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Agency Accountability Strategies After Liberalization: Universal Service in the United Kingdom, France, and Sweden

DORIT RUBINSTEIN REISS

Liberalization of key network industries is often said to reduce accountability by undermining its traditional mechanisms. Liberalization, others say, promotes accountability by creating new channels and mechanisms. This article suggests that neither view is sufficiently nuanced. Accountability comes in many forms, and the question is less “how much” accountability there is, but what form it takes. And accountability will take different forms in relation to different issues, even within the same organization. Examining accountability in relation to the provision of universal service in electricity and telecommunications, this article demonstrates that in the regimes studied, agencies were generally accountable for providing universal service by deferring, to the maximum possible extent, to political actors or stakeholders. However, when faced with an expert technical question—in this case, determining the costs of the universal service—agencies stressed their professional judgment and transparency. This observation supports a wider hypothesis concerning the conditions under which a variety of agency accountability strategies may be adopted.

INTRODUCTION

Liberalization of network industries has been a key industrial policy in many countries in the past twenty-five years. European Union (EU) policies have been a key driver for liberalization amongst the EU member states, even shaping patterns of liberalization in early adopter states such as the United Kingdom. Policies of liberalization in the electricity and telecommunications sectors in the United Kingdom, Sweden, and France have been controversial, in part, because of the effects on traditional accountability structures for public services. I suggest in this article that the question is not
whether reforms increased or reduced accountability. Rather, the question is what effect the reforms had on the form of accountability agencies use. Agencies use different accountability strategies to deal with different issues, depending on the extent to which an issue can be framed in professional-technical terms and the extent to which it is politically controversial. The article focuses on accountability for universal service, an issue that liberalization opponents and consumer advocates are concerned will be adversely affected by liberalization (Sauter 1998). The term universal service refers to policies aimed at providing or facilitating access to telecommunications and electricity services, considered by many essential services in modern society. I focus on one set of these policies, providing services to customers with low incomes, which involves politically sensitive decisions that may have substantial redistributive consequences. In relation to determining the scope of rules and processes that support affordable access to network services, agencies are aware of the legitimacy problems they will face if seen to make redistributive decisions. Under these conditions they prefer as much as possible to defer to the political authorities and cast themselves in the role of implementers. Where that choice is impossible, they make efforts to share the responsibility by involving stakeholders in the decision making and deferring to those decisions. Another dimension of the universal service issue, how to fund universal service schemes, involves complex calculations. The funding issue can be framed as a professional-technical question. Consequently agencies take a very different approach, emphasizing their own expertise and judgment, and this is reflected in the accountability strategies that they adopt.

The first part of this article sets out the theoretical background. The second part discusses the case study, universal service provision in electricity and telecommunications sectors, and the methodology by which the study was conducted. Findings from the case studies—the accountability strategies used by the agencies—are presented in the third part. A concluding section discusses the wider implications of the variety of agency accountability strategies outlined in the article.

PART I. THEORETICAL BACKGROUND

Market reforms of public sector services have been in vogue for several decades now (Kettl 2000; Levi-Faur 2006; Peters 1996; Pollitt and Bouckaert 2000; Smith 2001; Thatcher 2002a; Wyplosz 1999). Privatization and liberalization of utilities sectors were among the most popular (Jamasb and Pollitt 2005; Levi-Faur 2006; Victor and Dyer 1986; Waverman and Sirel 1997). Scholars expressed a number of concerns in relation to such reforms. One set of concerns focuses on the effect of such reforms on accountability. In broad strokes, the literature can be divided into those strongly concerned about the effect of such reforms on accountability and those (more or less
optimistic as to their effects on accountability. Those concerned point out that market-style reforms weaken traditional mechanisms of accountability and substitute the clear hierarchical structure of authority and responsibility that existed before them for an undetermined, somewhat chaotic new reality; they may also reduce opportunities for public participation (Harlow 1998; Hood and Scott 2000; McGowan 2000; Minow 2003; Palast Oppenheim and Macgregor 2003). A more optimistic view, however, sees the reforms as contributing to accountability by providing additional market-style mechanisms of accountability, increasing participation of various stakeholders and transparency, and adding layers of accountability (Goldsmith and Eggers 2004; Graham 2000; Hood and Scott 1996; Scott 2000; Thatcher 2002c; Trebilcock and Iacobucci 2003).

There are two problems with these studies. First, these evaluative studies, except for a few exceptional works (Scott 2000; Stone 1995) underemphasize the increasing complexity of the accountability situation facing administrative agencies. This complexity is acknowledged by a respectable body of public administration literature that describes the complex world administrative agencies face, with multiple, often conflicting pressures to be accountable and with demands to achieve many, often conflicting goals (Behn 2001; Bovens 2005; Day and Klein 1987; Dubnick and Romzek 1991; Mashaw 2005; Radin 2002). Scholars addressing the issue discuss several forms of accountability. The classic distinction drawn by Dubnick and Romzek deploys a matrix distinguishing between internal and external sources of accountability and between a high degree of control and a low degree of control, separating accountability into legal, bureaucratic, professional, and political forms of accountability (Dubnick and Romzek 1991: 77; Romzek 1987). However, in real life, as acknowledged by several of these scholars, these forms are not neatly separated. They overlap or conflict, and this frequently causes problems (Radin 2002; Romzek 1987). An agency cannot respond only to its political masters or only to judicial review or the rule of law. It is expected to accommodate all of these, for different reasons. The question then becomes how agencies handle conflicting and different pressures of accountability. The problem is even more severe since agencies are nonmajoritarian actors, they are not elected, and their decision making may be attacked as undemocratic (Majone 1994; Thatcher 2002b; Thatcher and Stone Sweet 2002). This article asks how agencies address this complexity.

The second problem is that in attempting to evaluate accountability, some studies treat the concept as uniform and as measurable, ignoring conflicting meanings and possible forms of accountability. This study takes the next step, by suggesting a classification of agency responses to accountability pressures and an explanation of different choices.

My basic assumption is that agencies should be treated as sophisticated actors facing a complex accountability situation. Agencies are not passive "pawns," they have considerable political know-how and can manipulate their political environment; therefore, their preferences need to be taken...
into account. Facing an array of complex accountability pressures and (as is ever the case in public administration) constrained resources, they have to find a way to handle the situation. This they do by adopting an accountability strategy, a set of behaviors and practices an agency uses to legitimize its actions and justify its choices. These strategies can vary. Agencies can be accountable, that is, legitimize and justify their actions, in different forms. Agencies are strategic actors, and since being “accountable” carries positive benefits (and being “unaccountable” carries penalties), agencies want to demonstrate that they are accountable and their behavior is legitimate. They choose different forms to accomplish this.

An agency can justify its actions by stressing its expertise and emphasizing its responsibility to act according to its best judgment, using a professional judgment form of accountability. It can be accountable by still emphasizing its expertise and professional judgment but providing much information about its actions, in essence saying, “We are accountable because while we have the authority and we make the decision, everything we do is out there, and we are transparent.” This is an information-based accountability strategy. It can go a step further and say, “while the decision is still ours, we would like to take into account stakeholders’ views and change our behavior to accommodate them.” In this case, the agency is seeking legitimacy through a strategy of responsiveness to the preferences of its stakeholder. Finally, an agency can stress that it is not in fact responsible for policymaking. The decisions themselves are made elsewhere; the agency is simply enforcing and implementing them. It can legitimate its actions through an accountability strategy of deference.

