

MA MAJOR RESEARCH PAPER

Simulating Public Interest:
The Issue of the Public Voice in the Fee-For-Carriage Debate

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Introduction:

One of the most fractious Canadian Radio-television and Telecommunications Commission (CRTC, or the Commission) policy hearings on record has recently come to a close. This was no run-of-the-mill, watch-the-paint-dry policy hearing. Tempers and passions flared as two industry titans, over-the-air (OTA) broadcasters, such as CTV and Canwest Global, and broadcast distribution undertakings (BDUs) such as Shaw Communications, Bell Canada and Rogers Inc, fought the battle of their lives over an issue called fee-for-carriage (FFC). The media covered the issues day in and day out. Canadians bombarded the CRTC with close to 200,000 comments and the Government of Canada forced the CRTC to hold an additional hearing just to address the impact the decision could have on the public. With extensive media coverage and uncharacteristically active public participation, could this public policy process be deemed 'democracy in action'? This paper will argue that this is not the case. Through a discourse analysis of the debate within two distinctly differentiated public spheres -- 1) the battling media campaigns and 2) the CRTC public hearings in November and December of 2009 -- this paper will show that the public's ability to define its own interest, using its own voice, is tarnished to such a severe degree that this policy process fails.

The two key industry players at the center of the battlefield – OTA broadcasters and BDUs – are longtime foes. Much more than a battle to win the day at the CRTC, this debate was a battle to own the public's voice and control the public's message. Through two incredibly pervasive media campaigns, these two powerful industry forces sought to speak for Canadians. Thousands upon thousands of comments from Canadians poured

into the CRTC about fee-for-carriage (FFC) also named value-for-signal (VFS). What is the value of such significant public participation? This paper looks critically at how the two public relations campaigns hijacked the public voice and reduced the battle to a simple yet emotional value judgment: are you a consumer or a citizen? It is the thesis of this paper is that these campaigns defined the FFC public debate in such a manipulative way that the representation of the public's voice at the CRTC policy process was tainted and rendered invalid, and as such made the policy process incapable of best serving the public's interest. The key questions that will shape this analysis include: Who are the key players and what are the key issues in this debate? What are the factors in 'successful' policy creation? How is the public's interest defined and served in the hearings? What are the key forces that influence Canadian broadcasting policy? And, what happens when a policy discourse is simulated and defined in a public sphere outside the CRTC and enters the formal sphere of the CRTC in an attempt to control the debate?

What is Fee For Carriage?

The FFC debate has become a very fractious issue within the past few years, but it is nothing new within broadcasting policy circles. FFC refers to the adoption of a subscription fee for the carriage of 'free' OTA signals by BDUs (Canada, Department of Heritage, 2009). The OTA signals are 'free' because they are broadcast via transmitters 'over the air' to anyone in Canada with a television antennae. It is regulated that BDUs must carry these signals, and they currently do so without payment to the OTA broadcasters. It might seem that it is an issue that is only of concern to these two parties, as it defines the nature of their relationship on the most basic economic terms. The

decision of when and how to allow OTA broadcasters to charge BDUs for their signal is a matter that impacts almost all Canadians – from the creative and service sector workers who write, direct, edit, produce and star in Canadian television, to Canadians who watch free local TV, to those who pay a cable or satellite bill every month. This issue has become a lightning rod of contention for the major players in the broadcasting industry with OTA broadcasters, BDUs and professional unions and associations all struggling to define and position the 'best interests' of Canadians. Canadians outside the industry were left out of the public debate until very recently, when two full-scale public relations campaigns drew them into the fray and the Government of Canada issued an order-in-council to the CRTC to hold a special hearing to judge the impact of a 'compensation regime' on Canadian consumers (CRTC, 2009e).

Methodology:

The methodology consists of a critical discourse analysis of the debate within the public relations media campaigns and within the official CRTC hearings. I will analyze the two campaigns "Stop the TV Tax" and "Local TV Matters" to determine the values, beliefs and assumptions each side draws upon in order to create a discourse of 'public interest' and conflicting 'identities'. I will further analyze discourse within the official CRTC hearings to identify the power dynamics inherent within this public sphere and ask if it is a satisfactory forum to define and determine the public interest. For this analysis, measuring public interest includes an assessment of how the public defines its own interest, using its own voice. This paper will focus on stakeholders in the English-speaking private sector only, as the broadcasters and BDUs in French-speaking Canada,

and the country's public broadcaster the Canadian Broadcasting Corporation (CBC), exist in a different economic and cultural context.

Theoretical and Analytic Framework- Defining Public Interest

Many theorists have noted the concept of 'public interest' is a contested concept, subject to social, political, economic, cultural and historical influences. In the theoretical tradition of Fraser (1993), this paper acknowledges that critical theory needs to engage with the current definitions of the 'public interest' on an ongoing basis. Fraser critiques the traditional concept of the public sphere as a place where "private persons" go to discuss matters of "public concern" or "common interest" (4). She notes this discourse is often inaccurately "idealized" as happening in an single open and accessible forum in which all participants are seen as peers, where inequalities of status are neutralized, and the results represent a strong sense consensus of the common good (4). This idealized version of the 'public sphere' inspires modern day definitions of the 'public interest'; we must ask what is 'true public interest' and how difficult is it to achieve in practice?

A few key concepts in Fraser's 'actually existing' public sphere are critical within this discussion. The public sphere is a place that where some voices are disempowered, accessibility is not equal and class, gender and ethnicity are factors in determining which voices are privileged. Coles (2006) suggests using a more constructive term -- the "publics' interests" -- to underline the importance of diversity and multiplicity of voices within the public realm in Canada. And most vitally important within this analysis, Fraser stipulates that within the public sphere, everyone must speak with "one's own voice" (16).

What role do the 'publics' play in defining their own interest, using their own voice, within the FFC policy debate? Fraser notes the responsibility of all critical theory is to "render visible the ways in which societal inequality infects formally inclusive existing public spheres and taints discursive interaction within them" (13). This paper aims to elucidate the tainted discursive action within the public debate about the FFC issue within the 'formally inclusive' public spheres. There are two separate and distinct public spheres that will form the context for this analysis. One sphere is the 'official' CRTC public hearings in November and December of 2009. The other public sphere of this debate is the more informal discourse within the realm of the Canadian public airwaves, specifically within two pervasive public relations campaigns.

Canadian theorists have shed light on the discussion of the role of the Canadian public within public policy. Kevin Dowler (1996) argues that Canada's "civil society" is particularly weak, if not artificial. He uses Maurice Charland's concept of "technological nationalism" (1986, 197) to argue a definition of the Canadian "polis" as one that is empty behind the material construct of the communication system, stating that: "The problem with a nation like Canada, which comes into being as a result of the space-binding effect of communications, is that it remains empty except for the system itself" (Dowler, 333). Dowler refines his argument by suggesting there is a byproduct of this empty space, "the empty experience of meditation" (333). For Dowler, this empty "metaphysical frontier" is the locus of Canadian identity (333). He makes a very interesting connection between Canadian identity and cultural policy: "It is here, within the discourse of the production of Canadian security, that cultural policy emerges as the content" (334).

There are a couple key observations that Dowler makes that are critical to the discussion in this paper. First, within the discourse of policy discussions, definitions of Canadian identity can emerge. And further to this, he asserts that Canadian identity formation is vulnerable to 'simulation': "The Canadian state has created a simulated civil society in the form of cultural agencies that are inserted in between the formal structures of the state and its citizens" (336). This argument has interesting implications within the context of the FFC debate. In the context of a weak civil society, there are opportunities for dominant voices to influence, or even create, a discourse that defines Canadian identity. Furthermore, semi-autonomous cultural agencies play a role in creating this simulation. It will be shown in this analysis that the two media campaigns of "Local TV Matters" and "Stop the TV Tax" create a very powerful oppositional discourse, simulating the identities of Canadians as either citizens or consumers. These two simulated identities later appear, in the form of flesh-and-blood Canadians, in the context of the 'semi-autonomous cultural agency' of the CRTC public hearings.

