

*An Historical Analysis of Foreign Ownership Restrictions in the Canadian  
Telecommunications Sector*

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## **Introduction**

In addition to a several thousand mile long border, Canada also shares a variety of cultural, economic, historical, sociological, and technological similarities with the United States. These numerous commonalities have helped foster close ties between the two countries. As the U.S. State Department's March 2000 *Background Note: Canada* attests:

The bilateral relationship between the United States and Canada is perhaps the closest and most extensive in the world. It is reflected in the staggering volume of trade -- over \$1.4 billion a day--and people--over 200 million a year--crossing the U.S.-Canadian border.

Canada and the United States also share one of the world's largest bilateral direct investment relationships. Stock of U.S. direct investment in Canada was estimated at \$116.7 billion, or about 72% of total foreign direct investment in Canada at the end of 1999. Conversely, Canada is the third-largest foreign investor in the United States with direct investments totaling approximately \$90.4 billion at the end of 1999 (*Background Note: Canada*; U.S. Department of State, March 2000).

Canada's multiple similarities to the United States coupled with large disparities in population and market size (Canada's market is approximately ten times smaller than its U.S. counterpart), have historically raised Canadian fears of cultural, economic, and political domination at the hands of its southern neighbor. Some Canadian intellectuals such as Dallas Smythe in *Dependency road: Communications, capitalism, consciousness, and Canada*, have characterized Canada's contemporary relationship vis-a-vis the United States as one of dependency and quasi-colonialism (Smythe, 1981; Collins, 1990).

Given Canada's dilemma, as a 1999 *Economist* article points out, "... Canadians define their country not by what it is, but what it is not. The word they invariably use "un-American"

(*Economist.com: Holding its own*, 1999). Canada's determination to distinguish itself from the United States has frequently manifested itself via the government's pursuit of domestic and foreign policy initiatives that vary, and in some cases, are in direct conflict with American endeavors. Canada's maintenance of diplomatic relations with Cuba over the past forty years despite intense pressure from the U.S. government to sever them is just one highly contentious example of the nation's independent-minded policy making. Canada's predilection for pursuing "alternative policies" is even broached in the State Department's *Background note: Canada* which notes "Although Canada views its relationship with the U.S. as crucial to a wide range of interests, it also occasionally pursues policies at odds with the United States."

### ***The Role of Communications in Canadian Nation Building***

For Canada, communications has played a predominate role in helping forge a sense of shared identity, linking a population dispersed over an immense landscape, and most importantly helping stave off American cultural encroachment. Sir Henry Thornton, Chairman of the Canadian National Railroad (CNR) and an early proponent of broadcasting declared, "it is only through nation-wide broadcasts that we shall accomplish what we regard as most important, the encouragement of a feeling of kinship between all parts of the country. We regard the use of radio as a national trust" (Thornton quoted in Boyle, n.d.).

The importance placed upon communications as a nation building tool coupled with concerns over potential U.S. domination have spurred numerous Canadian government initiatives intended to defend and foster indigenous Canadian culture and preserve national unity over the years. This paper will examine one of these measures -- the imposition of foreign ownership restrictions on the telecommunications sector. Although various industries within the sector will be discussed throughout the paper although the broadcasting and cable television industries serve as the primary focus of the analysis<sup>1</sup>.

Specifically, the paper will address the following questions:

- 1) What foreign ownership restrictions have been placed upon the telecommunications sector by the Canadian government over the years?
- 2) What rationale did the Canadian government offer for imposing ownership restrictions?
  - a) Was the United States brought up in any context during these discussions?
- 3) What, if any, changes have been made to foreign ownership restrictions over the years?
  - a) If changes were made, what prompted them?
- 4) What, if any, opposition by domestic or foreign parties were raised to the restrictions?
- 5) What impact did the restrictions have upon the development of Canadian industries in the sector?

In order to address the above questions, the paper is divided into four interconnected sections. The first section will provide a brief overview of the Canadian broadcasting and cable industries. This will be followed by a historical survey of Canadian telecommunications development and the role U.S. firms played in its evolution. The third section of the work examines foreign ownership restrictions placed by the Canadian government upon these sectors over the years and the motives behind the actions. The final section of the paper explores the increasing internal and external pressures exerted upon the Canadian government to loosen these restrictions and the possible ramifications for Canada if changes do indeed occur.

### **The Canadian Telecommunications Sector: An Overview**

Historically tied "... organisationally, technically, functionally, and even, politically and legally -- to conditions south of the border" (Winseck, 1998, p. 91), telecommunications played a leading role in forging the Canadian nation. Broadcasting, for example, was viewed by Canada's leaders as a "strategic industry", central to the Dominion's continuing process of nation-building

and self-assertion. This viewpoint has remained in the forefront of Canada's domestic policy to the present time (e.g., CRTC, 1999; Tate, 2000).

