PAY TELEVISION AND THE CANADIAN BROADCASTING SYSTEM

by

Kerry Dangerfield

A thesis
presented to the University of Manitoba
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INTRODUCTION

Technological changes often cause disruptions in the established order of things. This disruption is often perceived at first as a threat (usually economic) to vested interests in the field of the innovation. Pay television represented one of these technological changes that had aroused considerable debate partly because it was seen threatened existing operations in the Canadian broadcasting system. Proponents of pay-TV claimed that its introduction would bring many benefits, including a greater choice of productions for the consumer; large sums of capital for investment in the Canadian program industry; access to audiences and increased revenues for producers and cables companies. Opponents, however, maintained that pay television would harm the broadcasting system. They contended that unless it was suitably structured and regulated it would provide little in the way of funds for Canadian productions, the service would be limited to the most popular (that is, American) fare, the consumer would risk the loss to pay television of popular programs that are now received "free" from conventional broadcasters, and the profitability of such broadcasting enterprises would be weakened or destroyed.

Since the introduction of pay television in 1983, these scenarios seem unlikely in either extreme. It appears that pay-TV will neither be the savior nor the quietus of the Canadian broadcasting system, but they reveal the expectations and concerns aroused by the introduction of pay

TV. The fears were aroused partly because no one knew for certain the answers to such questions as: how much revenue would pay-TV produce?; how many consumers were interested in purchasing this new service?; was there an effective method of preventing the "siphoning" of programs from conventional TV to pay television?; and would pay-TV fragment audiences to such a degree as to make off-the-air television unattractive to advertisers? Two years has past since the licencing decision of the CRTC, yet many of these questions remain unanswered.

Pay television may represent the first step in a communications revolution and, depending on how one views the importance of communications to a state, may well determine how important one views the start of such a revolution. If one believes that broadcasting, and communications generally, should simply fulfill the whims of commercialism, that is, program what "pays" and allow ratings to determine content, then the introduction of pay-TV becomes simply an economic decision (though this does not necessarily make the decision simple). However, if one believes broadcasting should program for more than the mass audience, that the quintessence of broadcasting is to educate and enlighten, as well as entertain, then the policy decision becomes more complex. If, further, it is felt that broadcasting helps shape the values and promote the cultural development of a society, then this revolution is of much greater concern. And the public policy decision becomes even more complex.

These philosophies of broadcasting are not mutually exclusive, for economic viability of something like pay-TV may determine what can be programmed across it. But one's attitude towards these philosophies may

colour ones perception of the debate and thereby the policies that one might consider "correct". It is the assumption of this thesis that communications are an integral part of society, and thus the question becomes what form or model of broadcasting best accomplishes the purposes of such a philosophy?

This thesis examines the issues of the introduction of pay-TV into the Canadian broadcasting system. It also looks at the interests at work on this issue and the processes by which these interests have been expressing their desires. There were many arguments over the timing of the introduction of pay television, its structure and who should control it. The thesis will analyse and evaluate the policies adopted by the government of Canada and its regulatory agency, the CRTC, towards pay-TV.

Chapter One provides background to the Canadian broadcasting system, introducing underlying tenets of the paper with respect to the significance of history in the current debate. From the origins of broadcasting in Canada, the chapter will trace the system's development in terms of its original goals. The chapter concludes in 1968, when the present Broadcasting Act was adopted.

The central objective of Chapter Two is to examine the performance of the CRTC as the regulator of the broadcasting system. Included is a discussion of the of the CBC, the private sector and cable operators, with the main goal of establishing whether the CRTC succeeded at serving the goals of the 1968 Broadcasting Act.

Chapter One and Two describe the context in which the decisions to introduce pay-TV was made. Chapter Three is a comprehensive discussion

of the brief history of the pay-TV debate, including the events in America. This chapter examines the regulatory commissions development of policy and how it dealt with the question of the introduction of pay television. Also discussed are the arguments of the various interested parties.

While the CRTC dealt with the question of introduction of pay television, the federal government seemed preoccupied in a lengthy jurisdictional dispute with the provinces over cable and pay-TV. Chapter Four will detail those battles and the effects they had on the government's communications policy.

Chapter Five follows the CRTC's decision to introduce pay television, the licencing hearing and the subsequent decision. An examination of the arguments of interested parties is presented, as is a description of the CRTC's pronouncements on pay television. Chapter Six then examines the CRTC's decisions in light of its own criteria, the goals of the Broadcasting Act and subsequent events. The final chapter summarizes the findings and states some conclusions.

The issue of pay television has not received much examination in the Canadian context. While articles and references to the government's and the CRTC's dealings on this subject have appeared in the literature, they have usually been of a journalistic nature and limited in number. A more comprehensive and indepth study has not yet appeared. The thesis therefore will attempt an original analysis of the interests involved and the issues that lie behind the introduction of pay-TV?. There have been a variety of studies of its potential and the problems of pay television, but for the most part these reflect the desires and the preju-

dices of those involved, most of whom have an economic stake in any decision that might be made. The thesis will provide an original and detailed study of a technical innovation that challenges the concept of a national broadcasting system.

The methodological approach used in this paper is descriptive, analytical and historical. The author used several primary souurces including the transcripts from the CRTC's pay-TV hearings and several communication Ministers' meetings. As well, applications of all national pay television companies and a selection of regional applications were examined. Briefs from interested parties to the Commission and government agencies were obtained when possible. Newspaper accounts and government documents were used extensively. However, interviews with the those involved were not, for the most part, pursued.

Chapter I

BROADCASTING HISTORY IN CANADA

> ...the future of broadcasting can never be completely separated from its past.[1]
>
> What experience and history teach us is this -- that people and governments have never learned anything from history or acted on principles deduced from it.[2]
>
> What do you see in the rearview mirror of a motor car? The foreseeable future: you don't see what went past, you see what is coming.[3]

1.1 INTRODUCTION

The broadcasting debate in Canada has always involved value judgements and philisophic preferences. It has been a debate not simply of public versus private ownership, but public service versus commercial economics, programme diversity versus mass appeal programming, and perhaps most importantly, indigenous versus foreign programming. And this last debate is perhaps unique to Canada, at least, in the importance, intensity and duration of that debate. No other country lives in the shadow of the biggest entertainment producer in the world. The proximity of

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[1] Asa Briggs in the Introduction to E.S. Hallman, Broadcasting in Canada, Toronto, General Publishing, 1977, p. i

[2] G.W.F. Hegel quoted in David Ellis, The Evolution of the Canadian Broadcasting System:Objectives and Regulations: 1928-1968, Hull, Minister of Supply and Services, 1979

[3] Marshal MacLuhan, "Man and Media", in Pierre Juneau, et al, Communications Canada 2000, Toronto, 1979. p. 69.

the United States has meant that its high quality programmes have always been within reach of most Canadians. A concern to ensure cultural survival and to promote cultural development has dominated the discussion of broadcasting in Canada since the 1930s and continues today.

It is obvious that programming is essential to broadcasting, in many ways it is the very act of broadcasting, but it is indigenous programming which is the quintessential element of a broadcasting system. It is often this element that has eluded the Canadian broadcastng system. It is also the element that often causes the most controversy, costs the greatest part of the broadcasting budget, and is often the reason we watch or listen (or do not watch or listen) to broadcasts. For it is indigenous programming that sets a nation's broadcasting system apart from others. Indigenuos programming talks to its viewers about local, national and international events from a perspective developed within the country. It shows peoples their differences and by so doing hopefully brings greater understanding and unity to the country. It is often ignored, and bemoaned because it is ignored, but little is done to change this fact. It is ignored in the race for higher profits by business, in the race by viewers for more foreign fare and in the race by governments to find simpler and cheaper solutions to complex and expensive problems. The very essence of what makes broadcasting in Canada "Canadian" has always lived a percarious and ambiguous existence.

Partly this is so because programming does not exist alone; the hardware in the system, the structure of that system, access to foreign signals and the economics behind it all play a role in what is broadcast over the air or transmitted along a cable. To say that we need Canadi-

an programmes is in itself a straight forward end, it is the means that has always stifled that end. Governments and their agencies have for the most part failed to achieved the goal of more and better Canadian programming, mainly because of the means used to encourage it.

In the history of Canadian broadcasting,[4] this has been a major concern of governments, academics, regulatory agencies, broadcasters, and, some would say audiences: the production and distribution of Canadian programmes. All else: who produces the programmes; who pays for them; how they are distributed over whose hardware are of lesser import. (In the sense that it matters less who, or how the Canadian programmes are produced and distributed as long as they are.) However, the history of broadcasting in Canada demonstrates that it was questioned, and indeed still is questionable, whether private interests, especially those involved with the distribution of programmes, would produce such programming. The ownership of the hardware often determines what programmes is to find access to distribution. Although broadcasting is about programming, hardware often seems of the first importance to many. Because private broadcaster's main investment is in the plant itself, they expect a return on their dollar based on this investment. They invest not in programming, but procure American commercial programmes that make their hardware investment receive a better return than it would if their produced their own programmes. What history seems to tell us is that they will not produce it on their own initiative, at least, not in the

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[4] When reference is made throughout this thesis to the history of Canadian broadcasting, what is been referred to is the english language system. The french language system is quite separate and individual in parts of its history and the conditions in which it exists today.

quality or quantity desired by regulatory bodies and governments. As a result government intervention was seen as the only method to ensure a Canadian presence in Canadian broadcasting. At first this was done by direct government ownership of the resources that produced such programmes, but later it became more and more the case that government used regulation of private resources to ensure Canadian content. It would appear the former has always been more successful than the latter in producing better quality and a larger quantity of such content.

Frank W. Peers, in the second of his extensive two volume history of broadcasting in Canada, delineates four types of broadcasting systems that may be adopted by or may develop in a country. Two of these four represent the extremes of government involvement; the first: public sector dominant, to the last: private sector dominant. Peers explains that between 1932 and 1958 the first type of system was the one "chosen, but never fully realized" and that since 1958 we have been moving towards the other extreme, as technological and other developments have caused the system to transform itself "...into the fourth option -- a system in which the commercial ethos is dominant."[5] It would appear that throughout the over sixty year history of broadcasting in Canada, the system, with a few notable exceptions, has moved, albeit not always by conscious government choice, away from its original ideals towards a system that more and more resembled the private commercial system of the United States; resembling it not only in structure, but in content as well.

[5] Frank W. Peers, The Public Eye: Television and the Politics of Broadcasting, Toronto, University of Toronto Press, 1979, pp. 415-417, also see p. 445

Part of the reason for this has been two problems that have never been adequately resolved in the broadcasting system: 1) a lack of clear government direction in the field and as a result of this, 2) indecisive regulatory control of the private sector in the system.[6] Both reflect the fact that a clear choice was never made between these two types of systems. As a result Canada has developed a mixed system which was legitimized by government decision. For the most part the lack of government direction led to the position we find today. The government never really gave the public sector the support, financial or verbal, for it to accomplish what it was originally intended to accomplish.[7] The character of reulatory rule reflects, in part, this lack of resolve on the part of elected officials. This chapter should demonstrate the root of the problems we face today.

1.2 THE BEGINNING OF BROADCASTING IN CANADA

Britian and the U.S. moved quickly and more or less decisively in establishing a direction for they broadcasting systems; they did so in totally opposing directions, offering the world two different models of broadcasting. Canada would waffle somewhere between theses two extremes.

In the first years of broadcasting in the United States, it was not the government that was establishing the pattern that would become the American norm, but the industry itself.[8] Early government licencing pol-

[6] Alex Toogood, Broadcasting in Canada: Aspects of Regulation and Control, Ottawa: Canadian Association of Broadcasters, 1969, p. 116

[7] Frank W. Peers, Op. Cit, p. 417

icy was almost totally laissez-faire in operation; with licences granted without concern for frequency limitations. Between 1920 and 1923 half the stations established had failed,[9] and up until 1927 this virtual free-for-all caused such overlapping in radio signals that chaos was the rule. Finally the broadcasters themselves asked the government to intervene and reassign frequencies.[10] This is reflective of the firmly established private ownership that had taken hold by then; the commercial system was well on its way. The American ethos of free enterprise and freedom of speech through private ownership of communication facilities that had been prevalent in newspaper and other media was transferred in whole to the new medium of radio. As well its large population and ear-

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[8] Although the government tried to some degree to do so. In fact, many U.S. officials envisoned broadcasting as a public service much like that that would develop in Britian. See Kenneth C. Dewar, "The Origins of Public Broadcasting in Canada: A Comparative Perspective", Journal of Canadian Communications, January,.1981, Vol. 88, No. 2. He writes that, "The shape of American broadcasting, by no means predictable even in 1925, emerged with some clarity by the late 1920's and early 1930's. ...As in Britian, though with quite different results, the system developed gradually and uncertainly, by a succession of specific responses to changing technicogical, institutional and legislative circumstances." pp. 37-38.

[9] Herbert L. Schiller, Mass Communications and American Empire, Boston: Beaver Press, 1969, p. 22. Anyone wishing to use a frequency could, you just had to go down and apply for a licence. In the 1920s, the Secratary of Commerce in charge of the radio spectrum tried to eliminate the choas this had created. The courts ruled however that he had no power to deny any application "conforming to the requirements of the 1912 (Radio) Act even though no unutilized frequency was available." Secratary Herbert Hoover tried other methods, but these too were deprived him by the courts. Between March, 1926 and March, 1927 the number of stations increased in the United States from 536 to 732. William K. Jones, Cases on Regulated Industries: Cases and Material, Brooklyn: Foundation Press, Inc., 1967. p. 1023.

[10] The public was also beginning to pressure the government into action. Erwin G. Krasnow and Lawrence D. Longley, The Politics of Broadcast Regulation, New York, St. Martin's Press, 1973. p. 11.

ly perception by some of economic possiblities of radio quickly determined the fate of America's broadcasting system.[11]

Advertiser-supported radio and TV has been called 'free' because there is no direct cost to the viewer. Of course, it is not free, for the burden of the cost of television or radio commercials is reflected in the prices of products and is thus carried by the consumer. But this cost is so indirect that it is rarely associated with the programming watched by those same consumer.[12]

Broadcasters are not in the business of selling programming, but in the business of selling audiences to advertisers.[13] Programmes are simply packaging designed to attract audiences so that they will view commercials. The real value of a programme is not its quality, its content or the satisfaction individuals derive from it, but the number of people that view it.[14] This is the mass audience. The mass audience is treated

[11] See Ida Walters,"Freedom for Communication", in Robert W. Poole, Jr., ed., Instead of Regulations: Some Alternatives to Federal Regulatory Agencies, Lexington, Mass.: Lexington Books, 1982. pp. 97-101 for a concise examination of the American broadcasting system's history. Also see William K. Jones, Op. Cit., Chapter 10 "Regulation and Television Broadcasting" pp. 1019-1223 for a more technical examination.

[12] This is not a large sum if one looks at it the right way. In the U.S. advertising expenditures in the early 1970s amount to about three per cent of total consumption expenditures, and television accounts for only about seventeen per cent of this or about half of one per cent of consumption expenditures. Bruce M. Owen, Jack H. Beebe, William G. Manning, Jr., Television Economics, Lexington, Mass., Lexington Books, 1974. p 129.

[13] "The first and most serious mistake an analyst of the television industry can make is to assume that TV stations are in the business to produce programs." Micheal B. Owen, et al, Op. Cit., p. 4

[14] Even this is a simplification because advertisers "are interested not merely in the size of an audience, but in its characters..." as well. Such demographic characteristic as sex, age and income are important to the advertiser. This has been referred to as the Lawrence Welk

by television as a homogenous whole, not a large group of individuals with different tastes and values.

Since commercial broadcasting delivers programmes at no direct cost, therefore, consumers have no real choice in what is aired, what is cancelled or what is prolonged. Viewers can vote only in mass. Since it is seen as a 'free' good it is often assumed by persons that they have to accept what is given them. 'Free' broadcasts offer the consumer little choice in programme types, unless non-profit or publically subsidized.[15]

The economic efficiency of advertiser supported television or radio is questionable. Since advertisers are only willing to pay a maximum of a couple of cents per viewer per programme, stations and networks aim to get the largest number of viewers possible watching their programmes, because, correspondingly, they will get the largest revenues. For a programme to remain on the air it must reach a certain percentage of the

Show criticism because not only is the types of programmes limited, but so is the range within specific types. In other words, in the category of light entertainment programmes there is little that is designed for the older viewer. The Lawrence Welk Show would be aptly described as 'light entertainment', but the audience it attracted were either old or poor or both. Welk's programme was cancelled by ABC, not because of poor ratings but because it attracted an audience that was not popular with advertisers. Ibid p. 1 and 4. The popularity of individual programmes is not as important as the over all 'share' a network or station receives. Advertisers for the three American commercial networks, usually purchase 'ad' time at a cost that reflects each networks over all share of the viewing audience. Audience shares are based on the average of the ratings of network show in prime time, for example a 15.6 share indicates that at any given moment approxiately 15.6 percent of all American television households are tuned in to that network during prime time.

[15] As it was once stated; "...the consumer has almost nothing to do with it, so long as he will just consume it,..." Quoted in Thomas F. Baldwin, et al, "The Economics of Per-Program Pay Cable Television", Journal of Broadcasting, Spring, 1978, 22/2. p. 144.

audience, and whether it is of high quality or highly favoured by a small number of persons does not really matter. In effect 'free' radio or television restricts what is available both in terms of choice and in terms of diversity of programmes.

While the United States progressed through pandamoium, Britian, partly because of the mess in frequency allocation in the United States,[16] was arranging for a much more orderly development in radio. Shortly after the establishment of the first station in Britian, the Post Office urged all manufactures of radio equipment to join together in order to form a broadcasting monopoly; a single company that would operate all stations and would be supported by a licence fee levied by the government on receivers. In the fall of 1922 the British Broadcasting Company took charge of broadcasting in Britian. However, as a result of a 1926 government committee examining broadcasting, a publicly owned corporation was established and assumed the responsibility for the manufacturer's company. Thus the British Broadcasting Corporation was born.[17]

With the British system came the notion of public service. Public service inferred that broadcasting undertaking had a master other than advertising; its master was the public. As such it was to offer more than the narrow range of programs available over a commercially supported medium. It was to be diverse: its goal was to enlighten, educate, as well as, entertain. It was to supply programme types that appealed to a minority of the listeners or viewers.

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[16] Asa Briggs, Op. Cit.,1961, p. 98

[17] Frank W. Peers, Op. Cit., 1969 p. 6-7. Also Ibid., Especially, Chapters Three and Five.

Since a public service could not allow commercial concerns, such as audience size, dictate its schedule, revenues were to be garnered from other sources. The British chose licence fees on broadcast receivers. Grants by government or advertising revenue could be other sources. However, significant dependence on advertising revenue is a contradiction: such a source of revenue leads to a commercial service rather than a public one. Canada would adopt such a contradiction as its system basis of funding.

Like the United States, Britian quite early established its system of broadcasting. In the States private interests quickly took hold to direct what was to be, in Britian the government did the same. Unlike either the British or Americans, Canadians were only ploddingly moving forward in defining their system. The Canadian government, after an early period of activity, virtually ignored radio during the 1920s.

At the time Canadian radio seemed to be following the American approach; the commercial system of radio seemed destined for Canada simply because of the successful example that was developing to the south and the lack of government policy up north. The Canadian government's lack of policy in the field of broadcasting reflected two things: 1) the lack of interest in the subject, simply because it lacked political importance[18] and 2) the pragmatic politics of governments generally. While there was evidence that the Canadian system was having problems, no one had complained very loudly. Besides private industry in Canada was established, however shakily, in the field and it was felt that it was

[18] Alex Toogood, Op. Cit., p. 35 Frank W. Peers, Op. Cit., 1969. p. 12. "Until 1928, public authorities paid little attention to existing developments, as if broadcasting could be divorced from politics,..."

better to leave well enough alone. It was easier for the governments to ignore this policy field until difficulties arose and calls for government intervention were heard from the industry or the public. An individual event might serve to focus public attention on an issue and force the government to react. Radio was initially ignored because it was not perceived as important and when the government finally acted it was because radio had become a political 'hot potato', not because of public complaints about poor service.

What finally motivated the government to act was not the need for a clear policy, but the need for the government to extract itself from a bit of political controversy. In other words, it was 'politics' which prevented the early evolution of the Canadian broadcasting system along American commercial lines. The event which brought a halt to the laissez-faire pattern was the charge of political favouritism in the granting of licences and censorship in its revoking of them.[19] As a result of these accusations broadcasting became a matter of public controversy and concern. In what has become an almost national pasttime, the government appointed a Royal Commission to look into the problem of broadcasting in Canada.

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[19] Margret Prang, "The Origins of Public Broadcasting in Canada", Canadian Historical Review, Vol XVI, 1965, pp. 4-5. Also see T.J. Allard, The CAB Story: 1926-1979: Private Broadcasting in Canada, Ottawa, Canadian Association of Broadcasters, 1976, p.5.

1.3 THE AIRD COMMISSION: A CANADIAN SOLUTION

The Royal Commission on Radio Broadcasting[20] was established in 1928 to "examine into the broadcasting in the Dominion of Canada and to make recommendations to the Government as to the future administration, money, control and financing thereof."[21] After almost a year of hearings throughout the country and travel to other countries to examine their radio systems, the Aird Commission filed a nine page report with the government.[22] In its concise report the Commission sounded many of the warnings and concerns which would become ritual thereafter. Since the majority of the programs Canadians listened to at the time were from outside the country, the Commission recognized that this would have "a tendency to mould the minds of young people in time to ideals and opinions that were not Canadian."[23] They implicitly recognized radio as a important medium in shaping values, mores and explicitly recognized that radio might be used to foster a "national spirit" and "help interpret the meaning of Canada to 'Canadians'".[24] The recognition of radio as such a powerful force in society encouraged the Commission to recommend that radio be considered a public service, and since private radio could not afford to bring programming to all Canadians, there should be a pub-

[20] Canada, Royal Commission on Radio Broadcasting, 1929.

[21] Order-in-Council establishing the Commission quoted in Canada, Royal Commission on Radio Broadcasting, Report, Ottawa, King's Printer, 1929, p. 6

[22] Frank W. Peers, Op. Cit., pp. 37-44 for details of the hearings. The Commission visited the United States and seven European countries including Great Britian.

[23] Canada, Op. Cit., p. 6

[24] Ibid.

licly-owned national monopoly.

The structure of the public company would be such that it would have "all the powers and authority of any private enterprise" and would function like a public utility.[25] The Commission recommended that the public own and operate all radio stations and saw the need for such a corporation to be responsible to the federal government.[26] Funding for the company would be divided among three sources: advertising revenues, licence fees and five years Parliamentary grants.[27]

The Royal Commision made several assumption about what the Canadian broadcasting should strive towards:[28] how it would be looked at and what would be expected from it. These assumptions remain relevant even in comtemporary debates over what the Canadian broadcasting system should be or should attempt to be.[29] These assumptions were:

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[25] Ibid.

[26] While the Royal Commission recognized a need for the publically owned company to be responsible to the federal government, it recognized as well that the provinces may have had a legitimate role to play in programming. All programming should be under provincial control; of the twelve Commissioners enlisted to run the company, three would be federally appointed, the rest would be provincially selected, one from each province. The nine provincial appointees would in effect be program directors, deciding what would be shown in each province.

[27] Ibid. The advertising was to be indirect, that is, a sponsor's name could be mentioned, but no sale pitch for their product or its price would be allowed. Licence fees were to be three dollars per year. The parliamentary grants would equal five million dollars over a five year period. This would amount to an income of over 2.5 million dollars a year for the company.

[28] A. John Beke, "Government Regulation of Broadcasting in Canada", Canadian Comunications Law, Volume 2, December, 1970, p. 108. Beke says this is the most important event in Canadian broadcasting for this reason.

[29] It has been argued one of the downfalls of Canadian academics in dealing with broadcasting is the fact that that they look at the sys-

1. Broadcasting has the potential of being a public service, a national system to unify all Canadians in a common culture and education.[30] It rejected the notion that the public was best serviced by competing station.
2. A limited number of frequencies limited the number of licences, therefore, broadcasting was a natural monopoly and since radio frequencies were public property they should be used for the benefit of the public.
3. Only through public ownership would broadcasting service be taken to all Canadians and would Canadian programs be produced.[31]

The central assumption that underlies all the above is summed up in the Commission's oft repeated statement that "--Canadians radio listeners want Canadian broadcasting."[32] This is what distinguished Canada from the U.S. and Britian, an overwhelming concern for indigeous programming. For neither the U.S. nor Britian had to worry about being swamped by a foreign culture.[33] It was this assumption that coloured all

tem in this original light and thereby ignore the reality of the system. Norman Spector, "The Canadian Broadcasting System Within the Miniture Replica Economy", in Canadian Broadcasting League, The Crisis in Canadian Broadcasting, Ottawa: 1976.

[30] This is in fact questionable. The Commission, while mentioning the need to explain Canada to Canadians and encourage a 'Canadian' outlook, did explicitly state that programming was a provincial responsibility. It is doubtful that a 'common culture' meant to the Commission a monolithic or hegemonious one.

[31] P.M. Hindley, Gail Martin, J.M. McNaulty, The Tangled Net, Vancouver: J.J. Douglas ltd., 1977. pp. 46-47.

[32] Canada, Op. Cit., p. 6

[33] American domination of the Canadian system was never made specific in the report, but one of the Commissioners would later write an edito-

else; for in the Canadian context, without this need or desire public ownership became less an issue. While diversity of programmes, education and enlightenment were all concerns, a public service in Canada meant Canadian programming. And it was assumed that only a publicly run service could afford such.

1.4 THE CANADIAN RADIO BROADCASTING COMMISSION

Radio still was not an important political issue. When R.B. Bennett came to power in 1930, it was with with little understanding of the need for or sympathy for public ownership in broadcasting. As a self-made millionaire, with a private enterprise bias, Bennett did not naturally take to the idea of government ownership.[34] Later when interested parties explained to him the desirability of public ownership Bennett waffled. As such he personified the Canadian psyche; suffering from an almost schizophrenic desire to achieve the goals of public ownership, but not at the expense of free enterprise. It may reflect the conflicting values and influences of the American and British traditions in the field with "...Bennett himself...strong(ly) commit(ted) to both the protection of the vested private interests and the principle of public ownership."[35] Bennett also reflected another Canadian contradiction: a fear of anything American, yet a desire to be like our neighbours to the south.

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rial stating that private ownership would likely lead to American domination in the provision of programmes, if not in actual ownership of the system. Frank W. Peers, Op. Cit., 1969. p. 48.

[34] Margret Prang, Op. Cit., p. 7.

[35] David Ellis, Op. Cit., p. 10.

The Canadian Radio League, a pro-public ownership group, sensing the governments unease with nationalization and the costs of public radio, suggested to a 1932 Parliamentary committee, set up to make recommendations on broadcasting, changes that would make the system easier to accept: 1) there would not be complete nationalization, and 2) commercial revenues would be one of the main supports of the system.[36] In effect this meant that private operators could stay in business as local stations and that with increased dependence on commercial revenue the system would be less expensive both for the government (no longer required to give it parliamentary grants) and the general public (paying smaller licence fees.)[37] These suggestions found acceptance with the Committee and were part of the recommendations made by it to the government. Here was the first indication of what was to come: a mixed system of private and public elements.

The government's response was to introduce a bill establishing the Canadian Radio Broadcasting Commission (CRBC, the name suggested by the Aird Commission.)[38] The Commission had a brief, controversial life. It was given neither the encouragement nor, more importantly, the money to achieve its objectives. The government appointed Commissioners known

[36] E.A. Wier, Op. Cit., p. 120.

[37] Sir John Aird, chairman of the 1929 Royal Commission, told the Committee that the Commission never meant there to be total nationalization; that, in fact, they meant low-powered local station to remain in private hands. It was also argued that the public company would be less independent of government if it depended on grants from Parliament. Alex Toogood, Op. Cit., 1969, pp. 23-24. Aird even offered to make a loan available from the bank of which he was chairman to establish a national broadcasting system. E.A. Wier, Op. Cit., pp. 112-113.

[38] Canada, Radio Broadcasting Act, 1932.

for their partisan affliation with the Conservative Party thereby undermining the CRBC's credibility.[39] The licence fees were still a dollar short of the amount the Aird Commission had recommended three years earlier.[40] Even at this amount the fees were ineffectively and inefficently collected and were not turned over to the Commission, but went instead into the government's general revenue and were not earmarked for the CRBC.[41] At one point, the Minister in charge of the Commission ordered it to spend only half the money allocated to it.[42] It appears that Bennett purposely kept tight rein on the purse strings for he still "(a)bhorred public ownership and had passed the legislation only to quiet the clamorous lobby of the Radio League"[43] and would likely have accepted the notion of complete public ownership only if the private sector completely failed.[44]

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[39] A. John Beke, Op. Cit., p. 111.

[40] Frank W. Peers, Op. Cit., 1969, p. 78.

[41] The Commission received only $400,000 in its first year of operation, compared to the $2.7 million anticipated by the Royal Commission. Alex Toogood, Op. Cit., 1969, p. 22. In that first year of operation it was not even given all the money collected from those licence fees.

[42] Ibid. p. 42. A Parliamentary Committee in 1936 found that the CRBC's greatest problem was direct control by the minister responsible for the Commission. The minister had been influenced by colleagues who wanted to see the Commission fail. Also see Frank W. Peers, Op. Cit., 1969. p. 109.

[43] Alex Toogood, Op. Cit., pp. 35-36

[44] Frank W. Peers, "Canadian Media Regulation", in G. Robison and D. Theall, (eds.), Studies in Canadian Communications, Montreal: McGill University, 1975. p. 76.

While the CRBC depended on private stations to relay its programming and was underfinanced, it was important because it established in fact what the Aird Commission had recommended in abstract: public ownership. However, the Commission was an adumbration of what was to come: a mixed system made up of public and private parts. It demonstrated that the public and private elements could work together. Indeed in 1934 the Canadian system had already been described as a 'mixed' system. It foreshadowed the role of the public sector as the main provider of Canadian programmes and the private sector as an important part of the delivery system of these shows.

1.5 THE RISE OF A PHOENIX: THE CANADIAN BROADCASTING CORPORATION

As a result of charges of political interferrance the CRBC was replaced and a new Act was proclaimed in 1936.[45] This Act created the Canadian Broadcasting Corporation (CBC), an independent crown corporation charged with providing programming and regulating the performance of the private sector. Assurances that were not present during the life of the CRBC were given to the private sector. There would not be total nationalization.[46] However, like its predecessor, the CBC was underfunded; it could not establish stations in all provinces or regions, and from the beginning and more and more thereafter the CBC came to depend on private stations to relay its programming. These financial limitations placed "...on the public network steadily increased the dependence of the en-

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[45] Canada, Canadian Broadcasting Act, Chapter 24. 1936.

[46] Indeed the 1936 Act had nothing like section 9(g) of the 1932 Act, which had given the CRBC the right to nationalize the whole system.

tire system on commercial revenue and programming that originated in the United States."[47] The CBC was never given the support, financial or political, to accomplish the goals it was established to obtain, and because of this lack of support it never regulated the private sector to any real degree.

The ideals that had led to the establishment of the CBC began to be replaced almost immediately by economic realities imposed by the government. While both the Liberals and Conservatives were wedded to the principle of public ownership neither let this stop them from divorcing policy from those principles in practice. The recommendation of the Aird Commission for parliamentary grants was again ignored, and the licence fees and advertising were to become the mainstay of the system. These sources of revenue were impediments to the objectives of broadcasting in Canada: 1) licence fees, always unpopular with the Canadian public and therefore with our elected officials, were given to the Corporation only grudgingly and were never raised to meet the greater demands that were placed on the Corporation,[48] and thus, 2) advertising was made more important to the entire system; such a commercial system meant a greater dependence on American programming.[49]

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[47] Frank W. Peers, Op. Cit., 1979, p. 417.

[48] Licence fees were increased in 1938 to $2.50, still fifty cents shy of the sum Aird recommended nearly a decade earlier. Alex Toogood, Op. Cit., 1969, p. 57. The CBC's first deficit was not, however, until 1947. As a result the Act was changed to give all licence fee revenues to the CBC. Until that time the cost of collecting the fees had always been extracted by the government. p. 79. T. J. Allard, Op. Cit., 1979, p. 126, states that this income in 1938 was given to the CBC only with reluctance on the part of the government. And the raise in licence fees was also given over the opposition of the Minister responsible for the CBC, C.D. Howe.

The CBC acted in several capacities during the years 1936 to 1958; as a programme producer and distributor and as a regulator. This gave the CBC a dominance of sorts in the system, even though it was underfinanced and politically put upon. The system was a single system; one agency that produced and distributed programming and the same agency watching over the performance of the private stations. In another sense it was a single system as well, for the most part private stations were part of the national system, carrying CBC programmes. Public ownership was still based on the belief that only such a corporation would bring the service to all Canadians and only such a structure would produce Canadian programming in any substantial amounts.

While accepting private ownership, the 1932 Parliamentary Committee and the CRL had seen it as restricted to small local stations, acting to supplement the national system. Neither the Royal Commission nor the Parliamentary Committee had expected the suggested mixed system to become so integrated, and the public company so dependent on the private sector. Private operators were suppose to have provided local service, while a publicly owned network would provide a national service. However, the private sector became a 'key' in the delivery of national programmes to local audiences. Both the CRBC and the CBC made the private sector an important and intricate part of the national service. This was a further step away from the original concept of the system; it in-

[49] Also the mere fact that the major stations in the CBC network were privately owned meant the Coproration was under pressure from them to schedule popular American fare. In 1938 the CBC changed a previously held policy and began to carry sponsored U.S. shows. Its rationale was based on the arguments still used today; need for revenues to finance Canadian programmes and the Canadian public enjoyed them. Norman Spector, Op. Cit., p. 20-21.

creased the need for commercialism and thus American programmes and it created an even stronger lobby against the goals of public ownership in the form of the private stations that were allowed to survive, prosper and proliferate.[50] In both cases, the CRBC and the CBC, the agencies acted out of necessity; a lack of funds made a national system of owned and operated stations impossible.[51]

1.6 TELEVISION AND ANOTHER ROYAL COMMISSION

The end of the World War II meant rapid economic expansion and an explosion of consumer goods. Television was one of these goods unavailable or stifled by the war. American networks were quickly established after the war. There were demands on the Canadian government to act quickly, manufactures and retailers were demanding a market for their new products, private broadcasters were waiting for the go ahead, and Canadians were demanding a Canadian service.[52] Even so, in Canada television was not to be rushed in to. It was seen as having many unsettling effects on the broadcasting system and having an uncertain impact as a social force.[53] Because of this the CBC had cautioned the government to go

[50] This is not to say that all those in the private sector were against the CBC's predominance. Many were quite happy and even dedictated to being CBC affliates and the ideas behind the system.

[51] Indeed a prominent minister of the MacKenzie King and St. Laurent governments, C.D. Howe, who at times was the acting minister for the corporation, argued that CBC should stick to producing programmes and leave the expenses of delivery to the private sector.

[52] P.M. Hindley, et al., Op. Cit., p. 53

[53] Frank W. Peers, Op. Cit., 1979, p. 13. Or at least this was the CBC Board of Govenors' view of television. "The CBC's statement (approved by the board on January 20, 1949) tried to impress on the government the importance of television, which "multiplies the impact of

slow. Ottawa needed no such warning, it was in "no hurry to commit vast sums of money to launch a system until they were reasonably sure of its success and its viable technological form."[54] Again the government sought the advice of a Royal Commission.[55]

The major recommendation of the Massey Commission in the area of television was that it should become the property of the public Corporation and that the CBC should regulate its development. The general conclusion of the Commission was that Canada should be working towards a single national system in television as had been the case in radio.[56] Again, private sector broadcasters were to be restricted to the role as affliates and if "the Massey Report had been the last word on the subject, television would have been close to a monopoly of the Canadian Broadcasting Corporation."[57] The government had other ideas though. The mixed system was to carry on except this time it was the explicit inten-

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broadcasting more than five times" and which would be "a very great social force."" The Massey Commission agreed and added the warning that "if television is more powerful than radio it lends itself more easily to abuse." Canada, Op. Cit., 1951, p. 46.

[54] Garth S. Jowett, "Television Comes to Canada", In Search, Summer, 1977, Vol. IV, No. 3, p. 10. Also see Alphonse Ouimet, "Pioneers of the New Medium", In Search, Vol. IV, No. 3, Summer, 1977, p. 6.

[55] Canada, Report of the Royal Commission of the Development of the Arts, Letters and Sciences, Ottawa, King's Printer, 1951. Television was just one of several areas of investigation within the Commissions mandate. Also called the Massey Commission and the Massey-Levesque Commission.

[56] Donald Dawson, The CRTC and Consumer Interest, Consumer Council of Canada, 1971, p. 6.

[57] Author Lower, "The Question of Private Television", Queens Quarterly, 60, 1953, p. 171. This was necessary because "private ownership mean(t) American control." Lower quoted in Frank W. Peers, Op. Cit., 1979, p. 42.

tion of the government that private enterprise and the public Corporation would work together.[58] With television the governments main concern was not the interest of the system, but the cost of TV to the public purse.[59] As a result, CBC was initially limited to six major population centres; Vancouver, Winnpeg, Toronto, Ottawa, Montreal and Halifax; while the private broadcasters were given "exclusive right" to the rest of the country.[60] This meant that private interests, although confined to the role of CBC affiliates, were from the very beginning dominate in numbers and thus were in a very powerful position.

1.7 THE SEPARATION OF POWERS: THE BOARD OF BROADCAST GOVERNORS

As recommended by the Massey Commission, another Royal Commission was established three years after television had gone on the air in Canada. The Fowler Commission reiterated most of the concerns, fears and favours that had been expressed by its predecessors. Private interests had complained that CBC was in an unfair position; as both their competitor and their regulator. Fowler, as had the Massey Commission,[61] would rejected

[58] Frank W. Peers, Op. Cit., 1979, p. 36. Peers states that by this time both the private and public sectors in the Canadian broadcasting system had excepted the idea of the mixed system.

[59] Ibid., p. 62. Of course there are always trade offs between the "public purse" and the "public interest". Resources are always 'scarce' and governments must always choice between conflicting goals, but governments should attempt to use the available resources as efficiently as possible. The question then becomes at what point are goals worth the extra cost and when are other means necessary and desirable.

[60] Alex Toogood, Op. Cit., 1969, p. 77. The Progressive Conservatives wanted the CBC to go only into unprofitable areas, allowing the private sector all money making markets.

[61] See Canada, Op. Cit., 1951. pp. 283-284.

this. Little had changed in those seven years with regard to the form the regulatory agency should take. "...We should continue," the Commission wrote, "to have a single broadcasting system in which all radio and television stations, public and private, will be an intergal part and will be subject to regulation and control in the public interest by Parliament."[62]

The Commission recommended a more vigilant CBC when it came to its regulatory supervision of the private sector. It suggested that the Corporation become more commercially aggressive to win advertising from the private sector.[63] Perhaps to encourage the Board of Governors to take their regulatory responsiblity more seriously and become more commercially aggressive, the Fowler Commission recommended an internal reorganization of the CBC so that this new board would be more clearly separated from the day-to-day management of the Corporation. It was stressed in the report that this did not represent a move towards a so-called independent board, for the board suggested by the Commission would still be responsible for the CBC's long range planning and would speak for the Corporation before Parliament.[64]

As the private sector grew, so did the lobbying pressure it could bring to bear on the government. The Fowler Report had been commissioned by a Liberal government, but it was presented in 1957 to the mi-

[62] Canada, Op. Cit., 1957, p. 87.

[63] This, as well as the recommendations of statutory grants was the Fowler Commission's solutions to the financing of the CBC. The Commission also lamented the fact that licence fees had been dropped, because they were probably the best means to finance public broadcasting.

[64] Canada, Op. Cit., 1957, p.87. A. John Beke, Op. Cit., p. 109.

nority P.C. government led by John Diefenbaker. Mr. Diefenbaker was a strong supporter of the private sector and "denounced the CBC monopoly and called for improvement of programs through competition."[65]

Considering that the PCs had called for an independent board for the pervious ten years, it is not surprising that the party ignored the Fowler Commission's recommendations. The new Act established an independent, separate board borrowing the name suggested by the Royal Commission: the Board of Broadcast Governors (BBG). The BBG would regulate the whole broadcasting industry, while the CBC Board of Governors was retained in a different form to watch over the operations of the CBC.[66] It was reasonably clear that the new Board was suppose to be the dominate one in the system,[67] but the powers of the BBG were not specific and it was not clear exactly how much power the BBG had over the CBC. The Board was the embodiment of all that the Fowler Commission had tried to discredit as unmanagable and leading to conflict.[68] It established, in effect, a two board system without the neatness of a clear division of their respective jurisdictions. The BBG was not as the Fowler Commission intended "the sole authority and was not made responsible for

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[65] A. John Beke, Op. Cit., p. 116

[66] CBC did not have clear control of its own network, that is, its private affiliates and would not necessarily get the channels its needed for it had to now compete with the private sector for those frequencies. Frank W. Peers, Op. Cit., p. 161.

[67] The president of the CBC said as much in 1961, that while the CBC could by-pass the BBG, he stressed that the Corporation would not take advantage of this loophole in the Act for "the intent of the act was obvious, the CBC was a licensee, subject to the BBG." Alex Toogood, Op. Cit., 1969, p. 89.

[68] David Ellis, Op. Cit., p. 63

CBC policy."[69]

The Board was responsible for "program standards", promoting and ensuring the greater use of Canadian talent, recommending to the Minister of Transport in the matter of licencing, and the establishment of stations and networks.[70] The BBG was called upon within its first few months of existence to deal with three impotant issues: the licencing of second private stations in areas already served by CBC or CBC affliates, the licencing of a second english-language network and the establishment of regulations for the private sector.[71]

Within a year of its creation the Board had handed down its regulation for 'Canadian content' and within two years, after licencing second stations, it had given the go ahead for a private network, to be called the Canadian Television (CTV) Network. The licencing of the new network and second stations generally caused two problems for the national system. It increased competition with the CBC and thus further threatened its dominance in the system. It also increased the amount of American programmes in the entire system; thus threatening the major raison d'-etre of the CBC: indigenous programming.

By the time the BBG had been established there were already forty-four private television stations in Canada, as opposed to only eight CBC owned and operated ones. And although all of these were CBC affiliates,

[69] Bernard Trotter, "Canadian Broadcasting Act IV: Scene '67 or Double Talk and the Single System" Queens Quarterly, Winter, 1968, Volume XXXIII, p. 462. Nor did the government hed Fowler's other warning, that any board should have its authority "clearly stipulated and its rights and duties defined in the governing statute."

[70] Canada Op. Cit., 1958, pp. 140-142.

[71] David Ellis, Op. Cit., p. 49.

the proportion of programming devoted to U.S. programming filled a large part of most affliates schedules. But as affiliates these private stations at least filled a good slice of their schedule with CBC originated programmes. The licencing of private stations and a private network outside the CBC 'single' system meant that more American programming would flood the system. The private stations and network would depend exclusively on commercial revenues for support and, therefore, mainly on popular inexpensive American programming for their profits. As such, CBC was put into a position from which it had to compete for advertising revenues and for audiences.[72] The CBC therefore increased its amount of American programming, especially in prime time. For the Tories this was exactly what they had wanted. They had rejected the idea of a single system in favour of competition to facilitate viewer choice and freedom of speech.[73] However, what this actually resulted in was a narrowing of real choice in types of programmes, while increasing the choice of a specific programme type. And this is exactly what all Royal Commission on broadcasting had warned of, for it was 'impossible' for a broadcasting system based on advertising revenues alone to perform in the spirit of a public service.[74]

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[72] Duncan Dunton, Chairman of the CBC in the 1950s, stated that American networks spent about four times what the CBC did on a program, but sold it to Canadian stations for about one-tenth of their production cost. Peter Johnson, "The CRTC and the Canadianization of Broadcasting", Federal Communications Bar Journal, Vol. 26, 1973. p. 189. The Progressive Conservative government also accepted Fowler's argument that the CBC could be more commerically aggressive without undermining its fundamental purpose.

[73] Roger Rickwood, Op. Cit., p. 5.

[74] Canada, Op. Cit., 1957, p. 88.

When licencing private stations, the BBG heard extravagent promises of what was going to be undertaken by the applicants if they received licences.[75] Few would later live up to these promises, even fewer would receive much more than verbal reprimands for not doing so. Promises made at the time of licencing were outlandish, and few, if any, could have actually lived up to them.[76] However, their was little if anything the BBG could do since legally promises of performance were just that: promises with no legal status. Therefore, unfulfilled promises were not considered legally binding nor were they a legitimate reason to suspend a licence or impose penalties.

The content requirements established by the Board were not well received by the private sector. The regulation suggested by the BBG stated that by April of 1961 all Canadian stations would be required to broadcast a minimum of 45 per cent Canadian programmes and a year later this would be raised to 55 per cent of the total braodcast day. After hearing the reaction of private broadcasters and their representatives, the BBG conceded that perhaps these conditions were too harsh. As a result the Board made some major alterations to its proposed rules to allow the percentages to be more easily met.[77]

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[75] Warner Troyer, The Sound and the Fury: An Anecdotal History of Canadian Broadcasting, pp. 184-185. The licencee in Toronto for CFTO had promised a pre-school children's show three times a week, a half hour weekly drama series, daily comedy and variety shows, opera, music, good drama and 44.5 percent prime time Canadian content. In 1962 its actual Canadian prime time content was only 17.34 percent.

[76] Ibid., pp. 121-122. Peter Grant, Op. Cit., p. 360.

[77] The content rules were changed and amended thirty-nine times in the BBG's ten-year life. These changes resulted from the need to ease their administration, their failure to work and mostly the economic condition of the private stations. Peter Grant, Op. Cit., p. 336.

Programming on the private stations and network tended to meet the very minimum of what was required (often not even that) and what was produced was of questionable quality. Thus while the private sector often met the letter of the law, it certainly refained from approaching it in the spirit in which it was intended. Since there was no regulation as to when Canadian programs should be shown, most were placed in time slots that had the fewest people watching. The evening schedule, usually the highest viewing period, was filled with U.S. shows. This led the BBG to institute a forty percent minimum of Canadian content between 6:00 P.M. and midnight, however, this still left and allowed the private stations to schedule foreign programming, in the primest of prime time, between 8:00 and 10:00.

Part of the problem with the quotas was not only the private sectors unwillingnes to invest in Canadian programmes, but the Board's laxity in enforcing its own regulations. In 1962 and 1963 the Board waved the prime time requirements and allowed very questionable material to pass as Canadian.[78] Only towards the end of its life did it prosecute those who failed to meet content requirements and never did it suspend the licence of a station for not meeting these regulations.[79]

It extended the forty-five percent minimum to include the summer months, after April of 1962; instead of the percentage requirements been met on a weekly basis they would be met over a four week period; as well, the definition of what constituted Canadian programming was loosened, so that a wide range of non-Canadian programmes counted towards a stations content requirements. Everything from the World Series to an American Presidential address could be counted towards a stations Canadian content requirements, as could programming from commonwealth or francophone countries.

[78] Robert Babe, Op. Cit., p.22.

[79] Even these fines were minor. In 1965 four stations were prosecuted

When it was announced that the Board would consider favourably an application for a second network licence only one person came forward; few, if any, of the private stations wished to be involved with the expense of a network. Some interested parties called for such a network to be a non-profit, public trust and some went as far as to say that it should be created by Parliament with statutory obligations.[80] The concern was that, if left to a profit oriented company, such a network would be unlikely to make use of quality or a large quantity of Canadian programmes. The BBG ignored this concern partly because it had no choice, since such a body would require government legislation, moreover a non-profit group was not in the offing, therefore the Board was compelled to licence the only applicant. The private network struggled for four years trying to make both a profit and Canadian shows, until the worse possible solution was found for its diificulties: ownership of the network by the member stations.[81] It was against the economic self-interest of the member stations to make the network strong. They profitted more by obtaining more release time from the network, running 'canned serial' and selling local advertising. The network would grow

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resulting in two being fined twenty-five dollars each. In 1966 and 1967 there were six prosecutions highest fine given out was $1,170.00. Partly this was the fault of the Act which allowed the Board to dispense light fines or suspend licences with no sanctions falling in the middle ground. Peter Grant, Op. Cit., pp. 352-356.

[80] The CBC and the founder of the CRL, Graham Spry, were two of those interested.

[81] Warner Troyer, Op. Cit., p. 187. The CTV network, according to Troyer, was financially strapped from the beginning. It got only twenty-five percent of the advertising turned over to it from its programmes. This compared to fifty percent for CBC and seventy percent for the American networks.

and be able to support national programming by retaining the audiences of its member stations and selling national advertising.

The CBC during the decade suffered several defeats and its dominant position in the system was gradually transformed into a position of equality and eventually inferiority to the private sector, at least in terms of stations, audience reach and total revenue. The CBC had to compete with the private sector for licences, it had to compete with CTV for audiences and, since the government refused to properly fund the Corporation, CBC had to compete for and became more dependent on advertising revenues.[82] None of these event helped Canadianize the system and most undermined the original goals of broadcasting in Canada, especially the concept of public service.

1.8 CONCLUSION

While the Diefenbaker government ignored the major recommendations of the Fowler Commission, it was unfortunate that

> the new government did not take up (at least) the Royal Commission's challenge to formulate a clear statement of policy. Once more , broadcasting legislation gave no fair direction as to future of broadcasting.[83]

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[82] A. John Beke, Op. Cit., p. 107. Frank W. Peers, Op. Cit., 1979. p. 247. CBC revenue fell by 12.5 percent in 1961-62. In 1963-64 government austerity programmes cut CBC's budget forcing it to reduce its expenditures. Most of these reductions were in the area of Canadian productions and at the same time CBC pushed much of its Canadian programming out of prime time in order that it could make up the lost revenues with inexpensive American programmes.

[83] Alex Toogood, Op. Cit., 1969, p. 85. The BBG chairman "expected the government to decide policies on the larger questions, and believed that regulatory boards should assume the relatively more modest task of interpreting and applying those policies so formulated. But broadcasting was a touchy and potentially explosive subject for governments to deal with; they did not like to take strong and clearly

This is partly due to the fact that the Conservatives, while knowing superfiscially what they wanted to do, did not really know where they wished to take the broadcasting system. After implimenting the policy of a separate regulatory board, they allowed the system to drift. The Conservatives responded more to the lobbying of the Canadian Association of Broadcasters on the matter and, once the new Act was in place, were unsure what should be the next step.[84] The blame cannot be placed on the CBC, the private sector, nor the P.C. government, all may be partly to blame, all, however, were not the main villain, that role must be assigned to 'successive governments' who had neither the will, the imagination nor the clarity of thought to support a truly public system of broadcasting.

The period 1936 to 1958 "represents one of the most inexplicable failures of government imagination or understanding in Canadian history."[85] Every policy adopted was a half measure designed not so much to accomplish certain goals as to save the govenment money and controversy. In 1958, the new legislation in many ways recognized the reality that the Liberal policy had created, but it too was only a half measure. Though it recognized the private sector as distinct from the public, it failed to recognize that public goals and private interests were at best

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defined postions unless forced to do so by events." Frank W. Peers, Op. Cit., 1979, p. 217.

[84] Roger Rickwood, Op. Cit., p. 16 states that the only thing which prevented the private interests from gaining even more in 1958 was the public acceptance of public ownership and the CBC as an institutional interest group.

[85] Graham Spry in a presentation to the CRTC quoted in Telenation, Vol. 2, No. 2, 1974, p. 2.

incompatiable, at worst, destructive. The main goal of the private sector was to make money, not to make Canadian programmes; these two were at odds. However,

> (b)roadly speaking Candian content regulations (were) simply the logical consequence of the abandonment of the concept of a predominent public broadcasting sector with a subordinate private sector in a supplementary distribution role.[86]

Throughout this period nothing stands out more clearly than the total lack of clear government policy in the field of broadcasting. The rhetoric aside, the Liberals did support public broadcasting in theory, but in practice the system had evolved almost into a commercial private system. The Liberal policy was one of getting by without expending too much money; the end of licence fees probably signalled the end of the system the government claimed it supported. Without this independent source of income, it fell to the government to support broadcasting out of general revenue. As the public pressures for greater programme choice increased, the government found it easier to increase reliance upon the private sector rather than fund an increasingly expensive CBC. A stronger CBC would have better withstood the decade following 1958 and the system as a whole would have faired better in all respects than it did.[87]

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[86] Roger Rickwood, Op. Cit., p. 11.

[87] The suspicions harboured by the P.C. government, especially the Prime Minister, about the CBC being a Liberal propaganda agency did nothing to improve the financial fate of the corporation. See Frank Peers, Op. Cit., Chapter Seven, pp. 176-214, for a discussion of how poorly the Diefenbaker government treated the CBC.

Like so much governments do, the prescription was good, but the practice was poor. As a result compromises had to be made and mistakes perpetuated. While it has been argued that "success in strengthening nationality became the relative standard of utility against which the Canadian mass media as a whole was to measured",[88] radio and, to a greater degree, television faired only poorly. While the mistakes of passed government policy were obvious, few would learn from them. Governments, which must be everything to every one and fulfill complex and competing desires, are unlikely to fulfill any of them completely, unless it is a priority of that government. In Canada, one must conclude that broadcasting was never a priority of any government. In broadcasting this was further complicated by doubt and desire contrary to the system adopted. While politics prevented what many thought to be the rational development of radio, that is, along the American lines, "...the wisdom of having a distinctive policy was doubted and argued."[89] It would seem appropriate that politics then reverted the system to that which they had originally prevented. There was then no diabolical plot to undercut the CBC, worse there was no plot at all as to how the broadcasting system should be designed. CBC virtually difted through thirty years with little direction or aid from government. Small wonder it failed to do what it was originally established to do; government after government failed to support its efforts and give help. If up until the mid 1960s the broadcasting system was slowly drifting in the direction of commer-

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[88] Paul Rutherford, The Making of the Canadian Media, Toronto, Mcgraw-Hill Ryerson, 1978.

[89] Frank W. Peers, Op. Cit., 1969, p. 3.

cial dominance, post 1968 would find the commercial ethos irresistable and it would become the driving force of the whole system.

Chapter II

1968 TO PRESENT

> I think that the most that legislation can do in the broadcasting field is prevent the worst from happening. I have seen no evidence over the years that legislation can bring out the best.[1]

2.1 INTRODUCTION

With the return of Liberals to office in 1963, questions were raised about the effectiveness of the 1958 Act and the board it had created. To examine the state of broadcasting in Canada the Pearson administration established the Committee on Broadcasting. It was headed by the same person who had chaired the 1957 Royal Commission on Broadcasting, Robert Fowler.

The report[2] of the Committee recommended, as had its Royal predecessor, the establishment of a single authority to regulate the whole industry, both the private and public sectors.

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[1] Don Jamieson, private broadcaster, a former president of the CAB and a Liberal, quoted in Peter Harris, "First the BBG, Now the CRTC -- What's It All About?" Toronto Daily Star, April 29, 1968. p. 79.

[2] Canada, Committee on Broadcasting, Report of the Committee on Broadcasting, Ottawa, Queen's Printer, 1965. Also known as the Fowler Committee or Fowler II. Fowler II was a three man, non-parliamentary committee. It commissioned no research and held no hearings basing its recommendations on an examination of the performance of the BBG and the system as a whole.

The Committee blamed the state of the system, in part, on the Conservative government. The fact that it had ignored the advice of the 1957 Commission, by establishing an independent regulatory agency for the private sector, had caused the broadcasting system to deteriorate. The Committee, however, did not suggest that the Conservatives alone were to blame. It stated that all previous governments, all of which were Liberal, shared the responsibility for the present state of the broadcasting system.

> In the past, Parliament has not stated the goals and purposes for the Canadian broadcasting system with sufficient clarity and precision, and this has been more responsible than anything else for the confusion which has led to an endless series of investigations of it.[3]

The Committee suggested that what was expected of the industry be spelled out in statute form. This clear definition of the system's aims and goals should be complemented by a revitalized CBC which would regain the dominance it had lost over the last decade.[4] Fowler reasserted the philosophy, lost in the 1958 Act, upon which the system had supposedly been based up until that time: the public sector was not only the cornerstone of the system, but the main driving force behind system.

As a result of the Committee's condemnation of the present structure of the system and the Liberals' own feeling that something should be done, a new Act[5] was passed in 1968. This new act created a new regula-

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[3] Fowler Committee quoted in David Ellis, The Evolution of the Canadian Broadcasting System: Objectives and Regulation: 1928-1968, Hull, Minister of Supply and Service, 1979. p. 60.

[4] Bernard Trotter, "Canadian Broadcasting Act IV: Scene '67 or Double Talk and the Single System", Queens Quarterly, Winter, 1967. p. 479

[5] Canada, Broadcasting Act, 1968, RSC, Chap. B-11.

tory agency called the Canadian Radio and Television Commission (CRTC). It had greater and clearer powers than the old board, but it was not what either Fowler, Commission or Committee, had called for. It had been recognized even by the Liberals in the late 1950s, that the system needed to be revamped, the 1958 Broadcasting Act changed a major tenet of the Canadian broadcasting: a single system of public and private elements. Money was possibly the major reason for avoiding a return to the pre-1958 structure. If a return to a single board was to be meaningful the CBC would have to be given much greater resources to do its job. Governments have priorities and while it is argued that CBC was and is underfunded, the government purse is finite. The government was not under pressure to increase its funds to the CBC, for it had fewer 'friends' both outside and inside the government. The choice to tap the private sector to obtain public goals was less expense and less controversial for the government.

The CRTC's main challenge was to make television in Canada distinctive from American TV and distinctly Canadian within the environment created by the BBG, the prevailing legislation, and a dominating ethos of commercialism. It had attempted this on several fronts. The CRTC: encouraged the CBC to more aggressively pursue its mandate, implemented stricter Canadian content regulations, tried to integrate cable systems into the broadcasting system, increased the number of Canadian stations and networks in certain markets, and ensured Canadian ownership of the broadcasting undertakings. Few of its approaches were very successfull in getting large amounts of high quality Canadian productions on the air. This chapter looks at the success and failures of the CRTC in re-

lation to the Canadianization of Canadian television. And while "(t)he CRTC is much more committed to the creation of a Canadian culture than the average Canadian",[6] the approach adopted by the Commission to the problems facing the system, further commercialised the entire field and did very little to accomplish the goals established in the Broadcasting Act. While it is realized that an 'ideal' environment cannot be created 'overnight', it is questionnable whether the Commission has had 'little real power' to change it.[7]

2.2 THE 1968 BROADCASTING ACT

For the first time in Canada, broadcasting legislation laid down goals for the entire system. Previously statutory statements of broadcasting goals had been set for the CBC, but now the regulatory board would be delegated the powers to ensure goals were meet both by the private and the public sectors. The Act stated that:

> 3(a) broadcasting undertakings in Canada make use of radio frequencies that are public property and such undertakings constitute a single system,...
>
> (b) the Canadian broadcasting system should be

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[6] Katherine Swinton, "Advertising and Canadian Cable Television -- A Problem in International Communications Law", Osgood Hall Law Journal, December, 1977, Vol 15, no. 3. p. 184 fn 185.

[7] Kerwian Cox, "Rearranging the Deck Chairs on the Titanic -- CBC-CRTC" Cinema Canada, March, 1979, no. 53. p. 19. The statement about the 'ideal' enviromen is attributed to former Chairman of the CRTC, Pierre Juneau in Robert Fulford, An Introduction to the Arts in Canada, Ottawa, Copp-Clark Publishing and Minister of Supply and Services, 1977. p. 133.

effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the political, social and economic fabric of Canada,[8]

(d) the programming provided by the Canadian broadcasting system should be varied and comprehensive and should provide reasonable, balanced opportunity for the expression of different views..., and the programming provided by each broadcaster should be of high standard, using prodominantly Canadian creative and other resources,...[9]

To carry out these objectives the powers of regulations and supervision are to be vested in a single independent public authority.[10]

The Act stated that in case of conflict between the public and private sector it should be resolved "in the public interest but paramount consideration shall be given to the objectives of the national broadcasting service;" that is, the CBC.[11] The Act restated a policy lost

[8] The Act seems to read as if there was some sort of inherent link between ownership and control the broadcasting system and the protection and growth of the 'fabric' of the country. The Commission was quick to note this was not however the case; "...Canadian ownership alone, does not ensure an independent Canadian Broadcasting System." CRTC, Annual Report, 1969-70, Ottawa, Information Canada, 1970. p. 4.

