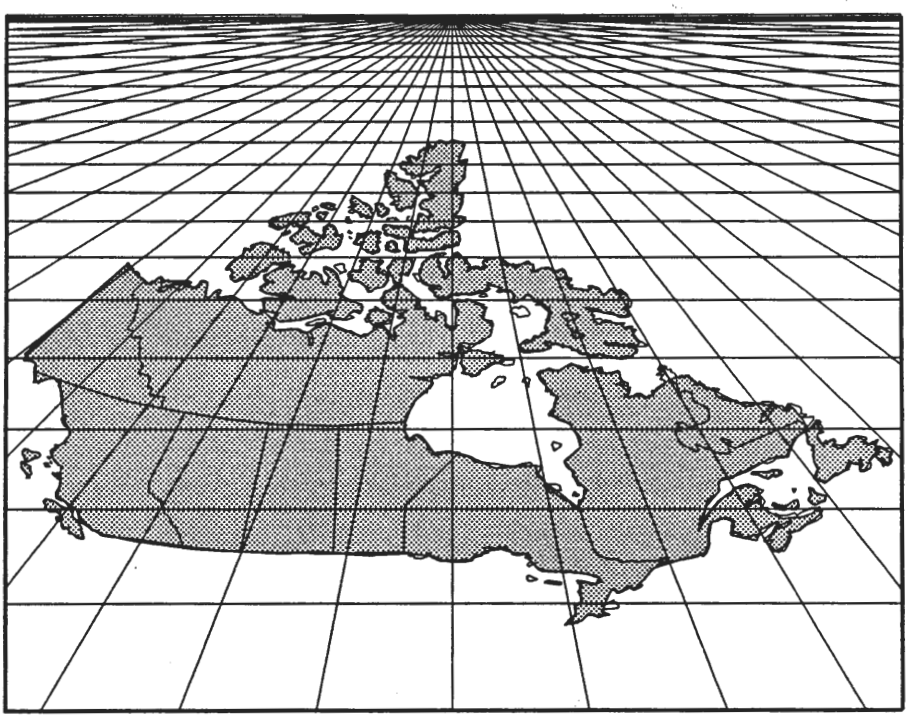
Telecommunications:

New Legislation for Canada



February 1992

Communications
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PREFACE

Canada has been transformed in recent years into a postindustrial, information society. Nearly half of the labour force in Canada works in occupations involving the collection, processing and dissemination of information, and almost three- quarters of Canadians work in the services sector. For example, telecommunications in Canada, which include services and manufacturing, employ more than 125,000 people and generate over $21 billion in revenues. More than any other factor, developments in telecommunications and information technologies have transformed Canada into an information economy. **As a result, perhaps more than ever in the course of our history, our prosperity and well-being depend on our ability to exploit the potential of telecommunications and information technologies.**

Many industries, especially financial and insurance services, transport, tourism, broadcasting and newspapers depend on reliable telecommunications networks and services to function efficiently and to ensure the distribution of their products around the world. In other sectors as well -- such as the insurance agent in Lloydminster, real estate agent in Montreal, sales representative in Moncton or doctor in an Ottawa hospital -- communications provide a vital link that can mean the difference between success or failure.

Telecommunications is a fundamental infrastructure of the Canadian economy and society. It has become indispensable to enhancing the productivity of Canadian industry and is essential to our broadcasting and cable television industries. For these reasons, an efficient and dynamic telecommunications industry is a prerequisite for economic prosperity.

THE CANADIAN EXPERIENCE

The Canadian telecommunications system is second to none in terms of its availability, diversity and the quality of services. More than 98 percent of Canadian households have a telephone, and there are more than 15 million telephone lines for a population of nearly 27 million.

It is therefore not surprising that Canadians are among the biggest users of telecommunications in the world. For example, in 1990, Canadians made more than three billion long-distance calls.

Moreover, Canadians have access to a range of highly sophisticated services, many of which did not exist 10 years ago, such as automatic tellers, cellular telephones, fax machines, and the 911 emergency service now available to nearly 12 million people throughout the country.

Telecommunications helps to overcome the obstacles of distance in a vast country such as Canada, permitting remote communities to benefit from services taken for granted in large urban centres. Here are a few examples:

- The Supreme Court of Canada uses an audio-video link to communicate with all regions of Canada to hear motions for leave to appeal.

