



**TELECOMMUNICATIONS & BROADCASTING:
Keep it Canadian**

A submission to

**Government of Canada: A Consultation on Foreign Investment in
Telecommunications
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By

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ABOUT US

ACTRA brings the particular perspective of 21,000 professional performers working in the English-language recorded media in Canada to this consultation. For more than 67 years we have represented the performers living and working in every corner of the country who are pivotal in bringing Canadian stories to life in film, television, sound recordings, radio and digital media. We also represent ACTRA Recording Artists' Collecting Society (ACTRA RACS) which distributes neighbouring rights and private copying monies to musicians.

The American Federation of Musicians Canada is the leading professional organization of its kind available to Canadian musicians. Everyday AFM Canada helps thousands of musicians with any number of issues related to the recording and performing of their craft. Operating in both official languages, the organization draws on the experience and strength of more than 90,000 musicians, with over 17,000 active members in Canada alone. Proudly celebrating 31 remarkable years of service, AFM Canada is uniquely positioned to address Canadian issues, and provides vital resources for Canadian musicians, at any stage in their careers.

EXECUTIVE SUMMARY

When it comes to the question of foreign ownership in telecommunications and broadcasting, ACTRA and AFM Canada have an easy and simple solution: the government must do *nothing*. Do not relax the rules.

Canadian ownership is a cornerstone of Canadian public policy

Owning and controlling our own communications systems is an essential and long-standing principle of Canadian public policy; it is even more critical in the increasingly digital world. In order to succeed in the digital economy, Canadian-owned broadcasting and telecommunications companies must be able to prosper so that we can control the means of production and distribution of creative content. That means maintaining the current restrictions on foreign ownership in telecommunications and broadcasting.

You can't separate telecommunications and broadcasting

We also believe that you can't open up telecommunications to foreign investment without impacting broadcasting. These two industries do not operate in isolation of each other. Indeed with the unprecedented level of convergence in Canada, they are nearly impossible to separate.

Canadians can invest more in telecomm

We know that there needs to be increased innovation, competition and investment in both sectors. However, we can get the job done without increasing foreign ownership.

Unfortunately the Government seems to already have made up its mind

Finally, we take offence that the government is holding these consultations while having already made up its mind to sell-off Canadian telecommunications. Cabinet's overturning of the CRTC's decision on WindMobile was quickly followed by strong statements of intent in the 2010 Throne Speech and Budget. We were also extremely alarmed by the government's recent decision to slide the removal of foreign investment

restrictions applicable to providers offering satellite telecommunications services into the 2010 *Budget Implementation Act* (Bill C-9, Section 2184). Most recently we were alarmed to see Heritage Minister James Moore launch consultations into foreign ownership of the publishing and book distribution industry.

It did not go unnoticed that the scope of these consultations is not 'if' foreign investment is required, but 'how much.'

The risks are greater than the benefits

Relaxing limits to foreign investment in broadcasting and telecomm will not bring a net benefit to Canadian consumers or the Canadian economy. In fact, we believe that the negative impact will be profoundly greater than any potential benefit and therefore implore the government to keep foreign ownership limits as is.

**TELECOMMUNICATIONS & BROADCASTING:
YOU CAN'T TALK ABOUT ONE WITHOUT THE OTHER**

Relaxing the foreign investment rules in broadcasting is only mentioned in the first of the three options for reform presented in the context of these consultations. However, it is our belief that broadcasting will be impacted by *all* of the options. In some countries it may be conceivable to talk about telecommunications and broadcasting separately, but that is not the case in Canada. Here, convergence isn't just a buzzword it's our reality. Perhaps even more than any other country, Canada's telecommunications and broadcasting sectors are inextricably linked.

With increasing corporate consolidation and the rapid evolution of technology – telecommunications and broadcasting have converged. Vertical integration means that telephone companies own cable, broadcast and satellite assets; and cable companies own telecommunications, satellites and broadcasters. Moreover, content is being delivered to Canadians through all of these channels – telecoms and ISPs are effectively becoming broadcasters. You cannot separate them and this reality shows no signs of changing any time soon; if anything we can expect the lines to blur even further.