[9] Canada, Op. Cit., pp. 684-685 .

[10] Ibid. p. 685.

[11] Ibid. The government's 1966 White Paper on broadcasting had given the CBC clearer pre-eminence. It had stated "the place of the public element should predominate in policy areas where a choice between the two is involved". The 1966 White Paper on Broadcasting quoted in Frank W. Peers, The Public Eye: Television and the Politics of Broadcasting: 1952-1968, Toronto, University of Toronto Press, 1979. p. 390. Under pressure from the Conservatives this was dropped and the present subsection included. In effect the CBC lost its assumed dominance. It was no longer presumption of the Act that the public sec-

since 1958 and by then virtually meaningless, that broadcasting undertakings constitute a single system.[12] The idea that radio frequencies are public property, while included in the Act, had also lost much of its meaning over the past decade. It seemed that the Act was too little too late, and it did little to deal with the real problems faced by the system. The 1968 Act was "essentially an improved version of the act passed in 1958. There had been only incremental changes in policy."[13]

2.3 THE CANADIAN RADIO AND TELEVISION (AND TELECOMMUNICATIONS) COMMISSION

The CRTC replaced the BBG as the regulator of the broadcasting system in 1968. It had clearier and greater powers over both the private sector and the CBC. The name change came about mainly to disassociate the new Commission from the questionable record of the old Board. The Commission consisted originally of five full-time and ten-part time members.[14] The CRTC was given the following powers: to issue, renew, amend and revoke broadcasting licences; to issue regulations which would carry

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tor was naturally better able to fulfill the goals therein. And it was no longer persumed that the public sector embodied, by virtue of its existence, the public interest. Under the CRTC, the CBC was given little preeminance.

[12] Both the CBC and BBG wanted the reference to such a system dropped because it did not represent the reality of the system. Frank W. Peers, Ibid. p. 408.

[13] Ibid. p. 407.

[14] Ibid. p. 686. This was increased to nine full time and ten part time members when the Canadian Radio-Television Commission became the Canadian Radio-television and Telecommunication Commission in 1975. The new CRTC took over the regulation of the communications system which had been under the Canadian Transport Commission. Canada, "Canadian Radio-televison and Telecommunications Act", Canada Gazette, Vol. 1, No. 9, Part III.

the force of law; to attach conditions to licences; and to hold public hearings.[15] Perhaps the most significant change in the powers of the CRTC, as compared with its predecessor, was the ability of the Commission to revoke licences between five year renewal periods.[16] The CRTC, also, had another important power which the BBG had not; the power to make promises of performance conditions of the licence and could, if broken, be used as a reason to revoke a licence.

In dealing with the CBC, the CRTC was given greater, but not complete, control over the national broadcaster. The CRTC could not revoke any of the CBC's own licences, but it could attach conditions to these licences at renewal time. The central recommendation of the Fowler Committee did not find acceptance. The CRTC, for all its powers, was not a return to the single board system. It was not the supreme authority in the broadcasting field. The agency recommended by Fowler would have supervised and taken responsibility for the entire system, including the CBC.[17] The CBC was not responsible just to the CRTC, but, with its own board, remained responsible through a minister to Parliament. If the CBC thought that any of the conditions of licence imposed by the CRTC were unfair or in conflict with its mandate, it could appeal to the appropriate minister, who had the power to set aside the condition.[18]

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[15] Canada, Broadcasting Act, Op. Cit., 1968. p. 690-92.

[16] Peter Grant, "The Regulation of Program Content in Canadian Television", Canadian Public Administration, Vol, XI, Fall, 1968. p. 364. This power had been recommended by the Fowler Committee.

[17] Frank W. Peers, Op. Cit., p. 407.

[18] Canada, Broadcasting Act, Op. Cit., 1968, p. 692. Which has happen several times -- in 1974 and 1979 when CBC's licences were renewed.

The rights of the private sector were protected to a greater degree under the CRTC. The private stations were given a number of guarantees of "due process". Public hearings had to held if a licence was to be revoked, advanced notice of such action was also necessary. No public hearings were required if a licence was to be renewed. Publication of all notices, decision, etc were necessary. And on questions of law, the case could be appealed to the Supreme Court.[19]

The Commission was to be an independent board separate from the government and the government had no legal right to give it direction or enforce policy on it, save changing its legislation.

Independence is often touted as the means to ensure regulation is fair, impartial and practical. It is based on the premise that politicians cannot be trusted to be just or proper when dealing with such things as price or property rights. The price of regulated commodities or industries should reflect something 'fair and reasonable', and rights within an industry should be granted to those 'best' suited to use them. It has been argued that whether or not politicians would actually use such bodies to win votes by keeping prices low or 'pay-off' friends with property rights, arms-length agencies would be less susceptable to such manipulation.[20]

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[19] Ibid. p. 696. Later appeals would be made to the Federal Court. Also see Frank W. Peers, Op. Cit., p. 410.

[20] Economic Council of Canada, Responsible Regulation, An Interm Report, Hull: Minister of Supply and Services, 1979. pp. 54-55 for reasons for the need for independent regulatory agencies.

Added to this is the idea that expertize and continuity is needed in decision making. Familiarity with past decisions and with the industry under regulation is needed to make rationale decisions that, at least, approach the public good.[21] This is especially true of high technological and complex issues where innovation and change are common. Independence supposedly ensures coherent and consistent decisions which serves to promote stability within the industry and give legitimacy to the regulatory process.

Independence, by its nature, in a liberal-democratic political system almost forces the decision making process to be more open. The board has a stake in its own survival, and therefore has a stake in demonstrating that it is fair, just and reasonable. It can again further legitimize itself by making itself more openingly accountable for its actions.[22] In the same instant it can be argued that even the most independent agency must keep a balance of "political support over opposition". No agency, no matter what the degree of independence can charge off to do what everyone else is opposed to. If it did, the agency would not be around for long. Such bodies, since they are political creatures, must seek to retain political support. Indeed, it is argued that such support, as well as political leadership, is necessary for "successful regulation in the public interest". However, the most successful regulatory board is the one that resolves conflict so that no party is "inordinately alienated from government". In other words, com-

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[21] Ibid

[22] It has been argued that such agencies try to make as few decisions as possible, for any decision will bring with it some dissatisfaction.

promise is the best policy.[23]

The most cynical reason for the desired independence of agencies, is the most observant. By removing itself from sensitive decisions, a government can use a board's 'independent' decision making as a way to exonerate itself. An unpopular decision can simply be shrugged off as a decision of an independent tribunal with which the government cannot interfer. By this means, the government takes 'heat' off itself.[24]

Sensitive issues and unpopular decisions are often not touched by governments for reasons of political expediency, rather than for respect for the agency's independence. The agency is forced to deal with policy problems on its leown.[25]

The CRTC was about as 'independent' a regulatory agency as one could find in Canada. The government could, however, refer back a decision to the CRTC, or even, through an Order-in-Council, rescind a Commission decision. However, for the most part, the policy function of the CRTC was in the hands of the Commission. The making of policy is not usually the

[23] Erwin G. Krasnow and Lawrence D. Longley, The Politics of Broadcast Regulation., New York: St. Martin's Press, 1973. pp. 9 and 40.

[24] It is interesting to note that there is a inverse relationship between the distance between a responsible minister and the board and the popularity of the board. As one increases the other inevitably decreases. If this logic had prevailed entirely, the government miscalucated by creating a potential for jurisdicational disputes between the CRTC and the CBC. As well, the government was the last recourse for those dissatisfied with a Commission decision. An appeal of a CRTC decision would draw the Cabinet into the process. The cabinet would be forced to resolve such conflict.

[25] ECC, Op. Cit., 1979, p. 57. "Agencies are often accused of 'making public policy' at odds with governments instead of simply adjusting cases in a manner consistent with the governments set of policy objectives. The most important reason that this occurs in the failure of the government to articulate its policy objective clearly and to ensure that they are consistent with each other."

role of Canadian regulatory agencies, they are suppose to implement policy decided by elected officials.[26] It is often argued that not only should this be the case in a parliamentary system of govenment but that it is inevitable in such a process. Regulatory commission should not make policy, but simply carry out established policy of governments. There is however a fine line separating policy implementation and policy making, one that is often obscured by demands on the one hand for action on the part of the agency and non-interference by the government on the other.[27] An agency is often constrained by the letter of the law, but may be over-zealous in its application of its spirit. Whatever the myth or reality of independence of such agencies, it is to ensure, in part, that such a 'vacuum' does not exist. The CRTC (especially under certain Chairmen) has, however, 'fused' regulation with policymaking.[28] This was especially true in its early years.

> In the hands of an aggressive, imaginative, indeed even courageous CRTC, the 1968 Broadcasting Act has been used as a power base for the shaping of a broadcasting policy.[29]

Mainly because of a hesitant government which would not or could not to act, the CRTC was forced to fill a void. For events to have turned out much differently, clear government policies would have been required.

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[26] Daniel Jay Baum, "Broadcasting in Canada: The Power of Decision", Osgood Hall Law Journal, Vol. 13, 1975. p. 702 states "It is fundamental law tht an agency of the Crown such as the CRTC, takes its power from statutes; it has no other power save that bestoyed upon it by Parliament."

[27] ECC, Op. Cit., 1979 "Rather than encourage greater freedom of action; vagueness in delegated power may serve to limit an agency's independence and freedom to act as it sees fit." p. 16.

[28] Bernard Ostry, Op. Cit., p. 223 fn 11.

[29] Daniel Jay Baum, Op. Cit., p. 722.

2.4 THE CRTC AND THE CANADIAN BROADCASTING CORPORATION

While the private and public sectors are both charged with playing a role in the safeguarding of Canadian identity, only the CBC has really succeeded to any degree in fulfilling this goal.[30] As the CBC was forced to rely more on American programming, and faced competition from both American stations over cable and Canada's own private stations, it faced the danger of becoming an irrelevant force as audiences fragmented and fewer people watched its Canadian programmes. The Commission appeared much more sympathetic to the CBC in its earlier years, and demonstrated a willingness to use its position to try to positively effect the CBC. Later in the 1970s and into the 1980s the Commission seemed much less willing to take such 'risks' and seemed less inclined to try to use its 'influence'. This more than anything resulted from a government which had made it clear that policy, even when the government did not have any, was its concern and not that of the Commission.

The national broadcasting service is suppose to be the dominate sector of our broadcasting system, it is obvious that it is not dominate in revenue, number of owned and operated stations or in audience. It is, however, dominate in another sense; it produces the highest quality and quantity of Canadian programming.[31]

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[30] Partly this is due to the fact that CBC has greater statutory obligations than the private sector.

[31] In 1977 the CBC reached 98.2 percent of the Canadian people. The CBC operated two national television networks, four radio networks, a Northern service, an international service and an armed forces service. CRTC, Special Report on Broadcasting: 1968-1978, Hull, Minister of Supply and Service, 1979, Vol. I. p. 10. This figure represented a nation wide average and ranged from 100 percent in Ontario to only 90 percent in Saskatchewan. This also did not mean that this percentage of the population received full CBC network service. CBC

The CBC must still go to Parliament on an annual basis and ask for money. The CBC budget for the year is usually drawn up in advance. Increased costs for programming, salaries, and the like are all included in the CBC annual presentation to the government for more money. If the money is not forth coming, then the CBC falls back on commercial revenues.[32] CBC has always been torn between its commercialism and its duty to strive for certain goals as a public broadcaster. This is mainly due to the fact that Parliament has never adequately funded the corporation. Nor has any government taken the advice of almost every disinterested

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was still dependent on private affiliates to reach to 20 percent of the population, but these private stations carried only part of the national service. Also see Al Johnson, Touchstone for the CBC, Ottawa, 1977. p. 30. In 1978-79, the corporation had a budget of 620 million dollars, about 78 million dollars of which came from advertising revenue. The rest came from a yearly parliamentary grant. The CBC produces about 17,000 hours of television programming and about 110,000 hours of radio programming per year. This represents three times the TV programming and twice as much radio productions as the BBC did in the same time. CBC, CBC -- A Perspective, Submission to the Canadian Radio-television and Telecommunications Commission in Support of Application for Renewal of Network Licence, May, 1978. p. 108. An independent study of the Canadian broadcasting system found that the best overall balance of programming was on CBC French and English owned stations; that diversity was greatest on CBC French stations, followed by the English CBC ones; and "...refutes the suggestion..." that CBC has "very similar" prgramming to other Canadian broadcasters. See Staurt MacFadyn, Colin Hoskins, David Giller, Canadian Broadcasting: Market Structure and Economic Performance, Montreal: The Institute for Research on Public Policy, 1980. p. 266.

[32] For example, in 1978 the federal government froze the CBC budget at its current level. CBC was expecting a $71 million increase in its budget, which took into account only inflation, including moneys already allotted for salary increases. The CBC had to find ways of saving money and increase its source of revenue. One way to increase revenue was to show more American programming, which was inexpensive to purchase and produced a lot of revenue. Add to this the fact that the CBC must approach Parliament and the governing party every year cap in hand, one can see why the corporation must hesitate to become totally dependent on such grants. Commercial revenues to some degree must be source of funds for emergency use such as in 1978.

body looking into broadcasting; that is, that the CBC should be funded by five year statutory grants. Such a method of funding would allow the CBC to more effectively and efficiently allocate its resources and plan for the future.[33]

The CRTC has been a constant, if lately somewhat subdued, supporter of the objectives of the corporation and the importance of the CBC. It is questionable how much power the CRTC really has over the CBC. The CRTC, as stated previously, cannot revoke or cancel any of the CBC's licences, it can, however, attach conditions to the corporation's licences at time of renewal. The CBC is ultimately responsible to Parliament and can therefore protest to the appropriate Minister about the conditions of licence.[34] Accompanying such renewals are public hearings. These hearings, by providing a forum for public discussion, have enabled the CRTC to exert indirect influence over the direction of the CBC.[35]

The CRTC 1974 licence renewal announcement for the CBC contained several conditions of licence. These conditions included the requirements that the CBC eliminate commercials radio network; that it eliminate commercials from children's programming; and it reduce the per hour commercial time it presented.[36] The Commission added that the CBC should in-

[33] The Massey Commission, the Fowler Commission, the Fowler Committee, the Special Senate Committee on the Mass Media and the latest committee which reported in 1979, called the Clyne Committee, have all called for five year statutory grants for the CBC.

[34] The CBC wanted to have removed from the Act the sections allowing the CRTC to attach conditions to its licence. Frank W. Peers, Op. Cit., p. 393.

[35] This led at times to disagreements between the CBC's board and its management and the CRTC.

[36] CRTC, Annual Report, 1973-74, Ottawa, Information Canada, 1974. pp.

crease its Canadian content between eight and nine o'clock to fifty percent by October, 1976.[37] Even so, the CRTC had been sympathetic to the CBC's plight, realizing that many of these conditions could not be fulfilled without more funds and a better method of funding.

> Obviously, this cannot be achieved without additional funding. It goes without saying that the cost of operation, like that of any large organization, can be reduced,....But cost efficiency is not the only and most important point. The CBC needs significant enthusiatic and tangible public support to increase production, to improve the quality of programs and to extend and improve the facilities...
>
> It is unfair to demand of the Board of Directors, and of the executives and staff of the Corporation, that they continue to concentrate their efforts on administrative and managerial efficiency...[38]

Even so the CRTC used the power it had in an attempt to mould both the CBC into what it thought it should be and push the government into a position of proper support. The CRTC was "trying to use its influence to make it possible for CBC to do its job the way it'd like to."[39] It was questionable whether the CRTC actually had any legal rights to 'advise' the government, but the Commission had used its position to present positive support for the public sector and suggested policy to a government hesitant to make any.

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[37] Ibid. p. 9. It was only 28 percent at the time.

[38] CRTC, Radio Frequency are Public Property, Decision CRTC, 74-70, CBC Network Licence Renewal, 1974. pp. 74-75.

[39] Jack Miller, "With Friends Like That...The CRTC's Decision Places an 'Impossible Load' and an 'Intolerable Put-Down' on the CBC", Broadcaster, April, 1974. p. 17. This is how Miller says the Chairman of the CRTC, Pierre Juneau, viewed the Commission's decision.

The positive support for the CBC was less forthcoming in the later part of the decade and into the early 1980s. While the Commission still supported the CBC, that support had taken a new, more subdued form. The CRTC had stopped trying to 'influence' the government (or for that matter the public), and had in some cases pandered to it. Two such cases were the 1979 licence renewal decision for the CBC and the Commission's decision on CBC-2.

The 1979 licence renewal was an example of an uninspired (and uninspiring), and forceless decision that offered none of the insight or support that the earlier renewal decision had. Attached to the CBC television licence renewal were only two conditions: one was that the weekly prime time schedule of the CBC should only include "Canadian programming or outstanding foreign programming other than commercially-oriented mass entertainment programming in a continuing series" and the other, that CBC should not broadcast "commercial messages in programmes directed specifically to children".[40] Neither of these conditon were very dramatic, innovative or particularly helpful in making the CBC better at its job. The CBC was already practicing the policy of no commercial messages in children's programming, a hold over from its 1974 renewal. The other condition was aimed at making the CBC less commercial and more distinctive, a condition that had its genesis in the 1974 hearings. A number of recommendations were also found in the renewal. The Commission recommended that the CBC increase its Canadian content to eighty percent of its overall schedule, (an idea first put forward by

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[40] CRTC, Decision: Renewal of the Canadian Broadcasting Corporation's Television and Radio Network Licences, Ottawa, 30 April 1979. p. 61.

the Corporation's president in 1977 and anticipated as soon as funds became available). The CRTC, however, made no mention of this need for extra funding. In fact, it suggested that the CBC should get out of local advertising altogether, and stop undercutting the private sector in its commercial rates. The Commission recommended that the CBC increase its service to underserviced areas, consolidate its facilities in Toronto and generally do things that would cost it more money. However, instead of conceding that this could only be done by means of greater public support the Commission wrote that it was

> not convinced that its condition of licence and its recommendation affecting the provision of service requires an increase in the Parliamentary appropriation for operating expenditures of the Corporation.[41]

The CRTC further assumed that the CBC could squeeze more money out of its operation through some belt tightening and recommended that the Corporation even cut out some of its morning programming on its owned and operated stations.[42] The Commission went on to state "it might be possible for the Corporation to provide more or better programmes with the same budgets or less."[43] This was incredible. The CBC could point to an independent study that stated that the CBC produces more programmes with less money than public broadcasters in Britian, France or Japan.[44] And while the CRTC might have been correct in its assumption that the CBC

[41] Ibid. P. 57.

[42] Ibid. p. 65.

[43] Ibid. p. 57.

[44] CBC, The CBC - A Perspective, Submission to the Canadian Radio-television and Telecommunciation Commission, May, 1978. pp. 482-483. As well, see Harry Boyle, "MPs Grow Weary of CBC", TV Guide, September 30-October 6. p. P-4.

could do more with what it had, the renewal was not strong enough in its presentation of the fact the CBC does indeed need more money to do more and better things. This was simply ammunition for the Corporation's enemies. If the Commission wished to remain 'neutral', at least, it could presented a more balanced explanation than was offered. In 1977-1978 the CBC used 95 percent of its programming budget for produce Canadian programes and 80 percent of its budget to programming and its delivery.[45] It was less managerially top heavy than CTV or most private broadcaters. But of course there was more money to be had if the CBC would just tighten up a bit. The CRTC neglected the fact that in part the CBC commercialism was a reflection of its lack of public funds. The Commission could not have it both ways.[46]

The public sector had become a minor player with a major role. To enhance and strengthen its position and its role, the CBC was to restore some of the lost balance between the private sector and itself by intro-

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[45] CBC, Ibid., pp. 472-473.

[46] Also there was a concern with ratings. A public corporation financed by grants needs to prove its worth. Numbers of viewers was perhaps the easist way to do so. The Commission in its 1974 licence decision stated that "such a preoccupation can become a condition of operation and the original public interest purposes of operation can be eroded." Further, even in its 1979 decision the Commission did mention a need for more secure financing for the Corporation and the fact that in the past the public service was still distributed by private broadcasters who demand commercially popular pregrammes. The Commission failed to note the need for more money to help rectify these problems. There was as well an interesting correspondance between these recommendations and one of the condition of licence and the private sector. The CRTC admitted that by making the CBC give up popular American shows it would make more such programmes available to private broadcasters presumably at lower cost, thus allowing these broadcaster to garner more revenue for use in producing Canadian programmes. The same connection can be seen in its reasoning behind the CBC getting out of local advertising.

ducing a second service.[47]

CBC-2/Tele-2 was first proposed by CBC's president in October 1976[48] and was explained in detail in the CBC's 'blueprint' for the future, Touchstone for the CBC.[49] It was envisioned then as a repeat channel carrying the best of CBC's main service. The concept grew over the years to be a PBS of the north: a channel with some repeats from the main service, but mostly original programming in specialized categories such as arts, business and documentaries.

In its application for the CBC-2 licence, the Corporation argued that such a channel was vital for it would "effectively double the time available to the CBC for exposure of quality Canadian programs in prime time" and offer Canadians a complementary channel of programming.[50] CBC-2 would be delivered via satellite to cable stations. The cable station would then programme CBC-2 across a vacant clear channel.[51]

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[47] Robert Stephan, "CBC Endangered By Timidity of Regulation, President Says", Globe and Mail, July 6, 1981. p. 2, quotes Al Johnson as saying "If the CBC occupies only one position among 30 or 40 channels of television service that will be available in the future, how many MPs are going to continue to support us?"

[48] Robert Nielson, "Cold Porridge from CBC Versus Steak from Pay TV". Toronto Star, October 6, 1976.

[49] Al Johnson, Touchstone for the CBC, Ottawa, 1977.

[50] CBC, CBC-2/Tele-2: A Proposal for National, Non-Commercial, Satellite dlivered CBC Television Service, August, 1980. p. 5.

[51] This meant that the channel would have been available, at least in the first instance, on 'augmented' or 'converter' services, to about 1.6 million subscribers or about 4.8 million people. It was expected reach nearly 17.8 million people as converters became more common. Ibid. p. 46. The service would cost about $32 million.

In 1980, the CRTC rejected a second CBC network at that time. It was feared that the Corporation would divert funds from the main service to the CBC-2, partly because the proposed budget was too small and partly because increased government funds were not forthcoming. Further the Commission disliked the fact that the service would only reach a limited audience.[52] All these reasons came down to was a lack of one thing: money. There are reasonable arguments for the rejection of the licence, but they are not good enough. While the Commission was prepared to receive and deal 'expeditously' with a proposal for an interim service of repeat Canadian programming, one cannot help but feel that the CRTC had dealt a blow to broadcasting in Canada.[53] While the CBC-2 envisioned by the Corporation was not perfect it was a step in the right direction. If the CRTC was waiting for the government to act first,[54] it could expect a long wait. It seems that while governments are supposed to form policy, they often need some prompting to get them to do so. If CBC-2 was a necessary development, then that should be reason enough for it to have been licenced. Underfunded or not, such a move may have demonstrated its worth. Once licenced the government would have a more difficult time ignoring it and its needs. Again, while it can be argued this was not the proper role for a regulator agency to play, "(i)t was

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[52] see Robert Stephens, Op. Cit., pp. 1 and 2.

[53] "This interim service could well provide the foundations for enhanced CBC-2/Tele-2 service that could be offered to Canadians on a more universal basis...such a fully developed service should only be implemented when necessary funds become available to the CBC". CRTC decision quoted in "Johnson Says He'll Fight for CBC-2", Marketing, June 15, 1981. p. 10.

[54] Though it can be argued that this was only proper.

incumbent on the CRTC to be bold..." when bold measures are needed.[55]

There was a problem here, part of it extends from the single board system that was adopted in 1958 and remains in effect today. It created a competition between two federal bodies both responsible for broadcasting, both responsible to Parliament. The CBC says it needs more money to do its job, the Commission concludes that it probably could do more with its existing budget. The Corporation stated CBC-2 was vital for a 're-Canadianization' of the broadcasting system and its own relevancy, the CRTC said that while this may be true, it could wait. How vital then can it be? One wonders who the government listens to, for both are responsible to Parliament. If the Commission does not echo the Corporation or visa versa, which was to considered correct; the crown coporation or the crown regulatory commission? There was a danger that if both do not see eye-to-eye, one was discredited. If they do not speak to the government with the same voice, with the same sense of urgency, there was a chance they weaken the other, and give the government reason for inaction. While it was realised that agreement cannot always be expected, on major issue of import it seems necessary.

The Commission it has been claimed "...can't be more than a sympathetic audience since it has no financial powers."[56] But the Commission can do more. It can offer clear, aggressive support for the corporation, as it did under the Chairmanship of Juneau and Boyle. The CBC while responsible to Parliament must go to the CRTC for licences, but

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[55] Al Johnson quoted in "CBC Two Plan Nixed", Winnipeg Sun, May 28, 1981. p. 29.

[56] Harry Boyle, Op. Cit. p. P-4.

also should go there for support. The Commissions role was not to determine financing, but it can call for more and better financing; it could have licenced CBC-2 in the belief that it was necessary and thus hopefully apply pressure to an unmoving government. The CBC needs to prove it can do more if it is to get more. CBC-2 would have been on way get the government's attention and perhaps become more sympathetic to the CBC.

2.4.1 The CRTC and the Private Sector

The CRTC is suppose to regulate both the public and private sectors of the Canadian broadcasting system, but it was forseeable that the Commission, as with the Board before it, would spend most of its time trying to regulate the private sector. To review, there are several reasons for this. We expect the private industry to pursue two incompatable goals; those laid down in the Broadcasting Act and those of profit. This would occur because the public sector has its own goals set out for it, above and beyond those laid out for the whole system. Whereas CBC was responsible to the Minister, Parliament and the Commission, private broadcasters are responsible only to the CRTC. Since radio frequencies are, in law anyways, public property, the CRTC is responsible to Parliament for their use by private individuals of this property. And finally, the private industry represented the largest sector in the system.

It is notable that while the CRTC was established as a 'single' board to regulate the whole system, the CRTC has acted much as if it was two separate agencies: one dealing with the public sector the other with the

private. It was almost schizophrenic in its approach to regulation, policies for one sector seeming to contradict those for the other. While stating the CBC was all important to the system and was the cornerstone of that system, it announced policy after policy for the private sector that made the Corporation the cornerstone of a skyscaper: important yes, but barely noticable under such a mammoth structure. Partly this was because the Commission saw a necessity to compete with the U.S. channels. Unfortunately the CRTC chose a poor competitor, the private sector. The private sector did not want so much to compete with American programmes, as to distribute them. The Commission may have chosen this course, because it had no other way to proceed.

It is often forgotten what state the system was in when the CRTC took over in the late 1960s. Although over that decade the CBC had been dethroned as the emperor of the broadcasting system, it could still claim in 1968 when the new act was passed that it reached the greatest numbers of Canadians and enjoyed the largest share of the audience. It had to compete with the CTV network and its member stations for revenue and for audiences. It had become more commercialized as a result and, in some peoples' view, less Canadian. But even so as one of two and as the producer of the most and, in the minds of many informed observers, the best of what was Canadian, it remained the cornerstone of the system and the notion of 'public service' and the goals associated with it had meaning. Under the CRTC this changed. The CBC became more Canadian, but instead of being one of two, it became one of many. The ethos of commercialism came to dominate the system and determined the number of Canadian stations, networks, programmes, the whole structure of the sys-

tem. The system came to be based for the most part on profit and commercial considerations and therefore on American programming. Public service had become virtually meaningless in the system. It was no longer recognized as the force behind the system, but often viewed as an anachronistic holdover from another age. The driving force of the system was not the CBC or the regulatory body or Parliament, but American programming. The number of such programmes available dictated the amount of Canadian programming that would be produced and the number of stations the system could support. The Canadian broadcasting system had become a 'miniture replica' of the American system: twenty-four million people supporting numerous networks and stations and a public broadcasting service increasingly few chose to watch. The 1970s became the decade Canada broke from the mould of a truly Canadian system and tried to adopt the American model. The original concept of the system had slowly evolved into a facsimile of the system that the CBC had been established to prevent. The broadcasting system had, like most other sectors of the Canadian economy, been absorbed by American enterprise, though in this case not through direct American purchase of the industry, but through domination by American programmes.[57]

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[57] See Norman Spector, "The Candian Broadcasting System Within the Miniture Replica Economy", in Canadian Broadcasting League, The Crisis in Canadian Broadcasting, Ottawa, 1976. pp 23-24. Spector calls the Canadian broadcasting system a 'comprader communications system', that is, "(t)he external economics or infrastructures--are created by the hinterland nation, to the benefit of foreign firms." In Canada, U.S. programmes had structured the system so that the 'driving force' was these programmes. They set "the limit on the number of Canadian stations which can survive."

The CRTC had conceived a four pronged attack to resurrect the Canadian system. This attack included two policies held over from the days of the BBG; Canadian content regulations and augmentation of licencees' profits. The third prong was designed for the most part to assist these holdovers. Cable TV was to be integrated into the system by encouraging it to aid broadcasters with moneys and some protection of private industry revenues. Finally, the CRTC licenced more Canadian private broadcasters and encouraged cable to establish community channels in a bid to increase the overall variety and quantity of Canadian programmes in the system and in an effort to create a competitive environment to ensure the 'best' would be shown. The entire system was designed to get more money into Canadian television productions, whether at the local or national level. In retrospect, the Commission plans were notable mostly for their lack of success.[58] The dependence of the Commission on the private sector to fulfill the goal of a distinctive Canadian system was to blame. The Commission could only be partially faulted for this; the lack of both government direction and public funds left the Commission few alternatives.

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[58] In 1967 the amount of time viewers watched Canadian shows hoover just above 30 percent by 1977 it had fallen to just blow that percentage. Some may call this success: holding our own against increased channels and American programming. CRTC, Op. Cit., 1978. p. 27.

2.4.2 Canadian Content Quotas

The CRTC has perpetuated two policy practices of the BBG; the requirement of the industry to carry a certain amount of Canadian programming and the practice of trying to ensure the private sector was profitable. These two policies were considered by the Commission as mutually reinforcing. It assumed that augmented profits encouraged and allowed private industry to devote larger sums of money to the production of Canadian programming.[59] The Canadian content regulations were to ensure that a share of this revenue was devoted to the development of Canadian talent. It was felt that the only way to get the private sector to contribute to the Canadian broadcasting system in a meaningful way was to establish quotas to that end. However, the fact that quotas were required, suggests that the agency had little or no faith in the private sector desire to produce such programmes. Since the production of such programming would cut into industry profits it was unlikely that such programmes would be produced without coercion or inducements such as tax incentives.[60] The question became, were such content regulations coercive enough to encourage quality and quantity.

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[59] Robert E. Babe, Canadian Television Broadcasting, Structure, Performance and Regulation, A Study Prepared for the Economic Council of Canada, Hull: Minister of Supply and Services, 1979. p. 552.

[60] Stuart MacFadyn, Colin Hoskins, David Giller, "The State of Canadian Broadcasting...As Seen by the IRPP", Broadcaster, June, 1981. p. 58. "Considering it is cheaper to buy ready made American programming, it is unreasonable to expect private broadcasters to act voluntarily against the interests of their shareholders by producing similar programs at much greater cost." And in their book, Canadian Broadcasting: Market Structure and Economic Performance, Op. Cit., p. 260 it is stated that whereas in 1975 CTV's average revenue for a Canadian produced programm was $55 per half hour, an American programme average per half hour revenue was $21,000.

The regulations regarding content established by the BBG had been a dismal failure. This resulted partly because the BBG had neither the powers nor the will to enforce its own regulations, partly because the regulations were so weak, partly because the regulations did not consider the quality of or the amount of money spent on a programme, and partly because the industry was not willing to try to adopt the spirit of the regulations.[61] The CRTC adopted more strigent regulations, with the aim to strengthen the private sector's commitment to Canadian television production. But the differences between the CRTC regulations and those of the BBG were only minor, and it seems that the CRTC ignore why the Board had failed.

The CRTC declared that "the Canadian broadcasting system...must improve rapidly or risk disappearance."[62] To achieve this necessary improvement in the system, the CRTC drew up new content regulations, which were released in 1970. The regulations expected that by September, 1970, for the CBC, and a year later, for the private sector, the amount of non-Canadian content would be reduced to forty per cent of a station's or network's overall schedule, and further that the same would hold true bewteen the hours of 6:30 p.m. and 11:30 p.m. This regulation would be averaged over a four week period. As well, the amount

[61] In 1968, 17 station in Ontario including CFTO in Toronto spent only $1.1 million on artists and other talent. CFTM, a private French station in Montreal, alone spent considerably more than this. The English-Canadian broadcasters were much worse than their French peers, often arguing Canadians wanted American programmes and therefore they should do little more than relay them. This feeling was not as strong among French-Canadian broadcasters. Frank W. Peers, "Oh, Say Can You See", in Ian Lumsdum, ed., Close to the 49th Parallel, Toronto, University of Toronto Press, 1970. p. 20.

[62] CRTC, Annual Report, 1969-70, Ottawa, Queen's Printer, 1970. p. 36.

of programming from any one foreign country was restricted to thirty per cent of a broadcaster's schedule.[63]

The CAB and private broadcasters fought hard against these new regulations claiming they demanded too much from the private sector. This attitude was partly responsible for the CRTC adopting the content regulations.[64] Further, the evidence seems to point to the fact that the industry could do more.[65] The profits of the industry were excessive by almost any standard of comparison. This is especially true of the private stations in the large urban centres.[66]

[63] CRTC, Annual Report, 1970-71, Ottawa, Information Canada, 1971. pp. 17-19.

[64] Harry Boyle, then vice-chairman of the CRTC, claims that the voluble outpouring of criticism of the new rules by the private sector convinced 'an often fractious' Commission more than anything else to 'unite' behind the regulations. Although the Commission did in the end soften the Canadian content requirements, this was not enough to satisfy private industry demands. See "Lobbyist Stalk Bureaucrats to Keep Up on Policy-Making", Globe and Mail, October 27, 1980. p. 9.

[65] Some of the smaller stations and perhaps the CTV network would have had difficultly living up to the regulations. A study of the network's financial situation was done at this time. It found that CTV could not have done much more without going into the red. However, the large urban stations were making substantial profits. See Peter W. Johansen, "The Canadian Radio-Television Commission and the Canadianization of Broadcasting", Federal Communications Bar Journal, Vol. 29, 1973. pp. 192-193.

[66] In 1973 the rate of return for the private sector on its investment was 41 percent before taxes, in 1975 it was 34 percent. In comparison, the Canadian Transport Commission allowed Bell Canada, in the same years, a before tax return of between 13 and 14 percent. This is seen by the Transport Commission as a "just and reasonable" rate of return. Robert E. Babe, Op. Cit., p. 70. The CTV network had financial constraints, but these were most likely the result of the stinginess of large stations. The sixteen largest stations accounted not only for 72 percent of the profits, but also 65 percent of the revenue and 64 percent of the operating expenditures. Robert Babe, Op. Cit., p. 65 and 91. The Senate Committe on the Mass Media, (Canada, Special Senate Committee, The Uncertain Mirror: The Report of the Special Committee on the Mass Media, Ottawa, Information Canada,

After it announced these proposed regulations, the CRTC held hearings to get the reaction of the public and industry. In response to industry pressure, the Commission diluted the original proposals and lengthened the time over which the regulations would be implemented. What the CRTC ended up with was not much more than the its predecessor had. The changes were incremental and proved ineffective in fulfilling their purpose. Again, even with these slight modifications, the private stations sought to fulfill only the letter of the law. There was for the most part no attempt to follow its spirit. The result has been little improvement in the quality or quantity of Canadian programming on private stations resulted.[67]

The CRTC has taken little legal or punitive action to correct for these obvious deficiencies in either their own regulations or the performance of the private sector. While the CRTC has the legal power to prosecute stations which have not lived up to content regulations, the CRTC seems to have been reluctant to use this power until very recently. Mainly this was due to the fact that legal actions were slow and came years after the fact. The CRTC was usually one and a half to two years behind in its statistical analysis of the performance of the stations. Such evidence would be necessary and the court action would be tedious as the court examined every entry in a station's log to determine if it

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1971.) reached the same conclusion, that private broadcasters could do more. As did Stuart McFadyen, et al., Op. Cit., pp. 254-255.

[67] For example in 1978-1979, CTV showed 5.7 percent Canadian content between 8:00 p.m. and 10:30 p.m. This was down form 22.8 percent in 1967-1968. CRTC, Special Report on Broadcasting in Canada: 1968-1978, Vol. 1., Hull: Minister of Supply and Services, 1979. p. 48. Also see Robert E. Babe, Op. Cit., 1979. Chapter 7. pp. 141-152.

had meet the minimum. In the past the Commission has perferred 'moral suasion' to legal action.[68]

The Fowler Committee had warned, back in 1966, that quantity regulations alone would not be enough to ensure good Canadian programming. The Commission ignored that warning and continue a policy demostrated over the pervious decade to be ineffectual. "....(T)here could be no more effective means of maintaining the output of the television industry at a mediocre level...(that leads to)...game and quiz shows.." than quantity regulations.[69] But what this also clearly demonstrated was that the private sector was not likely to do what was not in their economic interest.

2.4.3 Licencing

The powers of the Commission in terms of licencing were greater than those of the Board of Broadcast Governors. The CRTC had the power to revoke or cancel licences at anytime for cause, while the Board had been required to wait until the licence was up for renewal. This change had been suggest by the Fowler Committee and was expected to encourage licencees to live up to their promises and the regulatory agency's regulations. It was thought that with the threat of cancelation always hanging over their heads licencees would be more likely to try to be

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[68] Robert Babe, Op. Cit., 1979., pp. 146-147.

[69] Or at least in the opinion of the Chairman of the Australian Commission on Broadcasting in a dissenting opinion of the main report which recommended such regulations. Australia, Australia Broadcast Tribunal, Self-regulation for Broadcasters, A Report of the Public Inquiry into the Concept of Self-regulation for Australian Broadcasters, Canberra, Australia: Government Publishing Services, 1977. p. 11.

constantly good.[70] However, until recently this power had rarely been used and even in these cases, only sparingly. As has been pointed out private broadcasters are licenced with certain goals in mind. They are "expected to act as chosen instruments for implemenation of public policy while simultaneously pressuing the profit objectives of private enterprise."[71] The licencing powers assigned to the CRTC were in effect a way to ensure that this was what happened and that the latter objective was not at the expense of the former.

Originally the scarcity of radio frequencies required that the government intervene to decide who should benefit from this scarce resource. Technology had changed this and had removed many of the technical limitations place on the number of TV and radio channels available in any one area. Frequencies and the number of stations in any given locale are now purposely limited because

> ...in the broadcasting industry it will be found that uncontrolled competition directs broadcasters' behaviour in a way dramatically opposed to the national policy.[72]

The number of frequencies available is therefore still limited and as a result, as with all scarce resources, the value attached to them is high. And it is in the interest of the broadcasters to retain such regulations for their own profitability.[73]

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[70] Their was a tendency in the past for broadcasters to improve just before renewal time and claim before the Board that indeed they were improving. CRTC, Op.Cit., 1973. p. 38. for example, states that the CTV network increased its programming budget in the year its licence was up for renewal.

[71] Robert E. Babe, Op. Cit., p. 11.

[72] Robert E. Babe, Cable Television and Telecommunications, MSU International Business and Economic Studies, 1975. p. 5.

The large profits noted above were hard to justify when compared to the qualtity and quantity of Canadian programming on the private networks and stations.[74] The regulation of entry into the broadcast system, plus the almost guaranteed profits meant that frequencies had taken on a value.

> Since the market price of a broadcasting undertaking equals the discounted future stream of earning; any policy to increase the stream of earnings will also augment the market price of the undertaking.[75]

Restriction of competition and ensuring financial well-being and stability of the broadcasting industry had increased the value of the licences of stations. As soon as the price for an undertaking was above the value of the net assests of the existing plant (construction cost, facilities, etc.), then what was being sold was the radio frequency.[76] Radio frequencies are supposedly public property, as such the money made from the sale of a frequency should be recouped by the public, that is, the government or an agency of the government. It would seem then that the CRTC had a legitimate right to restrict the amount of money an under-

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[73] Ibid., p. xviii.

[74] Canada, Special Senate Committee, Op. Cit., 1971., p. 205. The Committee warned that while "(s)ome private broadcasters have produced high-quality Canadian programmes(,) (w)e feel this country should recognize them for what they are; persons so exceptional in the private broadcasting world as to be virtually another species." CRTC, Op. Cit., 1971. p. 3. "Broadcasting is not an end in itself. It is subject to higher and more general imperitives of national purposes ascribed to broadcasting by Parliament."

[75] Robert E. Babe, Op. Cit., 1979. p. 572.

[76] Ibid., An example of this is CFRW-AM and CFRW-FM in Winnipeg. When they were sold in 1974, CHUM Ltd., of Toronto paid the owner $2,565,000 for the station. $112,869 for the plant and equipment and $2,452,131 for "good-will". p. 89.

taking can be sold for between renewals, or itself collect the amount paid above net asset value. However, the Commission refused to get involved with the selling of licences on the market between renewals. Back in 1969 the Commission made its intentions perfectly clear.

> It is not the intention of the Commission to intervene in normal bargaining between current holders of the assests or shares of licencees and would-be purchasers.[77]

Such an attitude had made the statement of ownership of radio frequencies in the Broadcasting Act much less meaningful. Like other private commodities, frequencies were bought and sold in the market place. Radio frequencies had taken on a value, which when sold, the public receives no income from. This was reinforced by the fact that all but .7 percent of licencees were renewed in the early 1970s[78] and the conditions to be met in order to keep one's licence were so limited as to be almost meaningless. The CRTC, then, had given de facto recognition to the idea that radio frequencies are private property.[79]

The public interest is considered by the CRTC when renewing or granting a new licence, by evaluating what the applicant promises to do. These promises often become conditions of licence and if broken the CRTC can revoke the licence. This power had rarely been used between license renewls and, as we saw above, almost never at renewal time even though

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[77] CRTC quoted in Ibid. p. 573.

[78] Robert E. Babe, "Regulation of Private Television Broadcasting by the Canadian Radio Television Commission: A Critique of Ends and Means", Canadian Public Administration, Vol. IXX, Winter, 1976. p. 568.

[79] Robert E. Babe has argued that in order to recoup this income at the time of transfer of a licence should institute bidding for the right. See Robert Babe and Philip Stayton, Competitive Procedures for Broadcasting - Renewal and Transfer: Final Report, A Study Prepared for the Department of Communications, Sepetmeber, 1980.

stations willfully ignored Commission regulations and their own promises.[80] Promises of performance had been one of the strong incentives for the CRTC to grant licences. Promises of performance and conditions attached to licences had really done little to achieve the goals of the Broadcasting Act.[81]

Global was to be Canada's third english language network; it was to start out in Southern Ontario, and later extend across Western Canada absorbing third stations licenced throughout major cities in the west. The CRTC argued that Southern Ontario had access to five American stations and that Global would "help to reduce this imbalance and (would) add diversity to Canadian television services. The resulting increase in programming hours available from Canadian stations...will help attract viewers aways from non-Canadian stations."[82] In other words, the CRTC was betting that another Canadian station could compete with American channels and repatriate lost audiences. Global had promised a different type of programming schedule, heavily populated with Canadian programming. It promised to buy a lot of programming from independent Canadian production houses and help finance more programming from this source. It would be able to afford to do this because it would concentrate on national sponsorship and divert advertising revenue going to American TV stations caused by a shortage of Canadian air time for com-

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[80] An example of this was the private station CJON-TV in St. John's which had for years flagrantly ignored the content quotas. Yet it had received nothing stronger than a repremand.

[81] Robert E. Babe, Op. Cit., 1979, pp. 185-194 for some examples.

[82] CRTC, Op. Cit., 1972, p. 31.

mercials.[83]

The CRTC ignored many facts when it issued the licence. When the CTV Network went on the air, the only stations hurt by it, were the CBC's, the audience share for American stations received in Toronto remained about the same.[84] With the licencing of Global the overall viewing of Canadian stations increased in Ontario[85] the actually viewing of Canadian programming dropped.[86]

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[83] Ibid. p. 32. The CRTC saw greater revenues going to private broadcasters. Global's licence was based on the following logic: a) a combination of the practices of commercial deletion and the possibility of government legislation that would disallow tax deductions of Canadian advertising on American stations, would repatriate advertising revenue from American stations; b) Global would have a concentrated market in Southern Ontario and would not have to bear the expense of distributing its signal to unprofitable areas; c) it was not made up of local licencees, needing to do community programming. It therefore had an advantage of economies of scale; and d) the existing Canadian stations and networks had few advertising slots available, which seemed to indicate that there was a demand for more commercial time. Global would have advertisers waiting for it to go on the air.

[84] Robert E. Babe, Op. Cit., 1979. p. 149. The Fowler Committee made this observation.

[85] CRTC, Op. Cit, 1978. p. 28. See Table 4, "Ontario". But not substantially. Thus Global probably took more of its viewers away from existing Canadian stations than American ones.

[86] CBC, Op. Cit., 1978. p. 29.

[87] As with the CTV Network, Global was one man's dream. Al Bruner did start out to make Global something "good, different and Canadian", he almost "proved that Canadian television could be fresh, innovative and exciting." Warner Troyer, The Sound and the Fury: An Anecdotal History of Canadian Broadcasting, Rexdale, Ontario, John Wiley and Sons, Canada, Ltd., 1980. p. 195. But when he went and did all that made Global what he had promised it would be, it was in financial trouble. Bruner's downfall was the result of his own extravagance in purchasing the best equipment and studios, his own poor judgement in purchasing movie packages and his own poor administration. When Bruner left the real businessmen took over.

Global, after a year of service, was in grave financial difficulty.[87] While it had kept most of its promises, its survival required a transfer of ownership. The transfer of ownership was approved by the CRTC on the condition that the syndicate that was to take over would continue to live up to Global's original commitments, that is, its promises of performance. The new owners agreed that they would "still maintain the high principles" and, in the main, "the commitments of its original founders."[88] However, this promise was not kept. The new president of Global stated not long after those CRTC hearings that: "We will become profitable, but we cannot be expected to take profits and squander them on Canadian programs that don't work."[89] By programmes that "don't work", Global seemed to mean most of the programmes which were Canadian. Yet even with this deterioration of both the quality and quantity of Global's Canadian programmes, the CRTC in 1977 renewed the companies license for another four year period.

Even so it seemed strange that a network would be licenced based on its promises of performance that had not, could not or would not be matched by the private sector all ready in the area. While the Commission recognized that the licence was for a very lucrative market, it was also a very competitve one with five American and four Canadian stations already in the area. It seems it would have made more sense to try and get the existing Canadian stations to do more. Or it would have been more appropriate for the CRTC to give a second licence to either CBC or CTV. A second CBC network would have reaffirmed that the system was

[88] Allan Slaight quoted in Robert Babe, op. Cit., 1979., p. 189.

[89] Ibid. p. 190.

still mixture of public and private parts, with the public sector being dominate.[90] The licencing of Global and numerous 'third stations' have further commercialized the system. Global's financial success depended, not on good Canadian programmes, but good American ones. The third licence appears to have bid up the price of American programmes and as a result less money is available to spend on Canadian productions.

2.4.4 CABLE TV

Until the 1968 Act, cable was regulated by the Canadian Transport Commission. The Commission did little more than hand out licences for such undertakings. It was not until the establishment of the CRTC that regulations were designed to try to integrate the cable industry into the Canadian broadcasting system.

By the time the CRTC came on the scene almost thirty percent of Canadian TV households had access to cable, and over fifty percent of Canadians could receive at least one American station.[91] In Southern Ontario where the proliferation of cable had been the greatest, cable was seen as a means to clear up channels that in most cases could already be received off the air.

The fact that Ontario could receive all the American networks put pressure on the CRTC to allow cable system to carry these singles into areas that were not able to pick up the signals over-the-air. It was argued that you could not deny one region of the country something that

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[90] Babe suggests that CTV would have used such a second licence to aggressively compete with itself. Op. Cit., 1979. p. 249.

[91] CRTC, Special Report, Op. Cit., p. 14.

another had if it was economically and technically possible to give it them. Faced with great public pressure, the CRTC tried to implement a policy that would cause the least disruption to the broadcasting system and see the cable industry contribute something to that system.

> ...(T)he purpose is not to safeguard vested interests or to maintain a technology that would have outlived its usefulness. The purposes and mandate of the Commission is to uphold the public interest and to safeguard the system which in the considered opinion of the Commission, provides the best service for the largest number of Canadians.[92]

The Commission aim was to integrate cable TV into the broadcasting system; to make it a contributing member of a 'single system'.

The first regulation set out by the Commission was to indicate a preferential order of station to be carried by a CATV system; all Canadian stations would have priority.[93] At this time as well, the Commission rejected the use of microwave that would clear up American signals carried over great distances.[94] The following year the CRTC restated the order of station priority adding, after Canadian networks and stations, a community channel to be run and financed by the cable licencee.[95] Further to this, the cable licence applicant had to assure the Commission that a cable operation would not hurt the off-the-air broadcaster in the area.[96] By April, 1970 the CRTC had reversed its stand on the use of microwave systems, stating that such technology could be used as long as

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[92] CRTC, Op. Cit., 1971. pp. 6-7.

[93] CRTC, Annual Report, 1969-70, p. 43.

[94] Ibid. p. 45.

[95] CRTC, Op. Cit., 1971. p. 21.

[96] Ibid., p. 22.

it did not cause financial problems for the local broadcasters.[97] In the CRTC first major position paper on cable, it adopted most of the policies it would administer over the next decade.[98]

The paper set out how cable was to become a full member of the broadcasting system. In July, 1971, the CRTC required that all cable licensees must provide a community channel as a condition of their licence. New regulations also provided that if a programme was seen simultaneously on two channels, the Canadian channel may request that its version be placed on the American channel. Cable systems were also encouraged to delete commercials from non-Canadian stations and to pay compensation for the use of programmes to Canadian stations.[99] Most of these policies found little success. The idea that cable companies should pay compensation to broadcasters was the ambitious policy, in the sense that it would integrate cable into the broadcaster system the most thoroughly. It was based on the premise that people should pay for what they use[100] and was intended to create for the broadcasters a fund of money to improve the quantity and quality of local productions.[101] The CRTC sug-

[97] Daniel Jay Baum, Op. Cit., p. 22. The CRTC's reversal on microwaving was mainly the result of public pressure, but as well the Commission appeared to be accepting 'competition' as a means to enhance broadcasting in Canada.

[98] It was not until a 1979 paper on cable that the CRTC began questioning the effectivenes of some of these policies. A 1975 statement on cable remain true to the 1971 position paper. CRTC, Op. Cit., 1980. p. 49.

[99] CRTC, Op. Cit., 1972. p. 21

[100] Of course cable companies were only suppose to reimburse Canadian station for use of their signals and not American stations, which made the policy seem a bit unfair, and difficult to justify in light of other CRTC policies.

gested that the cable companies should do this voluntarily, and should get together with local off-the-air broacasters to arrange among themselves how this should operate. Such cooperation was not forthcoming however; the cable companies were in no hurry to give over their profits for others to produce programmes and the broadcasters were in no rush to embrass cable operators who they still saw as the 'villian' in the system and who gave them an excuse to claim suffering and an inability to meet Canadian content regulations. The CRTC threatened that if the cable companies did not do this voluntarily the Commission would use compulsion. This threat was never carried out (mainly because the CRTC saw no easy way to go about it without enabling legislation),[102] and compensation was abandoned as a major policy approach.[103]

The failure of the policy of compensation led the CRTC to switch emphases; while dropping the idea of tranferring funds to broadcasters to produce programmes, the CRTC would attempt to get the cable operators themselves to use some of their profits to make programmes. The CRTC had requested in its 1971 policy statement that a cable channel be made available for individuals and groups in the community. The Commission decided that the cable companies themselves should start 'programming' this community channel and begin devoting a 'reasonable' percentage of

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[101] Don R. LeDuc, "Cable TV Contorl in Canada: A Comparative Policy Study", Journal of Broadcasting, 20:4 Fall, 1976. p. 441.

[102] CRTC, Op. Cit., 1980. p. 48 and 51.

[103] Robert E. Babe, Op. Cit., 1979. p. 134. However, there were two cable companies that said they would undertake compensation in 1978. In most cases the compensation that has occurred was used to ease the lose of audiences when cable initially entered a market. It was not used to build a fund for programme production.

their gross revenue to its operation.[104] Even here, however, the amount of revenue actually devoted to such a channel was left to the licencee. The Commission neither established regulations requiring cable companies to devote a certain amount to this channel nor did it make such a general condition of cable licences.[105] Cable companies did not generally devoted this percentage of there gross revenues to their community channels,[106] even though most cable companies recognized that there were certain advantages in doing so.[107] As late as 1980 of the 467 cable system in Canada only 276 had community channels.[108]

If none of the CRTC's policies have been very successful in this area, most of the blame must be placed at the feet of the government that gave the Commission little support and even less direction.

> It is fair to say that the CRTC was given no guidelines as to how it should regulate CATV, for the federal government seemed to be speaking with several voices -- all evidencing concern, but, at the same time, unwilling to take specific action.

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[104] Ten percent was suggested as fair. CRTC, Annual Report, 1974-75, Ottawa, Information Canada, 1975. p. 4.

[105] CRTC, Op. Cit., 1980. p. 52. Such practices were not implemented because they were not "deemed practical".

[106] Robert E. Babe, Op. Cit., 1979. p. 134.

[107] CRTC, Op. Cit., 1980. p. 55 states that the industry generally accepted this measure, because the saw "programming expertise (as)...the key to pay-TV and other revenue producing services." But still if there was away around paying for it out their own profits the cable companies would have perferred it. In 1976, the President of the Canadian Cable Television Association stated that cable should be charged with the responsibility of local production, but only through cable rate raises to compensate cable companies for this responsibility. Micheal Hind-Smith, "Restricting the Broadcasting System: An Emerging Concept of Community Television", in Canadian Broadcasting League, Crisis in Canadian Broadcasting, Ottawa, 1976. pp. 7-8.

[108] "1980 Convention Issue", Cable Communique, p. 14.

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> The problem that the Commission faced required political support for what was to be a political judgement. That support was not forthcoming from the Government, which had not been able to come to grips with the issue.[109]

It got no support for its decision to prevent microwaving of signals into Canada. Nor was legislation forthcoming that would make its compensation policy easy to implement and administer.[110] The Commission chose policies that it had questionable powers to enforce, since it depended on the 'good will' of the industry to carry them out. The CRTC must take part of the blame. The Commission had allowed the cable companies very large profits on the grounds that they would benefit the whole system.[111] So cable companies remained "uncommonly profitable" in order that they would help the entire industry, they did not do this. The cable companies did not use there profits to reinvest in the industry, but sought out better investments outside the field so as to diver-

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[109] Daniel Jay Baum, Op. Cit., pp. 719-720.

[110] The private broadcasters have argued that it would have been better to have allowed them to have owned cable system, and thereby generate moneys for Canadian productions. If the CRTC expected the cable companies to pump money into the broadcaster, why did not just allow broadcaster to own cable companies? Mainly there was a fear of concentration of wonership in the hands of private broadcasters. The CRTC did not trust the private sector to act in a manner conducive with the goals of the Broadcasting Act. Especially after the Broadcasters reaction to the Canadian content regulations in the early 1970s, the Commission was convinced that "if they got control of cable they'll be so powerful they'd just tell you to go to hell..." Harry Boyle quoted in "Lobbyist Stalk Bureacrats to Keep Up on Policy Making", Op. Cit.

[111] CTRC, A Single System, Op. Cit., p. 33. "The Cable television operaters will tend to optimize their fees consistent with those economic factors in order to maximize their revenue, and, as consequence, that of the broadcasting system as a whole."

sify their holdings.[112] The CRTC never had the cable companies justify the initial price they charged the person who took the service. Nor did the Commission require cable companies to go into unprofitable areas and use profits to cross subsidize these ventures.

The general conclusion that can be drawn from the past decade and some odd years of CRTC rule, is that private broadcasters' will do as little as possible to fulfill goals that are unprofitable and antithetical to 'good business'. Canadian private networks and stations are mere channels of Americanism which depend not on the strength of programmes they produce or buy from Canadian sources, but depend on American programmes. This is in part to be expected, American programmes are high quality production that are inexpensive to purchase and generate much revenue. There are needed to support the Canadian private sector. However, the private sector can do more, profits of stations in large urban areas have always been above those of comparable industries, and therefore unjustifiable. But too much cannot be expected from the private sector, while it could do more, how much more is questionable. The licencing of more private stations in Canada offered little to the system in the way of attractive Canadian programmes, although it was believed competition would produce such programmes. While competition did not repatriated Canadian audiences, it did increase the prices paid for American shows as Canadian stations and networks bid for the best.

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[112] Robert E. Babe, Op. Cit. 1979. pp. 132-133 for examples of how they spend their profits.

In cable the Commission has been as unsuccessful. Of the policies adopted in the early seventies only simulcasting and the community channel have survived. The industry continues to make good profits, yet adds little to the production of Canadian programming. So much for integration.

In all cases the CRTC has not used the powers it has in its enabling statute to enforce its regulations. Instead it has preferred to use 'moral suasion', something the BBG found did not work. It has not allowed broadcasters to fail or revoked licences of those that add little or nothing to the system.

The public sector has suffered the most over the last decade. The government is at fault here, but the CRTC of late has demonstrated that even old friends can become less amiable as time goes on.[113] While the private sector should be expected to do more, the CBC should be doing much more. If it is not, it is mainly because it cannot. The government will not let it, because it has never given the CBC the financial or political support necessary.

Radio and free television have failed to do what the most important goal these medium is: attract Canadian audiences to Canadian programmes. With pay-TV a new chance emerged to change the past. The future, however, is rarely different from what has come before and further it often mirrors the past. The history of broadcasting in Canada set the stage for what was to come. The CBC, the BBG and the CRTC had all demonstrat-

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[113] It appeared that the CBC had been losing "friends" among Canadians generally for years. Each licence renewal hearing seemed to bring out more and more groups which used this platform to berate the Corporation.

ed that without active and positive government support and clear policy, higher goals of broadcasting system would be pushed aside. In the context of our broadcasting past, the future appeared very bleak. Pay television was to be introduced into a system with no direction and little to prevent it from being absorbed into the commercial ethos that prevailed.

Chapter III

CRTC AND PAY-TV

> The impact of new technology on the Canadian broadcasting system did not happen overnight, but there has been a tendency in the past to wait and see what would happen next.[1]

3.1 INTRODUCTION

In broadcasting, the American experience has never proven very effective when tranferred to the Canadian reality. While it is often recognized that there are differences between the two, there is still a tendency to adopt American means to achieve Canadian ends. Canada has been a leader in the development of communications techology: cable and satellites are just two examples. And while a leader in the develop of communications hardware, Canada has been less successful developing the software that is to be carried across it. Canada tends to allow this software vacuum to be filled by American programming and adopts structures for the hardware that reflect U.S. models. Rarely do we copy them totally, usually making a few housekeeping changes that are believed to make the model acceptable to Canada. Often Canada takes a 'wait and see' attitude. Waiting to see what will be done in the the United States, instead of striking out on our own in a direction that suits the Canadian reality.

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[1] CRTC, The 1980s: Decade of Diversity, The Report of the Committee on the Extension of Service, Ottawa, 1980. p. 2.

Pay-TV seemed to follow this course. Canada never took control of pay-TV until it was too late: we allowed the U.S. to establish the model and then allowed technological change to over take us. To harness its potential to the Canadian system of broadcasting the regulatory agency would have had to been innovative, forceful, and, perhaps, even dramatic. Instead, it waited. While it waited, it condemned pay-TV as simply another mechanism for profiteers to further subjugate Canadian culture and then, in the end, adopted wholeheartedly the structure most likely to do exactly this.