In addition, an agency may address a broad or narrow target audience. The breadth of the target audience may substantially change its behavior. When addressing a narrow audience, an agency may anticipate its preferences, which may lead the agency to try and conform with those preferences, even if is not being deferent (Lerner and Tetlock 1999; Seidenfeld 2001). If it has to contend with many stakeholders with different views, the pattern of decision making changes.

An agency may be addressing a narrow target audience, directing its accountability strategy toward no more than one or two major actors; or a broader target audience, a “medium” target audience, by aiming its accountability strategy toward direct stakeholders but not beyond. Finally, it may aim at addressing as broad a target audience as possible—in the Internet age, it may direct its justification and legitimacy efforts toward whoever can get access to its Web site. The two dimensions of accountability are shown combined in Figure 1.

In this conceptual space, an agency can choose in which manner it will be accountable, as well as the breadth of its target audience. Its behavior will look different according to the choices it makes. For example, informing only one actor of its actions (let’s say, reporting to the minister who is politically responsible for its action) looks very different than preparing a
general report for public consumption for every one of its major decisions. And both are very different than trying to defer to many actors simultaneously or being accountable by saying, “We are just following the orders of the democratically elected government.” The combination of these choices will be the agency’s accountability strategy and will determine its accountability behavior.

There is no direct literature on accountability strategies, but one can draw on the studies analyzing differences in the implementation of administrative reforms as well as on law and society studies and organizational behavior for candidates to suggest explanations for variation among agency behavior. Four hypotheses can be raised—though this study was not aimed at directly testing them, focusing instead on generating theory. First, the difference in accountability strategy can be accounted for by national factors, by the national administrative or political culture, and the way liberalization worked in the different countries (Thatcher 1999; Wilson 1989). Second, it can be explained by the characteristics of the sector. Thus, if telecommunications is characterized by a high level of competition and rapid changes, we would expect different behaviors from agencies than in the electricity sector, which is relatively stable and tends to oligopolies. Third, the accountability mechanisms in place can explain the differences in accountability behavior. Thus, an agency that has the obligation to consult before it makes a decision will behave differently than an agency that does not. The availability of appeal mechanisms will also make a difference.

All these factors are important to explain events in the liberalized sectors and differences between the different agencies. However, they are insufficient to explain differences in accountability behavior. The more convincing explanation, both in light of my findings and in itself, is that accountability behavior changes with the nature of the issue, or problem, the agency is
dealing with. Intuitively, this makes sense—different actors are involved in
the discussion of different issues; and the same actors will have different
preferences in relation to different issues. Therefore, the coalitions addressing
different issues will be different, as will be the grid of pressures and
demands. In addition, studies in sociology and organizational behavior
have repeatedly shown that organizational behavior changes with the task
environment, with the nature of the problem, and with the coalition of
actors and preferences surrounding it (Kagan 2006; Ouchi 1979; Thompson
1967; Thompson and Tuden 1959). Similarly, in their study of decision
making by the British telecommunications regulator, Hall et al. (2000)
found different models of decision making across different issues.

Two aspects of the issue are important for the choice of accountability
strategy. The first is the informational aspects, in the term borrowed from
Epstein and O’Halloran’s study of delegation of power (1999). This refers
to the level of information or expertise required to understand an issue. To
what degree is it an issue that requires professional or technical expertise?
To what degree is it a value-dependent issue? The distinction is fuzzy, especially
in areas where value judgment and professional questions are mixed closely,
like environmental decisions. And even issues that require a high level of
professional judgment usually require value judgments, and issues that
require substantial value judgments often have a knowledge or expertise
component. But it is a real enough distinction nonetheless. Designing the
 technological specifics for a bridge, a nuclear plant, a telecommunications
system does not look the same as deciding whether to give the poor low-
cost electricity services or income supplement. I expect that the more an
issue requires expertise, the more an agency will internalize its responsibility
and stress its professional judgment. The less an issue requires expertise, and
therefore the more central are value judgments, the more an agency will
seek to externalize the responsibility and depict itself as the implementer, not
the decision maker. There are two reasons for that. First, an agency populated
by experts will be more comfortable making decisions based on expertise.
Second, agencies are aware of the criticisms aimed at unelected bodies
setting policy (Bickel 1962; Majone 1994, 1999; Thatcher 2002b; Thatcher
and Stone Sweet 2002). In issues requiring substantial value judgment, that
criticism is most powerful, and agencies will want to avoid seeming to make
such decisions as much as possible. In issues requiring expertise, agencies
can present their decisions as “professional decisions”, not motivated by
values. Therefore, they will be less open to criticism for making decisions
that should be made by elected officials.

The other aspect of an issue that could affect the agency’s accountability
behavior is how controversial is the issue. Agencies are, as I mentioned
above, strategic actors. In accountability terms, since accountability brings
positive rewards, we can expect an agency to want to be accountable and
not nonaccountable to as many actors as possible. On the other hand, since
agencies have limited resources, they would not want to spend more on

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accountability behaviors than they have to. Producing information costs money, time, and manpower, as do holding hearings and consultations. Therefore, an agency will address broader audiences where it anticipates or faces challenges from more actors—on issues that are more politically controversial.

These explanatory variables can be added to the figure addressing the form of accountability, as presented in graphic format in Figure 2. This is the model of agency accountability strategies.

PART II. THE CASE STUDY: UNIVERSAL SERVICE IN THE UNITED KINGDOM, FRANCE, AND SWEDEN

METHODOLOGY

This article is part of a larger empirical project that examined the issues of network price setting, creating retail competition, and universal service in the United Kingdom, France, and Sweden, drawing on a large amount of documentary material and open ended interviews with over 100 people. The three countries were chosen since on one hand, they represent different administrative and political traditions, and on the other, they share a
common framework in EU law. Following Esping-Andersen’s (1990) classification, the United Kingdom is a “liberal” welfare state, France is a “corporatist” welfare state, and Sweden a “social democratic” welfare state. While Esping-Andersen focused on the countries’ attitudes to welfare benefits, his classification also captures important differences in public administration and the relationship between important actors such as industry and labor. England, France, and Sweden are substantially different in their approach to social rights and markets, in addition to having different political and administrative traditions. They are also at different stages of the liberalization process, England being a pioneer in this area, Sweden an early liberalizer, and France a relative late comer to liberalization. On the other hand, all three countries are subject to EU regulation, which has increasingly set the parameters for market liberalization and governance both in electricity and telecommunications.

Thus, the three countries chosen allow for a mixture of differences and similarities that makes comparison meaningful. Similarly, the two sectors—electricity and telecommunications—are both utility sectors, but have very different dynamics in terms of the rate of innovation and the feasibility of competition (Bartle 2002; Graham 2000; Palast et al. 2003; Soult 2003; Thomas 2004).