In a February 2010 report on Canada's communications industry, the CRTC noted that:

The spheres of telecommunications and broadcasting are rapidly evolving and converging into a single world of communication...The largest Canadian communications companies engage in content production, broadcasting, broadcast distribution and telecommunications access. In 2008, 80% of communications revenues in Canada were generated collectively by eight communications companies that provided both broadcasting and telecommunications services.¹

The Conservative government recognized the extent of convergence when it created the Canada Media Fund, which merged the pre-existing Canadian Television Fund with the Canada New Media Fund. The innovative Convergent Funding Stream supports Canadian projects on at least two distribution platforms, one of which is television. This

¹ CRTC, *Navigating Convergence*, Section 3.10

forward-thinking strategy will encourage the distribution of Canadian programming across multiple platforms to Canadians and audiences around the world.

When describing the economic impact of Canada's cultural industries in a speech at the 2009 Banff World Television Festival, Minister of Canadian Heritage James Moore said: "I mention all of this combined for a reason – because they are converged. They are not converging, the convergence is now, and Canada's new creative economy is here today."²

Canada's largest communications companies understand today's converged environment and are preparing to take advantage of new digital opportunities. In March, Shaw Communications announced it was sinking \$100 million into building infrastructure to enter the cellular market in 2011, adding to its powerful presence in satellite, cable, telephone, and internet. Looking to the future, Shaw is planning how best to offer broadcasting across multiple platforms should the conglomerate gain control of Canwest Global – a move widely anticipated by industry analysts.³

Convergence means that if Rogers, Telus, Shaw, Videotron or Bell were to be bought by foreign interests, we would lose control not only of our telecom and satellite industries, but we would also be one small step away from foreigners owning our broadcasting and media industry.

THE CULTURAL OBJECTIVES OF THE TELECOMMUNICATIONS ACT

The cultural and social objectives of the *Broadcasting Act* are well-known and abundantly clear. However there seems to be a common misconception that the *Telecommunications Act* does not share these same objectives.

More specifically, we are concerned that the government's approach to foreign ownership of telecommunications places disproportionate and prejudicial importance on the commercial objectives of the *Telecommunications Act* while ignoring its cultural and social purpose.

Section 7 of the *Act* explicitly outlines multiple commercial and non-commercial objectives with goals as diverse as encouraging innovation and enriching the social fabric of Canada.

It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives:

(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

² The Honourable James Moore, *Speech at 2009 Banff World Television Festival*, June 7, 2009

³ *Globe and Mail*, *Shaw steps up with 'a quad play'* by Iain Marlow, April 13, 2010.

(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;

(d) to promote the ownership and control of Canadian carriers by Canadians;

(e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;

(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;

(g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;

(h) to respond to the economic and social requirements of users of telecommunications services; and

(i) to contribute to the protection of the privacy of persons. [emphases added]⁴

The importance of the role telecommunications plays in strengthening Canadian sovereignty has been reiterated on numerous occasions over many years by various governments and parliamentary committees. For instance in the early '90s then-Minister of Communications Perrin Beatty rejected attempts by the Senate to remove the references to sovereignty in the *Telecomm Act*, remarking:

“The reference to sovereignty underscores and supports several of the policy objectives that follow it. By their very nature telecommunications do indeed perform an essential role in the maintenance of Canada’s identity and sovereignty. ... The references to identity and sovereignty, together with the recognized role of telecommunications and strengthening the social fabric of Canada, should be sufficient to reflect the increasingly important role that telecommunications systems play as key delivery systems for Canadian cultural products and services.”⁵

The *Telecommunications Act* is clear: telecomm and sovereignty are interconnected. The government cannot cherry-pick from sections of the *Telecommunications Act*; it has an obligation to respect the overarching objectives and purpose, and in doing so, must acknowledge that the *Act* prescribes cultural and social goals.

⁴ *Telecommunications Act*, 1997.

⁵ House of Commons, 3rd Session, 34th Parliament, May 11, 1993, Standing Committee on Communications and Culture, pp. 8:5-6, 8: 9-11.

CANADIAN CULTURAL SOVERIEGNTY

Let there be no doubt, increased foreign control of Canadian telecommunications and broadcasting would damage Canada's sovereignty over cultural policy, jeopardize Canadian content regulations and deepen the crisis in Canadian TV drama. Even with current Canadian majority ownership of our telecoms and broadcasters, Canadians are fed a steady diet of U.S. programming. Our culture is being marginalized and would be more so with a relaxing of ownership rules. Without Canadian ownership of our airwaves, the future of Canadian broadcasting and Canadian culture will be at stake.

