

**Independent Regulatory Agencies and Policy Change –
A Case Study of the Canadian Radio-Television and
Telecommunications Commission**

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1. Introduction

One of the functional advantages commonly attributed to independent regulatory agencies is the ability to adapt regulatory standards to a fast-changing environment in a flexible and efficient manner. The argument that a delegation of rule-making powers to independent agencies is appropriate where constant fine-tuning of the rules and quick changes to meet new circumstances are required constitutes a standard justification for establishing such agencies (cf. Baldwin/McCrudden 1987: 5). The more recent literature on regulatory agencies even casts these organizations as “change agents”. In his highly influential book “Regulating Europe”, Giandomenico Majone refers to the leading role of the American independent regulatory commissions in the deregulation movement and concludes that “a mode of regulation emphasizing independence and expertise [...] can [...] push through deregulation when economic and technological change make public oversight no longer necessary”. (Majone 1996: 23). Similarly, Mark Thatcher shows in his study on the British public utility regulators that these agencies have adopted a strongly pro-competitive stance and played a central role in the extension of competition after the privatization of public utilities (Thatcher 1998).

However, there is a dearth of empirical studies exploring the conditions which shape the reactions of independent regulatory agencies to pressures for changes in strategy. What factors influence the flexibility and readiness of regulatory agencies to adapt their regulatory policies to changing circumstances? The paper analyzes these questions in a case study of the Canadian Radio-Television and Telecommunications Commission (CRTC) which was established in 1968. The CRTC is well suited for such an exploration due to several reasons. Firstly, it is an independent regulatory agency equipped with broad and vague legislative mandates in the sectors which it oversees. Thus, it has a great deal of discretion. Secondly, the CRTC operates in two sectors which are characterized by an ever faster pace of technological change. Thirdly, the fact that the CRTC is responsible for regulating broadcasting and telecommunications allows for a comparative analysis of its reactions to pressures for change.

The paper proceeds as follows. Its first section describes the historic governance and policy models in telecommunications and broadcasting regulation. After briefly sketching out the CRTC’s enabling legislation, its regulatory approach and its relations with the government, the second section explores how the CRTC reacted to the challenges posed chiefly by technological innovations in the two sectors it oversees. The final part compares the findings from both fields and draws conclusions.

2. The Traditional Regulatory Policy Models in Telecommunications and Broadcasting

2.1. Telecommunications – Protectionism in a Monopolistic Market

For most of the 20th century, telecommunications policy was characterized by a remarkable stability in terms of governance models and problem definitions. Public control by an independent regulatory agency over monopolistic suppliers early on became the predominant mode of state intervention into the field. However, as the jurisdiction over telecommunications was split in Canada between the federal and the provincial governments, a rather complex patchwork of regulatory and ownership structures developed in the first two decades of the 20th century. While a multitude of partially competing suppliers had sprung up, when the new technology had begun to spread in the later 19th century, soon monopolistic tendencies emerged. Bell Canada, initially a subsidiary of the American monopolist AT&T, became the dominant carrier (Armstrong/Nelles 1986). Public criticism of Bell's high rates, its neglect of less populated areas and its refusal to interconnect its network with the lines of independent telephone companies spurred the federal government into action, which, in 1906, subjected all federally chartered telephone companies to tariff regulation by the *Board of Railway Commissioners* (BRC) (Babe 1990; Rideout 2003). The regional monopolists in the Eastern provinces, from where Bell had withdrawn in the 1880s, were also put under the control of independent regulatory agencies by the provincial governments in 1909 and 1910 (Armstrong/Nelles 1986). While all these companies remained in private hands, the governments of the Western provinces established public telephone companies between 1906 and 1909, because public ownership was seen as a more suitable instrument for extending service in these large, sparsely populated areas (Waters/Stanbury 1999: 151; Winseck 1998). Yet, two of the three Western provinces transferred oversight over the public monopolists to independent provincial bodies in 1912 and 1915 respectively (Babe 1990).

By then, the conviction that a “natural monopoly” was given in the telecommunications sector was well established, i.e. a situation, where, due to structural constraints, one single supplier can satisfy the demand in the market cheaper and more efficiently than several competing suppliers (Armstrong/Nelles 1986; Winseck 1998). Public regulation was therefore deemed necessary to prevent the monopolists from discriminating against customers with regard to prices and the availability of services and from reaping excessive profits (Schultz 1982: 204f). Consequently, the BRC's statutory mandate stipulated that the board would review and approve all tariffs, which “shall be just and reasonable” and “not unjustly discriminatory” (Rideout 2003: 24f; Winseck 1998: 24). Furthermore, the board was given the competence to approve applications for the interconnection between the networks of independent companies and Bell's lines (Babe 1990: 114f). However, regulation went beyond a negative, corrective mode strictly confined to compensating for market failure. A more

positive function which is captured by the term “universal access” has been read into the provisions of the 1906 *Railway Act* (Winseck 1998: 15). The intention to provide as many business and private users as possible throughout the country with basic access to the telephone network under comparable circumstances came to be shared by regulators and regulated alike (Woodrow/Woodside 1986: 103-108). The principle of universal service gave expression to national and social goals of telecommunications regulation.

Given the fact, that the BRC regulated Bell Canada, the biggest telephone company which operated in the large and lucrative market of Central Canada and supplied already in 1915 45% of all Canadian telephone subscribers, as well as the regional monopolist operating in the province of British Columbia, it was the most significant regulatory body in the country (Winseck 1998: 141). While vague statutory termini such as “just and reasonable” gave the BRC a considerable discretion in its decision-making, the board interpreted its statutory mandate rather narrowly, granting broadly defined management prerogatives to the telephone companies and perceiving its activities as quasi-judicial and technical in nature rather than political (Schultz/Alexandroff 1985; Mussio 2001; Winseck 1998). It focused primarily on price regulation in a limited sense, leaving the evolution of the tariff system largely to the telephone companies and restricting itself to modifying their proposals when this was deemed necessary. Yet, the board’s decisions advanced and intensified the cross-subsidization within the pricing system (Armstrong/Nelles 1986: 201, 277, McManus 1973: 407-419). The cross-subsidization from high profit centres such as long-distance telephony to rural and basic local service with the aim of keeping the prices for the latter services low has been the central instrument for pursuing the goal of universal service (Babe 1996: 292; Woodrow/Woodside 1986: 108). However, this practice was not only politically desirable, but in principle also in the interest of the telephone companies which wanted to increase their subscriber basis (Schultz/Alexandroff 1985)

