Some important themes occurred throughout the course of the studies. Most important, perhaps, was the insistence that communications are of the people, by the people, and for the people. If it be accepted that there is a “right to communicate,” all Canadians are entitled to it.

(INSTANT WORLD; A REPORT ON TELECOMMUNICATIONS IN CANADA, 1970:229)

Canada has a long history as a world leader in the development of advanced telecommunications networks. In recognition of their importance to economic development, cultural identity, national sovereignty and communication rights, these networks have been subject to a legislative and regulatory framework in which the federal government has had the responsibility of safeguarding the interests of all Canadians.

As far back as 1892, the federal government amended the charter of the Bell Telephone Company to prohibit rate increases without the approval of the Governor-in-Council. This formal acknowledgment of the public interest in telecommunications has helped protect users and consumers of telecom services, as well as under-served communities, through recognition of common carriage provisions; recognition of the importance of Canadian ownership; cross-subsidization to finance hard-to-serve areas; and consumer protection guarantees. While such protection has been
far from absolute, it has nonetheless enabled policy and regulatory discourse, and a framework for claims-making on behalf of the public interest.\footnote{1}

Over the years, various reviews, committees, and commissions have been implemented to update Canadian telecommunications and broadcasting policy. One of these, the 1970 Telecommission convened by the Department of Communications, the predecessor to Industry Canada, produced a report called \textit{Instant World} which is still a landmark study of telecommunications in Canada and the first one to take note of the impending convergence of computers and telecommunications. It also raised some fundamental questions about the relationship between telecommunications and society. Realizing that telecommunications was more than just plumbing, the Telecommission held "telecommunications environment" seminars to go beyond the questions of "how?" and "how much?" and ask "why?" and "what for?" "Technology can give society just about anything it wants; but what does society want?" they asked.\footnote{2}

Out of these seminars came three “touchstones against which the value of communications systems, in terms of what society wants, might be measured.”\footnote{3} They were access (to tools and information, and for whom), alternatives (choices and questions of control), and education (ability to make effective use of the systems). These issues have formed the groundwork for current telecommunications policy. But the context in which they are addressed has changed fundamentally.

Over the last two decades, telecommunications policy has been increasingly driven by an industrial strategy linked to technological innovation and competitiveness rather than a strategy that grows out of the national interest, the public interest, or social well-being. Beginning in the 1980s, calls were made for the deregulation of the telecommunications system. In 1992, the long-distance telephone industry was deregulated. In 1993, an amended \textit{Telecommunications Act} was introduced that encouraged increased reliance on market forces. This was followed by the deregulation of long-distance services in 1997, and the CRTC’s stunning 1998 decision on new media to forgo regulation of the internet altogether.

Although all of these measures were designed ostensibly to increase competition and unleash market forces in order to increase
consumer choice and lower prices, Canadians continue to face a market oligopoly comprised of a very limited number of powerful incumbents. As a result, they live in the worst of both worlds, enjoying neither the benefits of real competition nor the benefits of an industry regulated to serve the public interest. The Canadian telecommunications market lacks competitive vitality and has fallen behind other markets in terms of price, consumer choice, and penetration rates for services like cellular telephony and broadband.

“In Canada, telecom history shows that we don’t go from monopoly to competition—it’s the other way around,” says Lawrence Surtees, telecom consultant and author of a history of Bell Canada. “We had five wireless providers a few years ago and now we have three. The market has already spoken on this topic.” While deregulation may well have been good for corporate bottom-lines at Bell and Telus, it is difficult to discern how the public interest has been served. In spite of this, the mantra of deregulation continues to prevail.

The latest challenge to the public interest in telecommunications was launched by David Emerson, the Liberal Minister of Industry in April 2005. A three-member Telecommunications Policy Review Panel (TPRP) was appointed to conduct the first major public review of Canada’s telecommunications policy framework since 1993. Their job was to recommend policy changes that would:

> ensure that Canada has a strong, internationally competitive telecommunications industry, which delivers world-class affordable services and products for the economic and social benefit of all Canadians.

