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FEDERAL-PROVINCIAL ASPECTS OF
COMMUNICATIONS REGULATION

An Historical Overview and Analysis
of Recent Writings

Anne Meggs

Federal-Provincial Relations Branch
Department of Communications

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FEDERAL-PROVINCIAL ASPECTS OF COMMUNICATIONS REGULATION

Historical Overview and Analysis of Recent Writings

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The views expressed in this paper are those of the author and not necessarily those of the Department of Communications.

Part I - EXECUTIVE SUMMARY

This paper is designed to provide a review of federal-provincial discussions and activities from the late 1960s up to and including the constitutional discussions of 1980. This has been undertaken in the form of an in-depth review of key articles, books, analyses and studies written by learned and respected authorities from both the public and non-governmental sectors since 1980. This review gives rise to the following common themes identified by several of the authors studied:

1. one of the major implications of the technological revolution which Canada is undergoing, along with the rest of the developed world, is the deterioration of traditional boundaries - interprovincial vs. intraprovincial, common carriers vs. cable - all are falling by the wayside;
2. although the current regulatory system has served us well up to now, the status quo will not be able to cope with the staggering strides which are being made in this field and the consequences will be felt not only by the industry but also by Canadians as a people;
3. the basic policy objectives of regulation both in the fields of telecommunication and broadcasting need review and revision, preferably in a coordinated effort by both levels of government;
4. the provinces cannot be excluded from the process of revamping the regulatory system, not only are their interests legitimate in this field, but so too their legislative jurisdiction over certain aspects; and,
5. a joint federal-provincial regulatory mechanism is essential to the healthy development of communications and the communications industry in this country.

Each of these themes is discussed individually in Part III(b) and, finally, suggestions for elements to be considered in the development of a model for cooperative regulation are enunciated.

A chart identifying significant events and summarizing positions taken in the spheres of the federal government, federal-provincial relations, the provincial governments and interprovincial relations, the CRTC, and the Courts is provided in Annex A.

Part II - HISTORICAL OVERVIEW

Introduction

Heading into the 1970s jurisdiction in the field of communications seemed pretty straightforward. A few key court cases had apparently assigned regulation of broadcasting exclusively to the federal government and at least two of the major telecommunications common carriers, Bell Canada and B.C. tel, were (and still are) regulated by the federal government either through a quirk of federal incorporation or through use of the federal declaratory power. The major common carriers in seven provinces were (and still are) regulated by the provincial governments or their agencies. In the late '60s however, the impact of communications began to make itself felt and the provinces began to take a more active interest in not only retaining their jurisdiction in this field but wherever possible, extending it particularly in matters of provincial interest. The ensuing years saw a great deal of activity in the federal-provincial arena - some productive, some not so productive.

Several chronologies have been developed by various writers in attempts to clarify the course of events. However, activities were taking place on so many fronts at once, all impacting on the federal-provincial interaction throughout the years that it was felt that perhaps the simplest way of obtaining an overview of the action would be to plot it out in the form of a graph (See Annex A). Needless to say not every event of each government, agency and court is itemized. Rather, events have been included to which repeated references are made in the writings which were studied. Such repeated references indicate that an event had a recognized impact and therefore warranted inclusion in the chart.

Part III - ANALYSIS OF WRITINGS SINCE 1980

Introduction

For the purposes of this study, sources were restricted to those written from 1980 to the present. Aside from documents and articles suggested or provided by the Federal-Provincial Relations Branch of the Department of Communications, searches were undertaken in the general index and the Canadian Legal Periodical Index. Key words used for these searches included: cable, communications, telecommunications, constitution, television, telephones, regulation, federal-provincial, interprovincial, industry, radio and broadcasting. Such general searches can bring to light articles which sound relevant given their titles but which upon closer perusal, turn out not to be pertinent. In such cases lengthy summaries were not undertaken, but the bibliographical entry has been annotated.

It is perhaps worth noting that a new collection of essays on this subject is in the process of being prepared by the Institute for Research on Public Policy and should be published either later this year or early next year. The draft of one of the articles to be included in the collection has been summarized below (see Woodrow, "Players, Stakes and Politics in the Future of Telecommunications Regulation in Canada").

Part III(b) - Synthesis of Writings

In this section of the paper, common themes which recur in several of the articles and documents, analysed below in Part III (c), will be synthesized.

In effect several common themes present themselves repeatedly in almost all of the serious writing in the field of telecommunications in recent years. For the purposes of this study they can be summarized as follows:

1. one of the major implications of the technological revolution which Canada is undergoing, along with the rest of the developed world, is the deterioration of traditional boundaries - interprovincial vs. intraprovincial, common carriers vs. cable - all are being redrawn;
2. although the current regulatory system has served us well up to now, the status quo will not be able to cope with the staggering strides which are being made in this field and the consequences will be felt not only by the industry but also by Canadians as a people;
3. the basic policy objectives of regulation both in the fields of telecommunication and broadcasting need review and revision, preferably in a coordinated effort by both levels of government;
4. the provinces cannot be excluded from the process of revamping the regulatory system, not only are their interests legitimate in this field but, so too, their legislative jurisdiction over certain aspects; and,
5. a joint federal-provincial regulatory mechanism is essential to the healthy development of communication and the communications industry in this country.

Each of these themes will be discussed individually and finally suggestions for elements to be considered in the establishment of a joint mechanism will be identified.

1. Deteriorating Boundaries

Almost without exception, the authors studied recognized the increasing difficulties inherent in trying to determine "boundaries" which might be useful in discussions of jurisdictional split. No longer can common carriers necessarily be considered "provincial" entities simply because they are provincially incorporated; no longer can the common carriers be considered the only vehicles for pan-Canadian communication - cable and computer networks are presenting or have the potential to present serious competition; where does one draw the line between broadcasting content relating to advertising, educational television and film censorship and that relating to the "single integrated system"? On the other, technological developments have also rendered possible clearly definable closed circuit systems. If these are contained within the geographical boundaries of one province, should they automatically be defined as within provincial jurisdiction?

2. Inacceptability of the Status Quo

The current regulatory system has developed more in spite of, than because of, clearly defined jurisdictional roles. In fact many authors argue that it is not only the Constitution which is deficient in its clarification of roles in this field, but also that governments have allowed many areas to go unregulated. A continued ignoring of the situation by governments will lead to the ad hoc development of policy by regulatory agencies which, many students of the field point out, are not accountable in any substantive way to the people of the country. (See Simeon)

3. Provincial Involvement

As indicated above, boundaries in the field of communications have become too fuzzy to allow serious consideration to be given to the suggestion that the federal government has exclusive jurisdiction over the entire field, no matter how desirable a solution this may seem to objective observers and some representatives of industry. Provinces will not give up their interests in the telecommunications and even broadcasting arenas and most lawyers and political scientists concur that if ever directly raised in the courts (which, by the way, it has been observed, it has not been up to now) the result would likely be an inter/intra split which would be untenable from a practical point of view.

4. Policy Review

Many authors are severely critical of governments and the desperate lack of policy directive they have provided in the field of telecommunications and broadcasting. The objectives outlined in the Telecommunications Bill which has now died on the Order Paper four times are bewailed as inadequate, and unhelpful to the agency which is expected to implement them. It is suggested that guidance is required with regard to the government's position on matters such as competition, cross-subsidization and accessibility rather than motherhood statements about cultural sovereignty as public demand grows for greater freedom of choice. Several authors stress the need not only for the policy directives to be more concrete but for them to be developed jointly with the provincial governments since the provinces are in a position to affect national policy through legitimately provincial actions.

5. Necessity for Joint Mechanism

All of the issues raised above have led most of the authors reviewed to call for some form of cooperative regulation between the two levels of government in the field of communications. Some have gone into considerable detail as to what form this cooperative regulation might take, others have been less precise; but there does seem to be general agreement that this would be the appropriate route for the future. Problems arise, needless to say, when it comes to determining the proper federal-provincial mix for this joint regulation of national issues.

Elements for the Development of Cooperative Regulation

- A. Constitutional Amendment - Clearly, it would be nice to be able to avoid constitutional amendment given that it has always been such a lengthy process. (Although the new amending formula might or might not help in this regard.) If necessary, most authors who are willing to declare themselves on the issue suggest a simple clarification and concretization of what is considered the status quo, i.e. an inter/intra split, with delegation of at least the interprovincial aspects, and in some cases the intraprovincial aspects as well, to the joint regulatory mechanism.
- B. Legislative Authority - Since interprovincial aspects of the field are generally recognized by those authors analysed as federal, the legislative authority assigning this power would have to be federal. It should be noted, however, that more than one writer has proposed that the legislative authority should contain a set of national telecommunications policy objectives developed in conjunction with the provinces.
- C. Responsibilities - It would have to be determined the extent of the responsibilities of the joint mechanism. If confined to those matters currently regulated by the Canadian Radio-Television and Telecommunications Commission (CRTC), Telecom Canada and intraprovincial issues would still be left untouched. However, it remains to be seen whether the provinces would agree to allow the new mechanism to regulate areas currently covered by strictly provincial agencies. Schultz, among others has suggested that provinces could continue to regulate intraprovincial rates and services, but given the deteriorating boundaries discussed above this could be dangerous unless the provinces and their agencies agreed to be governed by the same principles as those outlined in the legislative authority establishing the joint mechanism.
- D. Appeals and Policy Directives - There is some division among writers in this field regarding the most appropriate method of appeal. Some provide convincing arguments against appeals to Cabinet suggesting that they tend to negate the entire hearing process and that, if proper direction were given to the Agency in the first place, they would not be necessary. They also lend themselves to injustice in that they favour those with the money and time to lobby the politicians. Lawyers suggest that the normal rights of judicial review under the Federal Court Act would suffice. One novel suggestion is to have the joint mechanism report to a Select Parliamentary Committee, in which case appeals could be made to the Committee. This issue of policy directives has been dealt with above; those directives required in addition to the ones specified in the enabling legislation could, presumably be issued by the federal government upon compulsory and prior consultation with the provinces.
- E. Membership - Perhaps one of the most intriguing concepts for memberships of a joint regulatory mechanism is put forward by Schultz in his article, "Partners in a Game Without Masters" (see attached summary). He suggests that a majority of the members would be drawn from provincial regulatory agencies (e.g. 10 provincial members, 5 federal) but that the joint board would operate in smaller panels always maintaining the provincial representation at one more than the federal representation. For example,

if two provinces were involved in a particular matter, a panel of 3 would be set up to handle it - 2 provincial and 1 federal. Larger panels would be created for matters involving larger numbers of provinces. Schultz argues that such a set-up would likely be more palatable than one in which the federal membership always dominated and that the interests of the individual provinces are so diverse that it would not normally be difficult for the federal representatives to sway one of the provincial members.

The prospect of attempting to coordinate agreement with the provinces on such a joint regulatory mechanism, especially in the current federal-provincial climate of distrust, is an intimidating one to say the least. Nevertheless, informed opinion leads one to believe that if such an attempt is not made, and in the very near future, Canadian society as a whole will suffer the consequences.

Part III(c) - Summaries /Analyses

Brait, Richard A. "The Constitutional Jurisdiction to Regulate the Provision of Telephone Services in Canada". Ottawa Law Review. Vol. 13 1981. pp. 53-94.

This paper is designed to give a legal opinion as to the extent of regulatory jurisdiction at both the federal and provincial levels in the field of telephone services and to argue "that some form of co-operative regulation by the federal government and the provincial governments is the appropriate solution both from a legal and a practical standpoint."¹ (p. 54) It should be noted at the outset that the author's definition of telephone services confines itself primarily to carrier services thereby excluding matters such as broadcasting.

A useful background is provided describing the present industry structure and its "'one company - one regulator' system"² (p. 57):

"... each regulator purports to regulate the complete set of rates which are charged to the company's customers. (Note) In fact, the actual extent of regulation goes far beyond this. Regulators generally have powers of supervision and control over major management decisions including, for example, approval of major construction expenditures, approval of stock or debenture issues and other methods of financing, approval of an extension or discontinuation of service to a geographical area, and the approval of all contracts for the interconnection of facilities with other companies."³ (p. 57)

The paper suggests that it is interesting to note that the jurisdiction of the provincial regulatory agencies over the interprovincial aspects of their respective companies has never been tested in the courts even though opportunities have presented themselves over the years. The author argues that were the issue to be raised in court the outcome might result in two-tiered regulation of the companies. "This would mean that each company would be regulated by two bodies, a federal one in respect of interprovincial rates and a provincial one in respect of local or intraprovincial rates."⁴ (p. 59) The author's constitutional arguments for this conclusion are well-founded in case history.