Today, the telecommunications sector remains a vital component of the Canadian economy: "The Communication industries -- telecoms, computers, and broadcasting (cable and over-the-air) -- account for approximately 6% of the gross domestic product (GDP) have annual revenues of approximately \$33 billion (cnd), and employ 250,000 people (Statistics Canada, 2000).

The Canadian broadcasting system features a mix of public (e.g., the Canadian Broadcasting Corporation--the CBC) and private broadcasters (e.g., CTV, Global). The first public Canadian television stations were launched by the CBC in 1952; four years after US networks began regular broadcasting into Canada. CTV, the first privately-owned television network began broadcasting in 1961.

From 1906 until 1993, Canadian telecoms were regulated under The *Railway Act* while broadcasting was separately regulated through a series of legislation leading up to the Broadcasting Act of 1991. The Canadian Radio-television and Telecommunications Commission (CRTC) serves as the statutory authority over broadcasting and telecommunications in accordance with the *Canadian Federal Telecommunications Act*, the *Radiocommunication Act*, and the *Broadcasting Act* while Industry Canada issues licenses to all telecommunications and broadcasting operators and regulates all equipment specifications (Jeffrey, 1996, p. 248; Linton, 2001).

The mandate for Canadian broadcasting set forth in section 3 of the Broadcasting Act, states:

The Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private, and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public

service essential to the maintenance and enhancement of national identity and cultural sovereignty.

The development of Canadian broadcasting and the role the Canadian government played in its evolution varied somewhat from the American experience. As Dwayne Winseck points out, "Even though Canada may have been more aligned with the United States in commercial affairs, it remained tied to the orbit of English political affairs. As such, it is not surprising that the emerging telecoms policy environment in Canada contained elements from both contexts" (Winseck, 1998, p. 92). Consequently, the role of the Canadian state in telecommunications policy has neither conformed to the model of "regulatory neglect" in the United States or that of "direct and active intervention" in Europe (Wilson, 2000; Winseck, 1998, p. 108).

Using broadcasting as an instrument for promoting "Canadian identity" has been a goal of Canadian broadcasting policy dating back to its earliest days. However, pursuit of this goal also requires recognition of economic conditions facing private and public broadcasters. Moreover, the special interests of French-speaking Quebec must also be taken into account (Holznagel, 1996, p.191). These factors have prompted Canadian federal and provincial governments to provide significant financial support for Canadian television program production via various agencies and investment programs including Telefilm Canada and the Canadian Broadcast Development Fund (CBDF).

### **Early Canadian Telecommunications Development and American Influences**

As Table 1 indicates, the United States has wielded a significant influence upon Canada's telecommunications sector since the introduction of the telegraph in the mid-1800's. The evolution of telegraphy in Canada was closely aligned between the growth of telegraph networks and the needs of the press in the United States (Wilson, 2000; Winseck, 1998, pp. 79-80). The

United States has also frequently served as a source of capital for telecommunications expansion. For example, the Anglo-American Telegraph Company, responsible for constructing the first successful trans-Atlantic cable in 1865, "... was authorised to raise unlimited capital in Newfoundland, New York, and London" (Winseck, 1998, pp. 82-83). Moreover, during the late 1800's, initial development of the telephone Canada was carried out by the Dominion and Montreal telegraph companies in Ontario and Quebec while the Western Union Telegraph Company began similar activities in part of the Maritimes (Winseck, 1998, p. 117).

The Canadian telephone system was also integrated into the U.S. network from the outset through patent licenses, manufacturing subsidiaries, interlocking corporate directorates and cross-border purchasing arrangements with U.S. National Bell. By 1929 the Canadian system would be hardwired into the U.S. network at several points, including London, Montreal, Niagara Falls, and Toronto (Wilson, 2000; Winseck, 1998).

The *Bell Telephone Company of Canada Act* (1880) marked the first time that the Canadian government authority "... explicitly embraced telephony" (Winseck, 1998, p. 119) with the Act granting Bell extensive rights to develop telephone systems across the country (Winseck, 1998, p. 6). During Bell Canada's expansion, its American-based namesake would hold widely varying ownership interests in the company. At the outset, American Bell held a 50% ownership interest in Bell Canada but its stake fell to 40% in 1905; 30% at the end of the 1920s; and near zero by the mid-1970s. One conclusion Babe (1990) draws from this history is that "telephony has hardly been an instrument of national unity and sovereignty" (p. 89) -- popular political rhetoric aside. Indeed, the Act enabling the new company contained no restrictions on foreign ownership whatsoever" (Winseck, 1998, p. 119). The seeming contradictions between the government's cultural goals and economic practice remain a vexing problem for

Canadian telecommunications even today and therefore merit further examination in a later section of this paper.

