

5th Mises Seminar
Sestri Levante – 3-5 October 2008

Against Policy-Induced Competition in the Telecommunications Sector

by Paul Beaudry
Ogilvy Renault, LLP

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Paper presented at the Istituto Bruno Leoni Mises Conference

October 4, 2008

Sestri Levante, Italy

By Paul Beaudry, LL.B.

Progress is precisely that which the rules and regulations did not foresee.

- Ludwig von Mises

Subsidizing competitors at the expense of incumbents is a cheap way of getting political credit, but it is not a way of encouraging efficient competition – or, in the long run, of promoting consumer welfare.²

- Alfred E. Kahn

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¹ Title inspired by the title of an article written by Professor Gerald Faulhaber of the Wharton School of Business. See Gerald R. Faulhaber, “Policy-Induced Competition: The Telecommunications Experiments” 15 *Information Economics and Policy* 73 (2003).

² Alfred E. Kahn, *Lessons from Deregulation: Telecommunications and Airlines After the Crunch*, Washington, AEI-Brookings Joint Center for Regulatory Studies, 2004, p. 38.

INTRODUCTION

The telecommunications sector is in a constant state of flux because of the fast pace of innovation. Rapid technological evolution in the telecom sector has enabled businesses to continually offer new products and services, bring them quickly to market, and drive productivity throughout the economy. It also has benefited consumers, who now have expanded opportunities for learning, employment, health and government services.

The widespread use of cell phones and the Internet has encouraged competition in the telecommunications sector, which was once considered a “natural monopoly”. Voice over internet telephony services (VoIP) are depriving incumbent wireline telephony providers of their traditional competitive advantages and facilitating the entry of new players in the telecommunications markets. Changes in the state of telephony markets paved the way for significant regulatory and legislative reforms in the 1990’s. In the United States, the 1996 Telecommunications Act was enacted to promote the emergence of competitors in a market that had until then been dominated by regional monopolies. In Canada, similar legislation was enacted in 1993.

Telecommunications legislation in Canada and the United States had a noble goal - to do away with monopolized markets and allow competition to flourish in the local and long distance telephony markets. This goal has been met. However, new telecommunications laws did not merely prohibit the existence of state-sanctioned monopolies by liberalizing telecommunications markets; they actively promoted the emergence of competitors by giving privileges to competitive local exchange carriers (CLECs).

In this paper, I intend to explore the Canadian telecommunications regulatory framework by analyzing the regulatory privileges given to new entrants at the expense of former telecommunications monopolies. Further, I intend to show how these regulatory initiatives have not been beneficial to consumers and investors: by substituting their micro-managed view of competition for the invisible hand of the market, legislators and bureaucrats have hindered innovation and have given entrepreneurs artificial incentives to invest in traditional wireline telephony instead of newer technologies.

I will also analyze how consumers are often the first casualties of government policies aimed at promoting competition. For example, in Canada, former monopolies were, until recently, prohibited from pricing their services as aggressively as their competitors, offering innovative bundles of services, and having different pricing policies for different Canadian cities.

A significant part of my analysis will focus on government-mandated network sharing. By giving CLECs mandated access to former monopolies’ networks at regulated rates, legislators and bureaucrats thought that they would be encouraging more robust facilities-based competition in the long term. According to this rationale, new entrants would benefit from cheap access to their competitors’ networks, build a client base and amass revenue that would eventually allow them to build their own networks. Unfortunately, instead of encouraging facilities-based competition, such measures have encouraged dependency and rent-seeking. Many telecommunications service providers never saw these regulatory privileges as being of transitory nature and prefer using political means to maintain them instead of investing to build their own infrastructure.

I will conclude by reflecting on the recent deregulation of Canadian local telephony markets, due to regulatory changes made by the Government of Canada in 2007.³ By overturning two decisions Canada's telecommunications' regulator, the Canadian government sent a clear message that market forces should be relied upon to the maximum extent feasible, and that regulatory interventions should be kept at a minimum.

I. TELECOMMUNICATIONS REGULATION IN CANADA

a. THE TELECOMMUNICATIONS ACT AND THE CRTC

Canadian telecommunications are primarily governed by two laws: the Telecommunications Act, which sets out the telecommunications policy objectives, and the Radiocommunications Act, which deals with licensing of spectrum and certification of wireless equipment.

Canadian telecommunications policy objectives are set out in section 7 of the Telecommunications Act:

7. It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives

- (a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
- (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
- (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
- (d) to promote the ownership and control of Canadian carriers by Canadians;
- (e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;
- (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;
- (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;
- (h) to respond to the economic and social requirements of users of telecommunications services; and
- (i) to contribute to the protection of the privacy of persons.⁴

³ In the interest of full disclosure, please note that the author worked as Senior Policy Advisor to the Canadian Minister of Industry and advised him on telecommunication matters from May 2006 to August 2007.

⁴ *Telecommunications Act*, Statutes of Canada, 1993, c. 38, s. 7.

The Canadian Radio-television and Telecommunications Commission (CRTC) is the regulatory agency in charge of implementing the telecommunications policy objectives. The CRTC's mandate is two-fold: it acts as regulator for both the broadcasting and telecom sectors, although under different legislation and pursuant to different policy objectives. Unlike many Canadian regulatory agencies, whose powers have eroded over the years, the CRTC still dominates the telecommunications regulatory regime in Canada and acts as the primary agenda-setter for the sector.⁵ For instance, it was the CRTC, and not the Canadian government, that introduced competition in local telephony and long distance markets via administrative decisions.

Despite the CRTC's substantial powers, the federal government can exercise certain powers in order to steer the policy agenda. Besides its ability to create and amend legislation, the federal government may vary, rescind or refer back a decision to the CRTC for reconsideration. These powers had seldom been used until 2006 and 2007, when they were used twice by the Canadian government in order to accelerate the deregulation of VoIP services and local telephony markets, creating considerable consternation in the telecom sector and the media.⁶ As the Telecommunications Policy Review Panel (TPRP), constituted by the government in 2005 to review telecom regulation in Canada, pointed out, "this power can also be viewed as having a significant policy-making component since applications under section 12 are almost always based on policy issues"⁷. The federal government may also require the CRTC to hold hearings or make reports on any matter within its jurisdiction, issue directions of general application to the CRTC on broad policy matters and make regulations under the Telecommunications Act and Radiocommunications Act.

b. ECONOMIC REGULATION OF THE TELECOM SECTOR

In its consultation paper issued in June 2006, the TPRP identified three types of telecommunications regulations: economic regulation, which "governs market behaviour, including prices and other terms and conditions under which telecommunications services may be provided by service providers"; technical regulation, which "governs standards for equipment, radio spectrum usage and radiocommunication facilities, interconnection standards and other technical matters"; and social regulation, which "covers such matters as consumer protection, promoting universal service and affordable access and facilitating access for all members of society, including persons with disabilities".⁸ My analysis focuses on economic regulation, as it deals directly with competitive issues in the telecom sector and, in the words of the TPRP, "[intends] to provide a substitute for competitive market forces where there are market failures"⁹.