The paper does not advocate two-tiered regulation of the telecommunications industry largely citing the American experience. However, it is suggested that a challenge to the provincial jurisdiction in this field may not be long in the offing:

"It is ... clear from the CN/CP decision (of the CRTC) that the provincial governments, and presumably their regulators, are far less willing to allow competition with their regulated companies. The knowledge that the federal regulator is more sympathetic to their cause is apt to make applicants before provincial boards more likely to challenge their constitutional competence."⁵ (p. 61)

With regard to constitutional authority to regulate, the author notes that, in some respects, there already exists some concurrency in the field of telecommunications:

"In one aspect and for one purpose the regulation of television programme content is within federal jurisdiction as part of the regulation of a connecting undertaking. In another aspect and for another purpose the

regulation of programme content is within provincial jurisdiction as part of the regulation of local business activities. In Kellogg's the provincial regulation (regarding advertising) was allowed to stand because it did not conflict with any federal regulations. Had there been conflict, however, the application of the doctrine of federal paramountcy would have allowed the federal enactment to prevail."⁶ (p. 70)

The author sums up the current constitutional situation in this way:

"... it appears in the Canadian telephone industry today that there is a structure in which strong local concerns with respect to quality of service, rates and other matters, can be expressed through the vehicle of provincial regulation. At the same time those matters which require national, or at least interprovincial, co-ordination, can be managed by the federal regulator. There are, of course, areas of concurrency and possible conflict. But, this is inevitable in a federal system and it must be assumed, as in the Montreal Street Railway case, that the regulators involved will co-operate for the mutual benefit of their respective jurisdictions."⁷ (p. 81)

The paper then places a rather large caveat on the above conclusion. It goes on to say that technological change will possibly "blur the boundaries between previously distinct services."⁸ (p. 81) For example, "if more competition is allowed in the provision of different terminal equipment and data services it will become increasingly necessary to regulate both the local and connecting aspects of the telephone undertaking in order to effectively control either."⁹ (p. 82) The author also cites new advances in the areas of electronic funds transfer, electronic mail and publishing, and remote control of plant and machinery as having a "nation-wide impact, not only on the technological aspects of the communications network but also on the way in which business and trade are conducted. These changes will undoubtedly increase the need for national regulation and co-ordination of all aspects of the communications network"¹⁰ (p. 83) leading to an "inevitable" increase in federal power and a gradual erosion of the provincial sphere of control.

Acknowledging the importance of provincial input into the regulation of this field regardless of the actual constitutional responsibilities involved, the author proposes that responsibility for regulation of interprovincial aspects of telecommunications be delegated to an interprovincial regulator. He notes that such a proposal has already been put forward by the Chairman of Bell Canada, Jean de Grandpré, in a speech in April 1980. At that time Mr. de Grandpré suggested that "matters of inter-provincial nature, such as rates and division of revenues for the exchange of traffic, would be under the jurisdiction of an interprovincial committee. This could be composed of provincial regulators representing the five regions of Canada, with or without federal representation."¹¹ (p. 90) Brait is not at all clear as to whether there should be federal representation on such a board. At one point he suggests that "all the (federal government) need do is appoint provincial regulatory officials to this proposed federal board."¹² (p. 92) However, in summarizing his proposition he states that "the major recommendation of this paper (is) that the national regulator be one composed of representatives of each of the provinces."¹³ (. 94) Either way there is insufficient elaboration of the proposal to allow serious critique.

Buchan, Robert J. and Johnston, C. Christopher, "Telecommunications Regulation and the Constitution: A Lawyer's Perspective" in Buchan, Robert J. et al. Telecommunications Regulation and the Constitution. (Montreal: The Institute for Research on Public Policy) 1982, pp. 115-166.

This paper defines its task as being "to analyse, from a lawyer's perspective, the federal and provincial proposals for regulating telecommunications services and facilities in Canada that were tabled for consideration by First Ministers at the September 1980 Conference on the Constitution."¹ (p. 117) Although those proposals did include broadcasting, the authors make it clear from the start that they intend to deal only with the non-broadcasting aspects of telecommunications "that is, (with) the implications of the proposals for '...the operations of the telephone companies and their present or potential competitors in the foreseeable future.'"² (p. 118)

Mention is made of the fact that, although the courts have had several occasions to rule on various aspects of broadcasting, there has been very little jurisprudence regarding the non-broadcasting aspects of telecommunications and the authors go on to suggest that it is "highly significant" that jurisdiction in this area has never been raised in the courts. Buchan and Johnston go so far as to state their belief that:

"a court forced to address this issue would hold either for,

a. exclusive federal jurisdiction over all telecommunications services and the facilities used to provide them ...

or, more likely,

b. a "two-tier" regime of divided jurisdiction."³ (p. 120)

The authors suggest that neither of these models "would necessarily contribute to the development of a telecommunications industry as efficient and well regulated as" the current one⁴ (p. 120) and rather than formal transfers of jurisdiction would prefer "the development of consultative and co-operative mechanisms between the competent agencies of both orders of government".⁵ (p. 121) Their specific proposal for such a mechanism is discussed later.

Some space is devoted in the paper to a discussion of the current operations of Canada's telecommunications carriers and mention is made of the use of radio communication and satellite transmission by the carriers as well as interconnection with computers to provide high speed, digitalized data telecommunications services. The authors then provide:

a. a description of the current ownership and regulator for each of the ten member companies of TCTS*;

b. a historical overview dating back to Confederation of how the current regulatory situation came to be;

c. an outline of the constitutionality of current regulation of the field;
and

* Trans-Canada Telephone System (TCTS) changed its name to Telecom Canada in 1983.

- d. a brief history of federal-provincial discussions of jurisdictional matters since the early 1970s.

In their analysis of the 1980 proposals the authors define the following criteria:

- "1. Do the proposals adequately reflect the basic principle underlying sections 91 and 92 of the BNA Act, that is, do they balance the interests of both levels of government in a federal system?
- "2. Are the powers granted sufficiently complete in each case to allow each level of government to regulate fully in its own sphere?
- "3. Are the respective spheres of authority clearly enough delineated so as to avoid overlapping or conflicting regulation?
- "4. Are the proposals likely to lead to consistent, fair, and efficient regulation to the benefit of all interest groups?"⁶ (p. 138-139)

After analyzing the two proposals against each of the above criteria the authors conclude that "neither proposal is satisfactory... Of the two, the federal proposal, as modified in the discussion paper of 15 August 1980, comes substantially closer to meeting these tests than does the provincial draft."⁷ (p. 151)

Buchan and Johnston recommend a "rearrangement of regulatory authority (which would) accommodate both separate and shared powers."⁸ (p. 152) Their proposal includes "a new, regulatory board with powers similar to those contemplated in the federal (1980) proposal and with a membership capable of reflecting the interests of both levels of government in national telecommunications."⁹ (p. 154) The details of their proposal are summarized as follows (p. 12-13):

PROPOSAL FOR ALTERING JURISDICTION FOR TELECOMMUNICATIONS REGULATION

Type - joint regulatory board (no constitutional amendment)

Legislative authority

- federal
- to contain a set of national telecommunications policy objectives, preferably agreed to by both levels of government

Responsibilities

- approval of rates for services linking two or more provinces
- approve connecting agreements between systems linking two or more provinces
- regulate new entry offering services extending beyond a single province
- regulate terminal interconnection of network-addressing equipment

- . establish a uniform system of costing and accounting
- . CN/CP, Telesat and Teleglobe to come under joint board
- . provinces to regulate intraprovincial rates and services

Appeals and Policy Directives

- . mechanism for internal review by whole board as per CRTC and CTC currently; similar criteria for review
- . normal rights of judicial review under the Federal Court Act
- . no appeal to Cabinet
- . policy directives after required consultation with the provinces and public

Membership

- . 9 members, 6 of whom would be drawn from chairmen or vice-chairmen of provincial agencies who would sit on both bodies. They would be part-time members.
- . the 3 federal representatives would be full-time, one of whom would be chairman

Janisch, Hudson and Irwin, Manley. "Information Technology and Public Policy: Regulatory Implications for Canada". Osgoode Hall Law Journal Vol. 20 (1982) pp. 610-641.

This paper constitutes an excellent compilation of the factors which affect modern policy making in the field of telecommunications. Although most of the information can be found elsewhere and has been heard before (and therefore will not be reiterated here), this particular summing-up of the complexities and tensions involved in telecommunications regulation development is well-structured and simply expressed. As such, it could prove an invaluable source of quotes for speeches or policy papers.

The authors do make some judgements regarding the governmental record in policy development in this field and they are not very positive:

"... there is little evidence of a capability to come to grips with immediate issues of information technology. Policy discussion is carried on at a very high level of generality and seems more influenced by the nightmare vision of a nationalistic elite than by any vision of the opportunities as seen by the business community and by most Canadians. In a period of policy pretentiousness, technological pragmatism will always win. Thus, ironically those who most denounce technological determinism are also those who give it its opening."¹ (p. 623)

They also discuss the question of deregulation and conclude that "total elimination of public utility regulation in telecommunications is unlikely in Canada because this country, especially at the federal level, has never regulated communications purely out of a concern for the dangers of monopoly power. Economic regulation has always been inextricably linked to social, political and distributional considerations."² (p. 632)

The authors, therefore, foresee a "compromise" approach to regulation in this field; that is,

"a response which preserves a major monopoly sector centred around (sic) the local distribution facilities of the existing telephone companies. Some degree of competition under a variety of regulatory ground rules (for example, cost separations or separate subsidiaries) will be tolerated or, perhaps, even encouraged in other sectors." 3 (p.637)

This prospect is viewed with great wariness by the authors as indicated in their closing warning:

"The great danger in the compromise response to dynamic technological change is that Canada will fall between the two stools of regulation and the market and end up with the drawbacks of both and the advantages of neither." 4 (p. 641)

The disappointing aspect of this paper is that Janisch and Irwin do not offer any solution to the regulatory quandary in which they suggest we find ourselves. They touch on the constitutional implications of the technological revolution in this field, but only to say that exclusivity is now unrealistic. Again no concrete alternative proposals are put forward. Nevertheless, as stated at the outset, the paper could prove an excellent tool in that it sets out so vividly the current regulatory dilemmas.

Kane, T. Gregory. "Breaking an Impasse: A Joint Panel Proposal for Telecommunications Regulation" in Buchan, Robert J. et al. Telecommunications Regulation and the Constitution. (Montreal: The Institute for Research on Public Policy) 1982. pp. 225-246.

This paper, unlike the others in the collection, spends little time analyzing the current regulatory structure in the field of telecommunications and its historical roots. The author recognizes that this groundwork is covered by the other three papers. Instead, Kane states simply that "we have a telecommunications regulatory mosaic in Canada that defies logical explanation"¹ (p. 227) and then moves directly to discuss proposals for "breaking the impasse" which has occurred in federal-provincial negotiations on the "future and conduct of telecommunications in Canada".² (p. 228)

The author discusses and dismisses fairly quickly the 1980 federal proposal for a new joint regulatory board. Its key flaws, argues Kane, are a) that it would have to be created by federal legislation which would "inevitably lead to it (sic) being characterized as a federal persona possessing the potential for provincial influence"³ (p. 229) and b) "which is perhaps more significant, that all existing regulatory agencies, both federal and provincial, (would) have to give up some power to this new board".⁴ (p. 229)

Kane describes the challenge then as being:

"to establish a new ordering or regulatory responsibility in which the parties will not have to give up any powers."⁵ (p. 229)

His suggestion is a joint panel which is summarized as follows
(p. 12-13):

Proposal for Altering Jurisdiction for
Telecommunications Regulation

Type - joint panel

Legislative Authority

- . not required
- . use a formal federal-provincial agreement including the relevant regulatory agencies

Responsibilities

- . power to make recommendations only to existing federal and provincial regulatory agencies. They must make the decision and implement it.
- . deal with agreed issues which, by design or effect, affects two or more jurisdictions where a regulatory authority is exercised over telecommunications. This would include systems interconnection, terminal attachment, adjacent revenue settlements, principles of regulation, costing methodologies and matters where jurisdiction is contested.

Appeals and Policy Directives

- . appeals would be pursuant to the decisions of the participating regulatory agencies.

Membership

- . the number of representatives on a particular panel would depend upon the number of regulatory agencies affected; several jurisdictions could agree to send the same representative
- . one regulatory agency would be characterized as the "host" agency for each particular hearing

Author's Note

Kane purports that the advantage of this proposal is that none of the parties currently involved in telecommunications regulation would lose any of the responsibility it now enjoys. However, it seems a somewhat unwieldy mechanism and does not appear to rule out the possibility of contradictory decisions being made by various regulatory agencies since none would be bound by the recommendations of the panel. Also, Schultz would surely argue that since the process would be established by an administrative agreement, the element of accountability would be missing as it is currently with the system of cooperation or negotiation through federal-provincial conferences.