The issues—network price setting, creating retail competition, and universal service—were chosen since they repeatedly came up in the literature, as well as in consultation with experts in the field, as potential “problem areas” in the liberalization process. For each issue, a large amount of written material was collected, and interviewees were asked to narrate how agencies handle them. I then constructed a narrative of the accountability behavior of the agencies in relation to it. On each issue, my goal was to have information on accountability behavior from three sources—what the agency said it was doing (through interviews and agency documents); what others said it was doing (from interviews and documents produced by other actors); and what its behavior demonstrated.

As this description demonstrates, this project was an hypotheses-generating project. My goal was, through detailed case studies, to arrive at an understanding of agency behavior. Future studies should add to the discussion of accountability responses by introducing a quantitative research design and testing the findings in countries beyond the EU and sectors other than utility sectors.

WHY UNIVERSAL SERVICE?

In this article, I focus on one of these issues—universal service. In the past, public policy concerning universal service referred mostly to geographical coverage—a duty imposed, often on a single service provider, to serve all customers within the country or region, wherever they were located within it (Prosser 2000). But in the three countries researched, geographical
coverage by the network was achieved by the time of liberalization or shortly afterwards. This article focuses on the social aspect of universal service—the treatment of those with low incomes and those having difficulties paying for the service. I examine procedures for subsidizing certain users and for the development of schemes for affordable use, particularly for those with low incomes. Focusing on the social aspect of universal service makes this part of the discussion an almost “purely” value-laden case study, since in relation to low-income customers, the distributional aspects are very obvious and the role of technical expertise is minimal. In contrast, the funding arrangements are complex and technical. Comparing the two allows testing both extremes of the “informational aspect” axis of the model. I therefore examine special programs to help low-income users to pay for services and the funding for those special programs.

Universal service addresses access to the telecommunications and electricity network. The premise underlying it is that in modern society, telecommunications and electricity are basic services necessary to assure a minimal level of quality of life. Therefore, as far as possible, barriers to access the network should be removed. Obviously, this itself is a value judgment, but beyond that, mechanisms to allow access always involve some degree of redistribution and resource transfers. Whether the focus is on having the same price regardless of geographic location (with urban customers subsidizing rural ones) or on having special programs for poor customers, someone is always footing part of someone else’s costs. Whilst there are a number of ways to do this (including cross-subsidizing, direct subsidizing, or creating special programs for certain categories of users), there are no professional criteria to say what the right way to provide universal service is. It is always a value judgment.

Furthermore, for those concerned with the democratic nature of administrative agencies, the concern will be the strongest in relation to redistributive questions, as will the desire to control the agencies. Two of the explanations used in Europe to justify making agencies independent is making a credible commitment and the need for expertise (Gilardi 2002; Majone 1999; Thatcher 2002b; Thatcher and Stone Sweet 2002). But that logic is weakest on these redistributive universal service issues.

PART III. ACCOUNTABILITY FOR UNIVERSAL SERVICE IN THE THREE COUNTRIES

As explained above, my model suggests that an agency’s choice of accountability strategy varies by issue and specifically depends on an issue’s informational aspects and the political controversy surrounding it.

In relation to universal service, since the issue is low on informational aspects (i.e., cannot be addressed in professional terms), my model predicts that agencies entrusted with universal service issues will want to transfer the
responsibility elsewhere, to defer, if at all possible, to someone else’s policy judgment. Indeed, in my case studies, almost all agencies chose a deference approach on these issues. Their ability to do so varied according to their legal framework and the degree to which it expressly placed responsibilities for dealing with universal service on the agency. But, within that framework, agency members narrowed the areas for which they were responsible as far as possible and stressed their deference to other actors. The one agency that initially did not—indeed could not, since the law placed the issue squarely within its responsibilities—still stressed its responsiveness to others and later moved toward deference.

The one exception supports my argument. As explained above, my model predicts that if an issue has strong informational aspects—that is, requires a high level of expertise and can be framed in professional terms—an agency will emphasize its professional judgment when dealing with it. In the French case, both in electricity and in telecommunications, the law created a funding mechanism for universal service. Assessing the costs of universal service, unlike determining its contents, requires professionalism and understanding of both technical and economic issues; in relation to funding, both agencies took a very different approach than their approach to universal service in general—emphasizing their professional judgment.

On the second dimension it addresses, the breadth of the target audience, my model suggests that agencies direct that deference according to the level of controversy surrounding an issue. That is, the more controversial an issue, the more actors the agency will want involved in the decision making. Again the data from the case studies supports the analysis in the model.

UNIVERSAL SERVICE IN SWEDEN

The law in Sweden was silent on the agency’s responsibility for universal service issues, and accordingly, the regulators found it very easy to point to the government as the actor in charge. They expressly said: it is not our job, taking an explicitly narrow deference approach. Since there were no political pressures on the agency to act on universal service, they did not have to broaden their target audience.

This meant that universal service was not extensively discussed by the Swedish agencies—their approach was clearly defined and meant that the issue, from their point of view, was invisible. For that reason, this discussion is relatively short—but the invisibility of this issue, which is so controversial in other countries, itself supports the claim that if possible, agencies transfer responsibility for these issues elsewhere.

In telecommunications, the Swedish government explained its intention toward universal service in its discussion of the new communications law: “Universal services shall be available to everyone on equal terms throughout the whole country and at affordable prices” (Ministry of Industry 2002: 9). The agency interpreted this provision narrowly. Again and again interviewees
that are members of the regulator stressed that universal service means, for them, geographical coverage, that it has not been a large issue, and that they did not have to deal with it.\textsuperscript{3} When asked explicitly about programs for low-income consumers, an interviewee said that “that’s none of our business.”\textsuperscript{4}

In electricity too, the regulator saw universal service as focusing on geographical coverage and not on providing services to consumers with low incomes. When asked specifically about tariffs for customers with low income, a prominent member of the regulator said:

\begin{quote}
We have no arrangements for people with low income. . . . We have no social tariffs in Sweden, not at all. If you cannot pay your electricity bill—if you are a poor family and need milk for your children, you cannot ask the store for a price reduction because of being poor. If you are poor, you should rely on the social welfare system, not the electricity market.\textsuperscript{5}
\end{quote}

The one obligation the government placed on electricity suppliers in this context is in relation to disconnections. If a supplier disconnects a customer for nonpayment, it has to notify the social welfare services in the local community the customer belongs to. The assumption is that the social services will, if necessary, step in.\textsuperscript{6} And as the regulator does not see this issue as part of its job, there is no information on how common are disconnections and how many families lack electricity.\textsuperscript{7}

In other words, in Sweden, since the agencies are not forced to handle universal service, they pass it on.

**ELECTRICITY IN ENGLAND AND WALES**

After being ordered by the government to become involved in universal service issues, the electricity and gas regulators in England and Wales had no choice but to do something. However, demonstrating the validity of the model above, they went out of their way to use a strategy of deference, either deference to government or to other actors. The strategies the agencies used include emphasizing their responsibility to promote competition, emphasizing the government's responsibility, defining their role narrowly, and involving stakeholders in decision making.