There can be a lot of democratic potential in policy-making spheres. Marc Raboy points out that public participation in policy making and regulation is often ignored in literature on the democratic role of the media (1994, 21). He notes that public *expression* of public *needs* is a concrete manifestation of public *interest* (21, emphasis added). Raboy positions the Canadian system as an example for other countries to emulate, as it allows for the "democratization of broadcasting" to happen as the CRTC provides an "important public space for debate" (19). Raboy & Taras go further to characterize the Canadian system as unique in the world due to the unparalleled levels of transparency and accountability (2004, 60). The law in Canada is very specific, as well, indicating that

broadcasting airwaves are public property and are to be used in the public interest (Meisel, 2001). These are all very lofty-sounding ideals, and to be clear, no one is saying that policy-making in Canada exists in a vacuum, safe from the influence of power. Raboy & Taras (2004) and Meisel (2001) point out that the 'ideal' within Canadian broadcasting policy goals is to be inclusive of the public, and more specifically the public's participation. Further, it is critical to look at each instance of policy creation, especially instances that generate substantial controversy and friction, and investigate the context in which "the public expression of public needs is a concrete manifestation of public interest". It is from this standpoint of measuring the real against these ideals that this analysis will begin.

Cultural and Communication Policy – Some Lofty Ideals and Core Conflicts

First, let's set the stage in terms of the major forces that influence cultural policy creation in Canada. In terms of orientation of policy, governmental actors such as the Minister of Canadian Heritage, the Cabinet, and the House of Commons Standing Committee on Canadian Heritage all have the power of formal influence (Raboy, 1995). The Standing Committee on Canada Heritage's 1999 report, *A Sense of Place- A Sense of Being: The Evolving Role of the Federal Government in Support of Culture in Canada* set new goals and aims for cultural policy in Canada, taking a step away from the more traditional goals of nation-building and identity creation. This report focuses on three emerging challenges for Canadian culture: the demographic change in the country, the exponential evolution of communication technologies and the globalization of economies and trade. It looks specifically at the role of the federal government in the past, present

and future and aims to make recommendations for supporting and enhancing culture within a new series of emerging challenges. Furthermore, this report places more emphasis on partnerships between the federal government and other governments, organizations and the private sector. The authors identify this policy model as the "Canadian model of cultural affirmation" and describe the goals as a healthy marketplace, freedom of choice and the principle of access to Canadian materials. The market-driven direction of this report sets up one of the key conflicts within cultural policy in Canada today: how do we balance cultural imperatives with market forces?

Almost all current broadcasting policy debates have this philosophical tension at their core: is the 'public interest' best served in the creation and perpetuation of Canadian identity, cohesion and unity, or is it best served by the philosophy of a free market, allowing consumer demand to drive content, programming and innovation? Furthermore, how can these ideals be achieved in a world where national boundaries are harder to maintain, the desire for American programming seems insatiable, and audience behavior is shifting more every day to an 'on demand' approach to consuming content? Nordicity Group asks these questions in the 2007 *Banff Green Paper*. It states very bluntly that diminishing regulatory leverage over broadcasting is inevitable and asks if it is time to end regulation as a means to reach our cultural goals (6). Ted Magder (1989), Joyce Zemans (1997), and Monique Lafontaine (2008) among many others, argue passionately for the importance of regulatory pressure to uphold cultural goals. Many agree it is the only way for Canadian voices to exist in a market otherwise saturated in "dumped" American content (Stohn, 2007).

All broadcasting policy is subject to judicial interpretation under the legislation of the *Constitution Act* of 1982, and concretely, the 1991 *Broadcasting Act* is the ultimate authority when it comes to the principles guiding all broadcasting policy in Canada (Raboy, 1995). The 'public interest' is a concept central to both the governing legislation for the Canadian broadcasting system and the mandate of the CRTC, the federal broadcasting regulator. Cultural goals as articulated by the *Broadcasting Act* (the *Act*), are held up in broadcasting policy circles as the *sine qua non* of cultural goals. The *Act* states the broadcasting system is "a public service essential to the maintenance and enhancement of national identity and cultural sovereignty," which should "safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada" through employment opportunities and programming which:

Serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society.
(Canada, 1991, section 3 (1)[b], [d])

The *Act* goes on to outline the imperatives relevant to private broadcasting and distribution undertakings. It states broadcasters are beholden to contribute significantly to the creation and presentation of Canadian programming and to also be responsive to the evolving needs of needs of the audience (Canada, 1991, section 3(1)[s]). Distribution undertakings are beholden to give Canadian programming services priority, but also must function effectively, efficiently, affordably and make best use of technology available to them (Canada, 1991, section 3(1) [t]). It is obvious that the first priority of the *Act* is to uphold a cultural mandate to create and protect the 'Canadian-ness' of the system, always balancing these high ideals with a dose of reality. As a means to achieve this cultural

mandate, the system must adjust and compete as technology and demand changes. These are some heady ideals, and important responsibilities.

The Regulatory Process – Voices with Influence

The process of determining broadcasting policy in Canada is a contested terrain and a site of struggle between economic, political and socio-cultural actors. The Department of Canadian Heritage oversees five departmental agencies including the CRTC. The CRTC is an independent tribunal that consists of 13 Commissioners, all appointed by the government with no need to be approved by Parliament (Raboy, 1995). Dowler (1996) notes that concerns about direct governmental involvement in the production of Canadian culture created a need to define cultural activities as separate from state activities: "The solution was and remains the creation of a structure of agencies that would administer culture on behalf of, and at distance from, the federal government" (335). According to its website:

The CRTC's mandate is to ensure that both the broadcasting and telecommunications systems serve the Canadian public. The CRTC uses the objectives in the *Broadcasting Act* and the *Telecommunications Act* to guide its policy decisions. In broadcasting, the CRTC ensures that all Canadians have access to a wide variety of high-quality Canadian programming as well as access to employment opportunities in the broadcasting system. Programming in the Canadian broadcasting system should reflect Canadian creativity and talent, our bilingual nature, our multicultural diversity and the special place of aboriginal peoples in our society. (CRTC, 2010a)

Many theorists question the ability of the CRTC to act in the public interest. Raboy & Taras (2004) assert that the power of the CRTC has expanded over time, and it is difficult to ascertain how the regulator is held accountable to the public for its decisions. "In the absence of strong directives from the government, the regulator has been allowed to conduct sweeping policy reviews, initial new policies and shape the broadcasting system through the incremental and cumulative effect of its decisions (65). Abuse of power is an

important concern in terms of fair, unbiased policy decisions regarding the public interest. Hogarth (2000) states that the CRTC is ineffective as a policy-maker because it is not democratic. He argues that it acts largely behind closed doors, has a heavy industrialist and political influence, and does not have a vehicle for public inquiry such as a regional ombudsmen (213). There are some checks and balances on the CRTC, although they are rarely used. The government can overrule the regulatory decision of the CRTC as well as order a “power of direction” to the regulator, meaning it can hypothetically intervene in policy procedures to instruct the CRTC on questions of general policy (but not regarding particular licenses) (Raboy, 1994: 19). Although it is formally autonomous from the government, the idea that the CRTC is fully insulated from political pressure is not true (Salter & Odartey-Wellington, 2004: 18).

In his examinations of broadcasting policy over the past twenty years, Raboy (1995) highlights a couple of key factors that have particular relevance to this paper. First, he makes the important observation that influence on the policy process is shown to be relative, depending on degree of access (411). The further an individual or group is from the centers of power and decision-making, the more vital the public hearings at the CRTC are as a means of influence. There are clearly many stakeholders that occupy positions close to the centers of power, such as the powerful and connected lobbyists of BDUs and broadcasters. Raboy even goes so far as to characterize industry participation in CRTC hearings as “noblesse oblige”(429), a perfunctory and antiquated gesture to uphold the ‘ideal’ that the public sphere for debate exists, when clearly it does not. Secondly, he points that swaying “public opinion” can play a critical role in influencing policy. He finds that the cable companies have brilliantly “managed to make its own

interests coincide with those of the public – a public increasingly defined by both the cable industry and the CRTC as a market of consumers” (423). He finds the BDUs have largely had success with CRTC rulings and asserts that it is because they been very astute, couching their agenda within the language of technological nationalism (423). This act of 'defining the public opinion' is clearly a key tactic of powerful stakeholders who have the means to influence public opinion.

