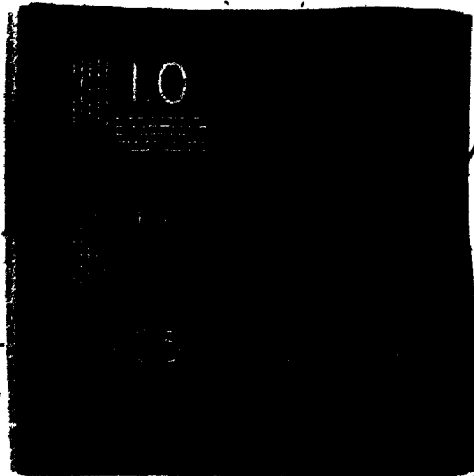


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THE CONTROL OF CABLE TELEVISION
BY THE
CANADIAN RADIO-TELEVISION COMMISSION

by

DAVID ANTHONY ZIZZO

Department of Political Science

Submitted in partial fulfillment
of the requirements for the degree of

Master of Arts

Faculty of Graduate Studies
The University of Western Ontario
London, Ontario

September 1975



David Anthony Zizzo 1975

THE UNIVERSITY OF WESTERN ONTARIO

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entitled
The Control of Cable Television
by the
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ABSTRACT

The Canadian broadcasting system has been envisioned by government as an instrument for national purposes. To this end radio and television stations have been licensed and controlled by broadcasting regulatory bodies to ensure the orderly development and continuation of this system. Community antenna television (CATV), which grew almost without regulation until 1968, threatened to disrupt the design and purpose of the system. The present study examines the actions taken to deal with cable television and incoming American signals under the policy controls of the Canadian Radio-Television Commission (CRTC).

This study used three main sources: published studies and reports in academic and trade journals, magazines and newspapers; government documents including House of Commons Debates, reports of various committees, transcripts of hearings, announcements and decisions of the CRTC; and interviews and correspondence with knowledgeable persons associated with government and the broadcast industry.

The paper presents some of the discussions to

regulate cable television prior to the CRTC being given authority over CATV. The responsibilities of this new regulatory agency are presented. The various controls the Commission proposed to curtail the "negative effects" of incoming signals are examined in detail. Finally, the implementation of these controls is discussed.

The basic finding of the paper is that the CRTC, through a process of adjustment to its controls on CATV, accommodated both the increased availability of U.S. stations to Canadian viewers, and its stated purpose to protect local Canadian stations. Through this accommodation CATV was integrated within the national broadcasting system. With cable television as part of the broadcasting system the basic characteristic of broadcast licensing, that is, local service, has been altered.

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CHAPTER I

INTRODUCTION

Since its inception broadcasting in Canada has developed with the objective of achieving a sense of national unity and the expression of Canadian identity. The Aird Report of 1929 thought these national aims could best be achieved by a public broadcasting system. For a variety of reasons the system developed with public and private broadcast stations being established. When television developed it was considered to be a broadcasting function and was required to meet the same objectives and licensing standards as radio. To ensure the orderly development of television only one station was initially to be licensed for any given area. By 1960, alternative service was being permitted by the Board of Broadcast Governors. To further achieve broadcasting aims the Board imposed Canadian content regulations on television programming.

During this same period cable television (CATV) was developing and bringing in distant stations to subscribers. At first this wired system was not regarded as a broadcasting activity. Not until the sixties did those in government and broadcasting realize cable was providing additional sta-

tions which were fragmenting the local audience. This fragmentation was perceived as an economic threat to Canadian broadcasting because it could damage the ability of local broadcasters to attract advertisers and revenue. If local stations could not survive the Canadian broadcasting system would be destroyed and therefore the objectives of broadcasting could not be met. As the seriousness of the threat became clearer a number of reports recommended implementing controls. It was not until the 1966 White Paper on Broadcasting and the Broadcasting Act of 1968 that steps were taken to deal with the CATV industry. This paper examines the actions of the Canadian Radio-Television Commission (CRTC) in developing policy for CATV under the Act and attempts to assess the effectiveness of this policy and its furtherance of the objectives for broadcasting.

Chapter II gives a brief history of developments that led to CATV's regulation by the CRTC. Of particular notice are the different suggestions and reactions by those encouraging legislation for cable, and Ottawa's reaction to these proposals. Chapter III notes the pertinent sections of the 1968 Broadcasting Act and presents the structure and powers of this regulatory agency.

Then, by examining selected problems created by incoming signals and dealt with by the CRTC, the study shows in Chapter IV and V the process of adjustment by the Commission to CATV; the substantive policies the Commission suggested to control cable and the changes made; and the

implementation of those policy controls finally adopted. Chapter IV examines in detail the initial, successive and final guidelines by the Commission in its attempt to mitigate the effects of incoming signals and Chapter V discusses their implementation as they relate to local broadcasting stations. Chapter VI reviews these developments and offers a series of conclusions and general observations on the policy-making process. By presenting the action the Commission took towards CATV the study shows how the CRTC incorporated cable television with its provision of American stations within the Canadian broadcasting system and the national policy while still protecting Canadian television stations.

Though cable television is a topic of continuous and ongoing development it should be noted that the writer has limited the study to the period between 1960 and 1974. These dates allow one to examine events leading to the placement of cable under the Commission, and the development of controls and their implementation.

CHAPTER II

CABLE TELEVISION PRIOR TO THE CRTC

The increasing growth and ability of Community Antenna Television (CATV) to relay television programs to Canadian viewers concerned broadcasters and their regulatory agency, the Board of Broadcast Governors (BBG) by the early 1960s. Both were worried about the effect the new system could have on television broadcasting. Conventional or over-the-air television broadcasting was under the control of the Board,¹ whereas, CATV had little regulation at a time when the system was increasingly expanding. This expansion was a result of CATV's ability to provide clearer reception and to bring in distant stations that were technically difficult, if not impossible, to receive by over-the-air television reception. By increasing the number of stations available to many viewers CATV offered more choice in programming. Both local broadcasters and the regulatory body considered CATV as having possible "negative effects" on the Canadian broadcasting system.

In the initial stages of broadcasting it was known

¹Canada, Statutes, 1958-59, Broadcasting Act, c. 22, s. 10.

that a limited amount of spectrum space or frequencies was available for the use of transmitting radio and television signals. Engineers were left with the decision of

...creating either a system of regional television markets where a number of broadcast stations would serve the same broad geographical area or a system of hundreds of small markets each served by one or two local stations... Spectrum space was allocated so that there would be local television stations broadcasting in as many communities as possible, preferably with one station per community rather than with several stations serving several communities.²

Canada opted for this local service concept of broadcast licensing during the developing years of radio.

Successive regulatory agencies defined service areas, and by limiting the power of neighbouring transmitters they acted to ensure that the broadcaster licensed for a given service area would reach a sufficient audience to support a satisfactory service. When television was introduced the same local service concept was applied....³

Canadian broadcasting officials, as in the U.S., reasoned the local broadcasters would provide local service. Federal officials assumed that the population in areas with a transmitting station would watch that station. With broad-

²Martin Seiden, Cable Television U.S.A. An Analysis of Government Policy hereinafter referred to as Cable Television-U.S.A. (New York: Praeger Publishers, 1972), pp. 11-12.

³CRTC, The Integration of Cable Television in the Canadian Broadcasting System hereinafter referred to as Integration Paper (Ottawa, February 26, 1971), p. 4.

casting organized this way broadcasters depended on an audience consisting of viewers from within the local service areas to support the existence of such stations. Without a sufficient audience the local broadcaster might not survive.

Diversity of programming from several stations outside the area was not a consideration, rather, the emphasis was on local service.⁴ The lack of a number of stations could cause local audience to view outside stations if available. In fact, viewers often erected antennas to pick up the signals of stations licensed for other areas. Even with the most elaborate apparatus though, there were no guarantee of receiving more than one or two distant stations. Cable television, however, could overcome the disadvantages of antennas. As a result, the concept of local service could be shattered very easily.

This local service design was threatened by the technical advantages CATV had over conventional broadcasting. Cable brought U.S. stations, whose off-the-air reception even a short distance from the border was poor or sporadic, into the local broadcasters own area. In providing these stations CATV extended the signals beyond their assigned coverage area thereby violating the concept of local service licensing. Thus, the local broadcaster was faced with competing for the local audience with stations not licensed to

⁴Seiden, Cable Television U.S.A., p. 11.

serve the area.⁵

Moreover, the distant stations brought into an area were mostly American. Government reports had suggested and government policy was oriented towards a radio and television broadcasting system which emphasized a system that was predominantly Canadian in content.⁶ Such a system, it was hoped, would maintain and strengthen a Canadian identity and character. CATV, however, provided American stations which attracted a large audience due to their mass appeal programs. Coupled with this was the BBG ruling that 55 per cent of a Canadian station's program schedule had to be basically Canadian in content and character.⁷ "Cut off by the regulation from many popular U.S. network programs, Canadians subscribed to cable systems which could provide them with U.S. channels in their entirety."⁸ The basic policy of a Canadian broadcasting system seemed to be in possible jeopardy as a result of the capabilities of CATV.

The Board of Broadcast Governors believed that some form of control and policy over cable broadcasting was necessary to ensure Canadian broadcasting. The Board, one year after its own creation in 1958 and seven years since cable

⁵CRTC, Integration Paper, p. 4.

⁶CRTC, Annual Report 1969-70, pp. 344-47.

⁷See Toogood, Broadcasting in Canada, pp. 96-99.

⁸Susan Anderson, "Cable TV men hope static from Ottawa won't spoil picture," The Globe and Mail, May 26, 1967, p. B5.

was first used in Canada, made known its own and Broadcasters' concern about CATV.⁹ However, prior to the establishment of the Canadian Radio-Television Commission under the 1968 Broadcasting Act there was only a minimum of controls governing CATV.

The initial regulation of cable broadcasting came under the licensing authority of the Department of Transport under the Radio Act. The regulatory controls of cable can be divided into two areas. One is regulations governing the growth and development of cable systems. The second is regulatory controls of a technical nature that can effect what signals and therefore content are available to viewers. Rules under this latter category were to preserve local broadcasting service. This area alone is of major importance to this paper, but, some mention of the former is noted so as to give an indication of the state of cable broadcasting in its early years.

The Department of Transport first mentioned the licensing of CATV in its Annual Report 1954-55.¹⁰ The Report stated that, "...[CATV] services are established in areas of fringe TV reception and consist of efficient antenna

⁹The Canadian Association of Broadcasters which represents broadcasters had initially expressed concern about the effects of CATV in the early 1950s. Interview with James Allard former Vice-President CAB, October 17, 1974.

¹⁰Canada, Department of Transport, Annual Report 1954-55 (Ottawa: Queen's Printer, 1956), p. 37.

installations supply service, by co-axial cable, to large numbers of subscribers."¹¹ All that the potential cable operator needed to go into business was a licence which could virtually be obtained from the Department by mail.¹² CATV operators licensed by the Department simply had to pay a minimal \$25.00 annual licence fee. The Department did not grant exclusive licences for any given area thus it allowed for possible competition from other operators and even the wiring of the same area by those holding equally valid licences.¹³ Since the Department did not grant licences that were exclusive as to territory the possibility of more than one cable company wiring an area existed.¹⁴

"About a dozen licences, for example, were granted for the Metropolitan Toronto area, each one of them entitling the holder to operate anywhere in the city."¹⁵ "[A]t least one cable operator ceased operations rather than face such competition."¹⁶ The theoretical possibility of over wiring was prevented by the telephone company, "...which owned the

¹¹ Ibid.

¹² Leslie Millin, "The writhing in the coils of cable TV," The Globe and Mail, March 1, 1969, p. 21.

¹³ Mary Eberts, Alternative Regulatory Futures for CATV in Canada hereinafter referred to as Alternatives for CATV Master of Law Thesis, (Harvard University, 1972), p. 28; see also CRTC, Cable Television in Canada hereinafter referred to as Cable Television (Ottawa, January 1971), p. 4.

¹⁴ Eberts, Alternatives for CATV, p. 30.

¹⁵ Ibid., p. 28.

¹⁶ CRTC, Cable Television, p. 8.

necessary poles and right of ways refusing to hang cables for more than one customer at a time, in a given area."¹⁷

Service could vary widely depending on the operator and location in the country. The number of channels offered by various systems could be different. Subscriber's fees for poor reception and fewer stations could be the same as for subscribers receiving quality service. The rates charged could be based on what the market would bear.¹⁸ Overall, for the Transport Department's part cable was allowed to grow at will with only a minimum of government control.¹⁹

The Department's "...regulations were mainly confined to technical matters, such as antenna height and site..."²⁰ and other features of cable equipment. The Department ruled that the location of head-ends (the cable's antenna) had to be within 10 miles of the area served²¹ and "...prohibited the use of more than one microwave relay connection to extend the possible reception distance of a cable system."²² The purpose of these rules was to preserve "...the idea of

¹⁷Ibid., p. 9.

¹⁸Millin, The Globe and Mail, March 1, 1969.

¹⁹Eberts, Alternatives for CATV, p. 28, see also CRTC, Cable Television, p. 8.

²⁰Canada, Special Senate Committee on the Mass Media, Report, Vol. II: Words, Music and Dollars, hereinafter referred to as Mass Media (Ottawa, Queen's Printer, 1970), p. 403; Eberts, Alternatives for CATV, p. 28.

²¹CRTC, Cable Television, p. 8.

²²Senate Committee, Mass Media, p. 403.

local service..."²³ and "...effectively prevented the importation of American signals into such communities as Calgary, Edmonton, Red Deer, Saskatoon, Sudbury, Moncton, Halifax, and St. John's."²⁴ This ruling did not, however, prevent CATV systems located within range of American signals relaying and extending these stations to other viewers.

The Board of Broadcast Governors had no jurisdiction over any of these CATV operations under the Broadcasting Act of 1958. As a courtesy the Department of Transport did refer applications for CATV licences to the Board but this was for its own information and informal review.²⁵ The BBG followed cable's growth and in its annual reports presented figures as to the actual number of CATV systems in operation.²⁶ In 1960 it noted there were some 200 CATV systems in service providing from one to six television stations by off-the-air pick up and then piping the programs to subscribers.

The steady growth of cable and the number of stations that were being brought into different areas caused the Canadian Association of Broadcasters (CAB) to question what possible effects CATV might have on the future of Canadian

²³CRTC, Cable Television, p. 8.

²⁴Senate Committee, Mass Media, p. 382.

²⁵BBG, Annual Report 1960 (Ottawa: Queen's Printer, 1960), p. 34; Eberts, Alternatives for CATV, p. 28 and n104; Interview with R. McLean former member of BBG, October 17, 1974; Senate Committee, Mass Media, p. 358.

²⁶The Department of Transport's Annual Reports listed only the number of applicants requesting licences in each year.

television stations.²⁷ CAB believed there was a need for some jurisdictional expansion of the BBG's duties to include cable broadcasting. This was thought necessary due to the competition that CATV offered commercial television stations in the struggle for audience and the fact that CATV could "pick up and transmit the programs of regular television stations without the permission of the originators or without fee to such stations."²⁸ The Association indicated to the Board a desire for "...amendments to the parliamentary enactments to bring CATV stations under the jurisdiction of the Board...."²⁹ With this jurisdictional aspect in mind the BBG consulted the Department of Transport and the CAB and planned meetings with officers of both these groups including officials of the Canadian Broadcasting Corporation (CBC) so as "...to arrive at a possible recommendation to Parliament for suitable amendments to existing legislation."³⁰

The BBG, at the suggestion of the Minister of Transport,³¹ called together a Committee on the Wired System in June, 1960. The Committee, consisting of representatives from the CAB, CBC and the Department of Transport, discussed the relationship of CATV towards television broadcasting. During these meetings members of the National Community

²⁷BBG, Annual Report 1960, p. 34.

²⁸Ibid.

²⁹Ibid.

³⁰Ibid.

³¹William Malone, Broadcast Regulation in Canada: A Legislative History (Ottawa, Canadian Association of Broadcasters, 1962), p. 145.

Antenna Association which represented the cable television industry were invited to participate. The Committee later presented a Report of the Committee on Wired Systems to the Minister on February 27, 1961. This Report was also made available to the House of Commons' Special Committee on Broadcasting. The Report stated:

The extension of the reception of U.S. signals does nothing to advance the national purposes. However, the general effect does not appear to have been significantly detrimental to the national purposes. The operations of some broadcasting systems...may be less profitable than in the absence of the competition from wired systems....But it does not seem that these factors are so substantial as to justify a general extension of controls over wired systems having in mind that regulations similar to those now applying to television broadcasting would prevent any CATV system from carrying signals of U.S. stations. However, in marginal situations, it must be conceded that the introduction or increase in the service of wired systems could prejudice the national purposes required of broadcasting.³²

The Report went on to say that the BBG should keep informed on the development of wired systems and report their impact on television broadcasting if necessary.³³

Although CATV was not legally defined as part of broadcasting nor under the BBG jurisdiction³⁴ the Board's watch-

³²Quoted in Canada, House of Commons, Debates, November 29, 1963, p. 5276.

³³Ibid.

³⁴The Chairman of the BBG, Dr. Andrew Stewart, believed both these items had to be rectified before the BBG could legally regulate CATV. Interview with R. McLean.

ful eye on cable was in keeping with the object and purposes of this body as set out in Section 10 of the Act:

The Board shall for the purposes of ensuring the continued existence and efficient operation of a national broadcasting system and the provision of a varied and comprehensive broadcasting service of high standard that is basically Canadian in content and character, regulate the establishment and operation of networks of broadcasting stations in Canada and the relationship between them and provide for the final determination of all matters and questions in relation thereto.³⁵

The Board felt that CATV needed scrutiny "...because of the effect these systems could have on the revenue potential of free television stations."³⁶

Four days prior to the Committee's report being presented, the Canadian Association of Broadcasters appeared before the Special Committee on Broadcasting.³⁷ The Association pointed out that cable systems were not subject to BBG regulations and particularly to the Canadian content quotas required of Canadian broadcasting stations. The CAB also acknowledged that cable was a competitive threat to broadcasters but more important CATV represented "...a competitive threat to the public policy objectives set for-

³⁵Broadcasting Act 1958, s. 10.

³⁶BBG, Annual Report 1962 (Ottawa: Queen's Printer, 1962), p. 18.

³⁷Canada, House of Commons, Special Committee on Broadcasting, Minutes of Proceedings and Evidence February 23, 1961:

ward by Parliament for broadcasting....³⁸ CAB thought the large and increasing number of cable systems "...may tend to jeopardize proper attainment of the public policy objectives...or at least seriously dilute chances for success of these."³⁹ In comparing the views of the Association and Committee on Wired Systems it is evident both concurred cable could "jeopardize" or "prejudice" the national objective of a Canadian broadcasting system.

The fear by local broadcasters of loss revenue was based on the effect several stations could have in reducing the size of their viewing audience.

[T]he television signals "imported" by the CATV reduce the size of the local broadcaster's viewing audience. From time to time local CATV subscribers tune to the distant stations brought in by the CATV...When the audience-rating agencies learn of this, the local station is credited with a small audience; this creates difficulties for the broadcaster, in that the size of his audience largely determines the volume of his station's revenue.⁴⁰

Many Canadian communities in proximity to U.S. signals were already receiving American stations by off-the-air reception.

³⁸ Ibid., p. 95.

³⁹ Ibid., p. 93; In the Final Report of the Special Committee (June 28, 1961, p. 992) the recommendation was made that the governor in council consider the expediency of referring to the Supreme Court for the purpose of determining "the constitutional jurisdiction of parliament...as to the means of the electronic communication known as the wired system;...and, in the affirmative whether such wired systems are covered by the word 'broadcasting' as presently defined under...the Broadcasting Act...."

⁴⁰ Seiden, Cable Television U.S.A., p. 3.

These stations came from a variety of locations along the border such as Burlington, Vt.; Watertown, N.Y.; Buffalo, N.Y.; Detroit, Mich.; Pembina, N.D.; and Bellingham, Washington. In each case the station attracted Canadian viewers and advertising, both vital factors being drawn from local Canadian stations. It was evident to both broadcasters and the BBG that the expansion of CATV would further extend the American signals, thereby affecting even greater the financial situation of Canadian stations and the Canadian broadcasting system's design.⁴¹

The availability and extension of U.S. signals also hindered the development of other Canadian broadcasting stations. In keeping within the concept of local service, alternative stations were to be allowed into areas where the regulatory board determined there was a sufficient audience to support a second station. Broadcasters feared this alternative service might not be provided as soon as the population was large enough if viewers were watching incoming American stations. In effect, the American signal would become the alternative thus delaying additional Canadian stations.⁴²

The Board of Broadcast Governors aware of the various effects CATV could have on broadcasting feared that without some measure of control the increase in American stations

⁴¹BBG, Annual Report 1962, p. 18.

⁴²BBG, Transcript of Public Hearing (Ottawa, June 4, 1963), pp. 73-5.

