such appears to have been the case with Geoff Conway in Timmins, Ontario (renowned as a "pioneer" in the development of the cable industry) and his MP, Jean Roy, a House Member who took a particular interest both in the microwave importation question and cable policy in general (49). Perhaps more importantly, with the 1968 "Trudeaumania" mystique already diminished, Liberal MPs were edgy about re-election. To many of them the Commission ruling seemed an unnecessary worry to carry into the next election (50). This re-election concern led to discussion of the Commission's announcement not just by the Liberal caucus but also within the framework of the "Political Cabinet" which then existed (thereby making the issue's political ramifications the knowledge of the ministers in attendance) (51). Thus, given this MP interest both immediately before and after the Commission decision, it is perhaps not surprising that House Members would seek a parliamentary forum in which they could provide their contribution to the issue.

Two days after being summoned, the Commission appeared before the House Committee (52). During the meeting MPs

wanted answers on two points: Just whose policy was the microwave decision, and, secondly, who was responsible for the principles implemented by the decision? (53). Throughout the session Juneau was questioned in an extremely vigorous and aggressive manner by Liberal and opposition members alike. He argued that the decision was simply "an interpretation of the will of Parliament" and that the policy behind the decision was "the policy enunciated in the (Broadcasting) Act" (54). Juneau added that given that the principle involved was not one "dreamt up by the Commission but (one proclaimed) by Parliament" the Commission must refuse responsibility for the decision rendered (55). With MP attempts to determine the statutory reference of the decision being abandoned (after the provisions of both the Broadcasting and DOC Acts had been discussed), bitterness and frustration entered into the discussion as the Commission was criticized for having created a problem by using an "overly-blunt" instrument in ruling for prohibition (56). The exchange became so heated at one point that the meeting was adjourned (57). The encounter between the Commission and the Standing Committee left the Commissioners, in the words of one staff member present, "'feeling sandbagged' by the members of Parliament" because they felt the agency's action upheld a government policy "where there had been a long historical position taken" (58). Despite whoever may have first formulated the policy, and however long it may have been in place, the meeting made clear to the Commissioners that MPs wanted the federal

government to change its policy on the issue of microwave importation from the United States (59).

Over the next short while the Commission was inundated with hundreds of letters from ordinary Canadians in connection with its December announcement. Most expressed their displeasure (60). These letters were suggested by cable companies in places such as Thornhill and Ottawa, Ontario (which were counting on the increased viewing choice made possible by microwave retransmission) who actively informed their subscribers about the implications of the Commission decision (61). The Commission acknowledged its correspondents, responding that their views would both be given "careful consideration" and would "have their influence on the proposed regulations" which were to be further discussed during a hearing scheduled for April (1970) (62). The topic of microwave warranted further discussion given the uproar after the December decision and the lack of forthcoming expressions of government support for the Commission position. It had become a matter, in the words of the Commission legal advisor at the time, "of the CRTC shifting its position in line with the changed government stance since 1963" (63).

The Commission's Response

In keeping with the "altered circumstances" that its announcement spoke of, the Commission in April (1970) proposed new "1 and 1" cable regulations that would allow

the carriage of one (1) non-Canadian commercial station and one (1) non-Canadian non-commercial station (64). The Commission presumably hoped that this relaxation would dampen the controversy as it felt these guidelines could be applied "almost uniformly across the country" (65). Nevertheless, apart from notable exceptions such as former Secretary of State Judy LaMarsh, who publicly expressed support for the Commission, the CRTC move appeared to satisfy few (66).

Following the release of the proposed guidelines in April, Chairman Juneau once again appeared on the behalf of the Commission before the House Standing Committee on Broadcasting. This event occurred over a period of two days. The meetings opened with questions as to whether the Cabinet and Prime Minister had telephoned the Commission, and what interest group wanted the meeting held incamera (67). Indeed, by this point Prime Minister Trudeau was informed on the issue, having been visited by Jerome (68). Debate at the hearing quickly clarified that the Commission's April "1 and 1" regulations were "just proposals" which could be changed with respect to the schedule of introduction and, indeed, substance (69). During the course of his appearance, Juneau stressed the independence of the Commission, saying that the Cabinet had played no role in the formulation of these latest regulations. He also stated that the definitive position of the Commission was to await a further hearing to be held in the fall (70). This indication of Commission flexibility

nevertheless did not prevent tempers flaring as had been the case with the earlier committee meeting. The tone of the meeting was set by the remarks of Walter Dinsdale, Conservative MP for Brandon-Souris, Manitoba. He accused the Commission of exercising "thought control" in addition to "regional discrimination". An evidently exasperated Juneau replied that the CRTC was "insulted" as a group by the use of such terms (71). He also remarked that:

> ... if Parliament wants to take responsibility for authorizing the importation of programming by microwave, change the Act and tell us that it should be done that way, it would relieve us of a very difficult task (72).

For his part, John Reid, the Committee chairman, while acknowledging that timing of the implementation of regulations were "within the authority of the Commission", (committee members had asked the Commission for a 12-month delay in the introduction of the microwave regulations), nevertheless believed that as the agency was "evolving" its regulations, they were "going to have many conversations and meetings like this with the Commission" (73).

In the days following the Committee meeting, MP discontent remained evident as, during Parliament, the House was called upon to express its will on the latest CRTC proposals (74). The government did not act upon these requests. With little transpiring in the Commons on the issue, Parliamentarian interest shifted to the Senate Standing Committee on Transport and Communications. There DOC Minister Eric Kierans, making his annual (estimates) visit, found the Senators most interested in learning more about both the growing role of cable in

communications and the nature of the working relation which existed between the DOC and the CRTC. In response to questioning on the latter point, Kierans spoke of a good relationship existing between the two organizations, one marked by consistency and "very close co-operation". Nevertheless, as far as Kierans was concerned, the CRTC's cable proposals "relate to the content and the quality of broadcasting (which) really has nothing to do with us" (75).

If the Minister seemed placid about CRTC activities, the latest Commission suggestions had nevertheless failed to find favour not only with House members but also with pressure groups such as the "Edmonton Citizen's Committee of Cablevision" (76). Meanwhile in British Columbia, a Liberal MLA called upon the federal government to replace all the members of the CRTC (77). In all, the next few months witnessed parliamentarians attacking the Commission, Pelletier continuing (quietly) to support it publicly, and interest groups intensifying their lobbying efforts; the cable association "restructured" its association "in order that it (might) bargain more effectively with the CRTC" (78). As a crowning touch, it was rumoured that the DOC was actively considering moving cable out from under broadcasting legislation and the Commission's jurisdiction in order to allow it to become a common carrier (79). Nevertheless, while the Department was "considering" what to do with cable, throughout 1970 the Commission faced an ever-increasing number of cable license applications which required some kind of response. A great number of these licensing requests involved areas for which the Commission had not invited tenders and were predicated on the

use of microwave retransmission (80). In any event the Commission felt it could not easily turn these applications aside because of the local politics and notion of "civic pride" involved - many of the submissions included letters of support from the mayor and other community officials (81). These applications were an additional source of pressure for the Commission as the sooner the agency settled on an approach regarding microwave transmission, the sooner it would be able to process the "sheer number" of applications being submitted.

The Commission's promised fall (1970) hearing did not take place, probably because the Commission was busy both handling the applications being received and considering its policy options (a House Standing Committee member more facetiously describes the agency during this period as busy trying to "distort reality to its policy") (82). Parliamentary interest in the affairs of the CRTC continued, however, with the appearance of the Report of the Special Committee of the Senate on the Mass Media (popularly known as the "Davey Report"). The Senators considered the activities of the Commission even though, as the report acknowledged, the functioning of the regulatory agency was not within the study's mandate. While the members of the Upper House were basically supportive of the Commission, they were not sympathetic to the Commission's cable policy and called for it to be both further developed and made "more realistic" (83). Thus the Commission found criticism even at the hands of a parliamentary group that considered itself a "great friend" of the agency (84).

During the early months of 1971 a series of events showed

the Commission to be cautiously disengaging itself from any particular policy position on the question of microwave importation. This movement was evident with the publication in February of The Integration of Cable Television in the Canadian Broadcasting System. Introduced as a precursor to a planned cable regulations hearing (now set for April), the document "outlined possible solutions" and did not "contain proposed regulations" to the microwave issue (85). The document was interpreted as reflecting a Commission in a state of flux on its own proposals and welcoming "guidance of all kinds" (86). The document predicted that the next series of hearings would lead the Commission to develop and release (yet another) policy statement "which will serve as a basis for proposed cable television regulations". These proposed regulations were to be considered at (yet another) public hearing sometime in the fall of 1971 (87). While declaring that cable still had to be the subject of extensive scrutiny, the paper nonetheless demonstrated a fundamental shift in the Commission view towards cable, saying it would be better "if restrictive measures could be avoided .... (because) a relatively large number of Canadians have clearly expressed the view that they like and want (cable)" (88).

At approximately the same time as the appearance of this document the Commission also released Cable Television in Canada. In an attempt to explain past Commission actions on the issue of microwave, and perhaps to avoid being further characterized as dogmatic on the issue, the paper emphasized that the three public statements in the past two years on the topic (those of 13 May 1969, 3 December 1969 and 10 April 1970) had only been intended

to provide a basis for public discussion of cable policy and "did not constitute regulations, (but) rather were proposals .... while a more detailed policy was being worked out" (89). Concurrent with the appearance of these publications, Chairman Juneau was publicly saying that the Commission was "not married" to any of its alternative suggestions (90).

These demonstrations of flexibility came in the face of continued pressure on the CRTC (into 1971) to further alter the modifications it had introduced in April 1970 (the "1 and 1" importation allowance). The flow of letters opposing the Commission's stance on the question of importation (which had begun with its original announcement of December 1969) had not ceased (91). Meanwhile a cable company-commissioned Woods Gordon survey of cable subscribers' attitudes was submitted to the Commission. This study demonstrated that the public's greatest reason for subscribing to cable was to receive otherwise unavailable American stations. Moreover, six times as many respondents opposed the CRTC's wish to limit the number of American stations received via cable as those that supported it (92).

Apart from ongoing cable industry activities, Parliament and government maintained pressure on the Commission to further relax the April 1970 proposed regulations. In Parliament the House Standing Committee on Broadcasting and its Chairman John Reid continued to think of the proposals as "negative" and let the Commission know this. The Standing Committee sentiment was also shared by many other MPs and members of the Liberal caucus. An indication of this feeling was that during early 1971 it was

possible to gather "in excess of 40 MPs even for an informal discussion" of the issue (93). Meanwhile, within the government, there was continuing political pressure on the Secretary of State which itself disagreed with the Commission on the issue. Pelletier, while careful to say anything in public which could be construed as criticism of the Commission, (being solicitous to harm neither the reputation of Juneau, his personal friend, nor the reputation of the agency), nevertheless had been privately working for some time to prevail upon Juneau to change the Commission's philosophy on the matter. As a minister, Pelletier's concern about the re-election of government members from marginal ridings in the west and, indeed, more secure ones in Ontario (such as Jerome and Roy), led him to have serious discussions on the topic with Juneau. This ministerial action was prompted by government members worrying that the abstract notion of the "arm's length" relationship of the regulatory agency to the government would not be understood by the public and that voters would make no distinction between the agency and the elected government. If that were the case, MPs were concerned that they would pay the price for any public discontent at the next general election. Finally, pressure on the Commission's stance on microwave importation was also evidenced from within the government bureaucracy. The DOC, to the displeasure of the agency, began authorizing cable systems with the capacity to carry more than 12 channels (94).

Despite these events, Commission feistiness was apparent in the interlude between the publication of its February CATV "non-policy document" paper and the April hearings which found

the Commission, in its words, "endeavouring to indicate its point of view" (95). However those receptive to the agency's "point of view" were few in number: the Commission found some public support in the form of a sole Senator who commended the agency on the "outstanding job" it had been doing in the name of Parliament by resolving the "dreadfully complex problem" of reconciling cable and television (96). Still, the more typical senatorial interest in the CRTC at this time, as had been the case the year before, was in learning what were the mechanisms by which the government could influence the actions of the agency (97). Nevertheless, on the eve of what was to prove to be the Commission's last set of hearings before issuing a definitive (and acceptable) policy position on microwave importation, the agency received a vote of confidence from the government when the Parliamentary Secretary to Pelletier, Hugh Faulkner, rose in the House to defend the CRTC. Saying that the agency was simply doing the job that the Broadcasting Act had assigned it, Faulker also stated that "it was the House which decided what broadcasting policy should be and we are responsible for it" (98).

At the subsequent April hearings the principal protagonists presented anew the arguments heard at previous hearings (99). However during the interlude between this hearing and previous ones, the Commission had undergone an attitudinal shift on the issue, coming to lose much of the initial goodwill it had held towards the broadcasters. The latter had publicly dragged their feet in offering their cooperation on the revised Canadian content requirements that the Commission simultaneously proposed

(while dealing with the issue of microwave) and this had intensely annoyed the CRTC. This Commission sentiment came about as the Canadian Association of Broadcasters (CAB), widely perceived as often acting in defiance of existing "cancon" rules, had attempted a filibuster at a public hearing convened by the Commission to discuss its new content proposals. The CAB action had the group viewed as persona non grata by the agency, one not only lacking clout but being actively ridiculed (100). This was to prove unfortunate for the CAB, as ironically, at the same time it was opposing the CRTC's proposed "cancon" regulations, it was also asking for the agency's "protection" on the issue of microwave importation. The unprofessionalism of the broadcasting association, which was the Commission's only vocal ally on the microwave issue, was only made all the more obvious by the public relations finesse of the cable lobby. The broadcasters' behaviour did not help the Commission in its efforts to deny the increased use of microwave and the importation of American signals.

The poor showing of the broadcasters at this latest Commission hearing evidently had its ramifications. When speaking of cable in its aftermath, Juneau was to say that it was "not realistic" to limit what technology had rendered feasible for to do so evokes "tout de suite l'argument de l'autoritarisme écrasant" (101). Juneau made plain that, from now on, the Commission's energy would be spent on seeking to reconcile cable and television. An integration between the two as "broadcasting undertakings" would have to be achieved (102).

A Policy Compromise

After the hearing, while awaiting the Commission's verdict, House Standing Committee discussion of the CRTC actually brought forth praise: the Commission was commended on the job it had been doing with cable, on having had "vision", and for having had the wisdom to reverse its earlier unpopular stances (103). The member making these remarks seemingly anticipated the announcement on microwave the Commission was to make the following month. At that time (July 1971) the latest Commission policy paper on cable appeared. While the accompanying press release repeated the claim that cable had damaged broadcasting, it also said that this policy statement was "intended to assure that viewer choice is in no way restricted or reduced" (104). The document itself demonstrated the ascendancy of the cable industry as the Commission stated it would henceforth "encourage" the development of cable television to allow it to play its part in the broadcasting "single system" (105). Crucially, the number of non-Canadian commercial stations received via microwave would henceforth "generally be limited to three" (106).

On the surface, this final policy paper appeared to indicate a Commission that, at a minimum, had resigned to accept the reality that cable was an increasingly important component in Canadian communications. The document nonetheless had only appeared after much time and struggle had been spent on its wording. Furthermore, the appearance of a CRTC willing to allow a more expansive scope to cable actually belied a commission which still looked upon the industry with a considerable degree of

suspicion and reticence. Events had made it obvious that the "cable monster" was not easily controllable. With the evaporation of the CRTC's hope that the microwave issue would simply die away, the Commission had given the industry some room to grow, but with the intention that this growth be carefully circumscribed (107). The introduction of this latest policy saw the blanket December 1969 ban on the importation of American signals give way to one founded on a city-by-city basis. Now the Commission would consider each cable request for importation only after the agency determined that Canadian broadcasting in that market could withstand the competition (108). The preamble to this latest document was careful to state that the basis for the proposed cable television policy had been established by Parliament as it was Parliament which had taken the basic policy decision that cable was "to be integrated into the broadcasting system". Related to this, the Commission described its activities of the previous two years as having "pursued the implementation of this basic policy decision of Parliament". The result was this latest statement which represented "a cable policy (developed) within the framework of the present Broadcasting Act" (109).

Thus cable industry agitation and "the scream that would not stop" in provincial legislatures, municipal chambers, House of Commons and Senate during the period between the appearance of the April 1970 guidelines and those of the July 1971 paper, appeared to influence the Commission's decision to increase the allowable carriage of American signals via microwave relay (110).

Final Resolution

The publication of the July 1971 proposed regulations marked the end of the battle over microwave importation as a policy issue. The struggle to have the new Commission policy implemented as a standard regulation still lay ahead, however, and final resolution on this point was not to be achieved until October 1972. At this same time a ministerial transfer of Pelletier from the Secretary of State to the DOC was to occur. This change was to affect profoundly the rules of the regulatory game and the CRTC role within that process (see "Conclusion" below). But first a discussion follows on the struggle waged to implement the CRTC's 1971 microwave policy.

Although the cable industry had won the "policy war" in terms of having a favourable policy adopted, the broadcasters were not yet willing to concede defeat. Their hoped-for salvation lay in the 1971 policy stating that the Commission would be willing to authorize importation only if the agency felt assured that Canadian broadcasting in the affected region could withstand the competition. The existence of this clause allowed the broadcasters to shift gears after July 1971 and fight a "guerilla war" against the cable industry. The broadcasters' strategy would be to argue on a city-by-city and hearing-by-hearing basis as the cable industry progressively came before the Commission to ask that the 3-signal importation regulation be implemented with their license. To do this successfully the broadcasters needed to show that authorization would prove deleterious to their economic health (and ability to

produce Canadian programming). Ironically, they were helped in this task by the financial burden imposed by the Commission's desire that they extend their signal (via rebroadcasters) into peripheral areas (111).

The turning point in this battle between cablecasters and broadcasters occurred October 1972 when cable licensees for Calgary and Edmonton requested condition of license changes which would permit, in light of the 1971 policy, the carrying of two American networks in addition to the one already allowed them under the earlier 1970 policy. These cable entrepreneurs had encountered cash-flow problems and consumer resistance when they began to build their systems after they were granted their original license (and its one station provision). To succeed in their endeavour and to make their product sufficiently attractive, these cablecasters felt the need for the full complement of American signals (112). These requests for additional importation rights were voiced during a Commission hearing held in Edmonton. In making his presentation, the cable operator told the Commission that while his original 1970 license reflected the Commission policy of the time, denial of permission to import the remaining two American network signals into Edmonton and Calgary, now that the policy allowed this, would be patently unfair (113). He asked whether it would be just that Calgary and Edmonton should be restricted to the viewing of only one commercial American signal due to "the accident of geography" while "every one of the ten largest cities in Canada receives the three American networks" (114). In closing, he called for a stop to this discrimination against the people of Calgary and Edmonton

and forwarded to the Commission a 9,000-name petition of cable subscribers which called for full importation (115). Also speaking at the hearing was a Liberal candidate for Calgary in the then upcoming federal election who, in claiming that he represented no-one but himself, spoke glowingly of the record of the local cable firm and its efforts in community programming. He too made it clear that he favoured importation (116). Then, dramatically, the cable licensees wanting the additional American network signals announced to the Commission that they had reached an accommodation with the Calgary and Edmonton broadcasters. The deal struck would have the cablecasters practice both commercial deletion and program substitution (as provided for under the Commission July 1971 document) in exchange for the broadcasters setting aside their opposition to the importation of a second American signal (117).

This development was not what the Commission had hoped for when it travelled west. Rather, its desire was to have the "right intervention" appear and make a good case, even at this late date, which would make it possible to display to all why microwave relay should not be allowed. If this were the case it was possible that the Commission would still not have to acquiesce to the widespread use of microwave relay of American signals (118). Instead during the hearing only the discredited CAB and Association of Canadian Television and Radio Artists (ACTRA), both widely-perceived as "self-interested", appeared before the Commission to argue against the use of microwave. It was again the cablecasters who were the obvious favourites of those in the packed hall of the Calgary hearing. Applause rang

out whenever someone made a remark about how good microwave would be for Calgary and Edmonton and "how decent" it would be for people in those cities to be "treated like people elsewhere in Canada" (119). The cogent case the cablecasters had made for their cause in the public forum of the Commission hearing, along with the deal they had struck with the local broadcasters, left the CRTC with little option but to approve the importation of a second American signal. Thus the Calgary decision was "a 'watershed' because it meant the beginning of the acceptance of microwave as a policy" (120). Importation of two American signals henceforth became standard Commission policy for both new cable licenses and renewals.

Having at this time permitted the second commercial signal, the Commission was to approve carriage of the third and last American network after a hearing held in Vancouver in 1974. This then also became general Commission regulatory policy (121). Nevertheless, while the Commission decisions following the Edmonton and Vancouver hearings had created the possibility of putting cable in many more parts of the country, some of the Commission reticence about this cable expansion and American network importation had been removed due to the increasingly good distribution of the two Canadian services (CBC/SRC, CTV/TVA) (122).

Conclusion

Given the virulent reaction to the CRTC's attempt in December 1969 to maintain the 1963 freeze on the importation of American signals, the question arises as to why the prohibition was apparently enforceable during the period 1963-1968 without similar outcry. Party solidarity may have played a role in keeping at least caucus members in line on the issue at a time when microwave relay of television signals required ministerial approval. The issue also seems to have been prevented from becoming troublesome simply because of the young nature of the cable industry during these years (123). It seems to be the case that the technology really "took off" only when the CRTC began to rationalize the cable industry in 1968. For the first time, cablecasters could contemplate the additional expense of either leasing or owning microwave facilities. With hindsight it seems inevitable that Canadian cable systems would eventually want to carry American signals as a part of the natural progression of the industry: at first cable would want to "clean up" the television signals readily available off-the-air, it would then want to guarantee the carriage of the rest of the Canadian broadcasting system. The really big "pay-off" would come with the opportunity to import and deliver the American network signals not otherwise available to Canadians.

Nevertheless, ascertaining just whose policy it was that was being implemented during the period 1969-1971 introduces the difficulties that surround the use of the word "policy". Parliamentarians upset with the CRTC December 1969 "policy" were

told by industry representatives in Standing Committee meetings that the government had failed to provide the CRTC with adequate direction on cable since the passing of the (1968) Broadcasting Act (124). Yet Juneau pointed to the Act as being the "policy statement" which guided the Commission in its deliberations on cable regulations. This semantic confusion surrounding the word "policy" and cable regulation was carried into the CRTC Annual Report of 1971-1972 wherein the suggestion seems to be made that the Commission's first "real" policy statement on cable was its document of 16 July 1971 (125). The Commission, however, had used the word in reference to its proposed microwave regulations long before that date.

When considering the CRTC as an "independent policy-maker" in this case study the aspect that immediately comes to the fore is that the government of the day was clearly prepared to allow the CRTC to handle the question of cable development. Pelletier's reaction to parliamentary criticism of the Commission's December 1969 microwave announcement reflected this. His behaviour probably also reflected the dilemma that many politicians found themselves facing: on the one hand, as the House had collectively made clear only in 1968, they wanted a strong broadcasting system; on the other hand, individual MPs affected by the CRTC action found it difficult to speak against the evident wishes of their constituencies for expanded cable service and American network signal importation. The complexity of the problem probably accounts for why government departments wanted nothing to do with the issue by 1969. As mentioned, discussion between Secretary of State and the Commission had CRTC legal counsel

arguing that, technically speaking, the issue was not theirs to handle as the agency did not have the authority to grant a license or create the microwave systems involved themselves (126). Nevertheless neither the Secretary of State nor Minister Pelletier sought to manage the situation although obviously both the Department and Minister were prepared to "counsel" the agency in private. In all the Commission seemed to come to handle the issue of microwave importation due to a variety of reasons which included the personal relationship of its chairman, Pierre Juneau, to the elected government, the comparative weakness/reticence to get involved on the part of other state actors and the sheer dynamism of the CRTC as a new organization.

It appears in hindsight that when Parliament created the CRTC in reaction to the political embarrassment caused by the feebleness of the BBG, at that time the government was content to establish a new broadcasting act and "put a good man in charge" (127). This "good man in charge", Pierre Juneau, had first come to the BBG "determined to do something about the American nature of Canadian television" (128). LaMarsh picked him to head the new CRTC as she wanted "someone tough and impatient". This Juneau was and he describes himself as someone who tends "to get involved, sometimes too much" (129). Meanwhile Juneau was to come to the new agency with excellent personal political connections to the Trudeau government and with well-established friendships. He had been to school in France with both Pelletier and Trudeau (130). This connection made Juneau extremely friendly with the government, able to meet with Pelletier frequently, and in his role as head of the CRTC, essentially

acting as a senior advisor to the government (131). One way Juneau fulfilled this role was by attending cabinet meetings in order to advise on matters of broadcasting policy. This participation allowed him "to uphold the CRTC point of view on policy matters" (132). One of these "points of view" might have been the Juneau argument that a formal directive power over the CRTC was not needed because the agency was "quite willing to go along with government policy" (133). Additionally, Juneau's status had allowed him to "put up a real fight" with the Privy Council Office (PCO) to have the people he wanted appointed to the CRTC. He told the government that it had given the Commission a great deal of authority and it was now time "to follow through" (134).

In the instance of microwave, this "great deal of authority" also came about because of the way in which Juneau interpreted the policy-making powers granted the Commission by the Broadcasting Act: "if it is not reserved for the minister to decide and yet is given by legislation .... and the CRTC is faced with making a decision in the absence of a policy framework established by the minister (then) the CRTC has to make a decision" (135). In December 1969 this attitude translated for Juneau into "nobody else told us what to do and we had to take a decision so we made the decision" (136). In all, the combination of Juneau's personality and his friendships with members of the Trudeau government, particularly with the Prime Minister himself, gave the CRTC an "exceptionally wide mandate" (137).

In explaining the Commission's initial freedom on the microwave issue and self-confidence to announce the 3 December

1969 decision, this "Juneau" factor must be combined with the fact that up until the early 1970s, and the rise of the DOC, government knowledge and research resources regarding broadcasting resided within the CRTC. The Secretary of State, which had guided the creation of both the 1968 Broadcasting Act and the CRTC, did not represent a rival source of expertise to the agency on communication matters after the period 1968 (138). Meanwhile in terms of cabinet representation, the DOC and its minister, Eric Kierans, could not compete with the stronger voice of the Commission (and the ability of Pelletier and Juneau to call "Pierre") (139). Finally the sheer "newness" of the agency led the Commission to take charge of the microwave issue. The activism of Juneau was matched by the dynamism of the agency in general (140). The CRTC process of examining the issue of microwave through the holding of hearings and the consideration of license applications predicated on its use reflected this willingness to go out "and meet the problem" (141).

Nevertheless it is obvious that starting January 1970 the entire microwave experience was to be a chastisement for the Commission; it found that both elected officials and the general public were not reticent to question its judgment (and authority to decide). The CRTC had undoubtably expected that its 13 December 1969 decision would be the end of the matter (142). The Commission also seemingly expected that each "revised position" it was to retreat to during 1970 and 1971 could be the definitive one as it labelled each consecutive announcement "policy". Thus, as a witness was to say before the House Standing Committee on Broadcasting in June 1971, rather than having had a dearth of

policy on cable, "there seems to have been a great variety of policies .... this is the bewildering part of it" (143). This "bewildering" aspect obviously came about as the CRTC was no longer fully in control of the microwave issue after January 1970 as it had been previous to that time. Henceforth it was to find itself largely reacting to events. Despite the impressions that MPs may have had that "Juneau acted at all times from a position of independence", the irony is clear in the Commission's 13 May 1969 announcement which stated:

> During this transitional period, the Commission is prepared to consider adjustments to its policy as required and will welcome written comments (144).

The CRTC was to find that not all the relevant factors to the microwave issue would need to be submitted as "written input" to the Commission. It is to a consideration of this "input" and the constraints generally that impinged upon the CRTC as a policy-maker in this series of events that the discussion now turns.

This case study has demonstrated that a lobby group such as the cablecasters can act as the catalyst for a rethinking of a long-time government position and the CRTC progressively adopt a more liberal position in its regard. During the late 1960s and early 1970s the cable industry and its association had tried hard to legitimize their position with federal politicians. In the case of microwave importation the industry had an issue that was "particularly salient and clear and which could be sold to the politicians and Standing Committee" (145). The cablecasters were very careful to point out the discriminatory aspect of the 1963 importation freeze to MPs from the more peripheral regions. By

the time the Commission's December 1969 announcement, continuing the Secretary of State-DOT policy of prohibition, was released, the matter had already become a political issue. The actions of the cable industry illustrate that a lobby group can possess a number of leverage points over the Commission: the hearing process was important in enabling this group to have its popular support publicly demonstrated to the agency. Once its issue was out in the public domain, the viewer/consumer/citizen constituency of the cable industry, combined with the political support from some MPs, resulted in a lobby group which possessed a great deal of influence on future Commission decisions on the issue of importation.

Indeed, the honeymoon days of the 1968 election had soon ended for the Liberals. From the start of their Ottawa tenure western Liberal caucus members had been uneasy about their chances for re-election. Many thought that their election in the first place had resulted from a sort of "freak accident" (146). The linkage that has been described here between the CRTC's microwave policy, regional discrimination, any upcoming election and the Liberal Party's chances in the west carried the risk from the start that the Commission's supposed political independence might be compromised (147). Thus there were political considerations which affected Liberal party support for the Commission. Nevertheless the initial referral of the Commission's December policy to the House Standing Committee in early 1970 occurred, in the words of a then-serving minister, not "because of any governmental disagreement with the CRTC but because the government thought it would be good to air the issue". With

cablecasters stirring up public demand for American signals in certain cities and mounting pressure applied to MPs in those ridings, the government felt stress over the issue both within its own caucus and through its departments. The MP lobbying of both the Secretary of State (as it was responsible for broadcasting) and the DOC (as it had the power to grant microwave licenses and because its mandate as "broad overseer of the communications system") eventually found its way into the Commission.

This pressure placed Pelletier in a difficult position. While broadly responsible for broadcasting policy, he believed in letting his agencies function independently with no interference from the Department and "little from the minister" (148). Nevertheless by the fall of 1969 he believed that Juneau "had to be told" of the MP and civic representations being made to the Secretary of State on the microwave issue. Thus, properly speaking, while the CRTC never received an indication from the government as to what its position on microwave importation should be, ministerial involvement nonetheless occurred in the form of the talks that Pelletier held with Juneau on the matter (149). Meanwhile the matter was not discussed in Cabinet, nor likely to be; this was not a subject that Juneau would seek to put on the agenda, while his personal prestige and his friendship with Trudeau and Pelletier would help ensure that no other minister requested its discussion (150). Thus it is not possible in this case study to speak of either a governmental or a cabinet policy "directive" being forwarded to the agency. While Juneau evidently interpreted the powers of the Commission under the

Broadcasting Act very broadly, as indicated above, he nevertheless believed the minister's powers in policy to be "whatever Parliament has delegated the minister in a defined way" (151). In relation to this Pelletier never became directly involved in the microwave case as he never used his power of review in connection with the issue (a power granted by Parliament in a "defined way"). The Commission change of heart on the topic of microwave importation was to come at the level of general agency policy and not cabinet review of specific Commission licenses which had been granted.

The fact that the affair stretched on until nearly the end of 1972, even though the first outcry had been in December 1969, reflected the influence of Juneau's personal relationships (which protected him within the Cabinet), the "difficulty experienced in having him understand that the microwave decision had to change", the CRTC's adversity to "taking anything that looked like direction" and Pelletier's own tolerant character (152). The role of Pelletier was crucial in allowing the CRTC a considerable policy-making role in the first few years of its existence. However, following the October 1972 hearings in Edmonton, what might be called the CRTC's "Golden Era" came to an abrupt end: on 30 October the Liberal government of Pierre Trudeau suffered an election reversal that dramatically reduced the commanding majority it had held from its 1968 victory. The CRTC, which had been a factor in certain Liberals' re-election concerns since late 1969, was to be profoundly affected by this governmental reversal. The government's fate affected the Commission as Pelletier, who had been parliamentary spokes-minister for the

Commission while at the Secretary of State, became the Minister of Communications in the ensuing post-election cabinet shuffle and took ministerial responsibility for the agency with him to his new home. Trudeau explained this move in relation to upcoming proposals for a new communications policy and the increasing inter-relatedness of telecommunication technology. Nevertheless the change could be interpreted as reflecting not just governmental hopes for a more co-ordinated policy approach but also the desire for greater political and bureaucratic control over the CRTC (153).

Pelletier was moved to the DOC to take him and the government's bilingualism and biculturalism agenda, which had been an issue in the election, out of the limelight (154). The move also involved the quick decision that he would take the CRTC with him to his new position because of his close personal relationship with Juneau (155). While both Pelletier and Juneau were against this agency re-assignment (the inspiration for the transfer originating within the PCO) the shift nevertheless occurred (156). The Commission all the same may have appreciated the opportunity to continue to cultivate the liaison with a minister who had been publicly solicitous of it because by that time the agency (and its cable policy) had the political liability of being designated by government members as one reason why they had been devastated in the west during the election (157). The move of Pelletier and the transfer of the Commission was welcomed with open arms however by the DOC. Although not reflected in the ministerial statements quoted earlier in the text, departmental bureaucrats had long agitated before the PCO

that ministerial responsibility for the CRTC should be shifted to the DOC. Thus while the consolidatory aspect of the ministerial move involved a governmental wish for a more integrative approach to communications, (illustrated, for instance, in the decision also taken at this time to begin the move towards a CRTC which would include telecommunication regulation), it also denoted an acceptance of the argument of active bureaucrats within the DOC (such as Richard Gwyn, de Montigny Marchard and Deputy Minister Allan Gotlieb). They asserted that it was nonsensical to have an organizational split within the government between the hardware (DOC) and software (CRTC)-oriented communications agencies (158).

The DOC wanted responsibility for the CRTC - a wish that carried the implication that this would have the Commission listening more closely to the government. This was a matter which had become a concern of some politicians, reflected in talk which began at that time about the need for a directive power over the CRTC. The concern that the agency had become a liability to the government probably earned the Department the political support it needed to promote the move of the CRTC from the Secretary of State to the Department of Communications. The discussion of a directive power to allow the government to give the agency instruction on issues of policy began at least as early as the resumption of government business after the Christmas break following the original Commission decision (159). Pelletier's ministerial re-assignment was to produce a radical change in the CRTC's working environment. The agency from now on was to operate under the constraint of being increasingly second-guessed by its parliamentary spokes-minister and his/her department (this, from

now on, being the DOC). Juneau was shown to have "clay feet" as he had "goofed badly" in political terms over the microwave issue and this changed his previously pristine image within the Trudeau government. The ministerial transfer followed and, as will become obvious in the following case studies, the CRTC was henceforth to pay the price for this early fumble.

Pelletier's arrival at the DOC was to place the Commission in a position of direct competition with the Department as each was to contend that it was the principal source of government communications policy-making. This issue was to be fed by both the DOC and CRTC mandates seemingly allowing both organizations to make policy on issues which could also be said to come within the gambit of the other organization. For its part the Department came to believe itself responsible, "at least indirectly", for broadcasting (160). It was not to agree, as the Secretary of State apparently had, that a regulatory agency could advise the minister on matters of policy (161). Henceforth the Commission would find itself confronting a DOC point of view which held the agency accountable to the Department (162).

The psychology had altered between the two agencies as a more hierarchical relationship came into play whereas previously the Commission had been able to remain aloof. For instance, for the first time the DOC had a say in the appointments made to the Commission and also in the setting of its budget (163). With this shift in responsibilities "a lot of problems were created and the two departments were to be fighting all the time" (164). There also followed a break in the personal relations between Pelletier and Juneau over "CRTC incompetence" concerning cable

policy. This rupture could be attributed to the fact that, for the first time Pelletier, as spokes-minister for the Commission, possessed in his own department staff that could speak to the issues that the CRTC was handling. At the DOC he had a group of advisors who could talk about cable which had not been the case while he was at the Secretary of State (165). As a factor here senior staff followed him from the Secretary of State to the DOC that came to take the Department's territorial ambitions seriously. The former Assistant Under Secretary of State (Max Yalden) was to become DOC Deputy Minister and Pelletier's former executive assistant (Bob Rabinovitch) was to become "Director-General of Social Policy and Programs Branch", a new position within the Department. These are bureaucrats who will figure prominently in subsequent chapters. In all, the end of the CRTC's "golden era" involved a radical change in the commission's environment. It marked the end of the agency as an independent expert with considerable autonomy. The CRTC had already been challenged with the microwave issue and henceforth there would be increasing politicization of communication issues in Canada, along with the emergence of new actors including a more vocal cable industry, a more active DOC and increasingly restless provinces.

In conclusion, musings made by one CRTC chairman, Pierre Camu, several years after the resolve of the microwave issue suggest that the Commission learned from the 1969-71 experiences that the regulatory process could be subject to all sorts of public pressures and that regulations, even when finalized, are not, as Camu was to say, "inscribed in stone" (166). Camu's

remarks also indicate that the Commission (and its corporate psyche) had by the late 1970s "worked through" this early period by labelling it as "one of trial and assessment" in which "it is difficult to conclude that any other course could have been adopted" (167). The microwave issue was to teach the CRTC that Parliament could express its will, (and achieve its objectives), without the need to "change the act" as Juneau had taunted it. It did not necessarily need to take on the responsibility of resolving the issue at hand either. The Commission, as a "front line agency" which needed to take licensing decisions, could be relied upon to do that. Additionally, the value of the regulatory agency as a political "insulator" is evident in the present case study, since even though the microwave question became a political issue, it never became a governmental one requiring the Trudeau government to intervene publicly. The study exemplifies the type of situation where politicians are happy to have a regulatory agency handle a delicate issue (168).

Microwave importation was an issue where the Commission would have welcomed government direction "to fill the vacuum" if that came in the form of a confirmation of the government 1963 ban. Such a move would have allowed the CRTC "no game to play and (it) would have had nothing to study" (169). Nevertheless Juneau himself now believes that a "smarter and more experienced" CRTC should have refused to proceed with the matter in the absence of a government policy. The Commission instead could have volunteered to hold hearings on the topic and submit a report to the government thereby transferring "the burden of the decision to the government" (170). At the time, however, Juneau would not

seek government direction on the topic feeling that, as the Act did not clearly state that the government could give a direction on the matter, the issue therefore was a CRTC responsibility (171).

Although not directly related the primary purpose of this thesis, it is interesting to note that the microwave importation case highlights several points made recently by John Meisel. He notes that politicians and regulators possess many common traits, undoubtedly as a consequence of having similar backgrounds. Their shared life experience leads to support of certain values such as a strong and dominant Canadian presence in the broadcasting system. As an example, Parliamentarians had overwhelmingly passed the Broadcasting Act in 1968 which stated that the Canadian, and public, element was to be predominant in the broadcasting system. Juneau and the CRTC, being of similar mindset, sought to implement this policy decision during the microwave importation series of events. Politicians and regulators both quickly confronted the fact, however, that "most Canadians are not at all nationalistic when it comes to choosing television programs" (172). Quite simply, (English-) Canadians prefer American television (173).

The sharing of values between regulators, Parliamentarians and the cultural elite has resulted in the passage of resolutions to bolster the Canadian broadcasting system. However, the elite values underlying these resolutions are not easily reconciled with those held by "Middle Canada"; namely, "democratic values which preclude the blind acceptance of governmental edicts" (174). This is most true in areas which touch upon personal

freedoms: "Canadians assume that their basic rights give them access to any television signal that modern technology makes available" (175). MPs were quickly informed of this attitude during the microwave relay series of events. This was done in a manner forceful enough that the House took on as its own the cause for importation and led to the ensuing Parliamentary uproar. In the end, the regulators were the authorities which ultimately had to back down on the issue.

In all the case study demonstrates that it is difficult to speak of the CRTC "usurping" ministerial or governmental powers in this instance when elected representatives were not prepared to state publicly a policy and take a stance before the Commission rendered its December 1969 decision. A reading of the following case studies will demonstrate that a cyclical pattern to agency-government interaction in the setting of communications policy in Canada exists. In each of these case studies there is an initial policy vacuum surrounding the issue at hand, one the Commission was to fill initially as the "dominant actor" in determining policy, only to face subsequently a reaction to its position requiring it to adopt major modifications. If the Commission can be labelled as being "out of control" on this particular case study it is only because it at first tried to defend the position it had taken. The "debate" on the issue of microwave importation which ensued through the House standing committee and Commission hearing processes was nonetheless successfully used by the participants which sought to have the Commission alter its point of view.

In sum the microwave issue introduced the Commission to an

experience it was to encounter frequently during the balance of the 1970s and which will provide material for the following chapters: the presence, and the need to be appreciative of, the political dimension which exists within the regulatory process. All the cases show that the widely accepted paradigm of the regulatory process, namely that regulators order and others follow, is questionable. There are real limits to regulatory power.

CHAPTER THREE

THE CRTC'S CABLE HARDWARE OWNERSHIP POLICY AND THE "CANADA-MANITOBA AGREEMENT"

Introduction

The issue explored in this chapter is the saga of the CRTC's cable hardware ownership policy and its fate in Manitoba and Saskatchewan. In this case study Commission efforts to devise a scheme to bring cable within the "single system" of broadcasting, as directed by the Broadcasting Act, are analysed. To accomplish its objectives, the agency made use of certain "conditions of license" involving cable operator ownership of elements of the cable system hardware. These "licensing conditions" became standard CRTC practice and their enforcement produced a de facto Commission "policy". The developing conflict between these licensing conditions and the growing aspirations of Manitoba and Saskatchewan for their provincially-owned telephone companies in the field of cable sets the stage for the central event of this case study: the Commission issuance of cable licenses for Manitoba (containing the usual "conditions of license") and the subsequent "setting aside" of these decisions by DOC Minister Jeanne Sauvé in the wake of an intergovernmental accord with that province (which would require the agency to alter the conditions of license that it imposed on its licensees for that province). This

review of the Commission's decisions was justified on the basis that the federal-provincial Agreement resolved many of the issues the Commission had previously sought to manage by imposing its licensing conditions while at the same time allowing political accommodation with Manitoba on the question of cable jurisdiction.

In this series of events the hypothesis holding that the Commission has been a policy-maker "out of control" in the area of communications must be seriously questioned. Instead, the CRTC appears to have acted as a "political insulator" in the early stages of the saga. It set federal policy on the issue of cable ownership in the face of increasingly truculent provinces but did so with federal government acquiesce. Yet, once the Department and its minister took an active interest in the topic and Minister Sauvé instituted her own arrangement with a province on the issue, the Commission ultimately gave way on the approach that it had been using. In fact, the argument could be made that the CRTC played a great role as advisor to the government, even after the appearance of the intergovernmental accord: achieving resolution to the issue appeared incumbent upon the Commission finding a way by which to translate the meaning of the Minister's intergovernmental accord into the more precise language of the leasing contract ultimately entered into by the CRTC regulated cable operators for Manitoba and the public telephone company of the province, Manitoba Telephone System (MTS). With the exception of the absence of an

intergovernmental accord, much the same remarks regarding the Commission's role can be made in relation to cable events in Saskatchewan - events which necessarily come into the current case study.

While during these events the Commission performs such roles as "political insulator" and "policy advisor", it is also demonstrated to be an "independent" entity constrained in its functioning. It is shown to try to accommodate the various participants who are able to apply pressure on the agency for their own ends using their own respective methods. In this case study, participants other than the CRTC include 1) the federal DOC and its minister, 2) provincial governments, 3) their telcos, 4) the established Winnipeg cable operators, 5) the newly-licensed ones for Manitoba and Saskatchewan and, in the background, 6) popular demand in the prairie provinces for cable television service. These pressures all came to impinge upon the CRTC, more than any other state or private participant, due to the Commission holding public hearings which led to its licensing decisions. On several occasions these hearings provided the public forum in which the principal participants sought to influence the outcome of what would be the nature of the cable hardware conditions of license imposed by the CRTC for Manitoba and Saskatchewan. The study provides ample evidence of the informal and less visible means by which pressure can be brought upon the Commission to adopt (in this case) a certain licensing stance. The real impact of this informal pressure is

demonstrated in the resignation of a Commission chairman which can be directly attributed to the events occurring in this case study.

In sum, the claim that the Commission has been "out of control" as a policy-maker on the issue of cable hardware ownership must be seriously questioned. The resolution of the saga shows that the CRTC essentially submitted to the will of the most powerful actors in this scenario: the federal DOC and its minister and the provinces of Manitoba and Saskatchewan.

Emergence of the Issue

As was the situation in the previous case study the emergence of the cable hardware ownership issue involves the Commission's attempt to bring order to the cable picture it found in the early days of its mandate.

The previous case study on microwave importation policy demonstrated that the Commission, after its creation, had to tackle and bring order to a burgeoning cable television situation in Canada. Moreover this task was to be performed in the absence of government direction. In this policy vacuum the Commission began to identify objectives and develop a set of assumptions and standardized procedures to guide consideration of the applications for cable systems. This process entailed confronting many questions and issues. One of these issues concerned who was to own the hardware (ie. the physical equipment or plant) of cable television

systems. This superficially mundane question of ownership incited a fierce rivalry between the telephone and cable companies because each wanted to be cable hardware proprietor. The CRTC also had its own concerns which entered into the issue. Further, the provincially-owned telephone systems of Saskatchewan and Manitoba, as instruments of government policy, had objectives distinct from those of the privately-owned telephone systems which affected how they viewed the ownership issue. The goals of each of these participants will now be briefly considered in turn.

Generally speaking, telephone companies (telcos) in Canada were concerned that the developing cable industry would no longer be content to act as the mere deliverers of television signals, because of the flexibility of their technology. Cablecasters, the telcos feared, would soon want to move into areas of message delivery which had traditionally been telco turf. From the time CRTC began to consider the issue of cable hardware ownership the telcos had already sought to own cable system hardware which made use of their poles and right-of-ways, leasing any equipment required by the cablecaster to the cable licensee. Control of the cable hardware was viewed as a means of controlling the activity of this new industry. For their part the early cable companies were largely endeavours begun by entrepreneurs which had generally developed in the absence of telco interest. These cable operators were eager to retain their independent status. Thus they lobbied the young

CRTC to be able to own, rather than lease from the telco's, the plant necessary to the operation of their systems.

Simultaneously, the Commission, having had to accept cable as a legitimate and increasingly important aspect of the broadcasting system (see Chapter Two), set about devising how the industry could usefully contribute to Canadian broadcasting: the Commission accepted the cablecasters' argument that they required ownership of the hardware to be able to establish their industry on a secure financial footing rationalizing that a "healthy" cable industry could begin to contribute to the realization of the objectives of the Broadcasting Act (1). Meeting what it perceived to be the objectives of the Broadcasting Act provided the focus to the CRTC's concerns in the matter. It wanted to be sure that whatever it was to finally decide would be all of the policy objectives for cable and that it would remain in a position to effectively regulate cable as a broadcasting concern (as under the Broadcasting Act). The Commission was unprepared to take any moves that could lessen this ability. The Commission believed that imposing certain hardware ownership requirements as "conditions of license" would ensure that regulation of the cable industry (and its programming) remained under federal control. The possible fragmentation of the Canadian broadcasting system, which could result if the provinces acquired ownership of any part of the cable industry, could be preempted by imposing "conditions" which required that a certain amount of the hardware involved be owned by the

Commission-regulated cable licensee (2).

Lastly, the provincially-owned telcos of Saskatchewan and Manitoba were particularly concerned about the technical threat posed by expanding cable systems because, as government instruments, these telcos were charged with the realization of overt provincial social policies. These policies particularly entailed the assurance of reasonably-priced rural telephone service. As was the case with the private telcos, the realization that cable systems might be able to compete in message delivery prompted provincial telcos' interest in the ownership of cable distribution systems as a means of preempting this possibility. Additionally, both MTS and SaskTel (the provincial public telco for the Province of Saskatchewan), who shared a political difficulty in raising their rates, no doubt viewed cable operations as a potential revenue source and means to cross-subsidize their phone operations (3). Further, at least in the case of MTS, the provincial telco seemingly had political clout such that, if it believed that it should own the hardware, this would become the provincial position (4).

Against this backdrop, by the end of 1970, a Commission position on the question of ownership was becoming discernable: the Commission favoured cable company ownership of hardware rather than it being leased from the telcos. By this time the Commission had agreed to a Nova Scotia CATV applicant's request to own all the system plant as a condition of license (5). The CRTC had also found "a

friend" in the Davey Committee report which had advocated against telco, and more specifically Bell, ownership of cable hardware (6). What was evolving as the Commission's cable hardware ownership policy spread from the Nova Scotian decision to elsewhere in Canada, becoming a universal condition of license applicable to all cable systems licensed for the first time. By 1975 it had become a de facto requirement for cable license renewal (7). This "Commission policy position on cable hardware ownership" was arrived at in the absence of any direct government indication of its preference in the matter. Nevertheless it can be interpreted that the agency had come to its stance on the issue to avoid the "pre-emptive" seizing of control of cable systems by the telcos: thinking of the potential competition that cable technology offered to the existing carriers, the Commission was concerned that no future possibilities for cable be foreclosed, at least until "federal authorities have reached important policy decisions" in its regard (8).

Meanwhile, cable development in Manitoba and Saskatchewan had been slow in comparison to the rest of Canada: in the case of Manitoba, after two system licenses were granted for Winnipeg in 1967, no more were to be issued until the 1976 decisions which are at the nucleus of this case study; while in Saskatchewan, a comparable situation existed with cable license applications having been outstanding since 1969 (9). Provincial officials in both of the western provinces, however, were becoming more

interested in cable (no doubt partially due to concern expressed by the provincial telcos and the increasing public pressure for an expansion of the service) and began to approach the Commission on the question. However the apparent conflict between what seemed to be the Commission position on cable hardware ownership and the likely position of the provincial telcos on the issue, appeared to create an obstacle to cable development in those provinces. Correspondingly, cable applications for the region which had been filed with the Commission in Ottawa were scarce (10).

However, the Commission stance on the issue of cable hardware ownership had never been made unequivocally explicit. An early Western request for Commission clarification on its position produced the non-conclusive response from CRTC legal counsel (John Lawrence) that "present CRTC policy requires operator ownership of amplifiers, drops and head-end"; yet nevertheless:

> While this would preclude the ownership of such equipment by third parties, including a telephone company, I did not state that telephone companies were excluded from ownership by CRTC policy (11).

This contradictory illumination of the Commission view on the matter was provided in a personal communication. In terms of official agency statements there existed a decided lack of documentation. Ownership policy for instance was not given direct mention in the Commission's "Bible" on cable regulation, the July 1971 cable policy document.

The entrenched existence of the Commission's policy as a condition of license, led Saskatchewan officials at one point to complain to the Commission of their inability to find a CRTC

statement on hardware ownership (12). The Commission response interestingly acknowledges that:

> ... the Commission has often used decisions as vehicles for enunciating specific requirements and policies .... (and that) the various decisions alluding to license requirements for ownership of facilities are considered to be a statement of Commission policy (13).

Against this backdrop of a Commission "policy" which existed in the form of conditions imposed on licenses and a developing provincial sensitivity on the issue of ownership, the CRTC began a more active consideration of cable development in Manitoba and Saskatchewan.

The Dominance of the Commission

After assuming responsibility for cable regulation in 1968, the Commission first considered cable license applications for Manitoba and Saskatchewan during a May 1974 hearing in Winnipeg. This hearing had been some time in coming: intention to hold a hearing on cable in the province had first been announced on 31 July 1972. The notice for the 1974 hearing itself was only issued after Ian Turnbull (the Minister "Responsible for Communications in Manitoba") had met with Juneau in order to discuss broadcasting service in the province (14). Renewal hearings for Winnipeg licensees who began operation in 1967 were also held at this time. These cable operators had signed "partial agreements" with MTS when they began service, by which they owned the cable amplifiers and house drops. These accords were to lapse in 1979.

At the opening of the CRTC Winnipeg hearing the Manitoba

government notified the Commission that it wished to alter its "partial arrangement" with the Winnipeg operators. The new provincial stance, expressed both in a policy document released on the eve of the Commission hearing and the hearing presentation statement made by the Manitoba Minister, held that MTS, "for all future agreements with cable operators", would only agree to a full-lease arrangement (15). The CRTC's reaction to the Manitoba position was contained in a statement uttered by General Counsel, John Lawrence, towards the close of the hearing:

> The proposal of the Manitoba government would be to the effect that cable television operators should restrict their activities to cable television services and that the common carriers should be entitled to these sole rights to carry all other types of cable services.
> ... now quite apart from any so-called jurisdictional question, how about the practical effect of that ... is (it) really practical, as a practical matter, (to) divorce those two things (16).

Despite the holding of the hearing, the CRTC and the province were far apart on the issue of cable hardware ownership; the Commission was still fearful of any measures which might constrain cablecasters and cause CRTC to lose control over the content they carried, while the province was becoming more adamant that its telco should own the complete cable delivery system. The nonconclusive nature of the hearing demonstrated how little the Commission and Manitoba, at least publicly, had to say to each other given their differences on the question of ownership. Nevertheless, despite the disappointing results of the Winnipeg hearing, a consultative process had started and Commission staff and provincial representatives were to continue to meet through the spring of 1974 in order to plan for cable in

Manitoba (17).

During this period of Commission predominance in planning the role of cable in Canada (and its future in Manitoba and Saskatchewan as well) events were occurring elsewhere which would soon have an impact on the Commission's prerogative in this regard. Both the DOC and its minister along, with the provinces, were becoming increasingly restless over a CRTC-set agenda. The reasons for the emergence of these increasingly important participants in the communications policy-making process are now considered in turn, beginning with the role of the Department.

While the CRTC had been holding the above-mentioned discussions with Manitoba, the DOC had also been meeting with the provinces as a result of the policy proposals contained in its "Green Paper" of 1973 (for more details on this document see below) (18). These federal-provincial talks reflected the increasing public interest the Department had taken in cable matters since ministerial responsibility for the CRTC had been transferred from the Secretary of State when Gérard Pelletier was moved to the DOC in late 1972 (on this see Chapter Two).

While Pelletier had been characterized as highly supportive and solicitous of the Commission while he was Secretary of State, his move to the DOC wrought fundamental changes in his relationship to the agency (19). Pelletier came to be influenced by the ambitious staff at the Department who were not prepared to accept the view, as had been espoused by the previous DOC Minister, Eric Kierans, that "as Johnny come lately on the communications policy block" the Department could only be active in areas "left over" by the CRTC. These bureaucrats, chipping

away at the authority of both Juneau and the CRTC in the wake of the microwave controversy and the western election results of 1972, began to find "Pelletier listening to them" (20). The confidence that Pelletier was placing in advice given him by senior officials (such as Deputy Minister Max Yalden and Director-General of the Social Policy and Programs Branch, Bob Rabinovitch, both of whom had followed Pelletier from the Department of the Secretary of State), increasingly acted as a substitute for that which he had previously received from Juneau and the Commission. The aspirations of the DOC to play a greater policy role, which evidently would have to come at the expense of the regulatory agency, began to have manifest results after the arrival of Pelletier. In the wake of the appearance of the "Green Paper" the authority of the Commission was to be publicly challenged by the Department.

Evidence of a changing DOC-CRTC relationship took several forms within the space of a few months in 1974. Pelletier's request to Juneau for an outline of his and the Commission's views on cable hardware ownership demonstrated that the Department had undertaken a review of Commission practices in cable regulation (although the DOC had already historically taken a stance different from that of the CRTC on the question) (21). By May 1974 DOC Deputy Minister Yalden was calling for a broadcasting policy role for the Minister of Communications greater "than that assigned to him exclusively under the Radio Act", saying that the 1972 transfer "postulated" such a development. The Department defended this interpretation in terms of the "more comprehensive approach" to policy planning

required to adequately encourage a hybrid role for cable (22). The impression of a departmental attack on the Commission's competency was strengthened the following month in another deputy minister speech. Here Yalden asked whether it was not "too simplistic to believe" that regulation alone could provide an adequate channel for the translation of communications policy into action on a "regular and timely basis" particularly where federal-provincial policy decisions were involved (23). Yalden had been persuaded to make these comments only after much coaxing by officials within his department (24). They nevertheless displayed sentiments having an institutional history within the Department: they simply described the long-standing DOC desire that it make policy in the area of cable (25). Their implications for the fate of the CRTC did not pass unnoticed by its constituency (26). The continued attraction to the DOC of able and active bureaucrats from elsewhere within the civil service led to the Department setting up a broadcasting sector "to aid development of new policies to further the objectives of a national broadcasting policy" (27). By the spring of 1975 the responsibility for preparation and submission of cabinet documents on broadcasting policy had shifted to the DOC with the Department of the Secretary of State now eclipsed (28).

