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SUBMISSION BY BELL CANADA
TO THE MINISTER OF COMMUNICATIONS
IN RESPECT OF BILL C-43
AN ACT RESPECTING TELECOMMUNICATIONS
IN CANADA

30 SEPTEMBER 1977

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CONTENTS

I. INTRODUCTION

In its responses to the Federal Government's Green and Grey Papers, entitled "Proposals for a Communications Policy for Canada" and "Communications: Some Federal Proposals", which preceded the introduction of Bill C-43, Bell Canada expressed its views on a number of issues raised by the legislative proposals contained in these policy papers. It was thought that such contributions would assist in developing a legislative and regulatory framework that would enable the Company to continue to serve the public interest effectively.

It has now become apparent that most of the proposals outlined in the above-mentioned papers have been embodied in the Bill without significant change despite the views expressed by the Company.

There are a number of aspects of Bill C-43 which Bell Canada welcomes. In particular, section 3 of the Bill lists sixteen objectives for a telecommunications policy which, in total, declare that Canada should have an efficient and economical telecommunications system. Bell Canada supports these objectives and in fact the Company has operated, since its inception almost one hundred years ago, with the same purpose. Again, the consolidation of various pieces of legislation into one body of telecommunications law should be helpful to all. Also one of the underlying principles of the Bill seems generally to be that the policy-making power should rest with the elected representatives who are directly accountable to the public. The question of whether that power should be exercised by Parliament, as opposed to the Government, is a matter which is subject to discussion. Bell Canada

favours a situation where policy is made by Parliament, and applied by the Canadian Radio-television and Telecommunications Commission (CRTC) according to statute. The government policy-making role should be restricted to introducing legislation, and, through the right of the Governor in Council, to amending CRTC decisions. The CRTC should have the right to recommend policy but not to make it.

However, while the Bill has certain useful features, it is Bell Canada's overall view that if Bill C-43 were to be passed in its present form it would, in both the short and long term, serve the people of Canada badly. The Company is most concerned that, speaking in a general way, the quality of telecommunications service in Canada would deteriorate.

Accordingly, Bell Canada now feels compelled to convey its continuing concern regarding certain aspects of this proposed legislation. It is hoped that the comments and suggestions made in this submission will receive careful consideration before the Bill is reintroduced in Parliament.

II. GENERAL COMMENTS

Before discussing various specific elements of the proposed legislation, it seems appropriate to compare briefly the method of regulation under the existing legislation with that which is proposed in Bill C-43.

The current method of regulation requires the Canadian Radio-television and Telecommunications Commission (CRTC) to ensure that the rates charged by the carriers are just and reasonable and that there is no unjust discrimination as to rates, services or facilities, nor undue or unreasonable preference or advantage to any person. This framework of regulation provides general guidelines for the regulator and the Company and constitutes a reasonably predictable environment in which both must operate. The high-quality, low-cost telecommunications service now furnished is evidence that the present system of regulation has worked.

In contrast with the existing framework of regulation, there are two major concerns regarding Bill C-43.

Firstly, the Bill proposes to extend governmental and regulatory authority into many additional areas of carrier operations. Bell Canada considers many of these extensions to be unwarranted intrusions into management functions.

Secondly, the Bill does not permit a clear understanding of the conditions under which carriers must operate in view of the number of matters remaining to be defined after the Bill is enacted. In the absence of known rules of conduct, it is much more difficult to plan effectively for the facilities and services that the carriers have an obligation to provide.

As well, the Bill proposes a number of procedures and approvals which would create potential impediments to expeditious and efficient conduct of the business.

In view of these concerns, Bell Canada feels strongly that the consequences, both short and long term, of the proposals contained in Bill C-43 should be carefully evaluated before the Bill is enacted.

III. MANAGERIAL AND REGULATORY RESPONSIBILITIES

Bell Canada's greatest concern arising out of Bill C-43 is that it prescribes an overdose of government control to cure a series of alleged ailments which the drafters of the Bill apparently see as afflicting the industry. Under the Bill, it is proposed that the Governor in Council, the Minister of Communications and the CRTC would have extremely broad powers to intrude into the management of the federally-regulated carriers by means of directives, decisions and regulations on a wide variety of matters.

Bell Canada has been subject to regulatory control in one form or another almost from its beginning. Few dispute that the Company provides service equal to the best in the world at prices which are among the lowest. The Company has achieved this in an environment in which regulators regulated and managers managed.

In recent years there has been an increased governmental interest in telecommunications - perhaps as a consequence of a growing recognition of the importance of the industry to the economic and social progress of the country. Such an interest, however, should not serve as an excuse for regulation to usurp the right to manage a business, within national policy guidelines and under regulatory surveillance. The business decisions of the enterprise should be left to the managers who are in fact ultimately responsible for the result of those decisions.