"...could help to defeat the Canadian content provisions..." as indicated in Section 10 of the Broadcasting Act.⁴³ The re-examination of present legislation by Parliament was needed "...to ensure that extension of service from U.S. stations will not defeat the domestic broadcasting objectives."⁴⁴

In April 1963, the Board announced a public hearing for June at which time it would

...receive representation from broadcasters and other interested parties on the relation between the development of wired systems and broadcasting, and the broadcasting policy.⁴⁵

The Board's concern centres around the fact that broadcasting stations, as a condition of licence, are directed by law to achieve certain national purposes. Distribution of programs by cable system is not so directed.⁴⁶

At the hearing conflicting viewpoints were presented as to whether CATV was a threat to regular television, and whether cable should be controlled by the BBG. Private and public broadcasters including the CAB again noted that CATV would open the door to "pay TV" and offer programs now available on regular television. This possibility was seen as a disadvantage to those not wanting CATV and to those where cable was not available. The future extension of wired

⁴³ BBG, Annual Report 1962, p. 18.

⁴⁴ Ibid.

⁴⁵ BBG, Annual Report 1963 (Ottawa: Queen's Printer, 1963), p. 19.

⁴⁶ House of Commons, Debates, November 29, 1963, p.

systems without some control could be detrimental to "free television". Cable operators contended that the 322 systems serving 200,000 households were only sophisticated aerial services extending the range of ordinary antennas. They did not see themselves as competitors but rather as a service providing a choice of programming. Cable operators did not realize that it was these aspects of cable that worried broadcasters and the BBG.

This hearing, as would all future hearings, reflected the vested interests of the different groups. But, there was no denying CATV was growing and expanding the range of U.S. stations. The Board provided "...a summary of opinions expressed so the government itself could determine whether any further actions is required."⁴⁷

Prior to any action being taken Douglas Fisher (NDP, Port Arthur) sponsored a Private Member's Bill (C-30) to bring community antenna television under the jurisdiction of the Broadcasting Act and the BBG. He agreed that there might not have been a need to control CATV at the time of the Report of the Committee on the Wired Systems but noted that both the Report and the BBG were aware of the effect cable could have on broadcasting stations. The situation nearly three years later was such that he believed

...the situation has now been reached where

⁴⁷Cited in Ibid., p. 5277; see also BBG, Transcript of Public Hearing, June, 1963.

the size of the community antenna television audience is large enough that we need to consider its impact on the national purpose...we should bring it under the definition of broadcasting in the act so we can be sure that in its future extension it does not cripple the present licence holders and the objectives of the national system.⁴⁸

The Secretary of State, J. W. Pickersgill, replied that if cable systems were put up for the purpose of bringing in U.S. stations not allowed to broadcast in Canada then the intent of Parliament was being circumvented.⁴⁹ He said the government was considering possible courses of action but could not give any definite plans as neither he nor the Minister of Transport had "...the opportunity yet to discuss this matter with my colleagues."⁵⁰ Still the position of the government was "...to do everything we can to see that broadcasting remains substantially, to the greatest degree we can reasonably make it, Canadian."⁵¹

Whether influenced by Fisher's suggestion, the BBG's remarks, or the possibilities of cable, the Secretary of State and the Transport Minister issued a joint statement on December 31, 1963.⁵² The Ministers, fearing CATV "... might erode the economic base of existing television sta-

⁴⁸House of Commons, Debates, November 29, 1963, p. 5277.

⁴⁹Ibid., p. 5279.

⁵⁰Ibid.

⁵¹Ibid.

⁵²"Ottawa Plans BBG Regulation for Cable TV," The Globe and Mail, January 1, 1964, p. 9.

tions or the new stations then being licensed to provide alternative service", froze the issuing of CATV licences "...proposing to carry U.S. television signals after December 1963."⁵³ The announcement also noted the government's intention to place CATV under similar regulations as those now applying to licensed television broadcasters....⁵⁴ To achieve this the BBG was asked, in consultation with the technical experts of the Department of Transport

...to inquire into and recommend any legislative action which might be required to ensure that, so far as the constitutional jurisdiction of parliament would permit the use of community antenna television for the dissemination of television program was subject to similar regulation under parallel conditions to that applied to broadcasting.⁵⁵

This was the first time that the Board was asked to make recommendations necessary to bring CATV under some sort of broadcasting control.

The result of this inquiry was a Report by a Joint Committee on Community Antenna Television. It was tabled in the House of Commons on March 19, 1964.⁵⁶ The Report stated that there should be an amendment to the Broadcast-

⁵³ CRTC, Cable Television, p. 8.

⁵⁴ "Ottawa Plans for Cable TV," The Globe and Mail, January 1, 1964, p. 9.

⁵⁵ Canada, House of Commons, Debates, July 22, 1964, p. 5799.

⁵⁶ Canada, House of Commons, Debates, March 19, 1964, as appendix pp. 1278-79; see also BBG, Annual Report 1964 (Ottawa: Queen's Printer, 1964), pp. 13-14.

ing Act so as to include "...commercial broadcasting receiving stations...."⁵⁷ It then listed several amendments thought necessary to control cable broadcasting. These included:

- 1) The BBG should have the power to hear and make recommendations on all CATV applicants referred to it by the Minister of Transport including renewal of existing licences;
- 2) The Board should have the power to regulate the program content and other non technical matters of CATV stations;
- 3) The objects and purposes of the Broadcasting Act should extend to CATV;
- 4) Foreign ownership of CATV should be limited;
- 5) The Board should have the authority to control any cable network;
- 6) The Board should have the power to enforce these above conditions.⁵⁸

The BBG also wanted to have the authority to regulate CATV

...in such a manner to ensure that, consistent with the public interest in the reception of a varied and comprehensive broadcasting service, the Board should to the greatest extent practicable maintain the Canadian identity and character of service available to the public and further the purposes of broadcasting as set out in Section 10 of the Act.⁵⁹

The Report believed effective control over radio and tele-

⁵⁷ Ibid., p. 13.

⁵⁸ Ibid., pp. 13-14.

⁵⁹ Ibid., p. 13.

vision signals transmitted by CATV could be achieved by additional amendments to the Broadcasting Act.⁶⁰ Overall, it recommended what was thought to be necessary changes to control CATV if Canadian television broadcasting was to exist and Section 10 realized.

Two months after this Report was presented The Committee on Broadcasting was formed. This body which was established to examine a wide range of different aspects in broadcasting and report to the Secretary of State was specifically to exclude CATV from its investigation. The terms of reference given this advisory committee plainly points this out:

To study in light of present and possible future considerations, the purposes and provisions of the Broadcasting Act and related statutes and to recommend what amendments, if any, should be made to the legislation; including...an inquiry into...the various means of providing alternative television services, excluding community television systems; and to report their findings to the Secretary of State with their recommendations.⁶¹

⁶⁰ Ibid. There are legal distinctions between types of "cable" and "closed circuit" systems which raise constitutional questions regarding federal-provincial jurisdiction. In areas other than CATV, the Report acknowledged complete control of all aspects of cable relays and closed circuit systems would be complicated and involve provincial consultations. These areas are beyond the scope and relevance of this paper. For a legal and constitutional discussion on wired systems see Eberts, Alternatives for CATV, Chapter I; and Peter Grant, "The Regulation of Program Content in Canadian Television: An Introduction," Canadian Public Administration II (Fall, 1968), pp. 332-91.

⁶¹ Canada, House of Commons, Debates, May 25, 1964, p. 3520.

Secretary of State, Maurice Lamontagne,⁶² after presenting the terms of references under which the Committee was to be guided noted that CATV was purposely excluded because:

The BBG and the Department of Transport have already made such a study and on March 19 made joint recommendations to the government, which hopes to make known its policy on cable television within a short time.⁶³

In June, prior to the Government making any comment, Douglas Fisher again had a Bill⁶⁴ before Parliament to place community antenna under the Broadcasting Act. Realizing that over 60 per cent of the population could already receive U.S. stations he was not worried about American programs per se, but, with the effect cable systems might have on advertising revenue supported television. The Parliamentary Secretary to the Minister of Health and Welfare, John Munro, replied that the very fact a large portion of Canadians could receive American programming was "...one of the reasons why the government itself has not moved fast in this area."⁶⁵

On July 22, Pickersgill as Minister of Transport made a formal statement on community antenna systems in reply to

⁶²In a Cabinet shuffle on February 3, 1964, Pickersgill became Minister of Transport and Lamontagne became Secretary of State.

⁶³Canada, House of Commons, Debates, May 1, 1964, p. 3520.

⁶⁴Bill C-40, Canada, House of Commons, Debates, June 19, 1964, pp. 4525-33.

⁶⁵Ibid., pp. 4532-33.

the BBG Report. The freeze imposed on new CATV applicants in December was lifted. He stated the government had two main concerns. One was the ownership and control of CATV systems. On this issue the government said it would make the necessary amendments "...so as to ensure effective Canadian ownership and control of new CATV installations."⁶⁶ The second main concern was of "...CATV installations designed to receive broadcasts emanating from outside the area reached by any local Canadian television station, and particularly from outside Canada...." The BBG was given the duty of examining CATV applications to decide whether they were "...unlikely to make the operation of any existing television station uneconomic or to inhibit the provision of alternate Canadian television service in the area concerned."⁶⁷

The Minister had recognized the significance about the importation of distant stations but did not directly deal with the issues of controlling cable or establishing a policy for CATV. Evidently he felt the review powers of the BBG were sufficient, for in referring to lifting the "freeze" Pickersgill said

...the government wishes to emphasize that it has no desire to regulate CATV for the sake of regulation, but merely to the minimum extent

⁶⁶ Canada, House of Commons, Debates, July 22, 1964, p. 5799.

⁶⁷ Ibid.

deemed necessary to maintain the Canadian identity and character of broadcasting to the greatest extent practicable, in accord with the consistent position taken by all governments and parliaments since the Aird report of 1929.⁶⁸

Neither the BBG nor Douglas Fisher believed Pickersgill's statement was sufficient. Fisher immediately replied that the idea of examining new applicants alone made it

...impossible to go back and clear up the situation where CATV systems are already in existence, and affecting the existing stations... It is obvious that in this policy the Minister has steered away from giving any firm indication of the government's reaction to the kind of regulation and control in this area that the board of broadcast governors set out....⁶⁹

Although the BBG made several recommendations in its Report, the Board was only given the authority to examine new applicants. This referral of applicants⁷⁰ was nothing more than

⁶⁸ Ibid., pp. 5799-5800. "In November [1964] an item in the Department of Transport's supplementary estimates would have brought CATV under BBG authority... The item met such opposition from CATV's friends in Parliament that it was withdrawn." John Saywell, ed., Canadian Annual Review 1964 (Toronto: University of Toronto Press, 1965), p. 451.

⁶⁹ Canada, House of Commons, Debates, July 22, 1964, p. 5801.

⁷⁰ Three factors were considered in assessing the suitability of new licensees: the economic viability of the applicant's proposed operation; the experience and ability of the applicant; and how the public interest could best be served. Eberts, Alternatives for CATV, p. 28. In four years from 1965 to 1968 inclusive 354 applicants were examined, of this number 33 were found to make the operation of existing TV stations uneconomical while 321 were approved. BBG, Annual Reports: Mass Media states (p. 358) "While the BBG occasionally recommended the rejec-

simply formalizing a procedure already established between the BBG and the Department of Transport.⁷¹ The Board expressed its discontent "...with this piecemeal approach to the CATV problem..." and continuously noted that CATV did not come under the Broadcasting Act.⁷² These feelings were forwarded "...to the Minister in the hope that some government policy and proper supervision may be established."⁷³

The actions Pickersgill implemented may have been taken to forestall the increase in American ownership and programming while the government could determine the basic policy for CATV. Whatever the reason for a lack of definite direction, the recommendation of regulating cable also appeared in the Report of the Committee on Broadcasting.⁷⁴

Though specifically excluded from its terms of reference cable television was considered by the Committee.

tion of certain applications for fear of the impact they would have on existing television stations or in the development of new ones, neither D.O.T. nor BBG appeared to have had much awareness of the economics of cable systems as such, nor much knowledge based on fact of the impact of cable on existing television stations."

⁷¹ Interview with R. McLean.

⁷² BBG, Annual Report 1965, p. 11.

⁷³ Ibid., pp. 11-12.

⁷⁴ Canada, Committee on Broadcasting, Report of the Committee on Broadcasting hereinafter referred to as Report 1965 (Ottawa: Queen's Printer, 1965).

Briefs had been presented by those worried about licensed broadcasters and the unregulated growth of cable systems. These submissions spurred the Committee to examine the actual and potential problems of CATV.⁷⁵ As with the BBG, the Committee realized

the additional program choices made available to the public by CATV will obviously contain a great deal of material imported from the United States, thus making it still more difficult than it is now to ensure that the Canadian broadcasting system generally is basically Canadian in content and character.⁷⁶

The Report reiterated the consequences that CATV might create for the continued existence of television. It noted that a majority of television homes were already within direct range of U.S. stations and what CATV did was to increase further "...the percentage by extending the range of the signals."⁷⁷ Cable was "seen as a threat

...where regulatory policy to nourish or support the licensee has been negated by the sudden intrusion of a number of new signals which dilute the audience and damage commercial support."⁷⁸

Further, "...the viability of a national network system could be disrupted if unrestrained or unregulated growth

⁷⁵Ibid., p. 251, CATV operators thinking they were excluded from the Committee's terms of reference did not submit any briefs.

⁷⁶Ibid.

⁷⁷Ibid., p. 253.

⁷⁸Ibid.

of CATV systems is allowed to continue."⁷⁹

The Committee did not anticipate the need for strict regulation in areas where there was an inadequacy of local television or no service at all. In these instances, it believed CATV was providing a very worthwhile service. However, in thin market areas, it realized the need "to examine the effect of CATV on stations...whose ability to conform to the Canadian content regulation is being jeopardized by this new competition."⁸⁰ As to the overall control of CATV the Committee recommended "...laying down rules to regulate the orderly growth of this new television technique, while preserving intact the objectives of Canadian broadcasting policy."⁸¹ Thus, as with the BBG, this Committee saw cable broadcasting interrelated with regular television broadcasting and therefore the need to regulate this system within that context.

In 1966, the White Paper on Broadcasting was tabled by the new Secretary of State, Judy LaMarsh. This document presented the government's proposed legislation for all of broadcasting including concepts of policy and regulation for community antenna television systems. It proposed that new legislation include CATV as a component

⁷⁹ Ibid.

⁸⁰ Ibid., p. 254.

⁸¹

Ibid., The Report 1965 cited (p. 254) the British Columbia Court of Appeal decision that CATV systems were a part of broadcasting and could only be regulated by Parliament. The Report further urged "...that the whole question of CATV systems should be studied in the light of our

of the national broadcasting system, placed under the Broadcasting Act and subject to licensing, regulation and other related controls under the Act.

The Standing Committee on Broadcasting presented a Report on the White Paper on Broadcasting.⁸² In the area of CATV the Committee agreed with the White Paper's proposals. The Committee believed cable should be considered as part of the broadcasting system. A noteworthy comment made in the Report was that CATV did not use the air waves but on the basis it did distribute broadcast programs which could be viewed as competition for other broadcast outlets it would be best to put cable under the jurisdiction of the Act.

The proposed legislation was part of Broadcasting Bill C-163. At the time of the Bill's second reading LaMarsh, in referring to CATV, noted that the new legislation would subject the community antenna system to licensing by the Canadian Radio-Television Commission which would replace the BBG. This new independent agency would be initiated under the same piece of legislation. In reference to cable television LaMarsh said that "CATV systems are quite different in many respects from other broadcasting

recommendations on the national broadcasting system, so that consistent policy and effective controlling legislation can be formulated...."

⁸² Canada, House of Commons, Standing Committee on Broadcasting, Films and Assistance to the Arts, Report on the White Paper on Broadcasting, 1966, presented March 21, 1967.

operations, "and thus we expect the regulatory's requirements for these systems to be quite different from those applied to what are regularly called broadcasting undertakings."⁸³ The Commission in issuing cable licences "...will have to take into account the need for comprehensive and varied service" and adapt regulations to scientific and technical advances.⁸⁴

In sum, the placement of cable television in the Broadcasting Act came about after many discussions, studies and recommendations in which cable's effect on local service and the belief, some action should be taken to deal with this growing system were emphasized. The inclusion of CATV in the Act is significant since the wired system for the first time was considered a part of the broadcasting system. Controls for cable would not come from the government directly, rather, the CRTC was given the authority to regulate cable. The following chapter examines the powers and objectives given this regulatory body; subsequent chapters present the controls the Commission imposed on cable,

⁸³ Canada, House of Commons, Debates, November 1, 1967, p. 3749.

⁸⁴ Ibid., p. 3751. The legislation giving government control of cable television was extensively examined in House of Commons, Debates, 1967-68, and Standing Committee on Broadcasting, Films and Assistance to the Arts, Minutes of Proceedings and Evidence, 1966-1967.

CHAPTER III

THE STRUCTURE AND AUTHORITY OF THE CRTC

The Broadcasting Act of 1968¹ replaced the 1958 Statute, stated a policy for broadcasting, established the CRTC and placed CATV under the CRTC's jurisdiction. It is appropriate to examine these aspects of the Act before proceeding to the actual regulatory measures imposed on CATV by the Commission. This chapter discusses the composition of the CRTC, notes the broadcasting policy which lists the objectives for broadcasting, and describes the applicable sections placing CATV under the CRTC. Further, due to the near carte blanche authority the CRTC has over broadcasting, the Commission's powers to deal with CATV are also presented in detail. Such a presentation, it is hoped, will provide an understanding of the Broadcasting Act and the regulatory body that controls all broadcasting undertakings.

The CRTC has five full-time and ten part-time members appointed by the Governor in Council. A quorum consists of

¹Canada, Statutes, 1967-68, Broadcasting Act, c. 24; as amended by Revised Statutes of Canada 1970, c. B-11.

three full-time and five part-time members. The Commission must meet at least six times a year.

Both full and part-time members hold office during "good behaviour" and can be reappointed upon the expiration of their term. The Chairman of the Commission, Pierre Juneau, was reappointed for another seven years after his first term expired in 1973.² Part-time members who have served two consecutive terms are not eligible for another reappointment until twelve months after the end of their second consecutive term. No such stipulation is made for full-time members. All members must retire at the age of seventy but may be removed "for cause" at any time by the Governor in Council.

During the BBG's existence both the Liberal and Conservative Cabinets chose known party supporters to fill the then three full-time and twelve part-time positions.³ CRTC members are appointed by the Cabinet and as such are considered political appointees. Alex Toogood in Broadcasting in Canada: Aspects of Regulation and Control sees this arrangement as having some potential flaws. Such appointments could result in these positions being held by those who are politically partisan or

²Editorial, "Juneau: Best man for a tough job," The Toronto Daily Star, February 17, 1973, p. 14.

³Peter Harris, "First the BBG, now the CRTC--what's it all about?" The Toronto Daily Star, April 20, 1968.

at least, amenable to political suggestions. Appointees cannot help but be conscious of the conditions surrounding their appointment... [nor do these appointments] tend to encourage the fearless... leadership that broadcasting demands. It also raises doubts about appointments even if no politics has been involved....⁴

There is no evidence to suggest that the CRTC would act any differently if members were appointed by those outside Parliament. Nor can one deny that present members have given direction and leadership in all aspects of broadcasting.

A major difference between the full-time members of the BBG and the CRTC is the experience the members of the latter group have in the actual business of broadcasting.

Unlike their predecessors [these members have] qualifications indicating experience and knowledge of one aspect or other of what goes to make up the complex broadcasting business... It has long been the plaint of the industry that the board called upon to regulate them under the old Broadcasting Act lacked anyone... with practical knowledge of broadcasting.⁵

All full-time members have experience in at least one facet of broadcasting,⁶ although, neither full or part-time members have any background in the area of community antenna television.

Three of the five full-time members have been pre-

⁴Toogood, Broadcasting in Canada, p. 112.

⁵Harris, The Toronto Daily Star, April 20, 1968, quoted from Broadcaster, March 28, 1968.

⁶D. A. Dawson, The Canadian Radio-Television Commission and the Consumer Interest hereinafter referred to as Consumer Interest (Hamilton: McMaster University, 1972), p. 15.

viously employed in some government body or organization.

Both the Chairman and Vice-Chairman were members of government bodies that expounded the need for, and encouragement of Canadian production, resources and talent. The Chairman, Pierre Juneau, has twenty years experience with the National Film Board and two years as a member of the BBG. The Vice-Chairman, Harry J. Boyle, spent twenty-five years with the CBC. Other members include: Harold Doran, formerly in public relations, was Press Secretary and later special adviser on Prime Minister Pearson's staff; Real Therrien, a Quebec broadcasting and telecommunications engineering consultant; and Mrs. Pat Pearce, a former broadcast columnist.

