

# **Policy Development and Aboriginal Broadcasting: A Case Study of the Aboriginal Peoples Television Network<sup>1</sup>**

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Over a number of decades, aboriginal<sup>2</sup> broadcasting has been promoted to achieve three goals – to improve aboriginal-non-aboriginal relations, to give aboriginal peoples their rightful place and voice in the Canadian federation and to raise aboriginal self-esteem by recognizing native culture and providing role models for the native population. To achieve these ends, the Aboriginal Peoples Television Network was created, and this involved the adoption of a unique policy instrument. This instrument was a mandatory fee-for-carriage requirement instituted by the Canada Radio-Television and Telecommunications Commission. Because the creation of this policy instrument represented a shift in aboriginal broadcasting services, interesting questions can be explored about the factors that led to this development, and how they are connected to the goals of developing aboriginal broadcasting services. More specifically, this paper will employ the policy regime framework developed by Hoberg (2001) to understand the development of this policy area. In addition, a variety of state and society-centred theoretical approaches will be used to understand the influence of various actors and interests, ideas and institutions on the formulation of Canadian broadcasting policy with respect to aboriginal peoples.

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At recent Canada Radio-Television and Telecommunications Commission (CRTC) hearings, both CTVglobemedia Inc. and Canwest Global Communications Corporation argued that the CRTC, or the government (by directing the CRTC through an amendment to the *Broadcasting Act*), should allow local television stations to charge a subscription fee to cable companies. Currently, these television stations must raise revenue through advertising - an inherently volatile funding source – and requests to institute a fee-for-carriage regime have been consistently opposed by the CRTC.<sup>3</sup> According to David Asper, the head of Canwest Global, this is because both the CRTC and the government

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<sup>2</sup> In this paper, the terms “aboriginal”, “native” or “indigenous” will not be capitalized. This is because these are descriptive terms pertaining to people being the first inhabitants of an area and are not proper names. Terms like Cree, Dene, and Inuit, however, will be capitalized because they are proper names.

<sup>3</sup> The CRTC has twice rejected broadcasters’ demands for fee-for carriage. Julian Beltrame, “CRTC threatens ‘end to broadcasting as we know it’, CTV chief says”, *The Canadian Press*, April 27, 2009.

“are afraid that voters might react negatively to monthly cable-bill increases, a fear stoked by the cable companies' huffing and puffing about some kind of new ‘tax’ on consumers”.<sup>4</sup>

Despite this resistance to a fee-for-carriage arrangement for local television stations, an exception was made and an even more coercive “tax” was levied on Canadian consumers with respect to the Aboriginal Peoples Television Network (APTN) in 1999. At this time, not only did the CRTC make the carriage of APTN mandatory (as is the case with the carriage of three other stations – the Canadian Broadcasting Corporation, Radio Canada and the TVA Group television network<sup>5</sup>); it also decided that cable companies would be required to remit to APTN 15 cents per subscriber each month.<sup>6</sup> As a result of the creation of this policy instrument by the CRTC, cable companies were required to carry a channel that was potentially unappealing to consumers, yet, at the same time, had to charge subscribers for the “benefit” of acquiring it in their basic cable package.

The CRTC placed conditions on APTN’s license that were unique and different from arrangements existing for public broadcasting companies, commercial networks and specialty channels.<sup>7</sup> They represented a significant change in the policy direction for aboriginal broadcasting services, and occurred in spite of vocal opposition from a powerful business interest – Canadian cable companies.<sup>8</sup> This raises questions about the nature of this particular policy decision. What were the factors that led to the development of this policy change, and how can it be explained?

Using the policy regime framework developed by Hoberg (2001), the various actors, ideas and institutions that influenced policy change in the area of aboriginal broadcasting services will be explored. Hoberg has noted that “significant changes in policy that go against the interests of business groups (or other dominant actors) are unlikely without a burst in public salience of new values”,<sup>9</sup> and it is likely that this hypothesis is applicable to the case of the CRTC’s decision with respect to APTN. It will be shown, in fact, that just such a “burst in public salience” with respect to the perceived need to recognize aboriginal culture has occurred, and this helps to explain the new policy direction with

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<sup>4</sup> David Asper, “Strangling local broadcasters”, *National Post*, May 2, 2009, p. A22.

<sup>5</sup> The TVA Group is a subsidiary of Quebecor Media Inc. TVA Group operates the largest French-language broadcast television network in Quebec and received a mandatory carriage stipulation in its license in 1998. For a discussion of TVA, see “TVA gets mandatory carriage”, *Canadian Communications Reports*, 24(18), November 18, 1998, p. 4; and “TVA to look at launching new networks in the wake of CRTC Review”, *The Canadian Press*, October 31, 2008.

<sup>6</sup> Jane Taber, “Aboriginal TV, whether you want it or not”, *Ottawa Citizen*, January 9, 1999, p. B1.

<sup>7</sup> Lorna Roth, *Something New in the Air: The Story of First Peoples Television Broadcasting in Canada* (Montreal: McGill-Queen’s University Press, 2005), pp. 201-6.

<sup>8</sup> Cable profits amounted to \$926 million in 2005 and \$1.1 billion in 2004. Marise Strauss, “Canadians watching more, distributors making more, says CRTC”, *Playback: Canada’s Broadcast and Production Journal*, July 24, 2006, p. 8.

<sup>9</sup> George Hoberg, “Policy Cycles and Policy Regimes: A Framework for Studying Policy Change”, in Benjamin Cashore et al., *In Search of Sustainability: British Columbia Forest Policy in the 1990s* (Vancouver: UBC Press, 2001), p. 16. Hoberg’s insight builds upon Baumgartner and Jones’s argument that “most issue change occurs during periods of heightened general attention to policy”. Baumgartner and Jones, cited, in Hoberg, “Policy Cycles and Policy Regimes”, p. 16.

respect to aboriginal broadcasting. The emergence of these new values has largely been explained by the effectiveness of aboriginal organizations in placing pressure on the political system. It will be argued, however, that the role of state actors in promoting native culture has also played a significant role in the development of aboriginal broadcasting.

### **The Historical Development of Canadian Aboriginal Broadcasting Policy**

In her book on the development of aboriginal broadcasting, *Something New in the Air*, Lorna Roth notes that APTN is unique and that “there is nothing like it anywhere in the world, both from the programming perspective and in the way it is financed both through advertising and as a social cost to the cable providers”. According to Roth, APTN represents “a new economic prototype for assuring the sponsorship and sustenance of public service programming that might be otherwise unaffordable”.<sup>10</sup> She goes on to point out that APTN essentially has both public and private components in that “it carries advertising yet models itself on public service television, addressing issues of concern to Canadian national publics and niche audiences”.<sup>11</sup> The “public” aspect of APTN, however, is really the aspect that provided the rationalization for the network’s development. Essentially, the formation of APTN was seen as being necessary to provide three important functions in the Canadian broadcasting system<sup>12</sup> – decreasing political conflict by improving understanding between aboriginal and non-aboriginal people, ensuring aboriginal cultural persistence so as to contribute to diversity in the Canadian federation, and instilling “pride and self-esteem in First Peoples themselves” through the showcasing of role models and the recognition of aboriginal self-determination and/or contributions to Canadian society.<sup>13</sup> As a result of these considerations, the CRTC paved the way for the creation of APTN in 1999.

Established in 1968,<sup>14</sup> the CRTC is a public, autonomous and independent agency, composed of a maximum of 13 full-time and 6 part-time commissioners all of whom are appointed by Cabinet.<sup>15</sup> The CRTC is responsible for monitoring and supervising the Canadian broadcasting system and implementing Canadian broadcasting policy, as stipulated in section 3(1) and 5(2) of the *Broadcasting Act*<sup>16</sup> and the *Canadian Radio-television Telecommunications Commission Act*,<sup>17</sup> where Parliament both defined the broadcasting goals and specified the CRTC as the regulatory agency responsible for their

<sup>10</sup> Roth, *Something New In the Air*, p. 216.

<sup>11</sup> Roth, *Something New in the Air*, p. 216.