The responsibility of the regulator in respect of telecommunications activities is regulatory, not managerial. This division between regulation and management has been affirmed and reaffirmed over the years by the regulators

and the Courts. The question was addressed by regulators as early as 1927 in the following decision:

> BELL TELEPHONE CO. vs. CITIES OF MONTREAL, TORONTO, OTTAWA et al (1927) 34 CRC 1
>
> Chief Commissioner McKeown (concurred in by McLean, A.C.C., Vien, D.C., & Boyce, C.), at page 29:
>
> "The suggestion that the contract is an improper one was, to a great extent, based on the position that the two companies were not dealing at arm's length, and that this tended to create an atmosphere of suspicion.
>
> There is no doubt that services of value are obtained under the contract. So long as present day business organization continues, and public utility corporations are under private ownership, the general business administration of such corporations must, of necessity, be in the hands of their directors. Of course, if they abuse their discretion and enter into improvident contracts, that is a matter which must be given full weight when it arises in connection with a hearing involving rates. In the present instance, on weighing the evidence, there is no such proof of abuse of discretion or improvidence in bargaining as would justify the Board in taking the position that the agreement should be invalidated in whole or in part: The function of the Board is one of corrective regulation, not of business management." (emphasis added)

The same principle was supported by the Board of Transport Commissioners in their decision of May 4, 1966 concerning Bell Canada, published in Pamphlet No. 16 where, at page 718, the Board said:

> "In this connection, it should be pointed out that regulation is, and must be, to a large degree ex post facto. The Board has consistently held that its powers are regulative and corrective, and that they are not managerial. Thus, it is necessary for the Board to review the Company's actions from time to time, as it is doing in the present proceedings, and to take whatever corrective action for the future that may be necessary, but the Board's powers do not envisage a retroactive ajdustment of the actions of management. Regulation which is inflexibly committed to a rigid mathematical formula, fixed at one point in time, would eventually so circumscribe the operations of a utility as to leave little or no room for the exercise of judgment, initiative or enterprise by its management in the decisions it must make daily. This would constitute an unwarranted invasion of managerial discretion prejudicial to the efficient operation of the business and could soon redound to the detriment of the utility's subscribers." (emphasis added)

The determination of the form and degree of regulatory surveillance needed to best serve the public interest is a difficult task. "Instant World - A Report on Telecommunications in Canada", issued by the Department of Communications in 1971, put it this way:

> "There appears to be some danger in adopting a too meticulous approach to regulatory legislation. If an attempt is made to establish statutory criteria governing every conceivable aspect of the public interest in telecommunications, the outcome may be disappointing. Perhaps the most likely result would be the creation of administrative machinery so ponderous as to bring both regulator and regulated almost to a halt. At the very least, there is a danger that excessively

> prescriptive legislation may impel the regulatory body to concern itself, or even interfere with, matters that more properly fall within the responsibilities of management." (pp. 225 and 226)

In the Company's view, good government involves providing the proper environment wherein responsible industry, without unnecessary constraints, can continue to supply the goods and services required for an expanding economy.

The dangers of 'micro-regulation', according to "Instant World", are twofold:

> "First, it may entail a volume of administrative cost, both in the company and in the regulatory body, that will in itself cause an increase in the price of service. Second, a regulatory body may be lured by a passion for excessive detail into a position of interfering with legitimate management decisions without accepting any responsibility to the shareholders for the results." (p. 192)

Bell Canada is a shareholder-owned company whose business is managed by its Directors and Officers. The management of the Company is and must be accountable to the shareholders for the decisions taken, subject of course to regulation of certain aspects of its affairs.

The overall quality and performance of the telecommunications system in Canada has been publicly attested to by many elected officials, most recently by the current

Minister of Communications at the annual meeting of the Canadian Telecommunications Carriers Association in 1976:

> "Canadians enjoy probably the best telecommunications system in the world. Our system is made up of a great many parts and a large number of different companies and agencies...and the fact that it works so well despite this diversity is a credit to all of you. And not only has the system worked extremely well, but it has developed and improved continually."

The CRTC acknowledged the excellence of the system at page 3 of its July 20, 1976 statement entitled "Telecommunications Regulation - Procedures and Practice":

> "In applying the concept of 'just and reasonable' rates, the Commission is convinced of one essential fact: Canadians enjoy a level of telecommunications service in this country that in terms of variety, high quality and low cost is second to none in the world. Whatever new directions for regulation may be suggested, it is essential that this reality be maintained."

In these inflationary times, the price of telephone service furnished by the Company has risen less than the prices of most other services and commodities. The price of this telephone service, relative to consumer income, is among the lowest in the world. This did not happen by chance. Over the years, Bell Canada has recognized the need to carry out its business in the public interest and has done so with

little or no governmental or regulatory involvement in the management of the business.

Bell Canada believes that the tendency for government to infringe on management functions would inevitably grow as a result of legislation such as Bill C-43. Such infringement would produce serious delays in planning for growth and for necessary modernization of the system and would impair the Company's ability to provide the good service demanded by its customers. Both the Company's costs and those of the Government would be increased. These costs would naturally have to be paid by the general public through higher taxes and higher prices for telecommunications services - all this without any readily apparent off-setting benefits.

In the course of her address to the annual meeting of the Canadian Telecommunications Carriers Association on June 20, 1977 which dealt mainly with the appropriate relationship between government and industry, the Minister of Communications stated:

> "None of this is to say, however, that the government wants to be involved in the management of your industry. To the contrary. Not only is Government unsuited to that sort of function, it would also constitute a serious waste of resources and an infringement on the prerogatives of your management."

If that involvement of which the Minister spoke is to be avoided, Bell Canada believes that a number of changes to Bell C-43 are indicated as detailed in Appendix "A".

IV. ALLOCATION OF AUTHORITY

There are a number of sections of Bill C-43 which deal with areas properly subject to regulation but where Bell Canada feels that the decision-making authority has not been appropriately allocated.

In areas which do not involve policy-making the CRTC should be free to render decisions unfettered by political interference - subject, of course, to appeal to the Governor in Council or to the courts as appropriate.