Under the Telecommunications Act, economic regulation is primarily directed at the former telephone monopolies, also called incumbent local exchange carriers (ILECs). In contrast, competitive local exchange carriers (CLECs) and cable companies, besides having to be certified as CLECs and complying with foreign ownership restrictions, are mostly unregulated and do not have to provide competitors access to their networks at regulated rates. Since 1997, regulations imposed

⁵ Richard J. Schultz, "Still Standing: The CRTC 1976-1996" in Doern et al (eds.) *Changing the Rules: Canadian Regulatory Regimes and Institutions*, Toronto, University of Toronto Press, 1999, pp. 32 and 49.

⁶ We will leave a discussion of the details of these decisions to later sections of this paper.

⁷ Telecommunications Policy Review Panel, *Consultation Paper*, Ottawa, Industry Canada, 2005, pp. 9-10.

⁸ *Ibid.*, p. 10.

⁹ *Ibid.*, p. 11.

on ILECs' local telephony rates have switched from being a traditional rate of return regulation to price cap regulation. Under price cap regulation, ceilings are set on a number of different baskets of services; the regulated firm is free to set prices for every basket of services, but is limited in the average price that it can set for each basket.¹⁰ Unlike rate of return regulation, price cap regimes fix revenues irrespective of companies' own costs for a certain period, thus encouraging regulated companies to cut costs through the profit incentive. ILECs face additional pricing constraints on many individual services, such as basic telephone service.

The CRTC, until recently, imposed price floor constraints on ILECs wishing to bundle regulated services with competitive services. For example, the pricing of a "quadruple play" bundle, which includes wireline telephony, cellular telephony, internet and video services, was subject to an imputation test by the CRTC, even though three out of those four services (internet, video and long distance) were not subject to rate regulation when not bundled with wireline phone service. The main rationale for the imposition of price floors was that it would help encourage competitive entry into as many services as possible, especially facilities-based competition.¹¹ The approval of bundles by the CRTC was a long and complex process, involving tariff filings supported by cost studies for all services contained within the bundle. Due to these restrictions, ILECs such as Bell Canada, Canada's biggest ILEC, were compelled to structure their retail bundles to be contingent only on customer use of their long distance service, and not regulated local service.¹² After the Canadian government issued a Policy Direction to the CRTC directing the regulator to regulate only as a last resort, the CRTC eliminated pricing constraints for bundled services rates.¹³

Until recently, ILECs were restricted in the price offerings they could make to consumers. ILEC territories have been divided in "rate bands". As CRTC commissioner Stuart Langford explained: "[t]ypically, an "A" band is in a city's downtown core, "B" bands cover the city's residential areas, and bands "C" and higher cover ever more rural areas containing decreasing population densities".¹⁴ Price de-averaging, a practice by which a company could offer different rates to different customers within the same rate band, was prohibited, despite the fact that many services industries in the tertiary sector, like the airline industry, routinely engage in such practices. Judging that the removal of rate de-averaging restrictions would foster economic efficiency, the CRTC abolished uniform pricing requirement in April 2007.¹⁵

One of the CRTC's most infamous rules that relates to price discrimination is the "win-back rule". Before the government accelerated the deregulation of ILEC local wireline services, a "win-back rule" prohibited an ILEC from targeting a customer who had been attracted to a competitor for a

¹⁰ Edward Iacobucci, Michael Trebilcock and Ralph Winter, "The Canadian Experience With Deregulation" *University of Toronto Law Journal* 56 (2006), p.8.

¹¹ *Ibid.*, p. 9.

¹² *Case Studies of Micromanagement*, Appendix D-10 to Bell Canada's Submission to the Telecommunications Policy Review Panel, para 10.

¹³ CRTC, "Price cap framework for large incumbent local exchange carriers" Telecom Decision 2007-27, Ottawa, 30 April 2007 (hereafter Telecom Decision 2007-27). We will discuss the details of the Policy Direction in a later section of this paper.

¹⁴ Telecom Decision 2007-27, Dissenting Opinion of Commissioner Stuart Langford.

¹⁵ Telecom Decision 2007-27, para 200.

period of ninety days.¹⁶ ILECs still face substantial restrictions on their ability to make promotions. A promotion cannot exceed six months and, since 2005, cannot be targeted at a competitor's customers in the ILEC's operating territory.¹⁷ Those restrictions have been condemned by many economists, who see win-backs and promotions as being "an integral part of the interminable, competitive struggle between market participants".¹⁸

One of the biggest obstacles to a more competitive telecommunications market in Canada consists in the strict foreign ownership restrictions that prohibit a company that is not "Canadian-owned and controlled" from exercising de facto control on a domestic telecommunications service provider. Canadians must own at least 80% of a telecommunications company's voting shares and at least 80% of its board of directors must be Canadians. In addition, at least two-thirds of the voting shares of a carrier's parent company must be owned by Canadians. Canada ranks among the most restrictive countries of the OECD when it comes to explicit restriction on foreign ownership of voting shares or on other means of controlling domestic telecommunications carriers.¹⁹

- **Mandatory unbundling regulations**

The CRTC's efforts in promoting competition in the telecom markets have focused on facilitating new entrants access to ILECs' networks. In establishing a mandatory unbundling regime, the CRTC recognized that it favored such an initiative because market forces could not be relied upon to guarantee healthy competition in the telecom market.