Finally, the avoidance of legislative change clearly would not result in the avoidance of a lengthy and most likely difficult negotiating process to establish the modalities of the administrative agreement.

Lesser, Barry. "The Implications of the Federal and Provincial Proposals for Regulating Telecommunications: An Economist's Perspective" in Buchan, Robert J. et al. Telecommunications Regulation and the Constitution. (Montreal: The Institute for Research on Public Policy) 1982. pp. 167-224.

This paper provides an economic analysis of various possible jurisdictional splits in the field of telecommunications. For the purposes of this paper, as with the other papers in this collection, the issue of broadcasting is excluded from the discussion.

The author begins by outlining:

- a) the revenues and expenditures of the major telephone companies, the national telecommunications carriers, and the cablevision industry in order to illustrate their economic importance in Canadian society;
- b) the federal proposal of September 1980; and
- c) the provincial "best efforts draft" (1980)

He then goes on to set out a framework for an economic analysis of these proposals which involves determining, to the extent possible given the little detail available, the relative organizational costs in each case.

"Four types or categories of organizational costs are identified:

1. Administrative costs: the costs at each level of government of setting up and maintaining that government's institutions
2. Co-ordination costs: the costs attached to the task of co-ordinating activities between governments
3. Signalling costs: the costs associated with citizens' activities aimed at making governments more aware of their preferences so as to obtain a public policy bundle that comes closer to the bundle they desire
4. Mobility costs: the costs associated with citizens moving from one jurisdiction to another, again in order to obtain a public policy bundle that is closer to the bundle they desire."¹ (p. 177)

Upon applying this framework, the author concludes that "as between the federal and provincial proposals..., the federal proposal is clearly the most centralized and, as such, ... represents a lower-cost solution than the provinces' proposal."² (p. 190). However, he is quick to point out that cost is obviously not the only factor which needs to be taken into account in determining a suitable division of responsibilities. Other factors which must be, and are, considered in some detail include:

- a) the preferences of politicians (and bureaucrats) of both levels of government;
- b) the cost of effecting a reassignment of jurisdiction;

- c) the fact that the actual policies likely to be implemented by each level of government, if it is assigned the responsibility, may influence organizational costs; and
- d) the effect of technological change in the telecommunications field on organizational costs.³ (p. 190)

All these factors considered the author reaches several interesting conclusions regarding the federal and provincial 1980 proposals. These conclusions are enumerated on pages 201-202, but are too lengthy to reprint in this short summary. Suffice it to say, as does the author, that:

"Basically, the provinces' proposal is insufficiently concerned with costs, while the federal proposal is insufficiently concerned with provincial politicians' preferences. What is needed is a compromise that attempts to take account of provincial preferences without unduly sacrificing the cost advantage of a federal assignment."⁴ (p. 202)

Before detailing his "compromise" proposal, Lesser points out several major policy issues which he feels must be taken into account in the devising of any new regulatory mechanism. These are:

- " . Competition, including new entry, terminal attachment, and interconnection
- . Foreign involvement in Canadian telecommunications, particularly transborder data flows and cable distribution of U.S. television stations
- . Rate levels and structures (of common carriers), including cross-subsidization
- . New services
- . Forms of regulation"⁵ (p.202)

Lesser's proposal involves a joint (federal-provincial) policy board and is summarized as follows (p. 12-13):

Proposal for Altering Jurisdiction for
Telecommunications Regulation

Type - joint policy board (no constitutional amendment)

Legislative Authority

- . not stated, probably not required

Responsibilities

- recommend policy governing intraprovincial, interprovincial and international telecommunications including that concerning "message creation" and redistribution of programming signals
- recommendations would be subject to ratification by all 11 governments, but in case of interprovincial or international services the province could only accept or reject, but not vary recommendations
- the federal government would have authority to enact laws, which would be paramount, in respect to intraprovincial services when the policies have been recommended by the joint policy board and at least two thirds of the provinces have accepted the recommendation
- the federal government would have authority to enact legislation which shall prevail over all provinces when interprovincial or international services are involved and where the legislation embodies policies recommended by the joint board
- federal government would have exclusive jurisdiction over technical matters concerning management of the radio spectrum, space aspects of communications satellites and telecommunications for aeronautics, defence, etc.

Appeals and Policy Directives

- See "Responsibilities"

Membership

- 13 members; 1 from each province and 3 federal representatives
- to operate by a simple majority voting rule

Author's Note

It is unlikely that this proposal would be seriously considered by those provinces which are most adamant about maintaining significant power over communications policy within their borders. Quebec, in particular, comes to mind. There are also some problems with vagueness in the proposal. For example, what exactly is meant by "technical matters" with regard to the spectrum, space communications, etc.? Provinces would undoubtedly want some of these matters clarified prior to any negotiation of the proposal.

Murray, Catherine A. Managing Diversity: Federal-Provincial Collaboration and the Committee on Extension of Services to Northern and Remote Communities. (Kingston: Institute of Intergovernmental Relations, Queen's University). 1983. (p. 173)

This book constitutes a case study of the Therrien Committee on the extension of broadcasting services in Canada. Considerable space is devoted to descriptions of the context in which the Committee came to be, the creation of

the Committee, its modus operandi, and its report and the reaction it received. For the purposes of this study, it will suffice to summarize the conclusions reached regarding the effectiveness of the federal-provincial collaboration and its potential as a model for future exercises in joint regulation.

Generally, Murray cites provincial reaction as being that "the mechanism of the Committee, while the "finest and only" such hour in federal-provincial regulatory collaboration, offers no palliative for jurisdictional differences."¹ (p. 139). She goes on to conclude that "it is not enough for the Commission to enhance its regional sensitivity or to include the provinces in its deliberations"² (p. 139). She also stresses the need for directive power on broad policy matters at the political level.³ (p. 139)

It is suggested that formal mechanisms for joint regulation of common carriers have been rejected up to now because they would require major jurisdictional rearrangements and new legislation and the assertion is made, therefore, that:

"Given the status quo on the division of powers, models of regulatory collaboration must be used infrequently for inquiries where the policy issues are broad, involving both jurisdictions, and where the political will is present. The key is a federal-provincial consultation in bringing the mechanism into play, defining its mandate, deciding its composition and responding to its findings."⁴ (p.140)

The question of political will is emphasized by the author and she indicates that the provinces at least do not believe that this will exists at the federal level especially since the re-election of the Liberal government in 1980. (Needless to say, this may change again as a result of the 1984 election since the leaders of both major political parties seem to support more cooperation with the provinces and greater recognition of legitimate provincial jurisdictions and concerns.)

Murray stops short of proposing an entirely new mechanism for joint regulation; however, several suggestions are put forward for improving the current situation, i.e. making the CRTC more responsive to provincial concerns, which could be undertaken without changing the existing Act:

- " . The Chairman's office may have ongoing responsibility for inquiries from provincial governments.
- . The Executive Committee could undertake to seek out provincial comment, to supplement the gazetting of regulations.
- . Part-time Commissioners may be instructed to liaise annually with their governments in their home province.
- . Hearings could continue to be decentralized, with locations selected in concert with provincial officials.
- . Program or task force staff may be organized to have responsibilities for provincial policy in addition to function areas. The sensitivity to

jurisdictional nuances is seen to reside in the legal department; the knowledge of political bargaining is restricted to the top. The role of regional offices in policy research and development could be enhanced.

- . Data-gathering and other research functions could be designed to make inter-provincial/territorial and intra-provincial comparisons. The finding should be public."⁵ (p.148)

And, finally, it cannot be overstated that these measures are recognized as stop-gap:

"Ultimately, the provincial role in the Commission's decision process can only be meaningfully enhanced by thorough legislative reform: giving the right to vote to part-time commissions (sic), widening the Commission's power to delegate and include provincial regulators, or giving the provinces the power to appoint directly, or to ratify appointments in a revised Upper Chamber."⁶ (p. 148)

Saunders, R.P. "Broadcasting Policy - Regulatory Framework and Judicial Responsiveness". (a commentary on the Shellbird case) Canadian Bar Review, Vol. 60 (1982) (pp. 495-502)

In this brief commentary, Saunders uses the Shellbird case to illustrate the point that, in a field which is constantly evolving, legislation instituting a regulatory scheme must be "sufficiently flexible to permit a particular administrative agency to adapt to and control new technologies" and the courts must be "sufficiently mindful of the purpose behind the scheme" to prevent both the agency and the industry from "flounder(ing) on the shores of indecision and uncertainty."¹ (p.495)

The author sets the context for the case by:

1. outlining the nationalist goals of the broadcasting policy as enunciated in the various relevant Acts and asserting that the goal of a "uniquely and effectively Canadian character in television programming" has not been achieved² (p. 496);
2. stating that the Capital Cities case gave exclusive control (subject to certain caveats) over all television broadcasting, including cable television programming, within Canada to the federal government and that the Dionne case confirmed this view³ (p. 497); and
3. pointing out the great advances in the field of broadcasting in recent years, particularly direct broadcast satellite (DBS) technology.

Saunders discusses the arguments which arose during the case as to the definition of "radiocommunication" and particularly regarding whether or not a satellite constitutes an "artificial guide", a necessary criteria for radio-communication and, therefore, for broadcasting. The court ruled that a satellite does not constitute an "artificial guide" and that, as a result, the signal being carried was not broadcasting and thus it was beyond the jurisdiction of the CRTC. Saunders clearly does not agree.

The author concludes that decisions like Shellbird, if allowed to stand, will threaten the entire broadcasting system in Canada. He argues very strongly that "satellite broadcasting must be subject to federal regulatory control"⁴ (p. 501) for cultural, regulatory and developmental reasons and he cites the Therrien Committee report for support of his position.

Schultz, Richard. "Partners in a Game Without Masters: Reconstructing the Telecommunications Regulatory System" in Buchan, Robert J. et al. Telecommunications Regulation and the Constitution. (Montreal: The Institute for Research on Public Policy) 1982. pp. 41-114.

This is a lengthy but thoughtful and complete paper which outlines the current state of telecommunications regulation in Canada with all its blemishes as well as its assets. Schultz explains the raison d'être of his paper as follows:

"... it is a central assumption of the paper that the existing telecommunications regulatory system will need to be revised because it is doubtful that it is capable of successfully coping with the political conflicts it will confront in the 1980s. If the regulatory system cannot cope, the potential is surely there that the provision of telecommunications services will be impaired." (p. 44)

Another key element in Schultz's dissertation is that public decision-makers have confused policies for telecommunications with policies pertaining to the use of telecommunications. He argues quite strongly, citing support for his position among industry representatives, that telecommunications policy should not be developed with a view to the content, but rather strictly confining itself to the efficient management and development of the carriage of information. He states that "it is the industry position that the jurisdictional conflicts over appropriate telecommunications policies pose difficulties enough without being joined by conflicts over the employment of telecommunications systems." (p. 85)

The paper covers the following areas in a thorough and fairly objective manner:

Part I - Background

- a. An outline of the major technological and economic forces, their causes, and the stakes involved that are largely responsible for the intergovernmental debate² (p. 44);
- b. A description of federal-provincial relations in general since World War II, a discussion of the impact of government in Canadian society and of the conflicting goals between levels of governments and among provincial governments and the implications of these conflicts:

"Numerous studies have documented examples of policies and actions by individual provincial governments, aided and abetted at times by the federal government it needs emphasizing, which have constituted barriers to the free flow of goods, services, and people within Canada."³ (p. 54); and

- c. A brief description of the evolution of the debate over allocation of jurisdiction since the early 1970s.