<sup>12</sup> The Department of Canadian Heritage includes these goals with a number of others. It maintains that “APTN and the Aboriginal broadcasters are meeting broader Canadian policy goals in areas such as the celebration of diversity, employment and training development for youth, the roll-out of new technologies, strengthening Canada’s cultural infrastructure, capacity building in Aboriginal communities, the advancement of Canada’s international reputation, the interpretation of Canada to Canadians, and the development of effective and accountable Aboriginal governments, as well as the promotion and protection of Aboriginal languages”. “The Policy Context”, <http://www.pch.gc.ca/pgm/pa-app/pgm/paanr-nbap/broadcast/summary-eng.cfm> (accessed May 2009).

<sup>13</sup> Roth, *Something New in the Air*, pp. 201-6, 223-224.

<sup>14</sup> <http://www.crtc.gc.ca/eng/backgrnd/brochures/b19903.htm> (accessed May 2009)

<sup>15</sup> <http://www.crtc.gc.ca/eng/about/commissioners.htm> (accessed May 2009)

<sup>16</sup> <http://laws.justice.gc.ca/en/B-9.01/> (accessed May 2009)

<sup>17</sup> <http://www.crtc.gc.ca/ENG/LEGAL/CRTC.HTM> (accessed May 2009).

application. The CRTC fulfills its role as regulator, independent of the executive branch of government, by developing “a regulatory framework for each sector under its jurisdiction and ensur[ing] that the regulatory regime is implemented and respected”.<sup>18</sup>

There are a number of policy principles in Part I of the *Broadcasting Act* that guide the CRTC’s licensing decisions. Specifically, it makes statements about the nature of programming and employment opportunities in the Canadian broadcasting system. It asserts that Canadian broadcasting “should...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”.<sup>19</sup> In addition, it is stipulated that “programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose”.<sup>20</sup>

Part II of the *Broadcasting Act* details the objects and powers of the CRTC. Sections 5 to 8 specify that the CRTC’s decisions should take “into account the regional needs and concerns”<sup>21</sup> and “facilitate the provision of Canadian programming to Canadians”.<sup>22</sup> Sections 9 to 17 outline the CRTC’s general powers. These include the ability to “issue licences ... subject to such conditions related to the circumstances of the licensee ... as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1)”<sup>23</sup> and to “require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.”<sup>24</sup>

The stipulation that the CRTC can impose “terms and conditions” on licensees that it “deems appropriate” gives the Commission significant leeway in the policy instruments that it can choose. Although it cannot direct the government to fund television networks, as has occurred in the political decision to create the Canadian Broadcasting Corporation and Radio Canada, it can make their carriage mandatory. In addition to both public broadcasters, the CRTC has chosen this instrument with respect to the TVA Group television network. This decision was provided for under section 17(5) of Canada’s Broadcasting Regulations.<sup>25</sup> The CRTC deemed the programming service of TVA to be of national public interest, and presumably sought an alternative representation of French Canadian views that would provide francophones outside Quebec a perspective distinct from that of Radio Canada. In support of this objective, the Commission placed

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<sup>18</sup> Ibid.

<sup>19</sup> <http://www.canlii.ca/en/ca/laws/stat/sc-1991-c-11/latest/sc-1991-c-11.html> (accessed May 2009)

<sup>20</sup> Ibid.

<sup>21</sup> *Broadcasting Act*, Section 5(2)(b) <http://www.canlii.org/en/ca/laws/stat/sc-1991-c-11/latest/sc-1991-c-11.html> (accessed May 2009)

<sup>22</sup> *Broadcasting Act*, Section 5(2)(d) <http://www.canlii.org/en/ca/laws/stat/sc-1991-c-11/latest/sc-1991-c-11.html> (accessed May 2009)

<sup>23</sup> *Broadcasting Act* Section 9(1)(b)(i) <http://www.canlii.org/en/ca/laws/stat/sc-1991-c-11/latest/sc-1991-c-11.html> (accessed May 2009)

<sup>24</sup> *Broadcasting Act*, Section 9(1)(h)

<sup>25</sup> Broadcasting Regulations, Section 17(5), <http://www.canlii.org/en/ca/laws/regu/sor-97-555/latest/sor-97-555.html>, (accessed, May 2009)

conditions on TVA's license requiring that TVA broadcast at least one 30 minute program weekly and a minimum of six special events annually that are representative of the reality of francophone life outside Quebec. It also required that a minimum 43 percent of revenues in excess of expenses resulting from the expanded service be reinvested in programming portraying the francophone reality outside of Quebec.<sup>26</sup>

With respect to APTN, the CRTC issued Decision 99-42, which granted it a national broadcast license.<sup>27</sup> The license stipulated that APTN, like TVA, must be carried as part the basic package offered by all cable and direct-to-home satellite carriers. It differed from TVA, however, in that it required carriers to collect and remit to APTN a fee of 15 cents per subscriber and that the network remain free of charge to people previously served by APTN's precursor, Television Northern Canada, or TVNC.<sup>28</sup> By requiring subscriber fees and mandatory carriage for APTN, the regulator was attempting to ensure an economic base for a network which would likely not operate under purely market conditions. The choice of this instrument relates to the fact that it is not within the CRTC's power to allocate federal subsidy funding to a broadcaster; this government responsibility is ultimately exercised through Cabinet and subject to votes of confidence in the house. As one commentator has noted, "without mandatory carriage requirements, it is likely that most cable companies would discontinue [APTN], or move it to a subscriber only basis, which would spell certain doom."<sup>29</sup> Viewed this way, APTN appears to be more of a bureaucratic creation rather than a political one. It is a product of the historical development of a highly regulated Canadian broadcasting system.<sup>30</sup>

In understanding the CRTC's choice of this instrument, it is important to recognize that Decision 99-42 did not just materialize out of thin air. Rather, it was a result of a long process by which the importance of aboriginal broadcasting gradually rose on the political agenda. The recognition of the need for an aboriginal broadcasting presence initially emerged in northern Canada for a number of reasons. Its large native population, communication challenges posed by the large relative distances between communities, and fears of a loss of indigenous culture as media programs from the south became available, to name a few. It was also connected to the career of Prime Minister Pierre Elliott Trudeau, who was attempting to build a Canadian nation through the public recognition of diverse cultures across the country (i.e. bilingualism and multiculturalism policies).<sup>31</sup> These domestic influences were linked to international developments. The 1980 United Nations study *Many Voices, One World* (the MacBride report),<sup>32</sup> for example, advocated cultural protectionism and autonomy and a number of

<sup>26</sup> <http://www.crtc.gc.ca/eng/archive/1998/DB98-488.HTM> (accessed May 2009)

<sup>27</sup> <http://www.crtc.gc.ca/eng/archive/2008/db2008-99.pdf> (accessed May 2009)

<sup>28</sup> Canadian Radio-television and Telecommunications Commission (CRTC), February 22, 1999. *Decision CRTC 99-42*, <http://www.crtc.gc.ca/eng/archive/1999/DB99-42.HTM> (accessed May 2009)

<sup>29</sup> Bart Beaty, *Canadian Television Today* (Calgary: University of Calgary Press, 2006), p. 62.

<sup>30</sup> For a discussion of the development of this system, see Leon C. Hood, "Canadian Broadcasting", *The English Journal*, 40(6), June 1951, pp. 329-332.

<sup>31</sup> For a discussion of this, see Richard Collins, *Television: Policy and Culture* (London: Unwin Hyman Ltd., 1990), pp. 131-175.

<sup>32</sup> <http://unesdoc.unesco.org/images/0004/000400/040066eb.pdf> (accessed May 2009).

communication rights such as “the right to information reflecting one’s own perspective and voices”.<sup>33</sup>

These domestic concerns and international developments led the CRTC to establish the Committee on Extension of Service to Northern and Remote Communities. The Committee’s report, also known as the “Therrien Report”, was released in July 1980.<sup>34</sup> It emphasized the importance of aboriginal participation in broadcasting and identified many issues and actions,<sup>35</sup> including the state’s obligation to enable aboriginal peoples to use communications technologies to preserve their culture,<sup>36</sup> while at the same time ensuring greater choice in programming for northern markets.<sup>37</sup> To achieve this, the report recommended the Commission put out a call for applications to provide satellite television service to the North.<sup>38</sup> It also offered recognition that numerous native languages and dialects needed to be served<sup>39</sup> - a circumstance that provided a rationale for the eventual establishment of 13 northern broadcasting societies.