The Chairman and Vice-Chairman are chosen from the full-time members by the Governor in Council. The Chairman is the chief executive who supervises and directs the Commission, and presides at meetings and hearings. The Vice-Chairman can substitute for the Chairman. If both are absent the Commission may authorize one or more of its full-time members to fill the position.

The full-time members compose the Executive Committee whose quorum is three. This Committee is very powerful. Any action of the Executive Committee in the exercise of its powers is considered an act of the Commission.

There are 10 part-time members with a variety of backgrounds including a professor, manufacturer, president and former CBC worker. These members represent regional and sectional interests across the country and come from

every province except Prince Edward Island and Saskatchewan. These members seem to be highly educated with at least middle-income positions. None come from the millions of "ordinary" radio and television listeners who might provide "common viewer's" reactions or suggestions to possible broadcasting regulations.

All CRTC members must be Canadian citizens who ordinarily reside in Canada. They cannot have any interest in broadcasting either "directly or indirectly, as owner, shareholder, director, officer, partner or otherwise". They cannot be engaged or have financial interest in any broadcasting undertaking nor in "the manufacture or distribution of radio apparatus except where such distribution is incidental to the general merchandizing of goods by whole or by retail."⁷ If any member has any such interest he must dispose of it within three months of being appointed.

Full-time members of the Commission are paid by the Governor in Council. Part-time members' remuneration is fixed by a by-law of the Commission. These members are paid fees according to their attendance at meetings of the Commission at which they are requested by the Chairman to attend. By-law No. 2 of the Commission provides that part-time members be paid a fee of \$100 per diem.⁸

⁷s. 7.

⁸Canada, Public Accounts II (Ottawa: Queen's Printer, 1970), p. 21-10.

The overall staff of the Commission is larger than the BBG had. Officers and employees are appointed in accordance with the Public Service Employment Act. All members of the Commission are considered employed by the Public Service. The staff makes up eight different branches of the Commission. These include: Licensing, Policy and Administration; Planning and Development; Technical; Legal; Broadcast Programmes; Research; Personnel; and Finance and Management Services. Each of these branches is further divided into different divisions which deal with specific areas that are part of that branch. For example, the Licensing, Policy and Administration Branch consists of three divisions: Application and Licensing; Ownership Review; and Public Hearing Division.⁹ The number of employees in the Commission as of the 1973-74 Annual Report was 400.

Part I of the Broadcasting Act outlines a "Broadcasting Policy for Canada". "This was the first time that the government committed itself clearly on broadcasting policy."¹⁰ "In the past, Parliament has not stated the goals and purposes for the Canadian broadcasting system with sufficient clarity and precision...."¹¹ The 1968 Act made

⁹CRTC, Annual Report 1972-73 (Ottawa: Information Canada, 1973), pp. 72-74.

¹⁰Toogood, Broadcasting in Canada, p. 108.

¹¹Committee on Broadcasting, Report 1965, p. 91 cited in Toogood, p. 108.

the government's broadcasting policy intentions clear. The policy presents broadcasting objectives in general without specific mention of ways to achieve these. It states that the Canadian broadcasting system is a single system made up of private and public sectors which comprise a "variety of broadcasting undertakings". To point out fully the policy under which broadcasting systems such as television and cable are applicable and upon which CRTC regulations are based the Broadcasting Policy is stated in Appendix A.

The basis of the CRTC's jurisdiction¹² over cable is contained in section 3(a) "...broadcasting undertakings in Canada make use of radio frequencies that are public property and such undertakings constitute a single system....". Section 2 of the Act defines a "broadcasting undertaking" to include a "broadcasting transmitting undertaking" (television) and a "broadcasting receiving undertaking" (community antenna television). "Broadcasting" itself is defined as "...any radio communications in which the transmission are intended for direct reception by the general public." "Thus, a CATV system is under Commission jurisdiction because it receives radio communications (television and radio) intended for direct reception by the general public."¹³

¹²Eberts, Alternatives for CATV, p. 34.

¹³Ibid., pp. 34-35.

The objectives of the Commission are set out in Section 15 of the Act:

Subject to this Act and the Radio Act and any directions to the Commission issued from time to time by the Governor in Council under the authority of this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy enunciated in section 3 of this Act.

The Commission was given substantial powers in order to carry out the designated policy requirements and regulation of broadcasting undertakings. On the recommendation of the Executive Committee the CRTC may exercise a variety of powers. It prescribes classes of broadcasting licenses and, with Treasury Board approval, fixes fees schedules and payment of licences. The CRTC regulates all broadcasting licences; program standards; the quality and quantity of advertising; the amount of time devoted to political programs and announcements; the operation and programming of networks and affiliates; the regulation and supervision of CATV, and the conducting of public hearings. The Commission may revoke, after a public hearing, any licence except those issued to the Canadian Broadcasting Corporation (CBC). Information pertaining to programs and financial affairs or data relating to the conduct and management of licences may be requested by the Commission. Finally, the CRTC may make regulations as it deems necessary for the furtherance

of its objects.¹⁴

Any regulation or amendment that the Commission proposes must be published in the Canada Gazette. Licensees and others who have interest in these changes are allowed a "reasonable opportunity" to make representation with respect to notices.

There are certain powers the Executive Committee may exercise "after consultation with the part-time members in attendance at a meeting of the Commission."¹⁵ Consultation gives the Committee more representative input¹⁶ and is necessary in circumstances involving the issuance, amendment, renewal or suspension of licences. The Committee may exempt persons carrying on broadcasting licences. The Executive reviews and considers any technical matter relating to broadcasting which has been referred to the Commission by the Minister of Communications and makes recommendations to him.

In other areas the Committee may undertake, sponsor, promote or assist in researching aspects of broadcasting and can make use of the technical, economic and statistical information, and advice from the CBC or departments or agencies of the Government.

The Executive Committee can require licensees to

¹⁴s. 16.

¹⁵s. 17.

¹⁶Correspondence with W. H. N. Hull, Brock University, October, 1974.

broadcast any program that either it or the Governor in Council believe to be of urgent importance to citizens generally or to persons resident in a particular area. After licensees have been notified of such a request the notice must be published "forthwith" in the Canada Gazette.

There are several situations for which the Commission holds public hearings.¹⁷ They are held to gather information and to consider different opinions prior to issuing, revoking or suspending a licence. Hearings are also held if the Executive Committee feels that "...it would be in the public interest to hold..." them for such items as amending a licence or concerning "a complaint by a person with respect to any matter within the powers of the Commission." A public hearing is held for renewing licences "...unless the Commission is satisfied that such a hearing is not required." Finally, the CRTC can hold a hearing for any other matter it deems desirable.¹⁸

It should be noted that a licence for broadcasting

¹⁷ Dawson says the consumer rarely presents briefs at hearings and concludes one reason for this may be the expense of preparing and presenting them, see Consumer Interest, pp. 29-34. However, the public does respond and makes itself heard on sensitive issues pertaining to the loss or restriction of programming by direct protest to the CRTC or Member of Parliament, see for example, issues of The Edmonton Journal after the December 6, 1969 ban on microwave or the December 1973 and January 1974 issues of The Globe and Mail for reaction to the possible loss of an American station on cable.

¹⁸s. 19.

is never granted permanently. This is because Parliament has declared, from the earliest periods of broadcasting, that the airwaves belong to the public and as such no one individual or group can own them. Rather, they are held in trust by those granted licences usually for periods of five years.¹⁹ Licences are not automatically renewable. When a licence expires application must be made for a renewal, at the same time, others may also make application for this same broadcasting undertaking. A request for renewal could be refused if the licensee did not abide by the conditions under which he was given his licence. An important note regarding CATV is that, unlike the BBG which only reviewed applicants and made recommendations that could be ignored by the Department of Transport, the Commission decides on and issues licences.

In conducting hearings the CRTC has "all such powers, rights and privileges as are vested in a superior court of record." Such powers include "the attendance, swearing and examination of witnesses ...the production and inspection of property and other matters necessary or proper in relation to such hearings."

Each hearing can be conducted by two or more members one of whom must be full-time. The Chairman of the Commission designates which members shall sit at a hearing. Those members have all the powers given the Commission for

¹⁹Initially, the CRTC granted licences for a period of two years. CRTC, Public Announcement: Community Antenna Television May 13, 1969 hereinafter referred to as Public Announcement: May, 1969.

conducting hearings. The whole Commission can take over a hearing if the full-time member conducting the hearing refers it to that body. Hearings are held in various locations across the country as designated by the Commission or the Chairman on behalf of the Commission.

The Commission gives notice in the Canada Gazette of applications it receives concerning broadcasting licences and of any public hearings pertaining to these licences. A copy of such notices is also published in one or more newspapers of general circulation within the areas in which these different licences relate.

The procedure for making application, representation or complaints to the Commission and the conduct of hearings are set down in rules made by the Commission.

There are certain limits put on the CRTC issuing, renewing or amending licences. The Commission, in dealing with such licences, cannot contravene any direction given the Commission by the Governor in Council. Such direction would include the maximum number of channels or frequencies that a licensee may have within a specific geographical area; and classes of applicants to whom licences should not be issued, amended or renewed.

Licences cannot be issued, amended or renewed unless the Minister of Communications certifies to the Commission that the applicant satisfies the requirements and regulations of the Radio Act and that a technical construction and operating certificate under the Radio Act has been or

will be issued. This means, for example, that any technical equipment that cable systems employ must meet the requirements of the Radio Act. The CRTC approves stations carried by CATV but the means to carry them must meet the Radio Act standards. Under authority of the Radio Act, the Department of Communications (D.O.C.) approves technical licences²⁰ which previously was done by the Department of Transport. Other than the approval of technical licences by D.O.C., cable in most other respects is regulated by the CRTC.²¹

A broadcasting licence cannot be revoked or suspended without the consent of the licence holder or after a public hearing. If the hearing determines the licensee violated or failed to comply with any condition of his licence the Commission can revoke, or the Executive can suspend, the licence. The licence can also be revoked or suspended if at any time within the two years immediately preceding the date of publication in the Canada Gazette of the notice of such hearing the licence was held by any person "...to whom the licence could not have been issued at that time by virtue of a direction to the Commission issued by the Governor in Council under the authority of this Act."²²

The CRTC decisions relating to the revocation or suspension of licences are sent along with reasons for the decisions to all persons who were heard or made any presen-

²⁰Eberts, Alternatives for CATV, p. 33.

²¹Ibid.

²²s. 24.

tation in connection with the hearing. The CRTC does not have to give reasons for decisions in other matters such as application for licences renewal or amendment of licences.²³ Decisions are made in-camera.²⁴ Moreover, "...no one outside the Commission knows exactly how and why CRTC decisions are made...[there is a] lack of public information about the decision-making process."²⁵ The Commission itself has refused to make public the minutes of its decision-making meetings.²⁶

Licencees, if found guilty of violating any applicable regulations, are liable on summary conviction to a fine not exceeding twenty-five thousand dollars for a first offence and not exceeding fifty thousand dollars for each subsequent offence. Violations dealing with election broadcasting such as election advertisements or announcements may bring on summary conviction a fine not exceeding five thousand dollars. A licensee who carries on a broadcasting undertaking without a valid licence or who operates "...as part of a network other than in accordance with the conditions of such licence, is guilty of an offence and is

²³ Interview with B. Kiefl, CRTC, October 16, 1974.

²⁴ Dawson, Consumer Interest, p. 35.

²⁵ Ibid., pp. 35-6.

²⁶ Ibid., p. 35. How the Commission analyzes information from public hearings and briefs in making its decisions is unknown. This situation also exists with the U.S. Federal Communications Commission, see R. E. Park, ed., The Role of Analysis in Regulatory Decisionmaking: The Case of Cable Television (Massachusetts: D. C. Heath, 1973).

liable on summary conviction to a fine not exceeding one thousand dollars for each day that the offence continues."²⁷ Cable systems have not had any fines imposed upon them.²⁸

Although the powers of the CRTC are wide they are not absolute.²⁹ Once a decision has been rendered several different forms of recourse are available. Appendix B lists four appeal procedures open to applicants and licensees.

The money for all expenditures of the CRTC including salaries, meetings and hearings is appropriated by Parliament. The operating expenditures of the Commission have steadily increased since its inception. In its initial year the Commission spent \$800,000 more than the BBG during its last fiscal year. The following table indicates the steady increase in expenditures from 1968-69 to the 1972-73 fiscal year inclusive.

<u>FISCAL YEAR</u>	<u>TOTAL NET EXPENDITURES*</u>
1968-69	\$ 1,964,000.
1969-70	2,784,100.
1970-71	3,291,662.
1971-72	4,732,083.
1972-73	5,444,215.

*SOURCE: Financial statements of Public Accounts and CRTC Annual Reports.

Prior to the 1970-71 fiscal year no indication was given of the amount of money spent towards "broadcast pro-

²⁷s. 29.

²⁸Interview with M. Tardiff, Secretary General, Canadian Cable Television Association, October 18, 1974.

²⁹Dawson, Consumer Interest, p. 16.

grams, evaluation and regulation", or towards "licensing policy and administration". The following table indicates the amount of money spent in these two areas for the fiscal years of 1970-71, 1971-72 and 1972-73. The balance of the expenditures which are not listed here were for such items as administrative and support services, research and planning, and other services.

	BROADCAST PROGRAMS* EVALUATION AND REGULATION	LICENSING AND* RELATED ACTIVITIES
1970-71	\$ 449,000.	\$ 776,000.
1971-72	667,000.	1,037,000.
1972-73	817,000.	1,267,000.

*SOURCE: Public Accounts.

A yearly report on the activities of the Commission must be submitted to the Minister three months after the termination of each fiscal year. The Minister in turn lays the report before Parliament within fifteen days after receiving it. If Parliament is not sitting the report must be represented within fifteen days after Parliament has been called.

Overall, the 1968 Broadcasting Act specifically defined CATV as part of the broadcasting system and placed cable under the authority of a broadcasting agency. Unlike its predecessor, the Commission was given authority over cable to hold public hearings and regulate the entire system. "In comparison to the BBG, the CRTC has a greater degree of independence, has more power over the private

stations,...the CBC [and CATV] and has its objectives more explicitly formulated."³⁰ The CRTC has the responsibility to issue, renew and amend all cable broadcasting licences. Previously, the BBG could only make recommendations. The Commission may make any regulation or condition of licence on CATV that it deems necessary to achieve the objectives of the broadcasting policy. In sum, cable television could now be regulated as part of broadcasting. The following chapters present those controls the Commission attempted to impose on CATV to ensure Canadian television broadcasting stations were not adversely affected by incoming signals of cable.)

³⁰ Dawson, Consumer Interest, p. 13.

CHAPTER IV

THE FORMATION OF POLICY CONTROLS FOR CATV

The Broadcasting Act of 1968 outlined the broadcasting policy for Canadian radio, television and community antenna television and established the CRTC to implement the Act's recommendations. Specifically the Commission's primary responsibility was to "...regulate and supervise all aspects of the Canadian broadcasting system with a view towards implementing the policy enunciated in section 3...."¹ The CRTC was the first regulatory body given the duty to ensure that "broadcasting receiving undertakings" are an integral part of the single Canadian broadcasting system as outlined in the Act.

As was already noted there were minimal rules governing CATV prior to the creation of the CRTC. The BBG was concerned about the number of American stations and programs coming into Canada and threatening the existence of local broadcasters and the Canadian broadcasting system but had no authority to achieve any effective control of CATV.

¹s. 15, Broadcasting Act 1968.

Now, the Commission had to decide the course for cable broadcasting. However, it initially was uncertain about what controls to impose on CATV. This was evident in the Commission's first decision to cancel its first public hearing and set up a number of studies because "new responsibilities under the Broadcasting Act of 1968 indicated the immediate necessity of further detailed studies in many areas of broadcasting."² The Commission's first Annual Report later revealed that part of these "detailed studies" included the "determination of policy and procedure regarding CATV systems."³

The Commission slowly came to grips with CATV and actively attempted to regulate this system. Unlike the Department of Transport, the CRTC moved to establish controls to govern the growth and development of cable. For example, the Commission set down the terms and periods of a licence; the boundary area within which a cable company could provide services; and the rate a cable operator could charge subscribers. Without these controls many CATV systems might be in a chaotic situation with overlapping services, high service charge and poor quality.

These controls, while important and necessary for the growth of cable and proper service to the public, have not been the main focus of the Commission. Rather, a

² CRTC, Public Announcement: Decision 68-1, May 14, 1968, cited in Annual Report 1968-69, p. 33.

³ Ibid., p. 21.

major portion of the Commission's time has been spent formulating cable policy so as to ensure the Broadcasting Act's objective of the continuation of the Canadian television broadcasting system.

The Commission, as did the BBG, worried about cable's technical ability to bring in distant signals and possibly disrupt Canadian broadcasting. The Commission worried that

the technology of cable television, by its capacity to extend the effective range of television signals, is gradually altering the broadcasting system....Cable television is completely changing the basic characteristics of broadcast licensing....⁴

The basic characteristic being altered was the concept of local service which is the basis of the Canadian broadcasting system.

To curtail what the Commission considered to be the "negative effects" of incoming stations and to protect Canadian stations, the Commission proposed guidelines and later policy to control incoming signals. These controls were developed in five policy areas and included: Station Priority; Microwave Limitation; Program Deletion, and Substitution; Commercial Deletion; and Compensation to Broadcasters. These five areas were discussed over a period of twenty-six months from May 1969 to July 1971 during which the Commission made five Public Announcements

⁴CRTC, Integration Paper, p. 4.

relating to some and eventually all these areas.

The first three announcements issued May 13, 1969, December 3, 1969 and April 10, 1970 were considered by the Commission to be interim statements on cable television until a more detail policy could be worked out.⁵ However, the Commission had said in its first statement that the announcement contained "the policy by which it [the CRTC] will be governed in supervising this sector of the Canadian broadcasting system." The second statement prohibiting the use of microwave had the appearance of policy and there was no hint that this was an interim statement. Not until the third announcement were the proposals presented termed as "...a guide to applicants for licences, amendments to licences and renewals of licences to carry on CATV undertakings." "...It would appear that the CRTC was becoming aware of the complexities of the cable problem and the difficulties of regulating broadcasting."⁶

One document, the fourth issued by the Commission and entitled The Integration of Cable Television in the Canadian Broadcasting System, was the first statement by the Commission on the possible ways to regulate and at the same time integrate cable into the broadcasting system. In this

⁵ Ibid., p. 1; Cable Television, p. 9; CRTC, Canadian Broadcasting, "A Single System" Policy Statement on Cable Television July 16, 1971, hereinafter referred to as Policy Statement 1971, p. 2.

⁶ ibid., p. 345. Quote from CRTC, Public Announcement: Guidelines for Applicants Regarding Licenses to Carry on CATV Undertakings April 10, 1970, hereinafter referred to as Public Announcement: April, 1970.

statement

...the Commission re-iterated its duty of protecting the broadcasting system which it confirmed as the central nervous system of the nation, and re-expressed its apprehensions regarding CATV...the Commission then completely repudiated its own guidelines in the April 10 announcement by saying that "Although some measure of direction [given by the CRTC in regard to the amount and speed of cable growth] may be inevitable, the Commission is of the opinion that it would be much better for the viewers and for the Canadian broadcasting system if restrictive measures could be avoided."

With this, the Commission stated its over-all CATV philosophy as attempting: "to develop a policy which would integrate cable television into the Canadian broadcasting system, avoid disrupting the system, enhance the capacity of the system to produce programs, and finally permit a vigorous development of cable television and of the whole Canadian broadcasting system."⁷

The document specifically stated that it was outlining "...for public discussion various possible solutions for the further integration of cable television into the Canadian broadcasting system to permit a vigorous development of the whole system."⁸

The policy paper, entitled Canadian Broadcasting, "A Single System" Policy Statement on Cable Television, was the fifth announcement and was issued on July 16, 1971. It was the first official CRTC policy statement on cable

⁷Ibid., pp. 349-50, quotes from CRTC, Integration Paper, pp. 6-7.

⁸Ibid., p. 1.

broadcasting and took precedence over all past announcements.

In the time between the issue of each announcement, the Commission held public hearings and invited participation in the form of briefs and oral presentations concerning alternative attitudes and proposals about cable policy. At each hearing the Commission received both the pros and cons, and numerous suggestions and alterations that should be made to each proposal. A discussion of these viewpoints is beyond the scope of the present work.

What is important here is the different controls the Commission did propose for CATV to safeguard local stations from the negative effects of incoming signals. This chapter now examines under each of the five policy areas the changing proposals made by the Commission in the various announcements to deal with the "negative" aspects of CATV.

Station Priority

A major advantage of CATV has been its ability to receive and transmit more stations than any other means of television reception. Cable operators were allowed to bring in any television signals they could receive off-the-air provided they did not remove anything from these signals. "The systems simply relayed faithfully what they were authorized to receive."⁹ This rule, as was the 10 mile limita-

⁹CRTC, Cable Television, p. 8.

tion on head-ends, originated with the Department of Transport and ensured that subscribers received the available Canadian stations picked up by CATV.