The policy model which emerged in the decades before World War II and extended into the first two post-war decades was thus characterized by a fusion of the public interest with the interests of the regulated companies in the minds of the regulators. As the chairman of a provincial regulatory agency put it, “[t]he true interests of a public utility and the true interests of the public are identical – adequate service for an adequate rate” (zit. nach Armstrong/Nelles 1986: 200). Thus, not only, and not necessarily as a matter of priority, the interests of the subscribers had to be protected, but also the financial health of the telephone companies. So as to ensure the functioning and the extension of the telephone service, the telephone companies had to be guaranteed adequate returns. The regulator’s mediation between consumer and producer interests often, but not always led to results which favoured the interests of the telephone companies (Mussio 2001: 21).

From the perspective of the government, the institutional set-up served its purpose of defusing tensions and deflecting popular pressure for lower rates from the political sphere rather well for most of the time. When the BRC had been given regulatory authority over telecommunications, the government had kept some degree of control. The decisions of the BRC could be appealed by affected parties to the cabinet, which could send the decision back to the BRC, vary it or rescind it altogether (Winseck 1998: 130). Well aware of the isolating function of the regulatory process, the government accepted only a handful of appeals between the beginning of the century and the early 1960s (Mussio 2001: 17, 20; Schultz/Alexandroff 1985: 22f). The infrequent intervention of the government reflected the low political salience of telecommunications throughout much of the 20th century, as this industry did not raise major political concerns either in a negative or a positive sense.

However, the narrow approach which the telecommunications regulator pursued only proved workable as long as the monopolistic structure of the industry was seen as a given and the regulatory arena was of low conflict intensity. Both conditions began to erode in the 1960s due to social and technological changes. These changes brought new actors into the regulatory arena, namely public interest groups and companies involved in new technologies, which criticized the regulator's lack of understanding for their concerns. Thus, the regulatory process was rapidly losing legitimacy (Babe 1990; Mussio 2001). Moreover, the emergence of new technologies and services awakened the government's interest into the sector (Schultz/Alexandroff 1985). These upheavals led in the mid-1970s to the transfer of regulatory oversight to a different agency with a very different approach, with far-reaching consequences for the structure of the industry.

2.2. Broadcasting – Cultural Protectionism between Nation-Building, Market and Public Service

Similarly to the telecommunications sector, technical-economic conditions initially led to the perception that state intervention into the broadcasting sector was unavoidable, as the limited number of broadcast frequencies available on the electromagnetic spectrum had to be allocated (Peers 1969: 12ff). In the decade following the start of the first Canadian broadcasting station in 1919, the federal government restricted itself to this allocation function and issued licences to a rapidly increasing number of stations. In the wake of a struggle over the programs of some religious radio stations, a broader political debate on the structure of the Canadian broadcasting system developed in the late 1920s. The Royal Commission which the government established in 1928 to provide it with policy advice identified a number of problems which have shaped Canadian broadcasting policy ever since. For once, it observed that the existing broadcasting stations tended to be concentrated in urban centres (Filion

1996b: 119). This points to the difficult geographic conditions of the large country. But Canada's geographical location led to another, much greater problem: the transnational interpenetration by the US broadcasting system. As the Commission's report noted, Canadians listened predominantly to US programs (Peers 1969: 44). US stations could be directly received in large parts of the country. Also, the largest Canadian stations were affiliated to US networks and broadcasted a high amount of US programming. US programs were very popular particularly in English Canada, whereas the different language was more of a barrier in the francophone part (Filion 1996a: 450ff). The so-called Aird Commission also criticized the general mediocrity of programs and the great amount of advertising broadcasted.

In essence, Canadian broadcasting was diagnosed to suffer from a structural economic deficit. Because of the limited advertising revenues available in the Canadian market, private Canadian radio was not competitive vis-à-vis American stations; economic incentives led to the affiliation with American networks and the import of cheaper US productions instead of domestically produced programming (Collins 1990: 54; Nash 1994: 54). Thus, the problem of "market failure" applied not only to the distribution system, but to domestic content itself. US producers enjoyed a competitive advantage because they could recover most of their production costs within their internal market, whereas this was very difficult in Canada, especially for more expensive forms of programming (Jeffrey 1996: 205). In view of these circumstances, the Aird Commission advocated public ownership of radio stations. It emphasized the broader educational potential of broadcasting, which could be used to inform the public about issues of national interest (Peers 1969: 44; Raboy 1990: 28f). But the public service aspect was fused with the overriding goal of promoting cultural sovereignty and national unity.

The Commission's report received great public support. The government proceeded to establish the Canadian Radio Broadcasting Commission in 1932, which was to create a national radio service and to oversee the Canadian broadcasting system as a whole. While private stations remained permitted, the new Broadcasting Act enabled the expropriation of commercial stations, thus hinting at an eventual state monopoly (Filion 1996b; Peers 1969; Raboy 1990). However, this first public broadcaster had some severe congenital defects and was replaced by the Canadian Broadcasting Corporation (CBC) in 1936. The 1936 Broadcasting Act did no longer provide for an eventual public monopoly, which was anyway rather unrealistic in the dire economic conditions of the 1930s. But the CBC was clearly conceived as the dominant element of the broadcasting system, whereas the private stations were assigned a complementary status. As its predecessor, the CBC was responsible for the regulation of the private stations (Peers 1969; Raboy 1990).

