HOUSE OF COMMONS
CANADA

OPENING CANADIAN COMMUNICATIONS TO THE WORLD

Report of the Standing Committee on Industry, Science and Technology

Walt Lastewka, M.P.
Chair

April 2003

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THE STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY

has the honour to present its

THIRD REPORT

Pursuant to Standing Order 108(2), the Standing Committee on Industry, Science and Technology proceeded to a study on the Foreign Investment Restrictions Applicable to Telecommunications Common Carriers. After hearing evidence, the Committee agreed to report to the House as follows:

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CHAIR'S FOREWORD

Canada's economic structure is changing rapidly as the country becomes part of the global knowledge-based, networked economy. Since this economy depends heavily on the efficient communication of information, a modern telecommunications infrastructure and a robust telecommunications sector are essential to Canada's economic success.

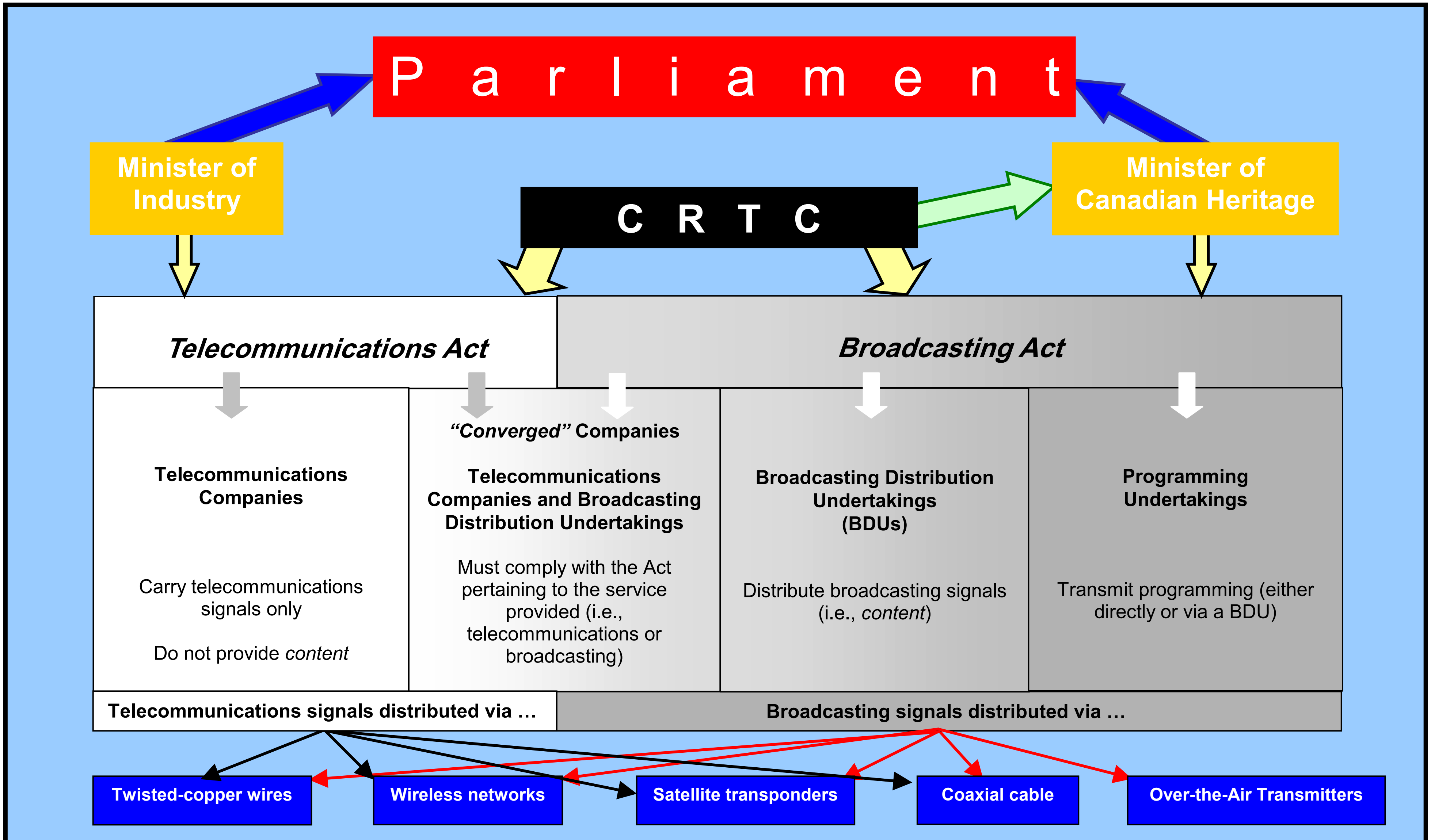
In recent years, advances in information and communications technologies (ICTs) and the diffusion of ICTs throughout the economy have increased the efficiency of industry and boosted productivity growth in many industrialized nations, including Canada. Much of the growth in ICT markets is attributable to the telecommunications sector, an industry in which Canada is a world-leader. Expansion and innovation in the telecommunications services sector do not come cheaply; large amounts of capital are required to finance new and enhanced infrastructure. Accessing sufficient levels of high-risk capital on Canada's domestic markets has proven difficult. Attracting foreign capital is, therefore, vital for expansion of the telecommunications sector in Canada.