In areas where the distance between CATV systems and television signals was close subscribers received a wide choice of available stations. These signals, both Canadian and American, were transmitted on the Very High Frequency (VHF) spectrum. Television viewers and CATV subscribers received these stations on the VHF dial selector of the TV set. The VHF dial was capable of accommodating a total of twelve channels. Originally, there was enough room on the dial for Canadian stations as well as any American ones that cable provided and still have channels vacant. Both Canadian and American stations were shown without considering one more important than the other.

With population increasing along both sides of the international border the number of television stations on either side was also increasing. For example, in the Toronto area viewers with an antenna could receive eight stations--two Canadian network stations (CBC and CTV) which originated in Toronto, one station each from Kitchener, Barrie and Hamilton and three commercial American stations from Buffalo, N.Y. Two additional stations could easily be picked up by CATV from either Canadian or American sources. Cable viewers would then have a maximum of ten channels occupied on the twelve channel VHF dial.

The reason for the lesser number of channels avail-

able for use on cable than the twelve possible when using an antenna is that signals of stations in the same city as the CATV system must be placed on a different channel for CATV viewers due to signal interference. For example, in Toronto channel 9 is on channel 8 of a cable system, channel 9 is not used as the viewing station because it would get two signals at slightly different time intervals one directly from the station and one from the CATV system, thereby causing a reception problem. Thus channel 9 frequency is adapted to channel 8 by the CATV operator. With two VHF stations in Toronto "impaired" on CATV only 10 of the 12 channels could be used for providing stations.

Besides signals available on VHF, stations can also be broadcast on the Ultra High Frequency (UHF) dial. This frequency carries channels 14 to 83 on its own dial selector. Under ordinary circumstances to receive these stations a special UHF antenna and dial selector is required. Cable systems, however, use only the VHF dial with its maximum 12 channel capacity. The UHF band is not utilized due to complex technical adjustments that would have to be implemented. It is a relatively simple technical adjustment though to convert a UHF frequency for availability on a VHF channel.¹⁰

¹⁰Correspondence with D. G. Robinson, Head, Cable TV Development Division, Planning and Development Branch, CRTC, December 17, 1974. One of the first stations to be converted on Canadian CATV was WNED, channel 17, Buffalo, N.Y.. The first Canadian UHF station converted to the VHF dial was the Ontario educational station, channel 19, referred to here as CICA.

With the increasing number of stations and the CATV operator placing UHF stations on the VHF dial, it became clear that the number of stations would eventually outnumber available channels on TV sets using cable. Cable operators would not be able to transmit all the available signals due to limited channel space and thus would have to decide which stations they were to provide on the VHF dial. The element of choice for the operator was left open and there was no regulation whether the transmission priority should be Canadian or American.

If operators were to decide which stations to keep they would have to consider that cable was popular not just because of better reception but because it brought in distant American stations and program choice for the viewer. If Canadian stations alone were desired, merely disconnecting the CATV service and using an antenna would achieve this end. Subscribers, however, were willing to pay a monthly fee for CATV to get American signals. Thus, the increasing number of stations becoming available could result in a Canadian station being dropped from the subscribers' service. To ensure that Canadian stations would continue to have channel space on the cable dial the CRTC announced in its Public Announcement of May 13, 1969 that these stations would have priority on CATV.

In this first guideline, the Commission presented the "television program services" CATV had to carry when

"technically"¹¹ possible:

- i) CBC French and English networks
- ii) private Canadian networks
- iii) independent Canadian TV stations
- iv) local and educational programming
- v) non-Canadian television stations
- vi) duplicate channels.¹²

While no cable company in any area had to drop American stations to comply with this guideline list, the possibility could arise that American stations might not get a channel if there were enough Canadian stations to fill the VHF dial. The list ensured that Canadian stations¹³ were given preference and thus protected them from being outnumbered by American stations. By placing American stations low on the list of priorities the Commission implied that U.S. stations were of secondary importance and could be omitted if necessary.

The Public Announcement of April 10, 1970 contained

¹¹ "Technical feasibility means a pick up off-the-air by an antenna. It would not for example, require a Toronto cable system to import the CBC's French network television signal from Ottawa even though this is technically possible by use of microwave feed." Leslie Millin, "CRTC gives cable-TV companies clearance to operate as monopolies in specified areas," The Globe and Mail, May 15, 1969, p. 1.

¹² CRTC, Public Announcement: May, 1969.

¹³ The CRTC made no distinction of stations transmitted on either VHF or UHF channels. This meant that a UHF Canadian station was expected to be placed on the VHF dial of CATV. This would not only increase the number of Canadian stations on VHF, but, in the future would raise questions and debates as to which American stations should be dropped so as to make room for new Canadian stations on cable, see Chapter V.

a revised priority list of television stations. This new list, would "...be used by the Commission as a basis for determining the channels to be carried by a system proposing a local head-end or distant head-end connected to the distribution cable by a broadband system..."¹⁴ Some stations, presumably American ones, might not be permitted if in the Commission's view granting any of these stations might "prevent the extension of television service into an area, seriously inhibit local televising programming or cause the financial failure of a broadcasting station serving the area."¹⁵

This amended list was more specific as to what stations could be carried. In this listing Canadian stations were again given first priority while the American stations for the first time were now being limited in number. The priority list included:

- a) CBC network service
- b) Canadian private network service
- c) Canadian B contour TV stations¹⁶
- d) A channel for community programs
- e) The Commission may require reception from additional Canadian stations which have significantly different program schedule categories (a) to (c)

¹⁴The use of a broadband system meant the CRTC was sanctioning the transmitting of U.S. signals by microwave. The issue of microwave is the next policy area to be discussed.

¹⁵CRTC, Public Announcement: April, 1970.

¹⁶Grade A contour stations are local stations and Grade B contour stations are regional stations. CRTC, Policy Statement 1971, pp. 14-15.

- f) Service from ONE non-Canadian commercial station
- g) Service from ONE non-Canadian non-commercial station, ...¹⁷

As before, the CBC and private Canadian network were given top preference. Instead of specifying that both CBC French and English services be provided the Commission now simply stated that CBC service had to be broadcast. The language of transmission was optional but the guideline did note that "...where the population composition of any licensed area requires it an additional local program channel must be devoted to programs in the other language unless otherwise authorized by the Commission."¹⁸ A channel for community programming (cablecast) was now listed separately. Elsewhere in the Announcement the Commission stated that one channel had to be set aside for an educational station. Only after all these stations were assured of having a place on CATV was mention made of the U.S. stations.

The original list of May 1969 had allowed any number of non-Canadian stations to be shown once Canadian priorities were fulfilled. Now the number and type of such stations were restricted to one commercial and one non-commercial station. The number of incoming U.S. stations was limited in areas which were being permitted to receive U.S. stations by microwave facilities for the first time.

¹⁷CRTC, Public Announcement: April, 1970.

¹⁸Ibid.

Theoretically this limitation applied to areas within range of American signals. The Commission said it would authorize CATV systems "...operating with a local head-end to carry programs from more than one non-Canadian commercial station."¹⁹ The Commission faced the reality of the available U.S. stations in border areas, and that it would be impractical if not impossible to attempt to limit CATV subscribers to one or two U.S. stations.²⁰

With the presentation of the fourth document the Commission indicated its willingness to modify the previous priority lists. At the time, many CATV systems could not carry all the available stations using the standard VHF channels. The Commission felt "the use of these channels must be balanced between maximizing cable revenue and fulfilling obligations to the Canadian broadcasting system" while acknowledging a compelling feature for subscribers was "the programming from distant stations...."²¹ Simply stated, this meant the Commission faced the problem of ways to accommodate the increasing number of priority stations on the VHF dial without displacing U.S. stations already being provided. To solve this situation the Commission was willing to consider the technical possibility of stations sharing channels; using impaired channels; or accommodat-

¹⁹Ibid.

²⁰See n37 this chapter.

²¹CRTC, Integration Paper, p. 16.

ing extra channels on the expanded channel service of a converter. These suggestions point out that while the Commission wanted to ensure the availability of Canadian stations it was not prepared to have American stations displaced, nor was it prepared to face possible opposition to its priority listing if U.S. stations were removed. The CRTC was aware of the inadequacy of its April listing.

The Policy Statement presented the basic television services that CATV should provide. The list emphasized Canadian stations as the major priority on CATV and only briefly noted reference to U.S. stations. The basic service included:

1. All Canadian television stations whose official Grade A contour encloses any part of the licensed area of the cable television system....
2. All Canadian television stations whose official Grade B contour encloses any part of the licensed area of the cable television system unless it is a private affiliate forming part of the same Canadian network as a local station....

If a station owned and operated by CBC providing the full national service is not included in priority 1 or 2 and is available, it must be carried.

3. Any Canadian station whose official Grade B contour does not enclose any part of the cable television system licensed areas which is not affiliated to the same Canadian network as a local or regional station and where reception is economically practical and technically feasible....

There may be cases where in the opinion of the Commission the carriage of a distant station is not in the public interest. In

such cases carriage will not be approved.

Stations not included in the list are optional stations and may be carried if all basic services are provided for.²²

These "optional stations" were American which the CRTC termed as "...stations not licensed to serve Canada, but whose signals spill over into Canada."²³ Unlike the April guideline which attempted to limit the number of U.S. stations allowed into an area this listing was vague as to the number permitted. The initial impression from the list is that once Canadian stations were accommodated any remaining channels could be utilized for U.S. stations. This is only partially accurate. In fact, the Commission stated elsewhere in the Statement that those CATV systems using microwave could bring in only three American commercial stations (no reference was made to non-commercial signals). The Commission reserved the right to limit authorization to fewer if it considered that local television service would otherwise be jeopardized.²⁴ Only in areas close to the border could CATV provide as many U.S. stations as there was room available. Further, because of the scarcity of channel capacity on cable systems in these areas, approval was given to sharing channels, using impaired channels, and the converter service.²⁵ All these actions effectively en-

²²Notwithstanding these priorities, channel capacity also had to be available for an educational station and cablecast. CRTC, Policy Statement 1971, pp. 14-15.

²³Ibid., p. 31.

²⁴Ibid., p. 33.

²⁵Ibid., p. 34.

ured for the first time since the May 1969 guideline that U.S. stations were to be on cable in spite of priority to Canadian stations on the VHF dial.

The Commission in each of its statements, emphasized the priority of Canadian stations to ensure their availability on CATV while at the same time downplaying, at least in the priority listing, reference to American stations. In the May announcement all non-Canadian stations were included in the listing. The April guideline for the first time put a limit of one on the number of U.S. stations that could be received. By the Policy Statement the Commission considered such stations to be optional.

While there was the appearance of de-emphasizing and limiting American stations the Commission, in fact, assured their continued availability. In the April guideline, CATV systems already receiving American stations were exempt from the restriction of one U.S. station. By the Integration Paper the Commission realized that an increase in the number of Canadian stations might threaten the displacement of U.S. stations from the VHF dial. As a result, in the Policy Statement the Commission approved the implementation of technical devices and alteration of signals to ensure that American stations were not dropped completely from CATV. Overall, in the attempt to make available all Canadian stations on the CATV dial the Commission ensured the availability of American signals. The Commission had become aware that the protection of Canadian stations could not be made

by limiting popular U.S. signals. With the Integration Paper and the Policy Statement there was the realization that Canadian stations could be assured of their place on the dial without loss of American stations.

Microwave

Microwave is a transmission process that extends the range of television signals beyond the station's transmitting coverage area into remote places inaccessible by other means.²⁶ The Department of Transport by its rules prohibiting "...more than one microwave relay hop from head-end receiver to connect with the cable system..."²⁷ and limiting CATV head-ends to 10 miles of their service areas effectively prevented the use of microwave to bring distant stations into areas that were not available by off-the-air reception.

In the initial CATV areas there was no need for the use of microwave. The CATV operator simply erected, within the Department's limit, a sophisticated and strategically located antenna to provide difficult to receive stations to viewers located on the fringe of the transmitting signal. London, Ontario, was one of the first areas to offer such service. Due to the city's geographical position the

²⁶Patrick Scott, "Cable TV operators are worried," The Toronto Daily Star, October 16, p. 30.

²⁷Senate Committee, Mass Media, p. 359.

nearest television signals came from Cleveland, Ohio,²⁸ but was beyond the reach of existing television antenna because of the area's low terrain. In 1952, a London resident built a special antenna to bring in such distant signals. From an initial beginning of 15 households cable has expanded and grown so that it now reaches over 82% of the London area households.²⁹ Today London cable services offer stations from within the area of Toronto, Detroit and Cleveland.

In contrast to London where the popularity of cable was based on the desire to receive at least some stations, the Toronto area viewer already had local television service but "still wanted the cable because of the larger variety of signals it would bring."³⁰ CATV was popular as it offered more available American stations and with better reception than could be received by an antenna.

The geographical location of London and Toronto allowed CATV systems to provide U.S. signals on cable without placing their antenna outside the Department of Transport's limits. However, this ruling meant that such cities as Kamloops, British Columbia; Edmonton, Alberta; Saskatoon, Saskatchewan; and Sudbury, Ontario received no distant stations due to the fact that signals, outside of the local stations, were not strong enough to reach them.

²⁸CRTC, Cable Television, p. 4.

²⁹Ibid.

³⁰Ibid., p. 1.

The use of more than one microwave relay hop necessary to bring American signals to these cities was prohibited.³¹ This meant that broadcasters "...many miles away from the nearest American stations...enjoyed a substantial degree of protection from cable television....Since...microwave has been the only economic method of relaying signals over long distances, the policy has effectively prevented the importation of American signals...into many communities."³²

In 1968 it became the CRTC's responsibility to decide whether microwave would be used in the Canadian cable broadcasting system. The possible extension of microwave transmission raised several questions for the Commission, the most important being the effect it could have on the local television service. There was also the question of whether an area could support outside stations not originally allotted for an area. Canadian stations in large urban areas were thought to be better able to withstand the economic effects of cable competition from U.S. stations. In less populated areas, the permitting of U.S. signals via microwave was thought to impede the establishment of additional Canadian stations and have serious economic consequences for stations already in operation.³³ Besides

³¹"Cable television vetoed," The Edmonton Journal, December 4, 1969.

³²Senate Committee, Mass Media, pp. 381-2.

³³Donald Newman, "Cable TV feed from US vetoed," The Globe and Mail, December 4, 1969. p. 1.

economic considerations there was the basic question of whether Canadians geographically distant from other stations should have these stations available to them. Those people living in such areas questioned whether they did not have the same right to receive American stations already provided on cable to others closer to U.S. signals.

No specific proposal or guideline was made about microwave in the CRTC's May 13, 1969 announcement. It only noted that the Commission was "developing its policy on application for a cable system obtaining its signal from a microwave feed."³⁴ In the meantime, the Transport Department's ruling was still applicable.

The Commission appeared to take a position on microwave in the December 3, 1969 Public Announcement. Specifically the guideline said

the fact that through force of circumstances many U.S. stations now cover parts of Canada, and that some of them seem to have been established mainly to reach Canadian audiences does not justify a decision of the Commission which would further accelerate this process.

In consequence the Commission will not licence broadcasting receiving undertakings (CATV) based on the use of microwave or other technical systems, for the wholesale importation of programs from distant U.S. stations and thereby the enlargement of the Canadian audience and market areas of U.S. networks or stations....

In conclusion, the Commission is convinced

³⁴Leslie Millin, "CRTC gives cable TV companies clearance to operate as monopolies in specified areas," The Globe and Mail, May 15, 1969, p. 1.

that acceleration of the present trend of extending coverage of U.S. networks and stations in Canada and importing programs wholesale from the U.S. networks and stations by using microwave or other techniques will, in a relatively short time, risk disrupting the Canadian broadcasting system as established by the Broadcasting Act of 1968 and as developed in Canada since the Aird Report of 1929 and the Broadcasting Act of 1932.³⁵

The Commission did not define "wholesale importation" but CATV operators, newspapers and the public interpreted this to mean the transmitting of U.S. signals into areas previously without them. Since this interpretation was not denied the statement meant there was a ban on the use of microwave to bring in U.S. stations.

To support this ban the Commission presented figures indicating the increase viewing of U.S. stations by cable subscribers. In Vancouver, homes not connected to cable spent 38.4% of the television viewing time watching U.S. stations and 61.6% viewing Canadian stations. However, in homes on cable, time spent looking at U.S. stations increased to 54.5% and Canadian viewing declined to 45.5 per cent.³⁶ Across Canada, American stations were available by antenna to 68% of television households but with cable there was a potential of reaching 75 per cent.³⁷ There was

³⁵CRTC, Public Announcement: The Improvement and Development of Canadian Broadcasting and The Extension of U.S. Television Coverage in Canada by CATV, December 3, 1969, hereinafter referred to as Public Announcement: December 3, 1969.

³⁶Newman, The Globe and Mail, December 4, 1969, p. 1.

³⁷Senate Committee, Mass Media, p. 382. The Globe and

no desire by the Commission to increase these figures by using microwave. This meant areas as Calgary and Sudbury would still not receive U.S. stations.

In its announcement the Commission pointed out conflicting alternatives. On the one hand it did not want to penalize any part of the Canadian population "in order to preserve a theory or to protect vested interests...." On the other hand it had "...to decide whether the use of additional techniques should be authorized to enlarge the coverage area of U.S. networks and U.S. stations and therefore their advertising markets in Canada."³⁸ The Commission's decision was to disallow microwave so that the latter possibility could be prevented.

While it appeared that microwave was being prohibited this issue was left open for further consideration by the Commission. The CRTC pointed out that it wanted to give more study to "the most effective way of achieving continuing development of cable broadcasting in Canada in

Mail reported Juneau indicated after the formal announcement that the Commission "...may ultimately ban all transmissions of the complete programming of U.S. stations over cable systems even in areas where there is no need to boost the U.S. signals via microwave hookup." December 4, 1969, p. 1. No further mention or reference to this remark has been found. One assumes this was an unrealistic statement by the Commission considering the repercussions such a veto would have from cable operators and subscribers. Babe states "One would suspect that the CRTC realized that such a regulation was politically impossible...." Cable Industry, p. 348.

³⁸CRTC, Public Announcement: December 3, 1969.

harmony with the rest of broadcasting."³⁹ This development would include regions where cable was not available, such as the interior of British Columbia, parts of the Prairies, Ontario, Quebec and the Atlantic Provinces. It is no coincidence that these were the same areas that were asking for microwave. With this statement the Commission remained open to change its position on microwave.

In fact, the CRTC altered its position in its April 10, 1970 Announcement. The Commission, as noted in the discussion of station priority, allowed CATV systems to provide one non-Canadian commercial and one non-commercial station using "...a distant head-end connected to the distribution by a broadband system."⁴⁰ The use of microwave was therefore permitted on a limited basis to such cities as Edmonton and Saskatoon. Thus the Commission's initial stance was reversed. This change in position was significant because

for the first time since the beginning of cable television around 1950, it was decided as a matter of general policy that microwave or other broadband systems could be used by a cable television system to receive ...non-Canadian stations.⁴¹

The Integration Paper rather than rejecting outright any past guidelines reopened for discussion the entire

³⁹ Ibid.

⁴⁰ CRTC, Public Announcement: April, 1970.

⁴¹ CRTC, Policy Statement, p. 4.

question of regulations in all areas.⁴² The paper presented the basic position of the Commission in relation to the overall problem of the development of cable television.⁴³ It re-emphasized the possible negative effects of American stations via cable on the Canadian broadcasting system noting that the "...unlimited penetration by United States stations on a wholesale south to north basis would completely destroy the licensing logic of the Canadian broadcasting system...."⁴⁴ The impact of these stations could affect the economic basis of private broadcasters and "...disrupt the Canadian cultural, educational and informational imperatives of both the public and private sectors..." of broadcasting.⁴⁵ The Commission presented possible solutions to integrate cable into the overall broadcasting system but did not specifically mention the role of microwave and whether it should be utilized or limited. Even though concern was expressed about the effect of incoming stations no change on the allowance of microwave was made.

With the Policy Statement microwave's place in cable broadcasting was established. In this announcement the Commission moved further from its original proposal of the December statement and expanded on the April guideline. The Commission said it would:

⁴²The Toronto Daily Star, February 27, 1971, p. 59.

⁴³CRTC, Integration Paper, p. 1.

⁴⁴Ibid., p. 6.

⁴⁵Ibid.

...authorize cable television systems to carry distant stations using microwave or other electronic communications system which technically extends the receiving system....