Canadian broadcasting is a public good. It is critical to the health of our democracy and our unique cultural identity. Broadcasting shapes our opinions, our outlook on our community, our nation, our world and ourselves. It is too influential, too precious and too tied to who we are to let it fall into foreign hands.

We are already largely dominated by American culture. Our films barely make it into our multiplexes. We fight to get Canada's private broadcasters to schedule our own programs in prime time. Our culture certainly cannot survive – let alone flourish – if our prime time schedules are dictated by executives at NBC Universal in Los Angeles.

A healthy democracy needs diversity in programming choices and editorial opinions. We cannot have a healthy democracy when all of our news rooms are in New York, Washington and Chicago. How will we know what's happening in our communities? How will our elected leaders communicate and learn about their constituents? We believe that Canadian voices are worth hearing, sharing and celebrating. We must not open the door to foreign ownership and allow those voices to be drowned out.

Culture is a serious business that plays a critical role in the economic health of our country. Canada's cultural industries contribute more than \$85 billion – constituting 7.4 per cent of Canada's real gross domestic product (GDP) – and more than 1.1 million jobs to our economy.⁶ In 2007/08, the film and TV industry represented \$5.2 billion in production, generating 131,600 jobs, that's 51,700 full-time jobs directly in production, and a further 79,900 spin-off full-time jobs in other industries in the Canadian economy.⁷

In 2008, Canada's communications sector in particular – which includes telecommunications and broadcasting – accounted for nearly 4.5% of Canada's GDP. Broadcasting revenues represented approximately one quarter (26%) of that amount and telecommunications revenues accounted for approximately three quarters (74%).⁸ In other words, any regulatory changes would inevitably have profound economic impacts.

ACTRA and AFM Canada absolutely agree with the government's assertion in the paper presented to these consultations that the telecommunications sector is critical to the digital economy. We believe it will play an increasingly greater role in our economy and in fuelling technological innovation. However we also believe that as telecomm carriers

⁶ Conference Board of Canada, *Valuing Culture: Measuring and Understanding Canada's Creative Economy*, August 28, 2008.

⁷ CFTPA. *The Guide 2009*, February 2009.

⁸ CRTC. *Communications Monitoring Report, 2009*, Section 3.1, August 2009.

take on an increasing role in the distribution of creative content and programming, their role in preserving Canadian sovereignty will also become increasingly important.

In our recent submission to the government's national digital economy strategy consultations, we advocated for the importance of Canadian content. Given the right tools, Canada's cultural industries will continue to be an engine of Canadian economic growth by encouraging innovation, promoting training and skills development, improving media literacy and creating jobs. Technology has changed the way Canadians engage with media, but what hasn't changed is that content is king. In fact, the demand for content has never been higher. Millions of Canadians are calling their ISPs to increase their internet downloading capacity. They're snapping up Blackberries and standing in line-ups for iPads. Why? Because of the *content* that these innovative tools deliver to them.

Broadcasting and telecommunications are the future of our knowledge-based economy. If we have no control, or no voice, we will not only lose our culture, but a huge piece of our economy. Canadians have seen what happens to other industries when they get bought out by foreign companies. They come up here for a while, take advantage of some tax breaks, then shut the plant down and ship the equipment overseas tossing Canadians aside to the unemployment line and their skills and knowledge along with it. One need look no further than Sudbury where workers at Vale Inco's mining and processing plant – which was bought by the Brazilian conglomerate in 2006 – have just voted to end a 12-month strike, or Voisey's Bay Labrador where Vale workers have been on the picket line for more than a year.

It is the government's duty to strive to make our telecommunications and broadcasting industries stronger. Canadians are rightfully proud of Canadian companies, such as Research in Motion (RIM), who have become global players while attracting the best ideas, pushing innovation and increasing our country's wealth. But Canadians do not agree that opening the doors to foreign investment is the only or the best way to achieve these goals.

INCREASING INVESTMENT, COMPETITION AND PROTECTING CONSUMERS

There is no question that Canadians are being gouged by cable and telecomms. Our wireless industry alone is a key example: three players – Rogers, Bell and Telus dominate 95% of the market. They also have the heftiest profits of any other providers in the developed world, according to a report from Bank of America Merrill Lynch. They're also making more off each user each month, US\$54.73.

Some argue that foreign ownership is the golden ticket to giving Canadian consumers a break on their mobile and cable bills. However, there is no evidence that allowing foreign ownership brings down cable or wireless bills and makes prices fairer. But there is proof that regulation does. The problem here is not lack of foreign ownership, it is lack of regulation.