When it allowed local competition in 1997, the CRTC required that ILECs unbundle and make available to CLECs certain essential services, which mostly included local loops in small urban and rural areas. To be considered essential, a facility had to meet the following three criteria: it had to be monopoly-controlled, it had to be required by an CLEC as an input to provide services and it could not be duplicated economically or technically.²⁰ The CRTC went further by mandating access to "near-essential" facilities, which include local loops in urban competitive areas. Even though the CRTC admitted that those loops could not, in any way, be deemed essential, it imposed mandatory access because it felt that CLECs needed access to those loops to be able to compete in the short term.

The CRTC broadly divided wholesale services into two categories: Category 1 services were divided in three sub-categories: interconnection, essential facilities and near-essential facilities; Category 2 services included all the other wholesale services. Rates of Category 1 services were cost-based, usually set at incremental cost plus a 15% mark-up, while the mark-ups on Category 2

¹⁶ Although the "win-back rule" has been now been eliminated in Canada, we note that the FCC recently upheld the validity of a similar rule in the United States. See Fawn Johson, "Verizon Can't Solicit Ex-Customers" *Wall Street Journal*, June 23, 2008, p. B-3.

¹⁷ CRTC, "Promotions of local wireline services" Telecom Decision CRTC 2005-25, Ottawa, 27 April 2005, paras 63-64.

¹⁸ Dennis L. Weisman, *Principles of Economic Regulation and Forbearance*, Appendix 1 to Comments of Telus Communications Inc. in Public Notice 2005-2, p. 45 (hereafter Weisman)

¹⁹ Telecommunications Policy Review Panel, *Final Report 2006*, Ottawa, Industry Canada, 2006, p. 11-14 (hereafter the TPRP Final Report).

²⁰ CRTC, "Local Competition", Telecom Decision CRTC 97-8, Ottawa, May 1, 1997, para 74.

services, which include wholesale high speed internet access, Ethernet access and operator services, can vary considerably.

The CRTC contended that such regulations would only be necessary for a period of five years:

After this five-year period, these facilities will not be subject to mandatory unbundling or essential facilities rating. In the Commission's view, this approach will permit entry at a pace that will better serve the public interest and, at the same time, provide incentives to CLECs to undertake construction or acquisition of facilities.²¹

However, in a 2001 decision, the CRTC extended mandatory unbundling indefinitely, because it considered that “competition [would] not evolve sufficiently prior to the end of the sunset period”²².

In March 2008, the CRTC revisited the wholesale regulations and changed the definition of an essential service. Under the new definition, the CRTC would determine the existence of an essential facility if:

The facility is required as an input by competitors to provide telecommunications services in a relevant downstream market;

The facility is controlled by a firm that possesses upstream market power such that *denying* access to the facility would likely result in a substantial lessening or prevention of competition in the relevant downstream market; and

It is not practical or feasible for competitors to duplicate the functionality of the facility.²³

The CRTC also established six new service categories for assigning wholesale services. Under this new categorization, unbundled local loops were deemed to be “conditional essential” services. The CRTC asserted that this category would remain “until it is demonstrated that in an application that functionally equivalent wholesale alternatives are sufficiently present such that withdrawing mandated access would not likely result in a substantial lessening or prevention of competition in the relevant downstream market”²⁴. The CRTC also announced that mandated access for certain wholesale services, such as new generation networks, would be phased out of regulation over the next three to five years.

The Canadian wholesale regime stands in sharp contrast with the American wholesale regime, which has been rolled back and, in certain instances, eliminated since the District of Columbia Court of Appeals invalidated FCC regulations that dealt with unbundling requirements in 2004²⁵.

²¹ *Ibid.*, para. 86.

²² CRTC, “Local Competition: Sunset Clause for Near-Essential Facilities” Telecom Order 2001-184, Ottawa, 1 March 2001, para 28.

²³ CRTC, “Revised regulatory framework for wholesale services and definition of essential service” Telecom Decision CRTC 2008-17, Ottawa, 3 March 2008, para 37.

²⁴ *Ibid.*, para 57.

²⁵ *United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (USTA II)

The FCC has since ruled that in order to encourage investment in new facilities and next generation services, ILECs were not required to resell their fibre, and hybrid copper-fibre networks.

- **The failure of the “stepping stone hypothesis”**

Before the CRTC opened local markets to allow facilities-based competition, it only allowed CLECs to resell ILECs’ services. Recognizing that resale competition was not an ideal form of competition (the resellers could not resale at significantly lower prices because they could only lower their costs through more efficient billing practices, marketing strategies, etc.), the CRTC allowed facilities-based competition by giving CLECs mandated access to ILECs’ wholesale services.

The rationale in favor of mandatory unbundling is that by allowing new entrants to have access to incumbents’ networks at regulated rates, those entrants would eventually amass the necessary capital to build their own networks, which, in the end, would benefit consumers. Temporary mandatory access would thus provide a “stepping stone” for new entrants.

In order for the stepping stone approach to succeed, the regulator must be able to determine what parts of the network should be subject to mandatory unbundling and to set access prices at economically correct levels.²⁶ The regulator must not only take into account the options value entrants receive for avoiding the risks of making the investment themselves, but must also regularly adjust prices to reflect the entrant’s increasing ability to rely on its own facilities.²⁷ Furthermore, the regulator must set prices by considering the risks taken by the ILECs when they build or update their networks. In a dynamic sector such as the telecommunications sector, technology can quickly become obsolete. CLECs who rely on mandated access will not have to bear the cost of obsolescence or the costs needed to improve an existing network.

The Canadian experience casts a shadow over the usefulness of the stepping stone hypothesis. ILECs’ have been forced to share too much of their network at artificially low prices set by the CRTC. The overgenerous mandatory unbundling policies have deterred investment in facilities by ILECs and competitors. ILECs who operate outside of their own incumbent territory also admit that the wholesale regulatory framework has slowed down their investment in network facilities because of their reliance on low-priced unbundled network facilities from other ILECs.²⁸ As Jerry Hausman and Gregory Sidak pointed out in a 2004 paper, Canada’s mandatory unbundling regime, despite the fact that it did not completely discourage CLECs from investing in their own facilities because of its less expansive approach than the U.S. regime, nevertheless created a CLEC dependency on unbundled local loops.²⁹

²⁶ Richard A. Epstein, “Takings, Commons and Associations: Why the Telecommunications Act of 1996 Misfired” 22 *Yale Journal of Regulation* 315, p. 317 (hereafter Epstein)

²⁷ Jeffrey A. Eisenach and Hal J. Singer, “Irrational Expectations: Can a Regulator Credibly Commit to Removing an Unbundling Obligation?” AEI-Brookings Joint Center for Regulatory Studies, December 2007, p. 2.

