

MANAGING DIVERSITY:
Federal-Provincial Collaboration
and the Committee on
Extension of Services
to Northern and Remote
Communities

by

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Catherine A. Murray
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Abstract

The Committee on the Extension of Services to Northern and Remote Communities was created by the federal Minister of Communications and the Canadian Radio-television and Telecommunications Commission (CRTC) in the fall of 1979. The Committee was asked to determine how the number and variety of television services to northern and remote communities could be improved in the context of satellite distribution and pay-TV.

The Committee was created in response to provincial demands for a greater role in policy development and the government's need to coordinate direction on the critical cultural and industrial issues raised by satellite TV. It was the first such delegated body in the area of broadcasting to involve federal-provincial collaboration in the direction of its mandate, selection of its members and assessment of its outcome. To aid the Committee in its inquiry, the minister submitted guidelines for satellite-TV which had been endorsed by nine governments. Nominees from several provinces and the Inuit Tapirisat of Canada were appointed to the Committee which conducted public meetings and issued its report, *The 1980's: A Decade of Diversity* in July 1980. The CRTC acted on the Committee's recommendations to license basic satellite-TV network services and introduce pay-TV. The decisions opened a new universe of competitive broadcasting services which was elaborated further in the federal policy statement *Towards a New Broadcasting Strategy* released in March of 1983.

The Committee on Extension of Services traversed a turbulent period of constitutional and regulatory review. Its mandate was conceived by the Conservative government, but its advice was implemented when the Liberals returned to power. Like Janus, the Committee simultaneously faced the fourth crisis of the broadcasting system and the first crisis of the Information Age.¹ The purpose of this study is to assess how this experiment on regulatory collaboration worked. Why was it undertaken? What was its outcome? Then we explore the prerequisites for an effective framework for intergovernmental collaboration on broadcasting policy and regulation.

What are the implications posed by federalism for managing the increasing diversity of policy issues raised by the information revolution? The Therrien Committee provides a useful model for federal-provincial and group consultation, but it does not substitute for a broader resolution of the constitutional and political issues involved.

Notes to Abstract

1. Woodrow et al., *The Introduction of Pay-TV in Canada*, Montreal: Institute for Research on Public Policy, 1982, p. 9.

1 The Politics of Regulation and the Federal-Provincial Policy Process

The fundamental prerequisite today is for effective intergovernmental collaboration at all stages of the policy process . . . from conception to implementation.¹

Given the almost exclusive federal jurisdiction over broadcasting and that altruism is seldom a political virtue, why would federal policy-makers search for effective intergovernmental collaboration on the expansion of Canadian satellite-TV? This chapter will make the case that federal-provincial collaboration was required for three reasons. First, changing conceptions of the role of communications in a federal community challenged the presumption of exclusive federal authority. Second, the convergence of a broad range of technologies, and in particular the potential competition between cable operations and common carriers for "non broadcast" or non-programming services promised complex inter-jurisdictional impacts. Finally, existing legislation with respect to broadcasting was silent on satellites. There was no legal precedent for satellite-delivered TV.

The debate at the heart of effective intergovernmental collaboration was the nature of political control of an independent regulatory agency. We will argue that the challenge was to adapt the CRTC to the changing imperatives of federalism and to develop new mechanisms of sharing the planning for satellite-TV.

1.1 Federal-Provincial Policy Process

The present structure of the Canadian broadcasting system flows from the constitutional provision for exclusive federal authority over lines of steam, rail, telegraphs or other undertakings extending beyond the limits of the province, as well as from the treaty-making and residual powers to legislate for the "Peace, Order and Good Government of Canada."² The technical characteristics of radio signals, which observe no borders, and the need for

international management of the radio frequency spectrum, provided the early rationale for federal authority.

The first technological development to challenge seriously the presumption of federal authority was cable television, essentially an intermediate delivery technology between the transmitter and receiver. The constitutional basis for a provincial claim to jurisdiction over cable, and more recently satellite-to-cable delivery, extended only to that portion of the operation which receives the signals and distributes them within the province. This proposition was predicated on the divisibility of the undertaking, which considers the receiving apparatus a local work of a private nature, bearing on property and civil rights which the provinces have argued since the **Radio Reference** in 1932. Subsequent judicial interpretation has upheld the principle of the indivisibility of the transmitter and receiver, the message and the medium.

The 1970s were marked by a growing divergence between the presumption of federal authority in the courts, and the *de facto* recognition of concurrency in the federal-provincial policy process. The provincial demands for a greater role in making communications policy reflected a fundamental conception of the Canadian community. The provincial governments contended that regional communities and regional identities were at least as important as the national community and national identification. Since communications were central to the sense of community and its well being, the provinces had rights and interests that could not simply be subordinated to the will of a national majority.³

Provinces also pointed to failures in institutional and policy responses to regional needs, arguing that the CRTC was one of the most centralized of regulatory agencies. Until 1978, full-time members came only from Quebec or Ontario. Part-time Commissioners, ostensibly representing each of the ten provincial communities, were appointed by the federal government after occasional consultation with the provinces, but did not enjoy the power to decide in licensing hearings. Moreover, the CRTC's policy pursued the national objectives of sovereignty, identity and unity in broadcasting at the expense of serving the special needs of the geographic regions.⁴ Measures to offset the concentration of television production in Toronto and Montreal were insufficient to satisfy provincial concerns.

The central collision with the provinces was over the sweeping scope of the Commission's powers to make policy which impinged on areas of mixed jurisdiction. Based on the principle of end-to-end control of the broadcast undertaking, the CRTC's cable hardware ownership policy stipulated that cable operators must own all aspects of the delivery system to the subscriber's home. In the western provinces where public telephone companies leased their facilities to cable operators, ownership of all aspects of the cable plant was essential to ensure rate-averaging for purposes of regional

development. Indeed, for all provinces, and especially those which owned or regulated common carriers, what was at stake in the confluence of satellites, fibre optics and computer technologies was control over the boundaries of competition with cable operators. The development of other specialized subscriber services, from pay-TV, view data, home security or other retail service, promised to offer lucrative tax bases and important instruments in regional economic development.

Where jurisdictional debates stressed distinctions, it did not appear that the new technologies of the information revolution would serve any one master.⁵ They seemed to erode, cross cut and overtake rational criteria for allocating the division of powers. The increased scope of government intervention in the economy implied that action by either level of government was rarely possible without some spill-over or unintended reaction. Public expectations of the levels and kind of services converged.⁶ The increasing novelty, to say nothing of the complexity, of the policy environment may be seen to offer strong incentives for "incremental and largely bureaucratic evolution of policy," or for political and regulatory inaction. When doubts about the best resolution of regulatory issues are widespread, the process becomes more significant, demanding a broader consultation of experts and affected parties, new mechanisms for sharing agency and departmental planning expertise and collaboration among governments.

The federal government first recognized the need for ongoing consultative mechanisms among governments in 1973, to assist it in revising communications legislation. The federal Department of Communications (DOC) was in the first stages of planning the infrastructure for the "Instant World." Federal and provincial objectives were seen as complementary rather than conflicting, affording ample opportunity for constructive co-operation by all governments. DOC was rudely awakened by the hostilities in federal-provincial negotiations over cable regulation, led by Quebec which subsided only slightly after a Supreme Court decision.⁷

Federal-provincial consultation may occur at the ministerial, deputy or official level. Until 1978, governments met primarily at the ministerial level, and mostly in Ottawa. There are many objectives in federal-provincial negotiations—to exchange information, to generate policy alternatives, to assess interjurisdictional consequences of policies, and to harmonize the exercise of jurisdiction by both levels of government. Decision-making is restricted, however, to the ministerial level. The process of intergovernmental collaboration has been criticized for its secrecy, low level of public participation, and a tendency to "freeze-out" consumer or industry views.⁸

In communications, decisions are reached by consensus, and objectors may publish the basis of their dissent. To date there has been only one case featuring extensive formal tri-partite consultation among federal and provincial officials and industry groups in communications.

The innovation during the Sauvé administration was the development of *ad hoc* working groups in 1978 as part of a medium term industrial planning exercise in other sectors. These were designed to give provinces access to policy formulation at an earlier stage than had been provided at the time of the Green and Grey papers of 1973-1975. Working groups of senior officials develop a consensus statement of common objectives and a set of policy alternatives to advise the ministers. They are jointly chaired and meet in the various capitals, and are thus characterized by a closer scrutiny from all ministers than would be the case for any secretariat in Ottawa. Working groups are characterized by comprehensive mandates, a continuity of officials in contrast to the turnover in actors at the senior political and regulatory levels and frequent contact. By 1979, the outcome of the working groups was still unclear although early experience gained the unanimous support of governments. A new elite of provincial officials was emerging which was capable of an effective leadership role in political and economic strategies for communications.

Despite these advances in the machinery of federal-provincial negotiation, the provinces have resisted legislating any continuing committee on communications. Quebec and Alberta have pressed for a re-alignment of jurisdictional responsibilities. There are two separate avenues to such reform. The first would feature administrative arrangements to delegate the regulation of cable undertakings to the provinces. Since the amalgamation of responsibilities for telecommunications and broadcasting under the CRTC in 1976, the Liberal administration reached two agreements of intent with provinces, first with Manitoba in 1976 and then with all first ministers except Quebec and Alberta in February of 1979.

The second alternative—to supplement or replace delegation—would amend the division of powers in the constitution. Such reform has been discussed twice since late 1978. One criterion for the allocation of responsibilities might vest the provinces with authority over broadcast regulation within the province, with federal paramountcy over certain matters. Recommendation from both federal-provincial and parliamentary arenas featured the transfer of a general legislative power in broadcasting, in part as a response to Quebec's distinctive cultural objectives.⁹ Also important, although less prominent, was the legal argument against an extended interpretation of the "Peace, Order and Good Government" clause, used to establish the national dimension of broadcasting. No one level of government in a federal state should possess a "blank cheque" to exercise its authority. Concurrence might better protect balance and diversity in expression.¹⁰

Such questions of fundamental reform are beyond the scope of this study, except inasmuch as they create a climate of opinion sanctioning the search for innovative methods of regulatory sharing. Nonetheless, it is the assump-

tion of this study that given the existing division of powers, the development of pay-TV could strengthen the provincial case for sharing jurisdiction.¹¹ No Supreme Court precedent addressed the issue of local, closed circuit origin on service before the Committee on Extension of Services. "Closed-circuit" pay-TV was construed in a narrow sense in the provincial assertion of jurisdiction. Definition revolved around the intraprovincial delivery of films, or video tapes, fed directly at source into the cable system. No satellite or microwave reception was used. In the Saskatchewan case, the local delivery to the home did not employ the cable of a federally-licensed broadcast undertaking. The only federal recourse would be to use the federal trade and commerce power to justify federal regulation of content imported from another province or country. But the attendant legal interpretation of the "flow" of commerce to ascertain jurisdiction was an anathema to broadcasting. Significantly, successive drafts of federal legislation after the re-organization of the CRTC in 1976 were silent on closed circuit services.

Second, in the context of satellite delivery, the provinces had technical, if narrow, grounds for challenging federal jurisdiction under the current **Radio and Broadcasting Acts**. The dissenting opinion in both the **Dionne** and **Capital Cities** precedents on cable regulation had queried whether federal authority extended only to the radiocommunication.¹² Radiocommunication was defined as:

any transmission, emission or reception of signals, writing . . . or intelligence of any nature by means of electromagnetic waves . . . propagated in space without an artificial guide.¹³

The question was whether a satellite constitutes an artificial guide. Also under contention was whether the scrambling of signals delivered from satellite to cable, to protect the revenue base of certain subscription services, removed these operations from the definition of broadcasting, since they may not be intended for direct reception by the general public, as an American precedent suggested.¹⁴ The structural transition from mass-appeal broadcasting to special or "narrow casting"—from scarcity to diversity of channels—undercut one rationale for regulation, and the presumption of federal control. The vacuum in the law of Canadian skies, like international aerospace law, was a function of being outstripped by rapid developments in technology.

Finally, the exclusivity of federal jurisdiction over content was under siege.¹⁵ The **Kellogg** precedent, which upheld a Quebec regulation banning advertisements directed at children, was the first to query the principle of absolute federal control over all but educational messages. Some provinces asked why pay-TV justified regulation any different from the movie industry.

1.2 The Demand for Political Control

Under the **Broadcasting Act** passed in 1968, the CRTC is vested with broad powers to make policy. The government may direct the allocation of frequencies, reserve channels for the Canadian Broadcasting Corporation (the CBC) and prohibit certain classes of licenses.¹⁶

Cabinet has used its directive power to specify provisions concerning ownership and provincial educational networks. The effect of the existing directive power is primarily suspensive. In the (unlikely) event that the federal government negotiated an agreement with the provinces, on introduction of new satellite-TV services including pay-TV, this directive power would be used as a stop order to the CRTC. If Cabinet wished to reserve channels or frequencies for an additional public network, it would be able to instruct the Commission to do so without full parliamentary debate. There was thus no formal obligation binding the Commission to accept the government directive on the introduction of new satellite-TV services in the absence of revised legislation. A large cast of federal actors was involved: two Crown corporations (the CBC and Telesat Canada) and two principal departments, Communications and the Secretary of State. Reconciling the complex cultural and industrial policy objectives involved in expanding satellite-TV called for innovative approaches to national planning.

The principle of a strengthened directive power has been accepted by both Liberals and Conservatives since 1976,¹⁷ to enhance the accountability of regulatory agencies. It is an important feature of the current federal policy proposals, "Towards a New National Broadcast Policy" presented on March 1, 1983.

The early debate over directive power focussed on two important problems: to protect quasi-judicial independence and to avoid increasing executive or bureaucratic dominance in policy-making. Matters which touched on the adjudication of individual cases, freedom of expression or content were exempted in successive drafts of telecommunications legislation. The first model of the directive power, developed under the Sauvé administration, required that a policy directive to the CRTC be ratified by Cabinet and gazetted to permit public reply. Critics argued that stronger procedural safeguards were required. As a result, the Conservative model, although it only reached the early stages of development, was predicated on J.A. Corry's thesis that the only effective control over agencies was through Parliament. A veto of one or both Houses could override any directive by Cabinet. The Conservatives also intended to involve the relevant parliamentary standing committee in closer scrutiny of the directive power, but the exact role was not specified.

To open the policy process at an earlier stage, both Liberal and Conservative models featured a referral power by which the minister could request policy advice from the Commission. No general obligation to do so was

imposed. A stronger procedural safeguard would implement this requirement, while recognizing the Governor-in-Council could accept or reject this advice in whole or in part.¹⁸ The CRTC was seen to enjoy the capacity to be a wide-ranging forum for relevant groups and governments, in a way that existing committees in parliament could not, and to possess specialized expertise.

The final procedural problem was the relation of the directive power to the government's power to review or refer back the Commission's decisions. The consensus seemed to be to restrict this power.¹⁹

Provinces had also argued for a strengthened power of directive. In past disagreements over the Commission's cable hardware ownership policy, or the Manitoba-Canada delegation, the provinces argued that the Commission presented an obstacle to effective intergovernmental policy co-ordination and "fostered a corrosive adversary system." The regulatory and federal-provincial policy processes represented two parallel tracks. Without the co-ordinating directive, communications could not provide the electronic railroad for the nation.

As well, the provinces took procedural exception to the Commission. A survey conducted by R.J. Schultz, at the height of political and legal appeals over cable jurisdiction, reported that the CRTC made no recognition of the superior representative claim of governments over interest groups.²⁰ Provinces argued for special status, guaranteed automatic standing, and access to information which would not interfere with the rules of natural justice. Since 1978, the Commission made several procedural innovations. Provincial governments have been able to adopt the position of a neutral intervenor, to make special representations on broad policy matters, and to avoid discussing the merits of individual applications. A special provincial representation is subject only to informal questioning which is rarely led by counsel. Provincial governments may also choose to present consensus statements to the CRTC. The number of written interventions and appearances on broadcast matters by individual provinces appears to be increasing.

In particular, the provinces criticized the "conflict of interest" principle or improper conduct when the CRTC attended a federal-provincial conference to advise the federal minister. The Commission has not attended a conference in any capacity since 1977. As well, to facilitate the Commission's capacity to reflect and accommodate regional interests, the Commission undertook to decentralize its hearings, and strengthen the collaborative role of its five regional offices.

There were also federal initiatives to involve the provinces in the actual process of decision-making at the CRTC. Both Liberal and Conservative ministers consulted extensively to remedy the regional imbalance in appointments of full-time Commissioners who exercise the power of

decision.²¹ Successive drafts of revised legislation widened the power of this Executive Committee of the Commission to delegate responsibility for the conduct of a general policy or licensing hearing from time to time. These delegate bodies could include nominees from the provinces, to enhance what may be termed "regulatory-sharing." Two precedents in such sharing which included provincial regulators were undertaken in 1977-1978 to consider telecommunications policy. No similar power to delegate to outside members existed under the **Broadcasting Act**.²²

Despite the growing consensus about regulatory reform, almost no critical attention was given to the first question of Canadian federalism. If a directive power for the minister or Governor-in-Council was to be integrated into the federal policy process, what role should provincial governments be given in the exercise? The critical issue is whether direction with respect to matters within federal jurisdiction which affected provincial cultural and economic objectives should be subject to the federal-provincial process. Is the role to be advisory, or should the provinces be integrated into the exercise of direction?

Before 1979, the proposed legislation of both Liberal and Conservative governments gave the provinces a consultative role in developing the content of a policy direction. In telecommunications matters, the federal minister was given the power to refer questions to provincial regulatory agencies. In broadcast matters, the minister could consult with his counterparts, but there was no obligation that this would be on a multilateral basis.

Without guarantees for some greater role by the provinces in the exercise of binding policy directions, proposals are tendered by "centralists in reformists' clothing," in the words of one official in this study. There can be little basis for effective intergovernmental coordination. One way would be to give the provinces the power to initiate a public hearing. A stronger alternative was conceived by the Working Group to Study Competition and Industry Structure in 1981. The model for joint mechanisms to regulate telecommunications attempted to integrate the federal-provincial decision process more closely into the directive power. First in telecommunications where mixed jurisdiction is a fact of life, the directive would likely be based on a unanimous motion of ministers.²³ Some officials in this study argued that the model did not necessarily exclude referral to a public hearing to develop the content of that direction. Communication of the direction to the appropriate agency for its advice could be open, to allow comment from individual provinces, industry and public. The agency would then conduct a public hearing and submit its advice to all ministers who would consider its inter-jurisdictional impacts. To further safeguard effective co-ordination in a situation of mixed jurisdiction the review power was maintained. Whatever their merits, such reforms would have two consequences. First, they would necessitate formalizing procedures in decision-making, in an

arena where there have been few rules. Second, they would challenge the compatibility of the tradition of executive secrecy in federal-provincial relations with democratic safeguards whether via parliamentary or regulatory scrutiny.

To be sure, assessment of the merits or demerits of the case for enhancing the political control of a regulatory agency in a federal state is beyond the scope of this study. Nonetheless, the complex forces at work on a federal regulatory agency must be better understood before proposals for stronger directive power can be assessed.

1.3 Focus of this Study

The Committee on Extension of Services was thus a product of demands for a greater provincial role in the development of satellite-TV and the need to co-ordinate overall government objectives. The challenge would be to integrate the federal-provincial and regulatory planning processes despite the confines of the **Broadcasting Act** which consigned them to two parallel, but separate tracks. To fail to develop flexible and effective mechanisms for sharing policy development would leave the Canadian broadcasting system at the mercy of the market. Technology would make its own rules and Canadians would be vulnerable to the spillover effects of American decisions.²⁴

2 Setting the Agenda

This chapter examines the principal forces which combined to set the agenda for the Committee on Extension of Services. It is impossible to provide an exhaustive survey of the developments in satellite technology or pay-TV over the last decade, as that would be tantamount to a sequel to the *Public Eye*.¹ Only the most salient planning initiatives during the period of Liberal government from 1978 to May of 1979 are highlighted below. What policy options confronted the Conservatives on taking office? Would the existing policy machinery prove sufficient?

2.1 Milieu

The Committee on Extension of Services was established on the wave of an international assessment of the information order.² The specific catalyst was the emergence of higher powered satellite technology in the latter half of the decade. At stake was the state's right to control what comes into its territory, a right traditionally recognized in international aeronautical or aerospace law. Since the area covered by satellite signals does not correspond to national borders, and also covers up to one-third of the earth's surface, the consequences of their spillover presented an unprecedented challenge to traditional models of regulatory control in broadcasting.

New satellite services could effect a transfer of technology critical to the balance of payments. Their messages could be used for overt political propaganda or covert promotion of foreign tastes. In domestic application, high-powered satellites could lower the costs of direct reception by individuals and make conventional television available to rural and remote areas, as well as introduce a variety of new services.³ Radical changes in leisure patterns stimulated popular demand for choice in broadcasting services; with the greater range in the number and kinds of services available, the viewer's power to program for his or her own taste was enhanced. This trend was buttressed by the ideological principle that:

everyone has the right to freedom of opinion and expression . . . this right includes the freedom . . . to seek, reserve, and impart information and ideas through any media and regardless of frontiers.⁴

As a consequence of extensive experimentation in the space sector, Canada was an innovator in the international policy arenas, advocating the twin principles of prior consent by the receiving nation and participation in the coverage of its territory.⁵ American foreign policy has been reluctant to recognize the right of prior consent because it implies a degree of censorship which impugns the First Amendment tradition and the International Declaration of Human Rights. Nevertheless, the U.S. has signed a letter of agreement with Canada governing the bilateral use of satellites predicated on "reciprocal" prior consent.⁶

Western democratic tradition offers few signposts to reconcile public preference, the individual's right to consume whatever is available, and the public interest, based on the collective rights of state sovereignty. In the era of microwave, nations acquiesced to transborder spillover of signals, except when it affected internal security or presented harmful frequency interference.⁷ There is no functional equivalent in "free" satellite broadcasting. Early evolution of satellite services featured fixed, point to point transmission of messages deemed private communications in international law.⁸ The advent of higher powered satellites, with broadcast capacity over a wide area punctured the distinction between private and public property. There has been no resolution of the right of prior consent, or a *priori* planning in the allocation of satellite frequencies predicated on territorial sovereignty, by the United Nations Committee which scrutinizes the overall political, legal and technical implications of the peaceful uses of outer space. In all of its institutional, ideological and legal complexities, the law of the skies is as difficult to resolve as the law of the seas.

2.2 U.S. Developments

American industrial strategy stimulated competition and lowered the costs of entry to satellite broadcasting over the last decade. The Federal Communications Commission relaxed technical standards, dispensed with licensing of satellite dishes, and lifted regulations concerning the importation of distant signals to aid in the extension of telecommunications services to rural U.S.A.⁹ The first effects were felt in the growth of advertiser-supported "superstations."¹⁰

The real "Magna Carta" for satellite-cable operations, however, came with a decision by the U.S. Court of Appeals in 1977.¹¹ Until then, the Federal Communications Commission had sought to protect the conven-

tional broadcasters against the inroads of pay-TV and other new services by preventing the duplication or "siphoning" of programming. The Court of Appeal lifted all regulations restricting content on the grounds that they had been based on theory rather than evidence of the alleged adverse impact. By 1978, regulatory developments in the United States promised a chaos of American signals over Canadian skies that was reminiscent of radio in the 1920's. Moreover, spectrum constraints promised similar bilateral tension. By 1979, the minimum frequency for satellites was near capacity. The United States was arguing for more space in the higher frequency range, in direct competition with Canada's experimental satellites, in the international forum where the spectrum was regulated.¹²

As the costs of satellite-receiving technology dropped and the availability of American signals increased, unauthorized dishes mushroomed in the remote areas of Canada.¹³ The piracy of signals in Canada was unique in that ownership included resource companies, municipalities, and individuals in remote areas. There were few concrete estimates of the number of dishes available. The early regulatory response in Canada was to issue cease and desist orders while threatening stiff financial penalties. By the end of 1978, there was an awareness that the limits to extension of services via conventional means had been met, that public demand for choice was growing, and that technology was evolving to a point where Canadian policy-makers would find it difficult to regulate or control.

2.3 The Policy Framework

The **Broadcasting Act** of 1968 created the independent regulatory agency, the Canadian Radio-television and Telecommunications Commission, to regulate and supervise all aspects of the Canadian broadcasting system. The Act created a single broadcasting system, in which the public aspect would prevail over the private aspect in the event of conflict. It also dictated that the system must be owned and controlled by Canadians. The Act provided that programming must be varied, ensure balanced opportunity for diversity of expression, and meet high standards, using predominantly Canadian creative and other resources. The Canadian Broadcasting Corporation is further obligated to provide a balanced service, recognizing the varied needs of the geographic regions.

Two sections of the 1968 **Broadcasting Act** address the entitlement to service. All Canadians are entitled to national public service in both official languages. Like the Charter of Rights, this "universal" entitlement has its override clause: it is subject to the availability of public funds.

The second provision states that:

the right of freedom of expression and the right of persons to receive programs, subject only to generally applicable statutes and regulations, is unquestioned.¹⁴

The **Broadcasting Act** thus does not confer on the individual an absolute right to receive either Canadian public or private services, or to receive information through the broadcast media regardless of frontiers.¹⁵

2.4 Extension of Services: Regulatory Initiatives

The task is no less than the completion of the building of Canada.¹⁶

In 1971, the Commission called for "an urgent program for the extension of services," while acknowledging that it had no power to force either the CBC or CTV to install stations.¹⁷ The government, the CBC, the Secretary of State, and the Department of Regional Economic Expansion were called upon to co-operate with industry in reaching underserved Canadians. The next year, the CBC was introduced via satellite to the far North. As well, in 1974, Cabinet voted special appropriations to the CBC to accelerate the extension of coverage to communities with a population of 500 or more. While pleased overall with the physical extension of services via the cabinet-ordered Accelerated Coverage Plan (ACP), the Commission noted at the CBC's license renewal in 1978 a lack of policy to replace the extant community-owned rebroadcast facilities, or affiliate services in the major language areas.¹⁸ As well, the Commission enjoined the Corporation to provide the provinces and territories with regional television production centres, although not at the expense of extending services to the special linguistic communities. Three ministers responsible for Communications in the Maritime provinces had argued as early as 1974 that each province should have a CBC service (of local origin) which would enable it to reach and to inform all its inhabitants. As a result of the ACP program, territorial and provincial governments entered into cost-sharing arrangements to extend the CBC to smaller population centers. The cutbacks in the CBC's budget for 1978 effectively set limits on further extension.

The private national networks (CTV and its French counterpart TVA) were not under any similar statutory obligation to extend services to all Canadians. Yet the paradox of our democratic system is the implied obligation to provide alternative local services to all citizens to safeguard diversity in political and cultural expression. By virtue of the powers of regulatory suasion, the Commission permitted special categories of affiliation to the CTV and "twin-sticking" with CBC services in the less lucrative markets. As well, the Commission limited the public corporation's capacity to collect advertising revenues in certain markets and selectively allowed

cross-ownership between local broadcast and cable operations to offset market disincentives for expansion to rural and remote areas.¹⁹ The Commission's review of the CTV network license in 1978 did not compel member stations to undertake further extension on an individual basis. The limits to extension via microwave had been met.²⁰ Citing prohibitive satellite costs, CTV's coverage stopped at the 51° latitude. What similar regulatory suasion could be used for expansion of Canadian satellite services?

In addition to these measures, the Commission addressed the range of services available. First, it sought to provide some equity of access to U.S. signals by permitting cable companies to enter into consortia to import signals via microwave relay. Importation was restricted to the three American commercial networks and the American Public Broadcasting System. The so-called "3 plus 1" rule was an abrupt reversal of the Commission's position in 1969, in part a result of pressure from Alberta Cablecasters.²¹ The Commission argued that:

unlimited penetration by U.S. stations on a wholesale basis from South to North would completely destroy the licensing logic of the Canadian broadcast system.²²

To preserve the logic of the local license, two practices were introduced, which will be discussed below.²³

The Commission's 1971 policy statement on the "Single System" had foreseen that satellites would multiply the access to programming from distant sources. In a subsequent decision in 1975, approving applications from private cable consortia to relay in the "3 plus 1" U.S. stations, the Commission stated that it was:

concerned about the heavy expense required for such a system, which because of technological developments [might] prove to be only an interim delivery system, and [advised] short term contracts.²⁴

On its tenth anniversary, in 1978, the Commission undertook to report on the level of television services to serve as a foundation for future "national policy." The study represented the first such comprehensive survey of "haves and have-nots" by province but omitted a separate breakdown for the mid-north and the territories. CBC coverage was almost universal. Outside Quebec, only two per cent of Canadians were without English CBC. Five per cent could not receive television at all. However, fully 27 per cent of Canadians outside of Quebec could not receive Radio-Canada. The key conclusion was that there were:

enormous financial and technical difficulties in providing basic Canadian services (defined as the two public networks) to the last two or three per cent of the population. The methods

adopted . . . may require irregular and novel technical and regulatory mechanisms in order to achieve fully the Broadcast Act objectives.²⁵

It was not until October of 1978 when costs of satellite technology began to drop that the Commission conducted its first hearing to address the general issue of the physical extension of television services to remote areas in Thunder Bay, Ontario. The Commission was responding to illegal "bicycling" relays for videotapes and native community association networks which had sprung up in communities which did not meet the population criteria for the CBC's Accelerated Coverage Plan.²⁶ The decision contended that "one channel in itself was not an acceptable level of service," in light of the social value of entertainment and information in isolated communities. Two channels were sufficient to satisfy public demand for more choice. The Commission recognized that satellite technology could be used in pursuing the Act's objective of making services available to all Canadians. However, the economics of satellite delivery were seen to "require that a national plan be adopted before implementation proceeds." In the meantime, aware that no single delivery technique would be adequate for northern needs, the Commission stated its readiness to review minimum technical standards for rebroadcast transmitters, video-relays and cross-ownership of off-air and cable facilities.

The Commission also stated that it wished to encourage applications by native communities for licenses in recognition of their special cultural and linguistic concerns. The Commission favoured the insertion of local programming "to the greatest extent possible" and promised to assess any application to delete certain programs on a case-by-case basis.

The decision demonstrated a new flexibility in approach to the extension of services which was welcome to federal and provincial officials for two reasons. First, the decision was a harbinger of the Commission's willingness to relax its regulations in certain applications and look at new consortium solutions. Secondly, the decision was the first formal recognition that the province should be involved in planning. The lesson from the unprecedented tension between the federal agency and provinces over cable hardware ownership policy, central to the extension of services, had not been lost. Knowledge of the Thunder Bay hearing, however, was restricted to the immediate players, Ontario and the Commission. The hearing was of limited relevance to other provincial or industry participants.

In general, the Thunder Bay precedent illustrated the inadequacies of using a licensing hearing as a forum to broach wide-ranging policy issues. It accomplished little beyond a revelation of the problem. There was no discussion of the implications of broadcast satellites or a return to first principles about the financing and content of services to be provided. No one was at all certain who should pay for any satellite-TV. To implement a user-

pay system would seem to require some sort of scrambling which would raise a legal question of whether broadcasting would constitute pay or some other form of over the air cable service. Possibilities of subsidy for community, non-profit organizations were raised, which tested the intent of the various provincial **Municipal Tax Acts** to cover levies for this purpose. The question of what to deliver raised the full configuration of broadcast services in the seventies—from Canadian public and private networks, independent or American stations. In general, the Commission favoured the priorities of carriage contained in its cable regulations.

In a surprising testimony to its willingness to entertain "exceptional measures" to reach those communities with one or fewer stations, the Commission stated that it was prepared to consider an interim arrangement for reception of signals from U.S. satellites as an alternative to the "3 plus 1" rule. It was precluded from so doing by those sections of the Act where the Department of Communications advised that it would not issue a technical certificate. The federal "prohibition" on reception from U.S. satellites was widely perceived to emanate from the CRTC, however.²⁷

2.5 Planning the Satellite Package

Canada became the first country in the world to establish a domestic communication system using satellites which rotate with the earth and are capable of providing point-to-point service. Telesat Canada, a quasi-public enterprise, was created by federal statute in 1969 with a mandate which reflects the federal interest in the defence of Arctic sovereignty, extension of the CBC and industrial development.²⁸ Unlike its cable counterparts, the satellite industry has not been considered a part of the broadcasting system. As a "carrier's carrier," it is not responsible for the content of the messages it transmits. At the same time, the Department of Communications was established to conduct a comprehensive series of studies on satellites and northern broadcasting as a part of a massive overall effort to provide infrastructure and equal standards of service to the Far North.²⁹

In a 1975 consensus statement, the provinces stated that the development of satellites had varying degrees of federal and provincial interest. Planning was considered to be the responsibility of federal-provincial agreement.³⁰ For the next round of intergovernmental meetings in 1977, the issue was pre-empted by cable, pay and revisions to the Telecommunications Bill. In 1978, a federal-provincial working group on competition and industry structure was set up to "develop policy principles or criteria which would ensure that telecommunications services," including the common carriers like Telesat, were provided in a "manner consistent with the public interest."³¹ At the same time, provincial governments set up special clientele agencies to co-ordinate and consult in the delivery of broadcasting services.

Television was considered a basic amenity in isolated communities, proving both an inducement and stabilizing factor in employment. Ontario and Quebec launched inquiries to develop broadcast plans.³²

The first major decision to change the face of the domestic satellite industry was the CRTC's refusal to allow Telesat to enter the Trans Canada Telephone System (TCTS) in 1977. The hearing had considered the powers and autonomy of Telesat, the expansion of satellite services and the impact of competition. The minister reversed the decision on the grounds that "broad policy issues over and above those considered by the CRTC" were involved. In the Department's view, the virtue of the agreement was that it would guarantee financing for the next generation of high-powered satellites. The Commission held that it would prejudice any ability to regulate rates.

The western premiers criticized the federal decision as assuming an interest in the operations, finances and practices of TCTS which would narrow the degrees of freedom of provincially owned and regulated companies.³³ In fact, Mme. Sauvé allegedly suggested that varying the decision would give the federal government a say in planning the telephone field, considered a prerequisite in an era of disintegrating natural monopolies.³⁴

Saskatchewan later distanced itself from the western premiers' position before a federal task force on Telecommunications and Cultural Sovereignty. Saskatchewan supported the integration of the national terrestrial and satellite communication system via the Telesat-TCTS merger. The governments of Newfoundland and Labrador, Prince Edward Island and New Brunswick jointly supported it as well on the grounds that it would enhance distribution and provide a "desirable method of access to remote areas."³⁵ The federally regulated telephone companies feared the CRTC would not have adequate ability to regulate Telesat for the purpose of rates and services.³⁶ Yet satellites did not become an issue on the federal-provincial agenda until 1979, when the pressure from illegal receivers began to mount. In the view of one federal official, provinces tended to be "silent on satellites" prior to that. Like "most other Canadians outside of the communications field, they were not aware of the technology, its politics or its changing economics."

The only native and northern group to intervene, the Inuit Tapirisat of Canada (ITC) called the Telesat-TCTS agreement the "most significant since the Anik launch to affect the nature and quality . . . and price . . . of life." They took issue with Bell Canada's policy against leasing partial channels and opposed the interconnection in favour of a "strong and independent Telesat." The ITC concluded that Telesat's configuration of coverage in the next generation of satellites did now allow Northerners the same range of services as the rest of Canada.³⁷

The Cabinet decision on the membership agreement suggests the federal

government may have secured some leverage in TCTS at the cost of leverage over the satellite development as a whole, since the overall commercial restrictions on Telesat's operations were increased.³⁸

While the jury on the Telesat-TCTS affairs was still out, the consensus seemed to be emerging that Telesat's monopoly on all aspects of satellite delivery, and the carrier's monopoly on retailing, worked to protect the carrier's investment and keep costs artificially high for broadcasters. Only the CBC was carried on satellite north of 51°. As a consequence, the Canadian satellite industry, while recognized for its innovation world-wide, was allegedly characterized by high capital costs, chronic under-capacity, and low profits.³⁹ With the launch of Anik-B in 1978 an unprecedented number of satellite channels was available for lucrative broadband or broadcast applications.

The federal Department of Communications launched three stimulative measures as a part of its overall industrial strategy following the Telesat-TCTS decision. First, the Hon. Jeanne Sauv   introduced satellite coverage of the House of Commons proceedings, for which there was no international precedent. For the first time, the concept of a package of services to complement the CBC was broached in public debate. Second, the Department experimented with high-powered satellites for direct to home, or community use, in co-operation with British Columbia, Ontario and several native groups.⁴⁰ Finally, the minister began in 1977 a review of policy on the ownership of earth stations—in effect considering the principle of competitive "terminal attachment" conceded in telephones.

In the midst of a crisis on November 30, 1978, "more profound than any since the twenties," the minister established a task force headed by the Hon. J.V. Clyne to study the implications of telecommunications for Canadian sovereignty. The initiative had every appearance of a power play "to further departmental and provincial interests at the CRTC's expense" since the task force was allegedly set up without the Commission's advance knowledge.⁴¹ The minister argued that technologies precipitated a need to change "the architecture" of the system and to offset the deficit in electronics balance of payments. Yet nothing "remotely resembling a consensus" on which range of solutions was best had emerged.

The task force was charged with a difficult mandate covering, among other things:

- 1) the use of satellites to the best advantage of Canada;
- 2) the importation of foreign programming;
- 3) the framework and timing for the national introduction of pay-TV.

The terms of reference excluded jurisdictional matters. The Committee invited submissions from industry and provinces but did not hold public hearings.

The Committee's unanimous conviction was that since "satellite communications have greater significance for Canadian sovereignty than for that of any other country:"

the federal government should, as a matter of urgency, initiate detailed studies in consultation with the governments of the provinces to determine the best means of establishing and financing a satellite transmission package that would provide alternatives to existing CBC programming.⁴²

The alternatives did not include pay-TV. The discussion acknowledged the presence of illegal operators of dishes and made the first public statement that the government did not intend to prosecute until some Canadian alternative was available. The Committee argued that direct satellite-to-home broadcasting in heavily populated areas would prove less feasible because of the technical constraints of angle of sight which interfere with reception.

Any satellite package must be predicated on the principle that Canadian satellites should be used only for Canadian signals. Two options were proposed to extend the coverage of CTV via satellite. The first was to leave it up to the private sector. The second was to provide a public subsidy, but public funds might be better spent on a composite public service package. Left unresolved was who should provide it, or for how much.

Also unresolved was the extent of Telesat's unused capacity, which resulted from its practice of reserving back-up channels to guarantee service to TCTS members. Telesat was advised to review its pricing structure for broadcast use. Finally, the Committee was unanimous that Telesat alone should receive programming direct from other countries. Exempt from the restriction would be the operation of satellite receiving dishes for individual use.

Of particular interest was the discussion of the limits to the government's obligation to provide service. The report affirmed the CRTC's view that the CBC's coverage of 98 per cent of the population represented "the economic limit to what can be done with off-air reception." The cost of reaching the rest of the population was so high that the provision of public funds was not justified. The majority of the Clyne Committee rejected the popular assumption that any Canadian has an indisputable right to be served as well as anyone else. If U.S. stations were available in the south by the "3 plus 1" rule, there was no inherent reason why that must somehow be made available everywhere.⁴³

The task force deemed the carriage of American stations on cable systems under the CRTC's "3 plus 1" rule "inherently unfair" to broadcasters. Further importation would diminish the commercial value in using U.S. programs for Canadian stations. The CRTC was advised not to allow additional importation. However, three members of the committee reserved their decision, leaving it to the CRTC's discretion.

The majority of the Committee sought to protect the exclusive rights of Canadian broadcasters to their programs in a given area to parallel U.S. practice. Messrs. J.V. Clyne and Robert Fulford dissented, on the grounds that this would be "unacceptable to Canadian viewers who regard watching of American stations carried in their entirety as an incremental right." The treatment of U.S. border stations was deemed to be on the verge of provoking retaliatory action. The federal government was advised to begin discussion to resolve the border dispute at an early date, in the context of a wholesale review of copyright.

Despite the Clyne Report's consensus on the urgency of the spillover of signals and their unauthorized reception, it favoured a comprehensive approach to cultural strategy. The cornerstone was a review of the CBC and other measures to enhance production. The Clyne Report was a casualty of the intervening election, and had a negligible impact on domestic policy-makers or industry officials. It has been used as an instrument of foreign policy in the international debate over the new world information order. The Canadian Association of Broadcasters suggested that the review of the CBC should be broadened. The chief benefit appeared to be for public interest groups. The Canadian Broadcasting League sponsored a conference to discuss the Report and protest any further dilution of the CBC's presence by additional satellite services.

Before the Report of the Clyne Committee was made public, the minister initiated a two-part program to spark further interest in the lucrative broadband applications of satellites. First, the outcome of a two year review of earth station policy was announced in February of 1979. Mme. Sauvé broke Telesat's monopoly on all aspects of satellite delivery. The policy concerning the ownership of earth stations was liberalized to permit broadcast undertakings and telecommunication carriers to operate dishes to receive Canadian TV signals via satellite. Offshore locations were considered on a case by case basis. Permission to receive signals from U.S. satellites was refused as it had been since the Thunder Bay hearing.⁴⁴ Mme. Sauvé stated the objective was to "encourage the fullest access to new satellite services" while in "no way" affecting other TCTS members. Provinces with public carriers were concerned that the move would jeopardize rate-averaging.

The second step was to sponsor a conference in March of 1979 to discuss the concept and design of a satellite package of services which would increase the supply of Canadian signals. The federal Department invited all potential users and carriers for wide-ranging consultation. No consumer groups were represented. The same month, the Western Premiers' Task Force had criticized the low level and quality of broadcast TV and radio services in rural and remote areas. The premiers felt it was difficult to justify continued constitutional restriction on provincial roles with respect to broadcasting.⁴⁵ Yet provinces were asked to act only as observers which

they saw as an afterthought. All provinces except Alberta and British Columbia were represented. While considered primarily an exercise of consultation with the industry, Ontario, Saskatchewan and Nova Scotia played important roles in the discussions, as did the provincial educational networks.

The federal government was essentially asking what should be introduced following the Accelerated Coverage Plan? A Canadian satellite package could narrow the gap in TV services available to urban and rural/remote citizens; deliver programs on a more equitable basis; reflect the interests of the areas being served; and stimulate Northern and Canadian program production.⁴⁶ Federal officials endorsed the priorities for carriage of public over private signals contained in the cable regulations. More U.S. signals might have to be included eventually to assure the packages' economic viability, a position which was more flexible than the Clyne Committee's. Two forms of potential cross subsidy were suggested; from urban to rural areas or from more to less popular programs. Canadian content quotas would be retained. The object of any such measures was to promote the "efficient utilization of the telecommunications system." The institutional and legal complexities of the relationship between programmer, distributor and exhibitor were not systematically addressed.

The conference convened by the Department was almost derailed within a few hours. What was clear to public officials was "a manifest disinterest" among the private broadcasters and certain cable interests in the less lucrative markets. Cable spokesmen suggested that the "engine to drive the train of extension" could well be the introduction of pay-TV. Private broadcasters who were solidly opposed threatened to withdraw if pay-TV dominated the agenda. The meeting was hastily adjourned. The deadlock was eventually resolved by clarifying that the focus was on the extension of services issues and the design of the satellite package. Nonetheless, industry representatives felt that the federal government was linking the issues of extension and pay-TV, which is evident in their submissions to a subsequent policy inquiry.