Beyond Bell, another important U.S.-based owner of Canadian telephone companies has been GTE. As Winseck notes, "it did not extend its activities into Canada until 1916 and did not completely engulf its predecessor, the Okanagan Telephone Company, until 1966. Through its holding company, Anglo-Canadian Telephones, set up in 1926, it has owned the vast majority of the stock in British Columbia Telephones and Quebec Telephones" (Winseck, 1998, p. 150).

Due to the close bonds between Canadian and American telecoms, Canada largely followed the precedent set by the 1926 Consent Agreement in the United States that forced AT&T to leave broadcasting and telegraphy in return for promises from General Electric, Western Union, Westinghouse, Zenith and RCA to refrain from the telephone business (United States Senate, 1926, p. 5480 cited in Winseck, 1998, p. 10).

### ***Emergence of the Broadcast and Cable Sector in Canada***

Although television broadcasts would be available to the American public during the 1940's, the first Canadian television station license would not be issued until 1952. In the meantime, Canadians living within range of U.S. broadcast signals could view programming offered by American stations. In fact, Canadian viewers were actively courted by a number of American border stations such as WBEN Buffalo which erected a "very tall antenna to reach the population of the Hamilton-Toronto area" (Boyle, n.d.; Holznagel, 1996). Despite the introduction of domestic television stations and concerted efforts by the Canadian government to promote indigenous television programming, English Canada's appetite for American television has yet to significantly subside after almost fifty years of Canadian television.<sup>2</sup>

Cable systems first appeared in Canada during the late 1940s and expanded quickly in the



1950s. The systems extended television to rural areas beyond the reach of over-the-air broadcast signals. As Boyle notes, "most systems concentrated on carrying American signals and had been built largely where telephone companies could easily supply trunklines" (Boyle, n.d.). During this period, cable lacked any appreciable government restraints imposed on cultural or competition policy grounds as the Department of Transportation (DOT) freely issued licenses including licenses to wire the same area. The Canadian government's laissez faire approach to cable allowed American-based cable firms to make substantial inroads into Canada's market. American cable firms' northern forays were so successful that by the late 1950s and early 1960s, U.S.-based firms owned many of Canada's cable systems. (Report of the Task Force on Broadcasting Policy, 1985, p. 553; Winseck, 1998). Moreover, with the exception of news and sports programming, it proved far more economical for both Canadian and American-owned television stations to purchase American programming in lieu of producing programming specifically for the Canadian market.

### **1968: The Imposition of Foreign Ownership Restrictions on Broadcasting**

The 1960's were a period of profound cultural, political, and social change in Canada. In Quebec, secessionist voices were intensifying while, at the same time, western provinces also experienced growing alienation from their eastern brethren. Amidst this political and social upheaval, Pierre Elliot Trudeau was elected as Canada's fifteenth Prime Minister in April 1968. Trudeau, a staunch defender of Canadian Confederation, moved "toward a more nationalist position in economic relations with the US" while also igniting a newfound sense of Canadian identity among the previously seemingly fractured population (Whitaker, 1999, p. 2392).

In March 1968, one month prior to Trudeau's election, Canada's fourth *Broadcasting Act* gained royal assent. As Roger Bird explains, the Act reflected a number of concerns regarding

### Canadian broadcasting:

Lester Pearson's Liberal government was concerned about the continuing conflict between the CBC and the Board of Broadcast Governors (the forerunner of the CRTC), the pressure from all broadcasters for more licenses in the lucrative markets and the wave of technological change that was altering the whole shape of broadcasting. Behind all this was the public's growing conviction that television was having unpleasant and unpredictable social and political effects (Bird, 1989, p. 373).

The 1968 Act established the CRTC as an "independent" regulatory agency. In reality, however, the CRTC's independence would not be absolute since a provision of the Act allowed the federal cabinet "to instruct the CRTC as to 'the classes of applicants to whom broadcasting licences may not be issued'". In October 1968, the federal cabinet took advantage of the proviso and began sending the CRTC a number of directives "... which defined with some precision the act's general notion that 'the Canadian broadcasting system should be effectively owned and controlled by Canadians'". As a result of these directives, foreign ownership of Canadian broadcasting and cable systems was limited to a 20%, noncontrolling interest (Bird, 1989, p. 406; Fraser, April 20, 2000).