After the release of the Therrien report, support for native broadcasting grew, and the CRTC became active in licensing a large number of northern native broadcasting undertakings.<sup>40</sup> By 1984 there were in excess of 250 radio and 300 television stations serving the North, many producing programming targeting native audiences.<sup>41</sup> One of the first steps taken by the CRTC to increase the prominence of native broadcasting was the licensing of Canadian Satellite Communications Inc. in 1981. In issuing the licence, the CRTC required this company “to provide one video and two audio uplinks in the North for northern programming, and to substitute up to 10 hours per week of southern-originated programming with native television programming”.<sup>42</sup> Another way the CRTC moved to provide more programming choice to northern and remote communities was to issue licenses to the Inuit Broadcasting Corporation and to the Council of Yukon Indians and Dene Nation.<sup>43</sup>

Not to be left out, the Liberal government requested the CBC to present a plan for an enhanced radio and television programming service in the North. On March 10, 1983 the government announced the Northern Broadcast Policy and called upon the CRTC to

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<sup>33</sup> Roth, *Something New in the Air*, p.33.

<sup>34</sup> <http://crtc.gc.ca/eng/archive/1990/PB90-12.htm> (accessed May 2009)

<sup>35</sup> <http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1SEC917295> (accessed May 2009)

<sup>36</sup> J.B. Minore and M.E. Hill, “Native Language Broadcasting: An Experiment in Empowerment”, *The Canadian Journal of Native Studies*, 10(1), 1990, p. 104.

<sup>37</sup> <http://crtc.gc.ca/eng/archive/1985/PB85-67.htm> (accessed May 2009)

<sup>38</sup> [http://www.broadcasting-history.ca/cable\\_services/TheHistoryOfCableTelevision.html](http://www.broadcasting-history.ca/cable_services/TheHistoryOfCableTelevision.html) (accessed May 2009).

<sup>39</sup> Minore and Hill, “Native Language Broadcasting”, pp. 8, 104

<sup>40</sup> For a discussion of these developments see Gail Valaskakis, “Native communications: The past is our future”, in National Aboriginal Communications Society (ed), *Retrospective: Twenty years of Aboriginal communications in Canada* (Ottawa: National Aboriginal Communications Society, 1987).

<sup>41</sup> <http://crtc.gc.ca/eng/archive/1984/PB84-310.htm> (accessed May 2009)

<sup>42</sup> <http://crtc.gc.ca/eng/archive/1985/PB85-67.htm> (accessed May 2009)

<sup>43</sup> <http://crtc.gc.ca/eng/archive/1985/PB85-67.htm> (accessed May 2009)

implement a number of policy principles,<sup>44</sup> including expanding program choice, considering the views of aboriginal people in the making of broadcast decisions, increasing aboriginal participation in these decisions, and preserving aboriginal cultures by fair access to broadcasting services.<sup>45</sup> This policy has been referred to by Roth, following Dallas Smythe, as an example of a “cultural screen”, in that it seeks to protect the central values of aboriginal cultures so as to aid their economic and political development.<sup>46</sup>

One assumption implicit in the Northern Broadcast Policy was that fair distribution of aboriginal radio and television programming would be provided by either CBC’s Northern Service or the Canadian Satellite Communications Inc. This resulted in tense negotiations as aboriginal broadcasters sought time slots which had been optimized for southern markets in differing time zones and CBC sought to preserve the integrity of its nationally-available programming. Problems in achieving equity in distribution resulted in lobbying by the National Aboriginal Communications Society for a separate aboriginal broadcasting system.<sup>47</sup> Then, in 1988, TVNC was created as the satellite distribution operator in the North.<sup>48</sup> At the time, TVNC was accessible to any satellite dish owner, in the North or South of Canada because its signal was not scrambled.<sup>49</sup> In 1995, TVNC was added to the list of eligible programming services cable operators could make part of their discretionary packages; however, few chose to distribute TVNC.<sup>50</sup>

Throughout the 1990s, TVNC operated a government funded television distribution system serving the residents in 96 northern and remote communities with content produced by the 13 communications societies funded by the Northern Native Broadcast Access Program.<sup>51</sup> Another source of government funding, the Northern Distribution Program, was only involved with infrastructure development, but the money was later used to enable TVNC to act as a coordinating distribution agency managing broadcast service to the 96 communities.<sup>52</sup> These programs, therefore, made it possible for TVNC,

<sup>44</sup> <http://crtc.gc.ca/eng/archive/1985/PB85-67.htm> (accessed May 2009)

<sup>45</sup> <http://crtc.gc.ca/eng/archive/1990/PB90-12.htm> (accessed May 2009).

<sup>46</sup> Dallas Smythe, cited in Roth, *Something New in the Air*, pp. 32-33.

<sup>47</sup> The National Aboriginal Communications Society consisted of 21 regional aboriginal communications groups. It was formed in 1986 and had a mandate “to act as a kind of central clearinghouse—a networking office through which national coverage of aboriginal news and issues can be distributed to NACS members”. For a discussion of this organization, see Mathew Ingram, “How Indians banded together”, *Ryerson Review of Journalism*, Spring 1987, <http://www.rj.ca/issue/1987/spring/43/> (accessed May 2009).

<sup>48</sup> For a discussion, see Gail Valaskakis, “Communication, Culture and Technology: Satellites and Northern Native Broadcasting in Canada”, in Stephen Riggins (ed), *Ethnic minority media: An international perspective* (Newbury Park: Sage, 1992).

<sup>49</sup> <http://www.museum.tv/archives/etv/F/htmlF/firstpeople/firstpeople.htm> (accessed May 2009)

<sup>50</sup> Canadian Radio-television and Telecommunications Commission (CRTC), February 22, 1999, *Decision CRTC 99-42*, <http://www.crtc.gc.ca/eng/archive/1999/DB99-42.HTM> (accessed May 2009)

<sup>51</sup> Not all of these communication societies are funded for television production. Seven are funded only for radio broadcasting. <http://crtc.gc.ca/eng/archive/1989/PB89-53.htm> (accessed May 2009)

<sup>52</sup> According to a recent CRTC-commissioned study of native broadcasting undertaken by Greg Smith and Associates (the Study), the thirteen native communications societies now provide regional radio and television services to approximately 260,000 native people in the North. Together, these societies employ 328 people, and produce an average of 250.5 hours of radio and 11.25 hours of television each week in more than thirty of Canada's 53 native languages. In all, the NNBP societies serve approximately 400

and then APTN, to deliver programming with an aboriginal perspective and in native languages as mandated by Canada's broadcasting policy. They created the organizational infrastructure by which TVNC and the communications societies could increase their broadcasting capacity, as well as their political clout in lobbying for CRTC Decision 99-42.

### **Understanding CRTC Decision 99-42: The Policy Regime Framework**

In attempting to explain why policies change over time, George Hoberg, following Howlett and Ramesh, advocates the integration of the policy cycle model with the policy regime framework.<sup>53</sup> The policy cycle model breaks down the policy development process into five stages – agenda setting, formulation, decision making, implementation, and evaluation – and attempts to link these stages to applied problem solving.

This organizing framework, however, has been criticized because it is limited in its ability to explain policy outcomes.<sup>54</sup> The policy regime framework attempts to address this deficiency by proposing three components – actors, institutions and ideas – that are likely to influence policy development. It also assumes that these components are situated within a wider environmental context, whereby external conditions such as public opinion, elections, and markets can influence a particular policy's trajectory.<sup>55</sup>

With respect to the CRTC's licensing arrangement regarding APTN, the stages of the policy cycle that need to be examined are formulation and decision-making – the policy alternatives that were considered and the course of action or inaction that was embarked upon. As was explained above, CRTC Decision 99-42 was unique and was opposed by powerful business interests.<sup>56</sup> It also overcame the fact that attempts to change a particular policy's direction always confront forces that "create a significant bias toward the status quo".<sup>57</sup> This raises questions about the factors that made this course of action possible. How did the policy regime with respect to aboriginal broadcasting influence the mandatory fee-for-carriage decision of the CRTC pertaining to APTN?