Part II - Alternative Values and Objectives

This part of the paper is divided into descriptions of:

- a. the federal position;
 - b. the provincial positions;
 - c. TCTS member positions; and
 - d. other carriers' positions.
- a. The federal position - the author cites the federal objectives as outlined in the Green Paper, the Grey Paper and the Telecommunications Act (C-16). He argues that the federal government has been more interested in policies for the use of telecommunications than in telecommunications policies per se. He goes on to say:

"The federal government has not provided authoritative statements of its position on the appropriate mix of competition and monopoly or the distributive effects on classes of users that will result from any changes in the present essentially monopoly-based system. ... Furthermore, the proposed Telecommunications Act (C-16), which can be expected to be the guide for telecommunications policy perhaps for several decades at least, is essentially silent on these matters. Finally, the willingness of the federal government to entertain the delegation of cable systems to provincial governments without any evident concern for the potential role of cable distribution systems within the national telecommunications system as long as broadcasting goals were protected is further evidence of the low priority of telecommunications policy issues within the federal government."⁴ (p. 69)

- b. The provincial positions - Schultz reviews the provincial positions quite accurately without revealing many surprises; however, interviews with provincial officials have led him to say that provinces are no longer willing to stay with the status quo. They are now recognizing the national dimensions of their policies. He states as follows:

"These dimensions include rates, standards, services, and the relationship between competitive and monopoly services. Provinces all agree in the principle that there should be no arbitrary or capricious barriers to the flow of communications and that the integrated national system should not be fragmented."⁵ (p. 76)

However, the provinces disagree with the federal government on how to handle these matters and certainly reject unilateral federal action on rates. Schultz also states more specifically:

"With respect to barriers to the flow of information, provincial governments have recognized the need for an arbitration mechanism but again reject federal dominance of such a mechanism. Their preferred alternative for handling the national dimension is interprovincial cooperation and they question the need for a federal role."7 (p. 76)

c. TCTS Member positions -- Schultz indicates that generally most TCTS members have, until recently, preferred provincial jurisdiction over telecommunications since they have seen this as pretty much maintenance of the status quo. However, a shift is now occurring for various reasons. For example, the CRTC seems increasingly to be infringing on traditional management rights and prerogatives. Also, competition is expected to be increasingly a fact of life in Canadian telecommunications.8 (p. 81) Schultz identifies seven elements to the current TCTS members' position on jurisdiction-related matters:

- i) acknowledgement that, hitherto, there has been at best only light, and at worst, no effective regulation of interprovincial rates and services;
- ii) governments wanting to play a more important role in policy-making in this field should be prepared to take the brunt of the criticism;
- iii) concern for mitigating the serious adverse effects of one regulator's decisions on activities subject to another regulator's authority;
- iv) emphasis on nationally integrated network;
- v) lack of openly articulated federal government telecommunications policies:

"the federal government does not appear to have a coherent philosophy or set of objectives in terms of the appropriate degree of monopoly and competition, the relationship between the various telecommunications sectors, or between user and service providers."9 (p. 85)

- vi) a belief that this lack of policy has led to "... an inconsistency, namely an increase in competition combined with an extension of regulation."10 (p. 85); and
- vii) fundamental opposition to two-tier regulations.

d) Other carriers' positions -- Here Schultz deals primarily with two other carriers, CN/CP and the cable industry. He outlines CN/CP's support for national regulation which allows for competition and its distaste for any sort of delegation of responsibility to the provinces. With regard to cable he speaks of the potential of cable for competing with the telephone companies:

"... if we are to attempt to respond to the regulatory needs of the future, there is a clear case to be made that there must be some recognition that cable may increasingly possess an interprovincial dimension."11 (p. 89-90)

Part III -- Assessment of the Alternatives

The author considers four options;

1. the federal 1980 position
2. the provincial 1980 position ("Best Efforts Draft")
3. the status quo
4. "some form of shared allocation regulated by a joint federal-provincial agency"¹² (p. 90)

Before dealing with each option the following premise is stated:

"In so far as the governments are concerned, the alternative that is adopted here is to accept the principle that both levels of government have legitimate interests that must be respected. Furthermore, ... the legitimate interests of either level are considerably larger than the other level appears prepared to concede, although also rather less than each has claimed for itself."¹³ (p. 90)

Schultz then goes on to reject the first three options giving clear and valid reasons for doing so in each case and instead proposes the fourth alternative which is summarized as follows (p. 12-13):

PROPOSAL FOR ALTERING JURISDICTION FOR
TELECOMMUNICATIONS REGULATION

Type - joint regulatory board (no constitutional amendment)

Legislative Authority

- . federal
- . to contain a statement of national telecommunications principles

Responsibilities

- . regulate interprovincial and international rates and services including system interconnection
- . regulate present federal carriers, i.e. CN/CP, Telesat, Teleglobe
- . regulate terminal interconnection of network-addressing equipment
- . regulate interprovincial aspects of cable television
- . provinces to regulate intraprovincial rates and services. (This would require a transfer of jurisdiction of certain carriers, e.g. Bell Canada, B.C. Tel.)

Appeals and Policy Directives

- . policy directives could be made by the federal government following the required consultation with provinces

- . appeals to federal Cabinet following the required consultation with provinces

Membership

- . majority of provincial nominees who would be chairmen or designates of provincial regulatory agencies
- . operate in panels of 3; 2 provincial, 1 federal if 2 provinces involved;
- . increase the size of the panel if more provinces were involved (always maintaining the provincial representation at one more than the federal representation. This would mean that the federal delegation would only have to obtain the support of one provincial delegate on the panel to swing the decision.)

Schultz, Richard. "Delegation and Cable Distribution Systems: A Negative Assessment". Institute of Intergovernmental Relations. Queen's University. (Kingston). Discussion Paper No. 11. 1981. 15 pp.

In this paper Schultz argues very strongly against any delegation of power to the provinces in the area of cable for the following reasons:

1. it would not serve the best interests of the individual citizen because it would lead to a complicated morass of regulation which would not only be difficult for the ordinary citizen to unravel, but also because the ordinary citizen would end up paying for the increased regulations;
2. it is no longer necessary because the incentives for consideration of such a move, e.g. the lack of control of the federal government over the CRTC and the insensitivity of the CRTC to the concerns of the provinces, have been, or are being, resolved;
3. discussions have been predicated on cable as an "adjunct to the traditional off-air broadcasting system"¹ (p. 3) rather than cable as a carrier system whose capacities are growing rapidly and will inevitably lead to the carriage of non-broadcasting services beyond provincial boundaries;
4. it is unlikely, and indeed improbable, that "provincial regulation (would) be willing or able to give sufficient weight and emphasis to the extra-provincial dimensions of cable distribution systems."² (p. 6);
5. reversal of a delegation decision seems to be next to impossible, given the example of the trucking industry; and,
6. "a transfer of jurisdiction, unless it is complete and total, an alternative which is neither desirable nor practical, will necessitate continual federal-provincial negotiations" and this is "most undesirable for it is a system of government dominated by excessive secrecy and in which neither Parliament nor provincial legislatures play effective meaningful roles."³ (p. 10)

In a postscript to the paper, Schultz discusses the federal and provincial final positions at the end of the 1980 constitutional discussions and finds them both lacking. Although he welcomes the evidence that both "sides" acknowledge the importance of the free flow of information across provincial and national boundaries, he criticizes each side's proposal for how to achieve this end.

The federal government proposed that it retain control over interprovincial aspects of cable distribution systems. This is insufficient, in Schultz's view, because the provinces could thwart the creation of trans-provincial cable concerns with their regulation over intraprovincial cable.

The provincial proposal for dealing with barriers to free flow is even worse, argues Schultz. "Only provinces, not citizens, (would) be empowered to seek redress", i.e. two provincial governments could "conspire" to disrupt the free flow of information to emphasize the rights of citizens to defend their interests, ... one cannot conceive of a more cumbersome method for seeking redress than a petition to Parliament for, of all things, a law to resolve individual conflicts."⁴ (p. 12)

The only hint at a possible solution is stated as follows:

"What is required is a method that will allow for appeals from all affected parties and the expeditious resolution of conflicts. There is a variety of alternatives, including appeals to the courts or to the national regulatory agency."⁵ (p. 12)

Author's Note

Mr. Schultz's paper might have been more helpful if he had expanded on the "variety of alternatives".

Schultz, Richard J. "Federalism and Telecommunications: Multiplication, Division and Sharing". Osgoode Hall Law Journal. Vol. 20 (1982) (pp. 745-761)

This article represents a revised version of the article by Schultz which is found in Buchan et al, Telecommunications Regulation and the Constitution (summary included in this study). There are, however, some interesting distinctions. (It should be noted that, as in the original article, discussion is confined to telecommunications and does not deal with broadcasting.)

The author begins with a description of the current regulatory system and how it came to be. He then goes on to argue very strongly that the current system has been "one of the first victims" of the "radical and pervasive" change which the field has undergone in recent years and that "the quality of the ... system is inextricably linked... to the resolution of the conflicts over the policies for telecommunications now central to the regulatory system."¹ (p. 749)

Schultz introduces two new words in this article to identify concepts he mentioned in the original version of the work. They are endogenous policies or policies for telecommunications² (p. 749) and exogenous issues or those which "address concerns pertaining to the relationships between telecommunications and other sectors of the economy and society."³ (p. 750) He suggests again that

governments talk more about the exogenous issues than the endogenous ones⁴
(p. 750) even though these latter would be considerably easier to resolve.⁵
(p. 752)

Several aspects of the federal-provincial arena are identified as being "particularly significant" in the struggle by governments to achieve exogenous goals:

"First, ...a successful federal attempt to secure a greatly expanded decision-making role in telecommunications would be directly at the expense of the seven provinces that now almost exclusively regulate telecommunications within their territories. ...The second aspect ...is that the provinces would be losing control to a national government that is widely condemned as being incapable of adequately representing the regional diversity of Canada. The third aspect is that unless one level of government secures exclusive control over the telecommunications sector, it seems inevitable, given the track record of the past decade, that competition and rivalry will ensue not only between the two levels of government but among the provinces as well, given their divergent interests and objectives. ...This leads to the final ...aspect ..., the absence of authoritative and effective decision-making rules to resolve intergovernmental conflicts."⁶ (p. 752)

In the third section of this article, Schultz again analyzes the 1980 federal and provincial proposals; however, this time he does it in a somewhat more systematic way. That is, he sets out three criteria for testing the proposals, which are:

1. a concern for minimizing regulatory overlap and conflicts between jurisdictions⁷ (p. 754);
2. maximizing regulatory capacity (in this regard Schultz states the "multiple decision-makers and segmented problem-solving or division of labour are possible organizational responses for enhancing regulatory capacity"⁸ (p. 756); and
3. the degree to which the legitimate interests of the respective governments are adequately represented.⁹ (p. 757)

Having applied these criteria to the two proposals the author comes to his original conclusions, i.e. that both proposals are seriously flawed.

Finally, Schultz puts forward the same suggestion as he did in the previous article with one interesting clarification. This time he specifies a "new" constitutional split:

"Provincial
Jurisdiction over intra-provincial telecommunications works and undertakings including cable systems.

Federal
Jurisdiction over interprovincial telecommunications works and undertakings including cable systems."¹⁰ (p. 760)

He then explains that the federal regulatory jurisdiction would be exercised by the joint agency which he outlined in the original article. He argues that this alternative passes all three tests he set out earlier.

It is unclear why Schultz adds this suggestion for constitutional change in this revised article when he argued originally that it would not be necessary. Indeed, it is still unclear whether it would be necessary. In either case, the proposal is an interesting one and worthy of consideration.

Stanbury, W.T. "Telecommunications Regulation and the Constitution: The Main Themes" in Buchan, Robert J. et al. Telecommunications Regulation and the Constitution (Montreal: The Institute for Research on Public Policy) 1982 (pp. 1-19).

Stanbury's paper serves as introduction to a collection of essays on telecommunications regulation by a political scientist (Richard Schultz), three lawyers (Buchan, Johnston and Kane), and an economist (Barry Lesser). (Each of these essays has been summarized elsewhere in this work.) As such, Stanbury sets the scene for the analyses which follow and gives a brief description of the proposals which are put forward. He also identifies several points which are worth noting about the proposals. These are:

1. all four proposals seek changes that will not require constitutional changes;
2. two (Schultz and Buchan and Johnston) propose new joint regulatory boards, one (Kane) suggests a joint panel which would make non-binding recommendations to existing regulatory agencies, and one (Lesser) recommends a joint policy board providing for legislative implementation of the recommendations;
3. two (again Schultz and Buchan and Johnston) would eliminate the federal government's regulatory tribunal;
4. all four proposals would allow the provinces to retain exclusive jurisdiction of intraprovincial matters, with a slight variation in the Lesser case (see Lesser summary);
5. Schultz would allow appeals to the federal Cabinet, whereas Buchan and Johnston would not; and,
6. Kane's proposal does not contain any mechanism for resolving conflicts among federal and provincial regulatory agencies (which Stanbury sees as a serious flaw).

In summary, Stanbury draws the following conclusions regarding the four proposals included in the collection:

"...adoption of any of the four proposals would move the provinces toward their position as defined in August 1980. In each case, the federal government would be agreeing to share power over matters hitherto thought to be exclusively within their purview. It seems that "triumphs" of

Canadian federalism almost always involve a decline in the effective legislative authority of the federal government. Fulfilling the aspirations of the provinces, even those that Schultz describes as the "legitimate aspirations of the provinces," comes at the expense of federal power. It is not clear why the federal government should wish to adopt such a solution."¹ (p. 14)

This point of view, expressed as it is without any elaboration, seems to suggest centralization for centralization's sake. Whereas each of the authors contributing to the collection includes extensive explanation as to why the provinces' aspirations need to be accommodated better in the telecommunications regulatory system in this country, Stanbury leaves us hanging with a gratuitous remark suggesting that the federal government should continue to cling desperately to whatever power it has in this field for whatever reason. This is not to suggest that Stanbury may not be absolutely right in his assessment; however, it would have been interesting to see greater elaboration of this point of view because it is not one which is advocated by any of the other authors in the book and it might, therefore, have rectified an imbalance in an otherwise very valuable document.