Although national security concerns have been traditionally provided the primary rationale for the imposition of foreign ownership limits (Gates, 2000; Canavan, 1999), in Canada's case, economic--and to a lesser extent-- cultural motives appear to driven their adoption. Within four years the limits served to "repatriate" \$125 million worth of broadcast undertakings out of a total of \$150 million. Nonetheless, as Winseck notes, "... it did so at the expense of fueling higher levels of corporate concentration in cable and broadcasting, as only those with deep pockets could marshal the requisite resources to acquire the U.S.-owned systems in such a short period of

time (Winseck, 1998, p. 182). Rogers Communications, the largest cable system currently in Canada was one of the many beneficiaries of foreign ownership limits (Fraser, April 20, 2000).

Winseck also observes that although ownership limits strengthened a small number of Canadian capitalists like Ted Rogers at the expense of American capitalists, "... it did little to serve -- and perhaps even hindered -- the goals of media politics or ... cultural production" (Winseck, 1998, p. 182).

Today, foreign ownership in the Canadian telecom sector is still limited to 20% direct voting shares and 33% of shares in parent or holding companies. Nonetheless, 'stacking' or combining investments allows a foreigner to effectively control as much as 46.7% of a Canadian media company's voting shares. Additionally no foreign investment limits are imposed on non-voting shares. In a 1997 directive, the Canadian government "... increased foreign ownership of Canadian broadcasting undertakings to the same levels as those in place telecommunications" although the government reserves the right to "... exercise its discretion in the cultural sector to restrict or permit foreign ownership beyond statutory limitations" (Gates, 2000).

In comparison, the United States restricts direct ownership of U.S. broadcasting assets to 20%, and indirect ownership to 25%. Restrictions do not apply to telecommunications carriers unless they hold radio licenses (e.g., wireless carriers). It is important to note that in Canada, cable is subject to the same ownership restrictions as conventional broadcasters while in the United States the 20% ownership limits do not apply to cable systems since cable is not defined as "broadcasting" (Fraser, April 20, 2000; Bird, 1989; Gates, 2000).

### **1980's - 1990's: The Regulatory Revolution**

During the early to mid-1980's, Canada's political winds once again experienced a marked shift in direction. Under the leadership of Brian Mulroney and the Conservative party,

the Canadian government would pursue more conservative, market-oriented, and "less government" policy making approaches in both the domestic and foreign policy arenas.

In addition, several other internal and external factors also helped drive Canadian telecommunications policy: (a) linkages between domestic communication law and international trade agreements; (b) the relationship of telecommunications to economic development strategies; and (c) a desire for Integrated Broadband Networks (IBNs). Various influential Canadian business and industry groups, moreover, also actively lobbied for government support for telecommunications liberalization and deregulation. The financial sector also played an influential role in exerting pressure upon the government for regulatory reforms. Canadian and U.S. banks such as J.P. Morgan, Citicorp, and Bond Co. among others strongly advocated increased market liberalization and privatization not only in North America but throughout the world.

Although privatization served as a key plank in the Conservative-led government's agenda, Canada's deregulation and liberalization efforts during the 1980s and early 1990s, although appreciable, lagged approximately 10 years behind similar efforts in the United States (Orr and Wilson, 1999, p. xiv). The slower pace of regulatory change was largely attributable to the fact that Canada opted to take a more incremental approach toward deregulation than in the US (Wilson, 2000).

#### *The Impact of International Trade Agreements on Telecommunications Liberalization/Deregulation*

Although regulatory liberalization predates free trade, there are basic linkages between changes in Canadian telecommunication laws and international trade agreements. Three multinational agreements, all covering communication issues, that have had domestic telecommunication policy implications include the 1987 Canada-U.S. Free Trade Agreement

(CUFTA), the 1992 North American Free Trade Agreement (NAFTA), and the General Agreement on Trade in Services (GATS). The foregoing trade regimes structure and formalize the rules of trade as well as encouraging trade among the members. Consequently, these agreements place additional pressure on the signatory governments (i.e., Canada and the US in CUFTA, Canada, Mexico and the US in NAFTA) to harmonize legal, regulatory, and economic practices domestically as well as across the continent (Winseck, 1998; Tate, 2000).

During the past decade, several highly-publicized Canada-U.S. disputes involving foreign ownership of telecommunications interests have taken place within the purview of these agreements. The first dispute, which began in 1994, involved U.S.-based cable channel Country Music Television's (CMT) access to the Canadian market. Ragosta, Magnus, and Shaw (1996) summarize the dispute as follows:

In 1994, after CMT had been on the air in Canada for a decade creating a market niche for 24-hour country music video service, the CRTC decided to block Canadian distribution of CMT's programming to make way for a Canadian-owned "clone" service. Following a petition by CMT, the U.S. Trade Representative (USTR) initiated a Section 301 investigation, and, in March 1996, determined that the Canadian access policies leading to CMT's eviction are "unreasonable," are "discriminatory," and "burden or restrict U.S. commerce.