However, the number of channels carrying signals from commercial stations not licensed by the Commission which are received using microwave will generally be limited to three. The Commission may limit authorization to fewer of these signals if it considers that local television service would otherwise be jeopardized.⁴⁶

The utilization of microwave was now considered as one of several possible means to strengthen and develop CATV. This was completely opposite to the Commission's December 1969 views. In approving microwave the Commission acknowledged that the public wanted distant stations and wider choice of programming available through cable broadcasting.⁴⁷

In sum, the Commission gradually reversed a long standing policy on microwave. Originally, the CRTC followed past policy and refused the wholesale importation of U.S. signals for fear of upsetting the logic of local service licensing. The next year it accepted limited use of microwave and allowed distant stations into new areas. Finally, Commission policy allowed a maximum of three non-Canadian stations to be transmitted via microwave. Thus, the Commission slowly reversed its position in the three years it examined the use of microwave in the Canadian

⁴⁶CRTC, Policy Statement 1971, p. 33.

⁴⁷Ibid.

broadcasting system. The Commission was now allowing broadcasting signals to be technically extended beyond their transmitting range.

Program Deletion and Substitution

American programs, by agreement with U.S. networks, were usually seen on Canadian television before being aired in the U.S. This was done to attract the audience to the pre-released version on Canadian stations. However, this arrangement allowed Canadians who received American stations a choice of watching the same program on two different occasions. If a U.S. program on a Canadian station conflicted with another program that the viewer wished to watch at the same time, he knew he could view the U.S. program later on the American channel. While this offered greater program choice to the viewer it created a problem for the Canadian broadcasting station that presented the U.S. program. This choice draws part of a potential audience⁴⁸ away from the Canadian station and causes audience fragmentation. Fragmentation also occurs if both stations have the same program on at the same time and some viewers watch the U.S. channel. "Cable television threatens the viability of local television stations when it fragments or reduces the size of their audience by introducing a

⁴⁸Not all viewers watch the same program, yet, all viewers are part of a potential audience that may watch a particular program.

multiplicity of programming choices from distant stations, both Canadian and U.S."⁴⁹ As a result of programs being available on two channels the Canadian station was not sure of getting the largest potential audience since part of that audience would watch U.S. station's broadcast.

Since the number of viewers watching a program is financially important for a station, audience fragmentation is considered a problem for broadcasters. "In order to obtain the amount of advertising revenue necessary to survive, a television station must be able to have audiences of dimensions worthwhile to advertisers."⁵⁰ Having a program available on two stations lessens the Canadian broadcasters's potential financial return. But, if the program is presented once this could increase that station's audience and advertising revenue.

Segments of signals a CATV system picks up can be omitted so that the viewer does not receive them. Past regulatory bodies prohibited any such removal from CATV. The CRTC in its first announcement endorsed this ruling stating "there shall be no alteration of the programming received from broadcasting stations unless specified or approved by the Commission or unless required by law."⁵¹

By April 1970, the Commission realized the problems

⁴⁹CRTC, Integration Paper, p. 9.

⁵⁰Ibid.

⁵¹CRTC, Public Announcement: May, 1969.

created by program duplication and proposed that

...non-Canadian programs broadcast by Canadian broadcasting stations serving the area shall not be duplicated on a CATV system simultaneously or during the week prior to and the week subsequent to the date of airing on the Canadian stations unless specifically authorized by the Commission.⁵²

This guideline meant that Canadian cable operators would have to blackout programs on American stations if the program was shown a week before or after on a Canadian station. Blacking out the program would "...reduce the effect on the local station of competition from distant stations... [and] maintain the [station's] exclusive right to provide the program to its service area which would have been paid for by the local station...."⁵³ In effect, this meant that cable operators were no longer to transmit what they received. Rather they were to omit by technical adjustments signals containing U.S. programs.

The Commission's initial proposal to blackout these programs completely on the U.S. stations was revised in the Integration Paper because of objections to the proposal's effects. The deletion of programs on U.S. stations "... would remove the cable subscriber's ability to see the program at different times."⁵⁴ During blackouts of programs

⁵² CRTC, Public Announcement April, 1970:

⁵³ CRTC, Integration Paper, p. 17.

⁵⁴ Ibid:

there would actually be periodic blank channels creating inconvenience for the subscriber. Instead, it was suggested that local stations provide their version of the program, (that is, the Canadian transmission of the American program with the local station's advertisements) on the U.S. station during any of the duplicated periods. A modified suggestion was that the cable system carry "...on all channels involved, the local station's version of any program duplicated simultaneously by a distant station or stations."⁵⁵ Under these proposals

the local station would maintain its exclusivity with no loss to the subscriber. Since the program is the same, the viewer's choice is in no way reduced, but the local station's economic position is considerably strengthened....Carrying the local station's signal on all ...channels...would restore the proper relationship of the...Canadian stations in the local areas...[and] would reduce the problem of spill-over advertising.⁵⁶

As with the blackout proposal, this suggestion of deleting the U.S. program and substituting the Canadian version would still require the CATV systems to technically adjust signals to meet the Commission's objectives.

In the Policy Statement the Commission presented basically the same proposals, with some minor changes:

When an identical program or program schedule is carried on a cable television system on more than one channel during the same time

⁵⁵ Ibid.

⁵⁶ Ibid.

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period, the station having higher priority may require the cable television system to delete the transmission of any lower priority or optional station during that period.⁵⁷

Once the program is deleted the CATV operator could choose to insert the program of the higher priority station on the channel being blacked out.⁵⁸ Contrary to the April guideline the cable operator did not have to delete duplicate American programs from the U.S. stations shown at a different time unless requested by the highest priority stations. The requesting station, however, must supply the CATV operator with the Canadian version so that it may be shown on the U.S. station. The broadcaster, not the CATV operator, "must bear all costs associated with this...non-simultaneous substitution."⁵⁹

Overall, the Commission made alterations to its original guideline while still preventing some audience fragmentation. Cable systems no longer had to provide blackout service on U.S. stations one week before or after of programs shown on Canadian stations. Now, the Canadian version would be shown on the U.S. station during non-simultaneous duplication at request and expense of the broadcaster. If, however, the broadcaster aired his version of the program at the same time as in the U.S. he could get the Canadian version on the U.S. station, and at the expense

⁵⁷CRTC, Policy Statement 1971, p. 27.

⁵⁸Ibid.

⁵⁹Ibid., p. 28.

of CATV operators. In any case, the onus to prevent audience fragmentation was divided between the CATV operator and television broadcaster.

For the viewer the change the Commission made from program blackout to substitution meant the convenient continuation of all American programs on U.S. stations. Thus while program substitution was to curtail unnecessary and costly audience fragmentation it was also to placate inconvenience to viewers.

Commercial Deletion

Advertisements televised on U.S. stations and available to Canadian viewers have been termed by the Commission as "commercial spill-over". For many years companies in Canada have taken advantage of this situation and have spent an estimated \$14 million dollars annually in advertising on U.S. stations to reach their Canadian market.⁶⁰ This method the CRTC believed diverted advertising revenue from local stations to unlicensed border stations. Moreover, the incentive to advertise on U.S. stations would continue as cable television made U.S. stations readily available to an increasing number of viewers. Worried about the effect this entire situation might have towards advertising on Canadian stations and the revenue already being lost, the Commission in its April 1970 Public Announcement warned CATV applicants

⁶⁰CRTC, Integration Paper, p. 5.

...that if a TV station solicits Canadian advertising outside of his market or licensed area so as to disrupt the economic balance established by normal licensing practice, the Commission may refuse to authorize the distribution of its programs by a CATV system.⁶¹

By threatening the removal of U.S. stations this guideline was aimed at discouraging the continuation of Canadian advertising on border stations.

By February 1971, the Commission further elaborated on the effects of commercial spill-over. Not only were messages by Canadian companies seen as a threat to diminishing revenue for local stations, but so were advertisements from international companies. The Commission reasoned that if these companies advertising on both a Canadian and American station realized a large percentage of Canadians were sufficiently exposed to their products by viewing American stations, they "...may withdraw completely...from the local station..."⁶² or "...reduce their expenditures on Canadian stations accordingly."⁶³ The Commission was also worried about the loss of advertising from companies who received a "free ride" when their U.S. parent company advertised on border stations viewed by Canadians. The entire situation was such that the Commission noted:

When we consider...the kind of advertising most

⁶¹ CRTC, Public Announcement: April, 1970.

⁶² CRTC, Cable Television, p. 32.

⁶³ CRTC, Integration Paper, p. 10.

likely to be lost this way is the financial backbone of the system--the major international advertising of very large manufacturing companies--we can see that the loss may be major and perhaps fatal to the system.⁶⁴

Since 75% of television advertising revenue in Canada came from these companies the Commission was anxious to prevent any such loss of this revenue.

The Integration Paper presented several alternatives "to eliminate the problem of commercial spill-over" through CATV. These proposals were:

- a) "...to require all cable operators to remove the commercials from U.S. television signals."
- b) "...commercial deletion be optional [allowing]...cable operators to obtain revenue by charging advertisers for carriage on the system."
- c) "...commercials on U.S. stations be replaced by new Canadian ones, either by the cable operators or local broadcasters."⁶⁵

As with the other policy areas, to implement any of these suggestions the cable operator would have to make technical adjustments to remove and replace commercials.

The Commission stated in the Policy Statement that commercials "...contained in the signals not licensed to serve Canada..." would be removed.⁶⁶ In place of the

⁶⁴CRTC, Cable Television, p. 32.

⁶⁵CRTC, Integration Paper, pp. 17-18.

⁶⁶CRTC, Policy Statement 1971, p. 28.

deleted commercials CATV operators were "...encouraged to make contractual arrangements with Canadian television stations in their areas to insert replacement signals carrying commercial messages sold by the Canadian television stations."⁶⁷ The Commission expected both CATV operators and broadcasting licensees to take this opportunity to assist together in strengthening the broadcasting system. If this did not happen the Commission said it would consider further action.⁶⁸

With the policy of commercial deletion, as with program substitution and deletion, the requirement of not altering signals was discarded. In both policy areas the Commission had come to the conclusion that the rule of not altering signals was a hinderance to restoring the logic of local licences and "...disrupts the ability of Canadian television stations to fulfil their mandate."⁶⁹

In comparison to the April proposal the Policy Statement dealt directly with the spill-over of commercials from U.S. border stations. Instead of threatening CATV systems with the removal of U.S. stations the Commission ruled on deleting only the advertising and permitting the program content. This would prevent any possible protest from subscribers who might have been without U.S. stations had the original proposals been put into effect. Moreover, any advantage that advertisers might have had in reaching

⁶⁷ Ibid.

⁶⁸ Ibid., p. 29.

⁶⁹ Ibid., p. 26.

Canadians through commercials on U.S. stations was discontinued. Any fears that companies might drop their advertising on Canadian stations because of sufficient exposure on border stations was also eliminated.

To discourage further Canadian advertising on American stations the Commission suggested amending section 12a of the Income Tax Act. This section allowed companies advertising on either Canadian or U.S. stations to deduct advertising as an expense from their taxable income. The Commission suggested Ottawa amend this section so that Canadian advertisers on U.S. stations would be prohibited from claiming such advertising as a business expense. This would mean that the 15 to 20 million dollars spent for advertisements on U.S. stations would not be deductible from income of companies located in Canada and therefore taxable. Such a proposal the Commission hoped would discourage advertising "...on stations not licensed by the Commission."⁷⁰ The need for commercial deletion would still be required though since subsidiaries of U.S. companies could circumvent this design by continuing to receive a "free ride" on their parent's advertising. The paper will later discuss whether this proposal, or commercial deletion itself, has been implemented, and, if so to what extent.

Compensation to Broadcasters

The bringing in of distant stations by cable broad-

⁷⁰Ibid., p. 29.

casting has been seen by the CRTC as having negative effects on local broadcasters by fragmenting audiences, lessening the value of programs and reducing the revenue of the television broadcaster "...licensed to provide programs to a community or area."⁷¹ The above four policy areas of the Commission attempt to deal with these negative effects by regulating what a CATV operator provides to subscribers. However, neither these different policies nor cable operators compensate broadcasters for the effects caused by incoming stations. Moreover, CATV depends in part on Canadian television programs for its existence yet has never compensated broadcasters for using their programs.⁷² The Commission believed

as cable television grows and continues to diminish the value of programs, the ability of the industry to supply programs will be curtailed. Theoretically, then even cable television cannot survive, except by relying on the supply of programs from the most powerful sources, which of course will be American.⁷³

In an attempt to find some further solution besides the above policies and to integrate cable so that it would contribute rather than negate the development of broadcasting, the Commission, in the Integration Paper presented several possibilities for discussion.

Each of these alternatives dealt with some form of

⁷¹CRTC, Integration Paper, p. 10.

⁷²Ibid., pp. 10-11.

⁷³Ibid., p. 11.

financial compensation to broadcasters. No attempt is made here to detail the different methods or to give the complete pros and cons of each. These proposals are of interest only as they are in keeping with the Commission's attempt to deal with the effects of distant stations on local broadcasters.

One suggestion was that local stations and CATV systems be under common ownership "...as a solution to the problem of fragmentation."⁷⁴ This suggestion would allow revenue from cable subscribers "...to compensate for the cost of television programs and the diminishing returns from television broadcasting."⁷⁵ However, such ownership would tend "...to limit rather than broaden the number of participants in the Canadian broadcasting system."⁷⁶ In addition, emphasis might be placed on increasing cable profits instead of program production.

Instead of common ownership a second alternative was a mutual agreement between cable and television licensee. "Some form of compensation might be paid by cable television for diminishing the revenue potential of Canadian programming."⁷⁷ Several methods of implementing this second type of compensation were suggested. One was "...a transfer of a percentage of a cable system's gross revenue to television." A second was "...a surcharge [collected by the cable operator] per subscriber per non-Canadian channel

⁷⁴Ibid.

⁷⁶Ibid., p. 12.

⁷⁵Ibid.

⁷⁷Ibid.

either on a flat fee or percentage of subscriber rate...."⁷⁸

A third and more accurate suggestion similar to the first would be to give a percentage of gross revenue but based on "...revenue per mile of cable system and the number of non-Canadian commercial stations carried."⁷⁹

The Commission realized that the collection of money had to be efficient so as not to encounter high administration costs which might offset any payments received. Furthermore, the Commission questioned how to distribute equitably the funds so as to be most efficient in producing more programming. It wondered whether funds should be distributed individually to each broadcaster, or to the broadcaster's affiliated network. The CRTC was aware

the money raised and distributed may not be sufficient to adequately promote the production of Canadian programs when divided amongst the many stations. It may be advantageous to apportion any payment between the station involved and the network to which it is affiliated. It is generally felt that the networks could utilize funds more effectively in program development since they provide most of the prime programs of the stations.⁸⁰

If the money did go to networks the Commission questioned whether or not it should be distributed equally among the "...CBC owned and operated stations, CBC network affiliates and the affiliates of the private networks."⁸¹ Whatever method was decided the Commission believed any payment

⁷⁸Ibid., p. 13. ⁷⁹Ibid.

⁸⁰Ibid., p. 14.

⁸¹Ibid.

received from cable systems should have two objectives. One would be that the payment "...compensate the broadcasters for their loss of revenue due to penetration of cable television." The second would be "...to maintain, encourage and develop Canadian programming resources."⁸²

A third alternative in acquiring compensation was for a cable system to obtain authorization for carriage of a station. Cable operators would have a list of priority Canadian stations they would be required to carry before they could add any others. They would have to negotiate with each broadcaster for the right to carry his station and the authorization to do so would be sent to the Commission for approval. This proposal for compensation was seen as simple to administer and would "...avoid the need for the Commission or the industry acting jointly to determine a standard formula for achieving equity and still ensure that a share of cable subscription revenues would go toward broadcasting costs."⁸³

These then are the three forms of compensation discussed in the Integration Paper. In each, the Commission saw CATV payments going to broadcasters as compensation, not only for CATV lessening the value of Canadian programming and ad revenue, but, also for the cost of programs on Canadian television. Thus, any of these proposals would

⁸²Ibid., pp. 13-14.

⁸³Ibid., p. 14.

have CATV operators and ultimately their subscribers paying broadcasters for the loss of viewers to imported American channels.⁸⁴ Conversely, subscribers would have to pay extra for watching American stations.

In the Policy Statement the Commission again suggested CATV systems give broadcasters some financial payment. The main reason for this belief now, however, was not based on the idea that cable television should pay⁸⁵ (read compensate) broadcasters for the damage to television stations. Rather, the Commission believed there was a more fundamental consideration,⁸⁶ that is "...one should pay for what he uses to operate his business."⁸⁷ The CRTC reasoned that cable operators are dependent on television stations and their programs for cable's survival but, the same cannot be said for broadcasters in relation to CATV systems. The CRTC also discounted the cable industry's argument that subscribers are simply buying sophisticated antenna service; rather, they are buying programs.⁸⁸

The Commission viewed cable as being dependent on the broadcaster for providing programs, developing an attractive programming schedule, and promoting these programs. Further, broadcasters process the programs into transmitting frequencies and distribute them. In receiving

⁸⁴The (Vancouver) Sun, February 27, 1971. p. 33.

⁸⁵CRTC, Policy Statement 1971, p. 20.

⁸⁶Ibid.

⁸⁷Ibid., p. 21.

⁸⁸Ibid., p. 20.

these signals the cable operator does very little before relaying the signals to subscribers. For these reasons the Commission believed that CATV should pay "...for services rendered and for use made...."⁸⁹ of these programs.

In the Policy Statement the Commission did not discuss payments as a form of compensation as it did in the Integration Paper, but rather, as payment for what was being used. The Commission saw its task as relating

...the fundamental philosophical idea of payment for services rendered and for use made, with the pragmatic realization that, without this payment, in the long run the very stations on which the cable systems depend may no longer be able to provide them those many services.⁹⁰

CATV payments were supposed to help strengthen broadcasting, by helping broadcasters fulfil the need for Canadian programs.⁹¹

The method of payment was left to the broadcaster and cable operator. The commission expected both parties to arrive at an agreeable solution but it made a detailed suggestion in the Policy Statement similar to one noted in the Integration Paper. Simplified, the CRTC's proposal would require CATV operators to pay "...through a formula based on the number of miles of cable in each system. This would allow payments to rise in relation to revenue without

⁸⁹ Ibid., p. 21:

⁹⁰ Ibid.

⁹¹ Ibid.

threatening smaller systems.⁹² This formula would involve paying in accordance to the programs transmitted or received from local stations.⁹³

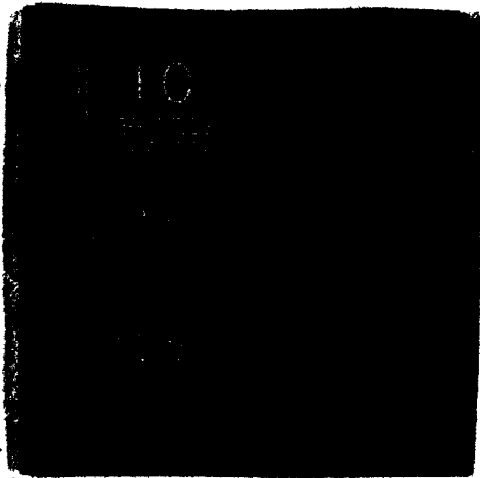
Whatever proposal is eventually implemented the Commission believes that total payment could reach several million dollars within a few years. Whether such payment is sufficient to help individual broadcasters or not, and whether, in fact, any payment has been made by cable firms will be briefly noted later. What is important here is that in both the Integration Paper and Policy Statement the Commission was determined to get money from CATV systems and their subscribers and give it to broadcasters. However, the reasons for payments changed. In the Integration Paper the CRTC emphasized payments as a need to compensate broadcasters for the negative effect of incoming stations on cable. The Policy Statement thought payments should be made for services rendered. Whether having payments on this basis rather than for compensating broadcasters was a more justifiable reason for any transfer of monies is debatable. While the Policy Statement's justification may be philosophically sound, the fact is that cable's dependence is based on its ability to provide American, rather than Canadian, stations.⁹⁴ Therefore, the justification for payment based

⁹²Michael Smith, "Ottawa board directs cable firms to pay TV stations for programs," The Globe and Mail, July 17, 1971, p. 1.

⁹³Ibid.

⁹⁴Babe, Cable Industry, p. 343.

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on services rendered seems secondary to the Commission's original reasons for compensation. Nevertheless, CATV does indeed make use of local signals. Thus, both reasons for compensation have their own merits so that any justification of payments may have to be made in terms of considering each side.

No matter how justifiable payments may be it is questionable whether they are legally binding on CATV operators, and if so, whether an equitable means could be devised to distribute any monies. The different methods noted here point out there is still no definite agreement on any specific proposal. Until an agreeable scheme is approved by all sides and a sound argument for payments is presented the Commission may find continued opposition to this policy area.