Unions and associations like the Writer's Guild of Canada (WGC), the Communication, Energy and Paperworkers Union of Canada (CEP) and the Canadian Film and Television Production Association (CFTPA) operate in policy circles to challenge the prevailing policy paradigm that privileges corporate and industrial interests. These groups often use arguments based on social or cultural objectives of the *Act* as well as invoking compelling employment arguments. The infamous 1999 CRTC policy decision, *Building on Success*,¹ had a big impact in how non-industry groups tried to influence government (Coles, 2006). This decision was a new direction in policy rationale, a distinctly market approach, with two big changes: the removal of broadcaster expenditure requirements and expansion of priority programming. As a result, the amount of original Canadian drama produced decreased substantially in the following years (McQueen, 2003). Unions united under a common banner, the Coalition of Canadian Audio-visual Unions (CCAUI), and sought to use a coalition advocacy approach to give more force to their arguments to uphold and enhance the creation of original dramatic Canadian programming (Coles, 2006). Unions and guilds continue to play an important

¹ Public Notice CRTC 1999-97. Ottawa, 11 June 1999. *Building On Success - A Policy Framework For Canadian Television*. Online posting: <http://www.crtc.gc.ca/eng/archive/1999/PB99-97.HTM>.

role as advocates for the 'public interest' as a way to sustain their own mandates to serve the indigenous production sector.

The Public Influence: Quebec City 1992

Public mobilization can have an impact. When it comes to social issues such as language rights, local programming or gender equality, public intervention has been shown to play an important role (Raboy, 1995). A massive public mobilization happened in Quebec City in 1992 around the license renewal of Canada's main French-language network TVA (CRTC, 1992). The network, pleading financial difficulty, applied to reduce its commitment to local production at the CFCM-TV station from 21 hours per week to 10. There was a massive public hue and cry expressing long-term frustration about the degradation of local programming that caused the CRTC to sit up and take notice. The station's request was denied and an early review of the station's compliance to original local productions requirements was undertaken. Raboy (1994) emphasizes the importance of this particular chain of events:

The point that bears emphasis here is that even in a national and global context generally marked by deregulation, commercialization and a shift away from state involvement in public affairs, the existence of a public agency with statutory responsibility to enable public participation in broadcasting made a difference. The availability of this mechanism enabled an organized community to influence broadcast delivery in a way that the market could not alone have done. (20)

This example of public participation is particularly relevant to the examination of any policy process, and specifically that relating to FFC. It outlines, in a concrete example, how democratic policy-making can work. In an open and accountable system, there is room for the public voice at the table with the much more influential and resourceful industry heavyweights and well-organized union sectors. In the Decision, the CRTC

made a point of acknowledging the important and valuable role the public played in influencing its denial of the TVA request to reduce local programming obligations:

The Commission witnessed at the session held in Quebec City in March 1992 an unusual outpouring of opinion representing a clear and essentially unanimous expression of longstanding frustration and strong protest against the constant decline in regional television services, particularly the services offered by CFCM-TV in Quebec City. The numerous briefs submitted to the Commission cut across virtually all social, political, economic and cultural boundaries in the Quebec City area; they came from mayors, MLAs, ministers and archbishops, municipal councils, school boards and chambers of commerce, unions and professional associations, and individual members of the public. (CRTC, 1992)

The Commission words the Decision to emphasize the importance of the public participation. It makes a point of noting the diversity of voices represented within the public mobilization, the unity of these voices, and the clarity in which they express their concerns. The final sentence of the Decision is vital: "The Commission offers its sincere thanks to the large number of intervenors who expressed their concerns about television services in the Quebec City area. Their informed input was of great assistance to the Commission in reviewing the licensee's application for renewal" (CRTC, 1992). By including many references to the public within the decision itself, the CRTC makes it clear it listened to the voices of the public and the expression of their concerns had a great impact on the proceedings. Furthermore, the CRTC outlines *why* the public voice was able to impact its decision-making process: through an "unusual outpouring of opinion" that represents "a clear and essentially unanimous expression". Let us keep these terms in mind, as I will return to them later.

This decision was only one example in which the public was able to play a role, however, and this is often not the case. Raboy notes that high stakes decisions are more often influenced by current political and economic imperatives, rather than social and

cultural ones (20). The political context of a policy decision can be very complex, but certainly the public voice plays a role in shaping it. Raboy (1995) illustrates this using the 1991 *Broadcasting Act* policy deliberations. He notes that the government's decision to promote a nominally nationalistic *Act*, in spite of industry opposition was "a way of appeasing social groups angry about the Canada-US Free Trade Agreement" (430). It is important to keep in mind that "angry social groups" can go a long way in influencing broadcasting policy. The FFC issue could, at first blush, seem to have many similarities to this situation in 1992: a threat to decrease local programming and an unusually large hue and cry of public outrage. The FFC context requires significant explanation. It is now time to look in more depth at this debate.

The Ghosts of FFC Past: Origins of the Debate

The issue of FFC first arose in a 1971 CRTC policy paper entitled, "A Single System: Policy Statement on Cable Television." This paper looks for a number of ways to mitigate the impact of the "new" cable system on the already existing broadcasters, and aims to establish a relationship between the two key players of the broadcasting system. Four pillars for structuring the financial relationship between the OTAs and BDUs came out of this policy document. The first was simultaneous substitution, which requires a cable system to replace an imported US signal with the same program, carried at the same time, by a Canadian station that has purchased the rights to carry that program. Simultaneous substitution allows OTA broadcasters to place Canadian advertising in the prime spots in the most popular American programs in Canada, earning substantial revenue. Secondly, BDUs were required to give the 'free' signals of OTA broadcasters mandatory carriage on their cable systems. The third pillar was priority

placement, giving the OTA broadcasters the most easily accessible spots on the dial. The final pillar was a recommended amendment to the *Income Tax Act* that eliminated the ability of a Canadian advertiser to deduct advertising costs for tax purposes for advertising placed in non-Canadian stations. These pillars gave OTA broadcasters the potential to earn substantial revenue through advertising due to the improved reach and clarity of their signals.

This was a prosperous relationship for both industries for many years. Broadcasters made very healthy profits from advertising revenue, as a result of simultaneous substitution and the Income Tax Amendment. This symbiosis worked for the cable providers as well, as the general-interest programming and broad audience appeal of the OTA broadcasters' programming made Canadians want to pay for a more reliable signal, as well as more diversity, including foreign signals, than they could get from their over-the-air antennas. It is important to note that *A Single System* suggests that, since these terms may not always be equitable, there might come a time that the terms would need to be re-negotiated:

Stated simply the fundamental relationship is: television stations are the suppliers, cable television systems are the users. Thus the basic principle involved is: one should pay for what he uses to operate his business... The task of the Commission must be to relate the fundamental philosophical idea of payment for services rendered and for use made, *with the pragmatic realization that, without this payment, in the long run the very stations on which the cable systems depend may no longer be able to provide them those many services.* (CRTC, 2009f, emphasis added)

The 'when and if' it is time has been the hotly debated focus of several recent CRTC hearings.

Fee for Carriage: First tries

In 2006, the CRTC held a policy hearing to review the regulatory framework of OTA television. This hearing was intended to address the massive amounts of change in

the industry in three major areas: overall economic models, technology, and consumers expectations. The question of FFC was re-introduced to the discussion, as a possible means to generate more income for OTA broadcasters. OTA broadcasters, vying for this fee, based their argument on economic need, citing flagging profits and low revenues. In its Decision, the Commission was not convinced that the broadcasters' cries for help were good enough reasons to inflict such a drastic measure on BDUs, the discretionary sector (meaning specialty and pay channels), and Canadian consumers:

Considering the 2006 decline in both revenues and PBIT in the context of the industry's financial performance over the entire 2002-2006 period, the Commission is not convinced that this one year's financial performance constitutes a permanent decline in the profitability of OTA television. In this regard, the Commission notes the cyclical nature of the broadcasting business, which is dependent on the audience appeal of each programming line-up at a given point in time. (CRTC, 2006a)

Critically, the Commission notes that only CTV provided any plan to use the FFC to increase or even maintain the amount of Canadian programming it currently broadcasts. The concern that the FFC could negatively impact the discretionary sector, and consumers' cable bills was still of critical concern to the CRTC. Without some substantial rationale, much more convincing evidence of financial need, and a solid commitment to improving Canadian programming, the CRTC was not sympathetic on the matter of FFC.