The DOC's bid for a greater policy-making role coincided with a similar demand by the provinces. These provincial demands produced a different agenda for Pelletier at the DOC than that he had held while at the Department of the Secretary of State: smoothing out relations with the provinces was now a priority. Collectively, the departmental desire to make communications

policy combined with provincial fermentation in the area resulted in the 1975 inhouse appearance of the first DOC cable policy document (29). The document allowed for 2-tier (federal and provincial) regulation of cable (as discussed in the 1973 "Green Paper") and had been developed in the face of the Commission's hostility. In fact, CRTC staff had been instructed not to speak with DOC people (30). Despite statements from Pelletier expressing faith in the ability of the Commission to "do a good job" and saying that the CRTC was "... an authority independent from the government over the whole field of broadcasting in certain matters" (which was an "arrangement" in which Pelletier still "believed"), the impression that Pelletier and the DOC had lost confidence in the CRTC's capacity to deal with cable was developing (31).

This impression was strengthened when the long-standing Juneau-Pelletier friendship experienced a rupture during 1974-1975. This falling-out was "due a great deal to the activities of the DOC staff" (32). The confrontation here was not just over the Department's assuming a greater interest in cable policy or Pelletier being advised by a new group of staff who increasingly rivalled the CRTC, but also over mundane issues which irritated both Juneau and the agency. An example was that the Commission was being "shadowed by DOC staff all the time" which included departmental personnel "always at the back of the room" during CRTC public hearings) (33). Also, the Department's legislative ambitions had the Commission annoyed, for the DOC efforts to rewrite the Act "virtually on a constant basis starting in 1974" forced Commission staff to "spend endless hours

examining their proposals" - particularly those which concerned the reframing of the Cabinet's directive power (34). Despite these actions which obviously troubled the Commission (Juneau being irritated to the point of threatening to resign during the summer of 1975), the DOC's moves to develop a policy research capacity in order to "reassert a limited degree of control over policy in broadcasting" did not negate for the government the utility that the regulatory agency offered at times (35). One of these occasions was when Pelletier was able to deflect MP concern regarding the slow cable development in Manitoba onto the CRTC saying:

> ... no hearing or decision of the CRTC has ever been delayed due to confusion or uncertainty of government policy .... (the "occasional licensing delay" having been caused by the CRTC's) .... own policy of regulation (36).

Given that the Department's first cable policy document was only to appear (inhouse) the following summer, the Minister could not help but be correct in his assessment, if somewhat disingenuous.

The second group of participants wanting an increased policy-making role, the provinces, also became more active during this period. By 1974 many of the provinces had a communications bureaucracy parallel to that of the federal DOC. As the provinces now had jurisdictional ambitions as well as specific policy objectives, the CRTC found itself spending more time attending to their demands. To illustrate, a discussion of the cable issue at the Western Premiers annual meeting (August 1973) produced both a statement expressing concern over "federal intrusion" into provincial cable jurisdiction and a call for "Disclosure of Information" to allow access "to the data and working papers

which form the basis for federal decisions related to ... cable television operations...". Most of these dossiers would be on file at the Commission (37).

The heightened provincial interest in communications can be linked to the federal DOC's Telecommission Series of investigations into communications issues of the early 1970s. The resulting intergovernmental rivalry that the parallel federal-provincial bureaucracy was to engender (with a questioning of federal authority serving as its principal focus) was to lead even former DOC Deputy Minister Max Yalden to state that the creation of the DOC "was a mistake" because "we created our own problems" (as its establishment sparked provincial interest in the policy area) (38). The first substantial effort by the Department to deal with this increased provincial interest in communication matters was the above-mentioned "Green Paper" (Proposals for a Communications Policy for Canada). Tabled in the House in March 1973, Pelletier spoke of it as an attempt to bring back "some balance in the legislation" (39). While the document spoke of a "two-tier system of regulation", designed to placate the provinces, it also contemplated that

> ... opportunity must be provided for the Governor-in-Council to give directions, compatible with the statute, as to the policies to be followed in pursuing national objectives (40).

This request was justified in terms of the Minister requiring more flexibility than that currently possessed in the "complex field of communications", which would allow the federal government to reach accommodation with the provinces on their demands for a greater voice in the regulatory and policy-making processes. However this departmental wish for a directive power

in order to negotiate with the provinces, reflected the departmental "lack of confidence" in the CRTC being able to handle the cable situation. It was combined with a general DOC sentiment that it had little power over the Commission and a belief, in light of the microwave importation issue, that the agency "wasn't listening to the government" (41). The waters for a DOC directive power were "tested" shortly thereafter with a proposed private member's bill: it put forth amendments to the Broadcasting Act which would allow for cabinet review of CRTC "policy decisions" and the provision that the Governor-in-Council could issue directives to such decisions (42). Despite the bill not proceeding past first reading, the Department presented its own legislative proposals later that year with the first reading of "Bill C-5" on 2 October 1974 (43). This proposed legislation's provision for the issuance of directives to the agency was thought saleable to the House because it would make the agency "more politically astute", in the words of a DOC official of the time. In the end, the version of Bill C-5 which received Royal Assent during 1975 did not contain provisions for a directive power. It was to be the case that even the (comparatively) simple transfer of responsibility for telecommunications regulation from the Canadian Transport Commission to the CRTC, as provided for by the bill, "took some doing" and the directive power was sacrificed at this occasion by the Department for the sake of political expediency (44). It was, however, as will be seen, repeatedly proposed in later years (in various forms) (45). Despite the DOC legislative attempts to obtain more direct control over the agency, "the talk didn't change anything" in the

opinion of the CRTC, so the Commission "decided to carry on as always" (46).

Part of this "carrying on" included considering a proposal made by Manitoba for a tripartite meeting of officials from the DOC, CRTC and Manitoba government in order to exchange "information and data related to policy formulation activities of common interest" (47). The DOC was presumably especially prepared for this type of intergovernmental meeting having established in October 1973 a "Federal-Provincial Relations Branch" in order to aid the two levels of government to "greater harmonize their policies" (48). The Manitoba proposal was no doubt made to maintain a sense of momentum in the wake of the Winnipeg hearing; Pelletier was receptive to holding such joint meetings - as long as they were limited to discussions on overall policy issues (49). Juneau was far less enthusiastic, voicing his "distinct reservations" over the establishment of such a consultative committee to Assistant Deputy Minister De Montigny Marchand of the DOC (50). The tripartite meeting was nevertheless held on 13 November 1974 and led to agreement both to give further thought to Manitoba's proposal of a jointly-formulated "conceptual plan for the province" and to set a date for a second meeting (51). In the wake of the first meeting the DOC proposed to the CRTC that they discuss the Manitoba situation before the next tripartite meeting but the CRTC reluctance to hold additional meetings was profound (52). The Commission, ostensibly concerned about protecting the autonomy of its licensing function, strove to have clarified what were "properly the subject of tripartite working meetings". A

CRTC memorandum stated that "if master planning is to develop between the CRTC and other departments" a number of concerns needed to "be resolved at the start", which included, among others things:

> - who decides on the planning goals?
>
> - does the plan(ning process) involve developments on cable tv? (53).

While these bureaucratic negotiations at the federal level occurred, the Manitoba government announced that the MTS planned the construction of a "Local Broadcast Network" (LBN) cable system for the communities of Brandon, Portage La Prairie and Selkirk (all then without service). This "network" was to

> ... pave the way for the introduction of a wide variety of services, as well as to provide facilities for the distribution of cable television signals (54).

By the time the proposed legislation appeared in Manitoba the CRTC had decided not to participate formally in further tripartite meetings. It instead asked if it could occasionally "sit in" on the meetings between DOC and Manitoba officials that the Department had decided to pursue (55).

Meanwhile, on the Saskatchewan front, developments had been slower and interaction between the Commission and Saskatchewan had been of a more limited nature: some correspondence in July 1973, a meeting in December 1974, and attendance at a CATV seminar in Regina in January 1975. In July 1975, the provincial Minister wrote the Commission to say the Province believed its cable policy of SaskTel cable hardware ownership combined with system management on an exclusively co-operative basis (see below) to be "attainable" (given the "two-tier" delegated

authority spoken of by the federal government in its "Grey Paper") (56). The Minister's remarks were in reference to another DOC document which had just recently appeared: the 1975 "Grey Paper" (officially known as Communications: Some Federal Proposals). In addition to speaking of possible "co-operative regulatory arrangements" with the provinces, this document also re-introduced the Department's argument for the necessary authorization of the Governor-in-Council to "give formal directions to the Commission on the interpretation of statutory objectives and the means for their implementation" (57). While this DOC legislative activity was on-going, developments continued on the Manitoba and Saskatchewan cable front. The Commission for its part was dealing with the practical issues at hand, one of which was negotiating with the two prairie provinces on the cable hardware issue to see if any points of commonality could be found before another licensing hearing was held.

On 1 August (1975) the Commission had announced its request for applications for the provision of cable television service in Manitoba (for Portage La Prairie, Brandon and Selkirk) and Saskatchewan (for Regina, Saskatoon, Moose Jaw and North Battleford). Both public announcements reminded potential applicants of the Commission's previous requirements and "policy announcements" on ownership (58). This explicit reference to ownership by the CRTC produced a sharp response from Manitoba: Turnbull complained to Pelletier that the CRTC threatened to provoke "a serious conflict between federal and provincial cable policy" through its behaviour during the November "tripartite" meeting, its "disregard" of the province's "discussion paper" and

"unprecedented" reference to past hardware ownership policy in the 1 August announcement. At the same time as these remarks, Turnbull requested a meeting with Pelletier in order to bypass the CRTC (59). The differences existing between "federal and provincial cable policy" was to lead to much jockeying amongst the DOC, CRTC, Saskatchewan and Manitoba bureaucracies during the interval between the Commission call for cable license applications and the subsequent Winnipeg hearing ten months later (May 1976). As a part of this jockeying, SaskTel's response to the Commission application call was to inform potential applicants that it would only supply facilities to firms respecting provincial policy guidelines and that any alteration to this long-standing policy would have to await "acceptable arrangements being made between the federal government and the Government of Saskatchewan" (60).

The Saskatchewan Minister "Responsible for Communications" had unveiled a provincial policy in October 1972 calling for cable to be run as a public utility with SaskTel owning and installing all cable hardware systems and only community-operated, non-profit groups (with the aid of public grants) being able to use the systems for local programming (61). This was a policy SaskTel was evidently keen to maintain (62). The Commission, however, had great reservations toward both developing cable television on a public utility basis (for the content reasons given above) and adopting a "pre-licensing procedure" which would restrict the type of applications accepted by the Commission for Saskatchewan to only community co-operative groups (63). In an effort to placate Saskatchewan and SaskTel

the CRTC issued a clarification to its 1 August 1975 application call for Saskatchewan on the issue of ownership:

> The Commission wishes to confirm that its Announcement should not be interpreted as precluding the hearing of any potential application ... (64).

The Commission then privately confirmed to Minister Turnbull of Manitoba that the announcement "applies to all cable television applications" which meant those whose "ownership principles" differed from the Commission's policies" (65). While Turnbull considered that the CRTC's announcement represented "a considerable softening of the Commission's position since the 1 August announcement", he nevertheless remained of the opinion that:

> Stripped of everything else, ... it really comes down to a question of whether the CRTC has any right to dictate to MTS the terms and conditions under which it makes available its poles and ducts to a cable operator" (66).

The CRTC meanwhile had informed Saskatchewan that it would have to adjust its provincial policy guidelines allowing SaskTel to enter into lease arrangements only with co-operatives and invoked DOC support on this point (67). Saskatchewan's response, which suggested a "swap" between the Commission allowing SaskTel ownership of the cable distribution system (excluding headends) in return for SaskTel entertaining "any prospective applicants for the CRTC license", went unpursued by the Commission (68). Simultaneously an attempt by the Saskatchewan government to bypass the Commission on the issue of ownership failed: the federal Cabinet refused the province's request to alter Order-in-Council P.C. 1972-1569 which disallowed provincial government agencies from holding broadcasting undertaking

licenses. Thus SaskTel was still ineligible to receive a cable license. The new federal DOC Minister, Jeanne Sauvé, wrote the provincial Minister in Saskatchewan saying that any amendment to the Order-in-Council:

> ... should only be addressed after we have reached multilateral agreement on possible provincial entry into general broadcasting. I am very willing, however, to have our officials discuss possible provincial entry into general broadcasting and means of provincial involvement in the process of licensing and regulating broadcast receiving undertakings (69).

Any negotiations involving a possible greater provincial role in both broadcasting and traditional CRTC regulatory areas would involve an agency and a department on the federal level which had both undergone changes in leadership. Pelletier had retired from politics and Juneau had left the CRTC the previous fall to run as a candidate in Pelletier's old Montreal riding. Juneau had already become interim DOC minister and was attempting the move into government as the Commission was no longer the "power base" it once was since Pelletier's move to the DOC and the Department's attempt to bring the agency "to heel". This was a fact which did not "sit well" with Juneau (70). Juneau however was to lose his election bid and in compensation was taken within the Prime Minister's Office (PMO). In the aftermath of Juneau's by-election loss, Jeanne Sauvé was to be appointed DOC minister - and promptly indicated that it was her deputy minister (Max Yalden), and not the CRTC, that was to act as her policy advisor (71). In the wake of these events the situation at the CRTC was one of disarray as former Vice-Chairman Harry Boyle was appointed only as an "Acting Chairman" (72).

Against this backdrop of intergovernmental bartering and

federal personnel changes, the guerrilla war continued between the CRTC and the MTS as applicants prepared their submissions in response to the CRTC's application call during the fall-winter of 1975-1976 (73). The MTS proceeded with the installation of its LBN distribution facilities while private firms preparing dossiers on the centres to be cabled complained to the CRTC of MTS slowness in providing the essential information and price quotes necessary to the completion of their applications (74). The MTS was also to forcibly occupy some of the CRTC's attention as it replaced some of the amplifiers of a Winnipeg cable licensee's system with its own (as allowed for under provisions of the 1967 Agreement) for the purposes of "an inter-hospital communications experiment" (75). The CRTC's response was that before any channel of a broadcasting receiving undertaking could be used, the licensee had to obtain the necessary authority from the Commission and the operator could not permit the use of its undertakings except as required or authorized by its license or cable regulations (76). This stance obviously placed the Winnipeg licensees in a potentially difficult position if both the MTS and CRTC exercised their respective prerogatives. As it was, the cable operator voluntarily ceased service for a short while - and the resulting public reaction prompted MTS to reconsider its action (77). With this incident the first salvos had been publicly fired in preparation for the confrontation that would take place at the May 1976 cable license hearing in Winnipeg.

At the hearing itself, the CCTA and the Winnipeg cable operators went on the offensive, attempting to persuade the CRTC

that both recent MTS actions and its policy position in contract negotiations threatened federal control over cable matters ranging from content carried to likely increases in subscriber rates. Minister Turnbull for his part defended the LBN concept and claimed it necessary to allow Manitoba to fulfill its common carrier service obligations to all provincial residents. He also took the opportunity to criticize the CRTC for the lack of cable development in Manitoba since 1967 and its "rigidity on the hardware question" (78). The clash between the Commission's responsibility for broadcasting and Manitoba's responsibility for common carrier services led to remarks such as the following:

> Is it proper .... for the CRTC to impose hardware ownership requirements which may impinge upon provincial rights. This is a situation which we wish to avoid and I am certain that you do too, and this is why we have come before you .... We would like to sit down with you .... We wish to co-operate with you (79).

MTS attempted to have the CRTC authorize cable undertakings for Brandon, Portage La Prairie and Selkirk by accepting the draft service agreement for LBN the agency was offering the private cable applicants (80). The provincial carrier claimed that the Commission would have "the same ability to control content as with operators who own, as a minimum, his amplifiers and drops". Thus MTS also attempted to demonstrate some flexibility in saying that the draft agreement would be the subject of discussion between the provincial government and the DOC, discussions to which "we would assume that the Commission and ourselves would be party ... to resolve the most satisfactory wording" (81). The Commission however appeared unconvinced by MTS reassurances of guaranteeing CRTC control of content under

any LBN contract. CRTC Chairman Boyle reacted with the remark:

> ... the Commission has tried to avoid the use of the word "content" because it has connotations in terms that go beyond this particular thing of hardware .... There are developments in broadcasting that would be in effect related to form as well as related to types (82).

CRTC legal counsel indicated the trend of the Commission's thinking by questioning a cable license applicant as to whether he would be able to afford the necessary equipment if the Commission decided to grant a license on a full hardware ownership basis only (83). Thus the hearing helped to publicly define the positions of Manitoba and MTS, both of whom were determined to retain the provincial crown corporation as the main supplier of telecommunication services in the province, and the position of the CRTC, concerned about maintaining control over content. The agency, however, while appearing firm in its ownership policy, was nevertheless faced with the possibility that whatever cable applicants it might authorize, they could possibly not have the access to MTS facilities and right-of-ways required to begin operations.

In the hearing's aftermath the CRTC's hand over the cable ownership issue appeared to be strengthened both by the Manitoba Public Utility Board concluding that the CRTC had jurisdiction over agreements entered into between cable companies and the MTS. and by Sauvé statement that "any decision to stipulate ownership .... will be made by the CRTC" (84). However, hints that the CRTC might be sacrificed to political accommodation on the hardware ownership question came when Premier Schreyer of Manitoba stated that Manitoba was not interested in controlling cable content - and that the province was willing to enter into a

formal contract with the federal government, recognizing that licensing of operators and supervision of programming "is and should remain, a federal responsibility" (85). With Schreyer speaking of the possibility of arriving at a formal intergovernmental contract, speculation arose that "a 'deal' may have been made" between Sauvé and the provincial Ministers of Communications on the matter of cable hardware ownership and that the pending decisions before the CRTC for Saskatchewan and Manitoba would reflect this "new arrangement". Sauvé, when asked about these on-going federal-provincial ministerial meetings, particularly between her department and Saskatchewan and Manitoba, responded that her consultations "were only part of a round of meetings ... (allowing me) to become acquainted with all my provincial counterparts" (86). Further, these intergovernmental meetings would "in no way" influence pending CRTC cable rulings, because:

> ... discussions at those meetings were on general questions of federal and provincial concern on various aspects of communications, and were not part of any specific applications to be heard by the CRTC (87).

Simultaneous with these remarks which signalled that the Commission's cable ownership policy was being discussed in a wider (and more political) forum, the House, for the first time, seemed interested in the question of hardware ownership. Appearing before the House Standing Committee on Broadcasting, Sauvé characterized the intergovernmental talks as concerning cable matters that were being discussed only in terms of "administrative arrangements" (88). Pushed on the question of cable ownership during a subsequent appearance before the

Committee, the Minister suggested that the CRTC "possibly" could hold hearings on the general question of hardware ownership "if the problem becomes important enough" (89). Committee members continued to press Sauvé on the question of the existence of a government policy on cable hardware ownership. She responded with her opinion the the CRTC had none (but it had "at least in certain cases, made it a requirement of the licensee to own some of its hardware") and that her own department had no policy on the issue, but "in due course, this might come up for review and for consideration as government policy" (90).

Of course, the issue had been "under review" long enough by the DOC for the Department to have produced its "CATV Hardware Ownership Discussion Paper" in the summer of 1975. Since that time the Department had felt the need to come up with a policy position concerning the ownership of cable hardware (91). Nevertheless, as mentioned above, a departmental position favouring telco ownership of cable hardware had existed for a number of years so for all practical purposes it could be said that a departmental position on the question did exist. Thus the Minister's House remarks could be interpreted as saying, as a former senior DOC official was to suggest:

> ... that there is no policy to be published, there is no need to publish a policy .... that does not necessarily mean that within the Department there is not a policy stance, a policy approach ... or even if it (a policy) is ready, that it should be published ... (92).

This evident departmental wariness to adopt a public policy position on the question of hardware ownership during the summer of 1976 was reflected in Deputy Minister Yalden counselling the Minister to exercise prudence in her statements on the topic; she

was advised to state that while discussions with the provinces:

> ... will not in any way influence current matters before the CRTC (and) that while the final decision will be taken by the regulatory body, you support the flexible application of the Broadcasting Act across different regions of the country to best meet the communications needs of various regions (93).

Boyle had followed Sauvé's appearance before the House Committee and, in response to continued MP interest on the question of hardware ownership, stated that the Commission had neither received direction nor had had any discussion with the government on the issue. He said that hardware, as it related to Manitoba and Saskatchewan, was a matter presently before the Commission and would be heard under the present rules and Act. He also characterized the currently ongoing ministerial discussions as concerning "some future legislation but that has nothing to do with the matter at hand" (94).

The Sauvé and Boyle remarks made before the Standing Committee were "technically true" in the sense that the state of federal-provincial talks during the early summer of 1976 were of a "general, exploratory nature" and had no specific CRTC decision as the subject of their discussion. It was also "true" that the DOC had "no hardware policy" in the sense of having something that was publicly available on the issue. Nevertheless, the intergovernmental talks were to quickly affect "a matter at hand" because after the public examination of DOC and CRTC activities that the committee hearings provided, the next event to occur was to be the rendering of CRTC cable decisions for Manitoba and Saskatchewan which were "heard under the present rules" and which had "nothing to do with" DOC activities. The DOC and the federal

Cabinet, however, were to become deeply involved in the fate of these Commission decisions. However, discussions that the DOC had held with the Commission throughout the summer of 1976 on the latest incarnation of its long desired directive power suggested that the rules of the regulatory game under which the Commission had operated were about to be changed.

The Intervention of the DOC

While the Department lobbied for the directive power, the Commission after the 1976 Winnipeg hearing took licensing decisions that were out of step with the changed political realities created by the federal-provincial talks. As such, the stage was set for the first cabinet use of its review power of CRTC licensing decisions as provided for under the Broadcasting Act.

Cable licenses for Saskatchewan were the first to be announced after the Winnipeg hearing. In a lengthy preamble to its decisions the Commission acknowledged the historical role of SaskTel in providing telecommunications services in the province but went on to say that the respective obligations of SaskTel and the Commission "can both be safeguarded by appropriate ownership of facilities and contractual arrangements with respect to their use"; this said, the Commission proceeded to issue licenses which incorporated past conditions of license regarding hardware (95). Saskatchewan was in the midst of planning its closed circuit cable system and decided to fight the CRTC ruling. It launched an appeal to the federal Cabinet to have the Commission decisions

set aside (96). The province's decision to take the political route of enlisting the aid of the federal Cabinet prompted the CCTA to equivalently lobby federal politicians on behalf of the CRTC position (97).

The federal Cabinet released its decision on the Saskatchewan appeal - and reaffirmed the CRTC judgments. Prime Minister Trudeau explained the decision, in a letter to Premier Blakney which accompanied the Order-in-Council, as reflecting the concern that "the safeguards offered by SaskTel to cable licensees might not be sufficient" (to ensure their observation of the Broadcasting Act). He made clear that Saskatchewan's recognition of federal jurisdiction over programming and other broadcast-related services for distribution on cable systems would establish the basis "for the further development of cable television services in the best interests of the people of Saskatchewan and Canada" (98). He further stressed "that it has been the policy of this Government not to interfere with the (CRTC'S) selection of individual licenses".

Meanwhile the CRTC announced its licensing decisions for Brandon, Selkirk and Portage La Prairie, Manitoba on the same date as the release of the Cabinet's decision on the Saskatchewan appeal. As was the Commission's custom, the licenses granted had the condition attached that the licensee own, as a minimum, the amplifiers and the house drops. It also stipulated that "any contractual arrangement entered by the licensee with the MTS is subject to Commission approval" (99). In its turn the Manitoba government appealed to the federal Cabinet to have the CRTC decisions set aside. However, in this case, the provincial appeal

triggered a series of federal-provincial meetings between Ottawa and Manitoba during the months of September and October. Excluded participants such as the cable companies termed these talks "secret" and felt resentment that neither of the two levels of government nor the MTS would involve them in the discussions (100).

The outcome of these intergovernmental talks was made public 10 November 1976 when the CRTC decisions of 16 September for Manitoba were set aside and the Canada-Manitoba Agreement simultaneously announced. The intergovernmental accord, in essence, provided for greater provincial ownership of cable hardware in exchange for recognition of federal jurisdiction over cable content. While the Cabinet's action was not hailed by all (some speaking of the "de facto" reversal of CRTC policy) the accompanying departmental statement justified the action as "the only means available to allow the CRTC to start afresh" in its consideration of the changed circumstances of the Manitoba cable situation (101). During a House session, Sauvé was questioned on this (first) use of cabinet power to review CRTC licensing decisions. She defended her action in terms of the Governor-in-Council authority to either set aside or refer back a decision to the Commission and asserted that the DOC Act granted the Department authority to enter into such bilateral agreements (102).

As it was, the Commission decisions for Manitoba had arrived while the Department was engaged in intensified talks with the province as a result of the earlier Schreyer statement in favour of an intergovernmental contract. The announcement of the CRTC

decisions prompted Manitoba officials to approach the DOC to see if an arrangement could be worked out between the two governments. With evident consequences for the CRTC (in the form of the eventual cabinet review of the Commission's licenses), the key DOC representative handling much of the negotiations for the federal side during the summer of 1976 and the early part of "secret talks" of September-October was Bob Rabinovitch, a departmental official who had been agitating for a greater policy-making role for the DOC. He was also a departmental official who acutely felt the Department's annoyance with the Commission's Manitoba decisions, regarding their "conditions of license" as a "deliberate provocation", given that the CRTC had attended some of the DOC-Manitoba meetings held after the Schreyer statement "and knew what was involved". Thus there was a sentiment in the DOC that it was important to set aside the Commission decisions in order to give the CRTC the "very clear message" that it was the Department which intended to assert the federal position in any dealings with the provinces.

What was "involved" in intergovernmental relations at the time for the Department was the pressure arising out of provincial "adventures" in cable, as described above. The DOC was also under pressure, in the words of an official, to show that it "could get something done". In addition the presence of a new minister (Sauvé) who was "eager to make her mark" was important. The Canada-Manitoba Agreement, came after a series of "seemingly endless and fruitless jurisdictional discussions" with the provinces in the wake of the "Grey Paper" (103). Its successful implementation, department officials felt, would allow

a "line to be drawn" in the contested area of cable jurisdiction. The Agreement was also important to the Department as it would show that it could break through the "ridiculous quarrels" which were then taking place with the provinces. This deal, the Department hoped, would be the first of a whole series of similar agreements allowing 2-tier regulation of cable with various provinces (104).

The Department was anxious to reach similar agreements with the other provinces because it was unsure of the constitutional legitimacy of federal jurisdiction over cable (105). Related to this, Sauvé and her officials were concerned that they remain able to orchestrate the "organized" commencement of pay-television on a national scale (106). In addition, a point which must not be understressed was that the Department, and the federal government as a whole, were gravely concerned about the political events taking place during the summer and early fall of 1976 in the Province of Quebec. Although the Department had continued bilateral talks with several provinces, in addition to Manitoba, after the previous multilateral federal-provincial talks on communication matters had ended, Quebec had broken off dialogue with the federal government and a bureaucratic guerilla war between Ottawa and Quebec had ensued (107). This intergovernmental tension continued to grow while the DOC bargained with Manitoba during the 60-day cabinet review period of CRTC decisions allowed by the Broadcasting Act. (The election of the Parti Quebecois, on 15 November 1976, came five days after the signing of the Canada-Manitoba Agreement.) Thus there appeared to be important political factors, as well as department

pride, in having the accord accepted.

Agreement in principle was finally reached with Manitoba as the 60-day review period was drawing to a close. Sauvé sought cabinet approval to have the Commission decisions set aside - and encountered resistance to this first ministerial request for cabinet intervention of a CRTC licensing decision. Cabinet discussion amongst ministers and their officials exhibited a marked divergence of views on the merits of the deal that the DOC had struck with Manitoba. Secretary of State John Roberts was opposed to granting hardware ownership to the province and Justice Minster Ronald Basford posed questions regarding the constitutionality of the intergovernmental arrangement (108). With this discord in Cabinet, Prime Minister Trudeau adjourned the meeting (109). The next day, however, the PM invited back "key ministers" (without their officials) and the decision was taken to set aside the Commission's licensing decisions (110). The CRTC had been neither consulted nor invited to submit its views during this process (111).

The Commission Response

The Commission's immediate reaction to the Cabinet's action had Chairman Boyle questioning whether the Broadcasting Act forced the Commission to accept an agreement negotiated between governments. Until a legal opinion was obtained, he said, the Commission would take a "hands-off" approach to the whole affair (112). Winnipeg cable operators, negotiating existing agreements with MTS, were told by the CRTC that the Commission's conditions

of license, notwithstanding the Canada-Manitoba Agreement, were still the operational ones (113). Boyle also let it be known that he viewed the intergovernmental agreement as a retreat from a national telecommunications system and, feeling it more than just a "bureaucratic arrangement", decided it to be unconstitutional and refused to accept it (114). For the Chairman the Agreement amounted to the licensing of a provincial institution and thereby conflicted with the 1972 Order-in-Council which forbade provinces from owning broadcasting endeavours (115). Boyle's signs of displeasure with the accord were probably not only a function of a natural Commission reaction in the face of having a policy reversed but also signified the fact that senior staff at the CRTC thought little of the Agreement (116).

To allay some of the mounting criticism toward her actions, Sauvé wrote to Boyle a month after setting aside the Commission's licensing decisions to explain that the move had been made "in order to allow the Commission the chance to take into account" the terms of the intergovernmental Agreement (117). Boyle limited his response to thanking her for the courtesy of formally informing the Commission of Cabinet's decision (118). The Minister in the meantime had also issued a press release to counter charges made by the cable association that the Agreement constituted "political interference and that it substantially erodes federal control of the Canadian broadcasting system". The Minister refuted these allegations saying:

> From the federal point of view the major obstacle to joint use of coaxial cable in the past has been the danger that, if federal cable television licensees were totally dependent on carriers to supply their distribution needs, they might be unable to meet their responsibilities under the

> Broadcasting Act. That is why the CRTC .... has found it necessary to impose conditions on its cable television licensees requiring them to own certain parts of their distribution system (119).

Equating the "federal point of view" with the Commission cable hardware ownership policy suggests the the CRTC stance had constituted the federal position on the issue. Apparently with the changed circumstances of the DOC having the intergovernmental accord in hand, it was time for the Commission to give way on a policy no longer needed.

Stalemate

Two weeks after the Minister's letter to Boyle, a CRTC "Public Notice" appeared. It stated that the Commission was prepared to again receive applications for the provision of cable service in Manitoba and called for a public hearing on the issue. The Commission release displayed a notable spirit of independence, however, stating with regard to the Canada-Manitoba Agreement that: "while the Commission was not a party to the Agreement and is not legally bound by it .... (the Commission) would appreciate a fuller understanding of the Agreement" (120). The Notice then recalled the application call for Saskatchewan of 10 October 1975 which stated that the Commission was "prepared to hear and give full consideration to all potential applicants regardless of the ownership arrangements they propose ..." (121).

The CRTC concession to consider the applications (along with the accord) obviously allowed the federal government to save face but it would also allow public debate and scrutiny of the merits of the Agreement of which Boyle stated that the CRTC had "not yet

decided one way or the other what it will do" (122). This was because, Boyle explained, the Commission had a responsibility to the existing cable operators in Manitoba while the intergovernmental Agreement itself was "very broad" and "does not address itself to many of the CRTC concerns that relate to its policy of hardware ownership" (123). The Commission had also agreed to a new hearing on the Manitoba situation as DOC Deputy Minister Yalden had consented to make an appearance before the public forum to explain the intentions of the intergovernmental accord (124).

In early 1977, in the aftermath of the hearing call, there appeared indications that the Commission was prepared to give, if only a little, on its ownership policy. The Commission seemed willing to allow the Manitoba licensees to own the indoor wiring, headends, and possibly, the drops as a minimum, while retaining the right to approve all contractual arrangements arrived at between the licensee and the common carrier (125). On the Saskatchewan front, meantime, a meeting in February 1977 between Shillington (the Saskatchewan Minister "Responsible for Communications"), the Saskatchewan licensees and Boyle illustrated that the Saskatchewan provincial government was determined to go ahead with a form of pay-television distributed by co-ops (126). Commission legal counsel attempted to arrive at an accommodation between the Saskatchewan representatives and CRTC Commissioners by suggesting that development of cable tv service go ahead in the province while questions surrounding the issue of pay-television jurisdiction be resolved at the political level, but this was not pursued (127). At that, an impasse

appeared to have been reached. The Saskatchewan cable licensees, eager to begin conventional cable service, began to see public pressure as the only means to oblige the Saskatchewan government to modify its position (128). Meanwhile, SaskTel, which had begun laying cable in early 1976 in Regina, Saskatoon, Moose Jaw and Battlefords, was laying cable "as fast as it could", apparently thinking this would provide it with leverage power in determining who would have access to the cable systems which would ultimately be used in those communities (129).

Following the inconclusive meeting with Saskatchewan government representatives, the CRTC also faced Prime Minister Trudeau's public endorsement of the Canada-Manitoba Agreement - calling it a "perfectly good example of an administrative arrangement within the framework of the present constitution" - and the province of Saskatchewan readying its "Community Cablecasters Bill" with its deep implications for federal jurisdiction (130). These events occurred all while the agency was conducting discussions with the DOC, in the words of the Minister, on "what this agreement really means and how it possibly could be interpreted" (131). During these meetings with the Commission the Department attempted to demonstrate that, while the CRTC's insistence on the hardware ownership conditions reflected its concerns and responsibilities for cable as a part of the broadcasting system, the problem was, in the words of a DOC official, that this seemed to "infringe upon departmental policy responsibility in terms of overall system development and the place of cable within this global scheme". Departmental frustration with the Commission over the progress of these talks

on the intergovernmental accord was reflected in a speech by Sauvé which was critical of the policy-making role that the Commission "had held" (132). Meanwhile a testy Chairman Boyle was telling the House Broadcasting Committee that "if the CRTC's management of the Canadian broadcasting system is wrong, then Parliament (should) abolish the CRTC" (133). Probably not wanting to have to employ such draconian measures but with the next Winnipeg hearing set to begin soon, Sauvé again wrote Boyle, thinking "it useful to clarify the provisions of the Agreement", in the hope "that the Commission will now be in a position to hear applications for CATV licenses in Manitoba" (134).

This letter from the Minister would have to suffice as departmental input on any public debate on the intergovernmental accord, because the DOC had decided by that point not to appear before the Commission. Fearful of the "legal niceties involved" if the government should be asked to use its review power in connection with any decision emanating from the hearing, the Department decided not to risk the possible compromising of this cabinet function and accordingly declined to appear (135). There was also worry within the DOC over the precedent that would be set if the Department appeared, what status its officials would have, "and also the possibility of future cases arising where it might be in someone else's interest, and not the Department's, to have the Department appear" (136).

While these developments were occurring within the federal government in the weeks leading up to the hearing, the Battlefords appointed licensee had entered into a "Cable Television Signal Delivery Agreement" with SaskTel that would

require deletion of its CRTC conditions of license stipulating operator ownership of amplifiers and drops (137). On the eve of the hearing, while the Battlefords licensee was appealing to the CRTC to allow equipment leasing from SaskTel, another licensee was soliciting the same from the DOC (138).

The third Winnipeg hearing to consider the extension of broadcasting services in Manitoba opened with the Commission needing to decide how to react to a Manitoba government policy discussion paper received on the eve of the hearing (a similar event had precipitated the 1974 hearing) (139). The policy paper defended the intergovernmental accord, citing it as necessary to allow provincial access to the unused cable channels over which the CRTC had usurped control because of its licensing conditions. The implementation of the Agreement was also essential to the province to prevent "the gradual transferring of responsibility for providing facilities for telecommunication services from MTS to the cable companies, and from the provincial to the federal level of regulation" (140). During the hearing the Commission made clear that it did not consider itself bound to the Canada-Manitoba Agreement. Nevertheless Chairman Boyle attempted to discern how the accord impinged on the MTS' scope of movement and also how the provincial Public Utilities Board (PUB) was likely both to interpret elements of the accord and to react to future public issue questions if it should find itself with a greater voice in the regulation of cable in Manitoba (141).

While it emerged for the first time that MTS appeared willing to permit a grandfather clause which would exempt the Winnipeg systems already in operation from the accord's ownership

provisions, the established Winnipeg operator (Videotron) could not not expect similar treatment with its new licenses for Portage La Prairie and Selkirk, which the CRTC had issued the previous September (142). Thus, while its statements made it clear that the CRTC felt that it had sole responsibility for the licensing of cable systems and that the Broadcasting Act did not allow for the operation of intermediaries, including ministers, in this function, it was becoming obvious that some sort of accommodation with MTS would still have to be found if the new rural cable offerings were to go forward (143).

However, the adjudication role that the Canada-Manitoba Agreement envisaged for the provincial PUB in resolving disputes of terms, conditions, and rates was obviously a major point of concern for the Commission. These functions seemingly placed the provincial agency in the pivotal position of deciding whether a service was a telecommunication or programming offering (144). Boyle considered the Agreement to be vague on the question of "just what constitutes programming"; this was coupled with an uncertainty as to who was to decide the nature of a service and a remark by a license applicant for Portage La Prairie that "there had been very little discussion, or any discussion at all, with MTS so far as programming is concerned" (145). All these factors were evidently unsettling for the Commission. When Videotron requested a 5-year license renewal for their Winnipeg operations in order "to strengthen their hand" in negotiating a new contract with the MTS for their licenses at Portage La Prairie and Selkirk Commissioner Hylton's response reflected the Commission's inquietude: "we could give you a renewal of license valid month

to month to show how nervous we are about the whole situation" (146). On that note the hearing ended. The experience, nevertheless, usefully demonstrated the lack of clear definition which existed between those activities constituting broadcasting programming and those seen to be common carrier functions. It also explored questions touching on matters of the jurisdictional division of responsibilities between the federal and provincial governments - an issue that would need to be dealt with in any resolution of the issue at hand - while considering what measures could replace the Commission's usual ownership conditions of license and still allow effective CRTC regulation of cable.

In the wake of the hearing, the Saskatchewan provincial legislature passed the "Saskatchewan Co-operative Communications Bill". This sought to launch a "Cooperative Program Network" involving government participation to encourage the formation of cable co-ops throughout the province by June 1978 (147). A program package to be sold to the co-ops was also to be developed (148). The situation meanwhile had not altered a great deal for the private Saskatchewan license the CRTC had granted in September 1976; SaskTel saw no reason to pursue negotiations pending the CRTC's response to North Battlefords' request made at the latest hearing for a change in license conditions and they also wanted to await the Commission's comments and official views on the ownership issue in light of the hearing discussion on the Canada-Manitoba Agreement (149).

With these Saskatchewan events occurring in the background, the Commission's deliberations from the May hearing were reflected in an August (1977) announcement which stated new

licenses for Manitoba. The Commission again stressed its independence, saying:

> The Commission cannot subject its authority to limitations imposed from any other source unless in conformity with the Broadcasting Act (150).

Having stated this however, and in the wish "to avoid further undue delays", the Commission announced that it would modify its normal minimal plant ownership policy in light of the "special circumstances" of Manitoba - provided that certain conditions were met. The most notable of these included that the cable television operator own the inside wiring, although there could be joint usage by the operator and MTS, along with the house drops and, further, that any contract entered into with MTS required Commission approval (151). Thus the Commission had given up the requirement that the operator also own the amplifiers, house drops and headends. In closing, and as a foreshadow of events yet to occur, the Commission acknowledged the trials and tribulations so far undergone by all parties and those yet to be faced in arriving at a final set of contractual arrangements (152).

The next month the CRTC announced "Decision 77-585" for North Battlefords, Saskatchewan in which it dropped the licensing condition that the cable operator own the amplifiers and drops. Again cited as reasons for this move were the desire to avoid further delays and the "special circumstances" of Saskatchewan (not to mention that the Battlefords Community Cablevision Co-op had been unable to arrive at an agreement with SaskTel). The announcement went on to say that the Commission was prepared to adopt alternative means of achieving the policy objectives sought

by the ownership conditions of license "although these were not the preferred means". These Commission decisions for Saskatchewan went beyond the ones granted for Manitoba by allowing the province the significant concession of using the reserved cable capacity of the federally-licensed operator to offer provincially-authorized services (of both a programming and non-programming nature). Mention was once again made in the announcements that implementation of the stated conditions by means of a contractual arrangement between SaskTel and the designated licensee would "involve considerable effort" (153).

The CRTC had decided to relent in the case of Manitoba otherwise "infinite ping-pong could have been the result" - as the Department had threatened the Commission with returning whatever licenses it issued for the province that were not keeping with the "spirit" of the Agreement Sauvé had signed with Manitoba (154). With the Saskatchewan decisions, however, the DOC was surprised by the greater leniency the Commission exhibited towards that province; in fact the Department thought that the Commission had "given away too much" (155).

The fact that the Commission had been more yielding in its stipulated conditions for Saskatchewan undoubtedly reflected the fact that the Commission felt it had less leverage room in that instance. With only a few minuscule systems already in operation in that province, in contrast with Manitoba that had had its major Winnipeg systems existing since 1967, the agency presumably felt that Saskatchewan would be willing to "hold out" to obtain the hardware ownership it wanted (156). Additionally, Saskatchewan had made it exceedingly clear that it was not going

to deal with any license the CRTC might "care to issue for the province" which included unacceptable hardware ownership provisions while all the time the province was prepared to proceed with the CPN system that was increasingly taking shape. These points were no doubt all made clear to the CRTC during the "concerted negotiations" held between Roy Romanow (Saskatchewan Minister of Communication) and his staff and CRTC officials and Commissioners in the six weeks preceding the agency licensing announcements for the province (157).

The new conditions of license for both prairie provinces were also a reflection of the significant negotiations that had gone on within the Commission: senior staff (and particularly Executive Director Michael Shoemaker) had made strenuous efforts to convince Chairman Boyle and some of the long-serving Commissioners that ownership of a cable system's tangible assets was not the key to retaining it as a "broadcasting undertaking" and controlling the content that it carried - but rather the ability to approve the contractual arrangements arrived at by the federal licensee and, in these cases, the provincial carriers was the crucial factor (158). The significance of the requirement to arrive at an acceptable contract for all parties was not lost on the provincial Ministers in both Winnipeg and Regina. While hailing the CRTC decisions for their respective provinces to acknowledge the provincial carriers' right to own more of the cable systems delivery hardware in the province than previously, both Ministers nevertheless also noted that the licensees would still need to negotiate a signal delivery agreement with their respective provincial carrier which was acceptable to the federal

agency. This might not be an easy task.

Thus these CRTC decisions evidently had the Commission retreating on its hardware ownership policy due to political pressure, and it is arguable that the hardware conditions remaining still left the cable operators with sufficient hardware to retain the final say over the kinds of services that could be offered (159). In fact, as will be seen, the license stipulations requiring that contracts negotiated with the provincial carriers be approved by the Commission were to prove so arduous, with compromises required on all sides, that it is difficult to speak of outright "winners" and "losers" in this case study.

Immediately following the CRTC announcements, negotiations were renewed between the CRTC-appointed licensees and their respective provincial telco. Battlefords Community Cable arrived at an agreement with SaskTel and the proposed lease was duly submitted to the CRTC (160). Meanwhile, bargaining between the Winnipeg licensees and MTS lagged due to the latter's refusal to incorporate the Commission's licensing condition of operator ownership of house drops within the terms of the lease - along with a refusal to seek Commission approval of the contract (161). The Commission eventually received a lease concluded between MTS and one of the new Manitoba licensees, studied it and promptly returned it to the submitting Brandon operator, citing its failure to conform to all the conditions laid out in the CRTC decision of 8 August 1977 (162). This action was to mark the arrival of another impasse, because the MTS had let it be known that should the Commission disapprove the concluded agreement submitted by the cable licensee, it could be discussed again

"except for certain non-discussable terms" (which included the house drops) (163).

The lease concluded between Battlefords Community Cable and SaskTel met a similar fate once submitted to the Commission. By the end of October, discussions between the Commission and the Province of Saskatchewan were described as being at a "standstill". Meanwhile the province was continuing with its "CPN" program (164). The pleas from a cable licensee led to a November Ottawa meeting between the Executive Committee of the CRTC and representatives of the Saskatchewan government and SaskTel. This led to the submission of a revised signal delivery agreement to the Commission (165).

The CRTC was also having to meet with its Manitoba licensees at this time in order to retain their confidence (166). They were becoming increasing disgruntled with the progress of negotiations (167). Over the next short while, nonetheless, little in concrete terms transpired, although much energy was expended, particularly on the Manitoba front (168). In regards to MTS, the Commission initially stood its ground, maintaining that the MTS had no reason to fear its imposed licensing conditions, as the Commission was only interested in ensuring the distribution of "programming services"; the federal agency was not "in a practical sense or legally" able to allow "the federally licensed cable operator to compete with the distribution of the telecommunication services" (169). Nevertheless continued MTS stubbornness caused some of the Manitoba licensees in early 1978 to apply to the Commission for deletion of the drop ownership condition of license. The

established Winnipeg operators, however, expressed their opposition to changing the policy on drop ownership (170).

By early March 1978, MTS inflexibility had the Commission by early March 1978 thinking of granting a concession on drops, but only for the new rural operators - and only if it appeared that MTS would not cede on the issue and if numerous outstanding issues were also settled. Amongst these were that MTS "must find some way to ensure that pay-television can be regulated by the CRTC" and that "the Commission is to approve MTS use of capacity in the indoor wiring" (171). However this strategy was being developed while the Commission still believed that the Manitoba government was "very anxious to achieve a reconciliation of the issue" and that Commission "overwillingness to negotiate" the question of drop ownership might be imprudent as "it (was) not beyond conception that the Manitoba government (was) willing to accept the Commission's license decision at this time" (172). This Commission's hope to prevail with its licensing decisions existed while the DOC and Manitoba government officials had been discussing with the "Service Drop Wire Clause" in the MTS contract that the CRTC had rejected as unacceptable in the effort to find a compromise. The two groups arrived at a draft agreement which had ownership of the drop reside with the cable operator and telco use of the unused channel capacity subject to CRTC approval in exchange for a limited right to take over the ownership and control of the drop wires under specified circumstances (173).

This attempt to partially accommodate the CRTC on the drop issue was taking place however while the Commission faced a

rebellion by most of its cable licensees appointed for Manitoba centres outside of Winnipeg: after having the Commission reject their request to withdraw the condition of drop ownership, they decided to defy this ownership condition of license. Only the Winnipeg operators and a single rural operator wanted to continue to own their own hardware (174). Simultaneously the Province of Manitoba applied political pressure to the Commission, while the latest Minister in the portfolio complained to Sauvé of CRTC intransigence and made the "formal request that the Government of Canada (take) positive action to ensure that the requested license amendments will be approved without delay" (175). While the chairman of the MTS appeared optimistic that such federal-provincial machinations would result in the CRTC removing its drop ownership restrictions, Sauvé had very little to say when questioned on the Manitoba situation in various House forums, except that "there is some administrative difficulty as well as practical difficulty in the application of the Agreement" (176).

Resolution

These "difficulties" involved negotiations between the various parties during 1977 and into 1978, which in their final stages, seem to begin to border on discussing the metaphysical (or, if you will, the proverbial "how many inside cable wires can dance on the head of a house drop" dilemma). Talks between the CRTC and the MTS bogged down on the question of who had jurisdiction over what end of the inside wire which went into the

house drop. Meanwhile in Saskatchewan, practical problems in implementing the deal that had been struck between the province and the Commission the previous September led to the "fiction of the split wire". The deal struck had held that while the CRTC would retain jurisdiction over the inside wiring, this wiring would "be split" so that provincially-regulated services such as the CPN could run on one wire inside the residence, while those services remaining under federal jurisdiction would be carried on a second wire running inside the residence. This "splitting of the wire" and house drops, however, posed some major technical (and cost) problems. In the end (in some cases) the split was not made and just one wire into the subscriber's house existed (with the involved parties tactfully consenting not to further address the "reality" that necessity imposed in those cases) (177). Meanwhile in Manitoba, the Winnipeg operators proceeded with their operations on the basis of a 5-year renewal of the original 1967 contract incorporating the concessions the Commission had made in its announcement of the previous August, while for the rural operators, for the most part, the MTS and CRTC arrived at an accord similar to that which had earlier been implemented for Saskatchewan (178).

Overall, however, there occurred no "definitive" resolution to the issue of cable hardware ownership in the provinces of Manitoba and Saskatchewan. The issue instead was supplanted and pushed into the background as other developments arose. In the case of Manitoba, the issue died away partially because of the weakening role of MTS as advisor to the provincial government (179). More importantly, by late 1977 the Supreme Court had

ruled in favour of federal government jurisdiction in the area of cable (180). With the Supreme Court rendering its decision, the federal government's "hand was strengthened" allowing the DOC to relax on the need to have the Canada-Manitoba Agreement implemented. It also removed the imperative to arrive at similar agreements with other provinces (181). Instead, henceforth, federal-provincial efforts were to focus on the multilateral discussions held in the wake of the Supreme Court ruling, discussions which formed part of the constitutional talks of the late 1970s and early 1980s. Furthermore, the earlier hopes (and fears) of cable as an interactive means of communications did not show signs of transpiring as the 1970s wore on. Instead of developing to provide a parallel service to the existing common carriers, cable seemed destined to remain simply a purveyor of entertainment.

The question of cable hardware ownership, for all practical purposes, came to be left at this point as the energies of both federal and provincial governments were increasingly taken by the multilateral talks on the issue of communications jurisdiction - and the end of the series of events that begun with the first cabinet review of a CRTC licensing decision can only be termed as anticlimactic.

Conclusion

The issue of cable hardware ownership, "a very important policy question", was obviously complicated in the fall of 1976 with the appearance of the Canada-Manitoba Agreement (182). The

attempt of the accord to bypass difficult questions of jurisdiction and break the "log-jam" in intergovernmental negotiations at the time, in order to "allow some things to happen", demonstrated that the Department wanted the issue of jurisdiction of control of programming settled. It felt it could summarily do so with an accord - and, in harmony with its historical position, did not mind if (in this case provincial) telcos owned the hardware of cable systems (183).

With Quebec licensing parallel cable systems and Saskatchewan embarking on the development of its own provincial pay-television scheme (which in August 1976 Sauvé had termed "disastrous for the Canadian television industry"), by 1976 the Department was evidently eager to try to reach some sort of settlement with the provinces (184). This search for accommodation thus had the federal Minister suggesting to Saskatchewan that provincial carrier eligibility for broadcasting licenses could be "discussed" after intergovernmental multilateral agreement had been reached on "possible provincial entry into general broadcasting" (agreement which would also allow possible discussion on "means of provincial involvement in the process of licensing and regulating broadcasting receiving undertakings") (185). These ministerial suggestions however dismayed the Commission (186). Not only was it concerned with maintaining regulatory control over cable for present broadcasting purposes, the agency had an eye to the future and was in agreement with the observation of a Saskatchewan Minister that ownership of the amplifiers and house drops not only dictated development of the cable system but was "necessary to

improvise new services which may come on the scene" (187). While the DOC, in the view of the CRTC, "didn't care much about the ownership question", Boyle and other (long-time) CRTC Commissioners did, seeing it as the key to control the introduction of a service like pay-television (188). The Department meanwhile had seemingly come to hold the belief that a series of bilateral agreements, like that with Manitoba, could handle the issue.

A remarkable feature of the series of events which took place between the CRTC and the Department (post-1976), and between the Commission and the provinces, is the length of time the issue took to unfold: in all, an excruciatingly slow process of "give and take" occurred, both before and after the arrival of the intergovernmental accord on 10 November 1976. The holding of the 1974 and 1976 Winnipeg hearings and the granting of the original licenses (which paid heed to none of Manitoba's demands) were a part of this process. Nobody wanted to be seen as responsible for the delay in the granting of cable licenses for the province. Thus the holding of the hearing, and all the events which were to follow, "were part of the game; you give the smallest pittance you can while giving the appearance that you're really flexible" (189). Obviously for the Commission this meant refusing to implement the Agreement as it first stood and instead, during the process of negotiating its implementation (during the period late 1976-early 1978), attempting to discern what the provinces would accept as a minimum in terms of hardware ownership.

Nevertheless, the two major themes which emerge from the

case study are the inter-related ones of federal-provincial and DOC-CRTC relations. In regard to the former, as mentioned above, an ironic point seems to be that the establishment of the Department, especially its "Federal-Provincial Branch", led to the heightened provincial interest in the area of communications which, in turn, led Sauvé to apparently have the elimination of communications as a jurisdiction question (and possible topic during any future constitutional talks) on her agenda upon arrival at the DOC. The further irony, however, is that when cable hardware ownership became a friction point between the levels of government as a result of this intensified provincial interest, it subsequently became a problem within the federal government - between the DOC and CRTC, given that "there were no occasions to debate the policy openly" between these two organizations (190). The issues surrounding the need for this policy to be debated within the government, and the lack of appropriate avenues to do so are now considered. To do this, the policy-making role of the CRTC in this series of events will first be discussed.

While Juneau would have understood if the government had wanted to decide the policy of hardware ownership, "because of its importance and (they) having every right to do so", the government did not make this move - thus leaving the Commission to make the decision "as no one else would do it" (191). Nevertheless, as the point was made in Chapter Two with microwave importation, the early years of the CRTC were remarkable in that its chairman, Pierre Juneau, was a more important advisor on broadcasting policy than any minister or deputy minister (192).

His closeness to the government was evident in his attendance of cabinet meetings and his standing as a candidate for the Liberal government of Pierre Trudeau during the by-election of 1975.

Thus because of Juneau's relationship to the government, it appeared that Pelletier, upon his initial move to the DOC, was prepared to be advised on the ownership issue by his good friend Pierre Juneau. During these early days of his tenure at the Department he appeared content to let the CRTC handle the issue (and deal with the provinces) (193). The "Juneau factor" was of sizeable importance in that, although from the early 1970s the DOC (privately) held a different view on the issue of ownership from that of the Commission, it was the CRTC view which prevailed. Juneau, "a stubborn defender of a very centralist view of cable", set the federal agenda in the pre-1976 period (194). In a related manner, the dominance of the Commission as the federal broadcasting policy-maker during the pre-1976 era was undoubtedly also reinforced by the absence of other forceful state actors - even after 1972 the DOC still did not have all the necessary wherewithal in terms of staff and research capacity to develop broadcasting policy (195). It was the agency which possessed the broadcasting expertise within the federal government (196). Additionally, as was evident in this case study, there existed a strong lobby for the Commission which helped to prevent any of its decisions from being reviewed before 1976.

The Commission was also aided in its role as a "policy-maker" on the issue of hardware ownership as it had the legal authority to make rules and set conditions of license

without the need for government approval. This ability, when the same conditions of license were consistently applied, allowed the Commission to independently set "policy". In addition, even in the post-1976 period, the Commission was helped, for the most part, in its endeavour to maintain its policy by virtue of its position as the state actor closest to the cable licensees. This was to be a factor in helping the Commission retain a pivotal role in the negotiations which took place after the introduction of the accord. Thus while Manitoba, MTS and the DOC still had to persuade the Commission to change its licensing stance, the agency was buttressed by the support of its established Winnipeg licensees and in general by its new Manitoba and Saskatchewan licensees - and also by a Saskatchewan government which, in the words of a provincial official of the time, "rebuffed by the DOC" (and seeing the tensions existing between the DOC and CRTC) "decided to throw its lot in with the CRTC" and kept talking directly with the agency. Saskatchewan was seemingly rewarded for this action by having its situation resolved before the same was done for Manitoba. Finally, what was important in the latter stages of the case study was the fact that the Commission had to approve all contracts entered into by its licensees with the provincial telcos which also helped the Commission retain a commanding position.

Nevertheless, if the first case study demonstrated the concern of various participants regarding their ability to more fully (and directly) control the activity of the CRTC, the current case study finds this desire taking on a public form. Upon becoming DOC minister, Sauvé's selection of Deputy Minister

Yalden as her communications advisor signified that "the CRTC was no longer going to run things" (197). However when the Minister remarked during July 1976 that it was for the CRTC to stipulate ownership and that her own talks with the provinces were "... just on-going .... (and would) not influence Commission decisions (as) these talks (were) just on matters of general concern", it suggested that the CRTC was making federal government policy in the area, with the government's acquiescence, as certain provinces had complained (198). Nevertheless the Minister was able to change this policy when it suited her and the DOC (199). This remark leads to a discussion of the constraints under which the CRTC operated in this series of events.

On this point obviously the departure of Pelletier and the changing of the guard at both the DOC and the CRTC were extremely important, because the Commission was to find itself dealing with a department henceforth far less solicitous of it. Thus in early 1976 while the Commission was concerned with protecting the federal prerogative in cable jurisdiction through the use of hardware ownership conditions of license, and was battling a determined Manitoba and Saskatchewan, the new Minister declared herself willing to discuss provincial carrier eligibility for broadcasting licenses (although under certain circumstances). This type of remark, and the Minister's willingness to pursue possibilities such as Manitoba Premier Schreyer's June (1976) statement that the province was ready to enter into an agreement with the federal government, demonstrated that Sauvé was a much more activist minister than Pelletier had been, a role which Boyle and the Commission resisted accepting and one which Juneau

certainly would have found "too interventionist" if he had stayed on at the Commission (200).