Thus, the country emerged from this formative phase of Canadian broadcasting policy with a mixed system comprising both public service and private commercial stations. The

decision to establish a public broadcaster was primarily motivated by the fragile national identity of the young nation (Peers 1969: 283). Due to the powerful neighbour in the South and Canada's internal fragmentation, the formation of a national consciousness has been a perennial problem of Canadian public policy ever since the Canadian state was founded in 1867. In this context, the concept of nation-building became the central theme of broadcasting policy. Broadcasting as nation-building had a dual thrust: the containment of American influence and internal integration, in particular with respect to the dominant internal divide between the Francophone and the Anglophone parts of the population. However, the national motif of broadcasting policy – Canadian ownership and Canadian content – proved much harder to sustain in practice than in policy statements and speeches. In particular, the containment of US influence was achieved only to a rather limited extent, as even the CBC practised a somewhat paradoxical form of cross-subsidization because of the economic incentives and audience preferences. It imported popular US programs which generated higher advertising revenues and used this income to support the production and distribution of domestic content (Collins 1990: 56; Peers 1979: xiiiif; Raboy 1996: 183). As a critic has noted, this amounted to “Canadianization through Americanization” (quoted in Jeffrey 1996: 208).

In order to make a genuinely Canadian broadcasting system economically sustainable, policy makers perceived it necessary to restrict market forces through a system of strictly limited competition. While this protectionist strategy aimed primarily at the public element of broadcasting, the economic viability of the private stations was also safeguarded so as to enable them to create locally oriented programming (Babe 1979: 20ff). The respect for private property rights and the accepted use of the medium for advertising purposes infused the Canadian broadcasting system with a commercial logic, which operated in constant tension to the national-cultural goals (Filion 1996b; Jeffrey 1996; Peers 1969, 1979). Clearly less prominent than these two dimensions, but always present since the 1930s was the social dimension of broadcasting, which emphasized democratic communication and social inclusiveness. The CBC featured several innovative programs strongly inspired by this aspect in the 1930s and 1940s (Raboy 1990; Vipond 1992). Thus, the policy model in broadcasting was characterized by a precarious balance between contradictory policy ideas, which, in their combination, can be described as cultural protectionism.

In the post-war years, the protectionist strategy shifted in terms of instruments from the priority of public ownership towards the pre-dominance of regulatory intervention (Raboy 1990:135). The cost intensity of broadcasting which significantly increased with the introduction of television in the 1950s and the aggressive lobbying by private broadcasters resulted in the growing importance of the private element within the system. A conservative government introduced a new Broadcasting Act in 1958, which put the private sector on an

equal footing with the public sector (Filion 1996b: 121). Both sectors were henceforth to be regulated by an independent agency. While licences would still be issued by the federal government, the new Board of Broadcast Governors (BBG) was to conduct hearings and make recommendations on licensing to the government. The board was empowered to pass regulations on, among other things, programming standards, advertising and the use of domestic creative resources in programming (Peers 1979: 152ff; Stewart/Hull 1994: 9). More intensive regulation was seen as necessary in light of the growing role of the private sector, which had to be obliged to contribute more actively to the cultural and social goals of broadcasting (Peers 1979: 93ff).

Corresponding to the intentions of the government, the BBG conducted the expansion of the private element in radio and especially in broadcasting during the following years. The private sector became de facto the dominant part of the broadcasting system. In the early 1960s, the first private television networks were licensed for Anglophone and Francophone viewers respectively (Collins 1990: 63; Raboy 1990: 45ff). Thus, greater competition was introduced into the system, but it remained limited due to a strict control of market access via the licensing process, which safeguarded the economic viability of the existing stations, and other measures (Babe 1979: 20). In exchange, the government and the regulator expected private broadcasters to invest part of the revenues earned primarily by airing US programs into domestic programming. To this end, Canadian content quotas were introduced in the late 1950s, which obliged broadcasters to send at least 55% of Canadian programming during a period of four weeks (Stewart/Hull 1994: 3, 29ff).

However, the BBG was neither politically nor administratively really up to its tasks. Similar to the telecommunications regulators, it pursued a relatively narrow interpretation of its mandate and only reluctantly assumed a more explicit policy-making function in reaction to new problems or issues which were not clarified in the Broadcasting Act (Stewart/Hull 1994). The government tended to leave policy-making in such cases to the regulator, although the latter expected the government to decide on issues with clear political connotations. As in telecommunications regulation, the responsible government department tended to follow a “hands-off” approach vis-à-vis the regulator and largely restricted itself to a reactive mode of control. It also rarely used its formal competences for the ex-post control of the regulator’s decisions. The government’s reserve was certainly due in part to the fact that government intervention into broadcasting regulation was generally perceived as awkward because of the political relevance of the medium. But it probably also, and perhaps even more, reflected the political difficulties inherent in the highly ambivalent nature of a broadcasting policy torn between high-minded national goals, market realities and the preferences of the audience for American programming (cf. Stewart/Hull 1994: 282). As in telecommunications, a greater

guidance by the government of the regulatory process would have promised little political gains.

The BBG did not enjoy a long lifespan. In 1965, another advisory commission criticized the lack of effectiveness of its efforts to improve the programming of private broadcasters and recommended that the BBG which was described as “weak” and “discordant” be replaced by a regulatory body with greater authority. This new agency should develop a coordinated policy to implement broadcasting policy goals which were to be defined more comprehensively in the statute (Hardin 1985; Raboy 1990; Wiesner 1991). Largely following these recommendations, the government amended the Broadcasting Act in 1968 and established a powerful new regulatory agency, the Canadian Radio Television Commission (CRTC).

A comparison of the regulatory governance and policy models in broadcasting and telecommunications at the end of the 1960s reveals obvious similarities. In both cases, technical-economic conditions existed which resulted in a “market failure”. Because of this effect, but also out of national, cultural and social considerations, more or less extensive forms of state intervention were undertaken in the two sectors. Competition was virtually non-existent in telecommunications and played only a very limited role in broadcasting. In both cases, similar governance models developed: regulatory oversight by an independent agency combined with limited public ownership. Apart from defining vague statutory goals, the government restricted itself to a reactive mode of control vis-à-vis the regulatory agencies and interfered only infrequently in their decisions. Regulation operated on the basis of protectionist policy models: the regulator safeguarded the economic viability of broadcasters and telephone companies so as to ensure that they could contribute to public policy goals. However, the instrumentalization for broader political goals was evidently more pronounced in broadcasting than in telecommunications. In particular, the nation-building motif played a much more dominant role in the former sector, which is due to the content aspect of this medium. Moreover, broadcasting regulation was characterized by a more difficult mix of conflicting goals, whereas in telecommunications the non-economic policy goals were not fundamentally irreconcilable with economic incentives created by the monopolistic market. While the structure of the telecommunications sector was defined largely by the technical-economic characteristics of this technology, the broadcasting system was constructed to a large extent by state intervention and was in its central features meant to defy market logic. Thus, the latter was perceived as more delicate as the former.