²⁸ Evidence of Telus Communications Company, *CRTC Review of Regulatory Framework for Wholesale Services and Definition of Essential Service*, page 13-14.

²⁹ Jerry A. Hausman and J. Gregory Sidak, “Did Mandatory Unbundling Achieve Its Purpose? Empirical Evidence from Five Countries” 1 *Journal of Competition Law & Economics* 173 (2005), p. 58-59 (hereafter Hausman and Sidak).

According to many proponents of mandatory unbundling, the elimination of unbundling requirements would reduce the number of players in telecom markets and thus have negative consequences on the state of the market and on consumers. Such an understanding of the market process is flawed because it focuses too heavily on rivalry within a given market structure. A “static” view of competition, which solely focuses on the number of players in the industry at a given time, does not take into account other competitive pressures that can exist in dynamic markets like the telecommunications market. Proponents of generous mandatory unbundling regimes ignore the role of actual and future technological change as a cause of competitive tension in markets, and may therefore understate the extent of actual competition in markets. A more “dynamic” conception of competition shows that competitive discipline and rivalry are not necessarily conditional on the presence of a multitude of players in the market; they can also be generated by anticipation of new services in the future.³⁰

Dynamic competition in Canada has been achieved not by a successful application of the stepping stone hypothesis, but by the development of cable and wireless competitors who did not require reliance on the CRTC’s mandatory unbundling regulatory framework. The TPRP, in its March 2006 Report, acknowledged the failure of the stepping stone theory by recognizing that the scope of mandatory wholesale access was too broad and needed to be narrowed down. It went on to disapprove the CRTC’s policy of mandating access to non-essential facilities, because it undermined incentives for CLECs to build alternative facilities:

The argument in support of mandating the availability of non-essential facilities is that it can actually facilitate, rather than hamper, construction of facilities by entrants by providing them with a “stepping-stone” until the day they can build their own facilities. The validity of this argument rests entirely on the assumption that the CRTC can set prices that are both:

- low enough to facilitate entrants’ ability to expand their networks and more quickly acquire the customer base that would justify construction of their own facilities
- high enough to provide entrants with sufficient incentives to build such facilities.

With perfect information, the CRTC might be able to achieve this balance. In practice, such information is not available and the prices it sets are arbitrary to some degree. Attempts to “fine-tune” or “manage” entry and investment incentives in this manner thus pose an unacceptable risk that entrants’ incentives will be compromised.³¹

Unfortunately, the CRTC did not follow the panel’s recommendations regarding wholesale access and, instead of establishing a transition period during which mandatory access to non-essential facilities would be completely phased out, it maintained a category of “conditional-essential” services in its March 2008 decision on wholesale access.

The CRTC’s strategy has utterly failed. CLECs who benefit from mandated access policies have become rent-seekers; their incentives to build their own network infrastructure are weaker because of the low unbundling rates set by the CRTC. New entrants have become de facto clones of incumbent providers, thus generating product imitation and sacrificing product innovation.³² As

³⁰ Neil Quigley, “Dynamic Competition in Telecommunications” C.D. Howe Institute Commentary, February 2004.

³¹ TPRP Final Report, p. 3.34.

³² Weisman, p. 29.

Professor Dennis L. Weisman contends, “policies that reward imitation rather than innovation will attract those market entrants adept at imitation, predominantly arbitragers, while driving away genuine innovators”.³³ Forcing a provider to share a wholesale service to a competitor thus weakens the rivalry between competitors and reduces consumer choice. Obviously, nothing should prohibit an ILEC from entering in voluntary unbundling agreements with CLECs made on commercially negotiated terms. Many facilities-based carriers in the United States have already done so.³⁴ There exists incentives for cooperation between ILECs and CLECs, but those incentives disappear when regulators impose mandated unbundling and make place for rent-seeking games played by political actors.

There is no reason to maintain the existence of an extensive mandated wholesale access regime. As the TPRP remarked in its Final Report:

There is no evidence in Canada that the CRTC’s “stepping-stone” strategy has provided an effective transition to greater reliance by entrants on their own facilities. There is, on the other hand, reason to believe these policies have distorted the behaviour and incentives of new entrants in Canadian telecommunications markets.³⁵

II. RECENT POLICY CHANGES IN CANADA

The Canadian government, in the last two years, implemented three major changes in the telecom policy regime: it issued a policy direction to the CRTC and varied two of the regulator’s important administrative decisions . Those changes can be attributed to two major events: the publication of a report written by a panel of telecommunications experts recommending greater reliance on free markets, and the appointment in February 2006 of an Industry Minister committed to free markets and deregulation.

a. THE TPRP

The Telecommunications Policy Review Panel (TPRP) was set up by the Canadian Minister of Industry in 2005 to conduct a review of Canada’s telecommunications legislative and regulatory framework and make recommendations on how to modernize the regulatory regime to the government. Despite being an early leader in the field of telecommunications, Canada was not remaining at the leading edge of innovation and deployment in key emerging technologies and was not moving forward as quickly as other countries in the telecom field.

One explanation for Canada’s lagging performance was that its telecommunications policies and regulatory framework were outdated. Canada’s telecom legislation had remained unchanged since 1993. In light of the dynamism and constant changes that characterize the telecommunications sector, the Canadian government thought it was necessary to appoint a panel of three telecom experts to review the telecommunications regulatory framework and publish a report that outlined steps that should be taken to modernize it.

³³ *Ibid.*, p. 30.

³⁴ Hausman and Sidak, p. 14.

³⁵ TPRP Final Report, page 3-35.

