



Department of Justice

Ministère de la Justice

*I would like to know how this offer from what has already been offered.*

MEMORANDUM/NOTE DE SERVICE

Security Classification - Cote de sécurité
File number - numéro de dossier
Date August 13, 1980

TO/A: THE HONOURABLE JEAN CHRETIEN

FROM/DE: THE DEPUTY MINISTER

SUBJECT/OBJET: Communications and the Constitution

Comments/Remarques

The purpose of this memorandum is to bring to your attention a draft on communications which groups into one succinct and reasonably flexible scheme the four components of this subject, i.e. the radio frequency spectrum, broadcasting, cabledistribution and the telecommunications carriers.

This draft proposes, with some variations, a devolution of powers to the provinces. These variations are expressed in terms of alternatives and their implications are explained in this memorandum. You may want to let us know which of these variations you would prefer to be presented to the provinces, keeping in mind that what should or might be offered to the provinces now should presumably not go as far, in terms of devolution of powers to the provinces, as the bottom line federal offer for the First Ministers' meeting. More work needs to be done on the draft. But it is considered to be sufficient for our purpose here. In preparing it, we were pursuing the following objectives:

- Clause 91.(X) - retains at the federal level, exclusive jurisdiction over the technical aspects of telecommunications including radio frequency spectrum. This point has already been conceded to us by the provinces.
- Clause 91.(Y) - keeps for the Parliament of Canada exclusive jurisdiction over networking and interconnections beyond the limits of a province, including the conditions under which this would be done. Under this power, Parliament could provide the conditions under which national carriers could interconnect with provincial carriers in a province. There is a question

.../2

as to whether Parliament, under this section, as drafted, could force interconnection between for example, SaskTel and CNCP, if SaskTel did not wish to interconnect, or could only regulate the conditions under which interconnection would take place, where SaskTel and CNCP would wish to interconnect. This question needs further consideration. The words "including interprovincial and international rates" are shown in brackets as a possible addition. Such addition may not be necessary, since the words "networking and interconnectability" may well provide Parliament with the authority to regulate interprovincial and international rates. This question is still under review. It is clear, however, that the proposed words would add certainty to the law by specifically extending such authority to Parliament, thus placing this matter beyond the reach of the provinces. DOC would prefer this. We know that the provinces would prefer to have jurisdiction over interprovincial rates specifically vested in the provinces. DOC feels this is a matter of national interest and that provincial concerns could be met by mechanism such as joints boards. The wording, without the addition in brackets, would continue the uncertainty of the present constitution. The interprovincial and international rates of telephone companies have up till now remained unregulated. They have been set by an unincorporated consortium of the telephone companies. A good case can be made to the courts however that at least the interprovincial and international rates of telephone companies come under federal jurisdiction.

- Clause 91.(2) - is aimed at giving the Parliament of Canada the authority to ensure that all or any telecommunications undertakings in a province will carry on a priority basis those services that the Parliament of Canada wishes to be carried nationally by any national institution.

The first alternative would ensure that these national program services can be widened from time to time by federal legislation beyond the national institutions providing such services (e.g. CBC). DOC recommends this alternative and rejects the second alternative.

.../3

The second alternative would ensure this priority only for any service carried by a national institution providing national programming services.

- Clause 92.(Y) - gives to the provinces jurisdiction over all telecommunications carrier works and undertakings in the provinces. The words "telephone, etc..." have been retained in order to ensure some certainty as to the field over which the provinces would have jurisdiction: it would be all carriers of communications at a distance, save those matters that are excluded. So excluded from this list would be:
  - a) the national carriers, such as CNCP, Telesat, Teleglobe;
  - b) those telecommunications that have a national purpose and that are distributed by local telecommunications, such as maritime and aeronautical signals, defence signals, emergency signals, etc.;
  - c) satellite signals.
- Clause 92.(Z) would give to the provinces exclusive jurisdiction over non-programming service (fire alarm, etc.) of undertakings in the province and some jurisdiction over the programming undertakings.

The draft includes three alternatives:

The first alternative would give jurisdiction to the provinces over all programming in cable except broadcasting and 91.(Z). The second alternative would allow the provinces to have jurisdiction over broadcasting for educational purposes. Such power, which would be construed widely, would allow the provinces to permit advertisement on educational broadcasting; this has been denied to them till now. The effect would be to produce great similarity with the existing commercial stations. DOC

will consider this question in the light of the Toronto meeting of officials to be held August 12 and 13. The third alternative would give the provinces jurisdiction over broadcasting, subject always to the provisions of the proposed Sections 91.(X), (Y) and (Z). DOC rejects this alternative.

Under either alternatives, Parliament would retain jurisdiction over non-Canadian programming in Canada.

Roger Tassé