Trudel, Pierre. "Les Conflits et enjeux juridico-politiques suscités par l'implantation de la télévision à péage". Thémis. vol. 16 no. 3 (1981-82) (pp. 431-456)

This article was written and published prior to the CRTC decision on pay-TV and, therefore, some aspects may be of dubious relevance today. The author discusses the potential impact of the introduction of pay-TV on current regulatory practices, predicting, for example, that it will contribute to the emergence of latent conflicts between the current monopolistic enterprises (including cable companies) and the new competitors who will be providing the service.¹ (p. 437) He also suggests that a pay-per-program decision (as was recommended by the Clyne Commission) would require a two-way cable capacity which would compete directly with common carriers.² (p. 438)

Trudel does have some interesting statements to make with regard to the regulation of cable in general suggesting that its regulation has been minimal and, in some instances, naïve:

"Les câblodistributeurs sont en fait peu habitués aux contraintes réglementaires. Ils ont toujours pu bénéficier de règles qui ne pouvaient avoir pour effet que de favoriser l'importation massive de contenus étrangers. Les discours du CRTC en cette matière sont d'une naïveté tellement grande qu'ils ne furent jamais pris au sérieux."³ (p. 440)

With regard to jurisdiction in the field of cable, and pay-TV in particular, the author states that again "l'inaptitude chronique des autorités à dégager un partage fonctionnel des responsabilités entre elles explique un certain vide en matière de réglementation."⁴ (p. 443) He goes on to suggest at the very least, a vulnerability in the federal government's position that it has full responsibility for all aspects of cable:

"Comme la compétence reconnue au gouvernement fédéral en matière de câblodistribution est fondée sur le fait que ces entreprises retransmettent principalement des signaux transmis par ondes hertziennes, il est raisonnable de penser que les provinces auraient compétence sur les services en circuit fermé. Le gouvernement fédéral n'a cependant pas l'intention d'abandonner la télévision payante aux provinces. Il prétend que celle-ci est d'une importance économique et culturelle telle que, si l'on veut assurer la survie de la radiotélévision et la réussite de la politique de radiodiffusion, il faut qu'elle soit réglementée par une seule autorité. Certes cela n'est pas un argument juridique, il s'agit au mieux d'un jugement d'opportunité. Il reste que le recours à certaines techniques est susceptible d'assurer ou de mettre en péril, sur le plan du droit constitutionnel la compétence fédérale sur la télévision à péage."⁵ (p. 443)

The author also devotes considerable space in the paper to the contention that the "rationalités classiques" for broadcasting regulation no longer apply, i.e. the limited spectrum, the single system and national identity. Instead, he proposes that new "rationalités" be adopted which relate more to the recognition of the fundamental rights of individual and identifiable collectivities, freedom of information being one of the most important of these rights. By that he means guarantees such as "equal time" and freedom from censorship of information.

Returning specifically to pay-TV and cable, the author warns against taking the view that it is a "luxury" and, therefore, not deserving of too much time and money on the part of the regulators, suggesting that this is to be naïve as to its potential:

"L'histoire du développement de la câblodistribution et son impact sur la radiodiffusion nationale fournissent pourtant assez de leçons sur ce qui se produit lorsqu'on laisse s'implanter en ce domaine une entreprise non réglementée venant en concurrence avec des entreprises réglementées et assujetties à des idéaux élevés qui ne sont pas d'accomplissement rentable."⁶ (p. 455)

Waverman, Leonard. "The Process of Telecommunications Regulation in Canada". Regulation Reference. Economic Council of Canada. January 1982 (p. 220)

This lengthy document constitutes an in-depth study of the process of regulation of the common carriers in Canada. Its five chapters include:

1. Regulation: Why, How and for Whom?;
2. Regulatory Supervision, An Overview;
3. An Analysis of the Process of Rate Setting;
4. Jurisdictional Issues: Analysis and Assessment; and
5. Recommendations: An Accountable Process.

For the purposes of this study, it will suffice to look briefly at the last two chapters.

Waverman concentrates in Chapter 4 on the division of jurisdiction between the government or legislature and the statutory regulatory agency. However, some consideration is given to the federal-provincial question in this field. He deals briefly with cases in which there has been provincial collaboration in CRTC decisions (Prince Rupert and the TCTS enquiry) but does not strongly support such initiatives in the areas of policy making primarily because of their lack of accountability. He states that "if (an) inter-regulatory jurisdiction liaison committee assist(ed) in policy development" it would lead to "the worst of all possible worlds, policy decided by private negotiations among regulators."¹ (p. 170)

He labels the current "fractured regulatory authority" as "unthinkable" and looks at three constitutional alternatives: a) regulation of all activities of all telecommunications carriers by the federal agency, which would be a "most naïve" recommendation "in the present political climate"² (p. 172); b) an inter/intra split between the federal and provincial agencies, which he rejects largely because the two-tier experience in the United States has not been a positive one; and, c) delegation of all communications regulation to the provinces, which is ruled out because of the number of "important issues today - attachments and terminal equipment, competition, enhanced services, the telecommunications/computer interface - which could then be decided differently by the nine different jurisdictions."³ (p. 171)

Having rejected the three simplistic constitutional rearrangements, Waverman comes down in favour of a joint federal-provincial regulatory agency:

"A joint federal-provincial committee could oversee both intra and inter-provincial matters with a selective choice of commissioners; purely intra-provincial matters being decided by representatives of that province; purely inter-provincial matters being decided by federal representatives."⁴ (p. 172)

Waverman reiterates this position in his final chapter in which he proposes a restructuring and revamping of the CRTC to make it more accountable. Although most of his recommendations do not relate directly to federal-provincial relations, it is interesting to note what Waverman has to say regarding policy directives to the CRTC. He is not convinced that "governments of the day have policies at all specifically designed for use by a regulatory agency" or even that it is possible to enunciate policies which are "general enough so as not to apply to specific cases but specific enough so that they will not be vague and meaningless."⁵ (p. 194) Instead, he suggests "it would appear to be the best policy development for the Cabinet to order generic hearings, where the DOC is an intervenor and where the government has final say over policy."⁶ (p. 196) Waverman would also do away with appeals to the Cabinet. Rather, he would have policy directives "placed before the Select (Parliamentary) Committee (which he proposes be established to oversee the CRTC) and notice of the directive given to all interested parties."⁷ (p. 202) Objections to the directive would lead to a CRTC hearing on the subject resulting in a recommendation to the Select Committee.

Author's Note

It would be worth considering these procedures for policy directives and appeals in any proposal for a joint regulatory agency.

Wilkie, J. Scott. "The Radio Reference and Onward: Exclusive Federal Jurisdiction Over General Content in Broadcasting?". Osgoode Hall Law Journal. Vol. 18 (1980) (p. 49-86).

The primary contention of this paper is that in actual fact the courts have really only spoken on the distribution of broadcasting and not on its content in the cases which have come before them and that it is arguable that the provinces could have a legitimate constitutional jurisdiction over some aspects of broadcasting content, particularly in the areas of cable and pay-TV.

The author purports that the Radio Reference.

"... should be recognized only as supporting the proposition that the Parliament of Canada has jurisdiction to regulate the physical and non-physical components of the process by which radio and television communication is distributed."¹ (p. 55)

and that successive interpretations extending federal jurisdiction to all broadcasting content have been misinterpretations and as well "betray a misunderstanding of the complexities inherent in modern broadcasting."² (p. 61) Wilkie's judicial arguments are interesting, given that there has been general common acceptance of federal jurisdiction over all aspects of broadcasting in recent years.

Wilkie goes on later in the paper to suggest that provincial legislative competence could be justified under section 92(16) of the Canada Act (cited, obviously, as The British North America Act, 1867 in the article), that is, "matters of a merely local or private nature in the province." He cites a judgement of the Supreme Court on censorship in 1978 (Nova Scotia Bd. of Censors vs. McNeil) in which Ritchie J. explained the substance of the section 92(16) authority:

"In a country as vast and diverse as Canada, where tastes and standards may vary from one area to another, the determination of what is and what is not acceptable for public exhibition on moral grounds may be viewed as a matter of a "local and private nature in the Province" within the meaning of s. 92(16) of the BNA Act, and as it is not a matter coming within any of the classes of subjects enumerated in s. 91, this is a field in which the legislature is free to act."

Arguments of a less judicial nature are also put forward to support the concept that provinces should have some legislative role in broadcasting content:

"It is a strong argument that the legislature most responsive to social needs should legislate with respect to them. A fortiori, and especially on matters of intensely focused public concern (such as broadcasting), legislators rather than government appointees should formulate fundamental matters of policy."³ (p. 76)

Wilkie proposes the following rearrangement with regard to jurisdiction in the field of broadcasting content:

"It is submitted that by a process involving concurrently operative legislation with federal paramountcy, and administrative interdelegation, the provinces may be permitted the opportunity to legislate on matters of general broadcasting content of a provincial character. After a province has exercised its legislative capacity, this mechanism envisages a delegation of the regulatory implementation of legislation to the CRTC, which would administer the provincial policy and its own matters of regulatory concern as a unit."⁴ (p. 78)

The thrust of this paper, it could be argued, is academic since rightly or wrongly the courts have already pronounced on the subject of broadcasting content assigning responsibility for it exclusively to the federal government. However, Wilkie suggests that the courts could reverse this trend in future cases if they so wished, that they are "no longer rigidly bound by precedent"⁵ (p. 83), that cases up to now have not been "concerned with content needs specific to the provinces or to a province"⁶ (p. 84), and that "factual information (could) be placed before the Court to establish the necessity and desirability of adopting a functional approach in particular broadcasting cases."⁷ (p. 84)

In summary, Wilkie states:

"The onus is on the Court. In a subject area as complex and ever-changing as broadcasting, in which social utility is a paramount concern, the approach of the Court should be to uphold valid provincial initiatives where constitutionally possible and convenient in a regulatory sense."⁸ (p. 86)

Woodrow, R. Brian and Woodside, Kenneth B. "Players, States and Politics in the Future of Telecommunications Regulation in Canada: A Preliminary Analysis". Draft of a paper prepared for Seminar Sponsored by the Institute for Research on Public Policy on "Telecommunications Regulation in Canada: Challenges of the Next Decade", held on December 12, 1983, Toronto, Ontario. (Final version of the paper will eventually be published by the Institute.)

This is a lengthy and, at times, rather technical paper dealing strictly with the "telecommunications sector" which the authors define "in the traditional sense of the term as comprising the major telephone companies, their suppliers or equipment, and the specialized telecommunications common carriers". As such, it does not touch on radio spectrum or broadcasting.¹ (notes: definition taken from note no. 7 on page 1 of the notes attached to the draft paper.)

The first 25% of the draft article is devoted to "mapping the territory", that is, describing the current state of telecommunications in Canada. In particular, the authors go into the telephone companies and their respective regulatory agencies, the telecommunications equipment manufacturing industry, specialized common carriers, e.g. CN/CP, Telesat, and Teleglobe, the computer industry, the cable industry, and the "newly-emergent interconnect industry".² (p. 7) They also make brief mention of "a number of other actors affecting the emerging shape of the information economy."³, (p. 8)

i.e. Canada Post,
public and private broadcasters,
business equipment manufacturers,
the banking industry,
the satellite industries,
consumer groups and poverty associations, and
the daily and periodical press.

The authors then give a brief aperçu of the current state of regulation of this entire sector.

Five issues are identified which affect the future of telecommunications regulation in Canada:

1. the role of the telecommunications sector in the emerging information economy;
2. the changing balance among monopoly, competition and regulation (several cases are used to illustrate the impact of this changing balance: the CN/CP interconnection with Bell, CRTC; terminal interconnection, CRTC; the TCTS/Telesat case, CRTC; the Bell reorganization report, CRTC; and vertical integration between Bell and Northern Telecom, RTPC);
3. problems of costing and pricing related to the operation of regulated and non-regulated markets and the cross-subsidization issue;
4. the prospects for jurisdictional and regulatory reform; and
5. the possibility of an industrial strategy in the telecommunications field.

