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Director General
Telecommunications Policy Branch
Industry Canada
16th Floor, 300 Slater Street
Ottawa, Ontario
K1A 0C8

Dear Sir:

**Re: Opening Canada's Doors to Foreign Investment in Telecommunications:
Options for Reform Consultation Paper**

Saskatchewan Telecommunications (SaskTel) provides the following comments in response to Industry Canada's June 2010 consultation paper entitled "*Opening Canada's Doors to Foreign Investment in Telecommunications: Options for Reform.*"

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Hersche".

Robert Hersche
Director of Regulatory Affairs
/am

Introduction

1. SaskTel welcomes the opportunity to participate in this important consultation on reforming Canadian foreign ownership rules in telecommunications. SaskTel recognizes that the Federal Government fully intends to “open Canada’s doors to foreign investment in key sectors” and acknowledge the potential benefits for Canadian consumers and businesses of a more flexible foreign investment regime. As a result, SaskTel is not opposed to relaxing the foreign ownership rules.
2. While supportive of the potential for rule changes, SaskTel believes that the expansion of foreign ownership rules will have far reaching effects on many aspects of telecommunications. Changing ownership rules must be part of an overall policy strategy for telecommunications. Changes cannot be undertaken in isolation without examining the impacts foreign ownership may have on the widening rural/urban digital divide or companies that distribute broadcast content.
3. In Saskatchewan, SaskTel competes head-to-head with significantly larger and well capitalized companies for phone, Internet, television, wireless and premise security services – the quintuple play. Should other, larger players wish to enter and compete in SaskTel’s market the company will adapt and succeed, provided the Government of Canada ensures an equal playing field.
4. SaskTel believes it will succeed because we continue to add value for Saskatchewan residents with capital investments and service improvements, including recent initiatives like the Rural Infrastructure Program which will provide high speed Internet service to approximately 99 percent of the Saskatchewan population and the launch of its new 3G+ wireless network allowing SaskTel to offer faster network speeds, a greater selection of devices, increased roaming capability and more applications and content.
5. These investments will allow SaskTel to effectively compete with a variety of industry players, be they owned domestically or through foreign investors, creating jobs, and providing real consumer benefits.

6. However, SaskTel does not intend to endorse any specific option or model of reform as proposed in the consultation document. Rather, SaskTel is suggesting some key principles or conditions that should apply to any set of rules ultimately adopted. These conditions would apply regardless of the foreign ownership limit set by the Federal Government.
7. In our view, removal of foreign ownership restrictions must be done on an equitable basis for all Canadian carriers (not content creators) - large and small, telecommunications and broadcast. Equally important, foreign ownership changes must be implemented in a way that rural interests are protected and the current urban-rural digital divide is not exacerbated.

Symmetry

8. SaskTel believes that symmetry among incumbents and new entrants and small and large companies is imperative in liberalizing foreign ownership policy. Should the rules for foreign ownership be relaxed, SaskTel submits that there be a requirement that all companies compete equally under the same rules. Rules can no longer favour new entrants on the altar of competition. These new entrants will be larger and better capitalized than many existing firms. They will not need any special treatment or liberalized regulations to provide a head start to achieve market share.
9. Any new rules should also apply symmetrically between large and small carriers. As many industry participants have noted, “[a]symmetrical rules, such as setting more restrictive foreign ownership limits for large companies than for smaller companies, will introduce new regulatory distortions into the marketplace by artificially disadvantaging one class of service provider relative to other classes.”¹ Micromanaging the market in this fashion should be avoided.
10. Liberalization of foreign investment rules should be done in a way that treats all carriers in a fair and competitively neutral manner.

¹ Bell Canada Submission to the *Government of Canada Digital Economy Strategy Consultation*, 9 July 2010, paragraph 32.

Distribution of Broadcasting

11. Similar distortionary effects will arise from the Federal Government's intent to open foreign ownership only to telecommunications carriers but not the carriage industry of broadcast distribution undertakings (BDUs). Communications infrastructure is converging and enabling services that were previously separate, such as voice, data, audio and visual, are now distributed over the same network.

Regulations that ignore this technological evolution by treating telecommunications and broadcasting carriers differently in terms of foreign ownership restrictions could distort the evolution of digital services in Canada.²
12. SaskTel supports liberalizing the rules for all carriers, including cable, satellite and IPTV companies, while still maintaining these restrictions with respect to the ownership of traditional broadcast undertakings like Canadian radio and TV programming services that are responsible for content creation.
13. SaskTel believes a distinction should be made between those service providers that distribute content or act as a conduit for information communicated by others from those that play a role in the content creation itself. In July 2010, the Federal Court of Appeal ruled that providing access to broadcasting through the Internet is not the same as broadcasting.³ Internet Service Providers or BDUs have minimal to no affect on Canadian broadcasting content, and, in turn, Canada's cultural sovereignty. Ownership of undertakings associated with carriage, by foreign investors should not be an issue.
14. Changes to the *Telecommunications Act* and the *Broadcasting Act* may be necessary, to clarify for the courts signal carriage or distribution from content creation. This will mean allowing greater foreign ownership activity in BDUs such as the cable delivery of broadcasting signals and IPTV undertakings. By separating the carriage of content and the creation of content there is no risk to Canadian cultural industries. It is also unnecessary to amalgamate the

² Ibid., paragraph 35.