3. The CRTC and Regulatory Policy Change

3.1. A New Regulatory Agency

In the mid-1970s, broadcasting and telecommunications regulation were brought together under the oversight of the CRTC. Initially created solely as a broadcasting regulator, the new agency pursued a very different approach in exercising its tasks than its predecessors in both sectors. While the previous agencies had shied away from the political aspects of their work, the CRTC saw itself explicitly as a policy-maker. A broader steering role for the regulator was provided for by the 1968 Broadcasting Act, which empowered the CRTC to “to regulate and supervise all aspects of the Canadian broadcasting system” (quoted in Hall 1990: 38). The new agency was endowed with a broad ambit of authority (Schultz/Doern 1998: 120). It was responsible for licensing broadcasting undertakings as well as for developing licence conditions and regulations to give effect to the policy objectives of the statute (Schultz 1999: 31). In both licensing and regulation-making, the CRTC was given very broad discretion, as the statute authorized it to proceed as it perceived necessary to achieve the statutorily defined policy goals (Babe 1979: 32ff). The policy statement of the Act laid down the conflicting goals defining Canadian broadcasting policy; its formula that the broadcasting system should “safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada” gave the CRTC “a virtually open-ended mandate” (Schultz 1999: 31). Thus, the policy statement hardly functioned as a constraint on an ambitious agency. As a commentator has noted, “[t]he CRTC has not declined the invitation of such sections to exercise its discretion expansively” (Johnston 1980: 21).

However, the fact that the CRTC established and subsequently maintained its role as a policy-maker and prime actor in the communications regulatory regime cannot be perceived primarily as a power-grab by a zealous agency. Although the federal government improved its policy-making capacities by creating a Department of Communications in 1969, this department – and its successors – largely proved unwilling or unable to issue clear policy guidelines on current issues in advance of any actions by the regulator – despite the growing need for policy decisions created by technological changes. Thus, the regulator was constantly left to fill a policy vacuum (Hall 1990). While the CRTC was not subject to formal political control in developing regulations under the 1968 Broadcasting Act, the government kept a veto power over the agency’s licensing decisions. Although the government largely stuck to its reactive mode of control vis-à-vis the regulatory agency, it was now much more receptive to political appeals by interested parties and intervened more often into the regulator’s decisions. A 1991 amendment of the Act gave it new powers for political control.

3.2. The CRTC and Broadcasting – Stemming the Spread of New Technologies

In broadcasting regulation, the CRTC used its broad competences to intensify and differentiate the mix of obligations and protectionist measures applying to the regulated companies. Thus, it ratcheted up the Canadian content quotas for TV stations in 1970 and, at the end of the decade, began to impose specific obligations on individual networks and stations which required a certain amount of domestic programming in under-represented categories, notably drama, and determined minimum expenditure for such programming (Jeffrey 1996; Wiesner 1991). The agency generally took a negative stance towards new technologies which seemed to threaten the financial viability of broadcasters, and later cable companies, and thus to undermine their ability to contribute to the goals of the Broadcasting Act. This defensive attitude became first visible in the Commission's policy with regard to cable companies.

Cable networks had been spreading in Canada since the 1950s without being regulated. Like radio in its early days, they operated primarily as importers of American programming. Consequently, the CRTC saw cable networks as a threat to the survival of the Canadian broadcasting system, as Canadian broadcasters, then the central agents for the attainment of broadcasting policy goals, would lose viewers and advertising revenues through the greater availability of US stations across the country. The Commission feared that the new technology would endanger its ability to steer the broadcasting system along the lines prescribed by the Broadcasting Act and tried to introduce a very restrictive policy in the late 1960s, which would have stemmed the further diffusion of cable networks in large parts of Canada. But the ensuing public protest and intense lobbying activities of the cable companies forced the Commission to retreat from this proposal (Babe 1979: 159ff; Babe 1990: 210f; Raboy 1990: 214). The Commission then changed its strategy and sought to integrate cable networks into the broadcasting system in a way that minimized the impact on traditional broadcasters. In a policy statement from 1971, it obliged the cable companies to carry all Canadian stations and networks and restricted the number of US stations which the cable companies could distribute. In effect, this policy furthered the diffusion of Canadian stations, but at the cost, that four US stations could be offered across the country (Babe 1979: 161; Fraser 1999: 74f; Raboy 1990: 211ff; Wiesner 1991: 263ff). With the cable companies being integrated into the regulatory regime, they were subjected to a soft form of price regulation which was meant to ensure their ability to fulfil their public obligations (Babe 1979: 163ff). Moreover, the Commission later on protected them from competition by another new technology. When the agency licensed a satellite network in 1981, the licence conditions specified that this distribution undertaking should offer its services only to cable companies and private costumers in areas not reached by cable (Fraser 1999: 23f).

The introduction of pay TV followed a similar pattern. Here, the Commission resisted pressure not only from interested parties, but also from the government for several years. In the 1970s, especially the cable companies began to call for the introduction in Canada of pay services, which were very successful in the US. The CRTC held an extensive public hearing on the issue in 1975, where broadcasters and public interest groups objected to introducing pay TV (Raboy 1990: 272ff). In its decision, the agency declined to license pay television at this point in time, chiefly because the traditional broadcasters were unprepared or incapable of assuming a prime role in the development of such services (Schultz 1999: 33). As in the case of cable networks, the Commission thus deemed pay services to constitute a “potential disruption [...] [of] the system” (quoted in Raboy 1990: 273). Undeterred by their defeat, the cable companies directed their lobbying activities to the Department of Communications, which proved to be much more responsive. The then minister of communications, Jeanne Sauvé, declared in June 1976 that, in her view, the establishment of pay television was inevitable and that she expected the CRTC to call for licence applications. However, the Commission was not prepared to share the minister’s view. It held a second hearing in 1978 and again declared “that it would be premature and impossible to endorse the introduction of a national pay-television system at this time” (quoted in Schultz 1999: 34). Only the continuous suasion by the department and the government-induced resignation of the CRTC’s chairman led to a policy change at the Commission (Hall 1990: 322f). In 1982, the Commission licensed six pay television services, which were subjected to Canadian content quotas and program expenditure requirements (Wiesner 1991).