- The "school of the future" program sponsored by SaskTel enables students at a school in Saskatchewan equipped with personal computers to make direct contact via satellite with students in other countries and exchange information and ideas.

- In Manitoba, 90 rural and isolated communities have access to primary- and secondary-school courses thanks to direct satellite links with educational institutions in Winnipeg.

- In Newfoundland and Labrador, 85 remote communities receive specialized educational and health-care services through audiographic and teleconferencing networks as part of the province's telemedicine and tele-education programs.

- Residents of the University of Montreal campus have access to one of the most sophisticated telephone system in the country; it offers several unique features, including a voice-messaging service for each student living in residence.

- At a Toronto hospital, a new personal communications technology is now being tested that allows nursing and medical staff to consult one other quickly wherever they may be in the hospital by using portable cordless telephones.

These innovations, made possible through telecommunications, have also contributed significantly to the phenomenal growth of the Canadian telecommunications industry. For example, the total value of the major telephone companies' investment in their facilities rose from $17.8 billion in 1979 to $40.3 billion in 1990. In the same year, Canadian telecommunications companies reported more than $15 billion in operating revenues, accounting for an estimated 2.7 percent of the Gross Domestic Product (GDP). In addition, in 1990 the telecommunications industry achieved a real growth rate (after inflation) of 8.6 percent compared to 0.3 percent for the Canadian economy as a whole. On the manufacturing side, Statistics Canada figures show that the Canadian communications equipment market was worth some $6 billion in 1990. Telecommunications is also Canada's leading high-technology industry; its R&D expenditures of $1.4 billion in 1990 represent about 24 percent of total expenditures in this area. This shows how telecommunications has come to play such a vital role in our society, in addition to being our most important high technology industry.

NEW CHALLENGES

However, our telecommunications system is on the threshold of major transformations during the next decade, and Canada must be ready to face them. These changes are caused by rapid progress in telecommunications technology, growing demand for

new telecommunications services, the globalization of trade and manufacturing operations, and increasing competition worldwide. It is important to note that the Canadian telecommunications market of $15 billion is small compared to those of our major trading partners, the United States ($185 billion), the European Community ($125 billion) and Japan ($65 billion). These factors are a mounting source of pressure on the industrial and regulatory structure of the Canadian telecommunications system.

The current trend in telecommunications around the world is a gradual easing of market regulation and the privatization of government-owned telecommunications companies. The United States and Great Britain have made strategic decisions to increase competition in telecommunications services and to modernize their telecommunications infrastructures. Other countries, such as Japan, Australia and New Zealand, are following their lead. The European Community is considering legislation to unify the European telecommunications market in 1992.

The experience of these countries is that such changes promote innovation and investment, while increasing productivity and efficiency.

Canada cannot be left behind. It must update its telecommunications legislation to bring it into line with world developments. For example, a key piece of legislation that guides telecommunications regulation and policy-making today, the *Railway Act,* dates back to 1908.

There is competition in some sectors of the Canadian telecommunications industry, although it is not as extensive as in Britain or the United States. Thus, telecommunications companies face strong competition in the provision of terminal equipment and many commercial data, voice and image transmission services. In addition, the decision of the Canadian Radio-television and Telecommunications Commission (CRTC) to ease restrictions

on the resale and sharing of telecommunications services has stimulated the development of these segments of the industry.

However, the small size of our domestic market and the fragmented structure of the telecommunications regulatory framework are factors which hamper the development of our telecommunications industry. The present regulatory structure cannot ensure the best performance of the system in the longer term.

If Canada intends to maintain its position as a leader in telecommunications to remain internationally competitive, it must adopt a coherent policy for the country as a whole and a more flexible regulatory system conducive to innovation and accelerated development of our principal high-technology industry.

The first steps toward such a policy were taken in 1987 by the Minister of Communications, who enunciated three basic principles to guide telecommunications policy-making:

- maintaining a basic telephone service which is affordable and universally accessible;

- encouraging development of an effective and efficient telecommunications infrastructure; and

- permitting Canadians in all regions to have access to the same level of competitive services.

