

Submission to the Broadcasting and Telecommunications Legislative Review Panel

Gregory Taylor

Assistant Professor

Department of Communication, Media and Film

University of Calgary

gregory.taylor2@ucalgary.ca

8 January 2019

I would like to extend my thanks to the Canadian government and the Broadcasting and Telecommunications Legislative Review Panel for reaching out to Canadians for input on this important process. I am pleased that the government is taking this step at such a critical juncture for Canadian communications. This Panel is necessary interventions at a key time. It is time to strengthen what works in our communications system and recognize the shortcomings, while exploring alternatives.

My name is Gregory Taylor and I am an assistant professor in the Department of Communication, Media and Film at the University of Calgary. I have published on a range of contemporary communications issues and my book, *Shut Off: the Canadian Digital Television Transition*, was shortlisted for the 2014 Donner Prize for best Canadian book in the area of policy studies (Taylor, 2013). I am also the principal investigator for Canadian Spectrum Policy Research. Many of the points I bring forward in this submission echo my presentation before the Senate Standing Committee on Transport and Communications on Oct 17, 2018.

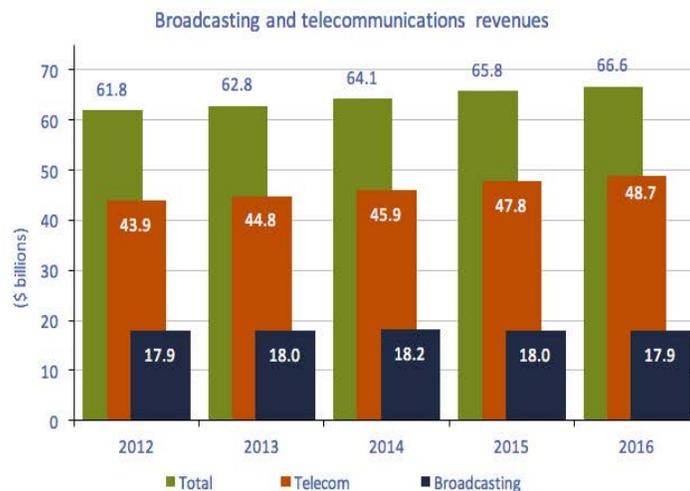
Key Points:

1. Be wary of the “end of broadcasting” rhetoric that can permeate debates such regarding the future of media. The current data does not support this position, and I argue the exact opposite – it is in fact the surprising resiliency of broadcasting that is one of the great media stories of the Netflix era. Broadcasting is clearly not in the position of prominence it once was, but it remains a powerful presence in the wider communication system. Plus, there are concerning ramifications for democracy if the end of broadcasting is made a self-fulfilling prophesy via legislation.
2. The government must stop expecting existing markets to deliver communications infrastructure in rural regions, in particular regarding broadband. Markets did not deliver for new communications technologies in rural areas in the past and there’s a strong chance they never will. Market failure in rural communications is common and this is not a uniquely Canadian problem. Forward thinking policy is required to bridge the rural digital divide.
3. Whether we have one or two Acts should not be a top priority. I will leave that to the discretion of legal experts. There are however, fundamental changes I believe the government should consider, including broadening the scope of the CRTC to include spectrum oversight and resurrecting the Department of Communications that was decommissioned in 1993.

1. End of Broadcasting?

The terms of reference for this Panel asks “How can the concept of broadcasting remain relevant in an open and shifting communications landscape?” Despite claims to the contrary, broadcasting in Canada is very much alive and hardly the media dinosaur many, including my own colleagues, often make it out to be. In fact, the “death of broadcasting” concept has been with us for decades (Brookes, 1998; Negroponte, 1995). This is important to note as we consider changes to existing legislation under the mandate of this panel.

Clearly broadcasting is not experiencing the growth of the mobile broadband sector. The CRTC’s own data shows broadcasting revenues have flat lined in the Netflix era.



Source: <https://crtc.gc.ca/eng/publications/reports/policymonitoring/2017/cmr3.htm#s30> Figure 3.0.4

It is important to note that broadcasting is not experiencing growth but, despite nine years of Netflix, it has clearly not met the fate of truly suffering industries such as newspapers or music

retail. As noted in the 2018 Canadian Media Concentration Research Project “TV remains a pillar of the internet- and mobile wireless-centric media ecology “ (Winseck, 2018).