The TPRP, in its final report, issued 127 recommendations aimed at improving access to telecommunications services, encouraging the adoption of information and communications technologies and modernizing telecom regulation. The Panel's recommendations regarding economic regulation was summed up in the following statement:

- Market forces should be relied upon to the maximum extent feasible as the means of achieving Canada's telecommunications policy objectives.
- Regulatory and other government measures should be adopted only where market forces are unlikely to achieve a telecommunications policy objective within a reasonable time frame, and only where the costs of regulation do not outweigh the benefits.
- Regulatory and other government measures should be efficient and proportionate to their purpose and should only minimally interfere with the operation of market forces to meet the objectives.³⁶

One of the most important recommendations of the Panel was to reverse the presumption that the CRTC should regulate unless it decides to forbear. The Panel suggested replacing that presumption by a legislative presumption that services should not be regulated, unless regulation was necessary to protect consumers or the competitiveness of the market. This major proposal entailed that economic regulation would apply only if a telecom service provider had significant market power in a specific market; if not, no tariff filings and other *ex ante* regulations would apply.³⁷

As mentioned in the previous section, the Panel also recommended that mandatory wholesale access for non-essential facilities be phased out, because it constituted a disincentive to investment and distorted the behaviour and incentives of new entrants.

b. NEW MINISTER OF INDUSTRY

When the TPRP report was published in March 2006, a new Canadian government had just been elected. The Conservative Party of Canada, who had been out of power since 1993, displaced the Liberal party and took the reins of power. Stephen Harper, Canada's new Prime Minister, appointed Maxime Bernier, a member of Parliament from rural Quebec, to serve as Minister of Industry. Despite being a political novice, Bernier had a strong knack for public policy and was known for his staunch libertarian beliefs, having served as vice-president of the Montreal Economic Institute, a free-market think tank, and written a book advocating a flat tax.

Bernier had gotten involved in politics with the intention of making government leaner, more accountable and less interventionist. Soon after taking office, Bernier was able stand up for his free market beliefs when a proposal to impose tariffs on the importation of foreign bicycles was brought forward at the Cabinet table. Bernier stood to benefit from the imposition of such tariffs politically, as Canada's largest bicycle dealer was based in his riding, but instead of bowing to political pressures, he openly opposed the tariffs, arguing that he did not want to be responsible for a rise in bicycle prices that would affect all Canadians. Due, in part, to Bernier's opposition to the imposition of protectionist measures, no tariffs were introduced.

³⁶ TPRP Final Report, Executive Summary, p. 4.

³⁷ *Ibid.*, p. 3-12.

Bernier's legacy as Industry Minister, however, would not be based on bicycle policy, but on telecommunications policy. Bernier had taken office shortly before the publication of the TPRP report. As Minister responsible for telecommunications, he saw the publication of the report as an excellent opportunity to make much-needed changes to the telecommunications regulatory framework. Making legislative changes would be difficult. The Conservative government did not hold a majority of the seats in the House of Commons and the Prime Minister's Office, which kept a tight leash on its Ministers, did not consider amending the Telecommunications Act a priority. However, there were many opportunities that made regulatory reform possible.

c. POLICY DIRECTION

Given the fact that Canada's government was in a minority situation in the House of Commons, it would have been difficult to introduce and pass legislative amendments to the Telecommunications Act without facing substantial opposition from the other political parties, all of which were further to the left on the political spectrum. Further, modernizing the Telecommunications Act wasn't part of the government's list of priorities, despite Bernier's efforts to promote telecommunications reform among his cabinet colleagues.

The TPRP, in its final report, had recommended that the government use its power under the Telecommunications Act to issue a policy direction to the CRTC to indicate how the CRTC should interpret the telecommunications policy objectives contained in the Act. The telecommunications policy objectives, as pointed out by Professor Richard Schultz, consisted in a grocery list of ambiguous and conflicting goals that provide little guidance for the CRTC in its decision-making. A policy direction would bring much-needed clarity to the way those objectives should be interpreted.³⁸

Although amending the Telecommunications Act would have been the preferred path to telecom reform, issuing a policy direction was the government's second best option, and a meaningful first step to bring about change in the way the CRTC regulated the telecommunications industry.

After obtaining Cabinet approval for the issuance of a direction, Bernier announced, on June 13, 2006, that the government was prepared to issue a policy direction to the CRTC for the first time since Cabinet was authorized to do so under the 1993 Telecommunications Act. The Policy Direction, modeled after the recommendation made by the TPRP, ordered the CRTC to rely on market forces to the maximum extent feasible to regulate only as a last resort when exercising its powers under the Telecommunications Act.

During his speech, Bernier made sure to reiterate his fundamental distrust of government meddling in the market: "It is not the role of government to decide how this increasingly complex market should evolve. It is to you – producers and consumers. Likewise our role is not to decide which technology is better and should be permitted to grow faster. That is up to the marketplace to decide"³⁹

³⁸ Richard J. Schultz, "Telecommunications Policy: What a Difference a Minister can Make" in Allan M. Maslove, editor, *How Ottawa Spends, 2008-2009: A More Orderly Federalism?*, Montreal, McGill-Queens's University Press, 2008, p. 138 (hereafter Schultz).

³⁹ The Honourable Maxime Bernier, Minister of Industry, "Speaking Points", 2006 Canadian Telecom Summit, June 13, 2006.

The final Policy Direction, which came into force on December 14 2006 (the law required that the policy direction be tabled before parliament for a period of forty sitting days), was worded as follows:

1. In exercising its powers and performing its duties under the *Telecommunications Act*, the Canadian Radio-television and Telecommunications Commission (the "Commission") shall implement the Canadian telecommunications policy objectives set out in section 7 of that Act, in accordance with the following:
 - (a) the Commission should
 - (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and
 - (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives;
 - (b) the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that
 - (i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with this Order,
 - (ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry,
 - (iii) if they are not of an economic nature, to the greatest extent possible, are implemented in a symmetrical and competitively neutral manner, and
 - (iv) if they relate to network interconnection arrangements or regimes for access to networks, buildings, in-building wiring or support structures, ensure the technological and competitive neutrality of those arrangements or regimes, to the greatest extent possible, to enable competition from new technologies and not to artificially favour either Canadian carriers or resellers; and
 - (c) the Commission, to enable it to act in a more efficient, informed and timely manner, should adopt the following practices, namely,
 - (i) to use only tariff approval mechanisms that are as minimally intrusive and as minimally onerous as possible,
 - (ii) with a view to increasing incentives for innovation and investment in and construction of competing telecommunications network facilities, to complete a review of its regulatory framework regarding mandated access to wholesale services, to determine the extent to which mandated access to wholesale services that are not essential services should be phased out and to determine the appropriate pricing of mandated services, which review should take into account the principles of technological and competitive neutrality, the potential for incumbents to exercise market power in the wholesale and retail markets for the service in the absence of mandated access to wholesale services, and the impediments faced by new and existing carriers seeking to develop competing network facilities,
 - (iii) to publish and maintain performance standards for its various processes, and

