A POLICY FRAMEWORK FOR TELECOMMUNICATIONS IN CANADA

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Department of Communications
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Canada, like all other industrialized countries, is moving toward a more information-based economy. Many information-intensive industries, such as banking and financial services, broadcasting and newspapers, are increasingly reliant on telecommunications for nation-wide distribution of their products and services. Telecommunications networks are therefore fast becoming the basic infrastructure of the information economy.

It is now essential to establish clear and consistent national policy to guide the future evolution of Canada's domestic and international telecommunications networks. In light of recent federal-provincial-territorial discussions, and on the basis of extensive public consultation and study, the Government of Canada has prepared the following statement of policy respecting the future development of the telecommunications carriage industry in Canada.

Evolution of the Telecommunications Industry

Until the late 1970's, monopolies dominated the telecommunications industry throughout the world. With very few exceptions, the industry consisted of monopoly suppliers who provided all facilities, services and equipment, ranging from the sophisticated transmission and switching facilities supporting their networks down to the ordinary desk telephone. Due to its monopoly status, the telecommunications business was invariably either government-owned, which is still the case throughout most of Europe, Japan and Australia, or investor-owned and government-regulated, which is the norm in North America. To a large extent, government regulation became a surrogate for market forces and was used as a device for protecting the public from the harmful effects of monopoly power.

In recent years, a much more complex technological and economic environment has emerged to challenge the traditional monopoly approach to the provision of telecommunications services. In part, this process results from broad technological factors, particularly the merger of telecommunications and computer technologies, which have permitted the introduction of a vast range of new products, services and markets. Although it has advanced more quickly in some countries than in others, the resulting transformation of telecommunications systems and services has become a world wide phenomenon.

Economic factors stemming from the growing demand for conventional and advanced telecommunications services have also fueled change within the industry. The consumption of conventional telephone services in Canada has been increasing at a rapid rate, from 27 billion local and long distance calls in 1980 to 35 billion in 1985. At the same time, business has been seeking specialized and high-quality data services, including such advanced offerings as electronic mail. The cost of providing many of these services has been declining, which has invited new entry into telecommunications markets and encouraged innovation in service and equipment supply.

Together, these economic and technological developments have led to a progressive erosion of traditional boundaries between telecommunications markets and are changing longstanding corporate and institutional relationships. As a result, a number of different market segments have emerged within the telecommunications industry, each exhibiting their own distinct economic characteristics. This market segmentation is increasingly based on three types of telecommunications business:

a) the provision of public network facilities, which comprises the technical infrastructure used for the transmission and distribution of telecommunications messages.

b) the provision of telecommunications services, including advanced computer-based services as well as conventional telephone and data services; and

c) the supply of telecommunications equipment, especially terminal devices such as Private Branch Exchanges (PBXs);

The growing market diversity that has displaced the simple monopoly model is prompting profound reassessments of traditional approaches to government policy and regulation. In response to these pressures, many developed countries, notably the United States, Britain and Japan, have implemented major structural changes to their telecommunications industries, through competition and deregulation in various markets, and through the privatization of state-owned monopolies.

The form of these changes has varied from country to country. In the U.S., which is the world's largest telecommunications market, the approach has been to permit unlimited entry into telecommunications by allowing new entrants to compete in providing both telecommunications facilities and services. Countries such as Britain and Japan, on the other hand, have chosen to expand network competition within their systems, but have limited the number of new entrants in an effort to establish viable competitive alternatives to the dominant carrier. Several European governments favour competition in the provision of telecommunications services, but nevertheless continue to support a monopoly supplier of network facilities.

Telecommunications in Canada

In Canada, the general economic and social importance of communications systems, including their central contribution to nation building, has been broadly recognized for a number of years. As a result, a fundamental objective of government policy and regulation has always been to ensure that an efficient, internationally

competitive telecommunications infrastructure exists in all areas of Canada sufficient to support the economic and social development of Canada and its regions. The emergence of a modern information-based economy has further magnified the value of a cost-effective national telecommunications network as an essential element in the Canadian economic infrastructure.

Provincial Interests and Involvement

An important feature of telecommunications in Canada is the current divided responsibility for telecommunications regulation between federal and provincial levels of government. Today, seven provinces - Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, PEI and Newfoundland - exercise regulatory authority over the major telephone companies in those provinces, and in the three Prairie provinces, the government actually owns the provincial telephone company. Moreover, for historical, economic and socio-cultural reasons, these provincial governments have long regarded ownership and/or regulation of their telephone companies as an important component of regional development.