After the Labor Government won the 1997 election, it asked the regulators of electricity and gas at the time, Offer and Ofgas respectively, to prepare a plan to help disadvantaged consumers. The result, a document titled “The Social Dimension: Action Plan—Offer and Ofgas Proposals,” was the first of a series of Social Action Plan documents, under which Offer and Ofgas, and after January 1999 the newly created Ofgem, explained their actions in relation to fuel poverty.\textsuperscript{8} The energy regulators—previous and present—have clearly put a lot of effort into researching, thinking about, and acting on the issue.

All actors taking part in the political debate surrounding energy agree that fuel poverty is an evil and should be dealt with—it is as consensual as
“accountability is good” (I’d say motherhood and apple pie, but there is no longer consensus that apple pie is good for you). Ofgem’s position has been that its primary role is to promote competition, which leads to lower prices. By doing that, it contributes to the fight against fuel poverty. Repeatedly, half or more of the decline in households on fuel poverty is attributed to reduced energy prices—for example:

We have therefore been working to contribute to the Government’s strategy by keeping prices as low as possible . . . The draft Fuel Poverty Strategy acknowledges the contribution which general price reductions have made, these being responsible for 700,000 out of the 1 million households lifted out of fuel poverty in England in the three years to 1999—the largest single cause of reducing fuel poverty. (Letter by Callum McCarthy, Chairman of the Gas and Electricity and Electricity Market Authority and Chief Executive of Ofgem, to Minister of Energy, Brian Wilson Esq., MP, on September 14, 2001; repeated on other occasions)

Ofgem accurately sees itself as only part of a network of organizations working on combating fuel poverty and not necessarily the main one. The main responsibility for combating fuel poverty belongs, in Ofgem’s view, to the government. Ofgem “contributes,” “helps,” compliments, and does its share, but it is not primarily its job (Ofgem 2000, 2001, 2002, 2004a).

Ofgem paints itself as the “aide” and “implementer,” not the policymaker. Therefore, Ofgem’s strategy in insuring its legitimacy is to clarify that: (1) its main contribution toward fighting fuel poverty is to do its role as an expert market regulator well and (2) it is not responsible for these issues alone and to a large extent defers to other actors—the government first and foremost, but as will be seen below, not only.

Ofgem did take primary responsibility in relation to those in debt—especially in allowing them to participate in the competition. It also conducted broad research projects as part of its social action plans (Ofgem 2001). Both of these can be seen as areas where expertise has a role.

Ofgem also encouraged initiatives by industry to help low-income customers. It did so by holding meetings with industry and expressing support for such projects; by positive references to industry initiatives in its reports (Ofgem 2001), and in appearances before parliamentary Commissions. Ofgem encouraged industry response to the disconnection crisis in 2003, sending industry members a cry for action (Ofgem 2004b). It encouraged industry to take action to help customers on prepayment meters, while strictly refusing to allow subsidized prices for them (interview, Ofgem). In addition, in response to industry concerns, it published a report clarifying that special schemes for low-income consumers are not illegal, removing a barrier—or an excuse, depending on your point of view (Ofgem 2004c).

As predicted by the model above, when dealing with social issues, Ofgem took a strong strategy of deference to other actors. It could not completely ignore these issues, since government placed them squarely in its field. But as far as possible, it equated its role in relation to social issues with its role
in general. The best way to help vulnerable customers is to fulfill its job as an economic regulator well—to encourage a free market that should lead to lower prices; to promote competition by improving the chances to switch and the information consumers have about switching; and to conduct extensive research about the functioning of the market. Accordingly, it objected to schemes that conflicted with that role, for example, lowering the tariffs customers using prepayment meters have to pay. When pushed into doing more, it declined the primary responsibility wherever possible. It emphasized the government’s duties and government’s role in leading the way on social issues. It put the burden on energy companies to set schemes and initiatives that will improve the situation in regard to disconnections, prepayment meters, and special schemes for low-income customers. It reserved for itself the role of monitoring, studying, and administering the programs others put in place.

Again, fitting the model, on issues that were not very controversial, such as the energy efficiency commitment and fuel poverty in general, it stressed its deference to government, a relatively narrow target audience. However, on issues that became, or were, controversial, it widened the base it addressed. Thus, on prepayment meters, it held workgroups that included members of industry as well as consumer organizations. Similarly, when disconnections became an issue, it addressed industry, but then consulted extensively on industry’s proposals and put pressure on industry to collaborate with consumer organizations. It also made an effort to work with Energywatch and involve them, with their stronger mandate as consumer representatives, in their decision making.

TEDCOMMUNICATIONS IN THE UNITED KINGDOM

The British telecommunications regulator, unlike the Swedish ones, was charged with responsibilities for universal service in the law creating it. Unable to “pass the buck” through a strategy of deference, it did the next best thing, stressing the responsiveness of its decision making. Fitting the prediction that a larger array of actors will be involved in controversial issues, a broad array of stakeholders was consulted. The role of political actors—government and parliament—was limited to stressing the importance of universal service and pressuring Oftel to do something about it.

For more than ten years, the British incumbent, BT (formerly British Telecommunications), has been required by Oftel to provide special programs for consumers with low incomes. In addition, BT had to answer to the regulator for disconnections. In both cases, the regulator achieved those goals mostly through negotiations with BT (similar to the findings in other areas of other studies of Oftel: Prosser 1997; Hall, Hood and Scott 2000; Thatcher 1999). As Don Cruickshank, Oftel’s charismatic director general from 1993 to 1998, said “the hope was ‘to act on a voluntary basis with the industry and with the education community to complement what
they are doing already—because remember the cable industry are committed
to link-ups and BT are doing it unconditionally’” (House of Lords 1996,
chap. 5, para. 5.69). Consumer organizations were, however, unhappy with
the results, which they saw as underinclusive and put pressures on Oftel,
and now on Ofcom, to change the universal service provisions. Their
success has been limited.

Following its regular mode of operation, Oftel conducted its policy-
making process through “reviews” of the question (e.g., Oftel 1995, 1997a, and
2000). These followed the pattern of sending out a consultation document
to a large number of stakeholders (the incumbent (BT), other operators,
consumer organizations, and political actors); holding public hearings and meet-
ings; inviting written responses and addressing the comments made in them.