(iv) to continue to explore and implement new approaches for streamlining its processes.⁴⁰

The direction substantially reinterpreted the policy objective of the Telecommunications Act and showed not only that the government had embraced the recommendations of the TPRP, but also that the government did not want to be a passive observer in the field of telecommunications regulations.

d. VARIANCE OF THE “VOIP DECISION”

In their 2000 paper contrasting the United States and Canadian approaches to competition and deregulation, Professors Robert Crandall and Thomas Hazlett pointed out the following:

Canada has introduced competition in its telecommunications sector through administrative decisions of its regulatory authority, the Canadian Radio-Television and Telecommunications Commission (CRTC) under a new Telecommunications Act that allowed such liberalization, but did not require it.⁴¹

Although competition was introduced through CRTC administrative decisions, deregulation of the incumbent carriers was recently accelerated by two government decision. The first government initiative was the variance of a CRTC decision that imposed retail price regulation on VoIP services offered by ILECs, while the second decision, which we will discuss in greater detail in the next section, was aimed at accelerating deregulation of local telephony markets.

VoIP telephony provides a means for making voice calls at considerably reduced costs than traditional wireline networks. With VoIP technology, people can place calls over the Internet; VoIP technology converts those calls into packets which can travel across the Internet like other data.⁴² VoIP services are key to the development of competition in the telecommunications industry because the technology they rely on takes away the incumbent carriers’ long-held competitive advantages. VoIP services are low cost and do not require mandated access to ILECs facilities.

The CRTC had examined the question of VoIP service regulation at the request of the ILECs, who wanted to obtain the assurance that VoIP services, because they were different from traditional wireline services, would not be subject to the existing regulatory framework. ILECs maintained that VoIP services could not be assimilated to traditional wireline telephony services and were instead a new service that should be forborne from CRTC pricing regulations, as were long-distance and mobile telephony services.

The CRTC saw things differently. In May 2005, it announced, in its Telecom Decision 2005-28 (the “VoIP decision”), that the same rules applying to ILECs for traditional wireline services would apply to VoIP services. Because VOIP services were simply “...another step in the evolution of telecommunications networks”, the CRTC continued regulating the prices of such services when

⁴⁰ Canada Gazette Part 2, Vol. 140, No. 26 – December 27, 2006 Order Issuing a Direction to the CRTC on Implementing the Telecommunications Policy Objectives.

⁴¹ Robert Crandall and Thomas Hazlett, *Telecommunications Policy Reform in the United States and Canada*, Working Paper 00-9, AEI-Brookings Joint Center for Regulatory Studies, December 2000, p. 1.

⁴² Madura Wijewardena and Cameron Andrews, “Death, Taxes and VOIP Regulation – Are They All Inevitable? International Approaches to VOIP Regulation”, Gilbert and Tobin, November 2005, p. 2 (hereafter Wijewardena and Andrews)

provided by ILECs (which included the application of the “win-back rules”), but forbear from regulating CLECs and resellers in the provision of VoIP services, because they did not have any market power.⁴³

Unsurprisingly, ILECs were unhappy with the decision and filed an appeal to the Cabinet. Bernier, who believed that there should be a level playing field in the provision of new technologies, seized the occasion to send a strong message to the CRTC. In May 2006, at Bernier’s request, the government sent the decision back to the CRTC for reconsideration. The timing was perfect: Bernier could justify his political intervention by asking the CRTC to reconsider its decision in light of the recently published TPRP report, which stressed that regulation of telephone services should only be relied upon as a last resort. To make sure the CRTC understood that the government wanted to adopt a new, more liberal approach to telecommunications regulation, Bernier even announced, in June 2006, that the government was considering issuing a policy direction to the CRTC.

Despite the strong political signal that had been sent to the regulator, the CRTC announced, in September 2006, that it was reaffirming its original decision although it was prepared to conduct a future proceeding to review certain aspects of the telecom regulatory framework. It disposed of the referral back by noting that it had met its statutory obligations and did not reference to any issues raised in the sent-back order.⁴⁴ The CRTC’s reaffirmation of its original decision did not please Bernier, who saw it as a flagrant disregard for the Policy Direction to the CRTC that he had announced only a few months earlier.

Bernier’s hostility to the regulation of VoIP was based on solid ground, considering that the application of *ex ante* obligations to ILEC VoIP services was out of step with the policies of regulators all around the world. The CRTC’s decision made Canada one of the only countries, if not the only country, that applied *ex ante* tariff regulations to ILEC VoIP services. The United States had taken a hands-off approach to VoIP regulation, contending that the regulation of Internet services should be kept at a minimum, while French and UK regulators had determined that VoIP services should not be included in the fixed-telephony market and should not be subject to *ex-ante* regulation or price caps.⁴⁵ The OECD had recommended the exclusion of VoIP applications from *ex ante* regulation for the retail voice market⁴⁶, while the European Commission had expressed a preference for “light-touch” regulation⁴⁷.

Considering the above and the CRTC’s harsh rebuke, Bernier had no difficulty in making the case for overturning the CRTC’s VoIP decision to his Cabinet colleagues, despite the opposition of

⁴³ CRTC, “Regulatory framework for voice communication services using Internet Protocol” Telecom Decision CRTC 2005-28, Ottawa, May 12, 2005.

⁴⁴ CRTC, “Reconsideration of Regulatory framework for voices communications services using Internet Protocol” Telecom Decision CRTC 2006-53, Ottawa, 1 September 2006, para 77; Schultz, p. 147.

⁴⁵ Wijewardena and Andrews, pp. 6, 12-13.

⁴⁶ OECD, “Policy Considerations of VoIP”, March 20, 2006, p. 5.

⁴⁷ European Commission, “Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee of the Regions” *European Electronic Regulation Markets 2005 (11th Report)*, February 20, 2006, p. 9.

public service officials, who thought the decision should stand.⁴⁸ The CRTC had been given a chance to readjust its heavy-handed approach to VoIP regulation and had clearly failed to do so.

On November 6, 2006, the government of Canada announced it was varying the CRTC's VoIP decision by forbearing "access-independent" VoIP services offered by ILECs from economic regulation. "Access-independent" VoIP services are services in which access and service may be provided by distinct providers (i.e. the service provider is not required to obtain the permission of the network provider to offer the service to customers on that network), while "access-dependent" VoIP services are services for which access and service are both provided by the same provider.