It is Bell Canada's submission that the enactment of basic telecommunications policy should be the responsibility of Parliament which is directly accountable to the public. Moreover, if the CRTC is to hold hearings on subjects which involve policy decisions and which might, for example, result in a restructuring of the industry, the CRTC should have the power to make recommendations to the Governor in Council as to how legislation should be altered. It is Bell Canada's view that the CRTC should administer policy and, where necessary, recommend policy changes, but that, as a regulator, the CRTC should not have the power to make policy.

Therefore, Bell Canada recommends that a number of sections of Bill C-43 be amended as indicated in Appendix "B".

V. FEDERAL - PROVINCIAL CONSIDERATIONS

The proposed legislation, as drafted, does not provide a clear understanding of the delineation between federal and provincial legislative authority over telecommunications. This becomes evident in reading subsection 4(1) which, in effect, calls for reliance on the courts' interpretation of the BNA Act as to what may be within federal jurisdiction rather than specifying the various matters intended to be covered by Bill C-43. It is difficult to see how the Bill would assist in reducing the number of jurisdictional disputes in the field of telecommunications.

Certain provisions of the Bill can easily be construed as an attempt to extend federal jurisdiction and encroach upon provincial powers. Some examples are:

1. Subsection 2(1), which defines "Special Act", explicitly includes a provincial Act. This definition, when read jointly with subsection 2(2), would result in subjecting provincial undertakings to the federal legislative authority in the event of any inconsistency between Bill C-43 and the provincial statutes governing such undertakings.

   Furthermore, given the "Special Act" definition, section 22 cannot but add to provincial concerns as it would empower broadcasters and cable companies - and even provincial carriers - to enter upon the streets and lanes of the provinces.

2. In line with the opening comment made above, subsection 4(1) is so broadly written that it could encompass facilities and services provided by provincial telecommunications undertakings not using radiocommunications. This clause would even extend to long-haul rates charged by provincially-regulated carriers.

   This subsection should reflect the present exercise of the federal regulatory authority.

3. Paragraph 63(1)(e) could require licence applicants to disclose any information that the Minister may consider appropriate. This provision would constitute a one-way street for federal access to information regarding provincially-regulated carriers and would seem to go well beyond what is required for the purpose of granting licences.

Because of the significant impact that the regulatory body's decisions or regulations may have on provincially-regulated carriers, it is strongly recommended that the proposed telecommunications legislation state as an objective the need for cooperation between the different levels of government and regulatory bodies. In this regard, new paragraph 3(2)(b) of the National Transportation Act (Bill C-33) would seem to offer an appropriate starting point.

It is also worthwhile noting that, in a document entitled "Report of the Western Premiers' Task Force on Constitutional Trends" dated May, 1977, the Western Premiers prepared a detailed inventory of the apparent intrusions of the Government of Canada into subject areas historically considered to be within the provincial sphere. Communications is one of the areas noted specifically and, at pages 40 and 41 the report makes particular mention of Bill C-43. Several instances are presented where, in the opinion of the Western Premiers, this Bill intrudes into areas which are properly under provincial jurisdiction.

VI. ITEMS NOT CURRENTLY INCLUDED IN BILL C-43

1. Entitlement to a "Fair Rate of Return"

A persistent problem for Bell Canada over the past ten years has been an inadequate level of earnings. When earnings are inadequate to enable the Company to prudently raise sufficient capital to carry out the required construction program, the Company has little choice but to tailor its expenditures in line with available finances. The inevitable result is that some customers go without service or without the quality of service to which they have become accustomed.

Regulation was originally conceived as a substitute for competition and was instituted for the protection of the customer. However, over the years, many regulatory authorities have come to recognize the importance of interpreting the phrase "just and reasonable rates" to mean fair to both customers and utility, and have stated that the regulated utility is entitled to earn a fair rate of return. Existing legislation in many jurisdictions gives formal recognition to this fact. It is Bell Canada's submission that Bill C-43 should include a provision which gives explicit recognition to a telecommunications carrier's entitlement to a fair rate of return. The recommended wording of such a section is as follows:

> "A telecommunication carrier shall be entitled to approval of rates which will enable it to earn annually a return adjudged by the Executive Committee to be just and reasonable."

2. Confidentiality

There are many situations in which information would be required by, and provided to, the Executive Committee in order that it might, with knowledge of all pertinent facts and related background, render an informed decision. For a number of reasons, the public interest may best be served by protecting the confidentiality of such information when it relates, for example, to the estimated results of wage negotiations; to the costs of the carrier which, if disclosed, would impair its competitive situation; and to other sensitive business data such as the private dealings between the carrier and third parties.

Bill C-43 contains no provisions equivalent to section 331 of the Railway Act. Bell Canada is firmly of the view that a provision similar to section 331 is absolutely essential to the proper functioning of the regulatory process. The absence of such a provision would in all likelihood leave the Commission with no alternative but to refuse to accept such data, on the ground that the Commission did not wish to have data in its possession which could be forced into the public domain, with unnecessary detrimental effect to the carrier. The Commission would thus be deprived of much helpful and pertinent material. Bell Canada recommends that a section in Bill C-43 equivalent to section 331 of the Railway Act be added:

> "Where information concerning the costs of a telecommunication carrier or other information that is by its nature confidential is obtained from the carrier by the Executive Committee or the Commission in the course of any investigation under this Act, or in any other manner, such information shall not be published or revealed in such a manner as to be available for the use of any other person, unless in the opinion of the Executive Committee or the Commission such publication is necessary in the public interest."

