THE TELECOMMUNICATIONS POLICY VOID IN CANADA

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INTRODUCTION

Over the sixteen-year period from 1973 to 1989 the writer had the good fortune to be able to work as a full-time consumer advocate, with major emphasis on telecommunications matters. First as General Counsel at the Consumers Association of Canada until 1976, and then as General Counsel at the Public Interest Advocacy Centre, the writer was involved in every major telecommunications hearing before the CTC and the CRTC as counsel to one or more consumer, native, handicapped or anti-poverty groups. This “view from the trenches” was, apparently, of sufficient interest to the editors of this journal that they requested an article providing an analysis of the lessons learned during that sixteen-year period. These will be presented in point form as a somewhat eclectic critique of conventional wisdom and unconventional folly.

NATIONAL TELECOMMUNICATIONS POLICY

Canada has never had a telecommunications policy. Nor is it likely to be able to develop one in the foreseeable future. But this is not surprising. Despite the historic importance of transportation to a country which is so large, and with so much empty space, we have never had a national transportation policy either. And telecommunications is, relatively, much newer. The federal Minister of Communications has traditionally had responsibility for both broadcasting and telecommunications, and in recent years, that oxymoron, “cultural policy.” A succession of Ministers of Communications has been more interested in being seen at “photo opportunities” at Cannes or at the Actra Awards or at
CBC-bashing session in the House of Commons than concentrating on the complex technological and economic data necessary to a meaningful understanding of telecommunications policy. Let us not be too harsh: there have been periodic announcements coming out of Ottawa dealing with telecommunications. Nevertheless, they have been, mostly inoffensive hype and nationalist pride—unless one finds lack of substance offensive. These rare policy announcements have been built with verbiage which could be drawn from advertising jargon: "world-class telecommunications system" and "maintaining Canada’s leadership in high-tech industries", etc.—the vacuous clichés of the information officer; whose role is to make the intellectually pedestrian appear to be the policy equivalent of running a three-minute mile.

A meaningful telecommunications policy would have to begin with asking some serious questions. For example, what kinds of telecommunications should our system provide, to what parts of the country, to which kind of customers, at what prices? What sort of industry structure is necessary to achieve this? Can we continue to blend government ownership and control over the system in the three Prairie provinces with private ownership and control in the rest of Canada in what the Supreme Court of Canada has held in the AGT case to be essentially a single integrated network? Who shall decide what our telecommunications policy should be? The Government of Canada? Governments of the Provinces? Or the various regulatory tribunals which regulate telecommunications in a balkanized, federal/provincial structure on a day-to-day basis?

In practise, telecommunications policy has been developed primarily by the regulators, particularly the CRTC, whose jurisdiction covers more that 70 percent of Canadian households. Yet there is nothing in any of the legislation governing the CRTC which tells it how to do this beyond the well-worn phrase “rates must be just and reasonable” in the Railway Act. (This wording has remained unchanged since the turn of the century, when it was first enacted. It is also the same language found in the statutes establishing virtually all regulatory tribunals in the U.S. and Canada.) It instructs the regulator to do no more than to apply its best judgment as to how to set rates which are fair both to the monopoly utility and to its customers. As a supplement to these rates jurisdiction, the regulators are also instructed to order interconnection between telephone systems in certain circumstances.

Whether because of regulation, or in spite of it, Canadian telephone companies have created excellent telecommunications systems with a level of universality of service which is the envy of the world. Who can say how much better all this might have been (or how much worse) had we had a national telecommunications policy? It is not being at all facetious to suggest that our national telecommunications policy has been to have no policy. Indeed, that may well have been better than having the wrong policy. Somehow, the
regulators have muddled through—at least until the last five years or so. Since then, developments in the U.S.—the divestiture of AT&T, the creation of competition in terminals, long distance service, enhanced services and even pay telephones, the world of telecommunication policy has become much more complex, and will have increasingly to face some of its internal contradiction. This major upheaval in the U.S. is in the process of being imported into Canada, not by any anti-trust section of the Department of Justice or by the Bureau of Competition Policy (we have no comparable anti-trust legislation in Canada) but largely by carriers and customers before the CRTC. The CRTC’s current legislative mandate is a very narrow pedestal on which to rest such a broad mass of new policies.