In each of the above five policy areas the incoming American stations on CATV were seen as having some negative effects for local television broadcasting. The Commission's initial guidelines to deal with these incoming stations were simply to restrict what was available via cable so as to protect the Canadian broadcaster. It was not technically difficult for cable operators to comply with providing Canadian stations of both frequencies on the dial and limiting the number of American stations; or to remove programs to prevent audience fragmentation, or

entire stations to discourage commercial spill-over. However, the Commission came to realize that cable was already an entrenched part of the broadcasting system and that restrictive controls were impractical if not politically impossible to implement. In suggesting changes the Commission noted in the Integration Paper the compelling features of cable and the need to develop and integrate cable in the context of the broadcasting system. Simply put, the Commission realized the demand for U.S. stations and the inconvenience of its original proposals to viewers. The CRTC came to understand this "due to political pressure and public resentment:..."⁹⁵ Thus, the interim proposals were replaced with controls that were the complete reversal of the original.

The Commission utilized cable's technical flexibility and innovation to allow the availability of American programming and still safeguard Canadian stations from the negative effects of these incoming stations. This is evident in the first four policy areas. In the area of station priority the initial design was to ensure the availability of Canadian stations and to limit to one (albeit flexible) the number of U.S. stations if necessary. This restriction may have been suitable where microwave was being approved, but, it meant possible displacement of U.S. stations in areas with a heavy concentration of both Canadian and U.S. stations. The result was the accommodation of U.S.

⁹⁵Ibid., p. 351.

stations by other means to prevent their possible loss due to Canadian priorities. On the one hand, the Commission was concerned about U.S. stations affecting Canadian stations, but, on the other hand, it was allowing these stations.

As to microwave, the CRTC restricted the extension of distant stations for fear of their effect on local stations. This ban, however, was completely reversed permitting U.S. stations in a limited number into new regions.

The initial proposal of blackouts to prevent audience fragmentation was also lifted. Instead, the Commission allowed substitution of Canadian signals on U.S. channels. Likewise, the threat of removing U.S. stations to eliminate commercial spill-over was dropped in favour of allowing programming without commercials.

In each of these areas then, the Commission reversed its original proposals to less demanding restrictions therefore allowing the continued availability and extension of U.S. programming. In effect, the Commission was still protecting Canadian broadcasters from incoming signals but without any decrease in the cable services provided.⁹⁶

In the fifth area the Commission reversed its thinking on the reason for having payments. Instead of justifying payments due to the effects of American stations, the

⁹⁶Ibid. p. 356.

Commission based such payments on CATV dependency on local broadcasters.

Thus, in each of the policy areas the ways and means originally suggested to protect Canadian broadcasters were reversed. It now seems appropriate to examine whether or not these policy controls were actually implemented or whether, like the guidelines, they too were altered.

CHAPTER V

THE IMPLEMENTATION OF POLICY CONTROLS

Station Priority

Station priority ensures that Canadian stations, both VHF and UHF, are transmitted by CATV on the VHF dial. These stations plus local programming from CATV systems make up the "basic service" that the Commission believes viewers should receive. The priority regulation has been of little immediate relevance in most communities because there have been enough channels to accommodate all Canadian and American transmitting stations. Often CATV systems provided FM radio stations on any unused channels. Thus, at the time of the Policy Statement CATV operators were easily providing basic as well as "optional" stations to subscribers.

This situation remained unchanged until mid 1972 when several Canadian stations were being established in Toronto where CATV systems were already filled to capacity. Cable systems there were providing on the VHF dial local stations, those of surrounding communities, and incoming

American stations. With any new increase there would be more stations available than places on the dial to accommodate them. Consequently, the priority ruling would affect what stations were to remain on the VHF dial.

The problems encountered with this ruling and the complexities involved in determining priorities for transmission are best illustrated in noting the implementation of this policy. Since there are ten cable systems in Toronto offering similar services, Rogers Cable TV Limited will be used as an example of the effect priority has on the position or place that stations have on the channel dial. In only one instance, as will be noted below, does Rogers react differently from other systems in accommodating CBLFT. Roger initiated what other systems would later follow. Other differences are insignificant and since they in no way alter the ultimate outcome of station priority on the VHF dial no mention will be made of them.

In 1967 Rogers Cable TV offered subscribers ten stations on the ten channels available for use. Two other channels, as noted previously, were without television programs because of local interference. By 1971, with the advent of Ontario's educational station, CICA, and the CRTC's requirement that cable systems originate some of their own local programming (cablecast),¹ subscribers were

¹The purpose of cablecast programming is to provide community oriented programs not available on mass appeal stations. There are to be no commercials on community stations. Most systems usually provide several hours of such programming a day.

receiving 12 stations on 10 channels. These two additional stations were accommodated by the Commission permitting cable operators to put both stations on the same channel.² During the periods that CICA was not broadcasting, the local originations would use the channel. Likewise, since one station (CHEX, a CBC affiliate) duplicated much of the programming already available on CBLT that station was to share the channel used by WNED when it was not broadcasting. This practice of sharing channels allowed stations to use the same channel on a part-time basis with only a minimum, if any, loss of programming. Thus, as of 1971, CATV operators were accommodating additional stations on a dial that was increasingly becoming crowded.

Table 1 shows the stations received by subscribers, their origin, call letters and the channels of Occupancy prior to and after the introduction of CICA and local originations. Of these stations, six are Canadian and four are American from Buffalo, N.Y. including the non-commercial UHF station, WNED.

TABLE 1. CHANNEL OCCUPANCY OF STATIONS PRIOR TO AND AFTER ADDITION OF CICA AND CABLECAST.

<u>CHANNEL</u>	<u>CALL LETTERS</u>	<u>ORIGIN</u>	<u>CHANNEL ADDITIONS</u>
2	WGR	Buffalo	
3	CKVR	Barrie	
4	WBEN	Buffalo	
5	CBLT	Toronto	

²CRTC, Public Announcement: Decision 71-77, February 15, 1971.

6	IMPAIRED		
7	WKBW	Buffalo	
8	CFTO	Toronto	
9	IMPAIRED		
10	WNED	Buffalo	CICA/CABLECAST (part-time)
11	GHCH	Hamilton	
12	CHEX	Peterborough	WNED/CHEX (part-time)
13	CKCO	Kitchener	

By September of 1972 three UHF stations were licensed for the Toronto area and were to be operational as of January 6, 1974. The first of these was CITY (channel 79) due on the air in September 1972; the second was the French CBC station CBLFT (channel 25) due March 1973; the third was the Global Communications network station (channel 22) with a broadcasting date of January 6, 1974. By this date, in addition to these stations there would also be in operation a second UHF Buffalo station WUTV (channel 29). (This station was broadcasting in 1972 but was not on Rogers' service because the dial was already filled.) In 1974 there was a total of 16 Canadian and American stations available on the VHF and UHF frequencies. Table 2 list these:

TABLE 2

<u>FREQUENCY</u>	<u>CHANNEL</u>	<u>CALL LETTERS</u>	<u>ORIGIN</u>
VHF	2	WGR	Buffalo
	3	CKVR	Barrie
	4	WBEN	Buffalo
	5*	IMPAIRED	
	6	CBLT	Toronto
	7	WKBW	Buffalo
	8	CFTO	Toronto
	9	IMPAIRED	
	10	Local Programming (Cablecast)	Toronto
	11	CHCH	Hamilton

	12	CHEX	Peterborough
	13	CKCO	Kitchener
UHF	17	WNED	Buffalo
	19	CICA	Toronto
	22	GLOBAL	Toronto
	25	CBLFT	Toronto
	29	WUTV	Buffalo
	79	CITY	Toronto

*CBLT was formerly on channel 6 (cable 5) and was later re-located on channel 5 (cable 6).

Of these stations eleven are Canadian--six VHF, four UHF plus the cablecast station; five are U.S.--three VHF and two UHF. For these sixteen stations there were only ten channels available on the VHF dial of cable subscribers. Nevertheless, by January of 1974 all sixteen could be available to the cable viewer by implementing different options approved in the Policy Statement. The accommodation of all these stations, however, was not achieved without first relocating and juggling stations around on the dial and eventually dropping some stations from the VHF dial and making them available at an additional cost on the expanded service device known as a converter.

CATV operators and the CRTC worked with four possibilities for accommodating these sixteen stations on the cable service. Briefly, the essence of each option was:

- 1) Drop an American station from the VHF dial to make room for a priority station. Cable firms would avoid this option as long as possible and implement other options until the stations dropped could be available by other means.
- 2) Continue to make some channels available to stations on

a part-time basis. A second station could use the same channel when the station that normally occupies that channel is not broadcasting or would be broadcasting a program duplicated on another channel. This was already permitted with the introduction of CICA.

3) Place a new station which threatens the removal of an American station on a channel that is not normally used due to local interference on the CATV system. Technical adjustments could be made by cable operators to provide the new station on an impaired channel, such as 5 or 9, so that the picture quality would have only a minimum of interference. This procedure was called the "phase-lock technique". This method was to be used temporarily for the French station until the commencement of its transmission signals from the CN tower presently being constructed, or December 31, 1974.³ The station would then be placed on a standard channel thereby displacing an American station. However, by this date cable systems would be using the expanded service of the converter which is the fourth means of accommodating stations.

4) The use of the converter allows U.S. stations to continue to be available. A converter is a push button device connected to the subscriber's television. This device would expand the twelve channel limits of a VHF dial by accommo-

³CRTC, Public Announcement: Carriage of CBLFT and Global Communications, December 21, 1973.

dating from twenty to forty program channels depending on the unit. Complying with priority regulations would then be simple: American stations dropped from the VHF dial to make room for new Canadian stations could be placed on the converter. Duplicate Canadian stations providing nearly the same programming as on other stations could also be removed from the VHF dial and placed on the converter leaving the channel for a non duplicating station. In using this device the subscriber would not have to lose any stations already available, but, would have to pay an additional monthly service charge and installation fee, approved by the CRTC, for this optional service.

The introduction of 'CITY' transmission in September 1972 forced the CATV systems to face the problem of placing a Canadian station on a dial that was already filled. The Commission ordered these systems to put this UHF station on channel 7 so that the station would be on the same channel of each system.⁴ Cable operators, including Rogers, did not wish to drop the American station transmitting on channel 7 and relocated it on channel 12. This meant the relocation of other stations. Buffalo's UHF channel 17 (WNED) which had occupied channel 12 (Table 1) was now without a channel. WNED was therefore put on channel 3 on a part-time basis when channel 3, a CBC

⁴CRTC, Public Announcement: Channel Uniformity in Toronto, July 27, 1972.

affiliate, was showing the same programs as the CBC station on channel 5. By giving channel 17 part-time airing, some of this station's programs were still available to viewers. In making these arrangements no station had to be dropped.

The next station falling under the priority ruling was CBC's new French station channel 25. As a priority station it was to be assigned a standard VHF channel on the basic service dial. Since the dial was filled it seemed that an American station would finally have to be dropped or placed on an impaired channel. Rather than delete a station already being provided to subscribers, or moving it from a standard to an impaired channel, the CRTC allowed cable operators to make use of the phase-lock technique and put the French station on the impaired channel as a temporary measure.

The exception to this was Rogers Cable which dropped WNED and CKVR from channel 3 and placed CBLFT on this channel.⁵ In using channel 3 for CBLFT Rogers in fact was giving priority to the Canadian station by placing it on a standard channel.⁶ WNED and CKVR were still to be avail-

⁵Rogers could not use the phase-lock method on channels 5 and 9 because its service area was too close to the transmitters of these stations and viewers would receive interference. Blaik Kirby, "Rogers cable subscribers deprived of Channel 17," The Globe and Mail, March 26, 1973, p. 14.

⁶Ibid.

able along with CKCO, CKEK, WUTV and two cablecast stations on the converter services.⁷

Other cable systems did not have the equipment ready to offer expanded channel service and so did not drop WNED immediately. They placed CBLFT on the impaired channels of 5 and 9. This prevented any station from being dropped at least for the time being. Eventually CBLFT would get a standard channel. Until that time the CRTC made an exception in its priority listing by not giving this station a priority position that would have displaced an American station or, at least, put it rather than the French station on the impaired channel.

The transmission of the Global television network station was the first Canadian station actually to cause an American station to be dropped from the VHF dial. When Global received its licence, the Toronto television dial was already filled and it was not possible to make further use of part-time or impaired channels to accommodate this station. CATV operators therefore chose to drop WNED and CKVR both of which were sharing a channel since the inception of CITY. This left channel 3 available for Global. Rogers Cable which was already using that channel for CBLFT relocated this station on channel 12. WKEW was moved from 12 to channels 5 and 9 phase-locked.

⁷CRTC, Public Announcement: Decision 72-309, November 16, 1972.

Prior to the dropping of WNED, which was hailed by many as a brilliant educational station, many cable subscribers sent letters of protest to the Commission expressing their displeasure about the removal of this station. One television critic pointed out it would possibly have been more useful to drop WKBW since most of its programs were already available on Canadian stations. If WKBW was removed only a few programs would not be available, whereas the loss of WNED meant losing all of that station's unique programs.⁸ Over 1,600 WNED supporters sent letters of protest to the Commission expressing their displeasure over the loss of this station. Others wrote to the CRTC complaining about this station's removal.⁹ However, none of these actions were to any avail.

The Commission had previously agreed to let the CATV operators decide "...which optional stations best suit the needs of their subscribers..."¹⁰ and which stations to discontinue. Rather than setting a precedent and establishing a priority list of what American stations should be retained the Commission supported the cable operator's decision.

Rogers Cable determined by consumer response surveys and audience ratings that subscribers wanted to keep WKBW

⁸ B. Kirby, "Cable systems wrong way to drop Channel 17," The Globe and Mail, November 6, 1973, p. 14.

⁹ Ibid.

¹⁰ CRTC, Public Notice: Cable Television Channels, June 9, 1972.

more than WNED.¹¹ In general, cable systems decided to drop 17 because it had the fewer viewers and therefore would disrupt the viewing of the smallest number. No matter which station was removed, some viewers would have expressed discontent over the station chosen. In any case, WNED was not lost completely since it was still to be available if the cable viewer added the converter service.

With the introduction of this device a variety of other stations could be made available besides the station being dropped. The stations on a converter could include:

- i) those not previously on the VHF dial due to overcrowding. WUTV (channel 29) is an example of a station that could not be accommodated even before the inception of CITY;
- ii) a station sharing a channel on a part-time basis, such as CKVR, could be shown in its entirety again;
- iii) American stations, such as channel 17, that would have to be removed to accommodate priority stations;
- iv) other program services. Rogers Cable, for example provides channels for local multi-cultural programs, business news, and digital information service such as the weather and airport arrivals.¹²

¹¹ Correspondence with E. S. Rogers, President, Rogers Cable TV Limited.

¹² CRTC, Public Announcement: Cable Television Licence Amendments, Decision 74-100, May 1, 1974. Jack Miller, "19 channels arrive on cable TV dial in Toronto Monday," The Toronto Daily Star, March 3, 1973, p. 63.

Thus, a channel converter could accommodate those stations affected by the limitations of the 12 channel dial, thereby eliminating the need for part-time and impaired channels. It would also allow an increase in the number of stations available to cable viewers. With the use of the converter all sixteen stations broadcasting in January 1974 were finally available full time to subscribers.

At present, there are indications that more American stations will be dropped from the regular VHF dial in the Toronto area because of a further increase in Canadian stations. This belief is based on predictable views about developments Canadian broadcasting will take in the next few years.¹³ At the moment plans are under way to relocate the Toronto CBC transmitting facilities to the CN tower. This means that the CBC signal will extend beyond Barrie. This in turn will have the effect of freeing the Barrie station as a CBC affiliate and allow it to apply as an independent station, hence permitting it to have a priority position on cable. The station would then be relocated from the converter back to the basic VHF dial. As a result, an American station would need to be removed from this dial and placed on the converter service. Another development that will alter the services on VHF is the UHF station designated for Hamilton. Once this station is in operation it too will be able to demand a position on the Toronto

¹³Kirby, The Globe and Mail, November 6, 1973, p. 14.

cable VHF dial since the signal will reach that area. This will result in the dropping of another American station. With the addition of these two stations there will only be room for one U.S. station and it is feasible that this also will be crowded off the dial eventually. As a result, CATV subscribers would not be able to receive any U.S. stations on the standard VHF channels. Cable operators though intend to place one or two of these displaced signals on impaired channels using phase-lock in order that subscribers who do not want to spend money for a converter will not be totally deprived of all these stations. The quality of the picture will undoubtedly still be poor to encourage subscription to the converter. Those subscribers wishing to have all the U.S. stations available with the best reception will have to accept the additional expense of the converter. Ironically, these subscribers who were initially willing to pay for better reception and additional U.S. signals will find themselves having to pay even more for this convenience as a result of the priority given Canadian stations.

The extra charge will vary depending on each system but is at present approximately \$18.00 for the installation of the converter and a monthly service charge of \$2.50.¹⁴ These costs are in addition to the initial installation fee

¹⁴CRTC, Public Announcement: Decision 72-363, December 21, 1972.

for cable, usually under \$8.00 and the monthly service charge of approximately \$5.00. In return subscribers will get all the conveniences the converter offers. This includes selecting stations by their identification number instead of having to remember that on CATV channel 25, for example, is on channel 3, or that channel 9 is on 8. As more American stations are removed from the VHF dial they will undoubtedly be offered on the converter. This will mean that as the station priority policy is implemented the converter will become more of a necessity for those wishing to receive American stations. Whether a subscriber goes to the converter now or later when more stations are available makes little difference for in the end he will be paying more for stations previously received at no extra costs.

There is no doubt that the Commission has enforced station priority at least to the extent that new stations were placed on CATV. But in doing so, the Commission did not push for the removal of any American station until absolutely necessary and then only after attempting to keep these stations on the dial through other means. It allowed the use of channels on a part-time basis when CITY came on the air, and placed the French station on an impaired channel. The introduction of Global did remove WNED from the VHF dial, but this station was shifted to the converter service. By these actions the Commission continued to keep American stations available.

On the one hand, the CRTC did not want to disrupt the services of subscribers; on the other hand, it wanted Canadian stations on the VHF dial but was not fully prepared to give them priority without ensuring the availability of American stations. The juggling of stations around the dial and the use of part-time and impaired channels was not done for the benefit of the three Canadian stations but rather for the U.S. stations affected by the priority listing. If the priority listing had been followed without worrying about U.S. stations it would have meant dropping an American station each time a new Canadian station started broadcasting or, at least, putting the U.S. station on the shared or impaired channel. In being lenient, the CRTC avoided displacing stations until necessary, thus enabling subscribers not to lose any U.S. station. This practice probably averted a protest from many subscribers who would have felt they were losing stations they assumed they were entitled to have. Had the converter not been established it is interesting to speculate whether the Commission would have approved the removal of any U.S. station. Had there been no technical developments made to accommodate displaced American stations, one questions whether the priority ruling would have been implemented at all, even though the Commission wanted to ensure the availability of Canadian stations.

Microwave

As mentioned in the last chapter, microwave trans-

mission of American signals was eventually permitted by the CRTC in areas previously out of reach by ordinary signal strength. The number of stations, however, were to be limited "...because of the high cost involved and the economics of each cable system." A maximum of three "...commercial stations not licensed by the Commission..." would be allowed but could be fewer if the CRTC "...considers that local television service would otherwise be jeopardized."¹⁵

To limit the number of stations because of "high cost" does not seem adequate for several reasons. As a business venture a CATV system would not likely develop a microwave system if there was no profit to be made. While the initial cost of a microwave system may be high the cost of additional stations should be lower. A major attraction of cable has often been the availability of distant stations and there seem no reason to believe this would not be the case in areas previously without such stations, especially since many areas have indicated a desire for American stations and have objected to previous microwave ban.¹⁶ In any case, the additional subscribers attracted to cable due to expanded services would help offset the cost of microwave

¹⁵ CRTC, Policy Statement 1971, p. 33.

¹⁶ Editorial, "Discrimination!" p. 6, and Barry Westgate, "That cablevision veto," p. 19, The Edmonton Journal, December 6, 1969.

facilities. Overall, justifying or assuming the limitation of stations on "high costs" and the economies of cable systems does not seem very convincing.

It is the CRTC's concern for local stations and not the CATV system that American stations have been limited. In examining decisions approving the use of microwave it becomes evident the Commission is acting cautiously so as not to jeopardize local service. Only when the Commission is assured from evidence presented at public hearings that optional stations do not threaten the viability of present stations have incoming signals been granted.¹⁷ This is a logical approach since the agency's prime responsibility is to ensure a Canadian broadcasting system exists.

In December 1972, the CRTC permitted two CATV Calgary systems to import via microwave an additional U.S. commercial station. Originally both applicants requested approval for the addition of two stations to the one already being received. However, the Commission decided

...on the basis of the documentation presented by the parties and the submissions made by them at the Public Hearing...local television service in Calgary, Alta., will not be jeopardized by the addition of one U.S. commercial station at this time. The applicants will be able to apply for carriage of a third U.S. commercial station after there has been an opportunity to assess the impact of the

¹⁷Some factors considered before stations are allowed include: the size of the community, cable penetration, number of Canadian and U.S. stations available, what station the cable operator wants to provide, briefs submitted and oral presentations. Interview with B. Kiefl, October 16, 1974.

present decision on local television service
in Calgary....¹⁸

The Calgary decision pointed out that the Commission would limit the number of stations until it was satisfied that local stations were not jeopardized. Further, the maximum of three stations was not going to be automatically granted.