According to Hoberg, the major actors in the development of a particular policy area "shape options to suit their interests".<sup>58</sup> With respect to aboriginal broadcasting policy, these actors include cable companies, aboriginal organizations, elected politicians who form the government, other media outlets, and bureaucratic and regulatory organizations – the CRTC, the Department of Canadian Heritage and the Department of Indian and

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communities, of which 289 receive radio services and 169 receive television services.

<http://crtc.gc.ca/eng/archive/1989/PB89-53.htm> (accessed May 2009).

<sup>53</sup> Hoberg, "Policy Cycles and Policy Regimes", pp. 16-17.

<sup>54</sup> Michael Howlett et al., *Studying Public Policy: Policy Cycles & Subsystems* (Oxford: Oxford University Press, 2009), p. 14.

<sup>55</sup> Hoberg, "Policy Cycles and Policy Regimes", pp. 10-13.

<sup>56</sup> This circumstance, it is argued, has inhibited government action to help indigenous people access new media technologies in other countries. Adam Lucas, "Indigenous People in Cyberspace", *Leonardo* 29(2), 1996, p. 101.

<sup>57</sup> Hoberg, "Policy Cycles and Policy Regimes", p. 13.

<sup>58</sup> Hoberg, "Policy Cycles and Policy Regimes", p. 18.

Northern Affairs. These actors had a variety of interests, which attempted to influence the licensing decision with respect to APTN.

Aboriginal organizations, for example, had both financial and political interests in CRTC Decision 99-42. Financially, these organizations could potentially benefit from a securely and well-funded aboriginal television network.<sup>59</sup> This was particularly the case for the thirteen Native Communications Societies, whose requests for additional federal and private funds would be legitimated by the formation of APTN.<sup>60</sup> Politically, the emergence of a new aboriginal television network was beneficial for native organizations in that it would enable them to publicize their political demands and to have aboriginal cultures recognized within the Canadian social fabric. As Lorna Roth explains, the demands for aboriginal control over broadcasting was part of a political agenda to obtain “full national media citizenship, comparable to that of French and English cultural communities, and not just a broadcasting status as ‘special’ cultural producers and distributors”.<sup>61</sup> This motivation also connected the demands for aboriginal broadcasting with the more general political mobilization for land claims and self-government and explains why the Assembly of First Nations supported TVNC’s attempt to become a national aboriginal broadcaster.<sup>62</sup> These political motivations were also related to economic considerations because the more aboriginal culture was valued by the wider society, the easier it would be to demand that funds be disbursed to protect it. As Roth has pointed out, “Indigenous communities...see themselves as nations of ‘special status’ and expect financial and other resource allocations commensurate with their political position”.<sup>63</sup>

This is not to deny the tensions that existed between aboriginal organizations regarding the proposal for TVNC to become a national aboriginal broadcaster. Some aboriginal organizations were not entirely supportive of TVNC’s application to the CRTC. Northern Native Broadcasting, for example, was concerned about northern representation on any new network’s board of directors and “argued for guaranteed representation for existing board members”.<sup>64</sup> This initial concern resulted in granting what amounted to a veto over board decisions to northern aboriginal members – a circumstance that continued to be a source of grievance between the northern and southern wings of APTN after its

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<sup>59</sup> Organizations like the Manitoba Indian Cultural Education Centre, which launched an Aboriginal Broadcast Training Initiative (ABTI), had an interest in the development of APTN so as to provide the rationale for this new program and the funding associated with it. For a discussion of this program, see Ashlea Kay, “Aboriginal people make waves in broadcasting”, *Windspeaker*, 21(3), June 2003, p. 24.

<sup>60</sup> For a discussion of the employment created through the funding of aboriginal broadcasting see Greg Smith, *Aboriginal Broadcasters Perspective on Broadcast Policy*, Report for the Northern Native Access Program, Department of Canadian Heritage, March 23, 2004, <http://pch.gc.ca/pgm.pa-app/pgm/paanr-nmbap/broadcast/broadcastpolicy-eng.pdf> (accessed May 2009).

<sup>61</sup> Roth, *Something New in the Air*, p. 13.

<sup>62</sup> Roth, *Something New in the Air*, p. 201.

<sup>63</sup> Roth, *Something New in the Air*, p. 12.

<sup>64</sup> Roth, *Something New in the Air*, p. 203.

formation.<sup>65</sup> Other aboriginal organizations were concerned about the national network's goals<sup>66</sup> or the capacity of the network to represent all native identities equally.<sup>67</sup>

Unlike aboriginal organizations, which were largely supportive of the licensing arrangements proposed for APTN, most cable companies were opposed to the application.<sup>68</sup> Opposition was rooted in their interest in increasing profits by attracting the largest number of subscribers possible, resulting in a number of reasons put forward for opposing the mandatory fee-for-carriage decision. First of all, cable companies argued that this would impose a mandatory cost on subscribers for programming that they may not want to watch, thus potentially causing customer dissatisfaction – a position that cable companies continue to hold.<sup>69</sup> This led them to favour supply and demand market forces for determining the channels provided to subscribers.<sup>70</sup> In addition, cable companies maintained that there would be additional costs of adding APTN to the dial as it would be necessary to move channels around to accommodate APTN as part of the basic package, which would further alienate customers.<sup>71</sup> The cable industry was also worried that the decision would set a precedent for other groups asking for a similar licensing arrangement.<sup>72</sup> Although they claimed to be supportive of national aboriginal programming, cable companies did not believe that mandatory fee-for-carriage was warranted for a group that comprised only three percent of the population, and maintained that APTN should be treated like any other specialty channel that appealed to a niche audience, and be licensed accordingly.<sup>73</sup>

In addition to the cable companies, a number of media outlets were critical of APTN's application. With respect to television stations, this largely was related to the fact that APTN would become a competitor for viewership and government funding. The Canadian Broadcasting Corporation, for example, argued that it was already covering

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<sup>65</sup> Paul Barnsley, "Licensed Renewed", *Windspeaker*, 23(6), September 2005.

<sup>66</sup> One Inuit leader, for example, notes that the objective of his organization was to preserve the Inuit language and culture, not to "showcase" Inuit culture for others. Zebedee Nungak, "Time long past to dub Inuit out of APTN", *Windspeaker*, April 2005 23(1).

<sup>67</sup> Cheryl Petten, "Television network will create opportunities for Metis people", *Windspeaker*, January 2003 20(9).

<sup>68</sup> There were some exceptions, including CANCOM and WETV. Roth, *Something New in the Air*, p. 204.

<sup>69</sup> In 2008, for example, it was noted that "broadcasters are fighting the removal of any "must carry" rules, arguing that worthy channels won't survive if cable and satellite firms become the "gatekeepers" that determine what is offered to viewers. The production and broadcast of Canadian shows will suffer as a result, according to a presentation this week by the Canadian Association of Broadcasters". Barbara Shecter, "'Basic' channel requirement should be suspended: MTS", *CanWest News*, April 12, 2008.

<sup>70</sup> Jay Thomson, the vice-president of the Canadian Cable Television Association, for example, argued that "the CRTC should not be making decisions that force services on consumers and forces consumers to pay for them. Consumers should be given choice to the greatest extent possible". Luiza Chwialkowska, "Coming soon to your living room: The CRTC is forcing a new aboriginal TV channel- and its cost - on most Canadian cable viewers", *National Post*, February 23, 1999, p. A.3.

<sup>71</sup> "The difficulty we have is that we only have a limited number of channels. In many [cities], those channels are filled up right now," said Mr. Thomson. "[The decision] may very well mean dropping services that are currently offered." He said changing the lineup and notifying customers will cost the industry millions of dollars, and perhaps anger consumers as well. "Consumers don't like seeing changes in their channel lineup, they don't like having things taken away from them," said Mr. Thomson.

<sup>72</sup> Chwialkowska, "Coming soon to your living room, p. A.3.