In the United States the fate of pay television was left in the hands of the its regulatory agency, the Federal Communications Commission (FCC). Its main concern originally seemed to be the protection of the established broadcasters, rather than allowing pay-TV a chance to prove itself successful. When pay television finally took off in the U.S. it was because the FCC freed up regulation, allowing almost free-market competition in the field of broadcasting. As well, technology had advanced to such a point as to make access to markets relatively simple and inexpensive. Pay-TV came to Canada because it had been shown to be very profitable in the United States. This reason more than any other would determine the structure of the service in Canada.

Like 'free' television, the question of introducing pay television into Canada had to be considered in the light of various concerns, the overriding one of which was the protection and development of Canadian culture. Conventional broadcasters saw it as a threat to their audiences and thus their revenues, revenues which the CRTC had helped keep artificially high so that broadcasters could produce Canadian programming.

The CBC saw pay-TV as simply another way for private interests to make more money at the expense of cultural goals, while further fragmenting its own audience. Actors, writers, directors, producers and the like feared that pay-TV would become another means of depriving them of jobs, and preclude any hope of developing a strong Canadian programme production industry. Only cable operators were positive about the benefits of pay, but cable itself, because of the havoc it was causing in the system and because it had contributed very little in the way of Canadian programming, was naturally viewed with suspicion by other interests inside and outside the system. Cable was the 'bad-guy' in the broadcasting system. The eagerness with which it had taken on pay-TV demonstrated to many that it too was bad. But as technology changed, cable would become the mechanism through which the government would try to keep the system Canadian.

The CRTC suffered many of these same anxieties; yet, at the same moment, the Commission recognized pay television as a means to revitalize the floundering system which was under its care. In many ways the Commission would have liked nothing better than to have this innovation disappear and return later when the system had improved and would more easily absorb the new service. Steps had to be taken to ensure that pay-TV would be something more than a conduit for American programming. Few, including the Commission, knew how to guarantee this. Almost from the beginning the Commission recognized that pay-TV would not simply go away; the question then became how either to put off pay-TV until a later and, with hope, better time or how to ensure that pay-TV was to be introduced into a dynamic system causing the least disruption and creat-

ing the greatest benefits. In addition, the Commission was playing second fiddle to the federal government. Ottawa's music, though, was not all that clear, while it was trying to orchestrate the introduction of pay-TV, it seemed to have little concrete conception of how pay-TV was to benefit the system. Further, Ottawa often had to change its tune in order to accommodate provincial concerns, yet still try to get what it wanted. Other than indicating a preference for its introduction, Ottawa would provide no leadership on pay TV. The CRTC was left to make a major policy decision. Overshadowing all these problems, was the success of pay television in the U.S. Again, it must be stressed that if pay-TV had not been a success in the U.S., Canada is unlikely to have developed such a service. This means that the model the U.S. adopted would likely become the Canadian model as well, simply because that was what had proven successful.

The quick and early introduction of pay-television must have been a temptation to the CRTC. It offered to a system that had never really found its feet since 1958, a new source of revenue which if handled properly could help build a stronger programming and broadcasting industry. In part the Commission's attempt to delay the introduction of pay demonstrated its recognition of the fact that it alone could not ensure what pay-TV would do to the system. And although it appears that it looked to the federal government to create a 'clearly defined purpose', it received nothing close to this. Certainly there were gains to be made with the introduction of pay-TV, but they were ambiguous ones, the costs of which might in the end outweigh the benefits. In part the Commission hesitation was reflective of the trouble within the whole

system: a system that the Commission managed, but did not control.[2] The Commission then was in a 'catch-22' situation. If it did not act, not only would it be accused of protecting vested interests, but it threatened to stagnant a system that was about to undergo a technological revolution. If it did act, it risked still further damnation for allowing a flood of American programming into the country. Being accussed of protecting vested interests would not be so bad, if those interests had proven themselves to be achieving the goals of the Broadcasting Act, but those established interests, save for the CBC, seemed to have neither the sympathy for nor the means to achieve a truly Canadian system. If the Commission seemed to contradict itself and generally sound confused, it was only because it was human.

Over the decade the CRTC's attitude changed on the question of pay-TV. It was not so much that the purpose pay-TV was to fulfill had changed, but that the methods and means chosen to achieve them did. Originally the Commission viewed pay television as a means to further integrate cable into the broadcating system. While it was recognized as a threat to off-the-air broadcasting, and thus was a threat to the main producers of Canadian programming, it was also seen as a means to improve the lot of broadcasters, allowing them a greater amount of money

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[2] As one author later noted: "The continual delays in moving towards the implementation of pay-TV was marked by tortutous ambiguities -- one minute it is the solution to the system's programming deficiences and the next its disadvantages in terms of increased foreign programming importation under it made it more dangerous than cable -- show how deeply the overall system was troubled by a lack of clearly defined purpose." CRTC, Canadian Broadcasting and Telecommunications: Past Experience, Future Options, (A Report Prepared for the Canadian Radio-television and Telecommunicatilns Commission), Hull: Minister of Supply and Services, 1980. p. 57.

to produce more and better Canadian programming. As private broadcasters failed to improve both the programming they made and there efforts generally in that area, the Commission began to view pay revenues as a source of funds for those that had the biggest stake in the production of programmes; the independent producers. But as the CRTC actually began licencing of pay-TV, it was questionable what purposes the Commission hoped it would fulfill, it certainly chose questionable means to achieve anything. Broadcasters and cable operators had supposedly become a secondary concern, and while independent producers were suppose to benefit the most from the chosen structure, it appears that very few such producers were in favour of the Commission's final decision. Its decision was made in face of the popular and profitable American model, political uncertainty and technological change.

3.2 SOME PAY-TV HISTORY

In Canada, television was imagined as a public service under government auspices and, as had been the case with radio, television was viewed as something everyone should have the right to receive.[3] The broadcasting system in Canada had been financed by advertising revenue, licence fees and, since the 1940s, government grants. Licence fees meant that television, as well as radio, could be likened to pay-TV, for those that used it were required to pay a fee for the service. However, in Canada this fee was so low as to practically exclude no one from receiving the service.

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[3] The corollary has always been; when funds become available.

Radio had been fairly successful in Canada and for all intents and purposes (except for a two dollar and fifty cents a year licence fee) was free to all. It was natural for TV to carry on this tradition. As in radio, television was to be a single system, that is, public and private elements working together, thus the idea of a service for which fees were paid to cover the cost of the production and distribution of programme was never really considered in Canada. It would have been prohibitively expensive for some, and therefore, considered elitist.[4] The triad that had been used to support the Canadian broadcasting system, had been based on the perceived necessity. Canada's small population and large area could not support a system by licence fee alone.

American television had been on the air years before the first Canadian station was underway. Because this example (and because some Canadians could receive this 'free' TV), it was thought that they would not be willing to pay directly for something their American neighbours seemed to receive for free. Indeed, licence fees, as low as they were, were finally abolished in 1953 because of their political unpopularity. The American model of TV was not the one that Canada adopted, but, as we have seen, the Canadian system has moved, albeit not always with explicit intent, towards the U.S. system. Advertising was viewed as important, not only as a source of revenue for TV, but as a spur to the post

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[4] In England in the 1960s pay television was also opposed for the same reason, that is, it was not in the public interest. "(A pay television)...system is by its nature exclusive and socially unjust. Indeed it is alien to the whole concept of a public service." In Britian 'public service' meant the broadcasting system served "only one master, the public." J.H. Arkel "Broadcasting Finance: The Licence Fee System", in E.G. Wedell, ed., Structure of Broadcasting: A Synposium, Manchester, Manchester University Press, 1970. p 8-10.

world war economy. The idea of public service, the perceived need for advertising and the American example made pay-TV an unlikely alternative to 'free' television.

In the U.S. different concerns prevented pay-TV from getting under way. If pay-TV had been approved early on in American television history, it is likely that Canada would have followed this lead. The idea of pay-TV is almost as old as television itself.[5] In 1947, a pay system was established, but failed, mainly due to strict regulatory conditions.[6] The logic and the technology used then were simple. It was believed that Americans, used to paying to see movies in threatres, would be willing to pay to see them delivered into their homes. To do this the pay-TV signal was scrambled at its point of broadcast, picked up off the air by subscribers who would have had installed a device to decode the programmes. While this appeared to be a logical extension of the threatre market, the radio corporations, the threatre owners, the regulatory agency and the public had a different idea. As was mentioned earlier, it is near impossible to separate ones broadcasting past from its fu-

[5] In pre-World War II America, a system of pay television, called 'Skiatron', was demonstrated. Walter S. Baer and Carl Pilnick, "Pay Television at the Crossroads", in Richard Adler and Walter S. Baer, eds., The Electronic Box Office: Humanities and Arts on Cable, New York, Praeger Publishers, 1974. p. 19. Also see Canadian Radio-television and Telecommunications Commission, Report on Pay-Television, Hull, Minister of Supply and Services, March 18, 1978. p. 6. In 1941, Muzak Corporation established a commercial-free background music system. Aimed at businesses, the music was delivered over-the-air and unscrambled by businesses paying for the service. William K. Jones, Cases and Materials on Regulation, New York, The Foundation Press, 1967, p. 1267.

[6] Ronald Coase,"The Economics of Broadcasting and Advertising", American Economic Review, May, 1966, Vol. LXV, No. 2. p. 446. But Baer and Pilnich, Ibid, add that restriction of frequency and viewer interest were also problems.

ture; fate, with a little help, dictated that the new medium of broadcasting should be similar to radio.

The American radio giants argued convincingly that TV was a natural extension of radio service. And if done properly would provide everyone with 'free' programming. The Federal Communications Commission (FCC) and the public seemed to agree. Free radio had provided a popular service, it had proven that it worked, and as such this 'conventional' system had a natural advantage over a pay system. To a population brought up on the notion that broadcasts were free, pay-TV offered only one real difference: the consumer would be billed directly for the privilege of viewing the programmes.

Commercial sponsored TV became the norm in the United States, but the concept of pay-TV was not forgotten. The problem appears to have been that those that seemed to remember it most clearly were those that most opposed it. Television network executives, such as the President of CBS, could not too harshly condemn pay television as a threat to that ubiquitous concept, the public interest.[7] This could hardly be consider an unbiased judgement and the FCC did not seem to agree, at least not immediately. In 1955, after being petitioned to allow pay-TV, the FFC decided to hold hearings.[8] "The Commission concluded that the claims and counter-claims could be better evaluated after a period of trial opera-

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[7] Ronald Coarse, Ibid. Ronald Coase states that the American network executives were arguing from even 'higher motives' than public interest. They were engaged in "restricting potential competition". p. 446.

[8] Christopher H. Sterling and John M. Kittross, Stay Tuned: a Concise History of American Broadcasting, Belmont, California, Wadsworth Publishing Co., 1978. p. 326.

tion."[9] This did not seem to sit well with the broadcasters or theatre owners, both of whom felt pay-TV threatened their profits. In the spring of 1956 the FCC announced that two to five year trials for pay-TV would be approved as soon as it established the rules for such experiments. While the FCC approved a number of over-the-air pay-TV trials in 1957, it attached a number of restrictions to these experiments. The broadcasters and theatre-owners intensified their battle against the FCC proposal by lobbying Congressmen and by appealing directly to the public through an advertising campaign designed to encourage viewers to express their concerns and objections to pay-TV. In response to these pressures the House of Representatives Committee on Interstate and Foreign Commerce held hearings on the subject and adopted a resolution opposing the experiments. They also called on the FCC to drop the subject until the Communications Act had been changed to specifically allow pay-TV. The same committee in the Senate took an identical position. A number of bills were brought before the House to deal with the matter and the FCC decided that it would wait for Congress to examine them before proceeding with the experiments. In 1959 the House Committee and FCC consulted

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[9] William K. Jones, Op. Cit., 1967. p. 1268. There were claims that not only was pay-TV better than free television, but that indeed it was a proven financial success. In the early 1950 several small scale experiments with pay-TV were tried. Zenith tested its system called 'Phonovision' (because it's signals were sent over telephone wires) in 1951 with 300 families. Zenith claimed that its test was a major success even though film distributors refused to supply it with first run movies. Skiatron was testing its system in New York with the same number of subscribers. And a company called Telemeter was conducting an experiment in Los Angeles and Palm Springs. All the experiments demonstrated conclusively was that they really proved nothing conclusive. The results could be interpreted several ways, depending of course on whether you were for or against pay-TV. Christopher H. Sterling and John M. Kittross, Ibid., p. 259.

on the matter and with the Committee's approval the FCC announced that experiments could commence but now under much stricter and narrower conditions.[10]

During the 1960s two major pay-TV experiments were undertaken.[11] A company called Subscription Television (STV) began broadcasting in Los Angeles and San Francisco in the early sixties. It offered subscribers movies, sports, and educational and cultural programmes. The longest running experiment was established in Hartford, Conneticut and ran from 1962 to 1969.[12] Both lost money.[13] However, STV did not close down sim-

[10] William K. Jones , Op. Cit. 1967, pp. 1268-1269. William K. Jones, Cases and Material on Electronic Mass Media: Radio, Television and Cable, Minedo, New York, Foundation Press, Inc., 1979. p. 477. In the tradition of some regulatory agencies, the FCC decided that it was easier and safer to study pay television rather than make policy on it. Without FCC sanction, an experiment was established in Burterville, Ohio, in 1957. It was to bring to persons' homes the same movies as were being shown at the local cinema. For $9.50 a month a subscriber received two channel of first run movies and repeats. Originally it had 800 subscribers, but as the novelty wore off the number dropped quickly. In order to try to attract subscribers it changed from a monthly to a pay-per-program service. It closed in 1958. Christopher H. Sterling and John M. kittross, Op. Cit., pp. 326-327. According to William S. Baer and Carl Pilnick it charged five dollars a month for this service, and folded within the year because of a lack of interest. Op. Cit., pp. 21-22.

[11] In England two experiments were run; one in London and the other in Sheffield, both in 1966. These were both wound up and found not to be in the public interest. J.H. Arkel, Op. Cit., pp. 8-10.

[12] Zenith Corporation had first petitioned the FCC in 1952 to undertake the experiment, but did not get the go ahead until ten years later. Canadian Radio-television Commission, Op. Cit., p. 6.

[13] Sylvester L. Weaver, Jr., "Why Suppress Pay-TV? The Fight in California", in Harry J. Skornia and Jack William Ritsen, ed., Problems and Controveries In Television and Radio, Palo Atlo, California, Pacific Books, 1968. Weaver, President of STV, claims that his company was going to make money. It was premised on the idea that "a successful commercial venture in the subscription-television field could be accomplished if it were done on a scale large enough to make adequate financing and programming possible." p. 480.

ply because of financial problems, but because it was perhaps too succesful. STV showed some encouraging signs of success before its untimely death.[14] Both Los Angeles and San Francisco had penetration rates were as high as thirty-five per cent.[15] This considerable subscriber interest may have accounted for what then happened. Backed by the theatre owners and others, a citizens groups called for the banning of pay-TV because it threatened the television programming then receive by all for free. The television networks and stations while not directly involved gave tacit support to the theatre people. A question was placed on the 1964 state ballot asking the voters of California if they would like to see pay TV banned.[16] With an effective campaign painting a picture of lost programmes for the elderly, rural and poor residence of California, the anti-pay-TV forces won by nearly a two to one margin. STV was

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[14] STV was a closed circuit system, offering the subscriber three simultaneously programmed channels. It was a pay-per-view system, acquired from Skiatron, which even kept track of royalties. It cost ten dollars for installation, one dollar per month for service and between fifty cents and a dollar-fifty per programme viewed. It showed off-Broadway plays, repertory companies, opera, concerts, ballets as well as movies and sports. Ibid, pp. 479-481.

[15] David M. Blank, "The Quest for Quantity and Diversity in Television Programming", American Economic Review, Vol. LV, No. 2, May, 1966. pp. 152-453.

[16] The principle backers of the citizens' group called the "Crusade for Free TV" was the motion picture exhibitors. While NBC, CBS and RCA all came out as "opposing the use of the ballot in a matter of free enterprise, the California broadcasters (did) not reputiate the widely published distortions of the threatre owners...". The National Association of Broadcasters supported and actively helped the theatre owners. The San Fransico Chronicle, owners of a NBC affiliate opposed STV editorially. Slyvester L. Weaver, Op. Cit. p.482. Not everyone was against STV, both the Hollywood programme producers and the unions saw the possibilities that pay-TV offered for new programme production. Bruce M. Owen, et al., Op. Cit., p. 126.

forced to shut down.[17]

The Hartford experiment proved it was not such a threat. Its penetration rate reached only four percent. Both STV and Hartford were done of a pay-per-programme basis, and as a result even the high penetration rate of STV were negated by an average weekly expenditure of only about one dollar. Hartford was able to raise about two dollars per week per subscriber.

The results of both these experiments made network executives gleeful. According to one television executive,[18] the failure of both these systems demonstrate that the vast majority of Americans seemed to be satisfied with 'free' TV. He pointed to the low penetration rate in Hartford and the fact that revenues demonstrated that subscribers made little use of the system. Even when subscribers did watch it was not often to get something different from conventional TV, but to get more of same.[19] In other words, diversity was not the aim of the subscribers, but a greater choice within established programming categories. As

[17] T. Onoski, "Pay TV Report", Take One, March 15, 1979, Vol. 6, No. 7. p. 43. The owners of STV did not accept this result and took their case all the way to the Supreme Court. William K. Jones, Op. Cit., p. 1271. The Supreme Court found that pay-TV could not be banned because it was an "abridgement of the free speech of state and federal constitutions." But by the time the court made its decision, it was financially impossible to resurrect STV.

[18] David M. Blank was then President of the Columbia Broadcasting System.

[19] David M. Blank, Op. Cit. p. 459. In Hartford, of the 599 programmes shown in the first two years 432 of them where feature films (of which only eighteen were foreign), seventy-nine were sports. Of the remaining, educational and specially produced entertainment programmes accounted for about thirty-five each. And while in Los Angeles feature films and sports only made up about 42 per cent of the schedule, they accounted for 83 per cent of the revenues. In Hartford, movies and sports accounted for 95 per cent of the revenues.

such, pay-TV threatened to remove from 'free' TV the most popular programmes, and thus they would only be available a small number of persons.[20] Pay TV threatened to imitiate conventional broadcasters and at worst become their substitute.

In response to this it was pointed out that while four per cent penetration of the 30,000 potential subscribers in Hartford was very small, four per cent of all American television homes was substantial. The STV penetration rate represented a huge potential market nation wide. And while a dollar or two per week in isolated experiments represented financial failure, economies of scale, would make a national system tremendously profitable.[21] While it was recognized that movies and sports made up most of the viewing, there was nothing wrong with offering a greater choice to viewers. Obviously four per cent of Hartford wanted such a choice at least once a week. Further while 90 per cent of revenues in both experiments came from such programmes, what about the 10 per cent that came from educational and cultural fare? What was wrong with serving this number of Americans who were not necessarily dissatisfied with free TV, but wished a choice on occassion outside of it?[22]

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[20] Blank pointed ominously to the fact that in most cases subscribers had above average income. Ibid. p. 453.

[21] Financial failure resulted from dividing revenues "without dividing the production costs." Peter O. Steiner, "Economics of Broadcasting and Advertising -- Discussion", American Economic Review, May, 1966, Vol. LVI, No. 2. p.474.

[22] Even if only ten per cent of viewers watched in "absolute numbers, television is still the largest concert hall, theatre, opera house, and public forum ever devised." Hyman H. Golden, "Economics of Broadcasting and Advertising -- Discussion", American Economic Review, May, 1966, Vol. LVI, No. 2. p. 477.

Revenue does not necessarily reflect viewer choice, anyways.[23] It is not stated how much the system charged for popular feature films and sports programmes, as compared to educational programmes. No 'ratings' are mentioned. Once again on a national level this represented a big market.

The clearest indication that pay-TV could have been successful was the very reaction that those with a stake in conventional broadcasting had to it. Throughout the 1950s and 1960s, broadcasters were very successful at subjugating the idea of pay-TV. With the claim of lost programmes, with only a few wealthy persons able to watch what everyone was then receiving free, networks literally scared a nation into believing that such a system threatened not so much TV networks and stations, as the television viewer, that is, the public interest. The regulatory agency, the FCC, did the same. It, with the encouragement of Congress, protected the established system, for whatever reasons,[24] from the inno-

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[23] The high cost to purchase programmes plus the small subscriber base meant the price per programme might have been high. "If this is so, cost per program per viewer is of critical importance and regional markets raise the cost per viewer." Peter O. Steiner, Op. Cit.

[24] One of the reasons was a threat to the logic behind FCC licencing policy. FCC liked local stations. Local stations were to produce local and community programming. Pay-TV threatened the revenue base of the local station. Such a threat might prevent the local station from producing, usually money losing local programmes. It is interesting to note that the policy of localism actually caused cable to begin in the first place. Most communities had had local channels reserved for them. The smaller and poorer ones could not attract licencees. This also meant that no station could be too powerful, because it might spill over into another community. Thus some centers neither had local broadcasters nor could they pick up neighbouring channels. Cable began in order to carry in those weak, distant signals. Robert W. Poole, Instead of Regulation: Alternatives to Federal Regulatory Agencies, Lexingtton, Mass., Lexington Books, 1982. p. 100.

vations which may have challenged the existing system.

In Canada, a division of Paramount Pictures called International Telemeter introduced pay-TV into the Toronto suburb of Etobicoke. This was the first cable originated system. It lost close to two million dollars in its first year of operation. It ran from 1960 through to 1965 and had at its peak about 5,800 subscribers. However, interest in the service was not maintained and by the 1965 there were fewer than 2,500 subscribers.[25]

The experiment was not sanctioned by the regulatory body of that time; mainly because it had no regulatory powers over cable. While the issue seemed to be an important one in the States, pay-TV was never an issue in Canada until the 1970s. But the early decisions of the FCC which in effect prevented pay-TV ensured that it would not become popular in the U.S. and therefore in Canada. It was, however, foreseeable that once pay-TV became popular in the United States, there would be pressure to allow its introduction here.

By the end of the decade and the establishment of the CRTC, pay-TV was still not of much concern. The Commission, for its first four years, was busy regulating and licencing cable and additional broadcasting stations. Cable proliferated during these early years, but as cable operators reached the saturation point of their markets, they began looking for new methods to increase their revenues and continue expanding.

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[25] Baer and Pilnick, Ibid. Canadian Radio-television Commission, Op. Cit., p. 6. Also see David M. Blank, Op. Cit.

3.2.1 The Pay Cable Revolution

If the 1950s and 1960s saw pay TV lose every battle in the U.S., the 1970s and 1980s would demonstrate a potential which might allow it to win the war. In the 1970s technology was outstripping the ability of those charged with regulating the broadcasting system to do so. Further, political and judicial battles were being lost as an era of deregulation began in the U.S. The 1970s also saw a change of attitude in the public; no longer were they as satisfied with or captured by conventional television.[26] TV fare and the commercials associated with it seemed less appealing, yet the desire to make use of telvision had increased as activities outside the home became less appealing. Higher costs of going out (both in terms of energy costs to get there and once there the actual cost of being entertained), the perceived dangers associated with going out in large American cities (whether actual or psychological), a slow down in the economy that made relatively inexpensive entertainment more desireable and a work force with greater leisure time on its hands all combined to make home entertainment services such as pay-TV more popular. Technology would help satisfy these desires.

Cable and satellites made the costs and technological problems associated with the deliver of greater television services possible. Cable was expanding by leaps and bounds in the U.S. in the 1970s. It was an inexpensive way to get the viewer a greater number of channels. It re-

[26] In 1960 a survey done on television audiences by Gary Steiner concluded that "the general viewer feels generally good about television in general..". Even this ambiguous statement of satisfaction was no longer evident by the 1970s. A 1970 survey found that people were less satisfied with TV and felt it was getting worse. Robert T. Bower, Television and the Public, New York, Holt, Rinehart and Winston, Inc., 1973. p. 11.

lieved the shortage of VHF channels and the unpopularity of UHF signals[27] and it was reliable. Satellites allowed for the advantages of economies of scale. No longer were companies restricted to small areas, they could now serve the nation. What was needed was more, and different programming services.

In 1950 there were only 14,000 cable subscribers in the U.S., mostly in rural communities. Cable was used to improve the signal quality or increase the number of conventional channels available to the community or both. In 1959, while the FCC had allowed pay-television experiments, it had resisted pressure from Congress to regulate cable. By 1965, with cable growing bigger, the FCC froze further expansion of the system. It remained virtually frozen until 1972.[28] By the end of the seventies, cable had reached twenty per cent of all TV home; the seventy communities served by cable in 1950 had grown to 10,000 served by 4,700 cable systems in 1979. A lot of the expansion was due to pay-TV.[29]

> In the U.S. the pay-TV and cable TV explosion are happening simultaneously. They are piggybacking one on the other.[30]

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[27] Walter S. Baer and Carl Pilnick, Op. Cit., p.20.

[28] Ida Walters, Op. Cit., pp. 105-106. The Supreme Court in 1968 found the FCC was within its rights to restrict cable.

[29] Dean M. Krugman and Clifford Christian, "Cable Television: Promises vs. Performance", Gazette, 27 (1981). pp. 193-194. Ida Walters, Ibid., states that cable systems in America were in the late 1970s growing at the rate of one per week. p. 111.

[30] George Murray, "Surviving the Video Revolution", Marketing, November 17, 1981. p. 27.

Unlike Canada, where cable easily found willing consumers in urban markets because it offered American signals, U.S. cable had nothing similar to offer the American urban market.[31] These, the biggest and richest, markets already had numerous conventional channels and needed something other than more of the same to attract subscribers and thereby make cable profitable. That something was pay TV.[32] It was pay-TV that got those that never considered taking cable to subscribe. Pay-TV was attracting a whole new cable audience in the United States. Further, even those already taking cable were enriching cable operators as they began to take services in addition to basic cable. This fact did not go unnoticed in Canada.

In 1968, the Federal Communications Commission, after considerable delay, decided that it would begin to licence regular pay-TV services, but it also decided to continue the restriction it had placed on the pay-TV experiments. These regulations remained intact until some were found illegal by the courts in 1975. In part, it was these events in the U.S. that would trigger demands for the introduction of pay-TV into Canada. From the beginning the CRTC tried to put pay television on hold, as it scambled to improve the broadcasting system. The Commis-

[31] CRTC, Op. Cit., 1980. p. 62.

[32] But this was only one of several things that developed to attract subscribers, albeit the most important. In the U.S. pay TV was used to describe most of what was carried across cable. This included sports channels, super stations, religious channels and the like, all which subscribers got as part of their cable package. For example, ESPN, a twenty-four hour sports network, sold itself to cable companies at only four cents per viewer. This cost was simply passed on to the cable subscriber in his monthly bill. He had no choice he got the ESPN channel when he subscribed to cable. See Pat Wadsley, "Is Pay TV the Future of Sports" Video, November, 1981, for a brief discription of ESPN and its competitors.

sion's mistake was waiting, by waiting it almost guaranteed that the system that would be adopted in Canada would be an imitation of the American. As well, other technological advances, such as home video recorders, would threaten the viability of pay services in Canada. If it had moved early, it was more likely that it could have been innovative and developed a system suitable for the Canadian reality. There would not have been the demands by the Canadian industry to adopt the American model, the one they identified with profitability. There would not have been the expectation of the Canadian audience that they would be receiving what their American neighbours got. Further by introducing a nation wide pay-TV network, Canada would have a jump on the Americans, and a fairly large market to back programming ventures. Programming which could have been sold to U.S. pay-TV channels which would soon be in desperate need of new productions. Of course, hindsight is a wonderful thing, but still the CRTC did move too cautiously and partly, because of this would in the end adopt possibly the worst solution.

3.3 EARLY COMMISSION DECISIONS

The first proposals for a pay-TV system were made before the Commission in 1970, but the CRTC decided to 'reserve' decision on them until pay-TV itself was examined. On October 3, 1972 "the CRTC announced that it was inviting interested parties to participate in determining the best method for a thorough examination of pay television services..."[33] The most interested parties were cable licencees. Such examination, it had been hoped, would lead to ways of making pay-TV an "integral part of the Can-

[33] CRTC, Report on Pay-TV, Ottawa, 1978. p. 8.

adian broadcasting system."[34] A number of pay proposals were made for experiments. It was argued that such experiments would better enable the Commission to discern if the proposed service would contribute to the objectives of the Broadcasting Act. The CRTC, however, delayed approval of any of these until it was certain that "such experiments would clearly demonstrate what benefits would accure to Canadian broadcasting and program production."[35]

The Commission decision on experimentation in Canada was a tactical maneouver, for, as the American experience had shown, it was doubtful that such experiments would, because of their small scale, clearly demonstrate any benefits to these sectors. Such experiments would, however, test different aspects of the marketing of pay-TV, such things as the various models of pay, means of deliver and perhaps its potential popularity. By demanding that experiments demonstrate how pay-TV would aid the production of Canadian programmes, was to reject experimentation altogether.[36]

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[34] CRTC, Position Paper on Pay-TV, Ottawa, February, 1975. p. 3.

[35] CRTC, Annual Report, 1972-73, Ottawa, 1973. p. 2. The Commission was doing exactly the same thing that the FCC had done fifteen years early: put off a decision while it studied the problem. Although a Quebec cable company ran an experiment that year. Called 'Selecto-Vision', it displayed a list of programmes on one cable channel and subscribers were encouraged to register their choice of want should be shown. This was not a case of paying for an additional service, but simply allowing the viewers additional choices.

[36] As experiments in the United States demonstrated, their small scale made programme production prohibitively expensive, but it demonstrate a demand of sorts. Most experiments were slated for large urban areas like Toronto and Montreal, which appeared to the Commission as simply a means of gathering as much publicity for the experiments as possible. CRTC, Op. Cit., 1978. p. 8.

The main reason for rejecting experiments would be the fact that the Commission was not about to allow pay-TV to be introduced in the near future, and such experiments while proving nothing about the benefits of the service to the system, might raise the level of awareness of pay-TV, may prove that it would be profitable, and thus create greater pressure on the Commission, by the public and those who stood to gain financially from it, to allow its introduction. By not allowing experiments the Commission could always deflate the pressure to act by stating there was no proof that their was demand for the service or that benefits would result. for it to act. Unlike the U.S., where the main concern of the broadcasting regulatory agency was the question of the 'best' means to deliver the product to the TV viewer, in Canada, the CRTC's main concern was whether the 'ends' would justify the means. It not only mattered how something was delivered, but what was actually delivered. While the American Commission had only to be concerned how equitable pay-TV might be as compared to 'free' television and the financial impact it might have on it 'free' TV, the Canadian Commission had to consider these matters, as well as, the ramifications of pay television for the production and distribution of Canadian programming. Unfortunately the Commission took the easy route of delay, instead of taking the more constructive route of manipulating and moulding this service into something uniquely Canadian.[37]

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[37] Part of the Commission's hesitancy to deal with the question of pay television can be explained simply by the fact that the CRTC was overloaded with issues at this point and neither had the time nor the resource to deal with the matter indepth.

What the Commission did decide was that pay-TV must be integrated into the broadcasting system. Here was a chance to make cable operators more than just signal distributors. If given over to them, it might be possible to integrate pay-TV smoothly into the system by making the cable operators programme purchasers. The CRTC decided that when pay-TV was accepted it would like to see it "develop under the control of cable licencees as an integral part of the overall broadcasting system..."[38] In the Commission's thinking this would serve the purpose of further integrating cable into the broadcasting system. Cable, which could be considered a common carrier, was to the Commission and the Broadcasting Act a 'broadcasting receiving undertaking', and as such, would fulfill this role more adequately if it was to help other sectors of the system and itself purchase or produce programmes.[39] It would provide the cable industry with greater sources of revenue, thus better enabling it to 'pay' broadcasters for the use of their programmes, and thereby increasing the amount of money for Canadian productions. This may have also represented a 'carrot on a stick' to the cable industry, who were putting the most pressure on the Commission to act. The CRTC was saying to the cable industry that while it was not going to introduce it now, the industry should take consolation in the fact that when it did come they would control it; and that, if they wanted to prove that they were

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[38] CRTC, Op. Cit., 1973. p. 7.

[39] See CRTC, Canadian Broadcasting: A 'Single System': A Policy Statemetn on Cable Television, Ottawa, July 16, 1971, for a discussion of the intergration of cable into the system. Such a policy could be seen as fulfilling the Broadcasting Act's goal that the braodcasting sector be a 'single system'. Giving cable a programming function would be a step towards that philosophy.

worthy of controlling it, the industry had better start demonstrating their worth. The Commission had hoped that the cable industry would voluntarily pay compensation to Canadian broadcasters for the use of their programmes; this had yet to be realized in any major way.

3.4 A POSITION PAPER

Pay-TV was not ignored over the next few years, there were still demands for the CRTC to deal with it in a more substantial way.[40] In February, 1975, the CRTC released its Position Paper on Pay-TV. Again, the Commission rejected pay television as inappropriate at that time, and stated that before pay-TV could be introduced "public consideration of a number of major concerns" would have to be undertaken.[41] The CRTC worried about the effects of fragmentation, siphoning and increased foreign material in the system. These were of particular concern, as the system was still adjusting to other initiatives undertaken by the CRTC.

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[40] CRTC, Position Paper on Pay-TV, February, 1975. p. 2. The Commission put the increased interest in pay-TV down to:

1. growth in public demand for more programming choices,
2. an increased irritation with advertising on commercial television,
3. available distribution systems: cable and UHF frequencies,
4. the decreased reluctance of producers to make their products available for use on pay-TV, and
5. the decreased number of motion picture theatres.

The CRTC ignored the most obvious cause, at least among cable operators, the U.S. experience.

[41] Ibid, pp. 3-4.

As well, the Commission was awaiting the outcome of such things as Bill C-58, which would prevent advertisers from writing-off for income tax purposes the cost of placing commercials on Amercian TV stations. Such legislation, it was hoped, would make for a healthier broadcasting system, one which could better withstand the shock of further innovation.[42]

While the Commission understood that fragmentation of viewers was the likely result of any new service that was introduced into an area, the CRTC wanted to ensure that it would be as little as possible. The fragmentation caused by pay television was likened to cable (and therefore seen as a great threat), because of its heavy dependence of foreign, that is, American, programming. Not only would the audience fragment, but it would do so to watch more American movies and other U.S. programming. This meant that to be acceptable, not only did pay-TV have to be benefical to the entire system, but it would have to attract Canadian viewers to Canadian programming.

While the Commission recognized that pay-TV "might present potential new opportunites for development of Canadian broadcasting and programme production industries.",[43] it was still uncomfortable with a service which might in fact have negative effects. Canadian private stations, as well as the CBC to some extent, depended on advertising revenue for survival. These revenues were based, for the most part, on audience size. The introduction of a new channel decreased the number of audience members viewing any one channel at any given time. The Commission

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[42] The legislation was designed to repatriate commercial revenue that Canadian companies spent advertising on American border stations.

[43] Ibid. p. 3.

was concerned that the introduction of pay services would threaten Canadian stations as the audience levels fell to unprofitable levels. There was a dilemma with fragmentation. If the CRTC was going to licence a pay-TV service in Canada, the Commission expect it to add to the Canadian programming industry or to conventional broadcast production or to both. To have done so, required that it make money. It therefore needed to be popular with its subscribers, so that they could feel justified spending their money on the service. However, popularity among the masses meant fragmentation of 'free' TV's audiences and thus threatened their ability to produce Canadian programmes.[44] The more successful pay-TV was the more likely it would garner a larger share of the audience, but the more money it would have to spend on Canadian programming. Thus a dilemma was developing for the Commission; a successful pay-TV service might threaten the conventional broadcasters who produced Canadian programming and local programming. But if pay-TV was to contribute something to the broadcasting system, either by reinvesting its profits in Canadian production or producing its own programming, it would have to be fairly successful, that is, popular.[45] The Commission offered no solution to this problem nor did it offer any standards of what was considered an 'acceptable' amount of fragmentation.[46]

[44] It is wondered if Canada would not have been served better though by a pay-TV service rather than a third network.

[45] Since most pay services are built around the concept of repeats, their actual threat to conventional TV stations may be limited. Pay TV, especially light entertainment pay that depended on feature films for most of its schedule, tended to repeat programming several times in order that all subscribers would get an opportunity to see them. Thus it was assumed, a pay channel would cause less fragmentation than the introduction of another conventional commercial channel.

The movement of conventional TV programming to pay service is known a 'siphoning'. One of the strongest arguments against pay-TV had been the threat that such a service would result in the most popular programmes then received 'free' on conventional television being purchased by pay TV and seen by a privileged few. This argument was based on the idea that pay TV could outbid conventional TV for programme rights, because any increase in cost could be passed on to the subscriber. (A dubious piece of economic analysis.)

In Canada this meant a fear that relatively inexpensive American programming would be siphoned to pay-TV. American programming, because of its cost and popularity, produced for conventional braodcasters large profits, profits which were suppose to be used to produce Canadian programming. Without American shows private Canadian station could not survive, it was argued, and could not produce expensive or popular Canadian content.[47]

If popular shows were 'siphoned' from conventional television then in all likelihood they would take with them most viewers of the show who are also subscribers. Thus increasing fragmentation, which in turn decreased the revenues of free TV, which in turn restricted them from making competitive bids for popular shows. Free TV ended up with the worst of what was avaiable with only the poor watching. The well-to-do were the most attractive to advertisers. If they were all watching pay-TV,

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[46] The Commission stated that "some fragmentation of audience must be accepted as the overall system develops. But the Commission would wish to assure itself that this be as limited as possible." CRTC, Op. Cit, 1975. p. 4.

[47] Something they rarely did anyways.

then conventional commercial TV would become less attractive to advertizers. Regulations were suggested to prevent this.[48] But even without them it was questionable whether people would be willing to pay for programming they already receive free.[49]

It was expected that to be at all popular, pay television would have to have a large number of popular American feature films; or at least all the private sector applications had indicated such. The question was; would a pay service's flood of American programmes be acceptable if it meant new money to invest in Canadian productions? One wonders why the Commission felt that it was necessary for pay, in order to be successfull, to carry an overabundance of U.S. fare.[50]

The Commission's enthusiasm for development of pay-TV under the auspices of cable had, if not disappeared, appeared to have cooled. The paper stated that despite the Commission's concern and suggestions, the

[48] These regulations borrowed from similar U.S. regulations. CRTC, Op. Cit., 1975 p. 13.

[49] The argument was not very persuasive in the Canadian context. Since most of popular, money-making programmes on Canadian TV were American, and since most Canadians who subscribe to cable can see most American networks for the price of cable, subscribers were unlikely to be willing to pay more to see the same programmes on a pay service. This argument was much more believable in the U.S., but even there it has yet to be proven true. Canadian sports seemed to be the Commission main concern, and the regulations reflected this.

[50] By making such an assumption, the Commission seemed to indicate that Canadians were not willing to pay for Canadian programming (or, at least, directly out of pocket) and were unwilling to support a truly Canadian system. No study at that time had been done to support such "conventional" wisdom, although there seemed to be historical evidence of conventional broadcasting and feature industry to support such an assumption. It was just assumed it had to be much like the American services. Already, the idea of pay seemed to hinge on the American model of a pay per channel movie service as a private profit-making entity. Why this was so, was never really explained by the Commission.

cable industry had done little to achieve the desired revenue flow from itself to broadcasters and programme producers.[51] Thus the Commission inferred that under such circumstances the cable industry would likely do the same thing if it had control of pay-TV. In order to fulfill the goals of the Broadcasting Act, the Commission decided what was required was a policy

> including an economic strategy within the Canadian broadcasting system itself, which would ensure increased, diverse Canadian programming of the highest quality. It therefore seemed logical to support and strengthen those elements of the Canadian broadcasting system which are now and traditionally have been involved in programme production.[52]

Partly too, because of fears of siphoning, the Commission was now favouring a company of broadcasters and producers be established to run pay services in Canada. Broadcasters would, it was assumed, protect their own interests by safeguarding against siphoning of programmes now available across their stations and networks. Cable would be relegated to the task of leasing channels to such a national operator. While moneys from pay would be used to improve Canadian content on free TV, pay-TV itself was expected to carry a fair share of Canadian production. The Commission envisioned pay-TV would not only deliver feature films, but ballet, theatre and opera, thus adding to the diversity of programming available.[53]

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[51] CRTC, Op. Cit., 1980. p. 8.

[52] Ibid. p. 9.

[53] Fifthteen percent of gross was seen going towards Canadian productions. At a penetration rate of 15% of all cable subsribers and at a retail cost of six dollars, $3.34 million was expected for Canadian production. If 25% of all cable subscriber took the service, about $5.4 million would go to production in Canada. While not a pitance, one wonders whether this was substantial enough to get the industry

The CRTC considered three possible structures for a pay company. As well as one national operator delivering its package in French and English across the country, a number of regional operators or even pay companies in ever major city were considered. In all cases the operator would be a monopoly (whether, it be a national, regional or local monopoly) because, the Commission argued, this would cause the least disruption to the broadcasting system.

The Commission wanted to ensure that a balance between Canadian and foreign material existed on any pay-TV system. While the CRTC stated that in the initial stages American material would be "necessary for its success", pay television would still be required to fulfill minimum Canadian content requirements. Further, funds would be allocated for the purchase and production of Canadian programmes, but the Commission warned that pay-TV would not be allowed to become like the motion picture industry in Canada, where access to distribution was very limited for those outside the system. (The CRTC could have made the same point about broadcasting in Canada; rarely did programmes other than those produced by the stations and networks themselves get on the air.) The CRTC suggested that producers must "be prepared to meet foreign competition and to encourage the development of pay television as a means to further their own interests."[54] Without specific power over the Canadian production industry, a suggestion was about all the Commission could make, but one it hoped those with the power might do something to

on its feet. CRTC, Annual Report, 1974-75, Ottawa, Information Canada, 1975. p. 5. Why twenty or thirty or for that matter ten percent was not chosen was never adequately explained by the Commission.

[54] Ibid.

change.

The Commission was concerned that any company that it licenced have the 'secured financial resources' and 'practical' arrangements for management and operation. These were the same criteria that the Commission considered when licencing private broadcasters. What these criteria demonstrated was the Commission's belief that sound business interests made good broadcasters. What these criteria had proven in the past was that good businessmen don't make good producer of Canadian content. It was not odd that the CRTC never even mentioned the possibility of a public corporation, for in its mind, the Commission, saw pay-TV as the savour of the private broadcaster. It respresented a source of new revenue, so they could more effectively live up to their commitments to Canadian programming.

The Commission's position paper was designed to establish its concerns and indicate were it saw pay-TV going in the future. In June, 1975, the CRTC held hearing to discuss its position and hear interested parties' reactions. The CRTC received forty briefs and heard fifteen representations at the hearing.[55] The representative of private broadcasters in Canada, the Canadian Association of Broadcasters (CAB), feared that further fragmentation would be caused by the indiscriminant importation of American programmes, which would cause them to lose rev-

[55] Of them six were from broadcasters and were generally against the introduction of pay-TV; fourteen were from cable operators and were generally favourable; seven were from the Canadian production industry and were general neutral and finally thirteen briefs were from public interest groups, including the Canadian Broadcasting League, most noting the lack of public enthusiasm for pay TV. CRTC, Annual Report, 1975-1976, Ottawa, Information Canada, 1976. Also see Sheri Craig, "CCTA Puts the Heat on for Pay-TV Go Ahead", Marketing, June 16, 1975. pp. 3-4.

enue and thus be unable to fulfill their conditions of licence. Further, pay television would siphon popular programmes from conventional TV causing the quality of conventional TV to fall.[56] Borrowing from its American compeers, the Association argued that pay-TV could outbid broadcasters for programmes, thus depriving the poor and those outside urban areas of popular programming.[57]

The CAB also questioned the public demand for pay and suggested that pay TV was 'premature', urging that it be delayed at least five years. If and when it was to be introduced, off-the-air broadcasters should control it because "control by broadcasters would provide a much better opportunity to ensure a flow of funds to the direct benefit of Canadian broadcasting and programme production industries..."[58] Such control would be in the form of a company separate from the present networks or stations, and would distribute a national pay-per-program service.

At these hearings it was mainly the cable interests which were 'eager' to see the concept developed and therefore offered proposals "which were to help Canadian production and hurt as little as possible the off-the-air broadcasters."[59] This support for the introduction of pay tele-

[56] CAB, "Brief of the CAB in Response to the Policy Paper on Cable Television by the CRTC", May 16, 1975, Ottawa. p. V1.

[57] Ibid quotes a FCC report dated April 4, 1975, "The broadcasting interests conclude that Pay TV would have more money than television stations or television networks to purchase programming and being creates of a competitive economic system, would inevitably purchase much of the best programming now broadcast on free television, and leave free television only with what was left over." also see Ibid p. V3.

[58] Ibid, p. V.5

[59] The cable industry "was eager to see the concept developed immediately and offered proposals as to how it could help Canadian production

vision was based more on the fact that pay-TV in the United States was proving to be a success, than any noble notion of the good of the broadcasting system. The cable industry was looking for new ways to foster its own growth as cable penetration reached its saturation point, and they believed that there was a demand for such a service among both the public and Canadian producer seeking outlets for their productions.

The Commission did not accept the need or the benefits of pay-TV in a policy statement released in December, 1975 and suggested that broadcasters, programme producers and cable interests "must work together to effect an integrated use to assist Canadian production"[60] before the Commission would consider introducing it.

Perhaps more importantly the Commission realized that it had thrown a lot at the system in the last seven years. With tougher Canadian content regulations, the widespread introduction of cable and the licencing of Global TV in Ontario and independent stations throughout the West the CRTC "believe(d) that the Canadian broadcasting system should have the opportunity to adapt to and absorb all the present policies and developments" before pay-TV would be considered.[61] It was a mistake perhaps to insinuate that a system that could not live up to design at the present, would do so in the future. Unfortunately technology would not wait for

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and at the same time not create harm to present off-the-air broadcasting system." CRTC, Annual Report, 1975-76, Ottawa, Information Canada, 1976. p. 5

[60] Policy statement quoted in Ibid. However, the Commission said it was willing to allow pay-TV to be delivered to hotels on a case-by-case basis.

[61] CRTC, Policies Respecting Broadcasting Receiving Undertakings (Cable Television), December 16, 1975. p. 42.

those unprepared to adapt and the CRTC did not encourage the system to improve, as much as simply protected established interests.

It is interesting to note the subtle change in the Commissions position with regard to who should control pay-TV in Canada. While in its position paper the CRTC had rejected the cable interests' participation in pay-TV and had championed the cause of broadcasters and programme producers, it now had all three happily working together in a marriage of convenience. Perhaps the broadcaster's self-serving responses during the hearings, reawoke the Commission's fear that the broadcasting interests might become to powerful and be able to ignore the Commission and do as they please.[62] By creating a partnership of what was ineffect rival elements in the broadcasting system, the Commission seemed to be hoping that in the process of looking out for their own best interests they would keep the other guys in check, thus avoiding any excess by any of them. An interesting way to run a broadcasting system.[63]

Most importantly the CRTC thought that it had dealt with the question thoroughly enough now, (although the Commission claimed it would continue to study pay-TV)[64] that it would not be bothered with it again for years. Although this would not be the case, by cloaking pay-TV in the mantle of reluctant saviour, the Commission was able to say not yet, but

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[62] A fear the Commission had earlier, when the broadcasters wanted control of cable. See "Lobbyists Stalk Bureaucrats to Keep Up on Policy-Making", Globe and Mail, October 27, 1980. p. 9.

[63] This can be seen as an attempt by the CRTC to integrate the various elements of the Broadcasting system, thus moving towards the goal of the Broadcasting Act for a 'single system'.

[64] CRTC, Annual Report, 1976-77, Ottawa, Minister of Suppy and Services, 1977. p. 6.

when it came everyone in the system would benefit, thus hoping to buying time for the system and buying off both extremes; those most opposed to it and those most favourably disposed towards it.

3.5 MEANWHILE SOUTH OF THE BORDER

The cable interests demands for the introduction of pay-TV were based mainly on the perceived success of pay-TV south of the border. Even with fairly tight restrictions, pay television appeared popular and profitable. Both the proponents and opponents of pay-TV kept abreast of the events in America, for what was done there would in all likelihood effect what happened in Canada.

The FCC's postion on pay television seemed to be summed up in the following statement. Its

> mandate to act in the public interest required that (it) strive to maintain the public's ability to receive the informational and entertainment programming now provided by conventional television at no direct cost,...[65]

The FCC had laid down several conditions for the introduction of pay-TV. Restrictions on such things as the age of the movies to be shown, commercial messages and the number of actual hours that people would pay for.[66] Of the regulations, a number were found illegal when challenged

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[65] William Jones, Op. Cit., p. 484. FCC jurisdiction over cable was based on the potenetial ability of cable to compete away TV stations profits and thereby affect their ability to do public service programming.

[66] The FCC required pay services to carry at least twenty-eight hours of free television per week. This was designed to place a burden on the pay channel similiar to that shouldered by local stations. Local stations provided local news, public affairs, specials and the like, few of which made much money for the station.

before the courts.[67] The House Committee on Interstate and Foreign Commerce which two decades earlier tried to prevent the FCC from allowing pay-TV experiments, now called on the FCC to lift all restrictions on pay services. The Committee maintained that the FCC regulations were "designed to ensure that cable television remains an unthreatening auxiliary to over-the-air television".[68] The Anti-Trust Division of the federal Department of Justice stated that the FCC had failed to demonstrate the necessity of protecting conventional television.

The first company to have recognized the potential home market for pay TV and to take advantage of it successfully was a Time-Life subsidiary called Home Box Office (HBO).[69] HBO was the company that was so intriguing Canadian cable companies. The same year the FCC lifted its freeze on cable, HBO began selling its services.[70] It was different from most of the earlier pay TV experiments in that it was not a pay-per-programme system but a pay-per-channel system, that is, subcribers paid for a whole channel of programmes on a monthly basis and were free to watch as many or as few of those programmes as they wished. It ran

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[67] William Jones, Op. Cit., p. 19.

[68] Robert H. Stanley, Op. Cit., p. 75. These were the same regulations that it helped bring into effect in 1959. Congress initiated hearings on the matter in 1976. But it was the courts that really made the difference. In 1977, a court decision freed up pay-cable. And in 1979, the U.S. Supreme Court upheld a lower court decision that struck down cable's local programming and public trust obligations. The FCC removed the remaining restrictions form cable and began licencing over-the-air pay-TV in 1979. Ida Walter, Op. Cit., p.110.

[69] Canadian Radio-television and Telecommunication Commission, Op. Cit., 1978. p. 6. Hotel pay-TV began in the U.S. in 1971 by Trans-World Communications (TWC).

[70] HBO began in November, 1972.

twelve to fifteen new movie titles a month, a few of which were fairly new (that is, just out of theatre distribution). In addition to movies, it ran sports and specials. It was on about eight hours per day, 250 hours per month. Repeats of programmes made up a large part of the monthly schedule.[71]

Home Box Office was different from early pay-TV experiments.

> HBO from the beginning has thought of its operation as one to be jointly participated in by the cable system and HBO itself. This is 180 degrees away from the concept of other early pay ...operators really took away all the responsibility for sales, marketing, promotion, hook up, maintenance, etc. and stood alone where you have to do everything yourself. HBO...licences, purchases or originates and schedules programming and then supports the local operator in the sale and distribution of the service in his own surrounding.[72]

The regulations installed by the FCC had not hurt HBO expansion.[73] There were demands for the service HBO supplied, the only problem was the ability to get it to market. In January, 1975, HBO had only 60,000 subscribers, in December of that year it had over 280,000.[74] This dramatic increase was due to the fact that HBO began to satellite its programming in the fall of 1975, thus establishing itself as a national network.[75] By the end 1977 HBO had reached the magic figure of two mil-

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[71] T. Onosko, Op. Cit., p. 43.

[72] Gretchen Frank (national accounts manager of HBO), "Speech to CCTA Convention" as reported in Cable Communique, 1980 Convention Issue, p. 13.

[73] Regulations, such as movies ten years and older, actually helped HBO. These features proved very popular and HBO discovered an untapped market. Ibid., p. 72

[74] In the first year HBO had a penetration rate of 25 per cent of their market. By the end of the second year this had double to 50 per cent. Canadian Broadcasting Corporation, Pay-Television and Canadian Broadcasting, March, 1980. p. 23.

lion subscribers (or less than two per cent of the television homes in America), the point at which it could start financing its own productions.[76] In 1980 of the nearly eight million pay-TV subscribers, HBO had about five million; being first was a great economic advantage. HBO sold its programming to cable companies at about $4.25 per subscriber per month, the cable companies, in turn, usually double this.[77]

HBO's success led to a proliferation of pay services, including diversification into cultural and specialized pay channels. The American television networks even got into the act.[78] It was this success and this model of pay television that Canadian entrepeneurs took to heart.

[75] "The Rise of American Pay-TV", The Economist, July 29, 1978. p. 62.

[76] Robert H. Stanley, Op. Cit., p. 73. Stanley writes that, "The funding necessary to underwrite the high cost of program production and rights will require an estimated subscriber base of two million homes." HBO did not show a profit until it had over five million subscribers.

[77] "Slaughter Addresses B.R.C. on Home Video and Pay TV", Broadcaster, p. 10

[78] CBS had started CBS Cable a cultural network, but it folded in late 1982 after losing something in the order of $20 million. Showtime was an all movie channel with about one million subscribers and is the second largest pay-TV service. HBO created a subsiduary called Cinemax, an all movie channel that showed movies based on demography on its audience. For example, women's movies during the day, children's and family movies in the evening, action-adventure films at night. In the early 1980s, a Cincinati experiment was underway to determine what kinds of television extras people were willing to pay for. It offerredr the subscriber 36 channels, including HBO, Showtime, Front Row (another movie channel), an all black network, a 24 hour news channel a children's channel, a 24 hour religion channel, X-rated movie channel and three more movie channels. Plus it was an interactive system, that is, subscribers could shop, bank and the like through the service. It has been in operation since 1977, and of a potential 100,000 subscribers, a little less than 30,000 had signed up in 1981. See Howard Blumenthal, "100 Cable Channels - Public Excess", Video, November, 1981. Also see Edward Meadows, "Why TV Sets Do More in Columbus, Ohio", Fortune, October 8, 1980, for another example of numerous channels and their functions.

Strangely it was also this model that the CRTC and other critics of pay TV feared. Their was nothing intrinsicly desirable about this model; it was not so much pay television that the Commission had had a distaste for, but this model of the service. Why then was the CRTC even considering it? Why were new, different models of pay not being developed or considered seriously by the Commission? While pay-TV was recognized as inevitable in the evolution of the broadcasting system, the U.S. system need not have been the model adopted in Canada.

3.6 CHANGE IN POLICY

The year following the CRTC position paper the cable interests, viewing the successfull expansion of HBO in the U.S., continued to demand that positive action be taken on the question of pay-TV. Adding to the urgency of these demands was the fact that unlicenced pay-TV services had began opertions in high rises in Toronto and thus threatened to usurp cables self-preceived role.[79] In response to this threat, two Toronto cable companies announced they would soon be offering their own closed circuit pay-TV service.[80] Harry Boyle, then chairman of the CRTC, summoned the cable companies to his office and after stated that they were "on the way to an accomodation."[81] In the end nothing came of these

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[79] See Jack Miller, "CRTC Seeks to Control High Rise Pay-TV", Toronto Star, April 21, 1976. p. A22, and Jack Miller, "Cresent Town Pay-TV Service to Start Tommorrow with Movies", Toronto Star, April 30, 1976. p. E10.

[80] "Cable Firms to Offer Pay-TV at $1 a Film", Toronto Star, April 26, 1976. p. C1.

[81] Jack Miller, "Ottawa Considers Opening Door", Toronto Star, April 30, 1976. p. E10.

threats.

Such a closed circuit pay system, if successful, could be expected to expand and might have threatened the entire broadcasting system, or at least, federal control of that system. The Minister of Communication, Jeanne Sauve, noted that "the continued federal regulation of the broadcasting system, including the regulation of pay television is a crucial factor in the coherent development of program services to the entire Canadian viewing public". While self-congratulatory, the Minister was suggesting that if something was not done, pay television might slip through of the Commission hands.[82]

In late April, Boyle had appeared before the Canadian Broadcasting Association to give a speech and a warning. Boyle lamented the fact that the broadcasting industry had not taken up the "challenge" of pay-TV and warned that unless broadcasters got into pay-TV soon they would be left behind.[83] This seemed to indicate that the Commission was experiencing a change of heart on the introduction of pay-TV. Boyle reiterated the Commission's desire to see broadcasters involved with pay television. At the very least, Boyle argued, such involvement would see profits from pay "compensate for any loss of audience."[84] And the money could be used to produce more and better Canadian content. Both Boyle and Sauve were keeping the question of pay television in the public spotlight, something which suggested that pay-TV may be in for re-evalu-

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[82] Minister quoted in CRTC, Annual Report, 1976-77, Op. Cit., 1977.

[83] "Get Into Pay TV Now Broadcasters Told", Toronto Star, April 27, 1976. p. A13.

[84] Jack Miller, Op. Cit, April 30, 1976. p. E10.

ation.

It appears that the Minister of Communications and the Chairman of the CRTC had had several meetings, in the spring of 1976, on the subject of pay-TV and among themselves had agreed that it might be best to introduce it soon. The Commission had stated, not six months earlier, that this was not the appropriate time to introduce pay services. Why the change in position? Partly it might be explained by the closed circuit pay television services which were developing. This threatened both the CRTC's jurisdiction over the service and, if they were popular, could destroy the economic foundation of the broadcasting system. They would be outside the system, and therefore would not need to contribute anything to it. The best way to deal with this was to beat these 'illegal' operators to the punch. A national system of pay-TV would make apartment services less attractive.

The cable interests had threatened revolt if the Commission did nothing; while unlikely, such threats put pressure on the Commision to act. U.S. pay-TV was growing by leaps and bounds. It was only a matter of time until that popularity filtered across the border and Canadians began to demand access to to pay-TV , Canadian or otherwise. (Indeed, it was only a matter of time till American off-the-air pay-TV filtered across the border.) If the CRTC waited until this time, it would be hard for it to adopt anything but the American model of pay-TV. Early action meant a chance to create a pay-TV model that was the most suitable for Canada.

Finally, and most importantly, Sauve and the federal government wanted to move on the question. First of all, to head off the provinces

that were claiming control of pay-TV and, second, to introduce a new source of revenue to be put to work producing Canadian programming. Revenue that the system badly needed, but which the federal government was unwilling or unable to supply on its own.

The CRTC then seemed to be convinced that pay-TV could be introduced at that time, or, at least, was convinced that it had to go along with the federal government.[85] On June 2, 1976, Sauve made the announcement that pay-TV was inevitable and that the federal government and the CRTC were going to move on the issue. Harry Boyle, in a speech delivered at the same CCTA convention as Sauve delivered her pay-TV announcement, stated:

> The Minister's statement has a national significance well beyond pay-television. It should be considered, as the Minister has enunciated before, as the beginnings of a national policy of "cultural security" for Canada. We are, accordingly, pleased that Mrs. Sauve sustains those deep concerns that pay-television be introduced in a harmonious way with the existing elements of the broadcasting system.[86]

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[85] Clive Baxter, "Ottawa May Take Over Pay-TV - Not Fight It", Financial Post, May 15, 1976. pp. 1 and 4.

[86] Harry J. Boyle, "Premuim TV for Canada: A Partnership in Production", Cinema Canada -- Special Edition on Pay-TV, August, 1976. pp. 8. What was this national policy of "cultural security"? Had Boyle been led to believe by the minister that pay-TV was the first step on the road to a substantially revamped broadcasting system in Canada; including legislation that would fulfill many of the Commission's recommendations to the government? It appears that the Minister of Communications had in effect outlined a new 'era' of communication to Boyle which included pay-TV. Clive Baxter, Ibid, claims that their were extensive plans made. And Boyle was promised something along these lines: a new company jointedly owned by CBC, CTV and Global would be created to run pay-TV in Canada. They would purchase U.S. movies and some U.S. network programs and sell it to subscriber for $8 per month. Fifty per cent of the gross revenue would go to promotion and operating costs; twenty percent to administration and promotion;thirty percent would be profits, about $45 million a year. Of this ten percent would go to the cable companies carrying the service and the rest to a holding company to stimulate television produc-

It is impossible to say what led to the Commission's reconsideration of the issue, but it is perhaps obvious from later events that the Commission was under pressure from the Department of Communications and its minister to act. It was also under the impression that more was to be forthcoming from the government than actually ever delivered. It is likely too that the Commission might really have believed its own rhetoric; that pay-TV could be introduced in such a manner as to benefit all. Boyle seemed to have dropped the lugubrious tone with which the he had earlier described pay-TV and had begun to proselytise those that doubted its value.