Another major CRTC hearing took place in April 2008, a broad and sweeping assessment of the regulatory framework of the BDUs. The CRTC received submissions from several English and French OTA broadcasters, requesting a re-consideration of FFC, and it was added as an expansion of the scope of the proceedings (CRTC, 2007c). Broadcasters CTVglobemedia and Canwest Global Inc. made an unprecedented joint submission, and appeared together presenting a unified front on the matter of FFC. They

supplied a multitude of evidence indicating how profits were shrinking to record levels. In direct response to the Commission's concern that the trend towards flat revenues and low profit is cyclical, they responded, "despite a sustained economic boom in Canada over the past several years, advertising revenues of private OTA stations have been essentially flat since 2003...the profitability of the sector is at its lowest level since...1962" (CTVgm & Canwest, 2008). They formed the basis of their argument for FFC around the turning tides in consumer behaviour, a trend that delegitimizes a revenue-model based on the strength of general interest programming. They highlighted the health of the discretionary sector and provided additional evidence that customers of cable services continue to pay increasing amounts for these services, especially relevant as an OTA-commissioned study found consumers already believe they pay for OTA broadcasters through their cable subscription (30).

As a part of a large omnibus Decision, the Commission once again denied the implementation of FFC. It draws attention to the lack of any comprehensive plan by the broadcasters to allocate any FFC revenue towards incremental spending on Canadian programming. It notes the inadequate nature of the proposals: that the "fee-for-carriage only be made available if broadcasters meet monthly local programming requirements" (CRTC, 2008). It makes it clear that the CRTC expects this revenue to be used to "improve" Canadian programming. Furthermore, they note that there is no research on how this additional fee for the OTA signals could impact consumers. The BDUs walked away victorious once again.

What Changed in 2009?

In early 2009, the country's largest conventional broadcasters began shutting down local TV stations. CTV announced it would not seek to renew licenses two stations in Ontario, Wingham and Wheatley, and that it would shut down CKX in Brandon, Manitoba (Toronto Star, 2009). Canwest announced that it was considering selling several stations (CBC News Online, 2009). Speaking at the April 2009 CRTC hearings on the renewal of private conventional television licenses, Ivan Fecan CEO of CTVglobemedia, renewed his argument about the “broken” broadcasting revenue model. This time, however, the approach was different. Rather than just relying on the ‘financial difficulty’ discourse, which certainly carried more weight after the financial meltdown, he opted to focus on the cultural value of television, beginning with local programming stating:

We believe that the foundation of the broadcasting system is in local broadcasting. I think we cut those roots at our peril. Local is the comfort zone for our audiences. Local is the glue that binds. Local is where people live. There are many forms of community, but the strongest is local. (CRTC, 2009a:78-79)

Broadcasters had made a significant change in their approach to the public debate, making a concrete link between FFC and the survival of local TV stations. They argue their ability to uphold their cultural duties, meaning the creation of national and local programming, is fatally compromised. Broadcasters had now pushed the public interest, as defined by the *Act*, front and center. However, is there evidence that conventional television truly on the verge of extinction?

Over the past few years there have been competing opinions. Nordicity Group (2007) conducted a study outlining the huge challenges for conventional broadcasters. These potential bottlenecks include: growing competition from unregulated sources (such

as cable and satellite in the form of video-on-demand and pay per view), increasing cost and expenditure on US programming, increasing audience fragmentation to new platforms for content such as internet and mobile devices (and the increasing difficulty in securing the online rights), and a decrease in advertising revenue due to a grim global economic picture as well as advertising dollars moving to the internet. These financial troubles do not even take into account the sizeable infrastructure costs of the upcoming government-mandated transition from analog to digital that broadcasters must finance by 2011(CRTC, 2009b).

The shift of viewing habits is a major concern, although there are conflicting reports in this realm. A recent Nielsen report finds that the majority of North Americans are still watching significant amounts of television -- 99% of video viewing in the U.S. during the third quarter was still done via traditional TV (December 8, 2009). Yet this does not mean the crisis is not real. The study also reported that online video usage is up 35% over one year ago, while DVR playback has jumped 21%. Another recent study by Ipsos Reid found that, for the first time, Canadians are spending more time online than watching television: 18.1 hours per week versus 16.9 hours (Vancouver Sun, March 22, 2010). Viewers are definitely changing their habits from a linear viewing style of 'appointment' television to an 'on-demand' a-la-carte lifestyle that involves several platforms. This does not bode well for the bottom line of conventional broadcasting, as the only means it has to earn revenue is selling audience to advertisers in those 'appointment' television timeslots.

If there was any question about the financial viability of the conventional broadcasters, the most recent statistics released by the CRTC put this debate to rest. The report states:

Although operating expenses were cut by 2.4%, these broadcasters lost \$116.4 million before interest and taxes over the 2009 broadcast year, which resulted in a negative profit margin of 5.9%. In 2008, private broadcasters reported profits before interest and taxes (PBIT) of \$8 million and a PBIT margin of 0.4%...Private conventional television stations experienced a decline of more than \$190 million in local and national advertising sales. From 2008 to 2009, local advertising revenues decreased by 10.1% from \$387.2 million to \$348 million, and national advertising revenues by 10.3% from \$1.47 billion to \$1.32 billion. (CRTC, 2010b)

The report also highlights another point of contention within the industry debate about conventional broadcasting profitability – the yearly amount spent on American programming. The amount spent on foreign programming reached its highest level yet at “59% of all programming expenses, or \$846.3 million...this total represented a 9.2% increase over the \$775.2 million that was spent in 2008” (CRTC, 2010b). The cable companies rightly point out that this expense is far beyond what the financially challenged conventional broadcasters should be spending. The amount of money both broadcasters and BDUs spend to bring Canadian audiences American programming is staggering. In a 1994 interview, broadcasting consultant Paul Audley sums up this fact that drives our system:

The great machine that drives broadcasting in Canada is the pitched battle to provide American programming to Canadians, and when the private broadcasters did that, they controlled the cash flow and were omnipotent. As the cable industry gradually took over the function of being the funnel through which American programming got to Canadians they became the most powerful. Cable and private broadcasters compete directly now to see who is going to provide American programming to Canadians. This is what drives our broadcasting system and the rest is window dressing (Quoted in Raboy, 1994: 423).

In 2010, the BDUs have been winning this pitched battle. The financial picture for the BDUs today is indeed quite impressive. They did not achieve the record profits they have

been reaching for the last few years, but still dwarf the broadcasters in terms of their overall profitability. According to the CRTC:

Revenue growth for cable companies slowed marginally to 11.9% last year after having increased by over 16% in both 2007 and 2008. Total revenues climbed from \$8.2 billion in 2008 to \$9.2 billion in 2009. Operating expenses rose by 10.6% over the same period, or from \$4.6 billion to \$5.1 billion. As a result, profits before interest and taxes (PBIT) improved from \$2.1 billion to \$2.3 billion in one year. (CRTC, 2010c)

The BDU position is that broadcasters are in this untenable position due to their own mismanagement by paying too much for US fare, combined with the trends we are seeing in advertising revenue. Furthermore, BDUs already pay to support the indigenous system of both local and national programming. As Sawyer (2009) reminds us, broadcasters benefit significantly from their relationship with the BDUs through the regulated means of signal substitution, “priority” placement on the dial, and mandatory carriage. BDUs contribute large sums of money to the creation of Canadian content through CRTC regulations mandating that a percentage of all BDU revenue be given to the Canada Media Fund (CMF), independent production funds (such as Rogers Documentary Fund and Cogeco Development fund) and the newly created Local Programming Improvement Fund (LPIF) which exists specifically to support the production of local Canadian programming.

Fee-for-Carriage Turns into Value-for-Signal

In May 2009, as a part of the Broadcasting Decision 2009-279, the CRTC announced another policy hearing to be held later that year. In the Decision, the term ‘value-for-signal’ (VFS) was introduced as the new way to describe the old and somewhat tarnished fee-for-carriage concept. In VFS, the Commission would not set the

price BDUs would pay per signal, but the two parties at the table would be required to negotiate a fee, thus relying on market forces. The Commission's tone had changed significantly regarding the idea of enforcing a pay regime on BDUs since the last public hearing. "The Commission is now of the view that a negotiated solution for compensation for the free market value of local conventional television signals is also appropriate" (CRTC, 2009b).