This dispute arose over Canada's "excessively broad interpretation" of the cultural exemptions clause in the NAFTA agreement. Following the U.S. government's intervention in the dispute and "threatened retaliation" a commercial settlement was made in the case. As a result, CMT and New Country (the Canadian-owned country music cable channel) merged for purposes of the Canadian programming feed. Furthermore, the newly created entity included a

large enough Canadian ownership interest to be deemed "Canadian" and therefore "... eligible for favorable regulatory treatment including a 'must carry' commitment imposed on cable distributors" (Ragosta, Magnus, and Shaw, 1996).

The second notable Canadian-U.S. dispute revolved around whether Power DirectTV, a U.S. affiliated "direct-to-home" (DTH) satellite distribution service would be eligible for a license to provide service to Canadians. In 1995, the CRTC received two applications, one from PowerDirect TV and the other from Express-Vu, a wholly Canadian-owned corporation, for licenses to begin offering DTH service. Initially, the CRTC granted a license to Express-Vu while denying Power DirectTV's application but was later overruled by the federal cabinet. Nonetheless, the conditions attached by the CRTC to Power DirectTV's eventual license proved "... so onerous as to make the entire venture no longer worthwhile" (Ragosta, Magnus, and Shaw, 1996). After several years and ownership shuffles at Express-Vu, it would eventually manage to become a reality albeit the service was not a initial success with the Canadian public since it did not offer the same scope of American programming as U.S.-based DTH services. Although purchase of U.S.-based DTH services for use in Canada was deemed illegal by the Canadian government, a thriving gray market for the service emerged that continues to the present day.

As the 1990's progressed, the pace of telecommunications liberalization and deregulation accelerated in Canada as multinational trade pacts along with the other forces addressed above continued to exert pressure upon the CRTC to maintain it's competitive, free market course of action.

### **The "4 C" Dilemma: Consolidation, Convergence, Cross-Media Ownership, and Culture**

Although Canada has taken enormous strides in deregulation and liberalization of its telecommunication sector over the past two decades, a number of important issues still remain

largely unresolved. Four major interrelated issues: (a) convergence, (b) cross-media ownership, and (c) balancing telecommunications and broadcasting policies with cultural objectives, and (d) globalization will be discussed since each of the issues will undoubtedly influence foreign ownership patterns in the sector.

### *Consolidation*

Control in the Canadian cable industry today largely rests with three players: Rogers, Videotron, and Shaw. Over the past few years, Canadian regulators have largely supported mergers of Canadian broadcasters and cable companies in order to encourage *national champions* -- companies who could "... form a protective barrier against American and other foreign programming" (Willis, 1995). The Canadian government utilizes the *Mergers Enforcement Guidelines* benchmark figure of "35% market control" by one firm to determine whether a merger *could* lead to excessive market control. However, exemptions can be granted to these guidelines if regulators deem that the benefits of technological innovation and global competitiveness is perceived to outweigh the costs of regulation.

### *Convergence*

As noted earlier, Canadian regulatory policy traditionally regarded telecommunications and broadcasting as separate entities, guided by differing laws and policies (e.g., the Broadcasting Act as opposed to the Telecommunications Act). Moreover, a 1969 policy barred common carriers from owning cable systems except in rural and remote communities. In the ensuing years, however, technological innovations eliminated many of the earlier distinctions between the two communication systems. Canadian telecommunications companies not unlike their counterparts throughout the world are currently engaged in a frenzied effort to position themselves for the envisioned "converged" world of the future by, among other things: (a)

forming alliances, mergers, partnerships with other players who may own/control infrastructure, technologies, or garner market share in areas where "pooling" of resources that could help the companies make further progress toward their desired goals; (b) seeking out new market areas both at home and abroad; and (c) rolling out new products/services.

### *Cross-media ownership*

In acknowledgment of the market realities within the sector, in 1995 the CRTC established the following conditions that would permit telecommunications carriers to enter broadcasting:

- telecommunications companies would not be limited to carrying broadcast programming for others but could produce content themselves
- telecommunications companies would not have to produce content via a separate affiliate
- all carriers -- telecommunications companies, cable, satellite, wireless, etc. -- will be regulated by the *Telecommunications Act* (1993) when providing telecoms services and the *Broadcasting Act* (1991) when offering broadcasting services. Thus, there would be reconvergence in facilities but continued separation of media along the lines of content (CRTC, 1995a, pp. 23-35)

In the years following the CRTC's alleviation of restrictions on cross-media ownership, telcos, broadcasters, and publishers have been forming cross-media alliances at a dizzying pace. In the year 2000 alone, several large-scale cross-media ownership deals took place that fundamentally altered the Canadian communications landscape. In the first instance, Rogers Communications (cable television, broadcasting, telecoms) acquired MacLean Hunter (publishing and broadcasting). Interestingly enough, before divesting its U.S. holdings several years ago, Rogers cable was also one of 10 largest cable operators in the United States (Fraser, April 20, 2000). In the second case, Bell Canada Enterprises (BCE -- Bell Canada's parent company) purchased partial ownership of the direct-to-home satellite service ExpressVu and later also acquired CTV, Canada's largest privately-owned TV network. As a result of the



purchase, BCE now enjoys a dominant position in both Canadian telecommunications and broadcasting.