There have been other decisions since Calgary affirming the policy of limiting the number of American stations brought in by microwave. The most recent decisions were in Edmonton, Alta.; Vernon and Kamloops, B.C.¹⁹ The cable system in Edmonton made application to distribute two more U.S. commercial stations which would have brought its total to three. Approval was given for one station on the condition that it would not start transmitting until one year after the commencement of broadcasting by a third Canadian station. The Commission justified this conditional approval on the basis that it had recently granted a licence for the creation of this new Canadian station and felt it "...should not have to contend with increased competition for audiences until it had a year to become established."²⁰ The licensee could re-apply later for the carriage of the third station after the Commission assessed the outcome of

¹⁸ CRTC, Public Announcement: Decision 72-364,
December 21, 1972.

¹⁹ CRTC, Public Announcement: Decisions 74-29, 74-34,
74-35 respectively, March 1, 1974.

²⁰ CRTC, Decision 74-29.

the others in the area.

In the Vernon and Kamloops decisions the Commission approved the establishment of CATV systems. Both were permitted to carry two Canadian stations plus one non-Canadian commercial and one non-Canadian non-commercial station. The carriage of additional American commercial stations was denied. In its published decision the Commission did not give any reason for this denial.²¹

A request by a Winnipeg licensee to relocate a head-end and commence using microwave to provide better reception of the three U.S. stations already being provided by cable was deferred by the Commission. The Commission was aware that relocating the head-end would provide better reception but stated that it was:

...concerned that these improvements be made within a framework which takes into account the overall requirements relating to the provision of broadcasting services in Manitoba.

In this regard, the Commission has announced its intention to hold a public hearing, regarding the provision of (a) third television service in Winnipeg and (b) the extension of television broadcasting services in Manitoba.

At this hearing the Commission intends to consider the following issues, among other, relating to the provision and extension of broadcasting services in Manitoba:

1. How should the microwave system in the Province be developed in order to deliver programming, both Canadian and non-Canadian, most effectively and comprehensively throughout

²¹CRTC, Decisions 74-34, 74-35.

the province?

2. What effect will the distribution of U.S. commercial signals by microwave have on the development of broadcasting throughout the Province of Manitoba?
3. What effect will microwave delivery of U.S. commercial signals have on the maintenance of existing off-air broadcasting services in Winnipeg?
4. To what extent will the importation of U.S. signals by microwave to Winnipeg affect the development of a third Winnipeg television station?²²

With these questions in mind the Commission requested opinions from broadcasters, CATV systems, consultants and the public before making its decision.

Overall, the limitation of the number of U.S. stations permitted into each of the above areas is based on the effect towards local broadcasters rather than any economic consideration for CATV operators who venture into the microwave transmitting business. These decisions indicate that the Commission intends to safeguard local broadcasters from possible consequences that might result from bringing in too many American stations by microwave.

The Commission was originally against any wholesale importation of American signals by microwave though it eventually conceded to the use of this technique on a limited basis. This change in position seemed to placate viewers' fears that certain areas would not get these sta-

²²CRTC, Public Announcement: Decision 74-30, March 1, 1974.

tions because of distance from the border. Nevertheless, the number of incoming stations was strictly controlled by limiting their number, and justifying the need for further limitation. No CATV system as yet, as far as can be determined, has been given approval to carry the maximum number of 3 stations allowed by the CRTC although there have been systems requesting as much. The main justification has been that additional stations might jeopardize local stations. Another means of limiting the number has been to forestall the transmitting of a station already approved until a third Canadian station was given a chance to become established. Finally, the CRTC has delayed the relocation of a microwave tower which would provide better reception of stations already carried on the basis that a hearing should examine the possible effects of microwave not only in the area concerned but the Province as a whole. In sum, it is evident the CRTC is employing a variety of restrictions to limit and forestall American stations via microwave into any particular area.

Program Deletion and Substitution

The implementation of program deletion depends on the initiative of the local television broadcaster. A station may request a CATV system "...to delete the transmission of any lower priority or optional station(s)..." if the program broadcast on the lower station is identical

and on at the same time as the higher priority station.²³
If the higher priority station can, but will not, require
this deletion "...any optional Canadian station carried may
require the deletion..." of such programs.²⁴

The cost of such deletion must be borne by the CATV
systems affected. However, if the program requested to be
deleted is on at a different time but is shown within one
week of the broadcaster's own televising, all cost of dele-
tion and substituting must be borne by the requesting broad-
caster.

Once the program has been deleted the cable operator
has three options:

- a) replace the deleted transmission with that
of the higher priority station;
- b) replace the deleted transmission with an
appropriate slide; or
- c) leave the lower priority channel blank.²⁵

In practice, where deletion has occurred, operators
have been substituting the deleted transmission with that
of the higher priority station's version including com-
mercials. In doing so, the Canadian substitute has been
available on two channels. In this way, there can be no

²³ CRTC, Policy Statement 1971, p. 27.

²⁴ Ibid.

²⁵ CRTC, Public Announcement: Notice to Licensees,
Program Substitution on Cable Television, August 1, 1972.

audience fragmentation since all viewers of the program are seeing the Canadian version. Such a situation increases the audience rating for the Canadian station. The CRTC, therefore, hopes advertisers will be attracted to the station and as a result advertising revenue for the broadcaster will also improve.²⁶ It is further hoped that advertisers will be dissuaded from spending money on the U.S. station's segment of the program in an attempt to reach Canadian audiences. Even if such advertising continues it will only reach those who receive their programs by means other than cable. In all, it is the local broadcaster who will benefit from this regulation.

Stations have been taking advantage of this policy since September 1, 1972 at which time most cable firms had to have the equipment for deletion.²⁷ One of the first request for program substitution came from the Canadian Television Network's (CTV) Toronto station CFTO.²⁸ Most cable firms complied with this request, however, Maclean-Hunter Cable refused to delete the U.S. version. The Vice-President of Maclean-Hunter at the time, Israel Switzer, argued:

It's easy to say that the viewer loses nothing,

²⁶ Interview with B. Kiefl.

²⁷ CRTC, Policy Statement 1971, p. 27.

²⁸ Jack Miller, "TV viewer's just a pawn in the nationalism battle," The Toronto Daily Star, September 2, 1972, p. 105.

because the show is still available through the Canadian station...but if a cable customer is denied a certain station, while his neighbour uses a regular antenna and can watch it then that's discrimination.²⁹

The company at the time did not comply with this policy, nor did the CRTC charge it with any infraction. Maclean-Hunter now voluntarily implements deletion and substitution although it still believes it to be discriminatory. The reason for this reversal in actions is unknown but one may assume the firm realized compliance could be forced upon them by making substitution a condition of licence.

As to substitution during non-simultaneous programming both Maclean-Hunter and Rogers have indicated that they will not implement substitution during these periods. No reason was given for this position by either company.³⁰ Though there are no indications that such requests for substitution have been made, there are certain programs for which broadcasters could make this request. The reason for not doing so may be that they do not know if non-simultaneous substitution is worthwhile in terms of its costs versus the additional viewers reached. It will be recalled that the purpose of pre-release was to give the Canadian station first opportunity to attract viewers. The number of viewers to this showing may be sufficiently large that the broad-

²⁹Ibid.

³⁰Correspondence with J. B. Gage, General Manager, Maclean-Hunter Cable TV, October, 1974, and E. S. Rogers.

caster does not consider it advantageous to request any substitution on the U.S. station.

During simultaneous programming, deletion and substitution has led to an increase in the number of viewers watching the Canadian version of American programs. "One program, shown in the fall of 1972 on the Toronto station CFTO, was broadcast one half hour before the U.S. telecast. When the program was televised simultaneously and deletion implemented the show's rating jumped by 40,000 to 188,000 households--a very profitable 27.7% increase."³¹ In another example, the independent Hamilton station (CHCH) in the fall of 1972 requested a deletion of the National Football League Monday night games on a Buffalo station. CATV operators complied and substituted the CHCH version with its commercials. As a result, the station added 20,000 homes to its ratings.³² Both these examples indicate the advantage of substitution as a means to enlarge audience size. Consequently, the number of programs deleted and substituted has been on the rise. Rogers Cable has increased the number of substitutions made from only a few in 1972 to thirty-five in the fall of 1973.³³ As more

³¹The total number of households viewing the same program but without cable was 72,100. A small number in comparison to those viewing on cable. B. Kirby, "Public suffers but stations benefit under the CRTC ruling," The Globe and Mail, March 8, 1973, p. 13.

³²Ibid.

³³Correspondence with E. S. Rogers.

stations realize the benefits of this control one can expect an increase in requests for substitutions.³⁴

If and when broadcasters desire deletion and substitution during non-simultaneous programming the Commission could enforce cable operators' compliance with these requests. Such substitution may be necessary if, as is expected, prime time on Canadian stations is devoted to Canadian productions. Since U.S. programs purchased by Canadian stations are usually scheduled in the U.S. during prime time, the Canadian broadcaster will not be able to simultaneously televise many of these programs. The Canadian viewer may then watch the U.S. broadcast instead of the Canadian version when it is shown. This would result in the broadcaster again being faced with audience fragmentation for some programs. Thus, although broadcasters will have to decide the ultimate value of non-simultaneous substitutions the Commission could ensure that when such requests are made cable operators comply.

In sum, this latter situation notwithstanding, the examples presented here of substitution indicate fragmentation can be lessened and the local stations can increase their audience ratings without the viewer being inconvenienced. It should be noted, however, that program substitu-

³⁴ CHCH, for example, scheduled 1 1/2 hours weekly for simultaneous release with programming on Buffalo stations. Bob Short, "Cablecaster," Broadcaster, XXXII (December, 1973), p. 22.

tion cannot completely prevent audience fragmentation. Since American stations are being permitted on CATV and are available by antenna there will continue to be other U.S. programs attracting Canadian audiences. Substitution, therefore, can only ensure fragmentation does not occur for those U.S. programs the local station televises.

Commercial Deletion

The CRTC believes the spill-over of advertising created by incoming stations via cable television threatens the continuation of advertising on local broadcasting stations by national advertisers. Further, Canadian subsidiaries get a "free ride" when their company advertises on U.S. stations broadcasting into Canada. These situations were thought to affect the advertising revenue of Canadian stations "...which then affect the viability of... [these] stations. The commercial deletion procedure is a counter-measure to lure more advertising to Canada and provide the standard [local] stations with increased revenue."³⁵

The CRTC's position on deletion and substitution of commercials stated in the Policy Statement allowed for "...the removal by cable television licensees of the commercial value contained in the signals of stations not li-

³⁵ K. Bambrick, "CRTC policy is complicating TV cable business," The London Free Press, September 1, 1973, p. 6.

censed to serve Canada."³⁶ It further encouraged CATV systems to make contractual arrangements with local stations for substitute messages. Overall, this policy area was envisioned by the Commission as a means to further strengthen the Canadian broadcasting system.

As of December 1972, CATV systems did not take the opportunity to implement this policy. As a result, the Commission began stating specifically in licences amended to carry American stations that CATV systems must have the equipment to delete commercials and that the commercials on these stations be deleted. These pronouncements initially affected CATV systems in three areas, Calgary, Montreal Island and the Maritimes. In Calgary the Commission had been aware that both CATV firms there had the intention of deleting and substituting commercials. This intention, although not included in either firm's application requesting an increase in the number of American stations, was being negotiated with local broadcasters in an attempt to reach a satisfactory agreement. Nevertheless, the Commission in its decision allowing a second American station in the area, stated this was

...an appropriate opportunity to require, insofar as the Calgary market is concerned, compliance with its policy on commercial deletion

³⁶CRTC, Policy Statement 1971, p. 28.

and substitution.

The Commission will accordingly direct each of the applicants, as a condition of its amended licence, to delete, or permit the deletion, from television signals received by it from broadcasting stations not licensed to serve Canada, such signals carrying messages as may be designated by any television broadcasting station whose B contour encloses any part of the area served by it and with whom it has an agreement, approved by the Commission, which provides for the insertion of replacement signals carrying commercial messages sold by such broadcasting stations or other appropriate replacement signals.³⁷

With this decision the Commission enforced the deletion policy insofar as it became a condition of licence.

In both the Montreal Island and Maritime decisions the Commission approved the expansion of cable in new areas and allowed the carriage of American stations. The licensees were instructed to

...construct facilities...for the deletion of commercial messages from television signals received from broadcasting stations not licensed to serve Canada...[and that these commercials]... be deleted before such signals are distributed to the licensee's subscribers.³⁸

In each of the above decisions the type of material to be substituted was indicated. In Calgary, as noted, commercials or other appropriate replacements supplied by

³⁷CRTC, Public Announcement: Decision 72-364, December 1972.

³⁸CRTC, Public Announcement: Cable Television in Nova Scotia and New Brunswick, Decision 73-395, August 3, 1973 and Public Announcement: Cable TV on Montreal Island, Decision 73-396, August 3, 1973.

the local stations on a contract arrangement were allowed. However, in Montreal and the Maritimes commercial substitution was not outrightly suggested as in Calgary, rather the Commission suggested different types of replacements. These systems were expected to use deletion periods for distribution of public service announcements or programming of a Canadian interest "...taking into account the acceptability to the viewers of such material."³⁹ Nowhere in these two decisions was mention made of substituting any commercials that would be sold for money. The Commission had been accused of piracy by improperly permitting Canadian stations to profit by taking a U.S. signal, selling it via substitute commercials and pocketing the money.⁴⁰ As a result, the Commission dropped the idea of contractual arrangements entirely in favour of non-commercial material.⁴¹

In another decision an American station was allowed on CATV not only on the basis of what the cable firm must do about commercials, but, on what the American station must not do. In Nackawic, New Brunswick, a Bangor, Maine, sta-

³⁹ Ibid.

⁴⁰ See, J. Miller, "Blowing the Whistle on the Buffalo Shuffle," Broadcaster, XXXII (February, 1973), p. 19; I. Switzer, "Let's Pay for U.S. Signals," Broadcaster, XXXII (March, 1973), p. 10. An editorial stated, "There's certainly an ethical problem in commercial substitution... 'Nationalism' cannot justify the expropriation and sale of someone else's product," Broadcaster, XXXII (September, 1973), p. 3.

⁴¹ J. Miller, "Commercial Substitution: An Uneasy Conscience," Broadcaster, XXXII (September, 1973), pp. 28-9.

tion could be added to the cable service "...as long as as that station does not solicit advertising in Canada."⁴² This is similar to the CRTC's initial attempt to discourage Canadian advertising on American stations, and is an indirect means of deleting Canadian commercials from a U.S. station.

The first deletion of commercials on a regular basis has not been carried out by any of the above, but rather by Rogers Cable TV one of the largest cable companies in Canada servicing 151,000 homes.⁴³ Since the summer of 1973 Rogers has been deleting American and Canadian commercials at random⁴⁴ on the major commercial stations in Buffalo and substituting promotional material of his cable firm.⁴⁵ Rogers supports the CRTC's deletion policy and says his purpose is to prevent American advertisers reaching the Toronto market and thus prevent the "free ride" that the Commission sees advertisers getting. By putting into practice this policy he indicates that deletion is feasible and hopes advertisers will realize they should buy time on Toronto sta-

⁴²CRTC, Public Announcement: Decision 73-338, July 18, 1973.

⁴³"The Battle of Buffalo," Time (Canada), May 6, 1974, p. 10.

⁴⁴Correspondence with E. S. Rogers.

⁴⁵Ibid. The CRTC later prohibited Rogers from promoting cable services pointing out this was not in keeping with the deletion policy. The Commission reiterated that only public service announcements could be substituted. CRTC, Public Announcement: Decision CRTC 74-100, May 1, 1974.

tions. If they do not his intentions is to go on "snipping" these commercials so as "...to destroy the effectiveness of their advertising."⁴⁶ Since Rogers does not own a television station he would not benefit if advertisers he deletes bought advertising on Toronto stations.⁴⁷

The reaction to Rogers' deletion has been mixed. The CRTC has supported Rogers for following policy and has offered no sympathy to those advertisers who are removed. However, American broadcasters have openly expressed their displeasure not only of Rogers' actions but of deletion itself. The three major Buffalo stations have retained Canadian legal firms specializing in copyright law to protest this practice. U.S. representatives went before a CRTC public hearing for the first time to oppose a policy of the Commission.⁴⁸ They claimed that to take the program content from their signals for broadcast and eliminate commercials was an "illegal activity", "unfair", "morally offensive"⁴⁹ and violated "copyright, trademark and common law...."⁵⁰ They also challenged the Commission's right to

⁴⁶B. Kirby, "Rogers' cable firms snip out U.S. ads while Buffalo stations fume," The Globe and Mail, November 28, 1973, p. 13. Time, May 6, 1974, p. 10.

⁴⁷Ibid.

⁴⁸Hearing held in Toronto, November 27-28, 1973.

⁴⁹J. Miller, "Buffalo TV Fights ad Blackout in Metro," The Toronto Daily Star, November 28, 1973, p. G18.

⁵⁰Kirby, The Globe and Mail, November 28, 1973.

allow the removal of commercials on U.S. signals. The CRTC, however, has not accepted these arguments and has simply expressed confidence in its own legal advisers.

There is more than the legality of deletion that worries U.S. broadcasters. Buffalo stations for example, are financially involved with Canadian advertisers and any deletion of their commercials may affect the amount of revenue they would get from this source. The three major Buffalo stations receive approximately \$6 million in advertising revenue from the Toronto-Hamilton market.⁵¹ Once the deletion process is fully implemented these stations stand to lose 20 per cent of their revenue.⁵² The potential loss is enough for U.S. broadcasters to oppose any deletion whether selective or not. Thus, the opposition of this regulation extends beyond the legality of the practice to basic financial considerations.

The Buffalo stations are not alone in fearing deletion may have financial repercussions on American stations. Lawyers representing border stations in the State of Washington have also expressed the same sentiments.⁵³ They argue that cable systems will be using U.S. programs

⁵¹R. H. Munro, "U.S. lawyers cry foul at CRTC commercial policy," The Globe and Mail, August 29, 1973, p. 11; James Bawden, "Commercial Deletion called 'illegality'," The (Hamilton) Spectator, November 28, 1973, p. 60; J. Miller, The Toronto Daily Star, November 28, 1973, p. G18.

⁵²Kirby, The Globe and Mail, November 28, 1973, p. 13.

⁵³Munro, The Globe and Mail, August 29, 1973, p. 11.

paid for by advertisers who are being deleted. They point out that the CRTC wants cable firms to pay Canadian broadcasters for the programs transmitted on cable, but this belief is not applicable to U.S. stations. By removing commercials, these lawyers argue, the Commission is lessening the revenue of U.S. border broadcasters. They contend the Commission has a concept of fairness that applies only to Canadian broadcasters.⁵⁴ The Commission counters such statements by simply noting that U.S. stations are not licensed in Canada.

American opposition to the commercial policy has reached the U.S. Federal Communications Commission (FCC), the State Department and the Senate. After the CRTC's Calgary decision the State Department had sent a "mild protest"⁵⁵ to Ottawa raising the question of equity since U.S. cable systems are forbidden to delete any material either domestic or foreign. U.S. border stations urged both the FCC and the State Department to present stronger opposition to Ottawa than they already had done. So far little effective pressure has been exerted by these agencies. Nevertheless, this situation points out the concern U.S. stations have over the possible effects of deletion.

Whatever financial loss U.S. broadcasters say they might suffer, it will not be enough to endanger the

⁵⁴ Ibid.

⁵⁵ Ibid.

existence of most television stations. In fact,

...only two or three stations near the border are so dependent on Canadian advertising revenue that they would actually fold up if the CRTC's deletion policy was universally applied. The two stations most mentioned are those in Bellingham, Wash. and Pembina, N.D., which serve Vancouver and Winnipeg respectively.⁵⁶

These stations would probably not have been established had there not been an available audience across the border.

While these stations may be the only two to collapse many other border station will have some financial loss. There seems to be two ways for this to happen. First, the incentive to advertise international products on U.S. stations may diminish if the Canadian audience is not reached, resulting in some decline of advertising on border stations. Such advertisers may direct more of their advertising campaign to Canadian stations. Second, with the deletion of Canadian commercials U.S. stations will lose the revenue Canadian advertisers now spend on these stations to reach their audience. If these situations occur border stations could lose more than the estimated 15 to 20 million dollars presently being spent by Canadian based advertising. With these potential threats looming over American stations it is no wonder they are anxious to argue the legality of deletion and to prevent the full implementation of this policy.