The minister was asked in the House whether she realized that the cable industry saw the satellite package conference "as an opportunity to establish a pay-TV network which the Commission opposed." The question was fuelled by an erroneous report in the press that any satellite package would include pay-TV.⁴⁷ The minister's statement appeared to industry and provincial officials to contradict the intent of her officials. In an attempt to dispel any fear that liberalizing the earth station policy facilitated the introduction of pay-TV, the minister stated that the initiative primarily allowed delivery of broadcasting services to people in rural and remote areas, would result in a drop in costs to consumers, and allow cable operators to own satellite earth stations and set up a national cable network. Because require-

ments for Canadian dishes were different than in the U.S., she foresaw no danger of dumping.

Subsequently, a letter from the Inuit Tapirisat of Canada to the new Conservative minister protested that the Department's encouragement of a satellite package jeopardized the Department's own joint experiments on Anik-B with the community broadcasting in Inukshuk. By September of 1979, the organization had passed a resolution that said no more television channels were to be introduced in the North unless that introduction was controlled by the community and the revenue poured into Inuit programming.⁴⁸

The consensus was that the Satellite Package Conference provided a forum for airing the issues, recognizing that something needed to be done, that something could be done and that it was a matter of working out in more detail the economics of commercial opportunities. The conference did not achieve the federal objectives to "break the current policy/regulatory/institutional/financial log-jam holding back greater use of Canadian satellites" or to "establish a consensus on the establishment, organizational structure and financial arrangements for some form of a national satellite consortium."⁴⁹ From the provinces' point of view, the exercise of consultation represented "the old federal government style." The industry had been heard first, and had not been able to break the deadlock over pay-TV. No new ideas emerged and no fresh consortia appeared. From the federal perspective however, the degree of interest among some of the provinces gave the first indication that the "extension of services was an issue where there was some possibility for undertaking cooperative development of mutual objectives." Federal officials expressed some surprise at this turn of events given the earlier period of high confrontation between governments over cable and pay issues.

2.6 Policy Options: Extension of Services

A number of technological, regulatory and economic factors affected the development of domestic satellite-TV.

The first decision necessary for the introduction of a Canadian satellite package was the definition of adequate "basic service:" what alternatives to CBC/Radio-Canada should be provided? The cable regulations gave public services priority over private ones, local services priority over distant importations; and were restricted to advertising-supported services. The CRTC set the target at communities with two or fewer signals in its Thunder Bay decision, but the Department's discussion paper for the satellite package avoided any definition.

Next, who should provide them? Broadcasters, cable undertakings or new "packagers" presented a number of alternatives for horizontal or

vertical integration. Both the Commission and the Department encouraged innovative consortia approaches, and stipulated that control must stimulate diversity of "access" for programming sources to exhibition. Nor were federal policy makers clear on the potential market structure. The assumptions seemed to be that the economic disincentives for expansion by private, advertiser-supported stations to remote markets were so high that only a monopoly was viable. Indeed, federal policy makers were open to suggestions that private stations be subsidized in a sort of post ACP plan. Given the budget cutbacks of 1978-79, this was a remote possibility and raised the anomaly of devoting public funds to special clienteles. On the other hand, what cross-subsidies should be permitted? Standard practice within both networks had been to allow lucrative urban markets to underwrite costs to rural ones. Should optional or luxury services subsidize basic ones? Finally, should these services be financed on an individual user-pay system? The other alternative would allow the community to bear the costs through some sort of tax or voluntary contribution.

Next, what would be the impact on the existent system? CRTC provisions for simultaneous program substitution or commercial deletion protected advertising revenues of local Canadian stations from their American competition. What would be the impact of Canadian superstations on the Canadian market? Neither the Thunder Bay decision nor the Satellite Package Plans squarely addressed this issue. But both seemed to restrict the superstation's possibility to the remote or northern market. Indeed, to the minister, the chief virtue of the "direct broadcast satellites" technology was to equalize the range of services. There was no suggestion whether the 'superstation' option could feasibly be regionally contained. Further fragmentation of advertising revenues could threaten traditional network-affiliate relations. Second, cable consortia in remote and rural markets had contracts to import distant stations via microwave which, although estimated as 50 per cent more costly than satellite delivery, promised not to expire for several years.⁵⁰ Given the overwhelming comparative advantage offered by satellites, since costs did not vary with distance from the source of signal or number of receivers, the eclipse of microwave imports seemed certain.

Several technological considerations were in play. First, what frequency should prospective services employ? Higher powered satellites promised lower dish costs for reception and, for a short time at least, insulation from American competition, since most U.S. signals were on lower powered satellites. Second, should a separate channel be dedicated for Northern use? While recommended since a 1971 study on Northern communications, such regional satellite coverage would have to contend with balancing an east-west capacity across several time zones, to ensure a north-to-north capability, with sufficient north-south coverage to average costs over as wide a market as possible.

Finally, what provisions would ensure a predominantly Canadian service? High capital costs suggested that any packages might want more "flexible" quotas.⁵¹ If done at the local level, the CRTC had proved receptive on a case by case basis.

What would be the social impact of these services? The introduction of additional TV services to northern and remote areas raised the principle of the "right of prior consent" in the receiving community. Several native communities refused any further one-way imposition of southern values upon the CBC's introduction to the far North. In 1978, the CBC license renewal hearings had been boycotted by Inuit organizations because the Commission had no "effective power over the CBC through moral suasion or legal statute" to oblige it to increase its television programming in native languages. Nonetheless, the decision provided a strong assertion of Northern needs. In particular, the failure of the Accelerated Coverage Plan to devote funds to programming obliged the Corporation to take a "care-taker role" in the introduction of television to the North. In the view of CBC President, A.W. Johnson:

in the final analysis it is the government which must concern itself . . . (The solution) requires a partnership—among parliament, the CBC, people of the north and territorial governments—a concentration of energies, basic will, and basic funding.⁵²

The Commission joined the Corporation in calling for government commitment to a separate northern service. The further influx of southern television services, although technically feasible, "should not be contemplated unless and until there was an adequate first service." The federal Department of Communications funded several studies on the social impact of the introduction of TV to the far North. The chief finding was that:

any policy to extend more television services must safeguard the integrity of choice and production of locally meaningful programming.⁵³

What provisions should be made for the local origination of programming? High channel costs prohibited the dedication of a community channel within the satellite package on the order of the cable regulation. Provision for access would have to be made at the local level, and could vary according to the mode of signal distribution, whether via rebroadcast or cable facilities. What forms of indigenous northern or native networks should be stimulated?

The last set of issues addressed the economic impact of satellite development. Should Telesat's monopoly on other aspects of delivery be relaxed? Could the rates be made more attractive to prospective users?

The heart of the problem posed by the unauthorized dishes, however, was the nature of the demand they represented. Would a Canadian "package" alternative be sufficient? Or was the demand for U.S. imports? For policy-makers, a clear philosophical issue was at stake. Equity of standards of service ranged across four axes: urban/rural, north/south, francophone/anglophone and across provinces. Yet application of equitable standards was complicated by cultural, legal and economic constraints. The access to American signals had escalated with the CRTC's "3 plus 1" rule on the importation of distant signals.

But two international obligations prevented similar application of the "3 plus 1" rule for satellites in the short run. First, a letter of agreement between Canada and the U.S. signed in 1972 stated that any services provided outside either country by satellite must be approved by both countries.⁵⁴ The second international obligation was that approval from the international satellite organization (Intelsat) would be needed for broadcasting services intended for direct reception by the general public.

Given this combination of domestic and regulatory constraints, there thus appeared to be three main policy options in response to the growth of unauthorized dishes.

- the **"Canadian skies" option**: authorizes a Canadian package of signals for carriage on domestic satellite. The package could include foreign programs, and a mix of conventional and pay-TV.
- the **"3 plus 1" option**: authorizes the carriage of U.S. stations on Canadian satellite to parallel the cable regulation called the "3 plus 1" rule to equalize the range of services across Canada. The alternative would authorize the direct reception of signals from American satellite on a "3 plus 1" basis.
- the **"Open Skies" option**: permits the reception of any signals on any basis, in effect conceding that the poaching of American satellite signals could not be prevented. The distinction to be made was between rejection for individual use or for redistribution.

The latter two raised the question whether such imports, or transplants should be subject to existing CRTC rules to protect the advertising revenues of Canadian broadcasters.

2.7 Pay-TV: Federal Planning

While the extension of basic services via satellite appeared to be more a hardware or medium-oriented issue, pay-TV went to the heart of the problem of an indigenous message. The Commission's chief instrument to

ensure that the broadcasting system remain predominantly Canadian has been the content quota. This is a quantitative measure of exhibition time for productions defined as Canadian. Like the principle behind the tariff, it is intended to ensure the domestic manufacture of a wide assortment of entertainment and domestic programs; to create, in effect, a "miniature replica" of the U.S. television industry.

The Commission employed two other methods to increase the supply of Canadian programming: licensing new educational and independent private stations, as well as compelling cable companies to provide a community channel. To protect the advertising revenues of existing stations, considered an essential structural factor in Canadian production, the Commission attempted to allocate advertising markets, or compel payment of financial compensation. In one case, to protect the advertising revenues of a local private station, the Commission limited the public corporation's capacity to collect revenues.⁵⁵ The final, albeit short-lived, strategy to protect broadcaster revenues was to compel cable companies to pay Canadian broadcasters for the right to carry the programs.

After the effective transplantation of American stations via cable into the Canadian broadcasting system, the Commission implemented two practices.⁵⁶ First, the Commission could compel cable companies to delete commercials on American networks at the request of a Canadian broadcaster. A major irritant in Canada-U.S. relations, this practice was suspended at the Minister's request in 1977, until the Commission's power to do so was upheld by the Supreme Court decision in the *Dionne* case. Subsequent U.S. copyright legislation casts the legality of this procedure again in doubt.⁵⁷ Second, the Commission has instituted the practice of simultaneous program substitution. A Canadian station may pre-empt an American one showing the same programs at the same time on cable. This has the effect of doubling the audience and hence advertising revenues for Canadian stations. It also had the perverse effect of reinforcing "horizontal scheduling," where prime time is dominated by American network practices.

From its early days, the CRTC was aware that "regulation was too blunt an instrument to secure or maintain Canadian content or other standards," and called for an integrated federal strategy.⁵⁸ Quotas alone could not alter the economic incentives to produce Canadian programs attractive to viewers. American programs were less expensive to acquire. They attracted larger audiences, and thus higher advertising revenues. Parliament created the Canadian Development Corporation in 1968; passed Bill C-58 which prohibited corporate tax deductions for advertising placed on U.S. radio or TV, and introduced a capital cost allowance in 1974 to stimulate independent film productions. But no express provision was made for independent television production.

By 1976, Mr. Harry Boyle, then Chairman of the CRTC, argued that pay-TV transcended the CRTC's normal purview under the **Broadcasting Act**, since it affected the whole range of creative program production for Canada. Indeed, Mr. Boyle was of the view that the "policy decision on the form and structure of a pay-TV network operation" should be taken by the Minister of Communications and Cabinet. The Secretary of State responsible for cultural matters, Hugh Faulkner, advocated a royal commission inquiry at a time when he was involved in repatriating advertising revenues, in order "to test the feelings of parliament and the country about action by Government aimed at controlling Canada's economic destiny in the cultural field."⁵⁹

Pay-TV is widely perceived to have become a "political football" between the Minister Jeanne Sauvé and the Commission after her now famous "pay is inevitable" address in 1976.⁶⁰ The previous year, the Commission had indicated that the introduction of pay-TV would be unnecessarily disruptive, for the broadcasting system was in a period of transition after reform to the cable regulations and entry of independent stations. Its stance was similar to that adopted by the U.S. Federal Communications Commission (FCC) before the appeal by Home Box Office. Pay-TV could fragment audiences and diminish advertising revenues upon which the network-affiliate relationships were based. It could "siphon" programs hitherto freely available over the air. The burden of proof thus fell on the prospective entrants to demonstrate that their pay-TV operations would not harm the viability of the off-air broadcasting system. Finally, the ineluctable paradox seemed to be that no pay-TV model could guarantee to meet the statutory obligation to use predominantly Canadian creative and other resources, particularly at a time when the domestic film industry was sadly underdeveloped and the effects of the capital cost allowance were still to be felt. The prospect of a secondary market could guarantee exhibition for Canadian films where the American controlled film industry under provincial jurisdiction had not—and where both the CBC and CTV continued to be remiss.

In general, the federal position was that:

(T)he continued federal regulation of the broadcasting system, including pay-TV [was] a crucial factor in the coherent and orderly provision of program services to the entire Canadian viewing public.⁶¹

It was essential that pay-TV not exacerbate disparities in service between urban and rural areas. This posed two problems. First, prior to the emergence of cost-effective satellite technology, there was the very real possibility that if pay-TV were introduced on a commercial basis via local closed-circuit cable or microwave delivery, it would not be available to

rural or remote markets. For this reason, the Maritimes had opposed the introduction of pay-TV, or sought specific assurances of reasonable cross subsidy. Second, pay-TV raised an aspect of distributive justice. Should its introduction proceed when the statutory objective to provide basic services was still not universally achieved?

It is important to recall that the occasion of Mme. Sauvé's speech was the annual meeting of the Canadian Cable Television Association (CCTA). The CCTA had been impressed by the growth of pay operations in the U.S. and concerned about the emergence of competitive, closed-circuit operations within their franchise areas. In the latter half of the decade, the domestic cable industry had saturated urban markets. Domestic and foreign acquisitions, novel marketing techniques like pay-TV and the lucrative prospects of domestic satellite to cable networks offered new revenue bases. Moreover, the retooling necessary to put pay-TV in place would open up other home services.

Popular history has tended to exaggerate the early opposition between the minister and Commission. The CRTC's rejection of pay-TV in 1975 was in no way categorical. Consideration of pay-TV was left open on a case by case basis where applicants could demonstrate that they offered no threat to the advertising-supported system. Second, while the minister was perceived to place greater emphasis on the consideration of consumer preference and commercialism in a new system, this was not at the expense of the overall statutory objectives. Finally, since Mme. Sauvé was at the beginning of her tenure, it was often assumed that her remarks implied a derogation of the Commission's authority. Sauvé's reference to responsibility for the structural development of the Canadian broadcasting system must be regarded in the context of an overall initiative to revise telecommunications legislation. Under a new Act, her directive power would be widened.

The minister requested that the Commission call for submissions about the development of a pay-TV agency and wrote her provincial counterparts in this regard. Within thirty days, the Commission had issued another call for applications.

In 1977, the Commission attended the third federal-provincial conference of communications ministers in Edmonton to brief them on the nature of the applications. Most applications continued to be deficient in concrete details about the structure and economics of pay-TV, particularly in their lack of concern about fragmentation effects, siphoning or the need to fulfill the mandate in the Broadcasting Act to build national and regional identities. Nor did proposals contain provisions for ameliorating the disparities in services between urban and rural markets. The Commission called for further clarification and held a public hearing.

Its subsequent report in March of 1978 begins with an outline of the ideology underpinning the electronic railroad since the 1920s. Significantly,

it did not address either the question of provincial claims to jurisdiction or to collaboration in national policy-making. In the provincial view, the report represented the old "Ottawa-centred" bureaucratic tone associated with the CRTC. The Commission decided once again that it was not possible to recommend the introduction of pay-TV at that time. Unlike the 1975 precedent, the Commission did not adduce the disruptive effects on system equilibrium. The criterion of public demand was found not to be sufficiently compelling. However, the Commission was cognizant that industry pressures at home and at the border would not abate and underlined the need for government departments and agencies to plan a national policy.⁶² The Commission also stated a reluctance to proceed with introduction of pay-TV on the basis of promise of performance alone and again called for test projects to aid in evaluation.

In a move startling to proponents of public broadcasting, the Commission rejected a crown pay-TV agency since it carried no intrinsic merit as a preferred form to achieve national policy objectives. At the time, the Commission favoured a single monopoly national network because of economics of scale in production for both official languages, distribution and marketing. A monopoly would avoid the kind of competitive bidding which would drive up the costs of American programs that was emerging as a problem between independent stations and networks.⁶³

The chief deficiency of most applications continued to be the failure to fulfill the statutory requirement to be predominantly Canadian in character or content. The Canadian Council of Filmmakers was noted for its "compelling contribution" in this regard, but with a key caveat. Their proposal was for a monopoly pay system which would be added to cable systems for a flat fee for all subscribers, a percentage to be devoted to production. The Commission noted that this universal system of marketing was "not really a form of pay-TV in that it was not optional" and called for parliamentary instruction, since it could be considered a mandatory tax. Earlier plans to pass a regulation to divert a proportion of cable revenues into productions for local communities had similarly been abandoned as beyond the powers of the Commission.⁶⁴

The minister acted on the Commission's *Pay-TV Report* of 1978 and undertook bilateral discussions with the provinces about pay-TV in 1977 and 1978. She also commissioned a study by consultants at the University of Western Ontario on an econometric model for the introduction of pay-TV. By no means a definitive market assessment, the findings were nonetheless used to begin constructing a model which was called the National Electric Theatre. The model featured monopoly control of acquisition and distribution of programs from the centre. Canadian content quotas and pay-per-program marketing were favoured. The question of local exhibition was left open to delegation to the provinces.⁶⁵

Finally, the Clyne Commission was instructed to consider pay-TV at the same time as the item was raised in the Satellite Package Conference.

The Clyne report noted that evidence of demand was still not compelling. However, it recommended that:

- pay-TV be introduced when the pay-per-program technology was developed;
- be Canadian owned (unlike the first experiment in Etobicoke);
- have content quotas appropriate to it; and
- have a levy of profits to be set by the CRTC which would be invested in production.⁶⁶

In addition, a general review of the CBC would consider the reservation of cable channels for public pay-TV.

The impact of the Clyne Report on the pay-TV issue was negligible. The Department's satellite package conference did not discuss any model for pay-TV. Although the minister was quoted in the press saying that any satellite package must include pay-TV, the report was erroneous. It caused "not unexpected" consternation among the industries for the minister to be saying one thing and her officials another. It was clear that the federal priority was on the extension of basic services. Pay-TV was to be included in the package sometime downstream, but definitely as the last tier of service. The possibility of a cross-subsidy was raised but was inconclusive. Nonetheless, the "link" was sufficiently ambiguous to cause widespread perception that the federal government believed pay-TV was linked to the extension of services to ensure more equitable provision of programming.⁶⁷

At the end of 1978, the survey of the performance of the system revealed several unintended consequences of the quota system. First, quality was not taken into account, so private production tended to the less expensive categories of information or variety entertainment. There was little or no production of drama by the private sector. Because of the cost benefits to vertical integration of both public and private networks, most production was concentrated in Toronto and Montreal. Second, exhibition quotas did not account for those periods of peak audience viewing.

After a review of the public and private networks, the Commission concluded that:

the Canadian system has become the northern exposure of the U.S. commercial television system. The wider choice of American programming available via cable is a disruption of the natural order for the CBC.⁶⁸

Fully two-thirds of all television programming available to English Canadians was not produced in Canada.

Furthermore,

satellite distribution of television signals will serve to accentuate the basic paradox in the Canadian broadcasting system.

The effect of the language barrier in forestalling this progressive Americanization of audience tastes would "only be temporary." Clearly, the performance of the Canadian broadcasting system was not meeting the objectives of the Act.⁶⁹ Evidence suggested that audiences for Canadian stations were declining, and competitive bidding among Canadian independents and networks had inflated the cost of acquiring foreign programs. Yet a study conducted for the Economic Council of Canada revealed that private broadcasters and cable operators enjoyed "supernormal profits."⁷⁰

In the '79 national network license renewals, the Commission advised the CBC to repatriate its prime-time schedule. The CTV's decision stated that the priority of the next decade was on the development of entertainment programming, and placed a condition on the license which required the network to produce a quota.⁷¹ Finally, the Commission launched a public review of its Canadian content quota. In an effort to divert some of these profits and revenues paid for foreign measures acquisitions, various measures had been proposed. These ranged from an across-the-board tax on foreign program acquisitions, to a levy on cable revenues, to complex copyright laws which would compensate Canadian broadcasters for the carriage of their programs on cable companies.⁷²

2.8 Federal-Provincial Bargaining

The pay-TV issue appeared as a recurring item on federal-provincial agendas since 1975, when the provinces were critical of the CRTC's "pre-emptive strike" in dismissing the new service before the Minister's meeting at the height of the cable war.⁷³ Moreover, the Commission's interest in purely local urban pay-TV undertakings as one option in market structure proposed in their 1975 report was construed as an intrusion into a legitimate area of provincial jurisdiction. The early provincial strategy subsumed pay-TV under the demand to regulate cable systems within the province. The issues became untied and defined in terms of closed circuit systems, which included pay-TV and other information services, after the Supreme Court precedents.⁷⁴ Only the Manitoba-Canada agreement formally ceded pay-TV to the federal government because of its content aspects, in exchange for provincial jurisdiction over cable carriage. This position was categorically rejected by Quebec and eventually by all other provinces. At the Edmonton conference in 1977, which Quebec boycotted, pay-TV was overshadowed by reforms to the new Telecommunications Act and cable delegation. Saskatchewan announced that it was formulating its own approaches to

pay-TV and took exception to the catholic interpretation of programming in the second draft of Bill C-43 on telecommunications, which could be read to include pay-TV.⁷⁵

A working group of officials on pay-TV was subsequently created which issued its final report prior to the Charlottetown meeting of ministers in 1978. The report contended that introduction on a national scale should, subject to technical and economic limitations, effect a relatively equal level of service with national, regional and local relevance. The statement of common objectives recognized the need to encompass what the CRTC's report had ignored: provincial policy interests, regional participation, and provincial licensing of local exhibitors. While recognizing that pay-TV should foster Canadian expression, it must also offer greater choice to Canadian viewers.⁷⁶ The working group's report did not consider the structure or administration of pay-TV agencies. Provincial officials noted that several models were under consideration at the time, although these were preliminary. One was the "Ontario" competitive model, another the federal monopoly and a third contained the possibility of multiple exhibitors. None of these models was logically categorical. The Commission's call for more planning was justified.

During 1977, the provinces began to divide into three strategic camps, although maintaining a united front on the jurisdictional issue. Saskatchewan and Quebec took a lead in promulgating legislation to introduce pay-TV, although the provinces were informed by very different ideologies. British Columbia also shared a strong assertion of provincial jurisdiction, although not yet with enabling legislation. The moderates, or system planners were Alberta and Ontario. The "doves" were Nova Scotia and Newfoundland who were dubious about the prospect of achieving the extension of pay-TV at reasonable rates. Although other provinces made no statement on pay-TV policy, only Manitoba was prepared to exclude it in administrative delegation.

The Saskatchewan government created a closed circuit and intra-provincial pay-TV operation by the end of 1977. The initiative reflected that government's exception to the "one big scheme" approach to national policy which left regional needs unanswered. National policies must "embody a synthesis of regional goals."⁷⁷ Pay-TV was neither in principle nor in fact (based on the U.S. experience) a single monolithic entity, nor was it in the public interest to introduce it as a single national monopoly. A federal presence was warranted in network arrangements and for extra-provincial aspects, but coordination with the provinces was essential.

The primary logic behind Saskatchewan's introduction of its pay-TV operation was to protect the integrity of the provincial telephone system. The principals of the new company, the Cooperative Planning Network, had been unsuccessful in obtaining licenses in a dispute with the CRTC over

the cable hardware ownership policy, despite the backing of the provincial government. The operation went into direct competition with the private cable companies which had been licensed by the Commission, but soon went bankrupt.⁷⁸ A second company, Teletheatre, was a consortium of community, private and crown investors, created in January of 1980 to serve Regina, Saskatoon and Moose Jaw. Although the second statutory objective of the system was to promote more Canadian and Saskatchewan content, the company found it difficult to compete with Canadian networks and American pay-TV companies in the acquisition of programs. Premier Blakeney went on record saying that the system did not work well, because of its tenuous commercial viability and predominantly American programming. Moreover, he suggested "perhaps it was always doomed to failure." The value of Teletheatre, in the view of the provincial officials, was its experimental use at a time of uncertainty in the market and the regulatory milieu. It would be premature to use the case to justify any hypothesis that provincial control over pay-TV might result in the further fragmentation of the market and Americanization of content. The real lesson from the Saskatchewan experiment, according to federal officials, was that the Saskatchewan government had no option but to co-exist with national planning in later events.

Quebec promulgated regulations but refrained from creating a provincial pay-TV operation in the period between 1977 and 1978. The regulations were animated by the philosophy that Quebec must be the master craftsman of its political and cultural destiny.⁷⁹ The Quebec model which was developed after a task force study, was predicated upon a monopoly as is its federal counterpart, but chose a public non-profit corporation. Licenses for pay operations were to be granted by la Régie des services publiques. Only those areas where at least two basic cable radio or TV services were already provided would be considered for pay-TV. The objectives of Quebec's system of pay-TV were: to provide access to the various elements of society, serve the public interest, favour the expansion of Quebec business, be self-financing, and protect Quebec's identity. To guarantee the latter objective, the Quebec policy made the same provision for ownership and control of pay-TV undertakings as was made for broadcasting in federal legislation. It also provided for a "Quebec content quota" of fifty per cent which would be phased in over a period of time, and which was adjusted to take into account hours of scheduling. As well, the Lieutenant-Governor-in-Council would set from year to year a fixed amount of revenues which would be ploughed into Quebec production. A ceiling of 30 per cent was put on the amount of government "seed money" in productions. After passing the legislation, the government did not proceed any further. Neither did it receive pay-TV applications from any party.

British Columbia contended that provinces should exercise jurisdiction over the operation of pay-TV within the province and should have an

effective role in the regulation of a national agency when introduced. Where national services were provided under a monopoly, the provision should be subject to regulation in accordance with provincial standards. British Columbia favoured a degree of competition and reasonable rates. Benefits must accrue to the British Columbia economy and reflect the British Columbia lifestyle.⁸⁰

Among the system planners, Alberta embarked on a review of all non-broadcast undertakings and was awaiting its completion in the fall of 1980. Ontario favoured a flexible, competitive market system and criticized the CRTC's report of 1978 because not one of the objectives for a new system set out the interests of the consumer. Despite the fact that Ontario used its Motion Pictures Theatre legislation in 1975 to license an apartment closed circuit operation, All-View, Ontario was the most predisposed to cooperation in national planning. In particular, Ontario believed it would be "an error to see pay-TV as a potential solution for problems confronting the whole system," and opposed regulation of cultural sovereignty by fiat.⁸¹

The subsequent discussion at the Charlottetown conference of communications ministers in March of 1978 was inconclusive. British Columbia, Alberta, Saskatchewan, Quebec and Ontario all asserted that the jurisdiction question should be settled before further planning and claimed that closed circuit operations had not been addressed in the Supreme Court precedents. The communique observed these differences on the need for the introduction of pay-TV and the absence of consensus on jurisdiction. Certain provinces stated they would continue to develop and implement pay-TV policies on their own. The federal position was that planning was primarily a functional proposition regarding the impact on the system, which would occur at either level of jurisdiction. Mme. Sauvé won agreement from the provinces to develop a model for the introduction of pay-TV in conjunction with those who so chose. The minister later commented to the House of Commons' Standing Committee on Broadcasting that she was:

most encouraged, not only by the consensus reached at Charlottetown but by the new spirit of cooperation which now marks federal-provincial relations.⁸²

Her understanding of the process was that her department would develop a model and then return to consult with the provinces on a bilateral basis. No follow-up consultation on the NET model was conducted however. Ontario's minister stated that provinces, like the territories, were consigned to commenting after the design was finished.

The puzzle is why there was delay in implementing provincial pay-TV operations after the assertiveness at the federal and provincial meetings of 1977 and 1978. The simple answer is that pay-TV was not a priority. By February of 1979, pay-TV was pre-empted on the constitutional agenda at the First Ministers' Conference. The federal position would have allowed

the delegation of the power to cable within the province, including the reception and redistribution of signals, while maintaining federal paramountcy over Canadian content and broadcast services. The agreement was not endorsed by Alberta or Quebec and dissolved after the change of federal governments. As well, more than half of the provinces changed ministers responsible for communications which proved particularly significant for the direction of British Columbia and Newfoundland's policy in the next group of ministerial meetings. The uncertainty of the regulatory environment was not conducive to innovative applications from the industry at either federal or provincial levels. Saskatchewan's Teletheatre did not provide a healthy advertisement for commercial viability. The industry was not certain of the rules of the game and reluctant to incur the costs of double regulation experienced in the cable war in Quebec. Finally, all governments—federal, Saskatchewan and Quebec—seemed to have implicit criteria that pay-TV would not be permitted into an area until the extension of "basic services" was completed.

2.9 Policy Options: Pay-TV

It is apparent from the discussion on public record that little progress had been made on the substance of a plan for introducing pay-TV. All government departments accepted however that pay-TV was inevitable.

The first question to be resolved was whether the appropriate vehicle was a public or private corporation. The strongest position on this was Quebec's "master craftsman ideology." Saskatchewan chose a mixed consortium. Both featured strong provisions for ongoing political control by appointments of department/regulatory officials to the board, and in the Quebec case, ongoing directive powers. The CRTC, by contrast, appeared to favour the private sector. No consensus emerged over the best method of financing, whether universal, or discretionary by channel or program. Significantly, Quebec's election of a public non-profit corporation was not predicated on any universal levy. The Commission clearly called for advice from the government. Yet the Liberal administration reached only the preliminary phase of planning, which is evident from the satellite package conference, and put a premium on consultation with industry, not provinces.

The second question to be resolved was whether pay-TV should be introduced as a monopoly. The minister, Commission and Department employed a "systems engineering" approach, which favoured a monopoly for reasons of cultural identity and economies of scale. The minister, the Department's NET model, the CRTC, and Quebec's model shared a similar ideological imperative. Only Ontario and Saskatchewan did not.

There were delicate divergences in the conception of the social objectives

of a pay-TV system. The **Provincial Working Group Report** did not use the rhetoric of the **Broadcasting Act** which emphasized production of predominantly Canadian and quality programs. Regional and provincial expression received a higher emphasis. The federal minister and the Ontario government appeared to favour responsiveness to individual preferences as coordinate with, if not superior to, the collective public interest. In Ontario's case, this responsiveness implied a competitive structure. As well, an awareness that the present Canadian content quota system was inadequate was apparent. In the federal and Quebec view, it needed to be buttressed by quotas on revenue.

Finally, there appeared to be some disagreement over the social dividends of pay-TV: whether they should be turned to extension of basic services or production. This "link" to extension of services was only strongly supported by private industry concerns, however. The federal position on cross-subsidy between the issues appeared more speculative than real.

Essentially two alternatives were available to advance the planning process: to call for yet another hearing, or to proceed with legislation.

2.10 Status quo ante

Several factors combined to favour institutional innovation in Departmental and agency planning. First, the reversal of the Telesat-TCTS decision placed the Commission in an uncertain milieu. The Thunder Bay precedent had stated that the economics of satellites required a national plan. The CBC license renewal in 1978 had declared a moratorium on the extension of further services to the North until there was an adequate first service catering to native peoples. The Commission had issued a general call for collaboration on policy for native broadcasting. Finally, in pay-TV, the Commission had called upon the political realm to generate policy alternatives and instruct it on the universal model. The Commission, said one official, "was a regulatory agency that with a caretaker chairman, and passing of the guard, was in search of a direction the Liberals refused to provide."

The CRTC was also pre-disposed to avoid the decision costs of the cable era by innovative mechanisms of regulatory collaboration. The federal government had reached an agreement on cable delegation. But even that was not sufficient to change the overall tenor of federal-provincial relations. The federal image among the provinces was negative, especially with the Commission's announced intent to regulate non-programming or non-broadcast services which was unanimously considered to be beyond its authority. Despite cooperation with the provinces in planning satellite experiments, the Satellite Package Conference and the generation of the NET model were perceived to be negative precedents. In the view of provin-

cial officials, provinces were irrelevant to the process until the MacDonald era.

Furthermore, while several policy options were emerging, the economic and regulatory implications were still unclear. Aware of a "race against time" before the inexorable American programming machine, everywhere actors seemed "defeated by the institutional, legal and economic complexity of the thing," said one federal official.

3 Creation of the Committee

This chapter examines how the Conservative Government undertook to break the regulatory logjam during its tenure from June of 1979 to February 22, 1980. What were the federal and provincial objectives for the development of Canadian satellite-TV? Why were two antithetical sets of issues—extension of basic services and pay-TV—linked? Finally, what criteria were used to select the Committee on Extension of Services?

3.1 The Conservative Administration

The Conservative Government took office on June 4, 1979. In a realignment of government departments, the Honourable David MacDonald (Egmont, P.E.I.) was made responsible both for Communications and the Secretary of State. The separation of the departments had accounted at least partly for the rivalry between cultural and industrial objectives during the Liberal administration.

Identified as one of the most influential ministers of Clark's inner cabinet, MacDonald chaired the Committee on Social and Native Affairs and was slated to become the head of the new super-ministry for social development. The high priority placed on new telecommunications legislation by Cabinet was evident when the selection of John Meisel as new Chairman of the CRTC prevailed despite some cabinet and industry opposition.¹ Furthermore, the combination of MacDonald and Yukon MP Eric Nielson as Minister of Public Works was widely regarded as promising that the Conservative Cabinet would be more sympathetic to northern interests than its Liberal predecessors.²

MacDonald shared Clark's vision of Canada as a "community of communities," all of which needed unique forms of expression. As a member of the "red tory" wing of the party, he was predisposed to a cultural nationalism which, in the words of one official:

was not a wholesale federal surrender (of the National Broadcast Policy) but a search for a more just and equitable balance in the flow and content of the broadcasting system.

The new minister went on record as preferring concurrency in matters of cultural sovereignty.³ During his short tenure, MacDonald chaired three federal-provincial conferences on matters within his responsibility. Cabinet's emphasis on improving federal-provincial relations was soon tempered by a growing realization that this was more easily desired than done.

3.1.1 Milieu

MacDonald toured the provinces with his senior officials shortly after taking office. At the time, the most important item in the provinces' view was the CNCP-Interconnect decision of the CRTC, although satellites and pay-TV were also discussed.⁴ Ontario, British Columbia and Nova Scotia pressed to have satellite policy included on the agenda for the next federal-provincial conference. As joint sponsor of the meeting, Ontario prepared alternatives to the federal policy statements on most agenda items.

The federal perception was that for the first time there was evidence of a "complete turnaround" in provincial attitudes. The extension issue had become more important than pay-TV because of its greater salience in the constituencies. The outcome of the tour was a certain optimism that the next meeting would embark on a renewed era of cooperative federalism because of a combination of new political actors and the federal determination to "break the logjam." In broadcast matters, the acid test would be the minister's stance on cable delegation.

There was a palpable sense among industry officials that jurisdiction might be "up for grabs." For the first time industry groups prepared positions on reform to federal institutions to present to all ministers when they met in Toronto on October 16, 1979. The Canadian Association of Broadcasters (CAB) favoured continued federal paramountcy over cable and broadcast undertakings and a restructured CRTC with provincial appointments. The proposal was silent on whether appointments to the CRTC should be made by the provinces, but the final decision would be retained by the Executive Committee.⁵ The CAB felt that hearings on local and provincial issues could be decentralized. The Association also presented its position on the use of satellites by broadcasters. They criticized Telesat's rate structure, particularly the earth station ownership policy which prevented broadcasters from owning dishes to uplink or transmit a signal. Their proposed package featured private services and pay-TV, flexible rates from Telesat, and a user pay system.

The Canadian Cable Television Association did not prepare a formal brief for the Toronto conference, but did attend as an observer. The Association favoured continued federal jurisdiction, although divisions appeared to be developing within the industry. The CCTA was aware that all governments wished to avoid two-tier regulation. Yet any provincial argument that regulators should be "closer to the people" logically led to regulation by the municipalities. After the Toronto conference, the CCTA decided to discuss delegation at its annual conference in May 1980.

3.2 Developing the Position

While in opposition, MacDonald had been responsible for cultural matters. Before taking office, his questions in the House and before the Standing Committee had not been particularly critical of Mme. Sauvé's policy on extension or pay-TV. Unlike many of his colleagues, MacDonald retained his predecessor's senior officials in the Department of Communications.

MacDonald's overriding objective was to make Canadian programming more available and popular to Canadian audiences over time.⁶

To stimulate production MacDonald:

- formed an advisory Committee, chaired by Louis Applebaum, to prepare a blue paper on cultural policy to be considered by a joint parliamentary committee;
- requested that the Commission accelerate its Canadian content review;
- began to co-ordinate several interdepartmental committees to consider incentives and small business loans for independent producers; and
- called upon the CBC to clarify its policies on independent productions.

MacDonald's program thus departed from two recommendations of the Clyne Committee. The review of the CBC was made more comprehensive and the delay on pay-TV was rejected.

At the beginning of October the minister announced that he was considering the Liberal NET model for pay-TV. This was the first early warning to some provincial officials that the minister "had been sold a bill of goods" by his senior advisors and that his concern about cultural sovereignty predisposed him to this position.⁷ Subsequently, MacDonald created a task force to identify new markets and expand the production industry in Atlantic Canada. The report of the task force recommended a provincial non-profit pay-TV system analogous to the CTV corporate structure but

was not completed until well after the Liberals returned to power.⁸ While a significant departure from the NET model, the provincial pay-model was predicated on the same assumption of a monopoly market structure.

On extension of services, MacDonald had his department begin a plan for native broadcasting and requested a clarification of the CBC's intent.

3.2.1 Choice of the CRTC

The first choice that confronted MacDonald was which vehicle to use to resolve the policy deadlock.

At the end of MacDonald's first month in office, the Commission issued its Thunder Bay decision on the extension of services. Outgoing CRTC Chairman Pierre Camu announced at a general planning meeting of the Executive Committee with the cable industry that a fall hearing was "likely" on both the satellites and pay-TV.⁹ According to industry representatives, the Executive Committee seemed to treat pay-TV as the "carrot" to induce the cable industry to take risks for establishing a satellite-cable network to remote areas. The CRTC stressed that it had not yet received any acceptable proposal on extension. Indeed, informal planning meetings between new consortia applicants, the CRTC Executive Committee, MacDonald and Nielson began in the fall. But, in the summer of 1979, the CRTC had not changed its view that the introduction of pay-TV was premature. The Commission's consideration of the topic was motivated by its concern with the statutory objective to extend services. Nonetheless, the arrival of a new majority of members on the Executive Committee promised room for movement on the pay issue.¹⁰

MacDonald was well aware of the liabilities which the Commission's image posed. Provinces continued to regard the Commission as an "agency out of control" and were hostile to its plans, announced the previous year, to hear applications for non-broadcast services. Popular antipathy to the Commission's extension of francophone services to the West was legendary. Alleged regional imbalance in appointments to the Executive Committee and the perceived restriction of hearings to the central provinces were causes for complaint. Moreover, Quebec did not recognize the Commission's regulatory authority in broadcast matters and refused to participate in any hearings. It was important that extension of services via satellite would not repeat the mistakes of the cable era.

But to use another vehicle whether it be a task force, Royal Commission or parliamentary committee—would run the risk of further eroding, possibly beyond repair, the Commission's legitimacy. The choice was whether to eliminate or refurbish the CRTC. The Clyne Committee was a precedent for going outside the CRTC for advice but it was not a positive one. The Commission offered the advantages of specialized expertise and

the capacity to hear provincial government representations which a parliamentary committee would not have. The new administration saw a good chance to rehabilitate the Commission by making appointments to key positions on the Executive Committee. The Conservative Party was ideologically disposed to favour the Commission's internationally recognized record in the open, democratic hearing process.¹¹ In the absence of other concrete suggestions which satisfied democratic, economic and cultural concerns, the minister decided to use the CRTC. The purpose of any hearing was to re-establish the credibility of the Commission with the provinces, particularly in the West, and enhance its collaborative role.

3.2.2 The Two-Phase Concept

The second choice was whether to conduct a general inquiry or to proceed directly to licensing or legislation. Opposition to the two-phased process as an unacceptable "dilatory" measure was widespread among the cable industry, new entrepreneurs in a race against the cable sector, and Telesat. Even the President of the CBC, A.W. Johnson, who had favoured a moratorium on pay-TV until Canadian programming had a chance to catch up (in part, through a second public network), recognized that the date for introduction was fast approaching because of competition from U.S. pay-TV operations off satellite or over-the-air at the border.¹²

MacDonald also accepted that the introduction of pay-TV was now necessary. The two-phased approach was not to imply any repetition of 1976-1978; when the Commission was asked to consider pay-TV only to reject it:

I want to make it clear that is not the context . . . of the hearings that the CRTC is going to hold . . . These are going to be hearings for concrete proposals . . . (that) move very directly into licensing.¹³

Cognizant of the need to proceed quickly, the government proposed a stringent time limit to parallel the introduction of the telecommunications bill in the Commons.

Several factors favoured a general inquiry. First, the minister felt that he could not act to set up a pay-TV agency without the support of the provinces. The two-phase approach afforded an opportunity for direct provincial involvement. The minister made it clear that:

(T)he price of four to six months for a . . . game plan was not serious to ensure a fully cooperative process with the province.

The speculation among provincial and industry officials was that the Liberal government would not have delayed the licensing phase. Certain

remarks from Mme. Sauvé in her capacity as opposition critic are instructive . . . :

(I)t is too late to buy time. Something has to be done . . . we cannot go on . . . saying, well the provinces are divided . . . so wait until they come to a consensus. They will not. We have to exercise leadership . . . if we do not move quickly [in pay-TV] we will lose the battle.

MacDonald replied:

Your implication is that if we move quickly, we can do so on a monolithic basis. That is a kind of federalism we reject.

Second, it was clear that the Progressive Conservative administration saw the two issues in the context of an overall strategy on culture and content. It made sense to buy some time until preliminary deliberations from the blue paper and Canadian content review were in. In the words of one broadcaster, both policy-makers and regulators needed "one big crash course" because of the changeover at the senior decision level.

3.2.3 Linking the Issues

The third choice was whether to separate or link the issues. Logically, they raise two different sets of policy questions. They are different classes of services—one conventional and universal, the other optional and a luxury. They service two separate constituencies: northern, remote residents with little choice, and southern, urban residents with a multitude of media choices. They share only the mode of delivery which necessitates setting priority over the allocation of space on satellites. The scarcity of channel space was complicated by the CBC's reservations for its proposed second network. The CBC was under fire from private entrepreneurs for its alleged intent "to introduce pay-TV through the back door." As well, since the Satellite Package Conference, the possibility of a cross subsidy was sufficiently widespread to merit further inquiry.

Accordingly, the minister proposed a four-part policy process. First, federal and provincial governments would generate a set of guidelines on satellites and pay-TV to aid the Commission. The Commission would then receive submissions of intent for extension of services and pay-TV in a general issue hearing. The findings would be discussed and revised by all governments to assist the Commission in developing criteria for the next phase. Finally, the Commission would undertake licensing hearings. The concept received Cabinet approval for presentation to provincial ministers without delay.