This was not an invitation for an *Instant World* style discussion of the role telecommunications plays in Canadian society. In keeping with Industry Canada’s mandate, which is to help make Canadians more productive and competitive in the knowledge-based economy, the Panel was asked specifically to make recommendations on:

- how to implement an efficient, fair, functional and forward-looking regulatory framework that serves Canadian consumers and businesses, and that can adapt to a changing technological landscape;
- mechanisms to ensure that all Canadians continue to have an appropriate level of access to modern telecommunications services; and
• measures to promote the development, adoption and expanded use of advanced telecommunications services across the economy.

We’ve come a long way since the 1970 Telecommission that produced *Instant World*. Telecommunications is now an industrial and technological policy issue which rarely goes beyond “plumbing.” “Why” and “what for” questions do not enter into the equation. The citizen “right to communicate” which is addressed in *Instant World* has become “the consumer right of access”8 in the TPRP Final Report.

**A Narrow Process Leads to a Narrow Vision**

...those making decisions on fundamental issues of telecommunications policy should have access to all the relevant facts, and should be in a position to hear the views of all concerned so that the effects of their decision may be seen in true perspective.

(INSTANT WORLD; A REPORT ON TELECOMMUNICATIONS IN CANADA, 1970:233)

Despite the fact that Canadians, historically, have taken an interest in telecommunications policy, opportunities for public input into such a major public policy area have always been slim.9 For the 2005 telecommunications policy review, the process—particularly that part of it which was realistically accessible to the public—was minimal. A consultation paper was issued in early June 2005, in response to which interested parties could make submissions. This was followed by a second round of submissions commenting on the first round. Two public forums were held: one in Whitehorse, Yukon Territories in September, 2005 (one day), mostly for public interest groups, and the other in Gatineau, Quebec in October 2005 (three days), mostly for industry groups. The Panel issued its final report in March 2006.

The TPRP process was dominated by industry and government concerns about issues such as competitiveness, productivity, and deregulation. Over the course of its work, the Panel received 200 submissions totalling thousands of pages. A content analysis revealed that Aboriginal, consumer, women’s and community groups represented only 15.5% of the total submissions, versus 60.1% for industry groups.10 The relatively fragmented, isolated, and ad hoc nature of community technology organizations in Canada undermined their ability to intervene effectively in such policy discussions.
Analyzing the submissions made in round one and round two of the process, with a specific focus on Section D (Canada’s Connectivity Agenda) of the Consultation Paper, students in a graduate level Media Policy course commented on the market-centric perspective of the Panel’s goals and the truncated process and timeframe for public consultation:

*Immediately, in the Panel’s Consultation Paper, the terms of discussion are set. Policy and regulation are to be set up, or dismantled, in a way that optimizes the market function of ICTs. The stakeholders involved are industry and consumers; the word “citizen” and the phrase “public good” are not to be found in the Consultation Paper. The Panel’s documents relate a conception of ICT development that is mainly economic, and very minimally social.*

The result was predictable. To no one’s great surprise, the Panel’s major recommendation was that market forces should prevail in the telecommunications sector. Noting that Industry Canada was already well on the way to facilitating that policy, Iain Grant, managing director of SeaBoard Group, a telecom consulting firm said: “I think the policy review staff planted [its recommendations] in an already-furrowed field. Now we just have to wait for the harvest to come.”

It wasn’t the harvest community and public interest organizations were hoping for. Those who participated in the review process stressed some very different points—and ones which were unlikely to be served by market forces:

- the on-going need for government intervention to regulate market actors and to support local, community-based telecommunications solutions;
- the important role played by the community technology sector in supporting access to and effective use of ICTs in Canada’s telecommunications infrastructure as a whole; and
- the persistence of a multifaceted “digital divide” within Canadian society afflicting various regions and populations.

The student study group also commented on private industry agendas, finding in the submissions of telecom giants Telus, Bell Canada Enterprises, and Nortel urgent provocations for government not to regulate, to let market forces reign, and to promote...
The signal is loud and increasingly clear that the intended course is full speed ahead to a telecommunications sector that is for sale to the highest bidder.