Section 331 of the Railway Act, in its present form, refers to information obtained "in the course of any investigation". Access to information may be requested in a variety of circumstances as, for example, in connection with the annual forecast contemplated by section 60 of Bill C-43. Accordingly, Bell Canada has recommended that the section be broadened to permit the Commission to exercise its best judgment in protecting all confidential information if this is warranted in the public interest.

3. Service Free or at Reduced Rates

The ability to offer services free or at reduced rates, although used sparingly, has been advantageous to Bell Canada and the communities which it serves in various situations. The principal use the Company has made of section 291 of the Railway Act, which enables the provision of services free or at reduced rates, has been Concession Service to employees and pensioners. However, the Company does make use of the section in other ways. For example, it currently provides free directory-assistance to the handicapped and, in long distance service, charges them the lower direct dial rates for any operator-assisted calls.

Just as many large companies sell their products to their employees at a discount, so Bell Canada offers its services to some of its employees at reduced rates. Were this practice to be discontinued, it would have to be replaced with one of equal value and this could well cost the Company more.

Although it could be argued that subsection 55(d) and paragraph 61(1)(f) of the Bill empower the Executive Committee to direct a carrier to provide such services free or at reduced rates, there is no certainty that a joint interpretation of these provisions and subsection 57(2) of the Bill would enable the Committee to do so.

Therefore, Bell Canada recommends the inclusion of a section in Bill C-43 equivalent to section 291 of the Railway Act:

> "Nothing in this Act shall be construed to prevent the provision of telecommunication services, free or at reduced rates, for charitable purposes, or at community fairs and expositions, or for disadvantaged persons, or for the carriers' own directors, officers, agents and employees, or their families, or for former employees of any carrier, or for such other persons as the Executive Committee may approve or permit."

4. The Right of Appeal

The right of appeal is an integral part of the Canadian judicial process. The right to appeal a decision of the CRTC to the Governor in Council appears to be covered in section 11 of Bill C-43.

However, in order to avoid any implication that this appeal is the only recourse available, there should also be a section in the Bill providing for a clear right of appeal to the courts as is now contained in section 64 of the National Transportation Act.

5. Competitive Tariffs

Section 274 of the Railway Act makes special provision for issuing tariffs to meet competitive situations. This provision should be continued and could be accommodated by adding new paragraph 57(5)(c) as follows:

> "(5) Nothing in this section prevents the Executive Committee from rendering a decision approving special tariffs or charges for
>
> (a) trials of new equipment or services for a limited period, in a limited area or for a limited group of customers;
>
> (b) services provided by one telecommunication carrier to another; or
>
> (c) the purpose of meeting competition."

VII. CONTINUANCE OF BELL CANADA UNDER THE CANADA BUSINESS CORPORATIONS ACT

Bell Canada, being a corporation set up by Special Act of Parliament, is required to return to Parliament by means of a private member's bill each time there is a need to change any provision of its Special Act of incorporation. The Company finds itself unfairly handicapped by this procedure since there is no guarantee in the parliamentary process to ensure consideration and disposition of private members' bills. There have been occasions when it has taken two sessions of Parliament to secure passage of necessary and acceptable amendments to the Company's Special Act. In one case, it took almost a year to have a simple matter like an increase in the number of directors brought to a conclusion.

We believe that a more flexible vehicle should be provided to enable a major public utility like Bell Canada to modernize its charter. One such method would consist of inserting a special chapter in Bill C-43 enabling the Company to be continued under the Canada Business Corporations Act (CBCA) and permitting amendments under the CBCA on a basis similar to that provided in section 11.3 of the Railway Act.

VIII. MISCELLANEOUS DRAFTING CHANGES

In addition to the foregoing, there are certain drafting changes which are considered to be worth recommending and which are presented in Appendix "C".

IX. CONCLUSION

Bell Canada, with a background of long experience in telecommunications, makes this submission in the hope that it will be given serious consideration. The Company, and its officers, stand ready to discuss or explain, in greater detail, any or all of its recommendations.

APPENDIX "A"

CHANGES PROPOSED TO BILL C-43 BY BELL CANADA RESULTING FROM ITS COMMENTS REGARDING "MANAGERIAL AND REGULATORY RESPONSIBILITIES"

SECTION 56

56. In furtherance of the telecommunication policy for Canada enunciated in section 3, the Executive Committee may, with the approval of the Governor in Council and subject to paragraph 27(2)(*e*), render a decision prohibiting a telecommunication carrier to which this Act applies from constructing, extending or operating any telecommunication facilities or providing any telecommunication services.

This section gives the CRTC, with approval of the Governor in Council, unnecessarily broad powers over present and future operations of the telecommunications carriers. It goes far beyond the title of the section and far beyond the statement on Page 11 of the Grey Paper which is the genesis of the section:

> 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 scope of section 56 should be restricted to its intended purpose by deleting the words "extending or operating any telecommunication facilities or providing any telecommunication services" and substituting the following:

> "or extending any telecommunication facilities of a major character, in competition with any telecommunication carrier which is regulated by a provincial body listed in Schedule I, or providing any telecommunication services, in competition with any telecommunication carrier which is regulated by a provincial body listed in Schedule I."

