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**Article (Published version)  
(Refereed)**

**Original citation:**

Shepherd, Tamara, Taylor, Gregory and Middleton, Catherine (2014) *A tale of two regulators: telecom policy participation in Canada*. [Journal of Information Policy](#), 4. pp. 1-22. ISSN 2158-3897

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## **A TALE OF TWO REGULATORS: TELECOM POLICY PARTICIPATION IN CANADA**

BY TAMARA SHEPHERD,\* GREGORY TAYLOR,<sup>†</sup> AND CATHERINE MIDDLETON<sup>‡</sup>

What are the challenges to effective academic participation in telecommunications policymaking? In this article, the authors analyze their experiences with the Canadian Radio-television and Telecommunications Commission and Industry Canada as examples. Their goal is to increase academic policy engagement despite negligible government support for public interest advocacy, as traditional public interest values are discarded by regulators because new technologies are framed as individual rather than collective. Industry Canada is deemed opaque with an “advocacy deficit,” though the CRTC is more transparent and inviting. To succeed in both venues, academics need to work with advocacy organizations as “circumstantial activists.” Such academic participation can offer new conceptual frameworks, add nuance to discourse, substantiate the use of scholarly research in policy debates, and add to policy theory building.

### **INTRODUCTION: CHALLENGES TO ACADEMIC ADVOCACY**

Academics intervening in telecommunications policymaking must consider the unique institutional settings for policymaking if they are to succeed as advocates. This article describes the divergent experiences of academics participating within Canada’s unique legislative framework for telecom regulation, divided between the Canadian Radio-television and Telecommunications Commission (CRTC) and Industry Canada. The specific legislative and institutional structures of these two governmental agencies serve to shape public and academic advocacy. In detailing cases of academic advocacy in the context of CRTC consultations and written submissions to Industry Canada, this article offers guidance and support for academic policy advocacy that can be applied in a range of contexts.

A lack of Canadian academic engagement in policymaking has been recognized in scholarly journals and contemporary reviews of Canadian telecom policy.<sup>1</sup> In 2006, the Telecommunications Policy

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<sup>1</sup> Bram Dov Abramson, Jeremy Shtern, and Gregory Taylor, “Commentary: ‘More and Better’ Research? Critical Communication Studies and the Problem of Policy Relevance,” *Canadian Journal of Communication* 33, no. 2 (2008): 303-317.

Review Panel released a widely-read report that noted the “relative paucity of academic work on what has been referred to as the ‘regulatory craft’?”

In Canadian telecommunications regulatory proceedings, there are relatively few research-based policy recommendations submitted by Canadian telecommunications experts, and there is heavy reliance on foreign (mostly U.S.-based) experts on economic, technical and even social regulation.<sup>2</sup>

The Canadian government ignored the report’s recommendation for multi-year research funding for academic research in telecom policy. Challenges to public and academic participation in telecom policy processes include funding scarcities, but they also stem from a number of other factors, noted in the literature on telecom policy advocacy.<sup>3</sup> According to American communications scholar Sandra Braman, for example, such additional factors include the prohibitive hierarchical and neoliberal climate of policymaking, a possible manipulation of research results for political purposes, and the lack of institutional incentive for academics to produce work outside of traditional scholarly channels.<sup>4</sup> Canadian academics, moreover, face the difficulty of forging research partnerships without the infrastructural and financial scaffolding of policy think tanks or large national advocacy networks.<sup>5</sup>

In Canada, academics engaged in policy advocacy must negotiate a patchwork of specific local advocacy organizations that contribute to the public debate on regulatory issues in order to mobilize research in the public interest. The public interest is key to this article’s working definition of *policy advocacy* by academics. According to Mike Feintuck, the public interest is identified “closely with the values of equality and citizenship within a democracy.”<sup>6</sup> For advocates, this can entail mobilizing research in the interest of democratic principles involving the general public and/or specific groups of citizens, and in the process, delineating a public interest that is scattered across a host of organizations, movements, and discourses. Paul Lazarsfeld wrote that critical communications research from a public interest perspective presumes “ideas of basic human values according to which all actual or desired effects should be appraised.”<sup>7</sup> Under this umbrella, public interest advocacy includes both Lazarsfeld’s Habermasian concept of a larger public with shared values, as well as the position taken by those such as Nancy Fraser who argue that “a multiplicity of publics is preferable to

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<sup>2</sup> Gerri Sinclair, André Tremblay, and Hank Intven, “Telecommunications Policy Review Panel Final Report 2006,” white paper, Government of Canada and the Telecommunications Policy Review Panel (2006), accessed Feb. 12, 2014, [http://epe.lac-bac.gc.ca/100/200/301/ic/telecommunications\\_policy\\_review-e/Iu4-77-2005E.pdf](http://epe.lac-bac.gc.ca/100/200/301/ic/telecommunications_policy_review-e/Iu4-77-2005E.pdf), 265.

<sup>3</sup> See generally Philip M. Napoli and Minna Aslama, eds., *Communications Research in Action: Scholar-Activist Collaborations for a Democratic Public Sphere* (New York: Fordham University Press, 2010); Marita Moll and Leslie Regan Shade, eds., *For Sale to the Highest Bidder: Telecom Policy in Canada* (Ottawa: Canadian Centre for Policy Alternatives, 2008).

<sup>4</sup> Sandra Braman, “Policy Research in an Evidence-Averse Environment,” *International Journal of Communication* 2 (2008): 433; Leslie Regan Shade, “Media Reform in the United States and Canada: Activism and Advocacy for Media Policies in the Public Interest,” in *The Handbook of Global Media and Communication Policy*, ed. Robin Mansell and Marc Raboy (London: Blackwell, 2011), 147-164.

<sup>5</sup> Leslie Regan Shade, “Public Interest Activism in Canadian ICT Policy: Blowin’ in the Policy Winds,” *Global Media Journal—Canadian Edition* 1, no. 1 (2008): 107-121; James G. McGann, ed., *Think Tanks and Policy Advice in the US: Academics, Advisors and Advocates* (New York: Routledge, 2007).

<sup>6</sup> Mike Feintuck, *The Public Interest in Regulation* (Oxford: Oxford University Press, 2004), 248.

<sup>7</sup> Paul Lazarsfeld, *Qualitative Analysis; Historical and Critical Essays* (Boston: Allyn and Bacon, 1972), 160.

a single public sphere.”<sup>8</sup> Moreover, researchers attempting to intervene as advocates according to a public interest perspective must negotiate the difference between evidence-based research that advocates a specific position and research from a more ideological bent that attempts to engage alternative perspectives.

The Canadian government’s “infrastructural support for capacity building [among advocacy groups] has been negligible.”<sup>9</sup> This general lack of government funding for public interest advocacy likely coincides with the “poorly defined” public interest, preventing integration and coordination between diverse civil society groups.<sup>10</sup> Furthermore, the lack of a clearly-defined public interest has meant that federal regulators have tended to equate the public interest with the economic interest, where consumers tend to stand in for citizens.<sup>11</sup> Moreover, policy issues arising from technological innovation – such as net neutrality and changes to intellectual property,<sup>12</sup> along with spectrum and wireless communication as detailed below – have been met with an increasingly difficult to define public interest perspective. This can be attributed to the ways in which new technologies are framed as individuated media technologies as opposed to more mass forms of media. The shift toward viewing communications technologies as individual has been met with an attendant shift in policy practices and ideologies. Older values of social responsibility requirements, public service, and altruism have often been overtaken by economic framings of the public interest as a kind of consumer protection focused on individual as opposed to collective concerns.<sup>13</sup>

Despite such obstacles to engaging in policy advocacy, academic research is important for representing the public stake in telecom policy debates.<sup>14</sup> As an intervention into the dominant administrative processes of policymaking, a research-based perspective constitutes “an important part of the currency of policy debate.”<sup>15</sup> Academics as advocates offer new conceptual frameworks for policy debates as well as pragmatic research skills for civil society groups, while generating scholarly research that is

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<sup>8</sup> Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Cambridge, MA: MIT Press, 1991); Nancy Fraser, “Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy,” *Social Text* 25/26 (1990): 77.