This shift in tone took BDUs by surprise, so much so that Bell Canada filed a motion to the Federal Court of Appeal. Bell argued that the Commission denied them the right to make submission on whether a negotiated, free market value for local conventional signals is appropriate (CRTC, 2009d). The CRTC issued a procedural clarification of 2009-411 to include an examination of "whether or not a negotiated solution for the compensation for the fair value of local conventional television signals is also appropriate, and is seeking comment on this question" (CRTC, 2009e). Bell dropped the appeal. The Commission's position had been made clear, however, they were now in support of a payment for OTA signals.

Once the Broadcasting Notice of Consultation 2009-411 was announced, it did not take the government long to react. On September 16th, the Minister of Canadian Heritage, James Moore issued an order-in-council instructing the CRTC to hold a separate hearing to investigate the impact of such a regime on Canadian consumers. CRTC were required to solicit general comments from the public on the impact a pay regime could have on consumers, in terms of affordability and choice, and also how the application of a pay regime would generally impact the communications industry (CRTC, 2009e). Direct government intervention in CRTC policy is unusual, but it does happen. James Moore

wanted to make it clear that the consumer's perspective is his top priority in the FFC issue and that the public voice must be heard on this matter. This new hearing was to specifically accomplish this goal.

The Standing Committee on Heritage Step In...and Then Out

As a result of the tumultuous change in the economy and the Canadian television landscape, the Standing Committee on Canadian Heritage (CHPC) began a process of looking into the matter of local television "as representatives of the people" (Canada, House of Commons, 2009:1). The work of the CHPC ranges from smaller inquiries and reports to large scale studies. These studies can call on testimony from corporate leaders, interest groups, bureaucrats, expert advisors and ordinary citizens. It is possible to request to appear before a Standing committee or be required by the committee to appear. Once the CHPC is finished its work – often report or study – it will submit it to the government with a formal request for a response. The Standing Committee issued a report to the House of Commons in June 2009 entitled "Issues and Challenges related to Local Television." It is an investigation into many of the same issues of this paper, including FFC.

The Standing Committee spent months interviewing industry CEOs, policy experts, union representatives and members of the CRTC Commission with a mandate to study:

.. funding (financial pressures, the decrease in advertising, changing viewing habits, and revenue streams), fee for carriage, the transition to digital programming, the role of the federal government and the CRTC, and the impact of local broadcasting.
(Canada, House of Commons, 2009: 4)

In the final report the Standing Committee makes several recommendations, but oddly, there is no mention of FFC. The only mention of FFC is that a future study theme could be "Would fee-for-carriage for OTA broadcasters help local television?" (35). A dissenting report from the Conservative members of the Committee brings to light a vital point in this discussion: the public's interest was not upheld by the Standing Committee.

...it was incumbent on this committee to offer our advice and advocate on behalf of the best interests of the Canadian people that have elected us to do just that. Despite that responsibility, the majority report neglected to offer any guidance, leadership or advice to the CRTC, BDUs, or broadcasters on this vitally important issue of public policy. (Canada, House of Commons, 2009:52)

The 'public interest' within the FFC issue is becoming increasingly more difficult to define. While the BDUs and broadcasters are doing everything they can to fabricate the public voice, the Standing Committee quietly bowed out of its responsibilities.

Moore issued a response to the committee on October 9, 2009, just before the beginning of the two key CRTC hearings. He notes that the Government had previously asked the CTRC to prepare a report "for its input on how some of these changes will affect consumers and emerging business models" and that we must wait to find out the results of the report before any action is taken to address these issues (Canada, Department of Heritage, 2009). It is important to note the language Moore uses within this address. When requesting the report, the Government has specifically defined Canadians as "consumers", yet throughout his response he refers to Canadians as consumers, citizens and creators.

Ensuring consumers and citizens have affordable access to a diversity of news and information, both through conventional television and other media platforms, is vital. It is for this reason that our Government deemed it necessary to direct the CRTC to hold hearings and provide us with a report on the implications of putting in place a compensation regime for the value of local television signals, more commonly known as fee-for-carriage. (Canada, Department of Heritage, 2009)

Previously, Moore had most often used the term "consumers" to describe Canadians, but in this response uses many terms. There is a new awareness that "consumer" is not the only term, or perhaps not even the politically correct term, to refer to Canadians. In the next section I aim to provide compelling evidence to explain the change in terminology. I will show how two very powerful and pervasive media campaigns, launched initially by broadcasters and then the BDUs, sought to define Canadians in a conflicting way -- as either "consumers" or "citizens". In doing this, I argue they sought to create an extremely politically charged context in which they could shape public opinion as much as possible before entering the CRTC hearings in the fall of 2009.

Discourse Analysis: Hijacking the Public Voice

Probably the single most significant attribute of this policy issue, certainly the most unusual, were the massive public relations campaigns that unfolded in the months and weeks leading up to the hearings. These campaigns were launched via TV, print, radio and internet and were expensive, professional and relentless. Initially the "Save Local TV" campaign was started by CTV and Global in May 2009, and it later expanded to include CBC, A, CHEK News, V and ntv, and was renamed the "Local TV Matters" campaign. The BDU campaign, entitled "Stop the TV Tax" was started in October 2009 and was supported by Bell, Rogers, Eastlink, Telus and Cogeco (CRTC, 2010d).

This analysis looks at these campaign messages in terms of the values they promote and the ways in which they define Canadians in attempts to engage the public emotionally and create support, anger and action around the issue of FFC. These campaigns certainly got Canadians to pay attention, as the flood of comments to the

CRTC will attest. I argue that these campaigns did much more than this -- they fabricated very simple 'identities' for Canadians on either side of the issue. Looking in detail at these campaigns, it is clear that they appeal to the two sides of the longtime competing identity of "consumer" versus "citizen." Representative media artifacts from each campaign illustrate the values, beliefs and tactics each side uses to stir public fervor and, in turn, to 'simulate' an empowered and outraged polis that attempts to sway the outcome at the CRTC.

"Local TV Matters" Defines Citizens

"Local TV Matters" is the campaign representing OTA broadcasters' interests. This public-relations campaign creates an image of Canadians as citizens. The original website (localtvmatters.ca) has since been taken down and limited content has been made available at savelocal.ctv.ca. The original website is an important place to begin the analysis, as it offers the viewer the first glimpse into the ethos of this campaign. This website was created to look like a forum for concerned activists rather than corporate broadcasters. There are several videos presented to 'inform' viewers about the issues. These videos are presented as YouTube links, a clever way to suggest they are possibly user-generated content. There is a polished 'do-it-yourself' style to several of the ads, attempting to give the impression that these are 'sincere' attempts by a concerned activist group trying to get the word out about important political matters. There are several pieces, each with a different approach to the issue at hand, but all convey the same key premise: Canadians are citizen who need to become actively involved in this issue. There is a slight-of-hand going on, of course, as the emotionally poignant, value-laden simple

issue of "saving local television" has been substituted for the real, and much more complex, policy issue of FFC/VFS.

One media artifact from the campaign, an "MTV News" piece featuring Aliya-Jasmine Sovani a current host and segment producer for MTV news, is a particularly interesting piece.² It very closely mimics the structure of a 'real' TV news piece. A young, south-Asian, female anchor speaks directly to camera, summarizing the issues of this debate. It features short clips (from other "Local TV Matters" campaign pieces) edited together in a fast-paced montage to give a typical 'news-style' introduction of an issue. Sound bites add texture: "Local television is in danger" and "How to get rich by Canada's cable companies." The perspective of the piece is clear – local TV is in danger and we must try to save it. This 'bias' is not typical in most news pieces, but is acceptable in pieces clearly labeled as 'editorial', or 'commentary'. The only visible title on this piece is the "MTV news" logo in the upper left part of the screen. There are no labels, verbal or written, that define it as anything other than a verifiable news story.

The piece takes an interesting turn as Sovani adds her own personal reflection:

I got my first taste of wanting to be on TV at a local station in Ottawa called CJOH. It was 'Take Your Kids to Work Day' and I got to do a news story with a reporter who was a friend of the family. That's what made me want to do news in the first place. And that's one of the reasons Local TV matters to me.