In June 2006, the presumption of no regulation did, indeed, become the first order of business. The government was now in the hands of the Harper-led Conservatives. Then-Industry Minister Maxime Bernier tabled a policy directive to the CRTC to take a “hands-off” approach to regulating the telephone industry. “Tabling this document signals the government’s intention to direct the CRTC to rely on market forces to the maximum extent feasible under the Telecommunications Act and regulate—where there is still a need to do so—in a manner that interferes with market forces to the minimum extent necessary,” said Bernier. This agenda was accelerated in April 2007 when the Minister, ignoring a specific recommendation to Parliament from the Standing Committee on Science, Industry and Technology, tabled an order-in-council deregulating local telephone service.

“Bell and Telus must be thrilled,” said a spokesperson for Rogers Communications. “With this order we’re embarking on a policy adventure in a way that no other country has done. We’re deregulating whether there is competition or not...” The harvest had indeed come in for the major telcos. Deregulation is now more than a presumption; it is close to a fait accompli.

What Do Public Interest Groups Want?

Submissions from public interest groups, lost in the storm of submissions from industry, its lobbyists, and friends, were adamant that government had a continuing role in ensuring equitable access to network infrastructure, and in ensuring that all Canadians have the necessary skills, resources, and confidence to take advantage of the potential benefits afforded by them.

As an example, the B.C. First Nations Technology Council submission pointed out that high-quality broadband connectivity needs to be considered as basic community infrastructure and a priority of all communities. ICTs are a part of culture and language
development through services such as radio over the internet and video conferencing that can deliver cultural support programs. They are necessary for civic participation in e-government. They provide information through e-health portals and ensure education in the communities through e-learning. ICTs are tools not only for social and cultural development, but also for e-commerce that allows especially remote communities to participate in the global market to ensure productivity and economic growth. This submission also noted that the government needs to prioritize all-around development of socio-economic factors such as lack of potable piped water as well as ICT infrastructure and skills development. 18

The Canadian Research Alliance for Community Innovation and Networking (CRACIN) reiterated the importance of community networks and community initiatives in fostering Canadian-based ICT initiatives and recommended that the Panel:

- affirm, preserve and improve existing policies and programs to support and promote community-based networking solutions as consistent with the objectives of the *Telecommunications Act* as specified in Section 7;
- support communities, municipalities and local organizations that wish to develop and maintain their own community-based networking infrastructure, services and applications; and
- resist the use of regulation and legislation to suppress community and/or municipal networking solutions, as recently seen in the United States.

CRACIN’s submissions and presentations also pointed to the persistence of ICT access gaps afflicting various populations in Canada, including low-income families, rural residents, Aboriginals, and the disabled. They further recommended to the Panel that:

- the Minister of Industry use his statutory responsibility under Section 7 of the *Telecommunications Act* to implement policies and programs that ensure affordable access to high quality telecommunications networks for all Canadians and that safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; and
- policies and programs that support ICT network access, adoption, and effective use by Canadians be maintained and strengthened, and that these be backed by adequate and stable long-term funding to meet the present and
future access needs of Canadians as new technologies arise.19

Some of these ideas were reflected in the TPRP Final Report. It recommended a targeted government subsidy plan called U-CAN that would connect all communities by 2010, as well as a proposed national ICT adoption strategy which would integrate research, a coordinated skills adoption plan, and a connectivity agenda. These could go a long way towards supporting essential services for community groups now threatened by imminent withdrawal of government funding, but, unlike the deregulation agenda, there has been no sign so far that the government is prepared to go ahead with any of these recommendations.20

The Alternative Telecom Policy Forum: A Response to the TPRP Final Report

The TPRP Final Report was released in March, 2006. The Report called for less regulation and increased reliance on market forces in order to promote the growth and competitiveness of Canada’s telecommunications industry. Perrin Beatty, former Conservative Industry Minister and now President and CEO of Canadian Manufacturers and Exporters, called it “one of the most comprehensive and authoritative reviews of telecommunications policy ever conducted anywhere.”21

His view was not shared by public interest advocates, who were alarmed by the Panel’s recommendations that threaten the Canadian public’s right to an affordable, universally accessible, and democratically accountable telecommunications system. While the TPRP public consultation process had the appearance of including and taking seriously the concerns of community and public interest groups, these were effectively marginalized, both procedurally and substantively. The proceedings of the TPRP reflected a preoccupation with the agenda and interests of key players in the telecommunications industry and an ideological commitment to deregulation on the part of industry and government alike. For the most part, however, public concerns were either ignored or brushed aside in the TPRP’s policy discussions and Final Report.