The political response to these new challenges has been characterized by less than heart-warming forthrightness. Rather than devising a national policy which might guide the CRTC (and even provincial regulators) in the future development of this vital national communications infrastructure, politicians of the three major political parties have been persuaded by the DOC bureaucracy to advocate giving the government of the day political control over CRTC decisions without political accountability, through issuing “directives” to the CRTC. Rather than devising a national policy with enough wisdom and judgment to justify legislation that it might last a couple of decades, politicians have sought the right to give ad hoc instructions to the regulator which would permit the latter to affect the outcome of particular cases even before any of the evidence is heard by the Commission. This will create an open season of lobbying the Cabinet and the Minister to issue a directive which will fix the outcome before the case even starts. Any other directive would be pointless.

The reason why the new issues have come into the fore is largely technology. Recent technology has made it possible to use the plain ordinary telephone system for data transmission, integrated with computers, in ways which have made large, telecommunications-intensive companies, as well as governments, much heavier users of the telecommunications systems than formerly. As this has also increased their telephone bills, they have struggled to reduce their costs by demanding restructured telephone rates. This has upset the equilibrium that once existed under which rate structures (as distinguished from rate levels) were relatively unchanged for decades. Now, the large users of telecommunications services (for example: banks, airline reservations systems, heavy users of online long distance services) are in a state of undeclared war against residential customers and businesses small and large who are not particularly intensive users of long distance telephone service. For the average Canadian business, telephone costs represent approximately 2 percent of their operating costs: for some telephone intensive businesses it may be as high as 20 percent. Yet a high proportion of residential consumers make very limited use of long distance.
Much of the debate between these now clashing classes of telecommunications customers has been emotional, and therefore, highly symbolic. For example, the successful transition from monopoly to competition for terminals has been preferred by large users as evidence that competition in general, even in transmission, will also succeed—a largely questionable theory. It has also been argued that the soupcon of “competition” which now exists has changed the entire telecommunications industry from a monopoly to a competitive industry. The overwhelming majority of the revenues in telecommunications are, and for the foreseeable future will continue to be, monopoly services. The more than ten times larger U.S. market is still able to maintain only two toll service competitors to AT&T, and then only with the vigorous intervention of the federal regulator in holding back an AT&T which had already been broken up by the courts. Thus, not only is it questionable how much of the U.S. experience is transferable to Canada, it is also unclear how good it really is.

THE RATE REBALANCING DEBATE

Not only has the public debate been largely symbolic but regulatory decision-making itself, like the public debate, has been based on numerous assumptions and hypotheses which are largely untested and, perhaps, inherently unverifiable. For example, the conventional wisdom that long distance telephone service is priced at well above cost, while local service is priced at well below cost (leading to cross-subsidization between not only those services but also classes of customers which use them most) is now taken as an article of faith. Yet it is at most an accounting hypothesis.

First, notwithstanding more than a dozen years of a Cost Inquiry commenced by the CTC and completed by the CRTC, the separation of such a large proportion of common costs into different “services” remains an arbitrary exercise. The selection of a particular costing method determines the outcome. Hence the word “cost” itself takes on a largely symbolic and rhetorical meaning. Like a small boy saying to another, “my pop can lick your pop” or an argument by two art critics about whether a new painter’s work is one of originality and talent or merely derivative and boring, we have competing socioeconomic groups struggling to redistribute income employing the rhetoric of “cost”. “Our rate proposal brings rates more closely in line with costs and is, therefore, more appropriate than yours.” “No, that’s not true, because you have not separated the joint and common costs properly, and as well, you have ignored other costs such as time of day usage and the technological cross-subsidy which arises from your imposing upon the system a level of speed and reliability not required for our usage. In this debate, the word "cost," which is widely assumed to have a common core of meaning and disciplines such as accounting and economics, really serves as a “surrogate for words such as "good" or “bad.” These are
words designed to elicit attitudes of approval or disapproval on the part of the listener rather than to convey any concrete, specific information. Because costs arguments are stated in numbers, the dollar amounts employed, or the percentages (eg. "you are only paying 80 percent of the true cost of providing your service") takes on added rhetorical force. This has been an uneven debate, however, for two reasons: first, the resources of the two sides are grossly unequal and, second, the telephone companies themselves would benefit from a change in the status quo favouring the "pro-competition" side.