In the early 1980s, the focus of the policy strategies of both the Commission and the government began to shift from the over-the-air broadcasters to the cable companies. The latter now became the “chosen instrument” for the implementation of Canadian broadcasting policy (Schultz 1999: 35). A report from a special committee chaired by the CRTC’s vice-chair for broadcasting concluded in 1982 that an extension of the range of services offered by Canadian cable companies was necessary because of the proliferation of specialty services and other satellite-based services in the US. The shift in regulatory attention towards the cable companies was thus primarily caused by this new threat of interpenetration by US services, but also by the fact that the conventional broadcasters had remained financially stable, but had not been as willing to contribute to the attainment of the broadcasting policy goals as hoped (Fraser 1999: 26ff; Raboy 1990: 286f). Cable networks offered a dual advantage in terms of the further development of the Canadian broadcasting system. As this was a terrestrial technology, the influx of foreign services could be controlled and thus limited, and the growing distribution capacities of cable networks could be used to make new Canadian programming services available to more and more Canadians (Interview 12/Industry Canada, Interview 15/CRTC).

Throughout the 1980s, the CRTC under its then chairman André Bureau organized its regulatory policy mix of obligations and protectionist measures more and more around the cable companies. A row of new specialty services was introduced, which made the cable companies' service more attractive for costumers. But the CRTC expected that the cable companies contribute to making these new services successful: "So André's strategy had been to say to the cable companies: look, we'll give you more services, so there will be more competition in broadcasting, you can carry more services, but we want you to structure the packages that you offer these things in such a way that these services are ultimately viable." (Interview 28/CCTA). The CRTC defined the terms for the carriage of pay and specialty services by the cable companies and shielded these services from direct competition by similar US services (cf. CRTC 1987-20; Wiesner 1991). While the broadcasters' market certainly became more competitive, the CRTC's licensing policy took their financial interests into account. Applicants for specialty services had to demonstrate that they aimed at a programming niche not covered by conventional broadcasters and that they would not siphon off advertising revenues from conventional stations (Jeffrey 1996: 245f). During this decade, the Commission – and the government – increasingly adopted an industrial approach towards the problem of how to secure a genuinely Canadian broadcasting system. The protection of Canada's cultural sovereignty was more and more identified with establishing a strong domestic communications industry which would produce marketable products that could be successful in the domestic and ultimately also in the emerging global market place (Dowler 1996: 340; Dorland 1996: 357f).

While the Commission had so far – after a period of initial resistance – always managed to integrate new technologies into the regulatory regime without destabilizing the broadcasting system, this task promised to become much harder in the 1990s due to the ever faster pace of technological change and the diffusion of neo-liberal ideologies favouring competition instead of protectionism. Whereas regulators and regulated had historically operated under conditions of scarcity, first in terms of broadcast frequencies, later in terms of capacity on cable systems, technological innovations heralded a new era of abundance. Digitalization, the development of new distribution technologies and the convergence between broadcasting, telecommunications and computer technologies threatened to undermine the basis of the regulatory regime. Cable companies which so far operated practically on a monopoly basis faced potential new competitors such as direct-to-home satellite television services. The emergence of digital interactive infrastructures which promised enormous distribution capacities threatened to challenge the strict control of market access which was a central plank in the Commission's protective strategy. Moreover, a completely digitalized environment would offer consumers the ability to freely pick individual stations and programs across borders, thus endangering the Commission's policy to

bundle US programs and stations together with Canadian offerings and even enabling a complete bypass of the Canadian broadcasting system (CRTC 1993b; Fraser 1999; Globerman u.a. 1996).

As in the past, the Commission's first reaction to these new challenges was to try to stem the flood of technological change and to defend the status quo as long as possible. In 1992/93, the CRTC conducted a major policy hearing at which the distribution and licensing policies for specialty services and the role of alternative distribution technologies were to be discussed in light of the future, more market- and consumer-driven communications environment (CRTC 1992-13). The central controversy at this hearing was the question of competition in broadcasting distribution. The telephone companies which were keen on entering the broadcasting market called for pulling down all regulatory barriers that currently prevented them from doing so (Rhinehart 1993a). A much more imminent threat came from the first US direct-to-home (DTH) satellite television service, whose representative bluntly announced at the hearing that the company was planning to offer its 150 channels also in Canada in the following year (Quill 1993e; Rinehart 1993b). While the cable industry naturally opposed a liberalization of market entry in broadcasting distribution, such a move was also supported by two provincial governments, public interest groups and program producers (CP 1993a; Enchin 1993c; Quill 1993c).

In the policy statement which the Commission issued after the public hearing, it announced that a greater liberalization of market entry and a partial deregulation of services and distribution undertakings would be inevitable in the longer term. However, the so-called "structural decision" envisioned a five- till seven-year long transition phase until the emergence of a digital broadcasting world which was to be used to strengthen the cable industry and Canadian programming (CRTC 1993-74). For the time being, cable was declared to be the most efficient and effective distribution technology. Any liberalization of broadcasting distribution was seen to be counterproductive at this point in time in light of the threat posed by US DTH services (CRTC 1993b). Following the motto "the stronger cable is the stronger is the system", the structural decision gave the cable companies, inter alia, financial relief so as to enable them to build digital networks. In exchange for largely accommodating the cable industry's interests, the Commission obliged them to pour a certain amount of their revenues into the production of Canadian programming. All in all, the report was very much status-quo oriented and, far from liberalizing or deregulating, even intensified the traditional protectionism, especially, but not only with regard to the cable companies. The CRTC's defensive stance reflected in particular the firm belief of the key decision-makers at the agency that a strong cable industry was necessary to protect Canadian services and more generally the fact that an attractive policy alternative to the current regulatory regime was not in sight. As a staff member of the Commission pointed out, there was no "clear model [...] of

what change could do that was positive for the society” (Interview 15/CRTC). This problem also hampered a wider appeal and greater effectiveness of the supporters of a more competitive approach.