3.3 Toronto Conference

The fifth conference of federal and provincial communications ministers was held in Toronto in October of 1979. Fully seven out of the eleven governments were represented by new ministers. As a reflection of the heightened interest in a new dimension of powers, six provinces sent staff from central agencies on intergovernmental relations.¹⁴

The federal minister lost his first motion to conduct an open meeting. He exhorted his colleagues to set aside "pathological" concerns about jurisdiction.

The provinces took exception to the preliminary draft of the **Telecommunications Bill**, adopted with minor modifications from the Liberals, since it did not contain a provision for the delegation of cable regulation to the provinces. Provincial officials expressed "surprise" that in the ensuing discussion, MacDonald's position on delegation was not more favourable to the provinces. All ministers agreed to set up a working group to study appropriate mechanisms for delegation to report to ministers within six months. Despite this obvious "carrot" to induce provincial co-operation with overall federal objectives, there was no consensus among provincial officials attending the Toronto conference on whether MacDonald had conceded the principle of delegation, predicated on a distinction between matters respecting content and carriage.¹⁵ Certainly, MacDonald was perceived to be inadequately briefed on the nature of the agreement among all first ministers except Quebec and Alberta in February of 1979. There are two probable explanations. First, it is likely that the Conservative position was simply unformed since telecommunications had not received their attention while in opposition. Proposed revisions to legislation were adopted with very minor modifications from the Liberals. Second, the briefing may have fallen between the cracks of a rivalry between senior officials from central agencies and line departments.

The other outcome of the Toronto conference was the acceptance of the policy guidelines prepared by the Working Group on Competition and Industry Structure. The consultation was endorsed and forwarded. Quebec joined the second round of the joint discussions, after the outcome of the CNCP interconnect decision. The co-chairman, James Snow of Ontario, contended that while not unanimous, the working group's report represented a "major step" in collaboration since for the first time all governments sought objectives to form a "useful common framework."¹⁶

In discussion of MacDonald's four-part-policy proposal to consider satellite TV, there was widespread opposition to the selection of the CRTC as the vehicle for policy-making and to further delay. Quebec held that policy questions should be addressed at the ministerial level only and demonstrated interest in political collaboration on pay-TV. Saskatchewan contended that the CRTC had an infamous reputation for neglecting the

hinterlands, and suggested a parliamentary committee. British Columbia and Ontario advocated direct licensing. Ontario felt pay-TV should be introduced in six months. British Columbia stated that what was needed was action, not another round of theorizing. Alberta was committed to await the outcome of its Public Utilities Board inquiry, and obviously did not think that pay-TV was of sufficient priority to proceed before the delivery of the PUB's report.

The federal minister defended the selection of the CRTC on the grounds that he was not asking the CRTC to make policy, but to interpret it. Provinces were to be guaranteed an effective role in policy guidance both before and after the Commission's inquiry. The process was seen to be an anticipation of a new role for the Commission with the strengthened power of ministerial directive in the revised **Telecommunications Bill**. Alternative vehicles would require too much time. The target for licensing would be one year.

The ministers agreed to delegate officials to develop a consensus position on the guidelines to be submitted to ministers for their individual approval. It was left up to MacDonald's discretion whether to use the Commission. Despite provincial hostility towards the CRTC, MacDonald was given the benefit of the doubt in the honeymoon period of his administration. Officials recognized the educational value of the two-phase approach at both political and regulatory levels. As well, the minister benefitted from the weight of party since it is clear that Ontario exerted its prerogative in the chair to swing the meeting. The safeguard of the provincial right to reply after the CRTC's inquiry also softened opposition. Collaboration on the broad policy guidelines was built on the precedents of the working groups which had yet to be discredited.¹⁷ Given the degree of antagonism "bordering on irrationality" among provinces towards the CRTC, according to a federal official, the outcome was as positive as one could expect.

3.4 The Guidelines Exercises

The officials of all governments met in Ottawa on November 8 and 9, 1979, to review the federal guidelines on satellite distribution and pay-TV. They were "locked up" for a day and a half to come up with a consensus.

The federal officials were under instruction to "forward the process at all reasonable cost." In the words of one federal official:

We were prepared to put a considerable amount of water in our wine to accommodate the provinces so that this would remain as it had originally been conceived; as an example of federal-provincial regulatory cooperation.

The clear federal intent in the guidelines exercise was to give a "sense" of direction to the Commission, to "trigger" the process. While aware that in a narrow sense the Commission would consider them as one of dozens of elements in the public meetings, and that the public inquiry might well develop a momentum of its own, the guidelines were to assist in "developing the terms of reference for the public hearing." The provincial goal was less to prescribe policy alternatives than to prevent options from being foreclosed. Provincial officials enjoyed the unprecedented flexibility in the federal position.

A clear part of the understanding among all officials was the right to comment on the CRTC's report, which would reconsider the guidelines in order to develop joint criteria to assist the licensing phase. All participants were aware that they were going to the limits of what could be done with the Commission. None knew the shape of the ultimate mechanism, or that the CRTC's panel would include provincial members. Nor were the officials at all sure how the Commission would treat the guidelines. Some provincial officials expressed a certain skepticism about how the CRTC had treated provincial government wishes in the past. Although all provincial representatives were aware that the guidelines were advisory, the fact that they represented nine out of eleven governments was felt to lend them significant weight. At the very least, the CRTC could not ignore them.

In general, all officials regarded the guidelines exercise as a positive one. The guidelines were necessarily general, a result of the attempt to deal with broad and difficult questions of policy. Given the benefit of hindsight, some officials conceded that the guidelines have become dated. But they continued to endorse the objectives for pay-TV throughout the four-part process.

3.4.1 Objectives and Guidelines for Pay-TV

The first agenda item proved to be the most contentious. The federal position was substantially altered; no longer did it use the language of a "single national system."¹⁸ The change was a result of solid provincial opposition to a single monopoly or CBC-like structure which had been implied in both the CRTC's 1978 report on pay-TV and the Department's NET model. The emphasis on a competitive industry structure in the provision of optional services reflected Ontario and British Columbia's position paper at Toronto, as well as the working group's report on competition and industry structure. It left room for concurrent jurisdiction. For the first time, the need for a framework to accommodate federal and provincial priorities was made explicit. The key proviso was that pay-TV should be distributed at equitable rates thus answering the Maritime's traditional concern with guarantees for universality of service.

The consensus guidelines adopted the principle that the new industry must ensure access at two levels: by program producers to distribution systems and distributors to cable systems for local exhibition. What was categorically rejected by the provinces was the idea of a federally-administered program production fund. The federal proposal that any surplus from a pay agency flow to a fund administered by the Canadian Film Development Corporation was omitted, despite the vague federal formula for distribution between federal and provincial authorities. There were two implications in this rejection. Ontario was opposed to any "negative control-oriented approach" or direct levy on profits and preferred a system of incentives.¹⁹ As well, the provinces were reluctant to enhance federal control over content or program production in this way. Significantly, the federal proposal did not make provisions for a joint TCTS type structure, in recognition of "real" concurrency, in the words of one provincial official.

The provinces argued for a more flexible interpretation of the Canadian content provision. They also expressed concern about the siphoning from traditional broadcasters and cinemas under provincial jurisdiction. As well, the definition of potential participants in any consortia was widened.

What sort of model for pay-TV emerged from the consensus process? Among the socio-cultural objectives the clear emphasis was responsiveness to consumer demand for choice, and for programs of wide audience appeal. This was seen to depart from the ideology of the **Broadcasting Act** where repeated reference to programs of "high quality" were seen to imply an idealistic or elitist interpretation by regulators. The objectives also provided for service in both official languages and regional balance in production and distribution.

In market structure, the guidelines stipulated that the system must evolve into a competitive one. They did not specify whether introduction should be sequential, although the majority of provincial officials was opposed to this approach.

No direction was given on the system of marketing. Significantly, reference to a universal system was omitted in both federal and provincial positions, despite the Commission's call for instruction in its report of 1978. Among government officials, the public service principle implied in any universal service, but not exclusive to it, had already been lost. According to consumer groups, what remained was a rearguard defense on the Commission's general inquiry.

Debate on certain questions important to any recipe for introduction of pay—the level of jurisdiction over licensing of local exhibitors; or whether the consortia approach should be profit-making or not—was inconclusive.

The guidelines were not without ambiguity. However, they were seen by provincial officials to be compatible with the future exercise of provincial jurisdiction and emphasized that provinces were players in the planning and

implementation process; that the systems must maximize choice; and that regional production must be enhanced. The key departures from the federal government's early modeling were on the monopoly market structure and levy on pay-TV profits. On the other hand, the guidelines offered little assistance in resolving the tension between the dictates of the market and the protection of Canadian production by region or by language. Jurisdictional disputes were tacitly set aside for resolution at a later stage. There was no doubt that federal officials would have preferred longer debate on the monopoly-regional question at the heart of the economics of pay-TV. The bottom line was that they retained the national system despite the perceived pressure from some provinces to see only provincially-regulated systems. The federal position did not compromise on the principles that pay-TV would be available throughout Canada in two official languages to complement, not supplant, the conventional broadcasting system, and to assist independent production.

3.4.2 Objectives and Guidelines for Satellite Distribution

The second item for discussion was less contentious.²⁰ There were three position papers on satellite distribution and consultations prior to the meeting among officials from Ontario, Saskatchewan, British Columbia and Nova Scotia.

At Toronto, all provinces opposed the cross subsidy of "basic floor" services by luxury or optional services in the working group's **Report on Competition and Industry Structure**. In addition, Quebec, Ontario and British Columbia opposed the "artificial" linkages between extension and pay-TV as yet another series of "centralized solutions."²¹ The basic problem was Telesat's rate structure, which was set by the common carriers to protect their investment. The partial liberalization of earth station policy had not worked. With reasonable rates, the problems of the under-use of Canadian satellites and unauthorized reception of signals would be alleviated. British Columbia further maintained that the Telesat and Canada-U.S. agreements would have to be re-negotiated to make legal "what the laws of physics already allowed."

The fundamental provincial criticism of the federal draft guidelines was thus the "one package" approach. They argued that there should be no single approach to the configuration of service, method of transmission, or definition of the area to be served. Accordingly, a minimum level of service was not defined. Extension was not to be restricted to northern and remote areas.

The consensus emphasized viewer preferences of rejecting what provincial officials termed any "old-Juneau style of cultural nationalism," "Fortress Canada" or a "central systems engineering" approach apparent in

the Satellite Package Conference and Report from the Clyne Committee. The reformulated view was compatible with the Ontario's strategy and the working group **Report on Competition and Industry Structure**.

Moreover, while the provinces endorsed the need to increase satellite use, satellites were treated as just one of several modes of delivery. In the words of one official, the object "was to erase any idea that the provinces would have to subsidize the federal lead in satellite technology" by being obliged to participate in any one package approach.

Significantly, any reference to the **Broadcasting Act** contained in the federal draft was omitted, because of its anachronistic definition of radio-communication. Exclusive federal jurisdiction over satellite services was not assumed, as provincial officials were to underline in later constitutional talks.

The principle of equalization between urban and rural users was accepted. However, the consensus draft categorically rejected the federal suggestion to have pay-TV subsidize less popular services. Provinces argued that each government should have a role in deciding the definition of basic services for local needs. Curiously, the provinces' consensus guidelines omitted the territorial governments which had been contained in the federal draft—"a typical oversight," stated one territorial official. As a result of objections from two provinces, the consensus version reduced emphasis on the cultural needs of native peoples and omitted reference to financial support for independent northern and native programming capability and access to delivery systems.

Finally, while prepared to accept that the total satellite-delivered service made available to the viewer should be predominantly Canadian, the consensus view was that the reception of U.S. satellite signals, or the importation and distribution of foreign signals, should be a part of the package, subject to established regulatory and licensing procedures.

3.4.3 Grounds for Reservation

Neither Quebec nor British Columbia endorsed the consensus guidelines. Quebec argued that policy deliberations should be at the ministerial level, and felt it had been accepted in Toronto that the guidelines would be submitted to ministers for consideration and decision. Participation in any broadcasting hearing by the CRTC would be tantamount to a surrender of Quebec's jurisdiction over communications. Quebec dissociated itself from the exercise and sent independent guidelines to the minister. Apparently, the differences between the two sets of guidelines were not substantial and certainly not significant enough to warrant refusal to reconsider the consensus draft in the recent working group set up to harmonize approaches to pay. The Quebec position was that it had jurisdiction over pay-TV, but

recognized room for concurrency. Moreover, it continued to participate in joint planning forums.

British Columbia also objected to the exercise on the basis that pay-TV was not under federal jurisdiction. The province opposed any concept of an artificial package of services protected on satellite and favoured the free reception of U.S. signals for individual use.

3.5 Commission Response

The release of the statement on extension of services which arose from the Thunder Bay hearings had disclosed the need for a comprehensive strategy for satellites, but the Department's March conference had been inconclusive. The Commission thus decided independently that a general policy hearing was necessary. The next decision was whether to integrate the regulatory process with the political one as MacDonald proposed. Given that the Commission was in a holding pattern due to the imminent departure of its Chairman and the majority of Executive Committee members, "prudence dictated cooperation," in the words of one federal official.

The acting Chairman, Charles Dalfen, agreed to the minister's four-part policy process with several caveats. He made it clear that the guidelines would supplement, not supplant, consideration of the "proposals of intent" in the public meetings.²² The Committee's primary terms of reference were to advise how best and expeditiously to increase the number and variety of television services to northern and remote communities. The issues of satellite distribution and pay-TV were "naturally expected to arise in that process," but were clearly auxiliary in status. Dalfen also recognized the minister's intent to revise the guidelines after the Committee's report, and asked that any revisions be introduced in a timely manner so they could be "fully discussed" in the second phase. The conduct of that second licensing phase, or phases, was deliberately left open.

The final decision facing the Commission was whether to include provincial nominees on any delegated Committee. The concept did not originate from the political realm, nor was it new to Commission practice. The Thunder Bay hearing, after all, had recognized that the provinces were key players in the planning and delivery of services to remote areas.

3.5.1 Precedents in Regulatory Sharing

The power to delegate to special committees under the *National Transportation Act* has been twice used by the CRTC: first to set up a Committee of Inquiry into the procedures for revenue settlement in dispute between the City of Prince Rupert and B.C. Telephone Company.²³ No public hearing

was conducted. The provinces of British Columbia and Ontario participated because of their interest in small independent telephone companies. Quebec declined. The Committee issued its unanimous advice in a public report. The Commission called for comments and issued a decision in 1979 which stated that it hoped that the Committee would serve as a model for "future cooperation between federal and provincial agencies in the telecommunications field." The officials surveyed for this study with knowledge of this precedent attributed the Committee's success to its narrow technical focus.

The second interregulatory Committee inquired into Trans Canada Telephone System's procedures for revenue settlement and was established in 1978. It included all the members of the TCTS, as well as British Columbia, Ontario and Quebec representatives. Chairmen of the Provincial Public Utilities Boards were asked to nominate a representative. In Saskatchewan, where there is no such independent regulatory body, the minister responsible for telephones complied. The TCTS Committee did not conduct a public hearing or issue a public report. The Consumers' Association of Canada protested the exclusion of the public. The Commission argued that the "interregulatory consultation process . . . [was] not a substitute but a preparation for a public hearing" and had to proceed as "quickly as possible."²⁴

The TCTS Committee encountered difficulties in monitoring the consultants' work. The provinces expected to prepare guidelines of the review of the consultant's work, and met on four occasions ending in October of 1979. The initial fact-finding was riddled with problems. First, the provinces submitted a list of questions for clarification which were to provide the basis of instruction to the consulting team. It is apparent the CRTC could not compel Bell or TCTS members to exchange the confidential documents required to answer these questions. As well, officials cited the inadequate preparation time afforded them in their efforts to "second-guess the complex mathematical profiles of the consultants." One province formally withdrew from the monitoring exercise. Several provinces did not participate in the subsequent phases of the inquiry.²⁵ Others contended that there was no "significant provincial input." The ultimate TCTS decision (81-13) was the central order of business at the sixth federal-provincial conference at Winnipeg in September of 1981. In the words of one official, the participation in the TCTS Interregulatory Committee was tantamount to "guilty by association" and contributed to a skepticism about future joint boards where the federal government retained the power of decision. The Western Premiers' commented:

Although the interregulatory Committee represents a mechanism whereby provincial and federal regulators can exchange information and perform other liaison functions, it is not entirely satis-

factory as a consultative forum out of which compatible regulatory policies and decision-making can emerge. The Committee is chaired by the federal agency and its functions are severely limited by terms of reference which are defined by that agency alone. It would be preferable to establish a more balanced consultative mechanism which could reflect provinces' legitimate policy and regulatory interests, as well as those of the federal government and its agencies.²⁶

When Pierre Camu made inquiries about continuing the liaison with the provinces, it was seen as an attempt to duplicate the Working Group on Competition and Industry Structure. That group reported that for a "variety of reasons," the TCTS monitoring Committee did "not proceed to study the other major issues" raised by the Commission. Nonetheless, the working group considered the precedents sufficiently positive to recommend that:

ministers encourage their respective regulatory authorities to utilize the concept of a Committee of regulatory staff members wherever appropriate.²⁷

But the provinces argued that participation was to be judged on a case by case basis.

3.5.2 Committee on Extension of Services

While there is no similar power to delegate under the **Broadcasting Act**, provision for it has been contained in successive revisions to Telecommunications legislation. The Commission felt that it was within its competence to delegate the responsibility for a broadcast inquiry to a body including outside nominees on the condition that it would not enjoy any power of decision. Two such experiments were undertaken in concert with the minister to enhance the Commission's collaborative role. The first was a tripartite inquiry into sex stereotypes in advertising which included members from industry and consumer groups. The second was the Committee on Extension of Services.

To full-time Commissioners, it was axiomatic that the Commission would retain the chair and form the majority of the Committee, as it had in the two telecommunications precedents. The original plan was to appoint seven members, with three provincial representatives. The option of parity in representation, on the model of intergovernmental bargaining, with ten provincial nominees, was rejected on grounds of regulatory salience and size. The Commission could not appear to surrender its jurisdiction over the issues by giving up its majority. Nor could it risk a Committee of unwieldy

proportion, since it was under the minister's instruction to proceed with all speed in developing a consensus. While not a "perfectly balanced" federal and provincial body, the original formula approximated proposals of reform to the Commission which recommended that provinces appoint about forty per cent of Commissioners.²⁸

Selection posed a problem unique to broadcasting matters. Previously, the Commission approached its regulatory counterpart directly to obtain nominees. Since there were no broadcast counterparts at the provincial level, the Commission requested that the minister act as "buffer" and select the provincial nominees. This approach retained a certain insulation from the federal-provincial arena which the Commission wished to preserve. In the absence of a formal directive power, the selection procedure recognized that responsibility for broad cultural and economic policy questions raised by satellite TV resided with elected representatives.

Apparently the Commission had anticipated that the minister would select the three provincial nominees "to defray the costs of unpopular selection onto the political sphere where they belong," in the words of one official. The minister did not choose to exercise this prerogative, in part because the intent of the exercise was not clear. In any case, the minister's role was not entirely "hands off" in determining the broad representative needs. MacDonald's emphasis was on the West, where the Commission's legitimacy was most suspect.

The final principle to be resolved was whether to include other interests. The logic of the northern and remote focus implied a representative from that constituency. That provision, along with the conduct of public meetings and a public report, would ward off any criticism similar to that levelled at the TCTS interregulatory Committee by the Consumers' Association of Canada. Given the lack of any part-time Commissioner from the North, the boycott of the CBC renewal hearings, and the proposed moratorium on the introduction of other channels because of inquiry to native cultures, the Commission favoured a representative from an organization of native peoples.²⁹ The inclusion was strongly supported by the minister.

The Executive Committee ruled out other industry or consumer representatives, a reflection of their determination to avoid bestowing a privileged position on future applicants for licenses.

3.5.3 Department-Agency Consultation

After receiving the suggestion from the CRTC to include provincial nominees in the general inquiry, MacDonald consulted with the provincial ministers. The response was generally favourable.

The minister then wrote to the Commission, approved its suggestion and appended the consensus guidelines. The minister's commentary on the guidelines was more evocative of the language of the **Broadcasting Act**, stressing that the new satellite services must make a significant contribution to broadcasting and be considered in an environment where the "public interest" would remain paramount. He also offered more detail on signals to be included in any satellite package: priority was given to "basic" services, including educational television, before pay. As well, he called for an assessment of the feasibility of marketing abroad and underlined that U.S. signals might be necessary to the financial viability of the package. He counseled the Commission to be cognizant of current international agreements in the latter instance.

The minister then wrote his provincial colleagues complimenting the "spirit of cooperation" in the guidelines exercise and reported on the CRTC's proposal to include provincial nominees which, in his view, went "a considerable way to meet provincial concerns about the way pay-TV and satellite distribution were to be introduced." Provincial ministers were invited to submit a nominee within ten days to ensure "the widest possible representation across the country" for the Committee.³⁰ The minister and acting Chairman of the Commission made a public announcement the following day.

3.6 The Selection Process

3.6.1 Provincial Governments

The minister's letter to provincial ministers did not clarify the status of the Committee, the nature of the representative function or the commitment of time involved. No province was certain of the ground rules for selection—whether the nominee should be a representative of the government under instruction, or of the provincial community—nor whether its nominee would be ultimately selected. Nova Scotia, Saskatchewan, Alberta and Ontario agreed among themselves "not to hesitate nominating government officials," although there was recognition that the Commission might not be amenable to the suggestion. MacDonald's clear intent had been to leave the nomination to the discretion of the province, but his senior officials preferred non-governmental representatives, when consulted.

Eight provinces participated in the nomination exercise. Quebec and British Columbia did not submit nominees, maintaining that the exercise was outside the jurisdiction of the Commission. As a condition, participating provinces insisted on an "effective role" in developing the mandate of the inquiry. The criteria used in the selection of their nominees offers interesting evidence in the perception of the regulatory process. The

majority view was that the important subjects of the inquiry merited direct governmental representation. The notion of maintaining any "quasi-judicial independence" was in the minority.

One province rejected the alternative of nominating a departmental official on the grounds that it would compromise the independence of the regulatory process, but saw no logical contradiction in nominating a representative from the regulated industries. Another province nominated a regulator from its provincial utility board with legal experience. When queried about intent in a similar exercise in the future, only two provincial officials would refrain from tendering a departmental nominee on the grounds of propriety.

As well, most provinces took "the old-fashioned view that public policy should be made by governments" and rejected the principle of representing industry or consumer interest, as had the Commission.

Two practical constraints governed the nomination process. The first was the bureaucratic and fiscal resources available to the provincial department. It was widely recognized that only Ontario had adequate resources to release a senior official for an open-ended inquiry. Saskatchewan reportedly had no option but to nominate members at the middle management level. Other provinces had to weigh their priorities because of scarce resources, and decided in favour of continued scrutiny of the TCTS and telecommunications matters. The second constraint was political; because of the avenue of approach to each minister and the short time involved, it appeared that the possibility of joint regional nominations was foreclosed. For example, the Council of Maritime Premiers might have been successful in getting a joint nominee on the Committee, but each minister preferred to exercise individual discretion. Only one province, Saskatchewan, used representation of the northern and native clientele as the principle criterion in selection. Due to the ambiguity of the exercise, about half of the provinces sent several nominees in no rank order, despite the minister's request for a single one.

3.6.2 The Commission

Réal Therrien was accepted as the "logical choice" for Chairman by the Executive Committee. He had been a Commissioner since 1968 and had previous experience with the renewal of network licenses and the pay-TV hearings. Therrien's original constituency in Northern Quebec was also important. In addition, the Commission decided that it was necessary to have one other member from the Executive Committee for administrative reasons and to maintain continuity over the second generation of hearings.³¹

The federal minister forwarded the entire lists of provincial nominees to the CRTC for its consideration. There is no accurate record of the total list of nominations. Acting Chairman Charles Dalfen and Réal Therrien were responsible for selecting the Committee.

The members of the Committee selected from the nominees were:

David Hobbs
(Communications: nominated by Ontario)

Charles Feaver
(Department of Northern Saskatchewan: Saskatchewan)

Allan Warrack
(University of Alberta: Alberta and Manitoba)

John Amagoalik
(Inuit Tapirisat of Canada)

The CRTC members were:

Paul Klinge
(Executive Committee)

Edyth Goodridge
(Part-time Commissioner: Newfoundland)

Rosalie Gower
(Part-time Commissioner: British Columbia)

Gilles Soucy
(Part-time Commissioner: New Brunswick)

In general, their selection criteria for provincial nominees was the same as for part-time Commissioners since the passage of the **Broadcasting Act**: demonstrable experience in salient broadcasting matters; representation of the provincial communities; and related professional and other life experience.

In fact, provincial officials knew it was highly likely that Ontario and Saskatchewan nominees would be selected among the participants in the exercise. Ontario's selection was considered obligatory on two counts: because of Quebec's boycott, and its efforts to precipitate the Thunder Bay hearing. Saskatchewan was a likely contender because of its progressive *dirigisme* in both pay and extension issues.

Both provinces nominated direct line officials. In Ontario, David Hobbs, the executive director of communications, had been responsible for organ-

izing the Toronto conference, drafting the guidelines and was instrumental in the Thunder Bay hearing. One of Saskatchewan's nominees was Charles Feaver, who was working as Assistant Director of the Department of Northern Saskatchewan. Feaver had had extensive experience in community and active broadcasting and was known to the Commission in previous license hearings for extension to areas where there was a significant Indian and Métis presence.

The third provincial member to be selected was Allan Warrack, previous minister of Communications for Alberta, who was nominated by both Alberta and Manitoba because of his experience with prairie telephone companies. Warrack's constituency had been a rural underserved community just east of Calgary. He had retired from politics the previous year to teach at the University of Alberta. Warrack was originally responsible for moving the federal-provincial conferences out of Ottawa in 1977. That year he led the provincial assertion of jurisdiction over pay-TV; however, that stance was not a central factor in his selection by the two provinces. The grounds of Dr. Warrack's acceptance, which were agreeable to his sponsoring government, were that he would not represent "the government view." In light of the fact that the other full-time Commissioner, Mr. Paul Klinge, was originally appointed from Alberta, it would appear that Alberta enjoyed advantaged access to the Committee. Its government was not interventionist in either northern development or pay-TV. Rather, the selection reflected the minister's priority on western representation and can be understood in the absence of British Columbia's participation. Both line departmental officials would continue to perform their policy and program functions while participating in the committee's inquiry. Hobbs and Warrack brought extensive experience in the federal-provincial bargaining process. To federal officials, neither was known particularly as a provincial "hawk." Feaver was also well-known to federal program officials for his expertise.

According to provincial officials, the chief defect of the nomination exercise was that at no time was any feedback given on the balance of the representation by federal officials. Provinces did not discover that their nominees were unsuccessful until the Commission's public announcement. This was particularly embarrassing for those provinces who had made several nominations from their community and wished to advise their candidates in advance.

After the selection of provincial nominees, the Commission decided to select a fourth nominee to represent the northern and native clientele so the exercise was no longer a simple federal-provincial one. The distinction was lost to many observers.³²

The consultative net was thrown out over Christmas, just before the intended Call for applications. The Department of Communications, CBC

Northern Service, and Inuit Tapirisat were asked to suggest nominees. John Amagoalik, Vice-president of the Inuit Tapirisat and Executive Director of the Nunatsiamek production team in Frobisher Bay, was seen by officials as an excellent selection among northern participants. No other native organization had been as well known to the Commission—from the boycott of the CBC renewal hearings to federal Court appeals. Since 1975, the organization had placed a high priority on communications development, and was successful in obtaining federal departmental support for an experimental satellite project. While the victim of a lack of interdepartmental coordination in the early years when native broadcasting was under the aegis of the Secretary of State, the ITC was successful in manipulating interdepartmental rivalry for its own purposes. After the DOC's satellite package conference, the ITC obtained a letter from the new minister of Indian and Northern Affairs saying that introduction of more signals in a package to the North at this time could potentially jeopardize the ITC's Inukshuk project.³³

Other politically assertive and culturally homogenous groups, like the Dene Nation or the We We Ta from the Treaty Nine area in Ontario, were less well-known to the Commission, and less oriented to television. Older, well-established groups like the Alberta Native Communications Society with experience in satellites were also overlooked. There were certain organizational barriers to the mobilization of Indian or Métis groups. Emphasis was on the delivery of basic social amenities. Linguistic variations dictate a prior concern with the less expensive and flexible radio technology. As well, the Indians' less formal method of gathering consensus was less adaptable to bureaucratic pressure politics. While there was widespread recognition of these barriers it was felt by most participants from the north, or with operational concerns in the north, that the "net could have been cast more widely." Among the disadvantaged consumer groups, the ITC had a comparative advantage of access to the Commission. Curiously, the Commission did not go out of its way to consult Radio-Canada for nominations. The possibility of a representative from the Quebec Cree, for example, was overlooked.³⁴ Strategically, the two organizations differed: the Inuit Tapirisat was seen to adopt a policy of protectionism which stressed cultural distinctiveness and the need for gradual introduction of services. The Quebec Cree, on the other hand, showed a more "entrepreneurial approach" to development of a user-pay system. In general, the Commission's information system was seen as not servicing the north very well. Nor did it seem to consult with the territorial governments. Northerners contended federal officials were slow to recognize the changing mandate of the information departments in the territories which have been increasingly compelled to enter cost-sharing arrangements with communities to supplement the ACP program, and have begun to contemplate co-production.³⁵

With the addition of a fourth "nominee," it became necessary to expand the size of the Committee to nine to retain the Commission's majority. The balance of the regional mandate was filled out by part-time Commissioners from British Columbia, Newfoundland and New Brunswick. Because of their remote location, the former two provinces had special cause to be interested in satellite technology while New Brunswick had historically been underserved in both official languages—it was the only province without a CBC owned and operated English language station. Its francophone service in Northwest New Brunswick had been the cause of repeated appeals to the Commission, the CBC and various ministerial conferences by Premier Hatfield. With the inclusion of New Brunswick, the Commission was reasonably assured of some degree of representation of views from the Council of Maritime Premiers.

3.6.3 Evaluation of the Balance of Representation

Awareness of the selection process was low. Provincial governments did not know where the ultimate responsibility for selection of the Committee lay; participants outside the executive federal-provincial realm were unaware of the logic behind the composition of the Committee. Neither did the presence of members from outside the Commission affect the strategy of group submissions or appearances before the Committee in any material fashion. Two distinctions about the status of the Committee—that it was independent of the Commission and that its members sat as individual citizens—were lost on the industry, public and media.³⁶ The CRTC was clearly "holding the bag" for responsibility for the exercise. The Committee is often referred to as the "Therrien Committee," and its report is published with the logo of the Commission prominently on its frontispiece.

The Committee had complex interests to balance. There was a pragmatic acceptance of representation along linguistic and regional lines given that British Columbia and Quebec did not participate in the exercise, also a realization that after a certain point selection was "inevitably arbitrary." The absence of a nominee representing the Quebec interests is most often cited by participants. This is seen as a high cost to the minister's selection of the CRTC as a vehicle for the inquiry. Francophone representation within the Commission was not considered an adequate substitute for the Quebec presence.

The degree to which a provincial government accepts indirect representation from a part-time Commissioner on such delegate bodies varies with the extent to which the government was involved in his/her original appointment. That acceptance is affected by relations with the federal minister and party, personality, and the degree that the Commissioner undertakes to liaise with the province about relevant broadcasting matters.

The four Atlantic provinces expressed satisfaction with their representation by part-time Commissioners. In the words of one official, when the "Atlantic can get two representatives on a national Committee of nine, that's pretty fair." If the CRTC had to exclude a region among those who participated in the provincial exercise, the Atlantic region was the likely one, because of its historic and amicable relationship with the federal government on the Atlantic Consultative Committee and the relative homogeneity of outlook among the three on the Council of Maritime Premiers. There was, however, a consensus that the exclusion of a region would not be likely to work again, since Newfoundland and Nova Scotia embarked on an "assertive phase" in communications, building up their departments and policy expertise.

There was no criticism of the degree to which the appointments represented provinces with a stated interest in extension or pay-TV. In terms of provincial communications ideology, Ontario was seen as the voice of entrepreneurial development, the school which "lets one hundred flowers bloom." Saskatchewan was seen as the polar opposite with its emphasis on community development. Alberta was seen as a neutral actor in a program sense, if not in the assertion of jurisdiction.

Only two appointments were seen to reflect the North. There was less satisfaction about the degree that the appointments represented native Indian concerns among immediate Committee members, constituents of the mid and far north and federal officials with operational concerns in the extension of service. It was seen as a "tremendous burden" to expect one man to be the "genius north of 60°," and the under-representation was seen to reflect a bias in the CRTC's information structure.

Non-participants noted that the Committee was most noteworthy for what it excluded: industry and consumer interests.

There was widespread recognition that the composition of the Committee was a product of an *ad hoc* and hasty selection process. Provincial and industry spokesmen predicted that future joint mechanisms will have to be more logically categorical and explicit in representative criteria to maximize agreement and legitimate results. Federal and provincial officials began to devote more attention to the options of joint mechanisms. In telecommunications matters, the minimum condition for cooperation is parity of representation with either a jointly nominated or rotating chair. In broadcasting matters, the position is less formed. The experience of the Therrien Committee indicates that eight out of ten provinces were prepared to participate in an exercise with a federal majority. When the provincial contingent was diluted from 3/7 to 3/9, no province withdrew, since the exercise was regarded as an incremental advance and possessed the fall-back of a return to the conference table to discuss the findings. Some provincial officials argued that the ministers should have been more involved in consultation

over the selection process. If the CRTC retained the majority, must it also retain right of selection? Several provinces questioned the "overkill" of the Commission's majority in an advisory Committee since it retained full power of decision in subsequent licensing phases. Future participation in a similar exercise will be judged on a case by case basis.

3.7 The Public Announcement

The Commission announced the formation of the Committee and called for proposals on January 8, 1980.³⁷ The key deficiency to the Call, in the eyes of officials from the guidelines meeting, was the repeated emphasis on "northern and remote areas" as the principal focus of the mandate. This appeared to be an unacceptable narrowing of the "inadequately served" areas addressed in the guidelines for satellite distribution. Buried in the background section there was, however, a recognition of the "special needs" of areas receiving no service or only the CBC. Before the parliamentary committee, the Action Chairman clarified that the term remote was not intended to imply only the Far North.³⁸

The issues to be addressed by proposals for service were not incompatible with the intent of the federal-provincial guidelines. Viewer demand for more choice, the open definition of services, as well as the intent that satellites are "just one" mode of delivery were all recognized. Additional concerns about the relationship to off-air services, technical arrangements and pricing considerations supplied the "usual" regulatory detail. The former appeared to some provincial officials to be a harbinger of conservative stance on competition, motivated by excessive fears of fragmentation. The ambiguity about the subsidy link reflected the indecision of the satellite package conference. The Call also announced a parallel inquiry into Telesat's rate structure. Pay-TV was clearly relegated to auxiliary status. The general condition for pay-TV's introduction borrowed from the language of the Act; indeed the Call declined to list specific issues to be addressed, but directed intervenors to the Commission's Report of 1978.

The Call cannot be considered a subversion of the federal and provincial ministers' intent, however. It was not that the provinces had no commitment to extension of services, but that the guidelines had been framed on the assumption of concurrence in timing. In the words of one official:

We felt that you didn't have to establish priorities between extension or pay-TV just as we felt you didn't have to establish elaborate linkages.

The majority of provinces saw the issues as parallel tracks.

The Call was seen as indicative of the Commission's strategy "to defer pay-TV until broadcast services were taken care of." Not only did the Call

bear the imprint of the Commission's interpretation of its legislative mandate, but it also was seen as a strategy to reassert the Commission's independence, from the Committee itself, and from the political process. The lack of emphasis on pay-TV was a "clear inversion of priorities" identified by six out of eight officials who subscribed to the view that the Executive Committee was unsympathetic to the inclusion of pay-TV in the mandate. Officials saw the mere inclusion of pay-TV on the agenda as a political victory; the wording of the Call, while sidestepping the thrust of the consensus guidelines on pay-TV, significantly did **not** refer to the single monopoly agency.

3.8 Clearing Skies?

The creation of the Committee on Extension of Services was widely welcomed as a sign that clouds of indecision over the policy process were lifting.³⁹ Moreover, the federal effort seemed to indicate that:

Acrimony and stalemate have given way to a recognition of the costs of conflict and a commitment to accommodation that respects the legitimate interests of federal and provincial governments and regulators.⁴⁰

But there were several levels of criticisms of the federal initiative. Like his predecessor, MacDonald had accepted the urgency of the need to halt the spread of unauthorized dishes and thus to separate Canadian satellite-TV issues from any comprehensive review of cultural policy. What remained to be seen was whether the experiment in further decentralized policy-making would compromise the role of the minister—or the Commission—in subsequent policy direction. Second, the minister's linking of the issues was perceived to offer the Commission the cover "to run with pay-TV," to allow a reversal from its previous position and a graceful capitulation to political and industry pressure. This hypothesis (representing a minority of participants in this study) started from the assumption that new political appointees predisposed the Executive Committee to favour the introduction of pay-TV. Finally, the fundamental cleavage in assessments of the linkage was on a north-south basis. Those with northern interests feared that the weight of pay-TV and provincial claims over jurisdiction would foreclose delivery of basic services to remote and northern areas, which had been pending since 1971. In fact, the inclusion of pay-TV almost jeopardized the participation of the Inuit association, since it had opposed satellite pay-TV on the grounds of cultural irrelevance and competition in building audiences for its own Inukshuk network.

As well, there were procedural objections. The four-part process conceived by MacDonald and Dalfen amounted to an informal circum-

vention of legislative and jurisdictional reform. A minority of the Executive Committee resisted the principle of regulatory- sharing since it implied an "outer-directed" Commission. Their view of the CRTC's mandate saw it as an independent supervisor of the broadcasting system which should apply its own conception of the public good. Their assumption was that the Commission's daily operations were outlined in the Act, and should prevail if it conflicted with any political events of the day. If the mandate itself no longer corresponded to political or cultural values, Parliament had the mechanism to change the Commission's instructions. This formalist view stood for constitutional prerogative and against undermining the integrity of the regulatory process or contravening the rules of natural justice. The balance among governmental and consumer industry policy "inputs" was seen in zero sum terms. Further, the proportion of full-time members was seen to have one unintended consequence:

What was created was a Committee which knew no jurisdiction in law; but, how could the CRTC disown it? To reject it would be to reject its Executive Committee members. Its hands were tied. And that's inevitable if you take this informal course to change.

Such arguments against playing fast and loose with the rules of the CRTC's game were more concerned with regulatory propriety than continued viability. What was at stake in the proliferation of illegal earth stations was the continuing capacity to regulate. Would the Committee for Extension of Services accept the proposition that technology was making its own rules to a very large extent?⁴¹

4 Modus Operandi

The Committee on Extension of Services to Northern and Remote Communities was created on January 8, 1980. It conducted public meetings between February and April, and released its report, *The 1980's: A Decade of Diversity* in July, 1980.

This chapter describes how the Committee worked. How did it interpret its mandate and use the federal-provincial guidelines? What were the implications of the Committee's composition for the mobilization of consent and management of conflict? We argue too that, on occasion, federalism can work, and can prove responsive to special interests, given an effective policy framework.

4.1 Mandate

The Committee members first met to define their mandate several weeks after the announcement. The Commission's position was that the Call for Submissions of Intent left much room for the Committee to develop its own agenda. The chief item of discussion was the "linkage"—albeit not necessarily financial—between the two issues. Not surprisingly, the positions of the Committee members mirrored the sizeable opposition apparent among industry and government sectors. The division was not animated by any clear federal, provincial or regional cleavage. Three members were opposed to the linkage, three were ambivalent and three favoured the inclusion of pay-TV. The Committee agreed to consider pay-TV to comply with the minister's intent.

The second key item of the mandate, in the eyes of regional and provincial representatives, was to widen the definition of the target clientele beyond "northern and remote." It was agreed to include all underserved areas, with precise definition to emerge in the course of the meetings. Nonetheless, no one disagreed with the proposal from full-time Commissioners that the inquiry begin North of 60°. Members were invited to

propose specific locations, while public submissions would suggest others.

The scope of the mandate was the final issue to be resolved, having never been made explicit at the outset. All members concurred that they entered the undertaking with a palpable sense of the need to confine their recommendations to those matters upon which the Commission was empowered to act. The focus was therefore on "what would fly" with the Commission, governments, and sponsoring agencies. In the words of one outside nominee, the assumption was that the Committee could suggest "only incremental reforms," something "to run with" when the individuals returned to their respective organizations. This practical constraint was the "natural governor" on the degree of innovation tolerated in any proposals, which some concede militated against the radical scope of cultural submissions similar to those made to the Joint Action Committee. At the same time, members stressed the need for flexibility. Was there any tacit agreement to set aside jurisdictional considerations? Two out of the three provincial nominees suggested that jurisdictional concerns could not have been logically excluded from the Committee's work and indeed that the report's recognition of the necessity for both levels of government to collaborate on the introduction of pay-TV was essential. There was agreement, however, that Committee members avoided taking a normative or advocacy stance on jurisdictional questions; no one suggested either sphere should "surrender turf" in the words of one member. Rather, the Committee's orientation to action dictated an "open" approach to its recommendations—leaving the problems of implementation to be worked out by the appropriate level or agency of government. This was universally seen as the key to getting on with the job. What is significant is that the references to jurisdiction in *Decade of Diversity* did not originate from the obvious members. In the words of one official in a support function, while there is no doubt the Committee members "danced around the jurisdictional question with sensitivity—the wonder is that they danced at all."

It is essential to remember the general environment of the inquiry which spanned the federal election and a period of high constitutional debate. The atmosphere was fraught with portents of change, a sense of an impending rendezvous with destiny and the almost near certainty that the issues would not reach the parliamentary or federal-provincial agendas in the immediate future. All Committee members felt an obligation to plan for the medium term and legislative or constitutional adjustment. In the words of *Decade of Diversity*, the Committee:

in common with all thinking Canadians, could not but be conscious that Canada is now in a climate of change, the outcome of which [could not] be predicted with any certainty, but [would] more than likely affect the structure of the Canadian broadcasting system . . .

In any decisions on new services and modes of broadcasting, the opinions of the provincial and territorial governments must be taken into full account.¹

4.2 Representative Functions

The composition of the Committee suggests three geographic axes of representation: federal-provincial, north-south, and status within the CRTC, where full-time Commissioners assume a national mandate and their part-time counterparts speak for local and regional needs. The two socio-cultural dimensions were francophone and aboriginal. In addition, members could develop a subjective orientation toward the "public interest," or a clientele which they perceived themselves to be serving.

The question of the provincial nominee's department as a delegate or an individual citizen was the subject of discussion at the initial meeting. During the Sauvé era, the federal government had taken precautions to clarify the relation of the Clyne Task Force on Telecommunications to the Department. Members sat as individuals, and preserved an arm's length from the Department. These distinctions ensured that there was no confusion in the public mind over accountability. At the same time, the task force benefitted from access to the Department's information and expertise. The Clyne Committee members stated that their independent status allowed their recommendations to be guided "by the best interests of Canada."