<sup>9</sup> Shade, “Media Reform in the United States and Canada: Activism and Advocacy for Media Policies in the Public Interest,” 157.

<sup>10</sup> Marc Raboy and Jeremy Shtern, *Media Divides: Communication Rights and the Right to Communicate in Canada* (Vancouver: University of British Columbia Press, 2010), 224.

<sup>11</sup> Vanda Rideout, *Continentalizing Canadian Telecommunications: The Politics of Regulatory Reform* (Montreal: McGill-Queen’s University Press, 2003), 44.

<sup>12</sup> Neil Barratt and Leslie Regan Shade, “Net Neutrality: Telecom Policy and the Public Interest,” *Canadian Journal of Communication* 32 (2007): 295-305; Jean-Frédéric Morin, “Paradigm Shift in the Global IP Regime: The Agency of Academics,” working paper (2013), accessed Feb. 12, 2014, <http://ssrn.com/abstract=2278410>.

<sup>13</sup> Jan van Cuilenburg and Denis McQuail, “Media Policy Paradigm Shifts: Towards a New Communications Policy Paradigm,” *European Journal of Communication* 18, no. 2 (2003): 200.

<sup>14</sup> Kate Milberry, “Freeing the Net: On-Line Mobilizations in Defense of Democracy,” in *Alternative Media in Canada*, ed. Kirsten Kozolanka, Patricia Mazepa, and David Skinner (Vancouver: University of British Columbia Press, 2012), 239; Robert McChesney, *Communication Revolution: Critical Junctures and the Future of Media* (New York: The New Press, 2007); Andrew Clement, Michael Gurstein, Graham Longford, Robert Luke, Marita Moll, Leslie Regan Shade, and Diane Dechief, “The Canadian Research Alliance for Community Innovation and Networking (CRACIN): A Research Partnership and Agenda for Community Networking in Canada,” *The Journal of Community Informatics* 1, no. 1 (2004): 7-20.

<sup>15</sup> William H. Melody and Robin E. Mansell, “The Debate over Critical vs. Administrative Research: Circularity or Challenge,” *Journal of Communication* 33, no. 3 (1983): 112.

enhanced by a level of access to the very audiences (e.g. advocacy groups) who stand to benefit most from critical research.<sup>16</sup> Applying this criticality self-reflexively, however, underscores how academics intervene from a relatively privileged position that, according to William Birdsall, can sometimes shut out important public interest voices.<sup>17</sup> Recognizing such power asymmetries is critical for academics as policy advocates working within a multi-stakeholder policymaking environment characterized by dialogues between civil society, businesses, nonprofits, and different levels of government.

For academics to cross over into advocacy roles, negotiations of contentious political terrain and precarious resource availability are required. It also involves fostering relationships with dedicated advocacy groups for conducting situated research and making effective interventions in policy processes. (In Canadian telecommunications, these include the Public Interest Advocacy Centre, Canadian Spectrum Policy Research, Canadian Centre for Policy Alternatives, and OpenMedia.ca.) Intervention as advocates in multi-stakeholder policymaking thus invokes political stakes in the process of articulating a public interest that is diverse, contingent, and fluctuating, and thus prone to political maneuvering.<sup>18</sup> Through the process of translating scholarly research into public advocacy in the regulatory space, researchers contend with a positionality that informs their own micro-politics around the representation of democratic principles. The pivotal moment of translation – of reinterpreting and resituating academic work into the language of regulatory and public debates – thus subtends researchers' political commitments as both scholars and advocates. As William Melody and Robin Mansell have argued, “advocacy in policy debate is the step of transition from research result to implementable policy decision. It is the crucial step in the operationalization of policy research.”<sup>19</sup> Even if research does not end up influencing policy decisions – a more common scenario in an “evidence-averse” political environment<sup>20</sup> – the translation of research results within the context of public interest advocacy contributes alternative and innovative conceptual frameworks to the discourses circulating around specific policy issues.

The case studies outlined below offer two examples of how academic interventions into Canadian telecom policymaking have addressed policy debates in divergent policymaking contexts. The case study format illuminates the specificities of each context through our recent experiences of acting as academics – both experts and advocates – in these two spaces, and conveys some of the opportunities and challenges that attend the process of participating in Canadian telecom policymaking more generally.

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<sup>16</sup> Philip M. Napoli, “Public Interest Media Activism and Advocacy as a Social Movement: A Review of the Literature,” McGannon Center Working Paper Series, Paper 21 (2007), accessed Feb. 12, 2014, [http://fordham.bepress.com/mcgannon\\_working\\_papers/21](http://fordham.bepress.com/mcgannon_working_papers/21), 26-27; Philip M. Napoli and Minna Aslama, “Introduction,” in *Communications Research in Action: Scholar-Activist Collaborations for a Democratic Public Sphere*, ed. Philip M. Napoli and Minna Aslama (New York: Fordham University Press, 2010), 2.

<sup>17</sup> William F. Birdsall, “Policy and Participation on the Canadian Information Highway,” *First Monday* 4, no. 3 (1999), accessed Feb. 12, 2014, <http://firstmonday.org/ojs/index.php/fm/article/view/653/568>.

<sup>18</sup> Patricia Aufderheide, *Communications Policy and the Public Interest: The Telecommunications Act of 1996* (New York: Guilford Press, 1999), 24-25.

<sup>19</sup> Melody and Mansell, 113.

<sup>20</sup> Braman.

## CANADIAN TELECOM REGULATION

Canada's telecommunications policymakers have traditionally looked to regulators in the United States and the United Kingdom for points of comparison; however, unlike the converged regulatory systems in those countries, Canadian telecom policy remains under the divided auspices of Industry Canada and the Canadian Radio-television and Telecommunications Commission (CRTC). This bifurcated regulatory structure has great consequence for civil society activists who seek to engage in the policy process.

Spectrum policy and allocation processes are determined by Industry Canada, a federal government department.<sup>21</sup> The broadcasting and telecommunications companies that use radio spectrum to provide television, data, and telephony services to Canadians are regulated by the CRTC, an independent public organization, whose mandate is "to ensure that both the broadcasting and telecommunications systems serve the Canadian public."<sup>22</sup>

While there are many public interest issues that arise in the provision of telecom and broadcasting services, as this article will demonstrate, commercial interests generally dominate public consultations by Industry Canada<sup>23</sup> and, to a lesser degree, public hearings at the CRTC.<sup>24</sup> Part of this public interest advocacy deficit in media and telecom policy is evidenced by the CRTC's creation of the Broadcasting Participation Fund in 2011,<sup>25</sup> designed to help encourage engagement for nonprofits and individuals and to offset the costs of participating in CRTC broadcasting consultations. Canada's Telecommunications Act allows for participants in telecommunications proceedings to request that the CRTC order payment of costs.<sup>26</sup> While significant, such funding offers only a partial solution to the broader challenges to encouraging non-industry participation, including the participation of academics, in Canadian telecom and media policy debates.