The authors point out that analysis of regulation of this field has often failed to take political factors into account.⁴ (p. 2) After discussing the role of the telecommunications sector in the information economy the authors conclude:

"The pressing question arises whether effective boundaries which are necessary for regulation can be re-established according to some rational and compelling principle, for example, carriage vs. content, competitive vs. regulated markets, or perhaps some territorial principle."⁵ (p.15-16)

(Note: By "territorial principle" the authors seem to mean, for example, interprovincial vs. intraprovincial matters.) To emphasize this point, the authors note that:

"While regulation is evolving in new directions with a growing emphasis on standards, it still requires industry boundaries and in telecommunications these boundaries are collapsing."⁶ (p. 27)

They go on to say that they will be devoting particular attention to this question in the final version of the paper.

With regard specifically to federal-provincial aspects of telecommunications regulation, the authors make brief mention of such matters in their discussions of specific cases which have come before the CRTC. However, the bulk of the discussion is dealt with, obviously, under Issue #4 (pp. 32-38 of draft) in which the authors borrow heavily from the Schultz paper published by the IRPP in 1982 and the C.D. Howe paper published in 1980. They do make the distinction between jurisdictional and regulatory reform, the latter relating largely to federal regulation, and come to the conclusion that attempts at reform in both the jurisdictional and regulatory arenas have failed up until now.

The authors go on, however, to outline four lines of development which "suggest that a convergence of jurisdictional and regulatory reform might hold some possibility of breaking the impasse ... and offer modest ... hope for improving telecommunications regulation in Canada."⁷ (p. 36):

1. technological advance - the authors suggest that this "can very much be regarded as the great deregulator, and one which operates with equal vitality at either the federal or the provincial level"⁸ (P. 36);
2. clarification of government control over the CRTC - this should include both the capacity for Cabinet to provide policy directive prior to decision-making and a clarification of the appeals procedure;
3. joint federal-provincial regulatory arrangements - there should be further exploration and adoption of such mechanisms "to deal with those areas where the jurisdictional power and regulatory action of the two levels of government ... might overlap."⁹ (p. 37); and
4. Bell/B.C. Tel initiative - this would involve an offer by the companies to lease their telephone operations to the respective provincial governments. Presumably such an initiative would prompt the federal government "to proceed with its 1980 offer to turn over regulatory authority over intra-provincial telephone companies to provincial regulatory authorities in Ontario, Quebec and British Columbia."¹⁰ (p. 37) This last line of development does not seem a very hopeful one given the provincial reactions to this proposal in the past.

The authors indicate that they intend to conduct interviews with industry, government and regulatory officials during the winter and spring of 1984 and that they will then be in a position to improve and add to their analysis of the five issues they have identified and that they also intend to extend the analysis to give greater attention to telecommunications regulation at the provincial level (probably in selected provinces) as well as at the federal level.¹¹ (p. 42)

Personal note: These four lines of development sound more impressive than they are. The first is an inevitability which may or may not lead to a break in the impasse. The second is one that will be resolved eventually, if the federal government could ever get its Telecommunications Act passed (which even the authors admit is a long time in coming, viz. in relation to the Bell reorganization report):

"Although the federal government indicated in its approval of the CRTC report that legislation would be forthcoming, the recent history of policy-making in telecommunications suggests that the uncertainty as to CRTC capabilities will remain for some time."¹² (p. 25)

They also note that:

"there is little evidence to suggest that substantive deregulation, as opposed to procedural changes, has really engaged the attention and support of the Prime Minister and Cabinet or, for the most part, key departments like Communications, Finance or Treasury Board. In these circumstances, it is not surprising that progress toward regulatory reform has thus far been slow."¹³ (p. 35)

The third line of development is a good suggestion but seems a tad unrealistic given the current status of federal-provincial relations as does the fourth one.

Woodrow, R. Brian, Woodside, Kenneth, Wiseman, Henry and Black, John B. Conflict over Communications Policy: A Study of Federal-Provincial Relations and Public Policy. C.D. Howe Institute. 1980. 76 pp.

This concise policy commentary is an excellent overview of regulation in the communications field for the time it was written. It is, needless to say, however, somewhat dated today in at least two respects: one, the state of federal-provincial relations and the evolving interests of each of the levels of government; and two, the extremely rapid rate of technological advance and its accompanying erosion of distinct boundaries between the various aspects of the communications sector.

Briefly, the book gives a useful background to communications policy in a language comprehensible to the layperson, describes the evolution of federal-provincial conflict in the field from the early seventies to the 1979 cable discussions, and then goes on to provide a policy analysis and evaluation.

It is this last chapter which is most relevant to this study. It reviews possible jurisdictional splits and their implications in the areas of broadcasting, cable distribution, common carriers, computer communications, and satellite communications. It comes to the interesting conclusion that serious consideration should be given to a combination of concurrent jurisdiction in some areas and more effective formal consultative and joint decision-making mechanisms on the part of the federal and provincial governments.

The authors suggest that:

"... recognition of de jure concurrent jurisdiction acknowledges the interdependence of both levels of government in dealing with communications policy and may provide a sounder basis for future federal-provincial cooperation."¹ (p. 64)

Given the admitted difficulties with concurrent jurisdiction, the authors go on to strongly recommend not only greater control of the federal government over its own regulatory agencies and relevant crown corporations, but also a permanent and formalized federal-provincial consultative mechanism such as the Committee on Communications Policy which was recommended in the 1975 Grey Paper of the federal government. This proposal is no doubt worthwhile but would require a greater feeling of trust between the two levels of government than currently exists to be acceptable for consideration by the provinces. The authors also support the concept of an Association of Communications Regulatory Bodies, again as suggested in the Grey Paper. Much greater liaison and coordination is touted as being an absolute necessity in the coming years given the continuing pressures for deregulation.² (p. 68)

The clear conclusions of the paper are summed up as follows:

"... the distinction between content and carriage would seem to offer a promising guideline for any future realignment of federal and provincial roles and responsibilities.

"Acceptance of concurrent jurisdiction on the part of the federal and provincial governments would appear a sine qua non for further progress toward resolution of the conflict over communications policy. Neither interdelegation nor exclusivity, in and of themselves, provide a suitable basis for underpinning the relationship between the two levels of government.

"... Clarification of departmental and agency roles and responsibilities; improved methods for consultation with, and representation of, the provincial governments in communications policy-making; and broader public and interest-group participation are desirable objectives."³ (p. 76)

CNCP Telecommunications. The Crisis in Canadian Telecommunications Policy and Regulation. (1982) (p. 35)

This brief was prepared and published in 1982 by CNCP Telecommunications and its purpose is "to show that it is essential that the federal government be in a position to exercise authority in regard to questions of access to the major telecommunications systems of Canada, and that this should be a priority objective in any constitutional discussions regarding jurisdiction over telecommunications in Canada."¹ (p. 2) The brief bemoans the current regulatory system with its mix of federal and provincial agencies and calls for a new "national regulatory framework". To simplify comparison the CNCP proposal will be summarized under the same headings as those used to summarize the proposals put forward in the Buchan collection:

Proposals for Altering Jurisdiction for
Telecommunications Regulation

Type - joint regulatory board (no constitutional amendment)

Legislative Authority

- . federal

Responsibilities

- . regulate all aspects of telecommunications rates and services, be they international, interprovincial or intraprovincial
- . regulate TCTS, each member of TCTS, CNCP, Telesat and Teleglobe

Appeals and Policy Directives

- . not specified

Membership

- . 14 members - 1 nominee from each province (to be ratified by the Governor-in-Council) and 4 from the federal government
- . in matters involving more than 1 province, operate in panel of 7; 3 provincial and 4 federal
- . in matters involving only 1 province, operate in panel of 3; 2 provincial and 1 federal

Clearly, this proposal is not fully developed; however, it is complete enough to judge as to its political acceptability. It would appear obvious that the provinces would not accept this suggestion for many of the same reasons given for not accepting the federal government's 1980 proposal for a joint board. First, the board would be set up subject to federal legislation; second, the majority of members would be federal appointees giving the federal government effective control over the decisions of the tribunal; third, and here it goes even further than the federal 1980 proposal, it would regulate intraprovincial matters over which the provinces would be loathe to concede any jurisdiction. In a nutshell, this proposal is far too heavily dominated by the federal government to allow serious consideration on the part of the provinces.

The CNCP brief is interesting in that it sets out the opinion of one sector of the industry on the subject of telecommunications regulation and it should be noted that not only do they argue vehemently in favour of strong centralized regulation, but they discount many other suggestions which have been expressed for changes in the regulatory structure in this field:

"... it is naïve to suggest that an ad hoc or temporary joint board or an informal joint regulatory approach could effectively apply economic regulation to TCTS activities. ...Clearly the magnitude of the issues to be addressed with respect to the regulation of TCTS and the issues of structure, prices and participants in Canada's national telecommunications market are of such strategic importance to the country's entire economic and social activities that to leave them to be addressed by way of ad hoc regulatory body is both short-sighted and irresponsible."

Author's Note

The primary concerns, nevertheless, expressed by CNCP could be met in other ways than the one proposed and, in fact, are addressed in several of the other proposals discussed in this study. The points to be made again is that the current regulatory system is unsatisfactory, that regulation of interprovincial issues must be undertaken if the basic communications infrastructure of the country is not to suffer, and that the provincial governments can not be excluded from this process.

Science Council of Canada Report. Planning Now for an Information Society: Tomorrow is too late. Minister of Supply and Services. March 1982 (p. 77)

This report was prepared by the Committee on Computers and Communication: Information and Canadian Society "to identify areas of prime concern (in the field of science and technology), to stimulate public debate and to place recommendations before policy and decision makers."¹ (p. 8) For the purposes of this study, it was felt that it would be worthwhile to cite those recommendations relating particularly to the field of communications. The relevant recommendations are as follow:

"3. Cooperation and coordination between federal and provincial governments is essential if Canada is to have a role in an information-dominated future. The Science Council recommends the creation of a national communications policy that is forward looking, integrative and comprehensive. It should encompass a wide range of subject areas from distributed data processing to cultural sovereignty to Telidon, and include establishment of standards that will ensure widespread compatibility of systems.

18. Telidon still requires extensive government support to ensure its speedy introduction in Canada. The Science Council recommends that both federal and provincial governments embark on a large-scale introduction of Telidon into their own operations. This will provide a body of operational experience, invaluable in promoting export of the technology abroad. In addition to improving productivity, such an introduction would lead to widespread computer literacy among government workers exposed to the system in the course of their everyday work.

22. We view with concern the questions associated with transborder data flows. The predicted impact on Canada in terms of balance of payments, employment and, of course, national sovereignty are serious problems that call for creative solutions. While recognizing the difficulties inherent in this area, we feel there are some instances where government intervention is justified; for example, in the areas of personal privacy, sovereignty and national security. The Science Council recommends that the work underway under the direction of the federal Department of Communications to measure the extent of the problem be intensified. We also encourage government agencies and the private sector to cooperate in support of similar efforts underway at the OECD.

23. The free flow of information is essential to Canada's future. Barriers of geography, culture or language must not hinder individuals from interacting with public information networks. Federal and provincial

regulatory agencies must guard against the creation of unnecessary artificial barriers.

24. The principle of separation of carriage and content is paramount; that is, carriers must not be allowed affect (sic) the content of material. It is recommended that regulatory agencies ensure that public videotex networks of the future meet all reasonable demands for services at tariffed rates.

25. Increased energy costs have become a widespread fact of life. The use of telecommunications can do much to alleviate the problems we face due to the rising cost of petroleum-based transportation systems. A number of studies have indicated that teleconferencing will become increasingly acceptable. The Science Council recommends the enhancement of the existing and planned telecommunications infrastructure to promote teleconferencing in both the public and private business sectors." (pp. 57-63)

Although the Science Council does not expand on how these recommendations could best be implemented, it is worth noting that this highly recognized body has placed considerable emphasis on federal-provincial cooperation in the field of telecommunications and has laid out some valuable objectives for future policy-making.

Part IV - BIBLIOGRAPHY

Note: * indicates that a summary can be found in Part III (c) of the study. Those articles which have not been summarized are annotated.

Barbe, Raoul P. "La délégation de fonctions régulatrices dans le secteur des télécommunications". Revue de Droit. Faculté de droit, Université de Sherbrooke. Vol. 11 no. 2. (1981) (p. 489-541) (This article basically compiles material pertaining to the delegation of powers in the field of telecommunications, including jurisdictional and legislative references, constitutional discussions, and excerpts from legal cases relating to delegation in the field of transportation. Since little or no analysis is offered nor opinions expressed by the author, it was determined that an in depth summary would not be required for the purposes of this study.)

Barrett, Douglas. "Pay-TV: the regulatory context". Cinema Canada No. 96 (May 1983) (p. 31-32) (This article is not directly relevant to this study; however, it might be of interest to federal policy-makers. It compares the Canadian content rules as set out by DOC in the Income Tax Act and those enforced by the CRTC and explains how "scaffolding" accounting practices as practised by the Pay-TV operators allow the goals of both the Department and the agency to be frustrated.)