SECTION 58

58. (1) A telecommunication carrier shall submit to the Executive Committee for its approval

(*a*) the amount, terms and conditions of each proposed issue, sale or other disposition of its capital stock or any part thereof, and

(*b*) the terms and conditions of each proposed contract or agreement of a class prescribed by regulations made under subsection (2),

and no issue, sale or other disposition referred to in paragraph (*a*) or contract or agreement referred to in paragraph (*b*) shall have any force or effect unless it is approved by decision of the Executive Committee.

(2) For the purposes of paragraph (1)(*b*), the Executive Committee may make regulations prescribing classes of contracts or agreements that telecommunication carriers shall submit to it for approval.

(3) No condition, by-law, rule, declaration or notice made or given by a telecommunication carrier that negates, restricts or limits its liability with respect to the service it provides shall relieve the carrier from such liability, unless the condition, by-law, rule, declaration or notice has been given prior approval by decision of the Executive Committee.

Paragraph 58(1) (a) - The requirement for approval by the CRTC of the amount, terms and conditions of an issue of capital stock by the Company, which is not specifically included in the CRTC's powers under the Railway Act, was first prescribed in 1929. Its purpose was to ensure that the Company did not sell stock at a price which would impose undue costs on its customers.

Since the Company's rates at that time were regulated with reference to permissive earnings on the basis of the number of shares outstanding, if more shares were issued than were necessary - for example, as a result of issuing shares at too low a price - the amount of earnings required, and therefore the rates charged, would have to be greater and this would impose undue costs on customers.

In May 1966, the Board of Transport Commissioners for Canada changed the basis of regulating the Company's rates.

Instead of stating the earnings in terms of dollars per share, the new basis is a percentage rate of return on the total amount of capital invested in the business and is unrelated to the number of shares. It is obviously in the best interest of the Company and of the existing shareholders to issue new shares at the highest price possible. Since this is also in the interests of the customer, the requirement for approval of the CRTC for the issue of the Company's capital stock is now redundant and should be discontinued. Without, in any way, nullifying the effective regulatory control exercised by the CRTC over the Company, this would eliminate the delays attendant upon the necessity of a public hearing related to the granting of permission to issue shares. Such delays can have serious effects on the Company's efforts to raise capital in the most economical manner. This is particularly true in periods of volatile stock market conditions, when timing is of the essence.

In making this recommendation, the Company acknowledges the considerable effort made by the CRTC to avoid unnecessary delay in carrying out its duties under the present legislation. Nevertheless, that legislation is no longer necessary.

Subsections (1)(b) and (2) - These provisions could extend regulatory control to all kinds of contracts, many of them of little or no regulatory significance. Considering the number of such contracts entered into by the Company, e.g., right-of-way agreements, building security contracts, leases for office space, etc., the administrative nightmare that would be created by the need to seek advance approval defies description - and this without counting the resultant impact on costs.

To obviate such a situation, paragraph 58(1)(b) should be amended to read as follows:

> "(b) the terms and conditions of each proposed contract or agreement between the carrier and any other telecommunication carrier for the regulation and interchange of telecommunications passing to and from their respective telecommunication systems, or for the division or apportionment of the revenues derived therefrom, or generally in relation to the operation of their respective telecommunication systems, or of any other telecommunication systems operated in connection with them."

This is equivalent to subsection 320(11) of the Railway Act and there is no evidence to suggest that the existing power has not been sufficient for effective regulation. The Executive Committee could, of course, examine any existing contract or agreement for regulatory purposes.

As a consequence of the above amendment, subsection (2) would not be required.

SECTION 59

Bell Canada submits with special emphasis that the provisions of this section, if enacted, would constitute a serious intrusion into its right to manage, and one that invites severe consequences through the potential impact it would have on the ability of the Company and its subsidiaries to compete, particularly in international markets but in Canada as well.

There are very few industrial sectors where Canadian technology is marketable abroad and there are not that many companies in Canada with the strength and potential required for penetration of world markets.

The telecommunications field is unquestionably a sector where Canadian know-how is second to none and where Bell Canada and its associated companies have the stature necessary to compete internationally. It is difficult to see how the provisions of section 59 could assist in maintaining a strong Canadian position in this field in Canada and in extending Canadian skills, technology and know-how to other countries.

In to-day's international markets competition is fierce and timely decision-making is crucial for obtaining major contracts, which can require the setting up of special forms of organization. Bell Canada contends that section 59 contains measures which would inhibit the organizational development required to assure continued growth.

In the case of Bell Canada, the road to the outstanding successes achieved in the past decade has been mapped by choices it made in its form of organization, free of the kind of constraints that section 59 of Bill C-43 would impose. The tri-corporate relationship between Bell Canada, Northern Telecom and Bell-Northern Research has been a major factor in achieving the economies of scale which have, on the one hand, enabled the enterprise to compete in world markets against multi-national telecommunications giants, and on the other hand to deliver high-quality, low-cost service to its Canadian subscribers.

This vertically-integrated form of organization has been in no small way responsible for the fact that Canadian exports of telephone apparatus and equipment last year exceeded imports.

Bell Canada takes the position that the CRTC's jurisdiction relative to any pertinent corporate, financial or business relations between Bell Canada and its subsidiaries should be limited to their impact on rates.

Furthermore, section 59 would appear to be unworkable since, for example, it would seem to require Bell Canada to seek the Executive Committee's approval if a remote subsidiary company undertook to spin off part of its business into another subsidiary company or to dispose of its control over such company. One can also anticipate the conflicts that might arise in relation to foreign subsidiary companies if any such company were ordered by a foreign authority to divest itself of its controlling interest in another company and the Committee disapproved of such divestiture.