The Telecommunications Act states that the CRTC has jurisdiction over telecom areas such as rates that must be "just and reasonable,"<sup>27</sup> facilities and services, international telephone services, unsolicited telecommunications including telemarketing and spyware, and other objectives as set out in Section 7 of the Act.<sup>28</sup> The CRTC has a clear history of a more open policy process than other,

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<sup>21</sup> Industry Canada, "Spectrum Policy Framework for Canada," June 2007, accessed Feb. 14, 2014, <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08776.html>, Section 3.1.

<sup>22</sup> Canadian Radio-television and Telecommunications Commission, "About the CRTC," accessed Feb. 14, 2014, <http://www.crtc.gc.ca/eng/backgrnd/brochures/b29903.htm>.

<sup>23</sup> Comments received on Industry Canada's spectrum management and telecommunications consultations can be found at [http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/h\\_sf08436.html](http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/h_sf08436.html), accessed Feb 14, 2014. Responses from parties not affiliated with companies and organizations are rare.

<sup>24</sup> Comments and interventions for CRTC proceedings can be found at <http://crtc.gc.ca/eng/proceed-process.htm>, accessed Feb. 14, 2014.

<sup>25</sup> Canadian Radio-television and Telecommunications Commission, "Broadcasting Participation Fund," accessed Feb. 14, 2014, <http://bpf-fpr.ca/en/home.html>.

<sup>26</sup> Canadian Radio-television and Telecommunications Commission, *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, regulatory document (2011), accessed Feb. 14, 2014, <http://laws-lois.justice.gc.ca/PDF/SOR-2010-277.pdf>, §§ 60-70.

<sup>27</sup> Government of Canada, Telecommunications Act (S.C. 1993, c. 38), 33.b.

<sup>28</sup> Hank Intven, *Canadian Telecommunications Regulatory Handbook* (Toronto: McCarthy Tétrault, 2012), 31.



more industry-focused government bodies. Robert Babe notes that when the CRTC took over regulation of telecommunications from the Canadian Transport Commission (CTC) in 1976, “in contrast to its predecessor, the CRTC announced it would encourage widespread participation in its proceedings.”<sup>29</sup> In a similar finding, Dwayne Winseck writes that CTC chair John Gray had “dismissed the idea that ‘public interest groups’ should contribute to hearings,” finding that they were unhelpful in the process.<sup>30</sup> The formation of the CRTC was thus a key moment for opening the door to wider public participation in Canadian telecommunication policy. The CRTC facilitates engagement by using the same rules of procedure for telecom and broadcasting and frequently holds public hearings to consult on matters of broad interest.<sup>31</sup>

Industry Canada’s consultation process is much less transparent. There are over thirty procedural documents issued by Industry Canada,<sup>32</sup> mostly of a technical nature, and there is little or no effort to encourage public involvement in calls for comment. As Canadian media lawyer Hank Intven writes, “Unlike the CRTC which operates at arm’s length from the government, and within a quasi judicial legal framework, Industry Canada operates as an integral part of the government administration.”<sup>33</sup> Much of the considerable power within Industry Canada is held by the Industry Minister, with the Minister and the department tending to operate behind closed doors. In areas where Industry Canada is the dominant regulator – including the policy, licensing, and regulation of the radio spectrum – the opacity of the policy process results in a more pronounced advocacy deficit.

### ***Case Study 1: Spectrum Regulation by Industry Canada***

In 2011 and 2012, Gregory Taylor and Catherine Middleton made four submissions to Industry Canada on matters of wireless telecom policy (one co-authored with Adam Fiser).<sup>34</sup> In each instance they contributed one of the very few non-industry responses to the call for public comments. The limited engagement with the substance of non-industry submissions in the decisions that followed the

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<sup>29</sup> Robert Babe, *Telecommunications in Canada: Technology, Industry, and Government* (Toronto: University of Toronto Press, 1990), 168.

<sup>30</sup> Dwayne Winseck, *Reconvergence: A Political Economy of Telecommunications in Canada* (Cresskill, NJ: Hampton Press, 1998), 193.

<sup>31</sup> See the CRTC’s Frequently Asked Questions page at <http://crtc.gc.ca/eng/faqs.htm>, accessed Feb. 14, 2014.

<sup>32</sup> Intven, 94.

<sup>33</sup> *Ibid.*, 93.

<sup>34</sup> Gregory Taylor, Adam Fiser, and Catherine Middleton, “Submission to the Industry Canada Consultation on a Policy and Technical Framework for the Use of Non-Broadcasting Applications in the Television Broadcasting Bands Below 698 MHz Gazette Notice No. SMSE-012-11,” Nov. 4, 2011, accessed Feb. 14, 2014, [http://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/smse-012-11-taylor-fiser.pdf/\\$FILE/smse-012-11-taylor-fiser.pdf](http://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/smse-012-11-taylor-fiser.pdf/$FILE/smse-012-11-taylor-fiser.pdf); Gregory Taylor and Catherine Middleton, “Submission to the Industry Canada Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum – Canada Gazette Notice No. SMSE-018-10,” Feb. 28, 2011, accessed Feb. 14, 2014, [http://www.broadbandresearch.ca/ourresearch/taylor\\_middleton\\_700MHz\\_spectrum\\_consultation.pdf](http://www.broadbandresearch.ca/ourresearch/taylor_middleton_700MHz_spectrum_consultation.pdf); Gregory Taylor and Catherine Middleton, “Response to Consultation on a Licensing Framework for Broadband Radio Service (BRS) – 2500 MHz Band. Canada Gazette Notice No. DGSO-004-12,” Nov. 19, 2012, accessed Feb. 14, 2014, [http://canadianspectrumpolicyresearch.org/wp-content/uploads/2012/08/Taylor\\_Middleton\\_2500\\_MHZ.pdf](http://canadianspectrumpolicyresearch.org/wp-content/uploads/2012/08/Taylor_Middleton_2500_MHZ.pdf); Gregory Taylor and Catherine Middleton, “Response to Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band. Canada Gazette Notice No. DGSO-002-12,” June 22, 2012, accessed Feb. 14, 2014, [http://canadianspectrumpolicyresearch.org/wp-content/uploads/2012/08/Taylor\\_Middleton\\_700\\_MHZ.pdf](http://canadianspectrumpolicyresearch.org/wp-content/uploads/2012/08/Taylor_Middleton_700_MHZ.pdf).

consultations suggests a disconnect between Industry Canada's public forum (in this event, written submissions) and the creation of policy.

As a point of contrast, participation in Industry Canada consultations can be framed against a similar policy engagement with Canada's other telecom regulator – the CRTC – which offers a more public vetting of concerns. Previous to his work on spectrum policy, Taylor's research had focused upon Canada's transition to digital television, and since broadcasting is under the exclusive auspices of the CRTC, Taylor spoke before the CRTC on February 3, 2011 at public hearings concerning the takeover of CTV television by Bell Canada.<sup>35</sup> He was preceded that day by spokespeople from Rogers Inc., one of the largest media companies in Canada, and Quebecor, a major vertically-integrated media company based in Quebec. Also given time to speak that day were writers' and directors' guilds, museum representatives, independent broadcasters, and a graduate student, Steven James May, who presented a short film he had made concerning television access in rural Ontario.