Cross-media ownership supporters stress that the arrangements provide resource and facility efficiencies while also offering "one-stop" shopping for consumers. On the other hand, critics of cross-media ownership point to a number of concerns regarding the potential for one company to control multiple communication systems. Specifically, concerns have been raised over the following points: (a) the potential of a single company to not only control the broadcasting and telecom equipment but also the transmission lines as well as the messages transmitted; (b) the lack of consumer choice; (c) privacy; and (d) pricing.

Undoubtedly, globalization is playing an increasingly larger role in the decision making processes of Canada's broadcasting and cable leaders as media industries in Europe, the United States, and elsewhere become increasingly transnational. Over the past few years, even Canadian media companies such as CanWest Global and Rogers as noted above have engaged in foreign expansion efforts (Fraser, April 20, 2000).

### *Culture*

The Canadian government continues to pursue a competitive market model of telecommunications regulation while, in the broadcasting realm, remains committed to following cultural protection policies and foreign ownership restrictions which by their nature are anti-competitive (Orr and Wilson, 1999, p. xiv). This situation creates a huge dilemma for the CRTC since the agency provides regulatory oversight of both broadcasting and telecommunications. The situation is further complicated by the convergence of voice, data, and video which increasingly blurs the lines between "telecommunications" and "broadcasting" as discussed above.

### **Recent Regulatory and Industry Developments**

The Canadian government faces ever-increasing levels of pressure to ease or eliminate foreign ownership limits and other non-tariff barriers on broadcasting and cable. Recent calls for regulatory change has come most vociferously from Canadian cable operators in search of foreign capital infusions. Over the past several years, Ted Rogers has repeatedly urged the federal government to remove foreign ownership rules. These sentiments have been echoed by the Canadian Cable Television Association (CCTA), the cable industry's lobby group as well as by their broadcasting counterpart, the Canadian Association of Broadcasters (CAB). In 2000, the CCTA also released a deregulation manifesto, *The Integration of Culture and Commerce* calling for the loosening of ownership rules in order to allow greater access to foreign capital sources (Fraser, April 20, 2000).

In a further development, at the end of June 2001 an Industry Canada committee recommended that the government loosen ownership restrictions on telecom companies. Speaking at a cable convention prior to the report's release, Industry Minister Brian Tobin stated that the federal cabinet would study the report and make a response by fall 2001 (Livingston, 2001).

Pressure to ease and/or eliminate foreign ownership and other non-tariff trade barriers has also come from the United States and international trade organizations. Ironically, many of the same Canadian companies now calling for changes in the ownership limits lobbied the federal government to maintain the ownership caps prior to the last round of the World Trade Organization (WTO) negotiations<sup>2</sup> (Fraser, April 20, 2000).

In a quasi-"turnabout is fair play", Canwest Global and other Canadian media companies have been actively lobbying American government officials to allow Canadians to own the same interest in a U.S. broadcaster as an American can own in a Canadian one. "Foreign ownership

rules in the United States currently set a benchmark of 25% ownership of an American broadcaster." However, on a case by case basis, this level can be exceeded unless the FCC can show that an acquisition of 25% would not be in the public interest (Management roundtable: Questions and answers, 1998).

At first glance, it may appear quite ironic that Canadians such as Ted Rogers whose corporations are predominantly built upon the protection afforded to them by foreign ownership limits and who previously vigorously defended the limits now argue for their removal. However, beyond their Canadian heritage, these individuals are businessmen striving to keep their companies afloat in increasingly consolidated, capital-intensive, technology-driven world. Over the next few years, Rogers and other Canadian telecom companies will require substantial infusions of capital to help pay for multi-billion dollar network expansion and digital conversion projects as well enabling the firms to more effectively compete with global players (Luna, 2001). Easing or eliminating foreign ownership limits would allow these companies to secure larger amounts of capital from sources beyond Canada while at the same time likely decreasing the overall costs for funds (Livingston, 2001). Supporters also point out that loosened ownership rules would allow Canadian and American companies to make joint capital expenditures and offer more leverage with suppliers (Luna, 2001).