<sup>73</sup> Roth, *Something New in the Air*, p. 204.

aboriginal issues, and therefore APTN was unnecessary.<sup>74</sup> The response of the print media, which was not in direct competition with APTN, was mixed and largely determined by a paper's ideology. Right-leaning papers such as the *National Post* and the *Vancouver Province*, for example, supported cable operators.<sup>75</sup> More liberal papers, such as the *Globe and Mail* and the *Winnipeg Free Press*, on the other hand, were supportive of the decision. As Morley Walker, a columnist for the *Winnipeg Free Press* put it: "fifteen cents a month today is a small price to pay as a cable subscriber to support a voice that is both indigenous to our country and vital to offering role models for a dispossessed minority".<sup>76</sup>

Although these actors were influential elements of the policy regime with respect to aboriginal broadcasting, it is important to distinguish them from those who hold positions in state institutions because, as Hoberg points out, "of the importance of authority as a resource".<sup>77</sup> Hoberg notes that it is crucial to distinguish between state and societal actors since the former "wield real political authority".<sup>78</sup> As a result, elected and non-elected officials have greater influence in policy development because it is they who make the decisions as to what course of action or inaction is taken. In the case of the policy regime with respect to aboriginal broadcasting, the government affects broadcasting through the *Broadcasting Act*, and can influence licensing arrangements by appointing commissioners to the CRTC. While the government's overriding objective is getting re-elected, it also pursues what it perceives to be good public policy and helps political supporters.<sup>79</sup> The fact that politicians pursue their own vision of "good public policy" means that the ideology and mandate of a government at a particular time can impact a policy decision. Take, for example, the landslide victory of the Liberal government in 1993, and the defeat of the Conservatives; in the case of aboriginal broadcasting, the change in the government's mandate arguably created a much more favourable environment for an independent network.<sup>80</sup>

The liberal government's preoccupation with re-election, however, would mean that its course of action or inaction with respect to aboriginal broadcasting policy would be constrained by public opinion. As Hoberg has pointed out, "the magnitude of that constraint depends on how salient the issue is to the public. If the public is indifferent, opinion matters little. But if the issue is a high priority, it can be a driving force behind

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<sup>74</sup> Bill Roberts, APTN (Bravo to Playback!), *Playback: Canada's Broadcast and Production Journal*, January 21, 2008, p. 11.

<sup>75</sup> Chwialkowska, "Coming soon to your living room", p. A3, "The Native Media", *The Globe and Mail*, February 24, 1999, p. A14; and "Consumers Should Decide What They Want to Watch", *Vancouver Province*, September 2, 1999, p. A36.

<sup>76</sup> Morley Walker, "Aboriginal TV Deserves a Better Spot on Dial", *Winnipeg Free Press*, September 4, 1999, p. B7.

<sup>77</sup> Hoberg, "Policy Cycles and Policy Regimes", p. 10.

<sup>78</sup> Hoberg, "Policy Cycles and Policy Regimes", p. 21.

<sup>79</sup> Hoberg, "Policy Cycles and Policy Regimes", p. 20.

<sup>80</sup> This can certainly be seen with respect for the Liberal government's support for land claims and self-government. For a discussion of the policies of the Liberal government with respect to aboriginal peoples, see James S. Frideres, *Aboriginal Peoples in Canada: Contemporary Conflicts*, 6<sup>th</sup> Edition (Don Mills: Prentice Hall, 2002)

policy”.<sup>81</sup> It was recognition of the importance of public opinion, in fact, that led the TVNC to commission an Angus Reid poll in January 1998, which showed that two thirds of Canadians supported the formation of APTN even if it displaced other television services. A concern with public opinion also resulted in TVNC publicizing the fact it had received over 300 letters of public support for its license application.<sup>82</sup> It was also likely that this support was related to a wider public concern about aboriginal issues.<sup>83</sup> Lorraine Thomas, a consultant who worked for TVNC, for example, argued that “Aboriginal issues are still high on the list of preoccupations of non-natives” and this concern translated into support for aboriginal broadcasting services.<sup>84</sup> During the 1980s and the 1990s a number of events occurred, such as the Oka crisis and constitutional renewal, which made it increasingly necessary to recognize aboriginal cultures in the Canadian federation.<sup>85</sup> The Conservative government initiated the Royal Commission on Aboriginal Peoples, while the Liberals increased efforts to settle land claims and negotiate self-government agreements.<sup>86</sup> Furthermore, the Supreme Court, in handing down its decision on the Quebec Secession Reference in 1998, declared that “aboriginal rights would have to be taken into account in any future negotiations on separation”.<sup>87</sup> Aboriginal issues also gained attention internationally, and a UN committee report expressed shock “at the ‘gross disparity’ between Canada's aboriginal people and the rest of the country”.<sup>88</sup>

Although politicians have influenced the context for the development of aboriginal broadcasting, the most significant state actors in this highly technical policy area are those who hold positions within bureaucratic and regulatory organizations such as the CRTC, the Department of Canadian Heritage and the Department of Indian and Northern Affairs. According to Hoberg, these unelected officials would be motivated by a number of interests related to obtaining influence and prestige. As Hoberg explains, this can be directed towards either increasing budgets or autonomy from the government, and “authority and expertise are used by the members of these organizations to obtain these

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<sup>81</sup> Hoberg, “Policy Cycles and Policy Regimes”, p. 20.

<sup>82</sup> “APTN Milestones”, <http://www.aptn.ca/corporate/milestone.php> (accessed April 2009); Roth, *Something New in the Air*, p. 201.

<sup>83</sup> Jhappan also notes that aboriginal groups often employ a “publicity-seeking strategy” that “is aimed at capturing public attention”. This, then, “can be used to pressure governments into accommodating Indian demands”. Rhada C. Jhappan, “Indian symbolic politics: The double-edged sword of publicity”, *Canadian Ethnic Studies*, 22(3), 1990.

<sup>84</sup> Thomas, cited in Roth, *Something New in the Air*, p.198.

<sup>85</sup> Rhada C. Jhappan, “Indian symbolic politics: The double-edged sword of publicity”, *Canadian Ethnic Studies*, 22(3), 1990; and Lorna Roth “Mohawk Airwaves and Cultural Challenges: Some Reflections on the Politics of Recognition and Cultural Appropriation After the Summer of 1990,” *Canadian Journal of Communications - Special Thematic Issue on Indigenous Peoples and Communications* 18(3), Summer 1993, pp. 315 -331.

<sup>86</sup> Kerry Wilkins, “...But we need the eggs: The Royal Commission, the Charter of Rights and the Inherent Right of Self-Government”, *The University of Toronto Law Journal*, 49(1), Winter 1999; and Alan Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000).

<sup>87</sup> Mark Dunn, “Quebec natives say court ruling recognizes aboriginal rights”, *Canadian Press NewsWire* August 20, 1998. <http://library.mtroial.ca:2092/> (accessed May 2009).

<sup>88</sup> “50 YEARS LATER Human rights criticized”, *Daily Gleaner*, December 10, 1998, <http://library.mtroial.ca:2092/> (accessed May 2009).

resources”.<sup>89</sup> In the case of APTN’s application, therefore, both the CRTC and the Department of Canadian Heritage would have an interest in promoting secure funding arrangements for aboriginal broadcasting so as to increase the sphere of their own bureaucratic and regulatory authority. The self-interest of bureaucrats and regulators, as well as their ideology, would provide a motivation to encourage the state’s recognition of cultural diversity in broadcasting services.