> To allow an opportunity to slip by to convert technical systems to a national purpose, a conscious and dedicted restructing of national broadcasting and cultural system, would be inexcusable.[87]

Did Boyle truly see this as the first step for a renewed broadcasting system?[88] Whether or not Boyle did, he can be seen as going along to ensure that pay-TV fit into CRTC policy, and to make the best out of a questionable situation. Pay-TV could be seen as a way to reinforce existing CRTC policy of increased revenues for broadcasters, so that they

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tions. The second phase would be a 'gateway', with the new joint company purchasing all U.S. network progamming, and using it to programming Canadian cable channels. This seems a bit extreme, but something like this was evident in Boyles speech of 'cultural security.'

[87] Ibid. Before a House of Commons' Standing Committee, Boyle stated that "...we have an opportunity now in the introduction of pay television to set up a system that is reasonable and sensible." Apparantly indicating his and the Commission willingness to proceed with the introduction of the service. Canada, House of Commons, Standing Committee on Broadcasting, Films and the Arts, No. 54, 1976-77, May 25, 1976 1st Session, 30th Parliament. p. 54:13.

[88] Such editorials as "Pay-TV Can Do a Lot For Canada", Toronto Star, June 4, 1976, did.

could produce more and better Canadian programmes. The decision to introduce pay-TV was in many ways out of the Commission's hands anyways. The federal government had every right to make the decision to introduce this new service, but the CRTC was under no legal obligation to follow it. However, the secret discussion between Boyle and Sauve must have made the Commission feel it had little choice but to go along with the Minister. The Commission and Boyle had left the door open, if they could not stop pay-TV they could delay it. While Boyle had praised Sauve's concern that pay television be helpful to the broadcasting system, he had also inferred that a 'harmonious way' of introducing it was a prerequisite for its consideration.

As a result, the Commission was 'requested' by the federal minister to call for submissions concerning the "development of a pay-TV agency".[89] The 'good' or 'bad' of introducing pay-TV had been forfeited for the question of how best to introduce. In many ways this was realistic for pay-TV was inevitable. The popularity of such services in the U.S. and technical change guaranteed this. No longer was the question "should it be introduced", but it became "how was it to be done". The CRTC called for submissions on the "form and function of a organization institution or agency", for the purpose of pay-TV. The deadline was set for September 1, 1976, but this was later extended a month, as the Commission's fresh enthusiasm, was not matched by the preparedness of those submitting briefs. Sauve had planned to examine the proposed structures and once she had found an appropriate one, the CRTC would hold licenc-

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[89] CRTC, Op. Cit, 1977, p. 6.

ing hearing to find a suitable applicant.[90] The minister was making policy, while the CRTC would impliment it. Unfortunately the other players in the debate refused to cooperate. In fact, over 100 submissions refused to simply go along with this coup,[91] lambasting the Commission for not holding public hearings on the question of the timeliness of the introduction of pay.

Almost all submission called for public hearings on the introduction of pay-TV, very few addressed the question of form and function. Only the cable interests appeared confident that pay-TV would be beneficial to the system and were sure substantial revenues would flow to Canadian programme producers.[92] Cable interest also suggested that to wait meant the threat of U.S. off-the-air pay-TV invading Canada and undercutting any domestic service.

As a result of the negative submission the CRTC, after much confusion and delay, decided that it would hold public hearings.[93] They were

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[90] Indeed, according to Boyle the Commission was quite prepared to take on the task for it had "been, for quite sometime, developing plans in anticipation of how to handle pay television." Canada, House of Commons, Standing Committee on Broadcasting, Films and the Arts, Op. Cit., p. 54:10.

[91] Patrick Howe, "Cable Industry Forms Company to Begin Introducing Pay-TV", Globe and Mail, June 5, 1976. Sid Adelman, "Pay-TV Bombshell Angers Jeanne Sauve", Toronto Star, October, 1976. Sheldon E. Gordon, "Sauve Keeping Her Hand on the Pay-TV Knob", Financial Post, July, 1976. p. 14. Douglas Mephan, "Pay-TV's Videotape Jams", Financial Post, July 2, 1977. p. 5.

[92] CRTC, Annual Report, 1976-77, Ottawa, Minister of Supply and Services, 1977. p. 6.

[93] The Minister of Communications did not want the hearings, but both the CRTC and John Roberts, the Secretary of State, did. See Barbara Byers, "Pay-TV Could Save the Film Industry", Broadcaster, January, 1977.

scheduled for June, 1977 and were established to discuss the 'form and function' of pay-TV, not whether it should be introduced. But almost all interested parties would argue for the delay of pay's introduction and in the end they, rather than the government, would have their way.

The CBC[94] in its brief warned of the dangers to the broadcasting system that were likely with this proposed service's introduction.[95] The corporation argued that if the real concern was for more Canadian programming then it would be far more sensible to licence a second CBC channel in both French and English.[96] If pay-TV was going to be introduced, then the Coporation saw the need for the majority of its directors to be from the public sector. This was necessary, the CBC argued, in order to ensure that pay-TV carried out its intented role. Before the hearing Al Johnston, then CBC President, called for a five year moritorium on pay-TV to allow for some "breathing space"[97] until "Canadian programming has developed to a healthier state..."[98] During this time, Canada was to "specifically" design a pay-TV system that would make the maximum contribution to the whole broadcasting system.

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[94] Although the minister had hinted that the CBC would be represented on any company created to run pay-TV in Canada, this did not prevent it nor private broadcasters, who were promised similar representation, from rejecting pay television at this time.

[95] CBC, Annual Report, 1976-77, 1977, p.4.

[96] At this time, CBC-2 was seen simply as a channel repeating the best of the main service. Ibid and also see Robert Nielson, "Cold Porridge from the CBC versus Steak form Pay TV", Toronto Star, October 6, 1976.

[97] CBC, Pay Television and Canadian Broadcasting, A Submission to the Canadian Radio-television and Telecommunications Commission, 1980, p. 1.

[98] CBC, Annual Report, 1978-1979, 1979, p. 12.

Johnson pointed out a deficiency in all proposed pay-TV systems; their dependence on U.S. programming.

> Why in Heaven's name are we seriously considering rushing into Pay-TV, ...when clearly the industry proposals made so far are utterly dependent on American films and productions.[99]

And even though it had been rationalized that profits from pay-TV would be used to encourage Canadian production this in no way compensated from "the flood of increased American films and programs coming into Canada through pay-TV."

The CBC was not alone in its condemnation of the introduction of pay-TV at this time. The Canadian Labour Congress[100] comdemned the CRTC for ignoring the most important question: "Should Pay TV be introduced into Canada now?"[101] The Congress's answer to this question was no; "we do not think that Pay-TV is currently capable of playing a positive role in the Canadian broadcasting system."[102] The CLC argued that any commercial pay-TV service would consist mainly of U.S. feature films and sporting events. Economics and profits would dictate this.[103] Further, neither the private broadcasters nor (and especially) the cable operotars had

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[99] Al Johnson, Touchstone for the CBC, 1977, p. 22.

[100] The CLC's brief was submitted on behalf of the American Federation of Musicians, ACTRA, Canadian Actors Equity, the National Association of Broadcasting Engineers and Technicians and Unione des Actistes. This was the body of talent and technicians that was supposedly to beneifit the most from pay-TV.

[101] CLC, "Submission by the Canadian Labour Congress to the Radio-Television Commission on Pay-TV", Ottawa, Ontario, April 15, 1977. p. 3.

[102] Ibid

[103] Ibid. pp. 9-10. A commercial system also threatened the existing broadcasting system, by way of siphoning and fragmentation. See pp. 10-13.

demonstrated a commitment to Canadian production.[104] The Congress saw pay-TV as neither necessary nor inevitable, and suggested the Commission prevent its introduction. If it was necessary to licence such a service, the CLC would prefer it to be controlled by a public corporation rather than a private profit oriented one.[105]

While the majority of production industry representatives at the hearings were for pay-TV, such producers organization as the Council of Canadian FilmMakers (CCFM), were opposed to a pay-TV system based on the American model. It recommended the most imaginative model; a publicly-owned universal pay system. Under this plan all cable subscribers would get an extra channel as part of their basic cable package. Large amounts of money (most of the two dollars per month cable subscriber would be charged) would be spent on Canadian production, bought from independent producers.[106]

[104] Ibid. p. 14.

[105] Even in this case the CLC was not even all that keen on pay-TV, because such a company would be insensitive to the economic realities of the artistic groups. Pay-TV may feature artistic companies on pay-TV thus destroying their need for touring. A questionable objection; exposure usually increases attendance and demands for live performances of such companies. But the argument continued that it would be difficult to justify another public TV channel when CBC already exists. And questioned the 'right' of a public company to charge a fee for something that was 'public'. (Here the CLC forgets about Air Canada, CN and other crown corporations that charge money, yet supposedly fulfill some public good.)

[106] Sandra Gathercole, "CCFM: Pay-TV", Cinema Canada, No. 34/35, February, 1977. Also see Barbara Byers, "Pay-TV Could Save the Film Industry", Op. Cit., The CCFM suggested a five year phase in plan. In the first year a universal system would be established and over the remaining four years a pay per programme service would be introduced. This was also the first mention of the need for the system to support more effectively the independent producer. Not alot of support was given to the idea that pay-TV should be given over to the public sector. While the CCFM and other artist groups made this

Those that needed to benefit from pay-TV were ignored, the CRTC would change its stand on the introduction of pay, but not the model which it would embrace. It would be one designed to benefit the private broadcasters and to some extent, cable operators.

3.7 REPORT ON PAY-TV

The 1977 hearings and earlier briefs were the ammunition the Commission needed to reject pay-TV. The CRTC's Report on Pay Television did exactly that. In the Report the Commission stated that it was not possible, or at least desirable, to introduce pay-TV at that time. It stated that there were too many unanswered questions for it to recommend that pay-TV be given the go ahead. One of these unanswered questions was government policy.

> The need for the planning of a national policy of pay-television prior to its introduction by governments, departments and agencies is...paramount. Only if planning is carried out in advance can there be prior assurance that the potential value of pay television to private and public elements of broadcasting system Twill be realized.[107]

This could be viewed as a reprimand of the minister and her department, who seemed bent on the introduction of pay-TV with or without proper planning of the system. The Commission's call for clear and comprehensive policy was reminiscent of other calls the CRTC had made in the

preference known, none effectively organized a campaign, so that the Commission would feel pressured to deal with the issue in a substantive way. Graham Spry in an article called "Public Ownership in Pay-TV", Canadian Journal of Communications, Vol. 3, No. 8, calls for a publicly owned pay-per-channel system, but the idea of public ownership was not hotly debated and one wonders if it ever was seriously considered by the CRTC.

[107] CRTC, Report on Pay Television, Ottawa: Minister of Supply and Services, 1978. p. 37.

past; calls for the government to get its act together, to plan for the entire system and thus allow the Commission to do its job more efficiently. Since the Commission's first dealings on this subject, it had warned that the programme production industry, broadcasters and the like had to be prepared for the coming of the new service. The Commission could only make this plea, it had neither the powers nor jurisdiction to do all that was necessary to prepare the system. It was up to the federal government to help make such preparedness a reality.[108]

This was not the only reason the Commission saw pay-TV as impractical at that time. The overwhelming majority of brief it received and presentations it heard were against pay television and there was no perceivable public demand for such a service either.[109] Thus the Commission saw little support for the introduction of pay-TV. The broadcasting sector was especially vocal in its criticism of the introduction of such a service.[110] The broadcasters had not taken to the idea, even though

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[108] Canada, Department of Communications, News Release, Ottawa, March 14, 1978. Looking on the bright side Sauve stated that "(t)he CRTC has confirmed that; if carefully introduced and properly regulated, pay-TV could not only benefit the subscriber but contribute to the development of Canada'a creative and production capabilities." This was not really what the Commission wrote, and while she considered it important that the government develop a coherent pay television policy as soon as "practicable" such a policy was never forthcoming.

[109] A Gallop poll taken in mid-December, 1976, concluded that 48 percent of Canadians were not interested in pay-TV and a further 25 percent were "not too interest". Cited in Patricia Hindley, Gail M. Martin and Jane McNaulty, The Tangled Net: Basic Issues in Canadian Communications, Vancouver, J. J. Douglas, Ltd., 1977. p. 114. This was deceptive though, for the demand before and after a service is introduced is not always the same. It must be remembered that when television was first introduced, the vast majority said they were quite satisfied with radio and were unlikely to buy a TV.

[110] See CRTC, Op. Cit., 1978.

they were, according to the CRTC's version of reality, to garner revenues from pay-TV. To them this service represented a threat to their profits and argued, convincingly to the Commission, that any damage to their profits would inturn impede their ability to produce Canadian programming.[111] The CRTC, which for the last ten years, had built a protective cocoon around the broadcasting industry, was not willing to allow the introduction of a service that may damage what it had had a hand in building. The Commission had proof that broadcasters produced at least some Canadian content. Pay-TV represented an unknown, with unknown effects. It was perhaps logical and expected for the CRTC to protect what it had created. Further, the Commission did not seem impressed by what the proponents of pay had proposed. "Canadian programming appeared to be considered (by pay-TV applicants) more as a cost of doing business than as a valid objective of the Canadian broadcasting system."[112]

Even so, the Commission, remembering why it had originally established the hearings, did make recommendations on the form pay-TV should take once it was introduced. It had examined three models of pay television. These different models of pay TV hinged on what the consumer actually had to pay for and how much discretion the user had in taking the service. There were three types of pay television considered: pay

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[111] Global Television wanted to start a pay-TV system that would show highly specialized Canadian made programming for a small select audience, which would do little to fragment the mass audience it depended on. See "Pay TV Issue Seems Headed to Politicians", Winnipeg Free Press, June 18, 1977. p. 13.

[112] CRTC, A Review of Certain Cable Television Programming Issues, March, 1979. p. 6.

per channel, pay per programme and universal. Each model did not necessarily exclude the others, nor did features of one necessarily preclude features of the other.

Pay per channel television was possibly the best known type of pay-TV. It was most aptly called the American model, being the most popular form of pay in the United States. The subscriber to such a service would pay a monthly rate in return for an extra channel or channels of programming. For this monthly fee, as with a regular cable fee, the user can access any or all of the programming offered on those channels without extra cost. Once paid for, the channel was available to the subscriber at any time without the cost increasing. As such, the per-channel pay-TV becomes like a regular channel to be viewed any time it was on the air, the major difference being that, if it did not satisfy, it could be cancelled.

Pay per channel allowed for greater financial stability for the company involved. Huge sums of monthly income may have guarantee a secure financial base for a business. It may give the company more money to work with in order to buy or produce the 'best' programmes possible. It was more reliable at generating revenues than, say, pay per programme TV may be, because it did not have to depend on whether or not the subscriber actually watches a programme. (Although a per channel pay service would have to worry about whether subscribers were not watching, for if they were not it, was likely that they would soon not be subscribers.) Because of the wide and secure financial base, it has been argued, the channel pay television would produce expensive and diverse programming, but this did not to seem to happen that often in practice. But since per channel pay must endear the whole channel to the subscri-

ber, it appears, if the American experience was any indication, that any per channel model would be dominated by light entertainment, mass appeal programming. As such, programming diversity, was unlikely.

Pay per programme differed from the per channel concept in that a subscriber must pay for each programme viewed. While this may appear less appealing than the per channel pay, it fulfilled more closely than any other model that original notion of pay-TV; that persons should pay only for what they get. Per program pay allowed the subscriber to chose individual programmes that they wish to watch and prevented them from being charged for programmes they had no interest in and did not watch. For example, during a normal week a subscriber may only view one programme, if this was the case, then that would be all he would be billed for. With pay per channel, the subscriber would be, in effect, paying for the service whether or not he was using it. As such, per programme pay was much more complimentary to 'free' TV, while pay per channel television, was closer to a substitute.

Per programme pay allowed the subscriber a <u>real</u> choice. An individual could actually choose between one programme and the next. Exhibitors could programme a wide range of programme types and charge prices that reflect the audience size and cost of production. Therefore a less popular show in terms of viewers, may be more expensive to view, but would be viewed by those that will garner greater satisfaction from it. A very popular feature film might be used to subsidize the price of a less popular programme in order to attract an audience. Pay per programme gave the audience an almost direct say in programming. It would allow them to demonstrate preference and the value of a programme to them.

Universal pay-TV, unlike the other two models, would not be a service a subscriber would have a choice in taking, that is, it would not be discretionary. Like the community channels that the CRTC encouraged the cable companies to operate and carry, universal pay-TV would come as part of the package of channels a subscriber to cable services would automatically receive. Unlike the community channels that was financed by the cable companies as part of the operating cost, universal pay-TV would require moneys to be transfered to a third party to produce or buy programming and run the channel. Whether this money was paid by the subscriber out of increased rates or by the cable operators through reduced profits, the universal system was often looked on as levying a tax. The idea of a universal pay system seems to be unique to Canada, but finds it origin in the old idea of licence fee on TV and radio receivers.

Universal systems suggest that a higher motive than profit was in effect, since the public was compelled to take the service. These higher motives may be unprofitable or, at least, less profitable, and therefore not carried out by a private profit-making company. In the Canadian context a universal system might be appealing because it would see the bulk of revenues devoted to programming and a large share of that to Canadian productions. A universal system would not preclude other types of pay TV and it would be independent of commercial concerns as well as government interference.

The model chosen by the Commission was the popular American pay-per-channel system. The choice was made because of the technology was available. Pay-per-program was seen as coming in the future and the

universal model, the CRTC felt, was beyond its legal authority.[113]

The Commission felt that a single national pay television network should be established and that such a system must be Canadian owned and controlled.

> (I)n the Commissions's view, a private company invoking a wide range of relevant interests and capabilities was the corporate form most suitable to achieve the flexibility of response to meet the objectives for pay-television established pursuant to the Broadcasting Act and to produce Canadian programming with domestic and international appeal.[114]

It was not clear what was meant by "a wide range of relevant interests public and capabilities", it is possible and indeed likely that what is proposed is a mixed system of public and private broadcasters and cable interests.[115]

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[113] CRTC, Op. Cit., 1978. p. 47. "The universal system should be considered if governments conclude that by statute it should be mandatory for all cable subscribers to contribute to the financing of Canadian programming to ensure that Canadian objectives are achieved." For a more detailed examination of the three pay-TV models see CRTC, Pay-television Background Research Paper: Subscription Pay Television, March, 1978; CRTC, Pay-television Background Research Paper: Universal Pay-television, March, 1978; and CRTC, Pay-television Background Research Paper: Pay-per-program Pay-television, March, 1978.

[114] Ibid. p. 186.

[115] If so, this was similar to what Suave seemed to have in mind. In retrospect, this seems to be exactly what the Commission was suggesting. According to the Commission's own interpretation of the Report, the pay television model suggested by the CRTC reflected Sauve's preference for the "establishment of a single national programming consortium." "It was envisaged that cable television interest should be financially and otherwise involved in the consortium with other broadcasting interests to facilitate the contribution of cable television to the Canadian programming objective of the national network." This, however, was not clear from the Report. CRTC, Op. Cit., 1979. p. 7.

What was surprising was the Commissions outright rejection of a crown agency for pay-TV on the grounds that "(i)t has not been demonstrated,..., that there is any unique co-relation between government control or ownership and significant achievements of national objectives."[116] This was surprising, because such logic ignored the historical facts of broadcasting in Canada; public ownership had been the most responsive to and had come closest to achieving national braodcasting goals.[117] Of course there was no "unique" co-relationship between government ownership and the achievement of national goals, but the history of broadcasting in Canada demonstrated that there was a greater relationship between public control in broadcasting and these goals, than between the private sector and them. The only relationship between private industry and these goals was an inverse one: the more money to be made the less the private sector did to forward these goals. There appeared to be some private enterprise bias here. The Commission assumption that the structure it proposed would naturally have greater 'flexibility of reponse' than a crown corporation which would have its goals and operations outlined in statute and be accountable to the people was not convincingly demonstrated. The CRTC envisioned an Elysian structure, where cooperation would prevail for the good of the system. This was a sophism, the likelihood that the private broadcasters and cable operators would work harmoniously together was questionable. The broadcasters saw

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[116] CRTC, Op. Cit., 1978. p. 187.

[117] Of the 27 per cent of the submission that expressed an opinion on the ownership question, 25 per cent thought that a public corporation should be licenesed. Ibid p. 17. Not a overwhelming show of support for a public ownership.

cable as a threat, it was likely that in business together that cooperation may give way to confrontation, in such a case flexibility would be stifled.

Why was the Commission depending on the private sector rather than the public?[118] The Commission saw pay-TV as a new source of revenues for private broadcaster, broadcasters they had help create and perpetuate. In order to support past decisions, the Commission wanted to ensure that moneys went to those that it had always suppport and contended would produce more if they had more. The commercial nature of the Canadian broadcasting system in the 1970s, seemed to determine that pay-TV was also to be a commercial venture. Such a structure, it could be argued, fit the Broadcasting Act's definition of a single system. Such a pay corporation would unite all sector of the broadcasting system.

While the Commission's pro-private industry bias could be seen as part of the reason behind the decision, other interested parties were also to blame. The CBC, the associations of actors, directors, writers, technicians and filmmakers all had a big stake in pay-TV being run by a public agency; they did not unite and fight effectively for it. While the CCFM declared its support for a publicly owned system, the CLC hesitated and the CBC distracted attention from a public pay service with

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[118] The Federal Deparment of Communications was sympathetic to a crown corporation, but other portions of the government saw a public corporation for pay as unpopular and unacceptable to provincial governments, who were claiming pay-TV as their own. In addition, the government by purposing a structure that gave something to everyone in the broadcasting field, had hoped to drum up support for the introduction of pay-TV. Finally, the government had accepted the role of the private sector as necessary and desirable, and wanted to find ways of giving them more money without it coming out of govenment revenues.

its CBC-2 proposal. Most of these groups were against the introduction of pay services, but on the question of who should control it if it was introduced they were neither an effective lobby nor a very vocal one. The Commission heard from the business interests one clear thing: if you are going to licence it, we should control it; those other groups said nothing this clear.

The 1978 report perpetuated the CRTC's questionnable policies: private ownership, Canadian content regulations and faith that such a company would devote revenues to its production. Need the Commission have been reminded of the failure of Global, Canadian content regulations and how unwilling the cable companies were to devote money to their community channels?

Since the service would be privately owned, and a monopoly at that, regulations would be required. Among these were: a 50 per cent Canadian content rule, 35 per cent of gross revenues should be allotted to Canadian content (and possibly a percentage of net revenues as well) and no siphoning of programming normally shown on conventional TV. These would be contained in promises of performance and the promise of performance would be the basis of who would get the licence.[119]

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[119] CRTC, Op. Cit., 1978. p. 188. The Commission also suggested that pilot experiments in pay-TV might be established in select respresentative markets. Different corporate structures; siphoning and fragmentation consequences; programming in different languages, different packages and different distribution methods should be tested. It was likely if all this was to be tested that the Commission did not forsee pay-TV in Canada for quite a while. The CRTC never did call for such applications. Ibid. pp. 53-54.

Here was a chance for the CRTC to be imaginative with its proposals for pay-TV. Instead it presented a prosaic response, it recommended the same old things.[120] It tried to keep the main sectors it regulated happy by giving most of them a piece of the action. Yet CRTC appeared to be on its way to set up another Global or CTV because the rules were only slightly different and neither network had ever proven its its dedication to Canadian production.[121]

Such a decision would be expected, for the Commission had protected and placed a great deal of faith in the abilities and capabilites of private enterprise. It was unlikely, and some would argue inappropriate, for the CRTC to do anything but perpetuate that which it was in charge of. The myth that private broadcasters were willing to fulfill public goals which require the sacrifice of higher profits was thus perpetuated. Profits and shareholders are still private industries main concerns, as they should be. These are not compatiable with the public goals of Canadian content. The requests for delay by interested parties were often self-serving or predicated on the idea that system had to be allowed to improve first. None said how it was to improve, though there was that prenumbra of greater and better Canadian programme production. None seemed to indicate how this was to come about.

[120] While the CRTC may have been unimaginative, it could be argued that there were not many ingenious proposals presented from which it could choose. Partly, this begs the question 'Would the Commission have been daring enough to implement anything that was different and imaginative'? And partly this ingores the proposal by the CCFM which called for a universal pay-TV channel first, and then after several years, the introduction of a discretionary pay television.

[121] And like both CTV and Global, the proposed pay-TV network would have no limit on inhouse production. Thus, creating another inaccessable system for independent Canadian producers.

This still did not lay to rest the question of pay-TV. The minister responsible for broadcasting accepted the Report, but in a slightly different light: "the CRTC has not said it is against pay television..." but that it was "time now...to develop a policy a for pay-TV.."[122] With this optimistic view, the Minister proceeded to claim a policy was under development and when completed, pay-TV would be introduced. The most important reason why pay-TV would be introduced in Canada had little to do with government policy, indeed lack of any clear government policy would make the fact that it was a success in the U.S. even more important.

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[122] Sauve quoted in Canada, House of Commons, Standing Committee on Broadcasting, Films and the Arts, No. 16, Third Session, 30th Parliament, 1977-78. p. 16:29. In an attempt to develop some policy, the Minister appointed Committee to look into the matter. In November, 1978 just eight months after the CRTC's report, the federal government had established the Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty. It was to "produce specific recommendations on a strategy to restructure the Canadian telecommunications system." This gave the Clyne Committee licence to examine the whole broadcasting and telecommunications sector, including pay-TV. Having been established, so shortly after the CRTC's Report, it looked as if the government was trying to get some positive feedback, so it could move on the question. Yet the Committee could be looked on as fulfilling the Commission's recommendation that the government get its act together and produce some comprehensive policy for the broadcasting system and the role pay-TV might play. The Committee stated, in the laconic chapter devoted to pay-TV, that their was 'no evidence' of an 'substantial demand' for pay TV, thus early introduction of it was unnecessary and there was no need for 'hasty action'. And instead of producing for the government policy, it recommended that the government plan a "strategic policy for its eventual introduction". The Committee did make several recommendation that could have been used for the basis of a such a policy. For example, it recommended that pay television be introduced when pay-per-programming technology was suffiently developed to make it workable and affordable. Canada, Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty, Telecommunications and Canada, Ottawa, Minister of Supply and Services, 1979. pp. 48-49.

3.8 THE COMMITTEE ON THE EXTENSION OF SERVICES TO NORTHERN AND REMOTE COMMUNITIES

In the fall of 1979, the new federal (and Conservative) Minister of Communication stated that Canada

> must develop a (pay-TV) model that will really exploit to the fullest potential the opportunties that are there.[123]

David MacDonald, like his predecessor, Jeanne Sauve, was anxious to get pay-TV under way in Canada. Also, like the Liberal minister, he saw the need for the economies of scale that would be provided by a national pay-TV service; and the participation of the various broadcasting interests as well as the federal government. Such an arrangement, Macdonald argued, would get money to those that needed it the most: programme producers.

In order to demonstrate that this government could get along with its provincial counterparts better than its predecessor, MacDonald's ideas had to be acceptable to the provincial governments. Most of the provinces were not sympathetic[124] to what they viewed as a federal move to grab control of pay-TV. A national pay-TV network would naturally be regulated by the federal television agency. MacDonald went to the federal-provincial communications conference in the fall of 1979 willing to compromise. However, he seemed to be the only one willing to. The provinces were unwilling to accept what Macdonald had in mind, but neither were they able to come up with an alternative to which they all could agree. Since they could not agree among themselves, the provinces

[123] David MacDonald quoted in Barbara Keddy, "MacDonald Keeps TV Viewers in Sight", Globe and Mail, October 19, 1979. p .5.

[124] Except possibly Saskatchwan, which wanted a publicly owned national pay-TV company.

adopted a suggestion by the federal minister that an independent committee be established to look into the matter. Such a committee was to be apolitical and have members appointed by the federal and provincial governments. Four of the nine member Committee were appointed by the provinces[125] the rest would be Commissioners from the CRTC. Some of the provinces refused to participate,[126] but those that agreed set out for the committee some objectives and guidelines for the consideration of pay-TV.

A little over a year and a half after the CRTC's Report on pay-TV and just months after another federal committee had examined the question,[127] pay-TV was to undergo further scutiny. This examination was to occur along the lines as set out by two levels of government. The objectives and guidelines reflected this joint authorship, as they were ambiguous, compromised and as the Committee observed "far from cystal clear."[128] Many of the criteria were reiterations of old concerns and

[125] MacDonald had had another suggestion that he had hoped would have solved another problem facing the broadcasting system and entice the provinces into agreeing to the quick introduction of pay-TV on his terms. The minister had suggested that pay-TV be used to subsidize the extension of broadcasting service to northern and remote communities. This was an issue of importance to most provinces, but not great enough to agree to the minister's suggestion and this question too was referred to the committee.

[126] B.C. was most adamently opposed to what it saw as yet another delay to the introduction of pay-TV.

[127] The Clyne committee reported in March, 1979.

[128] CRTC, The Committee on the Extension of Service to Northern and Remote Communities, The 1980s: Decade for Diversity, Ottawa, Minister of Supply and Services, 1980. p. 74. David MacDonald recognized the vagueness of the criteria upon which the Committee was to base its recommendations. And in a letter to the Chairman of the CRTC asking that the committee be established, stated that the guidelines and objectives reflected the "complexity of the issues involved" and as

desires. Ensuring that siphoning would not take place, ensuring benefits to Canadian programming production, and access of these productions to pay-TV distribution; read much like the criteria first spelled out by Jeanne Sauve years earlier. Which demonstrated just how much progress had been made on this subject.

While calling for 'one national distributor' initially, the same guideline went on the say that this should not preclude regional or local pay-TV distributors from acquiring programmes and marketing them in competition with the national distributor.[129] And such distributors could include:

> a mixed consortium, which may operate on a non-profit basis -- involving both public, federal (e.g. CBC, CFDC), and provincial, as well as private participation -- could also include independent profit-making entities such as broadcasters, cable operators, symphony orchestras, professional sports organizations, entertainment industries, etc.[130]

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such "unanimity was not possible." p. 85. What this really demonstrated was just how far apart on the issue the provinces and the federal government were.

[129] Ibid. p. 89.

[130] Ibid. The non profit entity would be David MacDonald's suggestion. Asked if the CBC should control pay-TV, Macdonald stated that he doubted that the Corporation on its own would control pay television. "I would, however, expect to see the CBC playing an active part in whatever final approach in policy and implimentation is decided." Canada, House of Commons, Standing Committee on Communications and Culture, No. 6, November 19, 1979. p. 6:20. It seems that a public corporation was not even considered by the Committee, (to the provinces not thrilled with a national non-profit service, a federal crown corporation would probably be even less acceptable), although important player pushed for it. In ACTRA, "A Submission to the CRTC Committee on Extension of Service to Northern and Remote Communities", March 25, 1980. p. 14, the Association stated that they were "opposed to the introduction of any form of Pay TV that (was) not publicly controlled..." And that they were "specifically opposed to any Pay TV scheme that (was) controlled by the cable companies, the broadcasters, the independent producers, or any combination of these groups." Why? Because the history of broadcasting in

This suggests that the guidelines were less a guide than an open ended list. In the end, the guidelines appear to have played small role in the actual formation of the recommendations, mainly because they were so vague as to be interpreted as the committee saw fit.

This group of "individual citizens", as the committee referred to itself, can be viewed as a committee of the CRTC. It would report to the CRTC and the Commission would adopt its recommendations.[131] The most important recommendation the Committee made was that pay-TV be introduced into Canada, but possibly reflected its acrimonious beginnings, the Committee's report on pay television was not unanimous.[132] Pay-TV was to be allowed into Canada...

> ...on the condition that these new services, make effective use of Canadian resources and that a significant amount of revenue flow to the Canadian program production industry.[133]

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this country demonstrated that public ownership and good Canadian production was more likely than private ownership and such productions.

[131] It would have been almost impossible for it not to. While it had not establish the Committee on its own accord, it was set up under its auspices. The majority of those 'individual citizens' were members of the CRTC. Even the final Report was deliver to the Commission chairman (not to the minister) and distributed by the CRTC. All these actions made the report appear to be a document of the CRTC and the Commission did little to distance itself from this perception.

[132] Two members of the committee dissented. But the majority of the committee made the main recommendation (which lead to the dissention among the members) that "(a)pproval should be given for the introduction of pay television and other optional service in Canada..." Ibid p. 54. The Report goes on the argue that Canada will likely have as "proportionately as large a market as the U.S."

[133] Ibid. Though the question of introduction had really already been settled. "The assumption clearly is that there is going to be a pay television system in this country." The hearings are "deciding the approach." David Macdonald quoted in Canada, House of Commons, Op. Cit., November 19,1979. The reason that their was 'going to be a

According to those dissenting, it could not be accomplished. There would be "no significant benefits" accuring to the broadcasting system, and that it was "inevitable" that a "proponderance of U.S. mass-appeal programs" would result which would further threaten Canadian cultural sovereignty.[134]

While the majority of the Committee members recognized the concerns of their colleagues, they believed that they could be overcome by "effective safeguards" and by "devising the adminstrative machinery necessary to ensure effective control in the public interest." To do this required some "licencing and regulatory innovations." With the proper regulations and a proper structure, pay-TV could benefit the entire broadcasting system. But whereas before the 'entire' system was usually equated whith the off-the-air broadcasters, now it was made synonymous with the private independent producer. For the first time the interests of the broadcasters were not stressed, and the independent producers became the proposed beneficiaries of pay-TV.[135]

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pay television system' in Canada was summed up by the Committee. "Little has changed in the general circumstances discussed in the 1978 "Report on Pay Television" except for the phenomenal spread and success of pay-TV in the U.S." Ibid. p. 54.

[134] Ibid. p. 58.

[135] Where did this leave private broadcasters and cable operators? It was assumed that both would indirectly benefit from pay-TV. The cable operators would garner revenues from delivering the signal (but nolonger were they seen as unique in this role). The broadcaster would benefit from co-productions with pay licencees and other production whcih would be shown on conventional TV, once they had run on pay. But nolonger were broadcasters seen as necessary have a direct piece of the pay-TV action.

In order to ensure such benefits came to pass, the committee made a number of recommendations. The committee rejected outright the notion of a single national distributor, because it would not "be in the best interest of the Canadian public."[136] The committee concluded that such a national agency "could not effectively balance the respective needs of pay-TV in English and French." The Committee went on to make a suggestion that if taken to its logical conclusion was quite innovative and probably beneficial. It suggested that the Canadian structure of pay-TV could be like the structure of ITV in Britian; where programme producers put together packages of programmes and compete for a share of the audience. The committee ignored the most important aspect of the British system; ITV (the distributor) is publicly owned, while the production houses are privately owned. Thus, the private companies make their money from producing popular programmes, not from the distribution of programmes. In the Canadian context, it would be private companies competing and owning the distribution system, purchasing privately produced programmes. And as was the case in conventional broadcasting, this will lead to a domination of foreign programming, because the pay-TV distributor will not have that great a stake in Canadian productions. The American products will be cheap and popular and, therefore, more likely to get a place on the schedule.

The Committee appeared to be a zealous supporter of free enterprise; it was seen as the best means to weed out the bad and promote the popular. The Committee ignored what fifty years of experience in broadcasting had taught us: private ownership of the distribution network of

[136] Ibid p. 74.

programming leds to American domination of broadcasting system. It was not the case that private production companies could not make popular or good Canadian programming. This was exactly what they wanted to make because producers were the ones that had a stake in a programme making money. Distributors, on the other hand, did not have such a big stake in the production, simply because they made most of their money from the distribution of programmes; they could do this with Canadian productions, but they could also do this (and probably more successfully) without them. Further, Canadian productions were not likely to make money in Canada and to recoup cost they had to be sold internationally. This put great pressure on such production to appear to be less "Canadian", and more "American" in look and subject because the largest market is the U.S.

Knowing that the distribution structure that it had suggested would not lead to great amounts of Canadian content, the Committee made numerous recommendation for control of content and the direction of funds into Canadian production. The Committee stated that Canada needs between $350 and 500 million if Canadian production was to become effectively competitive.[137] To do this end, the Committee suggested a strategy that would include the federal government implimenting a tax incentive for television production; a flat surcharge on pay-TV to be distributed to the programme production industry and Canadian content quotas. It did not want to see any 'tax' on pay-TV profits or indeed any strict limitation that might restrict the success of pay television.

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[137] Ibid p. 63.

In this report the provincial committee members seem to have won, if such a report can be expressed in those terms. Many of the Committee's positions reflect the concerns of provincial governments; the call for competition and less restriction certainly reflects the attitude of provinces such as Ontario[138] and is a radical departure from the CRTC's 1978 Report.[139]

[138] See Ontario, Minister of Transportation and Communication, Submission to the CRTC Committee on Extension of Service, March 3, 1980, especially pp. 17-20.

[139] In the Report on Pay-TV, Commission listed the reasons why it felt that a single national agency was essential:

1. such an agency represented the "maximum opportunity to generate and consolidate available resources to acquire, invest in, commission, market and schedule Canadian produced productions."
2. it would be in a "preferred position" to acquire foreign programmes, especially American, "on the most advantagous" of terms.
3. "...economies of scale..." would limit the costs of administration, distribution and marketing.
4. a national company would guarantee exhibition, access and distribution of quality Canadian production across the company.
5. it would have sufficient resources to "initiate and underwrite...programming proposals."
6. a national distributor would be able to negotiate the "best possible" contractual terms with the common carriers for exhibition.
7. a preferred position would be afforded programming for the french speaking audience. One national company would be flexible and capable to recognize and respect regional programming and production.
8. a national agency would be more directly responsibe to regulatory requirements.

Even so, it is not surprising that the CRTC accepted the Report; after all five of its nine member were from its ranks. What is strange, and a bit bewildering is that the Commission would actual act on the report and impliment many of its recommendations.

3.9 CONCLUSION

With the Therrain Report, the CRTC effectively gave up its fight of the inevitable. Yet hearings for pay-TV licences would not be held for another year and a half, and those licenced would not get underway until 1983, thus the Commission had successfully delayed the introduction of pay longer than most had thought possible. But the goal of delay; to allow the system time to improve, had never been achieved. The government (partly because of federal budgetary restraints) was not active in providing funds or incentives for such improvement, nor were the private broadcasters willing or able to do more. If the CRTC gained anything by delay, it was overshadowed by what it lost; innovativeness, economies of scale and a head start on the Americans.

By adopting the Therrian Committee's recommendations as its own, the CRTC adopted the American model, which even in the U.S. had faced tough going. The competition in the U.S. ensured several pay-TV channels would die off before the system stablilized. The CRTC accepted the questionable assumption that competition would bring about diversity of programming, innovation and experimentation. Nothing in the broadcasting past have demonstrated this. The CRTC rejected everything that was

CRTC, Report on Pay Television, Op. Cit., pp. 38-39. The Therrian Committee challenged none of these.

unique about Canada's broadcasting system, when it accepted competition as the best means to bring about the goals of the Broadcasting Act.

By delaying the introduction of pay-TV, the Commission prevented the development of a system that might have been uniquely Canadian -- private and public elements working together taking advantage of one large market to produce revenue and in turn produce Canadian productions.[140] By delaying pay-TV the Commission prevented the stimulation of the Canadian production industry at a time when a huge American market was just opeing up. By delaying pay-TV, the Commission create an American surrogate in Canada. There was opposition to pay-TV from the conventional broadcasters. The federal government was battling the provinces over jurisdiction of pay television. There was little public clamour for pay-TV and the CRTC was burdened with other problems. While it is recognized that a regulatory agency must maintain political support, and therefore, there are explanations for the CRTC's delay, there are not adequate. The Commission reached a decision about the form and function that pay-TV should take in Canada, but never looked closely at the history of broadcasting in this country, nor does it explain how it reached its conclusion.

Both the government and the CRTC, knew what it wanted from pay-TV: more money for Canadian productions. This was stated from the begin as the objective of the introduction of any pay system. The CRTC stated this in its 1975 Position Paper, Sauve layed out such a condition in 1976, the Commission reiterated it in its 1978 report, David Macdonald stressed this in 1979 and the Therrian Committee made it the reason for

[140] That is, a publicly owned distributor buying from private producers.

its acceptance of pay-TV. But over the decade, no one knew how to guarantee this nor the costs involved. Nor did the government or its agency make moves to either improve the sytem and pave the way for the introduction of pay-TV. While the rhetoric was on the move, action was almost non-existent. Sauve and Macdonald were expedient in their proposal of the old Canadian solution of mixed public and private elements in a national pay system. But neither had the authority to give policy direction to the CRTC. The Commission pandered to private broadcasters and private industry; proposing solutions that the past had proven ineffectual and perhaps irrelevant.

Pay-TV in Canada was inevitable, simply because the Americans had it. What should not been inevitable was the form of pay-TV adopted in this country. Canada did not benefit from the the U.S. structure, but it was this form that the CRTC finally endorse and would licence. It appears, however, that the goals of the Broadcasting Act, which the Commission states repeatedly it was to encourage, would have been much better served by a public corporation acting as a distributor, than any private model. The CRTC argued against that which had proven itself to be the most benefical to the goals of the Broadcasting Act; public ownership. It did this because under the Commission's direction the ethos of commercialism prevails. The CRTC had invested more hope and more expectation in the private sector, and it would be an admission of defeat to then single out a public corporation as the best means to achieve broadcasting goals. The CRTC continued its established policy of content regulation and private sector involvement when the passed fifteen years had demonstrated these to be ineffectual. Thus our past continued to

haunt us. Pay television was a chance to balance the public and private elements of the system. The American system was chosen instead; the Canadian system of broadcasting had evolved into a system where the public sector was not even actively considered.

Chapter IV

FEDERAL-PROVINCIAL BATTLES: PAY-TV AND CABLE

> At best governments can create an environment to facilitate orderly development and innovation.[1]

4.1 INTRODUCTION

The questions surrounding the introduction of pay television were complex: when should it be introduced, who should control it, what structure would it take and how would it benefit the Canadian broadcasting system. Added to this was the further complexity and uncertainty created by federal-provincial disputes over communications. In Canada issues have a tendency to be debated in terms federal versus provincial responsibility.[2] Thus the questions of: who would win the jurisdicational dispute, which jurisdiction was best suited to regulate pay-TV or cable and when would the provinces or Ottawa make a move to secure their claim, came to occupy a central place in the pay-TV debate. This became the overriding consideration of the federal government, its Ministers of Communication and his/her department: how to secure the federal govern-

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[1] Canada, Department of Communication, Jeanne Sauve, Speech, May 30, 1976.

[2] Robert F. Adie and Paul G. Thomas, Canadian Public Administration Problematic Perspectives, Scaraborough, Ontario: Pentice-Hall Canada Inc., 1982. pp. 109-110.

ments claim to pay television. The federal government tried to increase the pace of develop of the industry in the country, not necessarily for sound policy reasons, but to assert its jurisdictional claims. The federal-provincial jurisdictional dispute would shape how and when pay-TV would be introduced into Canada.

The cliche: "The more things change, the more they stay the same", seems particularly applicable to the discussion of federal-provincial bargaining over communications. While the federal and provincial governments have bickered over communications for more than a decade, the underlying problems in the Canadian broadcasting system have remained basically the same, and, in fact, may have worsened. Partly, the state of the broadcasting system is the result of the political environment in which it operates. The squabbling between the federal and provincial governments over matters of jurisdiction appears to have allowed the most important problems to be put aside or at least perpetuated while the various governments met, not so much to decide how they should be corrected, but to argue over who should get what. These federal-provincial meetings have not been designed to deal with problems faced by the broadcasting system or ways to coordinate efforts to solve these problems. Instead they have dealt with ways to divide up the 'spoils' seen to be associated with new technology in the communications field. There seemed to be a feeling among the provinces that allowing them a greater say in the communications field would automatically solve many problems. This attitude was as chauvinistic as that of the federal government, who saw its own continued pre-eminance in the field as the simple solution to most problems.

Such wrangles over jurisdiction are, of course, to be expected. Jurisdictional evolution, while directed by judicial interpretation of a country's constitution, is also dramatically influenced by social change, societal pressures, technological change and, of course, by political accomodations. In the field of communications, political decisions are being made inspite of judicial interpretation. This is not improper, for judicial reality and political reality are often very different dimensions of the same universe. The problem with the political solution to jurisdictional disputes, at least in the field of communications, is the lack of success, and further, the piecemeal approach that has resulted from the lack of clear and swift policies on dynamic questions. The question of jurisdiction has preoccupied these meeting and have allowed them to avoid the real problems of the system.

"...(A) fundamental prerequisite for effective government today is a successful intergovernmental collaboration and co-ordination."[3] Throughout the last decade, jurisdictional ambitions have prevented such a euphoric state from existing and the two levels of governments tended to simply co-exist rather than co-operate. The question of jurisdiction would, however, require solution before intergovernmental policy could be harmonized.[4] It appears that some delegation of some powers in the

[3] Richard Schutlz, "The Regulatory Process and Federal-Provincial Relations", in G. Bruce Doern, ed., The Regulatory Process in Canada, Toronto, The MacMillan Company of Canada, 1978. pp. 130-131.

[4] Even with that question answered, it is less likely that such can be achieved in the overly-politicized forum of ministerial meetings. Eleven jurisdictions meeting to work out solutions while looking out for their own best interest, is but one reason that solutions to problems are rarely forthcoming. The concern here is that meetings at the ministerial level tend to find agreement only after very long periods of time, if at all. More is at stake at these meetings than good pol-

field of communications to the provinces remains necessary to achieve any co-operation. Further it appears unarguable that the provinces do in fact have a legitimate claim to some greater say in the area of communications. The federal government has been notably inflexible to change and insensitive to provincial desires and needs; desires and needs that often transend the political and are in the public good.[5]

The provinces have demonstrated, however, that while they are capable of working as a cooperative unit to some degree, this is often overshadowed by the fact that they often can see little past their own boundaries. Provinces, while demanding that they be recognized as a voice equal to that of the national government, have not dealt with the fact that they do not have the unity of purpose or discipline to speak as a unit at the national level. Provinces represent different areas and thus different views, and while provinces often have similar demands, these cannot overcome the fact that needs of individual provincial often differ. The federal government might legitimately complain that it could not work out jurisdictional solutions with its provincial counterparts because there was no such thing as 'a provincial view', just a series of provincial views, each varying in some way from the

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icy; prestige, position, postering, and power often play a much bigger role than is desirable. Instead of clarifying issues and alternatives, they usually create further confusion and complication to that which is already very complex. What should be for 'cooperation' and 'coordination' have often become arenas of conflict. The victim of such disputes is often clear and coherent policy, and result in a general destabilizing affect that such conflict can cause.

[5] See Martha Fletcher and Federick J. Fetcher, "Communications and Confederation: Jurisdication and Beyond", in R.B. Byers and Robert W. Reford, Canada Challenged: The Viability of Confederation, Toronto: Canadian Institute of International Affairs, 1979. pp. 170-171.

other.

Even so, the federal government was in no hurry to move into individual agreements with the provinces, unless these agreements were on its own terms. The federal government was willing to offer a provinces only so much, but was unwilling to recognize that provinces are different.

The delay that has accompanied the question of jurisdiction in the field of broadcasting may be one of the reasons why Ottawa followed an unimaginative, some would say non-existent, policy. The federal government has not been hampered in moves it could make by the demands of the provinces, but by the slow progress in finding a solution to these demands, and, to some degree, its own legislation.[6] But the federal government had in the past refused to use other powers it had to achieve policy goals. Powers which are outside the CRTC's discretion, but would have allowed the government to help solve some very real problems that

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[6] Some of the conflict between the provinces and Ottawa can be traced to the "principle and ensuring practices of granting regulatory agencies independent descretionary authority to develop policy." Richard Schultz, Op. Cit., p. 136. This policy was often at odds with and contrary to its govenment's own policy. In the 1968 Broadcasting Act such a state exists. There was no way for the government to issue legally binding policy directions to the Canadian Radio-television and Telecommunications Commission. And the provinces have found that without such power the federal government could not bargain in good faith. The question then becomes; did the federal government want to bargain in good faith or want, at least, the ability to do so? If the speed with which it dealt with this problem was any indication, the federal government was in no hurry to bolster its ability to do so. Even when accomodations have been worked out, failure was often the result because of the trouble entailed with getting the Commission to accept it. Pay-TV and cable would be examples of this; to satisfy provincial demands for some say over cable, the federal government was to delegate to them such powers necessary to do so in exchange for recognition of federal control of pay television. Ottawa's slow progress on cable delegation had resulted in a very confused situation, as several provinces began claiming pay-TV as their own and the CRTC continued to regulate cable.

existed within the system. This accounts for only part of the problem. It was not suggested that a different forum or a more harmonious federal-provincial state would automatically have led to a clearer and more dynamic development of policy. The federal governments of the past have had clear title to broadcasting, but have not, as we have seen, used this position to create a positive environment for its development. Nor during the 1970s was the dilemma created by the Broadcasting Act remedied through legislation, legislation all provinces would have welcomed. The federal government's broadcasting policy had never been very much more than the idea that broadcasting should contribute to something called Canadian culture. It had left it to its regulatory agency to try, within limited jurisdiction, to achieve this something. The agency manifested a series of regulations that could not guarantee the desired goals be accomplished. The government failed to implement policies that would give such goals greater opportunity to be achieved.

It appeared that unless some real co-operation and consultation occurs between the two levels of government, nothing positive would result. During the 1970s the federal-provincial dealings over communications was based strictly on political considerations. There are no villians, just politicians.

4.2 BACKGROUND TO THE FEDERAL-PROVINCIAL COMMUNCIATIONS DISPUTE

The federal government was challenged by the provinces on its broadcasting policy almost from the first day it appeared to be contemplating substantive legislation in this area. As far as the provinces were concerned, radio broadcasting was at least partially their responsibility. A court[7] decision in Ottawa's favour forced a hesitant federal government to move quickly and decisively into broadcasting. Once there Ottawa had jealously guarded its domain and continued to win judicial battles with the provinces, but never won the war. Indeed, it appeared that in the end it would be the federal government that would surrender the most.

Challenges by the provinces before the courts have usually been unsuccessful and have either reaffirmed or increased federal authority. Until fairly recently most the provinces, except Quebec, seemed content to allow the federal government to run things. However, in the late 1960s and into the 1970s all provinces appeared to be taking a greater interest and demanding a greater say in communications. During this decade the provinces discovered not only an interest in communications, but a more effective way to demonstrate their interests. They discovered that they increased their political muscle by acting from a 'common front'. They also discovered that such a strategy was difficult to maintain, as few provinces wanted the same thing.

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[7] Great Britian, Judicial Committee of the Privy Council, "Re Regulation and Control of Radio Communication", (1932), 2 DLK.

Broadcasting had been seen as far back as 1929 as an instrument of national unity and national culture development. It was also a fact of life that broadcasters produced signals that crossed both provincial and international boundaries. The spectrum used to broadcast radio, and later, television signals was limited and thus called for international agreements and a central authority to divide them up within a country. Upon these assumption a broadcasting system was built, one that was federally regulated and whose aim was the protection and development of a Canadian 'identity'. The physical facts of broadcasting were originally the main reason the central government received its monopoly in broadcasting. These physical characteristics of broadcasting, however, soon became less important, and the philosophical need of a truly 'Canadian' system came to be all important. The use of the media of radio and television to foster a Canadian identity, it was felt, could be more successfully done at the federal level. The goal of a Canadianized system became the federal government's main reason for insistence upon national predominance in the field. Technology did not change these concepts. When cable came along, the federal position remained the same. Cable was not considered a separate or separable entity, it was part of the broadcasting system and as such had to work towards the same goals and remain under the same government's jurisdiction. Since cable delivered broadcasting signals and could possibly harm broadcasters, it was felt that federal regulation was desirable and necessary. Further, any programming initiated, except for educational purposes, was a federal concern for the same reason. These 'truths' became less valid, at least in provincial minds, during the 1970s.

During this decade commmunictions became a most time consuming topic in federal-provincial relations. Partly this resulted from a general change in provincial governments. As they had become more experienced, with better civil services and more money, they began to find greater interest in matters that were traditionally a federal concern. They found that they had the expertise to challenge Ottawa and that the federal government did not always know best for the whole of the country or its various parts. But to a great degree technological changes were responsible for the desire of the provinces to want a greater say in communications within their jurisdictions. Cable was the most important change. In cable the provinces saw a different sort of medium than the traditional over-the-air broadcasting system. Cable allowed for almost limitless channels. It was a local undertaking for it did not cross provincial or international boundaries. There was also a growing awareness that local issues, local programming, local and regional cultures were as important as, if not greater than, a monolithic national culture. It was questioned whether a national culture was even obtainable in a country as diverse as Canada and if the attempts to develop such were desirable. The fact that cable offered a relatively inexpensive method of programme deliver ideally suited for eductional and local cultural fare, further repudiated the old arguments about the need for strict federal control. The federal government's and its regulatory agencies' lack of success in turning broadcasting into a distinctively Canadian system, also made the provinces wonder if they could not do better, they felt certain they could not do much worse. Cable came to be viewed less as a luxury and more as a public utility, almost a necessity, and as such, the provinces felt they were better able to protect

the consumer from unwarrented price increases and encourage extension of the service to rural and remote areas and to help cross subsidization of such extensions. Along with these 'noble' reason was the more expedient fact that cable was generating substantial revenues, revenues which provincial governments and/or the provincial owned telephone companies expectantly looked forward to sharing.[8]

The 1970s shock up the communications world. With it the impossible became probable, the clear became cloudy. Perhaps it was too much to expect of governments to handle the situation clearly and succinctly.

4.3 THE AWAKING OF THE PROVINCES

In 1968, the modern era of the communications debate began. That year, the then Premier of Quebec, Daniel Johnson, demanded complete control of communications for his province. With this, Johnson had set the tone for all succeeding Quebec govenments, whether they be Union Nationale, Liberal or Parti Quebecois. Three years later, Quebec's Liberal government would release a Green paper on communications which called for Quebec to have all the powers necessary to "elaborate on over all communication policy"[9] for the province. As far as the Quebec government was concerned control over all broadcasting, including cable were necessary

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[8] Robert Babe, Cable Television and Telecommunications in Canada, MSU international Business and Economic Studies, 1975. p. 53. Babe states that some provinces were also looking longingly at the large profits of the cable industry. Profits they would have liked their provincially owned telephone companies to get their hands on.

[9] William Johnson, "Ottawa, Quebec Clash Over the Media", The Globe and Mail, March 22, 1973, p. 7.

to protect the French culture in Quebec. Cable especially was to be termed a "'indespensible tool' for the spreading of Quebec culture."[10] Ottawa reminded Quebec that communications was a federal responsiblity and that no one part of the system was separable from any other. Quebec's first move was to attempt to control cable. Quebec argued that since cable could be used for educational purposes and was a local undertaking, it was obviously a provincial concern. Gerard Pelletier, then the federal Minister of Communications, rejected this argument stating that the real reason persons subscribed to such a service was to get more channels most of which crossed international boundaries.

Communications was coming to the attention of the other provinces as well. In August of 1972 at the First Minister Conference in Halifax, the Premiers raised the matter of communications with the Prime Minister.[11] Later that year, the provinces met in Quebec City to discuss communications and formed a shaky 'common front' in order to press the federal government for change in the field of communications and if necessary to oppose Ottawa.[12] While Quebec was part of the 'front' it

[10] Richard Cleroux, "Cable TV is the Crucial Cultural Tool to L'Allier", The Globe and Mail, March 22, 1973, p. 7. Further Paul L'Allier's, then the Quebec Communication Minister, Green paper stated that "(i)t is in local production that the true vocation of cable is found and in which it realizes its true nature. It is in this sense that cable is to all practical purposes a municipal phenomenon, and hence provincial." quoted in Johnson Ibid.

[11] Daniel Jay Baum, "Broadcasting Regulation in Canada: The Power of Decision", Osgood Hall Law Journal, Vol 13, 1975, p. 728.

[12] Jack Miller, "Communications Tug-a-War Pits Provinces Against Ottawa", Toronto Star, February 2, 1974, p. F5. The common front was based on the premise that all the provinces wanted something from the federal government in the field of communications, and in their individual efforts all would help the other. Quebec wanted to protect its culture which would require the "entire field"; Ontario wanted to

wanted much more than the other provinces and as a result, shortly after this meeting introduced three pieces of legislation which in effect declared Quebec's "jurisidiction over every conceivable field of communications."[13] What followed was a game of cops and robbers, with Quebec and Ottawa both claiming to be the 'cops' and both jostling for position by claiming jurisdiction.[14] In effect 1972 layed the basis for the "full scale federal-provincial conflict" which would begin the following

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control cable in order to quickly licence services in northern communities and rationalize the system in some urban centres. Other provinces like Saskatchewan and B.C. wanted regulator powers over cable, but with the federal government retaining powers over it in reference to the Canadian broadcasting system. The smaller provinces, especially the atlantic provinces, seemed to want very little and may have been content with the status quo. Brian R. Woodrow, Kennth Woodside, Henry Wiseman, John B. Blacky, Conflict Over Communications Policy: A Study of Federal-Provincial Relations and Public Policy, Montreal, C.D. Howe Institute, 1980. pp. 37-43 for a brief summation of the provinces various stands.

[13] William Johnson, Op. Cit. These three bills made "any service the principal or accessory object of which is the broadcast, transmission, or reception of sound, images, signs, signals, data or messages by wire, cable, waves or any electric, electronic, magnetic, electromagnetic or optical means" subject ot Quebec's Public Service Board. L' Allier stated that the legislation will make the federal government recognize that communication "belongs to the provinces...".

[14] Ibid., In response to the passage of the Quebec bills the federal government did little immediately, waiting for Quebec to indicate more clearly what it thought its jurisdiction was. On December 20, 1972 the Public Service Board published an ordinance requiring all enterprises "defined as public service to give the board an inventory of its property and financial structure,..." plus names, addresses of management and owners, programme content and the like. The federal government judged this to indicate Quebec meant to extend its jurisdiction over the entire communications field. The questionnaire pertaining to the ordinance however went out only to cable companies, but with the threat of legal action if they did not reply by March 12, 1973. Pelletier sent a telegram to the Quebec Minister saying the cable companies already were licenced and need not be bother with the Quebec laws. L'Allier answered that he would be willing to let the courts decide this question.

year.[15]

4.4 THE FEDERAL GOVERNMENT'S POSITION

In February of the next year, in anticipation of some federal response, the provinces meet to reaffirm their common front strategy. The federal response to these growing demands and actions by the provinces was a statement saying in effect that the federal government was not willing to give up a thing. On March 22, 1973, Gerard Pelletier tabled in the House of Commons the federal government's Green Paper.[16] The paper clearly reasserted federal hegemony over broadcasting; it categorically rejected all provincial demands, including a greater say in cable. The federal government argued that the broadcasting system was a integrated whole and that any part could not split away from the rest without damaging the entire system. Pelletier would later argue that

> (t)he overwhelming dependence of the Canadian broadcasting system upon a small number of big urban markets for advertising revenue illustrates the fundamental interdependence of broadcasters in different provinces. Cable systems themselves though physically located in one province carry the programming of national and American networks.[17]

While a 'consultative arrangement' with the provinces may be desirable, Ottawa rejected any formal mechanism to carry out such consultation.[18]

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[15] Brian Woodrow, et all, Op. Cit., p. 32.

[16] Canada, Department of Communications, Proposals for a Communications Policy: A Position Statement, Ottawa, 1973.