As mentioned above, the government's self-perceived need to enter into an accord like the Canada-Manitoba Agreement ironically arose because the provinces increasingly became interested in communications as a result of early DOC efforts to promote the topic as a policy area. The provinces' demands for satisfaction from the Department in terms of input to policy-making produced the DOC claim that it could not deliver on these demands because certain areas were under CRTC jurisdiction (201). This created the desire at the federal level for more governmental authority over the agency. The Department, and undoubtedly the factor of "bureaucratic self-interest" enters here, wanted to have the power to both negotiate with the provinces and the ability to come back "and tell the CRTC what to do" in terms of implementing any intergovernmental agreement reached (202). As none of the proposed legislative amendments that would have given the Department a directive power over the CRTC had passed by the time of the signing of the intergovernmental accord in the fall of 1976, the Department and Minister could only "control" the agency, in the words of an official of the time, by use of the "blunt instrument" of referring the decisions back. The Department was dependent upon winning over the CRTC Commissioners to the merits of their approach and convincing them to implement the provisions of the Agreement through their future licensing decisions. While this seemingly placed the Commission in a strong position, the agency nevertheless faced a department that was enraged over its

original (1976) decisions for Manitoba, feeling them a deliberate affront, and thus determined to have the subsequent intergovernment accord implemented (203).

The Department's request to have the Commission decisions set aside, however, presented a picture of governmental confusion. The CRTC found support for its position both in Secretary of State John Roberts and in the legal questions raised about whether Minister Sauvé's authority to enter into an intergovernmental agreement could somehow be related to the act of referring a Commission decision back to the agency (204). The Cabinet, having the choice of either "setting aside" the Manitoba decisions or referring them back, choose the latter option. This was the more gentle action, akin to the Cabinet saying that it wished the Commission to reconsider a matter of policy, rather than that the agency had made a mistake in any way. This cabinet action seemingly reflected a certain belief that the Commission would docilely alter a position it had arrived at over a period of six years. With the Commission obviously not immediately doing so, the closest form to a directive power the DOC minister possessed in this instance was Sauvé's two letters to the Commission which laid out ministerial wishes on the issue. Nevertheless the Department's actions of license decision review and letter writing were sufficient for Commission Chairman, Harry Boyle, to resign during this series of events, complaining of "government interference" (for more details, see next chapter). The Department apparently did not feel it had much leverage over the Commission through these mechanisms and again felt the need to push for a policy directive power and the explicit ability to

enter into intergovernmental agreements. These perceived needs were reflected in the provisions of Bill C-16" which the Department tabled in the House in the aftermath of the 1976 events (205).

Nevertheless, any impotency on the part of the Department to directly instruct the Commission was compensated for by the pressure other actors were able to bring to bear upon the agency. In the case of Saskatchewan, the Commission was confronted with the "religious fervour" of its governmental officials and their belief that SaskTel should own certain parts of the cable system hardware. The CRTC found that this attitude made negotiating with the province "very difficult" and could explain why the Commission was to settle with Saskatchewan (and grant it greater concessions) before doing so with Manitoba (206). In all, the radical approach of Saskatchewan, the determination of Manitoba and the DOC to see their accord implemented and the increasing restlessness of certain newly-appointed CRTC licensees combined to prompt Commission staff "to spend all of (their) efforts trying to come up with a compromise" between all the interested parties (207). In a situation where the "political realities overruled the regulatory and legal niceties due to the seriousness of federal-provincial problems at the time", the CRTC was to "look hard" at its ownership requirements (208). With Commission staff able to convince Boyle and other long-time Commissioners that ownership was <u>not</u> the key issue, with some discrete "looking the other way" as well as the "fallacy of the house wire drop", and with quiet provincial acquiesce to Commission approval of contracts, the saga came to an end (209).

Before concluding, a moment is warranted to remark on the impact of the intergovernment Agreement upon the regulatory process as this will prove useful for discussion in the thesis conclusion. On this point, while a departmental view holds that the Canada-Manitoba Agreement was, and still is, a good description of the respective interests of the two levels of government in this domain, the overall consensus appears to be that the intergovernmental Agreement impeded the process of introducing and extending cable service in the two prairie provinces "as no one knew what it meant" (210). The long-term impact of the Agreement was to "make investors nervous about Manitoba;" its appearance was to trigger a chain of events which were to disrupt "the security and predictableness that the regulatory process can offer" (211). Due to this evident "disruption" of the regulatory process it is difficult to say that the CRTC acted as an "unfettered" actor in this series of events. While it is also difficult to specify categorically the actors who emerged from the experience as "winners" or "losers", given that concessions and compromises were made on all sides, it is nevertheless clear that the Commission felt obliged to give way on its established cable hardware policy of nearly six years standing to accommodate the actions of the Department and provinces.

Furthermore, as was the conclusion in the previous case study, it is difficult to speak of the Commission as having usurped any sort of a "policy-making" function from either the government or Parliament on the issue of cable hardware ownership. Until the granting of the original 1976 Manitoba

licenses, DOC ministers had left the CRTC to handle the issue (and Sauvé continued this tradition with her "stipulation" remark of the early summer of 1976) while no parliamentary forum had ever declared itself on the question (with the exception of the "Davey Report"). Thus, with neither a policy nor a public declaration emanating from the government before the granting of the 1976 decisions, it is difficult to speak of the agency as having usurped any federal role.

While, in the period after the referral back of the Commission decisions there existed genuine CRTC resentment over the government's actions, much of the ensuing delay in bringing resolution to the issue seemed to entail not simply Commission reluctance to implement the Agreement as it stood, but also the need to complete the task of translating the intentions of the accord into the more precise language and definitions required in the legal document which is a licensing contract.

As a final word to this series of events, and as a commentary on the expertise residing with the regulatory agency, it is ironic to note that with events occurring much later than the case study time frame (and both MTS and SaskTel moving to a position of divestment of cable hardware (see Appendix 1)), it appears that the Commission has been proven "right" in its early 1970s decision to require cable operators to own substantive parts of their systems. This situation where the regulatory agency is eventually proven correct in a decision originally taken during a period of government policy vacuum on the topic at hand, only to be disrupted in its elected course by the activity of the Department, is to be repeated in the next two case

studies. Collectively, they support an argument the former CRTC Chairman, Pierre Juneau, has made, that government should countervail the judgment of its regulatory agency only with the greatest of care (212).

CHAPTER FOUR

THE CRTC AND THE TELESAT-TCTS PROPOSED MEMBERSHIP PLAN OF 1976-1977

Introduction

Telecommunications policy-making by the CRTC is the subject of this case study. In this policy area, the Commission has been described as taking a highly activist role (1). This has led it since the late 1970s, in the words of Woodrow and Woodside, to become an "implicit" policy-maker sometimes overshadowing the DOC (2). To examine the validity of these statements with a particular focus on our concern of the independent policy role of the CRTC, an examination will be made here of the events which surrounded the CRTC's consideration of an agreement proposing the membership of Telesat Canada within the Trans-Canada Telephone System organization (TCTS, now known as Telecom Canada). In this series of events, the Telesat-TCTS proposed agreement was put before the CRTC for approval under provisions of the Railway Act, with DOC Minister Sauvé's sanction that the agency determine whether it was in the "public interest". The Commission examination of the proposal resulted in the agency rejecting the membership plan - against both the Minister's and her department's wish that it be implemented. The Commission action in turn led the Cabinet to "vary" the CRTC decision.

This "Governor-in-Council" review overturned the agency's refusal to grant permission with the resultant consequence that the proposal was ultimately implemented.

In determining whether the agency was "out of control" during this series of events and usurped a governmental "policy-making" role, the case study shows that although the Commission certainly did not like the proposed membership plan, and said so through its decision taken under the Railway Act, in the final analysis the CRTC could do no more in this instance than advocate its point of view. Due to the government's powers of review in telecommunications matters, the views of the Commission in this field are dispensable as any CRTC telecommunication decision is liable to cabinet review action. Accordingly, rather than considering the actions of an unfettered regulatory "policy-making" body, this case study prompts questions concerning the fragility of both the Commission's decision-making independence and the integrity of the regulatory process. The ad hoc nature of policy-making in the field of telecommunications also emerges. The absence of clearly stated government policy in the area becomes evident. Yet vague legislative statutes do exist, leading to bureaucratic rivalries with consequential effect on the decision-making process. Furthermore, there is an issue of the ambiguity involved in determining what types of decisions properly constitute "policy" versus those which make for "regulation". The resultant inexactness produced by all these issues has an impact on the roles played by different actors in the decision-making process. Finally,

as to the question of whether the CRTC was "out of control" as a decision-maker, the events of this case study will unequivocally provide the answer "No" - unless acting within its mandate, when asked, and required to do so, makes one "uncontrollable".

Emergence of the Issue

Telesat, the domestic satellite communications system, was established in 1969 with passage of the Telesat Canada Act (3). This legislation implemented recommendations of a 1967 white paper which considered space programs in Canada (4). The study advocated the foundation of a Canadian satellite system for a variety of social, economic and technical reasons (5). The existing terrestrial communications systems, TCTS and Canadian National-Canadian Pacific (CNCP), however had been opposed to the concept of introducing a satellite system - as its implementation could render their networks obsolete. The two organizations had argued that the creation of a satellite system was not needed as their current networks could meet all foreseeable demands for service required at a reasonable cost. The pending establishment of Telesat by the government signified that they had lost the debate; thus the common carriers apparently came to realize that they had better "join in". They shifted in their attitude towards a domestic satellite system and became more receptive to the idea of greater involvement in its operations (6). Canadian telephone

companies (telcos) thus became shareholders in Telesat upon its establishment. At that time ownership of the new corporation was divided with 49% of the shares possessed by the telcos, 50% by the the federal government and the remaining 1% held by the president of Telesat. Eric Kierans, DOC Minister at the time, however, let it be understood that eventually the general public would be allowed to buy into the corporation. Ownership at some future point would exist in three equal parts: one third of the shares to be owned by the federal government, one third by the telecos and the remaining third by the general public.

It was said that the establishment of Telesat was Kierans' "baby" while he was at the DOC. He wanted Telesat established as a company which would operate independently of the common carriers and, indeed, would compete with them in soliciting business directly from the public and business communities. He had not originally foreseen any sort of a "carrier's carrier" role for the new corporation wherein Telesat would only be permitted dealings with the existing telcos (7). Nevertheless, after his numerous meetings with Bob Scrivner, then President of Bell Canada, and a realization of concomitant political realities (including the fact that the provinces with crown common carriers did not want competition to their own telcos and their long-distance revenues), a liveable compromise emerged in the form of the Telesat Canada Act, which was ambivalent in its specification of the precise proportions of ownership to

be held in the new corporation. The question of the ultimate role of the new "Telesat" organization, whether it was to act as a competitor or as a service organization for the established land-based carriers, was put in abeyance. Nevertheless, in the early days of the Kierans administration at the DOC, a hope still remained on the part of the Minister and some of his senior advisors that Telesat would eventually become a competitor to terrestrial systems (8). The fact that a share offering was not made to the public, a move which could increase the corporation's independence, did not however prevent the common carriers from continuing to feel nervous about the organization from the start of its existence.

By the period 1975-1976, with Kierans long departed as DOC minister, a shift had occurred in the predominate thinking of senior departmental officials as to the appropriate role that Telesat should fulfill. This was not a surprising re-alignment given that the DOC bureaucracy had always been closely identified with the interests of the country's telcos. The departure of Kierans and many of the DOC's original senior staff, such as his executive assistant Richard Gwyn and departmental legal counsel Charles Dalfen (who later plays an important role in this case study), seemingly removed a counterbalance within the Department to a close identification with the common carriers. The viewpoint of rising departmental bureaucrats who believed that Telesat was intended, and should, fulfill a "carrier's carrier" role became, with their promotion into increasingly

senior positions within the Department, the DOC common view on the fate of Telesat.

By 1975, this changing of the guard at the DOC coincided with a need to re-examine Telesat's position. Placing its first satellites in orbit for essentially political, rather than economic, reasons, resulted in a highly unprofitable first few years for Telesat. Having put up its satellites "too early", before a sizeable demand for their services had developed, Telesat had difficulty finding business during the early 1970s, an endeavour not aided by various restrictive practices imposed on Telesat's operation by its legislative mandate. Meanwhile by 1975, planning and financing of the next generation of satellites needed to be undertaken if replacements were to be ready when the ones currently operational reached technical obsolescence. In short, by the mid-1970s Telesat needed more money for investment than current revenues could generate. The corporation accordingly initiated a search for the desired funds.

Meanwhile Eldon Thompson, the President of TCTS, had considered the inclusion of Telesat within his organization during a study of satellite applications (9). This idea of TCTS assimilating Telesat came after the period of the early 1970s when CNCP and the members of TCTS had participated in the operation of (and directed business towards) Telesat only under DOC duress. By the late spring-early summer of 1976, Telesat was nevertheless holding talks with TCTS. These discussions led to reports in early June that TCTS

might retail Telesat's satellite channels upon the satellite corporation becoming a member of TCTS (10). Telesat's fulfillment of such a role would neatly dovetail with the other undertakings of TCTS, an organization which essentially acts as a type of marketing service for its member companies: the members of TCTS jointly approve such matters as market strategies, technical facilities, construction plans and budgets. The TCTS organization itself owns no telecommunication plant (11). TCTS' competitor, CNCP, made a counterproposal to Telesat in mid-August. Worried about facing an omnipotent competitor if Telesat and TCTS combined forces, CNCP suggested as an alternative to Telesat membership in the TCTS, that Telesat, TCTS and CNCP link for certain services. However in early September, TCTS's response to CNCP was "not interested;" Telesat likewise rejected the proposal (12).

During this period Telesat and the DOC had been in close contact exploring Telesat's options for raising the funds it desired. As one CRTC internal memorandum put it, t.e government had set down firm rules (in the statute) preventing Telesat "from going all the way with whomever she may choose", and given the government's majority shareholding, any change in Telesat's status would likely require government consent (13). By the time Telesat responded to CNCP that it was "not interested", the corporation had decided to pursue the offer of membership with TCTS. Telesat's President, David Golden, requested from DOC Minister Sauvé final concurrence that the proposed

membership of Telesat within TCTS was to go ahead. As Golden wrote to the Minister:

> Whatever the legalities may be, neither Telesat nor TCTS would enter into an association such as I have described if the federal government were opposed (14).

In essence, the agreement arrived at specified that Telesat abstain from aggressively selling its satellite services directly in the marketplace in exchange for accepting membership within the TCTS system (which would instead market such services). Telesat's membership would entitle the corporation to receive transfer payments from the other TCTS members, payments which would be used to finance its purchase of the next generation of satellites. Under the agreement arrived at between Telesat and TCTS, the satellite organization would operate as a sort of "carrier's carrier" for TCTS members. The counterpart of the agreement struck allowed that in return for the reduction or elimination of said transfer payments, Telesat would once more gain direct access to the marketplace (15).

At the time that Telesat and TCTS began in earnest to discuss the satellite corporation's fate, the CRTC was just starting its new role as the federal telecommunications regulator: on 1 April 1976 the agency assumed the former telecommunications regulatory functions of the Canadian Transport Commission (CTC). The DOC had been instrumental in securing the transfer of these responsibilities of the CTC to the CRTC, wanting telecommunication regulation to be in the hands of a "more active agency" and, not by coincidence, giving telecommunications a "higher profile" (16). However, this transfer of legislative responsibility had come about with the

passage of what the DOC had called "Phase I" legislation. "Phase II", which was to contain provisions for a broad policy directive power, had been set aside for the moment. The Department had concluded that striving for the directive power at the same instance as seeking the regulatory reassignment would only serve to make passage of the bill through the House more difficult. The DOC wanted to avoid delay as it was desirous to move towards a consolidation of communications policy and regulation-making which would include the CRTC possessing regulatory authority over telecommunications. Nevertheless the DOC, while still anxious to acquire the directive power (see discussion below on proposed legislation "Bill C-43") had not been unduly concerned about completion of "Phase I" without "Phase II" as the Department still possessed a review power over Commission decisions (17). This review power in the area of telecommunications is particularly extensive: the Cabinet can vary, review, rescind, change, or alter any decision the Commission might take under provisions of the Railway Act (18).

The enlarged Commission of April 1976 forebode changes both to the telecommunications regulatory scene and to the CRTC itself. On the first point, the CRTC expected to take a more expansive view of its new telecommunications responsibilities than had the CTC; this intention was made clear by Chairman Boyle's first Broadcasting Standing Committee appearance since the agency assumed the CTC's regulatory functions. He stated that the Commission was concerned with understanding both broadcasting and telecommunications "in the Canadian context and with the translating (of) this understanding into policies and

objectives that direct the processes of licensing and regulation along paths that 'safeguard, enrich and strengthen the cultural, social and political fabric of Canada'" (19). These remarks echoed the wording of the Broadcasting Act and implied that the agency would bring much the same concerns to its telecommunications regulation as those which previously shaped its activity towards broadcasting (20). During the summer of 1976 much effort was spent training new agency telecommunications staff (21). However the expanded number of commissioners included some appointees more likely to consider the opinion of the elected government than did the Commissioners currently sitting, many of whom dated from the CRTC's original days (22). Amongst the new appointments for commissioners, that of Charles Dalfen led to important consequences regarding the events of this case study. Coming to the Commission as vice-chairman with responsibility for telecommunications matters, he had been responsible for the drafting of the Telesat Canada Act while, as mentioned above, a DOC staff member. Boyle had recommended his appointment due to his telecommunications experience and Minister Sauvé and her department officials agreed to the choice feeling that "he would do a good job" while at the Commission (23).

As negotiations between Telesat, TCTS and the DOC were already in progress, the CRTC learned of the proposed association between Telesat and TCTS early in its new mandate. Indeed, the pending proposal was discussed as part of the talks held between the DOC and CRTC on telecommunication matters when the Commission took over from the CTC (24). As a part of these discussions, in October (1976) the DOC provided the CRTC with a briefing on

proposed Telesat-TCTS plans (25). Meanwhile the Commission had already started up a staff group to deal with the matter. Following one CRTC-DOC meeting at which the proposed Telesat-TCTS deal was discussed, Commission Executive Director Michael Shoemaker then brought forward some of the conclusions drawn from the staff group's work and further expressed caution in a memorandum to the Executive Committee about the plans of TCTS and Telesat. Noting that Telesat had thus far been "unable to achieve any degree of economic independence", Shoemaker nevertheless recommended that "further in-depth studies on the total impact of the suggested alternatives should be seriously contemplated" before concluding that Telesat's association with TCTS was its only option (26). This recommendation reflected the Commission's prevailing view that "the government at the time of Telesat's creation really did set out to create a separate and competitive entity" (27). This view was most importantly shared by the new CRTC vice-chairman, Charles Dalfen, who had carried to the Commission the philosophy of "an independent and separate Telesat" (28).

By early November (1976) proposals concerning Telesat's membership in TCTS had reached Cabinet. Questioning in the House on 8 November revealed that the Cabinet had agreed to the arrangement arrived at by Telesat and TCTS (29). In writing to the presidents of both Telesat and TCTS later that month, Minister Sauvé formally informed the two organizations of the Cabinet's agreement to their proposal - but with the condition (among others) that the:

> ... proposal is given without prejudice to the role of the CRTC in relation to those matters

> which fall within the jurisdiction of the CRTC ... (30).

What these "matters which fall within the jurisdiction of the CRTC" were, the Minister did not specify in her letter. The day after Sauvé's letters were sent, the federal Treasury Board approved the proposal. Thomas Shoyama, the Department of Finance deputy minister, was said to have been concerned for some time about probable future demands Telesat would be making on the public purse to finance its next generation of satellites (31). The ready Cabinet approval for the proposed TCTS-Telesat membership plan prompted some to perceive the machinations of an opportunist central government: it was suggested that the DOC viewed ("with little doubt") formal membership by Telesat Canada in the TCTS as "a potential opportunity for increased federal power in the communications field" (32). Minister Sauvé herself was reported as commenting that Telesat's proposed membership in TCTS "gives me a say in the planning of the telephone system in Canada" (33).

Whether or not the proposed agreement partially received Cabinet approval because of this possibility of increased federal influence, the Ministers' approval did not mean that the accord would take automatic effect (34). As the Minister had signalled, approval was given "without prejudice to the role of the CRTC". Of the principal legislative acts governing telecommunications in Canada and giving the Commission statutory authority to act in this area, neither the National Transportation Act (NTA) nor the Railway Act, possesses a directive power that the Minister could employ to order CRTC implementation of the proposed Telesat-TCTS agreement.

The Dominance of the Commission

Just as things seemed to be progressing favourably for implementation of the proposed agreement (given the Cabinet sanction), Chairman Boyle of the CRTC wrote to President Golden of Telesat to remark that the corporation's plans raised "a number of significant regulatory questions" and that, pursuant to Section 320(11) of the Railway Act, the proposal "must receive the approval of the Commission". Boyle closed his letter requesting a meeting with Telesat officials to discuss holding a hearing on the matter (35). Golden, meanwhile, had agreed with Sauvé that the role of the CRTC was not to be "prejudiced" with the proposed deal (36).

While there was no doubt that under the provisions of the Railway Act the proposed agreement had to be set before the Commission, events continued to move forward on other fronts: the TCTS Board voted to accept Telesat as a member and little more than a week later Telesat shareholders ratified the Agreement. Meanwhile James Snow, the Ontario Minister for Transportation and Communications, who had taken an interest in Telesat-TCTS events from an early stage, wrote to Sauvé about the matter, expressing his concerns. In her response to Snow, the Minister replied that:

> ... there may be aspects of the relationship proposed by Telesat which fall within the responsibilities of the CRTC .... (and further) I have no doubt that the Commission will take an active interest in any such matters ... (37).

Snow, in turn, made known his concern that "major policy issues" were involved with the proposed Telesat membership plan which

needed to be discussed publicly. At the very least, he said, a CRTC hearing on the issue was warranted (38). While politicians corresponded on the matter, Telesat and TCTS contractually entered into their agreement 17 January 1977. The Commission, however, was still unsure at this late date whether the Agreement would be submitted for regulatory approval. Internal agency discussion occurred over whether to formally solicit an application from TCTS/Telesat in order to avoid being "faced with much more of a fait accompli than we would want" (39). In any event, Telesat informed the Minister on 18 January that the deal had been legally struck and three days later submitted the Agreement to the Commission for approval "as is required under the relevant provisions of the Railway Act" (40).

In the interval between Telesat informing the Minister of developments and submitting the proposal to the CRTC, the Commission had decided to hold a hearing on the matter (41). In early February, Telesat, TCTS and the DOC all received confirmation from the Commission of its intention to go ahead with a hearing slated for 25 April (1977) (42). This news was received with "absolute shock" on the part of David Golden when told by Boyle - and greeted not only with surprise but fury on the part of the DOC (43). When the CRTC's public notice announcing the holding of a hearing appeared, it described the proposed agreement as possessing both major implications for the development of domestic satellite communication and also as having an impact on both broadcasting and telecommunications in Canada. The notice went on to say that because of this, the Commission had:

> ... concluded that it is essential to convene a public hearing to ensure that all relevant issues are given full consideration (44).

The Commission hearing call had been made as the result of an internal agency debate. The conclusion had been reached that, whatever decision the Commission might render on the Telesat-TCTS proposal, policy would inevitably have to be made. Bearing in mind that any agency decision would undoubtedly affect a variety of communications activity in Canada, it was decided it was best to hold a hearing in order to allow "all sorts of interesting facts to emerge" - information that certainly could also be useful to the Commission in sustaining any ruling it eventually arrived at. Holding a hearing would also prevent the "possibility of Bell coming back, if displeased with the verdict rendered, and saying 'they didn't even hear us'" (45). While it was for the Commission to decide whether or not to convene a hearing (and the Commission could have decided against this option), it was never very likely that the CRTC would not hold one given the "importance of the matter at hand" (46).

Manoeuvering amongst the principal actors involved in deciding Telesat's fate had begun even before the CRTC "Notice" publicly announced the hearing on the proposed TCTS-Telesat membership plan. Chairman Boyle went on the offensive to defend the CRTC's role as a decision-maker with a speech stressing both the political independence of the Commission and the agency's intention to continue to fulfill its responsibilities as set out under existing legislation, despite Sauvé's talk of forthcoming legislative changes (on these proposals see below). Boyle further stated that it would be a mistake:

> To interpret the legislation as already supplanting current legislation under which the CRTC functions. Nothing could be further from the truth (47).

These remarks were followed shortly afterwards with another Boyle speech in which he discussed the Commission's recent assumption of the CTC's telecommunication regulatory functions. With remarks that could only have caused distress for Telesat and company, Boyle said that:

> ... the challenge for the Commission in its new area of regulation is to adopt procedures which will permit the application of broader concepts to the traditional tests of 'just and reasonable rates,' ... (48).

Boyle said the Commission was compelled to take this action as it was:

> ... restricted by the present legislation which contains no policy guidelines and requires only that rates charged by carriers be 'just and reasonable and non-discriminatory' (49).

The Chairman also defended the Commission's policy-making behaviour saying that there had been no "major policy positions" developed by the Commission which had not been subject to a "full public hearing" (50).

Meanwhile Minister Sauvé had written to Chairman Boyle to repeat that the Agreement was sanctioned by the Cabinet without prejudice to the regulatory role of the CRTC (51). Minister Sauvé justified this letter-writing "consultation" between herself and the agency on the basis that the CRTC had been making "policy" - to which, presumably and notwithstanding Boyle's remarks, the Minister wanted the opportunity to provide some input (52). As a part of this process of providing input, the DOC deputy minister and assistant deputy ministers were "slipping

the word to the CRTC so that her views were known to the Commission" on the TCTS-Telesat proposal (53). At the same time, nevertheless, the Minister was careful to provide the Commission with sizable scope for involvement in the Telesat-TCTS situation. She stated that the "arrangement" was approved:

> ... subject to the CRTC's prerogative of looking into the arrangement so as to ensure that the public interest will be served (54).

To determine whether the proposal was in the "public interest" the Commission had started preparation for the hearing in some earnest: Telesat, Bell and BCTel all received a list of Commission interrogatories for incorporation into the hearing's public record. Questions were asked of these organizations such as:

> - the rational which led to the Telesat decision to join TCTS
>
> - what alternatives to the agreement had been considered (55).

In April the Commission issued a second notice of the forthcoming public hearing and announced that the Commission was moving to subpoena Telesat, Bell and BCTel so as to obtain the information it and other intervenors needed in response to the interrogatories submitted in advance of the scheduled hearing (56). While many issues regarding the interrogatories had to wait until the hearing (see below), the CRTC request for information nonetheless resulted in "truckloads" of information being delivered to the Commission. Much of this existed in a "unprocessed form" (57).

On the eve of the hearing, opinion within the Commission held that the financial concerns of Telesat, used to justify the

proposed deal, were "overstated dramatically". Further, the Commission had come to view Telesat as likely to be financially successful in the future, if only despite itself (and its "timid management"). There was also a belief that the ensuing regulatory problems raised by approval of the Telesat-TCTS contract would be "major" (58). This staff analysis was completed in spite of the fact that, at least initially, the Commission staff was "bowled over by the proposal (as) no one on staff at the Commission knew what to do with it and the hugh quantities of information flowing into the agency" (59). The Commission assessment of Telesat's likely financial success was of some importance as the hearings approached, because the agency had already identified a "fundamental potential problem" of the proposal: its "extremely heavy reliance on the income which is expected to be generated from pay-television". The Commission, concurrent to assessing the Telesat-TCTS proposal, was re-considering the fate of pay-television at the Minister's request (60). The CRTC did not like the idea of introducing pay-television and feared that if the Telesat-TCTS proposal was implemented, TCTS reliance on successful pay-television to help finance Telesat would "oblige the government to ensure the success of pay-television". It was speculated that the government could be pressured into relaxing any programming restrictions which might be placed on the service at the time of its introduction (61). Thus with the public hearing pending, the Commission was greatly uneasy about the plans of Telesat-TCTS. The common view held that, although the Agreement might be modified by the Commission, the likelihood of it being refused outright was slight (62). Nevertheless, in

dealing with the proposed Telesat-TCTS agreement, the CRTC found itself in a policy vacuum: there had not been a definitive government policy statement regarding satellite communications since the incorporation of Telesat eight years previously. The regulatory agency thus had little pre-existing policy direction available from the government as to either what the regulatory objectives sought with Telesat were or, indeed, what the federal government's broad objectives in this policy area were.

The hearing, held under the chairmanship of Charles Dalfen, occurred in two stages: the first, a "pre-hearing", took place between the 25th and the 27th of April and dealt with the outstanding interrogatories, related matters of confidentiality and the procedures to be followed during the hearing; the second phase of the hearing, from 16 May to 2 June (1977), constituted the hearing proper. In their opening statements to the "pre-hearing" both Telesat and Bell made it clear that the Commission was expected to approve the contract expeditiously (Bell stating the CRTC could not modify it "in any way") (63). Telesat President Golden stated that the CRTC's overriding consideration must be the "public interest" - and to decide whether the Agreement was in the public interest or not, the Commission needed to determine its likely effects (64). This, evidently, would come down to the basic question of whether certain telecommunication users would benefit more than others from the proposed membership plan. Golden also remarked that Telesat wanted the Commission to consider the Agreement on its own merit and without the aid of other documents. This was a request which Dalfen overruled (65). In the words of a senior

CRTC official then present, Golden made these remarks in a way which made it clear "that he was not prepared to answer the questions asked in a full and helpful manner" (66). Much time was also spent during the first day of the hearings debating how wide a scope the hearings would assume: the CCTA wanted little restriction on the discussion, Telesat said there were already too many "irrelevancies" under discussion (67).

Dalfen was to rule on the issue of what were permissible questions. He said that, as Telesat was appearing before the Commission for the first time, "along with other reasons", he would allow "a fair degree of latitude in the questions that we will permit to be raised here". The Chairman explained this judgement by saying that the Commission approached the section of the Railway Act under which it was acting with "no preconceived interpretation" (68). Thus in the Chairman's consideration, it was possible for the hearing to consider "broad issues" while remaining cognizant of the fact that a specific decision needed to be made (69). The Chairman drew the line however at investigating "internal matters" which were more properly the prerogative of management. Accordingly the hearing's questioning would not "go behind the resolution to the details" involved with particular Telesat Board of Directors meetings (70).

This question of privacy and the related one of confidentiality of information had been major issues up to and including the prehearing. The Commission had requested certain information, along with other intervenors, from the federally-regulated members of TCTS (Bell and BCTel). Responding, these members argued that they could not release the information

demanded as it was the property of TCTS (the argument of Bell and BCTel being that the information requested had only come to their knowledge due their participation within TCTS). In the end, the Commission rejected the argument that information emanating from sources other than Telesat, Bell and BCTel was to remain confidential. It decided that any data that a CRTC-regulated TCTS participant had received from an organization member not regulated by the Commission was now also the property of the Commission-regulatee and so liable to be produced on demand (71). Thus, President Golden of Telesat was subpoenaed to produce data that had been the property of the provincial telcos AGT (Alberta Government Telephones), SaskTel and MTS (72). With talk of Golden "going to jail" if the ordered material failed to appear, the group of nine TCTS members acquiesced to the agency's ruling and the material requested by the Commission appeared (73). Having made their point on confidentiality, both Telesat and the members of TCTS were to fight their next battle in regard to acceptance of the proposed agreement during the second phase of the hearing. Nevertheless, the argument during the hearing's first phase concerning the question of confidentiality demonstrated the political overtones surrounding the Commission's consideration of the carriers' proposal. It was said that the argument of Bell and BCTel expressed the displeasure of the Prairie provincial telcos at the prospect of their business dealings being discussed within the framework of a federal regulatory forum (74). In addition to the objections of provincial telcos to federal "infringement on their territory", similar sentiments on the part of provincial regulators and

governments may have come into play. The prairie provinces may have been concerned to preserve the confidentiality of the secretive TCTS "revenue settlement plan" due to the possible cross-subsidies provided to their provincial telco operations located in a sparsely-populated region of the country; Alberta, for instance, had sent its Solicitor-General to Ottawa to argue against release of TCTS information requested by the Commission.

Also in question during the hearing was the Commission's power to alter the Agreement: it was asked whether the CRTC had the power to introduce any modifications or was the agency simply limited to either granting or withholding approval? If, as was stated at the prehearing, the CRTC was to seek out likely effects of the Agreement, conceivably the agency could not help but address its potential consequences for telecommunications competition and touch on as basic a policy issue as the question of monopoly control in this field (along with the desirability of regulatory mechanisms that encourage a competitive industry structure) (75). Given this, it would also be difficult to avoid addressing issues such as whether or not Telesat had explored all other options to a membership deal with TCTS (and, indeed, whether the Agreement was permissible under the Telesat Canada Act). Accordingly, whether it approved a modified form of the Agreement or simply issued a "yes-no" decision, the Commission verdict could not help but influence the structure of the telecommunications industry.

As the hearings progressed, speculation on how the Commission would rule became rife. The common consensus held that the Commission could only accept or refuse the Agreement and was

unable to either change the contract or suggest what sort of agreement it would accept (76). Whatever the outcome, the hearings were nevertheless viewed as a useful exercise for the Commission as, constituting the first public examination of Telesat's affairs, any information gained could "be used as the basis of other regulatory and policy initiatives" (77). Other speculation held that the real issue at stake during the hearing was not the fate of Telesat but the ability of the CRTC to be independent of the government, particularly in light of Minister Sauvé "staunchly" supporting the Telesat-TCTS membership plan (78). The agency's ruling on confidentiality, taken against the wishes of the "very powerful" Bell and TCTS organizations, reflected the strong role for intervenors encouraged by the CRTC during the hearing. In this aspect, in relation to the CTC, the Commission was "utterly different" (79). For its part, the Commission had felt the need for these intervenors in order to offset the influence and resources that Bell and the other telcos could bring to the hearing (80). A decision on the proposed Telesat-TCTS association would eventually be reached after an imposing array of interested parties had proclaimed their enthusiasm for the deal: these included most of the Maritime Provinces (seeing it as a means to obtain increased distribution of TV signals in their region of the country), the federal Minister and DOC (which had "pressured" TCTS from the early 1970s to form closer links with Telesat), the Cabinet, Telesat, Bell and the other members of TCTS and (implicitly) the Prairie Provinces (81). Given the interests involved, it was not surprising that the Commission had come, as Dalfen remarked

towards the close of the hearing, to regard the case at hand as a "fairly important matter" (82).

In the aftermath of the hearing the Commission requested the submission of final written arguments. The hearing had presented complex arguments as the hearing transcript running to 4,000 pages in length, testified. Meanwhile in a speech before the Canadian Telecommunications Carriers Association (CTCA) Minister Sauvé acknowledged that of the three legislative acts currently framing telecommunication regulation in Canada "none contain(ed) a clear statement of telecommunications policy" (83). The Minister stated that proposed communications legislation "Bill C-43" (see below), sought to ensure that the CRTC had sufficient powers to influence those decisions of the carriers which had a major impact on national policy objectives (84). Ironically, these remarks were made following the just-completed Commission Telesat-TCTS hearing which had considered a carrier decision of obvious "major impact" and did so largely in the absence of any clearly stated objectives for national telecommunications policy. The Commission review of Telesat-TCTS plans nevertheless took place amidst what appeared to be a ministerial and departmental preference as to their regulatory outcome. These carrier plans, however, were examined at a CRTC hearing whose Chairman would consider "ministerial wishes" in the matter only if they were made on the public record and accompanied by a ministerial appearance at the related agency hearing - with the Minister undergoing cross-examination as to her reasons for wanting the proposal to be implemented (85). This was an unlikely scenario given what the DOC perceived as the possible

difficulties arising should its minister testify at a hearing and then an appeal was made in regard to the subsequent regulatory decision which required ministerial review (86). As it was the DOC had tried, in its opinion, to give the Commission "positive direction" on the Telesat-TCTS issue prior to the hearing; the Minister's letter to Boyle could conceivably be viewed in this regard as constituting a type of "direction" (87).

As the months passed, and with a Commission decision pending, debate grew as to whether "approval with conditions" was within CRTC purview. It was said that the CRTC could neither accept the application as it stood nor reject it out-of-hand. A consensus emerged that the application, demanding what the CRTC had begun calling its "most important decision of the decade", would likely be approved, but with conditions (88). Obvious tension existed, however, between the regulatory agency and the DOC during this time. In relation to the "ministerially-inspired" CRTC pay-television hearing convened at this period, it was said that the Commission would have to say "No" to the service's implementation if only "to prove that it (was) not a Cabinet puppet". Besides, it was asked, what did the Commission have to lose by saying "No"? (89). It was shortly to be demonstrated that much the same argument could be made in connection with Commission review of the Telesat-TCTS proposed agreement.

The CRTC's decision on the carriers' proposal was announced 24 August (1977). The Agreement was not approved. The Commission rejected the deal largely because it judged its provisions to be anti-competitive. The Commission in its reasoning stated that

section 320 (II) of the Railway Act limited the agency to either approving or rejecting agreements submitted under that section (90). The Commission also stated that the criterion for approval under section 320(II) was the public interest, viewed in a broad sense. The Commission viewed "public interest" considerations, however, as being divisible into two "broad categories"; one allowed for the effective regulation of rates, while the second involved, notably, a series of questions concerning general public policy. The Commission concluded that in regard to the first criteria, of effective rate regulation, the Agreement was contrary to the public interest. The "Decision" then went on to state that:

> While the Commission is prepared in this case to rest its decision on the regulatory issues alone, it has also given considerable weight to public policy issues raised in this case (91).

An example given here was the Commission's concern about the likely erosion of the powers and autonomy of Telesat if the corporation entered into the proposed agreement, owning to the fact that the organization's statute had intended the creation of an "independent autonomous corporation providing satellite services on a commercial basis". The Commission decision also markedly made reference to Telesat having sought the Minister of Communication's concurrence to the Agreement, "although it was not required by law to do so" (92). Nevertheless, as far as the Commission was concerned, there existed "no doubt that the entire agreement (fell) within the provisions of section 320(II) and require(d) Commission approval before it (could) have any force or effect". To substantiate this point the Commission quoted the Minister "explicitly" acknowledging the statutory role of the

Commission, in this instance, when stating that the government's concurrence to the proposal "was given without prejudice to the role of (the CRTC) .... in relation to those matters which fall within the jurisdiction of the CRTC" (93).

In stating that the agency's basic jurisdiction was limited to either approving or denying the Agreement, the Commission judgement also noted that 320 (II) is silent on the specific criteria that the CRTC must use in reaching its decision (94). While remarking that the parties at the hearing had reached a "general agreement" that the Commission should decide the application on the basis of whether or not the Agreement was in the public interest, the CRTC decision stated that this determination still left the agency "faced with the further question of how broadly it should apply public interest considerations" (95). The Commission, evidently, decided to view the public interest in a broad sense, arguably taking it out of a narrow sphere of regulation and into that of public policy. With the agency considering issues pertaining to Telesat's corporate autonomy, the availability of satellite services and the nature of competition in telecommunications services, the CRTC had moved some way beyond section 320 of the Railway Act and its statutory power to decide on "just and fair rates" (96).

In the aftermath of the decision announcement, speculation arose on the possible political, and not just merely technical reasons, for the judgement. While an early commentary suggested that the Commission had searched for a regulatory basis to justify its "intuitive" reaction to reject the application, it was also said that the agency had not wanted to offer conditional

approval for this would have "further cast the CRTC in the role of policy-maker" (97). Indeed it was asserted that if conditional approval had both been granted and survived any court challenge, a new precedent would have been established "giving the regulatory agency more power than it had heretofore possessed" (98). Some observers viewed the decision, with its likely appeals, as a political tactic designed by the Commission to put responsibility for a final decision regarding Telesat's fate on the government (99). The Commission's flat-out rejection of the proposed agreement caught many by surprise and the industry off-guard (100). A total of seven government departments had an identifiable interest in seeing the proposal passed (and only one government department, Corporate and Consumer Affairs, had argued against acceptance of the Agreement during the hearings). Of these departments favourable to the Agreement, a number were headed by influential Trudeau-era ministers: Horner, Buchanan, Faulkner, Chretien, Lalonde (101).

The decision itself had been carefully "crafted": seeking to justify the Commission's power to act and render a decision, judgement "77-10" identified the various legislative acts which the agency felt gave it statutory authority to consider the proposed agreement (along with the relevant sections). With this accomplished, the Commission was able to reject the Agreement within the gambit of its regulatory mandate - while the Commission reference to "policy issues" in its decision resulted from the agency's broad interpretation of this statutory mandate to regulate. Thus having first established a regulatory basis in its decision, the Commission then pushed into other (ie. policy)

areas (102). It appeared that the Commission (and particularly Charles Dalfen) wanted to "push" the decision from the legislative basis primarily established by section 320 of the Railway Act in the direction of sending a strong message to the government that the Commission opposed the proposed Telesat-TCTS deal while at the same time endeavouring to put the decision "out of the reach of the government" by closely linking it to the Commission's underlying regulatory statutory powers (103). In all, the Commission decision was constructed in the hopes that it would prove difficult for the government to set aside (104).

Both the decision and the "public policy" phrasing of the announcement resulted from a Commission perception that if the agency was to be more than "just a rubberstamp", it would have to fulfill its regulatory mandate by looking at the substance of the proposed agreement in the belief that the Railway Act allowed the Commission a "very broad view of its jurisdiction" so that the CRTC could "investigate all aspects of the public interest" (105). In all, the Commission's self-conscious move beyond "regulatory issues" to address the broader implications of the proposed agreement could be interpreted as the agency testing its strength vis-a-vis the DOC, with the Commission putting both its legitimization as a policy-making body and its power to make specific decisions, "on the line".

Whatever the Commission's motivations, its staff realized that "turning down the Minister's wishes created a risk" although it was believed that the Cabinet would have a hard time overturning the decision (106). This Commission ruling was considered "uniquely Dalfen" (107). The CRTC Vice-Chairman was

said to regard the proposed agreement as a subversion of the original intent of the Telesat legislation. Believing this, he "was able to persuade the rest of the Commission as well" (108). Within the Commission, his dominance on the Telesat matter was apparently aided by the lack of interest amongst the other CRTC Commissioners in telecommunications matters. Dalfen had "been" the telecommunications side of the agency after his appointment and the Commission judgement on Telesat reflected his penchant "to express his view" and willingness "to forge a national policy where one did not exist" (109). The fact that Chairman Boyle himself did not think much of the proposed agreement (which he saw as "a scheme dreamt up by the civil service"), undoubtedly smoothed the way for the Commission's decision to reject the Telesat-TCTS proposal, a decision taken "in perfect knowledge of government view" was "protected" because the agency had acted within its powers, followed an irreproachable method of proceeding (which included the holding of a hearing which generated a 4,000 page transcript), and was rendered in the absence of any established government policy position. Nevertheless the Commission's action prompted speculation about what the Cabinet's reaction would be. Acknowledgement was made that it would be "difficult" for the Cabinet to modify the unqualified denial of the Commission without appearing to "subvert" the regulatory agency (111).

The Intervention of the Department

Although at the time of passage of "Bill C-5" (which transferred telecommunications regulatory authority to the CRTC from the CTC), the DOC had decided to forego attempts to obtain broad policy directive power and contented itself with accomplishing completion of "Phase I" legislative changes only, pressure to possess this power mounted after Boyle became chairman of the newly-expanded Commission (112). The DOC partially wanted the directive power to have the ability to negotiate and implement intergovernmental accords because of the developing federal-provincial aspect in communications policy. The Department also wanted to avoid events such as those described in the preceding chapter which arose in connection with the Canada-Manitoba Agreement. DOC officials in addition wanted the power because it "constituted part of the normal power of the minister and his advisors" (113). The events and tension occurring between the Commission and the DOC over the introduction of pay-television, according to a departmental official of this time, further fuelled departmental desire for the directive power and reflected DOC officials' belief that "a regulatory agency should not be making policy" (114).

With the expanded Commission operational, issues such as the fate of pay-television and the Canada-Manitoba Agreement in the background, and the Telesat-TCTS proposed membership plan about to be submitted to the CRTC, the Department prepared the legislation that was to be introduced as "Bill C-43" in the House in March 1977. The preparation of this legislation only helped,

however, to increase tensions between the Department and Commission: the CRTC response to the departmental draft which was forwarded to the agency infuriated the Department by arriving late and thus causing problems for the Department's House introduction planning of the legislation. The Commission document, "Towards Phase II" advocated limiting the proposed directive power and was perceived as "inflammatory by the DOC and designed to hold up the process of Phase II" (115). The Commission response had been prepared with the aid of Juneau (now in the PCO) who also put the Commission position forth during cabinet committee meetings, discussing how the legislation should be drafted; the CRTC worked through Juneau because as one official put it, "we did not get a good reception from the DOC" (116). The Commission's actions led to increasing frustration within the Department and as a result, in the words of an official of the time, the staff became "much more aggressive in threatening the Commission with the use of the Cabinet's review power". Minister Sauvé meanwhile attempted to apply some "moral suasion" on the Commission in the hope of obtaining "some co-operation"; her meeting with the agency to explain how the proposed directive power "might be exercised" only met however with silence from Boyle, Dalfen and the other full-time Commissioners present.

The introduction of "Bill C-43" in the House prompted both the Commission and the Department to launch "public relation" offensives. Boyle stated that the principle at stake with the bill was the right of an independent agency to make decisions that might be opposed to government policy (117). In an

appearance before the Standing Committee he pointed out the almost unanimous support for the creation of an "independent agency" that there had been at the time of the passage of the Broadcasting Act in 1967 (118). During this struggle over proposed legislative reforms which could affect the Commission's status, Minister Sauvé had also "gone public", stating that the proposed bill would not interfere with the Commission's daily affairs as the independence of the Commission in its regulatory duties was "not affected" (119). The acrimony between the Department and the Commission over the DOC wish for more explicit directive power and the manoeuvering over "Bill C-43" however led to nought: the legislation died without having particularly impressed observers with its proposed reforms (120). It also died for the legislation did not have whole-hearted Cabinet support - while Sauvé was able to obtain agreement from her Cabinet colleagues for the directive power "in principle", there still existed within the Cabinet much resistance to the DOC possessing this power over the CRTC. The fact that some ministers actively did not want the legislation to go through, affected its ability to attract House time. The legislation nevertheless was to be resurrected in differing forms the following year (121).

Although the DOC had proposed Bill C-43 on the basis that it needed more adequate statutory authority to control a "policy-making agency", the Department nonetheless succeeded in over-ruling the Commission's 24 August Telesat-TCTS decision as a decision taken "against the wishes of the government". A DOC news release announced on 3 November that the Governor-in-Council (Cabinet) had issued an Order-in-Council to the CRTC "varying"

its decision (122). The Order-in-Council stated that "the Cabinet concluded that the public interest will be better served if the Telesat Canada Proposed Agreement is approved"; thus, pursuant to subsection 64(1) of the National Transportation Act, the Commission decision was "hereby varied" so that "the Decision will now read as follows":

> The Agreement between Telesat Canada and the Trans-Canada Telephone System, made as of 31 December 1976, is in the public interest and is hereby approved (123).

The nervousness of the government, however, as to how its action would be perceived was evident by the length of the Department's announcement: it was uncommonly long (five pages) with the DOC expressing a desire that "this statement should be issued as a full explanation of its position on the matter". The statement went on to say it was "vital that it be emphasized" that the Cabinet's action affected "broad issues" of public policy, issues which lie beyond the reasonable purview of the CRTC (these being, in essence, the ordering and procuring of the next generation of satellites, the issue of employment in the area and, additionally, the protecting of the orbital "parking spaces" Canada had been allotted). An unmentioned issue concerned provincial interest in seeing the proposal implemented - those provinces with crown common carriers still did not want competition with their telcos' operations; and the federal government, eager to improve intergovernmental relations over communications, also wanted the deal to go through because of the federal-provincial dimension. In all, the Commission decision, according to the government, had reflected the "CRTC's view of policy considerations" (124). After stating that "adequate

statutory mechanisms" were not currently available through which the government "could have given clear policy guidance to the CRTC" (and thus direction on policy matters properly residing outside of Commission domain), the government announcement addressed Commission concerns about the Agreement by saying Commission authority to regulate common carriers would not be superceded (the government introducing modifications to the Agreement to this effect) (125). The news release nevertheless made clear the governmental sense of priorities stating:

> The government weighed the feasibility of asking Telesat Canada and TCTS to explore ways of modifying the Agreement, in such a way that the terms would meet the concerns of the CRTC .... (but) this approach would have prolonged the period of uncertainty (126).

It was acknowledged all the same that some regulatory difficulties might be introduced for the CRTC by implementation of the Agreement.

This Order-in-Council resulted from Telesat's swift lobby efforts to overturn the Commission decision once it had been rendered. Appealing the decision to the Cabinet, Telesat reminded the government that, in its opinion, governmental control over the corporation through its statute would take precedence over the agreement with TCTS (this gave rise to speculation that the government, with the proposal passed, could control TCTS through the Telesat veto, "a tool which would interest a ministry that wishes to set communications policy unchallenged") (127). A Cabinet meeting held seven weeks after the announcement of the Commission decision discussed the Telesat appeal (128). This meeting was reportedly "very stormy" with a defensive Sauvé facing "great opposition" on her recommendation

that the Commission decision be reviewed (129). Speculation suggested that the Cabinet would probably not overturn the CRTC decision on Telesat's appeal - at least not before satisfying the need to modify the Telesat-TCTS Agreement in such a way as to overcome major CRTC objections to it (130). Thus it was said that Sauvé would have to come up with a "credible option" to get a solid recommendation from the Cabinet during its next meeting (131). The evident success of the Minister in this task appeared a few weeks later in the form of the Cabinet overruling of the Commission's decision.

It was likely Minister Sauvé had been under pressure to review the Commission decision not only from Telesat but also from her own department as, in the words of a senior departmental staff member of the time, "there was no way that the officials at the DOC could let it stand, because it in essence said that it was for the CRTC to say where the public interest lay". Department officials, furthermore, were not prepared to allow "Juneau's mind-set of making policy (in broadcasting) colour the Commission's approach to telecommunications" (132). The Department also rejected what it suspected to be a Commission motivation in its ruling - that if it were unable to change the CRTC decision, the government would be forced to finance Telesat. As it was, the DOC "variance" of the Commission decision came after much vacillation at the Department. Seeking to put into place the outcome it wanted, under prevailing statutes the Department was only able to "modify" or "vary" a Commission telecommunication decision and not substitute one of its own - it could not make a Commission "No" decision a "Yes". Thus the

Department needed to find a way to reverse the CRTC decision without either being perceived as substituting its own judgement for that of the Commission or altering aspects of the agreement so significantly that the agency would be justified in calling for a new hearing on the matter. To aid in its endeavour, the Department took the CRTC decision to the Justice Department.

The Commission had based its decision, as mentioned, on statutory provisions which allowed it to determine whether or not the agreement was in the public interest and they had decided the carriers' proposal was not, as it was anti-competitive. The Department could not say that the proposal was good for competition in this policy area (whether or not it was) because to do so would be substituting its judgment for that of the CRTC. Therefore, the DOC was obliged to bring other matters to bear rather than directly addressing the concerns that the CRTC had expressed (133). Thus, the Cabinet "variance" of the Commission decision attempted with the Order-in-Council to introduce as determinate factors, issues which the Commission "had failed to" or "could not be expected" to have considered: these included the emphasis placed on the "survival" of a national satellite system (and industry) and the role Telesat would play in placing Canada at the forefront of satellite technology. Behind the Cabinet's action was the "reality" that the government was unprepared to put any more money into Telesat. While departmental officials realized that the Telesat-TCTS proposed agreement was a "political compromise", in that it entailed a certain loss of independence for Telesat, the DOC saw no other way for Telesat to raise the funds it desired for the future; in any event the

Cabinet ruling helped take the Commission "off the hook" for the responsibility of deciding the fate of Telesat (134).

Response of the Commission

The Commission's official response to the Cabinet's action appeared the next day in the form of a press release which was intended to demonstrate the Commission's displeasure with the Minister's decision (135). Noting that the Commission had rejected the proposed agreement back in August partially on the grounds that it would make effective regulation difficult, the announcement assumed a defiant tone, saying:

> The Commission will continue, however, to exercise its independent judgment on matters falling within its jurisdiction. In particular, given the existence of the agreement, the Commission is convinced that as a minimum, a much fuller review of the operations, finances and practices of TCTS and its individual members will be required than has ever been the case before (136).

The Commission was angered not simply because its decision had been reversed but also because all of the issues that Sauvé mentioned as justifying the variance action had already been considered by the Commission (137). However, apart from the press release, the Commission's public response effectively ended there. Protests against the ministerial actions from other quarters were equally feeble. Aside from an editorial in the Toronto Star strongly condemning the Minister's approval of the Agreement due to its "non-competitive" aspect, and an adverse comment in the Globe and Mail regarding the Minister's refusal to release the cabinet "background paper" on the subject, the Governor-in-Council reversal of the CRTC decision attracted

little attention (138). The Consumers' Association of Canada (CAC) attempted to carry the protest further. It took the Cabinet's Telesat Order-in-Council to the Federal Court of Appeal, arguing that the Cabinet had already given its opinion on the issue on the occasion when the Minister said it was for the CRTC to judge the Agreement's merits (and, furthermore, that the government did not have the right to review the CRTC decision) (139).

Despite these pockets of protest, after issuance of the Cabinet variance, the Minister went on the offensive and was able to effectively check further opposition to her actions. Thus while the Minister's actions did not pass unnoticed in the House, with Conservative members moving to invoke "Standing Order 43" (which would have allowed an emergency debate on the issue), the Minister was able to defend Cabinet's intervention during subsequent House questioning (140). She repeated that Commission regulatory powers were in no way superseded by the Agreement - and that, indeed, with the approval of the Agreement, ministerial responsibility had been executed (all while maintaining both the prerogatives of the CRTC and the "general policies of the government") (141). Likewise to the House Standing Committee criticism that she had issued a de facto policy direction after the Commission had rendered its decision, the Minister simply responded "we have the authority under the law" (142). The lament of some members that there had been no House discussion on the whole affair produced the reply that although she was prepared to discuss the "broad policy issues involved" in the forum of the Standing Committee, she thought they had already been adequately

considered in Parliament "when Telesat was created" (143). With that said, House discussion of the changed nature of Telesat, and of the ministerial overruling of the CRTC, came to an end. Continuing her offensive, Sauvé sought to assure lobbyists opposed to the Cabinet approval of the Telesat membership plan that the CRTC's current regulatory powers in the area would not be superseded (144). For the consumption of a wider audience, the Minister shortly afterwards made a speech before the Royal Society of Canada in which, after arguing that a complementary role was all that had ever been envisaged for Telesat, she did again acknowledge that some potential regulatory difficulties existed for the CRTC with the new arrangement. With remarks that might appease the Commission, the Minister also stated (somewhat contradictorily), that "the government believes the necessary regulatory powers exist (and, in the event that they do not) .... some new regulatory powers may be brought in" to aid the CRTC in its task. Moreover, in the Minister's opinion:

> By approving the Agreement, I believe that the government has reaffirmed its confidence in the .... Commission ... (145).

While the government may have had "confidence in the Commission" it appeared to be more uncertain in the case of its chairman, Harry Boyle Boyle was an original member of the Commission and had been reappointed as vice-chairman in 1975 for a period until 1980 - and then as chairman in April 1976, but he left the Commission in September (1977), when he said he never intended to stay the full term and "now seems like a good a time as any to go" (146). Boyle had been described as feeling "slighted" while CRTC chief, to the point that he had "not

bothered to hide his frustration with the government" (147). Indeed, given what he regarded as government interference in Commission affairs concerning the issuance of cable licenses for Manitoba and the Telesat-TCTS issue, Boyle was ready to resign sometime before he actually did (148). Amongst staff, his early leaving was read as the result of having opposed the government (149). Certainly the DOC action of setting up parallel departments to the Commission during Boyle's time highly infuriated both him and the CRTC (150). Moreover, federal officials never seemed especially to favour his appointment to the chairmanship of the CRTC. A distinct reluctance to appoint him had been evident and he was left to "dangle" from the time of Juneau's departure the previous August (1975) until he was officially appointed CRTC chief on 1 April 1976. The new Minister, Jeanne Sauvé, did not want him appointed, believing he had an insufficient grasp of new technology and "hang ups" about Canadian content and the "mission of the CBC". However the lobbying of the broadcasters for Boyle was very vocal. In the end, because Boyle had the support of other Cabinet ministers, Sauvé had to accept the situation - and Boyle. In the end, the government may have appointed him largely because the situation had become embarrassing (151). The question of his appointment may also have dragged on because, by that point, the PCO, both before and after the Boyle appointment as chairman in April 1976, was attracting former senior DOC staff: de Montigny Marchard, a former DOC assistant deputy minister was already there by early 1976, followed later that year by Rabinovitch (meanwhile Allan Gotlieb, another former DOC deputy minister, "had close links

had become embarrassing (151). The question of his appointment may also have dragged on because, by that point, the PCO, both before and after the Boyle appointment as chairman in April 1976, was attracting former senior DOC staff: de Montigny Marchard, a former DOC assistant deputy minister was already there by early 1976, followed later that year by Rabinovitch (meanwhile Allan Gotlieb, another former DOC deputy minister, "had close links with the PCO") (152). By early 1977 the rumour circulated that the current DOC deputy minister, Max Yalden, would soon be head of the CRTC "due to the old-boy network now existing in the PCO" (153). The rumour perhaps reflected knowledge of the letter Sauvé had obtained from Boyle at the time of his appointment as CRTC chairman. Here Boyle agreed to stay on at the Commission for no more than a year and a half.