The hearings evidenced an obvious imbalance of power: major corporate players were supported by phalanxes of lawyers, while public advocates often spoke individually. However, the CRTC's Rules of Procedure are clear that intervention is part of the process:

40. The parties must be heard in the following order at a public hearing: (a) applicants; (b) respondents; (c) interveners; and (d) applicants, in reply.<sup>36</sup>

Applicants are in an advantageous position in this ordering of CRTC hearings as they "bookend" the proceedings. Despite being in an obvious position of weakness for many policy interventions in comparison to well-supported corporate involvement, public participation is an expected part of CRTC hearings. Any individual or group who submits to a CRTC call for comment can ask to appear in person at a hearing. Yet, there is no pretense of an ideal Habermasian public sphere where all speakers are on relatively equal ground in CRTC hearings<sup>37</sup> – the Commissioners sit at the front of the room on an elevated platform and take turns questioning the presenter. The court-like atmosphere can prove intimidating. Taylor was questioned for ten minutes by then-Chair Konrad von Finckenstein, who disagreed with him over the significance of over-the-air broadcasting in the Canadian communications sector:

THE CHAIRPERSON: I am surprised by your passion about this issue [over-the-air broadcasting]. I understand you work on it and you have written this doctorate dissertation, et cetera. ...But do you really think it is such a big deal?<sup>38</sup>

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<sup>35</sup> The agenda for this hearing can be found at [http://www.crtc.gc.ca/Broadcast/eng/HEARINGS/2011/ag01\\_02.htm](http://www.crtc.gc.ca/Broadcast/eng/HEARINGS/2011/ag01_02.htm), accessed Feb. 14, 2014.

<sup>36</sup> Canadian Radio-television and Telecommunications Commission, *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, § 40.

<sup>37</sup> Habermas.

<sup>38</sup> Canadian Radio-television and Telecommunications Commission, Hearing to Consider the Broadcasting Application by BCE Inc., on Behalf of CTVglobemedia Inc. and Its Licensed Broadcasting Subsidiaries, Feb. 3, 2011, accessed Feb. 14, 2014, <http://www.crtc.gc.ca/eng/transcripts/2011/tb0203.html>, §§ 3689-3690.



Despite the clear disagreement between the Chair and the intervener, Taylor's point, as well as that of unions and graduate students, was heard that day at the highest levels of the public regulator. The hearings were also broadcast live and made available on the website of the cable channel CPAC, and transcripts were made available on the CRTC website. While the CRTC process is not perfectly democratic, these efforts represent an earnest attempt to allow those who are able to attend the time to voice their claims or concerns, and to have their day in (quasi-judicial) court.

Industry Canada, the department responsible for spectrum policy in Canada, operates in a very different manner – one that is far less amenable to public or academic advocacy. Radio frequencies are recognized by Industry Canada as “a finite public resource,”<sup>39</sup> yet the public's input into the policy process surrounding this increasingly essential resource is far from any accepted definition of *democratic*. The Spectrum Management and Telecommunications division of Industry Canada does solicit input from individuals and organizations via calls for comment published on the Industry Canada website and in the Canada Gazette. However, actual public engagement is negligible. Significant consultations such as those that preceded the Framework for Spectrum Auctions in Canada consisted entirely of a dialogue between Industry Canada and interested business groups. Only 16 submissions were received for this “public” consultation, and none of them were from advocacy groups or members of the public.<sup>40</sup>

The legislative impact of this exclusive dialogue between regulator and industry has seen an entrenchment of individualist, “free market” principles at the expense of wider public interest concerns. The 2007 Spectrum Policy Framework for Canada reduced the seven policy objectives of the previous 2002 framework down to one overriding guiding principle: “To maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource.”<sup>41</sup> Industry Canada's 700 MHz spectrum auction framework doubled the license terms of the previous AWS spectrum auction from 10 to 20 years with little rationale offered for this substantial gain for industry.<sup>42</sup> Economic interests are clearly at the forefront in Canadian spectrum policy.

Spectrum policy is an esoteric subject that even Canadian communication scholars tend to avoid. Recent calls for comment by Industry Canada have only attracted limited engagement from the academic community. In a University of Alberta analysis of 40 consultations conducted by Industry Canada from 2008 to 2012, the authors found that “in total there were five submissions by academics (individuals whose submissions clearly identified them as being affiliated with a university); however, with the exception of one submission [...] all the remaining submissions originate from Taylor and

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<sup>39</sup> Industry Canada, “Framework for Spectrum Auctions in Canada,” Mar. 2011, accessed Feb. 15, 2014, <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf01626.html>.

<sup>40</sup> Industry Canada, “Decisions on the Revisions to the Framework for Spectrum Auctions in Canada and Other Related Issues,” Mar. 2011, accessed Feb. 15, 2014, <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf10001.html>.

<sup>41</sup> Industry Canada, “Spectrum Policy Framework for Canada.”

<sup>42</sup> Gregory Taylor, “Oil in the Ether: A Critical History of Spectrum Auctions in Canada,” *Canadian Journal of Communication* 38, no. 1 (2013): 125.

Middleton (with one submission also including Fiser).<sup>43</sup> Canada has a proud history of political economy research in the field of communications (Dallas Smythe, Harold Innis, Robert Babe, Robin Mansell, Bill Melody, Dwayne Winseck), yet outside of a few engaged economists,<sup>44</sup> the area of spectrum policy has remained fairly quiet in academic circles even though wireless communications has grown exponentially in recent years.

The few public advocates who did submit to these Industry Canada hearings discovered that there is little sense that one's voice is truly being heard or points taken into consideration. Advocates engaging with Industry Canada often must be content with just having their submission listed on the department's website. Of the eight individual submissions to Industry Canada following the call for comment for the 700 MHz auction policy, six were not discussed in the final document. The only submission from academics (Taylor and Middleton) was mentioned three times in the policy document,<sup>45</sup> although none of their ideas received any engagement beyond a passing mention.<sup>46</sup> Taylor and Middleton's submission had been developed in consultation with labour groups and activists, who found common ground around issues such as license term lengths and the need for either a set-aside or a spectrum cap. Submissions by different advocacy groups were not uniform but exhibited areas of agreement. Though the government did incorporate a spectrum cap into the 700 MHz auction, there was no evidence that the efforts of advocates had played a role in this decision.

The authors of the University of Alberta report conclude that increased scrutiny of the consultation process by media and academics is necessary to reduce the risk of regulatory capture.<sup>47</sup> In *The Irony of Regulatory Reform*, Robert Horwitz describes "regulatory capture" as an instance when a regulatory agency "systematically favors the private interests of regulated parties and systematically ignores the public interest."<sup>48</sup> Despite a public battle between the Canadian government and the major wireless providers in the summer of 2013,<sup>49</sup> there is clearly a comfortable relationship between telecommunications firms and Industry Canada. Unlike the public hearings of the CRTC, audiences with decision makers at Industry Canada are carried out via lobbyists in closed-door meetings. Two recently retired federal government cabinet members, Jim Prentice (a former Industry Minister) and Stockwell Day, now serve on the Board of Directors of Canadian telcos Bell and Telus, respectively.