The much-discussed cable cutting or cord-cutting is similarly over-hyped. The CRTC’s data shows total BDU revenues have dropped .5% since 2012

(<https://crtc.gc.ca/eng/publications/reports/policymonitoring/2017/cmr4.htm> table 4.0.1). Bear in

mind: cable television is an industry that had never experienced a loss in its history until 2013.

This CRTC 2016 data shows that most of the cable cutters have often simply migrated over to IPTV since Netflix arrived on the scene in 2010 (Canadian Radio-Television and Telecommunications Commission, 2016).

Table 4.3.3 Broadcasting distribution undertakings subscriber (thousands) numbers – Basic and non-basic services

Type of service	2011	2012	2013	2014	2015	Growth (%) 2014-2015	CAGR (%) 2011-2015
Cable	7,862	7,701	7,445	7,062	6,707	-5.0	-3.9
IPTV	657	1,003	1,382	1,784	2,165	21.4	34.7
DTH and MDS	2,877	2,826	2,691	2,559	2,375	-7.2	-4.7
Total subscribers	11,397	11,529	11,517	11,405	11,247	-1.4	-0.3

Source: CRTC data collection

There are clear problems in the local conventional television sector, as advertising revenue drops, but overall the broadcasting sector remains healthy and reports of the death of broadcasting are decidedly premature. As I have argued in the past, the concentration of

ownership where conventional television broadcasters are owned by distribution companies has hindered the potentials of digital over-the-air broadcasting. This is not the case in other countries.

While the decline of broadcasting is slow, I recommend that it would be prudent to decouple the Canadian Media Fund from reliance upon the slowly-declining BDU revenues. This should be recognized by the Panel as it addresses support for Canadian content and creative industries as outlined in its terms of reference (10).

My efforts to support broadcasting are not borne of some misplaced sense of nostalgia or refusal to recognize the clearly shifting media environment. To downplay the continued role of broadcasting is to devalue its continued place in our democracy. A case in point was the 2015 leaders' debate during the federal election campaign. These debates were not carried by major television broadcasters and ratings plummeted as a result to an average audience of 1.5 million viewers on smaller broadcasters (Haupt, August 10, 2015). In the online world there were 440,000 views on Youtube one week after 2015 debate. For context the 2011 Debate, carried by CBC, CTV, Global, drew 10.6 million viewers. The Globe and Mail referred to the lack of broadcast coverage as "a disgrace" (Doyle, Sept 27, 2015) Broadcasting still has a unique ability to gather mass viewership. In the fall of 2018 CBC TV was justly criticized for not covering local election nights in Ontario. The public broadcaster once again noted that the results were readily accessible online. But the internet does not have the communal reach of broadcasting - we cannot simply assume the online world will pick up the slack. In the future, the tie between broadcasting and democracy must be strengthened through conditions of license that require

coverage of key election events. This should be noted under the Democracy, News and Citizenship (11) of the Panel's terms of reference.

Clearly traditional broadcasting will decline as new services proliferate and we need to explore alternatives; but much like automated cars, we're looking at years down the road. Broadcasting will continue to matter for the foreseeable future.

2) Rural Broadband

One of the themes of this panel is *Reducing barriers to access by all Canadians to advanced telecommunications networks*. I have recently published an article addressing the issue of broadband and rural Canadian connectivity (Taylor, 2018). Rural connectivity in Canada will be wireless. It simply makes technological and economic sense. Running fibre to each rural home is not economically feasible (the last mile road to house is expensive), and besides new wireless technology can offer high speeds and great data capacity. Despite this potential, I argue the government could be doing much more to spur wireless broadband in Canada's rural regions.

The process of taking moving spectrum users from one frequency band to another is known as "refarming". However, refarming has thus far not benefitted Canadian farmers.

Rural access is clearly a central pillar of Canada's communication strategy; however, despite successive Canadian governments that have announced measures to address this digital divide, the chasm between rural and urban service remains. The time is ripe for a reevaluation. Canada

enjoys solid broadband infrastructure in the cities but that diminishes quickly as you leave the urban centres.

I strongly support many of the conclusions in the 2018 report from the Auditor General of Canada, “Connectivity in Rural and Remote Areas” (Canada, 2018). I believe the Panel would be well advised to consider the research and recommendations in this report. In my view, the strongest recommendations from the Auditor General included these three key suggestions

1.48 Innovation, Science and Economic Development Canada, in collaboration with the Canadian Radio-television and Telecommunications Commission, should make a detailed connectivity map publicly available and update it regularly while respecting the confidentiality of service providers’ data.