In any event it "struck" Boyle early on in his tenure as CRTC chairman that he "was never going to get on with the government"; he was to experience staff and budget problems while Commission head (problems carried on into the time of Chairman Meisel after 1980), along with salary "irritants" (154). Meanwhile DOC officials, in the words of a Sauvé policy advisor, perceived that Boyle's only objective as CRTC chairman was to preserve the autonomy of the CRTC and his behaviour caused him to be viewed as "obstructionist" from within the DOC. The common view in industry likewise held that Boyle was "not prepared to help out the minister" on an issue such as Manitoba cable licenses or Telesat's proposed membership within the TCTS because of the government treatment he had received (155). When he was to leave, the DOC, in a curious sign of haste, prematurely released

nevertheless represented another appointment to the chairmanship of the agency with which Sauvé had little influence but to agree (159). Thus the choice of the CRTC head during both 1977 and 1978 demonstrates that the ability to use this "informal mechanism of control" over the agency can be exercised by the DOC minister to only a limited extent.

Resolution

In the aftermath of the Cabinet variance of the Commission Telesat-TCTS decision, opposition to both the Order-in-Council action and the fate decided for Telesat quickly abated and the issue was resolved. It was apparently a case where, when all of the major players had had their say, the process reached its natural termination - particularly as the general public was not interested in an issue that was rather technical in nature. Those in the industry who had lost this battle were prepared to wait for another day to continue the effort. The court challenge to the ministerial review that the CAC had lodged was found wanting on every point that the group had raised; the attempt by the consumers' group to appeal this judgement was likewise unsuccessful (160). The issue thus came to an end at that time. However events occurring during 1976-77 appear to have two later ramifications: the resignation of Dalfen from the Commission in late 1979; and the holding of a set of hearings in 1981 which examined the internal workings of TCTS (on these developments, see Appendix 2).

Conclusion

This case study was undertaken to examine aspects of the claim that the CRTC has been a policy-maker which overshadows the DOC. Certainly, the events of this case study concerning the Telesat-TCTS association proposal put to the Commission in 1977 demonstrated a CRTC which was prepared to take a decision in the face of powerful vested interests which was both potentially unpopular and had long-ranging consequences. The argument, however, will reject the claim that the CRTC has "overshadowed" the DOC in the area of telecommunications by usurping the latter's prerogative to set policy, and that the agency has done this without the Department's acquiescence. As a general comment it can again be said, as a Commission Chairman was to say several years after the events of 1976-77, that the proposed Telesat-TCTS membership plan raised major issues which the nation's uncoordinated approach to telecommunication policy development was unable to handle (161). An aspect of this "uncoordinated approach" involved the issue of what the general policies of the government were in this area. On this point two factors are notable: first, the sparse policy documentation on national telecommunications objectives available to the Commission to consult in advance of any hearing and, secondly, the ambivalent nature of the Telesat legislation concerning the role that the corporation was to fulfill. Stating a series of objectives for telecommunications in Canada and providing a clear legislative mandate for Telesat are both responsibilities of the federal government. In both instances, the government had failed to

supply either the industry in general, or the Commission in particular, with clear, unequivocal guidance in the period preceding the submittance of the proposed Telesat-TCTS membership plan to the CRTC.

The case study demonstrates that an "uncoordinated approach" to telecommunications policy also resulted in this instance when the DOC and the CRTC assumed different interpretations of what were to be the objectives of the telecommunications system and the specific role of Telesat within that system. In essence, the Department and Commission possessed different "world views" on how to approach telecommunications matters: the DOC generally discouraged possibilities for increased competition while this was a trend the Commission favoured. Stemming from this difference in philosophy, the Department and Commission had different views on the appropriate role for Telesat and the basic issue of whether or not the corporation was to operate in a competitive manner. On this point, and with rejection by the Commission of the proposed Telesat-TCTS agreement, the underlying tensions between the two organizations became public. These tensions both resulted from, and contributed to, the confusion in the policy-development process spoken of by Meisel; part of the complexity involved relates to the seemingly inherent difficulty in drawing a distinction between what properly constitutes "regulation" versus "policy". This was a demarcation that the Minister tried to make in turning the situation (and the Commission's decision) around. Yet what is also made strikingly evident in this series of events is the lack of consultative mechanisms available within the government to both allow and

facilitate rational and calm debate on issues in which both the CRTC and DOC have a legitimate interest. In the instance of determining Telesat's fate, regulatory provisions required that agreements between telephone companies be submitted to the CRTC for approval; the DOC however, as general overseer of the telecommunications system, had the right (and responsibility), to decide whether Telesat's operations would continue to be partially funded out of the public purse. Before discussing these basic issues further, however, a consideration of the policy-making role of the Commission in this series of events will first be undertaken.

In the absence of an established government telecommunications or Telesat policy, the Commission concluded that "it was obliged to reach the best decision it could on the application before it". This it did, according to John Meisel, after "careful development of a detailed public record". For Chairman Meisel:

> If that involves making what can be characterized as "policy" rather than "regulatory" decisions, so be it. In this imperfect system, we have no other choice (162).

The Commission did not have, for both practical and legal reasons, the option of abstaining from rendering a decision once the Agreement had been placed before it (163). From the moment the Agreement was submitted, the CRTC mandate was clear: "the Commission had to make its decision on the information brought forward". As a part of this process, "if the Minister had reasons for the proposed agreement to be approved, she should have brought them forward" (164).

If the Commission made "policy" in this instance, it did so

by giving the Railway Act a much broader reading than the CTC had previously done. The CRTC evidently put into practice the philosophy that to administer this legislation well, regulatory activity that "gets into all the 'nuts and bolts'" is required (165). Certainly as well, the role played by individual actors and the issue of "Commission preservation" are factors explaining Commission actions (166). Both Commission Chairman Harry Boyle and Vice-Chairman Charles Dalfen appeared willing to oppose the government on the issue of Telesat. Boyle was perhaps motivated by tensions existing between himself and a DOC bureaucracy which wanted to play a more predominant role, and Dalfen naturally upheld his opinion on Telesat's intended role when the government sanctioned a change in its status. The issue of the Commission's "preservation", in terms of retaining the agency's arm's-length relationship to the government, is also a factor: the CRTC seemed to feel a "bureaucratic resentment" towards the Department's policy and legislative initiatives, initiatives which obviously heralded a change in the status quo under which the agency had operated for almost a decade by that point. If the Commission had intended its decision to be a test of its power vis-a-vis the DOC, perhaps this attempt was inevitable given that the Commission had just the year before assumed regulatory responsibility for telecommunications.

It is also possible that the CRTC, conceivably concerned to have its new role as telecommunications regulator accepted by the public, was prepared to go against the wishes of the Department, if necessary, for indeed "it is in their interest sometimes to take an opposing view from the government - particularly if they

have the basis for such a stance!" (167). Certainly there was an awareness, as mentioned, that if the agency was going to be more than just a "rubber stamp" for the government it would have to "fulfill its regulatory mandate and look at the substance of the deal" despite the Agreement having been reached with the government's blessing. Thus the Commission reached a decision that went "against ministerial wishes". This decision was nevertheless taken well within the gambit of the underlying legislation. Moving from this basis forward, the Commission was prepared to enter into, and comment upon, public policy issues given the absence of any stated government policy. The use of such terminology as "public policy" was the result of a Commission desire to send a strong message to the government largely due to the existing bureaucratic antagonisms (168). In spite of possessing the legal right to rule on the proposal on regulatory grounds, "it must have taken a hell of a lot of backbone (on the part of the Commission) to reject the proposal given that all of the cards were stacked against it" (169). The discussion now turns to a consideration of the nature of the constraints impinging upon the agency as a decision-maker.

Despite statutory provisions requiring submission of the Telesat-TCTS proposal before the CRTC, given Sauvé's remarks at the time as to what was to be the Commission's role in reviewing the proposal, the subsequent Cabinet overruling of the Commission raises the question, as a retired CRTC Commissioner was to ask, of "why was the issue put before the Commission at all?" (170). The issue had come before the Commission with the Department expecting that the agency would "hold its nose and ratify it".

The DOC did not expect that the Commission would find it all that much to its liking - but nevertheless expected that the agency would respect the Minister's wishes in this instance and grant its approval (171). While both the Department and Sauvé took steps to make her expectations in this matter known to the CRTC, no mechanism existed by which the Minister could instruct the Commission "directly". Additionally, the Commission would only accept the Minister's "wishes" as evidence to be considered in arriving at a judgement if presented in the form of an appearance by Sauvé (or department officials) at the public hearing. The Department nevertheless did have the ability to review the Commission decision. In this instance the DOC, in the words of a departmental official of the time, "took the CRTC decision and rewrote it". The legislation governing cabinet review of telecommunications decisions, as noted, is broader than that for broadcasting: under the Railway Act the government can vary or rescind any decision of the Commission for any reason. These powers allow the Cabinet, as has been remarked elsewhere, to "rarely be outside of its jurisdiction in matters of policy" (172). Additionally, while it had generally been conceded that the Commission could only either accept or reject the proposed agreement and could not modify it by way of imposing conditions, the Minister was able to supply the compromise demanded by the Agreement's opponents at the time of the issuance of the Order-in-Council by affixing conditions to the contract. This was action that the Commission could not take and it served to diffuse much of the controversy surrounding the carriers' proposal.

This departmental willingness to intervene, as remarked upon in the last case study, resulted both from Sauvé being less deferential to the agency than her predecessor, Gérard Pelletier, and also because of the desire of departmental officials to expand the DOC's horizons as a decision-maker. Sauvé's remark that the Minister of Communications "is responsible for the CRTC" bespoke a different conceptualization of the government-agency relationship than that held by Pelletier; meanwhile the DOC's desire that the CRTC be limited to a tariff-making role in telecommunications was clearly illustrated by the Department's annual report for 1977-1978 (173). This stated that it was the Department, as part of its "general mandate", which developed policies and programs related to common carriers and the telecommunications industry (174). Forming part of these "policies" was the DOC's hardening of opinion on the issue of competition by the period of 1975-76, with Sauvé saying that "competition in this area we now think is bad" and that the telcos "are right in their thinking" (175). Evidently, the carriers had done their job well in helping to produce these ministerial statements/policies: "being successful in persuading officials within the Department that the proposed agreement was going to be beneficial and the officials in turn succeeding to convince the Minister of the validity of the proposition" (176).

It was partially also because of a wish to counter this influence of the telcos (and their seemingly privileged entrée to the DOC) that the Commission had dismissed the proposed agreement: the agency was concerned that the Agreement, if implemented, could impact upon the ability of intervenors to

effectively participate in future hearings (177). Feeling the need for competing participants to move the discussion at public hearings beyond the purely technical aspects (where organizations such as Bell enjoy obvious advantages given the resources they can bring to bear), the CRTC was fearful of losing this resource. Nevertheless this case study demonstrates that the "lobby for the CRTC" is not as strong in telecommunications matters as it is on broadcasting issues. Apart from the actions of the CAC, little effective opposition to the proposed plan was mounted at the hearing (nor further out in the public domain). Consequently, despite the introduction of additional "policy considerations" at the time of the government's variance action, the government did not labour under any lobby (or public) pressure to send the Commission decision back to the agency for a re-hearing (an action it neither wanted, nor was legally required, to do) (178). In sum, the Commission was unable to use the hearing process (and public opinion generally) to bolster its opposition to the proposed Telesat-TCTS plan. Public opinion, in an issue filled with "public policy" issues, did not enter the picture at all. In all, in no manner, even if the Commission ruling did involve "policy" considerations, was the agency decision beyond the reach of the government. This, the government is certainly aware of; the DOC "Overview" document of 1983 notes that although regulatory decisions "sometimes have policy implications", the federal government can vary or rescind any CRTC telecommunication decision (179).

To summarize this case study, it can be noted that the Commission appeared to have emerged from the Telesat-TCTS series

of events with its reputation as a "policy-maker", if anything, enhanced - and this despite the fact that Telesat, Bell and the other members of TCTS obtained the outcome they wanted through ministerial intervention. A consideration of the role of the Commission as a decision-maker however, leads to the conclusion that rather than being a "Goliath of policy-making" the regulatory agency is really more of a "David". While the agency had the opportunity to exercise influence by stating its opinion on the carrier proposal, the CRTC's ability to act as a policy-maker in this case was highly "fettered" despite the fact that it was for the Commission to decide, in the first instance, whether or not Telesat was to be independent of TCTS. In the event, the agency arrived at the "wrong" decision and the issue then passed out of its hands and into those of the DOC. The only manner in which the agency could be said to have usurped a ministerial or departmental role in this series of events was by stating its opinion on the proposal - which of course the Minister, on several occasions, invited it to do.

As with the other case studies of the thesis, a dearth of government policy existed which could be consulted by the Commission <u>before</u> it took the ruling in question. While the Minister, in this instance, had written to the Commission to advocate passage of the proposal before the related hearing was convened, this action hardly seems to constitute a rationalized, well-substantiated policy position; here, DOC telecommunication policy simply seemed to consist of "passage of the proposal is our policy". Certainly, since the DOC produced no evidence in favour of the proposal akin in nature to that generated during

the Commission hearing which allowed the agency to deny permission, it is difficult to say that the CRTC usurped a ministerial or departmental role by either failing to implement or actively countervailing an existing government policy. The Commission did decide not to implement a ministerial desire conveyed to it outside the context of the related hearing; to have implemented the carriers' accord simply because the minister asked for that would have questioned the worth of the contribution of those intervenors who had appeared and, of the hearing process in general. The Commission, however, did not ignore an established government policy position, as there was none. Relatedly, it is ironic to note Brothers' point that while changes had been made to the Telesat Canada Act over the years before 1977, these had occurred in an ad hoc fashion and without any public input; on the one occasion when a public forum was involved to examine Telesat, the outcome of that process was altered during the secretive process of a ministerial review of an agency decision (180).

While there are those of the opinion, including some from the CRTC, that under the circumstances, Minister Sauvé's review of the Commission Telesat decision was "appropriate", such a process produces ad hoc management of the telecommunications system (181). Nevertheless, as Schultz has noted, any claim to quality that the Canadian telecommunications system can make has largely been the result of individual regulatory decisions like the Telesat-TCTS one examined here (comprising, evidently, the occasional ministerial overturning) more than any comprehensive, global policy (182). Given the evidence of how Telesat's future

was decided in 1977, it is surprising that the telecommunications system functions as well as it does.

CHAPTER FIVE

THE CRTC AND THE INTRODUCTION OF PAY-TELEVISION

Introduction

This last case study explores the process which led to the licensing of pay-television in Canada in 1982. The events to be recounted here constitute something of a saga. They cover a period of twelve years, involve both the federal and provincial levels of government and the participation of several interest groups. The chapter will question why the Commission eventually authorized the implementation of pay-television service despite great continuing reticence.

The agency's cautious attitude towards pay-television had led it to reject its introduction in late 1975. However, in June 1976 DOC Minister Jeanne Sauvé made a speech before the cable industry's annual congress referring to pay-television's "inevitable" appearance. Nevertheless, despite a second hearing the Commission stood its ground. This decision, which disregarded the expression of seemingly strong ministerial and departmental wishes that the Commission move forward on the issue, received much criticism. Once again, the CRTC was accused of being "out of control": disdainful of an evident government position on the matter, it was said to be charting its own course on pay-television and in so doing, usurping a policy-setting

role more properly exercised by the government. This chapter will examine the validity of this claim.

The unique aspect of this case study is that the government wanted the Commission to make a licensing decision the agency was reticent to render. The fact that the government has no formal power to oblige the Commission to make a decision is amply illustrated with the introduction of pay-television. Even though the government did not immediately get its way on pay-television, and while the Commission always made clear its point of view on this issue, the agency nevertheless ultimately deferred to the wishes of elected authorities. The agency authorized pay-television, despite the fact that it did not believe the service to be beneficial to the broadcasting system. Thus, while the events of this case study present the strongest argument in the thesis for provision of a DOC policy directive power over the agency, the Department nevertheless ultimately got its way on the issue.

Moreover, given that the government never had a long-term policy on the issue, Commission pay-television licensing action meant that the CRTC not only unwillingly gave its authorization, thus bringing closure to the issue, but also had to find the measures by which to implement the service. The DOC, although eager to periodically push the Commission on the issue, was content to allow the CRTC to largely develop the model (or "policy") for pay-television service which the agency's 1982 licensing decisions set into place. The CRTC was forced to fill the void.

On the issue of independent agency policy-making, this case study suggests that the Commission enjoyed great "independence" in devising the policy and making the decisions which led to the type of system eventually introduced. However, this policy-making role was compromised by the fact that the "independence" of the agency in policy-formulation was not matched by equal freedom in setting the timetable governing the introduction of pay-television. Here, the Commission's "schedule-setting" role is shown to be more circumscribed. The Commission unwillingly considered the issue on several occasions when pressured to do so. Finally, after prolonged pressure emanating from ministers, their government officials, and interest group lobbyists, as well as continuing technological advances, the CRTC scheduled the introduction of pay-television although still not enthusiastic about the concept.

Consequently, and as the other case studies of the thesis conclude, the series of events examined in this chapter require a rejection of the claim that the CRTC was a decision-maker "out of control". The agency introduced the service within the framework of a time-schedule that was more reflective of the wishes of pay-television's supporters than its own, did so in a form that demonstrated more an attempt to appease the various factions which had agitated on the issue than fulfill its own desires on how the service should operate - and did this at a time when real public interest in pay-television service was becoming apparent for

only the first time.

Emergence of the Issue

The CRTC first addressed the concept of pay-television in 1970. At that time an application was submitted to the agency which involved carrying American signals to Canadian subscribers on a fee basis (1). While nothing came of this application, two years later the CRTC issued its first invitation for pay-television proposals. After a review of submissions, the Commission, however, concluded that pay-television was still in an "experimental phase" but notified everyone that whenever the service may be licensed, "it should develop through legitimate licensees" (meaning those authorized by the Commission under the Broadcasting Act) (2). DOC Minister Pelletier evidently supported the Commission position because in a speech the following year to the CCTA, he stated that pay-television should be developed in a fashion that would support broadcasting policy and he concurred with the Commission that pay-television was to develop through Broadcasting Act provisions (3).

In early 1975 the Commission released a "Position Paper" on the issue of pay-television. In this public statement the CRTC reiterated its belief that the introduction of pay-television was unwarranted but acknowledged the "new interest developing" in the service (4). The accompanying public announcement called for a

Commission hearing on the matter (the Commission's first public proceeding on the issue) (5). The Commission "Position Paper" and its decision to hold a public hearing reflected the increased interest of cable operators in the revenue potential of pay-television. During the period of 1970-1975 they had been busy handling their industry's rapid expansion and extension of service to first-time subscribers and had initially been unconvinced that pay-television service could be a money-making venture (6).

Nevertheless, despite these initiatives the Commission was still opposed to the introduction of pay-television. CRTC Chairman Juneau made this clear in a speech when he stated that the Commission's actions should not be construed as "pushing pay-television". According to the Chairman the Commission had no desire "to promote pay-television" but rather thought it useful to "clear the air if (it) came out with a certain number of ideas as to how pay-television might develop if Canadians want it, and if its a good idea" (7). This theme was repeated at the cable association's annual meeting, with Juneau saying that "the Canadian government (would) not allow" pay-television to make the broadcasting system "a second rate service" (8).

Thus, prior to the first cable hearings where pay-television was a major item on the agenda, the Commission seemed to suggest the service could be potentially harmful. Despite that, the Commission was not uninterested in pay-television, but it wanted the broadcasters to operate any service that might be authorized

(9).

Dominance of the Commission

At the cable hearing (June 1975) the divergence of opinion regarding any introduction of pay-television service was immediately apparent: both the Association of Canadian Television and Radio Artists (ACTRA) and the CAB argued for a delay in the service's implementation, while the CCTA predictably assumed the contrary position (10). The provinces were also represented. The Province of Manitoba raised the issue of jurisdiction in its submission, saying that the CRTC should not be addressing the issue of pay-television "while jurisdictional questions are under review at the present time" (11). In regard to the Commission's own attitude at the hearing, Juneau expressed his frustration with the complexity of the issues raised by pay-television and the concomitant difficulty to arrive at an across the industry consensus on the issue (12). Nevertheless, the hearing outlined various groups' positions on the subject of pay-television, demonstrating potentially difficult questions of jurisdiction. Further, while the likely impact of pay-television on the existing conventional Canadian broadcasting industry was still unknown, the hearing made plain that no sizeable public demand for the service then existed.

Six months after the cable hearing, the CRTC finally announced its decision on pay-television (December 1975):

the Commission considered that it was still not the right time to introduce a comprehensive pay-television service (13). A partial explanation of this reasoning was revealed a few months later when the new CRTC Chairman, Harry Boyle, spoke at the CAB's annual meeting: he expressed disappointment that the broadcasters had "not accepted" the challenge of the Commission to become involved in the planning of pay-television and warned that they might be locked out of its future development (14).

These remarks followed strenuous on-going Commission efforts, particularly on the part of Boyle, to interest the broadcasters in the subject. As part of these efforts, during one luncheon meeting with the heads of both the CBC and CTV networks Boyle stressed that "now is the time, before pressure builds, for you people to get in". Although he even specified the kind of pay-television proposals the Commission would find acceptable and be willing to license, the heads of both the CBC and CTV networks gave only a lukewarm response to the Chairman's urging (15). The Commission announcement rejecting the introduction of pay-television followed.

The Department Steps In

Whether the Commission thought its December 1975 decision would afford a temporary respite from the topic of pay-television is speculation, but there is little doubt that up until that time, the agency had had a free-hand in

considering the issue. During the period 1970-1975, the CRTC was busy "reconciling" the increasingly important cable industry with over-the-air broadcasting, and viewed proposed pay-television services as an additional threat to conventional broadcasting. It had little interest in wrestling with the matter if the broadcasters were not prepared to cooperate.

Nevertheless, since 1972, bureaucratic changes within the federal government witnessed the emergence of a DOC which became more interested both in the cable industry and decision-making in that policy area. It was acquiring a staff eager to start making policy decisions and by 1976 also had the CRTC amongst its minister's roster of agencies (16). Reflecting growing governmental interest in cable and pay-television, Pelletier, while still of "the opinion that the CRTC could handle the pay-television issue", by the end of his tenure as DOC minister had decided that "they were slow in doing so" (17). His reticence to do much about this perceived Commission tardiness, however, was characteristic of the customary manner in which he had treated the agency ever since he became its spokes-minister while at the Secretary of State in 1968. It reflected his commitment (at least publicly) to the "arm's length" notion of government-agency relations (18). The deliberation and release of the Commission's December 1975 announcement on pay-television however coincided with Pelletier's retirement from the government and his replacement as DOC minister by Jeanne Sauvé. As a consequence of these ministerial

changes, events were to follow which proved Boyle's warning message to the broadcasters to be a harbinger of future developments.

Shortly after the installation of Sauvé as minister she told the cable association's annual meeting just what the industry had been waiting to hear: "the establishment of pay-television service on a large scale is inevitable". While the Minister also warned that "inevitability need not mean disruption of the (broadcasting) system", Sauvé called upon the Commission to (once again) receive submissions from the public on the issue and to hold a hearing to discuss the service's organizational structure (19). With the resulting information, Sauvé said, the government would give "an early indication" of its policy "after which the CRTC will establish regulatory guidelines and call for license applications". The Minister, however, gave little indication of a government preference regarding the structure of a pay-television system, other than to express the concern that pay-television, "if left uncontrolled, could damage conventional broadcasting ..." (20).

After the Minister, Chairman Boyle addressed the CCTA meeting. On the subject of pay-television Boyle said that the CRTC had been discussing its introduction and "frequently consulted" the Minister on this subject. He justified this contact on the basis that pay-television constituted "one major problem (which transcended) the normal administration of the Broadcasting Act of 1968". This was due to the potential impact of its programming structure

not only on cable operators and broadcasters, but also "on the whole range of creative programming production resources of Canada" (21).

Sauvé's speech had justified the introduction of pay-television in terms of its potential contribution to Canadian programming production. However, it was also said at the time that Sauvé wanted to move with "some alacrity" toward implementing pay-television as it seemed that the government was about to be preempted in this regard by the provinces and the move was made to assert its authority (22). Minister Sauvé may have wanted to appear "in control", but it was soon evident that because of several reasons she could not push the introduction of pay-television along as quickly as she would have liked. One reason was that the Commission was still unconvinced of its merits. It appeared the Department, in a sense, had neglected "its homework" in regard to the CRTC. It had not worked as closely with the agency as it had done with the CCTA on the issue, and, as will be seen, the Commission resentment over the Department's disregard was to have a price.

The "frequent consultations" between the CRTC and the DOC on the issue of pay-television were an outcome of the cable industry's increased lobbying efforts toward the Department and Minister after the Commission had said "No" to pay-television the previous December (23). The Minister's speech before the CCTA reflected how successful these cable industry lobbying efforts were. This increased lobbying was

aimed in particular at the "Social Policy and Programs Branch" of the DOC. Here the cable industry was given a warm reception by its Director-General, Bob Rabinovitch, a bureaucrat who took up their cause within the Department. Instrumental in developing the DOC's early position on pay-television, he helped pilot the Minister's June 1976 CCTA pay-television speech through departmental ranks, up past Deputy Minister Yalden (24). The speech also demonstrated Sauvé's friendly personal relationship with the cable association. The address, apparently, had been pieced together on her living room floor in the company of Rabinovitch and CCTA President Michael Hind-Smith, a long-time friend (25).

While the Commission had known that the Minister was going to speak on the subject of pay-television at the cable convention, it had not been forwarded a copy of the text due to the Department's displeasure at the agency playing a "policy-making" role (26). Thus Boyle was left "picking up the pieces for the Commission" in the wake of the Minister's speech (27). Nevertheless, the speech publicly marked the Department's long-standing interest in cable as evolving from one mainly concerned with the technical and hardware aspects involved to an increasing preoccupation with its software and content characteristics. Sauvé had made her speech, in the words of an official, to give the Department "the impact on pay-television that it wanted". Boyle noted in his CCTA address, however, that the DOC's cable role involved "administering the technical functions;" this

remark hinted that the Department was not going to set cable and broadcasting policy for Canada the moment it might care to do so (28).

In all, the Minister's speech re-opened in a very vivid fashion the question of the fate of pay-television. This was an issue which it had generally been regarded the previous December that the CRTC had laid to rest. The ensuing effect, coupled with her declared opposition to the CRTC's judgment, sparked the rumour that Sauvé would not be the DOC Minister much longer (29).

The Commission Response

Inexplicably, just after the cable convention and her request that the Commission set a September 1 deadline for the reception of pay-television submissions, Sauvé was quoted as saying that there would be "no rush" to introduce pay-television (30). After the Minister's speech, however, pay-television was discussed with a renewed sense of urgency (31). Nevertheless, when Boyle appeared before the House Standing Committee on Broadcasting the month after Sauvé's CCTA speech, he stated that the Commission had "a grave concern about how pay-television will be introduced in Canada", despite the CRTC having "had discussions with the Minister on this question" (32). Boyle's remarks reflected the uncertain role the Commission occupied as a decision-maker on the issue.

The Commission had been obliged to say "maybe" to

pay-television and talked of holding a hearing on the subject because of the lack of success and disappointment Boyle had faced in his talks with the broadcasters. Nevertheless, his and the Commission's predilection remained to have the broadcasters take charge of any pay-television service introduced. Indeed this attitude would continue to shape its views towards the topic over the next few years. Despite the Commission reservations, its call for new submissions on the "form and function" of a pay-television system came in June (and made reference to the fact that the call was at the "Minister's request") (33). The invitation was issued as the Commission had decided to proceed with the process of accepting pay-television proposals and considered holding a hearing in order to "avoid having an outright confrontation with the Minister". While doing this, the agency was secure in the knowledge that "the calling of applications did not necessarily mean that anyone was going to be licensed" to provide a pay-television service. Any hearing could "merely be a generic one", in which the concept of pay-television would be considered, rather than any specific license applications (34). Additionally, a CRTC hearing would provide a public forum for the review of the concept of pay-television, an environment different from the offices of the DOC where the CCTA had so far experienced success in initiating movement towards implementation of the service (35).

During the summer of 1976, while applicants and intervenors prepared their submissions for the CRTC, rumours

and conjecture with respect to pay-television were the order of the day. Confusion reigned, for instance, over how the CRTC would proceed with its renewed investigation of pay-television. Would the agency hold public hearings on the issue or would it simply, upon receipt of the various submissions, make a decision concerning pay-television's modus operandi and then call for license applications? (36). Of course, Sauvé's speech of 2 June had suggested that it was for the DOC minister to rule on the form and functions of a pay-television network. The fact remained that for many participants and observers it was not at all clear as to who would decide the nature of the ownership and operation of any new pay-television distribution system. With respect to these issues it was reported at the time that "in reality, everyone is pretty confused" (37).

Minister Sauvé herself continued to sound confident, saying that government policy on pay-television would be finalized the following autumn (38). All the same, the confusion regarding who was to act on the proposals submitted, whether it was to be the CRTC, the DOC, or, possibly, the Secretary of State, carried into the fall. Government departments were said to be "in some disarray, each reportedly convincing their own minister that they alone knew how pay-television should be introduced" (39). Rumour suggested that the DOC wanted to take full charge of the investigation in an attempt "to solidify the federal claim of jurisdiction over the cable industry" (40). The source of this conjecture was probably the work undertaken

by the Department on pay-television that summer in the company of the CCTA (41). This work was undertaken by the "Social Policy and Programs Branch" of the DOC to "show the CRTC that pay-television was possible" and to provide material for a possible further ministerial speech outlining an organizational model for pay-television (if the Commission continued to prove reticent about its introduction). Thus, even if the Department did not have the power to direct the Commission to implement pay-television, departmental officials hoped that the "power of embarrassment", at least, would prove compelling to the Commission in its consideration of the topic.

Whatever the efficacy of this approach, speculation at the time held that with so many interests involved (of both a governmental and non-governmental nature), and the presence of troublesome observers such as the CAC (which claimed the CRTC decision of December 1975 remained "the operational one"), Sauvé would have to get a consensus from Cabinet before enunciating any further policy on the issue - "much less approving any structure for a pay-television system" (42). Departmental momentum on pay-television though had been broken by the end of September (1976) with the departure of Bob Rabinovitch. In lieu of further ministerial speeches that year, the Department was to consult with the CRTC on the 91 submissions on pay-television thus far received by the Commission. On the related topic of convening a hearing, the Minister said that she did not mind if the Commission did so (as "this was a

decision for it to make"); indeed, Sauvé acknowledged that she had discussed the possibility of a hearing with Boyle. Furthermore, in the Minister's view:

> There is no question that the Cabinet will give consideration to proceeding with public hearings, but it is not improper - nor, indeed, excluded - for these discussions to occur between myself and the chairman of the CRTC (43).

Thus the Minister seemed to be saying that while it was within the purview of the Commission chairman to decide the "whether or not" of public hearings, she certainly expected to be consulted on the matter (44).

Finally, eight months after the Minister's call for the reconsideration of pay-television, a CRTC notice announcing a public hearing emerged in early February 1977 (with the event slated for mid-May). Although it issued this call, the Commission had been disappointed with the submissions thus far received. The Commission remarked that few submissions had addressed the issue of agency design "to an extent sufficient to enable the Commission to make precise recommendations to the Minister". The notice also stated that "... following the hearing, the Commission will prepare recommendations for the Minister on the introduction of pay-television ... only when there has been an enunciated policy ... (would the Commission call for license applications)" (45).

The agency call had not arrived, though, without continuing signs of tension between the Commission and the Department. A recent speech by Sauvé had suggested that "the present troubles of the Canadian broadcasting system" were as much due to its structure as to the presence of the American influence and it

expounded the view that "regulatory policies" alone were insufficient to correct the situation. In her view, "a more positive approach to the problem" was needed. Presumably an example of this approach was her department and the CRTC continuing to "jointly study" pay-television with "the collective goal" of developing a structural model (this work was done as the result of "her initiative" and within "her guidelines" of what pay-television needed to achieve in Canada) (46). Her "initiative" threatened to produce one result fairly soon however - rumours circulated that the chairman of the Commission (Boyle) was ready to quit because of ministerial meddling in Commission affairs (47). Furthermore, the Commission was undoubtedly not willing to help out a minister it perceived to be acting in reaction to lobbying pressure, pure and simple, on an issue with which the agency felt that it had already dealt (48).

Nevertheless with the new likelihood that a Commission hearing on pay-television would be scheduled, parliamentary interest in the topic was once again aroused. Questions were asked in the House regarding government movement towards a pay-television policy - and this time confusion seemed evident between departmental ministers about the entire process. However, as a report from the planned Commission hearing was expected to be released by mid-October, the only outstanding question for Minister Sauvé concerned the procedure proposed for the public hearings. This was a matter, in any case, "which the chairman of the CRTC decide(d)" (49). Questions posed the same week to John Roberts, the Secretary of State, at a meeting of the House Standing Committee on Broadcasting, found him in conflict

with Sauvé as to the amount and depth of research still required prior to any introduction of pay-television.

Asked about a recent speech he had made which called for a broad inquiry into broadcasting, (with the possibility of a new broadcasting policy emerging out of that process), Roberts admitted that such a study could well mean a delay "in the development of some of the newer services such as pay-television". While Roberts denied that his call for a thorough look at broadcasting and pay-television "necessarily" entailed a policy conflict between himself and the DOC Minister, he did allow that, with respect to pay-television, it could mean "delay if necessary, but not necessarily delay" (50). In Ottawa this call was seen as a ploy to stall for time on pay-television perhaps because the Secretary of State was feeling "left out of the action" (51).

The much-postponed CRTC pay-television hearing was finally convened 13-16 June (1977). In his opening statement, Boyle said the Commission's agenda was to develop a policy on the form, function and design of a pay-television agency. This would be followed by "an introductory schedule for pay-television consistent with (the Commission's) normal regulatory and licensing functions" (52). As the hearings got underway tensions over the introduction of pay-television soon surfaced. Many of the remarks addressed not only the substance of any system that might be implemented, but the decision-making process that had so far been involved in handling the issue. The presentation of the Council of Canadian Filmmakers remarked upon the apparent governmental reversal of CRTC policy on pay-television while the

CAC likewise asked why the Commission's policy had been revised (53). The consumers group was also particularly disturbed that Sauvé and the DOC "had been making representations to the CRTC outside of the public domain ... which (were) clearly not a part of these proceedings" (54). A later intervenor, Liora Salter, also questioned the hearing's purpose and the CRTC role within the process. She remarked that she could not "understand what we're doing here" - was it to discuss the "whether or not" of pay-television or, rather, the "how" of pay-television. Chairman Boyle responded:

> We're just considering the general principle of pay-television. Some of the intervenors have said that it's a foregone conclusion. I'm not of that opinion myself. We have accepted any interventions that are related to the principle of pay-television itself, as you've noticed from the beginning (of the hearing) (55).

Although the Commission Chairman may have had his doubts that pay-television was a "foregone conclusion" and that the general principle of the whole thing still warranted discussion, the CAB nevertheless demonstrated a sizable shift of attitude during this hearing from the one it had previously expressed. They remarked, "While we feel threatened by pay-television, as it appears it is inevitable, we would like to participate in its development" (56). Thus it appears that the Minister's 2 June 1976 speech succeeded in prompting the CAB to accept the idea of pay-television (if only in public) where past Commission public admonitions had failed to stir it.

The Commission hearings ended in mid-June and the Minister's specified 1 October (1977) report date approached. When the report appeared, it was expected to "bear Boyle's distinctive

stamp" (57). Instead, what did appear in October was a CRTC Research Branch document which asked: "given the limitations of the response to the pay-television hearing, is it necessary to pursue the matter further at this time?" The only conclusion contained in the report was that "... the programming agency should be public (and) non-profit, ..." (58). The unenthusiastic tone of the Commission document towards pay-television undoubtedly reflected the findings of a CRTC sponsored public opinion survey held after the June hearings which found that the majority of Canadians were not particularly interested in being offered a pay-television service.

In fact, by the time the ministerially-ordered CRTC pay-television hearing was finally held in June (1977), much of the initial pressure the DOC exerted on the CRTC to introduce the service appeared to have subsided. Certainly Sauvé's remarks in various forums in the aftermath of her speech to the CCTA indicated a minister who was not prepared to pursue the topic at all costs. This "cooling" of the Minister could have come about as the result of a number of factors: first, due to a new awareness on the part of her advisors to both the negative aspects of pay-television and the complexities involved in getting desirable programming into the system (an aspect certainly made clear during the CRTC hearing); secondly, her resulting frustration from trying to make a reticent CRTC progress with the matter and; relatedly, her apparent inability to do more than simply make speeches on the issue (59). Certainly the departure of Bob Rabinovitch, her principal speech writer and advisor on the topic was also a factor in the DOC "losing steam"

on the issue. If a shifting in the dominant attitude within the Department on the topic of pay-television appeared during this time, the second Commission hearing on the service left the agency maintaining its opinion. The CRTC findings from the hearing were enumerated in its "Report on Pay-television" which finally appeared nearly nine months later (March 1978). The document stated that the CRTC could not endorse the introduction of a national pay-television system "at this time" (60). Prior to the appearance of the "Report" there had been a change in Commission chairman, with Harry Boyle replaced by Pierre Camu. Relatedly, the CRTC "Report" was interpreted as evidence of a new, "more compliant" Commission under the helm of Camu than had been the case with either Juneau or Boyle (61).

Thus, instead of slaying the "pay-television monster" for good ("which it could have done if wanted to"), the Commission's report "(gave) the government enough to go on" in terms of the outline it provided for the establishment of a national pay-television network. This, the agency did even while recommending rejection of the introduction of pay-television (62). The report had emerged after nine-months not only because the Commission had been busy trying to find a way to introduce pay-television within the boundaries of the Broadcasting Act but also largely because of the continued reticence of the broadcasters to get involved with pay-television in any way whatsoever - and the Commission's own reluctance to proceed without them "on side" (63).

Minister Sauvé, nevertheless, appeared appreciative of the Commission's efforts. She called the report "an important and

useful step in the development of a pay-television policy for Canada". The Minister also stated her general agreement with "its tone and its principles". Seemingly at a loss for quite what to say, Sauvé remarked that while, like the CRTC, she was in no hurry to push for the immediate introduction of pay-television and it should not be introduced "just because it is technically possible to do so", it was nevertheless important that the government develop a coherent policy as soon as practical to prevent the service developing in a piecemeal fashion. Thus, Sauvé said, the DOC would "immediately" begin an analysis of the report and its recommendations with the government stating its intentions regarding pay-television "in the near future" (64).

The Minister's cautious attitude towards pay-television continued to be displayed the following month during a Standing Committee appearance. Here Sauvé stated, for the first time, that the introduction of pay-television would have to wait "until there is demand for it" (65).

Stalemate

In effect, having thrown the ball back to the DOC with its report on pay-television, the Commission awaited a response - and there was none forthcoming. The departmental reaction helped confirm the Commission sentiment that no government policy on pay-television existed (66). The fact that the 1976-1978 DOC push on pay-television was to come to a complete stop after the 1978 CRTC report saying "No" was released, was taken as evidence that this initiative was not deeply rooted at the Department. As

Rabinovitch had been the advisor on the pay-television project within the Department, his departure left the project out of steam, as no other officials within the DOC bureaucracy were as enthusiastic about pay-television (67). Sauvé's public reticence on the matter, the result of the findings of the "DOC/cable industry-commissioned hearing" on pay-television, demonstrated that the CRTC had been able to "cool-down" the DOC on the topic (68). The Department needed to re-think its gameplan. It had pushed the idea of pay-television for two years and now felt, in the wake of the CRTC report, that there was little "more that it could do", according to a senior departmental official of the time.

During a federal-provincial conference of communication ministers, held the month after the CRTC pay-television announcement (in April 1978), Sauvé was to find that providing the "government's intentions" on pay-television would not be easy: the provinces were making it clear that they wanted access and the chance to provide input to the communications policy development process. Certain provinces were questioning the jurisdictional basis of any possible federal government unilateral action on the issue of pay-television while Saskatchewan had already begun the process of implementing its own provincial service (69). It seemed that if Sauvé's 1976 call for the introduction of pay-television had produced little in the way of concrete results so far, it had at least succeeded in prompting the curiosity of the provinces as to what would be the jurisdictional questions involved in pay-television's implementation.

The joint federal-provincial communique of the ministerial meeting pointed out "differences on the need to introduce pay-television" existing between the governments. This statement reflected the jurisdictional and policy input issues but, also, the fact that certain provinces were prepared to delay the introduction of pay-television service until the outstanding jurisdictional issues were resolved to their satisfaction (70). Nevertheless, the conference produced the idea that the federal government would develop, in concert with any interested provinces, a pay-television model "capable of accommodating the jurisdiction interests of both levels of government" (71). Thus an overt political dimension was added to the pay-television issue which was formerly just a federal regulatory/policy concern. Undoubtedly because of the events of the past two months, Sauvé responded to House questions about the inter-governmental meetings by stating that she had been entrusted by the provinces with the mandate of developing a model for pay-television "if and when it is introduced in the country" (72). Ironically, the two years since her 2 June 1976 speech had simply succeeded in moving the introduction of pay-television from an "inevitable" status to a merely "if and when" proposition.

As the cable industry and the provinces continued to "push" the DOC on the issue of pay-television in the aftermath of the Commission's report, the Department began the search for other ways to assert a policy-making role vis-a-vis the Commission. In the absence of any legislative changes to provide it with a policy directive power to order the agency to implement

pay-television service, the Department sought informal methods by which to counteract the influence of the Commission. Although Sauvé had said at the time of the intergovernmental meeting that the preparation of a pay-television model was "a matter of a few months", six months passed without the Minister presenting a "model for the introduction of pay-television". Instead, on 30 November (1978) the Department announced the establishment of an "Independent Committee to Recommend on the Future of Telecommunications in Canada" (popularly known as "The Clyne Committee"). The "idea" for the study group apparently resulted from discussions between senior departmental officials and the Minister "about the need for a national policy in the telecommunications field (and also the fact that) we (were) aware that the CRTC (was) swamped with its own workload ...." (73). The terms of reference for the committee included studying "the framework and timing for the introduction of pay-television nationally" (74). While it had been widely stated that the establishment of the DOC committee was an affront to the Commission, it was also perceived as symptomatic of the state of affairs at the Department, whose management "has never really come to grips with its underlying mandate" and appeared to be "seeking endorsement of its existence ..." (75). Indeed the formation of the committee followed rumours that Prime Minister Trudeau had considered abolishing the Department (76). An internal departmental "policy review paper" had appeared after Trudeau's rumoured musings were reported in the press but the document did not produce consensus amongst departmental senior staff as to how the DOC should approach policy issues, or even

what agenda the Department ought to pursue (77).

Unfortunately for the DOC, if it had hoped that the Clyne Committee would somehow lead to the realization of an increased number of policy initiatives for the Department, its hopes were soon to be dashed with the change of government after the May 1979 election (78). Moreover the report's lukewarm enthusiasm for pay-television led the Department to "edit" this section of the report before its release: the condensed discussion on pay-television that survived in the report recommended that the service be introduced but only on a "pay-television-per-program" basis and once "the technology allowing for this service has been developed". Thus as a means of applying "leverage" on the Commission's position on pay-television the report was, to say the least, ineffectual.

The fact that the Commission had not "taken kindly" to the establishment of the Clyne Committee (as "the issues it was looking at were central to the concerns of the CRTC") appeared to show in a a speech given by Camu in late February (1979) (79). Referring to the organization as having "been the target of much criticism", Camu defended his Commission, saying it was only enacting the statutory policy provisions of the Act and that much of the criticism aimed at the CRTC was "clearly misdirected and should properly be addressed to Parliament" (80). The House, meanwhile, had not seen fit to pass the legislation the Department proposed during 1978. "Bill C-24", introduced in January 1978 (and again later that year as "C-16"), was a reincarnation of "Bill C-43" which had been tabled in the House in early 1977. Its varied forms contained provision for a

directive power and its appearance was indicative of a continuing departmental reaction to the type of rulings the Commission had been making in the Canada-Manitoba and Telesat events. It also showed the DOC desire to direct the CRTC's "policy-making activity" (81).

This proposed legislation was partially justified on the basis that the DOC minister needed the authority it granted to negotiate with the provinces on broadcasting (82). In addition, its directive provisions would, in Sauvé's words, conceivably put an end to past situations where "ministers informally told regulatory agencies what they should do, only to have their advice disregarded" (83). The bill's third introduction, in November (1978), reportedly did not produce the same "ruckus" as its previous introductions due to the "CRTC having less friends" at that time (84). Nevertheless, the earlier doubts that had been expressed with respect to previous versions of the proposed legislation (by cablecasters, broadcasters, the CBC, common carriers and Bell), which largely concerned directive power provisions for the Cabinet, effectively sealed the legislation's fate (85). The uncertainty surrounding the proposed bill affected departmental efforts to find MP and Cabinet support (and consequently House time) for passage of the bill (86). In the end, the legislation was not taken seriously as part of the government's agenda (87).

Meanwhile Sauvé made a visit to the CRTC Chairman and Commissioners during the last months of her tenure as minister (88). This was the first time a DOC minister had visited the Commission and Sauvé's purpose was to discuss pay-television and

the Department's proposed legislation. The Minister, however, found the experience more of a personal monologue, than an actual discussion, for she was met mostly with silence from the Commissioners (89). Camu nevertheless appeared to have received the DOC message that it was determined to participate in broadcasting policy-making (90). Shortly afterwards he stated that it was the federal government, and not the CRTC, that must decide on the introduction of pay-television (91). The Department, for its part, continued to attempt to orchestrate that introduction.

Simultaneously with the establishment of the Clyne Committee and its overtures to the Commission, the DOC worked to "improve the context for the introduction of pay-television". Thus by the spring of 1979, the DOC was holding "private talks" on the topic of pay-television with the CBC, CTV, the Secretary of State and certain provinces (the intergovernmental "pay-television modelling work" was still ongoing) (92). It was thought that these consultations would allow some "water to pass under the bridge" before the Department again approached the Commission with a request for a licensing hearing (93). Throughout these activities, the Department tried to act as a "facilitator for negotiations on pay-television behind the scenes", while practicing "intellectual leadership" in the words of a senior official of the time. These efforts were made with a view to reducing tension, particularly with the provinces, so that the CRTC could reassess its 1978 decision on pay-television (94). Meanwhile, the last leading protagonist of an earlier, more difficult period of CRTC-DOC relations left the scene in May

1979. The downfall of the Trudeau government meant the loss of Jeanne Sauvé as minister. The way was now clear for new actors, less tainted by historic institutional positions on the issue of pay-television, to attempt to resolve the issue.

In June 1979 a new Conservative government came to power. By October, its Communications Minister, David MacDonald, had placed an outline for a pay-television programming agency before Cabinet (95). Stating that "pay-television is central to new PC policy" MacDonald wanted to see pay-television operational "within a year" (96). The Minister spoke of a policy hearing to be held in January 1980, with a license hearing to follow "sometime in June 1980" (97). These ministerial proposals involved a a "two-stage" CRTC hearing on pay-television which would be held in conjunction with federal-provincial guidelines issued to frame establishment of the service (98). However in preparation for this public debate on pay-television (held under the aegis of the CRTC), the Minister stated that the only DOC contribution would be the release "in the near future (of) the statistical work it (was) compiling on possible pay-television models" (99). Thus it appeared that the CRTC would have to assess the more qualitative issues surrounding pay-television's introduction in its "first phase report". According to the Minister, this "first phase report" would:

> ... be the subject of further inter-governmental consultation (from which it is expected will arise) some form of quite specific agreement on the acceptable form of these new (pay-television) systems in the public interest (100).

Following the Minister's remarks, the CRTC and DOC exchanged letters. The DOC also forwarded the objectives and guidelines

which were intended to frame the CRTC investigation. These guidelines, however, resulted from "general intergovernmental consensus, not unanimity" on the topic of pay-television (101). Moreover, in a letter to MacDonald, Dalfen stated that the hearing would consider the extension of service to remote areas first and the introduction of pay-television as only a "secondary issue". Dalfen also informed the DOC that "phase II" of the "two-stage" CRTC hearing would involve licensing hearings which:

> ... could involve pay-television, ... provided that the Commission is satisfied that pay-television can make a significant and positive contribution to broadcasting in Canada .... (102).

This correspondence between MacDonald and Dalfen was gingerly handled on the part of officials at the Department. Feeling that the letters were their only means to influence the Commission in this instance, they were concerned that the correspondence not be perceived as "interference". The enclosed guidelines, meanwhile, emerged from the 1978 federal-provincial work on pay-television which had begun under Sauvé. The Commission was well-aquainted with this "work in progress" as the Department had informed Camu of its development, and did likewise with Dalfen upon his appointment as acting chairman of the Commission (103).

The guidelines, when publicly announced, were revealed to be vague (104). Indeed upon their receipt, the Commission was left to interpret their meaning. This was a matter discussed in subsequent meetings between the Commission and Department, although the guidelines were ultimately to have little effect on framing the Commission's approach to pay-television (105). Nevertheless, with the DOC feeling that it possessed no power

over the CRTC other than that of making speeches, the guidelines represented, in the words of a departmental official of the time, "an attempt to go beyond this and to say to the CRTC that a federal-provincial position existed on the issue of pay-television" (106). The Department thought this was of some importance for it felt that the Commission had been using the intergovernmental tensions in the area as one reason to justify a "go slow" policy on pay-television (107).

The apparent encompassing Commission role envisaged by the forthcoming series of hearings prompted members of the House Standing Committee on Communications to question MacDonald. The Minister acknowledged that there were major policy implications in the first phase of the hearings but repeated his earlier statement that after the phase I report from the Commission had been studied "further policy recommendations" would be released to the CRTC (108). In the event, these further directions were never forthcoming (109). It would be misleading to think that the Commission had a completely free hand in setting the future committee's agenda however: pay-television was included in its terms of reference only because of MacDonald's insistence, or "interest", in the topic (110). The Commission also may have felt the need to cater to the interests of the provinces in setting up the committee (reflected in the inclusion of provincial members), as ongoing intergovernmental talks discussing new "regulatory arrangements" had caused some concern that the Commission might be "squeezed out of existence" in the federal drive to accommodate provincial aspirations (111). At least, provincial involvement was perceived by the Commission as

a way to "avoid problems with the provinces" (112).

Whatever the intricacies involved in establishing this DOC-inspired CRTC committee, in Macdonald, the Department appeared to possess another minister who was determined to see pay-television introduced. He made clear his view that the pay-television situation required resolution:

> ... some aspects of pay-television are already out of control .... I do not like situations in which we appear to have no policy and no sort of notion of where we are going. Hearings to date on pay-television have concerned the wisdom, the concept .... the hearings the CRTC is going to hold .... will deal with concrete proposals (113).

MacDonald's expression of the DOC sentiment of not being "in control" coincided with the Minister laying plans to reintroduce Sauvé's proposed telecommunication legislative acts while speaking of the need for a policy directive power over the agency (114). In the end, although MacDonald declared that new telecommunications legislation was also "a priority" with the Clark government, the Tories electoral loss left this most recent DOC legislative initiative unpassed by the House as well (115).

Compromise

At the beginning of 1980, a professor from Queen's University, John Meisel, assumed the chairmanship at the CRTC. He subsequently announced the creation of the DOC-requested CRTC committee on 8 January, known informally as the "Therrien Committee" (116). The Commission announcement at that time read in part:

> Following the Committee's report, the Commission will decide upon a call for specific license

> applications. This could involve pay-television .... provided the Commission is satisfied that pay-television can make a significant and positive contribution to broadcasting in Canada and can make effective use of Canadian resources (117).

By the eve of the Therrien hearings various interpretations of the Commission's intentions for the committee were forwarded. It was viewed by some as a CRTC stalling tactic and by others as a sign that the Commission was courageously tackling the imposing job of negotiating "a peace treaty amongst the warring factions on pay-television" (118). Regardless, the issue of pay-television still appeared no closer to being settled than at any other time since Minister Sauvé's June 1976 speech.

The Therrien hearings, under the chairmanship of CRTC Commissioner Real Therrien, proceeded to produce the standard discussion outlining the merits and demerits of pay-television. As usual, DOC officials participated in the event only as observers (119). The DOC nevertheless seemed pleased with the CRTC proceedings. The Department's annual report released at the time sanctioned a policy-making role for the CRTC hearings, saying that "the DOC-commissioned CRTC public review of satellite and pay-television in Canada" was:

> ... intended to formulate an appropriate policy and regulatory framework for the introduction of these new programming services (120).

Simultaneously, however, a new Liberal DOC Minister, Francis Fox, made it very clear in a speech before the CAB that the Commission had best approve pay-television this time around. Stating that "the time for contemplation on pay-television is past", Fox also remarked in a subsequent speech before the CCTA that the "government will not be bound by CRTC rejection of

(pay-television)" (121).

Speculation was rife regarding events at the Commission and the fate of the hearing's findings during the interval between the March-April hearings and the appearance of the Committee's report in July. One source for this speculation was Committee members who needed to deal with the question of pay-television while their predilection was to first address extension of service. Moreover the committee had to consider pay-television after the DOC had handed the issue over to them, in the words of one committee member, "without giving any indication as to where the government wanted it to go" (122).

When the report of the Therrien Committee did appear in July (1980), recommendation no. 28 advocated the start-up of pay-television, but with a (rather major) condition: pay-television was to come after other broadcasting concerns of a "higher priority" had been dealt with first. This basically meant that extension of service had to be well under way. Additionally pay-television was only to be licensed on the condition that it make "a significant contribution to broadcasting in Canada" (123). These conditions meant, as the Globe and Mail, in an editorial entitled "The Aging of Pay" quoted Therrien as saying, that "pay-television may not be viable for 3 to 5 years" (124). The post-report analysis nevertheless held it important that for the first time, a CRTC document had "recommended" the start-up of pay-television. However, the question of who was to act on the report was still asked (125).

Minister Fox's immediate response was to say that he wanted "action" on pay-television much earlier than that suggested by

the report (126). This view was relayed to the Commission in a series of meetings held between the DOC and CRTC to discuss the report's recommendations after it had publicly appeared (127). While these meetings followed some discussion within the Commission "on the merits of meeting with the Minister" they were nevertheless held to "defuse a situation where the two organizations did not need to be at cross-purposes ...." (128). With Chairman Meisel and Commissioners Therrien and Lawrence present for the CRTC and Minister Fox, the Minister's executive assistant and Deputy Minister Juneau attending on the "departmental side", the meetings opened with the CRTC Chairman telling the Minister that the CRTC had "collectively" decided that extension of service would take precedence over pay-television (129). This was news which Fox was not pleased to hear as his public remarks indicated (130). Nevertheless, with heightened expectations for pay-television existing by this time, momentum increased for the introduction of the service (131).

The CRTC gave its official reaction to the Therrien committee report and its recommendations on pay-television three months after its public appearance. The Commission stated that it adopted recommendation no. 28 and anticipated being in a position to deal with this matter as soon as extension of service had been dealt with (132). The apparent shift in Commission position embodied in its acceptance of "recommendation no. 28" sparked questions in the House the next day as to whether "duress" had been applied on the CRTC from either the Minister or his department (133). There was little doubt that the CRTC at this time was an organization under some pressure. Morale was poor and

the CRTC was reported as being in a "state of confusion" (134). A contributing factor to this state of affairs may have been the public speeches of DOC ministers which stated that the government must set communication policies as "it is not normal if the CRTC decides whether there should be pay-television in this country", while simultaneously leaving the bulk of the work for the Commission (135). Meanwhile the CRTC had long-standing commissioner vacancies which led Chairman Meisel to virtually plead for the positions to be filled (136). All the while Meisel was careful to say, as if not wanting to displease the Minister, that "he got along well with Fox" (137).

Meisel's desire to establish good relations with Fox from the time of their respective appointments to the CRTC and DOC, had created difficulties for him after his arrival at the Commission, particularly in his efforts to exercise leadership. His overtures to Fox registered poorly with the Commissioners still there from the Boyle-Sauvé years (138). Meanwhile his practical inexperience in the regulatory field caused a heavy workload for "the three men holding the Commission together" (Therrien, Dalfen and Faibish) (139). Meisel's inability to provide the CRTC with leadership during the period while he found his "regulatory footing" followed the abortive career of Camu as Commission chairman. A staff perception of Camu as a "weak chair" had left the Commission "virtually leaderless" during his tenure (140). The appointments of Camu and Meisel had been, for some, unfortunate ones for the Commission, in terms of their ability to decisively lead it. The magic of the Juneau days now seemed long departed.