To stave off the threat posed by US DTH providers, the CRTC also undertook to promote the development of a cable-friendly, Canadian DTH service. This became all the more urgent, when the American DTH provider DirecTV entered into a joint venture with a Canadian corporation so as to be eligible for operating in Canada (Fraser 1999: 36ff). Under the auspices of the CRTC, a Canadian consortium controlled by the largest cable companies and a pay-TV provider was founded. Their DTH service would be offered only to costumers in areas where cable was not available (Morrison 1996: 148). In March 1994, the CRTC proposed to exempt Canadian DTH providers from licensing and detailed regulation, provided they met certain criteria. A few months later, the Commission announced that only the Canadian consortium, but not Power DirecTV, the American-Canadian joint venture, fulfilled the specified conditions and would be granted an exemption (CRTC 1994-111). This decision caused an unprecedented public furore. Critics charged the Commission with preventing competition between cable and satellite services and among the latter and with favouring a specific provider (cf. Corcoran 1994; Siklos 1994b). Power DirecTV and a public interest group called on the government to intervene (Brehl/Stewart 1995; Morrison 1996). The CRTC’s activities were not kindly watched upon by important actors within the federal government. For once, the newly elected liberal government had already indicated that it favoured a more competitive approach in broadcasting (Industry Canada 1994b). Moreover, Power DirecTV had close connections to government members (Interview 15/CRTC). A couple of months after the CRTC’s exemption order, the government established a three-man panel which was to undertake a review of DTH policies. The panel’s report recommended that competition in the provision of satellite services be permitted and that the federal government issue a policy directive to the CRTC ordering the agency to license DTH on a competitive basis. The government followed the panel’s recommendations and issued a directive in 1995 (Schultz 1999: 38f). Interestingly, this control instrument, which was introduced by the 1991 Broadcasting Act in order to enable the government to provide binding ex-ante guidance to the regulator, was now used by the government in a reactive way. With the CRTC’s licensing decisions from December 1995, competition in delivering programming services to the home was introduced. But it was the government, not the CRTC, which had brought about this fundamental change in distribution policy.

In another policy process which concerned the convergence between broadcasting and telecommunications and took place during the same time frame, the government for once departed from its usual unwillingness to provide clear, if broad policy guidelines on emerging issues. In the fall of 1994, it ordered the CRTC through an Order in Council to produce a

report on convergence. The Order in Council specified that competition among network and service providers was to be the basis of the new communications environment. But it also explicitly reaffirmed the national and cultural goals of the Broadcasting Act and stated that all actors involved in broadcasting should deliver “equitable and appropriate contributions” to the production and distribution of Canadian programming (Government of Canada 1994b). The CRTC was asked to hold a public hearing on how to implement these broad principles (Interview 12/Industry Canada). In the hearing, the majority of participating groups objected to a fundamental transformation of the regulatory regime and generally argued for a reformulation of the protectionist policy model, which would feature a greater openness for competition, but uphold protection for Canadian services and Canadian content rules. However, these actors disagreed as to how far the regulatory reforms should go in detail.

Within this spectrum of positions, the CRTC’s Convergence Report assumed a more conservative stance. As a former staffer from the telecommunications side of the Commission noted, “[T]he problem with that Convergence Report is that rather than sort of saying [...] well, let’s articulate [...] what are our goals, our cultural goals and how can we achieve those, it was very much like what are our rules and how can we maintain them.” (Interview 28/CCTA). While the report outlined “a more competitive model for both distribution and programming services”, it warned that exclusive reliance on market forces would endanger the presence of Canadian voices and ideas in the communications system (CRTC 1995a: 7f). It argued that the existing instruments of broadcasting regulation remained, at least for the time being, effective as well as necessary. New service providers and distribution undertakings should therefore be subjected to the same or similar rules as existing providers of the same category. In essence, the report sought to reconcile cultural protectionism with greater competition.

After the government replaced the outgoing chair of the Commission with a new head more favourably inclined towards competition and market forces in 1996, the CRTC quickly set about overhauling all its major policies so as to move towards a more market-oriented regime. But the change remained limited. The reforms brought a considerable liberalization of market entry and more flexible, somewhat less intrusive regulation. In broadcasting distribution, market entry was completely liberalized, but all providers had to adhere to basically the same rules on the carriage and bundling of services which had previously applied to the cable companies (CRTC 1997-25). With regard to analogue programming services, the Commission stuck to its traditional licensing criteria, but orchestrated a considerable expansion of services. For new digital specialty services, a more open-entry approach was applied, and their carriage was not guaranteed (CRTC 2000-6). Conventional broadcasters got more flexibility in the production and presentation of Canadian programming with the 1999 TV Policy (CRTC 1999-97).

3.3. Telecommunications – Promoting Competition and Technological Change

In 1975, the responsibility for telecommunications regulation was transferred from the transport regulator to the communications regulatory agency, which was renamed the Canadian Radio-Television and Telecommunications Commission. While the statutory basis of regulation was not changed, the CRTC subsequently applied the policy-oriented approach it had developed in broadcasting to its new field of responsibility. The expansive interpretation which the CRTC gave its mandate manifested itself firstly in a greater scope and intensity of regulatory oversight of the monopolists and secondly in a series of pro-competitive decisions since the late 1970s (Schultz 1999: 39-41). Regarding the first aspect, the Commission soon moved to include quality of service into the review of tariff applications and to subject, for the first time, the interprovincial rates of the companies under its jurisdiction to regulatory scrutiny. In its first tariff proceedings, it considerably cut down the rate increases which the telephone companies had requested and also obliged them to submit a much greater amount of information in their filings (Johnston 1980; Winseck 1998).

