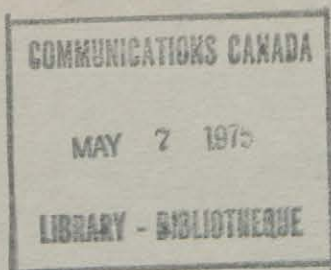


# Communications: Some Federal Proposals



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Honourable ①  
Gérard Pelletier  
Minister of Communications  
April 1975

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## **Communications: Some Federal Proposals**

*In March 1973, the Government published a Green Paper entitled PROPOSALS FOR A COMMUNICATIONS POLICY FOR CANADA, in which a number of suggestions were made for a better harmonization of federal and provincial interests in the development and regulation of Canadian communications systems and services. The Governments of the Provinces responded by enunciating their several positions at the Federal/Provincial Conference on Communications, which was held in Ottawa November 29 and 30, 1973. This conference was followed in April 1974 by a series of meetings between the federal Minister and individual provincial Ministers, at which certain federal proposals were put forward in response to the provincial positions enunciated at the November Conference.*

*This paper sets out, in broad outline, the intentions of the Federal Government, taking account of views expressed by the Provinces, as a basis for further consultation and an early revision of federal communications legislation.*

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**I.  
The Common Objectives  
of Communications  
Policy**



# I. The Common Objectives of Communications Policy

All Canadians, regardless of their origin or language or place of residence, share two fundamental demands for efficient and economical telecommunications:

1. they wish to be able to make direct contact with other people, not only in Canada but throughout the world; and
2. they wish to have access to information and entertainment, both local and Canadian in character, as well as the best that the world has to offer internationally.

The ability to meet these demands effectively and economically has been vastly increased in recent years by new communications technology, which continues to develop at an unprecedented rate. However, there is ample evidence in other fields that a blind acceptance of new technology for its own sake may have unforeseen results that are not only undesirable and wasteful but may not in the end provide the public with essential services. A primary concern of the Government is therefore to ensure that, in the field of communications, the development and use of new technology shall be the subject of a conscious choice which establishes a proper balance between the economical employment of scarce resources and the development of effective service to the public over as wide a range as possible.

In the past, telecommunications could be conveniently classified as telephony, telegraphy, or broadcasting. These distinctions are now less usefully applicable to the means of transmission employed, since conversations, messages, data, and broadcast programs all can be, and are being, carried by such means as coaxial cable, microwave, and satellite systems, which will be supplemented in the future by new technologies of even broader potential. While cable-television systems are at present almost wholly used for the distribution of broadcast programs, they have the capacity, if suitably modified, to provide two-way services involving, for example, direct exchanges between the public and the broadcasters, as well as access to computers, databanks, libraries, and other sources of information and entertainment. Moreover, they are capable of being linked to broad-band transmission facilities for networking, so that services can be provided on an interprovincial or even an international scale.

The contemporary means of transmission for telecommunications services are such that even though the physical facilities may be situated within a single province, the services themselves potentially, and in most cases actually, extend beyond the limits of that province. Thus, while particular facilities may be purely local in a physical sense, they provide services that connect all the provinces with each other and with the outside world, and therefore represent the components of a Canadian system which amounts to more than the sum of ten provincial systems.

The history of the development of telecommunications in Canada has resulted in a division of legislative authority between the federal and provincial governments. There is exclusive federal jurisdiction over radiocommunication, including broadcasting. Some of the telecommunications carrier undertakings [notably Bell Canada, British Columbia Telephones, Canadian National/Canadian Pacific Telecommunications (CN/CPT), the Canadian Overseas Telecommunication Corporation (COTC), and Telesat Canada] are subject to federal legislative authority, while the other principal telephone companies are provincially regulated. The effect of this situation is that no government in Canada has been in a position to give comprehensive attention to the current operations and future development of the Canadian telecommunications system as a whole.



The Federal Government does not believe that these complexities can be resolved by formal transfers of legislative authority to or from the provinces, precisely because all modes of telecommunications have both local and extra-provincial aspects, and because these cannot be distinguished by reference to the physical facilities employed. Nevertheless, it is evident that means must be found to maintain the orderly development of telecommunications across Canada. The Government intends to give full recognition to provincial and regional objectives and priorities, while continuing to fulfill its responsibility for this essentially national dimension. Thus, there is an urgent need for agreement on cooperative arrangements that will enable better account to be taken of provincial concerns while avoiding the fragmentation of Canadian telecommunications systems and protecting the interests of Canada as a whole.