Building a National Policy

Due to the fundamental economic and technological changes affecting telecommunications, the federal Department of Communications began a comprehensive review of traditional policy and regulatory approaches to the industry in 1984. The government's intention to proceed with this process was confirmed in the Minister of Finance's Economic Statement of November, 1984. The Department's review was based on extensive consultation with the telecommunications industry and users, and included written public comments from 35 interested groups. The vast majority of these submissions called on the federal government to establish a national policy for telecommunications in Canada that would apply across provincial and jurisdictional boundaries. The review also confirmed a growing need, especially from the business community, for efficient, high-quality, and innovative telecommunications services as a means of enhancing productivity and competitiveness within the Canadian economy.

In response to the views and concerns expressed by Canadians, the federal government embarked on a number of initiatives, both within its jurisdiction and in collaboration with provincial and territorial governments, designed to establish a national legislative and policy framework for telecommunications in Canada. As part of this effort, federal, provincial and territorial ministers of Communications met in Edmonton in April 1987 and endorsed a set of six principles which are intended to guide the formulation of government policies and regulation in the telecommunications industry:

- The future development of the telecommunications industry in Canada presents uniquely Canadian challenges, and will require uniquely Canadian answers.

- Canadians must continue to have universal access to basic telephone service at affordable prices.

- Policies must maintain the international competitiveness of the Canadian telecommunications sector and the industries it serves.

- Policies must ensure that all Canadians benefit from the introduction of new technology.

- A Canadian telecommunications policy must reinforce the goal of fair and balanced regional development, and respond to the interests of all concerned governments.

- Telecommunications policies should be established by governments and not by regulatory bodies or by the courts.

In addition to these general principles, the ministers considered two agreements which would form important parts of a national telecommunications policy for Canada: first, an agreement for sharing governmental responsibilities in the field of telecommunications that would facilitate the coordination of government policies and regulation; and secondly, an agreement on interconnection and competition policy that would establish a uniform level of competition in telecommunications services and equipment throughout Canada. The ministers agreed to submit the agreements to their respective Cabinets for ratification and to meet again in the fall of 1987 to give them final approval.

Government Powers and Objectives

The Government of Canada considers that an efficient national telecommunications network responsive to the needs of Canadians is essential to Canada's international competitiveness and to its future social and economic development as a nation. Unlike most countries, Canada already has a well-developed, competitive telecommunications carrier industry, consisting of three national carriers or carrier groups: Telecom Canada, a consortium of Canada's major telephone companies, CNCP Telecommunications and Telesat Canada, which currently form Canada's national network infrastructure and together provide Canadians with one of the world's most efficient and technologically advanced telecommunications systems.

The government currently utilizes a broad range of legislative, policy and regulatory instruments to meet its objectives in respect to the development of telecommunications systems and services in Canada. Pursuant to the Radio Act and the Telegraphs Act, for example, the Minister of Communications possesses considerable powers respecting the establishment and operation of telecommunications facilities. Thus, under the Radio Act, the Minister authorized the construction and operation of cellular telephone systems in Canada in 1984, setting forth certain terms and conditions which included provisions relating to domestic ownership and control. These provisions were put in place consistent with the government's longstanding view that domestic ownership of Canada's telecommunications infrastructure is essential to national sovereignty and security.

The "Special Acts" of the major telecommunications carriers, notably the Bell Canada Reorganization Act (1987), the B.C. Tel Act and the Telesat Canada Act, also contain statements of the rights and obligations of these carriers, and outline certain powers of the government and regulator in respect to these companies. The Teleglobe Canada Act, which received Royal Assent on March 31, 1987, and the Telesat Act also contain specific guidelines on the permitted nature and levels of foreign ownership. Finally, under the Railway Act and the National Transportation Act, the Canadian Radio-television and Telecommunications Commission (CRTC) exercises various regulatory powers in relation to the operations of national and international carriers subject to its jurisdiction.

The government has also issued several statements respecting the development of the telecommunications carriage industry in Canada. Most recently, in association with the divestiture of Teleglobe Canada, the Department of Communications issued a statement of government policy in relation to Canada-Overseas telecommunications, which reiterated its long-standing policy favouring the carriage of Canadian domestic and international telecommunications traffic on Canadian facilities and which confirmed Teleglobe's position as the sole authorized Canadian operator of facilities to provide Canada-Overseas telecommunications services.

In an earlier statement of policy issued in August 1979 regarding the appeal of Telecom Decision CRTC 79-11, the then Minister of Communications, the Honourable David MacDonald, outlined the government's support for competition in the provision of telecommunications facilities and services through the interconnection of existing carrier networks, and also affirmed its support for alternative domestic carrier networks.

A series of regulatory actions, taken within the scope of federal jurisdiction, have also served to define the government's position regarding competitors' access to carrier networks for the provision of telecommunications services and equipment. A progressive liberalization began in the terminal equipment market in 1980, when the CRTC first authorized terminal attachment, allowing customers to own and interconnect telephone sets and other terminal equipment to the facilities of federally regulated telephone companies. Since that time, a vigorous competitive market has been established in the distribution of residential and business terminal equipment, with annual sales of more than $300 million.