We do not see any evidence that points to foreign ownership as the cure-all to increasing competition. Indeed, if foreign investment restrictions are relaxed or eliminated, the likely scenario is that 10 years down the road Canada will still have a

duopoly in telecomm – but instead of Rogers and Bell we'll have foreign-owned corporations that are much harder to control and regulate.

There was no need for the government to overturn the CRTC and bring Globalive's WIND Mobile in through the back door to create more competition. We believe that Canada's identity and culture will ultimately be undermined by the federal government's decision to grant a licence to Globalive – an Egyptian-owned and controlled company – to operate a wireless service in Canada. The Globalive decision does not square with the requirements of the *Telecommunications Act* such as the rule that all communications companies be effectively owned and controlled by Canadians.

There are a number of Canadian companies ready and willing to enter the market. Public Mobile and Mobilicity have already opened its doors and with others not far behind. It makes economic sense to support our own Canadian companies and keep the money and innovation in our own country.

CANADIANS AGREE: KEEP IT CANADIAN

In a recent poll, Canadians (68%) confirmed that they continue to believe broadcasting and communications are too important to our national security and cultural sovereignty to allow foreign control of Canadian companies in these sectors. A summary of the Harris-Decima Poll commissioned by ACTRA, the Communications, Energy and Paperworkers Union of Canada, and Friends of Canadian Broadcasting, is appended to this submission.

A clear majority of Canadians are against allowing foreign ownership in the telephone industry (55%), cable (54%) and broadcasting (57%), according to the survey.

Given the converged nature of the telecommunications and broadcasting industries, with telephone companies owning broadcasters and cable companies offering phone service, many informed observers believe it is impossible to open one sector to foreign ownership and not the other because they are direct competitors.

The survey shows that Canadians believe the outcome of foreign control of Canadian media and communications companies will be less Canadian content. Half (48%) of respondents believe Cancon would decrease under foreign owners, while only 13% believe Canadian programs would increase and 36% believe Cancon levels would remain the same.

The poll also found that 64% of Canadians are more likely to vote for candidates who oppose giving control of Canadian media to foreign interests, up slightly from November 2007 when this question was last posed. Only 21% are more likely to vote for a candidate who is in favour of allowing foreign companies to own more of Canada's broadcasting and telephone companies.

Canadians are clear when it comes to the importance of their culture: 81% of Canadians (50% strongly) agree that it is important that the Canadian government work to maintain and build a culture and identity distinct from the United States.

CANADA'S UNIQUE GEOGRAPHIC & ECONOMIC POSITION

Canada is not alone in taking precautions to ensure foreign ownership does not get out of hand. Almost half of the OECD countries have restrictions on the ownership of telecommunications and broadcasting – including the United States. Spain, Australia, New Zealand, Norway, Korea and Japan also have restrictions.⁹ While the level of restrictions varies, none of them are in Canada's position of sitting within broadcasting distance of the biggest exporter of English-language cultural material in the world.

Canada is also exceptional in the high level of convergence between broadcasting and telecommunications; no other country shares the same level of cross-ownership in these industries. Appearing before the Industry Committee hearings on foreign ownership in telecommunications last spring, Dimitri Ypsilanti OECD Head of Information, Communications and Consumer Policy, noted that while Canada has strict foreign ownership rules, he also conceded that Canada is in a unique position: "To my knowledge, there are no countries where the telecom operator actually own broadcast facilities, in the sense of terrestrial broadcast facilities."¹⁰

Comparisons with other countries of the benefits from minimal foreign ownership rules must therefore be taken with a grain of salt as the Canadian communications experience is distinct. Canada is uniquely vulnerable; it follows that we must be uniquely vigilant.

CONCLUSION

It is the government's duty to strive to make our communications industries stronger; not sell them off. These industries are the future of our knowledge-based economy. If we have no ownership, or no voice, we will not only lose control of our culture, but of a huge piece of our economy.

The bottom-line is that Canadians need to control our telecommunications and broadcasting. Convergence in these industries means foreign ownership rules for telecommunications cannot be relaxed without affecting broadcasting and in turn Canadian content creation.

⁹ OECD, *Communications Outlook 2009*, Pages 47-49 & 228-237, August 2009.

¹⁰ Standing Committee on Industry, Science and Technology, *Minutes of Proceeding*, April 13, 2010.