Those favouring reductions in long-distance rates are highly concentrated. Approximately 1 percent of telephone users account for 20 percent of long-distance usage and approximately 20 percent of telephone customers account for approximately 50 percent of long-distance usage. These heavy users are primarily institutions which have a large number of branches spread across the country which must remain in electronic contact with each other at all times. A prime example is the use of automated banking machines in even the remotest communities of Canada, which can verify balances in bank accounts kept in a central database. Similarly, a travel agent in Whitehorse using the Gemini Computer Reservation System can make airline reservations between any city pair in Canada, thereby taking those seats out of the inventory of Air Canada, Canadian Airlines or any other airline "hosted" by the Gemini Computer Reservation System.

In debating whether such large users should pay lower rates we often look at almost irrelevant criteria. For example, it is argued that U.S. toll rates are lower than ours. This would be relevant if the costs of providing these services in Canada are comparable to those in the U.S. We do not have nearly the same population and traffic densities in our East/West routes as they do in the U.S. Thus, frequently made comparisons between a call from Toronto to Vancouver with a call from Buffalo to Seattle would only be valid if the costs were comparable. It is one thing to envy U.S. toll rates; it is quite another to equal their traffic densities and, therefore, their costs. Many things in Canada are much costlier than they are in the U.S. because volume differences create differences in economies or even in the types of technology which may be usable as a result of economies of scale. To the representatives of the ordinary telephone subscriber or the industrial consumers for which the cost of telephone service is relatively small, it is not worth spending large amounts of money at telephone rate hearings or in lobbying the federal government. Moreover, they may themselves be taken in by the rhetoric of "greater competition" and "moving rates closer to costs" so that they would perceive any resistance to the seeming inevitability of the cost argument as unfair, contrary to the principles of economics and simply retrograde. They have become prisoners within their opponents' semantic walls.
One would think that the telephone company should be largely neutral in this debate because, so long as it is permitted to earn a reasonable overall rate of return, which of its customers pay what rates should not matter. In practice, that is not the case. That is because the demand for long distance calling is more elastic than the demand for local calling, which is tied to the cost of basic service, and therefore, access to the system. People will forego long distance calls long before they will give up their telephones. Thus, the larger the share of a telephone company's total revenues which comes from basic service, the more stable will be its earnings pattern and, conversely, the important long distance revenues are as a share of total revenues the more volatile the earnings history.

This is stability or volatility of earnings ultimately reflected in share prices. Stock market analysts measure the "beta," or volatility in earnings, and use this as a proxy for the riskiness of that company's stock. The market tends to demand a higher reward (in the form of higher dividends and capital appreciation) from riskier stocks. It follows, therefore, that if management of a telephone company can reduce its beta while changing nothing else, the price of the stock should rise. Hence, even in the absence of competition, the telephone company has a strong financial interest in obtaining as much of its revenues as possible from those services for which the demand is the most inelastic. This is what Professor Baumol has learnedly described as the "inverse elasticity principle" of pricing, but it can be summarized much more colloquially in the old dictum "stick it to those who can lease avoid it."

This convergence of interest between the telephone company and the associations of its largest and economically and politically most powerful customers does not augur well for an independent national telecommunications policy. Given the self-interest of government (also a very heavy toll service user), coupled with the current ideological popularity of "competition" in any form, the outcome of the debate may be largely settled whether, beneath the rhetoric, it really has anything to do with costs or competition.

TELECOMMUNICATIONS DECISION-MAKING REGULATORY SUBJECTIVITY MEETS POLITICAL AD HOCkERY

Most regulatory decisions involving telecommunications, and the public debate surrounding them, tend to be isolated from, and without reference to, or understanding of, analogous decision in cognate areas; for example, the deregulation of financial institutions and airlines, or regulation of other public utilities such as natural gas or electricity.

By examining these other areas we can study the various techniques employed to determine what works well and what does not. However, the corporate culture at the federal Department of Communications sees
Telecommunications very much as a recent policy area to be determined as an adjunct to cultural and broadcasting policy.

Telecommunications decision-making at the Cabinet level is permitted by section 64 of the National Telecommunications Powers & Procedures Act (NTPPA), formerly the National Transportation Act. This legislation gives the Cabinet broad powers to vary or to rescind decisions of the CRTC at any time, either at the request of any person or party interested or even on the Cabinet’s own initiative.

