Wholesale Broadband Access and Regulatory Appeals in the Canadian Telecommunications Industry: An Institutional Analysis

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Extended Abstract

Past regulatory law and administrative policy studies examining the Canadian telecommunications regulatory regime have tended to focus principally on the Canadian Radio-television and Telecommunications Commission (CRTC), Industry Canada, or some combination of these two organizational bodies. By contrast, this thesis engages in an analysis that situates Canada’s federal Cabinet appeal procedure, the “Petition to the Governor in Council” (GiC), as a significant component in the country’s telecommunications policymaking apparatus. The thesis first questions how the GiC appeal procedure integrates with other organizational roles within the regulatory regime. Then applying the Institutional Analysis and Development (IAD) framework methodology, the thesis analyzes the institutional arrangement established for producing the policy developments and the appeal amendments that define Canada’s wholesale access regulatory program for wireline broadband provision. The research shows that, if viewed as an institutional actor, the GiC appeal procedure and its most recent appeal ruling for wholesale mandated access to fibre-to-the-premises (FTTP) broadband facilities help to illustrate how the CRTC has protected its roles and responsibilities as an independent regulatory agency. The research, furthermore, suggests that despite the appeal powers possessed
by the GiC over the direction of telecommunications regulation, as well as obstructions to CRTC regulatory development that can transpire as an externality of GiC appeal decisions, Canada’s telecommunications regulator has nevertheless preserved its ability to shape the specifics of policy outcomes. The thesis concludes by emphasizing that since the advent of commercially available broadband services, wholesale wireline access regulation demonstrates the success of the CRTC in defending its institutional role better than perhaps any other policy initiative. Finally, the thesis also points to areas where the GiC procedure would benefit from improved transparency and strengthened conduits for regional representation. Suggestions for improvement target the platform for provincial ministerial consultations used in the GiC appeal decision-making process.