The different interests of these state and societal actors led to the formation of what Paul Sabatier has called “advocacy coalitions”. Advocacy coalitions are “composed of people from various governmental and private organizations who share a set of normative and causal beliefs and who often act in concert”.<sup>90</sup> According to Hoberg, during the policy process “advocacy coalitions adopt strategies in the attempt to influence government, and conflict between advocacy coalitions is typically mediated by ‘policy brokers’”.<sup>91</sup>

In the case of policy formulation with respect to APTN, and CRTC Decision 99-42, two conflicting advocacy coalitions appear to have formed. On the one hand, there was a coalition pushing for stable funding for a separate aboriginal television network, which included aboriginal organizations, officials in the Department of Canadian Heritage and Indian and Northern Affairs, and some television stations. On the other, there were those actors who were opposed to various aspects of the APTN proposal for mandatory fee-for-carriage, for a variety of reasons. This included the cable companies and APTN competitors like the CBC. The “policy broker” referred to by Sabatier would be the CRTC, which held hearings and received input from the opposing sides. As a result of this input, the CRTC, as “broker”, concluded that TVNC was “a unique and significant undertaking serving the public interest and objectives of the Broadcasting Act, especially those objectives that relate to the special place of aboriginal peoples within Canadian society”, and therefore APTN should be formed so as to ensure that this service would be “widely available throughout Canada in order to serve the diverse needs of the various Aboriginal communities, as well as other Canadians”.<sup>92</sup>

The triumph of the pro-mandatory fee-for-carriage advocacy coalition can be explained, in part, by both institutional factors and a number of prominent ideas within Canadian society. Two institutional factors, in fact, had a major impact – the heavily regulated character of broadcasting in Canada and the circumstance that both broadcasting and aboriginal peoples are a federal responsibility. The CRTC’s control over broadcasting has been often used for the purposes of, as classical liberals and some cable company representatives have put it, “social engineering”,<sup>93</sup> and this feeds into a wider network of institutional influences. These include the Multiculturalism Policy (1971), the Canadian Human Rights Act (1976), the Official Languages Act (1977), the Northern Broadcasting Policy (1983), a Broadcasting Policy Reflecting Canada’s Linguistic and Cultural

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<sup>89</sup> Hoberg, “Policy Cycles and Policy Regimes”, p. 20.

<sup>90</sup> Paul A. Sabatier, “An Advocacy Coalition Framework of Policy Change and the Role of Policy-Oriented Learning Therein”, *Policy Sciences*, 21(2), pp. 129-68.

<sup>91</sup> Hoberg, “Policy Cycles and Policy Regimes”, p. 9.

<sup>92</sup> Cited in Roth, *Something New in the Air*, p. 202.

<sup>93</sup> David Warren, “Time to say goodbye to the CRTC era”, *Ottawa Citizen*, October 18, 2008.

Diversity (1985), the Employment Equity Act (1986), the Multiculturalism Act (1988), and sections of the Charter of Rights concerning equality rights and multiculturalism. As Lorna Roth points out, “supportive policies and pieces of legislation, along with their accompanying programs, have placed Canadians in a particularly strong position as regards the ability to organize constituency group resistance to homogenization via the media”.<sup>94</sup> One important source of “constituency group resistance” has been from aboriginal organizations, and their demands to have a separate aboriginal television network.

Aboriginal peoples are also a responsibility of the federal government. This, to some extent, has enabled a convergence of aboriginal broadcasting policy and federal policies with respect to land claims and self-government. These policies have assumed that the preservation of aboriginal cultures has been beneficial to Canadian society, both to promote cultural diversity and to facilitate more harmonious relations between different ethnic groups. This, in fact, explained why the Department of Indian and Northern Affairs supported and endorsed TVNC’s application for a broadcast license for APTN.<sup>95</sup>

In addition to these institutional influences, a number of ideas were also very important in the policy formulation process with respect to aboriginal broadcasting, and the success of the pro-mandatory fee-for-carriage advocacy coalition. The perceived importance of preserving cultural diversity in Canadian society, for example, resulted in the contestation of the free market ideology promoted by cable companies. Although broadcasting takes place within a capitalist context, and therefore consumer choice and minimizing the cost of cable services is recognized as a legitimate objective, this has been challenged by ideas concerning the importance of ensuring that marginalized ethnicities – francophones, immigrants and aboriginal peoples – should be more fully recognized within the wider Canadian society. This concern was also related to an ideological development known as “postmodernism”, which has been related to “anticolonial thinking” and the perception that diversity is a good in itself.<sup>96</sup> This ideology also forms the basis of the “communitarian paradigm” in communications studies – a theoretical orientation stipulating that “the maintenance and continuity of a community of identity and tradition is...fundamentally important in achieving the self-defined goals of development”.<sup>97</sup>

Lorna Roth has noted that these ideas have come about, in part, because of human migrations, leading to the recognition of “the importance of legally recognizing the ideology/policy of cultural and racial diversity as that which is best suited to the specific conditions of the late twentieth and early twenty-first centuries”.<sup>98</sup> These circumstances, and the resulting assumption of postmodernism that the “strategic recognition that all cultures *count* and *matter* in the general scheme of things [emphasis in the original]”, have provided an important justification for a separate aboriginal television network that

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<sup>94</sup> Roth, *Something New in the Air*, p. 39.

<sup>95</sup> Doris Baltruschat, “Television and Canada's Aboriginal communities: seeking opportunities through traditional storytelling and digital technologies”, *Canadian Journal of Communication*, 29(1), 2004.

<sup>96</sup> Roth, *Something New in the Air*, pp. 37, 227-230.

<sup>97</sup> Roth, *Something New in the Air*, p. 35.

<sup>98</sup> Roth, *Something New in the Air*, p. 37.

promotes native cultures.<sup>99</sup> Such an ideology also fits into notions of national self-determination for the aboriginal population, leading APTN to be perceived, “*not a specialty service, but rather a service with special status as a result of being one of the three Founding Nations of Canada [emphasis in the original]*”.<sup>100</sup> All these ideological factors rationalized CRTC’s selection of a policy instrument entitling APTN to the mandatory carriage arrangements stipulated for nationally important entities like the CBC, Radio Canada and TVA.<sup>101</sup>

### **Theoretical Approaches and Causality: Decisive Influences on CRTC Decision 99-42**

Although the use of the policy regime framework has identified some of the factors that influenced CRTC’s Decision 99-42 – to attach the mandatory fee-for-carriage condition to the license for APTN - questions still remain about why this policy change occurred. Probing these questions can be aided by an examination and application of different theoretical perspectives to this case. More specifically, these theoretical perspectives can help to elucidate why the “burst in public salience of new values” occurred.

In the political science literature, a number of theoretical perspectives are applied to explain policy outcomes.<sup>102</sup> These perspectives are often differentiated as either being society or state-centred,<sup>103</sup> and adopting a perspective from one side of this divide or the other would offer a very different understanding of causality with respect to CRTC Decision 99-42. A society-centred theoretical orientation, which includes public choice, pluralism and class analysis, has argued that the state is largely a dependent variable, and that policy formulation is a response to pressure stemming from socio-economic forces.<sup>104</sup> A state-centered approach, on the other hand, maintains that the state is more of an active entity that initiates policies autonomously from society, turning its own preferences into authoritative actions.<sup>105</sup> Policy development occurs because “those in government do what *they* think is best”.<sup>106</sup> State-centered approaches also assert the importance of bureaucrats in the political system because their expertise makes politicians have to rely upon them for advice. These bureaucratic actors can then use this role to pursue their own self-interest “by maximizing their discretion, jurisdiction, and financial resources” and “resort[ing] to the manipulation of information or coercion in

<sup>99</sup> Roth, *Something New in the Air*, p. 17.

<sup>100</sup> Roth, *Something New in the Air*, p. 204.

<sup>101</sup> Roth, *Something New in the Air*, p. 204.

<sup>102</sup> Rand Dyck, *Canadian Politics: Critical Approaches*, Fourth Edition (Toronto: Thomson Nelson, 2004), pp. 9-22; and Robert J. Jackson and Doreen Jackson, *Politics in Canada: Culture, Institutions and Public Policy*, Seventh Edition (Toronto: Pearson Prentice Hall, 2009), pp. 10-15. Dyck also includes “globalization” and Jackson and Jackson “feminism”, but they overlap on the other four approaches.

<sup>103</sup> Two other distinctions that are made are whether approaches are elite or mass, or inductive or deductive. The society versus state centred approach is used here because exploring this distinction will shed more light on the role of the CRTC with respect to aboriginal broadcasting.

<sup>104</sup> Dyck, *Canadian Politics*, p. 16.

<sup>105</sup> This idea was originated by Eric Nordlinger. For a discussion see *On the Autonomy of the Democratic State* (Cambridge: Harvard University Press, 1981). Similar approaches in the Canadian context include Leslie Pal, “Relative Autonomy Revisited”, *Canadian Journal of Political Science*, (March 1986), pp. 71-102; and K.R. Nossal, *The Politics of Canadian Foreign Policy*, 3<sup>rd</sup> Edition (Scarborough: Prentice-Hall Canada, 1997).