[17] Canada, Communications Canada, Information Service, Statements and Speeches, Minister of Communications, Gerard Pelletier, "A Speech to the CCTA", Vancouver, May 21, 1973. Also see same speech reproduced in Telenation: Newsletter of the CBL, Vol. 1, No. 5, 1973.

[18] Ibid. "Our proposal for consultation with the provinces in the Green Paper was based on the continuation of active federal involvement to

Further, it was necessary for a "single federal regulatory agency" to handle the whole of telecommunications and that such an agency should be more directly responsive and responsible to the federal government.[19] In effect the federal government appeared to be attempting to further its hold on communciations, exactly the opposite of what the provincial governments had proposed. The provinces rejected the federal initiative when they meet during a Communication Ministers Conference in November of that year.

At the conference, three province, Quebec, Ontario and British Columbia,[20] made it clear that to begin with they at least wanted control over cable TV. B.C.'s communication minister, Robert Strachen, went further, suggesting that his province supported Quebec's "right to defend its differences because we intend to protect our own."[21] In so doing, B.C.'s minister insinuated that British Columbia desires in this field were as broad as Quebec's. The conference ended three hours early,[22] with little accomplished. The federal minister promised to consider the provincial stand and consult with his provincial counterparts

ensure that the distribution of public responsiblity would not produce a balkanization of our broadcasting and cable systems, but it also looked forward to greater regional and local input into the regulatory process..."

[19] What the federal government had in mind was a Commission that would regulate telecommunications, as well as the broadcasting system. The new 'super agency' would therefore regulate such things as Bell Canada and CN/NP Telecommunications which were then regulated by the Canadian Transport Commission.

[20] Ian Urquhart, "Big Provinces Ask Ottawa for Power Over Cable TV", Toronto Star, November 30, 1973. p. A6.

[21] Robert Strachen quoted in Jack Miller, Op. Cit.

[22] Ibid.

over the next few months. All agreed that they would prefer to resolve the problems of jurisdiction "though a process of discussion and agreement rather than in the courts", because this was a political issue requiring a political solution.[23] And all agreed to meet again early the following year.[24]

The Communications ministers would not meet again until May of 1975. During that interval the jurisdictional debate continued to heat up; the federal government presented a new postion paper on communications and a new concern crept into the discussion between the federal and provincial governments: pay-TV.

During the 1973 conference, pay-TV was not an issue, but indirectly the provinces had laid claim to it by stating that both cable and all non-national broadcasting services should be within their jurisdiction. In May, 1973, Pelletier had stated that pay-TV when it came would be competing for private and public revenue and audiences and as such "protection of the existing services must be ensured."[25] By implication such 'protection' would be provided by federal regulatory control over pay-TV. By 1975, however, the provinces began to clearly lay out their claim to pay-TV. From 1975 on pay-TV became a central issue in the communications debate. Both sides had logical reasons to claim pay-TV as within their jurisdiction.

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[23] David Jay Baum, Op. Cit., pp. 728-729.

[24] Ian Urquhart, Op. Cit.

[25] Canada, Information Service, Op. Cit., May 30, 1973.

The federal government's position was based on the fact that pay-TV would most likely be carried on cable, which was federally regulated and therefore such companies would require CRTC permission to carry it. If pay-TV was offered over-the-air it was a federal concern because frequency allocations were clearly federal responsibility. But most importantly, the entire system would be affected by it. To ensure that it would complement and help existing system, it would require the same regulatory body that looked after conventional TV and radio. Only this way would pay TV be integrated into the system, and its most harmful effects quelled.

The provinces contended that pay-television would be a local undertaking since it need not cross boundaries, and if not broadcast but delivered by closed circuit means, it did not fall within the federal notion of broadcast receiving undertakings. Further, if cable was turned over to them, as they wanted, pay-TV would naturally be regulated by them. The provinces also saw pay-TV as a way to get into the programming field and in some cases as a source of revenue for local programme production and cultural activities.

The Grey paper,[26] the federal government's next statement on communications, seemed to rejected outright the transfer of jurisdiction to the provinces of any or all powers in the field, although the federal gov-

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[26] Canada, Department of Communications, Communications: Some Federal Proposals, Ottawa, 1975. By this time the government had passed Bill C-5, creating the super agency first mentioned in the Green paper. The bill gave the Canadian Radio-television and Telecommunications Commission (the Commission's new name retained the same acronym, CRTC) the powers to regulate telecommunications under federal jurisdiction. It was considered 'phase one' of a two step legislative program. 'Phase two' was outlined in the Grey Paper.

ernment did state a willingness to discuss any 'practicable arrangement' the provinces might have "to give a greater share in the process of licencing and regulating broadcast receiving undertakings."[27] Perhaps the most important aspect of the paper was the clause that would have given cabinet the authority to give policy directives to the CRTC. Such a power could certainly have been used to accomodate the 'practicable arrangements' mentioned by Ottawa. But in the end Ottawa evidenced no concrete example of what was meant by 'practical arrangements' and this paper and its predecessor can be viewed as a "stubborn defense of the continuing need for centralizated nation-wide control in the communications field."[28]

The Grey paper was slightly more than a repetition of the former position paper on communications. Any differences were a matter of degree rather than of substance, the federal government preferring to bargain from a position of strength rather than appearing ready to accede to provincial demands. Another Communications ministers' conference was scheduled, this time for May, and by then, the provincial governments had met several times and had reaffirmed their consensus. Proving they could take an equally stringent bargaining position, the provinces declared that "all aspects of cable distribution systems and services with

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[27] Grey Paper quoted in Brian R. Woodlaw, et al., Op. Cit., p. 35. Still the paper itself seemed to indicate no major reordering in the field. It did go a step further then the government's pervious paper by proposing a 'formal' Committee of Communication Policy to be established. It would be made up of ministers and their officials and the committee would meet to consult and cooperate. It also suggested that a body be established to rationalize the regulation of communications by the two levels of government.

[28] Ibid., pp. 34-35.

the exception of federal broadcasting services" should be provincial jurisdiction. The provinces wished to see broadcasting split between the federal and provincial governments with provincial authorities controlling all educational and provinical broadcasting undertakings with the exception of those that are national in scope.[29] Of course, most of the provinces really did not want all this, but they had learned that to get what you want you had to ask for more. And if the federal government was to bargain be offering little they were going to bargain by asking for all.[30]

By the end of the year the federal government responded to the provincial position by refusing the provincial demands as "unrealistic". The federal minister pointed out that what the provinces wanted would require constitutional change, and this was not within the powers of a ministerial meeting to decide. Moreover, no such course would be followed even at the constitutional level because such changes would fragment and destroy the Canadian broadcasting system. The federal government threatened a 'judical solution' if progress was not made in this area in the near future.[31] In order to attempt to satisfy certain provincial demands Ottawa offered the provinces delegation of regulation of cable transmission companies. This was done to appease provincial

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[29] Ibid, pp. 35-36.

[30] "These proposals (the Green and Grey Papers) can be viewed as the beginning point in the bargaining or negotiation process between the federal and provincial governments as to their respective communication roles." Danial Jay Baum, Op. Cit., p. 727.

[31] Legally the ferderal government felt certain it could win such a battle in court.

demands, while attempting to strengthen the federal position.[32] This offer was acceptable to almost all provinces, but not Quebec.[33] And, as such, it drove a wedge between the provinces. Quebec had rejected the federal government offer, an offer acceptable to all the others. Ottawa now knew that it could deal with the provinces individually negotiating an acceptable solution with those that did not demand too much, and isolating those that where, from Ottawa's view, making unreasonable demands. The federal government was, however, hesitant to negotiate different terms with each province, for such differences in delegation might cause the very problem that Ottawa claimed to be trying to prevent: a piecemeal and fragmented system. What Ottawa's offer did do was make it appear that the federal government was giving up something, while the provinces had not given any ground. Deals are struck politically through compromise, it was now up to the provinces to give up something they had demanded. Ottawa was hoping and working it such that the provinces would give up their claim to pay-TV.

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[32] It also could have been a response in anticipation of the Saskatchewan government was about to move into cable unilaterally. Delegation would then save the federal government 'face' and allowed Saskatchewan and anyone else to proceed legally within federal paramountcy. Such a move would have allow the provinces to garner some revenue from cable operations, but would not have given them the powers to regulate or licence such. Several provinces seemed to be wanting more than the federal government offered, but those that accepted must have seen it as a step towards greater powers in the future.

[33] Quebec's opting out weakened the provinces 'common front' and "put the federal government in a positon where it did not have to be as responsible to the provinces as if they had been an unified opposition." Danial Jay Baum, Op. Cit., p. 729.

While the federal government felt quite confident that cable itself was a federal concern, legally it was not so sure about pay-TV, or at least closed circuit pay-TV. In the hands of the provinces, pay-TV could threaten the whole federal broadcasting system; including the economic survival of conventional broadcasters.[34] Partly in response to provincial demands the federal government decided to move on the question of pay-TV, not in order to accomodate the provinces, but to out flank them.

4.5 THE FEDERAL GOVERNMENT'S OFFENSIVE

The spring of 1976 brought with it speculation that pay television would be given the go ahead in the near future,[35] and that the federal government and its regulatory agency had changed their stand.[36] Rather than fight pay-TV, they would simply "take it over..."[37] Such a step had been

[34] In an editorial in the Toronto Star, a paper noted for its nationlistic stance on communications and its support for the federal government on the issue, wrote that the provincial demands for cable, with the exception of Quebec, which had a legitimate cultural concern was based on nothing more than the desire to control pay-TV. "Other provinces want control because eventually the big money in cable will come from pay-TV,...Cable control by the provinces would be especially dangerous for the networks when pay-TV becomes available..." Editorial, Toronto Star, August 21, 1975. p. B4. Further it was argued in another article the same day that if provinces controlled pay-TV, "(t)here is no telling what they'd do."

[35] Jack Miller, "Ottawa Considers Opening Door", Toronto Star, April 30, 1975, p. E10.

[36] As outlined in the CRTC's 1975 position paper, Position Paper on Pay-Television, (Ottawa, February, 1975), and reiterated in the Commission's Policy paper released in December that year. Both of which had come out against the introduction of pay-TV at that time or in the near future.

[37] Clive Baxter, "Ottawa May take Over Pay-TV -- Not Fight It", Financial Post, May 15, 1976, p. 1 and 4.

contemplated for several reasons, but the 'trigger' which would initiate the move was the fact that a closed-circuit pay-TV system was about to be introduced in a Toronto condominium.[38] Perhaps even more threatening to Ottawa was the fact that the Government of Ontario had licenced the All-View operation under its theatres legislation. Ontario had thus sanctioned the company's evasion of federal regulation.[39] To avoid the development of a 'piecemeal' pay service in Canada and a revolt by cable operators who threatened to introduce similar service,[40] the new federal Minister of Communications, Jeanne Sauve, with the hesitant support of the Chairman of the CRTC, Harry Boyle, decided to allow its introduction. Of course this was not the only reason the government decided to take action at this time. The government saw a circumstance that could be used expediently. Here was an opportunity to out flank the provinces who were threatening to move into the field themselves. This provincial 'threat' and the piecemeal system which might result, would make integration of pay-TV into the broadcasting system problematic at best. Revenues from pay television were expected to be substantial and a government intent on getting more money into the system, without more direct government expenditures, saw federal regulation of

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[38] Ibid. Also see Jack Miller, "Toronto Getting Its First Pay-TV", Toronto Star, April 8, 1976.

[39] R. Brian Woodrow and Kenneth B. Woodside, "The Introduction of Pay-TV in Canada: A Guide to the Plot and the Players", in R. Brian Woodrow and Kenneth B. Woodside, eds., The Introduction of Pay-TV in Canada, Montreal: The Institute for Research on Public Policy, 1982. p. 39.

[40] Such a revolt by the cable companies was very unlikely and their threat of introducing pay-TV without the Commission's permission was more a matter of posturing, to illustrate their concern, rather than a realistic response.

pay television as the best method to ensure the new service would accomplish old goals.[41] It was expected that once Sauve and Boyle had agreed and the minister had got cabinet approval, that their policy would be announced in the first week of June.[42]

On June 2, 1976, Madame Sauve, in a speech to the Canadian Cable Television Association, announced that since pay-TV was 'inevitable' anyways, Canada may as well jump aboard the bandwagon, and direct it on a positive, productive course, rather than let develop in an uncontrolled fashion. Sauve argued that pay-TV need not be "disruptive to the (broadcasting) system"; in fact, if handled correctly this innovation could be very beneficial to "all groups interested in broadcasting -- private and public broadcasters, cable operators, program producers, actors, writers, and, most of all, the Canadian public."[43] The minister saw the possibility of six to fifteen and a half million dollars, depending on the success of the service, going to Canadian productions annually.[44] Sauve however recognized that left to itself pay-TV would

[41] Jack Miller, "Pay-TV Seen As a $9 Million Boast for Canadian Movies", Toronto Star, June 1, 1976. Also see Clive Baxter, Op. Cit.

[42] Clive Baxter, Op. Cit.

[43] Canada, Council of Communications Ministers, "Notes for a Speech by the Honourable Jeanne Sauve, Minister of Communications to the Canadian Cable Television Association, Toronto, June 2, 1976", Edmonton, March 29-30, 1977. p. 2. Also see the same speech reprint under the title "Pay Television Must Develop Canadian Productions", Cinema Canada -- Special Issue on Pay-TV, August, 1976, pp. 5-7.

[44] This is based on the assumption that fifteen per cent of the gross revenues, optimistically put at up to $100 million, would be diverted to such productions. The higher the penetration rate, the higher the amount of money to be pumped into Canadian productions. Considering that in 1975 CTV spent 13 million dollars on Canadian programmes, this was viewed as a substantial source of funds. But even so it was worried that this was really not very much at all. If pay television

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probably damage conventional broadcasting. Off-the-air broadcasters would be economically damaged, their existence even threatened, by siphoning popular programmes from it, and further fragmenting audiences, already spread dangerously thin.[45] In otherwords, while inevitable, if left to itself, pay television would inevitably do more harm than good. To ensure these problems did not occur, the minister suggested criteria upon which the introduction of pay-TV into Canada should be based:

1. it must provide a range of programmes not duplicated by conventional broadcasters, thus siphoning would be prevented and fragmentation hopefully reduced,
2. high quality Canadian programmes must be produced, and
3. these programmes must lead to international sales.[46]

Regulation of pay-TV would have to be at the federal level, said Sauve, if these criteria were to be fulfilled.

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put 10 million dollars into Canadian feature films per year, that worked out to only about ten moderately priced movies. Pay-TV would be showing at least 100 movies a year. Therefore, that represented a Canadian content quota of only ten percent. See Jack Miller, "Pay-TV Foofaraw Ignores One Thing", Toronto Star, June 4, 1976. p. E14.

[45] Partly this would result if pay-TV was allowed to become another 'lowest common demominator' medium, thus imitating conventional television. As well, it would probably be inequable, that is, unavailable to persons that lived in rural areas where choice was already small.

[46] Canada, Council of Communications Ministers, Op. Cit., pp. 6-7. International sales were seen as important because the Canadian market alone was not likely to recoup the cost of high quality productions. It is odd that this should be mentioned at all. It presumed that any good, high quality Canadian production should be sellable internationally. By mentioning it, Sauve seemed to suggest that international saleability was a function of something more than quality.

Sauve dealt superficially with the possible structures that might be developed for a pay service in Canada.[47] She invited views on what form the structure of a pay-TV company should take, but she implied that she found 'attractive' the idea of an independent company, with 'extensive' monopoly powers, which could be based on public, private or mixed ownership.

Sauve announced that the CRTC would be calling for submissions from the public and interested parties on what form such a company should take. And she would be contacting her provincial counterparts to "ask for their comments and views on how we can ensure that pay television contributes positively to the development of the Canadian broadcasting system." Once submission were all in, by September 1 of that year, a decision on the structure would be made and the Commission would establish regulatory guidelines and call for licence applications. Her speech had made it clear that a 'national network' for pay-TV was contemplated. While the new industry might be separate from existing broadcasting and cable companies, it would have some federal partner involved.[48] She also made it clear that the regulation of pay television

[47] Sauve had stated that the functions of exhibitor, those that deliver the service to the subscribers, and the distributors, those that package the programmes and delivery them to the exhibitor, should be separated. The three structures for the distributor function that she suggested was a consortium of broadcasters and cable operators, a number of individual licencees or an independent company. The first she saw as possibly leading to a conflict of interest, but still worthy of consideration. The second was 'undesirable' because it may have led to domination be foreign companies. The third seem to find the most favour with the Minister.

[48] Jack Miller, "$8-a-Month", Toronto Star, June 2, 1976, pp. A1 and A8. While separate form broadcasters and cable operations, this did not mean such a company would not have such participants involved, at least, at arms length.

by a federal body was crucial for the "coherent and orderly provision of program services to the entire Canadian viewing public."[49]

It was never clear where the briefs were to be sent, although the CRTC had made the call for information, which was only proper, briefs showed up at the Secratary of State's Department and at the Department of Communications. This reflects the confusion that surrounded both Sauve's speech and the subsequent announcement by the CRTC; who was in charge of the introduction of pay-TV? The fact that the Department of Communications received the majority of the briefs[50] was as Sauve had intended. It was her intent to make the policy, that is, the form in which pay television would be introduced into Canada, and the CRTC hold licencing hearings for the applicant that conformed to that decision.[51]

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[49] Canada, Council of Communication Ministers, Op. Cit., p. 7.

[50] Arnold Edenborough, "Just Hold On -- We Shouldn't Be Stampeded into Pay-TV", Financial Post, August 21, 1976. p. 28.

[51] Ibid. Also see Canada, House of Commons, Debates, 2nd, 30th, Vol. 1, November 1, 1976. p. 624. She gave the impression that this was what she expected: "...I asked the CRTC chairman permission to receive submissions or briefs from groups likely to be interested." Harry Boyle, in his speech to the CCTA on June 2, 1976, Seemed to confirm the ministers impression. See the speech reprinted under the title "Premium TV for Canada: a Partnership of Production", Cinema Canada -- Special Edition Pay-TV, August, 1976. pp.8-9. In one sense this amounted to taking the issue out of the hands of the CRTC. They would be presented with a decision which they would simply impliment. It was hard, however, to ignore the arguement that this was as it should be: the government making policy and its agency implimenting it. But this also reflected a growing mistrust within the Department of Communication of the past decisions of the CRTC. DOC questioned the Commission's reliance on the private sector and its decisions to licence more private stations. Pay-TV was in the Department's mind a way to get more money into Canadian production, by allowing a federal agency to play a role in it. The Department of Communications seemed to favour a public monopoly on a national basis and was sympathetic to arguments in favour of a pay-per-program system. R. Brian Woodrow and Kenneth B. Woodside, Op. Cit., 1982. pp. 41-42.

The briefs were to attempt to answer the question of what would be the best form for pay-TV to be introduced into Canada.

The cable companies, at least, liked the announcement of the coming of pay-TV, and prepared a brief supporting the move, and further establishing a pay-TV cable consortium as the best form in which pay-television might be introduced. Virtually no one else, however, felt the way Sauve and the cable companies did. By the October 1 deadline, (the original deadline of September 1 had been extended because of the outcry that there was not enough time to prepare briefs), thirty-five briefs had been received, the vast majority of which were against pay-TV at that time. Few approached the problem of how pay-TV should be introduced, most condemned its introduction at this time and lambasted the Commission for contemplating doing so without full public hearings. Further the government was criticized for overturning the CRTC's 1975 position paper which had expressly stated pay-TV should not then be introduced. (Although many ignored the fact that the CRTC seemed to have agreed with the minister at this point.)[52]

To the provinces this must have been seen as a slap in the face and have been viewed with cynicism. Without any consultation, the federal government had move into an area the provinces had claimed required at

[52] Douglas Mephan, "Does Anyone Really Like Pay-TV", Financial Post, September 25, 1976, p. 3. While such criticism was aimed at what was perceived as cabinet interference with the CRTC, Sauve seemed to have agreement of the Commission, or at least the CRTC was not publicly disagree with the Minister. But many had a problem reconciling the CRTC's decision only six months early dismissing pay-TV for the time being and the Commission sudden change of heart. Thus it was suspected that the DOC and its minister may have been involved in some arm twisting. It also seemd quite proper for the Minister to establish the policy and have the CRTC carry it out, especially if the Commission had the last word on the regulations and licencing.

least discussion before action was taken on any level. Most of the provinces appeared to be, not so much against the introduction of pay-TV at that time, but the federal government's unilateral move on the issue. The provinces contended, at least for bargaining purposes, that pay-TV was their concern.[53] Ottawa appeared to be strengthening its hand on an issue that all had agreed required a political solution. But any turn around in the federal government's position[54] came not as a result of provincial protest, but because of the public protest that was evident in the majority of the briefs that the government and its agency had received.

Except for the cable companies, almost all interested and disinterested parties were against pay-TV at this time. Without such support, the CRTC, always cautious of Sauve's plan, had the excuse necessary to hold public hearings. The Federal cabinet, too, appeared to be reconsidering its position.[55] The CRTC decision to hold public hearings would

[53] For example, Ontario argued the following year: "Ontario wants to licence and regulate cable distribute systems including pay-TV services that may be offered by these systems." Regulation and licencing of pay-TV did not exclude a national company, but Ontario and other provinces saw the federal move as designed to bypass their own concerns. See Canada, Federal-Provincial Conference of Communications Ministers, "Statement by James Snow, Minister of Tranportation and Communications, Ontario", Edmonton, March 29-30, 1977.

[54] Actually their was never an official reversal in the federal position. Sauve and subsequent federal Ministers of Communication remained convinced of the inevitablity of pay television and continued to speak of its imminent arrival.

[55] In August, the then Secratary of State, Hugh Faulkner, made a speech in Halifax, which supported the introduction of pay-TV, and seemed to indicate the cabinet supported Sauve's initiative. Canada, Department of the Secratary of State, Hugh Faulkner, Speech to the Canadian Broadcasting League National Conference, Tuesday, August 10, 1976, Halifax. It appears that Sauve did for a time have some important support within the cabinet, but doubts must have occurred with the

certainly delay the Minister's plans. However, Sauve seemed to grudgingly accept the idea of public hearings,[56] for there was little she could do to prevent the Commission from doing so. Even so, while the Commission had decided to hold public hearings, those hearing were still to deal with the question of the structure of pay-TV, and not what the majority of briefs dealt with: whether pay television was appropriate at this time. Sauve and the Commission seemed not so much to have abandoned the plan, as simply delayed it a year.[57]

The question of jurisdiction was been challenged at another level, with the successful introduction of pay-TV systems in apartment buildings. If some rationalization of the introduction of pay-TV was not forthcoming, the federal government feared that a piecemeal system would develop which would help no one in the broadcasting system. In effect, the federal government's move was calculated on the premise that an early smooth introduction of the service was preferable to the balkanization of the system which might develop. The federal move can be seen as both necessary and politically expedient. Ottawa's fear that the prov-

negative responses contained within most briefs. Sid Adelman, "Pay TV Bombshell Angers Jeanne Sauve", Toronto Star, October, 1976. See also Sid Alelman, "Pay-TV Proponents Offer Their Views on Action", Toronto Star, August 20, 1976. p. E6. and Douglas Mephan, Op. Cit, September 25, 1976.

[56] "The briefs are now comings in. Indeed, if there is justification, I have no objective to more public hearings. I will be meeting the president of the CRTC...to discuss this matter." Canada, House of Commons, Debates, 2nd, 30th, Vol, 1, October 14, 1976. p. 14. Later Sauve stated: "...I have nothing against the CRTC holding public hearings about pay television, but it is up to its chairman to make the decision." Canada, House of Commons, Debates, 2nd, 30th, Vol. 1, November 1, 1976. pp. 624-625.

[57] Douglas Mephan, "Pay-TV May Pause for a Public Debate", Financial Post, November 27, 1976. p. 11.

inces might successfully challenge its claim to pay-TV also played a role. Instead of negotiating with the provinces, it was easier for Ottawa to move in and occupy the field. It was easier to defend something once you occupy it. This would establish and more fully legitamize the federal claim by more clearier integrating pay television into the system. Possession, even in politics, was still nine-tenth of the law. Further a national company would be more difficult for the provinces to claim to be a provincial undertaking and being first in the field might effectively keep out provincially licenced competition in most parts of the country. And even if Sauve failed, federal officials must have been hopeful that the federal initiative would push the provinces into accepting what Ottawa was offering and give them what they wanted: pay-TV.

4.6 MANITOBA-CANADA AGREEMENT

While the federal minister had not succeeded in getting pay-TV into Canada, she had negotiated with one province to recognize the federal government's right to control such a service. The province had got what it wanted from the federal government in return: greater regulatory control over cable. Manitoba and Canada signed the agreement in November, 1976. In effect the agreement was an exchange; Manitoba would get to have some jurisdiction over cable and its use and the province would recognize the federal governments right to pay-TV. By allowing the provincially owned telephone company to own the coaxial cable and related equipment used to deliver the broadcasting signals to subscriber homes within the province, Manitoba would be able to recoup some of the revenues garnered by the cable companies through rents charge for use of

the cable.[58] The Manitoba government inturn recognized Ottawa's jurisdiction over broadcasting and related services including pay-TV.[59] By allowing the CRTC to licence and regulate pay television, the federal authorities thought that they had ensured their continued control over programming and revenues needed to produce Canadian shows. Both parties to the agreement seemed to have obtained what they wanted.

The CRTC was not consulted on the matter and saw the agreement as undermining one of the underlying concepts of cable as a broadcasting receiving undertaking.[60] Ownership of the equipment that relayed the signals to the subscriber had always been part of the CRTC's policy and was seen as essential. The CRTC was also opposed to the type of cross-ownership involved here; that is, between cable television, a broadcaster, and a telephone company, a common carrier. The Commission demonstrated its dissatisfaction with the Agreement by seeking a legal opinion as to whether it was bound by it,[61] initially refused to sanc-

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[58] The agreement recognized as well the province's responsibility for regulating of telecommunications services distributed within the province.

[59] Canada, Department of Communications, "Federal Communication Minister J. Sauve Made Public Text of Letter to H. Boyle, Chairman of the CRTC Concerning the Manitoba Canada Agreement", News Release, Ottawa, June 1, 1977. Article II of the agreement states that "the regulation and supervision of programming service, including programming services ditributed in Manitoba over the air or by means of facilities or apparatus of the (Manitoba Telephone System) are exclusive responsibility of Canada." Since pay-TV is specifically referred to in the definition of programming Manitoba intended to recognize federal, that is, CRTC authority.

[60] Gordon D. Hutchison, "Ottawa Dials for Power", Financial Post, April 2, 1977. p. 19.

[61] Barbara Keddy, "CRTC Seeking Legal Opinion in Status of Ottawa-Manitoba Cable Accord", Globe and Mail, November 23, 1976.

tion the move.[62] In the end a "political nod is as good as a legal wink"[63] and the CRTC accepted the agreement. So while critical of the agreement, the Commission, after substantial protest, felt obliged to recognize, if not totally accept, the agreement. In the future, however, other provincial governments would hesitate to sign similar agreements, because the CRTC seemed to have the power to overrule them.[64] Again, without the power to give the Commission policy directions, the federal government found its hands tied.

The Agreement while recognizing the Commission's jurisdiction over pay-TV proved to be of questionable value. Successive provincial governments in Manitoba have ignored the agreement claiming pay-TV as their own.[65] Furthermore, the agreement implied that the federal government was not certain it had exclusive jurisdiction over pay television and this admission may have weakened the federal government's subsequent bargaining position.[66] In summary, the main effect of the 1976 Manitoba-

[62] Brian Woodrow, et al., Op. Cit., pp. 44-45. Also see CRTC, Annual Report, 1976-1977, Ottawa, Minister of Supply and Service, 1977. p. 11.

[63] H.N. Janisch, "Policy Making in Regulation: Towards a New Definition of the Status of Independent Regulatory Agencies in Canada", Osgood Hall Law Journal, Vol. 17, 1979. p. 67.

[64] See Brian Woodrow, et al, Op. Cit., p. 44 fn 45.

[65] The latest Manitoba govenment has not followed the policy of the last NDP government, which signed the agreement, but has adopted its immediate predecessor's, albeit Conservative, policy as its own. This includes contending pay-TV is provincial responsibility. So much for agreements. See Cecil Rosner, "NDP Follows P.C. Policy on Cable TV", Winnipeg Free Press, December 8, 1981. p. 2, and Roger Newman, "Province Seeks Pay-TV Control", Globe and Mail, December 8, 1981. p. B2.

[66] Roy Romanow, Saskatchawan's Minister in charge of communications, used this argument against the federal government during the federal-provincial conference in 1978. "...(T)here is a Canada-Manitoba

Canada Agreement, which the Ottawa hoped would be a precedent for similar agreements with other provinces, was, in fact, to reinforce the status quo. Another result was the hesitancy demonstrated by other provinces from signing such agreements. The federal government did however introduce proposed legislation the following year, that would allow it to issue board policy directives to CRTC and prevent the government from being placed in similar positions.[67] The CRTC reaction to the Manitoba-Canada Agreement probably was not the spark that ignited the legislation, but it certain must have fanned the flames and hurried the fire along. The only problem was the central government was not making policy, it was making piecemeal decisions, decisions that were not giving the system any direction or dealing with any of the real problems.

4.7 SASKATCHEWAN: JUST SLIGHTLY AHEAD OF ITS TIME

While Ottawa seemed willing to give up something to the provinces, it was not moving fast enough for some. Ottawa was about to discover that even among the English provinces wants fluctuated. While Manitoba appeared satisfied with ownership of parts of the cable hardware for others this was not sufficient authority.

Agreement signed a year ago or so where apparently Canada was not so secure in its knowledge that juristictionally they had the exclusive control of Pay-TV, not so sure that they didn't get Manitoba's concurrence in the giving up of the Pay-TV jurisdiction to Canada." Canada, Federal-Provincial Conference of Communication Ministers, Transcript, 29 March, 1978, Charlottetown. p. 94.

[67] This was first contemplated in the government's Grey Paper in 1975.

Saskatchewan had watched itself become one of the worst served provinces in terms of broadcasting. Its government felt that in part this was because federal regulatory control tended to be distant and unsympathetic to the needs of the province. Even the national broadcaster, the CBC, did not, in the early and mid 1970s, deliver its service to a substantial number of the provinces population. In 1972, the Saskatchewan government had decided that it was going to build its own cable system, because it felt private enterprise would not be able to deliver the service to all its citizens.[68] Saskatchewan was a province that national broadcasting policy had not served well. It wanted to change this fact, and its motive were in its public's interest.

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[68] Saskatchewan could justifiably argue that federal communications policy was not serving its peoples' needs. In 1975, with 47 per cent of the population living in rural areas (compared to only 17.6 per cent in Ontario) most could receive only one TV channel. To deliver cable service to all Saskatchewan would have to be done directly by the provincial government or indirectly through the CRTC. The CRTC would have to encourage private business to us surplus revenues (profits) to extend service to rural and remote areas. The Commission had not done this in the past with off-the-air broadcasting services, instead Saskatchewan looked on in frustration as Ontario received a licence for another network, Global, bringing to four the number of Canadian stations serving Southern Ontario, while most of the people in Saskatchewan did not even have two. It was doubtful that the CRTC would force private industry, in the case of cable, to go were profits did not roam. David J. Baum, Op. Cit., pp. 729-730. This was at first acceptable to Ottawa. Jack Miller, Op. Cit., December 9, 1972. Miller says that although Saskatchewan planned to have SaskTel lay cables and establish non-profit organizations to be licenced by the CRTC, this caused Pierre Juneau, then chairman of the Commission, to say in October of 1972 that there was no essential conflict with CRTC policy and the province's plan. However, by the end of that year a constitutional fight loomed "...over who's in charge". This may have resulted from the Saskatchewan government's change of tatics. The government was contenting that the CRTC and Ottawa would have no say over what was to be carried on the cable in the province.

Late in 1975, the Sasktachewan government announced that it would back non-profit community groups in their applications for cable licences in the province's four largest cities. The Saskatchewan government argued that cable should be 'non-profit' so that profits could be channelled into local programming. The minister in charge of communications in the province warned that "(i)f the CRTC does licence a profit-making company we will not provide the hardware to them."[69] In addition the provinically owned telephone company, SaskTel, applied for a joint licence under which it would own and operate cable hardware for these independent groups. This was very similar to what Manitoba and Canada had agreed to a year before. The Manitoba Telephone System would own the coaxial cable and would rent it to the CRTC cable licencees. SaskTel's ownership of the hardware would insure that the majority of the province would be serviced, sooner or later, and that rates would be kept reasonable for rural subscribers through cross subsidization by city dwellers. But the chairman of the CRTC had stated that there was no way that SaskTel could be given a licence unless the federal government amended a order-in-council prohibiting any provincial government agency from holding such a licence.[70] In February, 1976, the CRTC rejected the applica-

[69] "Saskatchewan Phone Firm Seeks Only Joint Cable Licence", Winnipeg Tribune, December 6, 1975, p. 36. This made it sound as if a CRTC licence for SaskTel was only a formality. The phone company would be providing the hardware no matter what the ruling of the Commission. Further, the province was warning the federal regulator that anyone licenced as a cable operator had to be provincially acceptable. This must of put the Commission in an uncomfortable position, for to now do as Saskatchewan wanted was to in effect surrender some of its decision making powers.

[70] A. Rosseker, "Cable TV Showdown Looming in Saskatchewan", Financial Post, March 6, 1976. p. 14. Making it appear that while the CRTC was sympathetic to Regina's goals, Ottawa stood in the way.

tion by SaskTel to own cable hardware.[71] The federal government had changed nothing, although they had sanctioned such an arrangement with the Manitoba-Canada Agreement, and the CRTC felt it could not give the provincial crown corporation a licence. It also licenced, against the wishes of the province, two profit-making cable applicants.[72] SaskTel's response to the decision was to start laying cable in four cities within the provinces and challenging the Commission's decision in court.[73]

In the end the provincial government got its way. In a decision the following year the CRTC accepted the application of a co-operative in Battleford to have SaskTel own the cables over which it would deliver its service.[74] But the treatment the province had received on this mat-

[71] The CRTC argued that the cable operators had to own at least part of the hardware.

[72] The CRTC's decision was not based so much no the legality of giving the licence to a provincial crown corporation, but on the view held by the Commission that it was "essential" that a licencee have "effective ownship and control" of a minimum amount of the hardware in order to fulfill its responsibilities. See CRTC, Decisions, Vol. 2, Part 1, April, 1976 to March, 1977. pp. 155-156. The CRTC, by ignoring the logic involved with the request for non-profit licencees, demonstrated how difficult it was for it to break with its past. Up until this time, the CRTC had licenced only companies with 'strong' and 'stable' financial backing, on the grounds that they were more likely to survive and have the resources to contribute to the goals of the system. Indeed, the Commission's licencing of two non-profit groups for licences in North Battleford and Regina can be seen as a victory of sorts, but more likely they were the CRTC's way of pacifying the provincial government. Nadall Flakstad, "The Sage of Saskatchewan Cable", Broadcaster, September, 1978.

[73] John Twigg, "Saskatchewan in Tug of War Over Control of Cable TV", Financial Post, February 26, 1977. p. 36. The Saskatchewan government also appealed to the federal Cabinet to change the CRTC decision. See Richard Schultz, Op. Cit., p. 138.

[74] Actually an acceptable compromise was worked out. SaskTel would own the cable running telephone pole to telephone pole and from the poles to the subscribers' homes, the cable company would have to own the cable from the house wall to the television set. John Twiggy,

ter would make it to hesitate to negotiate with Ottawa on communication matters.

Pay-TV was a natural extension of the concept of local service by local undertakings. The Saskatchewan government reiterated over and over again this view of pay television. It was their main hope for more regional and local content[75] in a province where even the CBC did not do very much programming. Saskatchewan had seen cable in the same terms: by backing non-profit cable co-operates, it not only allowed citizens to participate in policy decisions on cable, it would also ensure profits were used to enhance local programming and local dialogue. In fact, the chief concern was for local programming.[76] Partly Saskatchewan's decision to go ahead with pay-TV without federal consent was a move to challenge the federal claim to this new service, but mostly it was the result of the federal government's insensitive response to the province's concerns and needs.

Pay-TV in Saskatchewan did not start until 1977, that year the provincial government guaranteed a loan to the Co-operative Programming Network (CPN). CPN was a joint venture of the cable co-operatives and SaskTel. CPN offered subscribers a four channel package consisting of a children's channel, a news channel, a channel called 'Variety Fare' and

"Saskatchewan Sees CATV Victory", Financial Post, October 8, 1977. p. 26.

[75] In 1976, the premier of Saskatchewan had indicated in "quite specific terms" that he regarded pay-TV as being exclusively within provincial jurisdiction. Canada, House of Commons, Debates, November 22, 1976. pp. 1267-1269.

[76] Courtney Milne, "The Cable Co-operative: A New Approach", in Canadian Broadcasting League, The Crisis in Canadian Broadcasting, Ottawa, 1976. pp. 4-5.

Home Box Office (HBO).[77] These three channels, plus HBO were available to the subscriber for $10.50 per month. At its peak it had about 16,000 subscribers in Regina, Moose Jaw and Saskatoon.

CPN faced many difficulties, including an inadequate supply of converters and ineffective security against theft, and as a result the company was placed in receivership in January, 1979. It ran until the summer of that year, at which time a new consortium called Cablecom was established.[78] Cablecom introduced a much less ambitious service of only one channel called Teletheatre. The channel showed mainly the American pay-TV service Showtime.[79]

What CPN proved was that pay-TV could be popular, but that on a small scale it was less likely to achieve what the Saskatchewan government had wanted. The fact that Telethreatre offered only one channel, while CPN had offered four, demonstrates that the province could not alone support this more elaborate version of pay.[80] CPN struggled courageously to

[77] The children's channel obtained its programming for TV Ontario, Access (Alberta's educational channel), PBS and the NFB, as well CPN produced some programmes itself. The news channel presented 'syndicated newswire' with background music from a local FM radio station. Variety Fare was a channel of syndicated programming, feature films, sports, local and Canadian productions. Some examples of these were: "Challenges: Saskatchewan Issues"; a 13 part series on the issues effecting Saskatchewan produced by the University of Saskatchewan. "Landscapes of Saskatchewan", a travel log, and "SaskCan", a current affairs programme on local and national issues. The amount of local production and Canadian production on the service however was small.

[78] The consortium included Co-op Trust, Federated Co-ops and Credit Union Central, the Saskatchewan government and local pay-TV affiliates -- the affiliates are owned, but not subsiduaries of CATV operators licenced by the CRTC.

[79] The above is based on a correspondance between the author and Richard J. Symson, Director, Communications Sectretariat, Province of Saskatchewan, January 5, 1981.

achieve the ambitous goals of being both a community service with regional programming and an alternative to conventional broadcasting. It also proved that pay-TV could be run under provincal auspices, without federal approval. Saskatchewan argued that closed circuit TV programming of any kind was not a constitutional concern of the federal government. Saskatchewan had a pay-TV network operating, but since it was not broadcast over the air, the federal government did not and could not do anything about it.[81]

According to the provinces, new broadcasting services such as pay-TV had broader implications than those cited by the federal goverment. Such services should included regional and provincial programming needs. Saskatchewan recognized a need for a federal presence and a national communication policy, but as Roy Romanow, the Saskatchewan minister in charge of Communications, argued

> national policies tend to obscure regional needs by over protecting national goals...The national governments, it is realized, can best set national cultural goals; provincial governments are best at establishing local and regional level cultural goals.[82]

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[80] Telethreatre's Canadian content ran at about 4 percent. Perhaps proving the federal government's point that the Canadian system is such that the entire market must be tapped if certain goals are to be realized.

[81] Even the CRTC recognized that their were different types of crimimals and "not everyone who breaks the law is 'prosecuted."' A CRTC spokesman quoted in Dan Westall, "Rogers Criticizes CRTC, Cites Bias Over Pay TV", Globe and Mail, November 15, 1980. p. B2.

[82] Canada, Federal-Provincial Conference of Communication Ministers, Transcript, November, 1978. Charlottetown.

It was not necessary for the federal government to abandon its claim to pay-TV in order for it to recognize that provinces have a role in the protection and promotion of local and regional culture through cable and perhaps pay-TV. Too often national policies fulfill "federal government goals, but (have) left regional needs unanswered."[83] The province hoped its pay-TV service would direct profits and revenues to the production of "regionally flavoured" programmes. And while it was recognized that the present system was supposed to be designed for the "preservation and promotion of Canadian culture", it was noted that it had "fallen short."[84] Ironically, it was Saskatchewan that warned that unless the federal government moved quickly to establish a national framework for pay-TV, other provinces might follow Saskatchewan lead, and create a piecemeal pay system, that was advantageous to no one.[85] While Saskatchewan would welcome clear federal policy and a clear federal framework in which to impliment that policy, it still saw the need for a provincial role. There is a problem here, because national goals and provincial goals often conflict; who should be pre-eminent in the field depended on from were the issue was viewed. The Saskatchewan solution was, in effect, to allow both the federal government and the province to

[83] Canada, Communications Ministers Conference, "Pay-Televison: Notes for a Statement by the Hon. E.B. Shillington, Minster of Government Service, Saskatchewan, Edmonton, March 29-30, 1977.

[84] Canada, Federal-Provincial Conference, Transcript, Op. Cit., 1978. p. 96.

[85] Saskatchewan argued that pay-TV "...has got to be controlled at a local or regional level. It has got to promote local or regional culture. It has got to have some form of a kick-back system for financing this local-regional system. (But) it has got to be integrated into a national system." Canada, Federal-Provincial Communication Minister Conference, Transcript, October 16-17, 1979. Toronto.

run pay-TV. If a national pay-TV distribution was licenced, the CRTC should regulate it, but at the local level, the licencing of the exhibitor was the provinces concern. Thus in Saskatchewan mind, both levels of governments could win what they wanted. Control of the national distributor of pay services would allow Ottawa to control content and see funds reinvested in Canadian production. Control of the exhibitor of pay TV, ie cable, would allow the provinces to garner revenues for local programming and cultural works. If the federal government had been more flexible it may have recognized the legitimate concern here. And whether Saskatchewan's solution was workable was a lesser problem than Ottawa's intransigent attitude which saw no solution forthcoming.

4.8 NEW TELECOMMUNICATIONS LEGISALTION

In 1977, the federal government tabled a new telecommunications act which had been anticipated in the 1975 Grey Paper. The act would allow the federal government to make agreements with other provinces and delegate them communications responsibilities. Cabinet would also be able give binding policy direction on the Commission.[86] While, strictly speaking, it surrendered no authority to the provinces, it did indicate a willingness on Ottawa's part to be more flexible and try to live up to any agreements it might make in the future.

This legislation, known as 'phase two' of the telecommunication bill, was tabled in the House of Commons the week before the Federal-Provin-

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[86] The legislation would allow Ottawa to give 'policy direction' to the CRTC, thus avoiding the politically embarrassing and inappropriate result of the Manitoba-Canada Agreement.

cial Communication Ministers' Conference was to open in Edmonton.[87] The legislation[88] which would be reincarnated three more times after its inital introduction, would allow the federal government to enter into agreements with the provinces and authorize the interdelegation of regulatory control between federal and provincial agencies. It also would permit the federal cabinet to issue broad policy direction to the Commission.[89] The legislation, while anticipating the truncation of federal regulatory responsiblity, nonetheless, explicitly reaffirmed the federal governments jurisdiction over cable and broadcasting.

After the 1977 Communications Minister's Conference, the bill was withdrawn from Parliament and slightly revised. It was reintroduced twice in 1978 and died on the order paper both times, once at the end of

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[87] The amendment to the existing Broadcasting Act which had created the super agency the Canadian Radio-television and Telecommunications Commission was considered phase one. The legislation was credited with making the mood at that conference 'radically different' from other ones. Jack Miller, "For Once, A Friendly Federal-Provincial Session", Toronto Star, March 31, 1977, p. A3.

[88] For an explanation of the legislation from the federal point of view see: Canada, Department of Communciation, Jeanne Sauve, Speech to the Canadian Broadcasting Association, Winnipeg, April 18, 1977.

[89] Although not on licencing matters, programming or the restriction of freedom of expression. Their were and are arguments for and against this power. The government would not be able to direct the Commission on issuing of licences, overseeing programming or levying rates, so it was not involved in the day-to-day functioning of the Commission. But in almost every other area of policy the CRTC came under the direction of the cabinet. Sauve argued that "(i)t is much less complicated for government to set out the general policy then to have after-thoughts about what a regulatory agency is doing." Besides it was the role of government to make policy, policy that was responsible to the Parliament. Boyle, on the other hand, stated that "It is the role of Parliament to set policy, but Cabinet decisions are made in haste and in secret and announced as an order-in-council." Policy, he argued, is not made more responsibly, just more expeditiously. It was over this issue that Harry Boyle resigned.

a session of Parliament and once because of an election. To the majority of the provinces which cared delegation was the key issue. Such a policy would allow the federal government to retain control of its main concerns: programming and regulation of national, local and foreign broadcasters within Canada and still give provinces control of some aspects of communications.[90]

In 1979, with a new government in power, a similar bill was introduced. The legislation introduced be the Progressive Conservative government mirrored its Liberal predecessor with a few modifications. The P.C. bill empowered the cabinet to issue policy directives, but added a provision for Parliament to override such directions.[91]

While under the Liberals, Ottawa had seemed eager to negotiate agreements with the provinces, wide gulfs remained between what the federal government offered and the position of the provinces, particularly Ontario, Quebec, Saskatchwan and B.C. This may have affected the speed with which the Liberals had dealt with its bill. Under the Liberals,

[90] It might be imagined, without too much trouble, that such delegation would be precedeed by an agreement similar to the Manitoba-Canada one, whereby the provinces would pledge to leave pay TV for federal regulation. Indeed, thwas is what the federal government had hoped to do with provinces who, like Manitoba, wanted greater powers in the communications field. The government was willing to hand them over for certain returns. This may have worked fine if it had not been for the CRTC's persistent complaints about its legality. These complaints were justifiable because Parliament had given the federal cabinet no such power.

[91] Barbara Keddy, "Tories to Let MPs Overrule Cabinet on CRTC Policy", Globe and Mail, October 16, 1979. p. 4. While this appears only symbolically important, it would lead to more open policy making. There would be no 'secret' directives from cabinet to the Commission and it would lead to a fuller discussion of the directives than might otherwise occur. Cabinet would also no longer have the power to "vary, suspend, or set aside CRTC decisions" and would only be able to refer Commission decisions back for reconsideration within sixty days.

the telecommunciations bill never seemed to be a priority. Ottawa's slow pace indicated to the provinces that the federal government did not appear all that keen to impliment the agreed to changes. Was the federal government simply playing with the provinces, buying themselves time? This was the way it appeared to the provinces.

Under the Conservatives speed seemed to be a greater concern. The P.C. had desire to prove themselves to be more accomodating to the provinces and able to reach agreements with them. They did not move fast enough, for an election was called before anything could be done and they lost. By the end of 1983, the communications legislation still remained to be approved. The fact that little or no progress had been made on this legislation annoyed many provinces who would have welcomed clarification to the jurisdictional tangle over cable and pay-TV. Conflict and delays led the provinces to challenge the federal government through actions designed in part to improve their bargaining position and increase the pressure on the federal government to act. The federal government by not passing the promised legislation damaged its own credibility with the provinces and encouraged the provinces to take matters into their own hands. Thus the system had, since the first mention of this legislation, suffered from the warring of factions and the threat of piecemeal policy, as well as, the government allowed other problems to languish unresolved.

4.9 COMMUNICATIONS MINISTER'S CONFERENCES: 1977-1982

The practice of holding almost yearly Communications Ministers meetings began in 1977. Unfortunately the number of meetings held was not reflective of the progress that was made on communications issues. The meetings were getting nowhere quickly and much of the frustration that resulted among the provinces might have been expected. While both sides had positions from which they wished to bargain, neither side really had any clear policy and it was never clear what either side was really willing to give up or wanted. As a result, the question of jurisdiction remained unresolved. One thing did appear clear during the 1970s, the federal government wanted to be in charge of the introduction of pay television in Canada. It wanted to be in charge to prevent a piecemeal introduction (which held potential danger for the existing broadcasting system) and garner potential revenues which could be used to support Canadian programming. Once in place the federal government would regulate it, for only through national regulatory control would the worst effects be stifled and the benefits maximized. Sauve's aborted bid to move quickly and unilaterly into pay-TV was Ottawa's first attempt to achieve this without bickering with the provinces. Once it failed; the federal government resumed negotiations with the provinces, something they would have had to do whether or not Sauve's coup de fait had been unsuccessful.

The first meeting of Communication ministers since 1975 was held in March, 1977. It might have been expected that the federal minister would be verbally lambasted for her action, but she came bearing a gift to pacify the provinces. Just a week before the conference, the minis-

ter had introduced into the House of Commons telecommunication legislation that would have given the federal cabinet the power to delegate responsibilities in the field to the provinces. During the day and a half conference, the federal minister stated that the delegation of some powers over cable regulation to the provinces which desired it would be forthcoming with the passage of the new Act. This legislation was popular with most of the provinces because it offered a quick way for the federal government to deal with their demands. The flexibility and accomodation which the proposed federal legislation could have produced, was credited with the dissolution of a provincial common front that had been put forward before the conference. The Alberta minister, who had opened the conference flatly demanding control of cable companies and pay-TV within his province, was joined by New Brunswick in announcing that the current regulatory arrangement was fine with them.[92] Quebec was criticized by other provinces for not showing up at the conference[93] and for demanding an unrealistic amount of jurisdiction in the communications field. Ontario saw the federal government's proposed legislation as the 'best method' to achieve its desired goals.[94] Although, Ontario

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[92] Jack Miller, Op. Cit., March 13, 1977.

[93] Quebec, with the Parti Quebecois now in power, had not come to the conference because it did not wish to lend credibility to the federal jurisdictional claims.

[94] Canada, Federal-Provincial Communications Ministers Conference, Statement by the Honourable James Snow, Minister of Transportation and Communications, Ontario, March 29-30, 1977, Edmonton. Doc 830-27/004. p. 6. While Ontario saw the legislation giving "...the opportunity to deal with the issue.", it did announce some reservations. The Act was silent "..on precisely what the federal government intends to delegate" and it was "not clear how restricting the conditions imposed on the provinces would be."

went into the conference claiming jurisdiction over all pay-TV services, it was willing to allow the federal government to regulate the programming end of it.[95] The federal government stated that no delegation would take place on matters of licencing, programming or the restriction of freedom of expression, thus effectively limiting the provinces to the arrangement made with Manitoba. The federal government would not "give up any control to the provinces in the programming of coming pay-TV services..."[96] Generally this position found favour with all the provinces, but Quebec and to some degree Saskatchewan, for most provinces at the time were more concerned with non-programming services that might be carried across cable; such as, stock market reports and fire alarms. This was fine with Ottawa and appeared to be 'good enough' for a province like Ontario.[97]

Reaching a general agreement, like the one achieved at the 1977 conference, meant little in retrospect. While the generalities of the issues were easily agreed to, the differences came about in the details. The provinces, for example, seemed to desire at least some say in pay-TV, perhaps limited to the role of requiring federally regulated carriers to receive a pay TV licence from a province. The federal government on the other hand would not allow the provinces such powers, hoping instead that they would be satisfied with some powers over cable regula-

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[95] This ambiguous reference to federal regulation of programming of pay-TV still left a wide gulf between what Ontario and Ottawa were actually offering each other.

[96] Sauve quoted in "Sauve Says Bill Poses No Threat to Broadcasters", in Toronto Star, March 30, 1977. p. D1.

[97] Jack Miller, Op. Cit. March 13, 1977.

tion and possible some control over non-programming aspects of cable. Such details seemed to have kept all involved far enough apart that no real agreement could be reached.[98]

In January, 1977, the Quebec government had established a task force to determine the most suitable method of introducing pay television in the province. The task force concluded that the introduction of the service was not advisable at the time, but did lay down the criteria that should be adopted when it was allowed. The criteria suggested by the task force and later adopted by the Quebec government, included such things as; pay-TV should be licenced by the provincial government, it should be a non-profit private company, owned and operated by Quebecers, and it should produce a substantial amount of its programming in Quebec.[99] In effect the Quebec government left little room for a federal

[98] For example, Ontario preferred competition as the means to achieve the goals of flexiblity and diversity in pay-TV. The consumer was best served, Ontario argued, by a service that would allow the consumer choice and programming diversity. In order to be flexible pay-TV must be flexible, and further to do this, competition must be encouraged and regulations held to a minimum. B.C. agreed with this stand. Ontario was against a national federally licenced monopoly, especially one involving direct federal participation. British Columbia did not care if the federal government was involved or not, but did not wish to see a monopoly of any kind. It was argued that Canadian programme production would be enhanced by several licencees bidding for producers' products. Ontario linked pay-TV with additional funding for provincial art groups; for example, money might go from pay television to the Ontario Arts Council, which would then distibute it to various provincial arts organizations. B.C. was more concerned that a great amount of programming be made in that province, and saw pay-TV as a way to stimulate its immature production industry. Newfoundland did not agree with these assessments, dismissing them as being fine for the rich provinces, but not very satisfactory for the smaller and poorer ones.

[99] Canada, Federal-Provincial Conference of Communication Ministers, Pay-TV in Quebec: Guidelines, Points and Recommendations, Government of Quebec, Department of Communications, March 29-30, 1978. Edmonton. DOC 830-39/035

pay-TV licencee to operate within the province.

The following year, Quebec announced that regulations for pay-TV were to be established for the province. These rules would be administered by the Regulate des service public de Quebec (Quebec's Public Service Board), which would have the power to oversee and regulate any pay-TV system contemplated for the province.[100] With this in place the Quebec government was willing to join the other provinces during the 1978 Communication Minister's Conference. Meanwhile, as we have seen, Saskatchewan was erecting its own pay-TV system. A piecemeal system was slowly taking shape. The federal government should have been moving quickly to prevent further rifts and try to get Saskatchewan back in the fold. This meant an attempt to find a suitable compromise. This was not forthcoming.

The federal government appeared to be in no hurry to pass its telecommunications legislation, indicating to the provinces that Ottawa was either not serious about its promises or it was not a priority with that government. Either way the federal inaction did not sit well with the provinces. Before the ministers met in March, the CRTC released its Report on Pay-Television[101] which stated that pay-TV should be resisted at this time. This must have come as a disappointment to Sauve who still anticipated a decision on the structure of pay-TV followed by its introduction. After the long process of hearings, Sauve expected to be at least back to where the federal government had been in 1976; about to introduce pay television. If this was a shock to her, Sauve took it in

[100] Ibid

[101] CRTC, Report on Pay-Television, March, 1978.

her stride announcing that she too did "not believe that Pay TV should be introduced just because it is technically possible to do so."[102] But the question was not dead, and by May of that year she stated that the CRTC and her Department had agreed after "intensive" study that pay TV could be a good thing.[103] Sauve stated that in the "near future" the government would outline its policy.[104]

The provinces took the report less optimistically. Many wanted to discuss on the question of pay-TV's introduction and saw the Commission's statement as another way for the fedeal government to stall discussions on the matter, as well as indicating that the federal government had no better control over the policy function of the Commission than it had before.

During the 1977 Communications Minister's Conference, the minister's agreed to establish a federal-provincial working group on pay television which would report to the ministers at the following conference. The working group's report was a document of vague compromises, most of which had been said before. It made no concrete or explicit recommendations, and thus was easily accepted by all ministers as the basis of further discussion at the next meeting. There was little of the amiable atmosphere that had prevaded the 1977 conference, at the meeting the following year. The federal government was no nearer to passing its te-

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[102] Canada, Department of Communications, News Release, Ottawa, March 13, 1978. p. 2.

[103] Canada, Department of Communications, "Cable and Responsive Community Service", Jeanne Sauve, Kitchner, Ontario, May 17, 1978. Speech, p. 4.

[104] Canada, Department of Communications, Op. Cit., March 13, 1978. p. 2

lecommunications legislation and the details on cable delegation had not been worked out to the provinces satisfaction.

Not much was accomplished during this meeting. The 1978 conference ended with the release of a Joint Communique, dated 29 March 1978, stating that the provincial ministers generally supported Bill C-24, the federal government's slightly revamped telecommunications legislation, first introduced last March. On the issue of pay-TV, the communique basically said that there were still differences. Once again, someone was to look into pay-TV before the next Ministers' conference, in this case the federal minister had been vested with the responsibility to develop a model for pay-TV.[105] The model she was to develop was to be along the line suggested in the Commission's recommendations. The model would 'look after' federal interests and 'include' provincial interests. She would develop a model and get back to the provinces. This is not, however, what the provinces wanted. They expected the minister to consult with them on the development of the model, not present them with the

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[105] When questioned that the government was ineffect ignoring the CRTC decision, the Minister declared that the Commission was not against pay-TV, but wanted government policy to precede it. "They said it is time now to develop a policy which I am now doing." Canada, House of Commons, Standing Committee on Broadcasting, Film and the Arts, Tuesday, May 23, 1978. No. 16, 30th, 3rd 1977-78. p. 16-29. The Department of Communications would also establish a Committee to examin communications, including pay-TV. The Clyne Commission was established partly so it would get some positive feedback on the introduction of pay-TV and help establish a policy for its introduction. The Committee can be seen as a move to take the question out of the 'political' arena and get some unbiased suggestions on its proper form. Taking the question to an independent body was politically expedient, for the federal government hoped to get a plan it could implement without such niceties as provincial agreement. The federal government could move on the question and point to an independent, unbiased body and say this is the best method for its introduction.

finished model to accept or reject. Quebec had not even agreed to the communique, stating that Ottawa had no rights to deal with pay-TV. At this rate pay-TV was about as inevitable as the turn of the next century.

The postion of the federal government had not changed much over the last couple of years. In a speech made shortly after the Minister's conference, Sauve reiterated the federal government's stand on pay-TV and said that the provinces agreed that

> Pay TV should not be brought in on an adhoc basis and that a piece meal approach should be avoided... I made it clear that pay-TV affects programming and that it was under federal jurisdiction.[106]

The larger provinces seemed to see pay-TV as a shared jurisdiction at the very least, and more likely as exclusively provincial. They were willing to accept federal control of national systems, they even may have been willing to allow the federal government to set content regulations and the like as long as they got the right to licence such services, and have those services fulfilled more than just national goals. Near the end of the year the federal government once again offered the

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[106] Canada, Department of Communications, Op. Cit., May, 17, 1978. Of course this ignored the fact that Saskatchewan had such a service in place, Quebec had passed regulations to allow it to do the same and the provinces generally claimed pay-TV as their responsibility.

[107] Ottawa appeared to becoming more flexible on this issue. Mostly this came as a result of a desire on the part of the Trudeau government to move on the issue of constitutional reform. The federal government was trying to demonstrate it was willing to be accommodating on the issue of communications in order to speed along reform and agreement in other areas. As a result of the First Ministers Conference on Constitutional Reform in October, the Continuing Committee on the Constitution was established to look further into the question of communications. Meeting in November and December of

provinces cable.[107] Quebec, however, once again refused to go along.[108] Again all of the other provinces were willing to accept this delegation of cable authority, but it was unlikely that even those so inclined would be permanently satisfied. The 1979 conference demonstrated this point.

The only thing of substance that was different during the 1979 conference was the party in power at the federal level. The Progressive Conservatives had run on the platform of greater provincial powers. But even in the federation like that espoused by their leader, Joe Clark, a great deal of federal control of communication was seen as necessary. The conference also demonstrated that even when a federal government was willing to listen to the provinces, the problem became which provinces it should listen to. Not all provinces had the same views, and consensus among them was almost as difficult as that between the different levels of government. However, in the end the Conservative administra-

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1977, the committee recommended, and the federal government agreed to, concurrent jurisdiction over cable distribution.