This makes the CRTC subject to extraordinary intrusiveness by the Cabinet acting as its own surrogate regulatory agency, without reference to Parliament or without any apparent concern for fidelity to the objects of the Railway Act. (This is due to a rather unfortunate decision of the Supreme Court of Canada, Attorney General of Canada v. Inuit Tapirisat of Canada et al., 1979 SCR. The Cabinet has treated this as giving it carte blanche to interfere politically with the tribunal regardless of the evidence, and it has done so, in two cases (Call-Net, and the National Anti-Poverty Organization—NAPO). In fact, of course, the practical work leading to the decision is done at the level of the Assistant Deputy Minister of Communications or lower, the Minister and the Cabinet functioning largely as figure heads.

In one case in the direct experience of the writer, instructions were given to him by his client to write to sympathetic cabinet ministers to seek their support on a forthcoming Cabinet appeal under section 64. Two ministers replied that they would certainly take the views of these clients into account when the matter arose before Cabinet. Unfortunately, their letters were dated after the matter had already been decided by the Cabinet. This illustrates how little attention ministers are likely to pay to but one among thousands of individual Order-in-Council matters which proceed through the various Cabinet committees and the full Cabinet each year.

Unless and until some degree of procedural fairness is imposed upon these Cabinet proceedings, either by the Cabinet itself or by the courts, parties appearing in hearings before the CRTC will never be safe from political interference at the behest of a disgruntled party. Indeed, as the NAPO Case has suggested, it is possible for the Cabinet to set aside a decision of the CRTC employing criteria which the CRTC itself could not lawfully have employed, at the behest of a stranger rather than a party to the proceedings, with the appeal process conducted entirely in secret and without notice to the parties. This demonstrates that in really controversial issues, the CRTC is not really the principal authority in telecommunications matters, but merely the slow way to the Cabinet. Accordingly, those with ready access to the Cabinet are much more likely to be
successful in having telecommunications decision-making go their way than those without.

In the absence of a meaningful domestic telecommunications policy, such Cabinet decision-making is ultimately consummate "ad hocery." Just as the squeaking wheel gets the grease, whoever squeaks loudest, or perhaps last, seems to win the day. Moreover, the Orders-in-Council which contain these decisions almost never give reasons. For example, in the NAPO case referred to earlier, the Order-in-Council overturning the CRTC in favour of the secret petition by the non-parties BCE and BCI gave as the reason only that the Cabinet considered its decision to be in the public interest. This hardly provides any guidance to the CRTC as to where it went wrong (if it did), or to the parties before it, in future cases. Although there was a press release accompanying this which did contain some (albeit perfunctory and incoherent reasons), when NAPO brought the matter before the Federal Court of Appeal, the Attorney General of Canada, representing the Cabinet, took the position that the press release was merely the creation of its authors and did not contain the reasons of the Cabinet at all.

As well, the CRTC (and other regulators) regularly decide issues of competition policy which are inherently very political, yet have not really been foreseen by legislators when creating such regulators. Unfortunately, because neither the legislators nor the cabinet nor the government department involved have any better idea than the regulators as to what the public policy should be, they appear content to abdicate the leadership role and to let the regulatory agency make the decisions as it will. If the results seem not too bad, the politicians let the regulators drift along making policy. If powerful interests protest, the cabinet can overrule the CRTC, giving as its non-reason that it was in the public interest to do so (one would hardly have expected it to give as the reason that it thought it was contrary to the public interest to do so).

CRTC PATERNALISM

While the role played in these matters by the Cabinet (regardless of political party) has been described as "arbitrary and despotic", the economic and other evidence at hearings has often contained such large gaps or has been so subjective that the real basis of the CRTC's own decision-making is often, inevitably, little more than the subjective value preferences of individual regulators or a collective attempt to do what is considered politically acceptable. An excellent example of this is found in the Commission's refusal, in 1985, to allow CNCP Telecommunications to interconnect with (and thus to compete with) Bell Canada to provide long distance service. In the face of strong political pressure to break Bell Canada's monopoly over long distance service by allowing CNCP to compete, this decision by the CRTC took a great deal of political courage.
The Commission took considerable pain in its decision to point out that it was not opposed to competition per se; indeed, it supported it. Its decision was made purely on the particular proposal before it, which it found defective. So far so good. However, the central reason the Commission gave for rejecting the proposal was that it felt that CNCP’s service was not economically viable and that, therefore, CNCP could not make a profit in providing it. One might well ask, perhaps a bit bluntly, what business is it of the Commission if CNCP fails to make a profit or, indeed, loses its investor’s shirts? What principle of regulation, what requirement of the Railway Act states that regulators must reject proposals for competition unless, in the regulator’s judgment, the new competitor will make a profit? And why is it the CRTC’s business acumen preferable to that of real-world business executives? It is surely the essence of capitalism that some competitors will be winners and some losers. While there may well have been sound reasons to turn down CNCP’s proposal, the reason given is hardly one of them.