The Commission issued a "Public Notice" calling for pay-television applications in April of the following spring (1981). This action followed the agency's decision on extension of service which had been rendered the previous week (141). In its call for pay-television submissions, the Commission listed some of the considerations which would guide its deliberations on the topic. These however were of a fairly general nature. Yet, Minister Fox appeared pleased with the situation. He remarked that he was content:

> ... that the CRTC has left itself open, as is its usual procedure, so that it is in a position to consider new ideas, initiatives .... (142).

To outside observers though, the agency and Chairman Meisel seemed "open" to the point of being in a state of disarray, or at least inconsistency (143). Nevertheless, by the time of the call for pay-television submissions, the idea that pay-television had been delayed long enough was current within the Commission (144). There was still not a great deal of enthusiasm within the CRTC for pay-television, a sentiment which Chairman Meisel shared (145). Nonetheless, an attitude shift had occurred within the Commission which now made it willing to license. This shift had partially resulted from the Commission tiring of constant statements from the DOC and its various ministers reiterating that pay-television was "inevitable", as well as the application of "unrelenting" cable industry pressure to introduce the service (146). There also existed the fear that further delay would lead to the wholesale importation of the American services then becoming operational (147).

Meisel's "inconsistency" on the issue also reflected,

however, that the Commission was still undecided on how to introduce the service (148). As was noted in the press, all the leading applications for national licenses were based either in Toronto or Montreal and all proposed a pay-television monopoly as the only economic way to function. The CRTC was characterized as being forced, because of this, to "act as judge and jury in the long-running saga of 'Upper Canada' versus the 'regions'" (149). This question of monopoly licensing was a particularly sensitive question given the provinces' long-standing demands for greater autonomy in communication matters, demands so far frustrated in the political venue of ministerial meetings. Relatedly, political activity at this time created much static noise: the Federal-Provincial Conference of Communication Ministers was held on the eve of the Commission pay-television hearings in September 1981. It was perceived as a last chance to reach a jurisdiction-sharing agreement on the topic of pay-television before the CRTC issued its licenses. The first such meeting in two years, the conference unfortunately opened on a discordant note. Fox did not want to discuss pay-television while several provincial ministers did (150). The "Joint Closing Communique" had the federal government clarifying its intention to exercise jurisdiction over pay-television while the same was evident on the part of the provinces (151). On this note, the centre of action on the question of pay-television reverted to the CRTC.

The Commission's pay-television hearing began on September 24 and ran for three weeks. It opened to the eternal question "Is pay-television really wanted?" No survey was produced to show that it was (152). The CCTA was nonetheless evidently extremely

impatient to get on with the introduction of pay-television, noting that "8,000 pages of hearing transcripts exist on the topic" (153). However other groups were not as keen on having immediate action taken to implement the service. The Commission was asked to defer making a decision until both the Applebaum-Herbert Committee on cultural affairs in Canada and the constitutional talks had been concluded (154). In response to these remarks Commission Chairman Meisel protested, "We are not authorized by our mandate to do or propose". Yet the regulatory process obviously possessed some flexibility of action, judging by another statement made by Meisel during the hearing:

> ... creative ideas develop during the (hearing) process and I can honestly tell you I don't know what I'll think until I've heard the very last argument (155).

Notwithstanding this remark, the Commission had gone into the hearing deciding that a service would be licensed this time around, one that was discretionary and divorced from a mandatory, "user must take", basis (156). To have brought the Commission thus far, and with the "widespread hype" surrounding pay-television by that point, the CCTA had "done its job well" in the words of a former senior CRTC official (157).

All the same, the basis on which the Commission was to proceed was not clear. At the hearing's end the complaint was made that the guiding criteria by which the eventual winner(s) would be selected was vague, and left untouched were "a host of major areas which could be deciding factors or mere details" (158). Seemingly, the situation was that:

> ... when the CRTC issues licenses to the entrepreneurs to take on the task of introducing its licensed pay-television in Canada, it will

also be declaring its policy (159).

This was an accurate observation for, at the time of the hearing, apart from having decided on a "discretionary approach", the Commission simply had no idea of what its policy on pay-television was or would be (160).

In the aftermath of the hearing, the DOC appeared pleased with the CRTC's modus operandi even if not all observers were. The Department's "Background Paper on Pay-television", produced for the intergovernmental deputy ministers meeting on pay-television (see below), considered that the Commission in its call for applications had "carefully outlined the criteria it would use in judging the various submissions" (161). The departmental approval might partially have resulted from the Commission remaining adamant that "it did not want pay-television to be provincial" (162). The intergovernmental quarrel over the issue had been brought into the CRTC hearings and remained in the background in the wake of the hearing as the agency began to ponder its licensing options (163). Meanwhile the intergovernmental talks on pay-television, cable and jurisdictional questions had still not progressed. Following the CRTC hearing, the federal and provincial Communication Deputy Ministers held their meeting to discuss pay-television and could only decide to re-confirm the pay-television objectives arising out of the Federal-Provincial Conference of Communication Ministers of 1979 (164). By this time there was increased provincial manoeuvering on pay-television, such as the BC Cabinet ordering its Public Utilities Board to accept applications for pay-television licensees (165). Against this political backdrop

and press reports suggesting that the Commission was deadlocked in arriving at a pay-television decision, Minister Fox announced that Ottawa intended to exercise jurisdiction over pay-television (166). With an impasse existing on the political front, it appeared that the next move on the issue was for the CRTC to take.

Resolution

Finally, on 18 March (1982), Commission pay-television licensing decision "82-240" was announced. In the accompanying statement Meisel took evident care to explain the licensing judgment (167). This was perhaps needed as the delay (which the press had spoken of as "deadlock") was caused by the Commission sitting down to design the pay-television system it was willing to license only after the hearing had ended. The Commission policy on pay-television, which the licenses set in place, had been guided in large part by the applications that had come before the Commission during the hearing (168). This process resulted in a licensing scheme which was remarkable due to the number of systems authorized which were of a competitive, national and regional nature. The competitive aspect reflected Meisel's willingness to let the cable applicants "sink or swim on their own" while the licensing of regional services both reflected the regional concerns of some CRTC Commissioners along with the agency's hope that the action would help head off any further provincial opposition to a federally-introduced pay-television system (169).

The Department expressed its satisfaction with the CRTC's role in managing the pay-television hearings and arriving at a series of decisions. The DOC stated that the Commission had been "adequately directed" by the ministerial statements of October 1980 and the guidelines forwarded to Dalfen, in which the "principles of policy to which the government subscribes were set forth" (170). While the Department was generally "pleased and relieved" that the whole process was over, and the provinces felt likewise, a common reaction was also one of "shock" at the "wholesale" dispensing of permits (171). The decision caught much of the broadcasting industry off-guard and led to grumbling about "lost opportunity" (172). The cable industry nevertheless "welcomed the pay-television decisions" (173).

Ironically, DOC public expression of satisfaction with the Commission's pay-television work came after a period when the Minister had wanted to take a more active role in directing agency deliberations on the issue. Fox had favoured a single, cross-country bilingual service and had instructed Deputy Minister Juneau to find a means of issuing a "directive" to the CRTC to this effect. In the end, although the Department considered "telling the CRTC" to hear applications for a national bilingual service only, Fox ultimately accepted Meisel's plea to preserve the sanctity of the hearing process (174). Nevertheless, while Fox may have had particular ideas on how a pay system should be introduced, apparently senior Department staff felt that the DOC's role did not include designing a pay-television model/system. This was more properly a task for the Commission, given its "knowledge and capacity" (175). Fox

appeared to adopt this view with his acknowledgment that while the process leading up to the pay-television decision had been a "long, lengthy and complex one" in which, amongst other things, "the CRTC had made its position known", the pay-television decision "was something that was in the hands of the CRTC" as it was a subject which properly came within its jurisdiction (176).

Despite criticism made of the CRTC decision and Fox's evident preference for a different outcome, ministerial approval of the March decisions was granted 14 May (1982) when the CRTC's ruling was endorsed by the Cabinet (177). The Governor-in-Council had received a number of petitions from groups both in the arts and film production industries, along with provincial demands for provincial regulation of pay-television operations (178). All were brushed aside as the Cabinet believed that "the pay-television system set in place by the CRTC decision" would meet the "principles of policy" Fox had laid out in the fall of 1980 (179). However, the Minister had a second occasion to review the Commission's policy on pay-television during the following year (1983). In a bid to aid the recently-established pay operators who were now experiencing deep financial difficulties, the CRTC reduced the Canadian content requirement conditions issued with the original pay-television licenses in July. Eight weeks later the Cabinet set aside this CRTC "corrective order" (180). The Commission was also asked later that year to "clarify its pay-television policy" following another decision taken to salvage financially-pressed pay-television operations. This CRTC action apparently caused the Cabinet concern that "the model they had approved was now being

modified in an ad hoc fashion" (181). Thus it would appear that both granting and maintaining the CRTC's 1982 pay-television decisions met with the government's approval.

Conclusion

Minister Fox was quoted as saying, "The process leading up to the CRTC decision was a long, lengthy and complex one". This was partially due to the unique aspect of this case study: the government possessed no formal powers to oblige the CRTC to take a licensing decision when the agency refused to do so. Nevertheless, as was the situation with the previous case studies, the saga of CRTC involvement with pay-television's introduction during the period 1970-1982 was marked by several distinct phases. These periods demonstrate differing degrees of independence for the Commission as a "policy-maker" in the matter. The case study is also similar to previous ones in that the federal government had no detailed policy at hand and was content to allow the CRTC, in the vacuum of government direction, to devise a position (182). The government did this in the case of pay-television after it had made clear to the Commission that it wanted the service introduced. The government never had a long-term policy on the issue and obviously did not know what to do about pay-television. This was evident on the occasions when the CRTC provided an opportunity for the government to become involved in the setting of pay-television policy (such as after issuance of the agency's 1978 "Report"). At these times the government did not, and possibly could not, respond. The CRTC was

forced to fill the policy void. The case study demonstrates that the agency eventually did introduce the service as the government wished, despite its obvious reluctance.

In doing so, and, even with the much-criticized 1982 licensing framework, the agency operated as a type of safety-valve for the government as had been the case in the earlier microwave importation ruling. The provinces had made it known for years that a national service would be politically unacceptable. In response, the Commission eventually issued regional licenses and when these did not prove viable, a process was begun which ultimately led to a sort of national service being formed. Thus the argument could be made that pay-television was initially tried the way popular demand wanted and only became a national service after experience had proven that this was the sole means by which it could work.

In all, politically, it was probably better that Meisel had been able to persuade Fox not to attempt to impose his wish for a cross-country, bilingual service in the final phrases of the saga (183). Nevertheless, as the CRTC document Canadian Broadcasting and Telecommunication observes, regardless of whether or not pay-television was a "normal development" given its possible consequences for the broadcasting system, the:

> ... continual delays in moving towards the implementation of pay-television, marked by tortuous ambiguities .... show how deeply the overall system is troubled by a lack of clearly defined purpose (184).

The role of the CRTC and other actors in this "troubled system" will now be considered starting with the policy-making role played by the CRTC in connection with the introduction of

pay-television.

Consideration of the CRTC role must necessarily take note of the early existence of a more deferential department, along with the fact that much of the governmental expertise in communications was, and continues to be, housed at the CRTC. Thus the early years of the issue were characterized by the Commission playing a dominant role in deciding the fate of pay-television as it possessed the ability to explore its firm preference that the broadcasters operate any service that might come into being. Minister Pelletier seemed content with this situation, saying it was one for the CRTC "to handle". The arrival of Sauvé, however, who was a much more "activist" minister, coincided with the departure of Commission Chairman Juneau (along with his favoured connections to the government) and his replacement by Boyle, an appointment apparently made without much enthusiasm on the part of the government. These personnel changes combined to give the Commission generally less of an agenda-setting role than it had possessed pre-1976.

Nevertheless, both before and after the departure of Juneau, the Commission had a major policy-making role to play with respect to the pay-television issue due to the relative weakness of other state actors as rival sites of expertise on the topic. For example, although Bob Rabinovitch's section at the DOC may have be instrumental in arousing the Department's interest in the matter and acting as the catalyst for Madame Sauvé's speech, beyond this it did not have the resources, capacity or background to move further in implementing pay-television (185). The DOC's inability to authoritatively manage the issue (evident when

comparing the detailed nature of the Commission's Annual Report for 1976-1977 on the subject with that of the Department's report), was similarly matched by the weakness of the Secretary of State, which, in the end, left the CRTC as the agency which "decided pay-television policy for Canada" (186). It is suggested, however, that the Commission performed this role within a timetable that was more reflective of DOC interest in the matter.

Additionally, the role of the Commission was strengthened by the federal government's decision that pay-television needed to be licensed under the ambit of the Broadcasting Act. This thus made it a CRTC responsibility. Whether in any sense the CRTC was "empowered" by the Act to license pay-television is perhaps a question of interpretation of the Act. If the DOC had been able to conceive of pay-television in a form that did not involve the application of broadcasting, the DOC could have circumvented the intransigence of the Commission on the issue of its introduction (187). This, of course, was not likely, as the federal government had always taken the position vis-a-vis the provinces that pay-television was broadcasting and so had to remain within federal jurisdiction and under provisions of the federal Broadcasting Act. Furthermore, the CRTC was the government entity with a mechanism already in place to evaluate competitive applications.

Part of this mechanism was the holding of public hearings. If hearings were a factor in compelling the Commission to abandon its preferred policy positions in connection with microwave signal importation (due to the occasion they offered for public

demand for the service to be expressed), similarly in the case of pay-television they repeatedly afforded the CRTC the opportunity to build its arguments in public - making the task of its opponents on the issue more difficult. Thus the first pay-television hearing (1975) allowed the Commission to dismiss early cable lobbying efforts to have the service implemented. The uncertainties surrounding both the service and its likely impact on Canadian broadcasting, along with the lack of any sort of popular demand, were amply demonstrated. Likewise (and more dramatically), the agency was successful in impeding movement towards implementation of pay-television during the Sauvé-"appointed" hearing of 1977 by again demonstrating its problematic nature, together with the continuing lack of public demand. The element of holding public hearings was also usefully employed by the Commission-sanctioned Therrien Committee to allow it to build its case in public for the preferred CRTC course of action of deciding the extension of service issue first and assigning pay-television secondary importance (188).

Pay-television, of course, was nevertheless ultimately implemented. The case study demonstrates that in the later stages it was the Commission which devised recommendations, developed a policy, and subsequently, implemented that policy through its licensing decisions. The Department's contribution to this development, the forwarded guidelines, were vague enough that they can only be characterized as incomplete criteria for pay-television. This commanding role as "substantive expert" allowed the Commission a margin of freedom while the political interests on pay-television were in disarray. The CRTC's initial

reticence in considering pay-television which reflected its preference that broadcasters operate any service authorized, resulted in no single group working on the issue at the agency. The matter lay dormant for periods of time and was only re-activated when factors external to the Commission prompted this (189).

Although, in this case study, the Commission certainly acted as a "policy-maker" in terms of devising the pay-television system eventually implemented, it was not a fully-fledged "independent policy-maker" because it did not enjoy comparable freedom in setting the schedule which framed introduction of the service. In the task of setting policy, both politicians and Department officials appeared content to allow the Commission to assume the burden; in the matter of scheduling, the agency was faced from 1975 on with a more activist set of ministers which forced it to relinquish control over this aspect of the policy formulation-implementation process. MacDonald's remark, "I have initiated the process under the CRTC towards pay-television", made when organizing what was to become the Therrien Committee, was an example of a minister not willing to wait for the Commission to move on the issue (190). Despite comments such as those made by Feldman and Janisch, who found in the CRTC's attitude at the time of the Therrien report "little doubt that the CRTC acts independently", these hearings, along with the others held, occurred in the first instance because of external pressure applied on the agency. This remark introduces a consideration of the constraints the Commission operated under in this series of events.

The scenarios of the two previous cable case studies demonstrated the pressure that was brought to bear on the Commission to reverse licensing-regulatory decisions it had taken. In the instance of cable licenses for Manitoba, the DOC was able to directly express its will to the Commission via the Cabinet's licensing review power. In contrast, the microwave importation case study involved massive popular demand forcing the Commission to reverse a policy stance. With pay-television, the Department was faced with the situation of trying to prompt the Commission to take a licensing decision. While, as stated in the introduction, this case study makes the strongest argument in the thesis for provision of a DOC policy directive power, it is inaccurate to state that the Department required this formal mechanism of control because the agency was "out of control". As stated, even if the Department said on several occasions that it wanted control of the pay-television situation, it patently would not have known what to do if the situation was solely its responsibility. This was made clear when, even in 1982, the CRTC was needed to devise the policy set in place by its regulatory licensing decisions.

In addition, there were several other reasons to explain why pay-television was a long-time in arriving. These included the absence of any sizeable public pressure for the service. There also existed both intergovernmental political obstacles and a certain departmental ambivalence which had to be overcome. The political environment and lack of clear DOC direction undoubtedly played a role in determining the fate of the Department's draft legislation discussed in this chapter. The DOC, and government,

never pushed the point of achieving formal control to direct the CRTC to take a licensing decision, such as in the case of pay-television. The government, in any case, probably did not need to pursue formal control mechanisms while more subtle informal ones were still effective.

Thus, while former senior CRTC staff have characterized the Minister's 1976 "request" for the Commission to look at pay-television as constituting "no problem" because the CRTC could "look and decide no", the ministerial intervention and first departmental attempt to influence the Commission on the topic came at a special time: Boyle had just been appointed CRTC chairman (191). He had been at the Commission as vice-chairman since its early "period of glory" days under the leadership of Juneau. Additionally, his many previous years at the CBC undoubtedly predisposed him to stoutly defend the agency's "arm's-length relationship" to the government and to reject the departmental initiative to have pay-television service implemented, if the Commission determined that was best for the broadcasting system. Yet if the only leverage the DOC could apply to have its will implemented was that of "embarrassing" the agency, given the lack of a policy directive power, obviously this had some impact: Boyle resigned two years into his mandate after complaining of government harassment. He was replaced by the more compliant Pierre Camu.

This DOC power of "embarrassment" took various forms. These forms included not only threatened "hypothetical" speeches "showing the Commission how pay-television could be done" but also ones actually given by the minister, which generally stated

that it was not for the CRTC to set pay-television policy as it "could have far-reaching consequences for the structure and organization of the industry" (192). Ministerial re-interpretation of Commission statements to coincide with the departmental point of view also occurred. An instance here was when Sauvé was questioned in May 1977 about how she was "going to get around the fact that her own Commission (was) not in support of pay-television". Her reply intimated that this was not what the CRTC had said, but rather the agency believed "it is time now to develop a policy for pay-television", taking into account that the service needed to be introduced "very carefully" so as not to disrupt the broadcasting system. As the Minister further explained:

> It (the Commission) said at some time back it is not the time now. Now it does not use the same words, it does not say it (pay-television) is inevitable as I did, but it meant the same thing (193).

If in the mid-1970s, the Commission came under this sort of ministerial pressure to enact a federally-sanctioned, nation-wide pay-television service because of the jurisdictional question, the later Supreme Court decisions on cable, along with protracted federal-provincial political attempts to find a pay-television model acceptable to all parties, lessened the ministerial pressure on the agency to license pay-television. The departure of Rabinovitch, as departmental "booster" on pay-television, is also a factor here.

Nevertheless, by 1979, with the federal-provincial guidelines in hand, the Department was able to renew its public moves to have the Commission reconsider pay-television.

MacDonald's "request" that the CRTC again look at pay-television was handled by a new chairman (Meisel) who not only found the agency in some disarray due to events of the past few years but perhaps was also wary of his own position given that he did not have unqualified government support (194). Meisel's prospects for relative peace while at the Commission and an avoidance of the bitter relations with the Department which marked the Sauvé-Boyle years appeared to depend on not (unduly) crossing the government.

Presumably tension between department and agency could be alleviated by opening lines of communication. Thus senior CRTC staff saw no harm in discussing "matters of common concern" with the Department "as long as they did not reach the level of determination on specific applications" (195). In the instance of the talks held between the two organizations after the issuance of the Therrien Report "no one necessarily changed their mind because of the talks, but at least the participants came away with a clearer idea of what the other guy (was) thinking" (196). While it is safe to conclude that these types of talks were invaluable to the Department as a means of expressing its point of view to the Commission, logic suggests that the Commission and its chairman would not lightly disregard the message and points conveyed by the minister and his/her department during this process, one which has become more frequent during recent years.

Nevertheless, the smooth functioning of the Commission within the government seems to require that the chairman have ready access to the agency's spokesminister. The Juneau-Pelletier relationship exemplified this. More recently, however, a CRTC

chairman wish to meet directly with the minister, in the absence of the DOC deputy minister, seems unlikely to be entertained. This was the case with Meisel and highlights the situation in more recent years. Ironically, it has also become a matter of some importance that the chairman establish a good working relationship with the deputy minister in order to protect the agency's "arm's-length relationship" to government. Meisel appears to have successfully achieved this in the case of Juneau, as demonstrated by the development of a "mode operandi" between the Department and the Commission in respect to both the Therrien report "recommendation no. 28" and the nature of applications considered at the last Commission pay-television hearing (197). The existence of this DOC-CRTC accommodation was probably aided by the fact that Juneau was a former CRTC chairman - as well as the ability/willingness of Fox to "learn his role" vis-a-vis the Commission (198).

The Commission's search for accommodation in the latter stages of the pay-television saga is evident also in the substance of the 1982 decisions and the agency's implementation of the 1979 intergovernmental guidelines' inclusion for profit-making pay-television program distribution operations (199). The CRTC had wanted to institute a non-profit distribution system "in order to showcase Canadian talent" but this preferred policy option did not survive to 1982 (200). It had long been rendered unfeasible due to both growing provincial aspirations and governmental distrust of agencies such as the CBC and NFB during the latter 1970s (201).

Broader political concerns likewise entered into the final

1982 set of decisions in that they were cleverly designed to help minimize any possible provincial or regional discontentment. Although certain senior CRTC staff were not worried about the provinces, being "convinced that pay-television is federal", the decisions nevertheless included a strong regional aspect. Chairman Meisel, himself, had favoured this route as he was unsure of the constitutionality of the situation. He feared that if the Commission did not license a few regional systems, the provinces would challenge the Commission's decisions in the courts. He stated, "... I was not at all sure that any challenge would be successfully repelled" (202).

Lastly, as a factor impinging upon the Commission's prerogative as a "policy-maker" in this series of events, the DOC's pattern of periodically promoting pay-television and simultaneously pressuring the Commission on the subject, demonstrated the able job that cable operators, their association and those entrepreneurs favouring pay-television's introduction, had done in convincing the Department of its potential contribution to both increased Canadian programming production and industrial investment (203). As was the scenario with the microwave importation case study, motivated entrepreneurs' actions appear to have significantly shaped the Commission's ultimate options for movement: to the very end, if left on its own and without DOC pressure, "the Commission might still not have licensed pay-television" (204).

In summary, it can be suggested that the federal government "left the CRTC to deal" with pay-television and that this is just another example of how the regulatory body was left to manage the

introduction of new technology and fill a policy void. It was the case with microwave importation and, indeed, cable technology in general. It has been argued that while it was indeed the Commission which devised the final pay-television policy announced in 1982, this decision was rendered after the government acquiesced to the Commission request that ministerial preferences not be imposed upon the agency at that late date. Thus, in terms of the policy which was eventually implemented, it is difficult to say that the Commission "usurped" a departmental planning role.

The Commission is more vulnerable to this charge of "usurpation" in terms of the scheduling of pay-television's introduction. The agency had first been asked by a minister to "actively consider" pay-television back in 1976. It was early 1982 before the service was finally licensed. However shortly after the Minister's June 1976 speech, the topic of pay-television was enmeshed in the politics of federal-provincial relations, followed by the constitutional talks. It is probably due to the difficult political environment surrounding cable and pay-television at this time that although the DOC said it wanted control over the issue, it is clear by its inaction that the Department was content to allow the CRTC to handle the issue. The DOC simply did not know what to do. Nevertheless, after the two levels of governments were able to arrive at the common position which led to the guidelines forwarded to the Commission in late 1979, the Commission completed the task of introducing the service in just a little over two years.

Perhaps the ultimate test of whether the Commission had been

"uncontrollable" during the events of this case study is to consider who complained about the decision-making process once the pay-television issue was resolved. The DOC, as noted, was pleased with the outcome. The fact that the cable industry was unsurprised that "it took ten years to license pay-television", indicates a certain contentment with the current process (205). Among the "consumers" of the DOC and CRTC, "regulatory lag" is a satisfactory price to pay for the comparative benefits: doing business in a field where the current site of policy-making power is ambiguous, allows the possibility of obtaining what is wanted by being able to knock on more than just one door.

CHAPTER SIX

CONCLUSION

Introduction

The extensive Telecommission study series of the early 1970s remarked that the Canadian communications policy-formulation process suffers from:

> ... an apparent serious deficiency in the liaison mechanism between the legislative and executive arms of government and the administrative and quasi-judiciary bodies ... (1).

The four case studies of this thesis have explored this "deficiency" by investigating both the means by which the CRTC is able to act independently as a policy-maker and the means and mechanisms invoked by other participants in the policy-making process which constrain the Commission's role. This investigation has sought to test the validity of the claims made about the CRTC outlined in Chapter One - namely that the agency has usurped ministerial and parliamentary policy-making prerogatives (and at times defied the minister in so doing) while leaving these political actors little influence in policy-making -- in effect, it behaved as an independent policy-maker that was "out of control".

The case studies have demonstrated that the CRTC has acted as a policy-maker in the absence of government action on the issue at hand, but that it relinquished this role once the agency's political masters so wished. The purpose of this final chapter is to delineate, through the case studies findings, the

general patterns and trends which emerge when considering the CRTC as a policy-maker. In so doing, answers will be provided to the questions set forth in Chapter One: 1) what powers did the CRTC exercise which can be said to relate to a policy-making function, 2) what are the strengths and weaknesses of the external controls which are administrable either individually or collectively over the Commission, and 3) can the accusations that the CRTC is "out of control" be substantiated? Of interest as well is the identification of the "moment" at which the Commission typically loses its agenda-setting role in policy-making, the point from which henceforth it must defer to its political masters. Also considered in this chapter is the issue of what policy role is appropriate for the Commission to perform. It will argue that, in the continuing policy vacuum, an active agency is necessary to prevent institutional paralysis.

This chapter has four parts. Part 1 considers the patterns and trends which have emerged from across the four case studies with respect to when the CRTC assumes and subsequently loses the role of policy-maker. Part 2 considers the individual actors in the policy process, and the mechanisms under their control, that have an impact on the CRTC functioning as a policy-maker. Their relative strengths and weaknesses will be assessed. Part 3 briefly considers the pros and cons of departmental versus regulatory agency policy-making in order to determine what is an appropriate policy role for the Commission. Part 4 offers a final summary answer to the question of whether the CRTC was "out of control" as a policy-maker during the period of 1968-82.

Part 1

Consideration of the CRTC as a policy-maker and the constraints which act upon it in this role finds the emergence of a general pattern. Within such a pattern the Commission often makes what inevitably must be called "policy" due to the absence of government legislation or guidelines on the matter. Nevertheless, once the Commission's political masters, whether they be Cabinet or Parliament, have formed a firm opinion on an issue in the end the latter obtain the policy outcome they desire - although they may have to wait for the Commission's point of view to "come around" in the circumstances where no direct controls over the agency exist. However, when the Commission makes "correct decisions" -- that is, decisions for which there is either political support or indifference, or where there is a lack of cohesive opposition to the CRTC position -- the agency is allowed to function unimpeded as a policy-maker. When it renders a politically-unsupportable decision, though, the Commission ultimately has to abandon its position and bow to the opinion held, and pressure exerted, by its political masters.

This pattern acknowledges that the Commission has played an important policy-making role; this is something the Commission itself appears to concede (2). Typically, the Commission acts as a policy-maker due to the existence of a government policy vacuum on the issue which has come within the CRTC's ambit; this occurs in the form of a regulatory decision which needs to be made. In all four case studies, it has been demonstrated that the Commission played a policy-making role either because the

government had no policy position established prior to the Commission decision (which effectively set government policy on the matter at hand), or the government had left the Commission to devise, through its actions, the federal position.

Thus, when the CRTC considered the question of microwave relay and importation of American signals, no federal government reconfirmation of the 1963 government freeze, or formulation of a new policy position, was made after the creation of the Commission in 1968. Meanwhile, it was the Commission's view during the early history of pay-television and cable hardware ownership which constituted the federal government position; during this period the CRTC was the only government entity actively considering these questions and addressing them in public statements. Likewise, at the time of the Commission ruling on Telesat's proposed membership within TCTS, it is difficult to find an official pronouncement which can be taken as a clear government statement on its objectives for both the company, and satellite communications, and which was a useful guide to the future development of Canada's domestic satellite system.

In all of the case studies, therefore, clearer departmental, ministerial or parliamentary policy positions came only after the agency had taken a regulatory decision replete with policy considerations - a decision which was taken during a period when the agency had either constituted the federal position on the issue, as in the case of cable hardware ownership or on pay-television's introduction, or was taken in the absence of a clear federal position, as in the instances of microwave signal

importation and Telesat's proposal to join TCTS.

In a related manner, the CRTC enjoyed considerable scope to set policy in the case studies, even after others had intervened. This was the situation with all but the Telesat case. In the instance of pay-television, it was the Commission which devised the policy eventually implemented by its licensing decision; in essence pay-television is an example of a new technology whose introduction was orchestrated via the regulatory process. Likewise, in both the cable hardware ownership and microwave importation case studies, it was left largely up to the agency to find a solution to the matter at hand. Only in the Telesat case study did departmental intervention put an end to a further policy-setting role for the agency. The continuing role of the Commission as policy-maker in the cable case studies was probably due to the ambiguity surrounding the jurisdictional question. Under the circumstances, the Commission was in a more privileged position than the Department to make policy as it could proceed on a gradual case-by-case basis, to develop a position, rather than have to render forth a fully-formulated policy, as would be the case with the Department.

The government's seeming inability to devise long-term policies further facilitated the Commission's policy-making function, since in the absence of government policies "it is the CRTC's legal responsibility ... to proceed case-by-case, in the public interest" (3). This procedure, however, requires that the principle of "natural justice" be maintained; this obliges the Commission to make decisions only on the basis of the evidence heard at the related public hearing. Thus arises the problematic

of how the agency is to consider ministerial or departmental wishes conveyed outside of that forum. As Dalfen stated while acting CRTC chairman, "a regulatory agency cannot operate under assumptions and we cannot operate if we take into account all the promises made in speeches ... (by government ministers)" (4).

Progression in this fashion, however, means that unless the agency chooses to issue a "policy statement", in order to make its own position clear, there may be no indication from any government source as to the government's position on a particular issue. In the absence of a clearly stated government position the only evident policy may be Commission policy; moreover, in the absence of a Commission-issued "policy statement", it may be necessary to piece together even the Commission position. In the words of a CRTC document, the agency attitude on a particular issue may be discerned by:

> Reading the relevant legislation, subordinate legislation and Commission publications, and on the practical side, by observing what the Commission actually does (5).

Whether the Commission decides to issue a policy statement or not is a matter left to its discretion. The agency chose to release a policy statement in the instance of pay-television and on the earlier question of microwave importation, but chose not to do so on the matters of cable hardware ownership and competition in telecommunications (at the time of the Telesat-TCTS proposal). Meanwhile Supreme Court endorsement of the Commission's use of "policy statements" has been interpreted as the judiciary sanctioning a Commission policy-making role (6).

In the absence of a clear government policy position, the CRTC typically assumed "the" policy position for the government

by virtue of its actions, when matters came before the agency as regulatory issues. Commonly, legislation required Commission involvement due to the adjudicative aspect involved. Thus Commission consideration of both the proposed Telesat agreement and introduction of pay-television was guaranteed by legal requirements that the related adjudicative decision be taken by the Commission; this was the case with the Telesat matter due to Railway Act provisions, while the federal government's desire that pay-television be introduced as a federal undertaking necessarily involved the Broadcasting Act and CRTC.

Once an issue came before the agency, however, the Commission tended to consider it through a broad interpretation of its statutory mandate. This occurred in the Telesat case study where the CRTC reading of the Railway Act justified consideration of the "public policy" issues the agency identified. Similarly, the Broadcasting Act, which authorizes the Commission to be concerned with issues that impact upon the content carried by the Canadian broadcasting system, was given a liberal rendering and so allowed the agency to enter into areas which arguably constitute public policy matters. These included Commission consideration of the microwave signal importation and cable hardware ownership issues.

CRTC forays into these areas reflected Juneau's opinion that the Broadcasting Act provides the Commission with a "very broad mandate": the agency mandate, in his view, is restricted only by the powers reserved to the minister. In other words, "there's got to be a basis in the legislation for what is reserved to the minister". With few direct powers granted to the minister by the

Broadcasting Act, except that of license decision review, the Commission tackled the issues of microwave signal importation and cable hardware ownership as these were perceived either to affect the agency's ability to control programming carried by the Canadian broadcasting system or were likely to have a detrimental effect on the Canadian programming currently scheduled.

Related to the issue of providing a broad interpretation to its mandate was the agency's willingness to venture out and confront substantive issues. It was prepared to do this by imposing either regulations or "conditions of license". Use of both powers is a matter exclusively under agency control; it will be remembered that their formulation and implementation are beyond any sort of governmental review. Thus, where the matter could be handled through regulations or the setting of licensing conditions, such as in the case of long-distance signal importation and cable hardware ownership, the Commission proceeded to do so. The broad interpretation of the agency statutory mandate that these CRTC actions have helped to implement, as is the case with its use of "policy statements", nevertheless have been supported by the courts on the rare occasion when a Commission decision has been legally challenged; in this sense, the regulatory agency's fashioning of a broad mandate from its statutory legislation has been sanctioned (7). That being the case, the Commission has, as Juneau stated to the Standing Committee on Broadcasting in 1973, "the authority to do a great amount of pushing" (8).

In the presence of a policy vacuum the Commission typically took steps to "push" the situation, obviously in the direction it

wanted developments to go: as Juneau acknowledged in regard to cable hardware ownership, "no one else would make the decision", so the agency made it. Likewise the Commission's early stance on microwave signal importation constituted "the federal position", as no other entity within the federal government would proclaim itself on the matter. The reticence of other government actors to "speak up" on topics which are also in their interest, left the Commission "coming up with policy" for the government on issues such as microwave signal importation and cable hardware ownership. The agency needed a policy framework within which to operate in order to ensure a consistent approach to grant new, and rationalize existing, cable licenses. As this was not devised by government, the Commission created one of its own. This action does not necessarily cause resentment on the part of government; there have been instances where this process has proceeded relatively unimpeded and without great controversy, such as in FM broadcasting (which involves policies designed by the Commission).

However, if the CRTC should take a policy stance by rendering a particular decision that is unduly out of step with other political/lobby interests, the agency loses both its control of the situation and its role as dominant agenda-setter. In each of the case studies, the moment when the agency had to cede its role as the primary decision-maker occurred when opposition to the Commission stance both solidified and became more widely-based. Thus in the case of microwave signal importation, the Commission faced the combined opposition of the cable industry, MPs and the general public. In the instance of

cable hardware ownership, the CRTC policy was opposed by an alliance between the federal DOC and a provincial government. The examples of pay-television and Telesat's plans to join TCTS, on the other hand, showed the agency facing a union of the Department, the Minister and related interested groups.

In all cases, the CRTC lost control of the situation, and its role as agenda-setter, when other political/bureaucratic actors became sufficiently interested in the issue to reveal publicly their alliances. The discussion will now consider the role of these other actors and how they constrain the CRTC's role as a policy-maker.

Part 2

The ambiguous legislative environment in the field of communications is an important factor in explaining the Commission's ability to imbue its powers to issue policy statements, conditions of license and adjudicative decisions with a policy-making function. It has caused much obscurity over where responsibility for policy and decision-making lay.

One former DOC Minister described to this writer the founding of the Department as "resulting from some vague government interest to study the new technology that was coming along". As a result, the DOC seemingly was given a mandate to make broadcasting and communications policy (which included the power to negotiate agreements with the provinces) but this legislation "neglected to provide the Department with the tools to implement its policies" (for these lay with the regulatory

functions of the CRTC). In the words of another departmental official, given the legislative inexactness which exists in the division of responsibility between the agency and the Department, "there were bound to be problems between the DOC and CRTC". The likelihood of problems arising between the two organizations was foreseen however as early as 1970 by the "Davey Report", which advocated clarification of the division of authority between the CRTC and the DOC (9).

As part of this legislative environment, a decision was made (whether consciously or not), at the time of the passage of the Broadcasting Act, to allow the CRTC to develop policy rather than cast it in the "concrete of the statute". This action left the agency with what appears at first glance to be a "free hand" to develop policy. While, as the same former DOC Minister stated, "no one at the time thought that the Broadcasting Act would be left as long as it has", and LaMarsh herself said at the time of its debate that the act "may not last five years" due to emergence of new technology, its drafting, if only because of the vagueness it has been accused of, has allowed it to survive, so far, for twenty years (10). Meanwhile, the broadcasting system and telecommunications technology have continued to develop, allowing conflict to arise amongst different policy actors (11).

If conflict has arisen between the Department and the agency because of statutory and specific policy reasons, antagonisms can also partially be attributed to the ambiguous nature of "policy". Policy takes different forms and can be made by all those who are authorized to take decisions, even those decisions of the most banal nature. Policy can come in the form of the enabling

statute given to the regulatory agency, along with the regulations and policy statements the Commission makes (12). In addition, a minister can say that pay-television is "inevitable" and, in a sense, this is also policy (13). A ministerial statement that pay-television is "inevitable", however, is "policy" in only its most vague form as the statement does not include any plan for its implementation.

The fact that ministerial statements are not binding on the Commission, and are difficult for the agency even to consider within the legal framework of an adjudicative hearing, obviously allows the CRTC some margin of liberty in their regard; nevertheless, as was stated in Chapter One, the generic ministerial relationship with the agency is ambiguous, thus leaving scope for interpretation on how this relationship is to function. Seemingly, each minister and agency chairman is required to come to his/her own understanding of the nature of this relationship and, depending how this relationship is defined, this can act as a constraint on the autonomy of Commission action (14). The obscurity of the ministerial relationship to the agency, for example, allows the minister great flexibility in responding both to agency actions and House questions asked about that behaviour. Ministerial responses noted in this study have ranged from demonstrating a conception of the minister as simply spokesminister for the agency in the House (Pelletier), to the opinion that the minister is responsible for the CRTC, which the evidence suggests is the view held by Sauvé.

The difference between Sauvé and Pelletier in their (public) views of ministerial responsibility for the CRTC affected

agency-departmental relations during their respective tenures. If it is possible to speak of a largely "absent" Secretary of State during resolution of the microwave signal importation matter, and a (publicly) deferential DOC in the early stages of the cable hardware ownership and pay-television issues, this state of affairs came to an end in June 1976 when Sauvé announced the "inevitability" of pay-television. The deference accorded the CRTC before her speech resulted from a combination of factors: the Secretary of State was a department unable to sustain broadcasting policy initiatives after 1968; the Commission was established as a communications policy-maker before the DOC assumed ministerial responsibility for the agency in 1972; Juneau's presence as the first CRTC chairman gave the agency a privileged entree to the Cabinet; the Commission displayed much energy before 1976 derived from the fact that it was a new organization, imbued with a sense of mission; and, finally, the organization in a very real sense was the government repository of expertise in communications matters. However, from the time of Sauvé's pay-television speech onwards, the CRTC faced a government department that wanted to make policy and would henceforth not be reticent to tell the Commission, in essence, when it had "got it wrong". The Commission was faced with a department that wanted a hand in shaping the fate of issues which were either on-going or arose after the appearance of the "new, activist" DOC: Telesat-TCTS, pay-television and cable hardware ownership. The activism of the DOC marked a government department in the process of defining its role.

This situation arose because, as mentioned earlier, the

mandates of the DOC and CRTC resulted not from rational government planning, but instead emerged from an ad hoc government approach to studying and managing the increasingly important policy area that communications was becoming. Thus, "sorting out of the CRTC's and DOC's respective roles had to be done after they had been established" (15). The DOC, for its part, after completion of its initial "Telecommission" studies in 1972 undertook a series of initiatives in the area of broadcasting. These ventures included establishing a broadcasting branch in the Department, making ministerial speeches and introducing changes to the legislation which governs CRTC activity (the "big 'P' policy"). Later departmental initiatives included asking the CRTC to hold the 1977 pay-television hearing and subsequently establishing the Therrien Committee.

These initiatives came about in the post-1972 period when ministerial responsibility for the CRTC shifted from the Secretary of State to the DOC and the Communications minister could henceforth be interpreted as responsible for the broadcasting policy area. This transfer led to an intensified ministerial vigil over the agency's actions, along with increased competition for policy terrain due to the presence of "the aggrandization role that all bureaucracies like to pursue ... (and) this being classic with the DOC" (16). Boyle sees the tension which existed between the Department and agency after the transfer of the Commission to the DOC minister as a case of the "bureaucracy being jealous of the CRTC", for the agency could take "direct action" courtesy of its regulatory powers; the

bureaucracy meanwhile did not possess similar authority and any powers held by its officials, to take action or exert influence, were mediated through the minister (17). This interpretation of regulatory and departmental officials' respective influence provides the former Chairman with a reason why regulatory agencies "are not really liked". Nevertheless, the mounting tension between the Commission and the DOC after 1972 also needs to be attributed to the fact that "the Commission considered that it had developed expertise in the areas the DOC was now looking at" (18). The CRTC was intent on preserving its policy terrain.

In determining the policy-making role enjoyed by the agency the importance of the Commission chairman's relationship to the elected government cannot be understated. Thus, the fact that it was 1976 before a Commission decision was affected by Governor-in-Council action is closely related to Juneau's presence as first chairman of the CRTC until 1975. Indeed, the nature of the early CRTC cannot be adequately discussed without considering of the role played by Juneau. Each of the cable/broadcasting issues in this study began in the late 1960s/early 1970s when, as discussed previously, Juneau possessed a privileged relationship to the ruling elite. This insulated the Commission from both bureaucratic and political interference. A similar situation has not been duplicated since.

It was not foreseen at the time of Juneau's appointment that he would dominate Canadian broadcasting as he did. His personal characteristics, in conjunction with other factors to be discussed, allowed the Commission during his time to be exceptionally influential (19). Under Juneau the CRTC did not

need to worry about such eventual concerns as its budget; during his tenure the CRTC submitted its budget directly to Treasury Board, without seeking departmental approval beforehand (20). Indeed, "Juneau was not shy to walk over Treasury Board to the Prime Minister" to obtain government approval of the Commission's budget (21).

Juneau also kept "very close" to the PCO during the period he was CRTC chairman (22). This undoubtedly helped maintain his "political antenna" while his closeness to the ruling elite probably allowed him to make statements that he could defend within the government, such as that "the CRTC should not pre-censor itself as to what the government may want" or that "we do not consult the government on decisions", decisions which included judgments that "may not always be the opinion of the government" (23). During the time that these remarks were made, Juneau, as mentioned, attended cabinet meetings whenever broadcasting matters were discussed; thus he was allowed the opportunity to argue the Commission point of view. Relatedly, the Cabinet "perhaps would have been more concerned about a regulatory agency making policy if its head had not been a friend of the government" (24). In summary, Juneau enjoyed a privileged access to the government and Prime Minister that other Commission chairmen have not since possessed. This was certainly the case, for instance, with John Meisel. Meisel's access to Trudeau, some ten years later, was often provided by former students of his who were subsequently strategically placed within the government. Through these intermediaries Meisel sent messages asking the government "to become more aggressive on communications policy"

or to fill the positions outstanding at the Commission (25).

Thus, the personal rapport of the agency head with the government has some impact on the agency's functioning. The importance of this factor in determining the agency's scope for action was well-illustrated during the strained Boyle-Sauvé period. Indeed, when Sauvé replaced Pelletier and Boyle took over from Juneau, the CRTC promptly lost control of its agenda-setting role on the issues of pay-television and cable hardware ownership; furthermore, its decision on Telesat was summarily overruled by the Cabinet. The tensions surrounding Boyle's attempts to maintain what he viewed as the Commission's independence demonstrated that this could not be achieved simply on the basis of legislative provisions and the support of the Commission's friends. The goodwill of the government, both elected and non-elected, was also required. The CRTC chairman, however, is usually at least somewhat "well-connected" as government considers commissioners "political appointees"; it appoints those whom it expects will "behave in a particular way" and who are able "to read a newspaper to see what the government's views are" (26).

The importance of the minister-chairman relationship is also apparent in the fact that, when the Commission made a policy/regulatory decision that precipitated a political response, it was most often ministerial intervention which restricted the policy-making independence of the Commission. The interest and personal involvement of the minister were present in all four case studies. This interest ranged from Pelletier's 1969 remark that "Juneau must be told about this", in reaction to the

representations the Secretary of State received on microwave importation, to Fox seeking in 1980-81 to define the nature of the license applications the Commission could entertain for pay-television. Thus ministerial interest in Commission affairs, and the matters coming before it, has been a constant issue.

The intervention of the minister signified that the issue, until then handled by the Commission, now either possessed a heightened political component, as occurred with the microwave signal importation and cable hardware ownership matters, or that the government wished to see a different policy outcome implemented than that prescribed by the Commission decision. This was the case with the Commission's judgment on Telesat's proposal to join TCTS and was largely the situation with pay-television. Ministerial involvement did not necessarily signify that the issue concerned "passed out of the hands" of the Commission completely, but it did mean that the agency would no longer exercise exclusive control in deciding its fate. Such was the case with microwave importation, cable hardware ownership and pay-television: these matters touched upon the regional nature of Canada and, more explicitly at times, federal-provincial relations. The pervasive federal-provincial dimension also entered into the Telesat case.

The use of explicit government powers over the agency was evident in only two case studies: these were the setting aside of Commission cable decisions for Manitoba and the overturning of its verdict on Telesat's proposed plan to join the TCTS network. This limited use of direct cabinet powers reflects the fact that the Governor-in-Council possesses a review, rather than

directive, power over the agency decisions which were overruled in the case studies. The agency first had to make a decision before the Department could act; even then the DOC experienced some Cabinet resistance when it tried to set aside the Commission's 1976 license decisions for Manitoba. This was the first such ministerial intervention into the affairs of the CRTC and the action had to overcome some government reticence to question a judgment of a regulatory agency (27).

However, as was noted in Chapter One, the minister only possesses tightly constrained powers of direction (along with the rather impractical option of directing the agency on a particular issue either by introducing new, or amending present, legislation). In the words of a former departmental official, this means that the only power the DOC minister possesses over the CRTC is in the review of agency licensing decisions. Nevertheless, at least during the Sauvé period, the evidence suggests that the Minister and her senior advisors believed that control of the agency was provided by the power of the law - but if the law was not precise interpretation was both possible and required. It seems apparent that Minister Sauvé interpreted the existing legislation as providing her with the ability to give broad policy directions to the agency, and if formal mechanisms by which to give this direction did not exist, moral suasion was the informal "fall-back" means of control.

This control could be exerted through actions that were considered "part of the minister's prerogative": the CRTC chairman could be told by the minister "I want to see you", the deputy minister could be sent to visit the agency in order to

"hash out" the current point of contention between the government and the agency, and departmental wishes could also be communicated through ministerial speeches. Sauvé's act of sending letters to Boyle on the Manitoba cable situation in 1976-77 and the fate of Telesat are notable due to their extreme rarity. In a minister's attempt to apply suasion on the Commission correspondence is the "ultimate gesture" because of its public nature. However, as this study has made clear, the strained government-agency relationship during the tenure of Sauvé and Boyle is exceptional. Normally, before a minister feels compelled to send a public letter to the Commission, an agency head will have taken any "chat" held with the minister on a particular matter as a "type of directive". Thus the grand, public gesture of letter-writing is usually unnecessary.

The subtle and less nuanced indications of DOC ministerial wishes directed to the CRTC during Boyle's time did not work due to the minister-chairman confrontation then in progress: Boyle viewed Sauvé's initiatives as "meddling", while the evidence suggests that she viewed her actions as simply exercising her ministerial prerogative to direct the agency (28). Minister Sauvé evidently felt that her department should make policy for the government, a point of view the DOC thought the CRTC had a difficult time accepting. Regardless of the view of the Commission, it is likely that the Minister would have found a way "to order" the CRTC to begin granting licenses for pay-television even if the law does not empower the minister to do so. Seemingly, the Commission did not receive an informal directive on this issue to license at that time simply due to the

Minister's own doubts on whether to proceed and the obvious lack of solidarity within her government on the issue (29).

The strained Boyle-Sauvé relationship demonstrated the importance for the government to "sound out" potential commissioners as to how they would act if appointed to the board - along with discussing the agenda the government would like to see the agency adopt. Such discussions are a sensitive matter given the quasi-judicial nature of the regulatory agency. A former DOC Minister is of the opinion that a minister "would not dare" discuss the agency's agenda with a potential agency chairman because "you can't tell him what to do". Nevertheless, this prohibition certainly does not prevent the minister from attempting to develop good relations with a potential appointee, in order to "discover his thinking, exchange views, tell him he would 'have to come to a conclusion'" on an issue the Department felt was in need of resolution. The ability to develop a good personal relationship with the agency chairman is of some importance for the minister as it determines his or her ability "to influence him afterwards".

The ability of the government to influence the Commission chairman appears to be a significant factor in the selection of agency heads after the Boyle appointment. As mentioned earlier, Boyle's replacement, Pierre Camu, was described, even before his appointment as someone who "would not make waves". When it came time to replace Camu, Dalfen was by-passed for Meisel partially because the new Conservative government wanted, in the words of Dalfen, "to put its own stamp on the Commission" (30). Meanwhile, Meisel was prophetic in saying that the government

"could, if it wanted to, make my seven-year tenure 'uncomfortable'", given the problems of Commission budget and staffing that he was about to encounter (31). Meisel, in turn, was replaced by Andre Bureau, after an entente had been reached between Bureau and the DOC on the agency's agenda during his sojourn at the Commission (32). Meanwhile, the Commission chairman has little say in the commissioners appointed to the agency; he has no choice but to accept any "personal appointment" to the agency by the Prime Minister, as when Trudeau chose the commissioners during Meisel's time (33).

Nevertheless, the government's behaviour towards the agency is monitored by groups favourable to ensuring its independence. Thus the CRTC first had a broadcasting decision reviewed by Cabinet only in 1976. The general response to this move, along with Sauvé's re-opening of the pay-television dossier after her 1976 speech, demonstrated the existence of a strong lobby for the agency, one that was swift to defend it against any "interference". An example was when the CCTA was quick to denounce the setting aside of Commission license decisions for Manitoba in 1976, and the "political interference" in Commission affairs this ministerial action represented. The lobby group at that time also reaffirmed "its support for an independent board as set up by the 1968 Broadcasting Act" and urged its members to let their local MPs "know how they felt on the matter" (34). Thus it appears that the CRTC can count on (at times) the support of lobbyists in the cable, as well as the private broadcasting, fields.

These lobbyists, who are of some importance to politicians

given the communications businesses they represent, "are for a strong CRTC, as it is the agency which grants licenses" (35). This protection of the agency contains an element of self-interest, of course, and the Department's trials and tribulations in introducing legislative change in the communications area partially results from this lobby interest. The cable industry, for example, does not want an omnipotent DOC, one that possesses a broad directive power over the CRTC, for the industry prefers the present "teeter-totter" arrangement of decision-making (36). Thus interests such as the cable association are ready to block any attempt to reduce the policy-making power of the CRTC (37).

While the current policy-making process prevents the DOC from unilaterally setting the communications policy agenda, this arrangement suits industries such as cable. This is partially the case because of existing sentiment that the DOC was a "total loss to the cable industry before the arrival of Fox as minister due to its willingness to enter into agreements such as the Canada-Manitoba one and support the application of Telesat to join TCTS" (38). Thus, as a means to check the behaviour of the Department, the cable industry has a vested interest in the Commission remaining an influential policy-maker; CRTC insistence that cable be regulated as a broadcasting undertaking, in accordance with the Broadcasting Act for example, has helped cablecasters maintain their independence from the telephone companies. Seemingly, despite the fact that the cable industry did not enjoy a good reputation with the CRTC throughout the 1970s (and into the 1980s), the continued prosperity of

cablecasters appears linked to the influence wielded by the CRTC. Likewise, broadcasters are not keen to see the DOC possess a directive power as this would allow the Department "to give directions to broadcasting". Sauvé's successive attempts to pass legislation which would provide her department with this power were in part blocked by Cabinet colleagues acting in unison with concerned broadcasters, both from the private sector and from the CBC (39). Overall, both the private broadcasters and cable operators "could not be better served by the system" (and the Commission's place in that system) (40).

The groups which lobby on behalf of the Commission extend beyond the broadcasting and cable industries and can include, depending on the issue, journalists, academics, public-interest organizations, and House opposition members. The CRTC can usually find "friends" in any given situation where it feels pressured, no matter whether the issue of contention between the agency and government is new legislation or a specific regulatory/policy issue. On the matter of new legislation, for instance, the CRTC chairman could try to convince the minister that the agency needs the "independent" policy-making powers which are threatened, in order to function efficiently; if this approach fails the agency head can speak to "friendly" cabinet ministers and also "go public". Bureau did this recently with his appearance before the Broadcasting Standing Committee on proposed DOC legislation. The Standing Committee was used in a similar fashion by Boyle during the mid-1970s, of course, regarding the directive power that Sauvé then sought; at that time Boyle was given the opportunity to provide the Commission view courtesy of questions asked by

opposition critic Patrick Nowlan (who as mentioned, had "great respect" for, and a personal friendship with, the Commission Chairman).

The role of public opinion must also be taken into account in any discussion of "lobby groups" and the communications policy-making process. Public opinion was an element that all participants attempted to utilize and rally to their cause when politicising the contested Commission decisions in the case studies. If successfully invoked by one of the parties, public sentiment can help "make or break" Commission retention of a desired policy position. For example, the success of the cable industry in soliciting public demand in connection with microwave relay and signal importation was a principal factor in causing the Commission to retreat on this issue. Conversely, public indifference on the topic of pay-television allowed the agency to defer from introducing the service for a period of time.

When groups who are basically supportive of the Commission role attempt to obtain a ruling from the agency that it is reticent to grant, these interested parties will also seek to link their request to other political/governmental participants in order to counterbalance CRTC opposition. Accordingly, the emerging cable industry "sold" its case for Commission authorization of importation of American signals via microwave to House members, and specifically those sitting on the Broadcasting Committee. Typical of any lobby group, the cable industry develops relations with MPs on the basis of "common interests". Identification of these interests allows the cable industry, as is also the case with influential private broadcasters and the

CAB, "to go to Members of Parliament or the Standing Committee with their itches". This approach can include writing those Members who are friendly "some questions" which can be asked in committee. This rapport between industry and MPs was evident in Chapter Two and the role of members such as Roy and Jerome (41).

MPs were cited in Chapter One who expressed the sentiment that House members were unable to influence the CRTC (and the DOC as well for that matter) (42). Jerome nevertheless believes that Parliamentarians are effectively able to make their views known to the Commission because they possess "all the power they need" with "no end of opportunities" to exercise their influence (43). Certainly he was able to inform the Commission of his views on microwave signal importation in a dramatic fashion by presenting a 20,000 name petition in favour of authorization to a Commission hearing; but in doing so, Jerome simply took advantage of the "preferred role" that the Commission accords House members at its public hearings (44).

The statutory necessity which obliges the Commission to convene public hearings when considering proposed regulations, as in the case of microwave signal importation, can play a key role in determining whether the CRTC maintains or loses a preferred (policy) position. While the Commission lost its case for prohibition of microwave importation due to the public support for authorization which was made evident at the Commission hearing, the agency can also use its public audiences to move the decision-making process in a preferred direction. Thus the Commission was able to demonstrate during other agency hearings that there was little demand for pay-television, the implications

of the Canada-Manitoba intergovernmental agreement were poorly understood, and that the proposed Telesat-TCTS deal was anti-competitive (45).

Another influential group in the policy-making process are the provinces. Their influence was evident at several points in the thesis and most apparent in the case of cable hardware ownership. Here, provincial discontent with the Commission's approach effectively resulted in the agency altering its policy in the instances of Manitoba and Saskatchewan. On the issue of pay-television, likewise, agitation by the provinces caused the Commission to accommodate their desires: the "guidelines" which emanated from the federal-provincial working group on pay-television were a key factor both in the re-animation of the issue, which led ultimately to a CRTC licensing decision, but also contributed to the Commission foregoing its preferred policy option of a national and non-profit pay-television distribution agency. Thus, despite provincial claims that they are limited in their ability to influence the agency due to their mere "intervenor" status at its public hearings, it would appear that the provinces are able to influence the agency when the DOC is willing to "help out" (46).