As a prerequisite for the introduction of such measures within areas of federal responsibility and authority, it is expected that provincial governments will be willing to enter into the proposed arrangements in a cooperative spirit. The people of Canada are entitled to the best possible telecommunications services, and their proper interests will be best served by a mutual understanding among governments as to the common objectives to be pursued. It is recognized that different governments will have their own priorities in developing policies and programs for the achievement of these objectives, and this makes it all the more important that there should be effective mechanisms for the harmonization of provincial and federal policies, plans and actions so as to ensure the orderly development and operation of telecommunications systems and services.

First, these systems and services must be efficient and economical, and there should be reliable service in all parts of the country at just and reasonable rates, taking full account of regional and provincial needs and priorities. Effective and coordinated regulation of telecommunications services is therefore essential, so as to ensure a proper balance between the interests of the public at large and the legitimate revenue requirements of the telecommunications industry.

Second, it is essential that the development and provision of all telecommunications systems and services should be designed to preserve and strengthen the economic, social, cultural, and political fabric of Canada.

Third, there should be strong communications links within and between all parts of Canada, thus reducing dependence on foreign communications resources, and Canadian facilities should be used, to the greatest feasible extent, for the carriage of telecommunications traffic between Canada and other countries. To achieve this, there must be an assurance of Canadian ownership or effective Canadian regulatory control of all telecommunications systems and services in Canada. Further, the efficient development of Canadian systems, using the products of Canadian industry to the largest possible extent depends on the promotion of research and innovation and the strengthening of Canadian undertakings engaged in the manufacture of telecommunications equipment and the provision of computer/communications services and facilities.

Fourth, there must be a free flow of information between all Canadians, who should have access to as wide a choice of information and entertainment as possible in both official languages. Emphasis will also have to be placed on the provision of Canadian sources of creativity and information, for these are essential to the survival of Canada as a distinct social and political entity.

Some of these objectives are already embodied in the *Broadcasting Act*, but are of equal relevance to all forms of telecommunications. The Government is concerned to maintain the objectives underlying the structure of the Canadian broadcasting system as a whole, with particular emphasis on the provision of the national broadcasting service, in both official languages, by the Canadian Broadcasting Corporation.

The foregoing objectives, which have previously been put forward for discussion with the Provinces, are set forth as the background to the legislative and administrative arrangements described below. These arrangements reflect the desire of the Government of Canada to take all reasonable measures to accommodate the concerns of the Governments of the Provinces and to work together with them to harmonize policies and programs for the benefit of all Canadians.

**II.**  
**Arrangements for**  
**Federal/Provincial**  
**Cooperation**



## II. Arrangements for Federal/Provincial Cooperation

The enactment of new federal legislation covering the whole field of telecommunications will take some months, but there are areas in which the Government can, under existing law, move towards closer and more effective collaboration with the provincial governments. The principal need is for a wider exchange of information about policies, programs, and operations on a continuing basis, so that all governments may achieve a better mutual understanding based on a common background of knowledge.

### A. Intergovernmental Cooperation

The Provinces have been invited to join in the establishment of a *Committee for Communications Policy*, consisting of the federal and provincial Ministers responsible for communications. This Committee would appoint sub-committees of officials to study and advise on such matters of mutual concern as systems planning, interprovincial and international services, and technical standards.

#### 1. *Systems Planning*

All governments are justifiably interested in the planning of communications systems that will satisfy their social, cultural, and economic concerns. In addition to the opportunities for coordinated planning that would be afforded by the *Committee for Communications Policy*, the Government would be prepared to enter into arrangements with regard to plans affecting a single province or a group of provinces with common interests. Under existing federal legislation, the Government has only very limited powers to give directions to the regulatory bodies. However, the implementation of agreed plans would be facilitated by the proposed enactment, in the second stage of federal legislation, of a provision empowering the Government to give formal directions to the federal regulatory body on the interpretation of statutory objectives and the means for their implementation.