The historical roots of this decision may have been that a few years earlier, in its notorious Pay TV decision, the CRTC had been severely criticized for licensing several broadcasters to provide pay TV services when the market was insufficient to support them all. Some of the licensed operators merged, others went under. This resulted in some misguided criticism which the Commission never bothered to refute. The implication that the Commission should somehow have licensed just enough pay TV operators to survive but not one or two too many. When the CRTC’s new chairman, André Bureau, took over the CRTC after the pay TV decision, he paid much greater attention to the profit potential of prospective broadcasting licensees and apparently imported this same philosophy from the broadcasting area to the Commission’s telecommunications jurisdiction. This may be responsible for the strange reasoning that CNCP would not be allowed to compete because, in the judgment of the regulatory bureaucracy, CNCP’s investors might not be satisfied with the results.

It is never possible for anyone applying to the CRTC for anything to “prove” what the future will hold; there are no “facts” in the future, there are only forecasts. All an applicant can do is put forward its forecasts and let the Commission determine whether or not it is right. In telecommunications matters, however, as distinguished from broadcasting (where there is a limited number of available frequencies) it should be of no concern to the regulator whether CNCP’s profit forecasts are accurate. Why CNCP did not appeal this use of irrelevant considerations is beyond comprehension. Nevertheless, its acquiescence has created a precedent for subjectivity under which future CRTC panels who wish, for any reason, to deny a proposal can now say, in effect, “we won’t let you do it because we don’t think it’s good for you.” This is paternalism, not regulation designed to protect consumers.
THE U.S. EXPERIENCE

In the U.S., the major users have been successful in obtaining substantial reduction in their long distance rates, even while local rates increased, so such an extent that the average U.S. consumer's telephone bill may well be larger than it would have been without the breakup of AT&T and the introduction of long distance competition. It is a little known fact in Canada that one of the most clever political "coups" ever carried off in the U.S. was by the Federal Communications Commission, the federal regulatory agency. By creating long distance competition with AT&T and, thus, by regulatory fiat, lowering long distance rates, state regulators had no alternative but to raise local rates so that the various new "baby Bell" companies created by the break-up of AT&T could survive. This meant that the federal regulators instantly became "the good guys" responsible for lower rates while the state regulators were perceived as the "bad guys" who raised rates for basic service, for which there was no competition and no practical alternative.

Another effect of the creation of MCI and Sprint (the two U.S. competitors to AT&T) has been to create a large amount of excess capacity in the industry, so that each of the three competitors operates at well below capacity and, thus, at higher unit cost. If AT&T, when it was operating a near full capacity, was more efficient than either of its smaller competitors operating at less than full capacity, the net effect of all of this regulated competition may have been to steer traffic away from a larger, more efficient operator to smaller, less efficient ones.

If the objective had been simply to lower long distance rates, that could have been done by the FCC itself by so ordering AT&T. Competition need not have been introduced at all. The question "should we have lower long distance rates in Canada?" is even more complex. If the policy is that long distance rates should be lowered, it need not automatically be assumed that the best way to do this is through U.S.-style competition," because the U.S. experience cannot be replicated in Canada without breaking up the major telephone companies by legally separating the entities which provides long distance service from the entities which provides basic service. Since no one is even talking seriously about breaking up all of Canada's telephone companies into local and long distance carriers, competition U.S.-style is impossible. At most, what we can have is some limited "interconnection" in major markets.

Even in the U.S. it is not all clear whether long distance competition, which has coincided with lower long distance rates, was really the cause of lower rates or whether it was simply the fact that the FCC decided to lower the rates of all competitors. In any event, it was not the marketplace that made the rate-lowering decision, it was the regulator. When the U.S. opted for increased
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competition in toll service it also opted for increased regulation. If that is not a paradox, what is?