The intent of the Executive Committee of the Commission was to allow its Advisory Committee a similar degree of freedom, to provide a certain distance from the outcome if necessary. The independent status was a condition stipulated by Mr. Therrien in accepting the role of chairman. In the selection of part-time Commissioners, it had been made clear that they would sit as individuals, as "Canadians" in the words of one member. This principle of "independence" was also seen to apply to the provincial and Inuit nominees and was conveyed in the initial telephone discussions between prospective members and the Acting Chairman, Charles Dalfen.

Thus, the Commission's interpretation of the Committee's representative function was entirely consistent with its mandate. The **Broadcasting Act** makes provision for ten part-time members appointed by the federal minister. A convention has arisen that the minister consults with each province in the selection.² Parliamentary debates in 1968 defined the role of the part-time commissioner to speak for the community, in the "various regions and walks of life," and to provide for a broad cross-section of Canadian opinion.

This "independent" status was endorsed by all members as essential to the strategy to "break the policy log-jam," to set aside the residual acrimony of

To Commissioners, the informality of procedure did not affect the degree of lobbying from industry or consumer interests. Industry interests adopted a conscious "hands-off" policy towards Committee members, to protect any eventual application for license. Consequently, there was no attempt to "play the members of the Committee off on each other" to benefit interest groups.

4.5 Provincial Liaison

The participation of provincial members on the Committee suggests three dimensions in the *modus operandi*: the use of provincial resources, the effect on provincial government strategy and the treatment of the potential conflict of interest question, where the provincial nominee might conceivably sit on the panel which is hearing his province's submission.

4.5.1 Use of Provincial Resources

At no time did the Committee formally broach the matter of consultation with support staff or others outside of the Commission. It is clear that those outside members who continued their line bureaucratic functions maintained an ongoing consultative relationship in the context of other business. So too did the Commissioners. In general, members were aware that this was inevitable and indeed found in several cases that outside agencies enhanced the information resources of the Committee. In the words of one member, "the nature of a task force is to input whatever you can get." As well, the by-product of maintaining these links was considered healthy, a counter balance to the natural tendency to get absorbed in the internal dynamic of the process and lose track of the outside world. Outside members were more active in solicitation of information from other channels.

How much support came from provincial governments depended on their fiscal and bureaucratic resources and the member's access to them. It was also affected by the wider relationship between the government and the Commission. Ontario provided the members with extensive support, preparing analyses of key briefs, and organizing background data and transcripts into a fact book. At the outset, the frequency of contact was once or twice a week. As the Commission's staff support proved dependable and the sense of individual efficacy increased, use of provincial support services declined. Indeed, the educational role flowed the other way—the provincial staff learned from the Committee's public meetings.

Information was exchanged among provincial members. One of the outcomes of the Committee experience was a recommendation to the

Alberta Department to increase its staff resources on the Ontario model. Additional appropriations were budgetted for the following year.

The Saskatchewan case was complicated by an external jurisdictional dispute with the Commission and the specialized expertise of the member. Frequency of contact with provincial support services escalated in the course of the Committee's meetings, despite overall scarcity of fiscal and bureaucratic resources. Outside members were unanimous that their links to their "home office" did not change their position, nor reformulate their strategy in the course of the public meetings.

This continuing information/liaison function did not risk the confidentiality of the Committee's deliberations. Industry and other participants remarked upon an extraordinary level of security surrounding the Committee as did "conduits" within the Commission.

Part-time Commissioners also consulted with their provincial governments to varying degrees. Quebec and British Columbia remained aloof from the proceedings. The Committee made a particular effort to consult with the New Brunswick government in the course of the public meetings, despite the fact that the government did not make a submission. This effort represented an attempt (in the eyes of some members), to give the Council of Maritime Premiers, seen as relatively homogenous, a voice in the inquiry, despite the absence of a nominee. Thus the potential conflict of interest arising from the appointment of outside members was not a major problem. Provincial nominees did not use their position to further their province's policies. Nor in most cases, did representation on the Committee act as a substitute for making submissions to the Committee. Only one province with a nominee abstained because of an informal policy not to participate before a federal regulatory Commission. In two cases, the nominating organization making a submission also chose to appear. The only province to refrain did so because of restricted fiscal and bureaucratic resources, the knowledge that its views would be represented by its member, and that it would have the option of direct comment and review of the findings at the follow-up stage of federal and provincial consultation. The Ontario nominee refrained from questioning his ministry officials. Among federal-provincial officials, there was low awareness of this decision, but general approval. The Inuit nominee on the other hand, felt that it was his duty to ask "relevant questions" of educative value, especially when the extension issue seemed eclipsed by the Commission's consideration of pay-TV.

4.5.2 Provincial Strategy

Seven out of twelve provincial and territorial governments made written submissions.³ British Columbia underlined its objection to the linkage of the

issues on the grounds that it amounted to a federal intrusion on pay jurisdiction. Quebec did not make a submission. Of the other abstaining governments, all except the North West Territories maintained that the guidelines represented an adequate policy statement and that the provision for comment before the second phase made participation in the Committee's deliberations unnecessary.

Only two governments actually appeared before the Committee, Ontario and Yukon. Most others concentrated their limited fiscal and bureaucratic resources on the simultaneous TCTS inquiry.

All governments expressed satisfaction that for the first time in a broad-cast policy document, the positions of provinces were adequately outlined in the report and presented before other industry and public positions.⁴ The Committee addressed those provinces which had not written a submission by describing the special needs of certain areas in extension of services. Two members of the Committee expressed puzzlement over the grounds for the lack of a presentation from the Federal Department of Communications.

4.6 Federal-Provincial Objectives and Guidelines

The Committee did not significantly break with two past precedents of the full Commission in their use of government policy statements. Following a telecommunications regulation, the CRTC stated that it had a statutory duty to consider all evidence, which may in the normal course include:

statements of government policy in a given case. These do not supersede . . . but, subject to cross examination and argument, may assist the Commission in the exercise of its authority.⁵

After the Manitoba-Canada Agreement with respect to broadcasting matters the Commission said it:

cannot subject its authority to limitations imposed from any other source unless in conformity with the Act. Nor would the Commission accept the cable operators' argument of non-compliance with . . . regulations imposed by another municipal, provincial or federal authority.

In general, the Committee accepted the guidelines as "part of their terms of reference"—but only as one of dozens of elements in the general policy environment. CRTC members and staff made no attempt to "follow them to the letter." Indeed, the rules of the game (the assertion of independent status, freedom from past jurisprudence, and pursuit of innovation) tended to relegate the guidelines as "part of the baggage to be left behind," as far as the staff were concerned. They were not used as benchmarks in the assessment of briefs for the Committee.

The guidelines were most significant to those line department officials closest to the federal-provincial bargaining process. But no Committee member acted as an advocate for them nor were they a salient element in the Committee's deliberations. The report summarized the guidelines and appended them.

The majority of the Committee felt the guidelines indicated that the extension of services was not a first priority and should be financially dependent on pay-TV, quite the reverse of the federal-provincial consensus. In particular, the suggestion that pay-TV should be introduced through a national monopoly but also permit regional and local distributors was considered by the Committee to be "far from crystal clear," and resulted in presentations in which few departed from a monopoly structure.⁶ The consensus guidelines were a key part of the minister's announcement, but were not appended to the Commission's call for submissions. This limited circulation may explain the low level of public awareness. In general, intervenors found them irrelevant to framing their written submissions, or to their strategy in oral presentation.

4.7 Public Meetings

The Committee conducted five public meetings from February to April of 1980. Four locations were selected outside of Hull: Baker Lake, Whitehorse, Geraldton, and Goose Bay-Happy Valley.

There was little complaint with the selection of these locations, but those with a strong interest in the far north contended that two meetings north of 60° were inadequate to strike a balance of regional and racial interests in the Northwest Territories. The Committee took pains to emphasize the informality of its procedures, eschewing any raised dais, formal name plates, and relegating transcribers to a less prominent place in the room. In fact, participants did not consider the Committee's informality to have been in any way exceptional and pointed to the Commission's track record in hearings outside of the urban areas. Outside Hull, meetings did not always feature written submissions, and were characterized by a certain spontaneity.

Suggestions for locations within their constituency by two of the four outside members were accepted by the Committee. The Baker Lake session was considered by members to provide the best insight into an alternative broadcasting system and its cultural significance to northerners. At Whitehorse, the group heard a fresh entrepreneurial approach to extension of services, the first concrete realization that "northerners were not asking for the impossible." The Ontario nominee suggested Geraldton because it was the location of the greatest number of complaints about inadequate service and proved the most confrontational of meetings among resource towns.

Goose Bay-Happy Valley was selected on the basis of the number of interventions received. The Committee did not choose to visit any predominantly Algonkian or Cree community in the mid-north.⁷ In all locations out of Hull, debate focussed on extension and native services.

A similar cleavage in print media coverage was apparent, with northern weeklies and dailies limiting their attention to the extension and satellite dish issues, and southern/urban dailies to pay-TV. Those members with a regional or provincial mandate noted the deficiency in distribution of the public announcements or advance notice of the meetings in rural and remote areas.

As a result, the Committee unanimously decided against a central news conference in Ottawa. To the disappointment of some members, the regional release of the report was plagued by inadequate delivery of sufficient copies in both official languages. Members varied in their interpretation of their role in building awareness and support for the report. Only two initiated contacts and were disappointed that most inquiries were from vested interests and were directed at Ottawa.

4.8 Psychodynamics

The internal dynamic of the Committee benefitted from initial low expectations. All members described an initial reticence about the process. The CRTC contingent feared a jurisdictional stalemate over pay-TV which might hinder the extension of services. The outside nominees were concerned that their presence would constitute "window dressing," and were loath to bind their host governments to an inconclusive—or unpopular—outcome. Committee-watchers wondered about the impact of the composition on consensus. Would the outcome be a collection of minority reports, or a compromise so vague as to be useless?

There had been little previous personal contact among members. Messrs. Amagoalik, Feaver and Hobbs were somewhat known to the Commission in previous interventions. Dr. Warrack had been briefly consulted over the appointment of Mr. Klinge from Alberta. No one knew the new CRTC chairman, Dr. John Meisel, except for his previous work with Mr. Hobbs on the Ontario Advisory Committee on Confederation.

There was no doubt that the selection of Mr. Therrien as Chairman was important to provincial participants. Relatively unknown to most provincial officials, Mr. Therrien bore no negative associations as "captive" of the industry. His appointment was a symbol that the CRTC "meant business." As well, because he was not associated with any centralist or "cultural-nationalist" wing of the Executive Committee, his appointment was a sign that the Commission "was ready to be shaken up."

Several initiatives promoted a sense of trust and good will within the Committee. First, at the outset of the Committee's work, Dr. Meisel hosted a welcome dinner. The newly-appointed Chairman succeeded in assuring members that the Commission viewed the Committee's experimental composition as a portent of the future and was prepared to act on its advice in good faith. Second, the mandate proved to be flexible, disposed to the imprint of outsiders, and to getting "some political profile" for provincial constituencies in the selection of meetings. Third, members considered it essential to have begun and ended in remote areas accessible only by air travel. Few members had been north of 60° before. Time pressures, intense isolation, and first-hand encounters of the barriers to travel and communication figured strongly in the recollections of members. Members called the meetings a "total immersion," "shock treatment," and a confrontation not only of the frontiers to service, but also of the "colonial mentality" to its delivery. The meeting at Geraldton, Ontario, precipitated a confrontational sense of "us against them" which was shared by all members in attendance for the initial half of the meeting. Members felt a sense that they heard "the voice of the people," and the unprecedented volume of over 400 interventions and the spontaneous nature of oral submissions at locations outside of Ottawa (although some may have been orchestrated by municipalities or cable companies) were important to the members' sense of mission. More than one year after its completion, members recalled the experience warmly.

4.9 Mobilization of Consent

If procedure is the servant of liberty, so too is it the indispensable servant of federalism. Certain conventions were developed by the Committee, under the guidance of the Chairman, which members feel were essential to the mobilization of consent.

There was no challenge to the decision to adopt a collegial *modus operandi*. Where the Committee divided, it was agreed to include both "schools of thought" in the text of the report to inform public debate. Only one "outside" nominee suggested that dissenting views should be identified as they were in the Clyne Report. This was rejected because it implied a direct representative function, could prove unacceptable to the various sponsoring agencies, and would narrow the latitude of compromise.

Three factors were singled out as important to the engineering of the agreement. First, there was no formal discussion among members of the principal issues raised after each public meeting other than clarification of points of information or of order. Second, the Committee retreated to Montebello for their general policy deliberation. This strategy was considered essential to insulate members both from the political environ-

ment and the competing demands of full-time jobs. Finally, the Committee unanimously adopted a strict convention of confidence, which they considered an essential prerequisite to maintaining the trust and sense of shared commitment among members, to ensuring candor, and to enhancing flexibility in discussion of potentially contentious matters of jurisdiction. All members expressed a stake in the evolution of the "Montebello method," but attributed its success to the skill of Mr. Therrien in its successful execution. The Chairman's role as animateur—not authority—was universally considered the key to consensus.

Each member was asked to prepare a summary of his or her position on the issues and to deliver it orally to other members in an allotted time period. A clerk recorded the presentations. Questions were restricted to the facts; rebuttal on points of analysis was discouraged. The object was to avoid any adversarial situation. Each member was allowed to develop individual priorities and was assured equal opportunity for expression. The Executive Secretary noted the points of convergence among the presentations on a blackboard, and at the end the Chairman provided a general summary. The "Montebello method" is described variously as "building on strength," "capitalizing on concurrence" or "starting with the easiest task." At the outset, the statements dwelled on the obvious points of agreement. Areas of disagreement were set aside until the end of the meeting. Participation in the process was reportedly as egalitarian as possible, varying more with personality than origin or status.

The Commission contracted a writer to prepare the report. Some Commissioners on the Committee felt they should have approved the selection of a writer. While the writer was respected for his experience in drafting the **Broadcasting Act** and a number of seminal reports on broadcasting, the selection did carry the potentially "southern and centralist" connotation. Yet the principle that the writer act primarily as a neutral voice of the Committee was strongly endorsed by three of the nine members. Care was taken that the nuances of the report should reflect the oral culture of the rural and remote areas—the clientele—rather than the Ottawa bureaucracy. Unfortunately, due to mechanical oversight, a recommendation of particular relevance to one of the outside members was issued in the first draft of the report presented to the Committee and fuelled a charge of "southern and central bias," which stopped short of resignation.

The final criticism was that a summary of a dissenting opinion to one of the recommendations in the report was inadequately redrafted very close to the deadline by an editorial committee. The issue occasioned an eleventh-hour trip to Ottawa by the party concerned and an emergency conference call. While accepting the necessity of an editorial sub-committee, the member recommended that final copy be endorsed by a committee of the whole.

4.9.1 Consensus

The thematic emphasis on diversity—that any solution to the problem of extension of services and the new satellite technology should not pursue any one approach to the exclusion of others—was quick to emerge as a philosophy common to all members. This was evident in the resistance to the concept of a single package, which had characterized the previous conference sponsored by the Department of Communications, the willingness to embrace new technologies, and the resistance to regulatory prescription.⁸ Committee members were united in their dynamic view of the policy process, as one which should change over time and should not be arbitrarily restricted by legislative, technical or quantitative definitions.

At Montebello, the Committee achieved unanimity on most of the key policy matters and on the concept of an "action platform" of proposals which they were reasonably assured would be accepted.⁹ These included the priority on extension of basic services, the rejection of any link between extension and pay-TV, and the recognition of the special needs of native peoples.

To members of the Committee, the agreement on the priority of extension and immediate provision of an interim alternative to the CBC was a simple reflection of the philosophy of equity. It may be understood in the context of the convention of equalizing the range and quality of public services across Canada. A part of the original confederation bargain, and formalized as a system of intergovernmental payments even before the advent of the national communications system, the equalization principle is now in the Canadian Charter of Rights.¹⁰ The consensus over the commitment to equalizing television service was also a result of the convergence in public demands for television services among all areas of Canada (with the exception of the cultural, national or native groups) and of its transformation in status from a luxury to a basic social amenity in the remote areas of Canada.

The Committee rejected any subsidy between extension of services and pay-TV. Linkage would compound the delay in the delivery of services, subject it to an unacceptable degree of financial insecurity, and involve a potentially unwieldy mechanism for redistribution of revenues.

The Committee offered no magic solution to the proliferation of the unauthorized reception of U.S. signals.¹¹ It was unanimous that the licensing of basic Canadian services should proceed with speed. Certain technological developments in the American satellite industry offered grounds for guarded optimism about the success of any Canadian package.¹²

As well, the Committee was united in its respect for the supremacy of law in international satellite regulation—even prior to the principle of equity in access to service. The report recommended that "no extraordinary action

should be taken to authorize" cable companies which were supplementing their operation with satellite receiving dishes. Interim permission might present unfair competition to a new Canadian service, which at the insistence of broadcasters, might have to be restricted to areas not served by the Canadian networks to avoid market disruption.

The Committee was also unanimous in its view that Canadian services should have priority on Canadian satellites in a time of short-term scarcity. The report noted a remarkable congruence of expectations among all participants on the order of priorities for carriage.¹³

This perceived "congruence" on the priority carriage rules may have been more apparent than real, a reflection of the polarization of clienteles around each of the issues. Southern and urban subscribers did not appear before the Committee to comment on how "basic" Canadian services may pre-empt American stations on converter service.

While members were united in their recognition of the special privileges in the extension of services to native peoples, reflected in recommendations which confer a right to edit services received and substitute signals, there was some difficulty over the principle of local access. The debate was whether to prescribe a condition on satellite licenses on the order of a community cable channel. Agreement was reached that the principle would neither be entrenched nor foreclosed, but considered on a case by case basis. The point was not a severe test of compromise among parties, nor discussed in the body of the report.¹⁴

The Committee was optimistic about the impact of new technologies on the Canadian broadcasting system. Members advised the Commission to weigh objections to the introduction of new services on the basis of audience fragmentation on a market by market basis. Unlike the protectionism of earlier policy statements, the burden of proof should be transferred from new entrants to objectors. The primary effect of the technological revolution in broadcasting, as the Economic Council identified in telecommunications, was that it made competition both possible and desirable.¹⁵ The range of new services envisioned was "broad and diverse", including 24 hour news and entertainment. The Committee found nothing repugnant about advertising on the optional channel, suggesting that the market might decide. Thus the creation of a Canadian superstation to compete with national networks, affiliates or independent broadcasters was not ruled out. Such optional services, together with pay-TV, would necessitate a system of differential pricing on the order of carriage priorities.¹⁶

Even where cleavages were more severe, no one dissociated himself from the report; one member offered this as evidence that:

concern for the public good and for what was legally and morally right transcended the federal and provincial current.

4.9.2 Cleavages: General

All members were aware of the escalating political stakes impinging on the Committee in the final days of deliberations. In April 1980, British Columbia's Minister of Universities, Colleges and Service, Dr. Pat McGeer, erected a dish on the lawn of the legislature, as a preliminary offensive in the declaration of an "open skies" policy.¹⁷ The skirmish escalated into a direct confrontation between federal and provincial ministers at the annual convention of the cable association. As well, questions in the House asked the federal government to clarify its enforcement policy against the illegal dishes and precipitated the issuing of a "clarification" by the minister and Commission that the federal government had no present interest in dishes for individual use until the outcome of the Committee's report.¹⁸

The critical case, however, was the clash between the federally regulated cable company Saskatchewan Telecable Limited in Saskatoon and the provincial carrier SaskTel over the cable company's installation of a dish to receive the proceedings of the House of Commons. An amendment to the Saskatchewan **Telecommunications Act** in June 1980 had incorporated into law the policy of banning attachments of equipment without SaskTel's approval. SaskTel jammed the cable company's reception, which resulted in a complaint to the Commission by the licensee. The real dispute was the provinces' right to control competition between satellite and fibre optic delivery. SaskTel had created a fifty-six million dollar fibre-optics network which represents a "strategy of self-containment," offering, the NDP administration contended, a comparative advantage in integrated broadcast and non-broadcast services and two-way interactive capacity.¹⁹ The issue became complicated by the coincidental appearance before the Committee of the Canadian Cable Satellite network, (CSN) of which the cable company was an affiliate. The Saskatchewan member clarified the nature of the earth station license that the CSN had in place.²⁰

The Committee was divided on the extension issue, (which occupies more than two-thirds of the body of the report) an import tax on foreign programs, which the majority opposed, and on the central recommendation that the government of Canada, following delivery to underserved areas, initiate discussions with the United States to "determine if the reciprocal reception of satellite services were in the best interest of Canada."

Members were unanimous that the dissenting arguments on four recommendations did not reveal a consistent cleavage as alliance changed according to the issues. None of the issues pitted five Commissioners against the four outsiders. Moreover, the divisions did not correspond to any of the obvious linguistic, regional or federal-provincial axes suggested by the composition of the Committee, did not have a negative impact on the outcome of the report, and in particular did not submerge the extension issue.

4.9.3 Cleavages: Extension

The majority of the Committee rejected the imposition of an import tax on foreign programming to be paid by broadcasters and cable operators. The higher cost of foreign programs could have the perverse effect of diminishing funds available for Canadian programming. Secondly, the tax could raise questions about the regulation permitting the simultaneous substitution of Canadian stations carrying the same program. Finally implementation of a tax was beyond the powers of the Commission. The key division was on the policy decision whether to permit the importation of U.S. signals. Two tactical choices presented themselves: to advise the renegotiation of the federally recognized 1972 agreement which would permit the reception and delivery of signals from U.S. satellites, or to put U.S. stations on Canadian satellites. The central problem was one of equity created by the cable regulation on the distant importation of signals by microwave, whether the "3 plus 1" rule should apply regardless of the method of transmission.

The ensuing recommendations represented "a perfect hedge of bets" in the words of one official. The majority recommended that the federal government undertake negotiations with the U.S. for the reception of American signals for redistribution. These members were convinced that this issue was the critical purpose of the inquiry. The provision of an all-Canadian option was not sufficient remedy in light of the evidence of public demand presented by the illegals, or the problem of equity, as the federal-provincial guidelines had implied. The best of U.S. programs available on Canadian stations would not suffice. This position was predicated on the view that the detrimental effects of U.S. superstation programming were overrated. Regulated competition was better than unregulated competition. The contention was that "Canadian services should be able to compete very well if the quality of the programming was good enough." The CRTC and DOC should take firm action to regain the control of the system in a three part strategy. First, the federal government should renegotiate the reciprocal agreement with the United States after Canadian services were licensed. Then the Commission should call for license applications relative to the "3 plus 1" formula on a competitive basis. Finally, both the Department and its agency should shut down illegal operations.

Significantly, the argument for majority recommendation was confined strictly to the "3 plus 1" option and did not broach the competing rationales for maintaining or reducing regulation. The open skies option was not discussed. There was one caveat. The Committee was unanimous that the federal government should review its policy on earth station ownership to permit reception by individuals. Further, the Committee recommended that the federal government undertake planning with broadcasters and other

direct broadcast satellite users for the next World Regional Radio Administration Conference in 1983.

The minority view stated that the reception of signals from U.S. satellites for redistribution should never be permitted. It was thought that the "3 plus 1" rule, as it now applied to cable systems, would be impracticable because there could be no certainty that U.S. commercial networks would be carried by satellite. New criteria would be impossible to develop out of the 35 or more non-network services. Further, once the reception of signals was available on a large scale in Canada, U.S. distributors would demand payment for local exhibition, which would siphon revenue available to provide new sources of Canadian programming. The Commission would thus have no control over the nature and content of the U.S. programming or rates charged. Finally, authorization would permit the American satellites to compete with the Canadian carrier and inhibit the economic base for developing subregional networks in Canada.

While recognizing that the "sky was literally the limit" in the demand for more choice of entertainment, these members felt that:

the demand [tends] to be mistakenly equated with the viewing of U.S. stations in their entirety . . . if this view [was] correct, Canadian satellite services carrying the best of American programming [might] prove as attractive as the broadcasts of U.S. stations.²¹

Saskatchewan in particular upheld the minority position, a stance consistent with its subsequent reservation on the consensus position on satellite reception in Quebec, or in SaskTel's position on licensing for local delivery. However, it is likely that the general recommendation, that introduction of any new satellite service must take into account the need to provide, maintain or expand facilities for community and regional services, adequately recognized the position of prairie telephone provinces.²² Certain Committee members suggested that the cleavage may also have been aggravated by the interpretation of the representative function by the Blakeney administration, which would have been a natural reflection of its more direct, dirigiste philosophy in development.

4.9.4 Cleavages: Pay-TV

One member of the Committee categorically opposed the introduction of pay-TV. Like the Clyne Task Force, this member found that public demand was insufficient. There were no guarantees that the profits would remain in the system or accrue to Canadian production whatever the conditions for its entry. The majority of the Committee, on the other hand, found no evidence of widespread, forceful public demand at the time, but felt it

would develop once pay-TV was introduced on a smaller scale than in the U.S.²³ Pay-TV's prospective benefits to viewers, producers, the broadcasting system and the domestic electronics industry, were felt to outweigh the costs of introducing pay-TV. The conditions for its entry were reminiscent of the **Broadcasting Act**. Pay-TV must make:

- i) a significant contribution to broadcasting in Canada;
- ii) effective use of Canadian resources; and
- iii) guarantee a significant amount of revenues to the Canadian program production industry.

Decade of Diversity made an important contribution to clarification of the definition and operation of pay-TV, and placed it in its cultural and industrial context. Once the principle of subsidy to underserved areas was rejected, the majority of the Committee observed that "it was almost universally agreed that the urgent need was to foster a strong, independent production industry." The Committee's optimism about the capacity and talent in the independent production sector reflected the boom years of the Capital Cost Allowance in 1979-1980.²⁴ Yet the **Decade of Diversity** recognized the fundamental ambivalence about pay-TV of the independent producers themselves, and cautioned the Commission to take special account in subsequent licensing.²⁵ Pay-TV alone could not raise the estimated \$300-500 million needed to make the Canadian production industry competitive. Accordingly, the federal government was advised to reconsider the entire system of tax and other incentives to buttress the introduction of pay-TV.

On the matter of Canadian content, the majority of the Committee felt that consideration should be given to imposing a flat surcharge on the rates for pay-TV, since the principle of a luxury tax was widely accepted.²⁶ Proceeds should be distributed to the maximum advantage of the program production industry. The argument against a wider levy on cable operations was that the costs would be passed on to the subscriber, some of whom must rely on local cable service to receive any television at all. Provincial members were solidly opposed to both variants of the concept. As well, quota levels should be "realistic," responding to the capacity of the Canadian program production industry, permit adjustments when practicable, and take into account revenues in addition to hours of exhibition time.

In creating a luxury tier of service, the Committee stipulated that there be an assurance that there was no cross subsidy by subscribers to ordinary cable service. Recognizing cable's common carrier role, as had the Clyne report, the **Decade of Diversity** recommended that facilities be made available without discrimination and at reasonable rates. Nonetheless, the CRTC should encourage the competition for licenses to effect local delivery, and equipment of largely Canadian manufacture.

The Committee was unanimous that pay-TV should be introduced in the first instance in the pay-per-channel-mode, but did not exclude the evolution towards a per program system "where a stable market for Canadian programs" developed. Despite the clear relegation of pay-TV to a second phase of licensing, and the limitations of channel space which would make it virtually certain that no pay-TV service could be made nationally available by satellite earlier than 1983 or 1984, the Committee did not recommend that pay-TV be delayed until satellite capacity became available.

Nonetheless:

a breathing space would be desirable in which to work out the framework of a pay-TV system that would fulfill the prerequisite objectives and comply with federal and provincial jurisdiction.²⁷

The *Decade of Diversity's* discussion on jurisdiction was "remarkable" in the words of one official. The report recognized that federal jurisdiction over broadcasting:

(was) a by-product of jurisdiction over radio-communication . . . A widely held legal opinion (was) that a system delivering . . . video-program and films without making use of radio-communication (was) not subject to federal legislative authority on Canadian content requirements.²⁸

The report used a narrow definition of "closed-circuit" on the Saskatchewan model. As a result, the Committee contended that:

Arrangements for a Canadian pay-TV system must be flexible enough to accommodate both federal and provincial legislative authority in the operation to which they may apply.

Further,

the federal government should initiate discussions with the governments of the provinces with a view to the authorization of program distributors (or packages) to market pay-TV services in Canada.

Finally, the majority rejected a monopoly market structure. A single national pay-TV agency would not have powers in the best interest of the Canadian public. Competition would produce a system that was more responsive to viewer choice, to regional and local preference, and could be more effectively regulated in the public interest while allowing producers to market their programs as freely as possible. Several members considered this cleavage to reflect the sole case where status within the Commission may have materially affected the outcome of the report. The hypothesis was

that the division reflected both the internal workings and ideological composition of the Commission, which would prove critical to the Commission's implementation of the Committee's advice.

4.10 Federalism Can Work

It is impossible to generalize about what makes a good Committee. It is significant, however, that two of the four outside members were prepared to write an article on "how federalism can work." Furthermore, all but one member stated without hesitation that they would consider participating in a similar experiment once again on the basis of their high sense of personal and group efficacy.

Nonetheless, the consensus among participants was that the Committee on Extension of Services benefitted from a "sublime conjuncture of people and events." The relative success of the Committee is a tribute to the individuals involved. Committee members in particular singled out the imprint of the Chairman on the *modus operandi*. Bargaining in small groups can facilitate compromise, or trading by *quid pro quo*, if conducted *in camera*, in an isolated atmosphere, and if structured to avoid rhetorical flourish.²⁹

In addition, the character of the issue is important to the procedural success of the Committee model. The issue must be broad to permit individual nominees room to maneuver, and to allow the potential of a "win-win" situation for all sponsoring parties. The issue must cut across jurisdictions, but not be intractable. The consensus among officials is that the model would not work for matters of finance and telecommunications. The case of Committee on Extension of Services further suggests that temporary institutions have great potential as vehicles for innovation in Canadian policy-making. The key to affecting the political market-place is to generate wide public awareness, as the Committee succeeded in doing.

The Committee's experience also shows that the issue of extension of services was well-suited to the politics of diplomacy. The extension issue was animated by two salient dimensions: sovereignty and equity. No one disputed either the need for Canadian services, which has been a constant of the Canadian broadcasting culture, or the principle of attaining an equitable access to services across all areas of Canada.

There are interesting variations in the analysis of the effect of the political environment on the *modus operandi*. Committee members felt that guidelines established a "will to action:" an indication that the political stakes were high enough to provide a healthy incentive to compromise. No Committee and no government could be seen to be dragging its feet on the extension issue. Federal and provincial officials claimed that the guidelines framed the agenda and focussed goals. Without the political imperative or provincial presence on the Committee, provincial officials felt that the

Committee would not have acted as quickly, or produced a policy document as sensitive to regional needs. Moreover, the Committee was a notable demonstration of what could be achieved when common objectives are shared.³⁰ The Committee did not **create** but **reflected** a consensus, which on the issue of extension of services, ran deep in the Canadian political culture. Finally participants were unanimous that the issuance of the report and the initially favourable reaction from governments, benefitted from its timing, when summit negotiations were in the full flower of compromise before the constitutional conference.

5 Report and Reaction

In this section, we will discuss the responses of the major institutional players to the **Decade of Diversity**. The federal-provincial response will be highlighted.

By September, the gathering stormclouds over federal-provincial bargaining over the constitution threatened to derail the follow-up to the Committee. How did governments interpret their role in what was intended to be the third step of the policy process—to assist in the development of criteria for licensing? We shall also examine the views of other principal participants in the Committee, the Inuit Tapirisat of Canada, and the Commission itself in the period from August, 1980 to the commencement of network licensing in February 1981.

5.1 Reaction to the Process

After the release of **Decade of Diversity**, both the minister and Chairman asked provincial ministers and industry groups for their views. Not surprisingly, those most positive about the mechanism were its direct sponsors. The new Minister Francis Fox stated that the Committee on Extension of Services had been "a positive, productive exercise," reflecting:

the institutional approach [to reform] through a re-vamped CRTC where the federal government and provinces would actually share the management of an effective communications system [which was far better] than dividing the communications system into ten different parts.¹

The Chairman of the Commission, Dr. Meisel, considered the model "worthy of attention and emulation."²

The Ontario and Saskatchewan ministers attributed the sensitivity to regional and provincial concerns apparent in the **Decade of Diversity** to the unique composition of the Committee and concurred with Dr. Meisel's view

that the committee provided a "model for the future."³ While both had some reservations about the findings of the report, they felt that it provided a sound basis for concrete action. The ministers pressed for a prompt return to the federal-provincial conference table to assist the Commission in the upcoming licensing stage. Neither Alberta nor the Inuit Tapirisat of Canada, who had representatives on the Committee, nor the other provinces, made any official comment on the mechanism.

Provincial officials were unanimous that if the experiment in regulatory collaboration was to succeed it would depend on subsequent consultation. The Committee itself recommended federal-provincial collaboration on:

1. the authorization of program distributors to market pay-TV services in Canada;
2. the review of earth station policy; and
3. the negotiations for the reciprocal reception of U.S. signals.⁴

The federal position was that the Toronto agreement about the four-part policy process reached during the Conservative era was in no way binding on the new administration. Communications emerged as one of the twelve sectors in the discussion over the division of powers by the Continuing Committee of Ministers and Officials on the constitution over the summer after the *Decade of Diversity's* release.⁵ Central agencies were thus in the lead role. Mr. Fox contended he could not give his officials a mandate to develop a consensus position on a *Decade of Diversity*. Negotiations over telecommunications legislation and the Working Group on Cable Delegation were similarly determined.⁶ Mr. Fox declined two invitations to convene a joint forum to discuss the Committee's report in November, 1980 and February, 1981. Federal officials maintained that there was no collaboration on place, time or agenda. Speaking for the provinces, M. Richard, then the Quebec minister, argued that the agenda items for the Quebec meeting were of general federal and provincial interest.⁷ Mr. Fox was prepared to follow up on the *Decade of Diversity* only in a bilateral arrangement. The provinces were committed to a common front strategy which had been cemented with the progress of the working groups.

The "best efforts" draft presented to the September constitutional conference represented the strongest assertion of a legislative role for the provinces in general broadcasting yet tabled in the constitutional debate over the division of powers. After the failure of the conference, the provinces individually realigned and upgraded bureaucratic and institutional resources, and revised telecommunications legislation to enable public utility boards to regulate non-broadcast undertakings.⁸ Positions began to harden in the face of perceived federal aggressiveness on the national broadcast policy. Federal and provincial communications ministers did not meet to discuss new satellite-TV services for over one year.

5.2 Response to the Substance

The 1980's: A Decade of Diversity was widely accepted as a benchmark in the analysis of policy options in the new era of satellite technology.⁹ The report performed an important catalytic function. It produced a "non bureaucratic" public document, filled the gap in the Commission's organizational memory, and encouraged the emergence of innovative approaches to the provision of both basic and pay services. The report was considered the "least centralist" document to have issued from the Commission in its history.

5.2.1 Federal-Provincial Axis

Five key areas bore the imprint of the provincial nominees on the report and were compatible with the spirit of the guidelines exercise. First the definition of "underserved" was seen to widen the intent of the Call of January 1980. The rejection of the subsidy link between basic and optional services reflected the principles of the federal-provincial Working Group on Competition and Industry Structure. The concept of the "impact test," where objectors to the introduction of new services must bear the burden of proof, lowered the costs of entry into broadcasting and encouraged new "windows" on the east-west communications system. The rejection of a monopoly market structure for pay-TV and of vertical integration among producers, distributors and exhibitors, were also central to the guidelines. Finally, the report's recognition of concurrency and in particular, of the provincial paramountcy over closed circuit pay-TV, was unexpected. Among provincial officials, the report was seen as a clear win for Ontario. On most points except the interim reception of U.S. signals or the levy on pay-TV, the win is attributed to the province's leadership role in the Toronto conference and support for the creation of the Committee.

Despite the absence of the federal minister, the provincial ministers responsible for communications met in Vancouver in November of 1980 to review the Committee's recommendations. Their comments were intended to "assist the Commission in its upcoming licensing hearing," as had been agreed at Toronto the previous year. Significantly, the consensus document represented both dissenting provinces, although they were to depart from the consensus on certain issues. Ministers followed informal procedures. There was no analysis of the report against the benchmark guidelines, point by point.

The ministers supported "most emphatically" the precedence given to the matter of extension of basic services, the recognition of overall service deficiencies, not just in the Far North, and the rejection of the subsidy link with pay-TV.¹⁰ Nonetheless, the provinces adhered to the policy of concurrence in timing the introduction of these services, on which the guidelines had

been framed, arguing that the "hearings on pay-TV need not be delayed unnecessarily."

U.S. and Canadian programming were included in any satellite package, as the satellite guidelines indicated. The priorities for carriage suggested by the Committee were accepted. British Columbia alone demurred, pressing for a higher priority on pay-TV. All favoured the acceleration of providing CBC production centers within each province.

The provinces approved the emphasis on diversity included in the recommendations on transferring the burden of proof, the plurality of delivery techniques and the recognition of regional concerns. Newfoundland distanced itself from the Council of Maritime Premiers, stressing that extension should be considered on a provincial rather than a regional basis. As well, the ministers supported the encouragement of native networks and the principle of editorial control by the receiving communities.

The Vancouver statement concurred with the socio-cultural objectives for pay-TV and the preference for a competitive structure enunciated by the *Decade of Diversity*. On matters of jurisdiction, the ministers claimed that pay-TV, like other closed circuit services was under provincial jurisdiction, but that this would **not** preclude the development of a mechanism to accommodate federal and provincial objectives. The ministers rejected the majority recommendations for a levy on pay-TV services in favour of coordinated supply side incentives.

The most interesting joint federal-provincial experiment in addressing issues of Canadian content was conducted in the Working Group on Industrial Impacts of Communications. All governments participated.¹¹ Regional development policies were mutually agreed to be beyond the scope of the study. The group addressed several key issues in the *Decade of Diversity*, arising out of parallel sets of meetings.

Concurring with the Committee, the working group noted "a significant latent demand" for pay-TV. Citing a "guesstimate" of a DOC study, the group concluded that "given the small size of the Canadian market, Canada may not be able to support the variety of services offered in the U.S." While expressing no preference for a monopoly or competitive market structure for pay-TV, the group echoed the Committee on Extension of Service's skepticism about the effects of audience fragmentation on the broadcaster "as long as the new services are not enjoying any unfair competitive advantage." The group decided that there "was no conclusive evidence of the effects of vertical integration on overall costs," and decided against specific policies on vertical integration, contending that broadcaster demand for Canadian programming could be modified through Canadian content regulations.

The working group discussed modifications to the quota system, with percentages adjusted to take account of independent productions, sched-

uling in prime time, and differing capacities of independent stations. It noted a "general support for a quota system," and particularly its advantage in simple administration, compared to a point system on the Australian model. A system based on audience share, similar to Ontario's results-oriented "approach," a spectrum license fee and import tax were also rejected. In principle, the group endorsed the view of the Committee on Extension of Services that Canadian content requirements should be flexible, of different types and levels for different services, and backed by a full array of fiscal incentives.

All provinces met again in Quebec City in February of 1981, confirming their position that "significant progress can be made on matters of joint concern independent of any constitutional discussion."¹² Priority was placed on the creation of a working group to study interprovincial telecommunications. Ministers agreed to study the wider use of satellites in educational television, reflecting the growing interest of British Columbia, Nova Scotia, Newfoundland and Labrador. Finally, the provinces produced a set of principles governing the reception of satellite signals to supplement the Committee's recommendations on earth station ownership and reception of U.S. satellite signals.¹³

5.2.2 North-South Axis

The presence of the Inuit representative was considered responsible for the emphasis on the broadcasting needs of native peoples and particularly the concrete proposal to consider the creation of an Inuit broadcasting system. In general, recommendations for Indian broadcasting needs were not as positive as for the Inuit, which reflected the composition of the Committee, and the locations selected for its public meetings. Nonetheless, there was satisfaction that the North got equal hearing, despite the insistent industry and media focus on pay-TV for southern clientele.

The first provincial-territorial response was from the ministers responsible for northern development who met in September of 1980. Their consensus document included the Yukon and the Northwest Territories. Commenting that little had been done in the past year to improve the availability or quality of radio and television, the ministers expressed unanimous support for an immediate call for applications to extend services, and called upon the CRTC to finalize the guidelines for licensing as soon as possible. They urged the Commission to hold hearings before the end of 1980 so that services could be available for the spring of 1981 at the latest.¹⁴

The Inuit Tapirisat of Canada applauded the report, but hoped that it was "not too late." It called upon the Commission and minister to act immediately. In particular, ITC was concerned about any increase in the appropriations earmarked for northern services to the CBC and NFB. In a

time of tight money, federal priority should be on the recognition of the right of a people to self-determination, they argued. Native communication societies must have preferred status in the allocation of funds.¹⁵

We conclude that the institutional dimension of governments in federalism did not freeze out other interests. In this case of regulatory collaboration, there was only one instance where the presence of provincial nominees is considered to have had an inhibiting impact on native and northern concerns in the report. The recommendation concerning funding for native communications societies singled out only the federal government. No mention was made of similar requirements for provincial consultation in funding broadcasting for Métis peoples.

5.2.3 Industry Reaction

The argument of most sectors of the industry (except broadcasters) was that the Committee exacerbated regulatory lag and jeopardized innovative proposals for the delivery of new services. More "illegals" continued to appear, consolidating the "head start" of American satellites services in building audiences. This view contended that the outcome of the licensing phases would have been the same without the **Decade of Diversity**. At the same time, industry officials did not dispute the educative value of the Committee.

This generally negative assessment was refuted by federal and provincial policy-makers. If there was no doubt in the public mind, why was the Committee divided on recommendations about reciprocal reception of signals? Without organizational innovation, it was unlikely that the Commission would have moved as quickly. The emphasis on special native forms of broadcasting and editorial control would have been muted. Fewer new actors would have emerged to apply for licenses.¹⁶ Moreover, it is probable that the end result would have been a monopoly in pay-TV. The guidelines exercise demonstrated that an "Ottawa-centred doctrine about the virtues of monopoly" still persisted within the senior bureaucracy of the Department of Communications.

Neither of the two major industry associations issued a formal comment on the structure or process of the Committee. The Canadian Association of Broadcasters (CAB) isolated four problems with the Committee's findings. It objected to the absence of a subsidy link, the renegotiation of the agreement for reciprocal reception of signals, and the rejection of a monopoly in pay-TV.¹⁷ In particular, broadcasters were concerned with the impact test, contending that the transfer of the burden of proof countered the Commission's position on the review of cable regulations in 1979, and the concern for the effects of fragmentation on broadcasters in marginal markets as demonstrated in the Commission's special report on broadcasting. As for

the recognition of concurrency in negotiations over the introduction of pay-TV, the CAB favoured continued federal paramountcy. In general, the Association reiterated the need to protect broadcasters' exclusive right to programs. The CAB also opposed the liberalization of individual earth station ownership, and pressed for amendments to the **Broadcasting Act** to cover the technical definition of satellites under radio communication.

