

CONFIDENTIAL

August 21, 1980

MEMORANDUM FOR THE HONOURABLE JEAN CHRETIEN

c.c. Mr. Kirby

Communications

Attached is a legislative draft of constitutional amendments on this subject. With one exception, at a meeting in St. Agathe yesterday, the Minister of Communications agreed to tabling of a draft in the attached form at the CCMC next week. The exception is the square bracketed words in the provision designated 91(w).

Although this draft will not be well received by provincial officials who will be attending the meetings next week, on balance, we would recommend that you table it when this subject comes up for discussion on Tuesday. In our view, you should insist on the inclusion of the square bracketed words noted above. In CCMC discussions during July, Ministers specifically approved of an officials' committee recommendation that the federal role in the management of the frequency spectrum should be limited to "technical aspects". You could be accused by your provincial counterparts of renegeing on that agreement if the words are omitted.

The major stumbling block with the provinces in the draft is likely to be the provision designated 91(x). This provision would retain to the federal government (and some of the provincial Ministers will argue that it vests new jurisdiction in the federal government that does not now exist) complete control over interprovincial and international rates for telecommunications services interprovincial and international networking, interprovincial and international interconnection and establishment of minimum technical standards.

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undertakings in the province but excluding such as are of the following classes:

- (a) national telecommunications;

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The one significant concession to the provinces that is contained in this draft and that has not previously been offered is provincial control of commercial programming on those cable channels that are not pre-empted for the "national program service". The communications officials indicate to us that this concession will be a major concern to the broadcasting industry. In fact, it is not as significant a concession as it may appear. The retention of federal control over non-Canadian programming would allow the federal government to impose restrictions on the use of foreign programming that would substantially detract from the viability of provincially regulated cable channels.

There are areas of the draft where there is a potential for further concession but no further concessions have been approved by the Minister of Communications. The most obvious areas are in educational broadcasting, either non-commercial or both non-commercial and commercial, and in certain aspects of federal control over interprovincial and international telecommunications services, notably forced interconnection. Another area of possible concession is in the incorporation into the constitution of an obligation on the part of the federal government to include some element of mandatory provincial participation in the deliberations of any regulatory tribunal established to administer federal jurisdiction in the communications area.

A draft opening statement for the communications item is being prepared for your use, if you so wish, at the CCMC meeting Tuesday.

Roger Tassé

undertakings in the province but excluding such as are of the following classes:

- (a) national telecommunications;

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DRAFT ON COMMUNICATIONS

1. Section 91 of the B.N.A. Act would be amended by adding the four following paragraphs:

91. (w) The technical aspects of management of the frequency spectrum.

(x) The technical aspects of telecommunications and interprovincial and international telecommunications services.

(y) Telecommunications works and undertakings transmitting programming services by broadcasting or providing programming and other services beyond the limits of a province.

(z) The regulation and distribution, including distribution in priority to all other signals through all or any telecommunications undertakings in a province, of a national program service as defined from time to time by Parliament, and of non-Canadian programming.

2. Section 92 of the B.N.A. Act would be amended by adding the two following paragraphs:

92. (y) Telecommunications carrier works and undertakings in the province but excluding such as are of the following classes:

(a) national telecommunications;

(b) telecommunications for a national purpose distributed on all or any telecommunications undertakings in the province, including telecommunications for maritime and aeronautical communications, defence or in a national emergency;

(c) space and satellite communications including related earth stations.

(z) Telecommunications works and undertakings providing programming and other services in the province and not within the jurisdiction of Parliament by virtue of class (y) of section 91.

3. A provision to the following effect would be added:

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The Government of Canada and the governments of the provinces shall consult together at least once in every year, bilaterally or on a regional or national basis, on the formulation, co-ordination and implementation of laws, policies, programmes and practices respecting communications.