In Canada, however, with competition being impossible, what we can have is, at best interconnection. This means that the regulator would coerce the telephone company to provide access to its local switched network to its "competitor." This is not really a telephone competitor able to compete on an equal footing but, essentially, a microwave transmission company which seeks to become a telephone company by using the facilities of the telephone company. If regulation and competition should in policy terms be antonyms, it will hardly be possible to reduce regulation under interconnection. On the contrary, the regulator will have to become even more intrusive, to regulate not only the rates of the telephone company but also of its interconnect competitor and, as well, to regulate the price at which the telephone company must provide its facilities to the interconnect company.

If interconnection can provide benefits similar to those of competition, then it may be worth doing. (Whether interconnection is likely to be beneficial is a complex factual question requiring empirical study beyond the scope of this paper. If it is tied to recant rate-balancing proposals by Bell Canada under which 15 percent of customers would have reduced total telephone bills and 85 percent would face increases the answer appears rather clearer.) If it cannot, it would be merely a complex, opaque device for the transfer of income from ordinary telephone customers (small users or non-users of long distance services) to the large users. This would be the rough analogue of a decrease in corporate income tax and an increase in personal income tax. If the policy objective is to create such a regressive transfer of income there may be much more efficient (although political more obvious) ways of doing this than through interconnection and the inevitably increased regulation which will result.

CAPTURING THE SEMANTIC INITIATIVE

Much of the telecommunications debate in Canada in recent years, as carried by the media and advanced by academic writers, is really part of an orchestrated campaign, a public relations exercise by the large users the purpose of which is to redistribute income by capturing the semantic initiative, thereby controlling the dialogue. This can result in rewriting the traditional rate structure through selective elimination of certain alleged cross-subsidies (local/toll) while ignoring others (time of day, usage levels, technology upgrading which would not make sense for residential service along). Now, even relatively informed public policy analysts have come to believe that there is a subsidy of local service by toll service, and, implicitly, that this is the only subsidy in the system which, therefore, must be eliminated.
TWO-TIER REGULATION

An equally popular theory is that there should be a federal/provincial agreement to permit the provinces to regulate local service while the federal regulator regulates long distance service only. While this is theoretically possible, it is utterly impractical. In the first place, as in the U.S., the federal regulators would be sorely tempted to increase their popularity by lowering long distance rates, leaving the job of raising local rates to the provincial governments. Why the provincial governments should be so aggressively lusting after this jurisdiction, given the inevitable consequence, remains a mystery.

Of course, the reason why the federal regulator can lower long distance rates is because, first, there is the precedent in the U.S. and, second, the pressure by the large users has created public opinion in Canada favourable to the same change. Yet this division of regulatory control will result in a great deal less regulatory control over the regulated industry. The telephone companies will be able to raise the spectre of a federal regulator poised to lower long distance rates as a concern with the provincial regulators, thereby virtually blackmailing them into disproportionately large local rate increases. At the same time, since rates should bear some resemblance to costs, and since much of the equipment used to make local calls is also used to make toll calls, the regulated companies will be able to play costing games, playing off one level of regulator against another.

Provincial ownership of telephone companies would not solve any of these regulatory problems. Experience has shown that the type of ownership does not necessarily affect the quality of the service or the cost. In those companies owned by provincial governments, political interference is not infrequent and the politicians sometimes use telephone companies much like they use electric utilities—for “job creation” (another oxymoron) in certain areas of the province. There is strong temptation, as with auto insurance, to make sure the taxpayers do not pay the real cost of the telephone service because they are charged little or nothing for the cost of capital. Also, the provincially owned telephone companies paid the same federal and provincial taxes as in other provinces, and if the province did not guarantee the telephone company’s debt, rates would be higher. The key question is: would the real cost of telephone service in Manitoba/Saskatchewan/Alberta, where the telephone companies are provincially owned, be greater than or less than they are if they were privately owned. No one knows.

TECHNOLOGY IS UNREGULATABLE

In industries in which there is rapid technological change, such as telecommunications, it is very difficult to develop a national policy based on assumptions about the existing technology. It is even more difficult for governments to
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attempt to forecast accurately what kind of technology will predominate in the future. All that a regulator can ultimately control is money and people.