The national cable industry did not issue a formal reply. In a press release, the President of the Canadian Cable Association found the report indicative of a "badly split Committee" and concluded that it offered no answer to illegal earth stations.¹⁸ By December of 1980, the Association commissioned a policy study of the open skies option, and made the "right to receive" the theme of their next annual convention in May of 1981, after the provincial consensus. The CCTA endorsed the Committee's recommendation to "re-negotiate" the 1972 agreement and was particularly concerned that it happen quickly because of the unfair competition from illegal earth stations. The development of direct broadcast technology was anomalous, given the federal government's reluctance to declare a universal open skies policy and to liberalize the individual ownership of earth stations. The CCTA endorsed the position in the Clyne Report that "sovereignty cannot be dictated against the will of a people," and favoured an open skies policy at first for underserved areas, and ultimately universally.

In general, broadcasters noted two disadvantages to the Committee's lack of legal and financial access to information and argued that they lowered the quality of the debate on the right to delete programs or on the economics of pay-TV.¹⁹ Indeed, these critics noted a complete absence of the discussion of copyright difficulties implied in the recommendation that any predominantly native community should have the "right . . . to eliminate channels . . . (or) a program and to substitute one of its own choice," despite the inconclusive recognition of the confusion over a similar issue in the discussion of pay-TV.²⁰ The lack of access to financial information, and in general, the lack of a "strictly business" perspective on the Committee is apparent in the discussion concerning the majority recommendation that a Canadian pay-TV system should not be entrusted to a single national agency. Nowhere were the merits of economies of scale in acquisitions or other functions evaluated. Furthermore, nowhere were the merits of a universal system compared to a discretionary system mentioned, much less assessed. While these critics agreed that these subjects were "exceedingly complex," they were not considered too complex for informal discussion in the report. Indeed, they were considered essential to explain the logic of the Committee's thinking. The absence, to quote one, "makes one suspect the triumph of a mindless Friedmanite abdication of responsibility to the market" without adequate grounding. But if the system failed, would public expectations force the Commission to step in? Would there be a repetition

of the Global syndrome? The very fact that these questions were not raised may have been due to inaccessibility to financial figures and expertise or the lack of the Committee's ultimate responsibility for implementation. In any event, they were central problems to be solved in licensing.

5.3 Conclusion

The Committee process broke the regulatory log-jam and launched the Commission on a new era. The **Decade of Diversity** was the first statement of a new policy paradigm in communications which replaced the protectionism of the "single system" architecture with a competitive model of diversity. The Committee's report stated:

a new day is dawning . . . illuminated by the opportunity for innovation that the new technology presents allowing more Canadians to participate, more room for choice.²¹

The revised model of organizational control sought a better balance between the rights of individual consumer preference and of collective national sovereignty in the era of the Charter. The full outlines of the **Decade of Diversity** would not become clear until the licensing decisions took shape, and a broadcast plan emerged in 1983.

Just as the global model appeared in transition so too were the policy principles on the extension of medium and message to underserved and native peoples in Canada. Where the Commission had earlier recommended a moratorium on the delivery of new services to the far North until "an adequate first service" was provided, the new emphasis in 1980's was on the self-determination of a people's message, on new forms of native broadcasting.

There were two categories of criticism to the report. The first originated with program officials with an operational concern in the north who contended that the report did not go far enough in prescription for extension. There was no recipe for components of the "package of services." The parallel argument among those with an operational interest in pay-TV noted the cursory attention given to key regulatory issues in the report, a consequence of the priority on extension. The **Decade of Diversity** left unclear to whom a pay-TV agency would be responsible, for where, for how many, for how much.

The second category of criticisms challenged the scope of the report, arguing that it narrowed its focus so as to exclude significant matters of debate on Canadian content and the economics of pay-TV. This was principally a criticism of the incremental model of policy-making, or the eclipse of rational planning in communications policy, directed at the political sphere. While logically the question of Canadian content may be prior to

the matters that the Committee addressed—and this was conceded only by certain officials sympathetic to a national focus in broadcasting—the majority view was that political pressures had escalated to the point where policy-makers had to proceed on an *ad hoc* basis. There was no doubt that the Committee's mandate was a short term political response to an immediate regulatory problem. That a **Decade of Diversity** succeeded in addressing the principal medium term planning issues for the transition to direct broadcast satellites was a tribute to its members and the vigilance of the players. The **Decade of Diversity** no more addressed

the economics of cultural survival in the North than it did the economics of pay-TV and cultural survival in the South in the new era of direct broadcast satellites.

Nor was it designed to. The "Great Canadian Equalization Ethos" was a greater political imperative than cultural survival.²²

Evaluation of the report on this dimension is determined by a conception of the role of communications in the federal community.

If one is committed to the "national dimension test" in broadcasting, then the chief threat to national identity and the broadcasting system facing the Committee was another generation of American incursion. From this view, the Committee's model of "diversity" in services is but a Trojan horse for American programming. The real problem to be faced was to make public the debate over the "incremental" right to American signals which was surrendered in silence in 1971, to re-open the question of Canadian or American skies, or to decide between individual preference and collective rights. The best method to resolve this critical issue would have been through a general hearing into the public corporation, as the Clyne Committee recommended, or an overall cultural review. This would have had the benefit of placing the public/private sector relationship as the prior policy question. The question of the second network, or maintaining the public presence in an increasingly competitive environment, would have been resolved. The reasons for the political rejection of a universal/public system in pay-TV, which is assumed in the guidelines and in **Decade of Diversity**, would have been cause for public debate. The fragmented review of Canadian content quotas, and cultural strategy within rival bureaucracies, if it did not subvert to the public principle, relegated it to a rear-guard defense in subsequent hearings.

On the other hand, if one is committed to the building of provincial identities and redressing the balance of exchange in the messages of broadcasting, then the challenge is to open the Canadian system to new sources of regional and provincial content. In this view, the new paradigm of the diversity emphasizes a decentralist view of the system, one which is respon-

sive to consumer taste. It is competitive in structure for reasons of access—aided by the prohibition on monopoly and vertical integration in services—and of jurisdiction.

6 Policy Implementation

This chapter explores the extent to which the recommendations contained in **Decade of Diversity** were implemented by the federal government. We will establish that the Commission led the expansion of Canadian satellite-TV and fostered the emergence of a revised federal broadcast plan. To this end we distinguish between the Commission's adoption of the Committee's criteria for network licensing and the independence of the public hearing process and note that the Commission did not accept the **Decade of Diversity** in its entirety. We will argue that it did adopt those principal recommendations within its jurisdiction. Yet no Call for Application can be exhaustive; in a public hearing the criteria are subject to commentary from a wide array of intervenors and applicants. As well, the new Chairman of the full Commission, Dr. Meisel, and a number of appointments to his Executive Committee from the regions, diluted any organizational continuity from the Committee on Extension of Services. These factors could suggest that the analysis of the Committee's outcome should end after the issue of the respective Calls for Applications. We reject this approach on two counts. First, given the relative consistency of the positions adopted by various sectors of the industry and consumer groups across both the policy and licensing hearings, any similarity in policy interpretation attests both to the quality of **Decade of Diversity** and its efficacy as a device in regulatory collaboration.¹ Second, the Committee was a response to the growth of illegal dishes. It rejected any exclusive Canadian skies option and pointed out the need for a complex set of federal-provincial and Canada-U.S. negotiations to develop a clear and coherent satellite-TV policy.

On its return to power, the Liberal government completed the re-organization of portfolios begun by the Conservatives, making the Minister of Communications responsible for all cultural and technological aspects of communications. As well, the concurrent initiatives to develop satellite-TV and to review cultural policy were retained. In 1982, the Department of Communications launched its own in-house review of a Broadcast Plan,

which was released just under three years after the **Decade of Diversity**.

Given the outcome of the third step in the policy process examined in the preceding chapter, we may tender a few hypotheses about the shape of subsequent federal-provincial negotiations. Those provinces which withdrew from the guidelines or nominee exercises for the Committee on jurisdictional grounds could prove the most hostile to the Commission's exercise of authority. The real test of the experiment in regulatory collaboration among participating provinces would be whether the interlude of harmony on the field of communications returned to a battle over sovereign imperatives. Only those events germane to the Committee's recommendations from the period February 1981 to March 1983 are discussed below.

6.1 Regulatory Action: Extension of Basic Services

6.1.1 Call For Applications

The Commission issued its first public announcement on recognizing the contribution made by **The 1980's: A Decade of Diversity** on October 16, 1980.² The Commission endorsed the order of priorities, the rejection of cross subsidy and called for applications to extend conventional broadcast services. Other subscription services would be the subject of a different hearing. Like the Committee's report, the Call refrained from any numeric definition of inadequate levels of service because of the complex variables involved.³ The Commission decided to proceed in two phases, licensing networks and local delivery separately.

The new services had to be attractive to consumers, responsive to special needs of the remote and underserved regions and compatible with the requirements of the **Broadcasting Act**. The Commission accepted the concept of user payment and principle of the impact test which was the cornerstone to the Committee's philosophy of diversity and innovation. In particular, the Commission encouraged applications from native communities and the right of predominantly native communities to decide on forms for local delivery.

The Call was a faithful reflection of the Committee's recommendations on extension of services within the Commission's jurisdiction.

6.1.2 Organizational Continuity

Hearings began in February of 1981, well after the consensus provincial reply to a **Decade of Diversity**. Four out of five Commissioners from the Committee on Extension of Services were involved in the licensing phase. The other force for continuity was the presence of the nominee from the Inuit Tapirisat as an applicant for a network license. The provincial

nominees were not involved in the second phase and, indeed, had moved out of their departments during the implementation of the Committee's recommendations.⁴

6.1.3 Provincial Participation

The Commission's position in the public hearings was that it would accept the consensus reply of the provinces, included in the special representation by the government of Newfoundland and Labrador, as evidence with no special status. Participation by provincial governments in the licensing phase, as measured by special representations or appearances, was low compared to the general policy meetings. Provincial officials did not demand a say in the allocation of specific licenses as long as their interests were reflected.

6.1.4 Decisions

The Commission took immediate action to license an interim service on Canadian satellites by CTV, in cooperation with the public network and at public expense. The service provided alternate programming wrapped around the House of Commons proceedings carried on Anik A-3, but ran into early delays because of a conflict in schedule with the Special Joint Committee hearings on the constitution. In effect the interim service provided only one more southern channel to the North, a fraction of what the Committee recognized was ultimately needed. It used only one transmitter to link up signals from the central time zone, so had limited salience in the east or west. In addition, since full CBC services were carried on a different satellite, any receiving community needed two dishes to receive both the regular CBC service and the alternative one. This contravened the Committee's recommendation that services from a particular band of the radio frequency (RF) spectrum should be carried by the same satellite. The interim service was more symbolic than real for underserved areas and proved no deterrent to the unauthorized reception of U.S. signals.⁵

On April 14, 1981 the Commission issued five additional network licenses to extend service.⁶ The first went to the Canadian Satellite Communications Inc. (Cancom) a multiple channel radio and television service with one CTV affiliate, two other English independent stations, and one composite franco-phone channel. As a condition of its license, Cancom was obliged to add an Atlantic station at the earliest possible date. As it has evolved, Cancom was intended to "reflect the various regions of the country to each other."⁷

Explaining its decision, the Commission cited Cancom's capacity to begin service in 90 days, to use existing (6/4) Satellite TV receiving equipment and

to provide for local origination of service if desired. Furthermore, the Commission accepted that Cancom's intention was not to evolve into a superstation. As well, Cancom's major shareholder was a long-time broadcaster and resident in the North.⁸ The Commission declined to grant other licenses for a multiple channel network to ensure its financial viability. Cancom could be carried by cable or local re-broadcast facilities, for a wholesale fee of \$4.00 per subscriber.

Because the Commission recognized the right of prior consent in predominantly native communities, Cancom was required to affirm its intention to permit deletion of signals in predominantly native or francophone communities and to pro-rate the fee accordingly. Other conditions to support the spirit of the **Decade of Diversity** included stipulations that Cancom must consult with native groups on local production, allow them ten hours a week access to broadcasting, provide one video and two audio uplinks in the north, and include one native vice-president.

As well, the Commission recognized the search for new native forms of broadcasting by granting licenses to two native networks with north-to-north communication capacity. The first was to the Inuit Tapirisat of Canada (ITC) for a television network to serve 47 communities in the eastern Arctic.⁹ As an interim measure, the network was to share the facilities of the CBC northern service offering between one-half to one and one-half hours of programming in Inuktitut and English every night, until a special dedicated channel was available. The Commission denied the ITC's position that any private network licenses must subsidize their organization:

The Commission considers Cancom's commitments to represent significant expenditures . . . In terms of funding, the responsibility for the preservation of native Indian and Inuit cultures rests with the governments of Canada, provinces and territories.¹⁰

Recognizing that the service turned on the provision of federal monies, the Commission stated as a condition of licenses that the licensee retain control of its network operations. The same caveats were applied to the second license to operate a radio network, awarded to the Council of Yukon Indians and Dene Nation on a time-sharing basis with Cancom.¹¹

Was the Committee's report itself a sufficient condition to ensure action on the recommendation that the creation of an Inuit broadcasting system be supported "on the largest feasible scale?" The evidence suggested that the success of the ITC's license was contingent upon obtaining support from the CBC for the concept and, of course, securing federal money. The former was forthcoming only after the Inuit Tapirisat opposed the CBC application for a second network.¹²

The remaining licenses were to extend the delivery of alternative service in the East. Atlantic Television Limited received a license for a second

network to be delivered by satellite which would devote 20 per cent of its time to education programming in an arrangement with the Nova Scotia government and the Council of Maritime Premiers. The right of prior consent was similarly extended to predominantly native communities. In addition, the advertising revenues of the CTV affiliate in Newfoundland were protected by the permission of commercial deletion where appropriate. The final license went to the Newfoundland Broadcasting Corporation to deliver a CTV affiliate service on an experimental basis. The Commission also approved the Newfoundland government's consideration of subsidy for extremely remote areas.

Another parallel decision by the Commission reflects the priority on the extension of basic services as recommended in the **Decade of Diversity**. The Commission denied the application for a second CBC service on the grounds that it did not demonstrate adequately that the new service would not cannibalize the first network either in the provision of intra-provincial feeds for local programming, or in the extension of the infrastructure via the accelerated coverage program to certain remote and northern areas in the mid and far North. As well, citizens would have limited access to the second network. Available only by converter, it was estimated to reach just 17 per cent of the population.¹³

The philosophy of the network licenses to extend services reflected the emphasis in the **Decade of Diversity** on innovation and flexibility. The decisions were pluralist in recognizing the needs for regional presence and the concern with the protection for local markets. The package achieved extension of the national CTV affiliate on a user pay basis, and avoided disrupting the advertising markets of local affiliates.¹⁴ The Cancom service also extended alternative francophone service west of the Ottawa River on a discretionary basis and gave the anglophone consumer a choice of at least three more alternatives to the CBC. In using conventional television stations, the package conformed to Canadian content regulations, existing property and distribution rights to programs, and was seen to forestall a jurisdictional contest.

Criticism of the regulatory aspects of the Cancom decision fell into three categories: technological, economic and cultural. First, the selection of existing technology was an interim measure. The decision did not recognize the potential for higher powered direct broadcast technology, which may be the only "post Accelerated Coverage Plan (ACP)" method to reach the most remote of citizens. There were two options. Selecting the high-powered (14/12 GHZ) satellite technology (the object of experiments by the federal Department of Communications), could have consolidated Canada's industrial lead in direct broadcast technology. It could also have established a short-term technological curtain, discouraging any free ride on U.S. signals, given that U.S. satellite services were available only in the low-

powered mode at the time. But the economics of such high-powered satellites require large, highly concentrated populations. Choosing the "middle range" of satellite technology which required larger dishes, was more readily adapted to the service of smaller populations over a wide area, and to the local origin of signals.¹⁵

The second caveat was the foreclosure of the superstation option to a later stage. Why was Cancom restricted to the micropolitan market and not universally available, subject to the impact test, as the Committee had recommended? Other than Quebec, seven provinces favoured Cancom's universal availability with the deletion of its CTV affiliate to protect the local broadcaster.¹⁶ As well, the vague criteria for "underserved" areas contributed to the volume of deficient applications in the second phase of applications for delivery. The Commission delayed the question of what should be basic, and universally available to all Canadians, to a subsequent hearing on tiered pricing for cable services.

Finally the content of the Cancom package met with criticism. English provinces queried the salience of channels from different time zones and the eventual cost to the end user. Quebec objected to the failure of the decision to observe its "droit de la difference" and commented on the questionable nature of the composite private francophone service.¹⁷ The package was basically designed for mid-northern and remote markets consisting of predominantly white, anglophone communities involved with resource industries. The provision for a territorial centre to originate signals that are northern in content or character, and for access by native groups, were "trailers" in the words of one official. They were yet to become operational two years after the decision, and the subject of a subsequent reminder from the Commission.¹⁸

The Commission was deliberately ambiguous on the definition of "predominantly native" community which would determine eligibility for editorial control of the Cancom signals. The intent was to leave this decision to be resolved at the local level. In the initial period after its license, Cancom chose to operationalize the definition as a population majority of 50 per cent or more. The conditions of native access to transponder time, and to a management position, were similarly vague. The Alberta Native Communications Society, which had supported an unsuccessful applicant in the network phase, was to contest the Council of Yukon Indians (CYI) and Dene Nation for access to Cancom facilities. The company was in the anomalous position of having to develop a policy on native access, which many felt was a decision too important to be in private hands. The problem was further complicated by the evolving confederate structure of the CYI-Dene network.¹⁹

The Commission acted with commendable speed on the principal recommendations in *Decade of Diversity* concerning the extension of basic

services within its jurisdiction.²⁰ Within one year of the report a number of new services was licensed. Within two years they were commencing local delivery. The innovative tripartite cooperation in community assistance for potential applicants for local delivery was similarly commendable. Experience with the second phase of licensing indicated a higher volume of applications to carry Cancom than expected.²¹

6.1.5 Enforcement

Policy involves not only decision but also the mobilization of support and the selection of sanctions.²²

In October 1980, the minister announced that the government intended to "take appropriate action to halt unauthorized earth stations" in the South, where there were already a wide range of signals.²³ After the Canadian services began operation, enforcement would be pursued on a universal basis.

The Department launched a case to shut down "illegal" urban operations in May 1981. It met with defeat in the lower courts. The Provincial Court of British Columbia decided that the federal Department's charges against Loughheed Village Holdings as a broadcast undertaking operating without a valid license under the Radio and Broadcasting Acts turned on the meaning of the term radio communication. The "irresistible inference" in the judge's view, was that the "electromagnetic waves were propagated in space with an artificial guide, that is the satellite."²⁴

The Commission also felt obliged to halt the unauthorized reception of U.S. signals on two counts: to preserve the integrity of the regulatory process, and to serve the legitimate goals of Parliament as contained in the **Broadcasting Act**.

On June 11, 1981, the Commission charged Shellbird Cable Limited of Corner Brook, Newfoundland with a breach of the Cable Regulations. The company had not been authorized to receive the American Public Broadcasting System (PBS) from satellite and deliver it to subscribers at no extra cost. Section five of the Cable Regulations states:

(A) licensee shall not use or permit the use of its undertaking except as required or as authorized by its license or these regulations.

The Provincial Court was posed with two questions: Was the delivery of PBS defined as broadcasting under the Act? If so, did the CRTC have the authority to regulate it? In an October decision, Judge Seabright decided against the Commission, declaring that earth satellites were an artificial guide, thereby removing them from the definition of radiocommunication,

and taking Shellbird's operation out of the Commission's jurisdiction. Judge Seabright dismissed that part of the Act which specifies that the supervision of the system should be flexible and adaptable to scientific advances on the grounds that:

(T)he policy is of very little value unless the proper law to achieve these ends is in place and thereby transmitted to the CRTC.²⁵

In the provincial view, the Commission's authority to regulate non-broadcast or special non-programming services under this global section of the cable regulations was at stake. The federal position was that the definition of a TVRO as an artificial guide was irrelevant. The **Broadcasting Act** (S. 16./1/b) and Section Five of the Cable Regulations establish the Commission's purview over all aspects of an undertaking. The Minister contended that satellite reception was not a matter of local or regional jurisdiction and announced his intention to pass remedial legislation if the courts continued to find the current Act deficient.²⁶ A subsequent injunction to the federal Court by an Ontario pay-TV operation offers a more rigorous test of federal authority.

The legal vacuum left the impression that the Commission was "forced into a *de facto* open skies policy."²⁷ The inequities of selective federal enforcement between remote and urban operators, individuals or hotels, jeopardized the federal government's perceived legitimacy in regulation.²⁸

The Attorney General for Canada appealed the Shellbird Decision to the Supreme Court of Newfoundland. In a decision on September 13, 1982, Justice Mifflin upheld federal authority. While the reception and redistribution of PBS by Shellbird did not fall within the strict definition of broadcasting, since the signal was not intended for reception by the general public, this was not "determinative of the legal issue." Federal authority contained in the **Broadcasting Act** extended to any programming carried on a broadcast undertaking. After the decision, the federal minister stated a renewed intent to take enforcement action against unauthorized operations, but held it in abeyance until the release of a revised broadcast strategy in March of 1983.²⁹

6.2 Departmental Action: Extension

The Minister of Communications encouraged the Commission's leadership, supported the Canadian package and protected the establishment of new services from "unfair" competition from American signals. The Committee's Report addressed four key recommendations on domestic satellite-TV to the federal government and its crown agencies: on interim service; funding of native services; simplifying of licensing procedures; and

provision of intra-provincial feeds under the CBC Plan for Accelerated Coverage.

The minister awaited the Commission's call for applications before stating his Department's policy;³⁰ he endorsed the priority of extension of services to an estimated 2.8 million Canadians who received two or fewer Canadian services:

(O)ur interest is seeing Canadians receive approximately the same number of signals no matter where they are in the country.³¹

As "another example of cooperative effort" after the Committee, the Minister undertook to coordinate the delivery of interim service which commenced on January 15, 1981.³²

By December 1980, the Department had granted an extension of the Inukshuk experiment by the Inuit Tapirisat on Anik-B and announced that the Commission "would be paying special attention to the needs of the Inuit and other native peoples in the licensing phases."³³ One year after the release of the Committee's report, the Minister announced with the Department of Indian and Northern Affairs (DIANA) that the organization had been granted \$3.9 million for the creation of an Inuit Broadcasting Network. The money was to allow the new Inuit network to commence permanent network broadcasting by the spring of 1982. On the other hand, the Department did not take as decisive a role in coordinating inter-departmental funding for the Council of Yukon Indians and Dene Nation to allow them to go into production for their radio network. The delay may reflect the federal structure and the lesser bureaucratic resources of these groups which may be obstacles to effective lobbying. As well, the inter-departmental committee to study the increasing need for television and radio programming in all northern native languages set during the MacDonald era was retained.

Significantly, the Department did not move to ensure supplementary appropriations earmarked for northern services for the CBC or National Film Board. For the former, however, there was an incremental increase in funding beyond the cost of inflation in 1982, although this was not earmarked for the northern service.

In the context of a comprehensive review broadcast strategy released in March of 1983, the federal government allocated \$40.3 million over four years to help Indian, Inuit and Métis production in the North. Mr. Fox maintained that the funding will double the present supply of programming from about five to ten hours a week.³⁴

Finally, in cooperation with the CBC the federal and provincial governments attempted to resolve the problem of buying a television station to originate productions within New Brunswick in both official languages.³⁵ The Accelerated Coverage Plan will be completed by 1984.

6.2.1 The Canadian Package

The minister found the Commission's decision on the Cancom service to be:

(On) the whole a satisfying development representing an innovation in the extension of services at no cost to the (general) taxpayer.³⁶

The decisions marked "the coming of age of satellites as an integral and viable part of our national broadcasting system," "instruments of communications as important as the last spike."³⁷

In a public notice to aid the licensing of Cancom for local distribution, the Department clarified its position on the Committee's recommendation 14: licenses would not be issued for the direct reception in Canada of U.S. satellite signals. The Canada-U.S. agreement and the absence of U.S. commercial networks on U.S. satellites were barriers. After the network licenses for extension of services were awarded, both the Department and Commission launched an offensive against a promiscuous open skies policy.

The Department defended a Canadian skies approach on the grounds that the U.S. programming available on Anik from the combination of stations included in the Cancom package represented "more U.S. commercial network programming than is available to many U.S. citizens in remote and rural areas in the U.S."³⁸

The minister stated:

(W)e owe it to informed Canadians to lift the veil of sovereignty and explain our actions. Why is it that Canada takes a strong free flow of information line on East-West information questions but a much more nuanced position on Canada/U.S. questions?³⁹

Mr. Fox argued that fundamental human rights were not in question in the Canada-U.S. flow of messages. The open skies or free flow of information argument had to be demystified to find for whom it works and for what economic advantage.

The overall federal strategy was presented in an address by J.T. Fournier, Assistant Deputy Minister for Policy to the Canadian Cable Association on the "right to receive signals" in June of 1981:

There is no such thing as an absolute right to receive. Such rights must be tempered with concern for Canadian priorities in terms of sovereignty, jobs and national identity. It is a question of balance . . . of Canadians being able to compete.⁴⁰

Mr. Fournier favoured "renegotiation" of the bilateral agreement with the U.S. as the majority of the Committee recommended, only when there was more and better Canadian programming on the Anik satellite system which could be sold in the competitive market to balance the imported content.

Unlimited fragmentation of audiences under any open skies policy would threaten the achievement of the objectives in the **Broadcasting Act**.

6.2.2 Satellite Policy

The **Decade of Diversity** recommended that the federal government initiate as wide a consultation process as possible to plan for the next generation of direct broadcast satellites. The minister underlined that Direct Broadcast Satellites (DBS) would have "an appropriate role as a part of an integrated system" and would not be left to the market to develop in Canada. The Department began a series of studies of the regulatory policy and institutional aspects in 1981 to prepare for the Regional World Administrative Conference on DBS in 1983.⁴¹

On the telecommunications side, both the Committee on Extension of Services, and the Economic Council of Canada had been concerned that Telesat's pricing structure militated against the broadcast user.⁴² The Governor in Council upheld the Commission's decision to allow Telesat to sell directly to broadcasters, and liberalized the policy of leasing channels so that sharing arrangements were possible.⁴³ As well, both bodies had expressed grave concern over the lack of policy co-ordination in the telecommunications sector. The federal government undertook a study of joint mechanisms to minimize policy conflict with the province of Nova Scotia at the end of 1981.

Finally, the Committee on Extension of Services had been astonished at a "deplorable limitation" in Telesat's planning for Anik-C. Coverage did not extend north of 63°, rendering it irrelevant to northern broadcasting needs. The Department undertook to consult in planning for the next generation of satellites via the usual gazetting process, which has been under fire as an inadequate mechanism from the provinces.⁴⁴ The provinces succeeded in obtaining a subsequent agreement from the minister that any planning should proceed on a multilateral basis in September 1981. The following spring, Telesat unilaterally signed three contracts with U.S. customers for the next satellite series. The resultant southern "skew" in coverage would seem to compound the "deplorable limitation" identified in the **Decade of Diversity**, and reveal a fundamental contradiction in the federal government's economic and cultural objectives for satellites. Telesat subsequently switched carriage of the U.S. customers to another satellite, eliminating the problems of channel availability and tilt for new Canadian users. Further, Telesat accepted only scrambled U.S. services for carriage.⁴⁵

6.3 Federal-Provincial Negotiations: Importation of Foreign Satellite Signals

The **Decade of Diversity** had unanimously recommended that the federal government reconsider its policy on earth station ownership to allow individuals to receive U.S. signals. The majority of the Committee had endorsed a "3 plus 1" approach to the importation of foreign signals for redistribution while protecting existing property and distribution rights. The interim federal decisions on the extension of basic Canadian services were predicated on the assumption that they would refuse the proliferation of illegal dishes. The Chairman of the CRTC contended that the number of illegal dishes had diminished. Further, Cancom claimed that its experimental delivery induced several of the illegal operations to convert. By its early enforcement action, the federal government continued to play the role of protector for the new licensee against "unfair" competition from U.S. signals.⁴⁶

On the other hand, provinces assumed the role of populist advocate for more choice. In the absence of arrangements to permit reception of U.S. signals, as the federal-provincial guidelines from Toronto had suggested, provinces argued that the window on the **Decade of Diversity** was only part way open.

6.3.1 Review of Earth Station Policy

Both the Committee on Extension of Services and the Economic Council of Canada recommended that the federal government review its earth station ownership policy to include both television and radio and a broader class of users—from broadcast undertakings, non-commercial institutions or groups, to individuals.

The Department acted on the recommendation in two parts. The first stage shortened the application procedure for earth station licenses in November 1980.⁴⁷ Provincial educational networks were permitted for the first time to own satellite receivers to pick up Canadian television signals. Already licensed satellite-TV receivers were permitted to pick up radio signals "to facilitate the wider distribution of radio programs to remote communities at minimum cost." At the same time, the Minister opened a more general review of earth station policy.

6.3.2 Quebec Provincial Consensus

After the minister's call for a general review of earth station policy, the provinces developed a set of principles governing the reception of satellite signals at Quebec in February of 1981. All provinces agreed that:

(A)ll residents have the right to receive for their own use foreign signals intended for the direct reception by the general public.⁴⁸

Further, the ministers contended that Canadian and American satellite signals not intended for direct reception by the general public should be protected by the originator. Saskatchewan alone stressed that the authorization of reception and redistribution of American signals in Canada was currently subject to legislation of both Canada and U.S. governments. In the words of one official, the Saskatchewan position before the change of governments was that:

(I)t must control everything that goes into its delivery system. Opening the individual reception of signals meant death of the fibre optics system.

Finally, satellite signals intended for re-distribution were subject to authorization by the provincial regulatory authorities. Thus the provincial principles both endorsed the general thrust to lessen regulation in the U.S. and asserted their continuing interest in the regulation of cable systems including satellite to cable networks within the province.

6.3.3 Winnipeg Conference

After provincial pressure to collaborate on the Commission's decision concerning TCTS revenue settlement procedures, the federal minister undertook to organize jointly with Manitoba the first federal-provincial forum in Winnipeg, in September 1981, over a year after the release of *Decade of Diversity*. The agenda was dominated by telecommunications and led to the creation of a task force to explore joint regulatory mechanisms.

The conciliatory federal keynote address emphasized the cooperative space experiments, innovations of technology and the information revolution. The minister emphasized that extension of services was a priority shared by all governments, and agreed that "provinces should be more involved in the planning of future satellite services." Little material advance on the definition of basic services or competition among optional services was made in reports of the three working groups of senior officials.⁴⁹ At Winnipeg, there was evidence of a division of opinion concerning the authorization for the reception of U.S. signals. Several provinces pressed for opening negotiations with the U.S. to permit the reception of signals in isolated and underserved areas, which the federal minister said would be given consideration as an overall broadcasting strategy being developed.⁵⁰ Several provinces favoured the carriage of "3 plus 1" American networks on Canadian satellites to underserved areas. Quebec stressed the need for

linguistic balance in the introduction of new services, regardless of country of origin.

The provinces contended they won federal assent for their position on the liberalization of TVRO ownership for individual use. The second changes to "facilitate reception from Canadian satellites" announced by the federal minister were timed to coincide with the local delivery of Cancom's service in January 1982.⁵¹ Resource camps were exempted from obtaining licenses. Others who wished to receive non-broadcast services were invited to apply. Despite intimations from certain officials, the minister stated that further liberalization for individual use had to await a comprehensive broadcast strategy. Federal-provincial polarization over implementing the Cancom decision was exacerbated by growing provincial involvement in the ownership of satellite receiving dishes.

6.3.4 Political Appeal of Cancom Delivery

Manitoba appealed to the Governor-in-Council to refer back the second phase of the CRTC's decisions for the local distribution of Cancom in Flin Flon, Le Pas and Thompson.

The government contended that Cancom did not represent an adequate alternative programming from American satellites since much of Cancom's fare was already available over the air. Manitoba asked the federal government to:

take appropriate steps to ensure the reception of Satcom programming . . . over Manitoba Telephone System's (MTS) coaxial cable systems;

allow the deletion of Cancom's CTV affiliate . . . and allow communities to receive both Cancom and Satcom signals via off air rebroadcast for those communities who so wish.⁵²

This agreement would provide program choices comparable to the traditional "3 plus 1" concept in southern Manitoba.

The appeal was denied.⁵³

6.3.5 Canada-U.S. Letter of Agreement

According to a 1972 letter of agreement, any transborder services operating in the "fixed" satellite mode of private signals provided by either Canada or the U.S. had to be approved by both countries, including those only "incidental or peripheral" to normal operations.

Federal negotiations to revise the agreement, as the Committee recommended, were delayed because of an overall deterioration in Canada-U.S.

relations, when retaliatory measures in communications were proposed to the U.S. Senate.⁵⁴

In May 1982, bilateral discussions about telecommunications traffic began. The Canadian object was to guarantee Canadian carriers "a fair share," both of facilities—channel for channel or geographical configuration of satellite coverage—and of revenues. A supplementary objective was to ensure Telesat's predominant role as the Canadian negotiator, subject to ministerial review. On August 26, 1982, the federal minister announced an addendum to liberalize private business telecommunication traffic, but specifically excluded the reception and distribution of radio and television programming.⁵⁵ Any resolution of a "fair flow" bilateral information policy depends on relevant domestic regulatory authority ratification by the multi-lateral convention of the Intelesat consortium.⁵⁶

6.3.6 Towards a New National Broadcasting Policy

On March 1, 1983, Mr. Francis Fox released his proposals for a new broadcast policy. In principle, Canadians were entitled to as much choice as technical, contractual and institutional arrangements afforded them.⁵⁷ The minister planned to lift licensing requirements for dishes for individual use as the provinces had argued, to "encourage the development of satellite services to underserved communities." The "amnesty" on reception of signals from U.S. satellites also included certain hotels or commercial establishments. The onus for protection of signals rested on the originators, as the Quebec provincial consensus held.

Further, the minister proposed to expand the range of U.S. satellite services, available to Canadian cable operations. Redistribution would continue to be subject to CRTC approval, contractual arrangement, and international agreement. The minister stated that it would be preferable to "repackage" such American satellite services to include Canadian material, but offered no instruction as to who would do it, how or why. Explicitly excluded were foreign pay-TV signals. The federal government re-opened negotiations with the U.S. to amend the 1982 letter of agreement to cover broadcast traffic. While widely welcomed in the media as an "open skies policy," the full outlines will not become clear until the parliamentary process is complete.⁵⁸

6.3.7 The Three-Plus-One Option

With the launch of the next Anik-D series of satellites in late 1982, the short term constraints on channel capacity identified in *Decade of Diversity*

eased. Therefore, it was necessary to review whether U.S. networks should be carried on Canadian satellite on a "3 plus 1" formula.

Two companies, including Cancom, applied to the Commission in 1982 to intercept American signals at the border and bounce them up to satellite. American signals would be offered on a discretionary basis. Both companies proposed to pay for the rights to U.S. stations. The move was a part of Cancom's original "8-pack" model conceived in 1977. It was seen by some as evidence that the Canadian package alone cannot compete with U.S. satellite alternative "Satcom." Further, the service of U.S. signals to smaller cable operators could underwrite the costs of the basic Canadian package.

One week after the release of the minister's proposed strategy, the Commission released its decision. There was no dissenting opinion. The *Decade of Diversity* had, after all, acknowledged that,

underserved communities would not necessarily be satisfied with a package of strictly Canadian broadcasting services.⁵⁹

The "3 plus 1" decision was thus a further completion of the distant importation rule for microwave, itself motivated by the need to equalize access to such signals among all Canadians.

The Commission approved Cancom's application, on the condition that Cancom first met its commitments to provide a basic Canadian station from the Atlantic region, and to assist native groups in the development of northern and native-originated programming. Cancom's target market expanded to the "extra-cable" sector, those small cable companies unable to distribute one or more of the U.S. network signals.

The Commission proposed to consider applications for local delivery of the U.S. signals only after extension of Canadian services to underserved areas—an estimated 800 more communities—had been met. The Commission also insisted that Cancom tailor its U.S. package for different time zones, and reconsider its wholesale pricing structure to ensure benefits flow to the core market. Constructed on a discount for volume on a subscriber basis, the pricing would militate against that market which was Cancom's entire rationale—the smaller remote community. Criteria for licensing Cancom's "3 plus 1" local delivery included size of market and range of extant services. Most important, the Commission suggested a "parity principle" between the number of advertiser-supported Canadian and U.S. signals in the overall cable package. This "parity principle" promises to re-emerge in the Commission's forthcoming decisions on tiered cable services which must redefine what constitutes a "basic service," and appropriate balance between domestic and foreign signals. Further, the Commission prohibited duplication of services, trading of Canadian for American signals and encouraged the provision of French-language service to

interested communities. The decision appeared to continue to foreclose the domestic superstation option—since the extra cable market will not be permitted to receive the Canadian Cancom signal. The concern continued to be that satellite delivery may eclipse costlier terrestrial microwave relay, although existing contractual agreements will lapse only in 1988. The larger public policy issue is whether to permit the Cancom or other packages to evolve into universal superstations. While these may compete with broadcasters for advertising revenues, subject to the impact test, the evolution, "painful as it may be," may be an essential element in increasing the number and range of Canadian services to retain a proportional market share for Canadian programming. While welcoming the "3 plus 1" Cancom as a significant step, the minister's proposals called upon the Commission to consider other, perhaps advertiser-supported services, in the context of its tiering decisions and review of its policy on simultaneous program substitution.⁶⁰ The Commission issued its Call in early May 1983.

6.4 Provincial Reactions

QUEBEC

Quebec argued that the Cancom design was predicated on a free flow "East-West policy." There has been low demand for local delivery.

The province has no formal position on the reciprocal reception of signals for community use. Ideologically, linguistic considerations dictate a "fair flow" policy. Nonetheless, the province might consider a one-for-one channel basis in order to secure export markets for the Quebec production industry.⁶¹

BRITISH COLUMBIA

British Columbia has declared an "open skies" policy; no license of any kind should be necessary to receive signals for private use, consonant with an overall trend to minimum regulation and liberalizing competition.⁶² The top three priorities of the B.C. government were to assert jurisdiction over cable and pay-TV, develop educational television, and create a local superstation. The government also funded research and development of cheaper satellite receiving stations.

ALBERTA

The minister is on record favouring the Cancom decision and the deregulation of satellite dishes for individual use. In the interim period of Cancom monopoly, Alberta offered to pay the fine of communities charged with the unauthorized reception of U.S. signals. In the **Report of the Alberta Public Utilities Board on Non Broadcast Undertakings**, the status of satellite TV receiving dishes (TVROs) was not raised as an issue. Nonetheless, the report

recommended that TVROs be regulated by the PUB only if connected to cable.⁶³

NORTHWEST TERRITORIES

An intervention to the CRTC from the Commissioner of the Northwest Territories favoured local input, editorial control by the municipal and band councils and the need for new services to be compatible with reception via one dish as recommended in the *Decade of Diversity*.⁶⁴

SASKATCHEWAN

SaskTel policy is that a TVRO constituted a part of a "remote signal delivery facility" which it must provide. A decision by the Saskatchewan Court upheld the Saskatchewan Telecable Company's legal right to operate a TVRO and "direct those signals to its customers through SaskTel's equipment." The decision was based on a narrow interpretation of contract and did not broach questions of policy or law.⁶⁵ The previous government favoured the Cancom decision, opposed the use of Canadian satellites to deliver American stations and allied itself with the federal "balanced flow" policy.

MANITOBA

In October 1980, the Manitoba Telephone System commenced leasing dishes to remote communities for the reception of U.S. satellite signals. The "Canadian skies" federal policy was an issue in the Manitoba election that year. In Flin Flon, citizens formed a group called Canadians for Real Freedom of Choice to protest the loss of access to U.S. signals. The new Premier similarly opposed the interruption of reception from U.S. satellites. The government contended that Cancom was not designed for northerners.⁶⁶

ONTARIO

Ontario favoured higher powered broadcast technology, the concept of Canadian superstations, and reception of U.S. signals on a "3 plus 1" basis. Ontario also criticized the federal government's reluctance to permit U.S. signals received off U.S. satellites. Pressure mounted from constituencies in Northern Ontario. When U.S. networks became available on satellites, the Ontario government endorsed permission of reception on a "3 plus 1" basis, "to ensure the even-handed treatment of those in underserved areas." Ontario also criticized the federal Department for renegeing on the liberalization of earth station ownership for individuals. A restrictive policy was tantamount to encouraging dishonesty.

In a speech to the Broadcast Executives Society in 1982, Ontario's Minister of Transportation and Communications, Mr. Snow, stated that:

Ontario's approach to satellite policy is equal access: that cable operators and individuals should be free to receive and deliver any signal that's in the sky intended for general reception.⁶⁷

"Equal access" moved closer to an "open skies" position, a consequence both of an overall polarization in federal-provincial relations, as well as a growing understanding of the public policy issues involved in the transition to the era of direct broadcast satellites.

NEW BRUNSWICK

New Brunswick welcomed the Cancom package as a realization of its long standing policy of extending cable to all communities of 500 or more households. However, the CRTC's decision not to permit Cancom in existing urban cable systems had the effect of prejudicing the extension of alternative French language service throughout the province. The government was skeptical of the argument about the negative effect such entry would have on local broadcasters. The province favoured the Committee's emphasis on the underserved areas in both official languages in areas of north-east New Brunswick.⁶⁸

PRINCE EDWARD ISLAND

The government met with cablecasters after the issue of **Decade of Diversity**. Its position favoured the Committee's principles and the Cancom network on the condition that it was universal and combined with at least the "3 plus 1" American stations.

NOVA SCOTIA

As a function of its close collaborative role with microwave cable consortia in the extension of service since the early seventies, Nova Scotia undertook the widest formal followup to **Decade of Diversity** among the provinces. The government generated a discussion paper which contended federal policy on Cancom, because it did not sufficiently recognize direct broadcast technology and because the "3 plus 1" rule amounted to "selective protectionism." The government was committed to increasing Acadian programming. It was ambivalent on the efficacy of an impact test for governing the introduction of new services, cognizant of the need to balance consumer demand for choice and the well-being of broadcasters.

The Nova Scotia government intervened on behalf of the application from ATV for a second network, which reflected the desire of the Council of Maritime Premiers to enhance educational programming, and endorsed the **Decade of Diversity's** provision concerning deletion.⁶⁹

NEWFOUNDLAND AND LABRADOR

The government of Newfoundland and Labrador was the only province to make a special representation to the first phase of licensing for extension of services. In particular, Newfoundland took exception to certain sections of the Therrien Report which appeared to neglect the province as a separate region. The brief outlined the philosophic framework for the introduction of new services, predicated upon freedom of access to information, freedom

of choice and a range of national and local programming. Reception of foreign programming should be constrained only by established legalities.