The leadership provided by the DOC as "policy-maker" in the field of communications has been sporadic. This has both been the result of, and has contributed to, the visibility of the CRTC in this role. The prominence of the Commission partially derives from the fact that, in some ways, the Commission, more than the DOC, is the federal government's "communications expert". This was certainly the case with the introduction of pay-television.

Here the Department never progressed past the point of making broad statements on the topic. Similarly with cable hardware ownership, it was the Commission which devised a workable interpretation of the Department's intergovernmental accord and translated it into legal contract form, thus implementing it. The CRTC also performed the studies on microwave relay and signal importation. The agency's image as a "policy-maker" had also been strengthened by their establishment of a "Planning and Development Branch" in 1972 (47). Meanwhile, by loaning personnel to the DOC to work on the "Broadcasting Policy" of 1983, the CRTC's role as government "communications expert" was evident (48). This help was needed by the DOC as it was poorly prepared, even as of 1983, to devise policy.

The difficulty the DOC has experienced in its attempts to act as a "policy-maker" is partially tied to a common problem concerning officials of "line departments" - they tend to be career bureaucrats and few know the (industrial) constituencies of their new department well. Furthermore, as Communications is a junior ministry within the federal government (49). the more able officers tend to be promoted out of the Department. Interestingly, a comparison of the tenure of persons holding responsible positions at both the Commission and the Department throughout 1968-1982 finds agency staff to be more stable. During the middle-1970s to early-1980s, for instance, four officers were responsible for broadcasting policy at the Department. Between 1968-1975, when Juneau headed the CRTC, he was the opposite number to a series of ministers and their changing deputy ministers. The ministers included Pelletier,

first as Secretary of State and then Minister of Communications, and both Kierans and Stanbury at the DOC before the transfer of Pelletier to that department. During the same period Juneau saw the position of deputy minister at the DOC held by both Gotlieb and Yalden.

Another factor which may explain why the CRTC assumed a policy-making role in the early 1980s is that during the early Trudeau years the bureaucracy was in a great flux; this may have allowed promotions to be made within the DOC before a critical assessment could be made of the performance of individuals and/or their policies. In any event, policy-making may have partially befallen the CRTC as officials at the DOC were not posted long enough to be able to devise and implement their policies before being transferred out of the Department. Certainly, the fact that Juneau attended cabinet meetings where broadcasting matters were discussed may have instilled in him, and the CRTC, a sense that they were "the authority" in this policy area. Juneau and his organization, quite simply, represented "consistency". The staffing situation at the DOC continued into the early 1980s and found Meisel as head of the Commission in opposition to three DOC deputy ministers (Ostry, Juneau and Rabinovitch).

The CRTC role as "expert" is one which is undoubtedly also influenced by the sheer dynamism of the agency, a dynamism evident from its first moment of creation. The Commission was enthused, enamoured of a perceived mission and headed by a charismatic leader. Moreover, the CRTC was the first "tailor-made" government entity inhabiting the "communications policy block" during a period of increasing federal and

provincial interest in this subject area. Thus the Commission "tackled" and had already established a position on issues such as pay-television and cable hardware ownership some time before the federal DOC and various provinces were prepared to divulge their differing opinions on these topics.

By producing only vague "policy", as discussed above, the DOC (and the Secretary of State before it) has failed since 1972 to fulfill the expected government role as policy-maker in the field of Canadian communications. This has sparked remarks by former and present departmental officials such as "looking back we spun a hell of a lot of bureaucratic wheels" (to characterize the period of the early 1970s), "the Department didn't get very much done" (as a remark summarizing the later 1970s), and industry representatives, who conceded that "there is no consistent policy at the DOC" (50). While ten years ago it was remarked that the "government has never moved with any haste" on its proposed communications legislation and policy review (legislation which still has not passed), due to a fear of "putting things down in black and white", today it still appears that the DOC is "no nearer than ever to stating policy" (51). The fact that this situation exists despite Juneau telling departmental officials back in the middle 1970s that "the CRTC will stop making policy once you begin to be active in this field", should not be surprising given that the case studies have demonstrated the preference of the government and other political masters of the CRTC to let the agency make policy - to which they can react, either by letting it stand or by challenging and striking it down (52).

The abdication of an active government role in policy-making, as this thesis has suggested at various points, is due to many reasons. These include changes of government (with resulting shifts in ministers and bureaucrats), communications as a policy area ranking low in government priorities, and the fact that the CRTC has been "doing a pretty good job" (53). While Chapter One cites some of the complaints that have been made in regard to the Commission's observation of its mandate, it would appear, as senior departmental officials have acknowledged, that both the DOC and the government "have not been hard done by the CRTC". Indeed, notwithstanding recommendations of the Lambert Commission and others as to a desirable agency-government modus operandi, discussed below, the argument can be made that the government finds it desirable to allow the regulatory agency to proceed on a case-by-case basis in handling issues, and to make policy so that it may then choose whether or not to review the decision in light of the reaction it provokes (54).

Some recent Commission decisions have possessed significant policy implications and stood because no government overruling occurred. In terms of telecommunications, Commission decisions taken from the late 1970s and into the 1980s - notably those of "Challenge Communications" in October 1977 (CRTC Telecom Decision 77-11), which liberalized terminal attachment, and the first Commission approval of a CNCP application for interconnection (CRTC Telecom Decision 79-11, 17 May 1979) - have allowed for increased competition of telecommunications, with important consequences for the industry (55). Certainly, if the government found the Commission occupying a policy-making role on a

prolonged basis undesirable, and the tension resulting from this action truly unbearable, it is likely that the agency would have had its powers diminished by this point.

The history of Commission-government relations seems instead to be one punctuated by moments of intense antagonism. These "moments" are at least partially due to departmental officials, at certain points in time, finding a prominent Commission policy role difficult to accept. Nevertheless, the fact that Commission powers have not been reduced although "it has annoyed a lot of people", and members of the current Conservative government have "come to it with blood in their eyes", seems to bespeak a government content with the Commission's role and performance (56). Indeed, since the time of Juneau's handling of the microwave importation issue, when the Commission was already being accused of usurping a government policy-making role, the CRTC has gained responsibility for telecommunications regulation - and, as stated at greater length in Chapter Four, this legislative rearrangement of responsibilities occurred with the DOC unconcerned about what the CRTC would do with telecommunications. Indeed, it occurred, in the words of an departmental official at the time, because "the Department thought the CRTC more dynamic than the CTC and (that) the Commission would give telecommunications a higher profile".

There is little doubt that the Commission during the period of this study did more than simply "translate the policy" it found in its legislative mandate, but indeed also made policy. The agency did this by implementing a variety of functions. In the instances of microwave importation and pay-television, a

series of "policy statements" were used to craft the Commission position. In the case of cable hardware ownership and Telesat's future plans, no policy statements were involved (although the Commission had considered the issuance of one on telecommunications competition at the time of Telesat's application to join TCTS). On the matter of cable hardware, meanwhile, Commission policy was established by a series of judgments which consistently implemented a set of "conditions of license". On the topic of Telesat and telecommunications competition, however, a single application of the agency's adjudicative powers (CRTC Telecommunications Decision 77-10), effectively granted the Commission a policy-making function given the government policy vacuum existing to that point.

It must be noted, nevertheless, that constraints exist concerning the topics on which the Commission can make policy; thus Juneau accepted Trudeau's 1975 invitation to become DOC minister because he had reached the view that "real" policy matters, such as directing a portion of cable industry profits to Canadian programming, could only be handled at a political, and not a regulatory, level (57). Certain policy questions cannot be handled at a regulatory level, no matter how powerful the CRTC may appear at first glance. This is because, while the Broadcasting Act, as Juneau is quoted earlier as saying, permits the agency to do a "great deal of pushing", this pushing comes only at the acquiescence of other actors. The act does not dispense any sort of absolute power: its underlying philosophy, in the words of a former CRTC Chairman, is that the agency can push broadcasters and other participants in the communications

field to a certain point - but the Commission chairman has to be careful to know where the bounds to this power lay (58). In the absence of legislation which explicitly sets out its limits, the boundaries to the Commission's power in relation to that possessed by other government actors are specified by the constant "give and take" which characterizes the communications policy-making process.

The scope of the flexibility provided by this process seems appreciated by politicians for it is allowed to continue. Certainly the current situation affords elected officials the option of not being pressed to introduce new legislation in this field, for policy decisions always seem to accommodate the different participants. When the CRTC was rebuked by members of Parliament for not moving to regulate children's advertising Baum remarked that "it was legislation which was required". This remark holds equally true for other issues that have come before the agency: the Canada-Manitoba Agreement attempted to establish a new intergovernmental jurisdicational balance via the regulatory process, after the legislative route had proven too arduous. Abandoning the legislative process has meant that comprehensive policies for the area of communications have not appeared; political guidance has only been of an erratic and piecemeal variety. While MPs have been counselled not to adopt the principle of "letting the immediate and short-term and particular instance affect the basic directions" they wish to see the CRTC take, and to distance themselves from individual Commission decisions (as a "healthy way of proceeding") this obviously has not been the credo adopted by the agency's

political masters (59). Instead, this thesis has demonstrated that politicians prefer to "offer guidance" to the agency by reacting to individual decisions the Commission takes, rather than developing the legislative or broad policy framework within which the agency operates. While this is undoubtedly an unconscious decision, there also exists a certain logic to this situation, given the effectiveness of the controls external to the agency that its political masters can bring to bear.

Thus in the microwave signal importation case study it was demonstrated that consistent parliamentary pressure on the agency was sufficient to force the CRTC to reverse a chosen policy position. In the Telesat case, the review power the Cabinet possessed in telecommunications matters was shown to be highly effective in altering a policy devised by the Commission because it allowed the substitution, and not merely the rejection, of the agency decision involved. In the instance of cable hardware ownership, where the Cabinet's broadcasting review power is not as encompassing as that for telecommunications, the appeal process was supplemented by the suasion of federal government actors and other participants (not to mention the steadfast refusal on the part of some parties to accept Commission doctrine on the matter at hand). Finally, in the case of pay-television, although the only control mechanism applicable to direct the agency in this instance was that of suasion, its constant application ultimately succeeded in "wearing down" the Commission so that it made the decision to license the service. This last event, it must be noted, occurred in tandem with other actions that the government had taken to create a regulatory environment

more "conducive" to the implementation of government wishes (such as the appointment of a more "amenable" chairman).

While all of these control mechanisms can be said to be "effective", for all have been linked to an eventual change in agency policy, it is curious to note that the "strongest" of these external controls, in the sense that it has an immediate impact on Commission functioning, is the Cabinet review power in telecommunication matters. Due to its technical and "unglamorous" nature, telecommunications is also the policy area in which a broad-based public interest component is lacking. Thus it would seem that the most direct intervention in Commission affairs is provided for in the policy area where such Cabinet action poses the least danger to the agency's political masters in terms of a possible negative public reaction.

However, the Commission has made, and continues to make, policy for communications in Canada. Consequently, a brief consideration of proposed reforms of the policy-making process, along with the advantages and disadvantages of regulatory versus departmental policy-making, will be briefly undertaken in order to appraise the issue of what policy is appropriately made through the regulatory route versus that which should be made by government.

Part 3

There have been CRTC suggestions that it would welcome stronger statements of government policy to guide it. The agency annual report for 1982-83, for instance, has John Meisel, its

chairman, "welcoming" provision of a policy directive power (as long as it could not be used in conjunction with a cabinet review power) (60). Such a directive provision, a former CRTC Vice-Chairman suggested to this writer, would indeed be "useful" to the agency; as the Fifth Report of the Standing Communications Committee, which studied recent suggested amendments to communications legislation, remarked, "the CRTC should be entitled to request that the Governor-in-Council issue a direction on a specific matter" (61). The existence of a policy directive power which allowed such a request, would, at the very least, shift some of the broad responsibility for the policy directions of the CRTC onto the elected government (62).

The curious length of time which has elapsed since the DOC first sought such a directive power perhaps reflects some apprehension on the part of elected officials to enact these legislative provisions. This trepidation could exist as "they know they can be trusted not to abuse the power but they're not sure what the next fellow will do" (63). A former CRTC chairman remarked that the "bureaucracy would love to have the directive power" (64). The remark suggests that desire to possess this legislative amendment could reside more with bureaucrats than politicians. If this is the case, the Department will obtain a policy directive power only with difficulty as long as communications remains a matter of lesser concern for politicians and, relatedly, the Cabinet's current review powers (in combination with informal mechanisms of control) are sufficient to direct the agency's policy-making actions within an acceptable time-frame when required. In short, if the goal is to control

the policy-making behaviour of the agency, there may be no need to introduce new legislation (65).

Nevertheless, a former DOC Deputy Minister suggested that provision for a directive power would "create a climate of dialogue between the Commission and the government". Certainly, co-ordination between the two is required in many instances, due to, if not overlapping mandates, at least the existence of interlocking responsibilities. An example here is that it would be futile for the CRTC to license pay-television if the satellite capacity required for the service, a DOC concern, did not exist (66). Thus certain consultations between the government and agency are vital to ensure the continued viability of Canadian communications. Whether consultations can occur and be fruitful, however, is seemingly dependent on the state of government-agency relations. On this point, the remark that the relationship between the DOC and CRTC "is to a large extent a reflection of the personalities involved" is validated by the thesis; although the legislative environment within which the CRTC and DOC operated remained unchanged throughout this study's time period, Commission-Department relations were more harmonious at some points than at others (67).

A factor which determines whether this organizational relationship is harmonious or not appears to involve how the question of the ministerial-departmental relationship to the agency is resolved. Resolution of this question necessitates that accommodation be reached between the government and Commission on the opposing viewpoints: there is the viewpoint which holds that the CRTC is "accountable to Parliament as to whether or not it is

accomplishing its mandate" while the opinion is also current, and strongly evident during some regimes at the Department, that the "DOC thought (the CRTC) should be accountable to it" (68). It was noted in Chapter One that the ideal relationship of a regulatory agency to its spokesminister and his/her department, Parliament, and the rest of government, has not been conclusively defined.

The use of public hearings in connection with the regulatory process's adjudicative functions ensures a certain amount of "public accountability" as "participation is guaranteed to the affected parties" (69). This is the case as the participants in a particular dispute, a license renewal for example, attend the related (required) hearing. In so doing, it is said, these participants are provided the opportunity to influence the setting of policy which will likely affect them. It is also held that this structured participation of interested persons can broaden the perspective from which the regulatory agency considers public policy questions. For this reason, the LRC has argued that this "public testing of ideas" enhances both efficiency and fairness in the administrative process. Accountability for policy-making is likewise promoted as "the very publicity of any process is a form of control over it" (70).

Of course, those participants most interested in the CRTC process are those appearing before the agency, and certainly there are costs involved to participate in what is essentially a legal process. Also, in the Commission's process, those making the decisions are not directly "accountable to the Canadian people" as they are not elected officials. As described in Chapter One, the tenet of accountability in government holds in

some importance the principle that those making decisions be made responsible for them; accordingly, this is an argument in favour of ministerial (and departmental) policy-making, due to the notion that a certain accountability for government decisions taken in the name of the public welfare can be exercised at election time (although, ironically, the political process by which policy decisions are taken, as was evident in the chapter which discussed the Canada-Manitoba Agreement, can be highly secretive).

This discussion of the decision-making process prompts the question of what policy is appropriately made by the government and what policy is properly devised by the regulator. There is logic to the statement that regulatory agencies can usefully make (some) policy, as a former departmental official acknowledged to this writer, for "they have infinite knowledge of the area". Thus, an agency such as the CRTC can play a valuable role as "policy advisor" to the government if capable people are appointed to the agency - indeed, due to the fact that the regulators probably know the industry best, the argument can be made that "the minister ought to think that they are his best advisors" (71). Following this logic, the Lambert Commission recommended, as an ideal way for government-agency relations to develop, that a consultation process be established by which the government could request information from the CRTC on a topic such as pay-television before making any policy decisions (72).

Along the lines of this recommendation, a former senior CRTC officer suggested to this writer that the DOC could usefully employ the Commission to perform research on an issue on which

the government was thinking of establishing a policy. The agency could be asked to hold a hearing on the question at hand, at which the Department would appear and present a submission. The Commission would then submit its findings and recommendations to the DOC, at which point the Department "would take over and decide on the final policy" (73). Something of this nature, of course, was attempted in regard to the introduction of pay-television, starting with Sauvé's "inevitable" speech of June 1976 and "request" that the Commission hold a hearing on the topic. Here, however, the experiment was subverted by departmental and Commission officials fighting for different policy positions and the seeming inability of the DOC to "decide on the final policy". Moreover, this struggle, as is usually the case in such matters, was not waged openly.

Nevertheless, the continued viability of Canadian communications in an era of increasing technological complexity, and likely international competition, demands a more rational and efficient policy-making process than this thesis has demonstrated to be the case in Canada. A key element to rationalizing the process would appear to be, as the Davey Committee noted nearly twenty years ago, the clarification of the division of authority between the CRTC and the DOC. The Davey Committee also noted that the CRTC "could be assisted by a little help from above in the form of more explicit legislative direction" (74).

Whether Parliament one day passes legislation which is more explicit on the policy objectives held for Canadian communications is perhaps doubtful; nevertheless if the legislation eventually enacted is notable instead for its

allowance of a ministerial policy directive power, a continuing, although henceforth acknowledged and reduced, Commission "interpretative" role should be allowed. The argument has of course been made in this thesis that such an "interpretative", or in a sense, "policy-making role", has already been conferred upon the agency. All of the powers documented in this study that the Commission has exercised which have allowed it what may be termed a "policy-making role" have laid within its statutory mandate.

In a clarified division of policy-making between the Department, its minister and the Commission, it should be for the minister to identify the policy areas he/she feels are important and in need of address, such as Sauvé did in the case of pay-television. In essence, the DOC and its minister should be required to set the objectives for Canadian communications and the general, or indicative, guidelines for the Commission to follow. The hope can remain that if the Department is expected to do so, it might be stirred to assume a more dynamic stance than it has in the past.

Within the broad policy framework set by elected government officials, the Commission should take responsibility for applying the government's broad guidelines and dealing with any policy consequences which might result from particular applications. This Commission "policy operationalization" role necessarily entails a policy-making role for the agency, but this role should be restricted. It should be exercised under only "exceptional circumstances", for the ideal function of the CRTC must be a regulatory one. Consequently, this role includes minimal interpretation activity on the part of the agency. Nevertheless

an "interpretative" element seems inherent to the Commission's process of operationalizing attainment of the policy objectives laid out by government. This was recognized by the Sixth Report of the Standing Committee on Communications and Culture. The committee thought it would be "valuable" if (new) legislation made explicit provision for Commission issuance of policy statements and it was necessary that the agency devote "even more efforts" to the development and articulation of policy, in advance of rendering individual decisions (75).

It seems inescapable that the Commission is destined to perform a policy-making role, however restricted, because the agency requires a certain amount of discretion in its decision-making due to the uniqueness of each case it confronts. Each regulatory application also possesses a precedent- (and policy-) setting aspect because of its individuality. Nevertheless, it is only consistent with a commitment to democratic government that elected officials (and by extension their departments) be publically accountable for the decisions that government takes.

During the period that the Communications minister has been the Cabinet representative for the Commission, the DOC has used the CRTC as an "instrument of policy", while also employing it as a political "tool". It has allowed the agency to be a policy-maker, but only to the extent deemed desirable, and on specific occasions. For obvious reasons, this has produced the confusion about the Commission's decision-making role that was cited in the first chapter.

To reduce this confusion, and to repeat the point made

earlier, in a clarified division of responsibility for policy-making between the Minister/Department and Commission, it is for the minister to set the general policy guidelines for communications in Canada. The Commission's role should be to implement those guidelines. A broad direction power (without extensive review possibilities) would allow the minister the ability to set policy and check agency "policy-making behaviour" without the need for unaccountable "informal" control methods, the widespread use of which this thesis has documented. The Cabinet in a parliamentary system must assume responsibility for the policy decisions made in its name. To be able to speak about a topic as important as cable hardware ownership only in terms of "Commission policy" signifies an abdication by elected officials of their responsibility. Major policy decisions such as cable hardware ownership and pay-television are the domain of politicians, not regulatory agencies.

The current situation, which allows the CRTC to be both an instrument of policy and a policy-maker, and which permits political decision-makers to decide whether to become involved in an issue or let the regulatory agency "handle it", not only muddies accountability in the policy/decision-making process, but introduces an element of unfairness. Due to the ambiguity of this situation, the policy-making process is confused; consequently, more sophisticated and well-connected lobby groups and individuals are better-equipped to play the policy game.

Nevertheless, in agreement with the Standing Committee's Sixth Report, a limited policy-making role can be sanctioned for the Commission in terms of the issuance of "policy statements".

These statements are necessary if only to help ensure "natural justice" to those whom the agency regulates (in the sense of providing indication of what elements it considers important and will likely guide it in coming to decisions on a particular subject) (76). The devising of "policy statements", however, envisages a restricted policy-making role for the Commission, possessing a distinctly "utilitarian" aspect. Ideally, these statements should be drafted in light of government guidelines issued to the agency. Meanwhile, the Commission could well function as an extremely influential "policy advisor to the Minister", given that its knowledge of communications matters often surpasses that of the Department.

Part 4

As a former CRTC Chairman remarked, "you expect politicians to be interested in the regulatory process, it's in their blood" - but this interest becomes "embarrassing when they begin to get involved in the mechanisms" (77). This thesis has demonstrated that government officials, both elected and non-elected, have expressed a continuing interest in Commission affairs, particularly when the agency has arrived at a "wrong decision".

This study has also shown the evident usefulness of the CRTC to the government. By leaving policy areas for the agency to handle initially, such as American signal importation by cable, cable hardware ownership, and pay-television, the Commission has acted as an "insulator" for government -- acting as an "advance guard" to "test the political waters" on contentious issues.

Combined with its role as "political insulator", the CRTC has also played a sizeable role as "advisor" and "technical expert".

While the case studies examined here are unusual, for they portray moments of exceptional tension between the agency and government, the conclusion that must be drawn from an examination of agency-government relations is that the government possesses an evident faith in the Commission's ability to fulfill its functions in a fashion pleasing to its political masters. Accordingly, not only have the Commission's powers remained undiminished over time, but the agency's responsibilities have indeed been augmented since its establishment. The powers that the CRTC possesses, it has been shown, are sufficient to allow it to play a sizeable role as "policy-maker". This study has also demonstrated that a pattern exists by which the CRTC comes to take on, and rule in, a policy area, only then to require, on occasion, subsequent modification of its position in light of increased interest on the part of its political masters. The agency typically has a great agenda-setting role, the thesis suggests, if for no other reason than that there exists a continuing vacuum in many areas of Canadian communications policy. Faced with the need to make licensing and other regulatory decisions as applications come before it, the CRTC inevitably fills the void.

Nevertheless, the charge that the CRTC has usurped ministerial and governmental powers is difficult to sustain for it has been shown that the Commission has only done that which is within its powers. Likewise, the accusation that the agency has been "out of control" must be rejected because the CRTC is

demonstrated to possess policy-making ability only by courtesy of the acquiescence of its political masters. These political masters, whether government or Parliament, are able to control the agency through the exertion of both formal and informal mechanisms. These control mechanisms can effect both the policy direction of the agency as well as specific adjudicative decisions that it makes. Both categories of Commission functions are susceptible to the extent that it is difficult to speak of an "independent policy-making function" for the Commission. Quite simply, the CRTC makes policy when it is allowed to by its political masters. This still amounts to a sizeable quantity of regulatory agency policy-making, not because the CRTC has necessarily usurped such a role, but rather because government has consistently failed to offer guidance in this policy area.

Guidance from government is needed because, as Juneau noted when he appeared as DOC deputy minister before the Standing Committee on Communications, the CRTC "does not have all the authority to resolve the problems that broadcasting faces today in the country" and that "these problems really require government and parliamentary attention" (78). It is questionable whether the broadcasting system will receive the governmental attention and, more importantly, action that it needs to resolve those problems. As Meisel notes, the credibility of policies and regulations to support the basic goal of ensuring the production of Canadian content is weakened by "ongoing attacks from the private sector" and the "large numbers of (anglophone) viewers hungry for the most popular outpourings of the U.S. networks" (79).

The opposition of private broadcasting and cable industry interests to the national/public objectives enunicated in the Broadcasting Act, along with a confrontation between elite and mass cultural values, has meant that both politicians and regulators have not had "enough influence to outweigh the strong economic interests, societal pressures, regional voices, political opportunists or others who were either uninterested or unwilling" to support the policy goals of the Broadcasting Act (80). The success of the cable industry over broadcasters, regulators and government policy in the microwave importation case study, when it meshed its demands with the expression of a regional popular will for American programming, demonstrates the potency of pressures which exist outside the government and CRTC. In all, the case studies findings appear to underpin Meisel's point that neither the government nor the CRTC is able to implement (and by inference, devise new) communications policies if political support is lacking. Thus in the area of broadcasting, the CRTC lacks "the clout" to impose "the nationalist and pro-public broadcasting assumpations of the legislation and the regulations needed to apply them (as there is not) enough politically effective support in the country" (81).

The CRTC must operate within the confines of this reality while accommodating a government and Parliamentary interest in communications matters which varies in intensity. On numerous occasions Juneau and other CRTC chairmen have invoked the fact that the agency's authority and terms of reference derive from Parliament; given this, the Commission is Parliament's instrument (82). The consistent lack of parliamentary attention to

communications matters, however, demonstrates the validity of Herbert's remark that despite existence of the "perception" that the CRTC is an independent body, it is in reality "an instrument of government policy" (83).

The Commission is "an instrument of government policy" in that it has been delegated responsibility for managing and directing the communications system and, when the government has a policy outcome other than that favoured by the Commission, the agency's political masters are able to set into effect, via the Commission, their policy option. The statement that the CRTC is an "independent body" in perception only, is an accurate statement given that this study has concluded that the agency is severely fettered in its ability to make independent policy and to maintain a position of authority in the face of opposition. It must always ultimately bide the wishes of its political masters.

APPENDICES

Appendix 1

As a postscript, the Saskatchewan CPN system ran for a few years and then experienced financial difficulty. It eventually re-emerged as a movie channel, "Teletheatre Saskatchewan," having been brought out by private cablecasters in the province (Simpson interview). As a continuation of this provincial retreat from government involvement in cable industry activity, Saskatchewan cable operators were to reach agreement with SaskTel in the mid-1980s whereby they henceforth would own all of their system hardware (the provincial government having decided that it was no longer interested in investing in cable (Johnston interview)). Meanwhile in Manitoba, recent indications are that MTS may eventually move in the direction of SaskTel and turn over all cable hardware ownership to the private sector.

Appendix 2.

Charles Dalfen, who had been considered by many both inside and out of the Commission as Boyle's "heir apparent," was never appointed to the chairmanship of the Commission. He left the agency in late 1979 to pursue a private law practice after John Meisel was chosen to succeed the departing Pierre Camu. Dalfen had not been appointed, in the words of an senior ex-CRTC staffer, because "he was not the type that the government felt that it could control" (Loftus interview). This assessment was apparently due to events surrounding the Commission consideration of the Telesat-TCTS proposal and the agency's behaviour during the establishment of the Therrien Committee (Lind interview) (which considered the introduction of pay-television service (see Chapter Five)). The need to appoint a Commission chairman, however, also coincided with a change in government. It appeared the incoming conservative regime of Joe Clark wished to put its own "stamp" on the agency by the filling of this appointment (on this, see also Chapter Five).

The second "long-time ramification" arising out of 1976-77 events occurred in 1981. Then, as if to fulfill the Commission remarks when its decision on the carriers' proposal was overturned, (saying that a "fuller review of the operations, finances, and practices of TCTS and its individual members will be required than has ever been the case before" (Decision 77-10)) it transpired when Bell went

before the Commission in what was initially to be a routine rate hearing case, the Commission launched a full-scale inquiry into the rate structure of TCTS (by that time known as "Telecom Canada"). This action was called by some at the time as the Commission's "revenge," inflicted by the agency on Telecom because of the earlier Telesat affair (Baby 2 interview). The CRTC had been taking progressive steps ever since 1977 to unravel the rate structure of Telecom. The knowledge that Telecom's revenue settlement procedures were undergoing fundamental changes, which could affect those of Bell, BCTel and Telesat (all entities under CRTC regulation), nevertheless provided the Commission with a reason to launch its inquiry into an area which had been a Commission concern for sometime; "in that sense the 1977 and 1981 hearings are related" (Johnston interview).

GLOSSARY

AGT -- Alberta Government Telephones

CAB -- Canadian Association of Broadcasters

CAC -- Consumers Association of Canada

CBC -- Canadian Broadcasting Corporation.

CCTA -- Canadian Cable Television Association

CRTC -- Canadian Radio-television and Telecommunications Commission

CTCA -- Canadian Telecommunications Carriers Association

CTV -- Canadian Television Network

DOC -- Department of Communications (Federal)

LRC -- Law Reform Commission of Canada

MTS -- Manitoba Telephone System

NFB -- National Film Board

PCO -- Privy Council Office

PMO -- Prime Minister's Office

SaskTel -- Saskatchewan Telephone System

TCTS -- TransCanada Telephone System (now Telecom)

ENDNOTES

Note: After November 1979 the House of Commons Standing Committee on Broadcasting, Film and Assistance to the Arts became known as the Standing Committee on Communications and Culture.

Chapter One

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16. ibid., 22 March 1977: 10:22.

17. Western Premiers' Task Force on Constitutional Trends. Report, 1978: 38; Report, 1979: 35.

18. Bernard Ostry. The Cultural Connection. Toronto: McClelland and Stewart, 1978. 223.

19. Robert Rabinovitch. "Communications Policy and Planning in Canada" (in) Syed Rahim and John Middleton (eds) Perspectives in Communications Policy and Planning. Honolulu: East-West Center, 1977. 238.

20. Gérard Pelletier, Speech to the Canadian Telecommunications Carriers

Association (Delivered by DOC Deputy Minister Max Yalden) 17 June 1974: 7.

21. Jeanne Sauvé, Speech to the Canadian Association of Broadcasters, 18 April 1977: 7.

22. Standing Committee on Broadcasting, 6 December 1979: 8:15.

23. Francis Fox, Speech to the Canadian Association of Broadcasters, 29 April 1980: 4.

24. C.C. Johnston. The CRTC. (for the Law Reform Commission of Canada) Ottawa: Minister of Supply and Services, 1980. 107.

25. Meisel also said on the issue of policy-making that he would prefer to see the ministry assume the responsibility, "which it had partly abdicated over the years" (Globe and Mail, 30 December 1980: 4).

26. On the points made sequentially in this sentence, see: H. Janisch. "The CRTC and Consistency: A Commentary on the TCTS Decision" 1 C.R.R. (2) 1981: 5.184; R. Woodrow and K. Woodside. "Players, Stakes and Politics in the Future of Telecommunications Regulation in Canada" (in) W. Stanbury (ed.) Telecommunication Policy and Regulation. Montreal: Institute for Research on Public Policy, 1986. 172; D. Kaufman. "Cabinet Action and the CRTC: An Examination of Section 23 of the Broadcasting Act" Cahier de Droit (26) 1985. 847; L. Waverman. The Process of Telecommunications Regulation in Canada. Ottawa: Economic Council of Canada, 1982: 170, 205.

27. For an industry view of the Commission's role, see: D. Bradon. "Telecommunications Policy: An Industry Perspective" (in) W.T. Stanbury (ed.) Telecommunications Policy and Regulation. Montreal: Institute for Research on Public Policy, 1986: 440; for an academic view, see: W. Watson. "Its Time to Rein in the CRTC", Financial Post, 21 September 1985: 7.

28. See Financial Times, 13 April 1987· 1-2.

29. Globe and Mail, 15 November 1986: D1.

30. F. Slatter. Parliament and Administrative Agencies. (for the Law Reform Commission) Ottawa: Minister of Supply and Services, 1982. 85.

31. Law Reform Commission of Canada. Independent Administrative Agencies. Ottawa: Ministry of Supply and Services, 1980. 73.

32. H. Janisch. "Policy-making in Regulation: Towards a New Definition of the Status of Independent Regulatory Agencies in Canada" Osgoode Hall Law Journal (17.1) 1979: 50.

33. Economic Council of Canada. Responsible Regulation: An Interim Report. Ottawa: Canadian Government Publishing Centre, 1979. 56-57.

34. F. Slatter, 7.

35. H. Janisch 1979: 49-50.

36. op. cit., 86-87.

37. Economic Council 1979: 54.

38. H. Janisch "The Role of the Independent Regulatory Agency" University of New Brunswick Law Journal (27) 1978: 87.

39. Quoted by O.P. Dwivedi. "On Holding Public Servants Accountable" (in) O.P. Dwivedi (ed.) The Administrative State in Canada. Toronto: University of Toronto: 1982. 157.

40. Ontario. Royal Commission into Civil Rights (McRuer Commission) Report Number One. Toronto: Frank Fogg, Queen's Printer, 1968.: 356.

41. Law Reform Commission. Independent Regulatory Agencies: A Framework for Decision-Making. Ottawa: Minister of Supply and Services, 1985. 43.

42. Andrew Roman. "Cabinet Directions to Regulatory Agencies: A Bold Leap Backwards" 1 C.R.R. (2) 1981: 5-143.

43. Penny, 14.

44. C.L. Brown-John. Canadian Regulatory Agencies. Toronto: Butterworths, 1981. 23.

45. Baum, 719.

46. On the lack of government telecommunications policy see: Globe and Mail, 7 May 1985: B1.

47. Janisch, 1978: 83-84.

48. For a discussion of the political aspect of regulatory decisions, see ibid., 104.

49. On the Commission decisions reviewed recently, see: Cinema Canada, June 1987: 47; Financial Post, 22 February 1988: 1-2; ibid., 25 April 1988: 5; Globe and Mail, 26 February 1988: A7.

50. Janisch 1978: 371-373.

51. Baum, 726-727.

52. On the notion of "consensus" that the government should make policy, see Johnston, 91. On the regulatory process's need for political solutions, see Janisch 1978: 106.

53. R. Schultz. Federalism and the Regulatory Process. Ottawa: Studies and Research Group, Federal-Provincial Relations Office, Government of Canada, 1978. 31-32.

54. Law Reform Commission 1980: 54

55. Economic Council 1979: 59.

56. Royal Commission on Financial Management and Accountability (Lambert Commission) Final Report. Ottawa: Minister of Supply and Services, 1979. 314.

57. Slatter, 113. Theodore Lowi advocates reducing the possibilities for agency policy-making by specifying in detail the policies to be implemented, at the time its mandate is granted (see chapters 5 and 10, The End of Liberalism. New York: Norton, 1969). Meanwhile, Parliament's supervision and acquisition of knowledge regarding the regulatory process can be summarily described as occurring both unsystematically and indirectly - investigation and criticism occur only in a piecemeal fashion with review partly occurring during the House Question Period and parliamentary committee work, particularly at the time of the annual estimate review (op cit) For a discussion on how the House standing committees can be granted an enhanced reviewing function, see H.W Arthurs ("Regulation-Making The Creative Opportunity of the Inevitable" Alberta Law Review (8) 1970· 320). D'Aquino et al. describe the trials and tribulations of performing committee work. In all, a "sporadic, uncoordinated and haphazard approach" characterizes the surveillance by parliamentary committees of governmental policy administration (Parliamentary Democracy in Canada. Toronto: Methuen 1983. 63). See Slatter on the staggering membership turnover with the Standing Committee on Broadcasting (146 (Footnote no 149))

58. Schultz 1978: 32.

59. Janisch 1979: 50.

60. op. cit.

61. J.M. Evans, et al. Administrative Law: Cases, Texts and Materials. Toronto: Emond-Montgomery, 1980. 747.

62. ibid.: 732.

63. Janisch 1979: 102.

64. Roman 1981: 144.

65. Andrew Roman. "Legal Constraints on Regulatory Tribunals: Vires, Natural Justice and Fairness" Queen's Law Journal (9.1) 1983: 51.

66. Lambert Commission 1979: 318.

67. Law Reform Commission 1980: 88.

68. See Douglas Hartle for a description of the contrasting perspectives to a Cabinet review held by potential parties to such a process: government ministry, interest groups, appointed members of statutory agencies, opposition parties, and the media (Public Policy, Decision-Making and Regulation. (for the Institute for Research on Public Policy) Toronto: Butterworths, 1979. 127-131). See also Johnston 1980: 85-86.

69. Economic Council 1979: 59.

70. Janisch 1979: 64.

71. ibid.

72. Richard Schultz. "Regulatory Agencies and the Canadian Political System" (in) K. Kernaghan (ed.) Public Administration in Canada. Toronto: Methuen, 1982. 77.

73. Economic Council 1979: 59.

74. On the issue of why government feels the need to possess a directive power, see Roman 1981: 5-148.

75. For further discussion on the directive power, see Janisch 1979: 103; Lambert Commission 1979: 49, 317-318; Law Reform Commission 1985: 26; Roman 1981: 5-144, 5-149 to 5-150; Vandervort 1979: 130.

76. Law Reform Commission 1980: 82.

77 On the issue of the appointment of commissioners to regulatory boards, see Economic Council 1979: 59; Law Reform Commission 1985: 78 and Law Reform Commission 1980: 81.

78. Economic Council 1979: 60 The use of the budget as a means to control the policies of regulatory agencies was strongly discouraged by the Lambert Commission (1979: 314). Nevertheless, as the Law Reform Commission report of 1985 remarked, little is known of how agency processes of policy and decision-making (and the related issues of agency organization and management style), are affected by its budget (78).

79. Law Reform Commission 1980: 82.

80. Economic Council 1979: 60.

81. op. cit.: 89.

82. Janisch 1978: 87-93.

83. op. cit. 78.

84. Richard Schultz and Alan Alexandroff. Economic Regulation and the Federal System (for the Royal Commission on the Economic Union and Development Prospects for Canada) Toronto: The University of Toronto Press, 1985. 21.

85. ibid.

86. Janisch 1979: 87.

87. Schultz and Alexandroff, 1985: 22.

88. ibid.: 23.

89. ibid.

90. ibid.: 23-24.

91. ibid.: 24.

92. ibid.

93. ibid.

94. ibid.

95. ibid.

96. Penny 1970: 13.

97. ibid.: 14.

98. Quoted in Janisch 1978: 93.

99. ibid.

100. ibid. On the issue of the political "sensitivity" of broadcasting activity, see also: Frank Peers, The Public Eye: Television and the Politics of Canadian Broadcasting, 1952-1968. Toronto: The University of Toronto Press, 1979; David Ellis, Evolution of the Canadian Broadcasting System: Objectives and Realities. Ottawa. Minister of Supply and Services, 1979.

101. On the topic of BBG board members, see Ellis 1979: 49; on the questionableness of Board decisions, see Peers 1979: 259.

102. Canada, House of Commons, Debates, 17 October 1967: 3174.

103. ibid., 1 November 1967: 3746.

104. Canada, Senate, Debates, 15 February 1968: 859.

105. Baum 1975: 698.

106. As used in Schultz 1978: 33-34.

107. Economic Council 1979: 61; Ellis 1979: 81.

108. Economic Council 1979: 108 (Footnote no. 59).

109. Law Reform Commission 1980: 54.

110. Baum 1975: 703.

111. Schultz 1978: 35.

112. op. cit.

113. Johnston 1980: 22.

114. On CRTC use of policy statements, see Baum 1975: 707, 705, 711; regarding the Supreme Court viewpoint on Commission use of such "guidelines", Janisch 1979: 46. The courts intersect with regulatory agencies on the basis of ability to question the validity of their application of their subordinate legislation. This is accomplished by scrutinizing whether its dispensation fell within the authority granted by the legislative enabling act. As Dreidger states the principle employed by the courts:

> If the statute confers the power, the regulation is valid; if the statue has not conferred the power, then the regulation is ultra vires (ie. beyond, in excess of powers authorized)

(Elmer Dreidger. "Subordinate Legislation" Canadian Bar Review (38.1) 1960: 5).

115. Schultz 1978: 36.

116. Janisch 1979: 63.

117. Schultz 1982: 78.

118. op. cit.: 64.

119. Roman 1981: 5-139.

120. Baum 1975: 703.

121. The requirement that the DOC grant CRTC licensees a technical permit is one reason why Janisch asserts that the 1968 Broadcasting Act failed to establish a truly "independent" public authority (1978: 93).

122. Peers 1979: 410.

123. Penny 1970: 12.

124. Johnston 1980: 21.

125. op. cit.: 14, 12.

126. Schultz and Alexandroff 1985: 11.

127. Schultz 1978: 34-35.

128. Johnston 1980: 46.

129. ibid.: 84.

130. ibid.: 99.

131. On the provincial wish for a broad federal directive power over the CRTC, see Janisch 1979: 93, on that of the DOC, Roman 1981: 146.

132. For past examples of the DOC-CRTC "guerilla war", see Janisch 1978: 83-85.

133. Jansich 1979: 65.

134. On the issue of the CRTC and children's advertising, see Baum 1975: 707.

135. ibid.: 702.

136. Ellis 1979: 73.

137. Schultz 1982: 64.

138. ibid.: 63. The collective federal-provincial governmental inertia, due to long-standing jurisdictional conflict in both broadcasting and telecommunications, appears to have contributed to the legislative vacuum in which the CRTC, applying its discretionary authority and needing to arrive at decisions on a daily basis, developed what appears to many to be "policy". Schultz characterizes this policy-making by an independent agency, an outcome which both levels of government have criticized, as the result of the CRTC "having been thrust into, or willingly accepted, depending on one's point of view, such a role" (ibid.: 64).

139. Baum 1975: 727.

Chapter Two

1. Information from John Hylton, personal interview, 21 September 1988 (henceforth Hylton).

2. Secretary of State, The Honourable J. W. Pickersgill, and the Minister of Transport, The Honourable George McIlraith, Press Release, December 1963. The BBG was asked to investigate the issue of microwave importation although it had no jurisdiction over cable. Until 1968, the issue of cable and microwave importation was to remain a DOT responsibility.

3. The federal government amended the Radio Act during the 1960s to give the DOT the authority to regulate the microwave transmission of American signals for cable systems (Province of Manitoba, "Broadcasting and Cable Television: A Manitoba Perspective", May 1974: 28). The foregoing discussion in the text on the general cable freeze of 1963 is based on the PhD thesis work done by Allen Bartley of McGill University ("Ottawa Ways: The State, Bureaucracy and Broadcasting 1955-1968". Forthcoming, 1989)

4. The BBG did not produce many of the studies on the Canadian broadcasting system that had been asked of it. This was the case with the requests made of the BBG to investigate the issues of religious broadcasting and Canadian content. The lack of agency follow-through may partially have been accounted for by the nature of the organization. The BBG remained a small outfit, with staff members who for the most part were not versed in or prepared to handle complex issues Perhaps it is difficult to be critical of the BBG's lack of response on issues placed before it for study as the agency lacked many of the resources necessary to produce the follow-through asked of it.

5. The discussion within the government on the issue of microwave importation occurred, for instance, between the Secretary of State and the BBG and was concerned as to whether future cable licenses could be controlled in the ratio of American to Canadian signals carried (see forthcoming PhD thesis by Allen Bartley).

6. Information from Harry Boyle, personal interview, 21 September 1988 (henceforth Boyle 1).

7. The advent of colour television emissions produced an increased demand for cable systems, whose initial role was to pick up and strengthen the signal of off-the-air stations, thus improving their reception clarity

8. Canadian Radio-television and Telecommunications Commission (henceforth CRTC), Canadian Broadcasting and Telecommunications Past Experience, Future

Options. Ottawa: Minister of Supply and Services, 1980. 39.

9. Information from Boyle 1 interview.

10. ibid.

11. ibid.

12. These early decisions that the Commission made about cable included, for instance, that there had to be exclusive territory for cable licensees (Information from Leona Mory, personal interview, 31 August 1988 (henceforth Mory)).

13. The basis on which broadcast licenses were granted (namely) involved the ascertainment that a region possessed sufficient resources to support a local broadcasting endeavour and that once operational, this station should not suffer undue competition to its advertising base.

14. Information from Boyle 1 interview.

15. ibid.

16. ibid.

17. Information from Mory interview.

18. CRTC, "Public Announcement", 13 May 1969: 4; see also Kenneth Goldstein, "Cable Television in Manitoba", Master's Thesis, Northwestern University, 1972.

19. Information from Mory interview.

20. CRTC, "Public Announcement", 24 July 1969.

21. Pierre Juneau, Speech to the CCTA Annual Meeting, 14 May 1969: 16. The Commission wanted to proceed cautiously with its cable decisions at this time; this decision was also evident in a later agency announcement where the Commission stated that for the present it would grant cable television system licenses only for a period of two years (CRTC, "Public Announcement", 10 July 1969).

22. Information from Harold Halliwell, personal interview, 28 November 1988 (henceforth Halliwell).

23. Information from Hylton interview.

24. The "staff" at the Secretary of State c.1970 was Henry Hindley. He was a veteran in the area of broadcasting policy and had played an instrumental role in the passage of the 1968 Broadcasting Act.

25. Information from Harry Boyle, personal interview, 3 November 1988 (henceforth Boyle 2).

26. Information from John Lawrence, personal interview, 23 August 1988 (henceforth Lawrence).

27. Information from Hylton interview. This instance of prohibition of American signal importation may have had little to do with any DOC concern to maintain the thrust of the 1963 freeze so to protect the Department's policy position of not allowing private microwave systems. The DOC instead wanted any broadcasting microwave carriage demand to be rented from the national systems of either CNCP or TCTS.

28. CRTC, Hearing Transcript, 14-16 October 1969: 41.

29. ibid.: 68, 52, 34, 100.

30. ibid.: 43.

31. ibid.: 68.

32. ibid.: 79.

33. CRTC, Hearing Transcript, 25-27 November 1969: 79.

34. Information from Hylton interview. The discussions between the Secretary of State and the Commission on the issue of microwave importation were held between Pelletier's Special Assistant, Bob Rabinovitch, and the CRTC's General Counsel, John Hylton.

35. CRTC, Public Announcement, 3 December 1969.

36. Information from Mory interview.

37. The Commission sensed that it had "few friends" with its position on microwave importation (ibid.). Nevertheless, and possibly in anticipation of a stormy reception for its decision, the Commission had made "complete" copies of its announcement available to House of Commons and Senate members, broadcasters, and the media in general. These were "the selected groups with access to a full explanation of the decision" (CRTC Research Branch, "Working Paper R-156", 1970: 13).

38. op. cit.

39. Globe and Mail, 4 December 1969: 1.

40. Calgary Herald, 5 December 1969: 1.

41. ibid.: 13.

42. Information from Halliwell interview.

43. CRTC, "Working Paper R-156", 1970: 20.

44. House of Commons, Debates, 4 December 1969: 1587.

45. Information from Hylton interview. The DOC was not consulted by the Commission on the topic of microwave use in regard to cable systems. This was to remain the case over the next year and a half while the Commission worked towards a final cable policy position. Although the DOC had done some work on the issue:

> ... the CRTC would have nothing to do with it and Juneau would never go in for a joint study ... it was difficult to talk to people at the CRTC as they were under orders not to talk to DOC staffers ... even though we were at that time all in the same building ...

(Information from Richard Gwyn, personal interview, 12 September 1988 (henceforth Gwyn)).

46. House of Commons, Debates, 13 January 1970: 2350.

47. Correspondence to the author from Jean Roy, 1988 (henceforth Roy). NDP members, perhaps reflecting their tendency to be elected from urban ridings in Central Canada, did not figure greatly in the outcry which greeted the Commission's decision on microwave.

48. ibid.

49. Roy was a Liberal MP who was to demonstrate a heightened interest in the Commission's endeavours to formulate a cable policy over the next two years. The cable entrepreneur-MP link was also evident in connection with cablecasters forwarding applications for franchises in Calgary and Edmonton. Here, the cablecaster involved, Jim Meekison, sensed the great Commission resistance to the use of microwave after the Kamloops hearings. He subsequently had meetings with his shareholders from the Albertan localities to "explain the issues to them and we got them hot and mad at being treated differently and we got them to contact their local MPs because we knew that without the use of microwave, it (cable) was not going to be viable any other way" (Information from James Meekison, personal interview, 2 November 1988 (henceforth Meekison)).

50. Information from Gwyn interview.

51. The "Political Cabinet" which discussed the Commission's microwave decision was an ad hoc group of ministers which met on an irregular basis to discuss issues of emerging political importance, rather than to deal with matters of policy or proposed legislation. It was at one of these meetings that the issue of microwave came up.

52. Standing Committee on Broadcasting, 15 January 1970: 17:35. The Standing Committee meeting at which the Commission's microwave decision was discussed originally was convened to consider the CBC annual report.

53. ibid : 17:59.

54. ibid.: 17:9.

55. ibid.: 17:62.

56. ibid.: 17:38; 17:45.

57. Information from Hylton interview. The confrontation with committee members over the microwave issue had Juneau "close to tears" (Information from Mory interview).

58. op. cit.

59. ibid.

60. CRTC, Hearing File Submissions, February 1970.

61. Information from Mory interview. The corresponding result of the cablecasters notifying their subscribers to the Commission microwave decision was that much of the mail the Commission received used the same phrasing. This held true across the hundreds of letters received. Many of the letter writers may also have been incited to write the Commission because of media remarks such as an article in the Broadcaster, which, in noting the CRTC propensity to justify its decisions by reference to the Broadcasting Act, said:

> Technically they are right, ... (but) why bother with elections when more and more power is being handed to appointed bureaucrats (March 1970: 4).

62. CRTC, Hearing File, February 1970. Commission cognizance of public opinion on the microwave issue was also evident in its annual report released during this time. Here it was recognized that "public expression of praise is a consideration in the development of CRTC policy" (CRTC. Annual Report 1969-1970, 1970: 91). However, the document was also quick to note Pelletier's affirmation after the release of the microwave decision, that broadcasting was a "Commission concern" (in which it enjoyed "a measure of autonomy") (ibid.: 100)

63. Information from Hylton interview.

64. CRTC, Public Announcement, 10 April 1970: 3.

65. Financial Post, 18 April 1970: 3. As the Commission noted the following year, these April regulations on microwave signal importation constituted the "first time since the beginning of cable television around 1950, (that) it was decided as a matter of general policy that microwave .... could be used" (CRTC, Policy Statement on Cable Television, 16 July 1971: 4).

66. CRTC Research Branch, "Working Paper R-156", 1970: 31. LaMarsh might be expected to take the stance of supporting the Commission as she was a good friend of Juneau. She had brought him into the BBG with the idea that he would head that organization's successor.

67. Standing Committee on Broadcasting, 5 May 1970: 22:6.

68. Information from James Jerome, personal interview, 23 May 1989 (henceforth Jerome).

69. op. cit.: 22:16.

70. ibid.: 22:55; 22:39.

71. ibid.: 22:74; 22:75.

72. ibid., 6 May 1970: 23:52.

73. op. cit.: 22:73.

74. House of Commons, Debates, 8 May 1970: 6733; 13 May 1970: 6920.

75. Senate, Standing Committee on Transport and Communications, Minutes of Proceedings, 19 May 1970: 27:29.

76. Broadcaster, May 1970: 6.

77. ibid.: 17.

78. Pelletier praised the Broadcasting Act during the period of controversy in early 1970, calling it a "very far-sighted piece of legislation", which would be able to incorporate future developments (House of Commons, Debates, 11 June 1970: 8037, 8038). Meanwhile, on the CAB reorganization, see Broadcaster (June 1970: 15). The cable association prior to its reorganization in early 1970 had been a small, ad hoc affair, set up largely to deal with technical issues (Information from Ralph Hart, personal interview, 6 September 1988 (henceforth Hart 1)). Meanwhile, as mentioned in the text, the cable association's traditional adversaries, the CAB, had reduced credibility with the government and the CRTC which was in no small part due to the personal characteristics of its long-time president, T.J. Allard. It also underwent an internal shakedown after the success of the CCTA became apparent. Part of the change at the CAB included the replacement of Allard by Pierre Camu (see: Bryan E. Olney, "The Canadian Association of Broadcasters as a Pressure Group", Master's Thesis, Queen's University, 1974). Camu became head of the CRTC in 1977.

79. Financial Post, 25 July 1970: 1, 5 The rumour that the DOC wanted control of cable demonstrated that the Department, from this very early date, held cable to be of great importance (due to its integrative potential with the telecommunications system). Relatedly, the DOC advocated the legislative switch, in the words of a senior official of the time, "because the Department wanted its say on the future development of cable and was prevented from having it by the Broadcasting Act".

80. Information from Mory interview.

81. Information from Halliwell interview.

82. Personal communication from Roy. The CRTC's plans for a fall hearing had been announced the previous spring (CRTC, "Public Announcement", 10 April 1970: 4).

83. While the Senate report on the mass media stated "we feel that the CRTC is evolving policy as it goes along and that its task has been very difficult", it also directed the agency to come up with a "realistic" policy soon "because the development of cable television in Canada cannot be delayed" (Special Committee of the Senate on the Mass Media (Davey Committee), Report. Ottawa: Information Canada, 1970. 219). The Senators felt the Commission's policy was "not realistic" as the cable guidelines of 10 April were "difficult for a cable operator to administer". Thus it was "not surprising ....(that cablecasters) .... have said they will resist these restrictions with all the means at their command" (ibid.: 218). The opinions contained in the Davey Report reflected the work done by a consultant, Ralph Draper, who was concurrently working for the Commission. Juneau had engaged him to study the financial position of the broadcasters (who had claimed that they could not afford the Canadian content regulations proposed by the Commission). Draper's market research for the Commission however showed that the majority of Canadian broadcasters were sufficiently economically viable that they could withstand competition from American signal importation. This was a position that the Senators evidently accepted (Information from Mory interview).

84. Information from Hon. Senator Keith Davey, personal interview, 27 September 1988 (henceforth Davey).

85. CRTC, Policy Statement, The Integration of Cable Television in the Canadian Broadcasting System. 26 February 1971: 2.

86. Financial Post, 6 March 1971: 19.

87. op. cit.: 1.

88. ibid.: 7.

89. February 1971. 9. The cover of this latest Commission document stressed that "This is an information booklet and is not a policy proposal".

90. Financial Post, 6 March 1971: B3.

91. By early 1971 the Commission had devised a standard reply to the letters it received on the microwave issue. This reply assured the letter writer that his/her comments would be borne in mind during the Commission's deliberations and further stated (tongue in cheek?):

> When announced last year, the guidelines were intended to serve as interim policies for cable applicants and to encourage public discussion ... (CRTC, Hearing Examination File, April 1971).

92. London TV Cable Service Limited, Submission to CRTC Hearing (April 1971), 11 January 1971.

93. Information from Roy interview.

94. Financial Post, 13 March 1971: 17.

95. CRTC, Annual Report 1970-1971. 1971: 22.

96. Senate, Debates, 10 March 1971: 671.

97 The curiosity of the Senators in learning about government control

mechanisms over the CRTC was reflected in the questioning which DOC Minister Kierans faced when he again appeared before the Senate Standing Committee. As had been the case the year before, the senators were keenly interested in learning about the working relationship between the Commission and the Department. Nevertheless, when queried as to what role his department played in influencing decision-making within the CRTC, Kierans suggested that Parliament had been very clear in demarking the lines of responsibility in respect to the Commission. For the Minister it was the DOC, as the "Johnny come lately" on the communications legislative block, who had to "take the situation as we find it". Other questioning by Senators implied that they were anxious to have the DOC move beyond a purely technical role in terms of cable policy. To this, Minister Kierans simply responded that any bureaucratic reorganization would have to wait to see what the "Telecommission" series of reports (then in preparation), had to say on the question of administrative jurisdiction (Senate Standing Committee on Transport and Communication, 11 March 1971: 5:20-5.24).

98. House of Commons, Debates, 5 April 1971: 4923.

99. For the broadcasters' view on the microwave importation question see the CTV Network submission, which advocated prohibition (CRTC, Hearing Examination File, 26 April 1971).

100. Information from Mory interview.

101. Pierre Juneau, Speech to "Reunion tenue sous les auspices de l'I.C.E.A.", April 1971.

102. ibid.

103. Standing Committee on Broadcasting, 15 June 1971: 14:30, 14.31.

104. CRTC, Press Release, 16 July 1971: 1.

105. CRTC, Policy Statement on Cable Television. "Canadian Broadcasting: A Single System". 16 July 1971: 31.

106. ibid.: 33.

107. This sentence is based on information from interviews with Mory and Spiller.

108. Information from Boyle 2 interview.

109. CRTC, Policy Statement on Cable Television. "Canadian Broadcasting: A Single System". 16 July 1971: 1. The statement of the CRTC on cable also noted that the necessity to conduct research, along with receiving public input on the issue, had caused the Commission to "find itself in the position of having to make cable policy cautiously" (ibid.: 2).