Throughout the process, Oftel consistently stressed its responsiveness to
stakeholders and committed to tailoring its behavior to suit their preferences,
thus legitimizing its actions by drawing on stakeholder support:

> We would like your views. Please read the full Consultative Document if you
can—it contains the full details on all the complex issues. (Oftel 1995b, sec. 2)

> Oftel’s preference is to work with the industry to develop improved procedures
for outgoing calls barred service with agreed repayment plans as an alternative
to disconnection for debt. (Oftel 1997b, para. 4.5)

Not settling for the views of those organized enough to attend its hearing
and consultations, in March 2000 it carried out a survey of “unphoned” house-
holds (Oftel 2000). In addition, Oftel had a consumer panel discussing universal
service since 1995 (Oftel’s Consumer Panel 1997). The reason for the panel’s
creation was, in Oftel’s words:

> The DG wished to set up a small, independent group of consumer experts to
advise on the interests of residential users during the review of BT’s price
control. . . . The DG felt that while business customers and the telecoms
industry were well organised lobbyists, it was more difficult to get effective
feedback from residential customers. (Oftel’s Consumer Panel 1997, para. 2)

The Director General’s (DG) expressed wish to be responsive to Oftel’s
stakeholders, and his attempt to proactively engage in dialogue with them
is evident. In its report, the panel mentioned above pointed out several
instances where its advice had impact. For example, it believed that its
support of including an option to make outgoing calls in the low-cost
incoming calls service that BT was about to offer (later the In contact plan)
led BT to allow collect calls as part of the plan and led Oftel to simplify
some of its documents. So Oftel was not only paying lip service when it created
the panel, but actually intended to take consumers’ views on board.

Besides seeking out views of stakeholders and expressly stating its
responsiveness, Oftel initiated a number of work groups that included
consumer and industry representatives to consult on universal service issues.
For example, one workshop was held in February 1996, and further workshops
in summer 1996. Another was held later, to discuss universal service funding, following BT's objections to Oftel's conclusions in 1997 (Oftel 1997a).

Oftel may have preferred to defer to government, but in this case the option was not available: government washed its hands of the issue, addressing it only to pressure Oftel to do something. Therefore, Oftel took action—but went out of its way to act in consensus with the actors, and a wide range of actors at that.

TELECOMMUNICATIONS IN FRANCE

Like the British case, the French telecommunications regulator was charged with certain duties in relation to universal service. However, these duties allowed it to define its role very narrowly, as implementer of government's policy—and it did, expressly taking a strategy of deference.

France has had a tradition of public service, seen as providing basic services citizens need for meaningful participation in social and political life, for many years prior to liberalization (Cohen et al. 1997; Cohen and Henry 1997; de Saint Marc 1996). One of the concerns voiced in relation to liberalization was its effect on the public service (in the sense mentioned above); therefore, the question of “service universel” (i.e., universal service) was in the forefront from the start. The importance of universal service has led the French government to create a funding mechanism for universal service, making France one of the only two countries in Europe to do so. This means that the French universal service operator—at this point still France Télécom—is recompensed for the costs of universal service via a fund to which all the operators contribute. The French experience with funding universal service, however, will probably not encourage other telecommunications regulators to adopt a similar funding mechanism. Not only is funding the universal service a very complex, work intensive process, but it has led to numerous controversies and court cases between the regulator and the operators. Interestingly, the French regulator, l'Autorité de régulation des télécommunications (ART14) had a dramatically different accountability strategy when it comes to determining the benefits and conditions of universal service than it had in relation to funding—even though in some ways, the legal framework is alike. This behavior fits well within my model. Funding universal service requires a high level of expertise. Accordingly, I expect an agency to stress its professional judgment—as the French regulators of both telecommunications and electricity did.

France offered a light user program and a subsidy to low-income customers. ART clearly had a role in determining the sum of the subsidy, and it has some leeway in determining the amount. In every case I examined, up to 2003, the minister has always accepted ART's recommendation on the matter.16 Nonetheless, even though it still has an important influence on policy-making and an important role to play, ART's accountability strategy in relation to universal service decisions is clearly one of deference to political
authorities. Government makes the law, and the law determines what goes into universal service. After that is done, ART administers the law. ART officials openly admit they have quite some leeway to administer the law. But the major policy decisions are clearly made by government and then embedded in law. ART applies the law. One member of ART said:

\textit{whatever is in the universal service is fixed in French law... there is a lot of debate before you change the law on what should be and should not be and how you should do that, we participate in the debate. Whenever it’s voted by the parliament my job is to run the factory’s administrative side.}\textsuperscript{17}

In a speech about universal service given by Jean-Michel Hubert, the President of ART in a colloquium chaired by (then) Prime Minister Jospin, he explained the role of ART:

\begin{quote}
La politique publique trouve sa définition dans une décision de l’autorité politique, Parlement et Gouvernement; la régulation est l’une des composantes de sa mise en œuvre. (Hubert 1998)
\end{quote}

Public policy is defined by a decision of the political authorities, Parliament (referring to the National Assembly) and Government; the regulation is one of the components of putting it into practice. (my translation)

Under the model above, this is not surprising. Determining what benefits should be included in universal service is very much a value judgment. There are no obvious answers or answers that can be reached through calculations or technical assessment. Accordingly, as in Sweden and England, the agency would prefer to defer to the government. It is willing to administer programs and implement rules but not to take responsibility for the major policy decisions.

FINANCING THE UNIVERSAL SERVICE

France, as explained above, is unique in deciding to provide funding for universal service. The French government made this value judgment together with its decision to deregulate telecoms in 1997. And as explained above, in relation to funding, the ART took a different accountability strategy. Since funding is a complex issue that requires a high level of technical expertise, that is not surprising.

The funding system was created in the initial law transposing the first European directives about telecommunication liberalization, but only took shape after the ministerial decree of 1997, setting the details. The decree came into force in May 1997 after two consultations with the newly created ART (ART 2006).

Like the rest of the French Universal Service rules, the scheme was defined in quite a bit of detail in the law.\textsuperscript{18} A formula has actually been specified for calculating the costs. As in relation to other tariffs, the Minister of Industry was granted the authority to actually determine the costs of
providing universal service and the formula for determining the contributions collected from operators. Yet as in relation to other tariffs, the minister regularly accepted ART's opinion.19

ART based its universal service calculations on assessing what are the costs France Télécom would not have if it did not have the universal service obligation, that is, the universal service costs minus what France Télécom would be doing anyway.20 ART regularly publishes its decisions, and it also details the information relating to the universal service calculations in its annual report.21 Customers or customer organizations do not have an input into this process, which is not a high priority for them.22

While the process was never simple, ART managed universal service relatively smoothly in the first years: costs were assessed, the minister approved, and there was little pressure on ART to change its methods. ART was meeting its demanding deadlines.

This changed following the December 2001 decision of the European Court of Justice (ECJ), which found the whole funding scheme illegal under EU directives, forcing the French government to substantially overhaul the system. The rules for funding universal service had to be changed, the calculations for 1998, 1999, and the subsequent years had to be redone, and companies started regularly appealing universal service decisions.

In a context where a funding decision has to be made every year, and where the funding decision itself is complicated and labor intensive, ART's job in relation to universal service became very difficult. ART itself pointed out, in discussions toward rewriting the decree relating to funding universal service following the ECJ's decision, that the changes, although inevitable following the ECJ ruling, will lead to complicated, awkward, and controversial calculations.23 In the years following the rulings, in the assessment of a member of ART, every decision they made in relation to universal service was appealed before the Conseil d'Etat.24 Operators have a clear interest in bringing such cases: if their argument is accepted, they will not have to pay until a new calculation is made, and they may end up paying less. While many of the cases are rejected,25 some are accepted,26 creating upheavals in the system and requiring substantial work. This meant ART was facing substantial uncertainty in relation to funding universal service.