At Winnipeg, Newfoundland considered Cancom to be an "acceptable but disappointing service." No signal originated from the east as yet, and the delay with the majority of signals from earlier time zones made the service of limited use to Newfoundlanders. Furthermore, the province took the position that any service should be accessible to consumers throughout the province. Cancom was not a substitute for foreign satellite signals. The government also favoured the liberalization of individual use of broadcast signals where not protected or secured by the originator.⁷⁰

6.5 Regulatory Action: Pay-TV

After the release of *Decade of Diversity*, the Chairman of the CRTC adopted a "go-slow" attitude, which conceded only that pay-TV would be inevitable within five years. In the interim, the Commission intended to monitor public demand.⁷¹

6.5.1 Call For Applications

The Call for pay-TV services was issued only after the release of the extension decision in April of 1981.⁷² The Call went considerably further in addressing specific issues related to the new services, such as financial support, ownership, and impact on the existing system, while retaining the essential thrust of the Committee's recommendations.

In general, the Commission recognized the cornerstones of the report's philosophy of diversity: a competitive market structure, transferred burden of proof, and emphasis on consumer preference. Local, independent "stand-alone" systems were recommended in addition to regional and national ones. The Chairman was reportedly intrigued by the model of regional pay systems presented by MacDonald's task force report as a way to provide new sources of support for the lively arts in the regions.⁷³

The major criterion in the evaluation of proposals was "the ability to open the system to currently under-utilized sources of Canadian programming." Canadian content provisions were left open for definition by applicants so as not to deter bidding. Applicants were advised to take into account the capability for program production in the various regions of the country, and percentage of gross revenue devoted to Canadian acquisitions.

The Commission agreed with the *Decade of Diversity* that pay-TV should be treated as a discretionary rather than mandatory service. The Chairman was compelled to justify this preference in subsequent proceedings of the Standing Committee on Culture and Communications.⁷⁴ The Chairman

contended that while the Commission was not persuaded that universal systems would offer more benefits to production or that popular demand was sufficient, it would reiterate its intention to remain receptive to a wide range of proposals and accept applications from universal systems. The burden of proof would rest with those proposals which varied from the Commission's preference.

The Commission ruled out consideration of applications from advertiser-supported superstations and specialty or religious programming at that time. Applicants were dissuaded from vertically integrating production, distribution and exhibition. Procedures for separating costs had to ensure that regular cable subscribers would not cross subsidize the pay-TV service. The Call agreed with the Committee's view of the merits of a pay-per-channel system in the first instance. While equipment of Canadian manufacture was preferred, it was not used as a criterion of evaluation.

Significantly, the Call rejected the Committee's recommendation to consider a flat surcharge on the rates for pay-TV which was unpopular with the provinces and cable industry. The Commission was also silent on the jurisdictional considerations implied by two of the Committee's recommendations.

6.6 Departmental Action: Pay-TV

After the release of the *Decade of Diversity*, the minister indicated that the introduction of pay-TV was a matter of urgency and accepted the recommendations concerning the conditions on pay-TV's entry.⁷⁵ In the interests of forwarding the process the minister wrote his provincial counterparts to hear their views on "the specifics of a strongly Canadian service." However, more than three months later, he criticized their lack of material reply.⁷⁶

At the beginning of his tenure, Mr. Fox had rejected the Clyne proposal for a general inquiry into the CBC as "an excuse for doing nothing." It was time to act:

It is not a question whether (Canadians) will have pay-TV . . . but whether we will have a system over which Canadians can have some influence and control.⁷⁷

He argued that the value of incremental solutions to the problem of eroding Canadian content should not be underated—whether via extension of basic service, pay-TV or other measures. Just over a year later, however, Mr. Fox was conceding that "while worthwhile at best these were only *ad hoc* measures." Regulation was not enough. The under-supply of Canadian programming demanded "a bolder and more integrated strategy" in consultation with broadcasters and governments responsible for industry. Cabinet realigned operational concerns for culture and communications—medium

and message—under one Department, to formalize the intent behind the Conservative's consolidation of portfolios. It widened the Applebaum-Hébert cultural inquiry, and created a task force on copyright in the first two years of office.⁷⁸ Other instruments, including fiscal incentives, an expanded role for the Film Development Corporation, and new forms of a capital cost allowance were explored.⁷⁹

With a Cabinet mandate, Fox launched a parallel in-house review to develop a National Broadcast Plan, to expedite consideration of the Applebaum-Hébert report. History repeated itself, in the eyes of some provincial officials, since this one, like its abortive predecessor in 1975, was developed without consulting provincial governments. The secrecy was a product of a "circle the wagon train mentality" of the federal bureaucrats in the escalating jurisdictional conflict, according to provincial officials.

Two other program initiatives were designed to help "prime the pump" of the film market essential for the introduction of pay-TV. The Canadian Film Development Corporation was given an interim grant for a production fund.⁸⁰ A special committee on initiatives in programming was set up in cooperation with the provinces. Evidence suggests, however, that this strategy collided with the central agencies and bureaucratic constraints of the envelope system. The December budget of 1981 changed the terms of the capital cost allowance, for example, without adequate consultation with the DOC. Mr. Fox forestalled the effect of the program until 1983, or the first year of pay-TV operations, after pressure from various sectors of the industry.

6.6.1 Federal-Provincial Negotiations: Pay-TV

A month after the call for applications, the Crown lost the Loughheed Village Case, discussed above. Provincial officials renewed their attempts to get Mr. Fox to the conference table after the Commission issued its decision concerning TCTS rates for services on July 7, 1981. They won federal approval for a joint meeting of ministers on September 9-10, 1981.

6.6.2 Winnipeg Conference

Provincial officials regarded the timing of the Winnipeg conference as "less than fortuitous," since it was soon followed by the final closing of submissions for the pay-TV hearings. The federal minister outlined the basis for federal jurisdiction over pay-TV and his intention to exercise federal authority. Provinces similarly indicated the grounds for their exercise of jurisdiction, and in particular, their intent to license local exhibition.

6.6.3 Federal Position

The federal position paper on pay-TV at Winnipeg built on their dissent from the Working Group on Cable Delegation.

Despite the subsequent Shellbird assault on the Commission's authority under Section Five of the Cable Regulations, the federal government continued to maintain that the Commission had exclusive jurisdiction over all cable television, including pay-TV, whenever provided by a system which integrated closed-circuit with off-air services, even if some of the programming was of local origin. Federal competence would also extend to any pay-TV carried by a federally-regulated telephone company if the relevant act were amended.

To cover any shortfall in legislative definition, federal authority over pay-TV included "a scrambled signal broadcast directly to the public" via satellite or microwave. Moreover, the federal trade and commerce power would justify regulation of program content on a provincial closed-circuit system if imported from abroad or another province. The unspoken threat was to regulate the foreign content of operations like Saskatchewan's through use of import quotas, taxes or other mechanisms.⁸¹

The federal case at the bargaining table did not change over the period of Commission's licensing deliberations.

6.6.4 Provincial Position

The inclusion of the "local stand alone" category of systems in the Call was construed by the majority of provincial officials to be an intrusion into an historic area of provincial jurisdiction which had been recognized by the Committee. The fact that the Call was issued before any federal political initiative to meet to discuss pay-TV appeared reminiscent of a scenario for a pre-emptive federal strike in jurisdiction. Subsequent public notices from the CRTC excluded any reference to the category under contention.

At Winnipeg, provinces continued to argue that pay-TV was not a broadcast service. Quebec, which had refused to recognize the Committee on Extension of Services, led the provincial offensive. Any undertaking wishing to offer pay-TV in a province must be required to do so according to conditions set by the province. Quebec questioned the point of further consultation after bad faith across Conservative and Liberal administrations, especially when the federal minister did not have the power to halt or instruct the CRTC hearings.⁸²

Only one of the three provinces to have nominees on the Committee of Extension of Services went on record at Winnipeg. Saskatchewan argued that the Commission could continue licensing national pay-TV networks while an arrangement was worked out under which provincial governments could authorize the local exhibition of pay-TV.⁸³

Although there was a battle to get pay-TV on the agenda at Winnipeg, an agreement to create a working group on pay-TV served to defuse provincial opposition to the CRTC's hearing process. The fact remains that six of ten provincial governments were prepared to participate in the Commission's hearings. There were two caveats. First, the Commission must be cognizant of the political initiatives and flexible enough to accommodate both federal and provincial legislative authority. Second, the Commission should not impose conditions on licensees which conflicted with provincial claims to jurisdiction over exhibition. No province filed a legal injunction to halt the hearing, although at least one considered the possibility.

It became essential for the provinces to untie pay-TV from a general claim over cable jurisdiction, given the stalemate of the cable delegation working group. What was at stake was not the Commission's power to license the wholesale function performed by pay operations at the national or regional levels. It was the retail function, or local distribution of these services to be addressed in the second licensing phase, which would test the Commission's intent to recognize the federal principle recognized in the *Decade of Diversity*.

All provinces preferred to fight the jurisdictional issue "on the streets"—by putting the statutory instruments in place to license closed circuit systems—or "at the table"—by finding a political solution. The anomaly that provinces faced was that the Committee on Extension of Services appeared to have raised public awareness, if not demand for pay-TV. Rhetoric on the extension of services stressed freedom of access to signals, or open skies in its most extreme form. No provincial government could be seen to be obstructing the introduction of new services, for fear of alienating either the electorate or the cable industry.

6.6.5 The Pay-TV Working Group

All eleven governments agreed at Winnipeg that it was desirable to clarify their respective concerns, and delegated a working group of deputy ministers to consider the extent and limits of their respective areas of interest, and avenues for harmonization.⁸⁴ The provinces were determined to meet again before the Commission released its decision. The communique of the conference specified that the report should be submitted within two months, and that ministers would meet before the end of December.

On October 23, 1981 after the Commission's public hearings closed, the deputy ministers responsible for communications met in Toronto. Their terms of reference were vague. The provinces wanted the federal delegation to clarify their intent to "harmonize" federal and provincial interests in the introduction of pay-TV. The federal deputy minister appeared neither

inclined nor mandated to work out a "clear distinction" of jurisdictional responsibility. Rather the federal commitment appeared only to listen to provincial views.

Discussion began with the consensus objectives adopted in 1979. All but the more anachronistic of the guidelines (to do with pay per program payment or siphoning) were retained. All provinces contended that at this stage no province wanted to stop access to the signal(s) to be federally licensed. The perceived federal strategy was to delay the progress of the working group until the decision by the Commission, to adjust the decision through the avenue of political appeal "whichever way the wind blew;" to hope that the weight of public demand would prove a deterrent to provincial obstruction.

Due to intransigence on both sides, little progress was made in the first meeting. The previous government in Manitoba tabled a proposal to proceed on a bilateral basis, a continuation of its strategy since 1978 to revise the Manitoba-Canada agreement. The consensus among provincial officials was that the subsequent bilateral meetings were nothing but "fishing expeditions." Although several provinces had concrete proposals on joint licensing, the federal government did not. From a federal perspective, the fate of the working group was determined by a widening ideological gulf and a collapse of the will to cooperate after the stalemate on the division of powers.

6.7 Legal Challenges

On March 10, 1982, Fergus-Elora TV Limited from Ontario filed a motion in the federal court to prohibit the Commission from interfering with the plaintiff's "use and enjoyment" of property. The cable company leased a channel to Canadian Subscription Television Limited of Toronto to provide videotapes from an American pay-TV package called Showbiz to its subscribers. Service commenced in February. The Commission issued a "cease and desist" order the same month, stating that it would consider prosecution under its powers in the **Broadcasting Act**.

Under challenge was whether the Commission was within its powers under Section Five of the Cable Regulations, also under review in the Shellbird appeal. However, the Fergus-Elora writ asked the federal court to examine three propositions, which sought to clarify the constitutional question. The intent was to determine if the Fergus-Elora operation was beyond the powers of the Cable Regulations, if the Cable Regulations exceed the powers of the **Broadcasting Act**, and finally if the Act itself was *ultra vires* the Parliament of Canada.⁸⁵ The case would not cast light on jurisdiction over those operations like Saskatchewan's which did not use the delivery facilities of a federally-regulated broadcast receiving under-

taking. Nor would it establish the definition of non-broadcast or non-programming services.

The Ontario minister had spoken in favour of the Fergus-Elora position. Nonetheless, Ontario's Attorney General refused the plaintiff any financial assistance. It is certain that the province will not take a direct role until the case reaches the Supreme Court. The Ontario Cable Association, however, has voted to cover a portion of the Fergus-Elora's court costs.

6.8 Decision

On March 18, 1982 the Commission awarded six licenses for pay-TV networks. The decision was one of the few to record dissenting opinions.⁸⁶ Provincial representations are not contained in the text of the decision or the decisions on Extension of Services.

In the Commission's view, the chief virtue of pay-TV lay in its capacity to generate new revenues, not to divert those already within the system. Advertising was thus precluded. The new services should increase the diversity of programming available from coast to coast, ensure that it reflects the various regions and official languages of Canada, and provide new opportunities for independent producers.

The Commission concluded that in an attempt to achieve too many goals, it would risk the most important ones. The majority decided in favour of a regulatory framework "free from all but the essential constraints."⁸⁷ It was predicated on a competitive market structure on the grounds that it would offer built-in incentives for diversity in programming, increase sensitivity to consumer tastes, and provide more outlets for independent producers. A competition would also lessen the degree of regulatory supervision required. The Commission declined to regulate retail rates or siphoning at the time. The progress of pay operations would be closely monitored, however, and competitive renewals considered upon the expiry of the licenses in five years.⁸⁸

All licenses were for discretionary systems. Nonetheless, universal systems would not be foreclosed since the Commissioners were persuaded by the argument in favour of a universal system's superior capability in providing a "distinctly Canadian" service, particularly if operated on a non-profit basis. In view of the scarcity of basic cable channels, introduction of such a service could best be considered within the context of an overall review of the cable services, and the related matter of cost tiering. The Commission remained open about the various alternatives for any universal system's ownership structure, but was concerned about the nature of its accountability.

The minority opposed any universal system as a reversal from the call for licenses which raised questions of policy and law outside the subject of the

hearing. Commissioners J.L. Gagnon and J. Grace saw a mandatory system as "a new CBC without commercials," and as an "ill-timed luxury" for which no public demand has been demonstrated. Furthermore, competition between discretionary and universal systems would be inherently unfair.⁸⁹

The Commission created three classes of discretionary licenses. In the first class, most of the programming would be intended for mass appeal, and would include films, variety and drama programs. The Commission decided in favour of a combination of one national and three regional general interest services from Alberta, Ontario and Nova Scotia. Any more than two general interest licenses in the same market would jeopardize their capacity to maximize the funds available for Canadian production. The Commission believed that the competition between the regional and national systems was likely to expand consumer choice. While revenues of any one license might be lower, the resultant increase in market penetration and trend to multiple purchase on the part of the consumer would ensure that the overall revenues available for funding pay-TV programming would be higher. Further, the Commission suggested grounds for differentiation in program fare, expecting that "regional licensees will place a greater emphasis on sports and special events not shown on local TV."⁹⁰

Two of the three regional systems were designed on a "flow through" basis: 100 per cent of the profits were to be reinvested in independent productions. All licensees have undertaken to set up an advisory board and to enter into time-sharing arrangements with provincial educational networks.⁹¹ Finally, as testimony of the Commission's commitment to regional production, it accepted the cross ownership of individual regional licensees by broadcasting interests, so long as there was strict financial separation of operation and disentanglement of management.⁹²

The other two classes of licenses went to a specialty performing arts network available on a national basis and to a regionally multilingual service in British Columbia. The latter was the only one that will not be delivered by satellite. It is exempt from Canadian content conditions, and from the prohibition on the vertical integration of production and distribution, but is confined to a ceiling on the hours of programming it may offer in English and French.⁹³ This loosening of restrictions follows from the weight the Commission attached to the need for diversity in programming. In particular, the decision notes the channel's proposal to allocate one-fifth of its total schedule to regional productions. The Commission also stated that it would in future consider further specialty services, or new classes of licensees, perhaps on a channel-sharing or "omnibus" basis, provided that the program-funding ability of existing licensees would not be jeopardized.

The national service was considered to "provide a strong national dimension for pay-TV in Canada." It would be responsible for provision of programming in both official languages. As a condition of its license, First

Choice was obliged to reschedule its French-language programming on a national 24 hour daily basis, and allocate a separate channel to it. The minority opinion of Commissioners Gagnon and Grace was that it was not within the competence of the Commission to "refashion so vital an element of this application" and to do so was unfair to competing, unsuccessful applicants.

The decision further noted First Choice's proposal to acquire approximately 25 per cent of its Canadian material from regional sources and regional offices across Canada. The Commission enjoined First Choice to cooperate with regional licensees in concept development, domestic co-production and program exchange agreements. The Commission was not prepared to establish a national buying agency for the acquisition of foreign programming. To further complement the national general-interest service, two other regional licenses were issued.⁹⁴

In principle, the Commission accepted the recommendation in **Decade of Diversity** for a "realistic" and adjustable level of Canadian content to reflect the capacity of the program production industry. General interest licensees would initially provide 30 per cent Canadian content, rising to 50 per cent in the last months of the term. Canadian content provisions were designed to take into account overall schedule, specified peak time, gross revenues, and total programming budget for the acquisition of Canadian programs. In particular, minimum levels were set out in both categories of commitment to dramatic programming. In a "correction of error," the Commission stated a willingness to average expenditures on Canadian programming on a "five-year rather than annual basis, but was vetoed by the minister."⁹⁵

The majority of the Commission held that this general design would add substantially to the realization of the goals of the **Broadcasting Act**. Nevertheless "given the changing broadcasting environment, the Commission recognized that the federal government may wish to seek other means of ensuring the evolution of a distinctively Canadian pay-TV service."

The dissenting opinions of Commissioners Gagnon and Grace contended that the general design amounted to "system overload". In particular regional networks in the more lucrative markets could "skim the cream" from the national system. In their view, the regional systems could be construed as "mini-nationals" with less onerous marketing and bilingual requirements than the national network. Concentration of production centres was both an historic reality and imperative of competition on the international market; even for the best of intentions, "Canada [could] not be different."⁹⁶

6.8.1 Evaluation

In no other decision has the dissenting opinion presaged so well the range of public criticism the decision would engender. The degree of competition in the market structure exceeded even that envisioned by the **Decade of Diversity**. The importance attached to the principle of regional systems can be seen in the waiver placed on cross media ownership in certain instances. To be sure, the major shape of **Decade of Diversity** and the consensus guidelines appear in the design. The model accommodates competition between national and regional systems, various classes of licenses and prohibits concentration across the various functions of the industry. The light-handed approach to regulation, together with the flexible Canadian content quotas and provisions for regional production, (to say nothing of the emergence of regional players) were designed to prove as attractive to provincial governments as possible. Furthermore, the decision's silence on the exhibition stage did not foreclose consideration or implementation of certain provincial policy concerns, including assurances of third party access to cable delivery systems, the right to insert programming at the local exhibition stage and the provision for competition in local delivery. Industry and provincial officials saw Ontario's influence in the rationale behind the decision. Indeed, some officials recognized the Commission's attempts to make arrangements flexible enough to accommodate future exercise of provincial legislative authority.

The decision's silence on provincial representations, given the mention of other producer and consumer groups, was conspicuous. The decision was predicated on a clear assumption of federal authority. Of the six licensees, five offered "satellite-to-cable" delivery. Only the national licensee, First Choice, offered a signal which was not scrambled, and therefore fell more clearly within the statutory definition of broadcasting. A curious anomaly in the treatment of the "regional" systems obligated only the "Atlantic" licensee to open intra-regional offices. The Alberta and Ontario regional licensees, despite the fact that they use East or West regional spot beams in delivery of their signals via satellite, serve within the provincial boundaries of Alberta and Ontario only.⁹⁷ Thus the decision reflected the federal position to bar any provincial claim to a general legislative authority.

The decision has been criticized for its treatment of the North, although it is recognized that pay-TV will be a "third generation" demand there, emerging only after several years of the Cancom package, if at all. No express provision was made for eventual delivery to the Territories. As well, for some unexplained reason, the multilingual channel had as a condition that 60 per cent of its local time must be allocated to the distribution of programs in languages other than English, French, or native languages. This has the effect of preventing the access of native producers to the private multi-lingual pay-TV market, and is alleged to reflect a primary

concern with the needs of immigrant communities of urban Canada.

The only notable departure of the Commission's decision from the recommendations in *Decade of Diversity* was the rejection of a flat surcharge on rates, a decision which found favour with provincial ministers. The CRTC's intention to invite applications for a universal system met with universal opposition especially from the cable industry and the provinces.

What can explain the Commission's remarkable policy U-turn on pay-TV in four years? It is difficult to weigh the provincial position in favour of a competitive model for pay-TV in the explanation of the Commission's decision. Certainly political forces were not themselves sufficient condition. Three other environmental factors explain that choice: forces of market, policies, and public demand. First, growing competition from video-cassettes and direct broadcast satellites has weakened the logic behind arguments in favour of a "defensive" monopoly strategy. Second, the "new orthodoxy" of selective de-regulation favoured a light-handed regulatory approach.⁹⁸ In an era of fiscal crisis, direct public ownership or principal equity position is relegated to the last resort in regulation of the market.⁹⁹ Finally, public demand for choice within and across categories of services appeared to grow with attention in the media to the Committee on Extension of Services.

The financial viability of Canadian pay-TV is still uncertain, especially after the abrupt demise of C-Channel within six months of service. Indeed, the Commission's decision may be considered the first to recognize the licenses "right to fail."

Market projections based on U.S. populations indicated that cabled households subscribe to an average ranging from 2.1 to 2.9 services.¹⁰⁰ The Commission arrived at the projected saturation point of three services for Canadian market after in-house study. Yet earlier market projections done for the Department concluded that "Canada may not be able to support the variety of service offered in the U.S." Also moot is the magnitude of the net infusion of revenues to the domestic production industry in a competitive scenario.¹⁰¹

6.8.2 Political Appeals

Three groups appealed the CRTC's pay-TV decision. One was an unsuccessful applicant for a license in the national general interest category; a second was tendered by eight industry associations and guilds, a prospect anticipated by *Decade of Diversity*.¹⁰² The final and most comprehensive of appeals was from the Canadian Conference of the Arts. The Conference's central objection built on the dissenting opinion that there was too much pay-TV. Fragmentation of revenue bases would result in a poorer quality Canadian product, by turning the chronically underfinanced licensees to co-

productions with U.S. pay-TV operations. Further, the loose regulations on Canadian content would facilitate more American programs and subvert the mandate of the **Broadcasting Act**. The competitive structure failed to effect an efficient cross-subsidy for francophone or regional program production. Implementation would provoke political and cultural tensions. Finally, to issue a decision at this time would be formulating policy on Canadian content via *ad hoc* use of the condition power, and prejudice the outcome of the eventual review.

No provincial government participated in any formal appeal to the Cabinet.

In a strongly supportive statement, Cabinet neither referred back nor set aside the Commission's decisions.¹⁰³ In the Cabinet's view, the provision of services in both official languages, as set out by the Act, was met by two aspects of the decision: the condition that First Choice must offer a 24 hour francophone service, and the Call for further applications for a French regional service by June 18, 1982. Further, the decision promised to benefit the program production industry from all regions of the country, and provide more consumer choice. Cabinet was also cognizant of its industrial advantages, in stimulating the development of the cable-satellite and electronic industries to put the infrastructure in place for a broad range of new programming and non-programming service.

Accordingly, Cabinet's major concern was with the "deleterious impact of further delays in introducing pay-TV." The degree of risk entailed in the multiple license structure was "inevitable in the increasingly competitive environment of the Canadian broadcasting system." The Cabinet also noted the Canadian content requirements, and in particular singled out the concept of competitive license renewals for approval. The statement from Cabinet was neutral about universal service, stating only that the government would follow the Commission's issue hearing with interest. Finally, Cabinet rejected the arguments of some appellants that the pay-TV decision would constrain the future development of an overall cultural policy after the report of the Federal Cultural Policy Review Committee.

Cabinet reiterated the Commission's view that pay-TV was not the only measure to assure "an essential role for Canadian programming." The increasing degree of competition in which Canadian programming will have to develop will "require a number of additional measures."

6.9 Calgary Conference

After the release of the pay-TV decision, Francis Fox met his counterparts in Calgary on May 20, 1982. Traditionally the most intransigent provinces on pay-TV jurisdiction, Quebec and British Columbia were still interested in cooperation. Indeed, the passage of senior federal officials who had piloted

federal policy across the two administrations of this study, was seen to offer some hope for a softening in the federal stance. None was forthcoming. Pay-TV was one of two agenda items; the other was proposals for joint regulatory mechanisms in telecommunications. Provincial officials noted a certain irony in the juxtaposition. Before the meeting, the federal minister sent a telegram stating that he would not discuss any "transfer" of jurisdiction over pay-TV, refusing to recognize that the provinces have any grounds for jurisdiction over closed-circuit undertakings, and rendering any joint resolution of licensing of federal networks for local exhibition impossible.

Fox claimed that federal and provincial ministers "seem to be most productive when concentrating energies on those issues which lend themselves to a cooperative approach."¹⁰⁴ His opening remarks again stressed the need to plan for an information society. In a summary of events leading to the awarding of the licenses, Fox contended that the philosophy of the Therrien Committee was clearly reflected in the CRTC's decision.

Mr. Fox felt that the meetings of the pay-TV working group "enabled the federal government to gain a better understanding of the concerns of all governments." It was essential, nonetheless, that pay-TV be implemented as rapidly as possible all across the country. Whatever the views on jurisdiction, governments must act in a way that serves the public interest.

The Calgary conference was open to the media, which may have had some polarizing effect. The meeting ended in a degree of acrimony similar to the period of the "cablecomédie" in 1975.¹⁰⁵ There was no agreement to meet again. Pay-TV licensees were thrown into the breach of a bitter jurisdictional battle.

6.10 Canadian Content Review

On January 31, 1983, the CRTC released its policy statement on the Canadian content review. Although the majority of the Commission favoured an incentive approach, and was open to proposals within its jurisdiction, the strategy was to "fine tune." Adjustments were made for peak-time and more frequent reporting periods. The Commission proposed to hold a workshop on the definition of what constituted "Canadian content" to be standardized across all agencies. A credit system was proposed to diversify the base of foreign acquisitions. Finally, the Commission promised to expand the CTV precedent of conditions based on the particular capacity of broadcaster, a reflection of the *Decade of Diversity's* preference for "flexible" quotas. The approach was subsequently endorsed by the minister. In addition, Mr. Fox suggested that the Commission consider other means, such as the non-simultaneous substitution of programs, to protect broadcasters' rights to programs.¹⁰⁶

6.11 Towards a New Broadcast Strategy

Two aspects of the federal strategy released on March 1, 1983 focussed on the development of tax and other incentives. First, the government allocated \$35 million to the Canadian Film Development Corporation to fund private production for TV—a sum which represents about a third of total expenditures by private broadcasters in 1981.¹⁰⁷ Funds are to be spread proportionately across English and French productions, and across the regions of Canada, and are intended for the key categories of drama, children's and variety programming.

Second, the federal government indicated an intent to capture a wider portion of the international market through an aggressive and selective policy of bilateral co-production and entertainment trade agreements.

Pay-TV was placed solidly in the context of an overall industrial strategy to make cable the 'chosen instrument' of the information age. The Commission was called upon to expedite its decision on cost tiering of cable services, and introduce regulations for non-programming services. Finally, the minister proposed that any new legislation must give the CRTC the authority to compel cable companies to lease at fair and reasonable rates without discrimination—which would seem to recognize cable as a common carrier—without subjecting it to rate regulation. The subsequent federal budget placed a 6 per cent tax on the cable industry.

6.12 Provincial Reactions

After the collapse of the constitutional conference, two other provinces—British Columbia and Alberta—put regulatory instruments in place to license non-broadcast undertakings, bringing the total to four. Four other provinces anticipate the passage of legislation to enable their public utility boards to regulate closed-circuit operations in 1983. They are Manitoba, Newfoundland, Ontario and Nova Scotia. Only New Brunswick and Prince Edward Island have no plans at this time.

In the 1980s, the provinces have not been oblivious to content concerns. Satellites have precipitated a renaissance of interest in education networking, with new actors emerging such as British Columbia's Knowledge Network of the West, and the Council of Maritime Premiers' co-operation with ATV-2. Only two provinces made submissions to the Commission opposing the CBC-2 proposal. Since the 1979 guidelines exercise, all provinces have been opposed to a "central, control oriented CFDC structure in film development." Except for Quebec, all provinces are committed to a "supply-side incentives" approach. Some have introduced loan programs in their development corporations and passed motion picture development acts to foster independent production.

BRITISH COLUMBIA

On August 22, 1980, the **British Columbia Public Utilities Act** received royal assent without opposition. The Act enabled the Public Utilities Board (PUB) to regulate all "conveyance or transmissions of information, messages or communications by guided or unguided magnetic waves, including systems of cable microwave, optical fibre or radiocommunication, where that service is offered to the public for compensation."¹⁰⁸

Since the Toronto Conference, British Columbia contended that the CRTC did not have the authority to introduce pay-TV, broadly defined. Furthermore, the province warned that if the Commission persisted, "it would undoubtedly provoke a challenge to its jurisdiction."

That legal challenge was not forthcoming until after the collapse of the political initiatives. After the decision, the minister announced that the federal licensees had to obtain a certificate of public convenience from the British Columbia Public Utilities Board, or face a penalty of \$10,000 a day. Nor could the Commission proceed with exhibition hearings without federal-provincial agreement. The PUB began to receive applications for intra-provincial pay-TV operations in April. As well, the province stepped up its longstanding industrial strategy to develop British Columbia production, and extended a low-interest loan from its Development Corporation to the multilingual licensee, World View.

In July of 1982, the government asked the British Columbia Supreme Court to declare that the current **Broadcasting Act** did not give the CRTC authority to control the business of producing, acquiring, packaging or distributing programs intended for use in pay-TV. Alternatively, the Court was asked to decide whether certain new services like instant electronic polling, video games or date services were non-broadcasting. The action could clarify the real boundaries of subscription services as tools of economic development in a way the Fergus-Elora case does not.

The province's position on the federal pay-TV licensees contradicted its open skies policy. The threat to stop access to signal from the national general-interest licensee proved impossible to enforce, since the signal was not scrambled. As well, over half of the province's subscribers in lucrative markets were cabled by a trans-provincial company.

QUEBEC

Quebec was the only province to issue a public statement on pay-TV in Winnipeg. Critical of a number of unilateral steps by the federal government in telecommunications, Quebec would not accept "anything less" than the provinces' best efforts agreement in September of 1980, reaffirmed at two subsequent interprovincial conferences.

On March 12, 1982 Quebec passed new pay-TV regulations. There were five objectives:

(To) reassert Quebec's jurisdiction expressed in 1978; guarantee Quebec control; offer service responsive to the province's socio-cultural needs; ensure capital accrues to Quebec industry; and provide access by all citizens.¹⁰⁹

These regulations, Quebec contends, respect the objectives and principles of the 1979 federal-provincial guidelines better than the Commission's decision.

Prospective pay-TV operators must obtain a license from La Régie des services publiques and belong to the central network of pay-TV companies. Two-thirds of the management board—a board of local companies and central network—must reside in Quebec. Furthermore, some three quarters of the programming must be acquired from the central administrative network. All programs must be approved by La Régie; "the majority" must be francophone. Operators are instructed that the first channel must be exclusively French. If more than one channel is offered, as many channels must be offered in French as in another language. No advertising is permitted. The new quota on programs acquired from the central network, along with the stipulation that La Régie will monitor, and will not set fees, represents a loosening of the 1978 regulations. Nonetheless, the Commission's competitive regulatory design is at odds with Quebec's.

Among the national general-interest applicants, Quebec was on record as favouring the unsuccessful *Première*. The Quebec minister queried First Choice's "enthusiasm" for complying with the radical condition to alter its checkerboard service to a 24 hour one. The government has indicated that its conditions for definition of production in Quebec would be more stringent than the Commission's. Dubbing in French will be inadequate. Quebec content quotas will be flexible, relating to the financial capacity of the nascent production industry, and the socio-cultural nature of the communities. In 1982-83, Quebec introduced a bill to set up a development fund for culture and communications industries totalling \$40 million.

The Quebec cable consortium, ALS (*Agent de Livraison Sélective*), specified that First Choice must offer simultaneous movies in English and French to Quebec operators without "paying double" as a condition of any affiliation agreement. The condition was waived for the national specialty licensee.

ALBERTA

In May of 1981, the Alberta legislature passed a revision to the **Public Utilities Act** which would enable it to regulate any undertakings within the province which fall outside the federal definition of radiocommunication.¹¹⁰ In the spring of 1982 the Alberta PUB licensed three local non-broadcast

undertakings to provide pay-TV from American satellite on closed-circuit cable. Alberta favoured replacing "regulation with competition" and began consultations with industry. Also in 1981, the Conservative government passed a **Motion Picture Development Act**. The minister has told the legislature that Alberta accepted that Ottawa had jurisdiction over the wholesale pay-TV operation and was pleased with the Alberta regional general-interest licensee.

SASKATCHEWAN

At Winnipeg, the Saskatchewan NDP Minister warned that if the process of joint federal-provincial collaboration as recommended by **Decade of Diversity** broke down, it would lead to the "balkanization" of communications policy."¹¹

To avoid conflict between federal and provincial priorities, Saskatchewan contended the Commission should impose conditions on its licensees to conclude affiliation agreements with provincially-authorized systems like Cablecom. Such conditions should be non-discriminatory and approved by the respective regulatory authorities when affiliate roles were established in intergovernmental arrangements. Further, local exhibitors should be free to produce and show products which enhance the national package. Cable undertakings should set forth clear terms for third party access. Ownership and control of national systems should be diffuse, include public equity, meet national objectives and preserve linguistic balance.

The new Conservative government in Saskatchewan was silent on the federal pay-TV decisions. The national licensees were compelled to negotiate with SaskTel to gain access to the provincial cable distribution system. The Conservatives are planning to set up a provincial regulatory body to call for private pay-TV applications. The Saskatchewan pay-TV operation was closed down after successive losses.

MANITOBA

The Manitoba minister also contended that the federal licensees must negotiate with the government-owned telephone system for carriage of their programming. The province has a draft telecommunications bill which would empower the PUB to regulate non-broadcast undertakings within the province. The new government would empower the Manitoba Telephone System (MTS) to act as common carrier and gatekeeper, and would widen its direct ownership of the cable from the connecting pole to the house in urban areas, unlike its predecessor. Passage of the Act is pending. The province has received applications for local pay operations.¹²

ONTARIO

Ontario was the only government to appear before the Commission in the pay-TV hearings.

Cognizant that some jurisdictional uncertainty would continue to persist, Ontario did not believe that there would be benefits from further federal delay. The minister stated that Ontario was pleased with the Commission's design of a market-competitive system, and in particular, with the decision to let the market determine prices of service. The competitive approach should be extended to all aspects of local exhibition.¹¹³

Ontario is drafting a telecommunications bill for 1983. While the Ministry has favoured the Fergus-Elora operation since August of 1981, it has not provided legal or financial assistance.

NEW BRUNSWICK

New Brunswick's position was that "it still does not receive alternate services from national broadcast licensees in either language." Aside from a general injunction to the CRTC not to abuse the interests of New Brunswick as had been done in the past, the province did not assert jurisdiction or express a preference for regional or a national system, but saw them in exclusive terms.¹¹⁴

NOVA SCOTIA

Nova Scotia's submission to the Commission also avoided jurisdictional claims. In general, the government argued that pay-TV could potentially prove more attractive than Cancom. The province noted the need to correct imbalances in the market by making provision for access and funding for independent Nova Scotia production. Nova Scotia also endorsed a competitive market structure. The onus was on the CRTC to exercise its authority to ensure any pay-TV networks must respect the jurisdictional aspects of different modes of delivery, avoid rate regulation, and offer more flexible conditions for Canadian content with a bonus for regional production predicated upon competitive local exhibition.¹¹⁵

Nova Scotia issued a discussion paper on revisions to its Telecommunications Bill. Passage is pending in 1983.

NEWFOUNDLAND AND LABRADOR

Like British Columbia, the government of Newfoundland and Labrador contended that pay-TV was not a broadcast service. In particular, wholly local, stand alone systems, and local exhibition were beyond the purview of federal regulation. The government emphasized that its citizens continued to be underserved.

Newfoundland did not oppose national or interprovincial pay-TV systems.¹¹⁶ The province argued that the policy framework for its introduction should balance the needs of access, difference in time zones and linguistic communities, and make provisions for the substitution of local programming. In particular, national and interprovincial pay operations should offer incentives for program production in all areas of the country.

The province is also in a race to put regulatory instruments in place. Revised telecommunications legislation is forthcoming in 1983.

6.13 New Era: Old Errors

The federal government adopted the medium range view from the *Decade of Diversity's* window on broadcasting. The decisions to equalize the level of available services contrasts with the U.S. proposals to repeal statutory provisions concerning universal access.¹¹⁷

But the interim policy of 'containment' on reception from U.S. satellites failed to recognize several key aspects of the Committee's advice: to permit individual ownership of earth stations; redistribution on the "3 plus 1" rule; and universal availability, subject to the impact test. Had the minister moved more quickly, the scale of U.S. importation in satellites might have been restricted, while a wider variety of Canadian services were introduced. Certainly, in the critical period for over a year after the Cancom decisions, most provinces and sectors of the cable industry continued to argue on the basis of equity.¹¹⁸ It may be argued that the federal government failed to recognize the fragility of its instruments of enforcement in the new environment of the Charter of Rights. While no court action was brought to bear against unauthorized dishes for individual use, the continuing dilemma was to justify the legitimacy of selective enforcement: urban over rural, commercial over individual. Even the Shellbird appeal did not significantly enhance the federal government's perceived authority to regulate satellite reception. The temporary inability to lift the veil of sovereignty may have been a consequence of the concurrent, but separate, *ad hoc* satellite-TV and comprehensive cultural reviews. It may have resulted in a more competitive environment of U.S. services sanctioned by the proposed broadcast plan than even the Committee foresaw.

Ultimately federal-policy makers had to make the transition to regulation in the era of direct broadcast satellites as the Committee recognized, which required both the domestic planning and new international agreements. The absence of clear direction on the satellite policy and the importation of U.S. signals has been identified by the Federal Cultural Review Committee. Three years after the Committee on Extension of Services, that direction has yet to emerge in parliamentary debate.

Not surprisingly, the Committee felt that the nature of that policy direction depended on the commitment to the federal principle and the will to co-operate. Yet the federal government embarked on a planning process which featured bilateral federal-provincial negotiation. Cable is the chosen federal instrument in an industrial offensive that will call on the banner of trade and commerce powers over non-broadcast undertakings, in addition to constitutional prerogative over broadcasting. Centralism rather than

diversity appears to have returned to communications policy. Where the Committee inaugurated a new era in federal-provincial collaboration, the political realm continues to replicate old errors.

7 Conclusions

No matter how ingenious a system of regulatory liaison is . . . in the final analysis it is subordinate to the political process.¹

This study began with a focus on the CRTC's Committee on the Extension of Services. Why was it established? How did it work? What were its recommendations? What impact did it have? But it soon became evident that the Committee could not be understood in isolation; it was part of an enormously complex political setting.

The Committee was a response to the exigencies of federalism, and through it, the Commission hoped to be able to show its responsiveness both to regional diversity and to the insistent demand from provinces for a greater voice in communications policy. The Conservative minister tried to build a more cooperative relationship with the provinces, and integrate that with the regulatory process. Thus the Committee's work cannot be separated from the wider debates about Canadian federalism which were conducted simultaneously in numerous arenas, from federal-provincial conferences, to the courts, to the battle for public support. Even as the Committee deliberated, and as the full Commission proceeded through the hearing process, intergovernmental relationships were proceeding on another track, one marked by much animosity and confusion. At times, the CRTC seemed—and still seems—threatened by derailment. The federal government and the provinces might have agreed on a major transfer of jurisdiction, or the Supreme Court might uphold the provincial claims now proceeding through the courts. A major observation which this study confirms is the difficulty of integrating a regulatory process, and a political, intergovernmental one. If the Committee on Extension of Services experience began in an attempt to integrate the two, it ended with them as far apart as ever.

7.1 Evaluation

It is no easy matter to assess the strengths and weaknesses of such a complex set of events and institutions. There are a great many vantage points on which to base evaluation. One could, for example, focus on the substance: were the final decisions on extension of basic services, satellites and pay-TV, good ones? The answers, of course, depend greatly on the observer's own preference and sense of what is realistically obtainable. In Chapter Six we have already observed some reactions. Canadian nationalists have been opposed to the movement towards "open skies;" proponents of "freedom of choice" have made some advance. Those who value local programming and regional and cultural diversity have been encouraged; those who see the broadcasting system as the unifying purveyor of a single Canadian culture, discouraged. As in every policy process, some have won, some have lost; though, again as in every such process, the winners and losers are not clear cut. The decisions were attempts to pick a way through the minefields of competing interests; the Committee was the advance patrol which made that possible.

We focus on evaluation of the process: was it a good way to make decisions? Three criteria for evaluation command wide support. A process is good to the extent that:

- it takes into account **all** relevant interests and values with important stakes in the outcome (responsiveness);
- it promotes compromise and trading among these values and interests (conflict management); and
- it enables the relevant authorities to make a decision (decisiveness).

These criteria must then be applied to the central theme of this study—federalism.

First, how well did the Committee process meet the needs and concerns of the major actors involved? The CRTC was faced with a number of difficult challenges to its mandate, procedures, and jurisdiction at the outset of the period. It had to contend with the proliferation of new technologies. These prompted a growing challenge from many quarters for a major shift in policy. There remained serious ambiguities in its relations with the federal government and the Department of Communications, particularly with respect to the role of the directive power and the division of influence in shaping new developments. Most important was the challenge of regionalism and provincialism. Protest against the Commission often had a regional base. Provinces not only often acted as spokesmen for these interests, but also, and more important, were anxious to claim increasing jurisdiction. All this was occurring within a wider debate over the basic

character of the Canadian polity and the role of federal and provincial governments. The challenge to the CRTC, then, was how to respond to these new and clearly threatening forces? The choice was to incorporate them in its own processes. If it could build provincialism into the regulatory process itself, then perhaps the threat could be averted and the CRTC could avoid the total loss of its influence to the federal-provincial bargainers.

To a large extent the Commission succeeded. The Committee allowed it to jettison the weight of bureaucratic precedent and adjust to a new competitive environment of services. The **Decade of Diversity** represented a reversal of the moratorium on new services to the Northern and native communities and pay-TV and a softening of the prescription for a monopoly scenario in pay-TV. Tactically, the experiment in regulatory collaboration bought the Commission time, and if not a compliance, at least a *détente* among the participating governments. The device enhanced the Commission's credibility among these provinces and allowed the first phase of pay-TV licensing to proceed without injunctions. The Commission showed it could be responsive both in the Committee process and the later decisions. Most provinces were generally pleased.

But in another sense, the attempt was not successful. Even as the CRTC deliberated, the federal-provincial negotiations continued. More important, a number of provinces (notably Quebec and British Columbia) continued to reject the CRTC's authority. Legal and political challenges to its jurisdiction persisted.