To address some of this gap, the CRACIN research group organized the Alternative Telecom Policy Forum in Ottawa in October, 2006. The forum was born from a recognition of the fragmented nature of the various telecom “counterpublics” attentive to the issues at stake in Canada, but largely ignorant of one another’s work. There was a need for a much more citizen-centric and community-
oriented forum for the discussion of the future of telecom policy and regulation in Canada, and a need for a more coordinated and collective response to the TPRP Report and recommendations on the part of citizens and communities.

Some of the concerns brought forward were expressed in a letter to Industry Minister Bernier from the organizers of the forum: 22

- proposed changes to Section 7 of the *Telecommunications Act*;

  “The TPRP proposals...reflect a much narrower vision of the role and value of telecommunications in Canadian society than that held by many Canadians,” says Philippa Lawson, forum participant and Director of the Canadian Internet Policy and Public Interest Clinic (CIPPIC), quoting a 2005 poll on consumer attitudes to telecommunications regulation. 23 Participants at the forum were particularly concerned that the objective to preserve Canada’s sovereignty and cultural identity could be replaced by the enhancement of the “social well-being of Canadians and inclusiveness of Canadian society.” The objective of “reliable and affordable” services could also be replaced by “the efficiency of Canadian telecommunications markets and the productivity of the Canadian economy.”

- the proposed reliance on market forces to ensure equitable and effective access to telecommunications services;
- the need to strengthen the Panel’s recommendations on network neutrality; and
- the need for adequate, stable, and long-term funding for community access programs.

Throughout the forum, panelists and participants voiced concern about the persistent market forces mantra expressed in the Panel report and recommendations. This “blind faith in market forces” 24 was felt to be a dangerous myth of technological progress and economic enlightenment; a masquerade for the many market failures accumulated by decreasing regulation, and a fraying commitment to meeting the telecom needs of Canadians in remote, rural, and inner-city communities, and those still considered to be part of the digital divide because of socio-economics.

The response from the Minister’s office assured the participants that no decision had been made on revisions to Section 7, but that an increased focus on market forces should not be at the expense
of key social considerations. This government probably realizes that the revisions proposed to Section 7 will be a political battleground and is no doubt biding its time.

**Full Speed Ahead**

The TPRP recommendations are currently under review by the Conservative government. However, emboldened by the Report’s findings, then-federal Industry Minister Maxime Bernier, as already mentioned, tabled a policy directive to the CRTC ordering the Commission to rely on market forces to the “maximum extent feasible” in implementing the *Telecommunications Act*. Responding to concerns about this policy directive, the Minister’s letter to the forum organizers says that the purpose “is not to reduce the role of the CRTC, but rather to act as a signal to the CRTC, the market and the Canadian public concerning the government’s intended course of action for telecommunications policy in Canada.”

The signal is loud and increasingly clear that the intended course is full speed ahead to a telecommunications sector that is for sale to the highest bidder:

- Directive to CRTC to rely on market forces (June 2006).
- The federal Cabinet overrules a CRTC decision on the regulation of internet telephone services (VoIP). (November 2006)
- Justice Konrad von Finckenstein, former head of the Competition Bureau, named Chair of the CRTC—prompting observers to ask whether the fox had been put in charge of the hen house. (January 2007)
- Deregulation of local telephone service. (April 2007)
- Industry Minister announces his intention to move ahead quickly with spectrum auctions. (May 2007)
- A panel of corporate leaders, led by Lynton Wilson, former Bell Canada chief executive and former Chairman of the Board of Nortel Networks, appointed to review Canada’s competition and investment policy, including foreign ownership rules in the telecom section. The panel is to report by June 30, 2008. (July 2007)
• Industry Canada announces spectrum auctions for May 27/2008. (November 2007)

Helping Hands or Policy Laundering?
The agenda is getting plenty of push from the private sector. In a truly extraordinary move, Bell Canada and Telus funded Hank Intven, one of the Panel members, and Mary Dawson, a former deputy minister at the Department of Justice with lengthy experience in legislation drafting, to draft a model telecommunications act based on the recommendations of the TPRP.