This personal commentary by Sovani turns this piece into a direct appeal. Sovani 'explains' the issue, but only from one side, citing how cable companies are amassing huge profits of \$2 billion dollars a year, while local television stations are going broke. This piece seems to be a personal commentary, yet it is initially styled as legitimate content of MTV News (which is owned by CTVGlobemedia). The piece goes on to

² This clip can be accessed at www.localmatters.ctv.ca,

imitate a real news piece as we see 'streeters': on-the-street interviews with Canadians. It is notable that within the faces on the street, only one 4-second clip is a white male, while the rest are members of visible minority groups. These 'streeters' are meant to represent the range of opinions of the community. It is further worth noting that of the total running time of 1:55, we only see a male Caucasian face for a total of 4 seconds. Alternately, female or visible minority faces are on display 71 seconds of running time. This piece is fascinating and somewhat confusing, as it shifts several times in terms of the style of 'journalism'. It uses both biased and unbiased tropes within the same discourse to give the impression of both journalistic professionalism and personal commentary.

This discourse fabricates an identity for the audience within a well-defined value system: the citizen. The visual language suggests several key values: diversity, youth and the importance of expressing an opinion. Sovani herself is young and of south Asian descent, thus she embodies a "multi-racial" value. This perspective represents an important cultural value in Canada: diversity. Diversity is a vital part of the *Act*'s cultural imperative and this piece makes sure viewers understand that the "Local TV Matters" campaign is concerned with upholding the cultural ideals of Canada. This single piece embodies several of the specific values articulated by the *Act* to elucidate the common good: multi-racial, multi-cultural, equal rights and employment opportunities.

Both content and style of the piece reinforce an identity of the viewer as an activist citizen. The personal story of the young host and the references to the role news plays in creating and maintaining community – such as developing local talent, supporting charities and local community groups – reinforce vital cultural ideals of identity, unity and cohesion. The "Local TV Matters" side of the debate frames the

Canadian audience as an activist citizen, someone concerned with their community and not just their pocketbook. The values inherent in this ad are: tolerance, community activism, mentorship, supporting family values and being informed about local political and cultural events and issues. You need to look no further for the perfect definition of what it means to be a good 'citizen'. They are exhorted to "Make a Difference" by getting in touch with the CRTC to add their voice to the debate.

The concept of identity creation in the public realm gains potency within Aliya-Jasmine Sovani's narrative. There are very few instances that a declaration of self can have such a binding, concrete manifestation in a format with the ability to be stored forever and distributed to millions of people worldwide. Fraser (1993) points out that "public discursive arenas are among the most important and under recognized sites in which social identities are constructed, deconstructed and reconstructed" (30). The voices of all the participants of this video are now forever engrained within the discourse of the campaign.

This campaign gains further power by couching its views firmly in the politically correct narrative of multi-culturalism and equal rights. On the surface, this discourse seems to embrace Fraser's ideals of an "egalitarian, multicultural society...in which groups with diverse values and rhetorics participate" (17). The issue here is "diverse values and rhetorics" of course, which are entirely missing from this discourse. This is not a public forum in which the traditionally under-represented voices of women and people of colour can find equal footing. This is a public-relations piece bought and paid for by the broadcasters in order to persuade Canadians to write the CRTC in their favor. This campaign is the culmination of broadcasters' attempt to forever connect their perspective

on the FFC policy debate to the much loftier ideal of the citizen activist saving local television.

"Stop the TV Tax" Defines Consumers

"Stop the TV Tax" represents the cable and satellite BDUs.³ This campaign website displays six short videos, all with the same tone and style. An authoritative male voice narrates the "facts" for the viewer in a very straightforward yet confrontational tone. The slogan of this campaign is "Come On Canada. Enough is Enough," exhorting the average person to not "buy into" the "lies" that the broadcasters are presenting as "truth". This campaign is presented as both a rebuttal of the other campaign, and as a revealing of the "facts." This 'Lies versus Truth' device is quite confrontational and represents a more negative approach — to deny, disclaim and disprove rather than to argue in favor of a belief. These ads represent broadcasters such as CTV, Global, and CBC as deceitful bullies, using power to take advantage of Canadians.

The ad labeled "Video 2" is a representative sample of the "Stop the TV Tax" campaign. This video begins with a somber voice-over and sorrowful piano music, along with a visual representation of a calculator totaling up dollar amounts that continue to grow larger. The adult male voice booms, "Canada's big TV networks want to charge you a tax, a TV tax, and they're not telling you the whole story." The camera slowly zooms into the window of the calculator as the sum total begins to grow. On top of the growing total sum we can read the question, "How much will the TV tax cost you?" We hear the sounds of a cash register ringing with each additional amount, the pace quickening. The narrator paraphrases the FFC issue by using oppositional language like

³ The "Stop the TV Tax" campaign material is available for viewing online at stopthetvtax.ca.

“they call it” and “they say it will only,” thus making it very clear that it is exposing half-truths, outright lies and misleading claims. The key device of this discourse is to re-define the term “fee for carriage” or “value for signal” as a “TV tax”.

The calculator is a very simple visual representation of the viewers’ concern with money, most significantly, a new ‘tax’. Taxes are generally viewed as unpleasant financial obligations, administered and enforced by our government. The not-so-subtle suggestion here is that the broadcasters have somehow convinced the government to institute a new tax on Canadian consumers. This is an interesting tactic by the BDU group, as they draw on political sensitivity about government taxation. Furthermore, they draw on the fallout from the high-profile “bailouts” of late 2008 and early 2009, as a result of the global financial meltdown. They construct Canadian as consumer; an important part of the capitalist regime. It is the duty of the consumer to reject government taxes and bailouts, as those mechanisms have no place in a thriving capitalist society.

Some indirect imagery characterizes Canadians as passive and submissive. “Video 4” features a wooden marionette, limply hanging just off center in the frame, controlled by invisible strings. Although logos of the broadcasters are pasted on the dummy’s chest, the discourse constructs the Canadian public itself as the helpless puppet. The video’s audio claims the public is being manipulated by false claims from the networks, booming “Don’t be deceived by the big networks”, just as the limp little puppet is pulled upwards by the invisible forces that control it. In this campaign BDUs have taken a significant step away from the discourse they formerly embraced to advocate their interests, that of technological nationalism, as observed by Marc Raboy (1995). There is nothing within this discourse that taps into cultural values, it is a simple identity

construction of Canadian as a consumer who is about to get the wool pulled over his eyes. I say "his" specifically because of the "man-to-man" style tone of this discourse. It is one man giving another some tough news. This market-driven approach is certainly in line with a CRTC policy to allow market forces to prevail (CRTC, 2009c), but how effective is this discourse in speaking to Canadians about their identity? Of the six videos on the site, not one uses a female voice or hints at a wider range of heterogeneous groups that might compose the Canadian public.

A Complex Policy Issue Becomes a Political Hot Potato

In response to these campaigns, more Canadians actively participated in this issue than any other on recent record at the CRTC. The Commission reports having received about 190,000 comments on the issue of value-for-signal, with 114,890 comments in support of the Local TV Matters campaign and 46,693 to the Stop the TV Tax (CRTC, 2010d). Furthermore, Canadians attended open houses, picnics and rallies at their local television stations to support the cause of Local TV⁴. It is a critical advantage of the broadcasters' campaign that 'local' actually exists in time and space. People were encouraged to go down to their local stations to join together to celebrate the values of community, diversity and participation. CTV news cameras covered the events and provided yet another platform to deliver the broadcasters' message, all the while couched within the language of 'good' citizenship.

Canadians wrote many letters to the CRTC, largely in support of the Save Local TV campaign. This could be for many reasons, but it is interesting to contemplate that the

⁴ http://toronto.ctv.ca/servlet/an/local/CTVNews/20090513/toronto_open_house20090513/20090513/

strategy to appeal to the 'citizenship' values rather than 'consumer' values was more alluring to Canadians. Perhaps Canadians felt the Local TV call-to-action was a more worthwhile cause. Perhaps Canadians did not respond well to being characterized as 'dummies' about to have the wool pulled over their eyes. It also could be evidence that appealing to Canadians to take action based on a desire to prevent an increase in cable bills might not be that effective. It has been suggested that Canadian culture is more accepting of the cable bill as an "essential" expense (Nordicity, 2007:25). Regardless, it seems that the Save Local TV created an 'identity' more Canadians felt compelled to take on.