ART'S ACCOUNTABILITY STRATEGY IN RELATION TO FUNDING

If determining the contents of universal service is very much a value judgment, assessing the costs for those contents and the contributions of each operator seems like a professional question. The formula is defined in the law. ART's role is to evaluate the costs submitted by the universal service operator, which requires both technical and economic knowledge (and a lot of work). On the other hand, one of the components in determining funding is the estimated benefits to the universal service provider from providing the service. There are no real numbers for those benefits—ART
has to decide on them, and there are no real professional criteria. Therefore, while funding is much closer to being a professional issue than the contents of universal service, it still requires some value judgments. Under the model we would expect, therefore, that ART would use an accountability strategy of information in relation to universal service funding. This is indeed supported by the data.

From the start, ART held extensive consultations and provided substantial information on its decision-making process (ART 1997a, 1997b). On the other hand, all its documents are very authoritative, rather than responsive. The ART decides, based on its own judgment.

In interview a member of ART explained that “In terms of calculating [universal service’s] cost, paying for its cost, . . .—we have pretty much full powers to applying what the law has said”. ART is not responsive on this issue, and does not defer to other actors. Instead it is accountable by being transparent, by presenting what it does to full view, enabling others to take measures against its choices. While it acts within the law, it stresses not the constraints the law puts on it, but the powers it has within that framework.

ELECTRICITY IN FRANCE

France’s sophisticated array of aid to electricity customers who have troubles paying their bills is not run by the electricity regulator, the Commission de régulation de l’énergie (CRE). The CRE’s approach to benefits is clear and well within the model—it is the government, together with Électricité de France (EDF), the state-owned company, that determines universal service benefits. The CRE defers to their preferences. CRE is very clear on the issue—helping vulnerable clients is not its job. It is someone else’s responsibility. Its role is confined to giving an opinion on the effects of the rules on competition. Accordingly, and as predicted, it takes an accountability strategy of deference.

However, in relation to funding, it takes a different accountability strategy—like ART, stressing its professional judgment. EDF has a substantial range of programs to help vulnerable customers afford their electricity bills, which goes beyond the scope of this article (EDF 2003). Besides these programs, Article 4 of the law transposing the EU directives about electricity liberalization ordered the creation of a social tariff (Law No. 2000-108). However, the article was not implemented for several years. On May 13, 2002, the CRE was asked to give its view on a social tariff proposed by the government. In its opinion, CRE basically said that they have nothing against the government’s proposed tariffs and have “aucune observation a formuler,” no views to offer, except on the effect of this tariff on competition.

The CRE clearly transfers the responsibility for defining universal service conditions to the government. “It’s not us.” The CRE will carry out whatever
specific mission the government wants in relation to universal service, as it
does in relation to funding. But it will not get involved in the thorny
political issue of defining the terms.

FUNDING UNIVERSAL SERVICE

CRE does not see itself as having a role in determining the universal service
terms; but it sees itself as having a substantial role in funding that service.
The funding system in electricity is very different from that in telecommuni-
cations in ways that mean that the CRE faces a lot less problems than the
ART and can adhere to a much more professionally based accountability
strategy. Accordingly, and following the model, CRE took a professional
judgment based approach to its accountability.

A funding mechanism has been set in Article 5 of the Law of February
10, 2000. The monies in the fund were collected from the customers
through an addition to their electricity bill. The amount each operator was
allowed to collect from its customers was proposed by the CRE and
approved by the ministers.

The advantage of this mechanism over the one used in telecommunica-
tions was that while a direct fee from the operators is strongly felt by a con-
centrated, resource-rich group of actors, who have both the incentive and
the ability to resist it strongly, when included in the bill, the fee is spread
over a diffuse group of customers, and for each of them, the amount is not
worth fighting over (Percival 1998; Stewart 1988; Wilson 1980). There were
therefore a lot less conflicts regarding the universal service contribution in
electricity than in telecommunications. In addition, in energy, there is no
discussion of benefits, and the amounts are defined as strictly the costs of
the universal service. Assessing the costs is a professional, technical ques-
tion.33 There is therefore much less room for value judgments, and much
more of a professional/technical question—how do you assess the costs?

Accordingly, it is unsurprising that CRE had an almost pure professional
judgment approach when determining the universal service costs, a member
explaining: “c’est la CRE qui propose au gouvernement le montant de cette
taxe.” “CRE suggests to the government the amount of the [universal service
contribution].”34 And the way they do it? “On regard les comptes de l’opérateur
et effectivement on fait une proposition.” “We look at the operator’s accounts
and propose the amount.”35 This has been CRE’s position consistently (CRE

CRE’s decisions include reference to the annexes that included the
detailed calculation it went through. But no public consultations were held;
no detailed explanations were given. The CRE is not hiding what it is
doing; but it is not claiming accountability because of its transparency.
Instead it demands trust because of its expertise. This pattern has been
repeated in other decisions. The decisions are always short, and detail num-
bers, without explaining how the agency actually got to them. They are
PART IV. DISCUSSION AND POLICY IMPLICATIONS

The first implication of the above analysis is that it is not only those concerned about the lack of legitimacy inherent in nonmajoritarian institutions deciding redistributive policies that do not want agencies to decide distributive or redistributive policy. This study suggests that agencies themselves would also rather not make those kinds of decisions. Agencies worry about the lack of good professional criteria to justify decisions. While professional criteria are often not value free (for example, economic criteria may include a bias toward economic efficiency as opposed to distributive justice), they give agency officials clear standards to use and allow them to justify the decision based on expertise. Issues that are clearly value laden do not allow them this protection. In addition, agencies are aware of the concerns about their legitimacy and would prefer that distributive decisions be made by elected officials. This clearly fits the predictive model described above. As expected, in all these cases the agencies—well aware of the legitimacy issues associated with universal service—did their best to limit what they were responsible for and place as much emphasis as possible on government's role in making policy. The ability of agencies to do that varied from country to country. In Sweden, where the law does not even mention universal service, the agencies simply stated that universal service was in no way their responsibility; in the United Kingdom and France, where the agency has clear statutory-prescribed responsibilities in this area, it was not as simple. However, whatever the law said, agencies were careful to specify their responsibilities in this area in ways that gave them a relatively narrow, implementer role. Within that role, the agency still did its best to transfer or spread responsibility. On the other hand, in determining the costs of universal service, the French regulators behaved very differently. In relation to funding, the agencies' accountability strategy was much closer to the professional judgment end of the continuum, as expected for an issue that has strong professional aspects. They did not have the same concerns as in determining the benefits.

One question left is how generalizable is this finding. Would this be true also in relation to agencies whose main goal is to deal with social benefit issues? At least one study, of the U.S. Social Security Administration suggests that it, too, frames issues in ways that avoid making redistributive decisions regarding social benefits (see Mashaw (1983), where the three approaches to the agency's task were bureaucratic rationality (efficiency), professional treatment, and moral judgment translated into applying the rules correctly and giving the benefits to those that deserve them). But clearly more research into this question is required.
Beyond the issue of universal service, this study raises broader questions. The findings above support the arguments that accountability can take different forms and that accountability behavior varies by issue. This has important implications to the discussion of accountability.