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<sup>43</sup> Michael B. McNally, Brandy Mowatt, and Lilian Pintos, "Industry Canada's Spectrum Management Consultations: Democratic Participation or Regulatory Capture," paper presented at the Canadian Communication Association Annual Conference, Victoria, BC, June 7, 2013.

<sup>44</sup> Richard D. French, "Spectrum Auctions 101," *Optimum Online – The Journal of Public Sector Management* 38, no. 2 (2008), accessed Feb. 15, 2014, <http://www.optimumonline.ca/print.phtml?e=mesokurj&cid=305>.

<sup>45</sup> Industry Canada, "Policy and Technical Framework: Mobile Broadband Services (MBS) – 700 MHz Band, Broadband Radio Service (BRS) – 2500 MHz Band," Mar. 2012, accessed Feb. 15, 2014, <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf10121.html>.

<sup>46</sup> McNally, Mowatt, and Pintos.

<sup>47</sup> For an overview, see Marver H. Bernstein, *Regulating Business by Independent Commission* (Princeton: Princeton University Press, 1955). For a discussion of the CRTC and regulatory capture see Wolfgang Hoffmann-Riem, *Regulating Media: The Licensing and Supervision of Broadcasting in Six Countries* (New York: Guilford Publications, 1996), 218.

<sup>48</sup> Robert Britt Horwitz, *The Irony of Regulatory Reform: The Deregulation of American Telecommunications* (New York: Oxford University Press, 1991), 29.

<sup>49</sup> See the incumbent telcos' "Fair for Canada" campaign at [fairforcanada.ca](http://fairforcanada.ca) and Industry Canada's rebuttal (outlining the Canadian government's wireless policy) at <http://www.ic.gc.ca/eic/site/icgc.nsf/eng/07389.html>.

Bernard Lord, the former Conservative Premier of the province of New Brunswick, leads the Canadian Wireless Telecommunications Association, the lobby group representing Canadian wireless providers.

Another example of Industry Canada's lack of responsiveness to public consultations is apparent in the 2010 Digital Economy Consultation, designed to seek input on the development of a digital strategy for Canada. This rare but broad-based public consultation from Industry Canada (in partnership with the Human Resources and Skills Development department and the Canadian Heritage and Official Languages department) held great promise for future advocacy within this branch of the federal government. The consultation was enthusiastically embraced: more than 2000 Canadians seized this moment to let their views be known on the various avenues open to Canada in the age of digital connectivity.<sup>50</sup> On July 6, 2010 Taylor submitted a proposal entitled "The Multiplexing Option for Digital Television," drawing upon his recently completed doctoral thesis at McGill University, *Canadian Broadcasting Regulation and the Digital Television Transition*. It seemed a perfect opportunity to combine new and timely academic research with policy advocacy. The Digital Economy consultation was thus met with a heightened degree of promise that Canada would join most advanced nations (United States, United Kingdom, Germany, Australia) in spelling out clear national objectives for digital media that draw upon extensive public input.<sup>51</sup> This was a bold and welcome initiative from the usually publicly disengaged Industry Canada.

There is a key problem with Canada's Digital Economy Strategy, however – as of this writing it does not exist. No response was ever given to the over 2000 submissions responding to the consultation. This great experiment in public consultation is by any measurement a dismal failure. Despite the fact that the Digital Economy Strategy remains speculative, Industry Canada has repeatedly trumpeted its virtues. In 2011, the government of Canada announced that the "Budget 2011 sets the stage for the release of Canada's Digital Economy Strategy later this spring."<sup>52</sup> The strategy was not tabled then and no reason has ever been given for the delay. In March 2012, Industry Canada released the long-awaited *Policy and Technical Framework for Mobile Broadband Services (MBS) – 700 MHz Band Broadband Radio Service (BRS) – 2500 MHz Band*, which made public the plan for the auction of Canada's digital dividend. It begins with the bold policy objective that:

The Government of Canada is committed, through Canada's Digital Economy Strategy, to ensuring that consumers, businesses and public institutions benefit from

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<sup>50</sup> For archived submissions, see Government of Canada, "The Digital Economy in Canada," accessed Feb. 15, 2014, [http://www.ic.gc.ca/eic/site/028.nsf/eng/h\\_00023.html](http://www.ic.gc.ca/eic/site/028.nsf/eng/h_00023.html).

<sup>51</sup> The policy proposals for the four nations mentioned can be found respectively in *National Broadband Plan: Connecting America* (USA), <http://www.broadband.gov/>; *Government Digital Strategy* (UK), <https://www.gov.uk/government/collections/government-digital-strategy-reports-and-research#the-government-digital-strategy>; *Digital Germany 2015*, <http://www.bmwi.de/English/Redaktion/Pdf/ict-strategy-digital-germany-2015,property%3Dpdf>; and *National Digital Economy Strategy* (Australia), [http://www.archive.dbcde.gov.au/2013/september/national\\_digital\\_economy\\_strategy](http://www.archive.dbcde.gov.au/2013/september/national_digital_economy_strategy).

<sup>52</sup> Government of Canada, "Budget 2011: The Next Phase of Canada's Economic Action Plan – A Low-Tax Plan for Jobs and Growth," June 6, 2011, accessed Feb. 15, 2014, <http://www.budget.gc.ca/2011/plan/chap4-eng.html>, Chapter 4.3.

the availability of advanced, competitively priced telecommunications services in all regions of the country.<sup>53</sup>

Thus, the policy that establishes the framework for managing the most coveted spectrum in Canada is largely based upon a phantom federal report. Indeed, the absent Digital Economy Strategy has become an object of ridicule in Canadian policy circles. Noted Canadian legal scholar Michael Geist refers to Canada's Digital Economy Strategy as the Canadian government's "Penske File" – a reference to an episode of *Seinfeld* in which the Penske File was a much-discussed but non-existent work project.<sup>54</sup>

The lack of opportunities for, and responsiveness to, public input at Industry Canada stands in contrast to the effort made at the CRTC to offer public hearings accommodating a range of voices. The CRTC has demonstrated a stronger history than Industry Canada of holding public consultations, and therefore channels for advocacy, which are a key part of the policy process. There is a clear legislative foundation for the CRTC's greater public outreach: Section 60 of the CRTC's Rules of Procedure grants the commission the ability to award funding to a party "that considers that they do not have sufficient financial resources to participate effectively in a proceeding."<sup>55</sup> However, because intervener costs under the Telecommunications Act are awarded *ex post* and do not constitute an assured stream of funding, they are poorly positioned to ensure participation in the manner that truly inclusive telecom policy requires. The Broadcasting Act does not address intervener costs, although the House of Commons Standing Committee on Canadian Heritage recommended in 2003 that this be reexamined.<sup>56</sup> Like much of that extensive report, the government took no action on the recommendation and any attempt to encourage non-industry involvement in public hearings was left to the regulator. The public forum that accompanies CRTC policymaking is thus far from ideal, but the process experienced by Taylor when attempting to engage with the two regulators shows a far more open and public process at the CRTC.

### ***Case Study 2: Wireless Code at the CRTC***

As the independent federal regulator of broadcasting and telecommunications, reporting to Parliament through the Minister of Canadian Heritage, the Canadian Radio-television and Telecommunications Commission can be contrasted against Industry Canada in a policymaking context. Composed of a Chair (currently Jean-Pierre Blais), two Vice-Chairs, and six Commissioners representing all regions of the country, the CRTC solicits input on regulatory decisions, and then creates regulations and policies that are binding but can be appealed to, and in rare cases are overruled by, the Cabinet. The

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<sup>53</sup> Industry Canada, "Policy and Technical Framework: Mobile Broadband Services (MBS) – 700 MHz Band, Broadband Radio Service (BRS) – 2500 MHz Band," § A4.