These campaigns created an extremely unusual environment. The public was very actively engaged in the issue, but only as a result of manipulation. The CRTC itself expressed concern over the muddying effects of these campaigns on the public comments on this policy process (CRTC, 2010e). Both campaigns provided pre-written letters expressing outrage at a "TV tax" or consternation about "saving local TV" that Canadians could just print and sign or affix their name and email off to the CRTC or to their elected Member of Parliament. Both these campaigns sought to emotionally manipulate Canadians into mobilizing over this issue. Certainly some of the public engagement in this issue was 'genuine', but after the lengthy, ubiquitous campaigns, it could hardly be compared to the "unusual outpouring of opinion representing a clear, unanimous expression" that the CRTC used as a basis to take the public expression of public interest into account in the case of the 1992 ruling in Quebec City. What happens when a policy discourse is simulated and defined in a public sphere outside the CRTC and enters the formal sphere of the CRTC in an attempt to control the debate?

The Public Voice?: A Discourse Analysis of the Hearings

Fraser notes that “official” public spheres are often arenas that privilege dominant groups. This domination is hegemonic in nature – rather than the dominant group using force to control and repress the less powerful, there is an understanding of consensual repression (8). She goes further to explain that within ‘official’ public spheres certain ‘acceptable’ styles and norms of behaviour and speech are formalized, and these styles and norms more often, if not always, privilege the dominant status groups (10). I will conduct a discourse analysis of key portions of the CRTC hearings transcripts to determine the role the public voice plays in this policy debate, if certain styles and norms of behavior and speech are privileged. Furthermore, I argue the fabrication of Canadian voices on both sides of the FFC issue previous to the hearings had a deleterious impact on the power of public participation at the hearings.

One of the most critical passages in this policy proceeding contains the opening remarks by Chair Konrad Von Finckenstein to set the focus and tone of the proceedings. He opens the hearing on November 16th, "Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television," by defining what this proceeding is and is not. He states: "This hearing is about the future...This hearing is not about the past. It is not about enshrining or protecting old business models. And it is not about taxing consumers" (CRTC, 2009f). Already, the Chair is showing a predisposition towards implementing a regime to compensate OTA broadcasters for their signal. The reference to not "taxing" consumers is important as it alludes to the pervasive "Stop the TV Tax" campaign. He suggests he will not tolerate language that was made popular by this campaign within the formal sphere of

the CRTC. The Chair defines the purpose of this hearing as a movement from an old to new way of thinking.

He makes several references to previous policy determinations and even quotes a key phrase from the foundational 1971 policy document, "*without this payment, in the long run the very stations on which the cable systems depend may no longer be able to provide them those many services*" (CRTC, 2009f: 38). It is important to note the significance of the Chair of the Commission setting the tone of the discourse in this way. He suggests the time has finally come for BDUs to "*pay for what he uses to operate his business*" (CRTC, 2009f:37). Equally important, he determines this discourse will be grounded in the logic of CRTC policy decisions and will privilege knowledge of these decisions. This is clearly not a sphere friendly to voices fabricated and defined within the emotional narrative of either of the public relations campaign discourses.

Although industry stakeholders dominated this hearing, a few brave souls appeared to define the public interest using their 'own' voice. On the whole, these people were very well-prepared, articulate and represented a variety of perspectives and opinions. One such presenter, Pam Astbury, points out one a very important inequality of the CRTC hearing process.

I do not stand to gain anything personally, financially or professionally by appearing here today. Unlike most attendees, I am not paid to be here. I have, in fact, rearranged my busy schedule as a consulting engineer and taken holiday time and travelled across the country to be here before you.
(CRTC, 2009g:3195)

The independent voices of Canadians show an understanding of the process and an acceptance, although it may be cheeky, of the terms set out by the Chair in the opening comments. In a feisty show of knowledge Wendell Wilks, a self-titled "hybrid

broadcaster" makes it clear he is up to the task of voicing his opinion in the matter at hand:

I have elected to follow the Chair's lead, though, upon learning yesterday that this hearing was about the future and not the past. I have subsequently put away my five-minute recipe to microwave the 42 years of mistakes by the CRTC as originally intended in my five-minute allotment, and I decided to go ahead with this one. (CRTC, 2009g:3236-3237)

The Commission was very polite and receptive to the handful of independent voices that arrived to voice their 'own' interest at the November hearings. Although these people were well-prepared, articulate and passionate, the CRTC chose not to acknowledge any of their input in its decision. As opposed to the 1992 Decision, where the CRTC repeatedly refers to the valued role of the public participation, the Decision 2010-167 highlights the BDU and broadcaster arguments as the guiding forces that influenced its decision. The Decision portrayed the broadcasters' exact arguments in detail, using active words like "arguing", "submitting", "supporting" and "asserting" (CRTC, 2010d, paragraph 141). It outlines the BDU perspective as well, using the same active terms. In the decision on value for signal, there is no reference to any other independent voices, social groups or creative unions to explain the rationale guiding of the outcome. The CRTC invited Canadians to speak about their concerns and beliefs in the matter of FFC, using their own voice, yet there is no evidence that they heard this voice, or tried to listen. Granted, it is a complex situation, as the public's voice has been greatly influenced by the PR campaigns, but does this mean the massive public participation in this hearing must be ignored altogether? How does the CRTC justify this exclusion?

The CRTC invokes section 3(1) of *The Broadcasting Act* as the guiding force for its decision.

However, the Commission finds that, in order to fulfil the policy objectives set out in section 3(1) of the Act, the system needs revision so as to permit privately-owned television broadcasters to

negotiate with BDUs to establish the fair value of the product provided by those broadcasters to BDUs. (CRTC, 2010c: 163)

Specifically it cites sections (e) and (f), as they are measures to reinforce the creation of Canadian programming and that each BDU should make predominant use of Canadian resources (CRTC, 2010c, paragraph 152). The CRTC chooses to use the *Act* to uphold the decision it is making, and by reference to it suggests that the 'public good' is served by reinforcing the imperatives of the Act. Furthermore, the December hearing, which I will look at next, was perceived to be the place the public's voice could be heard (CBC News Online, 2009), as per the Government's request. Is this indeed the case?

CRTC Hearings - December 2009

Many of the major players joined together once again in Gatineau, Quebec, in December for the hearing requested by the Governor in Council, in order to allow the CRTC to prepare a report on the implications and advisability of implementing a compensation regime for the value of local television signals. Chair Von Finckenstein sets the tone by noting that this hearing would not influence, in any way, the goals of the November hearing: they have two very separate agendas.

It must be kept in mind that this hearing is distinct from the Commission's other hearings. Our decision on the group based licensing framework and certain issues related to conventional television will be made on the basis of the evidence presented during the November hearing. As you know, there was a very precise hearing participation by all stakeholders, including consumers. (CRTC 2009g:9,10)

This passage very clearly determines that all the people gathered at this hearing will not affect the CRTC decision on FFC. The reason this hearing was called was only to "prepare a report" for the government on the matter of a compensation regime. The CRTC notes that "consumers" were a part of the hearing in November, as though to

suggest the consumers and citizens present at the December hearing were at the wrong hearing if they wanted to impact that decision.

This hearing had many new faces present – consumer groups, individuals, representatives from each of the campaigns (Stop the TV Tax and Local TV Matters) and various other creative and community organizations such as the Canadian Association of Community Television Users and Stations (CACTUS), imagiNative film + media arts festival, YMCA Edmonton, and Pride Toronto. This discourse is marked by many clarifications of scope and definitions of key issues. After the CACTUS presentation the Chair notes, "But this hearing is not on community stations, as you know..Now, I will take us back to what this is about" (CRTC, 2009g:343). After hearing from a Ms Parsons from Vancouver Island, the Chair remarks, "You have been subject to massive media campaigns for the last three months, et cetera, none of which have really specified the issue properly" (CRTC, 2009h:700). Another example, "We hear loud and clear from you that you do not want what is called a tax. You of course appreciate it is not a tax, it is nothing of the sort, what is before us is a proposal to have the broadcasters negotiate with the conventional companies who are about to pay for their signal" (CRTC, 2009h: 2175). This type of clarifying, correcting and instructing discourse suggests the CRTC sees the public voice as invalid, tainted by the pervasive media campaigns.

The CRTC established another platform, an online consultation process, to further gauge public opinion. They asked questions probing Canadians willingness to accept an increase in their cable bill to support local programming, as well as measuring general happiness with cable service. Eleven thousand people responded. The findings of the survey are remarkably consistent on a few key issues. Some key statistics: 76% of

respondents said they would not pay more for local TV; 79% said they are not satisfied with the service of their local cable/satellite service; 62% would like to choose only what they would like to watch (CRTC, 2010e). Overall, two key themes came out of the public response -- a desire to *not* pay more for cable bills and a concern about losing local television. Let us recall the criteria of the 1992 decision to help determine how the public voice can successfully have impact. Are these results a "clear and essentially unanimous expression"? Are they "an unusual outpouring of opinion"?