The new telecommunications legislation will give substance to these principles. In addition, it follows up on the Supreme Court's historic decision in the Alberta Government Telephone (AGT) case, by giving the Parliament of Canada legislative authority over the principal telecommunications common carriers in Canada.

OVERVIEW OF PROPOSED NEW LEGISLATION

The new legislation defines the federal powers and the regulatory framework that are required to implement Canada's telecommunications policy for the twenty-first century. It incorporates the objectives and principles which have traditionally guided the development of our telecommunications system, namely, ensuring the efficient and orderly operation of our telecommunications system, maintaining and promoting an internationally competitive telecommunications industry, and guaranteeing Canadians access to reliable, affordable and high- quality services.

The achievement of these objectives centres on two major principles: the first is to open the telecommunications market by having a coherent policy for the whole country under the aegis of a single regulatory agency; the second is to establish a more flexible regulatory framework. The new legislation gives effect to these principles.

The new legislation modernizes and simplifies the existing legislative and regulatory framework in three ways:

- by consolidating and modernizing existing legislation that governs telecommunications, that is, the *Railway Act*, the *National Telecommunications Powers and Procedures Act*, and the *Telegraphs Act.*

- by making a single agency responsible for regulating telecommunications, while recognizing provincial and regional concerns; and

- by ensuring uniform conditions with respect to network interconnection, access to facilities, establishment of local and long-distance rates, and introduction of competition for provision of telecommunications services throughout the country.

The equilibrium of the Canadian telecommunications system requires that local and long-distance rates be regulated by a single authority, the CRTC, in order to ensure adequate levels of cross-subsidization of local services by revenues from long-distance services.

As well, at the local level, new technology is leading to a convergence of the telecommunications, cable television and broadcasting distribution systems. To manage this convergence, and to ensure that local and long-distance rates and conditions respecting access to local systems are fair and reasonable, we need a single body that has the power to regulate telecommunications, cable television and broadcasting.

A more coherent policy and regulatory framework that is also responsive to provincial and regional interests seems then to be the best way to ensure the effective and efficient development of Canada's telecommunications system.

In addition, the legislation will result in the creation of a more open domestic market so that all Canadians will have access to comparable high-quality services, regardless of the region in which they live.

Application of the new policy requires that the regulatory framework be made more flexible, and the legislation contains important provisions in this respect. Among other things, it gives the CRTC the power to refrain from regulating certain services when the degree of competition is sufficient to protect the public interest.

Advances in telecommunications technology enable companies to offer a wide selection of new services to satisfy the various needs and interests of consumers. Indeed, one of the goals of the legislation is to ensure that all Canadians benefit from innovations in telecommunications. In addition to promoting the economic benefits of telecommunications technology, the legislation also responds to the social needs and interests of users. This objective is cited in the policy section of the bill and includes, notably, the protection of privacy. **The legislation also contains measures to protect consumers against possible abuse, including the sending of unsolicited information by telephone or facsimile machine.**

The new legislation will give the government the power to issue licences to Canadian telecommunication companies under federal jurisdiction and to set technical standards for telecommunications equipment and facilities. In order to be eligible to hold a telecommunications licence, the company must meet specific requirements respecting Canadian ownership and control. A key requirement is that 80 percent of the company's shares must be owned and controlled by Canadians. **The legislation, and related regulations, thereby promote Canadian control over the country's telecommunications infrastructure.**

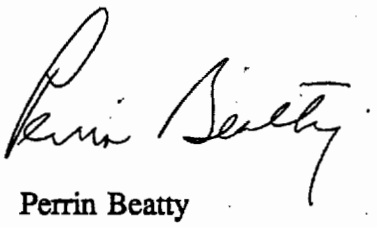
The proposed legislation also recognizes certain acquired rights that apply to telecommunications carriers now under foreign control. For example, a company like B.C. Tel, of which GTE Corporation controls more than 50 percent of the shares, will not face any special constraints in meeting the telecommunications needs of the people of British Columbia. Nonetheless, companies benefitting from acquired rights will be required by regulation to maintain their level of Canadian ownership.