[108] "Under the proposal, the federal government would...retain the right to limit both foreign channels and content, to set nation-wide technical standards, and to allow domestic cable equipment to develop economies of scale. Ottawa would also have control over closed circuit cable TV." "News", Broadcaster, Vol. 38, No. 2, January, 1979. The following January, the First Ministers would meet again. At this meeting the federal government agreed to a proposed Constitutional amendment which would have given the provinces paramountcy over cable within their border including the reception and distribution of signals. Ottawa would retain control in relation to Canadian content and Canadian programmes and services. This went much further than anything that had ever been proposed before, but while all the provinces agreed, an election and the use of communication as a bargaining tool in the constituional debate meant that this agreement was lost. The next constitutional meeting, in the fall of 1980, began from scratch on this issue. See Brian Woodrow, et al, Op. Cit., pp. 52-53.

tion offered what would be called by a fellow Conservative from Ontario a 'rehash' of Liberal policies.

Mr. David MacDonald, the Conservative Minister of Communications, saw pay-TV as an important issue to be dealt with quickly. Before the 1979 conference, he stated that Canada would have a pay-TV system in place within a year.[109] While stating that the jurisdiction of pay-TV was 'negotiable', MacDonald apparently believed that a national monopoly would be best for the industry and announced the government's intention to set up such a system.[110]

Macdonald's vision of the structure of pay television in Canada was a national government agency. Tentatively called the National Electronic Theatre, this pay-TV agency would be made up of government representatives, broadcasters, cable operators and independent producers. This is what MacDonald was going to recommend to cabinet.[111] 'Surplus profits' from such an agency would be used to fund Canadian programming. The fund would be administered by the Canadian Film Development Corporation, with provincial participation.[112] With this model he planned to consult

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[109] Glynnis Walkin, "Pay-TV Still Has to Fight Ted Tape", Financial Post, October, 23, 1979. p. 32.

[110] Barbara Keddy, "Jurisdiction of Pay-TV Negotiable", Globe and Mail, October, 19, 1979. p. 10. Added to this was the new issue of extension of services to northern and remote communities and the theft of American satellite signals by such communites. MacDonald's solution was to tie pay-TV to such extension, through a program of cross-subsidization. This was not a very popular stance with the provinces.

[111] 'News', Broadcaster, Vol. 38, no. 10, October, 1979. p. 9. Producers would exhibit the programmes on a pay-per-program basis.

[112] "News", Broadcaster, Vol. 38, No. 11, November, 1979. p. 12. MacDonald's version of pay-TV, however, ran into oppostion; probably leading the attack were cabinet colleagues. The cabinet was at that point purging crown corporation and may not have been sympa-

the provinces before the Communications meeting in the fall of 1979.

The question of pay-TV remained unsettled. MacDonald had to abandoned his plan and announced prior to the conference that he was not satisfied with any of the proposals yet heard for pay-TV's introduction and was going to suggest to the Ministers a "process of public consultation."[113] That process would be handled by the CRTC. The majority of the provinces agreed to send the question of pay-TV back to the Commission to make recommendations. There were dissenters, like B.C., who saw such a move as a waste of time, and a further delay on a matter that should be dealt with immediately.

To ensure greater provincial input, four of the nine members of the CRTC committee[114] would be selected by the provinces. The Committee was given guidelines and objectives on which to base its decisions. However, these were so confused and compromised as to be of little help in the Committee's search for the best method to introduce pay-TV.

The Committee would not report to the same government that had established it, because the Liberals were returned to office in the general election of February 18, 1980. Old positions clashed again. A constitutional conference was held, the Liberals and the provinces seemed to make some head way on this issue, only to see it lost when the conference itself collapsed. The provinces had always expected that the out-

thetic to government involvement in another venture. Further, the provinces were hesitant to accept what MacDonald had proposed for pay-TV.

[113] Canada, "Federal Government Working Towards Comprehensive Policy for TV in 1980s", News Release, Ottawa, October 4, 1979. p. 3

[114] Known as the Committee on the Extension of Service to Northern and Remote Communities or the Therrien Committee.

standing issues would be resolved before the federal government moved on pay-TV. In late 1980, the new Minister of Communication, Francis Fox announced that the government might move on the introduction of pay-TV, whether or not the CRTC was ready. After some consultation with the Commission, both agreed to endorse the Therrian Committee's pay-TV recommendations. Fox announced that he had given the 'offical' go ahead for the introduction of pay services in Canada.

Since then the provinces have tried to recapture their 'united front', especially on the question of pay-TV.[115] In the fall of 1980, in retaliation to what the provinces they viewed as sluggish progress on the question of cable delegation, they "agreed to challenge the federal government by declaring their independent power to regulate pay-television within the own borders."[116] They reaffirmed this later, stating "commercial pay-TV is not an instrument of national purpose that overrides the right of Canadians to be served as they choose, to be served by the governments they know best, those of the provinces."[117] And while they were not opposed to the establishment of a national pay TV system,[118] they were opposed to a system that would preclude the establish-

[115] In 1979-80 before the Therrian Committee, the provinces had demonstrated how divergent their views on pay TV were. The smaller provinces, while claiming pay-TV as their own, stated that it should not even be considered at this time, while large provinces such as Ontario were all for as much pay-TV as possible. See CRTC, Committee on the Extension of Services to Northern and Remote Communities, The 1980s: A Decade of Diversity, Minister of Supply and Services, 1981. pp. 54-56.

[116] Robert Stephans, "Pay-TV: A Provincial Issue, Provinces Say", Globe and Mail, November 28, 1980. p. 2.

[117] "Pay-TV for the Provinces", Editorial, Globe and Mail, December 2, 1980. p. 6.

ing of local or regional systems. To back this threat up with action, several provinces were to move quickly to introduce legislation that would give them independent power to regulated pay-TV that originated within their provinces.[119]

During the 1981 Communications conference Fox only grudgingly put pay-TV on the agenda and the following year he refused even to discuss it, claiming that pay-TV which is carried over federally licenced broadcasting receiving undertakening was in his government's jurisdiction. Fox's attitude and unwillingness to even discuss the matter angered the provinces and resulted in retalitory threats and counter moves designed to force the federal government back to the table.[120]

4.10 CONCLUSION

In over a decade of discussion the federal and provincial governments have demonstrated a unique ability to not only run on the spot, but to do so while everything else moved forward. While it is realized that in a country as regionally diversified as Canada, differences are likely to occur between the various regions and levels of government. Compromise should be the result. In the field of communications a new record for irreconcilability may have been established. Partly this drift of non-

[118] "Letter to the Editor, Pay Television", James Snow, Minister of Transport and Communciations, Ontario, Globe and Mail, December 2, 1980. p. 6.

[119] Robert Stephans, "Provinces Hurry to Take Control of Pay-TV", Globe and Mail, December 4, 1980. p. 12.

[120] See Gary Bolrovitz, "Federal-Provincial Communications Conference", Broadcaster, June, 1982. pp. 9-10. At the time of this writing this has not occurred and Ottawa appeared quite happy to allow the issue to resolve itself.

policy and non-decision may reflect the fact that politically the issue is not all that important. It is not like transfer payments, tax points, or equilization; the money involved is not large compared to these programmes and therefore an early conclusion is neither pressing nor urgent in this sense. However, such an environment was hardly conducive to the development of clear and 'good' policy. Since the matter of jurisdiction has preoccupied the minds of both levels of government other issues have been left without conclusion. The federal government was hesitant to establish clear policy, partly because it had been always easier to leave it to the CRTC to make policy and then claim inability to change the decision of an 'independent' agency, but mainly because it had virtually no policy in the field.

The policy it had was piecemeal and uncoordinated. Ottawa knew, for example, what it wished to hold on to, yet it had developed no policy that would allow this and still afford the provinces a greater share of the responsibility in the field of communications. The federal government's attitude was based partially on the belief that a "viable nation-state" required a strong national presence in the communications a storng national presence in the communciations field.[121] For all the federal talk about its concern for the 'balkanization', 'fragmentation', and 'destruction' of the Canadian broadcasting system, its own stubborn attitude, accompanied by a lack of policy caused greater problems than would have occurred if had given up to the provinces what they original-

[121] Martha Fletcher and Frederick J. Fletcher, Op. Cit., p.171. And go to state that: "If one accepts the preposition that Canada's survival as an independent state with a distinct identity is important, then it is clear that the federal government must retain significant jurisdiction over communications." p. 180.

ly wanted. The fear of balkanization of the broadcasting system was a legitimate concern, but one that was not solved by a government simply be claiming absolute jurisdiction for itself. Indeed, such an approach probably caused greater discongruence than simply incorporating provincial desires within federal policy.

Pay-TV in Saskatchewan was an example. The provinical government had pressed for a clear national policy within which it could work, but Ottawa had refused to do so. The federal government seemed to see intergovernmental relations as a zero sum game, in which a federal loss was a provincial gain. It was true that the federal government was hampered by its own broadcasting legislation, which did not allow for the government to give the CRTC policy direction. However, the speed with which Ottawa dealt with the bills to remedy this situation, seemed to suggest that the federal government was in no real hurry to solve its own problems.

The introduction of pay-TV could hardly have been helped by these disagreements. A new service was about to get off to a shaky start, as the various jurisdictions quarreled over whether federal licencees would require provincial licences to exhibit their services. Further, there was the threat that provincial governments would licence their own companies to compete with the federally regulated companies. Saskatchewan had no intention of dismantling its provincial pay-TV system. This cannot be described as a stable environment in which to introduce a new and untried service. If provinical licencee were given the go ahead, then the raison d'etre of the national licencees was threatened: Canadian content may evaporate under such competition. Provincial companies,

without the expense of Canadian content would destroy any advantage that was suppose to accure to the Canadian production industry. This scenario, while not probable, was possible.

The federal government was unable to use its positon as the main actor in this field to establish a healthy environment for pay-TV. This was perhaps the main fault of the last ten years: the waste of a decade when policy could have been made and these meetings used to construct a positive communication environment. Ottawa did little or nothing, other than claim pay-TV as it own, to ease the system in to, what might or could be, a deadly shock to a fragile industry. It did nothing to prepare the way for the coming innovation. It did little to encourage producers, writers, directors, and the like to get prepared for the coming of pay-TV. It did not try to encourage complimentary legislation by the provinces. Pay-TV alone would not cause a remarkable recovery within the system. By concentrating of who controlled it, the federal government, and the provinces, ignored opportunities to ensure the more important goal of increasing Canadian production throughout the system. Tax incentives for TV production, regional incentives for productions, expanding the role of CFDC to include TV productions, and even the creation of a warehouse for Canadian productions would all have meant more in the end than who actually controlled the licencing of pay-TV.[122] It would have created a more stable base upon which to establish pay television. The federal government demonstrated that it did not want to make policy, but wanted simply to be in charge. Why it bothered, since

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[122] Some such programs have been introduced, but only after the introduction of pay-TV and excluding pay-TV.

it did not seem to know what it wished to do once in charge, was another question. It left the CRTC to make the real decisions about pay-TV; what its structure was going to be and when it was going to be introduced.

While it appears that the federal government was blocked from moving on the issue because of provincial demands and the inability of the provinces to agree among themselves. The early introduction of pay television would have been better than waiting, but not without government policy. The fact the federal government continued to press for its introduction without such a policy, in the face of opposition from the provinces and other interested parties, demonstrates Ottawa's desire to be preeminant at all costs. It had choices, it chose to do nothing.

The federal government had plenty of time to establish the necessary environment that would have produced "orderly development and innovation." It did little or nothing. It allowed the opportunity to make pay-TV destintively Canadian; possible through the means of a public corporation or a non-profit private one.[123] The state of the relations between the federal and provincial governments however did not lend itself to such cooperation. Further the federal government's insensitivity and hesitancy to act destroyed all chances to develop the necessary

[123] One study done on pay-TV for the federal Department of Communications was most innovative. It required that each province establish a crown corporation to act as distributor of pay-TV. These corporations would form a national network by satellite or micorwave and thus become subject to federal authority. The federal regulator could then establish Canadian content and anti-siphoning rules. Cost sharing of production and deliver would ensure wealthy provinces shared their advantage with the less fortunate. Regional flavour would be reflected through 'windows' in the schedule. See Canada, Department of Communications, Atlantic Film/Video Industry Task Force Report, Vol. 1, 1980.

relationship. In the field of communications politics and politicing and the suspisions that go with them, have got in the way of clear policy. The provinces were not left untouched by this either. There demands at times have been unreasonable and have prevented the federal government from formulating policy. Their diverse views and at times individual intransigence have prevented agreements from being reached. As well, the one province that made an agreement with the government failed to live up to it or at least the spirit in which it was signed.[124] Most of all what was needed was some form of agreement. It mattered less what that form was, as long as one was made. In this enviroment, with no clear direction, the CRTC was left to introduce pay television on its own.

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[124] "In general, however, the provinces have recognized the need for coordination and for national policies. Their goal has been a shared jurisdiction which strikes an appropriate balance between the accepted need for a strong national system and the particular needs of localities." Martha Fletcher and Federick J. Fetcher, Op. Cit., p. 173.

Chapter V

THE COMMISSION DECIDES

> ...it can also be said that money is what this hearing is all about.[1]

5.1 INTRODUCTION

With the CRTC's acceptance of the Therrian Report the Commission had finally sanctioned the introduction of pay television. Even so the Commission seemed to be in no hurry to get on with it; call for applications, hold public hearings and decide on the structure pay television would take in Canada. While the federal Minister of Communication, Francis Fox, had given his 'official' go ahead for its introduction, and had stated that he'd like to see pay-TV given priority, this was based more on political expedience than concrete policy and simply echoed what all federal Communications Ministers had said since 1976.[2] But no one,

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[1] CRTC Commissioner P. Kingle during pay-TV hearings. CRTC, Public Hearings, Transcript, p. 2764.

[2] Using the excuse that the CRTC was now dealing with the issue, the federal government could argue that neither they nor the provinces should interfere. Fox had made no attempt to get the consent or agreement from the provinces on pay television's introduction. The same month that the CRTC was holding pay-TV hearings, the federal and provincial communication ministers meet. The federal minister did not even wish to discuss pay television, even though this had been the first communications ministers meeting in two years. Jean-Francois Bertrand, the Quebec Communication Minister, reaffirmed his provinces belief that jurisdiction over pay-TV belonged to the provinces, but Fox said simply it was now in the hands of the CRTC and would be left there. See "Jurisdiction Over Pay-TV Major Topic", Globe and Mail, September 9, 1981. p. 5. Months early Nova Scotia had made similar

especially the Commission seemed to be listening.[3] The Commission held off the pay-TV hearings until the question of extension of services to northern and remote communities was resolved. This was as the Therrian Committee had recommended; for once the broadcasting needs of those outside the major urban areas were to be given priority. The reason for this was not that the remote areas were going without, but because officials felt they were getting too much, too much American programming, which they were 'stealing' off American satellites. As well, the delay was a recognition of the fact that, no matter what the politicians and other interested parties might say, there did not appear to be a great demand in Canada for the services of pay-TV. The Commission could point to a poll taken early in 1981 which seemed to confirm these suspicisions. Only fourteen percent of cable subscribers said they would be 'very likely' to take a pay-TV service. But while John Meisel, the new CRTC Chairman, recognized that there was "no major stampede for pay television service", he also realised that

> [o]ne of the pressures for pay-television in Canada is simply the fact that if we don't develop our own system we'll be overrun with American services.[4]

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claims on pay television, but its true purpose seemed to be to get more regulatory control over cable rather than jurisdictional control over pay-TV. See Tom McDougall, "N.S. Wants Full Control of Pay TV", Winnipeg Free Press, June 8, 1981. p. 2.

[3] Sheri Craig, "Television '80: At the Brink of Things to Come", Special Report: TV Today, Marketing, November 24, 1980.

[4] Meisel quoted in Robert Stephens, "Only 14% of Cable Watchers Feel Certain They Want Pay-TV", Globe and Mail, March 12, 1981. p. 8. However, like all surveys, this one was subject to interpretation. Michael Hind-Smith, president of the Canadian Cable Association, noted that whereas fourteen percent stated they were 'likely' to take pay-TV another seventeen percent said that they were 'somewhat likely' to take it. Hind-Smith writes that, considering that most Canadians have

While the CRTC saw no need to rush the country into the broadcasting unknown, it did see that if we did not do it for ourselves we would have it done for us.

Almost a year after the Therrian Committee had released its report, the Commission called for pay television applications. Five months later it held its public hearings and it was another five months before the Commission awarded licences. Almost one year after that decision, pay television went on the air in Canada. While one recognizes that the wheels of regulation grind slowly; one wonders whether the Commission was still unprepared and still unwilling to deal with this broadcasting inevitability. If nothing else the CRTC had granted to the broadcasters of Canada an eight year moratorium on pay-TV. That 'breathing space', as the then President of the CBC had called it, was suppose to be a time of change, renewal and reaffirmation of a truly Canada broadcasting system. This did not happen. Indeed, with the coming of pay-TV, the private broadcasters seemed to think that they should do even less in the way of Canadian production, in order that they would be more competitive with the new service. So much for improving with age. The Commission certainly appeared less sympathetic to off-the-air broadcasters and had learned (though slowly) that protecting their interests only made cer-

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only read about the service, "(w)e believe a third favorable market response is great encouragement to proceed with the service." And represents a 300 percent increase in positive response, since a 1978 survey that found only three percent 'very likely' and eight percent 'somewhat likely'. Like all polls, how you view them, depends on were you sit. See Micheal Hind-Smith, "Pay-TV: Letter to the Editor", Globe and Mail, April 6, 1981. p. 7. Another interesting aspect of this poll was that over fifty percent of those interviewed supported the idea that some of the revenue from pay-TV should be used for Canadian content subsidization.

tain persons or companies rich. Protection did not get more money into Canadian programming; the question became would competition do the trick.

The Canadian broadcasting system was in for a few surprises with the licencing decision of the Commission, but it was the response to the CRTC call and subsequent hearings that are most telling.

5.2 THE CALL

On 21 April 1981 the Commission issued its call for applications for the pay television licences. While the Notice of Public Hearings[5] stressed the Commission's determination to make pay-TV an important part of the the broadcasting system, it remained vague on how this prominence was to be accomplished. The Commission stated that it would be guided by Recommendation twenty-eight of the Therrian report, which read much like the guidelines first mentioned by Sauve in 1976 and thus demonstrates just how far the issue had come:

1. Pay-TV should contribute to the realization of the Broadcasting Act,
2. it should increase the diversity of programming available to the viewer, and
3. pay television should create high quality Canadian programming from new programming sources.[6]

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[5] CRTC, Public Notice 1981-35, April, 1981.

[6] CRTC, Decision, 82-240, Ottawa, 18 March 1982, p. 2. Recommendation #28 of the report of the Committee on Extension of Service to Northern and Remote Communities stated that pay-TV should: "make significant and positive contribution to broadcasting in Canada, make effective use of Canadian resources, and that a significant amount of the revenue flow to the Canadian prgram-production industry." CRTC, The Committee on Extension of Service to Northern and Remote Communities, The

The main objective simply put was to get money into the Canadian programme production industry, as much money as possible.

> A major objective in the introduction of pay television is that it produce a flow of revenue to Canadian programme producers...with minimal disruption of the operation of existing broadcasters.[7]

This was not a 'major' objective of licencing pay services, but THE objective, everything else was supposed to take a backseat to it. For tranfer payments is what broadcasting regulation in Canada can be distilled down to; transfer of the wealth generated from the privilege of broadcasting to the poor, Canadian programming industry.

To accomplish this finanical tranfer, the Commission would rely heavily on the recommendations, implicit and explicit, of the Committee on Services to Remote and Northern Communities. Applicants would have to demonstrate how they would make popular Canadian programming without siphoning anything from established broadcasters or unduly fragmenting the audience of those stations. It would be giving preference to pay-per-channel discretionary services.[8] The CRTC stated that it would not accept any advertising on a pay service and it warned that it was unlikely to grant a monopoly to any one company.[9] While this last point

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1980s: A Decade of Diversity: Broadcasting, Satellites, and Pay-TV, Minister of Supply and Services, 1980, p. 59.

[7] Michael Prentice, "Rules Set on Pay-TV Broadcasts", Ottawa Citizen, April 21, 1981. p. 51.

[8] Ronald McIlroy, "Imaginative Pay-TV Proposals Urged", Winnipeg Free Press, April 23, 1981. p. 26.

[9] "...(I)nsiders seem to think the CRTC would ideally like to licence one national and a number of regional networks--...". See Judy Steid, "Pay Television: Drooling Over the Hottest Race and the Biggest Pot in the Land", Globe and Mail, September 8, 1981. p. 7. The CRTC chairman was not as explicit, but did state that the Commission was opening up

was a reversal from the Commission position as stated in the 1978 Report on Pay Television, it was again as the Therrian Committee recommended. And while the Commission warned that it would be taking into account the percentage of airtime devoted to Canadian programming and the percentage of gross revenue destined for Canadian production or acquisition,[10] it left much in the hands of the applicants. So much, that cable representatives were "astounded to learn that (pay applicants) would propose the shape that pay-TV (would)...take....It invites the players to set the book of rules."[11] The Commission wanted those that would run pay-TV in Canada to tell it what the market would bear.

While the Commission stated that the call for applicants was an expression of the CRTC's "determination that pay television provide a new and unique contribution to the Canadian broadcasting system",[12] it did not appear to have in mind how this was to be accomplished. It did not lay out explicit Canadian content requirements, ownership requirements, forms or structures, although in all cases the CRTC had years to study and develop such plans. The Commission said it was attempting to attract new ideas, new people and new arrangements into the pay television decision. While it can be argued that the Commission was making an honest attempt to listen, to appear flexible and to give the new, untried

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the pay-TV applications to anyone with a plan and as a result there could be several licences awarded. "CRTC to Accept Licence Applications for Pay-TV Service", Winnipeg Free Press, April 22, 1982. p. 1.

[10] Ibid.

[11] See Martin Meke, "CRTC's Open Approach to Pay-TV Delights Industry", Financial Post, May 2, 1981. p. 5.

[12] CRTC, Op. Cit., 1982. p. 2.

and innovative a chance, it can also be viewed as lack of clear and coherent policy. The CRTC had had a decade to study pay-TV. It held hearings twice on the subject and commissioned many reports and studies, yet it did not know what it wanted. Or more precisely, it did not know how to impliment pay-TV in such a way as to achieve the goals it had laid out. It should have known what it wanted, what was desirable, what was possible.[13]

Perhaps in the end it would matter little what the Commission had called for. If it had requested the moon, it would have been promised, along with promises of attempts to reach out even further into space. It is fitting that John Miesel should begin the hearing by likening pay-TV to the last frontier of Canadian broadcasting and be reminded of the words spoken by the first man on the moon. But what really took a giant leap was not mankind or the Canadian broadcasting system, but ones imagination in order to believe what would be promised by the applicants. The CRTC asked for very little, but it did ask for innovation, what it got was a rerun of the licencing hearings for private broadcasting stations in the 1960s and Global licencing in the 1970s. Nothing was too much to promise.[14]

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[13] Geoffrey Steven takes this tack. "After years of resisting ... the introduction of pay-television, the Canadian Radio-television and Telecommunications Commission has caved in with a crash. It has called for applications for Pay-TV licences without firm rules to insure Canadian content, to prevent the siphoning of the best programs from 'free' TV to Pay-TV, to maker sure that large amounts of new money flow to Canadian program producers, or to keep the hands of the cable operators (common carriers) away from programming. This regulatory failure can only benefit the mercenaries of the industry." Geoffrey Stevens, "Grumpy", Globe and Mail, April 23, 1981. p. 6.

[14] This is not to doubt the sincerity of any of the applicants. They may have truly believed what they promised, but like all aspects of

The Commission called for innovation and a distinctively Canadian system; but it should have expected that most applications would be based on the American model of pay television, with slight modifications to satisfy the hoary question of Canadian culture. Was pay-TV to be the Global of the 1980s? The Commission said it would not tolerate broken promises, but it was the applicants that were setting the rules.

5.3 THE HEARINGS

5.3.1 The Interested Parties

What is most striking in the mountains of paper presented and the volumes of words spoken[15] by individuals and organizations to the Commission was the lack of trust these interested and non-interested parties had for those applying for licences. There was a general feeling that the applicants would not do what they said they would do; not because of any conspiracy to break their word, but a belief that like so many private broadcasting undertakings in the past, so many broken promises, profits would be pursued before, and at the expense of, higher goals. Few called for the Commission to take a light hand with the new baby of Canadian broadcasting,[16] most suggested the CRTC take a firm hand and

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life, higher goals or motives are the first victims in the pursuit of staying alive (in this case, the necessity of profit.)

[15] The Commission received 350 brief, 45 of which were elaborated upon in oral presentation at the hearing.

[16] Of those that called on the Commission to tread lightly, the most extreme was the Ontario Cable Television Association which recommended that the CRTC forget about Canadian content regulation altogether for the first three years of the licence. The Canadian Cable Television Association and the Canadian Association of Broadcasting both insisted that too strigent condition of licence would lead to failure.

get tough with the licence winners.[17] There was general agreements among almost all interested parties that Canadian content requirement were a necessity, but what was a realistic level of Canadian content? Or more aptly, what could this virgin industry be expected to produce? Was it to be produce a golden age for the Canadian film industry or would it simply be busy trying to keep itself alive, unable to take on the burdens of Canadian productions?

The Canadian Film Development Corporation (CFDC) stated before the Commission that the Canadian film industry could easily meet fifty percent content requirements, and even suggested that if they were set higher, say sixty or sixty-five percent, they would be met.[18] The Association of Television and Radio Artists (ACTRA) stated that content requirements should be set at sixty percent in the first and second year of a pay-TV licence and after this period increased to seventy percent.[19] Most others[20] called on the Commission to set the Canadian con-

[17] Many of those intervening at the hearing seemed to hold the view that poor performance by Canadian broadcasters is not so much the broadcasters' fault as the fault of the Commission. "...(T)he promises of Canadian content have come back to haunt, not the successful applicants who made them and who have never lost a licence for failing to meet quotas, but the regulatory agency." Dan Westell, "Pay TV: Visions of Riches Lure Broadcasting Bidders", Globe and Mail, September 26, 1981. p. B1.

[18] See CRTC, Public Hearing, Transcript, Vol. 11, September, 25, 1981, pp. 430-431.

[19] Association de Quebec industry de cinema et television wanted all pay services' schedules to be totally Canadian, but they were willing to settle for between fifty and seventy percent Canadian.

[20] The National Film Board, the Council of Canadian Filmmakers (CCFM), the Canadian Conference of the Arts (CCA), the Pay TV Committee (made up of the QFPA, CMPA, CFTA, and CAMPP, all producer associations), the Association of Canadian Movie Production Companies, B.C. Media and such independent production houses as Norfolk Communications are

tent requirement at fifty percent of a licencee's schedule. One brief went as far as to say that to do otherwise would be illegal.[21]

The question of Canadian content did not end there. Having watched over the past twenty years as private networks and stations met their Canadian content quotas with little financial investment (even while the largest were making substantial profits), many called for a percentage of gross revenue be devoted to the purchase and production of Canadian programmes. The percentage that should be allocated to such ranged from thirty-five to fifty percent.[22] Even with these regulations in place, the Commission should consider a shorter licencing period than normal or a review over the licencing period to ensure the licencee was living up to its promises of performance.[23] The Commission was also warned to keep

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the 'others'.

[21] Douglas Baer of the Universtiy of Windsor argued that the 1968 Broadcasting Act required any licencee to be 'predominantly' Canadian; predominently by Baer's reading of the Act meant that no licencee could have less than fifty percent Canadian content. Interestingly, the CRTC's council at the hearings disagreed with this interpretation.

[22] B.C. Media called for thirty-five percent of gross revenue be devoted to Canadian content, as did the NFB. The Association of Canadian Movie Picture Companies called for a unspecified percentage of gross income (as did Douglas Baer), but also added that at least fifty percent of the programming budget must be devoted to the same. Norfolk Communications called for fifty percent and the representative from the City of Edmonton stated that all profits should be put back into the production of programming. It should be remembered that the CRTC's own Report on Pay Television called for thirty-five percent of a pay licencee's gross revenue to be devoted to Canadian programmming. The Therrian Committee, however, did not make a similar recommendation.

[23] Norfolk Communications suggested a yearly examination, as did B.C. Media, with cancellation of the licence if the holder did not live up to its conditions. Nelvana Ltd (another independent production house) suggested a three year licence with an extension of another two if it had fulled its mandate. One innovative suggestion made by

tight control over how much the cable companies could charge licencees. If left up to the cable companies, they would charge large fees to carry the pay channels, thus siphoning off moneys that should go into programming.

While the CRTC had stated in its call that a monopoly licence would not be granted, few intervenors argued in favour of the competitive approach.[24] Most representatives of the production industry and the broadcasting industry favoured a single national pay agency be licenced. This model offered the the advantage of economies of scale.[25] Even those that called for regional licenses did so on the condition that they be granted a monopoly in their area.[26] And while John Meisel worried that a

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the Assocaiton of Canadian Movie Picture Companies, was that a licencee would have to put up a bond. If the company did not live up to its promises, it would forfeit the bond (which one supposes would be used for Canadian productions) as well as lose its licence. ACTRA suggested competitive bidding for the licence, with the money from the highest bidder going to Canadian content.

[24] The Ontario Ministry of Transportation and Communications was the most vocal supporter of competition and suggested that the Commission licence as many pay services as possible. The Ontario Cable Association also called for competition and the licencing of both national and regional pay channels. The Bureau of Competition Policy, the agency in charge of enforcing competition policy, recommended to the CRTC allow open entry and competition in pay-TV. The Consumer Association of Canada also supported it. None filed or presented financial projections to support the economic viability of such. See Dan Westell, "CRTC Told to Consider Separating Firms With Stake in Produciton, Pay-TV", Globe and Mail, September 16, 1981. p. B8.

[25] The CBC, Canadian Association of Broadcasters, the Director's Guild of Canada, the CFDC, CCFM, Norfolk Communications, Cyclops Communications Corporation, Nelvana Ltd, Prime Media Ltd and the Pay TV Committee (at least in part) called for a single pay service.

[26] B.C. Media argued that regional licences would better serve there respective territories than one monolithic national company. They knew better what their area wanted to see, they would stimulate productions in the regions and they could band together to buy foreign productions.

national licencee would do little for regional productions, the producers (albeit, most from Toronto and Montreal) wondered if regional licencees could afford do anything for Canadian programme production.[27] The CAB argued that competition would probably impede rather than enhance Canadian production, because regional licencees would not be able to afford Canadian content. And as if to prove this point Cable Com Ltd, which ran the provincial pay-TV service in Saskatchewan, stated that it carried only about four percent Canadian content and had few dollars to produce any.[28] It was pointed out by the CCFM that HBO in the United States did not become profitable until it had 4.3 million subscribers.[29] There were a little over five million cable subscribers in Canada. Fragmenting this small market would be ruinous, the CCFM argued. Others, like the Canadian Cable Television Association and the National Arts Centre, pointed out that a monopoly was not desirable, but rather than a competitive system, these groups supported a complimentary one. As well as a national general interest service, a specialty channel

[27] The Pay TV Committee pointed out that this would fragment funds, when $3 to 7.5 million was needed to produce quality feature films. Further, it observed that Manitoba, Saskatchewan and Quebec had no regional applicant. Norfolk argued in favour of one service. At least in the initial stage, one single national service would have the economies of scale necessary to generate the funds to bolster the independent production industry and ensure the stability of the pay corporation itself. If the CRTC was determined to licence more than one service, Norfolk argued that it should have the licencees see-saw on the same channel; one week one, the next the other. This would give a competitive edge to the licence, both licence holders competing for producers' products, without the disadvantages of fragmenting the small Canadian market and without duplicating marketing needs.

[28] Ned Powers, "The Problem of Marketing Pay-TV", Globe and Mail, October 3, 1981. p. 10.

[29] Robert Stephens, "Little Consensus on Form, Content of Pay TV at CRTC Hearings", Globe and Mail, September 28, 1981.

should be licenced. Such a channel would carry programming aimed at a much narrower audience than a movie channel, programming such things as cultural fare. A complimentary, rather than competing, licencing scheme would enhance diversity of programming and ensure money went into a broader range of Canadian programming.

If the CRTC did decide to licence competing pay-TV services, then it was argued that a single purchasing agency should be established to buy foreign programming. This was to prevent the unnecessary inflating of the prices of foreign products. If such a body was not established it was assumed that foreign distributors would get the Canadian pay channels to bid against each other for the popular, subscriber-attracting films.[30] And no matter who was licenced or how many licences were given out, all producers and producer associations agreed that there should be no inhouse production by any licencee (i.e. productions made by the pay-TV licencee or by companies associated with it.)

The CFDC and CCFM called for the licencing of a national non-profit pay service as a first step for this new industry.[31] Both saw this model as getting the most money into the hands of Canadian producers. Several members of the Pay TV Committee agreed that a universal service should

[30] The Directors Guild of Canada, Jaylor Production Ltd, Cyclops Communications Corporation, Nelvana Ltd. all made this suggestion. The licencing of Global in Ontario and third station in western Canada had led to bidding war between stations and networks for popular American programmes, thus leaving fewer dollars for Canadian productions. All feared a repetition of such if precautions were not taken.

[31] Of course, the CCFM would support this model of pay-TV since it had originated the idea in the 1970s. The CCFM was calling for public ownership of such a service, arguing that competition between public corporation (that is, the CBC) was healthy. It, however, would prefer any type of universal over a discretionary service.

be licenced, but along with a discretionary system. The Canadian Conference of the Arts seemed to give tacit approval to a universal model of pay-TV when it called for a truly Canadian service not based on the American experience; only the universal applicant differed substantially from the American model of pay television.

Few of the briefs stated which applicant they supported. The CFDC and CCFM, while supporting a universal model of pay-TV, never explicitly mentioned TeleCanada as their candidate to hold such a licence. While the representitive of the City of Edmonton did not explicitly state it, he lent Edmonton's support to the only applicant that promised to reinvest all its profits into programme production; that being Alberta Independent based in Edmonton.[32] The CCTA did not come out and say it was pulling for Premier, but much of the criteria it gave for a national pay service, Premier just happen to possess. The CAB argued that broadcasters must be involved otherwise there could be "no guarantee that completely independent pay-TV packager will not attempt to augment their schedules with programs now provided on the regular system."[33] Further, if the Commission wished to see Canadian pay-TV programmes appear later on off-the-air broadcasters, there was no other way to guarantee this. Needless too say, the CAB was none to subtly supporting CTVA application.

The Commission questioned CAB arguments and quite pointly asked:

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[32] This support would be given as well to Ontario Independent Pay Television, which promised the same thing, and which just so happened to have the same Alberta investors.

[33] CRTC, Public Hearings, Op. Cit., Vol. II, p. 299.

> Can we expect people who have found it impossible to do it (produce Canadian programming) in one phase of their existence to do it in another...[34]

To which the Association answered that it was not the broadcasters fault, times were tough and they did not have the money.[35] Pay-TV, however, would add to revenues and enable broadcasters to make more and better programming and compensate for any loss of audience.[36] But the Chairman appeared to have dismissed private broadcasters as a viable applicant because of past indiscretions.[37]

This was the only indication the Commission had given of its intent. During the interventions, the Commission had heard that it should be tough with any licencee, that it should impose strict Canadian content regulations, tough Canadian spending requirements, and generally that the licencee would not be beneficial to the Canadian broadcasting system without the heavy hand of regulation. As well, most intervenors rejected competition as a means to achieve the desired ends.

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[34] Ibid, pp. 305-308 contains this exchange between the Chairman of the CRTC and the President of the CAB.

[35] Although the CRTC counsel pointed to substantial profits over the past few years, especially among the top thirty-three stations. Ibid., p. 327.

[36] A study by one national applicant indicated that no more than two percent of the TV audience at a given time, making "its impact would be less than that of a single U.S. television signal imported via cable." See Showplace Communications Inc., Standard Broadcasting Corporation, Supplementary Brief, p. 1 and 40.

[37] CTV had taken the CRTC to court over content requirements established at its last licence renewal, thus demonstrating itself to be an unenthusiastic supporter of Canadian content.

5.4 THE APPLICANTS

The CRTC notice of hearing brought a fantastic and unexpected response; no one, including the Commission, expected so many applicants.[38] A total of fifty-four were received. Within a month the CRTC had cut back this number to twenty-eight, because "virtually all were incomplete."[39] All of those to be considered were sent notices demanding clarification be filed by September 8, 1981.[40]

Perhaps the large number of applicants can be explained simply by the fact that the CRTC's call for applications had been so flexible, so loosely defined as to what it wanted from applicants. But the number of applicants clearly demonstrated that an awful lot people viewed pay-TV the newest 'licence to print money'. The number of applicants was telling. It is unbelievable that this number of applicants would have come forward if it was thought that pay-TV was going to be anything but hugely profitable. Few of the fifty-four applicants came forward simply

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[38] "'We've never seen anything like this", said a weary Vincent Lee Chang, a CRTC director of planning and development whose job it has been to analyze the promises. 'Normally we're dealing with three or four competing applications. In this case, we've received 55 and they all came in between 6 p.m. and midnight on the last day, July 20 (1981). We had to go through a four-foot high stack of documents and cut back to 28 groups that seemed feasible to be heard.'" Judy Steed, Op. Cit.

[39] "54 Plans for Pay-TV Cut Back", Globe and Mail, August 13, 1981. p. B1.

[40] The very volume of material the Commission had to deal with, much of it in a short time, might have cast doubt on how thoroughly prepared the CRTC was. (Much of the clarification material came in on September 8, 1981, the hearings were to begin less than two weeks later. Some applicants received extensions even beyond this point.) This led as well to complaints by some groups that they neither had the time, nor did the applications allow for, thorough examination and, therefore, permit thoughtful intervention.

because they would have the opportunity to make good Canadian programming, most came out because they believed that they could make a good return on their investment.

The applicants could be broken down along several lines: regional and national, universal and discretionary, general interest and specialty. Nine national applications, nineteen regional applications, seventeen general interest applications (eleven of which were regional), five applications for specialty channels (two of which were national), three for multilingual services, and two universal applications were to be heard.[41] The Commission closely questioned the applicants, especially on their connections with other media, Canadian content promises and arguments presented for and against competitive licencing. Generally, the Commission sat as an impartial judge at the hearings.[42] And while the Commission as a body did not seem to have the answers to many of the questions raised, individual Commissioners appeared to have strong feelings on them. So strong that the Commissioners would have a difficult time agreeing among themselves and in the end not all Commissioners would agree.

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[41] CRTC, Op. cit., 1982. p. 2.

[42] So impartial was the Commission, that when its Chairman wished one applicant a happy birthday, he felt compelled to wish all applicants a happy birthday. CRTC, Public Hearing, Op. Cit., p. 3463.

5.4.1 National General Interest Applicants

The national general interest applicants received the most media attention. They were modelled upon of the American pay-TV system: being essentially movie channels they were what was conjured up in most minds when the words 'pay television' were spoken. They were the ones that everyone thought were truly competing for this licence to print money. They also attracted the most attention because of the sums of money involved. Only they would deliver such products right across the country, they would most likely have the advantage of economies of scale and thus be successful. And for the most part they were interchangable, all were based the American model of pay television, all depended on American feature films for a major part of their schedule and, as if to compensate for this, all promised to feed large sums of money into Canadian programme production.[43] For a general interest licence on the national level there were six applicants: Astral-Tel, CTVA, First Choice, Performance, Premier and Showplace.

All had distinguished names in broadcasting, business or politics associated with them. The members of the Canadian establishment involved in pay applications read like a Canadian Who's Who; so much so that one late starting applicant bemoaned that "It seems everyone in Canada is already on a pay-television board."[44] 'Names' it appears, at least to the applicants, were important. They gave the companies not

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[43] Between $200 and $300 million over a five year period. Peter Lyman, Canada's Video Revolution: Pay-TV, Home Videos and Beyond, (Toronto: James Lorimer and Company, 1983), p. 71.

[44] Quoted in "Hoping to Hit the Pay-TV Jackpot", The Economist, September 16, 1981. pp. 76-77.

only presitige, but projected an aura of reliability and expertise. Everyone who was or used to be a someone seemed to be associated with pay-TV applicants; ex-Secretary of State, Hugh Faulkner was on the board of Performance. Ex-CRTC commissioner, Jean Fortier was on the board of Premier, and the president of CITY-TV, Moses Znaimer, was also the president of Premier.[45] While Jack MacAndrew and Don MacPherson, both former CBC people, were the presidents, respectively, of Performance and First Choice. Peter Grant, well known communications lawyer was representing First Choice at the hearings. Financier, Conrad Black was involved through his holdings in Standard Broadcasting. The Eaton and Basset families were involved through their holdings in CTV, the Bronfman family with their share in Astral Bellevenue Pathe and the Southams were part of a cultural programming application.[46]

Not only were well known individuals involved in applications, so were well known corporations, most of which were already involved in some way with programme production or distribution, or were already broadcasting licence holders. Astra Bellevenue Pathe Inc, a company involved in film and television production, distribution and dubbing, was also involved in Astra-Tel.[47] Telemedia, Astra Bellevenue Pathe's part-

[45] Also lending their name to the Premier application were Anna Porter, Norman Jewison, Peter Newman, Patrick Watson, Jack McCelland and Peter Gzowski.

[46] See 'Who's Who of Pay-TV', Winnipeg Free Preas, August 12, 1981.

[47] Astra Bellevenu Pathe was heavily involved in the dubbing, distribution and production of feature films and television production in Canada. It distributed features for Columbia Pictures and Twentieth Century Fox and the television products of such American companies as ABC Pictures and Dick Clark Communications. It was one of the most successful production companies in Canada and had produced, co-produced and helped finance twenty-four motion pictures, including such

ner in its pay-TV application, owned eight radio stations in Quebec. Showplace would be fifty-one percent owned by Standard Broadcasting Corporation, which already owned a TV station, a production house and several cable companies. Twenty-seven and half percent of Premiers shares were to be held by PTN, which was a consortium of cable companies. The CTV Television Network would own two-thirds of CTVA[48] while TVA, the private Quebec network, would control the rest.[49]

distinctively Canadian productions as The Apprenticeship of Duddy Kravitz and The Lies My Father Told Me, and as well such indistinguishable pictures as Terror Train and, the biggest grossing Canadian picture ever, Porky's. Astra Bellevenu Pathe also owned its own production company and film labs. For more detail on the Astra Bellevenu Path empire see Howard Goldberg, "Reducing the Risk", Cinema Canada, March, 1981.

[48] Orginally CBC was to be part of this union of broadcasters. The Corporation even prepared a submission to the Therrian Committee calling on the CRTC to licence a pay television service controlled by the private and public broadcaster networks. See CBC, Pay-Television and Canadian Broadcasting, A Submission to the Canadian Radio-television and Telecommunication Commission, March, 1980. And as late as April, 1981, just three months before the applications were due, the CBC seemed to still be involved in such a creature. See Robert Stephens, "Commission Calling Today for Pay-TV Applications", Globe and Mail, April 21, 1981. pp. 1 and 2. But when it came time to submit applications the CBC was nolonger involved with the private broadcasters and CBC president, Al Johnston, was calling for a non-profit pay service. It is likely that the CBC pulled out for two reasons. Whereas the CBC submission to the Therrian Committee had stated that a non-profit corporation would best serve the goals of the Commission, the CTVA proposal mentioned nothing of this. Secondly, the CBC had become very critical of private networks for not doing their part in producing Canadian programmes, as well CTV was involved in a bitter court battle with with the CRTC over Canadian content requirements. While there have been stranger bedfellows, the association in a pay television service with private broadcasters must have been untenable for the CBC at that time. See "CBC, Central Pay-TV Agency Advocated" Winnipeg Free Press, May 2, 1981.

[49] Strong and secure financial resources seemed to be a common link between all applicants that were finally to be heard. The major contenders for national and regional general interest licences could at point to strong financial backers, were themselves solid corporations or had such respected persons involved as to suggest that capital

The sort of crossownership that would result if some applicants were licenced was a concern of the CRTC. It wondered about the implications of crossownership, if it might not interfere with making pay-TV as successful as possible. Whether such ownership may not lead to conflict of interest.

> It seems to me it is only to be expected that members of a cable industry, although they may repudiate the collective position of their professional organization are inescapably going to view the world from the context to which they belong...(T)here is a problem even without having recourse to conspiracies...[50]

While the Chairman was speaking of the association of cable interest with Premier, the Commission wondered if the same thing may not be true in the case of others. Would pay service be less successful or less open if controlled by those with a stake in another sector of the same

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would be easy for them to raise. Few of those allowed to this stage were without 'big business' connections.

[50] John Meisel in CRTC, Public Hearing, Op. Cit., pp. 3678-79. PTN would hold 27.5 percent of the shares in Premier, the rest would be available to other interested parties, including cable companies. PTN would buy over $6 million worth of shares (21,920 shares), but cable companies would be allowed to purchase 173,672 shares. For example, the Winnipeg cable company, Videon would have owned 2,196 shares in Premier and Skyline Cable, which was owned by Standard Broadcasting, would own 5,235 shares. A number of smaller cable companies hold only 10 shares, while some of the biggest, like Premier Cablevision, would hold 34,012 shares. See Canadian Premier Television Network Ltd., Application for National pay Television Licence, Schedule 8, p.6-7. Their would be a twenty-four member Board of Directors. Six would be nominees of the Founder/Manager Shareholds (ie. people like Moses Znaimer), six would be nominees of the Cable investors, eight would be normal sharehold investors, two (if applicable) would be from the CBC and two (again, if applicable) would represent a major association of independent producers. It is questionable who the Fouunder/Manager Shareholders actually represent. They appear to be in effect PTN's shareholders, thus giving the cable industry half the members on the board. When asked by the Commission why the cable companies were included, Znaimer said Premier needed the money.

industry? Astra Bellevenu Pathe Inc. stated that it would close its production facilities if it was licenced, but the Commissioned worried this might adversely affect the production industry. CTVA did not try to hide the fact that pay television would be dramaticly entertwined with its other concernss.

The CTVA application claimed to offer

> (u)nequalled and proven expertise in the important areas of programme acquistion, commissioning, assembly, scheduling, distributing, promotion and in respect to affliation relationships.[51]

CTVA promised that it would not produce any programmes, but did not state that it would buy exclusively from 'independent' producers. Before the Commission, CTVA commented that it had no intention of excluding private broadcasting production facilities from making programming for it. The president of CTV said a pool of $32 million would be established from which the network's television affiliates would be expressly excluded. This meant that the main benefactor of pay-TV would not be independent producers, but big private broadcasters. This was a major tactical error on the part of CTVA. The independents had already won over the Commission; the question was not who would benefit from the new service, but how best could it be implimented to help independent Canadian producers. CTVA was still arguing for a scenario long disgarded by the Commission.[52] CTVA demonstrated that its own members concerns were of the greatest import to it, thus increasing the suspicion of the Commission and other interested parties that crossownership may endanger

[51] Letter to CRTC General-Secratary J.C. Pateraecle from Murray Chercover, President of CTV. p. 2.

[52] CRTC, Public Hearings, Op. Cit., p. 3516.

the goals of pay-TV. The only applicants without any direct links to other media concern were First Choice and Performance.

All the applicants promised plenty of Canadian content.[53] (See Table 1.) As a total number of hours the lowest was CTVA which promised only twenty-five percent. Performance, Premier and Showplace hovered at or just over thirty percent. Astra-Tel promised that Canadian content would occupy between twenty-nine and thirty-four percent of its entire schedule. This was only in the first year. Most applicants promised that if given a five year licence, by the end of that period, they would substantially raise the percentage of air time devoted to Canadian productions. Premier would would devote forty percent of its time, CTVA thirty-seven percent, Astra-Tel between forty-four and fifty-one percent and Performance fifty. First Choice promised that Canadian programming would be around the fifty percent mark over its entire licence period.

All promised to devote a substantial percentage of their gross revenue to Canadian production; this ranged from 33.7 to over fifty percent.[54] Partly the amount that applicants promised to spend on Canadian production was a function of the projected penetration rate the service would have, and how fast in the future cable itself grew. The lowest

[53] It is difficult to state exactly how much each applicant promised, or to compare what they promised, for content expenditures and hours often depended on penetration rates, as well as, what they charged and the number of hours they were on the air a day. Further content was broken down on the basis of total number of hours, the number of repeats, the percent of Canadian between six p.m. and midnight, between 7:00 p.m. and 10:30 p.m. and as a percentage of title as well as a percentage of gross revenue and the programme expenditures.

[54] Performance was at the low end of the scale, while CTVA and Astral-Tel were at the other.

penetration rate in the first year was envisioned by Asta-Tel at 343,000 in the first year (7.5 percent of all cabled homes). The highest rate was that of Performance and First Choice at 25 percent (over 1,089,000 as calculated by First Choice). By the end of a five year licence First Choice envisioned a penetration rate of about forty percent of cable subscribers, all other applicants were much more pessimistic about the public's acceptance of pay television. One can see that the gross income of one million subscribers is going to be much greater than that of 350,000. And as such, the actual dollars that the various applicants promised to devote to Canadian content fluctuated with the penetration prophecies and thus its gross revenues.[55] (See Table 2.)

What did pay-TV service offer and how much would it cost? Most of the services were to be on between eight and ten hours a day, except First Choice which was to be a 24 hour service.[56] The estimated cost to subscribers varied, but ranged between $13.00 to $15.00. The cost to the cable companies varied more dramatically. Premier was the lowest at $6.50 per subscriber per month. Astral-Tel's wholesale price was the most expensive at $10.00. Premier said that cable companies should charge about double what pay service would charge them (as was the practice in the United States) while First Choice argued that cable companies should only tack on three to four dollars to the wholesale price.[57]

[55] "Our commitments exceed all other applicants, save one." stated the representatives of Showplace during the hearings. See CRTC, Public Hearings, Op. Cit., p. 3891.

[56] Performance would be twenty-four hours a day on weekends.

[57] Premier may here be reflecting the concern of its corporate backers, the cable industry. Canadian cable companies had looked on enviously at their U.S. counterparts, who made large amounts of money from a

TABLE 1
National Pay TV Applicants

Applicants	Canadian Content (in percent)					
1st year 5th year	Total Hours	6 pm 12 pm	7:30 pm 10:30	Program Budget	Gross Income	Titles
Performance	34 51	50	32 53		33.7	50
Premier	33.3 40	33.3 40	33 40		50	50
First Choice	50	50	50	57	39	60
Astra Tel	A B 29 34 44 51	A B 33 42 51 60	A B 31 43 60 70		A & B 50 47	
CTVA	25 37	25 35	33 43		50 57	37 52
Showplace	30	32	38.1	58	41	40
Telecanada	60 75	60 75	60 75		49.4 89.7	50 75
C Channel	37.5	36.8	27.4		40.2 30	47.6
Q Channel	42	42			24 50	61

SOURCE: Pay TV Applications Submitted to the CRTC, July 20 and September 8, 1981.

TABLE 2
Projected Gross Revenues

APPLICANT	GROSS REVENUE OVER 5 YEARS (in millions)
SHOWPLACE	$354
PREMIER	$481
CTVA	$522
ASTRA TEL	$647
PERFORMANCE	$720
FIRST CHOICE	$770

SOURCE: Based on National Applicant's projected revenues.

The services offered by these applicants were much alike. Astral-Tel was unique in that it would offer two channels, one a popular entertainment channel (Channel A) and the other a more modest specialty channel (Channel B).

Of the applicants only Premier and CTVA offered to undertake national French and English language networks. Astra-Tel also offered a national service in two languages. The difference here was that Premier and CTVA would separately programme the two networks. Astra-Tel would offer one video channel for each of its A and B services, but with separate audio

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50-50 split of revenues from pay-TV services. Moses Znaimer, President of Premier, argued that it was necessary to be on good terms with the people that are going to exhibit your product and this was accomplished by given them a share they thought fair. But Premier Pay Television was not bound by this, and would accept lower for the cable industry.

tracks one in English and one in French. Performance also talked of a French language service, but this appeared to be a last minute addition to its original application.[58] First Choice offered a twenty-four hours English service and a twelve hour English - twelve hour French channel in Quebec and to the rest of the country (as an alternative to its English only service). Showplace was willing to accept a French language service if no other suitable applicant could be found.

The applicants offered other advantages to the production of Canadian programming other than money. Most described how part of the budget would be set aside for script and programme development. Performance suggested the establishment of core production companies. This would be large production houses which would handle the overhead of independent producers and thus garner the advantages of scale.[59] It also promised an 'Access' slot, such a slot would allow the producer of a programme to

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[58] It was not until its clarifcation, dated Sepetmeber 24, 1981, that a French service was mentioned.

[59] While Performance promised that it would not undertake any production itself, it would sign agreements with 'Core' companies to do so. A Core Company was to be a larger independent production firm acting as a production house for all independents. It was to act as a 'continuing executive producer', providing the facilities, contracts and reputation to attract financing and co-production investment. Because of the size of such a company, it could provide an arrangement for on-going international marketing and distribution. It would have the advantages of economies of scale, and thus be able to provide a leadership role in Canadian production, cultivating new Canadian productions, groups and companies. Performance, The Canadian Entertainment Network, Licence Application, 812205300, September 24, 1981. Vol. III. p. 207. Also see, Appendix E of the Performances Application "Building the Independent Production Industry in Canada." This was written by Richard Nielsen and Pat Ferns. Performance had signed agreement making Nielson and Ferns production company the 'Core company' for English Canada. Performance stated that its goal was to build as many core companies as possible as big as possible. CRTC, Public Hearings, Op. Cit., p. 3320.

show his work and then be paid on the bases of the number of people who viewed it. (A miniature pay-per-program system, with the producer winning or losing depending on the popularity and satisfaction derived from his programme.) Premier stated that broadcasters including the CBC were welcome to take a share in its company. Astra-Tel would set up the Canadian Production Fund which would be given 15 percent of its gross revenue. First Choice offered a Canadian Creative Development Board.[60]

All of the national general interest applicants were against the licencing of regional general interest channels in competition with them. Most found acceptable, a complimentary licencing of a specialty channel or a universal channel, but it was argued that to licence regional movie channels would severely hamper the national licencees ability to finance high quality Canadian productions. Regionals, they argued, would not have the money to financial any 'meaningful' Canadian productions and licencing them would severely cut into the ability of any national licencee to devote money to Canadian programming.[61] First Choice went into

[60] The Board would be controlled and directed by representives of organizations involved in the creation and production of television programming and feature films. First Choice would have no control over dispostion of the funds, but would have first refusal of all programmes produced with the Board's help. First Choice would be legally bound to turn over to the CCDB a levy of $.50 per subscriber per month for the first million subscribers and $.75 after this level. This would put $13 million in the hand of the Board in the first two years. First Choice Canadian Communication Corporation, Application for Licence to Operate a National Pay Broadcasting Undertaking, Toronto, July 20, 1981. pp. 1-9, 1-10, 2-20.

[61] In its application Performance stated (and echoed most other national applicants): "We believe that the Canadian market will not support more than one premium entertainment service, in either offical language, at least, not if pay television is to contribute to the goals laid out in the CRTC's call for application." Performance, The Canadian Entertainment Network, Licence Application, 812205300, September 24, 1981, Vol. 1, p. 39.

great detail to demonstrate what would happen if competing services were licenced by the Commission. It presented five scenarios; the most profitable for Canadian producers being a national pay monopoly. All the others, including two competing national licencees and competing national and regional licencees produced much smaller returns to Canadian programme production. As Table 3 demonstrates, a national monopoly could spent twice as much to licence Canadian productions as the combined licence fees of regionals and a national service. First Choice stated that any competitve system would reduce by $90 million the amount going into Canadian productions in the first four years alone.[62] This said, First Choice still was "quite prepared to accept competition of a mandatory or universal system."[63]

To pacify the complaints that a national licencee would pander to the producers in Toronto and Montreal, Premier promised that ten percent of its material would come from the regions. First Choice topped this, stating twenty-five percent of its programming would be regional productions, while Performance and Atral-Tel would both open regional offices to encourage production and act as a liason between them and such producers.[64] All in an attempt to demonstrate their sensitivity to regional concerns.

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[62] First Choice, Op. Cit., p. 4-1.

[63] CRTC, Public Hearings, Op. Cit., p. 3083.

[64] CTVA was not as sensitive to regional concerns, stating that movies like Why Shoot the Teacher? and The Rowdyman, as well as, regional NFB films and ethnic music and dance, should satisfy regional needs.

TABLE 3
Comparison of Licence Fees for Original Canadian Programmes

Scenario	Licence Fees for Canadian Production Paid Per Hour	Total Paid per Hour
One National licencee	$332,222	$332,222
One National licencee Four regionals	$118,794 $ 9,144 (each)	$155,370
Two National licencees	$118,794 (each)	$237,588

Source: First Choice, Application for Pay-TV Licence, July 20, 1981.

Few of the national general interest applicants were particularly innovative. Most offered the American style of pay-TV, while promising to spent a great deal on Canadian programming. But all were dependent on American feature films for the balance of the schedule and none demonstrated why this model was essential for pay-TV's success.

5.4.2 Other National Applicants

There were three others applying for national licences. Two were called specialty channels, one was to be a non-profit universal system.

Q-channel was the idea of two filmmakers working out of Halifax. It is notable simply because of its small scale[65] and the fact that it would offer something other than 'big-ticket' Hollywood movies. It

[65] It expected only a one percent penetration rate after a year, only three percent after five. Q-Channel - The Altantic Cinema Ltd., "Application for a National Pay Television Licence. p. 21.

would offer avant-garde cinema, movies from Hollywood and the rest of the world that were different, off-beat and with special appeal. As well, it would offer documentaries, shorts, interviews and criticism. It offered Canadian content of about forty-two percent and twenty-four percent of its gross revenue (growing to fifty percent over five years) would be spent on such productions.[66] It would also show and help finance small scale experimental films. It would be on air twenty hours a day and would expect a penetration rate of only one percent in the first year. It had no chance of being licenced.

The Lively Arts Marketing Board (LAMB) was first heard from during the Therrian Committee hearings. LAMB had many prestigous 'names' on its board, including Hamilton Southam, Edgar Cowan, Louis Applebaum, and Maurice Strong. C Channel, as LAMB's pay service was to be called, was 'distinctive'. "LAMB's raison d'etre is to advance the cause of the performing arts in Canada."[67] It was to offer little that was available on regular TV and little of what other national applicants were offering. It, therefore, did not threaten to siphon any programming from conventional television.[68] Opera, theatre, music, children's programming and "international award winning" feature films did not exist in abundance on advertiser supported TV.

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[66] This meant about $200,000 in the first year, over $2 million by the fifth. Ibid. p. 14.

[67] LAMB Inc., Application for National Pay TV Licence, p. 26.

[68] Unless you consider the threat the C Channel might present to the CBC's arts programming.

It planned to be on the air forty-two hours a week and would be available to cable companies at $8.00 per subscriber per month.[69] Between 1983 and 1987, C Channel would spend $66 million on programming, $35 million on original Canadian productions.[70] As well, a Lively Arts fund would be established, with 1.17 percent of projected revenues being committed to it.[71] Over thirty-seven percent of its total on-air time would be Canadian.[72] It expected to get about 160,000 subscribers in the first year, doubling in the second.

TeleCanada was probably the most innovative applicant. It resulted from a study done for the CCFM, which had recommended that as a first step a universal pay system should be established. It would offer the artistic community in Canada the greatest benefits. The original CCFM study had called for a publicly owned univeral system, TeleCanada was a privately organized company.

TeleCanada was to a federally incorporated non-profit, non-share capital corporation.[73] The proposed directors and officers of the corporation included Paul Audley, David MacDonald (Minister of Sate and Communications in the Clark government), Abraham Rotstein, Peter Flemington, President of Peter Fleminton Broadcasting Services, John Hoberg, then national director of the Canadian Conference of the Arts, plus five mem-

[69] Ibid., p. 42. The retail price was suggested to be $12.95.

[70] Ibid., p. 26.

[71] These funds would be used for script and concept development. Ibid., p. 29.

[72] Ibid., p. 32. But fifty percent of its programming would be Canadian. That is, there would be more repeats of foreign productions.