In the modern world, accountability is something everyone claims they want (Behn 2001; Bovens 2005; Dubnick 2002; Dubnick and Romzek 1991; Harlow 2002; Lerner and Tetlock 1999). Policymakers work at ensuring agency accountability. However, this study suggests, they are not considering possible contradictions between different forms accountability can take. If an agency is accountable through being transparent, emphasizing its expertise, it is not being deferential. Criticizing it for failure to defer to other actors ignores the fact that it is accountable, only in a different way. And not considering the form of accountability means that policymakers do not consider what form of accountability they desire. Instead of discussing in which cases an agency should be deferential to its political masters and in which cases expertise is more important, the term “accountability” is brandished about as if generally discussing it solved problems.

Much like trade-offs between policy goals, policymakers need to consider and take into account trade-offs between different forms of accountability, and between those forms and the purpose of the agency. If certain issues were given to an agency to be determined by expertise, responsibility to stakeholders is not necessarily a value (and in fact raises concerns of capture). Similarly, if the goal of creating an agency is creating credible commitments (Gilardi 2002; Majone 1999; Thatcher 2002b, 2002c), the agency needs independence, and demanding that it defer to politicians is self-defeating. Accountability through information and transparency can solve the dilemma between accountability and independence (Majone 1994). On the other hand, if an agency is created with the express purpose of implementing a social goal desired by the political masters, it should defer to the political will and not exercise its own judgment. These are the situations in which we have a principal-agent problem and where discussion of solving it is meaningful (DeShazo and Freeman 2003; McCubbins, Noll and Weingast 1987, 1989). The form of accountability used should affect the demands that can be legitimately aimed at the agency. An agency accountable through information and transparency can be attacked for not being transparent, but it is inconsistent to attack it for not deferring to the political authorities. Unsuitable expectations can be ineffective, or have negative consequences, demoralizing agency officials and leading to defensive behaviors (such as those created by too much regulation in Bardach and Kagan’s study (1982)).

In the extreme case, lack of distinction between forms of accountability means that an agency will be expected to be accountable in all the different ways at the same time. Since these demands contradict each other, an agency will fail inevitably to comply with some of them. This could lead to a situation where accountability means nothing but punishment Behn (2001). However, many calls for accountability desire ex-ante control, not
just ex-post blame. Punishing the agency whatever it does will not achieve that goal.

In addition, the form of accountability may affect the outcomes. The degree to which an agency responds to stakeholders will naturally affect who wins and who loses. It affects an agency's susceptibility to capture, though the exact effect needs to be thought about further. On one hand, responsiveness, in an area where there is no strong interest group and industry is the strongest actor, can lead to capture; on the other, if all experts are bound to industry in some way, so can a strategy of professional judgment. In areas where expertise is important, the accountability strategy may also determine whether the results will actually be achieved. Going back to the Challenger tragedy, Romzek and Dubnick's (1987) study suggests that in relation to when should a spaceship take off, professional considerations should be primary, and an agency should be allowed to act according to its best judgment—and maintain transparency so it can be caught if it "runs away." A different approach can lead to a spaceship exploding, a result desired by no one. The only way to achieve results on issues that require a high level of expertise is to leave them to experts. On the other hand, in relation to determining the level of benefits given to low-income people, an agency should defer to its political masters since how a country treats its poor is a question best handled by the political process. Either of these propositions can be challenged, but the questions of which form should accountability take should at least be discussed and considered. At present, they are not.

Finally, this model suggests that there is a limit to the degree outsiders can affect an agency's accountability strategy. If an issue is clearly professional, an agency will usually not defer to others in relation to it. The legislator can take an issue out of an agency's hand at times by detailed legislation or transfer to another agency, courts can order it to do or not do certain things (though it is doubtful whether courts will, if it is a very professional issue—they are more likely to add in procedural mechanisms and affect decision-making processes (Graham 2000; Scott 1998; Shapiro 1988)). Barring that, though, an agency will be accountable through professional judgment or through information, but it will not be very responsive to stakeholders' preferences and will not defer to another actor (and as I suggested above, that is not necessarily a negative thing). How can an agency's strategy be changed in this case? One way to do so is to force it to consider arguments beyond the professional ones and try and transform the issue definition into a value-laden question. For example, a change in agency personnel can do so; adding environmentalists to forestry agencies that had been populated by timber experts can inject additional values into the discussion. Outside actors can emphasize the nonprofessional aspects of an issue and make sure the agency addresses them. But the strategy to use is one attacking the issue definition, not one demanding that the agency defer to others.

On the other hand, increased participation can almost always be attained by putting political pressure on an agency, which will lead it to increase its
target audience—publish information more broadly, include more actors in
discussion, listen to more actors. Is that desirable? As pointed out by Shapiro
(1988) and Kagan (2001), the ability of many actors to participate can lead to
deadlocks, bad policy results, a costly and lengthy decision-making process,
or distortion of the policy-making process. Other scholars (Fung 2006; Graham
2000; Hirst 1994), though, as well as some of my interviewees strongly believed
that an inclusive policy-making process can lead to better decisions, since it
produces more information and enables to take everyone's preferences into
account. The concern that too much accountability can be paralyzing can be
met by recognizing that there is a whole menu of different strategies of
accountability, some more appropriate for certain policy issues than others.

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NOTES

1. To paraphrase and adapt the definition of accountability used by cognitive psycho-
logists (see Lerner and Tetlock 1999: 255), accountability is the "implicit or explicit
expectation that one may be called on to justify one's beliefs, feelings, and actions
to others... also usually implies that people who do not provide a satisfactory
justification for their actions will suffer negative consequences ranging from
disdainful looks to loss of one's livelihood, liberty, or even life... Conversely, people
who do provide compelling justifications will experience positive consequences."

2. But one that has been accepted by the European Union, which addressed
universal service as part of both its telecommunications and electricity reforms.

3. Interviews, PTS and STEM.
4. Interview, PTS.
5. Interview, STEM.
6. Though a consumer representative claimed that the actual treatment by the social
services varies from locality to locality, and some do not handle it well. Interview,
Customer ombudsman. There is, however, no indication on whether this is a
problem and if it is, how widespread it is.
7. Whether because the other mechanisms are effective enough to make such pro-
vision unnecessary, or because of the strong belief of the Swedish electricity regulator
and ministry in market mechanisms in relation to the electricity sector, is unclear.
8. In England, the question of universal service in energy is dealt with under the
heading of "fuel poverty." Fuel poverty relates to households that have to pay
more than 10% of their income on energy to achieve accepted standards of
heating. Studies pointed to tens of thousands of winter deaths from cold, due to
poorly heated houses (Offer and Ofgas 1998).
9. Though in this context without mentioning specific schemes. See, for example,
the appearance of Callum McCarthy, John Neilson, and Virginia Graham from
Ofgem before the House of Common's Select Committee on Trade and Industry
on Thursday 23 May 2002, answer to question 196.
10. My focus is on Of tel since in the time of research Of com was new and still feeling
its way on these issues.
11. One of the Director General’s primary duties was to “secure that there are provided throughout the United Kingdom . . . such telecommunications services as satisfy all reasonable demands for them including, in particular, emergency services, public call box services, . . . and services in rural areas” (art. 3 (1)(a) of the Telecommunications Act, 1984). One of the secondary duties is “to promote the interests of consumers, purchasers and other users in the United Kingdom (Including, in particularly, those who are disabled or of pensionable age) in respect of the prices charged for, and the quality and variety of, telecommunications services provided” (art. 3 (2)(a), Telecommunications Act, 1984).