The new licence-issuing system established under the legislation will enable the government to ensure the orderly development of the telecommunications market to meet the needs of users and the interests of the industry as a whole. This approach is consistent with the government's previous decisions regarding the issuing of licences under the purview of the *Radiocommunication Act*, notably the cases of CNCP (now Unitel), which was licensed in 1961 to operate a nationwide microwave facility; Telesat Canada, which was licensed in 1969 to operate satellite communications services; and Cantel and members of Cellnet, which were licensed in 1985 to operate cellular telephone networks. Each of these cases was thoroughly assessed before a licence was granted. Similarly, applications for a new telecommunication licence filed under the new licence-issuing system will be examined on their merits, including a review by the CRTC, according to telecommunications policy objectives, and in the light of any other consideration the government deems appropriate.

The new legislation will facilitate the implementation of a coherent telecommunications policy that takes into account the interests of the regions and the provinces. The government recognizes the legitimate concerns of the provinces regarding telecommunications regulation and the importance of telecommunications as an instrument of regional development. **Accordingly, the new legislation contains specific provisions under which the provinces will be consulted whenever the exercise of federal powers will have significant effects on the principal telephone companies operating in their territories.** It should also be noted that the legislation does not prejudice any federal-provincial negotiations and could accommodate future agreements between Ottawa and the provinces on the regulatory process.

Given the fundamental role of communications in Canadian society and the vital importance of this sector in the Canadian economy, the new legislation will ensure that the Canadian telecommunications industry can successfully meet the challenges of the coming decades. By promoting the establishment of a more open telecommunications market through the application of a coherent policy throughout Canada and by creating a more flexible

regulatory framework, the legislation will contribute to improving Canada's competitiveness, which is essential to the country's prosperity and well-being.



Perrin Beatty
Minister of Communications

I. INTRODUCTION

The new telecommunications legislation is the result of a long process which began in 1984, when a public notice in the *Canada Gazette* invited the public to submit its views on telecommunications policy to the Department of Communications.

In June 1985, the Minister of Communications expanded the consultation by inviting provincial and territorial ministers responsible for communications to participate in policy discussions.

In 1987, the communications ministers agreed on a statement setting out six principles to guide development of Canadian telecommunications policy: a uniquely Canadian approach to policy development; universal access to basic telephone service at affordable prices; the international competitiveness of the Canadian telecommunications industry; technological progress to benefit all Canadians; fair and balanced regional development; and the need for government to assume responsibility for policy development.

Later that year, the government approved a telecommunications policy framework, which was announced in July 1987. This framework was the first statement of a global telecommunications policy by a federal government since the early 1970s.

In August 1989, in a decision many have termed historic, the Supreme Court of Canada determined that the Parliament of Canada has legislative authority over the principal Canadian telecommunications common carriers. As a result of this decision, the privately-owned companies members of Telecom Canada (now Stentor), are subject to the authority of a single regulatory agency, the Canadian Radio-television and Telecommunications Commission (CRTC). With the privatization of Alberta Government Telephone (AGT), only the provincial Crown corporations in Manitoba (MTS) and Saskatchewan (SaskTel) are not subject to CRTC authority, because of the immunity conferred on them by their status as Crown corporations.

Later in 1989, the government tabled Bill C-41 for First Reading. This bill would have brought these two companies under the authority of the CRTC. However, the bill was set aside when the government decided to continue consultations with the provinces on their role in policy development and implementation. At the same time, the government undertook to draft new telecommunications legislation in order to give substance to the statement of principle of 1987 and to follow up on the Supreme Court decision.

These consultations led to agreements or agreements in principle with most of the provinces directly affected by the Supreme Court decision. Some of the consultation mechanisms mentioned in these agreements are the subject of specific provisions in the telecommunications bill.

SUMMARY OF THE BILL

This description of the legislation is divided into five parts. Part One describes the Objectives and Principles of the Telecommunications Policy and Part Two outlines the Scope of the legislation. Part Three provides an overview of the Policy Instruments, that is, the powers which the government requires to ensure implementation of the policy, including the power to issue directions to the CRTC, the power to establish technical standards for telecommunications facilities, and powers relating to the licence-issuing system. Part Four highlights the Regulatory Instruments and measures aimed at making the regulatory framework more flexible and effective; it discusses the CRTC's power to refrain from regulating, its power to take action where necessary with respect to unsolicited telecommunications, and the possibility for the CRTC to give advance rulings concerning the rules and conditions that should govern provision of a service that a carrier plans to offer. Finally, Part Five describes provisions concerning the Participation of the Provinces in policy development and implementation.