<sup>54</sup> Michael Geist, "Geist: Digital Economy Strategy Has Become Federal Government's 'Penske File'," *Toronto Star*, Nov. 26, 2011, accessed Feb. 15, 2014, [http://www.thestar.com/business/tech\\_news/2011/11/26/geist\\_digital\\_economy\\_strategy\\_has\\_become\\_federal\\_governments\\_penske\\_file.html](http://www.thestar.com/business/tech_news/2011/11/26/geist_digital_economy_strategy_has_become_federal_governments_penske_file.html).

<sup>55</sup> Canadian Radio-television and Telecommunications Commission, *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, § 60.

<sup>56</sup> Parliament of Canada, Standing Committee on Canadian Heritage, *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting* (Ottawa: Standing Committee on Canadian Heritage, 2003), Recommendation 15.6.

CRTC has consistently held public consultations on issues such as media convergence, content, access, and broadcast definitions.<sup>57</sup>

One such public consultation with a relatively high profile was the 2012-2013 consultation on the development of a mandatory Wireless Code for mobile operators, designed to benefit Canadians by providing more transparent service policies and consumer contracts for mobile phone and data services. The Wireless Code was proposed in October 2012, with the final version released in June 2013 after an intervention period, an in-person oral hearing, and a comment and reply period. The main issues debated throughout these proceedings included the provision of additional and clearer information about wireless services to consumers, the addition of a Personalized Information Summary that would outline how the main elements of the wireless service contract apply to individual consumers, the status of the “device subsidy” as a program for financing handsets, and the standard three-year contract along with prohibitive termination fees that had tended to prevent consumers from switching providers.

Parties participating in the oral hearings included industry representatives (the “big three” mobile operators – Rogers, Bell, and Telus; four regional companies; three new entrants; and the Canadian Wireless Telecommunications Association), nonprofits (organized into six groups), government representatives (three provincial, one federal), academics (the authors and their colleagues and one other post-doctoral researcher), and individuals (ten). While industry representatives tended to be the most active participants in the consultation and received the most time to speak at the oral hearings, the CRTC designed the consultation to generate a significant amount of non-industry input through a publicity campaign and channels such as an online comment portal that was open during the oral hearings. Significant obstacles to participation included the challenge of navigating the bureaucratic online submission system for interventions and replies, the financial and temporal costs of travelling to Ottawa-Gatineau for the hearings, and the often obscure legal and technical language deployed throughout the consultation. The CRTC’s efforts to open up participation in other ways shows an attempt to acknowledge public concerns about the provision of wireless service as an essential component of the national communications infrastructure.

Catherine Middleton and Tamara Shepherd’s submissions to the Wireless Code consultations (co-authored with Barbara Crow, Leslie Regan Shade, and Kim Sawchuk) used an infrastructural perspective to offer a research-based intervention into the Wireless Code consultation.<sup>58</sup> A research-based picture of how certain groups of Canadians negotiate relatively high costs within the wireless marketplace was created through the compilation of the authors’ separate studies about youth and seniors. The micro perspective of individuals’ uses of and understanding of the economics of wireless

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<sup>57</sup> Shade, “Public Interest Activism in Canadian ICT Policy: Blowin’ in the Policy Winds,” 110-111; Darin David Barney, *Communication Technology: The Canadian Democratic Audit* (Vancouver: UBC Press, 2005), 24-67.

<sup>58</sup> Catherine Middleton, Tamara Shepherd, Leslie Regan Shade, Kim Sawchuk, and Barbara Crow, “Intervention Regarding the Consultation on Proceeding to Establish a Mandatory Code for Mobile Wireless Services: Telecom Notice of Consultation CRTC 2012-557,” Feb. 12, 2013, accessed Feb. 15, 2014, <https://services.crtc.gc.ca/pub/ListeInterventionList/Default-Default.aspx?en=2012-557&dt=c&Lang=e> (Intervention #1063).



service provision was situated within a more macro perspective of national regulatory strategies, in order to suggest how that marketplace might take cues from other similar jurisdictions. Such a broad account of the Canadian wireless landscape, in an international context, was important for the authors to provide because they were the only communication scholars participating in the consultation.

The intervention presented evidence suggesting that both misunderstandings and structural issues around costs were prohibiting many Canadians from participating fully in wireless communications. The authors proposed that prevalent misunderstandings could be mitigated by the development of a Wireless Code that made the language of contracts clearer and more transparent, and the terms of service more flexible to accommodate the needs of different groups. The precedent for such a code had been established in similar jurisdictions.<sup>59</sup> For example, in Australia the Telecommunications Consumer Protections (TCP) Code was instituted by the industry association Communications Alliance in May 2012; in the United Kingdom the federal regulator Ofcom enshrined a Code of Practice as far back as 2007 for the sales and marketing of subscriptions to mobile networks.<sup>60</sup> Ofcom has also developed a number of important consumer empowerment resources for navigating mobile services and fees.<sup>61</sup> The authors' intervention recommended that similar resources should be developed by the CRTC as part of its public outreach activities. The authors argued that the Code also needed to address structural barriers to affordability, and this could take the form of reining in the powers of the big three companies, regulating roaming rates through price caps, and increasing the competitiveness of the market by implementing more consumer-friendly contract terms.

The authors' attempt to intervene on behalf of a non-industry, academic perspective took form in a series of written submissions along with participation in the oral hearing. At the hearing held in Ottawa-Gatineau in February 2013, Middleton, Shepherd, and Crow presented their research to the CRTC Chair and Commissioners. Attending the hearings was itself a crucial facet of the process of participation; through that experience, it became clear how the various parties addressed each other through the quasi-judicial protocol of the CRTC. Being physically present at the hearings also enabled a more reflexive self-positioning in the authors' subsequent consultation documents, including the Comment and Final Reply, submitted toward the conclusion of the consultation period in March 2013. The Comment sought to emphasize a public interest perspective by revisiting some of the questions that had been posed to the authors by the commissioners during the hearing, organized into specific recommendations on the application, administration, and content of the Code.<sup>62</sup> Additionally, a note

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<sup>59</sup> We did not highlight efforts of the FCC in the United States as part of this submission, but note that the US regulator has taken action on issues like bill shock. See Federal Communications Commission, "FCC Marks Milestone in Effort to Eliminate 'Bill Shock'," Apr. 18, 2013, accessed Feb. 15, 2014, <http://www.fcc.gov/document/fcc-marks-milestone-effort-eliminate-bill-shock>.

<sup>60</sup> Communications Alliance Ltd., "Telecommunications Consumer Protections Code, Industry Code C628:2012" (2012), accessed Feb. 15, 2014, <http://www.commsalliance.com.au/Documents/all/codes/c628>; Ofcom, "Code of Practice for the Sales and Marketing of Subscriptions to Mobile Networks" (2007), accessed Feb. 15, 2014, <http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/mobile/cop.pdf>.

<sup>61</sup> Ofcom offers a variety of guides and tools for consumers at <http://consumers.ofcom.org.uk/guides/>.