#### 2. *Interprovincial and North American Services*

A very wide area of telecommunications policy, with regard to system structure, services, and rates, is at present largely left in the hands of the Trans-Canada Telephone System, which is not, as a whole, answerable to any government in Canada. There is a need to ensure that the planning and rate structure of the Canadian telephone system be more effectively scrutinized by the federal and provincial governments on a cooperative basis, particularly with regard to interprovincial services and services between Canada and the United States. The proposed *Committee on Communications Policy* could gradually be developed into a forum for discussion of federal and provincial interests and an effective mechanism for the broad surveillance of the Canadian telephone system, without in any way encroaching on existing jurisdictions. An important feature of this kind of cooperation would be that all governments would be approaching their mutual and particular problems with the benefit of an exchange of relevant information as a basis for the formulation of their own policies.

#### 3. *Technical Standards*

The adoption of compatible technical standards for all telecommunications systems in Canada, taking regional differences fully into account, is an objective to which great importance is attached, not only for the improved quality of service that would result but also for the great advantage of the Canadian telecommunications equipment manufacturing industry. In addition to the obvious need for compatibility of equipment, a case in point is the desirability of arriving at agreed technical standards for the interconnection of privately-owned equipment to the public networks of the carriers. The Government does not seek to impose its standards on any other government, but will continue to use its resources to develop, in consultation with provincial governments and the industry, technical standards of performance and operation that will be mandatory within federal jurisdiction and would, if adopted by provincial governments, contribute to the orderly development of telecommunications systems and services throughout Canada.

B.  
Cooperative Regulatory Arrangements

In addition to these arrangements for cooperation among governments, it is recommended that they should be supplemented by the establishment of an *Association of Communications Regulatory Bodies*, which the Federal Government would help to support. From time to time, the Association would be expected to make recommendations to the proposed ministerial *Committee on Communications Policy* with regard to the development of telecommunications systems in the public interest.

The Association would also be expected to sponsor studies on such matters as economic criteria for regulation, including the permissibility of interconnection, the establishment of standard cost-separation formulae, and uniform accounting methods. If a consensus were reached on recommendations arising from these studies, they could be made applicable to all the undertakings subject to the jurisdiction of the several regulatory bodies, with a view to achieving greater harmony in regulatory practices.

**III.**  
**Federal Legislation**



### III.

## Federal Legislation

Parliament will be asked to enact measures to revise and consolidate existing federal legislation governing communications. One of the principal effects will be to permit the establishment of more effective arrangements for cooperation with the Provinces. The new legislation is being introduced in two stages.

#### 1. *First Stage*

The first stage, for which legislation has already been introduced, is limited to the establishment of a single regulatory body to exercise the powers and functions of the **Canadian Radio-Television Commission and the Telecommunications Committee of the Canadian Transport Commission**. The body, to be known as the Canadian Radio-television and Telecommunications Commission, will consist of nine full-time members, including a Chairman and two Vice-Chairmen, and ten part-time members. No provision would be made at this stage for any change in the powers to be exercised under the *Broadcasting Act*, the *Railway Act*, or other relevant federal statutes.

#### 2. *Second Stage*

The second-stage legislation would entail a complete revision of existing statutes with a view to clarifying their application to contemporary and future modes of telecommunications, to rationalizing the respective roles of the Federal Government and the regulatory body, to providing for more effective collaboration with the Provinces, and generally to establishing a coherent body of federal law on communications.

It is the intention that the Governor in Council should be authorized to give formal directions to the Commission on the interpretation of statutory objectives and the means for their implementation. Matters not subject to such direction would be specified in the statute, the most important being matters of broadcast programming. The purpose of this provision would be to ensure that the development of policy would be, and would be clearly seen to be, under the control of elected representatives of the people. It would also afford opportunity, from time to time, for the views of the Governments of the Provinces to be made applicable to the decisions of the federal Commission.

An example that may be cited is the question of inter-carrier competition, about which several provinces have expressed concern. Under this provision, it would be possible to ensure that, within federal jurisdiction, no entry into the provision of telecommunications services by a new carrier would be permitted without the approval of the Governor in Council, which would also be required for new facilities, or extension of existing facilities, of a major character by the existing federally-regulated carriers. Subject to reciprocal undertakings by the Provinces with regard to provincially-regulated companies, such approval would be given only after consultation in the proposed *Committee on Communications Policy* or direct discussion with the provincial government or governments concerned.