* Brait, Richard A. "The Constitutional Jurisdiction to Regulate the Provision of Telephone Services in Canada". Ottawa Law Review. Vol. 13. (1981) (p. 53-94)

Buchan, Robert J. et al. Telecommunications Regulation and the Constitution. (Montreal: The Institute for Research on Public Policy) (1982). (p. 276) includes the following articles:

* Stanbury, W.T. "Telecommunications Regulation and the Constitution: The Main Themes" (a summary of the four articles in the collection)

* Schultz, Richard. "Partners in a Game Without Masters: Reconstructing the Telecommunications Regulatory System"

* Buchan, Robert J. and Johnston, C. Christopher. "Telecommunications Regulation and the Constitution: A Lawyer's Perspective"

- * Lesser, Barry. "The Implications of the Federal and Provincial Proposals for Regulating Telecommunications: An Economist's Perspective"
- * Kane, T. Gregory. "Breaking an Impasse: A Joint Panel Proposal for Telecommunications Regulation"

Consumers' Association of Canada Report. "Regulated Industries: Dug-in on plug-ins: telephone companies fight customer equipment". Canadian Consumer. vol. 10. October 1980. (p. 44-46) (This report is clearly dated since it deals with terminal attachment and competition and their potential impact on the telephone companies and the consumer. Not directly related to this study.)

- * CNCP Telecommunications. The Crisis in Canadian Telecommunications Policy and Regulation. (1982) (35 pp.)

Foster, F. Broadcasting Policy Development. (Ottawa: Franfrost Communications). (1982) (Although this book was published in 1982, it is actually a compilation of policy statements on broadcasting from 1901 to 1974. As such, it is not particularly relevant to this study.)

Fuss, Melvyn and Waverman, Leonard. The Regulation of Telecommunications in Canada. Technical Report No. 7. Economic Council of Canada. March 1981. (168 p.) (This is a very technical report on the implications of competition and revised rate structures in the field of telecommunications and particularly on the operations of Bell Canada. Its policy conclusions are: "1) there is no evidence that all telecommunications services should be supplied by Bell Canada, in particular: there is no evidence that competition should not be encouraged in private line services, and 2) there is evidence that revisions in the rate structure would improve social welfare. (The) study indicates that monopoly message toll rates are too high while local service rates are too low. Moderate changes in the rate structure would lead to large increases in toll output and only small reductions in local demand." (p. 163) Although a useful background document for reference purposes, this paper is not especially relevant to this study.)

Glustein, Hyman. Radio, TV, Cable: Protecting Consumer Rights. Canadian Association for Better Broadcasting. (1981) (20 pp.) (This short pamphlet describes itself as "a guide to help individuals and organizations evaluate the extent to which stations in their communities render service on behalf of the public, and act to improve the programs broadcast." It describes the extent of the CRTC's jurisdiction and explains how to deal with the agency. It is not particularly relevant to this study.)

- * Janisch, Hudson and Irwin, Manley. "Information Technology and Public Policy: Regulatory Implications for Canada". Osgoode Hall Law Journal. (Vol. 20) (1982) (p. 610-641)

Johnson, A.W. "Prescription for Broadcasting in Canada: Looking Through a Burlap Bag". Queen's Quarterly. Vol. 90, No. 2. Summer 1980 (p. 457-465) (This article constitutes simply a negative critique of the Federal Cultural Policy Report of the Applebaum-Hébert Committee and the New National Broadcasting Policy of the Minister of Communications. As such, it is not particularly relevant to this study)

- * Murray, Catherine A. Managing Diversity: Federal-Provincial Collaboration and the Committee on Extension of Services to Northern and Remote Communities. (Kingston: Institute of Intergovernmental Relations, Queen's University). (1983) (173 pp.)
- * Saunders, R.P. "Broadcasting Policy - Regulatory Frameworks and Judicial Responsiveness". (a commentary on the Shellbird case) Canadian Bar Review. Vol. 60 (1982) (p. 495-502)
- * Schultz, Richard J. "Delegation and Cable Distribution Systems: A Negative Assessment". Institute of Intergovernmental Relations, Queen's University, Kingston. Discussion Paper No. 11 (1981) (15 pp.)
- * Schultz, Richard J. "Federalism and Telecommunications: Multiplication, Division and Sharing". Osgoode Hall Law Journal Vol. 20 (1982) (p. 745-761)

Schultz, Richard J. "Regulation as Maginot Line: confronting the technological revolution in telecommunications". Canadian Public Administration. Vol. 26 (Summer 1983) (p. 203-218) (This article does not deal with federal-provincial relations in this field, but rather constitutes a general warning against regarding regulation as the best method of achieving telecommunications objectives.)

- * Science Council of Canada Report. Planning Now for an Information Society: Tomorrow is too late. Minister of Supply and Services. (March 1982) (77 pp.)

Taylor James R. "Communications Technologies, Regional Identity and Canadian Dualism" Perspectives on Regions and Regionalism in Canada. Proceedings of the Annual Conference of the Association for Canadian Studies held at the University of Ottawa, Ottawa, Ontario on June 8-10, 1982. (The title of this paper gives false hopes as to its relevance to this study. In fact, little or no mention is made of regulation.)

- * Trudel, Pierre. "Les Conflits et enjeux juridico-politiques suscités par l'implantation de la télévision à péage". Thémis. Vol. 16, No. 3 (1981-82) (p. 431-456)
- * Waverman, Leonard. "The Process of Telecommunications Regulation in Canada". Regulation Reference. Economic Council of Canada. January 1982. (220 p.)

- * Wilkie, J. Scott. "The Radio Reference and Onward: Exclusive Federal Jurisdiction Over General Content in Broadcasting?". Osgoode Hall Law Journal. Vol 18 (1980) (p. 49-86)
- * Woodrow, R. Brian. Woodside, Kenneth. Wiseman, Henry and Black, John B. Conflict over Communications Policy: A Study of Federal-Provincial Relations and Public Policy. C.D. Howe Institute. (1980) (76 pp.)
- * Woodrow, R. Brian and Woodside Kenneth B. "Players, Stakes and Politics in the Future of Telecommunications Regulation in Canada: A Preliminary Analysis". Draft of a paper prepared for a Seminar sponsored by the Institute for Research on Public Policy on "Telecommunications Regulation in Canada: Challenges of the Next Decade", held on December 12, 1983, Toronto, Ontario. (Draft obtained from DOC; final version of the paper along with two others being prepared as a result of the same seminar (authors: Janisch and Globerman) will eventually be published by the Institute.)

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1968	<ul style="list-style-type: none"> • Broadcasting Act • Communications policy establishing Telesat 				
1969	<ul style="list-style-type: none"> • Department of Communications established • introduced legislation creating Canadian Educational Broadcasting Agency (did not pass) 		<ul style="list-style-type: none"> • Ministers of Education discussed provincial control over educational broadcasting 		
1971	<ul style="list-style-type: none"> • began working paper on interconnection • "Instant World" 	<ul style="list-style-type: none"> • working group formed to study inter-regional telecommunications 	<ul style="list-style-type: none"> • regional cooperation began among provinces- east, west, Ont-Que 		
1972 February		<ul style="list-style-type: none"> • meetings with federal task force on computer/communications • Council of Maritime Premiers requested federal help in regional approach to computer use • cooperation for assessment of inter-regional transmission facilities 	<ul style="list-style-type: none"> • Communications deputies established interprovincial working group 		

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1972 (cont'd)		<ul style="list-style-type: none"> Interdelegation formula developed for provincial educational authorities to run broadcasting stations if arms length and regulated by CRTC 			
August			<ul style="list-style-type: none"> Premiers' Conference <ul style="list-style-type: none"> resolution on provincial role in communications provincial communications ministers designated and instructed to establish common policies provincial communications ministers met for the first time in Quebec City 		
1973			<ul style="list-style-type: none"> working group on interregional telecommunications completed its study 		
March	<ul style="list-style-type: none"> Green Paper <ul style="list-style-type: none"> indicated preference for informal federal-provincial consultation and willingness to discuss 2-tier telecommunications carrier regulation 		<ul style="list-style-type: none"> provincial ministerial meetings 		
July		<ul style="list-style-type: none"> officials' meeting to discuss national objectives and arrangements for consultation 			

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRIC Activities	Court Decisions
1973 November	<ul style="list-style-type: none"> - working paper on inter-connection distributed to provinces 	<ul style="list-style-type: none"> • Communications ministers met <ul style="list-style-type: none"> - discussed Green Paper and general principles - provinces disagreed with tenets of Green Paper, but no united position 			
1974 April		<ul style="list-style-type: none"> • Bilateral ministerial meetings; federal minister proposed: <ol style="list-style-type: none"> 1. Committee on Communications Policy (fed. & prov. ministers) 2. Association of Federal-Provincial Regulatory Commissions 3. Provincial part-time members on federal regulatory body 4. Representatives of provincial regulatory bodies participate in deliberations of federal regulatory body 			
Summer		<ul style="list-style-type: none"> • Correspondence between the federal minister and the Chairmen of the provincial ministers; provinces requested second meeting; federal minister requested clarification of positions, refused to discuss jurisdictional questions 	<ul style="list-style-type: none"> • Frequent meetings of ministers and officials to develop common position • Saskatchewan requests control of aspects of cable 		

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1974 (cont'd) August		<ul style="list-style-type: none"> • Cooperative agreements reached with N.S., Nfld. and Alta. through the Educational Technology Program 			
October	<ul style="list-style-type: none"> • Bill C-5 amalgamated CTC Committee with CRTC 				
1975 January		<ul style="list-style-type: none"> • Provincial consensus position presented to federal DOC in exchange of letters at ministerial level - proposed: <ol style="list-style-type: none"> 1. cable-provincial jurisdiction, except for federal broadcast services; provinces could opt to control federal broadcast services within their boundaries 2. carriers-provincial, except for CN/CP, Telesat and COFC - federal-provincial agreement for cooperation on standards, spectrum, satellites, competition 3. broadcasting-federal-provincial agreement to define "national" broadcast services which would then be federal-provincial jurisdiction for other broadcast 			

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1975 (Cont'd) January		services for those provinces who wish it - federal-provincial agreement and consultation for national broadcast policies			
February				• Position paper on pay-TV	
April	<ul style="list-style-type: none"> • Grey Paper proposed: <ol style="list-style-type: none"> 1. no change in jurisdiction 2. Committee for Communications Policy (CCP) with sub-committees on: <ol style="list-style-type: none"> a. systems planning b. interprovincial and North-American services c. technical standards, interconnection 3. Association of Communications Regulatory Bodies 4. Part-time provincial members on CRTC 5. Ontario and Quebec participants in regulation of Bell and vice versa in the other provinces 				

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1975 (cont'd) April May June July	6. Legislation Incorporating federal-provincial consultation mechanisms for spectrum decisions <ul style="list-style-type: none"> • began to develop infrastructure for federal-provincial industry cooperation re: computer communications • working group established re: Manitoba suggestion 	<ul style="list-style-type: none"> • Communications ministers met: <ul style="list-style-type: none"> - Grey Paper vs. Joint provincial position • Officials' meeting-discussed: <ul style="list-style-type: none"> - federal questions re: provincial position - terms of reference for C.C.P. • Communications ministers met: <ul style="list-style-type: none"> - fed. DOC refused provincial proposal for jurisdictional discussions or split; - suggested further talk on administrative arrangements • DOC officials met with: <ul style="list-style-type: none"> - Atlantic Consultative Committee on Communications (ACCC) - Ontario Communications agencies 	<ul style="list-style-type: none"> • Manitoba suggested decentralizing federal EDP activities • Interprovincial negotiations on the Constitution resulted in Quebec-Saskatchewan proposal for concurrent 	<ul style="list-style-type: none"> • decided against pay-TV 	

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1975 (cont'd)					
July	<ul style="list-style-type: none"> • Phase I legislation introduced and passed (Royal Assent, April 1976) to create single regulatory agency 		<p>jurisdiction with provincial paramountcy for communications systems within the province</p> <ul style="list-style-type: none"> - Quebec's Traditional Stand 		
1976 March		<ul style="list-style-type: none"> • bilateral discussions at ministerial level 	<ul style="list-style-type: none"> • Saskatchewan proposed provincial ownership of cable hardware and licences to cooperatives 		
April		<ul style="list-style-type: none"> • discussions with Ontario on cable delegation definition of programming 		<ul style="list-style-type: none"> • announced regulations governing MATV systems - seen by provinces as possible intrusion into non-broadcast services 	
June	<ul style="list-style-type: none"> • Minister spoke out in favour of Pay-TV 	<ul style="list-style-type: none"> • federal and Quebec ministers agreed to set up working group to catalogue federal and provincial positions and interests 		<ul style="list-style-type: none"> • CN/CP applied for interconnection with Bell 	
September October		<ul style="list-style-type: none"> • 1st Ministers' correspondence suggests communications should form part of constitutional reform package 	<ul style="list-style-type: none"> • Quebec encourages introduction of Pay-TV under provincial control 		