Some observers such as Matthew Fraser take a bit more cynical view of the Canadian cablers plight, noting: "The same laws and regulations that helped them consolidate domestically are now impediments to foreign capital injections, global expansion and sell-outs at premium prices" (Fraser, April 20, 2000).

### **Future Shock? The Ramifications of Regulatory Changes for Canada**

A number of Canadian telecommunications analysts and industry insiders' vow that it is not

a question of if, but rather when, foreign ownership limits will be eased or eliminated.

Nonetheless, beyond the timing of regulatory change, a number of questions still remain regarding what this change will ultimately mean not only to the Canadian telecommunications sector but to the nation as a whole.

As shown in Table 2, the majority of Canada's telecom companies currently have an U.S. or European investor. Some analysts forecast that once the 33% foreign ownership cap is lifted, smaller Canadian telecommunications companies "will be ripe for takeovers by U.S. or European interests". Changes in ownership rules could also allow U.S.-based companies such as Level 3 and Qwest, for example, to use some Canadian network links that are currently off limits under current law (Livingston, 2001).

In the future, should US and other foreign-based firms come to dominate all aspects of Canadian telecommunications, they may face a backlash from Canadian politicians and nationalist sectors of the population similar events that ultimately resulted in the divestiture of American-owned cable systems in the 1960's. It would certainly be imprudent to believe that issues of cultural sovereignty and "Canadian identity" will vanish into thin air especially with as foreign ownership levels increase. Instead, culture will arguably remain a difficult problem for both domestic and international policy makers for the foreseeable future.

As Vincent Mosco asserts, the fundamental restructuring of the Canadian political economy during the past twenty years is attributable to a combination of internal and external forces:

This resulted from intense corporate pressure to cut government spending and streamline social welfare programs, from continental and global trade agreements, and from the creation of a world economy policed by the United States and global trade organizations like the World Trade Organization, the World Bank, and the International Monetary Fund. This has

certainly left its mark on the communication sector. With the disappearance of the Department of Communication ... the policy vacuum has been filled by an Industry Ministry whose mandate is to promote the market in every facet of social life. Industry Canada and the no longer even formally independent regulator, the Canadian Radio-television and Telecommunications Commission, have implemented a strategy that has eliminated most public interest regulation (Mosco, 1998).

It is indisputable that Canada's regulatory transformation has had an appreciable impact on virtually every aspect of Canadian telecommunications ranging from telephone and cable television service to satellite communications. However, it is uncertain how these changes will ultimately impact the average Canadian.

Consumer advocates along with individuals from other segments of Canadian society have suggested implementation of a tiered system that would allow greater foreign ownership levels for smaller telecom companies while adding restrictions for larger ones. Another suggested scenario involves the government directing foreign investors to reinvest a portion of their earnings on "... resources on improving telecom access for all Canadians" (Livingston, 2001). The suggested approaches would allow greater infusions of foreign capital while also affording a measure of protection for the Canadian consumer.

### **Conclusion**

American interests have played both positive and negative roles in the development of Canada's telecommunications sector. At times, American influence has allowed Canada to achieve goals which may have been far more difficult or even impossible for a country of its immense geographic size and small population to achieve without U.S. intervention. At other times, American telecom policies and corporate interests have dominated their Canadian

counterparts. However, in the future the Canadian and the U.S. telecommunication's sector not only have to be concerned with events in North America but globally as well. WTO and other multinational agreements are increasingly taking formerly national or bilateral issues to a global level.

Despite these changing conditions, Canada appears to remain committed attempting a delicate balancing act between cultural aspirations and economic realities in its bilateral and multilateral trade policies. As a recent article in *Playback* notes "Canada is blessed and cursed with a behemoth neighbour to the south. Especially in this era of free trade, being adjacent to the US and working in the same language as the giant affords all kinds of advantages" (Mounting a challenge, 2001). Among other things, these advantages include a potentially large market, and shared infrastructures. On the other hand, the preservation of Canadian culture remains a dominant priority for the government although this goal becomes progressively difficult as Canada must also contend with intense global competition among ever-larger multinational firms and rapidly evolving digital technologies.

As Ragosta, Magnus and Shaw (1996) contend, "As with trade policy generally, cultural trade measures present a question of balance. A reasonable balance may well include safeguarding the national culture and supporting the activities of those creative individuals who advance it". Conversely, "... in many instances the legitimate governmental interest in protecting culture is used as a pretext for crassly protectionist measures with primarily economic, rather than cultural, motives and effects". The culture - economic balancing act is not one that Canada has been always able to maintain as evidenced by the CMT and DTH disputes discussed earlier. Instead, government cultural discourse and motivations have often been called into question by the U.S. and other countries in various forums (e.g., NAFTA, WTO). As Shaw et al. also assert "the

culture - economic balance must be constantly monitored".