II. TELECOMMUNICATIONS LEGISLATION

1. OBJECTIVES AND PRINCIPLES OF THE POLICY

The Canadian telecommunications policy is based on the aims and principles that have traditionally guided development of the country's telecommunications system. However, it also reflects the demands arising from new realities, including the globalization of markets, in particular the integration of the North American market, and the extremely rapid development of the telecommunications sector.

The primary objectives of the policy are to maintain and increase the competitiveness of Canadian telecommunications, domestically and internationally, to promote Canadian ownership and control of telecommunications common carriers, and to guarantee Canadians access to reliable and affordable telecommunications services. Two major principles guide the fostering of these objectives: first, opening up the Canadian telecommunications market, through the application of a coherent policy for the whole country under the aegis of a single regulatory agency, while respecting provincial and regional needs; and, second, making the regulatory framework more flexible. The new legislation is the primary means for applying this policy.

The bill sets out the objectives of the policy, which are expressed in terms of the interests of the industry and users. It states that the objectives are, among other things, to foster increased reliance on market forces where conditions permit; to promote Canadian ownership and control of telecommunications common carriers, as well as the use of Canadian transmission facilities; to stimulate Canadian research and development; and to give Canadians access to reliable and affordable telecommunications services of high quality.

2. SCOPE OF THE LEGISLATION

The legislation applies to all Canadian telecommunications common carriers, as defined in Section 2. Three major definitions specify the nature of these carriers, that is, the definitions of *telecommunications common carrier*, *transmission facility* and *Canadian carrier*.

Under the terms of the legislation, a *telecommunications common carrier* is the owner or operator of transmission facilities that are used to provide telecommunications services to the public for compensation.

The point of the criterion respecting ownership or operation is to identify the person who actually controls the transmission facilities. The criterion respecting provision of telecommunications services to the public for compensation is intended to prevent the act's affecting carriers whose transmission facilities are used for internal purposes (Ontario Hydro, for example), thereby limiting the scope of the legislation to carriers who receive payment for the services they provide.

The *transmission facility* is at the heart of what constitutes a telecommunications common carrier for the purposes of the legislation and is the subject of a specific definition. Under the definition, the transmission facility must provide a link between two given points. The intent of the definition is to have the act apply only to the country's principal telecommunications common carriers, and not to entities which act only as suppliers of services or equipment.

These definitions clarify the type of competitive market the act is intended to encourage. In effect, the legislation is aimed at ensuring the necessary controls over carriers who have telecommunications infrastructures, even though there is substantial flexibility in those controls, as we will see later, and is intended to promote a fully competitive market for those who resell or share services.

Finally, the scope of the legislation is ultimately determined by the jurisdictional factor. The act applies only to **telecommunications common carriers which are under federal jurisdiction.**

The scope of federal jurisdiction was clarified by the decision of the Supreme Court of Canada on August 14, 1989 in the case of AGT versus CNCP Telecommunications. However, federal regulation does not now apply to the Crown corporations MTS and SaskTel, because the *Railway Act* contains no provision specifically binding the Crown. The bill corrects this anomaly.

It remains to be determined by the courts whether the smaller telephone companies, commonly called "independent telephone companies," are under federal jurisdiction.

The legislation does not apply to broadcasters, as defined under the *Broadcasting Act*, with respect to broadcasting activities. Without this provision there would be concurrent regulation under the *Broadcasting Act* and the *Telecommunications Act.*

3. POLICY INSTRUMENTS

The act accords the government various powers with a view to effective implementation of the policy's objectives. Several of these powers are new. The intent is to enable the government, in exercising these powers, to develop policies that reflect the state of the telecommunications sector, including the rapid transformations it is undergoing, thereby ensuring the government's control over the general evolution of the sector in Canada.

POWER TO ISSUE POLICY DIRECTIONS

The act empowers the Governor in Council to issue to the CRTC directions of general application on broad policy matters with respect to any of the objectives of the policy. With the recent adoption of the *Broadcasting Act*, the government now has a similar power in the field of broadcasting.