1.77 To foster the provision of wireless Internet services in rural and remote areas, Innovation, Science and Economic Development Canada should review the way it manages auctions of spectrum, including design and requirements such as

- size of geographic areas,
- deployment conditions, and
- subordinate licensing incentives for unused spectrum in underserved areas.

1.81 Innovation, Science and Economic Development Canada should foster secondary markets for unused spectrum in underserved areas by

- gathering additional information from rural and remote stakeholders about the challenges they face in accessing unused spectrum;

- reviewing spectrum licensing conditions that promote deployment and secondary markets; and
- providing public information that would help service providers in rural and remote areas seeking to access spectrum via sub-licensing.

For more than a decade, governments have repeatedly waited for markets to work their magic in broadband service for rural Canada. This has never been true of communication infrastructure since the days of telephone and radio and it has not changed today. Wireless broadband requires spectrum access. Market-based spectrum auctions were the policy child of the early 1990s when they were launched in New Zealand and quickly gained worldwide acceptance. For more than a decade, auction winners have faced weak deployment conditions in license structure and so have been hesitant to build in rural areas (Industry Canada, 2012; Innovation, March 2018).

The government seems to be slowly recognizing the limits of a market-based strategy and has recently announced a plan to invest \$500 million into rural connectivity. This is a start, but a more long-term strategy will be required. Broadband providers are experiencing enormous financial growth but this is not being reflected in rural build outs. There are ways to address this including more open spectrum access, reserving some spectrum for an administrative process that could be used to help incubate smaller wireless service providers in rural areas, or a more rigorous deployment outline as conditions of license. None of these possibilities will be realized via a strictly market-based approach.

3) Legislative Changes

Whether or not the Acts need to be consolidated into one should be the place of legal scholars; however, I do believe fundamental shifts are needed that that may be beyond the parameters of the current Acts.

First, spectrum oversight should be moved to the CRTC. As I've just noted, there is a fundamental link between spectrum and Canadian connectivity that should not be under the auspices of the government department also concerned with areas as diverse and seemingly disconnected as the auto sector.

According to the Radiocommunications Act, the ISED Minister may “do any other thing necessary for the effective administration of this Act” (Radiocommunication Act 5.1.n). The Minister is the government and as such is often focused upon elections, not long-term communication strategy. A more arm's length approach is needed for forward-thinking spectrum management.

The decisions of a true public regulator are under much more public scrutiny. Despite occasional calls for public comment, much of what happens at ISED happens behind closed doors. For something as increasingly essential to our communication infrastructure as the publicly-owned spectrum, it is important that the process of administering these airwaves be subject to clear public deliberation.

My other fundamental restructuring proposal would be to resurrect the Department of Communications as opposed to the current bifurcated approach between Canadian Heritage and ISED. The Department of Communications existed between 1969 – 1993; unfortunately disbanded just as the most powerful communications tool in history, the internet via the world wide web, was just launching in the public conscience. As it described itself in 1971, the Department of Communication “represents a fusion of administrative and research units ...to provide a more coherent view of the needs of the Canadian public on a national basis” (Canada. Department of Communications, 1971). This type of need for coherency is what we are talking about regarding the future of the Telecommunications and Broadcasting Acts.

I sympathize with Ministers who receive the ISED and Heritage portfolio and have limited time to learn the field before they are moved onto the next position. Canadian communications suffers as a result. Communications is too important for it to be a side venture in a larger department. We need a Minister with a dedicated focus on communications coupled with a CRTC that is not left wondering what ISED is doing in an essential field like spectrum policy. I strongly recommend placing spectrum under the auspices of the CRTC and (re)creating a federal Department of Communications.

Final Recommendations:

Given the broad scope of this Panel, I am not able to address all issues; however, I would like to add a few more points in brief:

1) The CBC remains key and must be central to the future of Canadian media. We may as Canadians incessantly argue about the content, but the centrality of the CBC to the Canadian communications system has not diminished in the digital era, in fact it may have intensified. My experience before the Senate Committee in October 2018 largely placed me in a position of defending the CBC before several appointed officials who clearly resent the public broadcaster. It does not have to be this way. A 2010 report from the CD Howe Institute noted the centrality of the CBC to the future of Canadian content (Hunter, Iacobucci, & Michael J. Trebilcock, 2010). Support for the CBC should not have to fall along party lines.