Bell Canada considers that the Executive Committee should not be empowered to prohibit any otherwise legal acquisition, disposition, incorporation or establishment of a subsidiary, whether direct or indirect. It is a proper function of management to fashion the organization best suited to the efficient operation of the enterprise. Accordingly, it is recommended that section 59 be deleted in its entirety from Bill C-43.

SECTION 60 AND 61

60. A telecommunication carrier shall, before the end of each fiscal year, file with the Executive Committee, in the manner and form prescribed by any regulations made by the Commission, its annual forecast of investment, operation and construction for the five years following the filing of such forecast.

Regulations

61. (1) In furtherance of the telecommunication policy for Canada enunciated in section 3, the Executive Committee may make regulations

(*d*) prescribing the manner of preparing the annual forecast required to be filed under section 60 and the form thereof;

The words of section 60 and paragraph 61(1)(d) taken together would apparently permit the Executive Committee to involve itself in forecasting methodology. To make it clear that this is not intended, section 60 should be reworded as follows:

> "A telecommunication carrier shall, within 90 days after the end of each fiscal year, file with the Executive Committee, in the manner and form prescribed by any regulations made by the Commission, an annual return of investment, operation and construction forecast for the five years following the filing of such return."

The word "forecast" should be replaced by the word "return" in paragraph 61(1)(d).

It is noted that section 60 goes beyond the proposals of the Grey Paper in that it provides for the filing of an annual forecast of operation. Depending on the format to be prescribed by the regulations, this forecast may call for the disclosure of considerable sensitive information. For example, disclosure of the Company's estimate of future wage levels could place the Company at a disadvantage in its labour negotiations.

In addition, Bell Canada is concerned about the detailed nature of the data that could be required. For example, the investment forecast may include information that, if disclosed, could prejudice the Company's efforts in completing its external financing program on the best possible terms.

Further comments on the subject of confidentiality are made in Section VI, page 16 of this submission.

SECTION 22

22. (1) Subject to this section, any person empowered by Special Act to construct, operate and maintain telecommunication facilities may, for the purpose of exercising those powers and subject to the provisions of the Special Act, enter upon and break up and open any highway, square or other public place.

(2) The Commission may make regulations

(*a*) prescribing the manner in which and the terms and conditions on which any person referred to in subsection (1) shall carry out any activities or classes of activities authorized under that subsection;

(*b*) prescribing the notices to be given and the plans, specifications, schedules or other information to be submitted by any person in carrying out any activities or classes of activities authorized under subsection (1) and the manner in which such notices, plans, specifications, schedules or other information shall be given or submitted; and

(*c*) generally for carrying out the purposes and provisions of this section.

(3) Where a municipality or other governmental body or agency having jurisdiction over any highway, square or other public place objects to any activities or proposed activities being carried on with respect thereto under subsection (1), it may give notice of such objection in writing with reasons therefor to the Commission and on receipt of such notice the Commission shall inquire into the matter in such manner as it considers appropriate, hold such hearings, if any, as it considers appropriate and render a decision authorizing or prohibiting, in whole or in part, any activities or proposed activities under inquiry, subject to such conditions as it considers appropriate.

At present under Section 318 of the Railway Act, the Company must have the legal consent of the municipality before proceeding with the works referred to in this section but the two parties can proceed, without external constraints, to reach agreement on how the work is to be done. The significant difference in section 22 of Bill C-43 is that the exact procedure will not be known until the regulations contemplated are issued. The Commission may make regulations which could be very detailed and create major administrative problems for the Company and for the municipalities. Since the present system works very well in practice, there is no reason to change it.

Subsections (2) and (3) should be deleted and replaced by new subsections equivalent to the provisions of Section 318 of the Railway Act which are pertinent in the light of current circumstances.

OTHER SECTIONS

In order to ensure proper separation between management and regulatory functions, Bill C-43 should deal only with the regulation of those activities of the carriers which are related to the provision of telecommunications services and facilities. To accomplish this, the following sections of the Bill should be amended as indicated:

2(1) "'tariff', in relation to a telecommunication carrier, includes a toll, charge or rate for the provision of any telecommunication service or facility by that carrier and includes a condition for the provision of that service or facility;

3(n) "the rates charged by telecommunication carriers for telecommunication services or facilities should be just and reasonable and without undue discrimination against any person or group;"

55(a) "In furtherance of the telecommunication policy for Canada enunciated in section 3, the Executive Committee may, subject to paragraph 27(2)(e), render a decision
(a) defining the conditions to be met by a telecommunication carrier in providing a telecommunication service;"

55(c) "with the approval of the Governor in Council, directing a telecommunication carrier to provide a telecommunication service specified by the Executive Committee in any geographical area it determines;"

55(d) "directing a telecommunication carrier to provide access to and use of its telecommunication facilities and services on such terms and conditions as the Executive Committee may determine;"

55(e) "authorizing trials of telecommunication services or equipment by a telecommunication carrier for a limited period, in a limited geographical area or for a limited group of customers;"

55(f) "directing a telecommunication carrier to permit the interconnection of its telecommunication facilities with other telecommunication facilities or equipment on such terms and conditions as the Executive Committee may determine;"

55(g) "directing a telecommunication carrier to permit the attachment to its telecommunication facilities of other telecommunication facilities on such terms and conditions as the Executive Committee may determine; and"

57(5)(b) "(5) Nothing in this section prevents the Executive Committee from rendering a decision approving special tariffs or changes for
(b) telecommunication services provided by one telecommunication carrier to another."