<sup>106</sup> Dyck, *Canadian Politics*, p. 10.

order to persuade the public of their wisdom, or seek the support of the most relevant societal interest”.<sup>107</sup>

Lorna Roth, in her comprehensive analysis of the history of aboriginal broadcasting services, largely accepts a society-centred perspective in explaining Decision 99-42. It is a pluralist theoretical orientation, which maintains that “a feeling of being overlooked by government will lead a group to mobilize and activate its resources, that the authorities can be moved by the articulation of demands by different groups in different policy areas, and that the policies adopted are usually the result of compromises among competing group demands”.<sup>108</sup> A pluralist orientation results in references to “First Peoples’ policy savvy and their demonstration of the skills needed to develop and manage distinctively Northern broadcasting infrastructures...”,<sup>109</sup> and how the actions of aboriginal organizations were decisive in pressuring state actors to adopt this particular policy instrument. Roth refers to “three decades and dedicated commitment by First Peoples broadcasters and lobbyists” and how this has resulted in the “legal recognition and acceptance of aboriginal voices within the Canadian public and private broadcasting spheres, as integral participants in the developing fabric of a pluralistic community of communities”.<sup>110</sup> These developments, according to Roth, led indigenous media to be recognized as an important element of the Canadian broadcasting system.<sup>111</sup> The ability to “gain communication rights” has been a large part of this process because aboriginal peoples have been able to control media content and therefore “play a significant role in tearing down antiquated power relations, as well as in clearing new grounds for political and discursive engagement among constituency groups and governments”.<sup>112</sup> In Roth’s view, “by surveying the players, policing the airwaves, identifying loopholes in existing policies over the years, and building group alignments within and beyond the system’s spaces opportunity - First Peoples were able to successfully negotiate collective cultural ‘air rights’”.<sup>113</sup>

Roth, however, also briefly recognizes the importance of state actors in the development of the CRTC decision. According to Roth, “the authorities decide what is good for society and design policies to fulfill their vision of the public interest”, and the CRTC’s actions was partially a reflection of this. It is also understood that broadcasting in Canada is heavily regulated, and this is partly a mechanism used by state actors to deal with ethnic conflict in Canada by fostering tolerance.<sup>114</sup> The question that needs to be

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<sup>107</sup> Dyck, *Canadian Politics*, p. 17.

<sup>108</sup> Dyck, *Canadian Politics*, p. 11. This approach was initially developed by Robert Dahl, *Pluralist Democracy in the United States: conflict and consent* (Chicago: Rand McNally, 1967). It has been adopted in Canada by A. Paul Pross, *Group Politics and Public Policy* (Oxford: Oxford University Press, 1986).

<sup>109</sup> Roth, *Something New in the Air*, pp. 213-14.

<sup>110</sup> Roth, *Something New in the Air*.

<sup>111</sup> Roth, *Something New in the Air*, p. 9.

<sup>112</sup> Roth, *Something New in the Air*, p. 220.

<sup>113</sup> Roth, *Something New in the Air*, p. 226.

<sup>114</sup> Roth, *Something New in the Air*, pp. 12, 38. It should be mentioned, however, that the relationship between recognizing difference and reducing social conflict is debatable. Cass Sunstein, in his work on group polarization, for example, notes that in a deliberative setting, like a specialty-focused broadcasting company, like-minded group members, when not exposed to competing or contrary ideas, tend to move towards a position that is more extreme in their support of initial values or ideas. This suggests a couple of

investigated, then, concerns whether or not the CRTC was responding to spontaneous pressure from aboriginal organizations, or if aboriginal group mobilization was created by state authorities to serve their own political purposes. And if the state did act in such a manner, what were the interests and values that it was pursuing?

A state-centred approach would explain the role of authorities in the CRTC, Department of Canadian Heritage and the Department of Indian and Northern Affairs in terms of the attempts of bureaucratic and regulatory actors to expand their resources and increase their autonomy from politicians. To this end, these authorities form a “policy community”, where they try to nurture and incorporate various interests that will support initiatives that expand their area of jurisdiction.<sup>115</sup> State actors can also take on the role of what John Kingdon has referred to as a “policy entrepreneur”<sup>116</sup> – those who shape the policy agenda by “promoting particular solutions”.<sup>117</sup> The fact that the Department of Canadian Heritage provided funds to the Native Communications Society before the CRTC invited them to submit proposals for the creation of APTN provides support for the analysis of the state-centred framework.

The class analysis perspective can also offer insights for the expansion of state activity with respect to aboriginal broadcasting services. At first glance, a Marxist perspective appears to be deficient for explaining Decision 99-42 since the CRTC pursued a course of action that was opposed by powerful capitalist interests. But a deeper look at the rationale behind the CRTC decision shows that it is somewhat of what Miljan refers to as an “accumulation policy”, which is designed to “maintain the social conditions necessary for profitable business activity”.<sup>118</sup> Although APTN could have been directly funded by a government department such as Canadian Heritage, the increasing prominence of neoliberal ideologies in late capitalism would likely have inhibited such a course of action. Decision 99-42, by directing cable and satellite distribution system operators to charge subscribers for APTN’s operations, was able to circumvent this opposition by instituting a faux market mechanism to guide the business affairs of the network.<sup>119</sup> The

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potentially significant consequences for policy development. One is that an activist coalition will, over time, increase demands for the public support of its cause. The other is that creating activist coalitions may not, in the long term, be the best means of reducing ethnic conflict. Cass Sunstein, *The Law of Group Polarization*, p. 81. See excerpt online at

[http://books.google.ca/books?id=v7e8X5vklbsC&pg=PA80&lpg=PA80&dq=Cass+sunstein+group+polarization&source=bl&ots=IAE5jXorU2&sig=MUBZfkAsIMG8r-zoVnq6cJdo-jg&hl=en&ei=MecOStOIGqTmtgP8oc2AAw&sa=X&oi=book\\_result&ct=result&resnum=2#PPA83.M1](http://books.google.ca/books?id=v7e8X5vklbsC&pg=PA80&lpg=PA80&dq=Cass+sunstein+group+polarization&source=bl&ots=IAE5jXorU2&sig=MUBZfkAsIMG8r-zoVnq6cJdo-jg&hl=en&ei=MecOStOIGqTmtgP8oc2AAw&sa=X&oi=book_result&ct=result&resnum=2#PPA83.M1)

(Accessed May 2009). For other discussions of this debate see James S. Fishkin and Peter Laslett (eds), *Debating Deliberative Democracy* (New York: Blackwell publishing, 2003).

<sup>115</sup> Dyck, *Canadian Politics*, p. 17.

<sup>116</sup> J.W. Kingdon, *Agendas, Alternatives, and Public Policies* (New York: HarperCollins College Publishers, 1995); for a discussion of the role of the “policy entrepreneur” in the policy press, see Leslie A. Pal, *Beyond Policy Analysis: Public Issue Management in Turbulent Times*, Third Edition (Toronto: Thomson Nelson, 2006), p. 118).

<sup>117</sup> Hoberg, “Policy Cycles and Policy Regimes”, p. 5.

<sup>118</sup> Miljan, *Public Policy in Canada*, pp. 27.

<sup>119</sup> APTN, in its 2007 Annual Report, for example, declares in its “corporate profile” that it “does not receive government funding for operations but generates revenue through subscriber fees, advertising sales and strategic partnerships”. <http://www.aptn.ca/corporate/PDFs/AnnualReport2007.pdf> (accessed May 2009)

Commission recognized that market mechanisms could not, at the outset, provide advertising or other revenue sufficient to finance APTN's operations, thus the CRTC used the only fiscal tool at its disposal to give APTN the appearance of commercial viability.