I have been at many CRTC public hearings where the beleaguered chair has to inform speakers, yet again, that the CRTC does not fund the CBC. However, the government does. Multi-year funding for the national public broadcaster is essential and should be part of any new legislation.

2) Canada's net neutrality laws must be upheld and reinforced. We have already had repeated cases where ISPs have tried to exert influence over data traffic to gain economic advantage (Dobby, May 16, 2018). The pressures of the net neutrality repeal by the FCC must be resisted.

3) The 1999 New Media exemption order has given this sector more than adequate time to get established (I supported this exemption and the subsequent reviews). However, these new media are not so new anymore. I support a tax on foreign and domestic-based over-

the-top (OTT) distributors for Canadian media production. If it were at an equal rate to Canadian broadcasting distributors, 5%, that would add roughly 50 cents a month to their Netflix bill. I do not see this as a major economic obstacle and seems fair if legacy media like cable are asked to contribute.

- 4) Finally, advocates for public positions in telecom and communication policy must be protected from threats of legal repercussions for being involved in appeals in the CRTC policy process. In 2015, public advocates in the case against Bell concerning net neutrality and Bell's TV app, were threatened with substantial legal costs if Bell were to win the case upon appeal (Lewis, Feb 23 2015). This legal procedure clearly deters even the most committed public advocate from taking part in the policy process. Both the Telecommunications and Broadcasting Acts must be structured to remove this legal barrier and encourage public engagement in Canada's communication policy.

I thank you for the opportunity to voice my concerns on the future of the Broadcasting Act and Telecommunications Act. I wish the Panel all the best on this very challenging endeavour.

Gregory Taylor

Works Cited:

Brookes, R. (1998). Time, National Identity and Television Schedules in the 'Postbroadcast Age'. *Time & Society*, 7(2-3), 369-381.

Canada. (2018). *2018 Fall Reports of the Auditor General of Canada to the Parliament of Canada*

Report 1—Connectivity in Rural and Remote Areas. Ottawa Retrieved from http://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_01_e_43199.html#hd2e

Canada. Department of Communications. (1971). *Annual Report 1970-1971*. Ottawa

Canadian Radio-Television and Telecommunications Commission. (2016). *Communications Monitoring Report*.

Dobby, C. (May 16, 2018). Federal court dismisses Bell appeal in mobile television ruling.

Globe and Mail. Retrieved from <https://www.theglobeandmail.com/report-on-business/federal-court-dismisses-bell-appeal-in-mobile-television-ruling/article30529570/>

Doyle, J. (Sept 27, 2015). Our Election Debate System is a National Disgrace. *The Globe and Mail*.

Houpt, S. (August 10, 2015). Federal leaders' debate draws far fewer viewers than 2011 edition.

The Globe and Mail.

- Hunter, L. A. W., Iacobucci, E., & Michael J. Trebilcock. (2010). *Scrambled Signals: Canadian Content Policies in a World of Technological Abundance*, . Retrieved from www.cdhowe.org
- Industry Canada. (2012). *Policy and Technical Framework: Mobile Broadband Services (MBS) – 700 MHz Band Broadband Radio Service (BRS) – 2500 MHz Band*. Ottawa
- Innovation, S. a. E. D. C. (March 2018). *Technical, Policy and Licensing Framework for Spectrum in the 600 MHz Band*. Retrieved from <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11374.html#s6.2>
- Lewis, M. (Feb 23 2015). Request for costs worries student who took on Bell's TV app. *Toronto Star*. Retrieved from <https://www.thestar.com/business/2015/02/23/request-for-costs-worries-student-who-took-on-bells-tv-app.html>
- Negroponte, N. (1995). *Being digital*. New York: Knopf.
- Taylor, G. (2013). *Shut off: the Canadian Digital Television Transition*: McGill-Queen's University Press.
- Taylor, G. (2018). Remote Rural Broadband Systems in Canada. *Telecommunications Policy*, 42(9), 744-756. Retrieved from <http://www.sciencedirect.com/science/article/pii/S0308596117302306>.
doi:<https://doi.org/10.1016/j.telpol.2018.02.001>
- Winseck, D. (2018). *Growth of the Network Media Economy in Canada, 1984-2017*. Retrieved from