The government limited regulatory forbearance to "access-independent" VoIP services in response to fears that ILEC providers could alter the traditional fixed-line network by adding IP elements to it and claim that all their traditional wireline networks were in fact "VoIP" networks. Government officials had expressed worries that ILECs could ask for regulatory forbearance of all their wireline services on that basis. Considering that Canada was the first country to make such a distinction for regulatory purposes, this fear might have been overstated. Nevertheless, Bernier did not mind limiting the scope of the VoIP variance order, as he was already preparing another proposal to the Cabinet, which proposal would be more meaningful and daring than his previous telecom accomplishments: the variance of the CRTC's "Forbearance decision".

⁴⁸ The CRTC had never been held in high esteem by the Conservative party, especially since 2004, when it tried to shut down a Quebec City radio station because of comments made by its conservative, politically-incorrect talk-show hosts.

e. **VARIANCE OF THE “FORBEARANCE DECISION”**

The variance of the VoIP decision had sent a strong signal to the CRTC and had shown that the government’s will to take control of the policy agenda. However, Bernier’s most noteworthy accomplishment was undoubtedly the variance of the CRTC’s Telecom Decision 2006-15 (the “Forbearance decision”, which dealt with the regulation of retail local exchange services.

In April 2006, the CRTC issued its “Forbearance decision”, which set forth criteria that ILECs had to meet in order to be forborne from regulation when providing local retail exchange services.⁴⁹ The CRTC’s forbearance test required that ILECs lose a 25% market share in a specific geographic market in order to be forborne from *ex ante* pricing regulations. ILECs also had to meet wholesale access quality of service requirements for a period of six months before applying for forbearance, and were subject to ninety-day “win-back” rule which prohibited them from contacting customers they had lost to competitors.⁵⁰

On May 12, 2006, ILECs petitioned the Cabinet to refer back the Forbearance decision to the CRTC, arguing that the decision should be reconsidered in light of the TPRP’s recently published report. Bernier sympathized with the ILECs’ position and believed that the criteria established by the CRTC would unduly delay deregulation of local telephony markets. However, Bernier, unlike the ILECs, did not want to send the decision back to the CRTC. Since the CRTC’s had refused to change the VoIP decision a few months earlier, Bernier had lost his patience with the regulator and believed that the only way to achieve fast deregulation in local telephony markets was to have Cabinet vary the Forbearance decision.

Bernier was well aware that many tests could be used to determine the competitiveness of an industry. Professor George J. Stigler, in 1956, had quipped:

To determine whether any industry is workably competitive, therefore, simply have a good graduate student write his dissertation on the industry and render a verdict. Its is crucial to this test, of course, that no second graduate student be allowed to study the industry.⁵¹

Bernier sought to replace the CRTC forbearance test based on market share loss by a bright-line “facilities-based test”, under which a residential market would be deemed competitive when at least two independent facilities-based carriers, including providers of mobile wireless services, were offering local exchange services in addition to the former monopoly. The residential market deregulation test also required that one of the independently-owned competitors be a facilities-based, fixed-line telecommunications service provider. The business market would be deemed competitive when two independently-owned facilities-based providers would operate in specified local business markets. In both the residential and business market tests, the independently-owned

⁴⁹ CRTC, “Forbearance from the regulation of retail local exchange services” Telecom Decision 2006-15, Ottawa, 6 April 2006.

⁵⁰ The CRTC, in the Forbearance decision, reduced the “win-back” period from six months to 90 days.

⁵¹ George J. Stigler et al., *Report on Antitrust Policy : Discussion*, 46 *American Economic Review* 496, 505 (1956) quoted in Alfred E. Kahn, “Telecommunications: The Transition from Regulation to Antitrust” 5 *Journal Telecommunications and High Technology Law* 159, p. 169 (2006-2007)

carriers would need to be able to serve 75% of the number of service lines that the ILEC is capable of serving.⁵²

Under Bernier's proposal, win-back restrictions would be abolished and quality of services requirements for wholesale access would be streamlined. For the purpose of local forbearance applications, local exchanges would be the appropriate geographic component of the relevant market, instead of the much larger "local forbearance regions" that had been chosen by the CRTC in its original decision. Smaller geographic units were favored, because they were less likely than "local forbearance regions" to contain pockets of uncontested customers.⁵³

Bernier's view of competition was quite different from the CRTC's. For Bernier, competition was not question of market shares, but a question of rivalry; if there existed rivalry, or the potential of rivalry, between different facilities-based telecom providers in a specific market, Bernier thought that this market ought to be deregulated. Bernier feared that waiting until the market share of an ILEC fell to an arbitrary level of 75% was likely going to force consumers to pay higher prices than they would pay in the absence of such regulatory constraints.

Under Bernier's plan, roughly 70% of the Canadian population lived in telecommunication markets that were ripe for deregulation. This was due to the rapid and widespread deployment of cable telephony, which had been introduced in 1999 by Eastlink, an Eastern Canada company. Other companies such as Rogers Cable, Cogeco Cable, Shaw Cable and Vidéotron had followed suit in 2005. Cable companies had networks that were capable of delivering voice signals to the home. Their costs of entry into telephony services were significantly lower than telephone companies' costs of entry into video services. Telephone companies had to invest important sums to upgrade their networks in order to deliver video signals to residential customers.⁵⁴ Being able to offer "triple play" or "quadruple play" packages, thus required less investment from cable companies than from incumbent carriers. And despite the fact that ILECs still controlled a vast majority of the wireline market in most Canadian cities, cable companies were constantly gaining ground and amassing a considerable clientele base.

Many opponents of deregulation feared that ILECs could not be trusted to compete in a market devoid of *ex ante* tariff requirements and that, in a forborne environment, they would engage in predatory pricing that would have the effect of stifling competition.⁵⁵ This fear was without foundation. As Professors Trebilcock and Iacobucci pointed out, the consensus in competition policy circles is that predation is rarely tried, and even more rarely successful. The costs of predation can be significant and the possibility of recouping losses that predation can impose are meager.⁵⁶ Furthermore, in an environment where cable companies had lower average costs than incumbent carriers, the prospects of seeing ILECs launch and win a price war were slim. As Robert Crandall explained:

⁵² Canada Gazette, Vol. 141, No. 8 – April 18, 2007, "Order Varying Telecom Decision 2006-15".