⁵⁶ Ibid.

The Buffalo stations have filed statements of claim in the Canadian Federal Court against Rogers. It appears the Commission will fully support Rogers in any actions against him since his defeat would be a defeat for the policy of commercial deletion and the CRTC. The Commission has told Rogers not to voluntarily settle any litigation "...on terms that might inhibit their ability to conform with Commission policy and requirements under the Broadcasting Act....the Commission's consent must first be obtained before any terms of settlement and, in particular, any injunction is voluntarily consented to by any licensee."⁵⁷

As a result of the pending legal proceedings other cable systems have not been deleting commercials.⁵⁸ The Commission is awaiting the outcome of this legal contest before pursuing the enforcement of its policy any further. Until then the implementation of commercial deletion appears to be at a standstill while Rogers continues to follow the Commission's policy and act as a test case in deciding the legality of deletion. If the court renders a favourable decision then the Commission could ensure that cable companies awaiting the outcome implement de-

⁵⁷ CRTC, Public Announcement: Decision 74-100, May 1, 1974.

⁵⁸ Interview with B. Kiefl and M. Tardiff. A British Columbia system had deletion equipment in 1972, but didn't use it for fear of legal action from the American stations. J. Miller, The Toronto Daily Star, September 2, 1972, p. 105.

letion as soon as possible.

In the Policy Statement the Commission suggested amending section 12a of the Income Tax Act. Such an amendment would have made Canadian advertising on U.S. stations a non deductible business expense. This could have the effect of curtailing such advertising on U.S. stations and possibly re-direct advertisements to the Canadian media. This suggested amendment, however, has not been implemented by the federal government.

The reason for this lack of action may be due to the possible repercussions such an amendment might have on the same exemption now granted to advertisers in Time and Readers' Digest. If the CRTC' amendment for broadcast advertising was implemented it would put pressure on federal authorities to decide whether or not they were going to continue allowing tax concessions to companies advertising in these magazines. Conversely, as long as no decision is reached in regard to these publications it is unlikely that the government will implement the CRTC suggested amendment.

Compensation to Broadcasters

In the Policy Statement the Commission decided that CATV systems should pay broadcasters for the use of programs upon which they are dependent. At that time the Commission suggested the method of payment should be decided

between CATV systems and broadcasters. If no solution was forthcoming "...the Commission [would] take the necessary steps to achieve this goal..."⁵⁹ Initially, the CRTC anticipated the transfer of payment to be small, but would rapidly grow in future years. Contrary to this belief no payments have yet been made to any broadcaster.⁶⁰ In fact, only one example has been found in which a cable operator has voluntarily agreed to give any payment to the local station. In this case the CRTC approved a CATV application in Kamloops, B.C., which had agreed "...to make a compensatory payment to Inland [Broadcasters Ltd., the local broadcaster] calculated on the basis of 50 cents per subscriber per month."⁶¹

In the decision approving this applicant, the Commission stated that this payment

...will be a condition of the licence that the licensee carry out its commitment. The Commission will expect that the money so paid will be used to provide additional local production by Inland and will require both the licensee and Inland to report annually the payments made by the licensee to Inland and the disposition of these funds by Inland.⁶²

⁵⁹CRTC, Policy Statement 1971, p. 22.

⁶⁰Interviews with B. Kiefl and J. Allard.

⁶¹CRTC, Public Announcement: Decision 74: 35,
March 1, 1974.

⁶²Ibid.

As the establishment of this CATV system is relatively new there is no evidence that any money has been transferred to Inland.⁶³

Other cable systems have not offered to make any payment to broadcasters. The Canadian Cable Television Association (CCTA)⁶⁴ which represents the cable industry does not believe any transfer of money should be made. It has pointed out that on the basis of copyright laws there is no justification for payments. Countering this the Commission notes that the government has made no final decision as to the role copyright plays in payments to broadcasters.⁶⁵ The Association contends broadcasters are ultimately paid on the basis of audience ratings and even with audience fragmentation CATV still contributes to this rating by making signals more readily available to viewers. If any money was given, the amount say those in the cable and broadcasting services would be too small to be of any benefit in providing extra programming.⁶⁶ Besides, there is still no definite agreement as to which broadcasters should receive payments or how to dis-

⁶³ Interviews with B. Kiefl and M. Tardiff.

⁶⁴ In 1968, the National Community Antenna Association changed its name to the Canadian Cable Television Association.

⁶⁵ CRTC, Policy Statement 1971, p. 22.

⁶⁶ Correspondence with J. Gage; interview with J. Allard. The CRTC estimates the total amount at \$4 million, Babe, Cable Industry, p. 369.

tribute such funds equitably.

Cable operators affirm they can and should assist in the process of putting more money into the Canadian system but not by direct payments. Rather, they believe the best and most efficient methods of injecting money into broadcasting are by program substitution and commercial deletion.⁶⁷

If and when the Commission tries to enforce payment it can expect CCTA and cable operators to oppose any attempts to make them contribute directly to the financial well-being of broadcasters. Their opposition may include the fact that CATV is not given the option to carry Canadian stations and therefore any justification for payments based on services rendered or dependence on these stations is very weak. Of the five policy directives discussed it appears the Commission will have the most difficulty in implementing this one.

⁶⁷ Correspondence with E. S. Rogers; interview with M. Tardiff.

CHAPTER VI

SUMMARY AND CONCLUSION

Cable television with its ability to bring in distant stations was seen as disrupting the purpose and design of Canadian television stations. To ensure the continuation of a Canadian broadcasting system ways had to be found to accommodate this new technology and prevent the anticipated disruption. Initially, little was done to curtail the effects of cable because the system was not defined as part of broadcasting nor was it under control of a regulatory agency.

During the sixties discussions were held by the Committee on Wired Systems and the BBG to deal with cable. At other occasions such as the 1961 Special Committee on Broadcasting and the 1965 Committee on Broadcasting, CATV was also discussed. A main item stressed at all these sessions was the effect of cable on local broadcasting stations. Some action towards cable was thought necessary if local broadcasting, one of the main pillars of Canadian broadcasting policy, was to be able to attain its objectives.

Recommendations on what should be done were made in the various committee reports, by the CAB, in private member bills and by the BBG. The recommendations varied from simply monitoring the growth and impact of CATV, as suggested in the Report of the Committee on Wired Systems, to regulating the orderly growth of CATV, as mentioned in the Report of the Committee on Broadcasting. The most comprehensive list of recommendations, however, was compiled by the BBG in its March 1964 Report. As with other recommendations these were given to the government for consideration.

From the beginning when questions were being raised about CATV and proposed courses of actions were suggested, Ottawa gave the appearance of being attentive to the problems created by cable. The different Ministers responsible for CATV suggested forming the Committee on Wired Systems; imposing a temporary freeze on cable licences; asking the BBG to inquire into and make recommendations on CATV; and formalizing the BBG's review of applicants. These gestures were aimed to assuage the anxiety expressed about the impact of cable. However, they did nothing to prevent CATV from interfering with the design and purpose of Canadian broadcasting.

What was lacking, as the BBG emphasized, was the placement of cable under "some government policy and pro-

per supervision".¹ It was not until the White Paper on Broadcasting that steps were taken to place CATV under the definition of broadcasting and the jurisdiction of a regulatory agency. The inclusion of cable within the Broadcasting Act thus came about after several Committees examined and discussed this system, recommendations were made favouring control, and Ottawa seemed to realize that its initial gestures were inadequate. It was left to the Canadian Radio-Television Commission to determine what action should be taken to control cable as part of the broadcasting system alongside local television stations.

The CRTC's authority over cable meant that for the first time a broadcasting regulatory body could impose controls on CATV. The Commission, as had the BBG and others concerned about the effect of CATV, considered incoming signals disruptive to the local service concept and a threat to the stations that comprise the Canadian broadcasting system. The Commission had to deal with the problem of protecting and preserving the over-the-air broadcasting system in the presence of U.S. signals.²

Chapter IV examined the Commission's changing proposals to control cable television and ensure it did not jeopardize the continued existence of Canadian stations. The initial guidelines in the first four problem areas were

¹BBG, Annual Report 1965, pp. 11-12.

²Babe, Cable Industry, p. 339.

to protect local stations by restricting cable services. The Commission later claimed in the Integration Paper these proposals were only "interim measures" until a policy could be developed.³ However, it also acknowledged these measures were undesirable because they were restrictive and inconvenient to subscribers and cable operators alike. The Commission further conceded "a relatively large number of Canadians have already clearly expressed the view that they like and want [cable]."⁴

In suggesting alternatives in each of the problem areas the Commission noted that cable had compelling features for viewers; that the system provided a choice of programming; and that there had to be a balance between maximizing cable service and fulfilling obligations to the Canadian broadcasting system. Thus, the agency became aware not only of the demands of broadcasters but also of the viewers and cable operators. Robert Babe in his study of The Economics of the Canadian Cable Television Industry attributed this shift from protecting broadcasters to integrating cable to "...a combination of public outcry and realization that in the age of communications satellites and laser, protectionism in communications is necessarily a short run policy alternative...."⁵ The Commission, how-

³ CRTC, Integration Paper, p. 7.

⁴ Ibid.

⁵ Babe, Cable Industry, p. 356.

ever, did not drop protectionism but rather realized it could not impose controls without considering viewers and cable operators. As a result, the controls presented in the Policy Statement attempted to achieve a balance between protecting local stations and providing the public with cable services. This Statement is especially significant for it finally established as a matter of policy that U.S. stations via cable television were to be a part of the Canadian broadcasting service.

This accommodation of American stations into the Canadian broadcasting system was achieved through a process of continuous adjustment by the Commission to its proposed controls for cable. The initial guidelines aimed at the negative aspects of incoming signals had the effect of removing American programs and stations. However, in altering these proposals to appease the public and cable operators the Commission ensured that American program content was not decreased. This process occurred in the four problem areas of station priority, microwave, audience fragmentation, and commercial spill-over.

The purpose of station priority was to ensure Canadian stations would be available on CATV by limiting the number of U.S. signals. This meant the displacement of some U.S. stations in areas with many Canadian stations. Such a possibility, however, was eliminated with the Commission's acceptance of alternative methods of accommodating displaced stations. By approving the sharing of channels

and the use of the converter the Commission ensured the continued availability of U.S. stations. In fact, due to the additional stations the converter can accommodate, the Commission made it possible for even more U.S. stations to be provided than previously possible.

The ban on microwave was to prevent any further extension of U.S. stations into new areas, thereby preventing these signals infringing on a broadcaster's local service area. In reversing the prohibition on microwave and giving approval of this system, the CRTC permitted U.S. stations to be available to an increasing number of viewers and in many more locations.

The basis of program blackout was to prevent costly fragmentation of audience during program duplication by effectively removing this material from the U.S. channels. The replacement of blackouts with program substitution, however, meant these programs would continue to be on the American channel even though the program was provided on the Canadian station. This substitution of the Canadian version on the U.S. station points out the emphasis given to appeasing the public's demand for the convenient availability of American programs.

The desire to prevent commercial spill-over also entailed the proposal to remove American programs. Here too, the Commission changed and continued allowing these programs, but without commercials.

Overall, in each of these problem areas the pro-

posals to deal with incoming signals would have restricted and lessened the amount of American programming available. In replacing these guidelines with less demanding controls, culminating with the Policy Statement, the Commission ensured the availability of U.S. programming on cable.

The controls in the Policy Statement were aimed at continuing to provide the choice cable offered while restoring "...the licensing logic of the Canadian broadcasting system..."⁶. To this end the policy directives have to some extent protected local stations from the negative effects of American signals that could disrupt the design and purpose of broadcasting. At the same time, the Commission allowed CATV systems to supply U.S. stations which resulted in multi-service being officially approved. Thus, on the one hand, the Commission has tried to preserve the concept of local service with such directives as program substitution and commercial deletion. On the other hand, it has discarded the idea of local stations solely providing broadcast service within specific areas. Therefore, although CATV is now providing American stations which somewhat altered the concept of local service, the Commission has dealt with the problems cable poses to ensure that Canadian stations continue to be available.

During the Commission's first six years it has developed a policy to regulate CATV in a manner compatible

⁶CRTC, Policy Statement, p. 26.

with broadcasting objectives. The discussion in Chapter V points out that the Commission is fulfilling its function of supervising and regulating cable television so as to safeguard local stations. The priority listing ensures that Canadians will continue to have Canadian stations. No longer will it be possible for U.S. stations to outnumber Canadian stations on the regular service. In the area of microwave the Commission has acted cautiously to prevent any sudden influx of U.S. signals and the possible disruption of local service. However, one wonders how long the Commission would be able to limit the number of American stations if viewers in microwave areas demanded the same number of American stations as are available on other cable systems.

Under program substitution steps have been taken to ensure the economic survival of Canadian stations. Substitution prevents harmful fragmentation and helps hold the audience to the local station thereby contributing to the station's advertising revenue. The indications are that substitutions will continue to increase as broadcasters realize the full benefits of this control.

The deletion of commercials can also help Canadian stations by forcing advertisers to keep their money within Canada. The Commission is hopeful that some advertising will be directed to Canadian stations. At present though pending lawsuits have hindered the adequate implementation of this possibility. Moreover, the Commission has not

decided how the space created by deletion on the U.S. stations will be filled as is evident by the different directives given the Calgary and Maritime cable firms.

Removing commercials may legally be proper since American stations are not licensed for coverage in Canada; however, it seems inconsistent that the CRTC demands commercials be deleted while approving the carriage of programs from these stations. If the CRTC is determined to repatriate Canadian advertising dollars it may be better to give full support to amending the Income Tax Act. Such an amendment would probably have the desired effect of Canadian advertisers removing their commercials. This amendment would not completely solve the problem of spill-over since some U.S. subsidiaries would continue to get a "free ride". However, one would not expect Canadian stations to collapse due to the lack of this additional revenue.

The one policy doubtful of being implemented is payment to broadcasters. The Commission has completely reversed the initial justification for payments; it has not devised any suitable method for transferring money; nor has it actively pursued this proposal. Furthermore, the question recently has been raised by some in the broadcast industry whether or not the Commission has the legal authority to impose controls regarding money matters of this type. These facts, coupled with the cable operators' objections, continue to prevent any meaningful implementation of this directive. Since there continues to be doubt

about the validity of payments and its merits, it may be advantageous for the Commission to direct its attention to other ways cable can contribute to assisting television stations.

Overall, from examining the development and implementation of the Commission's policy on CATV for incoming U.S. signals it is evident the CRTC has attempted to create a policy that is both fair and equitable to the television stations and cable segments of broadcasting. In implementing this policy the Commission has imposed controls on CATV systems as they relate to local broadcasting situations. This approach has protected local stations from at least some of the negative effects of distant signals while still permitting the continuation and expansion of American stations via cable.

The Commission's actions towards cable television have changed the basic characteristic of broadcast licensing. The concept of local service wherein the broadcaster is licensed for a given service area has been altered. Now, not only are broadcasters licensed to provide Canadian stations but cable operators are licensed to provide American stations. No longer is varied programming which included American material to come solely via Canadian broadcasters. Instead, cable operators will provide U.S. stations in their entirety. The Commission thus has accommodated cable television into the broadcasting system.

The presence of CATV has also modified the concept

of local service in other ways. Originally, television stations were limited to specific coverage areas. Now, cable television under the control of the CRTC extends local signals beyond their original area. Furthermore, the attempt to have local stations alone providing television service has been changed. Instead, cable television supplies the local area with a number of stations from several communities. The local station is just one of the many stations supplied to the cable subscriber. Since these additional stations come from a broad geographical area, cable television in effect, is providing regional service.

Yet, the provision of these stations has not meant the abandonment of local service. The controls on U.S. signals notwithstanding, the requirement under the priority listing that cable systems provide a channel for local programming is seen by the Commission as a means of reflecting community needs and interests.⁷ The cablecast channel, unlike traditional television stations dependent on audience ratings, can present a variety of programming to minority interest groups. Such programming, the Commission believes, will complement the material available on local stations.

From all indications of this study cable television can, if properly controlled and regulated, contribute and be advantageous to the Canadian television system. Cable

⁷ CRTC, Policy Statement, p. 16.

Cable Television in Nova Scotia and New Brunswick,
Decision 73-395: August 3, 1973.

Cable TV on Montreal Island, Decision 73-396.
August 3, 1973.

Feature Motion Pictures on Cable Television Systems.
December 5, 1973.

Carriage of CBLFT and Global Communications.
December 21, 1973.

Sharing of Locally Programmed Channel. December 21,
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OCTV Limited, Decision 74-29. (Edmonton, Alberta),
March 1, 1974.

Winnipeg Videon Limited and Greater Winnipeg Cable-
vision Limited, Decision 74-30. (Winnipeg, Manitoba),
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Telecommunications in Canada. Ottawa: Information
Canada, 1971.

bute to the various interests and tastes that make up a balanced broadcasting service. Ultimately, the Commission may be forced to review the entire question of content on the wired system. The Commission will have to decide whether or not content quota similar to that imposed for American programming on Canadian stations should be applicable to American stations on cable television.

Any planning or controls for cable will be of little value unless the Canadian television industry itself attempts to improve. Broadcasters during the early years of CATV contended that unless the wired system was regulated they could not hope to achieve the objectives of broadcasting. The controls placed on cable point out the Commission is dealing with the threat cable poses for local stations, and emphasize the Commission's desire to inject revenue back into the broadcasting system and increase the production of Canadian programming. The Commission is doing its task of regulating CATV under the Broadcasting Act and ensuring that local service and, therefore, the Canadian broadcasting system as a whole continues to exist. With cable television under the direction of the CRTC, broadcasters have a greater opportunity to strive for a truly Canadian broadcasting system than previously possible.

APPENDIX A

BROADCASTING POLICY FOR CANADA

3. It is hereby declared that
- (a) broadcasting undertakings in Canada make use of radio frequencies that are public property and such undertakings constitute a single system, herein referred to as the Canadian broadcasting system, comprising public and private elements;
 - (b) the Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;
 - (c) all persons licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast, but the right to freedom of expression and the right of persons to receive programs, subject only to generally applicable statutes and regulations, is unquestioned;
 - (d) the programming provided by the Canadian broadcasting system should be varied and comprehensive and should provide reasonable, balanced opportunity for the expression of differing views on matters of public concern, and the programming provided by each broadcaster should be of high standard, using predominantly Canadian creative and other resources;
 - (e) all Canadians are entitled to broadcasting service in English and French as public funds become available;
 - (f) there should be provided, through a corporation established by Parliament for the purpose, a national broadcasting service that is predominantly Canadian in content and character;
 - (g) the national broadcasting service should

- (i) be a balanced service of information, enlightenment and entertainment for people of different ages, interests and tastes covering the whole range of programming in fair proportion,
 - (ii) be extended to all parts of Canada, as public funds become available,
 - (iii) be in English and French, serving the special needs of geographic regions, and actively contributing to the flow and exchange of cultural and regional information and entertainment, and
 - (iv) contribute to the development of national unity and provide for a continuing expression of Canadian identity;
- (h) where any conflict arises between the objectives of the national broadcasting service and the interests of the private element of the Canadian broadcasting system, it shall be resolved in the public interest but paramount consideration shall be given to the objectives of the national broadcasting service;
- (i) facilities should be provided within the Canadian broadcasting system for educational broadcasting; and
 - (j) the regulation and supervision of the Canadian broadcasting system should be flexible and readily adaptable to scientific and technical advances;

and that the objectives of the broadcasting policy for Canada enunciated in this section can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

APPENDIX B

APPEAL PROCEDURES AVAILABLE TO
BROADCASTING APPLICANTS OR LICENCEES¹

By virtue of subsection 26(1) of the Broadcasting Act, the applicant may appeal to the Federal Court of Appeal, for leave to appeal to that Court. Such an appeal does not lie automatically merely because the applicant feels that the Commission's decision was unfair or unreasonable. It is available only if the Court, in its discretion, finds that the Commission made a sufficient error of law or error of jurisdiction to warrant granting it.

The applicant may petition the Governor in Council to exercise its power under section 23 of the Broadcasting Act. He would have to satisfy the Governor in Council that the consideration given to the matter by the Commission was sufficiently inadequate as to render it just and necessary for an order pursuant to section 23 to be made.

The applicant may apply to the Federal Court of Appeal for it to review the Commission's decision under section 28 of the Federal Court Act. The grounds for this action are, as stated in section 28, that the Commission:

- (a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) erred in law in making its decision or order, whether or not the error appears on the face of the record; or
- (c) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

Finally, there is section 18 of the Federal Court Act which

¹Correspondence with M. Andrew, Legal Branch, CRTC, November 12, 1974.

gives the trial division of that Court exclusive original jurisdiction to issue injunctions, the prerogative writs and declaratory relief against the Commission. There are numerous conditions which restrict the granting of these various extraordinary remedies and they are issued only at the discretion of the Court. Nevertheless they are available under the appropriate circumstances.

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