It should be noted that the directions which the Governor in Council is authorized to issue must bear on broad issues related to application of the policy. The government is thus being given a power that will enable it to assume its responsibilities for policy development.

The terms and conditions respecting the exercise of the power to issue directions are clearly established by the act. Thus, when the CRTC is actively studying a matter, directions issued by the government which might apply to such a matter are not binding on the CRTC. Moreover, the proposed order related to the direction to be issued must be laid before each House of Parliament and be the subject of consultation with the CRTC before it is adopted. The act imposes strict requirements on the government concerning public notice and consultation with interested parties.

MAINTENANCE OF THE POWER TO REVIEW CRTC DECISIONS

Under the new legislation, the Governor in Council may, by order made on application by an interested person or on its own motion, vary or rescind CRTC decisions. The substance of Section 67 of the *National Telecommunications Powers and Procedures Act* is incorporated into this provision and it does not grant the government any new power.

The importance of the power of review lies in the fact that some issues involved in CRTC decisions transcend regulatory matters for which the CRTC is responsible and enter the larger domain of public policy. The power is essential to ensure that the telecommunications sector is regulated in accordance with the government's broad policy objectives.

However, the legislation also guarantees, for the first time, that interested parties will be duly informed of applications for review made to the Governor in Council.

POWER OF EXEMPTION

The Governor in Council may, by order, exempt any class of Canadian carrier from the application of the act, subject to any conditions the Governor in Council believes are indicated and where the Governor in Council is satisfied that the exemption is consistent with the objectives of the policy set out in the legislation.

This new power is intended, for example, to enable the government to exempt from the act's restrictions carriers whose size, **in the context of the policy objectives**, does not justify the level of regulation which applies, to the country's large telephone companies. In this way, the provision recognizes that it is not necessary to regulate all Canadian carriers to the extent provided for by the legislation.

For example, radio common carriers could be exempted. Canadian telecommunications policies have traditionally avoided submitting these carriers to strict regulatory control. This government also believes that it would not be justified to subject them to such regulation. The definition of *Canadian carrier* includes radio common carriers. The power of exemption permits this restriction to be lifted.

By thus authorizing the government to maintain its right to examine the **general** market situation, and not a particular activity or service (which would fall under the responsibility of the regulatory body), the power of exemption allows for adjusting the policy framework as required to reflect the rapid development of the telecommunications industry.

The provisions respecting this power ensure that all interested parties will have an opportunity to be heard regarding the proposed exemption. They also oblige the Minister to consult the CRTC before presenting a recommendation to the Governor in Council.

POWER TO ESTABLISH TECHNICAL STANDARDS

The act accords the Minister new powers to establish technical standards for telecommunications facilities and to require the CRTC to give effect to them.

The intention behind this section is to recognize the government's jurisdiction over establishment of Canadian and international standards. This section also affirms the CRTC's active role in this regard, since the Minister, under this provision, must consult the CRTC before establishing standards and may require the CRTC to give effect to them.

LICENCE-ISSUING SYSTEM

The new legislation establishes a system under which all Canadian carriers, as defined in the act, may operate as such only if they hold a licence. The power to issue, renew and revoke licences is held by the Minister.

The Minister issues a telecommunications licence if, in the Minister's opinion, doing so will help further the telecommunications policy objectives set out in the act. The Minister may include in the licence appropriate conditions. However, before doing so, the Minister must forward the licence application to the CRTC, which will initiate public procedures regarding the application and submit a report to the Minister.

CANADIAN OWNERSHIP

In order to be eligible to hold a telecommunications licence, the Canadian carrier must satisfy specific requirements respecting Canadian ownership and control. Under these requirements, 80 percent of the interests in the carrier must be owned and controlled by Canadians. The legislation and related regulations are thereby intended to promote Canadian control of the country's telecommunications infrastructures.

Canadian ownership and control rules are more flexible for holding companies that wish to invest in Canadian carriers, because of the often international nature of their operations and their sources of capital. Under these rules, two-thirds of the holding company's equity must be owned and controlled by Canadians.