Funding APTN through mandatory subscriber fees also has some other advantages over direct government payments if the eventual goal is to make the network commercially viable. The predictability and stability of cash flow is probably one of the most significant. With a fee based on the number of subscribers, the revenue APTN receives will be fairly consistent. Contrast this with federal funding, which is, to some extent, subject to the political whims of the party that forms the government. Government actions are also dictated by economic conditions, and initiatives like deficit reduction can place funding for programs in jeopardy, leading to an uncertain business environment. The fact that government funding requires additional, and sometimes a duplication of, record-keeping and reporting functions also provides a distraction from business concerns. Revenue based on the number of service subscribers would enable APTN to focus on customers rather than its relationship to the government, and would provide some incentive ensure that distribution companies prospered (i.e. to develop a general concern with the profitability of the industry).

It is also possible that the CRTC was not committed to the mandatory fee-for-carriage instrument indefinitely. Clearly, while the Commission thought the network would be socially valuable, it may have been expressing hope that eventually the network would become economically viable. This expectation feeds into the conditions of a broadcast license, which are subject to review every time the license comes up for renewal. The potential for a condition not being renewed, then, would lead a judicious APTN leadership to recognize that the revenue source required by Decision 99-42 might not always be available.<sup>120</sup> This possibility would APTN's executive with an incentive to manage the network so that its product became more profitable. Although APTN currently benefits from being sheltered from direct competition, this could just be a strategy to ease its transition towards a market-based business model. Appropriately prepared, the network might be able to develop its brand and a program line-up suitable to its market niche of a quality expected by consumers. In this way APTN may increase its profitability and be able to generate advertising and other revenues sufficient to fund its operation without the mandatory fee-for-carriage directive.

But what conditions are required for APTN to increase its profitability? One framework, developed by Barney and Hesterly, analyzes a business' commercial potential by assessing four key variables - the value of the resource, its rarity, imitability and the organization's ability to exploit it.<sup>121</sup> The regulated nature of Canadian broadcasting can be seen as protecting both the rarity and inimitability of APTN, because it is the only

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<sup>120</sup> This circumstance, in fact, has led to a shakeup in the governance of APTN. For a discussion of this, see Greg O'Brien, "APTN at five: Aboriginal channel has turned the corner on its fifth year", *Cablecaster*, 16(5), September 2004, p. 20.

<sup>121</sup> This is referred to by Jay B. Barney and William S. Hesterly as the VRIO framework in the second edition of their text, *Strategic Management and Competitive Advantage*, p. 76-92

national broadcaster licensed to provide programming from an aboriginal perspective. The question of value is a more difficult one. Certainly, Canadian broadcast policy identifies the presentation of programming reflective of aboriginal cultures as constituting “value”, but this has nothing to do with economics; mandates for cultural protection, in fact, often are inconsistent with the goal of profitability. Besides, it is the mandatory fee-for-carriage condition on APTN’s license that provides it with the funds needed for its economic survival; the aboriginal population in Canada is relatively small, culturally diverse and geographically dispersed, and it is unknown to what extent aboriginal programming has the capacity to appeal to a wider non-aboriginal audience. It is questionable, therefore, as to whether the network has the organizational capacity to develop and exploit resource advantages over the long term and survive in the absence of a fee-for mandatory carriage condition attached to its license.

It was also possible that the mandatory fee-for-carriage requirement attempted to give aboriginal organizations a stake in the capitalist system, thereby diminishing the discontent stemming from being marginalized from economic processes. This insight is derived from employing a more “structuralist” interpretation of policy development in capitalist systems. Decision 99-42, in fact, can be construed as the second type of government action identified in Marxist theoretical frameworks - “legitimation policies”. According to Miljan,

legitimation policies reduce inter-class conflict by providing subordinate classes with benefits that reduce their dissatisfaction with the inequalities generated by the capitalist economy. Social welfare policies and labour legislation are examples of state actions that promote social harmony by legitimizing the existing capitalist system in the eyes of those classes who benefit least from its operation. These policies indirectly support the interests of capital because they maintain the social conditions necessary for profitable business activity.<sup>122</sup>

Decision 99-42 can also be explained by the Marxist notion of the “relative autonomy” of the state. This idea maintains that the conflicting interests in different capitalist sectors, in conjunction with a bureaucracy that fills its ranks with members of the working class, gives state institutions a certain independence from capitalist imperatives. In the case of broadcasting, for example, specialty channels, commercial networks, and public broadcasters all have different interests and agencies such as the CRTC are filled with professionals who do not own commercial enterprises. This enables agencies like the CRTC to develop policies that favour subordinate groups – i.e. aboriginal peoples – if this is necessary to increase social stability and the long term survival of the capitalist system.<sup>123</sup>

To this end, state actors encourage societal actors to identify on the basis of their ethnicity rather than their objective class interests.<sup>124</sup> This often is encouraged by the

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<sup>122</sup> Miljan, *Public Policy in Canada*, p. 27.

<sup>123</sup> Howlett et al., *Studying Public Policy*, p. 37.

<sup>124</sup> Dyck, *Canadian Politics*, p. 15.

leaders of ethnic groups, who benefit from this kind of recognition.<sup>125</sup> The policy to develop a separate aboriginal broadcasting network is a classic example of this circumstance, because these developments have encouraged the native population to identify on the basis of their ethnicity. Impoverished aboriginal people in northern communities are constructed as being similar to the people who have obtained leadership positions in APTN because they all share a common native ancestry.

### **Future Directions in Aboriginal Broadcasting Research**

CRTC Decision 99-42 provides a fascinating case study in policy formulation and decision making. As has been shown throughout this paper that the licensing of APTN, whereby a mandatory fee-for carriage arrangement was directed by the CRTC, was a unique instrument that had not been used with respect to other broadcasters. This choice is puzzling in that it was opposed by powerful business interests. As a result, it is important to raise questions about the factors that led to this decision and what it tells analysts about public policy development.

Some light can be shed on the decision by examining the historical processes that led to its development. It was pointed out that CRTC Decision 99-42 was the result of a heavily regulated policy area. Control over aboriginal broadcasting has often taken on some aspects of “social engineering”, and is generally seen as part of the process of nation building.<sup>126</sup> To deal with the tensions between groups asserting special rights in the Canadian federation, broadcasting policies were developed to address political alienation and encourage various groups – Quebeckers, aboriginal peoples and recent immigrants – to embrace and participate in the Canadian federation.

This historical context created space for aboriginal organizations to lobby the CRTC for a special licensing arrangement for APTN. Their efforts took place within an institutional and ideological context that made their advocacy coalition successful in comparison to its competitor (the cable companies and their supporters). An “increase in public salience”, which was due to increasing concern about aboriginal issues and a need to recognize cultural diversity more generally, enabled the CRTC, as a policy broker, to thwart the interests of a powerful business interest.

In an examination of why there was an “increase in public salience”, a number of theoretical approaches were analyzed. Although a dominant viewpoint has accepted pluralist assumptions that aboriginal organizations were effective in tapping resources and pressuring state actors like the CRTC, this view minimizes the role of state actors in constructing these demands. Furthermore, a class analysis approach has raised a number

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<sup>125</sup> Karl Peter, “The Myth of Multiculturalism and Other Political Fables”, in Jorgen Dahlie and Tissa Fernando (eds), *Ethnicity, Power and Politics in Canada* (Toronto: Methuen, 1981); Kogila Moodley, “Canadian Multiculturalism as Ideology”, *Ethnic and Racial Studies* (July 1983); and Martin Loney, *The Pursuit of Division: The Pursuit of Division: Race, Gender, and Preferential Hiring in Canada* (Montreal: McGill-Queen’s University Press, 1998).

<sup>126</sup> Lorraine Eden and Maureen Appel Molot, “Canada’s National Policies: Reflections on 125 Years”, *Canadian Public Policy*, 19(3), 1993, pp. 233, 239, 243.

of questions as to the extent to which CRTC Decision 99-42 was really an attempt to facilitate accumulation policies and legitimize the capitalist system.

Although there has been an attempt to apply a number of theoretical approaches to CRTC Decision 99-42, it is important to stress that this examination is tentative, and is certainly not intended to be the final word on this subject. In examining this decision, questions remain as to what extent the state acted autonomously, and what motivated its actions. Additional data collection, such as elite interviews and a further examination of government documents will provide new information from which to analyze the development of aboriginal broadcasting in Canada.