<sup>62</sup> Catherine Middleton, Tamara Shepherd, Leslie Regan Shade, Kim Sawchuk, and Barbara Crow, "Comment Regarding the Consultation on Proceeding to Establish a Mandatory Code for Mobile Wireless Services: Telecom Notice of Consultation CRTC 2012-557," Mar. 5, 2013, accessed Feb. 15, 2014,



about the continued lack of competition regulation as the basis for many of the problems with wireless service provisions was included in the Final Reply, although one of the circumstantial challenges of articulating this perspective among the group of authors was that it stemmed from a more market-based approach that was not shared by all members of the group. As such, the note about competition was couched in terms of regulation, of which competition regulation was one of a number of legislative tools that the CRTC might consider for ensuring that Canadians have access to wireless infrastructure. By the conclusion of the consultation, the challenges of policy advocacy within a bureaucratic context – where the CRTC has little jurisdiction on competition issues – became increasingly evident. The central purpose of mentioning competition in the documents was therefore to have it included in the public record, as an initial step in the incremental process of policy change.

Reactions to the eventual release of the Wireless Code on June 3, 2013 showed how even incremental policy changes can be contentious. The Code contains provisions that place a cap on roaming charges of \$100 and on data overage fees of \$50, and that allow for devices to be unlocked from specific carrier networks and for consumers to cancel their contracts after two years with no penalty.<sup>63</sup> These provisions represent a step toward acknowledging Canadians' wireless service needs by making a number of limited concessions to consumers, even though many of Code's provisions show a lingering tendency to use the legal language of industry rather than that of consumers, or indeed of citizens. For example, the definition of *unlimited services* includes the clause "A service provider must not limit the use of a service purchased on an unlimited basis unless these limits are clearly explained in the fair use policy." As such, contrary to reasonable expectations that *unlimited* means unlimited, providers are allowed to define *unlimited* on their own terms. Despite such industry-friendly provisions, the Code was met with opposition from industry players, who in July 2013 filed a motion in the Federal Court of Appeals that challenged certain parts of the Wireless Code. According to the CRTC's decision, the code must apply to all wireless service contracts by June 3, 2015. The appeal takes issue with this deadline, claiming that the retrospective application of the Code to existing contracts that will still be in force in 2015 represents an overstepping of the CRTC's regulatory powers. The CRTC in turn responded to the motion by claiming that the service providers agreed to these terms throughout the consultation period and even afterward, when companies such as Telus began advertising two-year as opposed to three-year contracts. In September 2013, the leave to appeal was granted by the Federal Court of Appeal, meaning that the incumbents can, as of the time of writing, follow up with a formal appeal of the Wireless Code's retroactive application.<sup>64</sup> The back-and-forth around the motion for appeal indicates how intervening as scholars in a proceeding mired in bureaucratization often entails coming up against legal particularities that obscure deeper issues such as the implications of wireless service provision on citizen rights to communicate.<sup>65</sup>

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<https://services.crtc.gc.ca/pub/ListeInterventionList/Default-Default.aspx?en=2012-557&dt=f&lang=e> (Intervention #1127).

<sup>63</sup> Canadian Radio-television and Telecommunications Commission, "The Wireless Code," Telecom Regulatory Policy 2013-271, June 2013, accessed Feb. 15, 2014, [http://www.crtc.gc.ca/eng/info\\_sht/t14.htm](http://www.crtc.gc.ca/eng/info_sht/t14.htm).

<sup>64</sup> *Bell Canada v. Amtelecom*, Federal Court of Appeals Docket 13-A-25 (Sept. 24, 2013).

<sup>65</sup> For a comprehensive analysis of the "right to communicate" in Canada, see Raboy and Shtern.

Despite the potential chilling effect upon interveners from being named in the legal filing for leave to appeal, policy advocacy continues to be important for improving wireless service provision on the basis that it is an essential element of Canadians' communication infrastructure. One of the key outcomes of the Wireless Code in this regard is the CRTC's attempt to create consumer outreach and empowerment materials – something the authors suggested at the hearing – including an infographic that conveys the Code's benefits, a checklist of consumer rights, and a promotional YouTube video.<sup>66</sup> The rights-based language used in these materials suggests that a research-based approach to defining the public interest may have been significant in influencing the CRTC's development of public outreach materials in conjunction with the Wireless Code. The authors' contributions were also cited concerning the issue of privacy, where wireless service providers were held to the standards of federal privacy law with regard to the protection of consumers' personal information.

In reflecting upon the process that led to these eventual outcomes, it is important to acknowledge that becoming participants in the Wireless Code hearing in the first place came about relatively spontaneously, as existing programs of research related to the issues debated in the consultations were assembled together close to the CRTC deadlines. The somewhat spontaneous decision to intervene in these proceedings thus invoked the same kinds of political stakes as in George Marcus's framework for circumstantial activism within multi-sited ethnography.<sup>67</sup> Within anthropological research, Marcus outlines how examining culture from a world-system standpoint requires researchers "to pursue the more open-ended and speculative course of constructing subjects by simultaneously constructing the discontinuous contexts in which they act and are acted upon."<sup>68</sup> This involves forging connections between discontinuous moments or sites as part of a systems approach to culture, while simultaneously acknowledging the constructed nature of such connections. In this way, circumstantial activism entails using researcher positionality to reflexively inform a micro-politics around the representation of people's activities and connections between and across disparate sites.

Analogous to Marcus's ethnographer, who becomes a "circumstantial activist" through the "peripatetic, translative mapping" of research and personal commitments onto discontinuous sites of research,<sup>69</sup> the policy researcher engages in circumstantial advocacy in the act of translation, whereby research results get mapped onto the terrain of policymaking according to a micro-politics of positionality. In the Wireless Code consultations, for instance, the contingent process of participation reflected some of what Marcus characterizes as the comparative dimension of circumstantial advocacy, where mapping multiple sites – in this case, qualitative accounts of how diverse groups relate to Canadian wireless service provision – is an uneven and constructive process.<sup>70</sup> From both a scholar's and an advocate's perspective, the public interest implied in the work was constructed actively across

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<sup>66</sup> The infographic is available at [http://crtc.gc.ca/eng/info\\_sht/t16.htm](http://crtc.gc.ca/eng/info_sht/t16.htm); the checklist at [http://crtc.gc.ca/eng/info\\_sht/t15.htm](http://crtc.gc.ca/eng/info_sht/t15.htm); and the YouTube video at <http://www.youtube.com/watch?v=vNuIejPTRGE>.

<sup>67</sup> George E. Marcus, "Ethnography in/of the World System: The Emergence of Multi-Sited Ethnography," *Annual Review of Anthropology* 24 (1995): 95-117; George E. Marcus, *Ethnography through Thick and Thin* (Princeton: Princeton University Press, 1998).

<sup>68</sup> Marcus, "Ethnography in/of the World System: The Emergence of Multi-Sited Ethnography," 98.

<sup>69</sup> *Ibid.*, 114.

<sup>70</sup> *Ibid.*, 102.

a range of materials from existing programs of research. For example, the results of separate studies on youth and seniors were compiled together, which served to bring into relief the similarities between the two groups in terms of their wireless communication needs – similarities that were in turn consolidated into a more unified public interest perspective. Researcher positioning conditioned this process, in which a reflexive orientation to the work of policy advocacy involved attempts to explicitly locate the position of researchers “within the terrain being mapped.”<sup>71</sup> In this sense, the authors’ attempt to articulate a coherent public interest perspective by drawing on diverse academic work entailed a reflexive negotiation of personal political stakes in the Wireless Code debates.