⁵³ *Ibid.*

⁵⁴ Robert W. Crandall, "A Two-facilities Bright-Line Test for Forbearance", Appendix 2 to Comments of Telus Communications Inc. in Public Notice 2005-2, p. 21 (hereafter Crandall).

⁵⁵ In the VoIP decision, the CRTC expressed the fear that deregulation of ILEC-provided VoIP services would lead to predation.

⁵⁶ Michael Trebilcock and Edward Iacobucci, "The Design of Regulatory Institutions for the Canadian Communications Sector", Appendix 4 of Bell Canada's submission to the Telecommunications Policy Review Panel, p. 23.

“If the entrants have low variable costs, as both the cable companies and VoIP providers surely do, the required price cut may be quite substantial and the costs of the price war could be enormous. The future gains from such a strategy require that the predator be able to raise prices substantially at some future date and sustain these high prices for some time in order to recoup more than their losses from the predatory war.”⁵⁷

Despite the fact that he had already spent considerable political capital convincing his cabinet colleagues of the *bien-fondé* of varying a the VoIP decision and issuing a policy direction to the CRTC, Bernier decided to submit yet another telecommunications initiative to his Cabinet colleagues. Convincing his colleagues to use the Cabinet appeal power for the second time in such a short timeframe was not easy, especially considering the opposition he faced from public officials, who thought he should not be imposing his vision on the CRTC.⁵⁸ In the end, Bernier succeeded. On April 4, 2007, the government announced that it had fundamentally rewritten the Forbearance decision and invited the ILECs to file forbearance applications in Canada’s major urban markets.

Shortly after the publication of the Cabinet order, the newly appointed chairman of the CRTC, who was more receptive to regulatory reform than his predecessor, let the government know that the CRTC had finally “gotten it”: “the government wants to move quickly toward more reliance on market forces in telecom services, less regulation and smarter regulation. I welcome the clarity and I welcome the variation order.”⁵⁹

In the CRTC’s 2007 Monitoring Report, the CRTC estimated that due to the variance of the Forbearance decision, the percentage of services subject to economic regulation would diminish considerably:

[In December 2006] the Commission estimated that 30% of telecommunications revenues were subject to economic regulation. With the issuance of the Forbearance Order that established a framework for forbearing from regulating local exchange service and the Commission’s High-Speed Digital Service Decision there are now frameworks in-place for forbearing from regulating the remaining major regulated retail services. With these frameworks in-place, the percent of telecommunications revenues subject to economic regulation is expected to decline significantly in the coming year.⁶⁰

The regulator was right.⁶¹ As of June 30, 2008, the CRTC had forborne from regulation over 73% of the residential lines and 65% of the business lines and approximately 80% of local access and revenues were from forborne local services.⁶²

⁵⁷ Crandall, p. 25.

⁵⁸ Schultz, p. 152.

⁵⁹ Konrad von Finckenstein, “Notes for an Address to the 2007 Telecommunications Invitational Forum” Montebello Quebec, April 25, 2007, p.1, quoted in Schultz, p. 157.

⁶⁰ CRTC, *2007 Communications Monitoring Report*, Executive Summary, <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2007/tmr2007.htm>

⁶¹ Pardon the oxymoron.

⁶² CRTC, *2008 Communication Monitoring Report*, Executive Summary, <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2008/cmr2008.htm>

IV. CONCLUSION

By putting in place a two-tier telecom regulatory regime, the Canadian government has sought to artificially encourage competition. Although such a regulatory framework might have been justified to give a temporary advantage to new entrants when local competition was introduced, its prolonged existence has brought negative consequences to the Canadian telecommunications industry. Because the CRTC refused to phase down those regulatory privileges in a timely fashion, new entrants became dependent on the regulatory framework and the policy-induced competition that had been promoted by the regulator backfired. Regulations that were originally intended to foster competition are now only helping competitors.

Canada's mandatory unbundling regime has created a subsidy system that will undoubtedly be difficult to dismantle. Its beneficiaries have become political entrepreneurs whose business plans depend on the extending the lifespan of the present regulatory framework. I concur with Professor Richard Epstein's comment to the effect that with the rise of the internet, cable and wireless technology, it might be wise to "concentrate solely on forging networks, not swapping UNEs [unbundled network elements]"⁶³. Phasing out mandatory wholesale access for non-essential facilities would be consistent with the Policy Direction and would help the future state of facilities-based competition in Canadian telecommunication markets. Competition will come through new technology, not from new entrants who merely replicate services offered by incumbent carrier's existing offerings.

Despite the fact that the need to amend the Telecommunications Act remains, major reforms have been made in the telecom sector during the last few years, due to political initiatives. ILECs still face *ex ante* tariff regulation in non forborne local markets, but the vast majority of the Canadian population now lives in deregulated markets. Such widespread deregulation would never have been achieved had the government not overruled the CRTC and done away with the stringent deregulation test favored by the regulator.

Due to the government's reinterpretation of the telecom policy objectives in its Policy Direction to the CRTC, the regulator has issued several rulings that favour the removal of regulatory obstacles on ILECs.⁶⁴ The "win-back rule" has been eliminated and price de-averaging is now allowed. The mandated unbundling regime is still in place, yet the CRTC has recently announced the phasing out of certain wholesale services. Tariff approvals for bundles are no longer required so long as the price of the entire bundle is at least as much as the combined prices of the regulated components of the bundle.⁶⁵ Despite the fact that many of the CRTC's rulings did not go far enough in doing away with the old regulatory framework, those rulings would likely have been worse without the Policy Direction.⁶⁶

Maxime Bernier understood that the telecom sector was evolving at a rapid pace and that Canadians stood to benefit from a light regulatory regime. His initiatives have shown that legislative changes

⁶³ Epstein, pp. 347-348.

⁶⁴ Martin Masse, "Worst Aspects of Government Meddling in Telecom Are Disappearing" *Financial Post*, March 12, 2008.

⁶⁵ Telecom Decision 2007-27.

⁶⁶ *Ibid.*

are not always necessary to achieve significant policy reforms. More importantly, they have contributed to the elimination of cumbersome and outdated regulations, and have made competition in Canadian telecommunication market more dynamic.