The CRTC report (2010e) acknowledges that there is widespread agreement (in comments and presentations) from Canadians that they do not want to pay more. However, it does nothing to protect the consumer from the undeniable certainty of this very thing happening. The CRTC assumes that the consumer ultimately will pay more, as previous years' statistics have shown that consumers do not react negatively to price increases. The CRTC points out that the average BDU bill has increased on a per customer basis by 46.7% since 2002, from \$36.28 to \$53.22 (CRTC, 2010e). It points out this is a fairly substantial increase, but there is minimal consumer backlash and no mass exodus of consumers from the market. Furthermore, the CRTC rejects all other options suggested in the hearings, such as an inexpensive "skinny basic" package or a choice-driven "pick and pay" system, that could have given cable and satellite customers more flexibility and affordability.

The Commission takes an overtly dismissive attitude towards consumers input. This expression of public opinion is certainly "unusual" and the agreement on the matters of choice and affordability seem essentially unanimous. This is certainly a

complex situation, due to the influence of the campaigns, but the CRTC does not attempt to balance these complexities in the decision. It gives no credibility at all to the flesh and blood voices that appeared before it and spoke in their own voices. This attitude does not go unnoticed. Commissioner Morin registers a dissenting opinion that points out the ineffectiveness of the CRTC decision to address the single most important concern in both a market-driven and a culture-driven framework -- choice. He underlines that the "skinny basic" was the most eloquent solution to address the issue of affordability that many Canadians face.

... the Commission... should have seized the opportunity to respond to a greater extent to the well understood interests of a skinny basic service... Such transparency with respect to pricing for the same number of services offered would have encouraged competition among BDUs...we had an obligation to ensure that on the eve of the digital transition and the possible implementation of some form of negotiated compensation for the signals of local broadcasters, the Canadian consumer would have a menu to choose from and the choice to foot the bill or not. (CRTC, 2010d)

Instead of dealing with essentially 'unanimously expressed' public concerns about poor choice and a desire for less expensive options, the Commission chooses instead to recommend the government establish a new complaints service. Morin points out the absurdity in this recommendation, as throughout the two hearings no one asked for this service, nor can it realistically be seen as anything more than an avoidance tactic on the part of the Commission. The findings of this report are shortsighted. As Morin puts it "defends the interests of the industry to the detriment of consumers who, for their part, remain powerless" (CRTC, 2010d).

The report to the government highlights how the two media campaigns drastically and negatively influenced the CRTC's perception of the public participation in the December hearing.

Both campaigns were well-funded, making extensive use of multimedia platforms and public relations strategies. Both strongly encouraged Canadians to show their support in numerous ways, including through the submission of form letters in this proceeding.... The record of the Commission's proceeding indicates that these campaigns influenced how the issue of VFS was perceived by participants. This is evident in the themes woven throughout submissions from individuals, above and beyond the campaign-generated form letters. (CRTC, 2010e)

It is evident from this passage that the CRTC is suspicious of a manipulation of the public's voice within this hearing. The CRTC rarely gets such active and engaged participation from the public on a matter of policy determination, yet it chose to disregard the public's voice, even though the December hearing was expressly convened in order to consult the public. It is disappointing that a system with such strong potential for a democratic process has been sidelined by the rich and powerful. It is only right that the CRTC should be concerned about the impact of the PR campaigns on the sincerity of the public mobilization. However, it also needs to find a way to listen to the many people that participated in the hearings, at their own expense, in order to have their 'own' voices heard. These voices were not heard at all, and that resulted in an incredible failure of the democratic potential of the process.

The Issue of the Publics' Own Voice

This paper began with a discussion of what the 'public interest' actually means. Within this discussion, public interest is defined in the tradition of Raboy (1994) as the public *expression* of public *needs*, and modified by Fraser (1993) as needing to be in one's 'own' voice. It further recognizes that within public spheres, especially within politically charged ones such as the CRTC, that there is an unequal balance of power. This paper argues that two powerful multi-media campaigns very successfully fabricated and controlled 'false' versions of the public's voice. The broadcasters and the BDUs took advantage of the 'weak polis' to create their own version of public mobilization. As a

result, 'real' Canadians that actually took up the challenge to become vocal, speaking in their own voices at the CRTC hearing. The CRTC transcripts reveal intelligent, opinionated, well-informed Canadians speaking with passion about something they know well. This is an incredibly unusual and complex situation, one that presents a difficult choice to the CRTC: ignore the public or ignore the overt manipulation of their voices.

The question central to this analysis asked: What role do the publics' (to use Coles' term) play in defining their own interest, using their own voice, in the FFC debate? This analysis finds the BDUs, broadcasters, and the CRTC itself disempowered and invalidated the publics' ability to define their own interests by using their own voice. The PR campaigns fabricated false identities for Canadians as simplistic versions of 'citizen advocates' or 'angry consumers'. The CRTC then further invalidated the voices of the real flesh and blood Canadians that appeared at the hearings by failing to try to make a differentiation between the 'false' voices and the 'real' ones. The CRTC does not see the public participation as an "unusual outpouring of opinion representing a clear unanimous expression" but only as a result of "well-funded" multi-media campaigns. The publics' voice was silenced before the hearings even began. This paper shows that power of the privileged industrial voices remains stronger than ever within policy proceedings in Canada.

Conclusion

This debate is not over, as the Federal Court of Appeals still needs to hear the case and rule whether or not the CRTC had the jurisdiction to rule on this matter; but an assessment of the process can certainly be made. In an ideal scenario, it could be a

triumph of democracy that thousands upon thousands of Canadians took the time to express their opinions on a dry policy matter usually reserved for the backrooms of powerful industry lobbyists, politicians and a few key union groups. Certainly the public nature of the CRTC hearings always encourages some public debate, but this process is normally dominated by those with direct economic ties to the matter at hand. It is a success of our Canadian system that the public has the ability to get involved to such a degree that there would be a separate hearing called specifically to hear public concern and reaction to the proposed changes.

This hearing is interesting because it occurred on a scale we have not seen in recent history of the CRTC – mass public involvement driven by two massive campaigns and government involvement on a very high level. In one way it is helpful to the policy analyst, as it enhances and exaggerates the flaws in the system. Clearly at play during this hearing were some key weaknesses in our policy process. These weaknesses have been made evident throughout this analysis.

This process has exaggerated how the system is biased to serve and protect industry interests at the cost of the public interest. Even when the public manages to speak with an 'essentially unanimous' voice on some key matters, namely frustration over limited choices within cable service and high cost, the CRTC chooses to ignore it. It is an absolute disservice, to say the least, of a public, that despite being bombarded by relentless media campaigns, still showed up to have their voices heard. The public interest was not served in this policy proceeding, as the public's 'own' voices were silenced. The findings of this paper support Dowler's (1997) assertions that dominant

voices have the power within a weak civil society to create a discourse that defines Canadian identity. The dominant voices of the BDUs and broadcasters did this overtly through their campaigns, and the CRTC reinforced this disempowerment of the polis by refusing to listen to the 'real' voices that participated in the hearings. This policy proceeding was not an example of 'democracy in action'.

Future work can be done on this matter. It is vital that our system for determining public policy continue to strive for the ideals, no matter how far from reality they may seem. It seems one key issue to address is the matter of CRTC fairness and accountability. It would be interesting to study ways an independent regulatory body, like the CRTC, whose members are appointed by government, could be held to greater scrutiny and accountability. A new system of appointing members of the Commission could be investigated. Methods of refining our 'formal' public spheres to reflect the 'actually existing' democracy will only serve to enhance the process; the payment of the expenses of Canadians participating in the process is a critical step in this regard. Furthermore, policy and procedures for the CRTC to deal with the manipulation of the public voice could be developed. This research becomes even more important as media expands further beyond the boundaries of countries and nations. The *Broadcasting Act* is our nation's mandate for building our identity and fostering equality and cultural expression, if the CRTC continues to show regulation does not foster the goals of the *Act*, Canada's distinct culture is not long for this world.

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