12. “The hon. Gentleman said that the proposals would prevent the poorest from signing up. He ignores the new scheme being introduced by BT to spread the cost of signing up and, therefore, make it easier for people to do so” (House of Commons Hansard Debates for March 5, 1991, in response to a question attacking the effect of liberalization on access). “5.64 The Information Society is not an exclusive club. Every British citizen should be able to become a member. In the long term, the aim must be that a majority of homes will have access to the Information Superhighways, perhaps via a low cost, low memory terminal or a television set-top box. But until this ideal is achieved, and, indeed, as a necessary stage towards achieving widespread knowledge, skills and use of IT, special arrangements will need to be made for public access” (House of Lords, Select Committee on Science and Technology, 1996, chap. 5, para. 5.69). See also Hall, Scott and Hood (2000: 78, 92), in their discussion of universal service, describing how the political masters stepped in to take control when Oftel was not living up to their standards and how Oftel had to negotiate with both the ministry and consumer organizations on the issue.

13. BT offered a number of special low priced schemes, including the Light User Scheme (LUS), First offered at the end of 1993 and included in BT’s license as Section 24d and In Contact, Initiated in 1998, but take up remained low until the introduction of In Contact Plus in April 1999. Customer organizations criticized these schemes on two important grounds. First, low use—which these programs reward—is an imperfect proxy for low income. Some vulnerable consumers need to use the phone quite heavily. They may be housebound and depend on the telephone for connection with the outside world; or they may be minorities with many relatives abroad (Klein 2003). Second, neither program is particularly generous. For LUS, the rental charges (the monthly fee paid for the line) are not reduced, and the program places a heavy limit on what the customer can use. In Contact had a low joining fee and reduced rental charge, but the initial program did not include outgoing calls (except to emergency numbers) and with In Contact Plus, where the customer can buy a calling card to call out, the price of calls is higher than the regular price.

14. Today, it is l’Autorité de Régulation des Communications Electroniques et des Postes (ARCEP). I am using the name under which it was known at the time of the field research.

15. The first program started before liberalization. In 1994, when the price of the line was raised, France Télécom created a special program called “ligne à faible consommation” (Line for Low Usage) which offered low users a reduction equal to 13–38% (varied by geographic area) of the price of subscription. ART’s role here was to advise the minister, but it did not initiate any of the plans and did not supervise their implementation. In 1999, the telecommunications code was changed by a government decree, creating a scheme for low income customers. Those customers were defined in some detail in the decree: “Les personnes physiques qui ont droit au revenu minimum d’insertion ou qui perçoivent l’allocation de solidarité spécifique ou l’allocation aux adultes handicaps . . . les invalides de guerre cumulant le bénéfice des articles L. 16 et L. 18 du code des
pensions militaires d’invalidité et des victimes de la guerre dont les invalidités supplémentaires sont évaluées à 10 % pour le calcul du complément de pension prévu à l’article L. 16 dudit code, les aveugles de guerre bénéficiaires de l’article L. 18 du code précité et les aveugles de la Résistance bénéficiaires de l’article L. 189 du même code”—that is, real people (not corporations) eligible for minimum income supplement or several other social benefits and wounded veterans (Decree 99-162). The new scheme meant that those eligible (“ayants droit”), would have a certain sum, determined annually by the minister following an avis (i.e., an opinion—in effect, a recommendation) from ART, deducted from their monthly bill.

16. ART’s recommendation for 2001 (ART 2001) was accepted on February 28, 2001. ART’s recommendation for 2002 (ART 2002a) was accepted in February 2002; ART’s recommendation for 2003 was accepted in February 2003. These last are also from ART (2006).

17. Interview, ART. Emphasis added.


19. Interview, ART. Table comparing Minister’s decisions to ART’s initial recommendation with author.

20. Interview, ART. To do this, it created thirty-five categories of localities in France based on popular density, and assessed where it is profitable for France Télécom to operate and to what degree. The difference between the actual universal service costs and the amount France Télécom would invest anyway is the net cost. Then, ART assesses the benefits France Télécom gets from being the universal service provider and subtracts that from the sum. The costs are placed on operators according to a formula that grants them a certain deduction (so that small operators end up not paying at all). Initially, it was based on the volume of calls an operator has, but since 2003, the assessment is according to the income operators have (after a certain calculation). France Télécom also contributes and is in fact the largest contributor to the fund. Until the change of method in 2003, Internet service providers who did not have a fixed line network were not contributing to the fund.

21. Interview, ART.

22. Interview, ART.

23. ART, 2002b: “exprime néanmoins de fortes réticences à ce que l’on s’engage sans possibilité de retour dans la voie de calculs compliqués, faisant appel à une procédure particulièrement lourde et contestable.”

24. Interview, ART.


27. Interview, ART.
28. "L'Autorité est chargée d'évaluer le coût net des différentes obligations de service universel et les contributions des opérateurs au fonds de service universel. Le ministre chargé des télécommunications, sur proposition de l'Autorité, constate ces montants." Interview, ART.

29. Interview, ART.

30. Interview, EDF.

31. The explanation suggested by a number of French interviewees is a political one; when the 2000 law was passed, the government in place was the socialist government headed by Jospin; that government lost its power in 2002 and was replaced with a center-right government of UMP. That government did not seem in a hurry to implement the article. However, that does not explain why a social tariff was not set between 2000–2002 when the Jospin government was in place; nor does it explain why a social tariff in telecommunications was put in place much earlier.

32. "Dans le cadre de sa mission de régulation, la CRE examine les tarifs qui lui sont soumis pour avis au regard des règles de concurrence et de bon fonctionnement du marché. Le coût du dispositif prévu par le projet de décret étant supporté par les consommateurs non éligibles n’en bénéficiant pas, la CRE n’a aucune observation à formuler. . . . ce projet de décret précisant strictement les conditions de mise en œuvre de l’article 4 de la loi du 10 février 2000, la CRE émet un avis favorable.” “As part of its regulatory mission, CRE examines the tariffs submitted to its review in relation to the rules of competition and the good functioning of the market. As the cost of the arrangements suggested by the decree is supported by non-eligible consumers who are not benefiting from competition, CRE does not have any observation to make . . . . as the decree adheres strictly to the terms set in article 4 of the law of February 10, 2000, the CRE gives a favorable opinion” (my translation).


34. Interview, CRE.

35. Interview, CRE.

36. Interviews, Ofgem. Interview, Ofcom. Interview, NCC. Everyone here, of course, is everyone who took part in the discussion, not all interested parties.

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