The provincial judgement of the process varies, depending on the larger political goals of the particular governments. The Committee was a clear advance over previous practice, in that provincial actors were drawn directly into CRTC proceedings. Nevertheless, there are limits to the Therrien model. Some recommendations in the final section will suggest how the Committee's precedent could be built on to ensure even fuller CRTC consideration of regional and provincial views. It seems clear that, from the provincial viewpoint, any such reforms will be insufficient until the larger issues of constitutional authority are settled. A provincially-responsive CRTC will be effective only if there is a general intergovernmental agreement on basic directions and on the appropriate division of labour in the communications field. Provincial officials argue that the mechanism of the Committee, while the "finest and only" such hour in federal-provincial regulatory collaboration, offers no palliative for jurisdictional differences. The basic conflicts of communications in the Canadian federation cannot be resolved by the CRTC. It is not enough for the Commission to enhance its regional sensitivity or to include the provinces in its deliberations.

Nor is the model of the Committee seen as a substitute for the ongoing need for directive power on broad policy matters at the political level.

Indeed the mechanism, despite its informal nature, cannot be detached from the provincial view that the business of the Commission is not to make strategic policy but to implement it. The model is predicated on an informal, consultative directive power, with provisions for political reply. To do otherwise would predicate it upon a presumption of federal jurisdiction which would exclude Quebec in perpetuity and from time to time other provinces on certain matters. As a result, officials do not favour institutionalizing mechanisms like the Committee on Extension of Services since it would not permit an adequate degree of flexibility for governments. Similar consideration of joint mechanisms to regulate common carriers rejected formal mechanisms on the grounds that would require major jurisdictional rearrangements and new legislation.² 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.

Provincial officials would thus consider participating in a similar exercise again on a case by case basis. That willingness would be qualified, however, depending on the prevailing climate in federal-provincial relations in communications. The Committee was seen as an accident of the Conservative period of tenure, and its success, however qualified, was attributed equally to the Conservative's commitment to a "community of communities," and to the personal dynamism of David MacDonald. While his ultimate views on jurisdiction were never fully clarified, MacDonald endeavoured to bring the Commission and federal-provincial relations tracks into closer contact. In its early stages—the guidelines exercises and martialing support for the Committee—this experiment was successful. It is hard to know whether it would have prevailed later.

There is little conviction among provincial officials that the present administration is willing to repeat the experiment, given the deterioration of recent federal-provincial relations. The Liberal government elected in 1980 had as a primary goal reestablishment of the status, authority and presence of the federal regime.³ It became, therefore, much more hostile to any transfer of jurisdiction. However, another element of the new federal strategy was to demonstrate that federal institutions could be fully reflective of and responsive to regional (as distinct from provincial government) views. From this perspective, such experiments should be promoted as an alternative to constitutional reform.

Given the experience of the Committee and its political outcome, provincial officials feel that the cost of regulatory collaborations may be circumvention of provincial authority. The provinces are in the anomalous position of having pressed for the introduction of new services, and agreed

on the principles guiding their introduction. Yet subsequent events at the political level compromised their jurisdictional interests and created large disincentives to obstruct the introduction of new services like pay-TV "for jurisdiction's sake alone."

The delay entailed in the process, coupled with the recession, contributed to the demise of Saskatchewan's Teletheatre and other prospective local pay-TV operations which would have consolidated concurrent provincial jurisdiction. The outcome may even be construed as a decisive jurisdictional "win" for the federal government, reinforced by the concentration in the satellite-to-cable industry. The outcome of the battle for control over non-broadcast information services, however, is far from clear.

For the new administration there is no doubt that the Committee raised expectations of political adjustment among the provinces which heightened the impasse in the bargaining process after the constitutional conferences. Yet the mechanism allowed the Commission's hearing process and the federal-provincial pay-TV working group to go forward. The Department was able to devote its resources to an overall broadcast plan.

Finally, how was the process evaluated by the non-governmental actors? Once again, that depends on who they are. Certainly the failure of political negotiations has meant that the licenses bore heavy costs of federalism, by having to mediate federal and provincial claims over local pay-TV delivery. Moreover, all the Commission's decisions were controversial. Yet the Committee on Extension of Services provided an opportunity to a very large number of groups to voice their views on broad issues unconstrained by the formality of a license hearing. The Committee's decision to travel and to foster interventions in other ways facilitated its consultative role.

The case raises two important procedural issues: the principle of access to information, and the role of producer and consumer groups. As has been witnessed, since the federal-provincial guidelines were not attached to the call for submissions, they proved irrelevant to most interventions. Participants in the public inquiry should be guaranteed access to the guidelines for comment. As well, the intergovernmental response to recommend policy should also be made widely available for comment prior to the licensing phase. The fundamental contradiction between the procedures of relatively wide access to information in public hearings, and the tradition of secrecy in federal-provincial negotiations which remains beyond the reach of any Freedom of Information Act, must be bridged for effective planning.

The second procedural issue is the role of producer and consumer groups in similar models. Most groups which participated in this study did not consider the Committee's innovative structure to have been dysfunctional. However, there was a sharp distinction between those groups which were intervenors and those which were actually represented on the Committee. Once it is decided to have a representative Committee, the crucial question

is: who is to be represented and what criteria are to be used in deciding which groups are most relevant? The selection of provinces and a native group was logical, given the emphasis on adapting to federalism, and on extension to remote areas as the first task. But then, clearly, these perspectives were privileged. Both industry and "public interest" groups were conspicuous by their absence and these, as it turned out, were the most critical of the implementation of the Committee's advice. A fundamental dilemma for designers of such committees especially given the diversity of interests involved, is how to achieve both representation and workable size.

Finally, contrary to MacDonald's intention, it cannot be concluded that the Committee experiment improved the Commission's popular image of legitimacy in the West. Media coverage of *Decade of Diversity* continued to suggest "let's ditch the CRTC and go with the flow" and "CRTC will not let the listener decide."⁴ Unauthorized satellite dishes continued to multiply. The entire rationale for the mechanism, after all, was skewed to that first question of Canadian federalism: who will decide? "Regulation" per se was accepted *a priori* as a virtue. A fundamental vision of the purposes and limits to regulation itself may have been obscured. Nonetheless, the innovative support services for prospective applicants to carry Cancom allowed the government to build some direct links with a new constituency.

7.2 Responsiveness, Conflict Management, Decisiveness

As the previous section indicates, the Committee, and indeed the wider process, scores quite well on a measure of responsiveness. In the full array of Committee and Commission hearings, and of governmental deliberations, it is hard to think of any relevant viewpoint which was not heard. But here we must make a sharp distinction between the CRTC and the inter-governmental process. The former is far better equipped to listen, openly and publicly, to citizen groups. Through it, groups could appear directly; they were free to oppose the views of other groups. The relatively neutral hearing process does not discriminate among interests on the basis of more common political currency (numbers and wealth) as much as do other policy arenas. There is one major caveat. The Commission's proceedings are divided into hearing and deliberation phases. The first is very open; the second, closed. Due to the judicial character of deliberations, it is impossible to have a continuing dialogue between groups and Commissioners as the latter consider various alternatives, some of which may be different from those proposed by any of the groups. This presented two major problems in the pay decision: assessing the ability of applicants to best serve the francophone community, and the degree of competition the market would bear.

The federal-provincial process is far less satisfactory on any measure of responsiveness. Criticisms of the process as it works in other arenas apply forcefully in the communications field. The process is largely secret; there is no public access to it akin to any Commission or parliamentary committee hearing. There is little public awareness of agenda or timetable. Nor is there public appreciation for the policy principles at stake, as we have seen in the cases of the guidelines exercise and the provincial consensus on principles of satellite reception in Quebec. The process gives special weight to regionally-defined interests and alternatives to the possible exclusion of other perspectives. It makes the status, and jurisdictional concerns of governments as governments, the central focus. On occasion—as in the constitutional debate—important substantive issues like communications can be over-ridden by broader questions.

This is not to say that the governments represent *only* their own bureaucratic interests. Certainly, federal leaders felt they were speaking for a broad constituency, and provincial leaders were speaking for a popular demand for wider access to signals. Certainly, too, there are extensive private contacts between government officials and group representatives. But in general, the federal-provincial debates over communication have been less accessible than the CRTC process.

A similar conclusion applies to the criterion of conflict management, though here, given the range of disagreements in the cases we have examined, neither process appears capable of resolving all the differences. The federal-provincial process has, in many fields, proven incapable of bridging differences. Indeed, one central criticism of "conference federalism" has been that such conferences have become less arenas for compromise than arenas for confrontation. Participants appear to have few incentives to compromise; to suffer few penalties if they fail to do so. Even if there were grounds for conciliation on a specific issue, like pay-TV, these substantive issues are often subordinated to the larger conflict. Moreover, when there is federal-provincial compromise, it may impose costs on those excluded groups not themselves party to the compromises. For cultural nationalists, the victory of the competitive scenario for pay-TV in the guidelines meant a silent surrender.

The experience within the Committee demonstrated that regulatory federalism can work given a flexible mandate and a consensus about policy direction. The unavoidable conclusion is that it succeeded precisely because it was a delegated, quasi-autonomous body outside normal policy machinery. It demonstrates the value of temporary institutions for policy innovation, federal or provincial.

The experience also demonstrates the benefits of balancing federal-provincial collaboration and consultation with interest groups.⁵ The public meetings served as a brake on the federal-provincial consensus guidelines,

re-opening the question of the right to U.S. signals and of universal pay-TV. While the convergence of processes was in no way complete, as is evident in the limited knowledge of the consensus guidelines among groups, the conclusion is that a mechanism in regulatory collaboration benefits from broadening the political market. The Committee on Extension of Services was more successful among governments than the TCTS precedent, for example, which did not involve its provincial members in public meetings.

CRTC licensing procedures are clearly aimed at a decisive end: the granting of a license, with appropriate conditions, along with (less effective) follow-up mechanisms. The work of the Committee on Extension of Services was also focussed, because it too had a clear goal: to prepare for a licensing decision. The complexity of the issues involved in this case, however, ensured that the process would be time-consuming. It should also be remembered that decisiveness may conflict both with responsiveness and conflict management, since agreement may be easier with few actors, and conflict may require long periods to resolve.

Decisiveness is not a characteristic of federal-provincial discussions. This is partly because of the lack of any clear procedures for voting, or registering a decision short of unanimity—in general, the lack of agreed rules of the game—which flows from its conventional status outside of the constitution. It is also a result of the nature of federal-provincial disagreement. Thus in the debates we have described, there are several examples of working groups meeting over a long period without visible result, debates over jurisdiction left unresolved, and continued uncertainty likely to require judicial intervention.

But another problem with decisiveness goes to the heart of the interaction of federalism and the regulatory process. Intergovernmental relations and the regulatory process operate on quite different logics, with different interests, actors, procedures and tactics. This explains why it is very difficult to bring the two processes together. But, at the same time, each process has the potential to subvert the other, making firm decisions hard to reach. Thus, the CRTC's pay "decision" was in fact not firm at all. It could have been overturned by the courts, or by negotiations among governments. This added costly uncertainty to the work of the new licensees as they prepared to go on the air. Conversely, a political or intergovernmental decision in which the CRTC is delegated to follow statutory procedures may be blocked or altered when it comes to be implemented by a licensing decision. This underlines the critical need to specify more clearly the relationships between the two processes, and to integrate the two tracks.

Finally, assessment of the "decisiveness" of any process raises more fundamental issues, which go to the heart of the efficacy of the process itself. To what extent was innovation capable of balancing overall Canadian and provincial/regional interests? Certainly the first two steps of

the process were more consensus-oriented than directed to stated national goals. Those goals were themselves in flux, reflecting a greater emphasis on consumer choice and the commercial sector within the broadcasting system than is contained in the 1968 Act. It was assumed that consensus would produce results which were axiomatically in the contemporary Canadian interest. What remains unclear is how the *ad hoc*, consensus-oriented approach affected the outcome of the more comprehensive assessment of overall cultural policy, and the revised federal broadcast plan. Key aspects remain to be released at the time of writing.

The four part policy procedure was itself a product of a complex decision infrastructure, with power shared among a number of federal departments, agencies, and provincial authorities. It represents an extension of an already distributed decision structure, which although bringing more institutions and individuals into the process, may complicate overall co-ordination, and produce results which tend to the lowest common denominator of acceptability.

The fragmented domestic policy process, both formal and informal, may impede the capacity of the national government to deal effectively in the international regulatory arena. To what extent were Canadian objectives in renegotiating bilateral and regional agreements affected in the international regulatory arena in 1983-84?

These questions set an agenda for future research critical not only for Canada, but all nations planning industrial and cultural strategy for the transition to the information economy.⁶

7.3 Incremental Reform: The Committee Model

If the model of the Committee on Extension of Services is to be repeated, it must be accompanied by the stages of political collaboration which occurred here: the guidelines exercise to assist the Committee in developing its mandate and provision for reply to the Committee's findings. Both create incentives for compromise and enhance the legitimacy of the mechanisms among governments.

Our recommendations are less to change the two-part regulatory policy process, which includes the general policy and licensing phases of the model, than to alter its context and enhance the links with the federal-provincial collaboration before and after.

- We recommend integrating consensus guidelines more fully into public meetings. The guidelines should be a part of the Call for Applications, which may allow them to become the subject of wider debate among interest groups. The subsequent comment by governments which addresses principles for the final licensing phase should similarly be public.

- To clarify the lines of accountability we recommend that the federal and provincial ministers select the provincial nominees for the policy inquiry. There is no consensus among participants about the appropriate formula for representation, except that it should be more logically categorical. Most provincial officials participating in the exercise are prepared to concede the Commission its majority. Indeed, the continuity of full-time Commissioners over licensing hearings was essential to the guarantee of action on advice. As well, they are prepared to allow the Commission to specify the optimum size of the Committee. Various formulae have been considered, from representation of five regions to parity of eleven governments. Officials in this study reject the concept of any "one model." The selection of provincial nominees by the ministers is critical. Composition may vary according to the subject of the inquiry and its regional salience.

- To enhance the efficacy of the Committee model, and underline its independence from the Commission, selection of the chairman, support staff and report writer should be ratified by the federal-provincial Committee. The option of recruiting outside staff should be left to the Committee's discretion but it is clear that the staff must function in a reactive mode to avoid disturbing its balance.

- Provision should be made for simplifying and enhancing the regional release of the public notice of meetings and the Committee's report.

7.4 The Commission's Power to Consult

In general we recommend that the Commission begin to establish resources and expertise in federal-provincial relations to supplement its planning function. This case of regulatory and political collaboration has illustrated the costs of uncertainty in the relationship between the Commission and federal and provincial governments, and the fragmented information sources that may exist in the absence of a clear directive power. If we accept the guidelines exercise as a precursor of that new relationship, albeit consultative, the Committee experience indicates that a high degree of uncertainty will persist even with a strong directive power bounded by procedural safeguards, as the federal statement in **Towards a New National Broadcast Policy** proposes.

Broad policy statements are inevitably general, and moreover, may not resolve fundamental conflicts in values. The guidelines did not give clear direction on either the priority to be given northern or underserved as opposed to southern clienteles, or the choice between monopoly or competitive systems in the introduction of pay-TV. Clearly, in this case, political "direction" did not compromise the Committee's discretion. Perhaps most important, the experiment demonstrates the need for a flexible directive process, one which is not so confined by procedural safeguards that it

becomes written in stone. Indeed, the guidelines themselves are reminiscent of an earlier policy paradigm in broadcast regulation, one concerned about the prevention of siphoning of programs from conventional television which was recognized as anachronistic in the pay-TV working group. Finally, the experiment demonstrates the pragmatic need for a process of review and adjustment to the policy directive power, to benefit from regulatory and political collaboration. Values and policy principles may evolve in the course of public airing. In the case of the Committee on Extension of Services, they occasioned a reformulation of positions.

The following recommendations are predicated on the assumption that the Commission is empowered to consult with the federal department, industry, and consumer groups in the discharge of its supervisory mandate. There is no logical basis for the exclusion of the provincial governments if consultation is done on an informal basis to serve the planning function. Such liaison need not breach executive secrecy. The Federal Court has ruled that if the subject touches on matters that are purely investigative and administrative in nature, and do not specifically address an upcoming application, it is not considered part of the public record.⁷ Further, there are grounds for fearing such accessibility will form dangerous *ex parte* contacts to prejudice quasi judicial impartiality. Provincial governments do not hold licenses. Nor are they interested in the allocation of specific licenses, as long as their overall policy interests are taken into account.

The additional exchange would have the effect of opening the Commission's information sources, enhance its understanding of the policy positions of individual government and extend its educative role. It will also have the effect of clarifying the Commission's relationship to the federal department. At the moment the invisible and confidential nature of the relationship is often construed as guilt by association—although officials are divided on whether the Commission is captain or captive of the policy process—and may hinder similar experiments in regulatory collaboration in the future.

Our recommendations stop short of suggesting that the Commission itself become integrated into the federal-provincial decision process in any observer capacity. The responsibility for overall direction, and its federal-provincial impacts, must ultimately reside with the minister. Enhancing the Commission's access to information in no way implies a derogation of this authority. Nor does it necessarily diminish the degree of the Commission's independence, which the Federal Cultural Policy Review Committee sees at risk in federal proposals to enhance the Governor-in-Council's power of directive. We do not believe that the Commission's planning policy function will cease after the directive power is entrenched.

Notes

Notes to Chapter 1

1. R.J. Schultz, *Federalism and the Regulatory Process*, Montreal: IRPP, 1979, pp. 22-25.
2. B.R. Woodrow et al, *Conflict Over Communications Policy*, Toronto: C.D. Howe Institute, 1980. Also Martha and Frederick Fletcher, "Communications and Confederation: Jurisdiction and Beyond," *Canada Challenged: the Nobility of Confederation*, R.B. Byers and R.W. Reford, eds., Toronto: Institute of International Affairs, 1979, pp. 158-187.
3. Richard Simeon, *A Citizens' Guide to the Constitutional Question*, Kingston: Institute of Intergovernmental Relations, 1980.
4. Walter Young, "The Voices of Democracy: Politics and Communications in Canada," *Canadian Journal of Political Science*, XIV:4 (December, 1981) p. 7.

George Woodcock, preface, *Tangled Net*, Patricia Hindley et al, Vancouver, 1977. Also D.J. Berenson, *Canada and the Burden of Unity*, Toronto: Macmillan, 1977, p. 9.
5. Charles Dalfen, "On Proposals for Changes in Jurisdiction," in P.S. Grant, *New Developments in Canadian Communications: Law and Policy*, Toronto: Law Society of Upper Canada, January 24-26, 1980, p. 497.
6. Richard Simeon and D.J. Elkins, *Small Worlds*, Toronto: Methuen, 1980, pp. 288-289.
7. R.V. Schultz, "Partners in a Game Without Masters," in *Telecommunications and the Constitution*, Montreal: Institute for Research on Public Policy, 1983, pp. 51-65.
8. D.V. Smiley, "Federal-Provincial Relations Among Consenting Adults," *Confrontation and Collaboration*, Toronto: Institute of Public Administration, 1979, pp. 1-17.
9. See the various constitutional proposals: Task Force on Canadian Unity (1979), Liberal Party of Quebec (1980), Law Reform Commission (1978), Ontario Select Committee on Constitutional Reform. Particularly J.S. Wilkie, "The Radio Reference and Onward: Exclusive Federal Jurisdiction Over General Content in Broadcasting?" *Osgoode Hall Law Journal*, 18:1 (March, 1980), pp. 49-86.
10. For one view on the peregrinations of P.O.G.G., see W.R. Lederman, *Continuing Canadian Constitutional Dilemmas*, Toronto: Butterworths, 1981, pp. 290-300.
11. M. & F. Fletcher (1979), p. 167.

12. Grant (1980), p. 42.
13. Broadcasting Act, R.S.C. 1970, Section 2.
14. S. Feldman, *Introduction of Pay-TV in Canada*, unpublished Master of Laws Thesis, University of Toronto, 1981. Chapter 5, pp. 8, 66.
15. Fletchers (1979), pp. 163-164.
16. Schultz, *Federalism and the Regulatory Process*, p. 33.
17. The principle has been endorsed by the Economic Council of Canada, Lambert and Law Reform Commissions, and various independent scholars like H. Janisch and D. Hartle. Other instruments of political control, via appointments, estimates or other taxation measures, have not received attention. See Economic Council of Canada, *Responsible Regulation*, Ottawa 1979, pp. 59-60. Especially H.N. Janisch, "Policy-Making in Regulation: Towards a New Definition," *Osgoode Hall Law Journal*, vol. 17, No. 1. (April, 1979), pp. 46-106.
18. See Bill C-16, and *Federal Discussion Paper on Canada's Telecommunications Bill*, Toronto: October 16-17, 1979. Doc. 830-54/0125.
19. The problem with restricting the Cabinet's power to review decisions is that it shunts the question of interpretation of the intent of that direction onto the Federal Court and does not provide for the scenario where a decision may be construed by the Court to fall within the strict wording of a direction but applied in a manner or with a result not intended by Cabinet (or provinces). C.C. Johnston advocates maintaining a limited right for Cabinet to set aside decisions, with procedural safeguards of notice. The second problem is one of unintended consequences, or what is more likely, unforeseen consequences, of ministerial directive. Douglas Hartle recommends the Cabinet have the power to issue a "stop" or conversion order. This too must be qualified by procedural safeguards. See C.C. Johnston, *The CRTC*, Ottawa: Supply and Services, 1980, p. 25. The argument can also be made that individual appeals of procedural injustice will increase with the Charter of Rights. Misguided reason is not controlled by the Courts. Best protection is a variety of checks at the political/regulatory levels: early rule enunciation and an open planning process. See K.C. Wheare, *Maladministration and Its Remedies*, London: Stevens and Sons, 1973, pp. 70-89.
20. R.J. Schultz (1979), *passim*.
21. See G. Tardi; "The Appointment of Federal Regulatory Commissioners: a Case Study of the CRTC," *Canadian Public Administration*, vol. 24, #4, (Winter, 1981), pp. 587-596.
22. See below, Chapter 3 for a discussion of these precedents.
23. Second Report of the Federal-Provincial Working Group on Competition and Industry Structure, Winnipeg, (September 9-10, 1981), p. 6.
24. Fletchers (1979), p. 160.

Notes to Chapter 2

1. F.N. Peers, *The Public Eye: Television and Politics, 1952-1968*, Toronto: U. of T. Press, 1979.
2. The term New World Information Order is used to denote the debate over a free or fair flow of information conducted in several international arenas. The interim report of the MacBride Commission of the United Nations' Educational, Scientific and Cultural Organization in 1978 provided the focal point of world awareness of a more broadly based, participatory process of two-way communications. See T.L. McPhail, *Electronic Colonialism*, Beverly Hills: Sage, 1981, p. 211.
3. These services may be advertiser-supported, subscriber-supported, like pay-TV; or a combination. For general introduction to broadcast satellites, see A. Curran, "DBS: myth or reality?" *Intermedia*, 9#1 (January 1981): pp. 27-30; V. Sardella, "Satellite broadcasting to homes: service options, policy issues and costs," *Telecommunications Policy* 5#2 (June, 1981): pp. 84-101.
4. *Ibid.*, 183. Article 19 in the Declaration of Human Rights is more explicit than the Canadian Constitution Act 1982 which states only that everyone has the fundamental freedom "of thought, belief, opinion and expression, including freedom of the press and other media of communication."
5. There are three international agencies which are concerned with the freedom of information principle and the regulation of satellite communications. The U.N. General Assembly's Committee on the Peaceful Uses of Outer space oversees the comprehensive political and regulatory aspects. UNESCO has passed a Declaration on the Guiding Principles of Satellite Communications which recognizes the right of receiving nations. The International Telecommunications Union, which is responsible for the regulation of the medium, organizes Administrative Radio Conferences to allocate frequencies. I.T.U.'s radio regulations also recognize the right of prior consent. The U.S. contends this is of a narrow, technical application only. See McPhail, 187. In addition, there are multi-lateral conventions observed by satellite corporations.
6. See below section 2.6.
7. N.M. Matte, *Aerospace Law: Telecommunications Satellite*, Toronto: Butterworths, 1982, p. 63.
8. International law has not caught up with the emergence of higher frequency technology to create a new class of direct broadcast services. The International Telecommunications Satellite Organization (Intelsat) in which Canada is a member, falls under the legal class of fixed satellite services. These are considered to be private communications, which require authorization for receipt of signals. Canada, U.S., Japan, Australia, France and Germany are launching domestic broadcast satellites to overcome problems of terrain and a dispersed populace. Piracy of signals is on the increase. The legal distinction between individual and community reception is unclear. See "Broadcasting: the law is confused" *Intermedia*, (January, 1980), pp. 7-12.
9. "Satellites for Rural Development," *Journal of Communications*, vol. 29 #4 (Autumn, 1979).
10. Foster Reports, *Video Technology and Its Impact on Commercial TV*, (September, 1981), p. 90.

11. B. Litman, "The Emerging Oligopoly of pay-TV in the U.S.A.," *Telecommunications Policy*, 5#2 (June, 1981): pp. 121-135.
12. Alphonse Ommet, "Canada vs. U.S.A.," *Intermedia*, Vol. 7, #6 (November, 1979). D.M. Rice et al, *Development and Regulation of New Communications Technologies*. Communications Media Centre, New York Law School, 1980.
13. There is no reliable estimate of the supply of U.S. signals. The Federal Department claimed in March 1979 that there were 20 U.S. satellite services available—approximately three times the number available in mid 1978. By June of 1982, the count raised to 35. By March 1, 1983, there were an estimated 50 services. In fact, there is no sky inventory. The methodological problems in counting signals range from the existence of condominium channels; regional spot beams, to the provision of a number of audio tracks to one video track. See DOC, *Working Paper on a Canadian Satellite Package*, Ottawa: March 1-2, 1979. "Broadcasting and Cultural Sovereignty," Minister's address to the Commonwealth Broadcasting Association, Toronto, June 13, 1982, *DOC Towards a New National Broadcasting Policy*, March 1, 1983.

Neither is there a reliable estimate of the number of illegal dishes. Customs evidence would present only marginal figures. In response to a question in the house, on February 26, 1981 the minister estimated that there were 147 unlicensed terminals at a time when industry groups placed the figure at 3,500-5,000. Question—1,026 *Debates*, p. 9925.

14. *Broadcasting Act*, R.S.C. 1970, C (B-11, s. 3-c).
15. *The Right to Receive from Foreign Satellites: the need for Balance*, Notes for an address by Jean T. Fournier, Senior Assistant Deputy Minister (Policy), Department of Communications, Quebec City, (May 12, 1981).
16. Department of Communications, *Future of Canadian Technology* (1970): p. 2.
17. CRTC "An Urgent Program for Extension of Services." Address by Pierre Juneau, July 16, 1971. *A Single System*, July 16, 1971, p. 33.
18. CRTC, *Radio Frequencies are Public Property*, 1974, pp. 61-64. Also Decision 79-310 (April 30, 1979), C.T. #5, pp. 65-70.
19. R.E. Babe, *Canadian Television Broadcasting*, Ottawa: Ministry of Supply and Services, 1979, p. 149.
20. CRTC Decision 79-453, C.T. #5 p. 451.
21. Frank Peers, "Radio Frequencies are Public Property," *Communications and Natural Limits*, D.B. Singer, ed., Toronto: Copp Clark, 1975, pp. 202-215. A.W. Johnson, "Public Broadcasting in Canada." Alexander Graham Bell Lecture, McMaster, November 1982, p. 6.
22. CRTC, *A Single System*, p. 33.
23. See below S.2.7.
24. CRTC, "The Cable TV Licenses in Newfoundland," December 24, 1975, pp. 4-5.
25. CRTC *Special Report on Broadcasting in Canada 1968-1978*, pp. 1, 13.
26. The two organizations were Jim Brough's Northern Access Network, which videotaped programs from Toronto and "bicycled" or relayed them among remote communities: and the Wa Wa Te of the Treaty Nine Area which erected low or "flea" power rebroadcast

transmitters to link communities with populations of less than 500. See CRTC Public Announcement on the Extension of Broadcasting Services to Small and Remote Communities, Ottawa (June 27, 1979).

27. Peter Lyman, *Canada's Video Revolution: Pay-TV, Home Video and Beyond*, Toronto: James Lorimer, 1983, p. 69.
28. G.B. Doern, "Telesat Canada," in *Public Corporations and Public Policy in Canada*, pp. 221-251. Telesat is owned by the federal government and telephone companies of Canada. While provision exists for public shares, there has been no movement to "shareholder democracy." Telesat has operated as a carriers' carrier or wholesaler of services, where the carriers leave to the end user until the recent decision 81-13 by the Commission on Rates for Services . . . Furnished on a Canada-wide basis by members of the Trans Canada Telephone System and Related Matters, Ottawa, July 7, 1981.
29. E.J. Dosman, "Interdepartmental Co-ordination and Northern Development," *Canadian Public Administration*, 24 #3 (Fall, 1981): p. 43. The lead department was Indian and Northern Affairs. The other department, the Secretary of State, began to give core funding to native organizations in the early seventies. This funding, in concert with the 1972-1974 experiments with high frequency radio communications under the DOC's Northern Pilot Project, created communications and production organizations still in existence. Although the technology was soon eclipsed, the NPP was considered a fruitful planning experiment. See also, DOC, *Northern Communications*. (1971) Despite efforts since 1975, no comprehensive Northern Broadcast plan received federal cabinet approval, in part because of the complexities posed by the mid-North.
30. DOC Comm: #49-4.
31. Report of the Federal-Provincial Working Group on Competition/Industry Structure in the Telecommunication Industry, (1979): 830-54-003,2.
32. The provincial norths are a complex mix of populations; white, status native and Métis, with the vastly different legal and administrative relationships which may occur with the federal and provincial governments. Provincial definitions of the mid north for administrative purposes differ widely. Their approaches to development policy have been worlds apart.

C.E.S. Franks, *Fractures in the Mosaic: Canada's Provincial Norths*, presented to the Western Social Science Association, Denver, Colorado, (April, 1981): pp. 21-23. For Quebec's efforts see Naalavik, p. 23. Ontario sponsored a Royal Commission on Northern Development which criticized a "wire up and move on" approach to broadcasting. The Ontario Ministry for Northern Affairs persuaded the CRTC to hold its hearing in Thunder Bay.
33. B.R. Woodrow et al, *Conflict over Communications*, Toronto: C.D. Howe, 1980, p. 45.
34. G.B. Doern "Telesat," p. 242.
35. Brief of the Government of Newfoundland and Labrador re Telesat-TCTS agreement, (1977): 4.
36. Brief of the Government of Ontario re Telesat-TCTS Agreement (1977): 48.
37. Brief of the Inuit Tapirisat of Canada re Telesat-TCTS agreement, (1977): 10.
38. Doern, pp. 241-244.

39. Ibid., 233-235. See also Ontario and British Columbia positions below in Chapter Three.
40. First among experiments was the Inukshuk network of the Inuit Tapirisat of Canada. British Columbia and Ontario also undertook a series of one and two-way interactive experiments in health and community education. The various experiments brought new actors into the regulatory milieu and fostered awareness of the social impact of new technologies. See Department of Communications News Release, December 13, 1979, p. 8.
Also B. Melody, "Are satellites the pyramids of the 20th century?" *In Search* (Spring 1979) Vol. VI, No. 2:4.
41. H. Janisch, "Policy-making in Regulation," *Osgoode Hall Law Journal*, 17#1, April, 1979, footnote 82, p. 68.
42. *Telecommunications and Canada: Report of the Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty*, (1979) pp. 44-54.
43. Ibid., 54.
44. Press Release, February 27, 1979.
45. *Second Report of the Western Premiers' Task Force*, p. 33.
46. DOC, *Working Paper on a Canadian Satellite Package*, Ottawa (March 1-2, 1979).
47. "Talks will be held on pay-TV Sauvé says," *Globe and Mail* (March 2, 1979).
48. ITC Letter of June 28, 1979.
49. *Working Paper on a Satellite Package*. p. 3.
50. See Foster Report, p. 83. CRTC 3 & 1 Decision 83-126 (March 8, 1983) p. 12. Also D.M. Rice, *Development . . . of New Technologies*. (1980), p. 124.
51. CRTC, *Extension of Broadcasting Services to Small and Remote Communities*, Ottawa: June 27, 1979.
52. CRTC-Decision 79-310 CBC Network Renewal, p. 55. Plagued by a shortage of funds, the CBC Northern Service delivers only one-half hour of programming a week in Inuktitut. It has also been criticized for failing to surrender editorial control.
53. G. Granzberg and J. Steinbring, *TV and the Canadian Indian*, p. 176, and G. Valaskis, *Second Interim Evaluation Report: Inukshuk Anik B. Project*, *passim*.
54. See CRTC, *1980's: Decade of Diversity*, July, 1980. Also, *Working Paper on a Canadian Satellite Package*, DOC, March 1979.
55. See R.E. Babe (1979) p. 201. Also Decision 81-256 (April 14, 1981) on the Newfoundland Broadcasting Corporation. Several arguments underly the controversy over Canadian content quota, over the effects of media, the role of private and public enterprise, the domination of the broadcasting industry by multinational corporations, or the state's right to censor. (E.R. Black) *Politics and the News*, Toronto: Butterworths, 1981, p. 80.
56. Paul Audley, *Canada's Cultural Industries*, Toronto: Lorimer, 1983, pp. 220-238, R.E. Babe (1979), p. 34.
57. Paul Audley, p. 239.

58. See the single system statement. Also, Frank Peers, "The Place of Pay-TV in the Canadian Broadcasting System," in *The Introduction of Pay-TV in Canada*, Montreal: IRPP, 1982, p. 8.
59. See *Introduction of Pay-TV* (IRPP, 1982) fn. 51 page 2. Also, Patricia Hindley et al, *A Tangled Net*, (1977) p. 25.
60. Until the release of a *Decade of Diversity*, the Report of the Committee on Extension of Services, definitions of pay-TV were loose. There are a number of forms of pay-TV: cable is the first to be widely available. The generic term refers to a novel system of marketing movies, news, sports and other mass entertainment by the unit or channel for payment. In the U.S., the system is usually commercial-free to maintain a competitive advantage. It may be delivered off-air or by cable operations which may obtain the signal via satellite or closed circuit. The signal may be scrambled. Technology to unscramble the signal may be inserted at the retail or subscriber level.

The mass appeal pay-TV channels widen the secondary market for the film industry. As the industry has developed in the United States, the contracts for films are not signed on an exclusive basis unlike the major broadcast networks. All companies carry approximately the same fare at different times. Differentiation of channels turns on exclusive first run specials. At present, Home Box Office, Showtime and the new entrants Premiere and now defunct Entertainment in the U.S. are marketed on a per-channel basis.

Other forms of "pay" or premium subscription services may be intended for special interest audiences (narrowcasting). The videocassette and videodisc industries sell movies direct to the consumer. In the absence of pay-per-program marketing of "mass" pay-TV, these industries may develop a significant share of the market. The advantage to the consumer is enhanced selectivity, at particularly low cost.

Essentially pay-TV offers a level of premium service and a departure from the Commission's earlier policy of combined tier pricing for extra cable services which permitted converter attachments. See CRTC, *Decade of Diversity*, July 1980, p. 56. Litman, p. 131.

61. CRTC Public Announcement (June 30, 1976).
62. CRTC, *Pay-TV Report*, (March 1978), pp. 37-38.
63. R.E. Babe (1979), p. 145.
64. CRTC Pay-TV Report (1978), pp. 37-51.
65. R.J. Buchan, "Federal and Provincial Politics on New Programming Services," in P.S. Grant, ed., *New Developments in Canadian Communications*, Toronto: Law Society of Upper Canada, 1980.
66. *Telecommunications and Canada*, Ottawa: Supply and Services, 1979, p. 49.
67. Buchan, p. 198.
68. CRTC 79-310 (April 30, 1979). Also CRTC 79-453.
69. See Clyne Report, CRTC Special Report on Broadcasting, CRTC Canadian Content Review Public Announcement, December 31, 1979 on review commenced April 17, 1978, and S. McFadyen et al, *Canadian Broadcasting: Market Structure and Economic Performance*, Montreal: IRPP, 1980. p. xi.
70. Babe, (1979), p. 68-72. Also McFadyen et al, xvii.

71. The CTV appealed the decision on the procedural grounds that it had insufficient notice of the decision. The Supreme Court upheld the Commission's power to attach conditions over content.
72. The attention to the changing architecture of the system increased with revisions to telecommunications legislation and the Clyne Review. There were a number of visionary proposals. See Stuart Griffith "Alternatives" in Volume 7, **Report of the Royal Commission on Violence in Communications**, Toronto, 1977, pp. 209-51. J.A. Ouimet, **Rationalizing Canadian Telecommunications**. (1978). The Clyne Report recommended that cable be converted from a broadcaster to common carrier. See also Audley, conclusion.
73. R.V. Schultz, **Federalism and the Regulatory Process**, Montreal: IRPP, 1979, p. 67.
74. See for example, the **Third Report of the Western Premiers Task Force**, pp. 3, 32.
75. Ontario and B.C. voiced similar objections.
76. Submission of the Saskatchewan Government to Clyne Committee, p. 6.
77. Saskatchewan: Pay-TV 830-27/013, pp. 2, 6.
78. C.C. Johnston, **The CRTC, Law Reform Commission: Supply and Services**, 1980, p. 3.
79. Québec, **La Télévision Payante**, (March 29-30, 1978), 830-39/032, p. 3. Principes directeurs, éléments et recommandations, 830-39-035, p. 4. Also, **Règlements concernant le téléviseur payant**, 29 novembre, 1978.
80. British Columbia, **Position Statements**, (March 29-30, 1978), 830-39-014, p. 2.
81. Ontario, **Pay-TV** (March 29-30, 1978), 830-39/019, pp. 6-7.
82. Minutes of the Standing Committee, 1978; pp. 32-35.

Notes to Chapter 3

1. G. Tardi, "The Appointment of Federal Regulatory Commissioners: A Case Study of the CRTC," **Canadian Public Administration**, 24#4 (Winter, 1981): 546. Senator Lowell Murray and the Hon. Flora MacDonald were also instrumental in obtaining Meisel's appointment.
2. E. Dosman, "Interdepartmental Co-ordination and Northern Development," **Canadian Public Administration** 24#3 (Fall, 1981): footnote 21 p. 445.
3. "Interview with Hon. David MacDonald," **Telecommunicator**, 1#19 (March 12, 1980), p. 12. Ideologically, MacDonald was one of the few Cabinet members to oppose the privatization of Petro Canada from the outset. See Jeffrey Simpson, **Discipline of Power**, Toronto, 1980, pp. 177-179.
4. CRTC Decision 79-11.
5. **Canadian Association of Broadcasters: Federal/Provincial Regulation of Cable Systems: the Broadcaster's Perspective**, Ottawa: June, 1980.
6. **A Federal Discussion Paper on Satellite Distribution of Television Programming and Pay-TV**, Toronto: (October 16-17, 1979), D 66. 830-54/024.

See B. Keddy, "Satellite Signals Bring Pay-TV Down to Earth," *Globe and Mail*, (July 9, 1979), p. 19:

7. "Minister urges National Pay-TV Agency," *Globe and Mail*, October 4, 1979, p. 1, and "MacDonald keeps TV Viewers in Sight: Forming Public Broadcasting Policy," *Globe and Mail*, October 9, 1979, p. 5. At the same time the minister was having his Department prepare the Canadian position for the 1979 World Administration Conference. Canada opposed the U.S. plan to move broadcast satellite services to higher frequencies, which could have crowded the Canadian 14-12 GHz Anik series.

See B. Segal, *The 1979 W.A.R.C.: International Negotiations and Canadian Telecommunications Policy*, Ottawa: Supply and Services, 1980, p. 30.

8. A Network of provincial crown corporations would program and distribute pay-TV on a national basis. Provincial public utility boards would license the local exhibitors. The principle of equalization was accepted and calculated in two ways: economically, to adjust for varying levels of infrastructure and capacity to carry network costs; and culturally, to adjust for provincial "windows" on programming. The latter would guarantee production and exhibition for the provinces. The task force report was not widely circulated and irrelevant to the period under study. The head of the task force, Finlay MacDonald, later led a consortium of Atlantic private investors in successful application for a regional pay-TV license in the general-interest category. See *Task Force Report on Atlantic Film and Video Industry, I*, Ottawa: October 1980. MacDonald's personal predilection for a monopoly may be seen in his support for the application from the national universal pay-TV agency, TeleCanada in 1982. He favoured continuing federal paramountcy over cultural content, with guarantees for proportionate regional production. See "Pay-triation—Fulfilling a Canadian Promise," in R.B. Woodrow and K. B. Woodside, eds., *The Introduction of Pay-TV in Canada*, Montreal: Institute for Research on Public Policy, 1982, pp. 161-184.
9. "Fall Hearing Likely on Satellites and Pay-TV," *Globe and Mail*, June 22, 1979.
10. After January of 1980, the majority of 5 out of 9 full time Commissioners was replaced, along with four out of 10 of the part-time Commissioners. Notes for an address of the Chairman of the Commission to the Canadian Cable Association meeting, Toronto: May 31, 1982.
11. "Where divergent interests are at stake, it's probably preferable to go through the . . . adversarial process (of a public hearing) even at the risk of coming up with a decision that is much less perfect than (that conceived in privacy of the board rooms . . .) Because the process almost becomes more important than the brilliance, conciseness or perfection of the decision itself . . ." C. Dalfen quoted in *Responsible Regulation*, Economic Council of Canada, Ottawa: 1979, p. 105, footnote 16. The more intractable the issue, the more valuable is the public hearing process.
12. Canada, House of Commons Minutes of the Standing Committee on Culture and Communications, #8 (November 22, 1979).
13. *Ibid.*, 8:9. The hypothesis is further borne out by the priority on rapid introduction of pay-TV by the next minister Francis Fox.
14. Alberta, Quebec, Newfoundland, British Columbia, Saskatchewan and Ontario sent central agencies. Timothy B. Woolstencroft, in his study, *Organizing Intergovernmental Relations* (Institute of Intergovernmental Relations, Queen's University, 1982) outlines the development, structure, role and objectives of the various intergovernmental agencies in Canada. Woolstencroft notes that Alberta, Quebec, Newfoundland and Labrador all

have binding legal mandates for their intergovernmental agencies. The agencies of the other provinces and the federal government have been given "advisory functions rather than formal controls." (pp. 17-19) Central agencies in Quebec, Alberta and Newfoundland ensure that policies, programs and activities of line departments fit within a coherent framework for intergovernmental relations. (pp. 44-45) Of the four governments (Quebec, Alberta, Saskatchewan and Ontario) who have created full ministries to coordinate intergovernmental relations, only Quebec and Alberta have adequate organizational structures and resource allocations to conduct a number of complex tasks simultaneously. By contrast, the Saskatchewan and Ontario governments have been more cautious (p. 26).

15. See David MacDonald "Pay-triation," IRPP (1982). The continuity of senior federal officials may have provoked an early stalemate over the interpretations of the terms of reference for the Cable Delegation Working Group. See *Report of the Working Group on Cable Delegation*, DOC 830-103/005, Winnipeg: (September 9-10) p. 33.
16. The report recommended that the fundamental goals for developing an efficient telecommunications structure should:
 1. provide universal access to a broad range of services at equitable rates;
 2. permit a wide degree of consumer choice, ensure services are of high quality and responsive to consumer demands, and are innovative;
 3. contribute to regional development;
 4. ensure Canadian control.