The impact of academic policy participation in the context of the CRTC’s public consultations, while seemingly better than in the proceedings of Industry Canada, remains unclear. The uncertain outcomes of participating in the Wireless Code consultation indicate how the role of circumstantial advocate can be defined in terms of adequacy, in which the goal of researchers tends to be concerned with making “an intervention in the very way that problems are conceptualized.”<sup>72</sup> The conceptual impact of the authors’ interventions might be seen particularly in the framing of wireless service as necessary communications infrastructure, which should be more affordable and simple to understand in order “to ensure that Canadians have access to a world-class communication system.”<sup>73</sup> Yet concrete outcomes of the more critical components of the research-based intervention were also limited in many ways by the bureaucratic structure of the consultations and the prevailing hegemony of the citizen as individual consumer.

The contingent and yet constructive experience of participating in the consultation thus offers an illustration of how circumstantial advocacy is a necessarily uneven process, in which the larger power asymmetries in policymaking are broken through in smaller tactical moments of subversion. Adding nuance to the discourses around Canadians’ relationship to wireless service was one such productive moment in this particular case of circumstantial advocacy. Another was more directly related to the process of research as opposed to policymaking, in which participating in the consultations has contributed to the authors’ dynamic programs of research by substantiating scholarly analysis within the realm of policy debates. In this sense, participating in the consultation process was rewarding partly as a result of the CRTC’s attempts to integrate a degree of public input into its development of a Wireless Code. Even though this process was not completely seamless or balanced, it represents a genuine attempt by the regulator to acknowledge the public interest. One further outcome of this acknowledgement has been to encourage the authors to continue this program of research and advocacy by tracking the code’s impact and effectiveness once it comes into effect, while also producing academic analysis that attempts to bridge some of the conceptual and procedural gaps between scholarship and advocacy. As circumstantial advocates, the authors continue to work on translating a research-based perspective into the terms of public regulatory debates.

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<sup>71</sup> Ibid., 112.

<sup>72</sup> Christine Hine, “Multi-Sited Ethnography as a Middle Range Methodology for Contemporary STS,” *Science, Technology & Human Values* 32, no. 6 (2007): 656.

<sup>73</sup> Canadian Radio-television and Telecommunications Commission, “The Wireless Code.”

## CONCLUSION: ACADEMICS AS ADVOCATES IN TELECOMMUNICATIONS POLICY

In the case studies presented here on spectrum and wireless policy in Canada, the possibilities of applying research in the policymaking context has depended on circumstantial factors, particularly institutional power dynamics. The institutional pressures faced by researchers as advocates in telecom policy debates, an arena that tends to be dominated by industry voices, played out differently in the context of Industry Canada versus the Canadian Radio-television and Telecommunications Commission. At Industry Canada, the closed process that accompanies the Industry Minister's decisions, and the very fact that so much power is bestowed upon one individual, tends to prevent effective public input into regulatory decisions. Conversely, the CRTC has earnestly attempted to engage non-industry perspectives and broaden the role of advocacy groups.

As the two case studies presented here show, the CRTC offers a decidedly more effective institutional context than Industry Canada for participation by academic policy advocates. The CRTC's Three-Year Plan, presented by Chair Blais in Spring 2013, contains explicit reference to facilitating consultations directed toward a public interest:

During the past year, the CRTC sharpened its focus on the public interest by putting Canadians at the centre of their communication system. For example, the CRTC named its first Chief Consumer Officer, who ensures that consumer perspectives are taken into consideration. [...] While we have made an effort to listen more attentively to the concerns of Canadian consumers, we have not lost sight of the needs of citizens and creators. The activities described in the following pages reflect our commitment to ensuring that citizens can participate more fully in Canada's democratic and cultural life.<sup>74</sup>

This statement is important for its acknowledgment of participation as the crucial function of consultation, in which a discursive invocation of citizenship and the public interest alongside consumer issues represents – at the very least – an attempt to encourage policy advocacy. As such, and despite remaining challenges to participating in telecom policymaking as academic advocates, the CRTC's impetus to open up policy processes to more diverse groups of participants renders it a decidedly more effective institutional environment for advocacy than Industry Canada, where much of the key decision making occurs behind closed doors.

Beyond the Canadian context, the work of advocacy to define public interest perspectives in telecom policy debates remains at the crux of what it means to enact advocacy as academics. But the circumstances of academic labor, in which making interventions into policy proceedings is not necessarily recognized by educational institutions, mean that policy participation is often viewed precisely as a personal "side project." Yet, because articulating the implications of research results often includes making policy recommendations and engaging with receptor communities – as

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<sup>74</sup> Canadian Radio-television and Telecommunications Commission, "CRTC Three-Year Plan, 2013-2016: Chairman's Message," May 2, 2013, accessed Feb. 15, 2014, <http://crtc.gc.ca/eng/backgrnd/plan2013.htm>.

demanded by both personal convictions and funding imperatives<sup>75</sup> – the status of policy participation in the academy may be improving. Academics work across disparate sites, with diverse groups and a patchwork of research results, to construct policy recommendations as both pragmatic and conceptual interventions through a reflexive process that negotiates the institutional parameters of policymaking and scholarship. A key facet of this process entails negotiating the public dimensions of such institutional contexts. Participating in public consultations means bringing research results out into new audiences, particularly when consultations also include oral hearings that are broadcast on television or over the Internet. This level of exposure for both policy issues and academic work is crucial for opening up policy debates to more diverse voices. As Marc Raboy has noted, “without provision for a strong public presence in policy-making, non-industry groups would have little or no influence.”<sup>76</sup> In order to curtail the dominance of the procedure by industry, it is critical that academics become involved as advocates to advance at least some version of a public interest in telecom regulation.

Furthermore, from the perspective of doing research, participating in policy processes offers a chance to reflexively import an additional layer of assessment onto scholarly research that takes into account its relevance in a “real-world policy context.” As Melody and Mansell contend, contrary to the “more antiseptic atmosphere of professional journals and meetings,” the policy arena provides a space in which “the theoretical and methodological trappings of research are directly confronted by reality and the test of relevance.”<sup>77</sup> Even in moments where research may “fail” this test, scholars stand to gain insight from the “dirty work” of intervening in policy debates.<sup>78</sup> Engaging in the messier, on-the-ground elements of policy advocacy often means forging new ties among academics, and between academics and advocacy groups. These associations have the potential to strengthen our understanding of the intricate power dynamics operating in the policy field while also enabling channels for achieving effective policy interventions.

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<sup>75</sup> Shade, “Public Interest Activism in Canadian ICT Policy: Blowin’ in the Policy Winds,” 115 (“...our funding for external grants from SSHRC and other entities typically demands a statement on the policy dimensions and efficacy of the research for which we are seeking funds.”).

<sup>76</sup> Marc Raboy. “The Role of Public Consultation in Shaping the Canadian Broadcasting System,” *Canadian Journal of Political Science / Revue canadienne de science politique* 28, no. 3 (1995): 477.

<sup>77</sup> Melody and Mansell, 113.

<sup>78</sup> Shade, “Public Interest Activism in Canadian ICT Policy: Blowin’ in the Policy Winds,” 117.

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