The new statute would embody a statement of objectives which would govern the Minister of Communications and the federal Commission in the exercise of their powers and functions.

Subject to the enactment of the second-phase legislation, the Government would seek the concurrence of each provincial government in the nomination of one of the ten part-time members to be appointed for a term to the new Commission by the Governor in Council. These part-time members would participate in public hearings and private deliberations on broadcasting matters, with the same responsibilities and powers that the part-time members of the CRTC have today under the *Broadcasting Act*.

The enactment of the proposed second-phase legislation would enable the Commission to make use of new provisions designed to facilitate cooperative arrangements with the Provinces, to ensure adequate public access to efficient services, to achieve more effective economic regulation of the telecommunications carriers subject to federal regulation, and to rationalize the relationships between carriers and cable-television undertakings.

The principal features of the second-phase legislation may be summarized under the following headings:

- (a) regulation of carriers subject to federal jurisdiction;
- (b) radiocommunication;
- (c) broadcasting (general);
- (d) broadcasting (cable).



## A. Regulation of Carriers Subject to Federal Jurisdiction

### 1. *General*

In taking steps to clarify the powers of the federal regulatory body with regard to telecommunications carriers, the intention is to provide a statutory framework in which the Commission could establish mechanisms, based on an adequate understanding of a carrier's financial position and prospects, so as to ensure that the rate structure is not only just and reasonable for the public but also compatible with the ability of the carrier to raise the new capital required for extensions and improvements, and for the introduction of new technological developments that would improve service to the public.

The Commission would be responsible, as the Canadian Transport Commission is at present, for ensuring that rates for telecommunications subject to federal jurisdiction are just, reasonable, and non-discriminatory, while providing an adequate return on investment. Where there is any incompatibility between the new statute and the special act of incorporation of a carrier, the former would prevail.

In order to ensure proper service to the public, it is proposed that, subject to enactment of the second-phase legislation, the Commission would be empowered to order a federally-regulated carrier to provide basic services in areas where they are not available, taking the cost of doing so into account in the determination of the carrier's general tariffs. The Commission would also be empowered to enforce standards of quality in the services provided by the carriers, and to authorize limited trials of new services or equipment so that their value to the public may be determined. To ensure room for competition in the provision of services that might better be provided competitively, it would be possible, subject to the approval of the Minister, to exempt the provision of specified services from rate regulation, provided that the Commission is satisfied that this can be done without detriment to the effective regulation of the general service to the public.

It is the intention that the new Commission would be empowered (within the limits of federal jurisdiction) to determine whether any proposed interconnection of apparatus or equipment that is compatible with technical standards would be in the public interest, having regard to economic and other considerations, and to order interconnection subject to appropriate conditions.

Complex considerations also arise with regard to interconnection of systems. The interconnection of public carrier systems with each other has an important bearing on some aspects of inter-carrier competition, to which the Government is giving close attention. Interconnection of private systems with the public switched networks may raise economic problems for the latter, which would be left for consideration by the new federal Commission in making decisions as to whether, and on what conditions, such interconnection would be allowed within the area of federal jurisdiction.

It is also proposed that the second-phase legislation should embody a number of provisions, some of which are included in existing legislation, designed to facilitate the more effective economic regulation of the telecommunications carriers subject to federal authority. The carriers would be required to submit annually a five-year program of investment and construction, and the Commission would be empowered to exclude from the carrier's rate-base any capital or other expenditures not deemed to conform to the public interest, to approve all equity issues, and to approve or prohibit the incorporation, acquisition, or disposal of subsidiary companies.

In order to implement any consensus reached by the proposed *Association of Communications Regulatory Bodies* with regard to uniform procedures and criteria, the Commission would be empowered to prescribe, for example, the form and frequency of returns accounting for operating and capital expenditures both by the federally-regulated carriers and their subsidiary and associated companies, to prescribe uniform methods of cost accounting and rates of depreciation that it will use, and to establish the cost separation formulae it will use in its determination of the rate-base for all services.