Regarding the second aspect, the government had indicated, in two policy papers from 1973 and 1975, that some sort of liberalization of interconnection of non-telephone owned attachments and systems was desirable (Mussio 2001: 166f). But these papers were more discussion papers than clear policy statements: "They did not provide any firm guidance on what the federal government deemed to be its priorities and goals in terms of the policy issues that are central to the telecommunications infrastructure, the relationships between its components and between providers and users." (Schultz 1982: 69). This has remained the state of affairs during the following two decades. While the CRTC proceeded to introduce competition in ever more segments of the telecommunications market, the government generally refrained from providing policy guidance in advance and restricted itself to indicating agreement with the CRTC's decisions (Schultz 1999: 42).

Since the late 1960s and 1970s, the diagnosis of a "natural monopoly" became more and more questionable. The sector was increasingly transformed by the convergence of telecommunications and computer technologies and by innovations in transmission technologies (Globerman/Carter 1988; Schultz 1983). With dramatic cost reductions and efficiency increases, the technological developments began to undermine the argument of scarce capacities and made technical constraints obsolete, thus considerably lowering the barriers for market entry (Schneider 2001; Woodrow/Woodside 1986). The potential implications of these changes for telecommunications regulation became first visible in the US, where the regulatory regime has been liberalized step by step since the late 1960s (cf. Schneider 2001). The reforms in the US not only led economic actors in Canada to demand

similar changes, but, more importantly, also provided both market actors and regulators with inspirations and ideas on how a more competitive model could work.

In Canada, the first fissure in the monopoly system occurred in the late 1970s. In 1976, CNCP Telecommunications applied to the CRTC for permission to interconnect its private voice and public data network to the local switched networks of Bell Canada. For CNCP, which did not have local switched networks itself, this was very important in order to be competitive in the growing market for data transmission (Strick 1990; Surtees 1994). In the public hearing, which lasted for 25 days, Bell and the other incumbent telephone companies argued that CNCP wanted to snatch part of the telephone companies' long-distance revenues and that lower revenues in this segment would necessitate higher rates for local calls, thus endangering universal service. In this, they were supported by several provincial governments and the trade unions. The organizations of business users and firms from the computer industry took CNCP's side (Rideout 2003: 75ff; Schultz 1982: 70ff; Surtees 1994: 79ff). The intervention of these players showed a dissatisfaction with the monopoly system, which would grow significantly over the following decade. In its decision, which was issued in 1979, the CRTC rejected Bell's main arguments and considered the company's projection of revenue losses as vastly exaggerated. It stated that network interconnection would improve competition and bring significant benefits for users. However, CNCP was obliged to pay a so-called "contribution charge" to the telephone companies which was to ensure that the latter remained able to subsidize the costs of local access. Bell appealed the decision to the cabinet, but the appeal was denied (Rideout 2003: 78; Surtees 1994: 93, 95).

In 1980, terminal attachment policies were liberalized. The Commission decided that Bell had to allow any customer the attachment to its network of virtually any type of terminal equipment, provided that independent specified technical standards were met. Again, Bell appealed and lost (Schultz 1999: 44). In two proceedings from 1984 and 1985, the Commission permitted competition in enhanced services and also allowed resale for providing such services. These decisions drew a line between competition and monopoly in services. All services which went beyond simple voice and data transmission over the public network were classified as enhanced services. The provision of enhanced services by companies other than the monopolists would not be regulated (CRTC 84-18).

Following these proceedings, the liberalization process got to a preliminary halt, but was resumed with renewed vigour in the 1990s. In 1983, CNCP applied to the Commission for interconnection with the federally regulated telephone companies to provide full long-distance competition. As in previous proceedings, Bell's counterattack focused on the effects on the principle of universal service. The company announced that it would be prepared to accept competition – provided that the rates were rebalanced so that they reflected the underlying costs. The threat of massive price increases for local calls put CNCP on the defence and led to

intense public attention on the proceeding (Babe 1990: 133; Stanbury 1986: 483ff; Surtees 1994: 113ff). Bell's arguments and threats resonated with public interest groups, trade unions and the majority of provincial governments, who opposed the application. In contrast to earlier proceedings, where the US had always been cited as an example for the positive effects of competition, the recent upheavals in the US system in the wake of the break-up of AT&T helped the case of the opponents who pointed to the deterioration of service and significant price increases for local calls. While business users again supported CNCP's application, their support was muted due to public concerns about universal service (Rideout 2003: 87ff; Schultz/Brawley 1996: 97ff). These concerns also were the prime motivation for the CRTC's 1985 decision. While the Commission acknowledged that long-distance competition would bring important benefits for Canada, it denied the application, arguing that the applicant had a questionable business plan and would, due to the contribution payments required for subsidizing local calls, most likely be unable to serve the whole territory in question at the prices it proposed (CRTC 85-19). The Commissioners were strongly influenced by the developments in the US and feared that similar negative consequences would occur in Canada as well (Schultz/Rich 2003: 128).

CNCP did not throw in the towel. After a restructuring, the company, now renamed Unitel, applied once more for interconnection to provide long-distance public voice competition in 1990, this time successfully. Now, it could support its application with expert studies and analyses that demonstrated the positive development of the liberalized market in the US and the broadly spread benefits for subscribers. The concerns that price reductions would benefit only a small group of costumers and threaten universal service had, despite higher prices for local calls, not come true in the US (Surtees 1994). Bell countered Unitel's application with an offer to bring long-distance prices to the US level within five years, if the telephone companies could keep their monopoly. The fact that Bell now offered price reductions, showed how the focus of the policy debate had shifted since the mid-1980s. The general advance of neo-liberal ideologies and, in particular, Canada's free-trade agreement with the US in 1988 led to a heightened attention for the competitiveness of the Canadian economy vis-à-vis the traditional concerns about universal service. Major Canadian companies now fought aggressively for liberalization. Many business groups and individual firms participated in the regional hearings which the CRTC held during the proceeding and "urged the Commission to increase competition in order to provide users with a greater variety of service packages and prices tailored to meet the demands of the market place" (CRTC 92-12: 59). The line-up of interested parties during the proceeding had not changed significantly from the past.