³ Federal Court of Appeal Judgment concerning docket A-303-09, 7 July 2010.

Broadcasting Act and *Telecommunications Act*, one of which embodies the need for Canadian content, the other focusing on carriage and distribution of that content, respectively.

15. SaskTel agrees with those studies that have indicated that separating broadcast carriage and content rules is an effective way to ensure that our cultural objectives are not undermined. The 2006 Telecommunications Policy Review Panel, for example, noted that the European Union has two separate directives – one to address carriage issues provided by telecommunications common carriers and cable networks; the other to deal with content. The Panel suggested Canada consider such an approach. More recently, the House of Commons Industry Committee heard evidence that, “it is possible to build a firewall from a legislative and regulatory standpoint between ownership of carriage (sometimes referred to as the “pipes” or “pipeline”) and content.”⁴ As one expert witness concluded,

Canada is, in fact, one of many OECD countries that have regulations favouring local content and the diffusion of domestic broadcast content, yet these other countries do not seem to find the need to restrict investment in the telecommunication sector. If they want to protect the content sector, they do so directly with other laws and regulations.⁵

16. In addition, in order to further allay cultural concerns, any changes to the foreign ownership rules could have Federal Cabinet retain authority to screen significant investments to ensure they are in the public interest.

Rural-Urban Digital Divide

17. Overall, SaskTel believes that opening telecommunications to more foreign capital may result in more competition, lower pricing and greater innovation in the urban markets of Canada. However, SaskTel believes that it is unlikely that these same foreign companies will begin to invest and compete in rural areas, causing Canada’s digital divide to expand. This will mean that companies such

⁴ Report of the Standing Committee on Industry, Science and Technology, “*Canada’s Foreign Ownership Rules and Regulations in the Telecommunications Sector*,” June 2010, Chapter 4.

⁵ Dimitri Ypsilanti (Head, Information, Communications and Consumer Policy Division, Directorate on Science, Technology and Industry (Paris), Organisation for Economic Co-operation and Development, Evidence of the House of Commons Standing Committee on Industry, Science and Technology, *Canada’s foreign ownership rules and regulations in the telecommunications sector*, Meeting No. 8, 13 April 2010, paragraph 0905.

as SaskTel, who are the providers of last resort in rural areas, will find their abilities to shoulder the burdens of serving low density areas imperiled as they are required to devote their focus and resources to competing effectively in urban areas.

18. SaskTel is not alone in this view.

19. The House Industry Committee observed that,

the goal of a business, whether Canadian or foreign-owned, is ultimately to maximize profit, not to achieve a given societal objective. From this perspective, there is not much difference between a Canadian telecommunications company and a foreign-owned one; neither will invest in a project for the sole purpose of providing services to rural and remote areas if the project is not commercially viable. Only government policy could ensure that such investments are undertaken.⁶

Bell Canada voiced a similar sentiment in its submission to the digital economy consultations stating,

[a]nother unintended consequence could result from foreign competitors' targeting of urban areas to the exclusion of rural areas. This is likely as higher urban population densities provide better opportunities to maximize investment returns. ... The focus on urban areas by foreign-owned competitors will require Canadian competitors to dedicate their scarce investment capital to fortify their urban capabilities. As a consequence, investments in rural areas will suffer.⁷

20. Foreign ownership changes must be implemented in a way that rural interests are protected, and the best protection is a safeguard like the National Contribution Fund. The National Contribution Fund has proven to be an effective regulatory tool in the past, fulfilling important public policy goals like universal basic telephone service without jeopardizing overall government deficit containment.

21. Consequently, SaskTel is supportive of the Federal Government's desire to relax the foreign ownership rules but on the condition that the National Contribution Fund is maintained and reformed to meet the future needs of rural telecommunications including the provision of affordable broadband.

⁶ Report of the Standing Committee on Industry, Science and Technology, *Canada's Foreign Ownership Rules and Regulations in the Telecommunications Sector*, June 2010, Chapter 3.

⁷ Bell Canada Submission to the *Government of Canada Digital Economy Strategy Consultation*, 9 July 2010, paragraph 34.

22. A National Contribution Fund is the only way to incent investment and competition in rural and northern areas and the provision of affordable, advanced services in rural areas.

Conclusion

23. SaskTel supports lifting the foreign ownership rules but with two key conditions which are necessary to maximize potential benefits of reform for Canadian businesses and consumers.
24. Fairness requires equal treatment for all carriers regardless of size or ownership.
25. Moreover, there is a fundamental question whether more permissive foreign ownership rules will provide any benefits to rural and remote areas of Canada – in fact, an unintended consequence may be to worsen the urban-rural digital divide.
26. Without a strong commitment to a dynamic, long-term National Contribution Fund, the digital divide in Canada will grow and rural residents will be increasingly excluded – in short, telecommunications service in rural and northern areas of Canada will become unaffordable and ongoing investment in advanced services in rural areas untenable.