### 2. *Carriers and Cable-television Undertakings*

The proposed second-phase legislation would contain provisions to rationalize the relationships between federally-regulated carriers and community-antenna television (CATV) undertakings. The regulatory body would thus be empowered to approve all agreements between federally-regulated carriers and CATV operators covering the use of facilities and, as appropriate, to order federally-regulated carriers to furnish access to facilities at reasonable rates and without unreasonably restrictive conditions.

### 3. *Provincial Participation in Federal Regulation of Carriers*

Bell Canada operates in two provinces and in the North-West Territories—a sufficient reason in itself for the exercise of federal regulatory authority. It is recognized, however, that the Provinces of Ontario and Quebec are thereby placed in a position different from that of the provinces that have jurisdiction over the main carriers operating within the province. Subject to the enactment of second-stage legislation, the Government would accordingly be willing to enter into an agreement to meet the concerns of the Provinces of Ontario and Quebec. Under such an agreement, in public hearings and private deliberations on matters related to Bell Canada, representatives of the regulatory bodies of Ontario and Quebec could be entitled to participate in the proceedings of the federal Commission before its decisions are made. Similarly, the agreement could provide that a representative of the federal Commission should be invited to participate in hearings by the regulatory bodies of Ontario and Quebec on matters that have extra-provincial aspects.

The Government is engaged in bilateral discussions with the Governments of British Columbia and Newfoundland with regard to future arrangements for the regulation, respectively, of the British Columbia Telephone Company and the telephone service provided in Newfoundland by Canadian National Telecommunications.

It is also proposed that the federal Commission be authorized to ask the appropriate provincial regulatory body or bodies for advice on certain matters within federal jurisdiction if they have significant intra-provincial aspects. The Commission would be empowered to consult a provincial regulatory body in advance of a rate hearing that could have important intra-provincial implications.

The introduction, under powers to be provided in the second-phase legislation, of these arrangements for participation in the federal regulatory process by representatives of provincial regulatory bodies would entail no obstacle to the continuation of the existing right of a provincial government to be represented as an intervenor in federal public hearings.

#### B. Radiocommunication

Since Hertzian waves recognize no boundaries, provincial or national, the management of the radio-frequency spectrum is necessarily subject to international agreements and constraints in which only the Federal Government

can represent Canada. Policy and planning for the utilization and allocation of the spectrum must therefore be administered on a national basis. This does not, however, preclude the participation of the Provinces (either through the *Committee on Communications Policy* or through individual bilateral arrangements with the Federal Government) in the identification of provincial and regional requirements to be accommodated in national spectrum planning.

Under the proposed legislation, the Minister of Communications would retain his responsibility for the orderly development of radio-communication, with authority over the management of the radio-frequency spectrum and exclusive authority to issue radio licences. However, he would additionally be empowered to invite a provincial government or governments to make recommendations on any matter within his jurisdiction which is specifically related to that province or which has implications for more than one province. The Minister would also be entitled to call upon the federal regulatory body, or (through the responsible provincial Minister) invite a provincial regulatory body, to advise him, perhaps after a public hearing, on any matter within his jurisdiction.

#### C. Broadcasting (General)

The Parliament of Canada has exclusive legislative authority over all forms of broadcasting, and the Government is determined to ensure that Canada shall continue to have a broadcasting system that preserves and strengthens the social, cultural, political, and economic fabric of Canada, and that is predominantly Canadian in content and character. Furthermore, it is essential that broadcasters, whether in the public or the private sector, shall be free from partisan political influences, being subject only to general standards as to the origin, quality, balance, and language of their programming; this is the basis of the relationship between the Federal Government, the CRTC, and the CBC.

There is a distinction to be drawn between the responsibility of the Government for the structure and balance of the broadcasting system itself, and the delegation by Parliament to an independent regulatory body of responsibility for supervising the balance and quality of the programming carried by the system. As has been stated, it is proposed that under the new legislation the Governor in Council would be empowered to give formal directions to the Canadian Radio-television and Telecommunications Commission on matters affecting the

structure and balance of the broadcasting system. It should be stated clearly, however, that the exercise of this new power would not be applicable to the content of programming by the CBC or private broadcasters, a subject that would be specifically exempted from governmental direction by the proposed statute.