In the telecommunications services market, the CRTC has taken a number of steps to facilitate effective competition in the provision of business-related voice and data services, beginning with Telecom Decision CRTC 79-11 in May 1979, which granted CNCP Telecommunications the right to interconnect its inter-city facilities to the local telephone network of Bell Canada. This decision was later extended to include the British Columbia Telephone Company. Arrangements for the sharing and resale of carrier facilities to provide enhanced and basic services (but not public long distance telephone) have also been approved through Telecom Decisions CRTC 87-1 and 87-2 (February 1987). As a result, in areas under federal jurisdiction, there is now competition in a wide range of telecommunications services and equipment.

Through this combination of statutory provisions, policy measures and regulatory actions, the government has made known its support for maintaining an efficient and innovative telecommunications system for Canada. Nevertheless, in order to maintain Canada's leading position in this field, national policies and regulation must permit the continued modernization of telecommunications market structures and technology. Judging from the experiences in the United States and Europe, competition in the supply of telecommunications services and equipment helps to sustain a high level of innovation and growth in the telecommunications industry. To allow for viable competition in these markets, government policies should:

(a) create a market environment which allows for open entry and exit for suppliers of services and equipment; and

(b) foster an efficient network infrastructure that permits economic and cost-effective delivery of these products to end users.

The first of these objectives can only be realized through the implementation of a nation-wide policy which provides for the interconnection of services and equipment to the network facilities of Canadian telecommunications common carriers.

The second goal, that of maintaining an effective and efficient network infrastructure, can best be achieved through policies which acknowledge the role and status of Canada's existing telecommunications carriers and which respect the principal economic characteristics of the telecommunications carriage industry. In the latter regard, the heavy investment costs and high transmission capacity of modern telecommunications systems, although essential for economic development, constitute a significant expenditure burden for national economies. In all countries except the United States, this fact has lead to a concern regarding possible over investment in telecommunications network capacity and has prompted many governments to take steps to ensure that their domestic carrier networks can operate at maximum efficiency by achieving the greatest possible economies of scale and scope, consistent with the competitive supply of services and customer equipment. In view of these international initiatives, the government considers it appropriate to establish a framework for policy and legislation which will:

- permit the designation and authorization of national and international facility-based carriers, but limit new entry to the existing facility-based carriers for the time being;

- facilitate the efficient use of the network infrastructures of existing facility-based carriers by ensuring the carriage of Canadian telecommunications traffic on Canadian network facilities and by requiring the interconnection of networks and services on a nation-wide basis for authorized services; and

- provide for corporate ownership arrangements which will ensure Canadian control of network planning and development.

Statement

Accordingly, the Minister of Communications has expressed her intention to use current powers, and to seek new legislation where necessary, to implement a comprehensive national policy in respect to the establishment and operation of telecommunications common carriers in Canada, consisting of:

- the designation of a class of telecommunications carrier (Type I) that may own and operate interprovincial and international telecommunications network facilities for the purpose of providing basic telecommunications services to the general public;

- the authority to establish the general terms and conditions for the operations of Type I carriers, especially their obligations to serve and to provide access to their network facilities for other carriers;

- statutory guidelines requiring effective Canadian ownership and control of all Type I carriers operating in Canada that would include provisions prohibiting foreign nationals from holding more than 20 per cent of their voting shares (with appropriate arrangements made to exempt any existing Type I carrier which is currently foreign-owned or controlled);

- the designation of a class of telecommunications carrier (Type II) that will be authorized to provide services to the public utilizing in whole or in part the network facilities of Type I carriers; and

- the legislative and regulatory measures necessary to ensure that Type II carriers obtain access to the network facilities of Type I carriers on just and reasonable terms and conditions and in a manner which promotes fair and equitable competition in the provision of new telecommunications services.

The implementation of these measures is intended to encourage the rapid growth of innovative and competitive new telecommunications services that are of interest to the business community and to ensure that such services are implemented using the network facilities of Canadian Type I carriers. More efficient utilization of these facilities by all users will contribute to maintaining the affordability of local telephone service, which, as in all other countries, will continue to be provided on a monopoly basis. Regarding competition in long-distance telephone service, Ministers responsible for Communications, at their April 2-3 meeting in Edmonton, decided to refer this matter to federal and provincial regulatory agencies for further study.

The Minister of Communications proposes to introduce telecommunications legislation that will give effect to this policy, following consultations on the legislative proposals with the public, with industry and user groups and with provincial and territorial ministers of Communications.

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