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1976 (Cont'd) November		<ul style="list-style-type: none"> • Canada-Manitoba Agreement <ul style="list-style-type: none"> - Provincial ownership and regulation of cable and related equipment - federal regulation of broadcasting and broadcast-related services affirmed (including pay-TV) 	<ul style="list-style-type: none"> • PQ elected 		
1977 January			<ul style="list-style-type: none"> • Quebec established task force on introduction of Pay-TV in the province 		
March	<ul style="list-style-type: none"> • Phase II legislation (C-43) tabled (did not pass) <ul style="list-style-type: none"> - provided for mechanisms for interdelegation - Cabinet direction of CRTC 	<ul style="list-style-type: none"> • Communications Ministers met: <ul style="list-style-type: none"> - C-43 - cable - interconnection - Pay-TV - possible annual ministerial meetings - provinces (except Quebec) generally support greater Cabinet control of CRTC 			
May			<ul style="list-style-type: none"> • Western Premiers' Task Force on Constitutional Trends, Report I <ul style="list-style-type: none"> - concerned over definition of programming - cable should be provincial - advertising - non-broadcasting services should be provincial - education - opposed interconnection 		

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1977					
Cont'd)				<ul style="list-style-type: none"> • Decision which repudiated Canada-Manitoba Agreement 	
August					
October				<ul style="list-style-type: none"> • decision to allow terminal attachment to Bell 	
November	<ul style="list-style-type: none"> • Cabinet reversed CRTC Telesat decision 			<ul style="list-style-type: none"> • Decision to refuse Telesat membership in TCTS 	<ul style="list-style-type: none"> • decision on Capital Cities and Dionne cases - cable distribution systems part of broadcasting system and therefore federal jurisdiction (refused judgement on closed-circuit systems)
1978					
January	<ul style="list-style-type: none"> • Phase II legislation (C-24) re-introduced (not passed) - similar to C-43 				<ul style="list-style-type: none"> • decision on Kellogg's case - provincial advertising laws apply to federally-licensed broadcasting undertakings (no formal recognition of decision by CRTC)
March		<ul style="list-style-type: none"> • Communications ministers met: - provinces generally support C-24 (except Quebec who didn't favour Cabinet control of CRTC) 			

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1978 (Cont'd) March		<ul style="list-style-type: none"> - provinces consider Pay-TV closed-circuit and therefore provincial - Quebec, Ontario and B.C. own Pay-TV policies - established working group on competition and industry structure - Quebec proposed "St-Laurent formula" - DOC asked to look into clearing house for regulatory decisions 			
April			<ul style="list-style-type: none"> • Western Task Force Report II <ul style="list-style-type: none"> - supported C-24 - claimed authority over closed circuit - CRTC had more or less ruled out further cable agreements - Pay-TV is closed circuit - federal definition of broadcasting too broad (could include education) - advertising - interconnection required consultation - feared CRTC enquiry into TCTS - video games 		
June	<ul style="list-style-type: none"> • Constitutional Amendment Bill C-60 proposed no change in the division of powers 			<ul style="list-style-type: none"> • announcement that CRTC would favour use of cable systems for non-programming services 	

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1978 October		<ul style="list-style-type: none"> • 1st Ministers' meeting on Constitution: <ul style="list-style-type: none"> - Continuing Committee of Ministers on the Constitution (CCMC) formed - communications one of areas of discussion; 4 sub-areas: broadcasting, spectrum, cable, telecommunications carriers - federal and Saskatchewan officials assigned task of coming up with cable proposal • meetings with ACCC • meetings with Ontario re: cable • meetings with Saskatchewan minister re: advertising • creation of Canada-Ontario Committee on Telecommunications Carrier Policy Issues 		<ul style="list-style-type: none"> • decision to enquire into TCTS rates and practices 	
November	<ul style="list-style-type: none"> • Phase II legislation (C-16) re-introduced (not passed) - similar to C-43 and C-24 • Clyne Committee established 	<ul style="list-style-type: none"> • meeting of CCMC - 2 proposals: Saskatchewan and Nova Scotia 		<ul style="list-style-type: none"> • established interregulatory committee chaired by CRTC representative, included representatives of provincial regulatory agencies, to look into TCTS - terms of reference defined by CRTC; provinces said poor substitute for proper federal-provincial mechanism 	

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1978 December		<ul style="list-style-type: none"> • meeting of CCMC - federal government rejected 2-tier regulation; proposed splitting cable jurisdiction • meetings of federal and Saskatchewan officials 			
1979 January	<ul style="list-style-type: none"> • Task Force on Canadian Unity Report - proposed: <ol style="list-style-type: none"> 1. review areas where jurisdiction could be split 2. develop effective councils or intergovernmental bodies 3. federal legislation should be reviewed by a Council of the Federation (provincially appointed Upper House) 	<ul style="list-style-type: none"> • meetings of federal-Sask. officials • meeting of all communications officials - DOC proposed interprovincial aspects of carriers be federal; provinces split on this question; DOC agreed to draft a cable proposal; provinces wanted role in frequency management • CCMC meeting - federal government proposed cable draft (concurrent jurisdiction with divided paramourty) 			
February	<ul style="list-style-type: none"> • new policy liberalizing earth station ownership and operation to include broadcasters, cable operators and carriers 	<ul style="list-style-type: none"> • 1st Ministers meeting on Constitution <ul style="list-style-type: none"> - federal cable proposal made public - general provincial approval, except for Alberta and Quebec 			
March	<ul style="list-style-type: none"> • Clyne committee reported; proposed separation of carriage and content 	<ul style="list-style-type: none"> • 2 meetings with ACCC 	<ul style="list-style-type: none"> • Western Task Force Report III <ul style="list-style-type: none"> - expressed concern about cable draft, particularly re: definition of "cable distribution" and re: scope of federal paramourty 		

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1979 (Cont'd) March		<ul style="list-style-type: none"> • bilateral meetings at ministerial level 	<ul style="list-style-type: none"> - wanted to retain provincial authority over closed circuit 		
May	PC Govt Elected			<ul style="list-style-type: none"> • Decision to allow CNCP Interconnection with Bell 	
October	<ul style="list-style-type: none"> • Federal Govt approved proposal: <ul style="list-style-type: none"> - cable mostly provincial with 3 areas of federal paramountcy - carriers jurisdiction divided intra/inter-provincial across the country - discussions on local aspects of broadcasting - spectrum federal 	<ul style="list-style-type: none"> • Communications ministers met: <ul style="list-style-type: none"> - working group on competition reported; asked to continue and review Can-Ontario Committee report - set up working group on cable delegation • CCMC meeting <ul style="list-style-type: none"> - provincial officials wanted clarification of terms in cable draft • established Task Force on use of satellites in education 		<ul style="list-style-type: none"> • Proposal from Bell to CRTC for local measured pricing (later withdrawn) 	

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1979 November		<ul style="list-style-type: none"> • provincial representatives nominated for Therrien Committee on extension of services • Federal-provincial agreement on satellite objectives and policy directives for CRTC; also on Pay-TV 		<ul style="list-style-type: none"> • Therrien Committee established 	
1980 February	Liberal Govt Elected				
March	<ul style="list-style-type: none"> • proposal for clearing house for regulatory decisions sent to provinces 		<ul style="list-style-type: none"> • Sask Tel announced \$56 million fibre optic system 		
June		<ul style="list-style-type: none"> • cooperation with provinces and industry on technical standards for terminal attachment to federally-regulated carriers • 1st Ministers meeting on the Constitution <ul style="list-style-type: none"> - communications placed on agenda 	<ul style="list-style-type: none"> • Manitoba and Quebec developing own licensing scheme for cable distribution systems • Maritime premiers met <ul style="list-style-type: none"> - received report of Communications ministers on CRTC Inquiry into TCTS; criticized this action 	<ul style="list-style-type: none"> • Therrien Report released (extension of services) 	
July		<ul style="list-style-type: none"> • COMC meetings (3 weeks) federal proposal: <ol style="list-style-type: none"> 1. national objectives for discussion 2. carriers - Inter/intra jurisdictional split across the country 3. spectrum - federal 			

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1980 (Cont'd) July August		<p>4. broadcasting - willing to listen to provincial proposals re: local broadcasting</p> <p>5. cable - 1979 proposal</p> <p>Quebec:</p> <ol style="list-style-type: none"> 1. consider whole field 2. reiterated 1975 Quebec/Sask. position with more specifics <p>Nova Scotia:</p> <ol style="list-style-type: none"> 1. spectrum - federal (administrative arrangements for local radio systems) 2. broadcasting - provincial, except for national networks 3. cable - provincial (administrative arrangements for national concerns) 4. carriers - provincial, except for national carriers; concurrent for interprovincial aspects <p>• 2 meetings of ACCC in 1980-81</p> <p>• communications' officials meeting</p> <p>• CCMC meeting provinces united on "best efforts draft"</p> <p>- all aspects concurrent with provincial paramountcy, except for federal paramountcy over</p>			

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRIC Activities	Court Decisions
1980 Cont'd August		<ul style="list-style-type: none"> a.technical aspects of spectrum b.space aspects of satellites c.broadcast networks covering 4 or more provinces d.non-Canadian broadcast programming e.use of carriers or cable systems for aeronautics, radio-navigation, defence, national emergencies - mechanism to ensure free flow • federal position: <ul style="list-style-type: none"> a.spectrum - federal b.cable - Intraprovincial aspects would be provincial c.broadcasting - federal d.carriers - Inter/intra split with joint board 			
September		<ul style="list-style-type: none"> • 1st Ministers' conference on Constitution provinces: "best efforts draft" (see August 1980) federal government: <ul style="list-style-type: none"> - spectrum - federal - cable - Intraprovincial aspects would be provincial, except national program services, non-Canadian programming - carriers - Inter/Intra split - satellites - federal - broadcasting - federal 			

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1980 (Cont'd) September		<ul style="list-style-type: none"> - regular federal-provincial meetings 			
October		no resolution			
November	<ul style="list-style-type: none"> • Minister announced DOC would accept applications from provincial educational agencies and authorities for TVRO stations 	<ul style="list-style-type: none"> • Clearing House and Repository for Telecommunications Decisions began operations 	<ul style="list-style-type: none"> • Communications ministers met <ul style="list-style-type: none"> - agreed to meet at least annually - confirmed support for "best efforts draft" and agreed to develop mechanisms to put it into effect - set up working group to look into national educational television system - consensus reaction to Therrien Report - affirmed provincial control of closed-circuit cable, including Pay-TV, non-broadcast services, etc. - expressed concern re: <ul style="list-style-type: none"> a. certain clauses of Bill C-42 (Canada Post Corporation) b. interconnection 		

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1980 (Cont'd) 1980			<ul style="list-style-type: none"> c. Interprovincial telecommunications regulation (set up working group on subject) - communiqué 		
1981 February			<ul style="list-style-type: none"> • Communications ministers met - received preliminary report on regulation of interprovincial telecommunications; group instructed to continue work and come up with recommendations - agreed on guidelines re: reception of satellite signals - open skies, redistribution a provincial responsibility - expressed concern re: federal plans to modify radio relay policy - received report on national educational network; models to be considered by joint communications/education officials' committee 		
June			<ul style="list-style-type: none"> • Alberta passes amendment to Public Utilities Board Act to include regulation of non-broadcast services on cable distribution systems 		
July				<ul style="list-style-type: none"> • Decision on TCTS (81-13) 	

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1981 September		<ul style="list-style-type: none"> • Communications ministers met - satellite technology: agreed that provinces should be more involved in future policy-making - transborder data-flow: federal-provincial officials should meet again on this - CRTC decision on TCTS: all provinces, except Ontario, expressed opposition - Pay-TV: federal government and provinces both expressed intention to exercise authority in this area; agreed that DMs should meet to discuss subject - cable: provinces presented consensus that proposed administrative means to meet provincial objectives; federal government agreed to discuss specific cable issues bilaterally; received report from working groups 			
1982 February		<ul style="list-style-type: none"> • Communications ministers met - received report on joint regulatory mechanisms 			
September				<ul style="list-style-type: none"> • Request from CNCP to Interconnect with AGT 	
November				<ul style="list-style-type: none"> • Decision to allow subscriber ownership of main set as well as extension phones 	

Date	Federal Activities	Federal-Provincial Activities	Provincial & Interprovincial Activities	CRTC Activities	Court Decisions
1983 March April	• Broadcasting strategy announced			• Approval of Bell reorganization	