61(1)(b) "(1) In furtherance of the telecommunication policy for Canada enunciated in section 3, the Executive Committee may make regulations
(b) establishing formulae for identifying costs relating to specific telecommunication services provided by telecommunication carriers;"

61(1)(e) "requiring the preparation and filing of reports by telecommunication carriers with respect to existing and planned telecommunication facilities, traffic distribution, system utilization and related matters and prescribing the form of such reports;"

61(1)(f) "prescribing terms and conditions governing the provision of telecommunication services by telecommunication carriers; and"

APPENDIX "B"

CHANGES PROPOSED TO BILL C-43 BY BELL CANADA RESULTING FROM ITS COMMENTS REGARDING "ALLOCATION OF AUTHORITY"

SECTION 61

Regulations

61. (1) In furtherance of the telecommunication policy for Canada enunciated in section 3, the Executive Committee may make regulations

(*a*) prescribing the order in which telecommunication carriers shall transmit any messages or classes thereof;

(*b*) establishing formulae for identifying costs relating to specific services provided by telecommunication carriers;

(*c*) prescribing accounting methods to be followed by telecommunication carriers for the purposes of this Act;

(*d*) prescribing the manner of preparing the annual forecast required to be filed under section 60 and the form thereof;

(*e*) requiring the preparation and filing of reports by telccommunication carriers with respect to existing and planned facilities, traffic distribution, system utilization and related matters and prescribing the form of such reports;

(*f*) prescribing terms and conditions governing the provision of services by telecommunication carriers; and

(*g*) respecting any other matters it considers necessary for carrying out the purposes and provisions of this Part.

(2) Subject to subsection (3), there shall be published in the *Canada Gazette* a copy of each regulation that the Executive Committee proposes to make under subsection (1) and a reasonable opportunity shall be afforded to licensees and other interested persons to make representations to the Commission with respect thereto.

(3) A proposed regulation need not be published if it has already been published pursuant to subsection (2) whether or not it has been modified as a result of representations made by licensees or other interested persons as provided in that subsection.

Paragraphs 61(1)(b), (c) and (f) deal with matters sufficiently important to require mandatory public hearings under section 27(1) rather than being subject to the making of regulations by the Executive Committee. The subject material should be moved from section 61 to section 55.

SECTION 55

55. In furtherance of the telecommunication policy for Canada enunciated in section 3, the Executive Committee may, subject to paragraph 27(2)(*e*), render a decision

(*a*) defining the conditions to be met by a telecommunication carrier in providing a service;

(*b*) delimiting the geographical area in which a telecommunication carrier may provide a service;

(*c*) with the approval of the Governor in Council, directing a telecommunication carrier to provide a service specified by the Executive Committee in any geographical area it determines;

(*d*) directing a telecommunication carrier to provide access to and use of its facilities and services on such terms and conditions as the Executive Committee may determine;

(*e*) authorizing trials of services or equipment by a telecommunication carrier for a limited period, in a limited geographical area or for a limited group of customers;

(*f*) directing a telecommunication carrier to permit the interconnection of its facilities with other facilities or equipment on such terms and conditions as the Executive Committee may determine;

(*g*) directing a telecommunication carrier to permit the attachment to its facilities of other facilities on such terms and conditions as the Executive Committee may determine; and

(*h*) respecting such other matters as are necessary for carrying out its duties and functions under this Part.

Subsection 55(b) appears to make it possible for the Executive Committee to practice market allocation on a service-by-service and area-by-area basis. This should not be the function of a regulatory authority. Therefore, the subsection should be reworded as follows:

> "(b) delimiting the geographical area in which a telecommunication carrier may provide telecommunication services and facilities."

Paragraphs (d), (f) and (g) are apparently intended to give the Executive Committee the power to render decisions regarding system interconnection, terminal connection and pole attachment respectively. These are policy decisions which could have significant effects on the industry and should be subject to mandatory public hearing. In addition,

the decisions should be subject to approval by the Governor in Council.

The preamble of section 55 should also be amended to replace "27(2)(e)" by "27(1)(c) or 27(2)(e) as applicable". Section 55 should also be amended to accommodate the material now included in paragraphs 61(1)(b), (c) and (f).

SECTION 27

27. (1) The Commission shall hold a public hearing

(*a*) in connection with the issue of a broadcasting licence other than a licence to carry on a temporary broadcasting network operation;

(*b*) in connection with the revocation or suspension of a broadcasting licence other than a licence to carry on a temporary broadcasting network operation; and

(*c*) in any case where it is ordered to do so by the Governor in Council or the Minister.

(2) Where the Executive Committee considers it in the public interest to do so, the Commission may hold a public hearing in connection with

(*a*) the amendment or renewal of a broadcasting licence;

(*b*) a submission for approval of a proposed tariff or any part thereof;

(*c*) the issue of a broadcasting licence to carry on a temporary broadcasting network operation;

(*d*) a complaint with respect to any matter within the jurisdiction of the Commission;

(*e*) the making of a decision under section 55 or 56; or

(*f*) any other matter within the jurisdiction of the Commission.