There are certain foreign controlled carriers now operating in Canada, such as BCTel and Quebec Tel, which have satisfied the needs of their customers successfully for a number of years. The acquired rights of any such companies that are subject to this act will be recognized. For example, B.C. Tel will not face any special constraints on its operations in British Columbia although it is more than 50 percent controlled by GTE Corporation. However, carriers with acquired rights must ensure that they maintain, in accordance with the regulations, their level of Canadian ownership.

These and other elements of the Canadian ownership regime will be contained in regulations which will be developed in a manner that is both flexible and consistent with the objectives of the policy.

ISSUING OF LICENCES TO NEW CARRIERS

The new licence-issuing system permits entry into the market by new facilities-based carriers, while enabling the government to ensure that the size and nature of this market, which is crucial to the entire telecommunications sector, respond to users' needs and to the interests of the industry as a whole. In this respect, the role of government under the new licence-issuing system has not changed.

During the past thirty years, the government has granted operating licenses under the *Radiocommunication Act* to new telecommunications carriers such as Telesat Canada and Cantel, and to existing carriers such CNCP (now Unitel) to operate new facilities. The decision to allow CNCP in 1961 to operate a nation wide microwave communications facility to provide business

communications services was instrumental in stimulating competition in this market. Telesat Canada's entry into the market in 1969 gave Canadians, particulary those in remote areas, access to a range of new communications services; it also gave rise to the Canadian space communications industry. Finally, the granting of a licence to Cantel and the CellNet companies in 1985 led to the development of an innovative and competitive cellular communications industry which revolutionized mobile communications in this country. In each case there was a thorough review before a licence was granted.

If past experience is an indication, future applications for a licence to operate new facilities-based services could follow the same pattern: applications would be relatively few, and they would generally involve the introduction of new services and more advanced technologies that will be supplied by either a new carrier or an existing one. Furthermore, the CRTC will automatically review each application on its merits and against the objectives of the telecommunications policy, and then submit a report to the Minister for consideration.

Whatever the nature of the applications, they will be assessed according to a number of factors, including:

- the effect of the new carrier on universal access to affordable, high-quality basic telephone service;

- the capability of the proposed operation to respond to specific needs and to offer services from which Canadians could benefit;

- the potential effects of the proposed operation on the availability of a range of reliable, high-quality and affordable telecommunications services in all regions of Canada;

- the effect of the new carrier's market entry on the efficiency and competitiveness of the Canadian telecommunications industry.

In addition to benefitting from the CRTC's recommendations, the Minister may consider an application in the light of any other factor the Minister deems appropriate. A company receiving a telecommunications carrier licence would then be subject to regulation by the CRTC.

4. REGULATORY INSTRUMENTS

A large number of existing legislative provisions regarding regulation are consolidated, and in many cases updated, in the new legislation.

Thus, the obligations of Canadian carriers set out in the *Railway Act* are now contained in Part III of the legislation, entitled "Rates, Facilities and Services." This part presents the elements on the basis of which the CRTC establishes its regulatory criteria, particularly the process for rate-setting and the connection of telecommunications facilities, essentially incorporating those already in force. It should be noted that two major regulatory principles are maintained: the obligation to establish just and reasonable rates and the prohibition against discriminatory practices.

Much of the *National Telecommunications Powers and Procedures Act*, which describes the CRTC's powers, corresponds to Part IV of the new legislation. The act provides important new powers for CRTC, including the ability to forbear from regulating, which will significantly increase the flexibility and responsiveness of the regulatory system. The following briefly describes the nature of these new powers.

FORBEARANCE BY THE COMMISSION

The most important new power the act accords the CRTC is the power to forbear from exercising its normal regulatory powers in relation to services provided by Canadian carriers where it deems there is sufficient competition to protect users' interests.

Until now, the CRTC could not refrain from regulating the carriers under its jurisdiction. This ran counter to the general trend in modern societies toward more reliance on market forces, and had frequently been criticized by the industry.

The new legislation authorizes the CRTC, in exercising its powers, to take into account the degree of competition in the provision of services. Thus, it may refrain from regulating if it deems that there is sufficient competition to ensure that just and reasonable rates for services are established, and to prevent any unjust, undue or unreasonable discrimination, preference or disadvantage. However, the act provides that, whenever the CRTC determines that the service is no longer subject to sufficient competition, the Commission must resume the exercise of its normal powers and duties.