[73] TeleCanada, Application for a National Pay TV Licence, p. 1A.

bers appointed by the CBC and NFB.[74]

TeleCanada would be carried on the basic cable service and, because it would be a universal system, would be required to be taken by anyone who took cable. It proposed to carry sixty percent Canadian content in all viewing hours from day one and by the third year would increase this to seventy-five percent. In its first year of operation, TeleCanada would spend 49.4 percent of its gross revenue (eighty-two percent of its total programming budget) on Canadian programming. This would increase to 82.9 percent (89.2 percent of programming expenditures) over a five year period.[75] This meant that in its first year, TeleCanada would spend $77 million on Canadian production and $156 million in the fifth year. Of this $700,000 would be spent in the first year on production from outside Ontario and Quebec, by the five year this would rise to $9.1 million. Ten million dollars would be set aside for co-production with the NFB and CBC in year one, twice this amount in year five.[76] TeleCanda would undertake a major and continuing script and programming development program.[77]

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[74] Ibid. In the Supplementary Brief this is expanded to include five members from the CAB, CFDC and CCTA. From twenty-five voting members, a fifteen member board of directors would be chosen. TeleCanada, Supplymentary Brief to July 20, 1981 Licence Application, Septmember, 1981.

[75] Ibid., p. 11b.

[76] Ibid., p. 11b.

[77] TeleCanada, Supplementary Brief, Op. Cit., p. 33. In 1983 $2.5 million would be set aside for script and programme development. In 1987 this would be up to $7 million.

TeleCanada would produce none of its own programming. It would programme two national networks, one in French and one in English, the primary language in an area would be carried on the basic service, while the other would be available on the next programming tier. Thirty percent of its programming budget would go to French productions.

All this would be available to all cable subscribers for as little as $2.50 per month. The universal system would not necessarily even add $2.50 to the cable subscribers monthly bill. TeleCanada argued that it need not be this much, that some of that $2.50 could be and should be absorbed by profitable cable companies.[78] The Commission worried that no matter where that $2.50 came from, this proposal was like a tax, and thus something beyond the Commission's power. TeleCanada argued that it was within the CRTC's jurisdiction because the Commission had in effect already done such when it required cable companies to establish community channel and spend a certain percentage of their revenue making programming for that channel.[79] But since the CRTC had explicitly called for discretionary services, it was not likely that this, the most innovative proposal would be granted a licence.

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[78] Paul Audley, part of the TeleCanada board, pointed out that Class A cable companies were earning forty percent returns on their investments. And since a discretionary pay service would probably increase their profits even further, a universal system, such as TeleCanada, could receive the $2.50 from the company with increasing the cost of cable to the subscribers. CRTC, Public Hearings, Op. Cit., p. 2890.

[79] However, the amount the cable companies' were to spent on the community channel was a guideline, not a condition of licence. Ex-Minster of State and Communication's, Donald MacDonald stated that he thought what TeleCanada had requested was within the Commission power.

5.4.3 Regional Applicants

Even before the hearings began it was not expected that many of the regional applicants, especially those in the general interest category, would succeed. The main reason for this was that while there was nineteen regional applicants, there were none for the provinces of Quebec, Manitoba or Saskatchewan. There was a lot of duplication of applications for the wealthy provinces of Alberta and British Columbia and especially Ontario, which accounted for ten of the regional applications.[80]

It is not surprising that these markets attracted applicants (it is surprising that the Atlantic provinces also had a regional applicant). In Canada there has always been rich and poor television markets. In the past the wealth of one market has helped subsidize the network service that is delivered across the country and the producing the Canadian

[80] Being the richest market this might have been expected. These regional licences range in size from individual cities to the entire province. Not all regional licences were for general entertainment channels, there were multilingual services proposed for Ontario and B.C. and a universal service proposed for Toronto, which would present cultural fare and experimental films. World View was a company applying for a multilingual licence in British Columbia. Almost a quarter of its schedule would be made up of locally or regionally programmes produced by the licencee. Almost thirty-eight percent of its programming would be Canadian. Forty-three percent of its programming would be in languages other than French or English. Fiestavision was a regional multilingual pay service for Ontario. It was to be owned by MTV of Toronto. Its schedule would be 58.6 percent third language programming, but still it would have 33.3 percent Canadian content. 15 Dance Laboratorium was to be a universal pay channel in Toronto. Arts Intra-Media would run the channel and would be a non-profit share captial, federally chartered corporation. It would programme experimental films, cultural fare and documentaries. Fifty-five percent of the programming would be locally or regionally produced by the licencee and twenty-two percent would be aquired locally or regionally. Canadian content would, therefore, run around the eighty percent mark. It would be delivered to all cable Toronto subscribers for 30 cents a month.

programmes carried by the network. Pay-TV on a regional scale moved to unlink this by servicing those area that would return to the investors the greatest dollar amount on their investment.[81]

All regionals located in the wealthly provinces projected substantial revenues and thus large amounts of money going to Canadian programming. One Ontario applicant projected that it would spend $94 million over a five year period on Canadian productions.[82] ONT TV, an applicant for regional pay licence for Ontario, promised to spend 17.5 percent of its gross revenue on Canadian content, as well as, turn over fifteen percent of its gross, to the Ontario Council of the Arts. Premier Alberta Television Ltd. promised to spend over $11.7 million on Canadian productions in its five year and have 38.9 percent Canadian content. It was not too clear how much of this would be spent regionally. Alberta Independent Pay Television, a division of Allarco Broadcasting Ltd, which owned a TV station and production facilities, would offer thirty percent Canadian content and establish a Canadian production fund. The fund would garner $5 million over five years. Alberta Independent would also spend seven percent of its gross revenue on Canadian productions and reinvest all of its profits into programme production. Ontario Independent Pay Television committed itself to aquiring only twelve per-

[81] One applicant, Aurora Movie World, proposed a regional service from Mississauga to Windsor. It was thus trying to carve up the richest Canadian market, not the province of Ontario, but the 'Golden Horseshoe' from Oshawa to Windsor. In such a case pay-TV would be nothing more than a local service, such as cable, with as little responsibility for Canadian production as did cable.

[82] This is a large amount, but takes into account the fact that this company promised to invest all its profits into programme production. Ontario Independent Pay Television, Applicantion for a Regional Pay TV Licence, p. 117.

cent of its material regionally, and most other regional applicants were much the same. While BCTV's application for a regional pay service in British Columbia stated that all its Canadian content would be produced in that province, this amounted to only eighteen percent of its schedule. Another regional applicant from B.C. would provide 14.3 percent Canadian content, all of which would be produced in that province.

Indeed, the anomally of the regional applicants, seemed to offer just as much, if not more, than some of the applicants from the richer provinces. The Star Channel would serve Atlantic Canada. It would cost twelve dollars per month to the subscriber. It would run five to ten hours a day, it would have thirty-two percent Canada content (twelve percent of the schedule would be local productions) and would spend almost $2 million in year one and $6 million by year five on Canadian programming. In the first year 40,000 were expected to sign up, 100,000 by the end of the licence.

Most regional services offered programming that would not differ substantially from national general interest applicants. Although they did promise to produce some programming regionally, this usually was a small amount, meaning these service would simply be a mass entertainment movie channel. And as with the national general interest applicants, none were particularly innovative, none guaranteed that Canadian programming would benefit substantially.

5.4.4 Closing Words at the Hearings

The CRTC put aside the last few days of the hearings for applicants to rebut arguments and rebuke the failings of other applicants. For the most part this did not take long. Most took the opportunity to lavish praise on themselves rather than attack others. But regional applicants, after listening to the national applicants dismiss them as unnecessary and unwise, used this time to retaliate. One argued that it was the national applicants that should not be licenced, that a series of regional licencees, would be sensitive to regional needs and yet be able to band together to finance some programming. The national applicants' argument that regionals would not generate enough money for Canadian productions was false, Ontario Independent Pay Television stated, for it was demonstratable that a series of regional licencees would inject as much, if not more, money into the Canadian production industry.[83] As for the fact that there were three provinces without applicants for a regional licences; a decision by the CRTC to licence exclusively regional services would soon bring numerous applicants for these provinces.[84] Others, like Allarco Broadcasting Ltd., argued that

[83] Ontario Independent stated that if the applicants from B.C., Alberta and the Maritimes, as well as itself, were licenced, they would generate $165 million for the production industry over a five year period. If licences came forward from Manitoba and Quebec, this would probably increase by $60 million. Ibid., p. 3810. One of the Commissioners came to the same conclusion. p. 3820.

[84] Premier Alberta Television was vehemently against the licencing of a national pay service. And further accused the cable companies of not taking regional applicants serious in the pre-application inquires, because of their involvement with Premier Pay-TV. If this is the way the cable industry acts before a licence is granted, just wait, Premier Alberta warned, if Premier and some regionals are licenced; the regionals will be second class citizens. See CRTC, Public Hearing, Op. Cit., pp. 3789-3797.

if regionals and a national company were licenced, the regionals should have priority.

First Choice used part of its time to once again condemn the licencing of the regional channels arguing:

> ...it is the height of parochialism for regional applicants to cream off the profits in Ontario and Alberta and ignore the absolute essential need for support of a French language service.[85]

First Choice argued that regionalism may be fine for those that can afford it, but what about those that could not and what about the need for a French language service which will probably only survive if cross-subsidized by the wealthier English market?

Showplace warned against the licencing of CTVA, because it would result, as is the case with the CTV network, in the domination of the pay service by three or four big television stations in Canada. It dismissed the LAMB application as unrealistic and took aim at all the other applicants, demonstrating that if it inflated its penetration rate as much as they did, it looked better than all, except for First Choice which was being totally misleading, because of its unrealistic penetration rates.[86]

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[85] Ibid., p. 3865.

[86] Showplace came to the following figures if all applicants had the same gross income and penetration rates. It would spend:
$37 million more than CTVA,
$10.25 million more than Premier,
$60 million more than Performance,
$8.75 million more than Astra-Tel, but
$50 million less than First Choice.

Thus ended the Commissions hearings. Few could imagine what the CRTC had decided after hearing so much testimony. Few expected the results of the Commission's five months of soul searching.

5.5 THE DECISION

Although the Commission had stated in its call that it was unlikely to grant a monopoly pay television licence, the CRTC's decision still came as a surprise, if not a shock, to most interested parties.[87] The enthusiasm one might expect from the 'winners' was even stifled, as they wondered what they had gotten themselves into. The Commission had decided that competition was the route Canadian pay service should take and to prove it meant business licenced six applicants; two national and four regional services. One national and three regional general interest services were granted competing licences (with an immediate call for applicants for B.C. and a french language service for Ontario, Quebec and the Atlantic provinces. With the expressed intend to call for regional applications in Manitoba, Saskatchewan, the Yukon and the North West Territories). One national specialty (performing arts) channel and a

[87] Shortly after the hearing, one Edmonton-based group feared that it would lose out to a Toronto-based national applicant, because the CRTC would maintain Canada's tradition of centralized communications. "Pay TV Group Worried", Winnipeg Free Press, November 7, 1981. p. 35. According to Stephanie MacKenchuck, "CRTC's Intentions Unclear in Spite of Pay TV Hearings", Special Report: Media, Financial Post, November 7, 1981. p. 55. The regional services had already been rejected by the Commission and the three strongest contender for the one national licence were Astra-Tel, Premier and First Choice. And Dan Westall, "Can Pay-TV Tension Abate When Stakes are so High?", Globe and Mail, January 30, 1982. p. B5. stated that the regionals had lost out to one national discretionary service and Telecanada. One must comment on the ability of the Commission to keep a secret. Either that, or the Commission was having trouble deciding.

multilingual service in B.C. were also licenced. All would be competing for the public's attention and the public's money.

First Choice beat out its five competitor for the privilege of running a national movie channel. Alberta Independent Pay Television won out over its rival for a regional channel in Alberta and its sister, Ontario Independent, was chosen from the numerous application to run an Ontario regional service. The Star Channel was accepted (there were no other applicants) as the regional licencee for Atlantic Canada. Lively Arts Market Builders was granted a national specialty licence and World View, the B.C. regional, a multilingual one.

Upon these 'winners' in the pay television lottery were imposed far fewer regulations than might have been expected. The majority of regulations imposed had to do with content. All licencees, with the exception of World View, were required to carry at least thirty percent Canadian content in their first two and a half years. The four general interest licencees would have to raise this to fifty percent of their programming schedule by January 1, 1986. LAMB's licence required that it set Canadian content at forty percent by this time. These content regulations would be in effect for the entire broadcasting day and in the evening hours.[88] In all cases this would be averaged over a six month period. In the case of First Choice, the CRTC set content requirements for the first couple of years lower than the licencee had suggested in its applications.[89]

[88] For the national licencees and the Atlantic regional service the definition of evening varied across time zones.

[89] Star Channel had proposed thirty-two percent Canadian content, while both Alberta and Ontario Independent Pay Television said they could

Canadian content requirements are nothing new, but the Commission imposed some unique and untried, yet popular (during the hearings), conditions in relation to Canadian content. (See Table 4 for a summary of these conditions.) The Commission, to encourage and perhaps ensure that Canadian programming would get its fair share of the dollars made by the services and spent by them on programming, implemented a requirement that a specific precentage of gross revenue and programming budgets be spent on Canadian programming. First Choice would have to spend forty-five percent of its total revenue on acquiring or investing in Canadian productions.[90] The Atlantic regional pay service had to devote the least to Canadian content; only fifteen percent of its gross revenues had to be spent on Canadian content. The Alberta service had to spend thirty-five percent of its gross on it, and Ontario Independent had to spend the most, fifty percent of its total revenue on such. All the general interest licencees had to devote sixty percent of their programming budget to the Canadian products and at least fifty percent of the money spent on Canadian programmes had to be spent on Canadian dramatic productions.[91]

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live with thirty percent.

[90] First Choice had, in its application, promised to devote thirty-nine percent of its gross revenue to Canadian programming.

[91] This was to avoid the licencee from producing inexpense, but usually easily sold, variety programming. The percentage of the programming budget devoted to Canadian productions meant that $0.60 out of every dollar spent on programming had to be spent on Canadian productions. Canadian productions were those that meet the test of the Canadian Film Development Corporation or the federal Department of Communication's definition.

The restrictions on LAMB's C Channel were quite different from those imposed on the general interest channels and were designed to ensure that it would remain a 'specialty' channel. While in its first two and a half years of operation it would, like the general interest licencee, have to be thirty percent Canadian, its content requirments would rise to only forty percent. Partly this was in recognition of the services much smaller subscriber base, but as well it was to be providing distinctive progamming, Canadian or otherwise. It was only required to devote twenty percent of its total revenue and fifty percent of its total programming budget to Canadian productions. Its schedule could be no more that forty percent feature films, and no more than five percent of air time could be made up of the top thirty grossing films of the previous three years. Further, not more than fifty percent of its feature films could come from any one country (ie. America).[92]

With these regulation the CRTC thought it had allowed the licencees the flexibility necessary to adapt, change and experiment. The Commission had ignored or rejected many suggested regulations. First Choice had been one of the champions of a national buying agency, if more than one pay television service was licenced, but the CRTC rejected this for the time being stating that while the benefit of such were recognized, there were problems associated with its implementation that would first have to be dealt with. The Commission did not elaborate on what these

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[92] World View, the B.C. multilingual service, had no Canadian content requirements, but it had to program at least sixty percent of its schedule with shows in languages other than French, English or Native Canadian languages. No more than twenty-five percent of its feature films could be in these languages either.

problems were.[93] In place of such an agency, the CRTC would not allow exclusivity of foreign products. This meant that no service could purchase the exclusive rights to any foreign feature film and it was hoped this would prevent an escalation of costs due to competitive bidding for such products. This would also mean that pay services would have to compete mainly with good Canadian products, since foreign features would likely be the same on all services. The Commission also rejected a recommendation that pay services be required to acquire and show all Canadian feature films produced each year.[94] As well, the CRTC did not act on a recommendation that it set the retail or wholesale price of the pay TV, nor did would it require all cable services to carry all or any of the pay channels it had licenced.

The Commission refused to dictate to the licencees how they should finance Canadian productions, and whether they had to back any such productions. While those interested in how applicants would promote script and concept development asked that specific regulations be established none were forthcoming, but the CRTC "hoped" this would still take place and would take note of it at renewal time. Generally, the Commission felt that

> these matters can be better ascertained by producers and network managers who are closer to the realities of the marketplace than the Commission.[95]

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[93] Ibid. p. 27.

[94] Ibid.

[95] Ibid., p. 26.

TABLE 4
Summary of Conditions of Licence

LICENCEE	EXHIBITION TIME			EXPENDITURES			
	ALL CANADIAN PROGRAMS		DRAMA	ALL CANADIAN PROGRAMS		DRAMA	
	% OF EXHIBITION TIME DURING ENTIRE DAY	% OF EXHIBITION TIME DURING SPECIFIED EVENING HOURS	%OF EXHIBITION TIME	% OF TOTAL PROGRAMMING BUDGET	% OF TOTAL GROSS REVENUES	% OF TOTAL PROGRAMMING BUDGET	% OF TOTAL GROSS REVENUES
FIRST CHOICE	30 % IN THE 1ST YR 50 % IN THE 5TH YR	30 % THE 1ST YR 50 % IN THE 5TH YR	50 % OF CANADIAN TIME IN ALL YEARS	60 % OF BUDGET TO TO BE SPENT ON CANADIAN	45 %	50 % OF ALL MONEY ON CANADIAN PROGRAMS	50 % OF ALL MONEY ON CANADIAN PROGRAMS
ATLANTIC REGIONAL	30 % IN THE 1ST YR 50 % IN THE 5TH YR	30 % THE 1ST YR 50 % IN THE 5TH YR	50 % OF CANADIAN TIME IN ALL YEARS	60 % OF BUDGET TO TO BE SPENT ON CANADIAN	15 %	50 % OF ALL MONEY ON CANADIAN PROGRAMS	50 % OF ALL MONEY ON CANADIAN PROGRAMS
ONTARIO REGIONAL	30 % IN THE 1ST YR 50 % IN THE 5TH YR	30 % THE 1ST YR 50 % IN THE 5TH YR	50 % OF CANADIAN TIME IN ALL YEARS	60 % OF BUDGET TO TO BE SPENT ON CANADIAN	50 %	50 % OF ALL MONEY ON CANADIAN PROGRAMS	50 % OF ALL MONEY ON CANADIAN PROGRAMS
ALBERTA REGIONAL	30 % IN THE 1ST YR 50 % IN THE 5TH YR	30 % THE 1ST YR 50 % IN THE 5TH YR	50 % OF CANADIAN TIME IN ALL YEARS	60 % OF BUDGET TO TO BE SPENT ON CANADIAN	35 %	50 % OF ALL MONEY ON CANADIAN PROGRAMS	50 % OF ALL MONEY ON CANADIAN PROGRAMS
LAMB SPECIALTY CHANNEL	30 % IN THE 1ST YR 50 % IN THE 5TH YR	30 % THE 1ST YR 50 % IN THE 5TH YR	NOTHING	50 % OF BUDGET TO TO BE SPENT ON CANADIAN	20 %	NOTHING	NOTHING
B.C. MULTI-LINGUAL	NOTHING	NOTHING	NOTHING	NOTHING	NOTHING	NOTHING	NOTHING

Source: CRTC, Simiplied Summary of Pay TV Licences' Canadian Content Requirements, Ottawa, 18 March, 1982. p. 3.

The Commission did not implement shorter licencing periods for the pay services or periodic reviews of the licencees to see if they were living up to their condition if licence.[66] But the Commission warned that

[66] Most likely because the Commision was in no position to afford the time.

if the licencees did not perform as expected, they could expect their licences to be revoked after their five years were up, and/or if necessary competitve renewals would be considered.'[7] The Commission implemented no anti-siphoning regulations and only in the future would they be considered, if necessary.

Surprisingly the Commission seemed to change its mind on the idea of universal or mandatory pay services, but felt that Telecanada did not afford a clear enough structure of accountability for the Commission to licence it. But in the near future, the Commission would hold hearings devoted to this subject, and would consider who should run and how to impliment such a service. The Commission called for regional licences in B.C. and a French language regional service for Quebec, Ontario and the Atlantic provinces. As well, the Commission started to open the door for more specialty channels.

Why these applicants? While the CRTC praised all the applicants that it had licenced, it is not clear why these ones were chosen over several others. The CRTC had stated that it would base its decision on the promises made by the applicants at the hearings, but by altering the conditions of licence for First Choice, the Commission had ignored its own criterion. In the case of the regional and the national general interest services their differences from other applicants were marginal. In the case of LAMB and World View, no other applicant had proposed anything similar and the Commission was looking for ways of bringing diversity to Canadian television. Star Channel was the only applicant for Atlantic Canada, so one might argue a 'shoe-in' for its regional li-

[7] CRTC, Op. Cit., 1982. p. 19.

cence. But there had been two applications for licences in British Columbia, neither of which the Commission licenced. The CRTC stated that one of the applicants provided insufficient evidence of adequate Canadian programming experience, while the other, who was supported by a substantial portion of the B.C. arts community, was designed around too little Canadian content.[98] The fact that the Commission could have set the Canadian content quota for this applicant at a higher level, did not change the Commission's mind. It seems that the CRTC expects its applicants to at least appear enthusiastic about Canadian content, and would rather restrain the overly enthusistic than trust those showing reserve.

Those that were licenced had several things in common; they all promised to spend large sums of money of Canadian programming and devote a substantial amount of time to the same. But again this can be said about almost all the applicants.

First Choice impressed the commission with the "credibility" of its representatives and the "experience" and "abilities" of the personnal associated with it. Thus the Commission seemed to cast doubt of the crediblity, experience and abilities of the failed national applicants. But the other applicants appeared no less so, and at times, more so than First Choice. While it would establish a fund of $1.5 million at the outset to stimulate early production of Canadian programming, and a further percentage of its revenue to script, concept and interm financing. most other national applicants made similar promises. The Commission liked the fact that First Choice would set up regional offices and pur-

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[98] Ibid., p. 12. The latter's schedule was only to be 14.3 percent Canadian, a substantial portion of which consisted of regional sports.

chase twenty-five percent of its Canadian material from the regions. Premier and Performance made similar promises. But regional licencees seemed to make such redundant. And First Choice's commitments were conditional on it getting a monopoly licence.

Even though the First Choice French-language service was praised for its "overall commitment and approach to the development of French language programming", the Commission set about amending the the First Choice proposal. The CRTC decided that First Choice would take on a separately programmed national French language service. Thus the Commission imposed on First Choice, something both Premier and CTVA had set out in their applications, but which First Choice had questioned as viable. During the hearings First Choice had stated that it doubted the feasiblity of a national French language pay-TV network, but had also said that it would be willing to take on such a responsibilty.[99]

The Commission final decision forced the national licencee to put a greater percentage of gross revenue towards Canadian production than promised by First Choice, Performance or Showplace in their applications, but less than that promised by Premier, CTVA or Astra Tel. Only First Choice promised fifty percent of its air time would be devoted to Canadian productions in the first year, but all, except CTVA, met the CRTC final level of thirty percent. The only thing that really set First Choice apart from the other national applicants was the fact that it involved no crossownership. Only it and Performance had no interests involved in broadcasting (such as CTVA or Showplace), cable (such as

[99] Astral-Tel offered a national French and English service as well and both Showplace and Performance stated that they would be willing to offer a French language network.

Premier) or production (such as Astral-Tel). And while Performance also had little or no crossownership involved, it proposed French service was vague and one of its innovative ideas was unpopular.[100] First Choice stood out not so much because the Commission was impressed by who was involved, but because of who was not involved.

In some respects this argument is dashed by the fact that the CRTC gave regional licences in Alberta and Ontario to groups that own broadcasting and production facilities. Further, there is even crossownership between the Alberta licencee and the Ontario licencee. Alberta Independent Pay Television was owned by Allarco Ltd. which owns a TV station and ITV Productions in Edmonton. Ontario Independent Pay Television was owned in part by the same company. This crossownership was dismissed by the Commission:

> the Commission has taken into account that the directers of Allarco are experienced broadcasters from Alberta with a proven record in television, production and financial management.[101]

Even so, the CRTC set up a regulation to "preclude that pay television licencee from producing pay television programming for its own use or from acquiring such programming from a person related to it."[102] The question is: if this is not a concern and easily regulated in this case, why was crossownership a concern in the case of national applications? In part, this could reflect the fear that a national pay TV service com-

[100] The Core company concept had left few in the production industry happy. It threaten to become another layer of bureaucracy through which producers would have to go. At worst, it was seen as a danger to the small Canadian producer and almost like inhouse production.

[101] Ibid., p. 45. All of a sudden crossownership becomes an asset.

[102] Ibid.

bined with the national private braodcasting network or cable companies may have become too powerful, but again this is not explained by the Commission, leaving one with the feeling that the CRTC had contradicted itself.

The point here is that it really did not matter who the Commission chose. These licencees appear no worse, but substantially no better than any of the lot. The lot was mostly empty of any innovation. All national applicates promised massive amounts of money would be pumped into Canadian content. Almost all said they would meet the content level finally decided on by the Commission. The national applicant that was finally chosen did not meet the Commission's level of gross income to be devoted to Canadian programming, but it appeared that the CRTC was quite willing to change applications. Only CTVA and Premier offered separately programmed national French language service. Astral-Tel had dual tracking and First Choice had its checker board system, but all expressed a willingness to take on a national French service. Only First Choice and Performance excluded crossownership concerns. In other words, none were really acceptable, but the Commission was not willing to reject all and make a 'recall'.

The lack of a truly acceptable applicant and the subsequent need of the Commission to change the licencees' proposals, calls into question the vague 'call' that the CRTC released. It would have been fairer to all concerned if the Commission had clearly stipulated what it wanted. It appears that the Commission chose applicants with the "right attitude", those presenting positive approaches to Canadian content. But

the Commission could have chosen almost any applicant, because its' regulations were enforcable on any of them, and because it had demonstrated a willingness to change applicant's proposals.

It is doubtful, no matter who the Commission had chosen within the structure it had established, that it would have made any difference. The structure chosen by the Commission appears, even to the uniformed, to be shaky, thus tempting disaster for the pay industry and the Canadian programme production industry. Haste is not an adequate explanation. The Commission did look before it lept; it had spent ten years looking, studying and analysing before it threw pay television of the cliff. Why then did the Commission decide on this stucture?

Chapter VI

THE RESULTS OF THE DECISION

> Pay-TV is one of those once-in-a-decade opportunities to significantly change reality.[1]

6.1 INTRODUCTION

The CRTC's decision of 18 March 1982 decision was obviously a difficult one, both in terms of who to chose and what structure to establish. This is reflected in the time taken by the Commission to decide and the form their decision took. The difficulty in making a decision could be dismissed simply as thoughtful deliberation on a complex issue. Indeed, the issue was complex, the choices many and the decision possibly the most important that the regulatory commission would make or had made in quite a while. For the Commission to take its time should not then raise eyebrows. But there appears to be evidence that more than complexity of the issue was keeping the Commission from deciding.

> ...[I]t becomes clear that the pay-TV licencing decision had constituted a most difficult exercise in regulatory decision-making, both from a technical and political standpoint, and the fact that the decision contains an unusual and important 'miniority decision' is only the most visible mark of the struggle that took place.[2]

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[1] Hon. David MacDonald and Fred Rumsey, "Pay Treation - FulFilling a Canadian Promise", R. Brian Woodrow and Kenneth B. Woodside, ed., The Introduction of Pay-TV in Canada, Montreal: The Institute for Research on Public Policy, 1982. p. 161.

[2] "A Commentary on the CRTC Licencing Decision of 18 March 1982", R. Brian Woodrow and Kenneth B. Woodside, ed., The Introduction of Pay-TV

It appears clear that both during the hearings and in its decision, individual Commissioners had definite ideas on what form pay television should take in Canada. However, the CRTC as a body had no policy, other than some vague platitudes, on pay television, what it should accomplish, or how it should fit into the broadcasting system. Indeed, there is some question of whether the Commission felt it should fit at all, since pay-TV can be viewed as a new technology that has little to do with the existing system.[3] Yet the Commission in all its past statements and in its call for licence applications seemed to have stressed that pay-TV was not to be treated as something separate from the existing broadcasting system. It was to be merged into to that system and pursue traditional goals. However, Decision 82/240 can be viewed as separating pay television from the structure and goals of the existing system and recognizing pay-TV "as a new technology in its own right..."[4]

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in Canada, Montreal: The Institute for Research on Public Policy, 1982. pp. 212-213. The decision was reached after "one hell of a fight" according to a staff member of the Commission. Paul McLaughin, "It's a Battle for the Minds of Canadians", TV Guide, November 6, 1982. p. 15.

[3] See John B. Black, R. Brain Woodrow and Kenneth B. Woodside, "Technological Possibilities and Operational Formats for Pay-TV in Canada", in Ibid., pp. 77-93. It is argued that pay-TV is the first step in a technological revolution and as such must be treated distinct from the existing broadcasting system.

[4] "A Commentary on the CRTC Licencing Decision of 18 March 1982, Op. Cit., 1982, p. 219. This same essay finds that the CRTC had in the past ignored the possibilities that this technology offered in areas outside the-traditional broadcasting system. "What is missing from the CRTC decision and related pronouncements in recent years is any clear and convincing concept of pay-TV as a new and potentially autonomous technology in the communications field." p. 219. This seems to suggest that the Commission did not see pay television as anything but a means to traditional ends, that being, Canadian programming. At least, this was the case until the March, 1982 decision.

The CRTC had no coherent strategy to achieve the one goal which had been stated over and over again: pay television must significantly contribute to the Canadian programme production industry.[5] This lack of policy was partly due to the fact that the Commission did not have strong leadership. John Meisel, a Conservative appointee, (although an 'apolitical' one), was not, nor could he be, a strong chairman for he had little political support inside or outside the Commission. Meisel was as equal as any other Commissioner, his opinion weighed no more than any of the others.[6] As such there appears that there were several competing visions for pay television, and the decision might be seen as an attempt to pacify all Commissioners. Since the government had not given the CRTC any direction, the Chairman was left to sort out a compromise among his fellow Commissioners. More importantly, the CRTC was making a major policy decision, something that while not outside its legal competence, can be seen as beyond its capabilities. However, it cannot be condemned for doing so, for it had no policy direction from the federal government, which had 'abdictated' its responsibility for policy making

[5] Robert FulFord, "Paying the Price", Saturday Night, August, 1982. p. 5. Fulford discribes the Commission as "...a regulatory body that has never set a clear policy and is making up its mind as it goes along."

[6] Robert Fulford, Ibid., p. 6, wrote that Meisel "must carry his fellow commissioners with him rather than autocratically directing their course", unlike earlier chairman, especially, Pierre Juneau. Commission Marc Gervais desribed the process of decision making in the case of pay-TV as "an education on how democracy works." "After the hearing is over, the (Pay television) panel meets with (CRTC) staff and comes to a kind of global feeling about the matter. ...Then, the panel presents its recommendation to the whole committee, the 17 (Commissioners)...(T)he whole group comes hopefully to some kind of consensus, which generally backs the panel, but not necessarily..." See "Inside the CRTC Decision: Marc Gervais on the Pay-TV Controversy", An Interview with Marc Gervias conducted by Jean-Pierre and Connier Tadios, Cinema Canada, May, 1982. p. 30.

to the Commission.[7] Future decisions the Commission would make on pay television in Canada seemed to indicate that it lacked a clear direction and was dealing with many issues on an ad hoc basis.

The decision appears to be more a compromise or a 'second best' solution encompassing many ideas, but without coherence or cohesiveness. It may have solved some of the internal bickering and conflicting ideas of Commissioners, but would it achieve the goals set by the Commission?[8] Even though the decision represents a compromise, two Commissioners could not accept it.

The Commission's licencing decision was greeted with sceptism and concern by interested parties and informed observers. So great was the doubt that the CRTC had chosen a workable structure, so persuasive were the arguments that it was inherently fragile and that some licence holders would fail, that the Federal cabinet received three appeals calling on it to set aside the decision or send it back for reconsideration. The two dissenting Commissioners found themselves in quite respectable company. The three appeals were launched by: the Canadian Conference of the Arts, representing 711 arts groups, a group of eight associa-

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[7] "...part of the problem rests with the Government, which abdictated the policy making function to the commission. Mr. Meisel repeatly said the CRTC should be a licencing and regulatory body, not a policy maker." Dan Westell, "CRTC Faces a Host of Problems", Globe and Mail, September 30, 1983. p. B20. Although, it should be repeated that the government had no legal means to issue binding policy directive to the Commission. The last policy the government seemed to adopt was that of the Therrian Committee. If this was the case the CRTC may have seen itself constrained in its decision making by the recommendations of that Committee.

[8] This is freely admitted by at least one Commissioner. "The decision is a compromise document..." . Marc Gervais in "Inside the CRTC Decision", Op. Cit., p. 32.

tions in the film production business[9] and one of the national pay television applicants, who had lost out in its bid for a licence.

This is indeed a telling response to the Commission's decision. The Canadian Conference of the Arts, normally a strong defender of the CRTC's independence and a vehement crusader against 'political' interference in Commission decisions, demanded that

> Decision 82/240 of March 18, 1982 be referred back to the CRTC and that the Commission be asked to reconsider the Decision in the light of the the specific concerns identified in the appeal.[10]

The CCA must then have been truly dismayed with the decision.[11] The Canadian Conference of the Arts represents a vast group that could conceively have been one of the biggest 'winners' in the pay-TV sweepstakes. The CCA, as well as the group of eight production associations, could see their members gaining little or nothing from the licence structure and thus launched an appeal. Performance's appeal is again extraordinary, for it would gain little by requesting the cabinet to send back the decision.[12] Its concerns echoed those of the Cana-

[9] These where the Directors Guild of Canada (DGC), the Canadian Film Editors Guild (CFEG), the Canadian Association of Motion Picture and Electronic Recording Artists (CAMERA), the Association of Canadian Film Craftspeople (ACFC), les Association des Professionnels du Cinema du Quebec (APCQ), the Association of Canadian Movie Production Companies (ACMPC), the Canadian Association of Motion Picture Producers (CAMPP), les Association des Producteurs du Film du Quebec (APFQ) and les Association Quebecoise des Distributers de Film (AQDC). See "Film Community Appeal Outlines Economic, Artists Shortcomings", Cinema Canada, May, 1982. pp. 8 and 13 for a reprint of this appeal.

[10] Canadian Conference of the Arts, "An Appeal to the Governor in Council", Ottawa, 26 April 82, p. 3

[11] Robert Fulford, Op. Cit., p.4, calls this action 'highly unusual' and reflects the CCA's dismay with the decision.

[12] It could not be looking for another chance at a licence.

dian Conference of the Arts and the production associations. Thus the appeals were launched by a wide ranging group that encompassed diverse interests.[13]

The CRTC had set three goals for the licencing of pay television in Canada and it would be assumed that the structure chosen would have been the 'best', in light of the constraints placed on the Commission, to achieve these ends. To reiterate, the criteria for the introduction of pay television were

1. that it should help the realize the goals of the Broadcasting Act,
2. that it should increase the diversity of programming available, and
3. that it should create quality Canadian programming.[14]

If one were to examine superficially the Commission's decision in the light of these criteria, it would be difficult to see it as anything but a positive step. Partly this is because the criteria are so vague that almost any decision might support them.

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[13] Not all interested parties saw the decision as disasterous. The Canadian Film and Television Associations stated that it was "delighted" with the decision. And refused to support the CCA's, of which it is a member, appeal, for "it is in the industry's and the country's best interest that the decision 'is speedily implemented.'" . See Dan Westall, "Pay-TV Pleases Production Firms", Globe and Mail, March 20, 1982. p. B5. and Dan Westall, "Pay Television Decision to be Appealed", Globe and Mail, April 27, 1982. p. B18.

[14] These are repeated in the CRTC decision. CRTC, Decision 82-240, Op. Cit., 1982. pp. 8-9.

It has been argued that the introduction of pay television always has had one preeminent goal: the creation of a lot more Canadian programming.[15] Only the fulfullment of this goal could justify its introduction and throughout the history of the CRTC's discussions of pay television, this was given as apriori for rejecting or accepting it. In this light then the three goals given by the Commission become one. The 1968 Broadcasting Act can be seen as having as its main goal the Canadianization of the broadcasting system, both public and private elements, through both ownership and content requirements. It called for a system that used 'predominantly Canadian creative and other resources.' If pay television was to become a complementary part of that broadcasting system, then 'realizing' the goals of the Act became mainly an exercise in Canadian ownership (which is taken as given) and more importantly, Canadian programming.[16]

The second criterion refers to increased diversity of programming. Diversity is often confused with access to a large number of channels, but diversity really refers to the range of programme types available to the viewer. Usually programming that is little available or non-existent in a system is considered diverse. In the Canadian context then, diversity would include, for example, dramas with truly Canadian themes. Thus in Canada, diversity can take on a double meaning: to expand the range of programme types and to increase the amount of Canadian program-

[15] It should be remembered this is exactly what the CRTC itself states.

[16] While it is recognized that the Broadcasting Act is a much more complex and diversified piece of legislation, it would seem from this author's reading of it and the CRTC's interpretation of it, that its raison d'etre is to promote a system that reflects the Canadian reality.

ming of any type.[17]

In these contexts, the first two ends cited as essential to the licencing pay services can and do simply reinforce the last: increase the amount of quality Canadian programming. Canadian programming is central to the CRTC's stated goals for pay television. The CRTC reinforced this in its call for applications, for the criteria upon which the Commission entended to judge licencees was to be based on the percentage of content, gross revenue and programming budgets devoted to Canadian programming. The Commission, as we have seen, was not alone in this view of pay-TV as an important source of revenue for the Canadian programme production industry, and by implication most artists, actors, writers, producers, directors and technicians in the country.

The achievement of this goal alone would place a staggering burden on the shoulders of this new industry.[18] However, these specific goals, as outlined above, were replaced by ubiquitous ones. Pay-TV was not going to simply save the Canadian programming industry, it was going to achieve feats never dreamed possible, it was going to do everything for everybody. It was appropriate that two the licencees would band together and call themselves Superchannel; for that is exactly what the industry would have to be in order to survive.

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[17] Diversity could of course include programmes that are not original Canadian productions.

[18] The American pay service HBO spent most of its early years securing its position in the broadcasting world. It spent most of its revenue simply surviving and still lost millions, before establishing itself. It lived on off-the-self features and produced little itself. Canadian pay services would not only have to survive, but would have to start financing Canadian content immediately.

The Commission increased this new industry's burden by adding several other goals to those already stated. Regionalism became a major theme of the Commission's decision. If not so much regional production, regional ownership was an important adjunct to the CRTC's structure of pay television. Subscribers choice became a consideration. Not only choice between programme services carrying different programme types, but choice between channels carrying the same programme types. Thus a consumer dissatified with one service could purchase the other. Choice between a national network, which may represent a 'national' or perhaps a more sophisticated, taste, and regional services which might present local programme preferences.

Political and jurisdictional concerns were considered and the structure reflects the desire of the Commission to accomodate both federal and provincial constituencies.[19] It could be viewed as a flexible response to jurisdictional modifications which might occur and be seen as a nod towards provincial concerns. As well, it offered options in face of change. The broadcasting system was under review by three bodies: the Federal Cultural Policy Review Committee, the Department of Communication and the federal cabinet.[20] The CRTC decision can be seen as flexible to change.

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[19] As Commissioner, Marc Gervais, put it "(L)et's say, political reality made the CRTC go into the area of regional systems". "Inside the CRTC Decision", Op. Cit., p.31.

[20] The Canadian Conference of the Arts, "An Appeal to the Governor in Council, Op. Cit., p. 2, states that since pay television and the entire broadcasting and cultural field was under revenue, it was imprudent of the CRTC proceed with its decision. And adds that the question of Canadian content, which was then under review by the Commission, should have been dealt with before pay-TV.

Finally, there appears to be a technological imperative associated with the Commission decision: a belief that it was necessary to emulate and perhaps impossible to disregard the commnications revolution which was occuring world wide, but especially in the U.S. Canada had to leap forward to catch up and not be swallowed up by the burgeoning pay, cable and satellite services to the south.[21] The CRTC did not wish to see that revolution turn north uncontrolled, to consume Canada, so it decided by bureaucratic decree to start one of its own. In on giant leap (actually several would be taken and were planned) Canada was to catch up on the lost ground, to do so in months or years, what had taken a decade in the U.S. This meant a major upgrading of cable systems so they could carry more channels and perhaps become interactive. This, of course, would require a large financial investment. Cable companies saw this money coming from pay-TV, and so, it appears, did the Commission.

Yet the CRTC had not abandoned its original goal and to demonstrate this it established some tough regulations regarding Canadian content. While the fifty percent Canadian content quotas would not come into effect until well into the licence period, the percentage of revenues and programming budget with respect to Canadian programming were new, unique and, under the circumstances, arduous. In addition, the Commission seemed to suggest that a universal system could better accomplish many of its goals in the field of Canadian production. This, however, did not let the discretionary licencees off the hook; they were to live up to the rules or forfeit their licences. The problem was that the struc-

[21] Canada has always been a technological leader in the field of communications. However, Canada has always fallen behind in adapting the new hardware to our programming needs.

ture that the Commission had chosen would make abiding by the rules very difficult.

6.2 COMPETITION

The structure in which those goals would be realised was a competitive one and a major element in the CRTC's plan was competition.[22] Competition as far as the Commission was concerned was necessary to achieve the objectives of pay-TV within the broadcasting system and beyond. While almost all national applicants, including First Choice, and most of the general interest regional applicants, including the winners, most of the producer, director and artist organizations, had called for a national monopoly or regional exclusivity, the Commission "...was not persuaded that a monopoly scenario would maximize opportunities for Canadian program production."[23] It saw a competitive structure as increasing the access of Canadian producers to the system; if one pay service did not like an idea or a product, its sponsors could go to another exhibitor. If a regional producer wanted backing she would have regional licencees to go to; if a producer of cultural programming wanted support she would more likely get it from C Channel than First Choice. Competition would encourage pay-TV to be 'innovative' and 'experimental' because it would allow for a regulatory framework "free from all but es-

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[22] It was interesting that the Commission should adopt this structure. It is obviously borrowed from the American experience with its plethora of pay services now available. However, the Commission ignored the fact that Home Box Office, the first successful pay service, was so successful partly because when it started it had no pay-TV competitors.

[23] CRTC, Decision 82/240, Ottawa: March 18, 1982. p. 11.

sential constraints", something that could not have been done if a monopoly licence had been granted.[24] Competition at home was seen as toughening the new industry, so that it could survive an emerging broadcasting environment which was very competitve, just around the corner, and across the border.[25] Competition was clearly a regulatory device to get the licencees to do what the Commission felt it could not manageably impose.

> (T)he relatively competitve market structure that will result from this decision should foster a dynamic industry with a built-in incentive to realize the goal of diversity of programming.[26]

Competition, then, was the grease that would allow for the smooth operation of this new system. The broadcasting and technological revolution was based on a multiplicity of services, a plethora of choice -- diversity had come to mean not different programme types on a channel, but whole channels devoted to different programme types. 'The more the better' seemed to be the slogan of this revolution in broadcasting or, as it was becoming known, narrowcasting. This first licence decision could be seen as the step to service beyond programming, to shopping, fire and burgler alarms and other interactive services delivered over cable.[27] Pay-TV could then be seen less as part of the existing broadcasting system and more a new and separate technology.

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[24] Ibid, p. 18.

[25] ibid.

[26] Ibid., p. 19.

[27] Narrowcasting channel can be seen as complimentary rather than competitive. Yet all services are competing for subscribers' dollars, which are limited.

The Commission's decision to licence a performing arts channel run by LAMB reflected this view of diversity and was seen as the beginning of many channels directed at specific groups and tastes. The licencing of competitive general interest or 'mass entertainment' pay services was also a symptom of this new broadcasting environment: a belief that the viewer had the right to see a programme at his/her convience. No longer would a network schedule dictate when one could watch a programme. This is the essence of pay per channel television: a fee to see programms, scheduled many times thoughout a month, week and day, so that a subscriber could watch at his or her convience. By licencing two general interest channels, the CRTC was allowing the consumer the choice which service better meet his/her needs.

Competition was seen as a simple (and perhaps simplistic) solution to the Commission's desire to give regions a voice in pay-TV and programme production, without losing a national service which was "essential to provide a strong national dimension for pay television in Canada."[28] And by licencing regional services plus a national service the Commission killed another bird with the same stone: it could pat itself on the back for its structure could be seen as bridging many political and jurisdictional concerns. If any changes were forthcoming to the present regulatory structure, the Commission hoped it had constructed a flexible and adaptable industy.

Competition was also seen as very 'acceptable'. Regulatory agencies with their 'heavy hands' were falling into disfavour, and deregulation had become a popular slogan to describe the drive to remove excessive

[28] Ibid. p. 11.

and costly regulation. The Commission could not be condemned for a little expedience that might win it some laurels in the press and with the public.[29]

The video revolution which the CRTC seemed bent on bringing to Canada as quickly as was humanly or more aptly, 'bureaucratically', possible caused much apprehension and fear among the pay-TV industry and those that were originally to benefit the most. Most independent producers and filmmakers accepted their fate and felt that what the CRTC's pay structure offered the floundering industry was better then nothing at all.

6.3 THE COST OF COMPETITION

6.3.1 How Many of These Birds Will Fly?

"How many of these birds will fly?" was the rhetorical question asked by Commissioners Gagnon and Grace in their dissenting report. A minority decision was an unprecedented event, as was the news conference called by the CRTC's chairman to 'explain' the decision. Meisel said in effect there was no question in most of the Commissioners' minds how many of the licences would survive. The Commission's "exploration convinced us that the market can support this."[30] Yet there was no evidence presented by the CRTC to support this claim or to demonstrate how the Commission

[29] This was not to be. Editorials complained that the Commissions still was interferring too much. See for example "Resticting the Genie", Winnipeg Free Press, March 20, 1982. p. 6 which while commending the Commission "admirable respect for the benefits to the consumer of competition", complained of the restrictive regulations the CRTC imposed on the industry.

[30] CRTC, Information, "Statement by Chairman John Meisel on CRTC Decision 82-240 (Pay Television)", Ottawa: 18 March 1982, p. 1.

reached this conclusion. "The CRTC did not explain how it arrived at this formula and indeed there is no evidence on which such a formula could confidently be based."[31]

Considering the negative reaction to the CRTC decision, even by two of its own Commissioners, the release of whatever analysis that supported the decision might have been used to appease critics and, more importantly, to boost the morale of the Canadian programme production industry. Although it is not the practice of the CRTC to explain itself, the dissenting opinion would strongly suggest that any evidence the CRTC had to support its 'formula' should have been brought forth. The fact it did not, must lead one to suspect that this formula had little to support it. The number of licences was "system overload"[32] and few saw much short of disaster resulting from it.

The evidence presented throughout the hearing, including that presented by almost every applicant, stressed the need for a monopoly service in a given area. Most intervenors and submissions by interested parties supported the contention that to do otherwise was contrary to economic reality. Even the American experience in the field seemed to

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[31] Robert Fulford, Op. Cit., p. 4. The Canadian Conference of the Arts reached similiar conclusions stating that "No rationale, reasoning figures, studies or other evidence has been released by the Commission to justify the actions it has taken." See The Canadian Conference of the Arts, "Memo to Cabinet Ministers on an Appeal to the Governor in Council regarding the CRTC Decision on Pay Television", April 28, 1982. p. 5. Patrick Watson comes to the conclusion that "...the commission intended a number of applicants to fail. The onus is on the commission to show that it did not so intend." Patrick Watson, "The Odds on Canadian Pay-TV", Globe and Mail, May 13, 1982. p. 7.

[32] The dissenting Commissioners in CRTC, Decision 82-240, Op. Cit., 1982. p. 70.

suggest that the structure erected by the Commission was precarious. BRAVO, an American cultural pay service, which had after two years of operation had only 60,000 subscribers, whereas the proposed Canadian cultural channel needed 200,000 within nine months of launch to survive.[33] Home Box Office in the U.S. did not finance a single programme until it had over two million subscribers and was not profitable until it was over the four million mark. A CBC financial projection based on the national general interest licencee's own figures and modified to take into account the CRTC's conditions of licence and a 'very modest' decrease in the number of subscribers spelt disaster for the licencee.[34] It is impossible that the CRTC did not have this information, most of it was supplied in great quantity at the hearings, and in addition, the Commission had a large research staff to prepare their own studies. Still the CRTC licenced too many services to chase too few dollars. Thus "...the Decision does not permit the launching of pay television in Canada on an economically viable basis."[35]

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[33] BRAVO started in December, 1980 and was at first coupled with an adult movie service called Escapade. BRAVO would broadcast two days a week, the adult channel five. See Thomas F. Baldwin and Stevens McVoy, Cable Communications, Englewood Cliffs, N.J.: Prentic-Hall Inc, 1983. p. 115, 128. C Channel estimate of its break even point of 200,000 was given by its president in "C Channel Head Predicts Financial Security for Firm", Winnipeg Free Press, January 11, 1983. p. 23.

[34] It should be remebered that First Choice's projected penetration rates were the highest of any applicant and that such optimism was based on being the only general interest licence awarded. See Patrick Watson, Op. Cit.

[35] John J. Shepherd, Chairman, Performance, The Canadian Entertainment Network Ltd., Letter to Mr. Micheal Pitfield, Clerk of the Privy Council, Ottawa, May 3, 1982. p. 1.

Competition not only weakens the system through means such as increased overhead, a decreased subscriber base and the like, but what has been called the 'squeeze'.

> The major impedement to realizing the business scenarios projected by the pay-TV operators lies in their vulnerability to the classic middleman squeeze.[36]

The licence holders would find themselves in a squeeze between the foreign film distributors and the cable industry. The Commission, while not permitting licencees to buy the exclusive rights to foreign films, did not set up a common buying agency to ensure that the pricing of films would not be inflated when more exhibitors went into the market.[37] The cable industry was in a similar position to extract much from the pay distributors. The CRTC neither required any cable company to take all or any of the services licenced nor would it set the wholesale or retail price of pay television. Thus as the main (and perhaps only) secure means of delivering pay services, a cable operator could demand a large chunk of the monthly subscriber fee.[38] To reject the cable opera-

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[36] John Lyman, The Video Revolution, Toronto: James Lorimer and Company, 1983. p. 74.

[37] The loss of exclusivity does not prevent this as the cost-per-subscriber for a 'block buster', subscriber-attracting film may be great. Fear that ones reval will pay the price will certainly cause more money to be drained from the pay licence holders to the foreign distributors. See CCA, Op. Cit., p. 3, Ibid, pp, 74-75 and Directors Guild of Canada, et al, "An Appeal to the Governor in Councial Regarding CRTC Decision 82/240 on Pay Television", April 23, 1982. p. 3.

[38] Marilyn Mackinnon, "Local Cable Firms Near Agreement on Pay-TV Pact", Winnipeg Free Press, In Edmonton the cable companies were to get between $6.20 and $6.75 of the $15.00 or $16.00 retail price. About forty percent of the retail price. While this is lower than American cable systems get, it is still higher than many, including First Choice, had suggested at the hearings.

tors demands may result in a licencee with a service, but no way to deliver it. The pay licencees are caught between 'bad' movies and no delivery vehicle or good movies and a delivery vehicle but with little money left for much else.[39]

> ...the outcome of the CRTC pay-TV decision is likely to be a strong encouragement to the delivery system rather than a means of stimulating Canadian content.[40]

The squeeze factor will cause part of this, but in fact the cable industry had a legitimate case for demanding a larger share of pay-TV revenue. By licencing more than one service, which most cable companies could have carried at little expense or modification to existing systems, the Commission increased the complexity of delivery and the cost of hardware. This would require large expenditures by the industry in more expensive security devices and in effect retooling or upgrading their cable to carry more services.[41]

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[39] See "Pay-TV Firms Bond Together", Globe and Mail, September 14, 1983. p. B13 which states: "Some cable companies have refused to carry the service unless they receive half the revenue." "And U.S. studios, which control most films, and banding together to sell their material." and Performance, Appendix to May 3 Letter to Micheal Pitfield, "Advise- Implications of CTRC Pay-TV Decision", p. 1, which states "...licencing two or more general service licences in a single geographic area as the CRTC did puts foreign suppliers and the (cable) retailors on a more advantageous position vis-a-vis the pay TV operators."

[40] John Lyman, Op. Cit., p. 85.

[41] See "A Commentary on the CRTC Licencing Decision", Op. Cit., pp. 220-221. This is exactly as the cable industry saw it. "We're using pay television as the economic engine" to overhaul the cable system states Colin Watson, Vice-President of Rogers Cablesystems in Dan Westell, "Pay Television Viewed as Industry's Economic Engine", Globe and Mail, November 4, 1982. p. B5.

The consequences of the squeeze are two fold: failure of the licencees and/or lack of funds for Canadian programming. And failure, which the CRTC seemed willing to accept, was dangerous.

> [I]t is clearly evident by its decision to licence multiple directly competing services and let the marketplace decide which of them would survive, it did not take into account what will happen to independent program production should a licence go bankrupt. The effects of such an event, as we saw at the time of the group originally licenced to run Global and have a disasterous effect on an industry that as it is can barely survive.[42]

In other words, if some licencees go they are bound to take parts of independent production industry with them. Second, the moneys in the system are going to the places, other than those in greatest need. They are going to be duplications in costs: offices, staff, advertising and other overhead costs.[43] More money is needed to be spent on advertising in an adversary system. Huge amounts must go into advertsing the advantages of one service over the other. Money goes out of the country for popular firms and money to the hardware side of the industry.

How Many of these birds will fly? Canada offered to pay television a major advantage: it had a prefabricatied infrastructure for delivery. Unlike the U.S. where cable and pay expanded simultaneously, Canada had over five million homes cabled and waiting. This represented a major market coupled with tremendous economies of scale for a single national

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[42] CCA, Op. Cit, p. 4. At the time of Global's bankruptcy it still had huge unpaid bills to independent producers. And as if to mimic this, First Choice, after only a few months owed $3.4 million to Canadian producers and was in serious finanicial difficulty. "First Choice Pleads for Urgent Help", Winnipeg Free Press, November 12, 1983. p. 21.

[43] Estimated at twenty percent of gross revenue for such pay service as HBO. CCA, Op. Cit., p. 1.

service. The Commission decided to unlink this advantage, and in effect, balkanized a viable market into several questionable ones. As well, pay television did not appear as attractive in Canada. Unlike Americans, Canadian in major centres already had up to twenty channels available as part of basic cable. And where Home Box Office might cost a subscriber up to $10.00 a month, Canadian pay services would be charging fifty or sixty percent more. The delay in introducing pay television into Canada had made the market much different than that in the U.S. Technology had in many ways over taken pay-TV, video home recorders were becoming standard consumer durables, making pay services even less attractive.[44]

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[44] Cassette versions of movies come out six months to a year before they make it to pay television, video recorders are scheduled by the owner and, in Canada, video rentals are very convenient: all making VHS very attractive and pay-TV more difficult to sell. Lucie Hall, "Mission Imponderable: the Uncertain First Months of Canadian Pay-TV", Cinema Canada, May, 1983. p. 35.

[45] While the Commission was apparently convinced that the system could support its decision, it seems failure was something the CRTC was willing to accept. John Meisel stated that the various licencees "are designed to reinforced one another and create a whole range if 'safety nets', so that if one part does not work as effectively as hoped, other parts would do the job." Meisel quoted in Robert Fulford, Op. Cit., p. 5. Fulford adds that "(f)rom the beginning, everyone involved knew that pay-TV in Canada would be risky; the CRTC has made it riskier." p. 4. Patrick Watson sees the CRTC allowing failure for the first time. "The CRTC has never let companies fail before...[It] has always bailed the entrepenuers out. This time commission chairman John Meisel has said he will not allow them to renege on their obligations. This time the CRTC has given the entrepenuers the right to fail." Op. Cit. Meisel contended that "(t)he Commission is a kind of midwife that creates the condition for the most promising ideas to grow and some others to fail. In that context, (the decision) should be judged not by the ventures that succeed or fail...but by those that had an opportunity to try." quoted in Dan Westell, "Meisel Defends Course of CRTC Development", Globe and Mail, October 25, 1983. p. B16.

Failure[45] of any of the licence holders ensured that at least some of the CRTC's goals would not be accomplished. Even financial difficulty without insolvency would impinge on any of the most important ends of pay television. By establishing a system that had failure built into it, the CRTC ultimately would allow the market to determine the outcome of the structure of pay-TV in Canada. Thus regulatory policy has been forfeited for the 'invisible hand' of a 'free' market.

The most convincing evidence that the CRTC either intended some licencees to fail or licenced too many services are the emerging consequences of its decision. Two years after pay television went on the air in Canada only four of the original licencees still survive. C Channel collapsed a mere six months after it went on the air.[46] Star Channel went off the air near the end of 1983.[47] Since the original decision, the CRTC licenced a B.C.-Yukon regional service and a regional french-language service in Quebec. The B.C. company could not find enough capital to start up. The french-language regional service, licenced early in 1982, has been in financial difficultly since its first day. It

[46] See "C Channel in Receivership", Winnipeg Free Press, June 18, 1983. p. 17. and Craig LeMay, "C Channel Faces End with $9 Million Debt", Globe and Mail, June 18, 1983. pp. 1-2. C Channel had 27,000 subscribers when it failed, it had expected sixty to seventy thousand. As if to demonstrate that it would do nothing to prevent failure, the CRTC had refused to allow any service to defere satellite payments until they were more financially secure. Even though Telesat, the company in charge of satellite distribution in Canda, agreed with such a policy. In the first year charges would be set at 50 percent of the going rate, and in the fifth year it would be 150 percent. There were no arguments presented against the proposal, and everyone thought it would be a simple housekeeping procedure for the Commission. Yet the Commission said no. Thus the CRTC dramatically increased the chance that C Channel and others might fail.

[47] Dan Westell, "Star Channel Placed in Receivership", Globe and Mail, November 30, 1982. p. B3. Star Channel had only 10,000 subscribers.

has had to go outside the country for investment, has borrowed substantually from the Quebec goverment and finally had to merge with First Choice's french service. First Choice was so starved for cash, that the CRTC authorized, a takeover, by Astra Bellevenue Pathe, one of the original applicants for a national licence. Thus First Choice is nolonger run by the people that so impressed the Commission, but by a company that had earlier been rejected by the CRTC for that very licence.[48] It appears that the universe is unfolding as the CRTC intended.[49]

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[48] At the 1981 licencing hearings the CRTC had been concerned that Astral Bellevnue Pathe, a prominent producer and an important distributor, would, if licenced, vertically integrate the pay-TV industry. In response, Astra-Tel claimed that the production and distribution arm of its parent company would be shut down. The Commissions quite rightfully worried about the repercussion of such an important part of the production and distribution industry closing down. Allowing Astral Bellevenue Pathe to buy a 58 percent share in First Choice seemed to suggest that the CRTC had put aside its earlier fears. The Commission said it would closely monitor the company to ensure no conflict of interest. And Astral Bellenvue was to no longer produce films for First Choice and was to cease acting as a distributor in Canada for Twentieth Century-Fox. "First Choice Wins Financial Struggle", Winnipeg Free Press, November 17, 1983. p. 37.

[49] A financial analyst predicted that Superchannel and First Choice would not be around as separate entities in a years time. Superchannel had at the end of 1983 80,000 subscribers, First Choice 270,000. Robert L. Perry, "Pay-TV Comming to Moment of Truth", Financial Post, May 21, 1983. p.1. This prediction turned out to be true. In the summer of 1984, Superchannel and First Choice asked the Commission to divide the country in two, with First Choice providing service east of the Manitoba-Ontario border and Superchannel serving the West. The two companies would purchase foreign films together, work together in production and be distributed as First Choice - Superchannel.

6.3.2 Canadian Programming

While the Commission had confessed its feeling that Canadian programming production was the major concern in its licencing decision, it appears the CRTC made assumptions that were questionable. The Commission had chosen three means to achieve its ends through its discretionary licencees: competition, spending regulations and threat of lose of licence.