In order to accommodate certain proposed changes to sections 55 and 61 recommended in this Appendix, the following changes are required in section 27:

A) subsection 27(1) should be amended to redesignate paragraph 1(c) as 1(d) and to add a new paragraph 1(c) worded as follows:

"(c) in connection with the making of a decision under paragraphs 55(d),(f),(g),(*),(*),(*),"

(* - additional subsections to accommodate material moved from paragraphs 61(1)(b), (c) and (f) to section 55)

B) paragraph 27(2)(e) should be amended as follows:

"(e) the making of a decision under subsections 55(a),(b),(c),(e) and (h) or section 56; or"

SECTION 32

32. In furtherance of the telecommunication policy for Canada enunciated in section 3, the Commission may make regulations

(c) applicable to any person or class of persons holding a broadcasting licence or to any person or class of persons exempted under this Act from the requirement of holding a broadcasting licence

(vii) respecting the provision of any services by broadcasting receiving undertakings and establishing the terms and conditions applicable thereto, and

Paragraph 32(c)(vii) would apparently allow the Commission, by regulation, to permit broadcasting receiving undertakings to provide telecommunications carrier services. This would be a major policy decision in that it would permit new entry into the telecommunications carrier field.

This type of decision should be subject to a mandatory hearing and approval of the Governor in Council.

MISCELLANEOUS DRAFTING CHANGES PROPOSED BY BELL CANADA

• 6(1)(b)

6. (1) Subject to section 8, the Minister may

(*b*) promote the development and efficient operation of telecommunication apparatus and services in Canada and for such purposes issue standards of performance for telecommunication apparatus and services;

Bell Canada submits that the preparation of performance standards should be undertaken in consultation with the affected carriers in order to draw on the experience gained over many years of operation. Therefore, the paragraph should be reworded as follows:

> "(b) promote the development and efficient operation of telecommunication facilities and services in Canada and for such purposes issue performance objectives developed in consultation with interested parties for telecommunication facilities and services."

• 27(2)

(2) Where the Executive Committee considers it in the public interest to do so, the Commission may hold a public hearing in connection with

(*b*) a submission for approval of a proposed tariff or any part thereof;

(*e*) the making of a decision under section 55 or 56; or

Paragraphs (b) and (e) above state that the Commission may hold a public hearing in connection with matters which, in fact, must be decided upon by the Executive Committee. The subject matter of paragraph (b) is referred to in Section 57. The subject matter of paragraph (e) is, as noted, referred to in sections 55

and 56. Since the Commission comprises full-time and part-time members, it seems anomalous that it could hold a public hearing through its part-time members who are not entitled to participate in the ultimate decisions under sections 55 to 57. It is suggested that where the Executive Committee may, or is required to, render a decision, it alone should hold a public hearing.

- 27(3) Unless otherwise ordered by the Governor in Council or the Minister, the Chairman may direct that a public hearing be held on behalf of the Commission by two or more members designated by him, of whom at least one shall be a full-time member, and the members so designated have and may exercise for the purpose of such hearing the powers of the Commission set out in section 30.

In line with the comments made re paragraphs 27(2)(b) and (e), it is considered inappropriate that a hearing be conducted which includes part-time members who will not be responsible for making a decision. (e.g., under sections 55 and 56).

- 27(6) The Commission shall, if so directed by order of the Governor in Council, invite a provincial regulatory body to designate any of its members to participate, under conditions specified in the order, with members of the Commission in any hearing held by the Commission under this section.

For the sake of clarity and conformity with the French text, "any" should be changed to "one".

According to the Grey Paper, representatives of the provincial regulatory bodies were to be entitled to participate in proceedings or hearings of the Commission but not in the making of the decision. If that is still the intent, it should be more clearly reflected in the proposed legislation. As presently drafted, this provision enables the Governor in Council to specify conditions under which a provincial representative is to participate and such conditions could entitle him to participate in the decisions.

• 28(1)(b)

28. (1) The Commission shall publish in the *Canada Gazette* a notice of

(*b*) any public hearing to be held under this Part and the decision rendered in relation thereto.

Because of the words "to be held", this provision might be construed to restrict the publication of notices to the mandatory hearings contemplated by sub-section 27(1). In order to provide for such publication with respect to all public hearings that "may" or "shall" be held under Part II, it is suggested that the words "to be held" be deleted.

• 57(2)(b)

(2) Before rendering a decision under this section, the Executive Committee shall take into account the telecommunication policy for Canada enunciated in section 3 and shall be satisfied that

(*b*) the telecommunication carrier does not, in respect of the imposition of charges, the provision of services and the use of its installations

"installations" should be changed to "facilities"

57(5)(a) (5) Nothing in this section prevents the Executive Committee from rendering a decision approving special tariffs or charges for

(*a*) trials of new equipment or services for a limited period, in a limited area or for a limited group of customers; or

"equipment" should be changed to "telecommunication facilities"

61(1)(a) **61.** (1) In furtherance of the telecommunication policy for Canada enunciated in section 3, the Executive Committee may make regulations

(*a*) prescribing the order in which telecommunication carriers shall transmit any messages or classes thereof;

This apparently applies to telegrams and the sub-section should be reworded to clarify the intent.

61(2) (2) Subject to subsection (3), there shall be published in the *Canada Gazette* a copy of each regulation that the Executive Committee proposes to make under subsection (1) and a reasonable opportunity shall be afforded to licensees and other interested persons to make representations to the Commission with respect thereto.

61(3) (3) A proposed regulation need not be published if it has already been published pursuant to subsection (2) whether or not it has been modified as a result of representations made by licensees or other interested persons as provided in that subsection.

In these two sub-sections, "licensees" should be changed to "telecommunication carriers".