The next few years will prove to be a critical challenge for the telecom sectors of both countries. It is imperative for American firms to be sensitive to Canadian concerns regarding culture and foreign domination and act accordingly. On the other hand, the Canadian government should work to clearly define its cultural goals as discourse and practice must coincide. Working together, the Canadian and U.S. telecom sectors can make enormous strides that can provide equal economic and social benefits for both nations.

## Footnotes

<sup>1</sup>Due to time constraints, virtually little attention has been paid to radio broadcasting in the paper. However, this omission should not be construed that radio was of little import to Canada's regulatory development. On the contrary, the regulatory history associated with radio would have important implications for television and other later technologies.

<sup>2</sup>Unlike English Canada, television audiences in francophone Quebec have consistently favored indigenous Quebecois programming in lieu of American fare. English Canada's preference of American over Canadian programming has been attributed to a number of factors including higher production values of American programs and the sheer number of American programs available on Canadian and US broadcast and cable stations.

<sup>3</sup>It should be noted that Bell Canada was fearing a hostile US takeover at the time.



Table 1

## Timeline of Canadian - US Telecommunications Relations

July 26, 1874	Alexander Graham Bell discloses idea for a telephone to his father in Brantford, ON
1880	Bell Canada incorporated
June 11, 1881	Bell Canada successfully places the world's first international submarine cable between Windsor, Ontario and Detroit, Michigan (US).
1903	Bell Canada becomes subject to the Railway Act of 1903
February 14, 1916	Montreal is connected with Vancouver by telephone for the first time. The connection is made through a circuit of 6,763 kilometers from Buffalo, Chicago, Omaha, Salt Lake City, and Portland in the United States.
January 19, 1953	Bell Canada provides the first permanent television link between two countries to bring United States programs from Buffalo, New York to the Canadian Broadcasting Corporation in Toronto.
1968	CRTC established. Foreign ownership limits placed upon Canadian cable systems.
1997	PRIMUS Canada is founded, a wholly owned subsidiary of McLean, Virginia-based PRIMUS Telecommunications Group, Inc., with offices in Vancouver, Toronto, Oakville, London, Windsor, Montreal, and Edmunston.
February 1, 1999	Bell Canada officially launches Bell Nexxia. The new company is designed to offer a full range of Internet Protocol (IP) services over a coast-to-coast broadband network and the United States.
June 2001	CRTC rules that cable companies could buy pay-TV and specialty-TV services.

## Table 2 Selected Canadian Telecoms with U.S. Ownership Interests

### **Ameritech**

- **March 1999:** Purchases 20% of Bell Canada Enterprises (BCE)

### **ATT Canada**

- **March 4, 1999: AT&T buys out MetroNet Communications** (now called AT&T Canada) for \$4.7 billion. British Telecom acquired 30% of \$402 million of AT&T's 31 % equity state (Arm in arm, August 17, 1999).
- Foreign ownership restrictions prevented AT&T from taking full control of AT&T Canada. Therefore, AT&T must wait to acquire the remaining 69% (Arm in arm, August 17, 1999).
  - For the AT&T Canada investment, AT&T and BT created **Wireline Co.**, which is 70% owned by AT&T and 30% owned by BT (AT&T and BT Team up, August 6, 1999).

### **Bell Canada**

- 20% owned by U.S. based SBC Communications

### **MCI WorldCom**

### **Microcell**

- **2001:** "... Deutsche Telekom AG, Europe's biggest phone company, bought several U.S. wireless companies along with U.S.-based VoiceStream Wireless, which owns a stake in Montreal-based wireless operator Microcell" (Livingston, 2001).

### **Rogers Communications**

- **1996:** Signed co-branding agreement with AT&T
- **August 5, 1999:** AT&T and British Telecom jointly purchased 33% stake in Rogers Cantel Mobile Communications for \$934 million (Arm in arm, August 17, 1999).
- BT & AT&T taking equal ownership interest in **Wireless Co.** -- a company that they are creating to hold joint investment in Rogers Cantel. (aka **Rogers Wireless?**)
  - After transaction, Rogers will retain 69.4% of voting shares and 50.9% of equity of Rogers Cantel. AT&T will name 4 of 16 Rogers Cantel board seats (AT&T and BT Team up, August 6, 1999).

### **Sprint** (Wireless marketplace)

- Alliance with BCE Mobile (AT&T and BT Team up, August 6, 1999).

### **Telus**

- Partially owned by Verizon

"Level 3 and Qwest have some network links in Canada that they can't use due to the foreign ownership rules" (Livingston, 2001).

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