110. Information from Mory interview The cablecasters were content that the Commission had accepted their argument that the April 1970 microwave importation guidelines placed them in the difficult position of deciding which two of the three American commercial signals they would carry on their systems (ibid.) These latest proposals eliminated that problem by allowing all the American network signals to be imported into Canada The DOC was not entirely pleased with the latest CRTC microwave decision, however, and indeed the issue of who was to own the microwave systems which were subsequently built over the next few years became a point of tension between the CRTC and DOC

DOC Deputy Minister Gotlieb's statement that the CRTC policy of permitting microwave may allow the development of a "hodge-podge of microwave installations", with the radio spectrum used inefficiently as a result reflected the Department's preference that broadcasters lease microwave facilities from the common-carriers (Broadcaster, August 1972 10) Meanwhile the Commission was to support the broadcaster's argument that they often

needed to own these installations as both the TCTS and CNCP networks wanted to charge what they felt to be exorbitant rates. In the words of the vice-chairman of the Commission at that time, Harry Boyle, the differences in stance between the CRTC and the DOC on this topic was to cause a "battle" between the two agencies every time the topic arose as part of a license application during the early and mid-1970s (Information from Boyle 2 interview).

However the CRTC was convinced that with this 1971 policy document it had the rational underpinnings to frame an orderly introduction of cable "wherever it might want to go" (Information from Hylton interview). Members of the House Standing Committee agreed, feeling the new proposals represented an "acceptably 'objective' minimum set of standards" (Personal communication from Roy). For their part, the cablecasters were pleased with these latest proposals and were henceforth preoccupied with the building of their systems within the new rules. The CRTC mailroom undoubtedly appreciated the new tranquillity on the cable front.

111. Information from Halliwell interview.

112. Information from Meekison interview.

113. CRTC, Hearing Transcript, 3 October 1972: 389.

114. ibid.: 455.

115. A call for microwave importation was repeated during the hearing by the Mayor, the President of the Chamber of Commerce and a MLA of the City of Calgary. Both Commission Chairman Juneau and Legal Counsel Hylton objected to the "leading nature" of the questionnaire on American signal importation that the cable operators had sent out to their subscribers.

116. Richard Taylor was the Liberal candidate supporting microwave importation. He was just one of the many Liberal election hopefuls in the west to face defeat in the federal election of 30 October 1972.

117. The agreement between the broadcasters and the cablecasters on the issue of microwave importation was reached within the guidelines of an existing Commission policy which allowed for commercial and program substitution. The accord, negotiated "over the water cooler" in the hallway of the hotel where the hearing was held, was taken upstairs and presented for approval to the Commission (Information from Meekison interview).

118. Information from Mory interview. Hylton, in face of the cablecasters' petition which called for full microwave signal importation, cited mail the Commission had received from the Canadian public which argued against further American signal importation into Alberta (CRTC, Hearing Transcript, 3 October 1972: 461-462).

119. Information from Mory interview The Commission had hired doormen (cum bouncers) to ensure crowd control during the Edmonton hearing (Information from Hylton interview).

120. Information from Pierre Juneau, personal interview, 24 February 1989 (henceforth Juneau).

121. Information from Hart 1 interview. Again, at the Vancouver hearing, as with the case of Edmonton two years earlier and at hearings such as at Kamloops and Sudbury four years before, it was the careful argumentation of the cablecasters which helped win the day. At Vancouver it was once more emphasized that the cable carriage of American networks was not damaging to Canadian broadcasters (Information from Meekison interview).

122. Information from Halliwell interview. Ironically, in terms of the lasting impact of the entire microwave issue on the broadcasters, the group that the Commission had been anxious to protect, the effect seems to have been

minimal. The importation of American signals was not to have nearly the impact on the Canadian broadcasting system that the Commission in 1969-1970 feared it would. The 1970s were to prove to be boom times for the majority of Canadian broadcasters, some of whom were to make supranormal levels of profit.

123. The undeveloped nature of the cable industry at that time is demonstrated by the fact that during the mid-1960s only a few systems existed which possessed more than 100,000 subscribers.

124. Standing Committee on Broadcasting, 15 June 1971: 14:13.

125. CRTC, Annual Report, 1971-1972. 1972: 21.

126. Information from Hylton interview.

127. A future DOC deputy minister characterized the fact that the government had put a "friend" in charge of the agency as a "bright thing for them to do".

128. Information from Juneau interview.

129. ibid.

130. Information from Hart 1 interview.

131. ibid.

132. Information from Juneau interview.

133. NAC, RG. 97, vol. 183, file B2, Memorandum "Broadcasting Policy" by Henry Hindley, 7 January 1970.

134. Information from Juneau interview.

135. ibid.

136. ibid.

137. Information from Gwyn interview.

138. Information from Maxwell Yalden, personal interview, 10 November 1988 (henceforth Yalden).

139. op. cit.

140. op. cit.

141. While the agency appeared willing to "confront the problem", it has also been suggested in the text that to an extent the CRTC was coerced by the cable industry in this regard.

142. In a speech Juneau was to make a few years later, he referred to December 1969 as the period when "le CRTC a commence a exprimer publiquement la crainte" that the retransmission of American programming could seriously harm Canadian broadcasting (Pierre Juneau, Speech to the Royal Society of Canada, 4 June 1973. 2).

143. Standing Committee on Broadcasting, 15 June 1971: 14:14

144. This sentence is based on information from a personal communication from Roy and the CRTC document, "Public Announcement", 13 May 1969. 1. To explain the Commission's past actions, there might also have been quite simply the possibility that the agency "had not been aware originally" that people subscribe to cable in order to receive American programming - nevertheless, there was now "reason to believe that the Commission is genuinely prepared to take another look at its guidelines" (Toronto Star, 4 January 1971 19)

145. Information from Phillip Lind, personal interview, 21 December 1988 (henceforth Lind).

146. Of the Liberals unexpectedly elected in 1968, one cabinet member informed this writer, "at least one was very open that his motivation in running for office was to advance his legal firm or forwarding his chances to be appointed to the bench - not to get elected!"

147. However the pristine character of the Commission, in terms of its political independence, already seemed threatened. Richard Gwyn has described (in his biography of Pierre Trudeau) the confidential analysis the CRTC was performing for the government on French-language broadcasts aired during the October Crisis of 1970. The objective of this secretive investigation was to identify those announcers and radio stations "suspected of being separatist". Gwyn ascribes this effort as resulting from a meeting between Juneau and Jim Davy (a Trudeau political aide) in a "quiet Ottawa bar" (Richard Gwyn. The Northern Magnus: Pierre Trudeau and Canadians. Toronto: McClelland and Stewart, 1980).

148. Information from Yalden interview.

149. Information from Gérard Pelletier, personal correspondence to the author, 1988 (henceforth Pelletier).

150 This sentence is based on information from interviews with Juneau and Gwyn.

151. op. cit.

152. Information from Harry Boyle, personal interview, 3 November 1988 (henceforth Boyle 2)

153 The communication policy proposals that Trudeau spoke of eventually emerged in the 1973 "Green Paper". On the issue of the ministerial reassignment for the CRTC, the Prime Minister gave the assurance that no change to the Broadcasting Act was envisaged and that the Secretary of State "will continue to have broad responsibility for cultural aspects of broadcasting". The ministerial move was made simply as a result of the "increasing pace of technological development and interaction". Further, the Minister of Communications:

> Who under the Radio Act has a broad responsibility for the development of broadcasting systems in Canada, has been given added responsibility in relation to the CRTC in order to encourage and ensure a co-ordinated approach to policy formulation for the improvement of the regulatory framework for carriers subject to federal jurisdiction and for the resolution of problems created by the increasing inter-relatedness of the broadcasting and communications system" (NAC, RG 100, vol 25, file 218. Pierre Trudeau letter to the CAB, 26 January 1973).

154. Information from Gwyn interview.

155. ibid

156. Information from Juneau interview. The move of the CRTC to the DOC left the CBC with the Secretary of State, which made for "a rather incongruous situation" (ibid.) The reassignment of the CRTC also signalled the essential demise of the Secretary of State as a major state actor in the setting of broadcasting policy The failure of the Secretary of State after 1968 to act as the major governmental policy source on broadcasting (as some had intended), had effectively caused the Department to be "wiped out of the broadcasting picture" during the 1972 bureaucratic reorganization (Information from Ernest Steele, telephone interview, 2 December 1988 (henceforth Steele)).

157. Information from Gwyn interview.

158. The "rationalistic" aspect of the ministerial reassignment probably also appealed to the influential Michael Pitfield in the PCO, with whom the Department was apparently fortunate to possess something of a kindred spirit in its Deputy Minister Allan Gotlieb (ibid.). Both men had the reputation of being more interested in the structure of government than any particular nuts and bolts departmental policy (Information from Christopher Johnston, personal interview, 9 November 1988 (henceforth Johnston)). Gotlieb and his confreres at the DOC had for some time prior to October 1972 been interested in expanding the Department's focus to include not just the "hardware" aspect of communications but also the "software" (or "fun") side of communications. Simultaneously, the interest of Eric Kierans, the first DOC minister (1969-1971) was focused on his "brain-child", the establishment of a domestic satellite system (Telesat). This preoccupation, combined with his confidence in Gotlieb, left the DOC Deputy Minister with much scope in setting the priorities of the young Department (op. cit.).

Thus, with the complaisance of the Minister, Gotlieb et al set about "stretching the DOC mandate from being the hardware department it was supposed to be" (ibid.) As part of this process the Department began a series of initiatives. During this period it launched the "Telecommission Series" with the purpose of identifying issues and untapped policy areas in communications. From 1970 the Department began to take a greater interest in both cable and the CRTC and began to attend Commission hearings (as the implications of the technology for the telcos became clearer) (Information from Boyle 2 interview). In addition, the DOC also began to post field workers to help establish "Native Communications Societies" amongst various aboriginal groups who began to intervene before the CRTC. Nevertheless its major studies such as "Computers and Communications" and "Computers and Privacy" had come to an end during 1972 and no legislative attention was given the Department, the DOC found itself in an impasse by October 1972 Robert Stanbury had become DOC Minister by this time (after the abrupt resignation of Kierans from the Trudeau government) and he had little clout within the Cabinet With the DOC "basic thinking" on communications at an end and stymied by a lackluster minister the Department began to seek other directions in which to push its malleable mandate. This endeavour led its officials henceforth to pursue issues in the areas of cable and broadcasting more vigourously. This was to bring it increasingly into direct conflict with the Commission

159. The discussion of enhanced directive power over the CRTC was reflected in a memorandum prepared by Hindley. He proposed the establishment of a "Standing Interdepartmental Committee on the Use of Reserve Powers under the Broadcasting Act" which would involve the participation of several governmental organizations. Moreover, he foresaw the usefulness of this board in not only providing the CRTC with an opportunity to oppose the issuance of formal directions but also in providing the government with the opportunity to consider policy statements made by the agency (NAC, RG 97, vol. 183, file B2, Memorandum "Broadcasting Policy" by Henry Hindley, 7 January 1970).

160. Information from Yalden interview.

161. ibid.

162. Information from Gregory Kane, personal interview, 30 August 1988 (henceforth Kane). An example of the CRTC's "loss of glamour" in the wake of the microwave issue was the lack of follow through on the "government policy now being developed" which Kierans had spoken of in February 1970 which would have had the DOC relinquish its power to license microwave to the CRTC Pelletier's failure to secure this function for the Commission, in the face of the DOC's jealousy to preserve its prerogative, also marked a waning of the influence of both Pelletier and the Commission at this time.

163. Information from Gwyn interview

164. Information from Juneau interview

165. In fact, the briefings that Pelletier received when he first arrived at the DOC possessed a sizeable cable content, reflecting the growing importance with which the Department regarded cable.

166. Standing Committee on Broadcasting, 29 November 1977: 3:62.

167. Pierre Camu, Speech to the CCTA Annual Meeting, 4 April 1979: 3. Camu's successor, John Meisel, also indicated lasting Commission ambivalence about the outcome of the microwave issue when saying:

> The decisions of the Commission which led to cable companies becoming major purveyors of US services in most of the country was prompted in part by the desire to equalize viewing opportunities of US shows whether a person lived near the border or not. These decisions, ... have certainly contributed to the large-scale availability of foreign programs on Canadian screens (Speech for the Delta Dialogue Series, 15 December 1981: 10).

168. Information from Lawrence interview.

169. Information from Hylton interview.

170. Information from Juneau interview. Juneau thought of the option of requesting governmental direction, "years later". He now favours the approach, as in compensation for allowing microwave permission the government could have directed cablecasters to contribute to a programming development fund, something "which only the government could introduce". Indeed the reality of the resolution of the microwave issue was that "we removed the freeze and got nothing in return" (ibid.).

171. ibid.

172. John Meisel. "Fanning the Air: The Canadian State and Broadcasting". Unpublished paper for the Symposium on "The State and the Arts", Royal Society of Canada. 5 June 1989: 3.

173. ibid.

174. ibid.

175. ibid.

Chapter Three

1. The cable industry courted the CRTC and DOC during the early 1970s, although it regarded the latter as an "arm" of the telcos. This sentiment was reinforced by early DOC-cable industry meetings during which the Department advocated telco control of cable operations (Information from Lind interview).

2. The CRTC wish to retain control over cable operations reflected concerns it held about Canadian communications. These included an initial fear that common carrier involvement with cable would allow cost-averaging between cable television and telecommunications services and so make possible the subsidized importation of American television. A later Commission anxiety was that loss of control over the cable content carried would mean the balkanized introduction of pay-television (Province of Manitoba, "The Canada-Manitoba Agreement and the Future of Cable Communications in Manitoba". June 1977).

3. This sentence is based on information from interviews with Meekison and Boyle (2).

4. op cit

5. The Commission at this time, however, proclaimed itself still prepared to "hear various methods of owning and using physical plant", with a view to reducing costs (CRTC, "Public Announcement", 26 February 1971: 25).

6. Special Committee of the Senate on the Mass Media, Report. 1970: 221.

7. CRTC, Telecom Decision CRTC 77-6, 27 May 1977: 13.

8. NAC, RG 100, vol. 14, file 66, part 1. "The Commission Policy Position on the Ownership of Cable Facilities". 8 March 1974.

9. The hiatus in cable development for Manitoba (and lack of licenses granted for Saskatchewan) was "not the result of any Commission policy on this point", but was perhaps simply a reflection of the nature of the communities left to be cabled (Hylton). Their character included small population size to be serviced, an elevated cost of putting cable into those areas, along with the cost of microwave service from the border to supply them and, lastly, the financial situation of the local broadcasters Additionally, while the attitudes of MTS and SaskTel may not have prevented applicants from coming forth, the known views of these telcos may have dissuaded applications and the Commission's willingness to call a hearing The CRTC usually proposes a public hearing only after it has received sufficient indication that serious applications are likely to be brought forth.

10 Information from The Hon. Senator Jeremy Grafstein, personal interview, 23 September 1988 (henceforth Grafstein).

11. NAC, RG 100, vol. 14, file 66, part 1, J. Lawrence letter to B.B. Torchinsky, 22 August 1973.

12. NAC, RG 100, vol. 14, file 66, part 1, Leo Courville telex to M. Shoemaker, 7 August 1975.

13. NAC, RG 100, vol 14, file 66, part 1, N. W. Harvison telex to Leo Courville, 13 August 1975.

14. Information from Grafstein interview.

15. CRTC, Hearing Transcript, May 1974· 10. This declaration of the Province of Manitoba that it wanted to own all the cable hardware in the province could hardly come as news to the Commission. MTS had written to the Commission three years previously to state that it wanted cable operators only to be in the business of providing "broadcast and entertainment services" and not to own the system hardware (CRTC, Hearing Examination File, 8 April 1971)

16. op. cit · 711.

17. NAC, RG 97, vol. 166, file 205.5, Pierre Juneau letter to Ian Turnbull, 19 March 1974.

18. The suggestion of the "Green Paper" to increase policy power sharing between the two levels of government may have reflected federal government concern that no formal forum existed for a province to raise its communications proposals: "as a result, unilateral action by a province becomes a reasonable solution to them" (NAC, RG 97, vol 195, DOC. Memorandum on the October 1972 Meeting of Western Provinces, 11 October 1972)

19. For a discussion of Pelletier's relationship with the CRTC, see the case study on microwave signal importation (Chapter Two)

20. Information from Gywn interview

21. NAC, RG 97, vol. 193, file "Cable Hardware Ownership", Pierre Juneau letter to Gérard Pelletier, 11 March 1974 A DOC memorandum noted that the departmental desire to promote integrated communications plant planning lined

it up with the views of the carriers and many of the provinces against the position advance by the CRTC and CCTA on the issue of ownership of cable facilities. The memorandum further remarked that "it has never been possible to reach consensus between the CRTC and DOC on this subject", despite the Commission's "number of substantial reasons" for its policy position (NAC, RG 97, vol. 193, "Cable Hardware", ATB. Memorandum to H. Hindley, 19 March 1974).

22. Max Yalden, Speech to the CCTA, 30 May 1974.

23. Max Yalden, Speech to the Canadian Telecommunications Carriers Association, 17 June 1974.

24. The speeches given by Yalden were written by Rabinovitch who had just transferred to the Department.

25. Information from Gywn interview.

26. The Commission's constituency noted that talked-of DOC roles to be transferred to the CRTC (such as the licensing of microwave links) had not occurred. This was read to mean that the "protection" that Pelletier had ensured the CRTC within the Cabinet was now "on the slide" (Broadcaster, June 1974: 3) Coincidentally, at about this time, cable industry representatives began to step up the frequency and duration of their "courtesy visits" to the DOC when in Ottawa to see the CRTC (Information from Lind interview).

27. DOC, Annual Report 1974-1975, 1975. 8. One bureaucrat who moved to the DOC during the early 1970s was Henry Hindley He also came from the Department of the Secretary of State where he had been instrumental in the writing of the 1968 Broadcasting Act.

28. The Secretary of State had seemingly lost its way after the departure of Pelletier and was also rendered ineffectual by its "smorgasbord" collection of responsibility for a variety of policy areas (on this point see the pay-television case study, Chapter Five). The Secretary of State was eclipsed by the DOC pushing the idea that software and hardware had to be grouped together and progressively lost its more dynamic staff members (such as Rabinovitch and Hindley) on account of this (Information from William Neville, personal interview, 19 December 1989 (henceforth Neville))

29. The DOC's first cable policy document, which demonstrated the Department's traditional acceptance of the telcos' arguments on hardware ownership, had begun on Gotlieb's (the previous deputy minister) initiative. It received encouragement from Pelletier due to the increasing trouble he was facing with the provinces over the issue of cable and followed a "cabinet directive for the DOC to encroach on CRTC territory" (J.C Michel Guite. Requiem for Rabbit Ears: Cable Television Policy in Canada Stanford University: Institute for Communications Research, 1977: 36). This trouble with the provinces, in Guite's words, required Pelletier "to bear the heat for the provincial initiatives" then underway in the field of cable (ibid.: 33)

30. ibid.· 37. CRTC staff were instructed not to speak with DOC people at a time when the Department and the Commission shared quarters in the same building.

31 The information in this sentence is based on: Broadcaster, November 1974: 3; Senate Standing Committee on Transport and Communications, 18 November 1974: 3·14; and, also, Guite 1977: 33.

32. Information from Boyle 2 interview.

33. Information from Boyle 1 interview.

34. ibid.

35 This sentence is based on information from Guite (1977: 40) and

Rabinovitch (1977: 238).

36. Senate Standing Committee on Transport and Communications, 18 October 1974: 3:9.

37. Press Release, Western Provinces Meeting, 31 August 1973.

38. Information from Yalden interview.

39. House of Commons, Debates, 5 February 1973: 989.

40. DOC, Minister of Communications, Proposals for a Communications Policy for Canada. Ottawa: Information Canada, 1973. 24.

41. Information from Andrew Watt, personal interview, 19 December 1988 (henceforth Watt).

42. This legislation, Bill C-279, was proposed by Len Marchand, the Parliamentary Secretary to the Minister of Indian Affairs and Northern Development.

43. House of Commons, Debates, 2 October 1974: 28

44. Information from Yalden interview.

45. The implications of the enacted version of C-5, which gave telecommunications regulation to the Commission, are discussed further in Chapter Four

46. Information from Boyle 1 interview.

47. NAC, RG 100, vol. 10, file 52, part 1, de Montigny Marchand letter to Pierre Juneau, 23 October 1974.

48. DOC, Annual Report 1973-1974. 1974: 7.

49. NAC, RG 100, vol. 10, file 52, part 1, Gérard Pelletier letter to Ian Turnbull, 30 September 1974.

50. NAC, RG 100, vol. 10, file 52, part 1, Pierre Juneau letters to de Montigny Marchand, 1 November 1974; 5 November 1974. Juneau twice asked for CRTC and DOC staff to consult in advance of the meeting with Manitoba in order to have a "common understanding" of the agenda to be discussed.

51. NAC, RG 100, vol.10, file 52, part 1, de Montigny Marchand letter to J. D Hylton, 28 November 1974.

52. NAC, RG 100, vol. 10, file 52, part 1, de Montigny Marchand letter to J. D. Hylton, 28 November 1974.

53. NAC, RG 100, vol. 10, file 52, part 1, CRTC memorandum "Issues Arising from Discussions with DOC and Manitoba", n.d.

54. NAC, RG 100, vol. 10, file 52, part 2, Province of Manitoba throne speech excerpt, 12 February 1975.

55. NAC, RG 100, vol. 52, file 52, part 2, Ian Turnbull letter to Gérard Pelletier, 11 August 1975. Hylton conveyed to de Montigny Marchard that he would like their respective organizations to arrive at some common response to the cable policy position taken by Manitoba and agree to a federal policy position in advance of any discussions with the province (NAC, RG 100, vol 10, file 52, part 1, J D Hylton letter to de Montigny Marchand, 19 February 1975).

56 NAC, RG 100, vol 14, file 66, part 1, John Brockelbank letter to Pierre

Juneau, 31 July 1975. Pelletier made clear during the intergovernmental meeting of communications ministers in May 1975 that improved coordination of federal and provincial policies and programs would have to await the holding of a constitutional conference of First Ministers (DOC. News Release, 13 May 1975). This was the case, as he was to publicly protest two months later, because he did not "have the authority" to discuss constitutional changes (Gérard Pelletier, "Statement", Second Federal-Provincial Conference of Communication Ministers, 15-16 July 1975). Nevertheless, by this point Secretary of State Hugh Faulker was becoming involved in the issue. He wrote to Pelletier suggesting the creation of a "Council of Communications Ministers" Faulker also advocated the institution of formal procedures to "more effectively" involve those federal agencies "vitally concerned" with telecommunication and broadcasting issues (NAC, RG 100, vol 10, file 10, part 2, Hugh Faulker letter to Gérard Pelletier, 5 August 1975).

57. DOC, Minister of Communications, Communications: Some Federal Proposals. Ottawa: Information Canada, 1975. 8, 11.

58 CRTC, "Public Announcements", 1 August 1975.

59 NAC, RG 100, vol 10, file 52, part 2, Ian Turnbull letter to Gérard Pelletier, 11 August 1975.

60. CRTC, Examination File P-38 (Decision 76-650) (Frank Dagenstein, letter to R. Wilding, 15 September 1975). The Commission call for license applications for Saskatchewan had come despite the fact the province had not followed through on its earlier indication to the agency that it would drop its stipulations that only a certain class of application (co-ops) would be serviced by SaskTel if they were licensed by the CRTC (NAC, RG 100, vol. 14, part 66, part 1. "Aide-Memoire re. Saskatchewan Public Policy" n.d.).

61. In 1976, to encourage community groups to start up cable systems, Saskatchewan made $5,000 grants available (The Leader Post, 30 October 1976: 3).

62. In communication with private groups likely to apply for a cable license, SaskTel stated that its ownership of telecommunications delivery services was a basic point in its policy. SaskTel nevertheless was confident that no cable operator would be disqualified by the CRTC on the grounds of leasing "his distribution facilities from SaskTel" (NAC, RG 100, vol. 14, file 66, part 1, S. McCormick letter to B. Torchinsky, 10 September 1973).

63. NAC, RG 100, vol. 14, file 66. part 1, Pierre Juneau letter to Juneau. E. Brockelbank, 18 July 1973.

64. CRTC, "Public Announcement", 10 October 1975.

65. This sentence is based on information from: CRTC Examination File W-37 (CRTC Decision 76-650) (Harry Boyle telex to Ian Turnbull, 16 October 1975); and NAC, RG 100, vol. 14, file 66, part 2, Guy Lefebvre letter to C. Day, 16 October 1975. The series of Commission statements on the cable hardware ownership issue reflected the opinion of the CRTC that it was in a difficult situation of "wanting to resist the incursion of the provinces but on the other hand having to recognized that the provincial government's were adamant in their position" (Information from Desmond Loftus, personal communications, 30 August 1988).

66. Province of Manitoba. "Press Release". 20 October 1975

67. NAC, RG 100, vol. 14, file 66, part 1, Harry Boyle letter to John Brockelbank, 10 September 1975 The CRTC viewed the Saskatchewan co-ops as agents for the provincial government (Information from Boyle(1) interview).

68 NAC, RG 100, vol 14, file 66, part 2, John Brockelbank letter to Harry Boyle, 1 October 1975 The Commission was possibly not in a position at this

time to negotiate anything. Juneau left the CRTC on 29 August 1975 and the appointment of a new chairman had not yet been made (House of Commons, Debates, 16 December 1975: 10045).

69. NAC, RG 100, vol. 14, file 66, part 2, Jeanne Sauvé letter to Neil Byers, 13 January 1976.

70. Information from Johnston interview.

71. Ottawa Citizen, 6 December 1975: 3.

72. For further details on the appointment of Boyle as CRTC chairman, see Chapter Four.

73. While the Commission was calling for license applications for Manitoba, all was not well between the CRTC and the DOC. The Department in the summer of 1975 had produced its "CATV Hardware Ownership Discussion Paper" in which the position was taken that:

> ... while the evidence (has shown no) harm in having CATV local distribution plant being owned by CATV licensees at the present time, the long term goal should be a move to carrier ownership on a case by case basis, and as soon as the carrier could show that it was in the public interest.

The Department, concerned about the Commission's "capability to cope with developments in this area", had been attempting to generate CRTC comment on its paper since the previous fall but to no avail (NAC, RG 197, vol. 193, "Cable Hardware", Ken Hepburn, memorandum to Senior Assistant Deputy Minister (Andre Lapointe), 17 February 1976) The Commission eventually discussed the paper with the Department, predictably disagreeing with it on the issue of hardware ownership (Information from Loftus interview).

74. CRTC Examination File P-38 (CRTC Decision 76-651) (Doug Smith letter to I. J. Thomson, 21 November 1975); CRTC Examination File W-34 (CRTC Decision 76-650), (J. R. Mitchell letter to G. Lefebvre, 24 February 1976).

75. NAC, RG 100, vol.10, file 52, part 2, J. R. Mitchell letter to Harry Boyle, 3 March 1976.

76. NAC, RG 100, vol. 10, file 52, part 2, Guy Lefebvre letter to G.R. Kirk, 30 March 1976. The public displeasure about cable service interruption during the MTS "experiment" prompted the company to capitulate and restore transmission facilities to the cable operator affected (Information from Meekison interview).

77. This sentence is based on information from: CRTC Hearing Transcript, May 1976: 295; and information from Meekison interview.

78. op cit. 10, 11

79. ibid.: 54, 55.

80. The LBN system, proposed by the Manitoba government in 1975, was being built by the time of the CRTC hearings in May 1976, in Brandon, Portage La Prairie and Selkirk. It was to provide a signal delivery system for both cable and non-broadcast services (ibid.: 25).

81. ibid.: 28.

82. ibid.: 53.

83. ibid.: 490.

84. This sentence is based on the following sources: NAC, RG 100. vol 10,

file 52, part 2, J.S. Grafstein letter to C. Johnston, 15 June 1976; and, NAC, RG 97, vol. 193, file "Cable Hardware", Jeanne Sauvé letter to James Meekison, 14 July 1976.

85. NAC, RG 100, vol. 10, file 52, part 2, Speech to the Prairie Regional Meeting of Broadcast News Limited, 3 June 1976.

86. Jeanne Sauvé letter to James Meekison, 14 July 1976.

87. ibid.

88. Standing Committee on Broadcasting, 13 June 1976: 52:24. The intergovernmental talks on cable, which aimed to arrive at new "administrative arrangements" with the provinces, had an institutional history before the arrival of Sauvé as minister. They had begun during the regime of Pelletier, were discussed in the Department's "Green Paper" of 1975 and had also been the catalyst for the establishment of an "intergovernmental negotiation mechanism" within the DOC by the time of the arrival of Sauvé. The talks that Pelletier had initiated and that Sauvé continued, to reach new "administrative arrangements" with the provinces, involved the delegation of some powers to the provinces. Topics discussed included both provincial involvement in federal regulatory bodies (ie. the CRTC) and the delegation of certain responsibilities to the provinces.

89. ibid., 18 June 1976: 53:6.

90. ibid.· 53:9.

91. In arriving at a position on the issue of cable hardware ownership, however, the Department seemed dependent upon receiving the Commission's views before "advancing this issue" (NAC, RG 97, vol. 193, "Cable Hardware", Andre Lapointe memorandum to Max Yalden, 24 October 1975).

92 The official went on to say regarding the topic of policy-making that:

> ... you do not publish a policy just because it is ready ... you publish it when there are good political reasons to publish it, to achieve something, . . you don't publish policy if you want to have room to maneuver and you don't state policy (always) for you may then find yourself with less room to move when you need it".

93. NAC, RG 97, vol. 193, "Cable Hardware", Max Yalden memorandum to Jeanne Sauvé, 16 June 1976.

94. Standing Committee on Broadcasting, 25 June 1976: 54:37, 54:38.

95. CRTC, "Public Announcement", 15 July 1976.

96. Globe and Mail, 31 July 1976: 4.

97. Council of Canadian Filmmakers, "Pay-television in Canada", Submission to CRTC hearing (May 1977), 15 April 1977: 197.

98. NAC, RG 100, vol. 22, file 164, Pierre Trudeau letter to Allan Blakeney, 16 September 1976.

99 CRTC, Decisions 76-650, 76-651; 16 September 1976.

100. NAC, RG 100, vol. 22, file 164, James Meekison letter to Jeanne Sauvé, 28 October 1976 As a key DOC official involved in the talks leading to the intergovernmental agreement explained:

> I don't think that it was a secret at all except that we

> weren't about to talk in public about what the details were and what it was that we hoped to accomplish in the Agreement (Information from McCaw interview (henceforth McCaw)).

While the intergovernmental talks continued, the Commission had issued another request for cable applications for Manitoba - a notice which reminded applicant's of the Commission's usual hardware conditions (CRTC, "Public Notice", 4 October 1976: 3).

101. DOC, "News Release", 10 November 1976. One of the groups upset about the arrival of the intergovernmental agreement were the cablecasters They had not known what the topic of negotiation between the DOC and the province had been, but were nevertheless reassured by the Department "not to worry" as they would be consulted. Nothing was "going to happen without their input" With the signing of the accord, the cablecasters were "furious" and began to contact MPs, saying they had been promised a hearing on the issue and had not got it. Jerry Grafstein, who had shares in the cable holding firm affected by the decision on Manitoba (and later to be a Liberal Senator), also "spoke with people in Ottawa" (Information from Meekison interview)

DOC action to intervene with the Commission decisions involved section 23 (review power provisions) of the Broadcasting Act. Ironically, discussion within the CRTC, before the Cabinet action of "setting aside" the Commission decisions took place, speculated that an intergovernmental agreement which appeared subsequent to a Commission hearing could not constitute sufficient justification under section 23 of the Broadcasting Act for Governor-in-Council action (NAC, RG 100, vol. 22, file 104, C C Johnston memorandum to M Shoemaker, 28 October 1976).

102. House of Commons, Debates, 10 November 1976: 937, 938.

103. Information from Yalden interview.

104. ibid.

105. DOC lawyers at the time of the intergovernmental accord felt uncertain as to the possible outcome of any court ruling on the issue of cable jurisdiction (and thus also federal ability to introduce possible national pay-television services), a departmental official of the time stated to the author.

106. For the DOC, the "programming services" which the signing of the Canada-Manitoba Agreement was intended to guarantee effective federal control of "related not just to pay-television but to the provision of a wide range of competitive programming services" (NAC, RG 100, vol 14, file 66, part 5, DOC draft letter to Saskatoon Telecable Limited, n d 1977). The departmental concern was largely over the fate of these "competitive services", for it felt a "satisfactory resolution of the pay-television question" would be forthcoming in the near future. However, as for the matter at hand, the DOC acknowledged that "... any resolution of the current impasse must, of course, involve the Commission ..." (ibid)

107. The DOC hoped that an agreement similar to that with Manitoba could be arrived at shortly with both Saskatchewan and Ontario. The Manitoba Agreement was struck first, however, as that province "wanted the least" (desiring authority only over "non-programming services")

An instance of the "guerilla war" over cable between Ottawa and Quebec was the licensing by the government in Quebec City of different cable operators than those who had been sanctioned by the CRTC This resulted in both the provincially and federally-appointed licensees seeking to install their respective systems in the same territory In at least one case, Ottawa used the RCMP to seize the equipment of a provincially-licensed cable operator.

108. Information from Lind interview

109 Last-minute running back-and-forth occurred between the DOC and the

Justice Department the day Sauvé sought Cabinet approval of her department's intergovernmental accord. This activity took place to satisfy Justice's desire for further information as to what were the intentions of the Agreement (in order to better ascertain the document's constitutionality), an involved official told this author.

110. It was reported that Sauvé had required the consent of "only three other ministers, including the Prime Minister" for the adoption of her department's accord and "not the agreement of the whole Cabinet" (Electronic Communicator, 17 November 1976: 1). The Department's officials had performed much of the required last-minute negotiation with the province via telephone and the Agreement was signed by Sauvé in Ottawa on the day dated. It was then carried to Winnipeg to be signed in provincial government offices there with a direct telephone link opened to the deputy minister's office back in Ottawa in order to learn whether the Cabinet had set aside the CRTC decisions.

111. Financial Post, 2 April 1977: 19.

112. Globe and Mail, 23 November 1976: B1. The news that the Commission was going to obtain legal opinion on the Agreement was greeted with "anger and frustration" by the Department, a senior official of the time told the author.

113. NAC, RG. 100, vol. 22, file 164, C.C. Johnston letter to J. R. Mitchell, 3 December 1976.

114. This sentence is based on information from: Canadian Annual Review of Politics and Public Affairs, 1977. Toronto: University of Toronto Press, 1979: 108; and Boyle interviews (1 and 2). The "preservation of the national (broadcasting) system" was an issue of some importance to the Commission as it wanted to maintain a national standard for programming services distributed because of the possible introduction of pay-television services. It also wanted to be able to direct cable industry revenues into Canadian broadcasting and production (Information from Meekison interview).

115. The Commission (and Boyle) had already gone through the process in the early 1970s of divesting MTS of a radio station it then owned and operated when the Cabinet directive which prohibited provincial governments from owning and operating broadcasting facilities was first issued (Information from Boyle (2) interview).

116. Information from Michael Shoemaker, personal interview, 1 December 1988 (henceforth Shoemaker).

117. NAC, RG 100, vol. 22, file 164, part 1, Jeanne Sauvé letter to Harry Boyle, 14 December 1976.

118. NAC, RG 100, vol 22, file 164, part 1, Harry Boyle letter to Jeanne Sauvé, 31 December 1976.

119. DOC, "Press Release", 21 December 1976: 2.

120. Legal opinion held that the Commission was not bound by the Agreement as the accord had been reached by two contracting parties of which the Commission was not one (Information from Johnston interview).

121. CRTC, "Public Notice", 30 December 1976.

122. The Commission called the cable hearing which would consider the intergovernmental accord both to "allow interested parties to state their opinion on the thing, to try and find some merit in it, and to defuse the situation", and also with the sense that the holding of the hearing would provide a "out" for Sauvé, "a minister who was surrounded by bureaucrats ..." (Information from Boyle(2) interview)

123 Globe and Mail, 31 December 1976: B1

124. Information from Boyle(2) interview.

125. NAC, RG 100, vol. 22, file 164, Michael Shoemaker letter to John Shanski, 21 February 1977.

126. NAC, RG 100, vol. 14, file 66, part 5, Harry Boyle letter to Clifford Wright, 16 February 1977.

127. NAC, RG 100, vol. 14, file 66, part 5, C.C. Foster letter to Roy Romanow, 21 February 1977.

128. NAC, RG 100, vol. 14, file 66, part 5, Noel Bambrough letter to Ron Graham, 3 February 1977.

129. Financial Post, 26 February 1977: 36.

130. This sentence is based on information from: House of Commons, Debates, 28 February 1977· 3468; and, NAC, RG 100, vol. 14, file 66, part 5, Mark Lewis memorandum to Michael Shoemaker, 25 April 1977.

131. Standing Committee on Broadcasting, 17 March 1977· 9:9. The CRTC, for its part, had entered into these talks with the DOC over the intergovernmental agreement to see "what kind of accommodation could be made" (Information from Loftus interview).

132. Departmental staff, according to an official of the time, felt the Commission had made it plain it was not very interested in what they had to say about the Agreement and "was only interested in finding out what its constituency thought of the Agreement".

The Minister in her speech before the CAB complained that with the existing legislative framework the federal government's direct authority over the development and direction of the system was severely circumscribed. Sauvé claimed that this inhibited the government from coming to grips with the problems existing in Canadian communications such as the balance of responsibility between the federal and the provincial governments The Minister also said that under the present Broadcasting Act the CRTC had played a major role in the development of policy and that in the introduction of pay-television "elected governments should be able to exercise more direct control" over the process (Jeanne Sauvé, Speech to the CAB, 18 April 1977 4,7,12).

133. Boyle's remark that Parliament could abolish the Commission if it wanted came in reply to alternatively being told by Committee members (apparently depending on their "pet interest") that the CRTC had been "exercising an authority which it does not have in certain areas" while it had "not been exercising its authority it has in certain (other) areas" (Standing Committee on Broadcasting, 22 March 1977. 10:34).

134. DOC, "News Release", Jeanne Sauvé letter to Harry Boyle, 31 May 1977 The Minister in her letter to Boyle denied that the Agreement in any way weakened the integrity of the Canadian broadcasting system, although the "arrangements differ from those which the Commission heretofore considered necessary for maintaining the integrity of the broadcasting system" This letter constituted the first official DOC intervention at a CRTC hearing in broadcasting matters (Jacques Fremont. "Protection of the Public Interest in Communications Regulation The Canadian Radio-television and Telecommunications Commission" LL.M, York University, 1978· 27)

135. Information from Shoemaker interview.

136. Information from McCaw interview.

137 NAC, RG 100, vol. 14, file 66, part 5, S McCormick letter to Lise Ouimet, 6 May 1977.

138. NAC, RG 100, vol. 14, file 66, part 5, C.C. Foster letter to Ross Milne, 16 May 1977.

139. Boyle's response to the provincial discussion paper was that, as it had been both tabled in the legislature and released to the press in the days just preceding the hearing, "it seems silly to go on with the hearing and ignore it" (CRTC, Hearing Transcript, June 1977: 7).

140 Province of Manitoba, June 1977: 16.

141 op cit.: 107, 195, 652.

142 ibid.: 568, 648.

143. Legal counsel for Greater Winnipeg Cable, Jerry Grafstein, stated: "Consideration of what is in the best interests of the broadcasting system (is something that) nobody else decides .... except you" (ibid.: 71, 72).

144 ibid . 197.

145 ibid : 224, 197, 712.

146 ibid · 650. The Commission had posed a series of questions in its public notice announcing the cable hearings (30 December) which concerned the intergovernmental accord's effect on both cable licensees and on the CRTC's ability to regulate the broadcasting system. The cable association in its submission on these points addressed the "Loss of Independent Status of the CRTC" seemingly appealing to the Commission's pride by saying its ownership policy was developed "in the face of almost continuous political pressures from various provinces, many of whom made a superior case on behalf of telephone company ownership to that of the Manitoba government. Despite this, the CRTC did not yield" (CCTA "Response to Questions Posed by the CRTC in its Public Notice fo 30 December Concerning the Canada-Manitoba Agreement, its Effect on Cable Licensees and on CRTC regulation of the Canadian Broadcasting System". Submission to the CRTC (June 1977) Hearing, 20 May 1977. 14).

147 NAC, RG 100, vol 14, file 66, part 5; Star-Phoenix, 25 June 1977.

148 NAC, RG 100, vol. 14, file 66, part 5, Vern Traill letter to Harry Boyle, 15 June 1977 The co-ops were to make use of SaskTel facilities with content provided by local cable tv co-ops. The local TV co-ops were owned by groups ranging from the YMCA to the University of Saskatchewan (Saturday Night, 13 March 1977: 11).

149 NAC, RG 100, vol. 14, file 66, part 5, Frank Dagenstein letter to C.C. Foster, 11 July 1977.

150 CRTC, "Public Announcement", 8 August 1977: 3.

151 ibid · 7 As part of its licensing decision for Manitoba, the Commission grouped together both the established Winnipeg operators and the newly-licensed rural operators in a consortium. This was obstensibly to facilitate any rate averaging and to ease the burden of the cost of the new headend at Tolstoi. A less publicized reason for the CRTC move was that the Winnipeg operators were businessmen who would want to retain control of their cable hardware whereas the new rural operators were of a more eclectic background and probably would have "been just as happy to let MTS provide for the delivery of cable signals" (Information from Loftus interview).

152 op cit 16. An exchange of letters occurred during the summer of 1977 between Commission Executive Director Michael Shoemaker and a former CRTC legal counsel (John Hylton). Hylton offered his services as "honest broker" between the Commission and the provincial ministers and characterized the cable jurisdictional conflict between the two levels of government as "largely artificial, non-productive and often based on misinformation as to intent"

Moreover he thought the political expectations were now "so high that only a politically achieved resolution of the present situation is possible" (NAC, RG 100, vol. 11, file 52, part 4, J. Hylton letter to J. Shoemaker, 10 August 1977; Shoemaker, Letter to J. Hylton, 22 August 1977).

153. CRTC, "Decision", 15 September 1977.

154. Information from Charles Dalfen, personal interview, 17 August 1988 (henceforth Dalfen).

155. Information from Watt interview.

156. There were five cable systems in operation in Saskatchewan by mid-1975. All were small and had a combined subscription of 6,000 homes (NAC, RG 100, vol. 14, file 66, part 1. M. Storey memorandum to Pierre Juneau, 13 May 1975)

157. NAC, RG 100, vol, 14, file 66, part 5, Remarks of Roy Romanow at Press Conference, 19 September 1977 The negotiations between Saskatchewan and the CRTC were initiated by Roy Romanow for the province (which faced an imminent provincial election). The province was nevertheless in an advantageous bargaining position given that· 1) the Community Cablecaster Act had been passed by the provincial legislature (though not proclaimed), 2) the CPN was ready to start, 3) the cable system SaskTel had been hurriedly building was nearing completion, and, lastly, 4) the Commission's cable licensees were eager to start operations while public pressure for the introduction of service was mounting. It appeared that the point had been reached where a deal had to be made. With all of these factors forcing both sides to the negotiating table, the process culminated in Romanow spending an entire day talking through the issues with the CRTC in Ottawa. And, in contrast to earlier meetings where Commission senior staff had played a leading role, this final deadlock-breaking series of meetings occurred directly between the provincial Minister and CRTC Commissioners

158. Information from Johnston interview

159. Globe and Mail, 9 August 19//: B2.

160. This sentence is based on information from. NAC, RG 100, vol. 14, file 66, part 5, Charles Day letter to Lise Ouimet, 22 September 1977, and, Michael Shoemaker memorandum to D. Loftus, 17 October 1977

161. MTS did not deny the CRTC at this time the right to approve the contract its licensees entered into (NAC, RG 100, vol 14, file 66, part 5, Jon McGuire letter to Andrew Ogaranko, 4 October 1977)

162. This sentence is based on information from NAC, RG 100, vol 21, file 159, part 2, Michael Shoemaker memorandum to D Loftus, 17 October 1977; and, NAC, RG 100, vol. 14, file 66, part 5, Lise Ouimet letter to I. Bobiak, M McLean and B. Berry, 25 October 1977.

163. NAC, RG 100, vol 14, file 66, part 5, Jon McGuire letter to Andrew Ogaranko, 4 October 1977.

164 NAC, RG 100, vol 14, file 66, part 5, C.C. Foster letter to Michael Shoemaker, 31 October 1977

165. NAC, RG 100, vol. 14, file 66, part 5, Charles Day letter to Michael Shoemaker, 9 November 1977 Amongst the changes made to the signal delivery agreement was one which would have, in the joint usage of the cable, programme services carried by the federal operator, who would not be able to carry communications services unless SaskTel agreed (NAC, RG 100, vol 14, file 66, part 5, J. Shoemaker memorandum to Chairman (Pierre Camu), 9 November 1977)

166. The meeting between the Commission and its licensees was followed by a summary of the Commission's position on the matters discussed, done in the

hope of "establish(ing) a clear idea of the courses of action available to the licensees and the constraints on the Commission". The summary made clear that MTS insistence during contractual negotiations that ownership of subscriber drops be vested with the carrier ran counter to the license conditions of 8 August 1977 and that the Commission was not at liberty, "under the provisions of the Broadcasting Act", to contravene its own rulings, and drop the requirement (NAC, RG 100, vol 11, file 52, part 4, CRTC, Draft Letter, 1977).

167. The Commission informed the licensees that they could formally apply to have their conditions of license altered to allow carrier ownership of drops but that this was a matter which would have to be discussed at a public hearing (ibid) However the possibility that the established licensees, MTS and the federal and provincial authorities (if perhaps not the recently appointed rural licensees) "can carry on indefinitely and still be in relatively good shape" made the Commission come to the view "that we are in for protracted deliberations in Manitoba". The Commission nevertheless feared that its desire to avoid "further 'Saskatchewans'" (ie. needing to deal with a province heavily involved in cable as was the case with that province and its co-ops and public (provincial) cablecasting) the new licensees in Manitoba may "come to view the Commission as a scapegoat for their troubles and spread this perception of us, thereby weakening whatever position we have in Manitoba" (NAC, RG 100, vol 11, file 52, part 4, D. Loftus memorandum to M. Shoemaker, 15 December 1977).

168 Sauvé met with the Manitoba Minister on 20 December 1977 to review implementation of the Canada-Manitoba Agreement Meanwhile the cable licensees had appealed to both the provincial Minister and the MTS to drop their insistence on carrier ownership of the drops, all the while continuing to seek advice on their situation from the Commission (NAC, RG 100, vol. 11, file 52, part 4, Eric Lansky letter to R. Kirk, 23 December 1977, J Meekison letter to E R McGill, 18 January 1978; NAC, RG 100, vol. 11, file 52, part 4, Eric Lansky letter to Michael Shoemaker, 30 January 1978).

The Commission had also met during this time with senior representatives of MTS and the Manitoba government. Questioned why the CRTC would not treat Manitoba in the same fashion as it had Saskatchewan (where the carrier had ownership of the drops), Commission staff replied that "Saskatchewan factually was an entirely different situation (and that) the Commission adapted its policy in that Province for a number of external reasons essentially beyond its control" (NAC, RG 100, vol 11, file 52, part 4, J Shoemaker memorandum to Chairman (Pierre Camu), 23 December 1977). The memorandum went on to say that the federal Minister was likely to want a quick resolution of the issue but the Commission would have to tread carefully with respect to its position on drops, both because of "the difficulties the Commission is having in maintaining policy in light of executive department consultations and negotiations" but also as "it seriously can be argued that a situation like that which has arisen in Saskatchewan would not have developed if the Commission had owned the drops" (This comment was in reference to Saskatchewan proceeding with its "CPN" idea) (ibid . 3, 4)

169. NAC, RG 100, vol. 11, file 52, part 4, Michael Shoemaker letter to Eric Lansky, 6 February 1978.

170 NAC, RG 100, vol. 11, file 52, part 4, J. Meekison letter to Lise Ouimet, 25 January 1978

171 NAC, RG 100, vol. 11, file 52, part 4, Michael Shoemaker letter to Pierre Camu. 7 March 1978.

172. ibid

173 NAC, RG 100, vol. 11, file 52, part 4, Marc Dolgin draft letter to D. Smith, 26 April 1978

174 Brandon Sun, 26 April 1978· 1. The CRTC's reaction to its licensees'

move was to have Legal Counsel for the Commission prepare a letter putting on notice any of its Manitoba licensees who pursued further this line of action (NAC, RG 100, vol. 11, file 52, part 4, M. Shoemaker memorandum to L. Durr, 10 May 1978).

175. NAC, RG 100, vol. 11, file 52, part 4, Edward McGill telex to Jeanne Sauvé, 10 May 1978. The CRTC thought the MTS to be under pressure during this period to resolve the situation. The existing lease with the Winnipeg operators, if not terminated on or before 8 May 1978, would be carried over for an additional five years on its present terms and conditions (NAC, RG 100, vol. 11, file 52, part 4, J. Shoemaker memorandum to the Executive Committee, 12 April 1978).

176. This sentence is based on information from· NAC, RG 100, vol. 11, file 52, part 4. Brandon Sun, 6 May 1978; Standing Committee on Broadcasting, 23 May 1978: 16·26; and House of Commons, Debates, 25 May 1978: 5717

177. The cable service that ultimately got underway in Saskatchewan was a basic 12 channel service on the "federal wire" while CPN, on the "provincial wire", offered three channels. These were all closed circuit and involved a movie channel, a childrens' channel and a premium phone service

178. The information in this sentence is based on interviews with Meekison and R. Cusson (telephone interview, 3 March 1989)

179. op. cit.

180. See Globe and Mail, 1 December 1977: B1.

181. Information from Bernard Ostry, personal interview, 4 November 1988 (henceforth Ostry).

182. Information from Juneau interview.

183. Information from Yalden interview.

184. The Leader-Post, 30 October 1976: 3.

185. NAC, RG 100, vol. 14, file 66, part 2, Jeanne Sauvé letter to Neil Byers, 13 January 1976.

186. NAC, RG 100, vol. 14, file 66, part 2, M. Shoemaker memorandum to H. Boyle, C. Johnston and P. Grant, 15 January 1976.

187. CBC Newscast. "The National", 7 September 1975.

188. Information from Shoemaker interview.

189. Information from Loftus interview.

190. Information from Juneau interview

191. ibid. Juneau maintains that a decision on the question of cable hardware ownership was needed soon after the establishment of the Commission due to the hundreds of applications which were outstanding.

192. ibid.

193. Information from Loftus interview

194. Information from Yalden interview For countervailing opinions to the portrait of Juneau as an omnipotent chairman of the CRTC, see the remarks of Pelletier (Broadcaster, April 1970: 3) and Standing Broadcasting Committee Chairman John Reid (Broadcaster, January 1974: 28)

195. Information from Shoemaker interview. For a discussion which suggests that the situation of the DOC as a policy-maker had not really changed a decade later, see Chapter Five on the introduction of pay-television.

196. As noted in the text, the only cabinet directive that was issued to the Commission during the Pelletier regime was on the "Canadianization" of the broadcasting system. This directive had to be, in the final analysis, drafted by the Commission itself rather than the government.

197 Information from Juneau interview.

198. Opposition Critic Nowlan, for instance, quoted Minister Rhodes of Ontario at this time as saying that the federal government was "introducing" communications policy via the CRTC (House of Commons, Debates, 21 April 1975: 5038-5039)

199. Information from Michael Hind-Smith, personal interview, 12 August 1988 (henceforth Hind-Smith).

200. Information from Juneau interview.

201. ibid

202. ibid

203. The source of the DOC sentiment which viewed the Commission reaction to its intergovernmental accord as an "insult" has the potential to make for an interesting study, as much of the Department energy for reaching an accord with Manitoba and referring back the Commission decisions appears to have originated from a lower level of the DOC bureaucracy than might be expected considering the importance of the issue at hand The initiative certainly seems to have rested in the early stages with officials other than the deputy minister or assistant deputy ministers of the Department. Interestingly, while Deputy Minister Yalden described himself as "more relaxed than most of his crowd" at that time (Information from Yalden Interview). Yalden was also perceived by some, however, as a poor administrator because he had allowed members of his staff to "test out their wings" thus resulting in "flights of fancy" such as the Canada-Manitoba Agreement (Information from Halliwell interview) This issue of the source of policy-initiation within the DOC at this time resurfaces in Chapter Five which deals with the introduction of pay-television, particularly in connection with the Minister's June 1976 speech declaring pay-television "inevitable" (For a discussion on the possibilities available to more junior departmental officials to initiate policy, and sometimes see it through to implementation, see Roman 1979: 213-215).

204. The "legal questions" concerning the Department's intergovernmental agreement largely revolved around the niceties of whether the Minister had the power to enter into the Agreement when her responsibilities could be interpreted as only involving the technical aspects of broadcasting. Nevertheless the government ultimately decided that between "section 5.2" of the DOC Act (which permits the Department to negotiate intergovernmental agreements), and "section 23" of the Broadcasting Act (allowing ministerial review of Commission licensing decisions), the Cabinet could presumably take into consideration any agreement reached by the DOC and justify referring a decision back to the Commission

205 Information from Peter Grant, personal interview, 21 December 1988 (henceforth Grant)

206 Information from Shoemaker interview.

207 ibid

208 Information from Johnston interview

209. The key role that Commission staff had played in devising the accommodation eventually reached in regard to cable hardware ownership for Manitoba ans Saskatchewan is suggested by an internal agency memorandum of April 1976 (two years earlier) which asked whether the Commission could permit a division of the coaxial cable capacity among separate users (NAC, RG 100, vol. 14, file 66, part 2, J. Hylton memorandum to C.C. Johnston, 2 April 1976).

210. This sentence is based on information from interviews with McCaw and Dalfen.

211. Information from Grafstein interview. One of the original Winnipeg licensees still claimed when interviewed in 1988 that he had been on the verge of successfully renewing his contract with MTS until the DOC began its intensified talks with Manitoba during the summer of 1976.

212. Information from Juneau interview.

Chapter Four

1. For an example of the argument that the CRTC has been a dominant telecommunications policy-maker, see Janisch 1981· 5.184.

2. Woodrow and Woodside, "Players, Stakes and Politics . .", 1986 172.

3. Canada. Telesat Canada Act. S.C. 1968-1969, c 51.

4. Chapman, J. H., et al. Upper Atmosphere and Space Programs in Canada Ottawa· Queen's Printer, 1967.

5. The more properly speaking "political" reasons for the establishment of a Canadian domestic satellite system involves three areas of "national need", fulfillment of which were deemed of "vital importance for the growth, prosperity and unity of Canada". These are· 1. the supplying of broadcasting services in both French and English to points across the country. 2 the provision of telephone and television service to points in the North 3 the supplementing of telecommunication services in the expanding east-west market in southern Canada

6. Information from Loftus interview.

7. ibid.

8. Information from Gywn interview.

9. CRTC, Telecom Decision 77-10: 271.

10. Electronic Communicator, 2 June 1976: 1.

11. Each member company of TCTS owns the entire plant in its area of operation and is solely responsible for the raising of capital necessary for construction of that plant and for the operation of all facilities in its area The members jointly share the administrative costs and service expenses of TCTS The organization's individual companies share the profits of the System in accordance with a "Revenue Settlement Plan" determined by the Board of Management of TCTS (op. cit.: 273).

12. ibid.. 271.

13 NAC, RG 100, vol. 20, file 157, part 1, D.S. Loftus memorandum to J.M Shoemaker, 7 September 1976

14. CRTC Telesat-TCTS Hearing Examination File, D.A. Golden letter to Jeanne Sauvé, 7 September 1976

15. This clause of the Telesat-TCTS proposal allowing the satellite corporation direct access to the marketplace is of importance for later Telesat developments. See Appendix 3.

16. Information from Yalden interview.

17. ibid.

18. Information from Johnston interview. On the transfer of regulatory responsibility for telecommunications to the CRTC, see also Chapter Three.

19 Standing Committee on Broadcasting, 25 June 1976: 54:4, 54:5.

20. A Commission memorandum at the time when the Commission assumed regulatory authority of telecommunications reveals the regulatory philosophy which would guide the agency in its new function: this regulation would be "of the 'dynamic' type rather than retrospective, with a social goal approach", thus being managerial rather than corrective in outlook (NAC, RG 100, vol. 5, file 25, part 1, CRTC memorandum, "Review of Telecommunication Regulation", N.D.).

21. The Commission embarked on a training program for its new telecommunications staff as the CTC people coming in were not "up to snuff" in terms of ability to do analytic work (Information from Jean Baby, personal interview, 29 September 1988 (henceforth Baby(2)). In fact, the CTC had had something of a reputation of simply granting whatever Bell or the other telcos might request in their appearances before the regulatory tribunal, without beforehand making a critical independent analysis of their demands.