To the surprise of many observers, the Commission approved not only the applications from Unitel and another, more regionally-oriented applicant, but threw open the door to all

potential competitors willing to enter the long-distance market under the conditions provided by the 1992 decision. The written decision supported the arguments of Unitel and the business users in major points. Choice and lower prices for costumers generally, but especially for business users, were the central themes of the proceeding and the written decision. By allowing competition in the public voice market for the first time, the decision practically buried the “natural monopoly” concept and profoundly transformed the structure of the telecommunications industry (Schultz 1999: 43). But the Commission opted, in view of the traditional emphasis on universal service, for a “revolution without tears” (Schultz 1995: 280). So as to minimize the impact on prices for local services, all new entrants had to pay contribution charges, albeit with a discount applying for the initial period of entry (CRTC 92-12). Central for the Commission’s 1992 was the existence of an attractive policy alternative, which promised economic benefits and was not deemed to undermine non-economic policy goals. The fact that the almost completely liberalized US market seemed to perform well with regard to both economic and non-economic aspects also very much increased the capacity for mobilisation of the supporters of competition. The high mobilization of a potent liberalization coalition was another important factor for the decision. These two intertwined factors also impacted on the government. While it did not state a clear policy on competition, it did send indirect pro-competitive signals which made this radical opening of the market politically feasible. As a government official stated, “there was a common perception that there had to be competition” (Interview 36/Industry Canada).

Only after the Commission had fundamentally turned around telecommunications regulation, did the government get around to changing the more than 80 years old legislation. True to the government’s preference for ambivalence, the 1993 Telecommunications Act contained a vaguely worded policy statement, which defined “increased reliance on market forces” as one of several goals of telecommunications policy. As a former Commission member rightly noted, “the government was really putting in place a policy that recognized what the Commission was already doing” (Interview 5/CRTC). In essence, the new act sanctioned and legitimized the reforms undertaken by the CRTC and gave it new regulatory tools for a market-oriented environment.

Due to the fuzziness and ambivalence of the Telecommunications Act, it was primarily left to the regulator to work out a concept for a new regulatory regime in a competitive market place. In 1994, the Commission issued a 165-pages policy statement which outlined a new regulatory framework and defined the necessary steps to implement this framework. In this decision, known as “94-19”, the Commission opted for a complete market-opening, including local service, the last remnant of monopoly service provision: "The Commission considers that the greatest public benefit will ultimately be realized if basic telecommunications and innovative information services are competitively provided" (CRTC 94-19: 48). The character

and the instruments of public regulation were to be completely transformed and redirected towards creating and safeguarding fair and efficient competition. The regulator was undertaking a process of institutional self-transformation towards a subsidiary role as supervisor and referee. It wanted to withdraw from a detailed regulation of prices and services, focusing instead on laying down ground rules for competition and on undertaking limited interventions into problematic areas. Regulation was henceforth to concentrate on services and markets, where competition was not (yet) functioning, and to provide for the attainment of the non-economic goals of telecommunications regulation. The Commission believed that the social and national goals could be achieved to a large extent by relying on market forces (CRTC 94-19).

4. Conclusion

The comparison between the CRTC's activities in telecommunications and broadcasting reveals marked differences in the attitude of the Commission towards pressures for change, which emanated chiefly from technological innovations whose impact was reinforced by the advance of neo-liberal ideologies. Since its early days, the Commission displayed a defensive stance towards new technologies in broadcasting. Generally, new technologies meant greater competition for the incumbent market actors. Any threat to the financial viability of broadcasters, and later cable companies, was seen by the CRTC as a threat to its ability to implement Canadian broadcasting policy. Consequently, its initial reaction was to try and stem the spread of these new technologies, be it cable companies, pay-TV or DTH satellites. This initial resistance was usually resolved by the interference of political actors, and the CRTC then proceeded to integrate the new technologies into the protectionist regulatory regime in a way which minimized their impact both on the existing players and the CRTC's governance capacity. Thus, what was first viewed as a cultural challenge was turned into a vehicle for public policy (Interview 12/Industry Canada). In contrast, the same agency showed a remarkable openness to competition and new technologies in telecommunications. Step by step, the Commission allowed competition in more and more segments of the market and finally completely transformed the regulatory regime from a protectionist model towards a market model. Unlike the broadcasting side of the CRTC, its telecommunications side was the prime motor of the regime transformation, whereas the government largely restricted itself to a non-initiating, supporting role.

What explains these differences in the reactions of the CRTC? I would argue that they are chiefly attributable to the underlying policy ideas and the different degrees of instrumentalization of market actors for non-economic public policy goals which they involved. In broadcasting, the CRTC not only had to deal with conflicting goals, but it was

mandated to construct and sustain a broadcasting system which defied market logic. This system was inherently unstable and thus very vulnerable to any kind of upheavals. The strong identification of broadcasting with nation-building made the regulator cautious and hampered its willingness and ability to find innovative solutions to the problems at hand. In telecommunications, the regulator's goals were a lot easier to pursue. Telecommunications regulation basically focused on the "better service at lower price kind of goal" (Interview 36/Industry Canada). Even the non-economic goals of regulation were neither in a monopoly nor in a competitive environment perceived to be difficult to reconcile with market incentives. Thus, much less far-reaching regulatory intervention has been required than in broadcasting, and it was much easier to develop, or rather in this case to import, new models so as to adapt the system to changing circumstances. Moreover, these conditions also facilitated the mobilization of actors who would benefit from liberalization, thus putting significant pressure on the Commission to open up markets. In contrast, the conceptual difficulties of reconciling the goals of broadcasting policy with competition hampered the effectiveness of advocates of competition in broadcasting and thus led to lower pressure on the Commission.

These considerations imply that the flexibility and readiness of a regulatory agency to adapt – within the confines of its statutory mandate – to changing circumstances hinges to a considerable extent on the character of the policy goals which it is mandated to pursue. If an agency is saddled with very demanding goals which are highly difficult to implement and require far-reaching intervention into the market, it may tend to assume a defensive stance towards pressures for change so as not to endanger an already achieved equilibrium in the regulatory regime. Under such conditions, its innovative capacity may be rather limited.

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