British Columbia was sceptical about the likelihood of reaching any agreement on a floor package. As a general principle, the working group recognized cross-subsidy may be necessary in certain services to achieve universal standards. The group vetted three options for basic "floor" packages of video services to be combined with voice, recorded message and data services on a discretionary basis. These options corresponded to the Commission's priority carriage regulations for cable. It was the group's view that universal services should not subsidize competitive ones. The ministers endorsed the concept of a basic floor package and directed the working group to further consider its configuration along with related questions about the boundary of competition, and the consequences of vertical integration in the industry, particularly between broadcast and non-broadcast undertakings. See *Report*, Toronto: October, 1979, Doc. 830-54/0-03, p. 21.

17. R.D. Schultz, "Partners in a Game Without Masters: Reconstructing the Telecommunications Regulation and the Constitution," in *Telecommunications and the Constitution*, Montreal: Institute for Research on Public Policy, 1983, pp. 63-65.
18. Government of Canada, *A Federal Discussion Paper on Satellite Distribution of Television Programming and Pay-TV*, 830-54/024, Toronto: October 16, 1979.
19. Ontario, *Statement by the Honourable James Snow Regarding Pay-TV* 830-54/016, Toronto: October 16-17, 1979, p. 3.
20. See *Federal Discussion Paper on Satellite Distribution*, 830-54/024, p. 6.
21. Compare with British Columbia, *Statement of Position on Satellite Policy*, 830-54/030; *Press Release* 830-54/040; *Comments on Federal Discussion Paper on Satellite Distribution and Pay-TV*, 830-54/035, Toronto: October 16-17, 1979. Ontario, *Canadian Satellites Should be Used*, 830-54/015, Toronto: October 17, 1979.

22. See the exchange of correspondence between the federal Minister of Communications and CRTC Acting Chairman, November 22-27, 1979, in Appendix B, *Decade of Diversity*, Ottawa: CRTC (July, 1980), pp. 84-87.
23. C.C. Johnston, *The CRTC*, Ottawa: Law Reform Society of Canada, 1980, p. 80.
24. R.J. Schultz, "Recent Developments in Federal-Provincial Liaison" in P.S. Grant, *New Developments in Canadian Communications*, Toronto: Law Society of Upper Canada, 1980, pp. 10-12.
25. CRTC Decision 81-13, Rates for Services . . . Furnished on a Canada-wide basis by members of TCTS and related matters, Ottawa: July 7, 1981, pp. 4-5.
26. *Third Report of the Western Premiers' Task Force on Constitutional Trends*, (March, 1979), p. 35.
27. *Second Report of Working Group on Competition and Industry Structure*, Doc. 830-103/004, p. 8.
28. See Alberta, *Harmony in Diversity*, 1978.
29. The Commission has no geographic division for the far north. Articulation of northern concerns depends on the interest of the various commissioners. With the departure of Faibish, Gagnon and Pearce from the Commission, northerners were concerned about the need to re-educate the Commission to northern and native needs.
30. See the Minister's letter of November 29, 1979.
31. A third member, Rosalie Gower, was appointed a full-time commissioner during the public meeting phase.
32. See R.J. Schultz, "Recent Developments," R.J. Buchan "Federal and Provincial Politics on New Programming Services," and Woodside et al, *The Introduction of Pay-TV*, Montreal: IRPP, 1982, pp. 51, 105.
33. See the appendix, Inuit Tapirisat of Canada, *Submission to the Committee of Extension of Services*, January, 1980.
34. This does not exclude the maintenance of infrequent consultative contact between members of the Commission and Radio Canada.
35. Until 1979, neither territory was part of the federal-provincial bargaining process. Now, however, both participate in the interprovincial forum on northern development, and have joined in consensus statements on communications. That fact in conjunction with the changing plurality of the N.W.T. and emerging political differences on development between the east and west arctic indicate greater involvement of territorial officials in communications matters in the future. What remains to be seen is if native organizations use the assemblies to mobilize their demands for new forms of native and northern broadcasting, or their organizations after the resolution of land claims settlement. In the N.W.T., native organizations criticize the level of funding, the tendency of the federal officials to retain editorial control, a circulation of managers, and lack of affirmative hiring procedures in communications.
36. Despite the introductory preamble of the Chairman, Mr. Therrien, it is unlikely that the citizens appearing at the public meetings outside of Ottawa were aware that the Committee was independent of the CRTC. The distinction was particularly lost upon those who spoke only Inuktitut in Baker Lake. Media coverage specified that the status was as a "Committee of the CRTC." See for example, "Hougen presents proposal to

- CRTC Yukon News," (Whitehorse) March 5, 1980 or F. Cleverly "CRTC Ducks the Issues", *Winnipeg Free Press*, July 28, 1980. Of 22 articles in southern dailies selected at random during the period of the public meetings only five note the unique composition of the Committee. See C. Bain "Advocates of Pay-TV Refuse to Stop Pushing," *Ottawa Journal*, March 26, 1980. B. Kirby "CRTC Opens 12-day Hearing on Satellite and Pay-TV," *Globe and Mail*, March 25, 1980. J. Lynch, "Cultural Winds of Change," *Edmonton Journal*, July 26, 1980. J. Miller, "Canadian Satellites Worn Out CRTC Told," *Toronto Star*, April 12, 1980. Only once did an outside nominee occasion comment: B. Kirby "Networks Fearful but Super-station Intrigues CRTC," *Globe and Mail*, April 11, 1980.
37. CRTC Public Announcement, January 8, 1980 in *Decade of Diversity*, pp. 79-83.
 38. C. Dalfen before the Standing Committee on Culture and Communications, (4-12-79).
 39. The process was considered by some to be "a bold response to the enormity of the issues at hand." See Stan Feldman and Hudson Janisch, "Pay-TV: Jurisdictional and Regulatory Issues" in *Introduction of Pay-TV*, Montreal: IRPP, 1982, p. 105.
 40. R.J. Schultz, "Recent Developments in Federal-Provincial Liaison" in P.S. Grant, *New Developments*, (1980), p. 15.
 41. See W.T. Stanbury, *Telecommunications Regulation and the Constitution: Main Themes*, Montreal: IRPP, 1982, p. 9.

Notes to Chapter 4

1. *The 1980's: A Decade of Diversity*, A Report of the Committee on Extension of Services on Broadcasting Satellites and Pay-TV, Ottawa: Supply and Services, 1980.
2. The status of their powers was the occasion of a division between the parliamentary Committee and the minister. While part-time commissioners share in the right to make regulations and broad policy guidelines, so that their position cannot be considered purely advisory, they are excluded from the decision on allocation of broadcast licenses and rate hearings. The minister's logic for this exclusion devolved from the shorter period of tenure (five years or the life of Parliament) which was considered to carry with it the possibility of undue influence by local and sectional considerations. The minister's view prevailed. The concentration of authority in the full time members would make it less likely that the board would be paralyzed by differences and more probable that consistent standards would be applied.
3. Only Quebec, Alberta, New Brunswick, Newfoundland and the Northwest Territories did not participate.
4. See *Decade of Diversity*, Sections 6.3 and 8.3. The gap of those provinces which did not make a submission is supplied in Section 7.2.
5. See Hudson Janisch, "Policy-making in Regulation," *Osgoode Hall Law Journal*, 17 #1 (April, 1979): pp. 67-68.
6. *Decade of Diversity*, p. 74.
7. The Naskapi-Montagnais did appear at Goose Bay-Happy Valley, however.

8. *Ibid.*, see pp. 31, 36. The resistance to prescription is reflected in the open-ended use of certain terms: "underserved" and "predominantly native communities" where the onus is on local and regional definition.
9. See Recommendations 1 to 8 in *Decade of Diversity*.
10. See Garth Stevenson, *Unfulfilled Union*, Toronto: Gage, 1979, p. 147. D.V. Smiley, *Canada in Question*, 3rd ed., Toronto: McGraw-Hill Ryerson, 1980, p. 170. Dr. Meisel used the analogy in the introduction to the first phase of licensing the extension of basic services. In the context of Cancom, the analogy is incorrect. Since Cancom is extended on a user-pay basis, public subsidy to extend basic CTV service in anything except interim service has been avoided. See below, Chapter 6, Section 6.1 and 6.2.
11. *Decade of Diversity*, p. 17.
12. The U.S. satellite companies may use more geographically specific spot beams. Together with the evolution toward the scrambling of signals, the effects of overspill of signals on Canadian territories may diminish.
13. *Decade of Diversity*, recs. 13, 17; pp. 43, 25.
14. The subsequent Cancom Decision 81-252 makes the provision.
15. W.T. Stanbury, "Basic Themes," *Telecommunications and the Constitution*, Montreal: IRPP, 1982, p. 8.
16. See *Decade of Diversity*, 30-31, 37, 59, 76.
17. "Fox and McGeer trade TV potshots," *Vancouver Sun*, June 24, 1980.
18. Question from the Hon. Perrin Beatty, D7235, (June 3, 1980). Also, D7351 (June 5, 1980). J. Lyon, "Meisel Message: Stop Poaching TV," *Financial Post*, June 7, 1980, p. 5. See also CRTC *Statement of Clarification*, Ottawa: June 9, 1980. G. Oake, "TV Dishes could cook up Revolt in North," *Montreal Gazette*, June 4, 1980, p. 41.
19. "Cable creates clash with the Province," *Globe and Mail*, April 19, 1980. Also "Buying Satellite Station in Saskatchewan town is Buying Trouble," *Globe and Mail*, October 14, 1980. Saskatchewan Bill 13 Received Assent on June 17, 1980.
20. See Verbatim Transcripts of the Public Meetings of the Committee on Extension of Services, April 14, 1980, Volume 8 of 12, p. 2116.
21. *Decade of Diversity*, p. 17. Many cultural nationalists share this view. See Paul Audley, *Canada's Cultural Industries*, Toronto: James Lorimer, 1983.
22. See Rec. 7, *Decade of Diversity*. The other of specific interest to Saskatchewan's previous government is Rec. 26.
23. *Ibid.* pp. 58-59.
24. Peter Lyman, *Canada's Video Revolution: Pay-TV, Home Video and Beyond*, Toronto: James Lorimer, 1983, pp. 59-65.
25. *Decade of Diversity*, 56-62.
26. *Ibid.*, 64. This point is ambiguous in the text. See *The Introduction of Pay-TV*, Montreal: Institute for Research on Public Policy, 1982, p. 52 for an alternative interpretation.
27. *Ibid.*, 59.

28. Ibid., 74.
29. Nimmo, D.D. and Sanders, K.R., *Handbook of Political Communications*, Sage, 1981. p. 213.
30. J.T. Fournier, "The Right to Receive," Notes for an Address to the Annual Convention of the CCTA, Quebec City, May 12, 1981, p. 8.

Notes to Chapter 5

1. "Notes for an Address to the Broadcast Executives Society," delivered by the Minister, Toronto, October 21, 1980. Also Verbatim Transcript of the First Minister's Conference on the Constitution, Ottawa (September 8, 1980). DOC 800-14/042, p. 195.
2. Verbatim Proceedings of the Public Hearings on Extension of Services, Volume 1, February 9, 1981, p. 1.
3. Mr. Snow stated to his colleagues, "in view of the wide scale public interest in the report of the Committee and our common objectives to improve the quantity and quality of . . . services available," he would make his letter requesting a joint meeting public. Letter of August 20, 1980.
4. See recommendations 13, 14, 33, 34 in *Decade of Diversity*, CRTC, 1980.
5. Legal text forming the appendices to the CCMC Reports to the Meeting of First Ministers, DOC 800-14/059, Ottawa, September 8-11, 1980. Also the Kirby memorandum, p. 19.
6. See verbatim transcripts of the First Ministers Conference on the Constitution, 1980.
7. "L'absence de Fox étonne Richard," Québec *Le Soleil*, 28 janvier, 1981. "Provincial Ministers disappointed by Fox Snub," *Globe and Mail*, February 4, 1981.
8. The Government of Newfoundland and Labrador transferred its portfolio from Transport to the Intergovernmental Affairs Secretariat in 1980. Saskatchewan intended to transfer communications from its secretariat in the Attorney General's office to a separate Department just before the election. See *Public Sector*, October 5, 1981. Alberta increased its policy branch of the Ministry of Telephones.
9. See Nova Scotia, Policy Statement: Extension of TV Services and Introduction of Pay-TV, November, 1980, p. 2. Also Charles Lynch "Cultural winds of change," *Edmonton Journal*, July 26, 1980.
10. Vancouver Provincial Consensus Statement, November 28, 1980.
11. The report was presented at Winnipeg: September 9-10, 1981. *Report of the Federal-Provincial Working Group on Industrial Impacts of Communications Policies*, Doc. 830-103/006.
12. Quebec Provincial Consensus Statement, February 11-12, 1981, 860-89/011, p. 2.
13. See below, Chapter 6; Section 6.3.
14. Statement of Ministers responsible for Northern Development. DOC 860-81/025, September, 1980, p. 27. The Commission's condition on a subsequent license met this deadline within two months.

15. Inuit Tapirisat of Canada, News Release, July 24, 1980.
16. One new applicant was able to settle its affiliates and build support for its challenge to the Canadian Cable Satellite Network.
17. Canadian Association of Broadcasters, *Comments . . . on the Report of the Committee on Extension of Service to Northern and Remote Communities*, Ottawa: October, 1980.
18. CCTA Press Release, July 24, 1980. Also *The Right to Receive*, Collection of the papers delivered to the Twenty-fourth annual convention, Quebec City, May, 1981. CCTA News Release, May 14, 1981. Also "Canadian satellite role in jeopardy," *Globe and Mail*, March 29, 1982.
19. See recommendations 20, 32 in *Decade of Diversity*.
20. *Ibid.*, Section 9.2.4.
21. *Ibid.*, p. 78.
22. A.W. Johnson, *Public Broadcasting in Canada: Ideal and Reality*, Alexander Graham Bell Lecture, McMaster University. November, 1982.

Notes to Chapter 6

1. See Woodrow and Woodside, eds., *The Introduction of Pay-TV in Canada*, Montreal: Institute for Research on Public Policy, 1982, pp. 56-68, 158.
2. Call for license applications of services to Remote and Underserved Communities, October 16, 1980.
3. *Ibid.*, p. 2. These include the balance of radio/television signals, language of service, distant signals already present in cable, and relevance of community programming available.
4. One nominee is presently on secondment to the Federal Department. John Amagoalik subsequently was elected president of ITC and was a key constitutional advisor on the patriation package. The new CRTC appointment from Nova Scotia is Mr. Robson.
5. "CTV bird service hits snags," *Filmworld*, January, 1981.
6. CRTC Decisions 81-252, to 81-256, April 14, 1981. CanCom, ITC and CYI-Dene. Atlantic Television and the Newfoundland Broadcasting Corporation received licenses.
7. The regions of origin for television signals are British Columbia; the West (with the Edmonton independent); Ontario, and Quebec. The fifth uplink will originate from Nova Scotia. Cancom also offers 8 AM-FM radio stations. The system was operational by January, 1982.
8. See Decision 81-252, pp. 7-9.
9. This represents 68% of Inuit Communities. Additional penetration is dependent upon completion of the CBC's Accelerated Coverage Plan.
10. Decision 81-255, p. 3.
11. Decision 81-256.

12. Verbatim transcripts of the hearings to Extend Basic Services, February 9, 1981, p. 131.
13. The Cabinet refusal to give the CBC additional funds for the second network proved an effective restraint on subsequent Commission licensing, say provincial officials.
14. In licensing for local delivery, as a result of industry pressure and Manitoba's political appeal the Commission gave permission to delete that part of the CTV signal which duplicated local service. In British Columbia, the Commission permits deletion of the French service.
15. Alex Curran, "Canada Goes for the Middle Range," *Intermedia*, (July, 1981). Quoted in "Broadcasters Keep Wary Eye on Satellites" in *Globe and Mail*, (October 30, 1982). Also, D.A. Golden, Chairman of Telesat's address to the International Institute of Communications, "Technology: Master or Servant, a Case Study," Helsinki, September 5, 1982.
16. See Below, Section 6.4 for Provincial Reactions.
17. The French service consists of programming from TVA; the Hull station of TVA; and TV Acadie. See the Minister's statement to the Standing Committee on Culture and Communications #26, (20-5-82); p. 26:17.
18. The prospects for a sufficient advertising base to support a northern channel within the package are bleak. The monopoly retailer, the Hudson's Bay Company, already has ads on the national CTV affiliate. These figures to meet the conditions of license were criticized in the Commission's decision 83-126, March 8, 1983. See pp. 4-6.
19. Cancom offers the first multi channel service via satellite with low power rebroadcast delivery, and capacity for two way interaction. This low power rebroadcast capability has been thwarted by the scarcity of frequencies. "Canada's CRTC blazes bold new trails while FCC dithers," *Delta Report*, January 23, 1982. Cancom News Release, May 31, 1982. After a two year study of native communications groups, conducted by Pitfield McKay Ross, Cancom appointed H. Ross Charles, an Ojibway from Ontario, as Vice-President. He will liaise with the CYI-Dene, develop native programming, and a policy on access to broadcasting time by native groups. There will be three uplinks for native signals: two in the North (Yellowknife and Whitehorse) and one in the south.
20. The Commission acted on the Committee's recommendations one to eight, 12, 13, 17, 19, 20, 21, 24, 25, 27. Whether it acts on the recommendations that the range of services should be diverse and consider 24 hour service (22), and that the burden of proof of financial damage rests on objectors, remains to be seen in subsequent licensing.
21. The Commission received 1,382 applications and conducted hearings on 977. Evidence of the Standing Committee, May 22, 1982, p. 27:5. Cancom offers 18 hour programming to some 400 communities. There are approximately 800 communities yet to be served. See "Cancom's Hougen expects to break even by year end," *Globe and Mail*, January 20, 1982. CRTC Decision 83-126, p. 4.
22. P. Aucoin, "Public Policy Theory and Analysis" in G.B. Doern, *Public Policy in Canada*, Toronto: Macmillan, 1979, p. 15.
23. Speech to Broadcast Executives October of 1980, and reiterated before the Standing Committee #12 (28-5-81), p. 17, 19.
24. R.V. Loughheed Village Holdings, County Court of West British Columbia, unreported decision of Judge McDonald August 31, 1981. See also "Owner of satellite dish prosecuted in B.C.," *Globe and Mail*, January 22, 1981. "Open Sky policy condemned by

- Fox," *Winnipeg Free Press*, April 31, 1981. "Lougheed: Big Brother Leave me Alone," *Media Forum*, March-April 1, 1981.
25. CRTC v. Shellbird, Unreported decision of Judge Seabright, Provincial Court of Newfoundland, October 29, 1981.
 26. Minister quoted in J. Chevreau, "British Columbia Open Skies Policy seen as totally unacceptable," *Globe and Mail*, January 6, 1982.
 27. Question from Hon. Mark Rose (Mission-Port Moody) to the Chairman, proceedings of the Standing Committee, 25-5-1982. Cable companies are concerned about unfair competition from about fifty operations which receive satellite signals for use within hotels or apartments. See J. Chevreau "Deregulation adds to Cable TV Competition," *Globe and Mail*, July 17, 1982, p. B.1. "Ottawa can't halt TV dish operation even on own land," *Globe and Mail*, February 11, 1982.
 28. Steven Globerman, "Economic Aspects of the Operation of Pay-TV in Canada" in *The Introduction of Pay-TV in Canada*, Montreal: Institute for Research on Public Policy, 1982, pp. 130-131.
 29. Unreported decision by C.J.N. Miflin, Newfoundland Supreme Court of Appeal, filed September 13, 1982, #276. Department of Communications, "Fox Takes Steps to Reinforce the Canadian Broadcasting System," News Release 82-97, October 7, 1982. Also "Shellbird 2 Seen Harmful to Domestic Cable Sector," *Globe and Mail*, October 21, 1982. On January 25, 1983 the Supreme Court of Canada dismissed an application for leave to appeal Shellbird II.
 30. Minister's speech to the Broadcast Executive's Society, October 21, 1980. The Minister had been confronted with the extension issue on two fronts at the September Constitutional Conference: the deficiencies of basic CBC coverage in New Brunswick and the fragility of regulatory instruments in controlling foreign programming in the new universe of technologies. See the *Verbatim Transcript of the First Minister's Conference*, pp. 158, 197.
 31. Question in the House, October 30, 1980.
 32. Department of Communications, Annual Report 1980-1981, p. 7.
 33. Speech to open the Inukshuk network, December 1, 1980.
 34. "Forty Million Allotted to Aid Native Broadcasting," *Ottawa Citizen*, March 11, 1983, p. 3.
 35. Notes for and address by the Minister to CAB, April 16, 1981.
 36. Proceedings of the Standing committee, 20-5, 82; pp. 26: 12-20. Also "A Time for Growth" Speech to the Annual Convention of the CCTA, May 12, 1981.
 37. Standing Committee, 20-5, 82, p. 26:23.
 38. Announcement of May 8, 1981, p. 2.
 39. Speech to the XIV Annual Meeting of the International Relations Club, University of Montreal, March 6, 1981.
 40. Address by J.T. Fournier to the Annual Meeting of the CCTA Quebec, May, 1981.
 41. Proceedings of the Standing Committee, (20-5-82), p. 26:10.

42. Economic Council of Canada, *Reforming Regulation*, Ottawa: Ministry of Supply and Services, 1981; p. 47.
43. Broadcast traffic now provides Telesat with 40 per cent of its overall business. See "A New Broadcast Strategy," Speech by the Minister to the Broadcast Executives Society, p. 18. Also "Fox varies CRTC satellite decision," *Globe and Mail*, December 11, 1981. "Canada's satellite role in jeopardy," *Globe and Mail*, March 29, 1982. The policy was to have the immediate effect of benefitting the Cancom licensee by an estimated one million dollars in savings on channel costs over five years.
44. Acting on the Committee's Recommendation Ten, the federal government favoured the configuration of six "footprints" on a regional basis to correspond to time zones and cultural boundaries. The benefits would be to reduce the isolation of the north and permit cost averaging from south to north. There is no east to east beam North of 60°. With present technology, north-to-north communications will require bouncing the signal up and down across the six zones. Development of "on board switching" technology on satellites may make the process of up and down linking redundant.
45. CRTC Annual Report 1981-1982, p. 30. T.L. McPhail, "Canada's DBS Woes: Culture or Profit" undated address to University of Hawaii, 1983. Also, Peter Lyman, *Canada's Video Revolution*, Toronto: James Lorimer and Co., 1983, p. 93.
46. Chairman's submission to the Standing Committee on Culture and Communications #27 (May 22, 1982), p. 27:5. Also "Shape of Things to Come," *Toronto Star*, March 20, 1982. Cancom contends that after an experiment in a Labrador Community which had been illegally receiving U.S. satellite signals, 80 per cent of the community chose to stay with Cancom.
47. "Fox simplifies Earth Station Licensing," November 24, 1980.
48. Quebec Consensus statement, February 11-12, 1981. DOC 860-89/011, p. 2.
49. The extension issue surfaced in various forms in the reports of the three working groups. The second report of the working group on competition and industry structure defined a basic universal level of service (11), recognizing furthermore that it may be subject to enrichment by the various jurisdictions at a later date.(29) The report did not make any advance on the question of boundary between universal and optional broadcast services. The working group on industrial impacts of communications policies considered but did not evaluate the possibility of an important tax on American programming to put "U.S. and Canadian suppliers on an equal footing," which the Therrien Committee had rejected in general.(40) As well, the report endorsed measures to stimulate the development of a Canadian market for the TVRO manufacturing sector. The federal discussion on the conditions on the use of foreign programming in the cable delegation working group, whether carried off air or via closed circuit, reiterated the philosophy re established at the First Ministers' Conference.(3) See Documents 830-103/004; 830-103/005 submitted to the Ministers at Winnipeg, September 9-10, 1981.
50. See Joint Closing Communiqué, Winnipeg: September 10, 1981, 830-103/028. 2. Also questions from Hon. Perrin Beatty (Wellington-Dufferin), October 30, 1981; D32150; November 20, 1981 D32549.
51. See Announcement of December 31, 1981. "Ottawa believed set to yield in war with television earth stations," *Globe and Mail*, November 17, 1981.
52. Petition of the Government of Manitoba to the Governor-in-Council Re CRTC Decisions 82-2 to 82-4, February 4, 1982.

53. "Petition Denied," *Broadcaster* (April, 1982), p. 33.
54. Stephen Clarkson, "Cultural Survival and Telecommunications" in *Canada and the Reagan Challenge*, Toronto: James Lorimer, 1982. p. 235.
55. Department of Communications, "Canadian and U.S. Communications Satellites to be used for Transborder Services," News Release 82-90, August 26, 1982. See also *Towards a New National Broadcasting Policy*, March 1, 1983.
56. The U.S. Federal Communications Commission approved twelve applications for DBS in April of 1981. Operations begin in 1986. See also *Communications Week*, 2 # 10 (March 22, 1982) and "Satellite TV from U.S. may go to Rural Homes," *Globe and Mail*, May 13, 1982.
57. *Towards a New National Broadcasting Policy*, March 1, 1983, pp. 11, 6.
58. "Dish Policy Astute, Realistic," *Winnipeg Free Press*, March 3, 1983. Jack Miller, "Ottawa Opens the Skies to the TV Dish Market," *Toronto Star*, March 3, 1983. "An Ounce of Pre-emption: DOC Draft Policy," *Maclean's*, November 3, 1982.
59. CRTC "3 plus 1" decision 83-126, March 8, 1983.
60. See Lyman, 53, 103. Audley, 277, 304-325.
61. See opening address and Review of Microwave Policy; Quebec, 830-103/0; 830-103/013.
62. See B.C. Announcement, 08-27-81. "B.C. Minister talks about the terrible paradox that faces Canada," *Broadcaster*, (February, 1982), p. 14. The new Knowledge Network of the West, offers 77 hours of educational programming a week.
63. Alberta Telecommunications Inquiry Report No. E80111, Public Utilities Board, September 1, 1980, p. 156. "Cancom forced on rural viewer," *Edmonton Journal*, August 26, 1981. "Raid on Fort St. John," *Mountaineer*, Rocky Mountain House, Alberta, November 11, 1981.
64. Letter of the Commission of the Northwest Territories to the CRTC, February, 1981.
65. "Integrated Signal Delivery," *Regina Leader Post*, October 22, 1981. Also "Saskatchewan Telecable wins TVRO case," *Canadian Communications Reports*, 9 # 7 (April 15, 1982); pp. 8-9.
66. "Lyon clear on TV," *Winnipeg Free Press*, (WFP) October 30, 1981. "TV Challenge," WFP, November 10, 1981. "NDP follows PC policy on Cable TV," WFP, December 8, 1981. "Earth Station Rules are Limiting Manitoba Viewers Choice," *Globe and Mail*, January 9, 1982. Reference to Steinbach here.
67. Ontario letter submission to the CRTC, January 26, 1981. Statement . . . Regarding Extension of Services, Winnipeg, September 9-10, 1981. DOC 830-103/018. "Responsible Regulation in the 1980's," address of the Hon. James Snow to the Broadcast Executives Society, February 11, 1982. "Snow favors Direct Service," speech to Ontario Cable Association, *Globe and Mail*, October 21, 1982.
68. New Brunswick; Comments on Extension of Services, Winnipeg, September 9-10, 1981, DOC 830-103/020.
69. See Nova Scotia, *Policy Statement*, November 1980, p. 6. Also *Extension of Services to Rural Nova Scotia*, June 1, 1981, intervention to the CRTC, and "More choice on TV," *Chronicle-Herald*, April 22, 1981.

70. Brief to CRTC, "Doyle Pro U.S. Signals," *Evening Telegram*, September 15, 1981, and Newfoundland's Position on Extension of Services, Winnipeg, September 9-10, 1981, DOC 830-103/021.
71. Interview in *Chronicle-Herald*, July 28, 1980.
72. CRTC Public Notice 1981-35, Call for Application for Pay-TV Services, April 21, 1981.
73. CRTC "Five Steps for Survival," Notes for the Chairman's Gerstein Lecture, York University, April 10, 1981.
74. Minutes of the Standing Committee on Culture and Communications, #13, (May 19, 1981), 14:14.
75. DOC, "Programming and Nationhood: The Challenge of Change," notes for an address to the Canadian Broadcasting League's Fiftieth Anniversary Conference, Ottawa, October 6, 1980.
76. DOC Notes for a Speech by the minister to the Broadcast Executives Society, October 21, 1980. Also Notes Re Federal Interests in Pay-TV, tabled at the Meeting of . . . Deputy Ministers Responsible for Communications in Toronto, October 23, 1981. DOC 830-117/010, p. 1. Only the two directly participating provinces, Ontario and Saskatchewan, replied.
77. Question in the House, from Hon. F. Oberle (Prince George, Peace River), D. 28080, October 22, 1980. Also from Hon. M. Rose (Mission-Port Moody) D. 28079, D. 28103.
78. Former done July 30, 1980. The Hylton Task Force was created July 11, 1981. See "Broadcast Strategy Review a Priority," *Film and TV World* (March 15-April 15, 1982), p. 9. Evidence presented to the Standing Committee on Culture and Communications, (20-4-82).
79. DOC, "The Government's Role in Communications," notes for an address by the minister to the C.A.B., Calgary, April 29, 1980: p. 1.
DOC "Broadcasting in the Eighties, pointing the Way to a Strategy," Address by the Minister to the Annual Meeting of the Canadian Association of Broadcasters, April 16, 1981.
80. The CFDC received four million in June of 1981. *Ottawa Letter*, XV # 24, p. 184. Evidence presented to the Standing Committee (20-4-82) pp. 26:5, 12. Also see "Rollback of Capital Cost Allowance," *Film and TV World* (Jan. 15-Feb. 15, 1982), p. 7.
81. Notes Re Federal Interests in Pay-TV, October 23, 1981, DOC 830-117/010, pp. 6-7.
82. Quebec, Quebec Proposal on Pay-TV, Winnipeg: September 9-10, 1981. DOC 830-103/012, p. 2.
83. Saskatchewan, Romanow Urges Federal-Provincial Licensing of Pay-TV, Winnipeg: September 9-10, 1981. DOC 830-103/028.
84. Pay-TV Report to be submitted to Ministers, Winnipeg: September 9-10, 1981. 830-103/026, p. 1.
85. "Pay-TV prompts a quick threat," *Globe and Mail*, February 10, 1982. "Fergus-Elora," *Film and TV World*, March 15-April 15, 1982, p. 19; "Pay-TV Firm Backed in battle with CRTC," *Globe and Mail*, March 19, 1982. Also "TV and Freedom of Choice," *Maclean's*, May 24, 1982, pp. 14-15. The Company has a history of previous battles with the CRTC on the policy prohibiting cable carriage of local advertising.

86. Three full-time Commissioners from the Committee on Extension of Services were a part of the panel which conducted the pay-TV hearings: Rosalie Gower, Paul Klinge and Réal Therrien. No other members participated.
87. Decision 81-240, March 18, 1982.
88. See Lyman (1983), p. 77. Since the organizational structure of pay-TV approximates the Independent Broadcasting Authority in Britain (with independent programmers, distributors, exhibitors) the prospect for competitive licensing of new program packagers is more likely than when there is integration across functions.
89. CRTC 81-240, p. 69.
90. The trend to twenty-four hour service and commitment to non-exclusive contracts may mean ultimately that the only substantive difference among general-interest licensees will be the Canadian shows. See Jack Miller "Pay-TV Competition May Pay-Off for Viewers," *Toronto Star*, June 2, 1982, p. B-3.
91. All commit varying degrees of financial resources to regional creative productions. Alberta and Ontario licensees or Superchannel proposed to allocate 20 per cent of its production budget to regional projects for the development of programs that reflect the various cultural and linguistic groups in Alberta.(43) Starchannel from the Atlantic Region will devote 50 per cent of its budget to production.
92. The Commission noted that shareholders of First Choice had "no significant present involvement in program production or cable television." Applications for a national general-interest service from cable and broadcast interests were notable casualties. However two broadcasting backed interests were awarded licenses for regional general-interest services. Allarco emerges as the big winner in recent Commission decisions, with independent "superstations" in Cancom, and a regional license. The condition of the Ontario license was that a director resign from the Allarco. In general the Commission forbade integration of production and distribution. The multilingual service was exempted.
93. See Decision, pp. 58-59.
94. CRTC Decision 82-1023 TVEC, Nov. 23, 1982. Also 83-115 AIM February 21, 1983.
95. See Statement re: Governor-in-Council Review of Broadcasting Order, CRTC 812-1 of July 28, 1982, SP 82-57, September 23, 1982. Also J. Portman, "Storm Over Pay-TV Content Backdown," *Vancouver Sun*, August 13, 1982, p. C-1.
96. *Ibid.*, pp. 70-71.
97. The Chairman states that there will be no expansion. Evidence of the Standing Committee, 25-5-82, p. 33:18.
98. *Introduction of Pay-TV (IRPP 1982)*, p. 29.
99. Bruce Doern and Allan Tupper, *Public Corporations and Public Policy in Canada*, Montreal: IRPP, 1981.
100. See CCTA estimate in *Producer and Consumer*, September, 1981. Also discussed in the *Report of the Federal-Provincial Working Group on Industrial Impacts of Communications Policies*, Winnipeg, September 9-10, 1981. DOC 830-103/006, p. 26.
101. Lyman (1983), p. 62.

102. See *Canadian Communications Reports*, 9#9 (May 15, 1982), 10. "Fox upholds pay decision: 3 appeals quashed," *Film and TV World*, 5#5 (May 15-June 15, 1982).
103. DOC Statement, May 15, 1982. The minister later was to state to the Standing Committee "if some fail, so be it." 20-4-82, p. 31:20. Further licensees if they so wish may apply to provincial utility boards, p. 31:31.
104. DOC, *Statement by the Minister*, Calgary, May 21, 1982. DOC 830-117/012 pp. 6-7.
105. "Fox accused of Declaring War," *Globe and Mail*, May 25, 1982, p. B-6.
106. CRTC Statement Re: Canadian Content, Notice 83-18, January 31, 1983. Cultural nationalists are supportive. See Audley, (1983), p. 285.
107. See Department of Communications, *Towards a New National Broadcasting Policy*, March 1, 1983. The sum exceeds the CFDC's entire budget for 10 years. See Audley, (1983), p. 228.
108. B.C. Public Utilities Act Bill 52, R.A. August 22, 1980. See also "B.C. orders hearings on license requests for closed circuit TV," *Globe and Mail*, January 29, 1982. "Province Claims Ottawa has no Pay-TV Powers," *Delta Report* 3#5, March 5, 1982. "Worldview Loan," *Vancouver Sun*, March 19, 1982. "Provincial Government Should Stop Trying to Regulate Pay-TV," Editorial in *Province*, March 23, 1982. "Pay-TV Firm Faces B.C. Fines," *Province*, March 25, 1982. "McGeer Ups Ante in Pay-TV Dispute," *Communications Week*, 2#11 March 29, 1982. "The New Purveyors of the National Culture," *Macleans* March 29, 1982. "Ministers Fail to Resolve Jurisdiction Over Pay-TV," *Globe and Mail*, May 25, 1982. "B.C. Disputes CRTC Control Over Pay-TV," *Globe and Mail*, July 14, 1982.
109. See *Quebec Proposal on Pay-TV* (1981). DOC 830-103/012. *Pay-TV—A Preliminary Statement*, Winnipeg: September 9-10, 1981. DOC 830-103/014. *Position on Pay-TV and Joint Regulatory Mechanisms*, Calgary, May 21, 1982. DOC 830-117/006; *Notes on Pay-TV*, Calgary: May 21, 1982. DOC 830-117/009. See also 12 mars 1982, "La Choix de First Choice Inquiete Bertrand," *Le Devoir* 20 mars 1982. "Provincial Licenses For Pay-TV Needed Quebec and B.C. Say," *Globe and Mail*, March 20, 1982. "First Choice et la Justice," *Le Devoir*, 20 mars 1982. "First Choice Warned No Pick Up if Demands Not Met," *Film and TV World*, 5#5 (May 15-June 15, 1982), 7.
110. See Alberta, PUB Bill 52. R.A. May, 1981. *Alberta Report*, November 6, 1981, "Alberta Tries to Take Control Over STV," *Stettler Independent*, February 10, 1982. *Communications Week*, 2#9, March 15, 1982. "Pay-TV Control Spoils of Battle," *Edmonton Journal*, May 21, 1982. "Ottawa Facing Pay-TV War," *Edmonton Journal*, May 22, 1982. "Alberta Wants to Control Pay-TV," *Regina Leader Post*, June 4, 1982.
111. Saskatchewan, *Submission to the CRTC Public Hearings on Pay-TV*, September 24, 1981. *Romanow Urges Federal-Provincial Licensing of Pay-TV*, Winnipeg: September 9-10, 1981. DOC 830-103/031. "A Pay-TV Pioneer Signs Off with Advice to the New Boys," *Financial Post*, January 29, 1983.
112. "Province Seeks Pay-TV Control," *Globe and Mail*, December 12, 1981. "Pay-TV Customers Forgotten," *Winnipeg Free Press*, January 8, 1982, and "Pay-TV Price Tag Could Be High," *Winnipeg Free Press*, January 9, 1982. "Le Manitoba Ajoute Sa Voix Aux Provinces Recalcitrantes," *Journal de Montréal*, 22 mars 1982. "Evans Joins Call For Pay-TV Talks," *Winnipeg Free Press*, March 22, 1982, p. 9.

113. Ontario, Submission to the CRTC Re: Pay-TV, September 1981. "Responsible Regulation in the 80's," speech to the Broadcast Executives, February 15, 1982. "Pay-TV Firm Backed," *Globe and Mail*, March 19, 1982.
114. Cable to CRTC from Premier Hatfield, September 10, 1981.
115. Nova Scotia, Submission to the CRTC on Pay-TV, September 17, 1981; *Policy Statement Extension of Services and Introduction of Pay-TV*, November 1980; *Telecommunications Legislation for Nova Scotia*, April 1982.
116. Cable to CRTC from Cyril J. Avery, Deputy Minister, Intergovernmental Affairs Secretariat, September 16, 1981.
117. P.D. Lehrman, "Uneven Course of U.S. LP-TV," *Broadcaster*, 41#9 (September, 1982).
118. See CCTA *The Right to Receive*, May, 1981. And Above Section 6.11. Also recommendation 81, Report of the Federal Cultural Policy Review Committee.

Notes to Chapter 7

1. R.M. Burns in *Politics of Fiscal Federalism*, a study prepared for the Economic Council of Canada, Kingston: Institute of Intergovernmental Relations, 1982, p. 253.
2. *Report of the Federal/Provincial Task Force Exploring Joint Regulatory Mechanisms*, Calgary, May 21, 1982. 830-117/004. p. 2.
3. Bruce Doern, ed. *How Ottawa Spends Your Tax Dollars: National Policy and Economic Development*, Toronto: Lorimer, 1982, pp. 1-6.
4. In the *Vancouver Sun*, July 29, 1980 and *Winnipeg Free Press*, July 29, 1981, respectively. CRTC *Annual Report*, 1981-1982, p. ix.
5. The heritage of the constitutional accord in 1981 has also provided new insights into the engineering of incentives to mobilize consent. The external forces of control—parliamentary committees, press or the Courts—may discipline the federal-provincial decision process. See Richard Simeon and Keith Banting, eds. *And No One Cheered*, Toronto: Methuen, 1983.
6. A.M. Rutkowski, *U.S. Policy-making for Public International Forums on Communications*, New York: New York Law School, 1981. Also "U.S.A. and ITU Many Attitudes: Few Policies," *Intermedia*, (July/September 1982), vol. 10, #4-5.
7. Hudson Janisch, "Policy-making in Regulation," *Osgoode Hall Law Journal*, 17#1 (April, 1979), pp. 67-68, 81.

Appendix One:

Methodology of Managing Diversity

1.1 Background

In August of 1981, the Institute of Intergovernmental Relations received a grant from the CRTC to study the Committee on Extension of Services to Northern and Remote Communities, as one case of federal-provincial regulatory collaboration.

1.2 Objectives

The objectives of this study were to:

- i) record the creation of the Committee, and interpretation of the mandate;
- ii) examine its **modus operandi**; and
- iii) develop criteria for the assessment of such experiments in regulatory collaboration.¹

1.3 The Method

This sample was designed on a modified version of the "bureaucratic actor" approach to case study.² Given that line-departments responsible for communications and the CRTC were in the lead role for this experiment, central agencies for federal-provincial or special clientele bodies for northern development were excluded. Due to the consolidation of cultural matters with communications at the federal level in 1979, the Secretary of State was excluded. Time constraints of time also precluded attention to the co-operation and conflict between the two federal crown corporations.

The primary data are drawn from a series of 67 individual in-depth interviews with key actors. Consistent with the norm of previous case studies, it was agreed that comments would remain confidential. Attribution is

restricted to documents on public record. Other background evidence is drawn from the relevant documents from federal provincial meetings, public transcripts of the committee's meetings, speeches, Hansard and proceedings from the Standing Committee on Culture and Communications. Secondary material on the federal-provincial decision process and regulatory reform are presented in the selected bibliography.

1.4 Scope

For purposes of the study, the Committee is examined as a step in the process of policy collaboration at both political and regulatory levels in the period from 1978-1982.

The focus is on leading organizational innovation and on the methods used to mobilize consent, manage conflict and build support which were used by the Committee. Line department officials involved in this collaborative experiment are unanimous that both process and substance—policy development and implementation—are important to the evaluation. Substantive dimensions of analysis were defined to include objective and subjective question: were the number and variety of services increased? By how much? How well? Quantitative measures of the "reach"—of levels and penetration of new services—are beyond the scope of the study, but merit further research after the licensing for local delivery is completed.

Two caveats must be raised. First, literature on executive federalism, regulatory reform and program assessment offer few definitive criteria for evaluation. Previous case studies have revealed that perceptions of the process vary with the expectations held when participants are going into the exercise. Analysis is necessarily subjective.³ Second, the convenient classification of the Committee as a part of the four part policy chain must not in any way imply that a simple definition of effectiveness, or a measurement of effect against intention is possible. One of the characteristics of executive federalism is the rolling nature of compromises and constantly changing partnership. The Liberal minister did not participate in the third part of the process as his predecessor had intended.⁴

Notes to the Appendix

1. Address by the Chairman of the Commission; John Meisel, to the Opening of the Licensing Hearings to Extend Basic Services, Verbatim Transcript 11, (February 14, 1981), p. 3.
2. See Richard Schultz, **Federalism, Bureaucracy and Public Policy**, Montreal: McGill-Queen's Press, 1980, p. xi. The sample is outlined in Appendix One.
3. J. Brown and J. Eastman, **The Limits of Consultation**, Study for the Science Council of Canada, Kingston: Institute of Intergovernmental Relations, 1981.
4. See below, Chapter 5.

Appendix Two: Chronology of Political and Regulatory Events