As we have seen competition plays an major role in the structure the CRTC chose. The CRTC argued that competition would increase the money going into Canadian production and the quantity and quality of Canadian productions. Competition meant competition for good Canadian products, since the non-exclusivity clause of the pay television decision made competition with foreign productions next to impossible. This meant that the system would be open to more producers, because there would be competing outlets looking for 'good' ideas. It meant that Canadian production would become more important because it was the one distinguishing feature between the competing general interest licencees. Thus its quality would be higher and since content requirements for the amount of Canadian production was enforcable on all licencees the quantity of Canadian programmes naturally rose.[50]

Since competition would not be enough to ensure Canadian production, the CRTC had imposed some tough spending regulations. The logic used here is seductive. Since spending regulations are imposed on all licencees, even if the number of subscriber to one service goes down, the total number should at least equal that of a monopoly service. In such a case the gross revenues of all licences should be the same as a single

[50] But so did the amount of foreign programming in the system.

national service, thus just as much money would go to Canadian productions. The advantage of competitive licencing is that it should actually increase the number of pay television units sold, that is, some subscribers will take more than one service. With an overall increase in penetration, there will be a corresponding increase in the amount of money for programme production. Thus the competitive scenario supposedly guarantees at least the same amount of money as the monopoly and promises more.[51]

This might be called the best possible scenario. With the licencing of competitive services, pay-TV went from the industry that was born with a silver spoon in its mouth, to one that would be fighting for food. The structure that the CRTC chose ensured tht the licencees would be 'squeezed'. Faced with these pressures, licence holders have few choices. It has several 'hard' expenditures: overhead, costs of cable, costs of foreign films rentals and one 'soft' expenditure: Canadian content. Thus if the licencee did not fail, it would be because it got some breathing room by diluting the burden of Canadian content. Canadian content is the weak link, if profit drops, so does the amount and quality of Canadian programming.[52] The 'squeeze' means less money for

[51] Marc Gervais explains it this way: "Supposing you have Ontario Independent cutting into First Choice and taking 2/5 of First Choice's audience. That means it will take 2/5 of its total revenue away from First Choice. Well, First Choice still has to give 35% of its gross revenue...to Canadian production and Ontario Independent has to give 35% of its total revenue, so it still comes to the same amount. It has even calculated that if you have two competitors, you'll probably have a greater penetration rate than if you have one. Therefore, 35% of total revenue is going to be a little bit more,..." "Inside the CRTC Decision", Op. Cit., p. 33.

[52] John Lyman, Op. Cit, p. 74. Robert L. Perry, Op. Cit. states that First Choice was completing a four-to-six month freeze on its pur-

purchasing or investing in Canadian productions.[53] Even without the 'squeeze', revenue to purchase programming or invest in production is cut. The overall amount spent by licencee might be the same as in a monopoly situation, but must be spread thinly over far more hours of production. As we have seen a competitive scenario weakened the bargaining position of the pay service to market Canadian production to foreign, especially American, distributors.

> Clearly, Canadian programming will be strengthened by giving maximum power to Canadian pay-TV operators vis-a-vis...(foreign distributors).[54]

To be able to bargain means to have something that the others do not. In this case it would be access to the Canadian pay-TV market. A single buying agency or a national monopoly would have ensured such power. It could deny access to American products if in return the American distributor did not take some Canadian production, thus increasing the mon-

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chasing of Canadian programming, and putting 30 to 40 projects on ice. Payments for programming was deferred, so cash could go to current production. Production houses were getting anything but helpful financing proposals. Under one licence holder's financing arrangement, the first payment for use of a program would be made seven months after it was carried and then four more payments would be made over the next two years. This was not a lot of help for an industy that needed money fast. Dan Westell, "Pay-TV Too Late for Norfolk Production", Globe and Mail, September 21, 1982. p. B4.

[53] "Likely, there will be a very competitive and expensive commercial struggle...The objective of each competing group will be to keep programming costs as low as possible in the early stages -- certainly little or no investment in original production -- and try to knock out the other competing service." Performance, Op. Cit., p. 2.

[54] John Lyman, Op. Cit., p. 76. See Dan Westell, "Pay-TV Seen Benefiting Cable, U.S. Producers Most", Globe and Mail, September 2, 1982. p. B10. An analyst states that based on a 30 percent penetration rate in 1987 foreign producers will receive $162.9 million, cable will get $236.8 million and Canadian productions will be handed $97.7 million.

ey for and the exposure of Canadian films. The CRTC neglected the fact that the biggest and most challenging competition comes not from within Canada, but outside it.

> Canada has built-in competition in its marketplace from the U.S. product and does not need domestic competion as a spur to quality. In Canada, competition merely leads away from quality and quantity of Canadian content.[55]

Competition weakened the Canadian production link in pay services budgets and weakened it vis-a-vis an international market. The Commission licencing regionals appeared to be more inviting: they were designed to ensure money went into Canadian content. Yet once again,

> ...the concept of competitive licences is not compatable with the set of conditions of the licenced imposed; it will prove almost impossible for pay-TV operators both to live up to the condition of licence and to stimulate competition Canadian programming -- unless either the national or the regional licence-holder drives the other out of the market in a particuliar geographic area.[56]

Thus failure means success. If the Commission regulations are not totally lost, then the likely out come is an increase in low-cost low-quality productions. There are several ways for pay companies to

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[55] Sandra Gathercole, "The CRTC Pay-TV Decision: How Many Birds Will Fly?" The Canadian Forum, August, 1982.

[56] Ibid, p. 79. For example, the CRTC conditions of licence dictates that First Choice forty-five percent of gross revenue or sixty percent of its programming budget on Canadian programming. First Choice was originally going to charge cable operator a wholesale price of $7.50, under the conditions of licence this might be spent in the following way:

$3.37 on Canadian programming
$2.25 on foreign programming.
$1.89 for everything else.

$7.50

In the U.S. such features as Star Wars cost pay services $1.00 per subscriber. If this is the case either Canadian programming will suffer or First Choice would have to forgo popular American productions. The latter is unlikely.

stretch their revenue so as to meet their Canadian content requirements. Co-production would be the most likely route. As one pay television executive explained, co-production is "nothing unusual."[57] A Canadian company might put up $35 of every $100 and an Amercian company, probably a pay network, would put up the rest.[58] Such programmes would count as 100 percent Canadian towards content requirements, despite the fact they usually 'look' American.[59] As well, there was concern that the money put up by foreign interest could be used by the licence holder as part of its spending requirements, thereby killing two birds with one stone.[60] Or worse, churning out inexpensive 'soft-core' pornography to fill Cana-

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[57] Co-productions are widely done in the Canadian movie industry and private broadcasting sector.

[58] Dan Westell, "Loophole Aids Pay-TV Firms", Globe and Mail, July 17, 1982. p. B16.

[59] Performance, Op. Cit., p. 2. This was too change as the CRTC proposed modifications to the Canadian content regulations. These changes would include a point system and a narrower definition of what constitutes a Canadian programme. See Ben Fiber, "CRTC Proposing Point System to Determine Canadian Content", Globe and Mail, August 16, 1983. p. B1. and CRTC, Public Notice 1983-18, "Policy Statement on Canadian Content in Television" Ottawa, January 31, 1983.

[60] This latter practice is called scaffolding; the use of foreign investment in production as part of their financial commitment to Canadian programming. First Choice spent $20 million in its first year and Ontario Independent spent $6. It is unclear whether this money is scaffolded. Most of First Choice's money went to entertainment specials featuring such Amercian stars as Red Skeleton and Crystal Gayle, as well as a series of rock concerts featuring the Police, Supertramp and David Bowie. It has made some features for its channel, but again the stars were American and the content not particularly Canadian. All were produced in Canada and in the case of the rock series were fronted by Canadian bands. "Show Slip the CRTC Leash", Globe and Mail, January 7, 1984. p. 10. Lucie Hall, "Pay TV Special Report", Cinema Canada, January, 1983. p. 20. "'Hydraulics' Move Producers to Protest First Choice's Intention", Cinema Canada, March, 1983. pp. 3 and 11. Lucie Hall, Op. Cit., May, 1983. pp. 31-32.

dian content quotas.[61]

Finally the Commission warned that if Canadian productions were not what it was suppose to be then it would not renew licences.

> (T)he Commission will consider denial of applications to renew the licences of those who have failed to contribute to the achievement of the Commissions' objectives for pay television by reason of their non-compliance with the conditions of the licence.[62]

This threat may be seen as more valid in the instance of pay services than say in conventional broadcasting. This mainly is because unlike conventional broadcasters, pay services have very little capital investment. Broadcasters often have huge physical plants that made removal of licence less attractive as a penalty. Pay service have very little invested in any physical plant, so to remove and transfer a licence is seen as easier. This consideration might be combined with the fact that pay-TV is seen as non-essential and thus its service could be interrupted with little trouble. Under these circumstances then the CRTC can be seen as having a bigger stick.

This big stick is still going to be tough to wield if a licencee comes forward and produces its books which demonstrate huge debt or a financially precarious position. Is the CRTC then going to remove a licence from a group that kept its service alive, while not living up to

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[61] See CCA, Op. Cit., p. 9. "Pornography has become a dominant element in the retail sales/rental market in the U.S., provides a substantial component of the programming offered on many U.S. pay services, and will undoubtedly become a factor in Canadian productions for pay TV in the very near future." This proved to be prophetic as First Choice signed a $30 million deal to co-produce soft core material with Playboy Channel. This content would count as Canadian. See "Pay-TV Subscribers Respond to Playboy Deal", Globe and Mail, January 12, 1983. p. 11.

[62] CRTC, Decision 82-240, Op. Cit., p. 19.

its content requirements; content requirements which if met would have caused failure? Not likely! As well, the CRTC has demonstrated that, at least in the early years it will tolerate bending if not breaking of its own regulations.

In August, 1982, four months after it announced its decision, the Commission announced a 'correction'. The decision had what appeared to be a contradiction in its general section and the specific section of condition of licence. The CRTC had stated in one part that the spending regulations calculated on a yearly basis, but this "was contrary to the manifest intention to leave it up to the licencee."[63] A licencee would still have to meet the conditions of the licence, but instead of on a yearly basis, it would be averaged over the entire five years of the licence.

This was seen as another blow to the Canadian programming industry and was appealed by the CCA and other groups.[64] The pay industry might spend nothing on Canadian programmes for years, pushing the production industry on the verge of bankruptcy over the edge. The federal cabinet set aside the correction,[65] but for what effect? It is unlikely that

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[63] CRTC quoted in Dan Westell, "Pay-TV Invitation May Bring CRTC More Criticism", Globe and Mail, August 17, 1982. p. B14.

[64] Dan Westell, "Filmmakers Appeal 'Correction' to CRTC Pay Television Decision", Globe and Mail, September 1, 1982. p. B13. "the removal annual minimum spending requirements 'gives up, in practice, any effective control over licencees expenditure commitment to Canadian content.'" Unlike, the earlier appeal, this move by the CRTC united all segments of the Canadian programme industry. Marilyn MacKinnon, "TV, Film groups take CRTC to Court", Winnipeg Free Press, September 2, 1982. p. 21.

[65] Dan Westell, "Annual Canadian Spending Required for Pay-TV", Globe and Mail, September 24, 1982. p. B6.

the Commission will take away a licence if a service fails to live up to the original regulations. The Commission has demonstrated that it will be 'soft' on the very regulations that it told all it would be tough about. So much for a big stick.[66]

That big stick is only helpful if all pay-TV licencees are outragously successful, otherwise, they are going to be too busy trying to survive.[67]

6.3.3 Regional Licencees

The licencing of regional applicants was based on several conclusions: they would afford regional expression a better opportunity; offering multiple markets for producers, especially those who create programming outside main production centres; they would add more revenue to Canadian programming; and they would reassure the constitutional and political sensibilities of those provincial governments claiming jurisdiction in the field. However, these reasons do not really justify the number of such licences.

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[66] "While the federal government overturned the CRTC amendment, the regulation has in effect signalled its intention as to how it would review pay-TV licence renewals at the conclusion of the five year licence period." John Lyman, Op. Cit., p. 79.

[67] It appears that they are already breaking the rules. A CCA report on the pay industry 'says the pay-TV licences are not meeting CRTC objectives, but this arises "not because of willful violation of the regulatory requirements, but because the decision containing the requirements may be subjected to varied interpretation....The problem "is not with the regulated, but with the regulator."' And concluded that promises were seen by the licencees as 'soft' and were not been lived up too. Dan Westell, "CRTC Urged to Tighten Regulation for Pay-TV", Globe and Mail, May 6, 1983. p. B12.

The first consideration raises the immediate question: what is regional expression and does regional ownership guarantee it? Regional expression in this case can be seen as two quite different phenomenon. It could be claimed that regional licence holders are better able to select films that reflect local tastes, thus regional expression became that regional owner 'knows' his/her subscribers better, knows what kinds of movies and other programming they would like. This is also wrapped in the mantle of 'community standards' and how regional or local operators are better attuned to them. Regional expression could also mean regional themes in programming shown on the channel. Expression becomes a means of saying something through the medium of pay-TV to local and regional audience. And presumably to national audiences as part of the goal of national unity. This encompasses not only an outlet for this expression, but financial support for it.

The Commission in its decision seemed to suggest both were important, but that the latter was its main concern.

> ...(The Commission) considers that regional general interest services are necessary to provide new opportunities for regional expression by stimulating creative talent and utilizing production facilities in communities across the country.[68]

But if this was a major concern of the Commission it did little else to ensure production would occur outside Montreal and Toronto, Canada's major production centres. Is regional ownership enough to ensure regional programs? In considering this let us turn back to one of the applicants at the hearings.

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[68] CRTC, Decision, Op. Cit., p. 11.

Aurora Movie World proposed a regional service from Mississauga to Windsor. It would spend almost $5 million in its fifth year of operation on Canadian content, but it is not clear how this would be spent regionally. However, it argued that

> ...we are convinced that an all-Ontario application would inevitably be Toronto centred and fail to meet several regional goals of the Commission's call for application.[69]

In effect, if an all-Ontario applicant gets the regional licence, Toronto would again dominate and thus the point of licencing a regional channel questioned. But if Toronto still threatens to dominate Ontario, then might not Winnipeg dominate Manitoba productions, Vancouver B.C. productions, Edmonton and Calgary Alberta productions? How small a territory is desirable so that truly 'regional' programming is produced? The Commission deals with this almost arbitarily, by establishing provincial boundaries as a region in two cases and the Atlantic provinces a region in another.[70]

It must be realised too, that Ontario, because of its population, would generate the most revenue and was going to have the most money to spend on Canadian production. A regional Ontario licence seemed to ensure that the most money would stay right in Ontario, where the regional applicants argued most of the money would go if a national licence was granted. Ontario Independent Pay-Television projected that it would

[69] Aurora Movie World, Application for a Regional Pay TV Licence, p. 1.

[70] The Commission did not, for example, appear to consider the economic viablity of some of its 'regions'. The CRTC was told that one of its remaining 'regions' (Manitoba, Saskatchewan and the North-West Territories) "would not be viable" as a stand alone service, "because there are not enough potential subscribers." Marilyn Mckinnon, "Pay-TV Companies Oppose Regional Bid", Winnipeg Free Press, April 21, 1983. p. 27.

spend $94 million over a five year period on Canadian productions.[71] This is the bulk of the money estimated to be generated by the regionals, which meant that the bulk of the money would stay in Ontario. The CRTC said it was encouraged by the fact that the Ontario regional promised to spend large amounts of its revenue outside the province.[72] Why would an Ontario licencee be better placed to produce programmes that reflect other regions, than would be a national licencee? As well, the Commission encouraged the regional licence holders to band together to produce productions.[73] All this seemed to repudiate the reason for licencing them in the first place.

The Commission seemed to have fallen into the rhetorical trap that is often heard: Canadian ownership in broadcasting will ensure a Canadian broadcasting system. Based on past experience this principle appears to be untrue. Regional licence holders alone will not ensure regional productions. The Commission instituted no regulation to ensure regional licencees spent money regionally and on regional programming.[74] The only regulation that the Commission imposed on two regionals that was substantially different from the national service was a condition to ensure

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[71] This is an extraordinary amount, but takes into account the fact that this company promised to invest all its profits into programme production. Ontario Independent Pay Television, Applicantion for a Regional Pay TV Licence, p. 117.

[72] Something First Choice had also promised and which the Commission applauded.

[73] The Alberta and Ontario regionals banded together under the banner of Superchannel.

[74] The U.S. regionals and the Saskatchewan pay service demonstrate that there is no correlation between regional control and access for regional production. CCA, Op. Cit., p. 3.

that most of the directors of Ontario Independent Pay Television were from Ontario.[75]

In one sense these regional licencees could be considered as complementary to the national general interest service, if regional programming was to be an important part of their schedule.[76] But nothing in the CRTC's decision encouraged the regionals to be complementary, that is, offer different, especially regional, programming. In fact, competition for subscribers will encourage the regional services and the national licencee to programme much that is the same, leaving little room for innovation and experimentation.

If the CRTC's goal was to encourage regional productions it may have severly missed the mark. Ownership does not guarantee purchase or production in ones region unless there is an economic imperative to do so. Competition with a national licencee meant tighter budgets, more regional co-productions, and more international co-productions.[77] And as if to

[75] This is because Allarco which owned Alberta Independent Pay Television also owned 40 percent of Ontario Independent. Although cumbersome, spending or production requirements in the region would have been better. This was to change when Superchannel expanded into British Columbia. The Commission imposed regulations on Superchannel which required it to show eight hours of programming a week that originated in B.C. Dan Westell, "New CRTC Pay TV Rules Aim to Reduce Regulation of Sector", Globe and Mail, January 10, 1984. p. B11.

[76] And indeed the CRTC was not aiming that these services be anything, but competition for the national general interest licencee. The regional licencees are not to blame in this, they presented themselves as 'movie' channels at the hearings and stated that they would be dependent on American feature films for their programming. As John Lyman, Op. Cit., p. 80 puts it "...the regional licencees awarded in Canada are not primarily oriented to providing a complementary service with a regional flavour. They are predicated on similar high-quality entertainment services anchored by big-ticket, foreign feature films."

[77] "Pay-TV Firms Band Together", Op. Cit., p. B13.

prove this, the Alberta and Ontario pay services banded together to form Superchannel, and since the original decision Superchannel has won the regional licence for the North-West Territories, Saskatchwan and Manitoba. (Mainly because there were no other applicants.) As well, it has been trying to arrange to get the B.C. service off the ground and at one time talked of aiding the Atlantic service. In effect Superchannel has become a second national general interest service, with the same concern: survival.

The Commission appears incompetent in setting the framework to secure the goal of regional production. It was surely utopian for the CRTC to believe in the idea of a distinctive regional service for three or four relatively small provinces was viable. Spending regulation for a national service or single regional licencee in a geographic area would have served the goal of regional programming better.[78]

If the CRTC chose regional licencees for 'political' reasons, because they thought such would be more 'acceptable' to the provinces, so once again a federal agency would not be accused of ignoring provincial concerns, it may again have failed. The licencing of regional channels brought little praise from the provinces, and were seen as simply more federal licencees. B.C. and Quebec were the most vocal in their criticism of the new structure (not that any other struture chosen by the CRTC would have been more acceptable) and made demands that any pay-TV company operating in their provinces had to get a provincial licence to do so. The federal government simply shrugged this off.[79] If the CRTC

[78] A model of a monopoly pay service with regional input is found in Honourable David MacDonald and Fred Ramsey, Op. Cit., pp. 175-178.

had wished to settle anything by its 'realistic' decision then it failed here.

More money for Canada productions was based on the assumption that more people would take a single service or hopefully some, would take both. Since they are almost identical, why would a subscriber who would not take one, take the other? The assumption that subscribers would take more than one service is based on the American experience. Viewers in the States were taking more than one service which show similarly programmed channels, but in the U.S. a channel is fifty percent cheaper.[80] This has been discussed in more detail in the previous chapter.

The CRTC's goals for regional pay services have not been meet. The original regional licence has grown into a mini-national, without the burden of a french service that is carried by First Choice. The Commission has learned that like Canadian ownership of broadcasting outlets, regional ownership a pay-TV channel in itself will guarantee little in

[79] "Provincial Licences for Pay-TV Needed, Quebec and B.C Say", Globe and Mail, March 20, 1982. p. 2. "Evans Joins Call for Talks on Pay TV", Winnipeg Free Press, March 22, 1983. p. 9. Claims the provinces are united in their claim that pay television was within their jurisdiction. And instead of quelling provincial concerns the pay licencees seemed to add fuel to the fire. See Victor Malerek ,"Pay-TV Firm Refuses to Ask for a Licence from Quebec", Globe and Mail, March 23, 1982. p. f. and "Pay-TV Disputes Arise", Winnipeg Free Press, July 15, 1982. p. 29. The B.C. government threatened to with hold a licence from First Choice. First Choice stated that this was fine, since they were not planning to apply for one anyways. The provincial government was to take the issue of jurisdiction to the B.C. Supreme Court. Anne Roberts, "B.C. Jumps in to Pay-TV Fray over Ottawa Claim", Globe and Mail, January 29, 1983. p. 8.

[80] See Thomas E. Baldwin and D. Stevens McVoy, Op. Cit., p. 128. In the U.S. 53 percent of basic subscribers are pay subscribers. "...American precedents - though they may help the CRTC and the broadcasters to guess at how many will subscribe to pay TV services - provide inadequate models for a Canadian structure." Robert Fulford, Op. Cit., p. 4.

the way of regional programming. In the structure erected by the CRTC, regionals have been designed to compete with the national service rather than compliment it. The outcome of this is two channel that have very little to distinguish them from one another.

6.4 DIVERSITY: FAILURE

Diversity, as we have seen, was one of the goals the Commission established for pay. Diversity in the Commissions' mind meant an increase of little seen programme types such as the performing arts. In this endeavour it licenced C-Channel, which has sinced failed. It has been argued that pay television is not the proper vehicle for such, at least, independent of other programme types.[81] For something that is suppose to be an 'economic engine', such narrowcasting in a market the size of Canada appears to be of moot economic viability.[82]

It appears that this type of diversity was an expensive proposition. In the U.S. several cultural pay services have started and failed and the one that is surviving is just barely doing so. Diversity on U.S. pay television is the exception rather the rule; although there are a large number of channels available, they are for the most part similiar in their programming.[83] In electing to create diversity outside and sep-

[81] See John Lyman, Op. Cit.

[82] In the past pay-TV was seen as the rejuvenate of narrower programmes types.

[83] "...[The] evidence is mounting that the hoped-for new, more specialized, or simply 'more' programming has failed to materialize from the growth of pay-TV [in the U.S.]...[I]nnovation is disfavoured as pay entrepeneurs, like the 'free' networks before them, seek the largest audience with lowest common denominator products..." Kristen Booth Glen, "Pay TV in the United States: Its Growth, Regulation and Pros-

arate from a mass entertainment channel, without government financial support, the CRTC doomed it to failure.

Competition too lessens diversity. Nothing in our broadcasting past has indictated that competition will lead to 'expermentation' and 'innovation', indeed it leads to conformity. Since the insolvency of C Channel, those left to add any diversity are the competing general interest licencees. Competition seems to guarantee that little that is different will be produced or even bought, because such is expensive. Programming that is not popular with the masses is not going to have potential sale value abroad and something that is not popular is not a sound investment when trying to attract subscribers with popular programming.

6.5 FRENCH LANGUAGE SERVICE

During the original licencing hearings, the CRTC, it will be remembered, was presented with four methods of providing French language pay television. Premier, CTVA and Performance offered separately programmed channels across Canada in both official languages. The French language service would in effect be subsidized by the more lucrative English market. Astra-Tel suggested that the same video channel should be available across Canada, but that there should be two separate audio signals, one in English and one in French. First Choice offered a checker board service - twelve hours in French followed by twelve hours in English. Finally, there were those who argued for a totally separate company to run a French language service, either on a regional or national scale. This

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pect", in R. Brain Woodrow and Kenneth B. Woodside, ed., The Introduction of Pay-TV in Canada: Issues and Implications, Montreal: The Institute for Research on Public Policy, 1982. p. 195.

was suggested even though no one thought enough of the economic potential of such a service to bother applying for such licence. There was a general concensus that the relatively small French market would make cross-subsidies from a national English pay service essential.

The CRTC seemed to accept the view and in the past had supported the contention that the two major linguistic groups in Canada should have access to pay television in the language of their choice. In accordance with this, the Commission found First Choice's proposal unacceptable. However, it decided to amend that application and award First Choice a licence on the condition it provided a separately programmed French language service.

To many this appeared unfair and perhaps illegal. It was seen as unfair to the other applicants who had proposed and thoroughly planned for a separate French channel.[84] It was argued that it was illegal for the CRTC to reshape such "vital element" of an applicants proposal.[85] It was observed that it the Commission was taking a chance licencing a company "to provide a French service for which it had not prepared plans."[86] The Commission appeared more concerned with getting on with the introduction

[84] The majority of the CRTC dismissed this: "The Commission also decided not to award the national general interest licence to one applicant that was less qualified overall, simply because it had purposed a better scheduling format for its French-language programming." CRTC, Decision 82-240, Op. Cit., 1982. p. 40.

[85] "[I]t does not, in our opinion, now come within the competitance of the Commission to refashion so vital an element of this application in such a way as to make acceptable and therefore licencable, what would otherwise have been found unacceptable and unlicencable." wrote the dissenting Commissioners. CRTC, Decision 82-240, Op. Cit., 1982. p. 69.

[86] "Pay-TV on the Way", Editorial, Globe and Mail, March 20, 1982 . p. 6.

of pay television, rather than wait for a suitable French language purposal to come forward. It decided "not to delay the introduction of the national service by engaging in a further public process on the French-language scheduling matter."[87] Commentators questioned whether the Commission would take such a light view of this matter if it was the English service that was judged inadequate. The apparent cavalier attitude of the Commission took on the issue, brought this reponse from the Quebec Minister of Communications:

> Permit me to doubt the enthusiasm that will be shown by the people at First Choice now that a French channel has been imposed on them...[88]

But in fact what the Commission had done, while possibly remaining unfair and even illegal, was to modify slightly the First Choice proposal. First Choice's checker board service would have seen two six hour blocks of French programming, followed by two six hour English blocks. The Commission simply said that First Choice should make that service entirely French by repeating the French blocks, so that it imitated its English counterpart.[89]

While this was not a major problem, it does demonstrate that the CRTC's ability to communicate to those concerned what it exactly was doing. It must be said that some of the Commission's 'bad press' resulted from the CRTC's inability to explain itself. Once again, the Commission should have demonstrated why its decision would work, including why the

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[87] CRTC, Decision 82-240, Op. Cit., 1982. p. 40.

[88] Quoted in "Provincial Licencs for Pay-TV Needed, Quebec and B.C. Say', Op. Cit.

[89] So in effect it was 'scheduling' problem.

modification to First Choice was "such a minor, minor change..."[90] The more serious difficulty with the Decision's French service was its lack of commitment to a national French pay channel.

The Commission commited First Choice to a national all French service for only the first two years, after which it became unclear what it had in mind. It should be remembered that the Commission cited as one of its main reasons for amending the First Choice proposed checker board service was "the absense of a regional pay service in the French language."[91] The Commission stated that it would be immediately calling for such regional applicants. Once a regional French pay licencee was found, would First Choice then be relieved of its burden of a national service in French? Would it be allowed to revert to its checker board proposal or abandon it as well?

Since this in not clear, it would seem that First Choice would not devote much time, money or effort towards this service. First Choice had stated that its checker board service was based on reality. The company had stated that an all French service was economically unviable. As well, its promise of the French-English checker board was conditioned by the prospect of a monopoly licence. As an obligation that it had to

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[90] "Oh, that was such a minor, minor change....[First Choice] came up with this idea for one bilingual channel....So then the papers said First Choice didn't care about the francophones, they were only giving a deluted French service. It wasn't deluted at all. It just meant that 25 (sic) hours a day, instead of having repetition of six-hour chunks four times, they'd only have repetition twice in French and twice in English." And Marc Gervais goes on to say that no matter who had been chosen "there would have had to be changes, perhaps in other areas: percentage in programming, Canadian content, ownership etc." "Inside the CRTC Decision", Op. Cit., p. 33.

[91] CRTC, Decision 84-240, Op. Cit., 1982. p. 39.

undertake for only two years under conditions it had not forseen, there is neither the time to build a subscriber base for a French language channel nor the incentive to make the service attractive to audiences through the purchase of 'expensive' features or advertising. Since First Choice would be locked in a battle for subscribers in the lucrative English market, it would not have the money to invest in (or even support the cost of) a service that might not be around after two years.

The CRTC's strategy seemed to indicate that a national discretionary French pay service would not be available after two years. It could be argued that as a discretionary service it need not be available to all.[92] It is not by definition essential. However, one of the CRTC's main goals in the introduction was to increase the diversity of programming available. In a nation that is suppose to have two official languages, it unfortunate that the Commission would not clearly support the means to get more French language programming to French Canadians across the country, thus increasing the diversity and choice to those with little of either.

The logic of the CRTC's decision (which is discussed in more detail in the next section) would seem to suggest that a universal pay service in both official languages would make up for this discrepancy. A national French and English language channels would be available to all cable subscribers, and therefore, in a way, make unnecessary a national discretionary French pay service. It would then free the national discretionary licencee to compete more freely against the regional servi-

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[92] Indeed the CRTC seemed to suggest this when it did not require all cable companies to take any or all pay channels.

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The CRTC's call for applications for a regional French language pay channel to serve the Maritimes, Quebec and Eastern Ontario, surprisely generated three proposals including one backed by the Quebec government.[93]

The winner was Television de l'Est du Canada (TVEC). Not long into its licence it was in grave financial difficulty. It went out of the country to find investors and borrowed heavily from the Quebec government. By the end of 1983, it had only 20,000 subscribers, while Premier Choix, First Choice's French language service, had 25,000.

In late 1983 First Choice began negotiations for the sale of its French service to TVEC.[94] Something TVEC did not appear to want. In fact, TVEC claimed it was ready to battle First Choice out of the French market, not buy it out. However, by the end of 1983 Premier Choix and TVEC were set to merge. This was at the insistance of the Quebec government. It and the organisations representing the Quebec film industry stated that French market in Canada was not big enough to support two competing services.[95] Using the threat to withhold badly needed financial support, the Quebec government changed the minds of TVEC executives who were reluctant to enter such a deal. The Quebec government became a major shareholder in the new company. The new union of TVEC and Premier

[93] This application was rejected mainly because of the federal regulation restricting provincial ownership of broadcasting receiving undertakings except for educational purposes.

[94] Dan Westell, "Favourtism Seen in Pay-TV Policy", Globe and Mail, November 1, 1983. p. B10.

[95] Wendir Kerr, "Premier Choix, TVEC Set to Merge", Globe and Mail, December 16, 1983. p. B11.

Choix stated that their channel would continue to be available across Canada, but it was not clear that the CRTC would in fact enforce it to do so.

Once again the CRTC has shown little forsight and has left it to financial reality and, in this case, a provincial government to determine the shape of pay-TV in Canada. The CRTC could also be seen as adopting a policy contrary to that of the federal government on the question of bilingual broadcasting services. "The concept of territorial bilingualism has been discredited and should not now be reintroduced by a regulatory decision."[96] stated the dissenting commissioners. Whether this was the intent of the Commission was and remains unclear, what is clear is that this is a case of the pay-TV tail wagging the regulatory dog.

It is not argued here that the CRTC could foresee all the calamities that might confront this new industry, but it could have done everything in its power to make it strong, for a strong pay industry meant the accomplishment of its primary objective: a strong Canadian programme production industry in both French and English. Instead the Commission licenced a weakened model, especially in the case of the French language service, on the pretext that something in the future would ensure these goals. That something was a universal pay television system.

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[96] CRTC, Decision 82-240, Op. Cit., 1982. p. 67.

6.6 UNIVERSAL PAY TELEVISION

While the dissenting Commissioners called it "a new CBC without commercials: an ill-timed, expensive luxury in two languages for which no public demand has been demonstrated.",[97] the majority of Commissioners saw manditory pay-TV as holding the "promise of being uniquely Canadian in content...[and would balance]...economic, social and cultural incentives."[98] A universal pay system most closely capsulated the CRTC's criteria for licencing pay services in Canada. It would meet the goals of the Broadcasting Act, being mostly Canadian in content. It would offer diverse programming, mainly Canadian drama, in both official languages. And it would produce a massive flow of revenue to the independent production industry.

While the discretionary pay applicants had offered hope for the Canadian production industry, they alone, in whatever form, could not be expected to buoy the entire industry. The CRTC appears to have recognized this and had a 'formula' to ensure that pay television would as much as possible lead to a strong production sector in Canada. The discretionary services were for the free enterprises, the businessmen, the cable companies and those that wanted American feature films. Universal pay would be for those that wanted Canadian production and would therefore be for the independent programme and film production industry.[99] Discretionary pay-TV would have a year or two to secure its subscribers and demonstrate its worth, then two universal channels would be introduced

[97] CRTC, Decision 82-240, Op. Cit., 1982. p. 68.

[98] Ibid, p. 14.

[99] "Inside the CRTC Decision", Op. Cit., p. 31.

to add even more money to independent production. Manditory pay offered a stable and massive source of revenue. It could be the lifeboat to the discretionary juggernaut.

It appears that discretionary services were simply the 'first wave', universal would be the second and more important. For it would be the safety net. Commissioner Marc Gervais describes it as follows:

> Even if wave one is somewhat weakened, wave two is so gigantic and safe - it's fool proof. People are not going to stop getting cable.[100]

The Commission had established a discretionary structure that it hoped would meet some diverse needs: regional and national, mass entertainment and cultural, english and french, cable expansion and consumer choice. And when it was all said and done, the universal would be established to catch what might not get enough support otherwise.[101]

Gervais seems to produce a 'formula' from a decision that has none. But only to a degree. Once again the CRTC has demonstrated that it was dealing with the issue of pay television on an ad hoc basis.[102] The concept of universal pay television was not new. The CCFM first put forth the idea in 1976. And the CRTC produced quite a convincing paper on the merits of such a model in 1978.[103] Yet when it called applications for licences in 1981, it virtually restricted them to discretionary servi-

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[100] Ibid., p. 33.

[101] French and english programme production.

[102] Gervais admits this "...the CRTC didn't have all the answers, and never claimed to. It was learning as it went along." "Inside the CRTC Decision", Op. Cit., p. 31.

[103] CRTC, Universal Pay Television, 1978.

ces.[104] Even so it received and heard two universal applications. The result:

> Maybe everybody should go and burn little lights in front of a TeleCanada shrine because they brought new insights, or brought back to life certain things that had been said before, in a different context.[105]

In effect, if TeleCanada had not bothered submitting an application, universal pay-TV would not have been given any consideration. As it was, a universal system was not guaranteed. It may have been the true saviour of independent production, yet it was "not certain"[106] that it would be introduced.

The CRTC had said in its decision that 'we see universal pay having certain merits, lets hold a hearing to consider them more thoroughly.' While it is in many ways quite wonderful that a regulatory agency should be so flexible as to change course in mid-stream, it is perhaps even more wonderous that a decision making body which had for years studied this issue should be so ill informed about the merits of one of the major pay television models.

"Ill-timed" is perhaps a good way to describe the way the universal model was handled by the Commission. Ill-timed in that it more than any other model would guarantee the large sums of cash necessary to secure

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[104] Marc Gervais does not see it that way: "It was decided that when the call came for pay-TV, the expression of a clear preference for discretionary would be made, but the call would not totally exclude the universal." "Inside the CRTC Decision", Op. Cit.

[105] Ibid.

[106] "It is not certain. The question is still open, but its right there in the decision that is where the CRTC is heading." Ibid. p. 32. "...[A] universal service cannot be introduced until a number of basic problems are resolved.", but this makes it sound as if the concept had been accepted. CRTC, Decision 82-240, Op. Cit., p. 15.

the financial health of the ailing production industry. It would have had the captial necessary to immediately start shoring up the programming sector, thus a universal service introduced as a prerequisite to a descretionary model[107] would have better ensured the financial stability of the entire pay sector.[108]

By introducing a discretionary model first, the Commission had removed its major bargaining chip with interests who wanted discretionary pay but disliked universal. The discretionary licencees could argue that such might take potential subscribers away, off-the-air broadcasters could argue it would substantially fragment their audience and the most powerful, the cable companies, could argue it was unfair to their customers. If a universal was tied to the introduction of discretionay services, it would have had a much better chance.

Any discretionary service would start out in a weak position. The structure established by the CRTC was especially weak and vulnerable to failure.[109] Thus in the CRTC's scheme of things a universal model seemed essential yet it was never a sure thing. From the hearing that followed and the CRTC's lack of action on the issue it does not appear that a universal system is very likely.[110] Now there is no safety net and yet those licenced continue to walk a tight rope between success and fail-

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[107] As had been originally proposed by the CCFM.

[108] A universal service would offer huge amounts of money for co-production between it and discretionary pay.

[109] "We don't know what's going to happen. Maybe in some places the regionals will kill the national, maybe the national will kill the regionals everywhere." "Inside the CRTC Decision", Op. Cit., p. 32.

[110] Cable, broadcasters and other pay services were very negative at the hearings on universal pay.

ure. If the Commission had chosen a simple structure, which was to concentrate on one essential task it would still have had time to introduce a more elaborate structure in the future. The difference would have been substantial: the Canadian production industry would have years to digest the healthy revenues of a universal system or even a national monopoly pay service. It would have created a base from which a competitive system could have then been launched. The Commission could claim that technological change would soon overtake Canada if it did not move quickly. But to move quickly, as well as to make up for past failures was to prove very tough going.

6.7 GOVERMENT POLICY

The introduction of pay television in Canada was a major policy decision and had been sanctioned by the federal government since 1976. However, the government had only a vague idea of the structure they would like to see put in place. When the CRTC finally came to hold its hearings for licences it had no government direction on how pay-TV should be structured in the country and, as we have seen, it did not have a policy of its own.[111] The Therrian Committee had stated that pay television should be introduced provided its benefits outweighed its costs.[112] In deciding

[111] Informal or secret discussion between the government or the Commission cannot be dismissed, but one would be at pains to find how the CRTC's pay-TV structure fit into the government's broadcasting policies (announced after the pay decision) or its past pronouncements on pay television.

[112] CRTC, Committee on Extension of Service to Northern and Remote Communities, The 1980s: The Decade of Diversity. Broadcasting, Satellites, and Pay-TV, Report of the Committee on Extension of Service of Northern and Remote Communities, Hull: Minister of Supply and Service, 1980. p. 59

what structure would create the greatest benefits, the CRTC's abacus obviously broke. While the Commission did not seem able to do some simple cost-benefit arithimetic, the federal government did not even actively consider the problem.

Aside from expressing its desire that the introduction of pay television be given a high priority, Ottawa had not produced any policy on the structure it should take. In 1976 and during the short tenure of the Conservatives in 1979 there was some preference on the structure of pay television, expressed by the ministers, but the provinces, government indifference and little public support swept these aside.[113] In the final analyse federal governments since 1976 have simply pushed for the introduction of pay television without having an overall strategy of how the new service was to contribute to and be integrated into the broadcasting system.

The government in power at the time of the CRTC decision was having the entire broadcasting system revenued at two levels: the Department of Communication was studying the system and the Federal Culture Review Committee was examining the entire cultural field.[114] Instead of waiting

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[113] The Ministers of Communications in 1976 and 1979, had called for a single national pay service. But this was probably more the Ministers' own feelings on the matter than concrete government policy.

[114] Not that either would have helped. An internal DOC working paper circulated shortly after the CRTC decision was released mentions pay-TV only in passing and simply echoes the CRTC's policy. Canada, Department of Communications, "A Broadcasting Strategy for Canada", June 25, 1982. pp. 38-40. The Federal Cultural Policy Review Committee would also touch on pay-TV only briefly. The Committee did not even see pay-TV as warrenting its own section in the chapter on broadcasting and makes no recommendations on it. Canada, Federal Cultural Policy Review Committee, Report of the Federal Cultural Policy Review Committee, Ottawa: Minister of Supply and Services, 1982.

on these bodies to form recommendations and the goverment to decide policy, the CRTC was rushed into creating pay-TV in a political vacuum.[115] The government used these ongoing investigations as a reason for refraining from to making pronouncements on pay-TV. The government could not, however, remain untouched by the system put in place by the CRTC. Like it or not, the government was the last refuge for the dissatisfied. The original decision resulted in three appeals. A subsequent 'correction' by the CRTC to its original decision resulted in a court challenge and, again, an appeal to the cabinet. A still later CRTC decision to award a certain applicant a regional licence produced yet another appeal.

The Commission itself had recognised that

> [t]he federal government may wish to seek other means of ensuring the evolution of a distinctively Canadian pay television service.[116]

And as the Canadian Conference of the Arts wrote in one of its appeals:

> The Commission has recognized that the initiative of pay television services raises policy issues which are, quite properly, the concerns of the Government of Canada.[117]

Yet the appeal process through which the government would be creating policy or sanctioning the CRTC's policy, was, at least in this case, quite unsatisfactory. The government had three courses of action: one was to set aside the decision, another was to send the decision back to the Commission for reconsideration, and finally, to support the CRTC de-

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[115] This is not to say that delay was desirable, for Canada was far behind on this issue, but it does seem that the situation was one of allowing the cart to precede the horse.

[116] CRTC, Decision 82-240, Op. Cit., p. 17.

[117] CCA, "An Appeal to the Governor in Council", Op. Cit., p. 2.

cision. The government had been pressing for years for the quick introduction of pay television it could hardly now turn a decision back or set it aside. The main result of either action, simply put, was delay. As one frustrated member of the production industry had said:

> If anybody is going to fight this decision, they are going to doom the industry. We haven't got the time.[118]

The government was understandably hesitant to send back the decision to the Commission for reconsideration. Such a strategy, without concrete government policy, would result in delay, but without any guarantee that the CRTC would alter its chosen structure in the least. This would benefit no one. If the government set the decision aside, what would then replace it? The CRTC had laid out its policy and the government had no policy. The reviews of the system were still in progress, none had reached any conclusions and therefore the federal government could not set aside the CRTC decision because it was still in the process of formulating a policy. It had nothing to fill the void that would be created.[119]

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[118] Bill Macadan of Norfolk Communication quoted in "CRTC Licence of First Choice Met with Surprise, Milieu Measures Implications", Cinema Canada, April, 1982. p. 13.

[119] The CCA, "Memo to Cabinet", Op. Cit., p. 7, argued that if the government set aside the decision, the 'dangerous' effects of delay could be stifled by positive actions by government until a 'better' system was put in place. It called on the government to add $25 million to the CFDC budget as interim funding for feature films and television drama in 1982. The CBC should be given more funds specifically for drama and the Capital Cost Allowance should be strengthened. These would act as a stop gap measure for the independent programme production sector until the government had formulated policy on pay television and the CRTC had put it in place. This neglects one thing: money. While the suggested funds are a small percentage of the federal government's overall budget, to free up such in times of a huge government deficit and general restraint was very unlikely.

There were several 'political' reasons for the government not to act to change the Commission's decision. If the cabinet took either course it would have been seen as unfair to those applicants licenced. They had played by the rules, it was not their fault the CRTC had blundered. Further, Ottawa would appear to be interferring with an independent agency. A move by cabinet may have been construed by some as anti-regional. In its decision the CRTC had stressed the regional aspect of Canada and it was not likely that a government would rush to quash this symbol of regionalism. To overrule the CRTC would have made the government appear more centralist and without care for regional concerns. Provincial governments had been restless on the issue of pay television and while few had expressed enthusiasm with the CRTC decision, fewer still would give up the chance to do a little 'fed bashing' if the decision was set aside. The provinces would have a pretext to, at least, complain that the central government once again cared nothing for its regions. Further delay could also have meant that the provinces might move on the pay question, usurping the federal government's authority. There was a 'wave' of enthusiasm for competition and deregulation, and a government might be hesitant to be seen as against these concepts. Finally, while the appeals were launched by a broad group representing many interests, there were by no means representative of a consensus on the issue. The production industry was divided on the merits of the decision and the penalties entailed by further delay. Thus the government was not facing a united, full frontal assault, but a divided rear-guard action. The government could point to elements in the programme production industry that decried further delay. The federal cabinet then must

have been in a quandry, for satisfied or not with the decision, it would have been difficult for it to act to change it. It would have taken considerable political will. There were few incentives for the federal government to do much with these appeals except reject them.

As a result the cabinet upheld the decision. It argued that its main reason for doing so was the "deleterious impact further delays in introducing pay television" would have on the system.[120] While the cabinet recognized the "risk entailed in a multiple licence structure", it dismissed this on the grounds that "risk is inevitable in the growing competitive environment which the Canadian broadcasting system is increasingly facing."[121] In rejecting the appeals the government alluded to benefits that the model adopted by the CRTC could have for: the program production industry, the consumer, and the cable industry.[122] But it

[120] Canada, Department of Communications, "Statement by the Minister of Communications, Francis Fox, Concerning the Governor in Council Review of CRTC Pay Television Licencing Decision 82-240", May 14, 1982. p. 1. The appeal by the film production groups called on the government to make changes to the Commission's decision if it was to be kept. Suggested modification included: a full french-language, national service cross subsidized be a national english service by made ongoing; automatic revoking of licences of those that failed to live up to the conditions of licence; a common buying agency be established; regulation of retail price; feature films must be distributed through a Canadian company; and a commitment by licencees to state when funds for programme production will be made available. See "Film Community Appeal Outlines Economic, Artist Shortcomings", Op. Cit.

[121] Ibid. p. 2.

[122] In the government's scheme of things cable would be playing an important role. A strong, multichanneled cable infrastructure was part of the overall policy being contemplated by the federal government. "If the Canadian broadcasting system is to continue to be an effective toil of public policy, it must be responsible and response to policy direction and to regulation designed to impliment government policy...Cable offers the means to meeting public demand for increased service in an efficient means while making the effective-

stressed that a French and English pay service should be available on a national basis, but was "satisfied that the CRTC decision has provided for this."[123]

The Canadian Conference of the Arts had asked, if nothing else, the Cabinet as a matter of policy should support the concept of a universal pay service. By so doing, the CRTC would be better placed to introduce such a system. Although the licencing of a universal service was within the power of the CRTC, it was less 'legitimate' for the Commission to order a mandatory service, because it was not an elected body. It did not have a mandate from the 'people' as Parliament did, thus to lend greater credibility to something that could be viewed as a tax, universal television would require at least token support of government. The government, however, chose to remain vague in its sentiments for a universal service.

> The Governor in Council has noted the recent discussion concerning the idea of a universal television service to be supported by a mandatory fee added to cable subscribers' monthly accounts. It has also noted the fact that the CRTC intends to hold an issue hearing in the near future. The Government will follow the dicussion on this matter with interest.[124]

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ness of broadcasting system as a tool of public policy." To do this meant that cable had to increase its penetration and increase its channel capacity so as to be attractive in the coming years. The CRTC guaranteed that money would be available for cable to upgrade. Canada, Department of Communications, "A Broadcasting Strategy for Canada", Second Draft, June 25, 1982. p. 13. See as well, pp. 13-15.

[123] Although we have seen that the decision does not do so, First Choice had told the cabinet that it would continue its French service after the first two years were up. This statement on the French language pay service was the strongest in the cabinets response: "The Governor in Council firmly believes that all Canadians are entitled to broadcasting in both French and English and the provision of this service in both official languages,..." Ibid. p. 1.

[124] Ibid. p. 2.

The government expressed no outright support for such a service, though neither did it dismiss it. But here was an important aspect of the CRTC's decision, that much needed safety net, which was necessary to make the Commission's chosen structure complete. Here was the opportunity to adopt a clear policy on an essential part of the pay television system. That it did not do so, is most unsatisfactory.[125]

The confused events surrounding pay television continued. In May, 1982, the cabinet received another appeal concerning the amendment to the Commission's original decision. It will be remembered that the CRTC had amended the original conditions of licence holders, so as to allow the licence to defer spending to the end of the five years. The cabinet set aside this amendment, claiming such would be detrimental to the programme production industry.[126] This was easy for the cabinet to justify and was popular with the film community, because the main beneficiary of pay television was to be the production sector. By amending its decision the Commission would allow licence holders to defer money for programming to well into the licence period, this could cause the delay that the government, in rejecting the original appeals, had tried to avoid.

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[125] It appeared that the government was supportive of a universal system run by the CBC. Canada, DOC, Op. Cit., June 25, 1982. p. 25. Originally the government was contempleting a universal service as well as a tax on cable susbscribers, but it appears that the universal system was abandoned in favour of the tax. The direct tax on cable subscriber would be used by the Canadian Television Development Fund. This fund would be avaiable to all broadcasters to use in programme production. Universal Pay would die a quiet death and pay television would be left without a safety net.

[126] Dan Westell, "Annual Canadian Spending Required for Pay-TV", Globe and Mail, September 24, 1982. p. B6.

In 1983, yet another appeal was launched this time by First Choice. In August 1983 the CRTC awarded a regional licence for Manitoba, Saskatchewan and the North-West Territories to the only applicant, Allercom Communications. Allercom already owned Superchannel in Alberta and Ontario. First Choice argued that if Superchannel was allowed to become a national service then it should have the same 'tough' conditions of licence as the national licencee.[127] In addition, it seemed to go against the rationale of regional service.

The Governor in Council sent the decision back and asked the Commission to reconsider it and "further explain what impact its solution will have on the delicate mix of national and regional services."[128] The cabinet stated that "our concern now is that this model...is being modified in an ad hoc fashion."[129] Yet cabinet gave the CRTC little indication what its policy was and it too appeared to be making its decision on an ad hoc basis.[130]

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[127] Superchannel in Alberta did not have to spend as much on Canadian content as First Choice and did not have to provide a French language service.

[128] See "CRTC Asked to Clear Confusing Picture in Pay TV", Winnipeg Free Press, September 23, 1983. p. 24. and Dan Westell, "CRTC Asked to Clarify Pay-TV Policy", Globe and Mail, September 23, 1983. p. B1.

[129] Dan Westell, Ibid.

[130] The CRTC did hold a hearing to review its decision on licencing Superchannel in Manitoba, Saskatchewan and NWT and to review the structure as it was in place. The result of these hearings was to allow Superchannel into those provinces as well, into B.C., because it "supported the idea of competition." "CRTC Relaxes Grip of Pay-TV Firms, Opts not to Ban Pornography, Racism", Globe and Mail, January 6, 1984. pp. 1 and 2. At least one Commission disagreed with this decision. As for the system as a whole, a lighter, less restrictive regulatory hand would taken with the industry. As well, while competition was seen as good, "[t]he companies [involved in pay-TV] were encouraged to find ways to lower the 'relatively high'

The pay television structure chosen, implemented and modified by the Commission is its creature. The federal government kept its distance. It had upheld the construction of a substantially weakened model and further help sink the one aspect of the original decision that promised to accomplish pay-TV's original intent. The federal government lent little support to the idea of a universal pay system and in the end would speak out against it. The federal government had left the question of pay televison in the hands of its regulatory agency, even though that agency had recognized that the government has the right to seek ends by other means.

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prices of their services and the commission said the business would not be facing such trouble if there were "a lessening of the fierce and heavy-handed head-to-head competition." If this sounds as if the CRTC was clarifying anything, then their must know "doublespeak". In one sentence the commission has trumpeted 'strong competition', while in the next blamed the industry for being competitive. (It is strange that cut throat competition increases the price of pay television.) And if this was not agile enough, the Commission distanced itself from the entire mess: "Participants in the industry must assume primary responsibility for the vitle development of pay television." CRTC quoted in Dan Westell, "New CRTC Pay-TV Rules Aim to Reduce Regulation of Sector", Op. Cit.

6.8 CONCLUSION

The CRTC pay-TV decision must be measured against the criteria for introducing pay television into Canada. By such a standard the decision has been, thus far, a failure. Canadian content has yet to demonstrate substantial benefits, regional concern seem to have evaporated as the last surviving regional service became a mini-national, and diversity disappeared with C Channel. The main concern of the licencees is survival and this is as it should be. It is not the pay television companies that are at fault, the structure embraced by the Commission dictated that survival would be a major preoccupation of the licencees. It is natural in such a struggle that the higher goals of Canadian content, diversity and the like, would be the first victims.

The federal government is also to blame. It had the opportunity to indicate what it wanted and to support the most important element of the decision: a universal pay service. It did neither and once again, Canada's cultural throat has been cut by its own hand.

Chapter VII

CONCLUSION: THE ESSENCE OF FAILURE

> Despite the shifts in delivery methods and support structures, the reasons we value broadcasting and the objectives we pursue in the ordering the broadcasting system need not change.[131]

The history of the Canadian broadcasting system can be summed up in a single word: failure. Failure of political and regulatory will, imagination and commonsense. If Canadian broadcasting history has taught us anything, it is that when we have an opportunity to change the past, we will botch it! With few exceptions our broadcasting past has demonstrated that government and its agencies will make it as difficult as possible for the higher goals of the system to be achieved. It is as if we subconsiously court disaster.

The early years of broadcasting in this country foreshadowed its future failures: a continuous undermining of the public sector and its goals to the benefit of private interests. Throughout Canadian broadcasting history, the public sector's role and dominance has been eroded away. It was soon the case that it was the cornerstone of the system in name only. The most dramatic example of this is the creation of a two board system in 1958. The 1958 Act, while a major step towards the adoption of an American model of broadcasting, was only the most blan-

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[131] Frank W. Peers, "The Place of Pay-TV in the Canadain Broadcasting System", in R. Brian Woodrow and Kenneth B. Woodside, The Introduction of Pay-TV in Canada, Montreal: Institute for Research on Public Policy, 1982. p. 1.

tant example of what all previous governments had done by incremental means.

The Board of Broadcast Governors continued this march to Americanization. It further commercialized the entire system, yet failed to get the private sector to substantively work towards the basic objectives of the system. Its successor, the Canadian Radio and Television Commission, should have taken a warning from the BBG's failure. The Commission, even under a strengthened Broadcasting Act, not only continued the system dependence on the private sector (it had little choice), but increased that dependence. The private sector and the ethos of commercialism would prevail under its regulation, establishing a miniture replica of the system down south. Canadian content regulation, licencing of a private network and stations and cable expansion, all lead to a system where private interest predominate over the public.

Over the past decade the CRTC was an agency suffering from regulatory schizophrenia. This is nowhere more clear than in its dealings with pay-TV. It would preach one thing and in the end do another. Pay television offered the Commission a chance to reshape reality. The demand for the introduction of pay television in Canada had always come from those interested parties who saw themselves benefitting the most. This was not the consumer, but the cable operator. Here was a chance for the Commission to be daring and reverse the trend of private dominance. But the "characteristic of our relationship to technology is a lack of planning until its introduction is a fait accompli."[132] The CRTC and the

[132] Hon. David MacDonald and Fred Rumsey, "Pay-Triation -- Fulfilling a Canadian Promise", in R. Brian Woodrow and Kenneth B. Woodside, ed., The Introduction of Pay-TV in Canada, Montreal: Institute for Re-

federal government did exactly that: pay television had been discussed in Canada for almost a decade until its licencing hearings were finally held. The CRTC did not develop policy as much as simply bounce from one policy to the next: first cable was to control it, then broadcasters, then a consortium of interest parties and finally, new players. The CRTC had developed a policy that one national licencee was essential and then simply dropped this for the competitive approach. While the CRTC fussed over its introduction, it never really developed a policy on pay television and it missed several opportunities to structure pay television as something uniquely Canadian. While the Commission jumped from policy to policy, the federal government appeared to have little to say about pay television, except: it should be introduced.

The federal government, therefore, must share the blame. It was the lack of clear federal policy, that forced the Commission to become a policy maker. It was Ottawa that allowed the public sector to lose its predominance. It was the federal governnment that gave tacit support through its own inaction to the use of private interests to achieve public goals. The federal-provincial jurisdictional disputes over pay-TV and cable added further complexity to the problems faced by the broadcasting system and its regulator. In broadcasting the federal claim to cable and especially pay television came to preoccupy the federal government. This preoccupation and the governments inability to act (that is, give policy direction to the CRTC) meant that Ottawa tended to support the introduction of pay-TV, but offered no clear policy as to its form or function. It left the choice of structures to the CRTC, but

search on Public Policy, 1982. p. 162.

this choice was the most important policy decision with regards to new service. For it was the structure which would determine the goals that would be achieved: what would be distributed and who would benefit. The distribution structure is everything:

> ...the role of distributor has as much to do with content as with carriage. The choice of the appropriate agency or organisation to act as distributor of pay-TV,...is therefore crucial if pay-TV is to serve Canadian determined objectives.[133]

The structure of delivery is of the greatest of import. If an improper structure is chosen, numerous regulations will make little difference.

The evidence and testimony at the CRTC pay television licencing hearings was the Commission's chance to compensate for past wrongs. While the CRTC had called for competitive structure, almost every interested and disinterested party at the hearings called for a market monopoly. While none of the applications was satisfactory (in the sense that they were private profit-making ventures), a monopoly would, at least, give the higher goals of the broadcasting system a fighting chance. The CRTC asked for very little in its call for applicants and that is what it got. The competitive nature of the system chosen by the Commission meant that a licencee's major concern would be survival and meeting the CRTC conditions of licence impossible.

The decision was immediately seen as a recipe for disaster. by everyone, except the Commission. The Commission's choice of competition as the means to higher ends, ignores our own broadcasting past and the current American experience with pay television. The economic failure of licencees is a waste of resources. The spending of millions on du-

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[133] Frank W. Peers, Op. Cit., p. 13.

plication of advertising, personnal, foriegn features and equipment is not justifiable, especially when these millions are spent and the licencee fails. No one in the Canadian broadcasting system benefits from such a structure.

The most important aspect of the 1982 decision was its recognition of the universal model of pay-TV as essential to the system. This is especially true within the pay television structure chosen. It was to be a safety net. The Commission and the federal government have abandoned this, leaving the industry to save itself.

Their has been no coordination between the federal government and its agency. Yet comprehensive and coordinated policies are what are needed now.

> To be able to even hold our own, well-thought-out, consistent federal broadcasting, film production and marketing policies, and effective strategies that will impliment these policies, aere urgently needed. ...No such policies or strategies exist. exist.[134]

Those that claim that pay-TV should be treated as a separate, new technology, distinct from the existing broadcasting system, ignore one fact: the existing system does not and has not achieved its goals. Thus new technologies are seen as a new way to achieve old goals. Either those goals must be abandoned or government policy and that of its regulatory agency must be design to achieve them.

If the past broadcasting experience had been a greater success, with a strong and popular programmed industry being established, the structure of pay-TV would have been much less a concern. Pay television

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[134] Canadian Conference of the Arts, Background to Pay television Appeal, p. 8.

could have then been viewed as a new and separate technology. Further technological advances in the the field would then appear more benign, more distinct and perhaps independent of the past. The fact that old and unsuccessful policies presist, meaning that old yet desirable goals are not achieved, ensures that 'new' technologies are seen as a possible saviours and are quickly usurped to become part of the existing system.

A uniquely Canadian based of pay-TV is not and cannot be model on the American experience. Adoption of such a model meant one thing: an American system run by Canadians. What makes the American structure unique is the fact that the country has a large market with a well established programme production industry which has importance world-wide. Such a structure can afford the luxury of competition and the plethora of channels that, by some definitions, translates into choice. The Canadian situation is vastly different. The cable market although well established, already offered many a large selection of channels. The programme production industry was virtually non-existent. The common charactistic of the two markets was the consumer demand for and enjoyment of high quality mass entertainment feature films.

It is this last characteristics that units the North American market: the need for quality[135] programmes. Everything else separated the Canadian and American systems. They are very distinct and at odds with one another. The size of Canada and the power of the U.S. makes it essential that the Canadian elements were not weakened. This means that those agencies who had the power to structure the system should have

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[135] Here quality takes on the simple meaning of high production values and the more complex notion of been 'good'.

made them as strong as possible if they were to achieve other policy goals. To construct a system with positive and needed regulations to ensure certain goals is futile if that structure is fundamentally weak. If an element of the system fails, then nothing is achieved. If the structure is so busy fighting internally that it is weakened to the adversary from outside, what is accomplished: the strengthening of those that are in effect the enemy.

The overwhelming evidence suggests that the most successful model of broadcasting in Canada is public ownership. This is the structure that should have been chosen in the case of pay television. It matters less whether the pay-TV model is a universal, pay-per-channel or a pay-per-programme system, what is essential for the fulfillment of the objectives of broadcasting in Canada that the public sector should control it.

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