The corporate reorganizations which the telephone companies have been permitted to undergo, creating their own "parent" companies, has now made any form of regulatory control much more difficult. An effective regulator must be able to punish a recalcitrant regulatee for providing substandard service by reducing its rate of return. This then causes shareholders to back away from purchasing the shares, resulting in pressures to change management. However, when the telephone company is a wholly-owned subsidiary of a diversified conglomerate, the parent rather than the management controls access to capital. Shares of Bell Canada are not sold on a stock exchange; only shares of BCE. Thus, BCE can decide that it will not go to the stock market to raise capital in the BCE name for its subsidiary unless that subsidiary provides a rate of return which the parent finds satisfactory. The parent then has other options—to finance a new Northern Telecom plant, for example, which might provide a higher rate of return than would the telephone service. As well, when such a corporate reorganization takes place the parent can milk the "cash cow," the regulated company, by taking many of the best personnel as well as much of the profit to strengthen the parent. Over time, as the share of the parent’s income represented by the regulated utility diminishes, so does the incentive to modernize and upgrade the subsidiary’s technology.

REGULATORY HEARINGS ARE NOT EXPENSIVE

It is fashionable, in this age of deregulation, to complain that regulatory hearings are very long and costly. Yet they are quite cheap and quick in comparison to the alternatives, and much more democratic, accountable and informed than the reality of regulation by Cabinet decree. That is because although a typical regulatory hearing may cost as much as $2 million, the cost of having wrong rates is much greater than the savings from eliminating or reducing the efficacy of the regulatory agency. Bell Canada’s revenues alone are of the order of $5 billion annually. The annual cost of the regulatory decision-making structure to cope with this (including not only the cost of the regulatory agency itself but the cost to the regulated companies) is still reasonable for the cost of decision involving dollars of that magnitude. If the regulatory agency is replaced by a cheaper mechanism which results in only a one percent error in rates (whether too high or too low), this would exceed many times over the cost of any regulatory rate hearing.
CANADA NEEDS A MINISTER OF TELECOMMUNICATIONS TO DEVELOP A NATIONAL TELECOMMUNICATIONS POLICY

A succession of Ministers of Communication has been preoccupied with "culture," the CBC, Telefilm, book publishing and the like. They have also tended to be rather short-term appointments with no knowledge or significant interest in telecommunications matters. There is little doubt that today, telecommunications policy is as important or more important than energy or transportation policy, let alone fitness and amateur sport. Yet if one compares the vast policy making apparatus within Transport Canada with that of the handful at the Ministry of Communications, the difference is astonishing. Transport Canada has literally hundreds of specialists dealing with all phases of policy from airports to railways. The total policy-making apparatus of the Department of Communications, devoted to telecommunications matters could probably be stuffed—without much discomfort—into a telephone booth. As well, much of what we call telecommunications policy—like that of rail policy—is really being set not by the Department of Communications but by the Department of Finance, on budgetary grounds, in accordance with concerns of macro-economic policy and deficit reduction.

The telecommunications industry is experiencing a declining cost curve. This is resulting in a growing share of the revenues of the industry being captured by the government in taxes rather than having the declining costs passed on to the industry in the form of higher profits or to residential consumers in the form of declining basic service rates. The reason why Finance can play such a dominant role is because of the absence of a Minister of Telecommunications and a coherent telecommunications policy. Nevertheless, if telecommunications companies, like other public utilities, are cash cows to be milked, perhaps it is not such a bad thing that the Minister of Finance has applied his hands to the udder right beside those of the parent company.

CONCLUSION

The regulation of telecommunications is a very complex business. What we know and understand seems far less important than what we do not. In many cases, the data is simply not there to do anything more than to permit regulators to make educated guesses.

Nevertheless, telecommunications policy—such as it is—has been characterized as much by the uneducated guesses of the Cabinet or of a succession of Ministers and senior officials in the Department of Communications who have been concerned more with “cultural policy” than with telecommunications. For its part, the CRTC has been chaired by people with cultural preoccupations—Pierre Juneau, Harry Boyle, John Meisel, André Bureau, and now, Keith Spicer.
Despite being treated like the Cinderella of both Ministers of Communications and the CRTC, the federally regulated telephone companies (particularly Bell Canada) have provided largely acceptable telephone service at reasonable prices. The provincial regulators have substantially followed the CRTC’s lead, have also produced satisfactory results in most provinces.

Today, rapid changes in technology (cellular, fibre optical transmission, digitization) and new arguments for increased competition (or interconnection) are going to create policy choices of unprecedented difficulty. If Canada’s rather remarkably good telecommunications infrastructure is to survive this period without serious deterioration in service quality and cost, it will take a great deal more mental discipline and analysis by Ministers and regulators than has been demonstrated in the past. Let us hope that we are up to the task.