ORDER TO INTEGRATE ACTIVITIES OF AFFILIATES OR TO DIVEST ACTIVITIES

The act authorizes the CRTC to order any Canadian carrier either to provide a telecommunications service instead of an affiliate or to cease to provide a service in favour of an affiliate. Its decision must be based on the degree of competition to which the service is subject, in relation to the need to ensure establishment of just and reasonable rates and to prevent discriminatory practices.

These two new provisions originated in the *Bell Canada Act*. Their generalization to cover all Canadian carriers, like the section authorizing the CRTC to refrain from regulating, reflects the intent to adjust the regulatory framework to the realities of the telecommunications market.

These powers allow the CRTC, in exceptional circumstances, to require structural separation to protect the public interest.

UNSOLICITED TELECOMMUNICATIONS

Technological developments have created new kinds of threats to privacy. One of the most striking examples is advertising by telephone or facsimile machine.

The legislation is designed to deal with this new problem. It explicitly grants the Commission the power to regulate, taking into account users' right to freedom of expression, certain categories of unsolicited telecommunications transmitted using the telecommunications facilities of a Canadian carrier.

ADVANCE RULINGS BY CRTC

The act contains a new provision under which the CRTC, on application by a person who plans to provide telecommunications services within the framework of a Canadian carrier, or on application by the Canadian carrier, may advise the applicant regarding the rules and conditions which should govern the provision of those services. By authorizing the CRTC to advise in this way, the legislation increases the efficiency of the regulatory process and contributes to the establishment of new telecommunications services.

METHOD OF DETERMINING RATES

Finally, the legislation modernizes and clarifies the CRTC's powers respecting determination of rates in such a way as to give the CRTC more flexibility in this regard.

A new provision even clearly authorizes the CRTC to choose the method it deems most appropriate for establishing the rates of the carriers it regulates, including the current method, which

is based on the carrier's rate of return on its rate base. Alternatively, the CRTC will be able to use price cap regulation, or even to adopt social contracts.

The act thereby enables the CRTC to better take into account the diversity and complexity of telecommunications common carriers.

5. INCREASING REGIONAL AWARENESS

Aware of the legitimate concerns of the provinces regarding regulation of telephone companies operating in their territory, especially where it affects economic and social development, the government concluded a series of agreements with the provinces to specify the terms for their participation in policy development and implementation.

Most of the consultation mechanisms provided for in these agreements are the subject of specific measures in the new legislation.

The act stipulates that a province must be consulted when the exercise of the government's main powers will significantly affect the principal telecommunications common carrier in the province or a carrier operating principally in the province. The main powers involved here are those to issue directions to the CRTC, to review CRTC decisions, to exempt categories of carriers from the provisions of the act, and those related to the issuing of licences.

In addition, it should be emphasized that, with the recent adoption of the *Broadcasting Act*, CRTC commissioners may henceforth exercise their powers and carry out their duties in the regions, the intent being that the CRTC's decisions reflect the needs and interests of all regions of the country. The responsibilities of commissioners extend to both broadcasting and telecommunications.

III. CONCLUSION

Telecommunications is the country's leading high-technology industry, one of the few industries in which Canada is a world leader, and it provides an essential infrastructure for Canadian businesses. The economic importance of this sector has been proved, and all the main parties involved recognize the urgent need to give Canada the means to maintain and promote competitiveness in telecommunications, both nationally and internationally.

The government believes, therefore, that it is essential that regulation of telecommunications be more flexible and that greater competition in this sector be encouraged, while guaranteeing Canadians access to reliable, affordable and high-quality telecommunications services.

The new legislation advances these major policy objectives. It ensures a more open Canadian telecommunications market, through the application of a coherent policy for the entire country and the establishment of a single regulatory agency; guarantees the participation of the provinces in policy development and implementation; modernizes the regulatory framework; and favours Canadian ownership and control of telecommunications infrastructures.

The legislation thereby ensures that the telecommunications industry, which is vital for the country's economy and for all Canadians, can successfully meet the challenges of the coming decades.