This model act was published by the law firm McCarthy Tétrault, current legal home of Intven and Dawson, and unveiled at the 2007 Canadian Telecom Summit, an annual meeting of the powerhouses of the Canadian Telecom industry. The preamble acknowledges that this is a somewhat “unusual” undertaking. The vested interests of Bell and Telus are acknowledged, and readers are assured that Bell and Telus played no role in the drafting of this model act. But, given that the TPRP’s recommendations didn’t draw any criticism from the telcos, it hardly seems necessary for them to have intervened.

This is an astonishing and dangerous precedent that should have brought a storm of protest from citizens and elected representatives alike. Instead it has been treated as perfectly normal. Save for one article in The Globe and Mail, the media have been silent. How tempting will it be for those who are truly tasked with bringing forward legislation on these issues to start with nicely prepared statements from this industry-friendly document rather than starting from the more much difficult point of addressing the needs of Canadian society with respect to telecommunications policy? Commented Liora Salter, an Osgoode Hall Law Professor, “The model act reveals how most new laws in the private sector are fiercely negotiated behind closed doors.”

It looks very much like an indirect way of pushing forward policies without the usual democratic political process, something which an international coalition of privacy and civil liberties organizations has dubbed “policy laundering.”
Just as money laundering describes the cycling of illegitimate funds through outside institutions in order to enter them into legitimate circulation, so does policy laundering involve the cycling of policies that lack political legitimacy through outside intuitions (sic) in order to enter them into circulation despite their lack of acceptance.29

Together with other TPRP recommendations being considered by the government, these recent moves represent an unprecedented attempt to diminish the ability of Canadian citizens, through their democratically accountable legislative and regulatory bodies, to ensure that Canada’s telecommunications system meets the needs of all Canadians.

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1 See Robert E. Babe’s Telecommunications in Canada (University of Toronto Press), 1990, for an earlier history of telecom in Canada, and Vanda Rideout’s Continentalizing Canadian Telecommunications: The Politics of Regulatory Reform (McGill-Queen’s Press), 2004, for a discussion of the neoliberal turn in policy.


3 Instant World: 34.


6 The 3 panel members were Dr. Gerri Sinclair (former academic and now internet technology consultant to industry and government), Hank Intven (partner in the Toronto office of McCarthy Tétrault LLP, a Canadian law firm and former CRTC commissioner) and André Tremblay (President and Chief Executive Officer of Micronet Telecommunications Inc.).


8 Ibid. p. 6-4.

10 Statistics compiled by Rachel Miles, Concordia University.


12 Concordia University MA class in Media Studies, Media Policy (COMS 644). (Fall 2005). Taught by Leslie Regan Shade. Participating students included Carol Auld, Neil Barratt, Alison Harvey, Michael Lithgow, Heather Peters, Rachel Miles, Michele Ohnona, Rebecca D. Reeve, Craig Stewart, Nyambura M. Waruungi and Ezra Winton. They each drafted a ‘think piece’ about submissions made to the TPRP; they were then edited together to form an op-ed which the group unsuccessfully tried to place in Canadian newspapers.


14 Concordia Media Studies Class.


19 CRACIN’s first, second, and follow-up letters to the TPRP are available at www.cracin.ca.

20 The TPRP *Final Report* is online at www.telecomreview.ca. Summaries of Chapter 6 (Social Regulation), Chapter 7 (ICT Policy), and Chapter 8 (Connectivity) have been written by Rachel Miles, Concordia University, as part of the Alt.Telemac Forum backgrounders, and are available at www.cracin.ca. See Moll and Shade’s press release, “Not Just Business as Usual,” at www3.fis.utoronto.ca/research/iprp/cracin/TPRP_oped.pdf. In Section 7-43, the TPRP Report acknowledged CRACIN’s submissions on the necessity for community networks.


Said Philippa Lawson, Executive Director & General Counsel to the Canadian Internet Policy and Public Interest Clinic (CIPPIC), and echoed by others, notably Garth Graham of Telecommunities Canada and Prof. Andrew Clement of the University of Toronto.


Ibid.


Ibid.