22. Information from Boyle(1) interview.

23. This sentence is based on information from interviews with Boyle(2) and Yalden.

24. Information from Loftus interview.

25. The DOC-CRTC meeting on Telesat-TCTS plans followed others held since the Commission had assumed regulatory responsibility for telecommunications. During this time the CRTC also requested departmental documents on a variety of topics in order to assist the agency "in establishing an inventory of information on basic telecommunication issues" (NAC, RG 100, vol. 5, file 25, part 2, Harry Boyle letters to Jeanne Sauvé and Max Yalden, 12 March 1976).

26. NAC, RG 100, vol. 20, file 157, part 1, J.M Shoemaker memorandum to the Executive Committee, 1 October 1976.

27. Information from Loftus interview. The Commission sentiment that the government at the time of Telesat's founding intended the company to be independent is reflected in a CRTC document of 1 October (1976). It mentions Kierans' appearance before the House Broadcasting Committee in 1969 wherein he stressed that with the Telesat Canada Act the government wanted to establish a company which would be run on a "commercial basis". The Commission "Background Paper" read this to mean "self-supporting"

28. Information from Loftus interview.

29. House of Commons, Debates, 8 November 1976: 838.

30. CRTC, Telesat-TCTS Hearing Examination File (Jeanne Sauvé letters to D.A. Golden and E. Thompson, 23 November 1976)

31 The Telesat Canada Act contained a provision which specified the limit of investment the federal government could make in the corporation at any one time This limit had already been reached with the construction and launching of the corporation's first generation of satellites (Information from Baby(2) interview)

32. G.B. Doern and J.R. Brothers. "Telesat Canada" (in) A. Tupper and G.B. Doern (eds.) Public Corporations and Public Policy in Canada. Montreal: Institute for Research on Public Policy, 1981. 242.

33. ibid. While Sauvé may have said that implementation of the Telesat-TCTS proposal would give her greater influence over Canada's common carriers, she could probably obtain as much information as needed about TCTS' workings to be "influential" through Bell and BCTel's membership in the organization

34. Telecommunication activity in Canada is a patchwork of regulatory arrangements, ownership and control. Of the members of TCTS, only Bell and BCTel are CRTC regulated (and under federal jurisdiction); the other telco members are under either provincial or municipal control

35. CRTC Telesat-TCTS Hearing Examination File, Harry Boyle letter to D.A. Golden, 26 November 1976. Section 320 (11) of the Railway Act explicitly gives the Commission the power to review the Telesat-TCTS proposed agreement, reading in part:

> All contracts, agreements and arrangements between the company and any other company, or any province, municipality or corporation having authority to construct or operate a telegraph or telephone system or line are subject to the approval of the Commission and shall be submitted to and approved by the Commission before such contract, agreement or arrangement has any force or effect.

36. CRTC, Telesat-TCTS Hearing Examination File, D.A. Golden letter to Jeanne Sauvé, 7 December 1976.

37. ibid., Jeanne Sauvé letter to James Snow, 28 November 1976.

38. ibid , James Snow letter to Jeanne Sauvé, 9 December 1976.

39. NAC, RG 100, vol. 20, file 157, part 1, J.M. Shoemaker memorandum to Jean Baby, 17 January 1977.

40. op. cit., D.A. Golden letter to Jeanne Sauvé, 18 January 1977; R. Turta letter to Guy Lefebvre, 21 January 1977.

41. NAC, RG 100, vol. 20, file 157, part 1, C. Johnston memorandum to M. Shoemaker, 19 January 1977. The Commission was prepared to meet again with Telesat "in order to have a preliminary discussion about the format of procedures for the hearing".

42. NAC, RG 100, vol. 20, file 157, part 1, M. Shoemaker letter to Andre Lapointe, 3 February 1977.

43. Information from Boyle(1) interview. Nothing of the Department's response to the Commission's decision to hold a hearing on the Telesat-TCTS proposal was conveyed directly to Boyle, but "it came back to me".

44. CRTC, "Notice of Public Hearing", 16 February 1977: 2

45. Information from Loftus interview

46. Information from Baby(1) interview.

47. Harry Boyle, Speech to the Montreal Society of Financial Analysts, 19 January 1977

48. Harry Boyle, Speech to the McGill Management Institute, 3 March 1977

49 ibid. Boyle said to this writer that he could sense the resentment

rising in the room as he made his remarks regarding how the Commission intended to regulate telecommunications (Information from Boyle(1) interview).

50. Globe and Mail, 6 April 1977: B1.

51. CRTC, Telesat-TCTS Hearing Examination File, Jeanne Sauvé letters to Harry Boyle and D.A. Golden, 10 February 1977.

52. Jeanne Sauvé, Speech to the CAB annual meeting, 1977: 7.

53. Information from Baby(2) interview.

54. Standing Committee on Broadcasting, 25 March 1977: 12:8.

55. CRTC, Telesat-TCTS Hearing Examination File, Guy Lefebvre letters to R. Turta (Telesat), Guy Houle (Bell Canada) and Rolans Bouwman (BCTel), 22 February 1977

56. CRTC, "Notice of Public Hearing", 19 April 1977: 3.

57. Information from Baby(2) interview.

58. NAC, RG 100, vol. 20, file 157, part 2. CRTC Briefing Material, 21 April 1977.

59. Information from Baby(1) interview.

60. See Chapter Five for more details on the Commission's deliberations on pay-television

61. NAC, RG 100, vol 20, file 157, part 1. Aide-Memoire, "The TCTS/Telesat Satellite Communications Proposal", 1 September 1976.

62. Electronic Communicator, 23 February 1977: 1.

63. CRTC, Hearing Transcript, 25 April-2 June 1977: 30-1.

64. ibid.: 51, 55.

65. ibid.: 89.

66. The testimony given by Eldon Thompson, of TCTS, during the Commission hearing was more straight-forward than that of Golden as he provided matter-of-fact responses to the questions asked. His candidness, according to a senior CRTC official then present, was "completely unexpected". Indeed, Thompson's cooperation so contrasted with Golden's reticence that Dalfen thanked him publicly at the hearing for his efforts.

67. op cit.: 873.

68. ibid.: 874.

69. ibid.: 876.

70. ibid.: 943.

71. Information from Grant interview.

72. Information from Baby(2) interview.

73. TCTS' change of position regarding the disclosure of information during the Commission hearing may have resulted from the new attitude taken by Ernest Saunders, then head of "Law and Corporate Affairs" for Bell and his "realization that the approach that he had used with the CTC was not going to work with the CRTC" A "hard-nosed" lawyer, Saunders was said to have

basically "run" the CTC while it handled telecommunications regulation (ibid.).

74. Information from Loftus interview.

75. CRTC, Hearing Transcript, 25 April-2 June 1977: 2716, 2946, 2955.

76. Electronic Communicator, 4 May 1977: 1.

77. ibid.

78. Winnipeg Free Press, 3 June 1977: 8.

79. Information from Kane interview. The CAC, for instance, was pleased with the reception it received by the Commission at the hearing in contrast to its previous experience before the CTC (ibid).

80. Information from Loftus interview. Ex-CRTC Chairman Boyle describes the Commission desire for the participation of intervenors at telecommunications regulatory hearings as resulting from·

> ... there's a dance that goes on at these meetings between Bell and the regulatory agency ... and (because of) the fantastic resources available to Bell that aren't even available to the regulatory agency in preparation of a hearing ... you open up the forum to let other forces do the work for you ... (Information from Boyle(1) interview)

81. CRTC, Hearing Transcript, 25 April-2 June 1977· 614, 298.

82. ibid. 3117.

83. Jeanne Sauvé, Speech to the CTCA annual meeting, 20 June 1977: 4.

84. ibid.: 11.

85. Information from Dalfen interview.

86. Information from Baby(1) interview. On the issue of ministerial/departmental appearances at Commission hearings, see also Chapters Three and Five.

87. This sentence is based on information from interviews with Watt and Kane.

88. The sources for this sentence are: Vancouver Sun, 19 August 1977: 23; and, Electronic Communicator, 10 August 1977. 1.

89. Globe and Mail, 11 June 1977: 37.

90. CRTC, Telecom Decision 77-10, 24 August 1977: 265.

91. ibid.: 266.

92. ibid.: 275.

93. ibid.

94. The Commission decision on the Telesat-TCTS proposal in part reads:

> Although sections 57 and 58 of the National Transportation Act provide the Commission with certain ancillary powers to condition its approval on the performance of terms or to grant partial, further or other relief, these do not in the Commission's view, empower the Commission to require applicants

to enter into a different agreement than that present for approval under section 320 (ibid.).

95. ibid.

96. ibid.: 285-292.

97. Electronic Communicator, 31 August 1977: 1.

98. ibid.

99. Financial Post, 10 September 1977: 12.

100. ibid. Boyle took the opportunity of a speech to the Broadcast Executive's Society to state that CRTC decisions are the "joint responsibility of the Commission" and not just that of the chairman (Harry Boyle, Speech to Broadcast Executive's Society, 15 September 1977).

101. Financial Post, 24 September 1977: 10.

102. Information from Kane interview.

103. Information from Loftus interview.

104. Information from Johnston interview.

105. This sentence is based on information from interviews with Lawrence, Grant and Dalfen.

106. op. cit.

107. Information from Shoemaker interview.

108. Information from Loftus interview.

109. This sentence is based on information from interviews with Baby(2) Lawrence and Baby(1).

110. Interviews with Boyle(1) and Dalfen provide the information for this sentence. President Golden of Telesat had been a career civil servant himself, holding the post, amongst others, of deputy minister for the Department of Industry during 1963-1964.

111. Electronic Communicator, 31 August 1977: 1.

112. Information from Halliwell interview.

113. Information from Yalden interview

114. ibid. In regard to the directive power, there existed within the DOC some concern that even if the Department possessed it and had been able to issue a directive to the Commission on an issue such as pay-television, the Commission would still find a way to "foot-drag" on the implementation of that directive

115 Information from Grant interview. For its part, Commission thinking on the DOC draft legislation of 1977 (which attempted to rationalize the Radio Act, Broadcasting Act and CRTC Act of 1975 along with the communications sections of the Railway Act) was that it was "awful". The Commission response identified "130 mistakes" in the Department's proposals (ibid.).

116 Information from Shoemaker interview

117 Ottawa Citizen, 23 March 1977: 20.

118. Standing Committee on Broadcasting, 29 March 1977: 13.8.

119. The sources for this sentence are: Ottawa Citizen, 23 March 1977: 20; House of Commons, Debates, 24 March 1977: 4280.

120. Bill "C-43" was criticized on the basis that it still poorly specified where policy-making powers were to reside within the government (Financial Post, 2 April 1977: 19).

121. On the Department's several attempts to enact legislation during 1977-1978, see Chapter Five

122. DOC, "News Release", 3 November 1977.

123. Office of the Privy Council, Order-in-Council P.C. 1977-3152.

124. op cit.

125. ibid : 2. The modifications introduced by the government on the Telesat-TCTS proposal placed conditions on Telesat's participation as a member of TCTS by ensuring that access to its services would be controlled by the Commission (and not by the agreement between Telesat and TCTS); thus "any new prospective users of satellite communications can appeal to the regulatory body for direct contact with Telesat" (Gordon Hutchinson, "The Definitive Story on the Telesat-TCTS Affair" InSearch. (5) 1978· 20)

126 op. cit.: 3.

127 Electronic Communicator, 28 Sept. 1977: 1

128. Electronic Communicator, 19 Oct. 1977: 1.

129. ibid.; Electronic Communicator, 11 January 1978. 1. The rumour that the variance of the Commission ruling on the Telesat-TCTS proposal had "been a hard decision for the Cabinet to take" may have served to smooth the ruffled feelings of the parties the ministerial action was bound to upset, such as the cable association (which urged its membership to contact their cabinet minister (CCTA Communique, (2.17) n.d. 1977) The Order-in-Council, nevertheless, was probably a fairly easy decision for Cabinet to achieve consensus on, given the number of cabinet ministers who had an interest in seeing the proposal approved and the lack of public interest in the matter.

130. Electronic Communicator, 19 October 1977· 1.

131. ibid.

132. Information from Baby(1) interview.

133. Information from Johnston interview.

134. Information from Loftus interview.

135 Information from Lawrence interview. The Commission was expecting the Cabinet reversal of its Telesat-TCTS decision, and had been given 24 hours notice of its pending publication (op. cit.).

136. CRTC, "Press Release", 4 November 1977.

137 Information from Grant interview.

138. Toronto Star, 4 November 1977· C4; Globe and Mail, 14 November 1977: 8. Cabinet "background papers" on Telesat was, according to the newspaper, a recently-introduced class of cabinet document "supposedly open to the public"

139 Electronic Communicator, 5 April 1978· 2

140. House of Commons, Debates, 7 November 1977: 625, 627.

141. ibid.

142. Standing Committee on Broadcasting, 24 November 1977: 1:57.

143. ibid.: 1:45.

144. See CCTA Communique, 18 November 1977: 1.

145. Jeanne Sauvé, Speech to the Royal Society of Canada, 29 November 1977: 11

146. DOC, News Release, 27 March 1975.

147. Sources for this sentence are: Montreal Star, 14 September 1977: D14; and, Marketing, 27 June 1977: 21.

148. Information from Boyle(1) interview.

149. Information from Loftus interview.

150. Information from Johnston interview

151 Information from Lind interview. The case of bureaucratic musical chairs regarding the heads of the CRTC and DOC had already proven embarrassing enough for the government as Juneau after quitting the Commission had lost his bid to become Minister of Communications when he failed to be elected in Pelletier's old riding after quitting the Commission (on this, see Chapter Two). Further, as acting chairman throughout all this, Boyle could conceivably have raised (in his words) "a ruckas" if the government had not formally appointed him (Information from Boyle(1) interview)

152 Information from Boyle(2) interview.

153. Marketing, 27 June 1977: 21.

154 On Meisel's difficulties while chairman, see Chapter Five; Boyle's salary was pegged only minimally above that which he had earned while vice-chairman (op cit.)

155. Information from Lind interview.

156 Vancouver Sun, 19 August 1977: 23. Boyle stayed with the Commission until the government-requested study on CBC/SRC (a deep concern of his) was completed

157. See Montreal Star, 22 August 1977: A9.

158 Information for this sentence is the Johnston interview and CCTA Communique, 15 September 1977· 2.

159. Camu was approached about heading up the CRTC directly by the PMO. Camu's personal friendships seemed likely an asset for him in the position - he was personal friends of both Juneau and Maurice Sauvé, the husband of then-Minister of Communications, Jeanne Sauvé (Toronto Star, 24 September 1977 D3).

160 The CAC in its court appeal to the Cabinet overturning of the Commission decision on Telesat-TCTS argued that while the Cabinet has the power to "vary and rescind", the Cabinet had used the word "vary" in this instance to effectively turn the decision around and substitute its own judgment in place of that which the Commission had rendered (Information from Kane interview).

161 John Meisel, Speech to the CAMPUT Annual Meeting, 7 September 1983· 3

162. John Meisel, Speech to the Canadian Association of Municipal and Public Utilities Tribunals annual meeting, 7 September 1983: 4.

163. Legal precedence holds that if a body has certain powers under statute, it must exercise these powers; thus if the CRTC is able to rule in a matter, it must do so. Meanwhile, on a practical note, it is not feasible for the Commission to announce that it is not ready "just yet" to rule on a contract submitted for approval, as these agreements often come into operational force before being legally sanctioned (as happened with the case study at hand).

164 Information from Dalfen interview.

165. Information from Loftus interview.

166. Information from Lawrence interview.

167. op. cit.

168. ibid.

169. Information from Boyle(1) interview.

170. Broadcaster, January 1979· 16.

171. Senior DOC staffers were of the opinion, as one senior deputy minister of the time phrased it, that if the CRTC Commissioners should find the Telesat-TCTS proposal impossible to implement "they could always resign, at least that's the the way we saw it. .".

172. Donna Kaufman, Lecture, McGill Law Faculty, 11 March 1987.

173. House of Commons, Debates, 20 October 1976: 267.

174. DOC, Annual Report, 1977-1978, 1978: 10.

175. E.B. Ogle. Long Distance Please: The Story of the TransCanada Telephone System. Toronto Collins, 1979 168.

176. Information from Kane interview

177. CRTC, Telecom Decision 77-10: 280.

178. Information from Johnston interview.

179. DOC. Canadian Telecommunications· An Overview of the Canadian Telecommunication Carriage Industry, Ottawa: Minister of Supply and Services, 1983. 24.

180. James Brothers "Telesat Canada· Pegasus or Trojan Horse?" Master's Thesis, Carleton University, 1979· 379.

181. Information from Lawrence interview.

182. Schultz 1982: 6.

Chapter Five

1. CRTC, "The Integration of Cable Television ...", 26 February 1971· 15.

2. CRTC, "Public Announcement", 3 October 1972. 1.

3. Gérard Pelletier, Speech to the CCTA, 23 May 1973· 14, 15.

4. CRTC, "Policy Announcement on Cable Television", 17 February 1975 1

5. ibid.

6. Personal correspondence to the author from Pelletier.

7. Pierre Juneau, Speech to the CAB, 29 April 1975: 27, 28.

8. Pierre Juneau, Speech to the CCTA, 21 May 1975: 16.

9. The Commission wanted the broadcasters to operate pay-television given their role in producing the bulk of Canadian programming (Information from Michael Helm, personal interview, 26 September 1988 (henceforth Helm)).

10. CRTC, Hearing Transcript, 10 June 1975: 398, 273, 654.

11. Manitoba, "Policy Statement Concerning the Community Channel", 6 May 1975: 1.

12. CRTC, Hearing Transcript, 10 June 1975: 925. Pay-television was considered at the June 1975 hearing as only one of many cable policy items The hearing signified the culmination of a three year "tidying up" process of cable regulations that had been undertaken in preparation of a new cable policy. The Commission had based its assessement of the likely impact of pay-television during this period of 1971-1975 very much by the use of a "seat of the pants" approach. Feeling itself strapped for research funds and staff to devote to the subject, the Commission was monitoring events in the US as a source of information. Interestingly enough, none of the staff involved with the issue of pay-television at this point had a strong background with cable, instead being better versed with broadcasting (Information from Hart interview).

13. CRTC, "Policies Respecting Broadcasting Receiving Undertakings." 16 December 1975.

14. Harry Boyle, Speech to the CAB, 26 April 1976: 26, 27. On the intrigue surrounding Boyle's accession to the chairmanship, see the discussion in Chapter Four.

15. Information from Boyle(1) interview Chairman Boyle proposed to CBC and CTV that the two organizations set up a joint pay-television channel (in cooperation with the cable operators) of Canadian programming repeats. He also suggested the establishment of a universal service channel of CBC and NFB programming. The DOC, for its part, when it learnt of these CRTC overtures to the broadcasters, "was livid" (ibid.).

16. For further details on the developing aspirations of the DOC, see also the discussion in Chapters Two and Three.

17. Personal correspondence to the author from Pelletier.

18. See Chapter Two for a discussion on Pelletier's relationship with the agency.

19. Jeanne Sauvé, Speech to the CCTA, 2 June 1976: 2, 10.

20. ibid.: 4.

21. ibid.: 4, 3.

22. On the issue of cable jurisdiction, see also Chapter Two.

23. Information from Lawrence interview.

24. Information from Yalden interview.

25. Hind-Smith had known Sauvé "quite well" since the time when they were

colleagues at the CBC twenty years before (Information from Hind-Smith interview). Thus, with the new Minister, the cable association appeared to have an entrée to the DOC which it had not possessed previously.

26. The brewing tension between the DOC and CRTC reached a critical point with the Commission's decision in 1974 to license a third English-language network (Global). The Department felt the decision constituted a policy issue on which the government should have been consulted and resented that the Commission had gone ahead with the service's introduction under the guise of it comprising a "regulatory issue". Thus the incident of Sauvé's speech exhibited the "tit-for-tat" nature of DOC-CRTC relations at this time with the prevailing sentiment, in the words of an official of the time, that if the agency could "hide behind its regulatory mantle", the Department could likewise not tell the agency "what we've advised the Minister to say".

27. Information from R. Gower, personal interview, 27 September 1988 (henceforth Gower).

28. Harry Boyle, Speech to the CCTA annual convention, 2 June 1976: 1.

29. Broadcaster, December 1976: 1.

30 Broadcaster, July 1976: 17.

31. The sources for this sentence are: ibid.; Marketing, 14 June 1976: 3.

32. Standing Committee on Broadcasting, 25 June 1976: 54:10.

33. CRTC, "Public Announcement", 30 June 1976: 1. Two months were apparently not sufficient time for many intervenors to prepare their submissions for the forthcoming pay-television hearing, the Commission announced in early August that it was extending the deadline date for the filing of submissions to 1 October (CRTC, "Public Announcement", 10 August 1976).

34. Information from Hart interview.

35. Information from Kane interview.

36. Hugh Edmunds, "The Big Picture", Cinema Canada. (3.30) August 1976: 15.

37. op. cit.

38. Broadcaster, August 1976: 6.

39. Edmunds, 1976: 15.

40. Financial Post, 25 September 1976: 3.

41. The CCTA, in the words of an official of the time, "was the DOC's only friend" on the issue of pay-television.

42. op cit.

43. House of Commons, Debates, 1 November 1976: 624, 625.

44 If public debate was indeed desired on the issue of pay-television, it did not need to be held only within the framework of a CRTC hearing as the House Standing Committee could also hold hearings. This would be a possibility over which, of course, the minister and the government had a considerable say in scheduling.

45. CRTC, "Notice of Public Hearing", 3 February 1977 2, 4.

46 Jeanne Sauvé, Speech to the Conference Board of Canada, 9 November 1976: 4, 5

47. Broadcaster, December 1976: 1.

48. A CRTC Research Branch working paper of this time (fall 1976) concluded that Sauvé had declared the introduction of pay-television as "imminent" due to the pressure applied by impatient cable operators to prod the DOC into immediate action. This was due to the appearance of hotel/condominium closed-circuit pay-television systems and ministerial desire to have the CRTC keep "control" (CRTC, "Working Paper R-208", 12 October 1976: 14).

49. House of Commons, Debates, 25 May 1977: 5931.

50. Standing Committee on Broadcasting, 31 May 1977: 20:22, 22:22.

51. Marketing, 27 June 1977: 3, 21. In a bureaucratic sense, rather than any ideological one, Roberts may have been talking about the need for further study on new broadcasting services due to his capacity as Minister "responsible vaguely for culture" and as a minister who felt left out of the action on pay-television occurring at the CRTC and the DOC (Dalfen) However, if Roberts had spoken out in the hope of retrieving some of this "action" for his department, he undoubtedly was disappointed. Since the early 1970s the Secretary of State had continued to be an internally-weak department It had responsibility for the CBC, NFB and the Canada Council organizations among others. In fact, any government entity concerned with cultural/social policy which did not easily fit elsewhere within the bureaucratic structure, seemed to end up at that department (see also Chapter Two) Consequently, the Secretary of State's ability to contemplate pay-television and arrive at a rationalized policy position which it could then fight for was probably hampered by the competing sects which had a voice within the organization on the matter - the film industry, independent producers, the CBC, NFB and so on.

52. CRTC, Hearing Transcript, 13-16 June 1977: 5.

53. The Council of Canadian Filmmakers viewed the government action as emanating from DOC wanting to make evident its new policy-making role, combined with a departmental view that the "CRTC had been doing a poor job of regulating broadcasting and things had been getting out of hand" (CRTC, Hearing Examination File. Council of Canadian Filmmakers, Submission, "Pay-TV in Canada". June 1977)

54. op. cit.· 11.

55. ibid.: 329, 341.

56. ibid.: 841.

57. Vancouver Sun, 19 August 1977: 23.

58. CRTC, "Report S-103", 12 October 1977: 1.

59. Information from Hind-Smith interview.

60. CRTC, Report on Pay-television. 1978: 54.

61. Speculation was that the only adequate pay-television system proposed in regard to Canadian content requirements would be a universal one, over which there was debate that "the CRTC did not have the legal power to set up even it it wanted to". There was some question, however, of whether the Commission had tried to win approval for a universal system (Globe and Mail, 14 March 1978. 1).

62. ibid., 16 March 1978 6

63. Information from Helm interview. The lack of a clear idea within the Commission as to how to proceed with pay-television, even on the part of those who wanted to implement the service, probably resulted from the fact that the

Commission had not conducted any significant new studies on the topic since the time of its last hearing (in 1975) (Information from Hart interview). The disillusionment of pay-television supporters within the Commission due to the lack of resources available, led to some staff members going over to the DOC during the period 1977-1978 (op. cit.).

The suggestion on the part of the CAB at the 1977 hearing that it was "prepared to get involved with pay-television now that it looks inevitable" may have been meant more for public consumption than anything else given subsequent events

64. DOC, News Release, 14 March 1978. Nevertheless, despite Sauvé's remarks that she was in "no hurry" to have pay-television implemented, the Minister was still read as "wanting" the service as it would give her department "a whole new industry to preside over" (Globe and Mail, 16 March 1978 6).

65. Standing Committee on Broadcasting, 23 May 1977 16:14, 16:29.

66. Information from Shoemaker interview.

67. This sentence is based on information from interviews with Boyle(2) and Ostry.

68. Information from Kane interview.

69. Again, on the point of cable jurisdiction wrangles, see Chapter Three.

70. Electronic Communicator, 5 April 1978: 1. The atmosphere at the intergovernmental meetings on communications reflected the character of federal DOC-provincial relations at that time, which was very tense with "a lot of hostility" in the air (Information from Ostry interview)

71. The federal-provincial modelling work on pay-television was just one component of a series of studies initiated by the DOC and performed on a bilateral basis with certain provinces. The other areas included cable, telecommunication competition and industrial policy strategy issues.

72. House of Commons, Debates, 3 April 1978 4061.

73 The information source for the sentence is the Globe and Mail, 5 December 1978: B1. Interviewed for this thesis, Ostry stated that his hopes for the Clyne Committee had been that "it would say something about communications in this country, where it stood and its relation to culture and society as a whole .. (and that the Committee) was set up to draw attention of both the government and the public of the need to think about communications issues that were being dealt with in a piecemeal fashion ...".

74. DOC, "News Release", 30 November 1978: 2.

75. See Electronic Communicator, 6 December 1978: 1, 2. DOC Deputy Minister Ostry stated that he hoped the Commission "wasn't upset" over the Clyne Committee's creation and that the CRTC knew about its appointment in advance (Globe and Mail, 5 December 1978: B1). Former CRTC Chairman Harry Boyle however was later to write that while provincial authorities evidently knew of the formation of the DOC study group, the Commission did not (Globe and Mail, 8 December 1978· 7). Camu, chairman of the CRTC at the time of the establishment of the Clyne Committee, contented himself with the remarks that "the Minister has that privilege ... as you can see, I'm being very careful". Camu further stated that despite events it will be "business as usual" for the Commission (op cit.) Other observers however were not as careful as Camu and did not mince their words. The CAC "Summary of Position" submitted to the Clyne Committee was highly critical of what it viewed as the "ad hoc policy role" of the Committee The CAC defended the Commission during what it called its "period of crisis", a crisis which it viewed as "created and aimed, in part, at undermining the role of the Commission". The CAC further called on the Committee "to support an independent regulatory commission in on-going

policy-making and to call on Parliament to live up to its responsibility for major policy determinations" (NAC, RG 100, vol. 25, file 218, CAC "Summary of Position", 18 January 1979: 1, 3, 4).

76. Globe and Mail, 5 December 1977: 8.

77. NAC, RG 97, vol. 430, file 5-4014-3-3, part 1, J.P. Lefebvre (Assistant Deputy Minister) memorandum to Bernard Ostry (Deputy Minister), 13 April 1978.

78. Information from Helm interview.

79. Information from Dalfen interview.

80. Pierre Camu, Speech to the Men's Canadian Club of Vancouver, 27 February 1979: 4. (Echoes of Juneau's remarks eight years earlier) (see Chapter Two)

81. Information from Johnston interview.

82. Broadcaster, April 1978: 7.

83. Globe and Mail, 18 March 1978: 14.

84. Financial Post, 2 December 1978: 9

85. The sources for this sentence are: Information from Jean Fournier, personal interview, 1 December 1988 (henceforth Fournier); and, Financial Post, 25 November 1978: 9.

86. op. cit.

87. Information for the sentence is from the Watt interview Possible additional reasons why the Department did not obtain passage of its proposed communications legislation (and directive power) at that time included, according to a ministerial aid of the time, the fact that the House's legislative schedule was "in a complete mess" during the last months of the Trudeau government before its 1979 election loss. As well, some senior departmental officials also sensed "a certain lack of ministerial will on the matter".

88 Information from Halliwell interview

89. Reference for the sentence is the Shoemaker interview Certain Commissioners by 1978 were less reticent to visit the Department to speak with Sauvé or the DOC on an individual basis. These included Charles Dalfen and Roy Faibish (ibid.). Both were Sauvé appointees and Faibish had been a personal acquaintance of the Minister before his appointment to the Commission (Information from Halliwell interview)

90. The DOC annual report which appeared at this time remarked that "broadcasting (had) become a major policy preoccupation of the Department" due to its determinate role in producing Canadian programming (DOC, Annual Report, 1978-1979 1979: 10)

91. Broadcaster, July 1979: 9.

92. The DOC stated that the reason for the 1979 round of consultations on pay-television was the threat of new technology allowing cable companies to tap American satellites and their specialty programming (Globe and Mail, 2 March 1979. 5).

93. Information from Fournier interview

94. Other examples of departmental initiative on the topic of pay-television during the period 1978-1979 included the holding of a national conference on pay-television (which the Commission attended) and continuing ongoing

statistical work on pay-television which the Department had begun (ibid.).

Meanwhile, the Department was trying to gain improved access to routine Commission regulatory decisions. The Department asked the CRTC if the "current haphazard process" by which it was notified of Commission decisions "only after they have been made public (thus) causing problems for the Minister in the House" could be improved The CRTC assured the DOC that arrangements would be made so that the Department received "important CRTC decisions immediately on their release" (NAC, RG 100, vol. 25, file 218, Jean Fournier letter to J.M. Shoemaker, 17 April 1979, J.M. Shoemaker letter to Jean Fournier, 21 April 1979) The Department felt compelled to formally write the Commission on this matter as "the Minister's office was lucky to get a CRTC decision the same day it came out" It had occurred on several occasions that not only would the media know of Commission decisions before the Minister but so would the opposition critic. This was Patrick Nowlan, who had a personal relationship with Boyle of the CRTC, a man who Nowlan regarded "as one of the titans of broadcasting in this country" Meanwhile, nowever, relations between Sauvé and Nowlan were strained.

95 MacDonald combined his DOC portfolio with that for the Secretary of State. This lessened the possibility of rivalry between the ministries but raised the question in the House of whether the government intended to "wipe out" the DOC (House of Commons, Debates, 7 November 1979: 1043).

96. Globe and Mail, 4 October 1979 1.

97. ibid.

98 Globe and Mail, 26 October 1979: 10. The apparent ministerial desire to accommodate provincial aspirations on communications issues was also reflected in the federal government's request for provincial input on the filling of "key vacancies" at the CRTC (DOC, News Release, 12 October 1979). Some provinces did not appear to be easily placated however. Both Nova Scotia and British Columbia were displeased that the CRTC was yet again asked to become involved with the process of introducing pay-television (Broadcaster, November 1979: 7)

99. David MacDonald, Speech to the Canadian Broadcasting League, 25 October 1979: 7

100. ibid.

101. D. MacDonald letter to C. Dalfen, 22 November 1979: 3. This reference and the next are from the DOC "News Release" of 29 November 1979.

102 C. Dalfen letter to D MacDonald, 26 November 1979.

103 Information from Fournier interview.

104 A provincial representative later conceded that the wording of the pay-television guidelines forwarded to the Commission was "very broad in nature".

105. Sentence reference is the Hind-Smith interview Likewise, the modelling work that the Department had been doing on pay-television, which was shared with the Commission, had little ultimate impact on the final pay-television policy outcome (Information from Helm interview) Nevertheless, these guidelines and modelling work were to be the first (and last) guidance/material the CRTC received from the Department on the issue of pay-television (Hart) "apart from the innumerable letters and calls that went back and forth between the two agencies" (op. cit.).

106. Information from Fournier interview

107 ibid.

108. Standing Committee on Communications, 29 November 1979: 6:9.

109. Information from Gower interview.

110. References for the sentence are: Broadcaster, August 1980. 44, and the Dalfen interview. The Commission was more than willing to conduct a hearing on the extension of service, as requested by the DOC, because this was a matter which had long been a preoccupation of the agency Pay-television was still, in the Commission view, a matter of lesser priority. Nevertheless the committee members had "no trouble with the mandate" except that the linkage drawn between the two issues caused some difficulty, with the committee needing to "think about how to handle it" (Information from Charles Fever, personal interview, 23 August 1988 (henceforth Fever)). The DOC had connected the two issues, (extension of service and the introduction of pay-television), encouraged by the cable industry, with the idea that the introduction of pay-television in the cabled parts of the country, could contribute towards the introduction of both first service and improved service in "underserved regions" of the nation In the collective mind of the CRTC "this was an odd connection to make" (Information from Gower interview) The Therrien committee proceeded to uncouple the two as it did not see why the extension of service should be in any way dependent on the fate of pay-television (ibid). The Commission followed this approach in its ultimate implementation of the committee's report.

Dalfen had entered into this dialogue with the Minister for he felt that there was nothing "improper in discussing what the committee would look at" and the arrival of a new minister promoted an attitude of "let's have a fresh look at pay-television" (Information from Dalfen interview)

111. Broadcaster, January 1979: 16.

112. op. cit

113. Standing Committee on Communications, 4 December 1979· 7 35. In his appearance before the House Committee after MacOonald, Dalfen also seemed conscious of the need to have as little "delay" as possible regarding pay-television (ibid., 6 December 1979: 8:7)

114. For details on MacDonald's intentions for the latest set of DOC legislative proposals, see the Globe and Mail, 16 October 1979. 5, and the Broadcaster, November 1979: 8.

115 Marketing, 26 November 1979: 32.

116. See Globe and Mail, 9 January 1980: B2.

117. CRTC, "Public Announcement", 8 January 1980: 79.

118. See Globe and Mail, 9 January 1980 B2; Broadcaster, March 1980· 47

119. DOC legal counsel and the Department of Justice had advised, for the usual reasons, against a departmental submission to the CRTC hearing (Information from Fournier interview)

120 DOC, Annual Report, 1979-1980 1980· 11.

121 Besides saying that the time to act on pay-television is "now", Fox also remarked that although in its early years the CRTC had "had to break trail over some very rocky terrain" (and fulfill roles as different as those of legislator and judge), henceforth the Commission was simply to establish and enforce regulations only within the existing legislative framework (Francis Fox, Speech to the CAB annual meeting, "The Government Role in Communications", 29 April 1980· 1, 4)

122. Information from Fever interview.

123. CRTC, The 1980s, A Decade of Diversity: Broadcasting, Satellites and Pay TV. July 1980: 59.

124. Globe and Mail, 1 August 1980: 6.

125. ibid. Once it had divorced pay-television from the question of extension of service (and the existing broadcasting system in general) the Therrien Committee came quickly "and easily" to the conclusion that as long as nothing else was at risk, let those clamouring for pay-television licenses "do as they want" (Information from Fever interview). The committee was thus significant, for in promoting the realization that the licensing of pay-television "will not be the end of the world", it broke the stalemate existing on the question and restarted the process towards resolution of the issue. However, while the question of "whether" pay-television went smoothly, this was much less the case with the question of "how" pay-television This of course was a question which could wait for another day (ibid)

126. Broadcaster, September 1980 9.

127. Information from Gower interview The Therrien committee Report had initially been submitted to the CRTC Executive Committee as "it was the body that would implement any recommendations" (Information from Lawrence interview)

128. ibid

129. Meisel had asked Fox to meet with Commission representatives alone in order to discuss the Therrien report, but the Minister vetoed this suggestion saying he wanted departmental officials with him in any meeting he might have with the agency (Information from John Meisel, personal interview, 1 November 1988 (henceforth Meisel)).

130. ibid

131. Information from Lawrence interview.

132. CRTC, "Public Announcement", 21 October 1980: 1, 2.

133. House of Commons, Debates, 22 October 1980: 3929. To the remark of whether "duress" had been applied on the Commission, Fox replied that the Therrien report did not necessarily represent the views of the whole of the CRTC - thus the recommendation did not entail a policy shift by the CRTC (ibid.: 3930)

134. Broadcaster, "Comment", October 1980: 80.

135. Globe and Mail, 13 December 1980: B3

136. Standing Committee on Communications, 15 July 1980: 3:6.

137. Globe and Mail, 30 December 1980· 4. Meisel had been pressing MacDonald and Deputy Minister Ostry "practically from the day I arrived at the CRTC" to fill the outstanding CRTC commissioner positions (Information from Meisel interview).

138 Reference for the sentence is the Gower interview. The "unhelpful reception" that Meisel met with on the part of some Commissioners was partially connected to his asking Minister MacDonald to take him over to the CRTC to meet the full Commission after he had accepted the post as chairman. The visit was made in the company of DOC Deputy Minister Ostry This was an action which scandalized some members of the Commission who felt that Meisel had permitted an intrusion by the Department into the affairs of the Commission Meisel confesses himself to be completely oblivious at the time to any of these departmental-agency relationship "nuances" (op. cit.).

139. Globe and Mail, 2 April 1980: 7.

140. This sentence is based on information from interviews with Halliwell and Lind. The agency was in a state of "chaos" during the period 1977-1979 as Commissioners, unimpressed with Camu's competency, had taken to challenging him "daily" (Information from Lind interview).

141. CRTC, "Public Notice", 21 April 1981.

142. Francis Fox, Speech to the Canadian Conference on the Arts, 7 May 1981: 17.

143. Globe and Mail, "Editorial", 19 May 1981: 6. The remarks of Meisel on pay-television trace the evolution of the new Chairman in his job, a process which took him from being initially "overly-open and innocent" to eventually adopting, with time, a more cautious attitude (Information from Gower interview).

144. Information from Lawrence interview.

145. Information from Meisel interview.

146. Information from Gower interview.

147. Globe and Mail, 13 August 1981 5.

148. Information from Lawrence interview.

149. Globe and Mail, 8 September 1981: 7

150. Globe and Mail, 9 September 1981· 8.

151. Federal-Provincial Conference of Ministers of Communications. "Joint Closing Communique". 9-10 September 1981.

152. CRTC, Hearing Transcript, September-October 1981: 186.

153. ibid.: 551, 553.

154. ibid.. 989.

155. ibid: 1003

156. Information from Helm interview.

157. Information from Lawrence interview

158. Meisel said that in the call for pay-television applications.

> That even so crucial a factor as Canadian content was left undefined, and that suggestions were sought about its appropriate levels and how they should be measured, indicated the extent to which the Commission was trying to involve applicants in the process of formulating some of of the rules (John Meisel, Speech to the Delta Dialogue Series, 15 December 1981: 17).

159. Financial Post, 7 November 1981: 53.

160. Information from Gower interview.

161. DOC, 23 October 1981: 4 (NAC, RG 57, vol. 430-5055, file 24, part 1).

162. Gower

163. On the jurisdictional issue, see the following submissions to the CRTC hearing of September 1981: Government of Labrador and Newfoundland. "Submission", 24 September 1981; Government of British Columbia. "Submission", 18 September 1981.

164 NAC, RG 97, vol. 430, file 5055-24, part 1, DOC memorandum, 23 October 1981. The slowness of the pace of the talks on reconciling pay-television and jurisdictional questions is evident in the fact that pay-television had been discussed at the Federal-Provincial Ministers Conferences in 1977, 1978 and 1979 (as well as September 1981), it was not until the 1979 meeting that the goal of harmonizing the respective interests of the federal and provincial governments was set. The statement drafted at that time simply said

> The development of pay-television in Canada should take place within a framework that fosters the orderly development of the industry and that accommodates the interests and priorities of provincial and federal governments in pay-television (NAC, RG 97, vol 430, file 5055-24, part 1, DOC, "Draft Report", n.d.).

165. Globe and Mail, 29 January 1982: 3

166 ibid ; Globe and Mail, 20 March 1982· 12. The remark of Fox that pay-television would be "federal", came in response to Quebec announcing a series of regulations for pay-television

167 John Meisel, "Statement", 18 March 1982· 1

168. Information from Gower interview. Meisel said that his mind on pay-television was not made up until after the 1981 hearing had ended and a review of the applications begun (Information from Meisel interview).

169 This sentence is based on information from the Meisel, Gower and Lawrence interviews It can be noted that the 1982 pay-television licensing decisions were rather unusual in that they constituted an exception to the general rule that possession of a CRTC license is a infallible "permit to make money". The exceptional approach in the case of pay-television was possible, of course, because the Commission had divorced pay-television from basic service in order to allow entrepreneurs to "do their own thing" Nevertheless, the decision also included, unusually, the public dissent of two Commissioners who felt that the licensing scheme was over-subscribed

170. DOC, Annual Report 1981-1982 1982· 65.

171 This sentence is based on information from the Fournier and Helm interviews. See also Globe and Mail, 5 March 1983: P12 The provinces, on the whole, were pleased with the 1982 pay-television licensing regime as it avoided the creation of a national monopoly and provided (somewhat) for the establishment of a more flexible industry structure The pattern of multiple licenses allowed some element of regional control and ownership.

172 The sources for this sentence are R S Wilson, "An Historical/Critical Analysis of the Evolution of Canada's Pay-Television Policy", Master's thesis, University of Windsor, 1985 132, see also, R. Woodrow and K Woodside. "A Commentary on the CRTC Licensing Decision of 19 March 1982" (in) R. Woodrow and K Woodside (eds) The Introduction of Pay-Television in Canada Montreal Institute for Research on Public Policy, 1985 211-227.

173 CCTA Communique, 26 March 1982 1 Hind-Smith was quoted that the "CRTC (had) met most of the concerns expressed by this industry as being important to the successful introduction of Canadian pay-television"

174 Information from Juneau interview

175 Information from Fournier interview

176. Standing Committee on Communications, 18 May 1982. 31:28, 31:29 Just after the Minister's appearance before the committee, yet another federal-provincial conference of communication ministers was held during which pay-television was on the agenda These talks also did not arrive at any sort of an agreement, with the result that communications (and a resolution of its jurisdictional questions), did not figure in the constitutional accord reached at, later that year (Francis Fox, "Pre-Conference Statement by The Honourable Minister Francis Fox Minister of Communications Canada to the Federal-Provincial Conference of Communication Ministers", 20 May 1982)

177. Francis Fox, "Statement", 14 May 1982

178. Globe and Mail, 15 May 1982. B14.

179. op. cit

180 Francis Fox, "Statement", 23 September 1982.

181 Globe and Mail, 23 September 1983: B1

182. Wilson, 130

183. Information from Juneau interview

184. CRTC, Canadian Broadcasting and Telecommunications . ., 1980. 57.

185 Information from Shoemaker interview

186 The Department's 1976-1977 annual report makes the unenlightening remark that the " . federal government was developing policies to ensure that it contributed positively to the Canadian broadcasting system" (DOC, Annual Report, 1976-1977 Ottawa Minister of Supply and Services, 1977 6) In contrast the report of the Commission was far more detailed on the subject it set out a series of questions governing the "form, composition and functions applicable to a pay-television agency(ies) " These questions were listed in order to frame the forthcoming public hearing's discussion on pay-television in light of the inconclusive material that had been presented to the Commission the previous October (CRTC, Annual Report 1976-1977 1977 6). The reference for the sentence's quoted remarks is the Lawrence interview

187. If pay-television had been considered simply as a type of "programme provider" and not as a "broadcasting undertaking" the DOC would have presumably been able to license the service without needing to involve the CRTC (ibid.).

188. Information from Fever interview

189 Information from Helm interview.

190. Standing Committee on Communications, 29 November 1979: 6:14.

191. This sentence is based on information from the Dalfen and Kane interviews.

192. Jeanne Sauvé, Speech to the CAB annual meeting, 18 April 1977: 12.

193 Standing Committee on Communications, 23 May 1978. 16:29.

194. Information from Meisel interview

195. Information from Shoemaker interview Discussion of specific applications would of course compromise the notion of "natural justice"

196 Information from Lawrence interview

197. Information from Meisel interview.

198. ibid.

199. On this, see CCTA News, n.d. 1979: n.p.

200. Information from Gower interview.

201 This sentence is based on information from interviews with Lawrence and Boyle.

202. Information from Meisel interview

203. ibid. Both Meisel and Fox found the methods of the cable association "unpalatable" and often "commiserated with each other over this" (ibid.).

204. Information from Gower interview.

205 Information from Lind interview.

Chapter Six

1 DOC, Telecommission. Study 2(a) Ottawa: Information Canada, 1971. 66.

2. The CRTC, officially, does not have a position on the question of it making policy as opposed to the government (remark made by Dalfen to the Standing Committee on Communications (1 December 1979: 7 28)) Nevertheless, other statements from Commission sources ascribe a policy-making role to the agency. Thus the CRTC annual report for 1981-1982 speaks of a "function exercised . .. under its supervisory powers (being) policy-making .. " (CRTC Annual Report, 1981-1982 1982· 22) Coincidentally, then-CRTC chairman, John Meisel, consented that a number of Commission decisions for that year would "shape public policy" (Globe and Mail, 27 June 1980· B3)

3. Financial Post, 30 June 1979· 6.

4. Marketing, 26 November 1979 34

5 CRTC, "Working Paper R-147", June 1973: 27.

6. Information from Grant interview. The interpretation that the Supreme Court has endorsed a Commission policy-making role results from its "Capital Cities" decision of the late 1970s.

7 ibid

8. Standing Committee on Broadcasting, 15 November 1973: 26:25.

9 Special Committee of the Senate on the Mass Media, 1970: 223.

10 Standing Committee on Broadcasting, 14 November 1967: 20.

11 In the past it was safe to generalize broadcasting policy as regulating the message and its cultural impact; telecommunications regulation, on the other hand, characteristically focussed on economic matters and the means of transmission However, the increasing convergence of broadcasting and telecommunications technologies will render such a bifurcation of policies increasingly difficult to maintain.

12 Echoing the earlier remarks of Juneau (quoted in Chapter Two), Meisel spoke of the Broadcasting Act to the Standing Committee on Communications as providing the reference for the "broad policy" that the Commission makes, policy which was developed within the "goals set up by Parliament" Meisel went on to acknowledge, however, as Juneau did not, that Commission

regulation-making can compose "policy":

> ... what happens, of course, is that slowly, and as it were by stealth, sometimes the broad policy issues become as it were contaminated by the case load that we build up in response to particular decisions (Standing Committee on Communications, 15 July 1980· 3:11).

13. Information from Dalfen interview.

14. The PCO has indeed been of the opinion that as the Commission to spokes-minister relationship is not clear, it is best not to try to clarify it "too much" (Information from Juneau interview).

15. Information from Gwyn interview.

16. Information from Meisel interview

17. Information from Hart(1) interview.

18. Information from Boyle(1) interview.

19. Information from Neville interview.

20. Interview from Juneau interview.

21 Interview from Halliwell interview. A former DOC Minister interviewed for this study stated that the idea of using the budget of the CRTC as a means of controlling the policy direction of the agency "never occurred", nevertheless, now the CRTC budget is not publicly examined until after it has been submitted to Treasury Board through the DOC minister This allows the situation to arise, in the words of a former CRTC official, that "if the CRTC does not have the support of the minister, it is not going to get anywhere with Treasury Board" (Information from Hart(1) interview).

22. Information from Juneau interview.

23. Standing Committee on Broadcasting, 3 April 1974: 6·17.

24. Information from Neville interview

25. Information from Meisel interview.

26. Information from Ostry interview.

27 The way for Cabinet review of a CRTC decision appears to have been cleared by its consideration of a CTC judgment regarding Bell Canada in 1973, an action which only came after some controversy within the government

28. It was suggested to this writer that Boyle's lengthy career in public broadcasting before joining the CRTC may have instilled in him "a heightened sense of the need to preserve the independence of the agency from government interference"

29 A Special Assistant to Sauvé characterized the exertion of suasion on the Commission during her tenure as handled in a "very light (fashion) while I was there" (1975-1977).

30. Broadcaster, October 1980. 42.

31. Financial Post, 15 March 1980: S8 Meisel was able to establish a good rapport with Juneau while the latter was DOC deputy minister, but was not so successful with Bob Rabinovitch, Juneau's successor. Rabinovitch "had a different concept of the law than I did" which caused difficulties between the

DOC and CRTC (Information from Meisel interview). Indeed, Meisel was to find the DOC bureaucrac, during Rabinovitch's tenure so meddlesome that at the time of his resignation from the CRTC in 1983 he labelled his nearly four years at the Commission "a type of war service" (Globe and Mail, 30 September 1983: B20).

32. By the time Bureau "negotiated" his appointment to the Commission in 1983, the Department was well advanced with its new "Broadcasting Policy" which it announced later that year. In gaining industry approval for its plans, the DOC had brought the cable industry "on side" with a promise that discretionary services would be introduced as part of the "policy". The Department discussed the implementation of these services with Bureau when interviewing him for the Commission chairmanship. In the words of a senior official with the Department at the time, the DOC made it "very clear" to Bureau that he would be both "independent" and a "major player in making policy", and would be informed of departmental plans and initiatives, "but there will be times when the Department will want to call the shots". As part of this "information session", Bureau was given the Department's proposed broadcasting policy to read, as it was understood that he was required to agree to introduce the discretionary services the DOC had promised the cable industry shortly into his tenure.

33. Information from Meisel interview.

34. CCTA Communique, n.d. (1.20): 1.

35. Information from Ostry interview.

36. Information from Lind interview.

37. Information from Yalden interview.

38. op. cit.

39. Then Secretary of State, John Roberts, actively sought the support of broadcasters to oppose Sauvé's legislative plans because he did not want to lose ministerial responsibility of the CBC to the DOC, a possible consequence if Sauvé's proposals passed This shift in ministerial responsibility for the CBC to the DOC nevertheless occurred while Juneau was deputy minister in the early 1980s.

40. Information from Ostry interview.

41. Information from Hind-Smith interview.

42. Standing Committee on Broadcasting, 17 March 1977: 9:21.

43. Information from Jerome interview.

44. On the role of MPs at Commission hearings, see the remarks of Pierre Camu to the Standing Committee on Broadcasting (28 November 1977: 3:57).

45. In the case of the Telesat-TCTS proposal, the absence of an effective lobby to espouse opposition to it and to take the issue into the wider public domain, due to the lack of popular interest in the topic, effectively helped neutralize opposition to the proposal and the ability of the Commission's supporters in this matter to bolster the Commission's decision, reached after examining the hearing evidence, in the wake of the Cabinet's "modification".

46 As Murray notes, the interaction of federalism and the regulatory process affects the "decisiveness" of the communications policy-making process. This occurs as "intergovernmental relations and the regulatory process operate on quite different logics, with different interests, actors, procedures and tactics". Accordingly, it is difficult to link the two processes and to arrive speedily at policy/regulatory decisions Nevertheless, Murray states, an

effort to link the two processes is required as each "has the potential to subvert the other, making firm decisions hard to reach". Along these lines, Murray remarks that the CRTC's pay-television "decision" was "not firm at all", because in addition to the possibility that it could have been overturned by the courts, it was also susceptible to negotiation between governments, as had been the case with the agency's 1976 cable licensing decisions for Manitoba. At the same time, as occurred with these Manitoba decisions, any political or intergovernmental agreement may encounter difficulty when time for its implementation by a regulatory agency arrives. The consequential tension "underlies the critical need to specify more clearly the relations between the two processes and to integrate the two processes" (C.A. Murray. Managing Diversity. Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University, 1983. 144).

47. The CRTC "Planning and Development" division was described later in the decade as responsible for "undertaking policy, market and regulatory studies of short-, medium-, and long-term nature of both the broadcasting and cable industries ..." (CRTC, Annual Report 1978-1979. 1979: 24).

48. Information from Meisel interview.

49. Information from Ostry interview.

50. This sentence is based on Information from interviews with Gwyn and Hind-Smith.

51. This sentence is based on information from the Globe and Mail (18 March 1978: 14) and Dalfen interview.

52. Information from Shoemaker interview.

53. ibid.

54. The government's tendency to be selective in its intervention in CRTC affairs has not passed unnoticed by Members of the House, as the following remarks of Freisen testify:

> It seems to me that any time we ask the government to intervene with the CRTC we are always given the answer that it was supposed to be an independent body and it was not the prerogative of the government to do so (Standing Committee on Broadcasting, 24 November 1977: 1:56).

55. Kenneth Wyman, an Executive Director with the CRTC, has stated, on the topic of telecommunications policy, that "I think to date the Commission's approach has not been one of a general policy of promoting competition, but one of examining on a case-by-case basis the evidence". Thus, if the Commission also did not have a policy on this issue, it would appear that a complete vacuum on the topic of competition in telecommunications exists (in: T. McPhail and S. Hamilton (eds.). Communications in the 1980s. Calgary: The University of Calgary. 1985: 63).

56. Information from Boyle(1) interview.

57. Information from Juneau interview.

58. Information from Boyle(2) interview.

59. The advice given to politicians that they divorce themselves from the daily operations of the CRTC was made by Louis Applebaum of the "Federal Cultural Policy Review Committee" (House Communications Committee, 17 March 1983: 48:17).

60. On the topic of the directive power, see also Meisel's remarks before the

Standing Committee on Communications (6 December 1982: 39:6). The debate surrounding the directive power proposed for the CRTC in any event has determined that this provision should be only broadly applicable and not relate to specific agency decisions. Controversy remains, however, over whether the ability to refer and set back, currently listed in section 23 of the Broadcasting Act, should continue to exist in conjunction with any directive power introduced.

61. The sources for this sentence are the Dalfen interview and House of Commons, Fifth Report of the Standing Committee on Communications. 14 April 1987: 33:45 (recommendation no. 11)

62. Use of the directive power would probably shift more criticism in the direction of the government. As an example of how prevalent this criticism can be, while the CRTC was assailed in some quarters for not immediately implementing the "Canada-Manitoba Agreement", the agency's subsequent deletion of ownership conditions of license for Manitoba and Saskatchewan earned it Armstrong's wrath - in his opinion, the Commission's concessions to the provinces "violated a fundamental statement of policy" in the Broadcasting Act (that of the "single system" concept) (S Armstrong, "The Evolution of Federal Regulation of Broadcasting and Cable: An Examination of the Impact of Changing Technology" Master's Thesis, Carleton University, 1979. 102).

63. Information from Boyle(2) interview.

64 ibid

65. Although the issue of American signal importation took three years to resolve fully and cable hardware ownership took two years (after the appearance of the intergovernmental agreement), whereas the introduction of pay-television took six years (after Sauvé's "inevitable" speech of 1976), these time-frames still appear to be politically acceptable. As a former DOC Minister said to this writer, "Time is a great thing in politics; you don't get too far pushing things . .".

Nevertheless, it can briefly be noted here that the latest incarnation of communications legislation, "Bill C-136" (1988), has gone some way in limiting the proposed directive power, in terms of procedure, as the Commission had wanted and lobby groups demanded (see Globe and Mail, 29 September 1988: A4).

66. Information from Meisel interview.

67. Information from Kane interview.

68. This sentence is based on information from interviews with Juneau and Meisel.

69. J. Jowell, "The Legal Control of Administration Discretion" Public Law 1973: 196.

70. Law Reform Commission, 1985: 18-19.

71 Information from Juneau interview. Certainly, in both the instances of Telesat and cable hardware ownership, the outcome that the Commission had advocated eventually came to pass - independence from the common carriers for Telesat and cable operator ownership of cable system hardware in the provinces of Manitoba and Saskatchewan Additionally, as Boyle remarked to this writer in connection with the introduction of pay-television, CRTC insistence on cable as a broadcasting endeavour early in the 1970s "allowed the DOC something to push the CRTC on later in the decade" (Information from Boyle(2) interview).

72. Royal Commission on Financial Management ..., (Lambert Commission) 1979: 317.

73. Information from Shoemaker interview.

74. Special Senate Committee on the Mass Media, 1970: 223.

75. House of Commons, Sixth Report of the Standing Committee on Communications. 4 May 1987: 95.

76. Indeed, if the Commission does not provide a sense of direction in a particular subject area, it is liable to criticism of lacking direction: this was the case with the question of pay-television and speciality services where the agency was criticized for "looking at details before making the policy decisions" (Globe and Mail, 30 September 1983: B20).

77. Information from Boyle(1) interview.

78. Standing Committee on Communications, 3 December 1982: 38:15.

79. Meisel 1989: 9

80. ibid.

81. ibid.

82. On the CRTC as "Parliament's instrument", see for example, Meisel's remarks to the Standing Committee on Communications (15 July 1980: 3:4).

83. Standing Committee on Communications, 26 May 1983: 65:24.

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