This new provision would enable the Government to give effect to the concerns of the Governments of the Provinces with respect to broadcasting coverage and service. Accordingly, an undertaking would be given to discuss broadcasting priorities with provincial governments, in advance of major decisions on coverage and service priorities, at meetings to be held at regular intervals.

Subject to the foregoing provisions, the Canadian Radio-television and Telecommunications Commission would be charged with the supervision and regulation of the Canadian broadcasting system in accordance with the statutory objectives.

With regard to the licensing and regulation of broadcasters, the part-time members of the new regulatory body would participate in its proceedings as the part-time members of the CRTC do today. As stated above, the Government intends, subject to the enactment of the second phase of legislation, to seek the concurrence of each provincial government in the nomination of one of the ten part-time members to be appointed for a term by the Governor in Council, thus ensuring the infusion of local and regional sensitivity into deliberations on licensing and regulatory matters.

#### D. Broadcasting (Cable)

The Government has given long and earnest consideration to the representations of the Governments of the Provinces on the subject of regulatory authority over cable-television systems. A cable system that receives broadcasting transmissions from a community antenna and distributes them to subscribers has been designated as a 'broadcasting receiving undertaking' and, as such, is subject to the exclusive legislative authority of Parliament. However, the coaxial cables that distribute the broadcast signals have the potential capacity, subject to modification of their ancillary equipment, to carry a wide variety of telecommunications services that are not necessarily related to broadcasting. Coaxial-cable systems providing general telecommunications services are already being installed by the carriers, and it is therefore arguable that the development of separate cable systems to distribute broadcast programs may be unnecessary. Several provin-

cial governments are especially concerned with the overall development of carrier and cable facilities, which they regard as vital elements in regional and local development planning within their borders.

Nevertheless, whatever the future potential of coaxial-cable systems, the predominant function of those that have a broadcast receiving antenna is at present, and will remain for some time, to extend the range of broadcast transmissions and improve the quality of their reception. There is therefore no practical alternative at present to regarding them primarily as essential elements in the structure of the Canadian broadcasting system as a whole. The problem, as a result, is to find some means of accommodating provincial concerns without opening the way to a damaging impact on the capacity of Canadian broadcasters to provide the kind of programming that is needed if the broadcasting system is to remain, as it must, predominantly Canadian in content and character.

The Government has therefore given careful consideration to means of associating the appropriate provincial authorities with the federal regulatory body when the licensing of 'broadcast receiving undertakings' is under consideration. The second phase of the new federal legislation would provide that a representative of the appropriate provincial regulatory body will be entitled to take part in the public hearings and the private discussions of the federal regulatory body in advance of decisions taken with regard to the issue, amendment, renewal, suspension, or cancellation of a licence for a broadcast receiving undertaking.

Furthermore, the Government would be willing to discuss any practicable arrangements that the Provinces might suggest in order to give them a greater share in the process of licensing and regulating broadcast receiving undertakings. An essential prerequisite for any such arrangements would be an agreement explicitly accepting federal authority to impose criteria or conditions on any undertaking offering any form of 'programming' for distribution on coaxial-cable systems, in addition to the technical certification of any radio-receiving apparatus used by such systems. Subject to this guarantee for the protection of the Canadian broadcasting system, it would also be possible to negotiate arrangements with regard to the common use of coaxial cable and other facilities so as to ensure the orderly and economical development of broadband-cable systems throughout Canada. The Government would therefore welcome a discussion on any proposals for practicable arrangements for this purpose.

**IV.**  
**Conclusion**



## IV. Conclusion

The principal conclusion to be drawn from all the studies of communications in Canada that have been undertaken in recent years is that all forms of telecommunications have both national and local aspects, and that these aspects cannot be separated on the basis of the technological character of the facilities involved. Legalistic questions as to which aspect predominates in a particular situation are much less important than a mutual determination to ensure that the people of Canada have access to the best communications services that the country can afford. This objective can best be achieved if the federal and provincial governments can agree upon effective means of harmonizing their policies and priorities so as to arrive at the best results for the Canadian public. It is in this spirit that the Federal Government, after discussion with the Provinces and careful consideration of their views, has elaborated the arrangements described in this paper as a basis for further discussion with the Provinces and the enactment of federal legislation.