Canada's restrictions on foreign direct investment (FDI) applicable to telecommunications common carriers are intended to ensure that there is a balance between encouraging investment in the sector, and maintaining Canada's sovereignty policy objectives. Concerns have been raised, however, that these restrictions are limiting the telecommunications sector's access to capital and acting as a barrier to innovation and growth in the sector. In response to these concerns, and in the interests of maintaining a modern and competitive telecommunications sector, the Minister of Industry recently called for a review of the FDI restrictions applicable to telecommunications common carriers. The call for such a review also forms part of the federal government's efforts, as presented in its *Canada's Innovation Strategy*, to improve Canada's regulatory environment in order to promote innovation.

In response to the Minister's request, the House of Commons Standing Committee on Industry, Science and Technology immediately undertook an intensive study of the issue of FDI restrictions applicable to telecommunications common carriers, and heard a wide range of views on this and related issues. The Committee believes that implementing the recommendations contained in this report will help to improve investment and innovation in the Canadian telecommunications sector, provide better services to consumers, and achieve the government's telecommunications policy goals.

I would like to thank the individuals and companies that took part in this series of hearings, and express my appreciation to them for the helpful insights and analysis they provided. The Committee will continue to work hard to ensure that Canada's telecommunications sector has the necessary levels of investment to be innovative and competitive in today's globally networked economy. The Committee believes that it is essential that the federal government and Parliament keep abreast of technological and industrial changes in the telecommunications services sector. The legislative framework governing the sector should reflect, and even anticipate, change in order that growth and innovation is not constrained by outdated legislation. In closing, the Committee looks forward to having the Minister appear before the Committee to explain how the federal government will act on the Committee's recommendations.

TELECOMMUNICATIONS AND BROADCASTING LANDSCAPE IN CANADA



Note: Grey shading represents the institution's degree of influence over content; Green arrow represents a reporting obligation; Blue arrows represent a ministerial responsibility; Yellow arrows represent a decision-making authority.

LIST OF RECOMMENDATIONS

CHAPTER 2: FOREIGN OWNERSHIP RESTRICTIONS AND INVESTMENT: IS THERE A CONNECTION?

1. **That the Government of Canada amend the *Telecommunications Act* to require a mandatory five-year review of the Act by a parliamentary committee.**

CHAPTER 3: PUBLIC POLICY OBJECTIVES AND INSTRUMENTS: A BALANCED APPROACH

2. **That the Government of Canada prepare all necessary legislative changes to entirely remove the existing minimum Canadian ownership requirements, including the requirement of Canadian control, applicable to telecommunications common carriers.**

CHAPTER 4: THE CHANGING TELECOMMUNICATIONS LANDSCAPE AND CONVERGENCE

3. **That the Government of Canada ensure that any changes made to the Canadian ownership and control requirements applicable to telecommunications common carriers be applied equally to broadcasting distribution undertakings.**
4. **That the Government of Canada strike a special parliamentary committee to undertake a comprehensive review of the governance structure of both telecommunications and broadcasting sectors in Canada in light of technological convergence. The review should include, as a minimum, an examination of:**
   - **(a) the regulatory framework governing Canada's telecommunications and broadcasting sectors;**
   - **(b) approaches that the federal government could adopt to continue to facilitate broadband deployment in rural and remote communities;**
   - **(c) federal departmental organization (Industry Canada and Canadian Heritage); and**
   - **(d) the jurisdiction, role and mandate of the Canadian Radio-television and Telecommunications Commission.**

INTRODUCTION

The National Broadband Task Force requested a review of Canada's foreign ownership rules in telecommunications and broadcasting distribution in 2001. At that time, the Task Force was concerned that the restrictions might be impeding industry participation in the competitive deployment of broadband infrastructure in Canada. Since then, a second call for such a review emerged from the consultative sessions held by Industry Canada with the public and the business community as part of *Canada's Innovation Strategy* in 2002. This time, the concern was that the restrictions form a barrier to capital acquisition, and possibly to attracting highly skilled people, needed to fuel innovation in one of the leading sectors of the knowledge-based economy — an economy that Canadians have been building for some time and which the government is actively promoting.

This new economy trades on intellectual capital, not physical assets, but it must ride the rails of a world-leading communications infrastructure. [John McLennan, AT&T Canada, 14:15:45]

Our telecom infrastructure may be adequate for today but as the wired world evolves, one day further capital will be needed. Those investments will be important to our competitiveness as a nation, to our ability to create the lasting knowledge-based jobs on which so much of our future depends. [William Linton, Call-Net Enterprises Inc., 14:16:05]

Although these two calls for a review of Canada's foreign ownership rules as they apply to telecommunications common carriers and broadcasting distribution undertakings[1] are relatively recent, their underlying concerns began to surface several years ago when the sector was opened up to competition in the wake of advances in information and communications technologies. These new, innovative technologies are radically changing the sector's industrial structure. Digital and data compression technologies, along with fibre-optic cable, which carries information on a pulse of light, wireless systems, which make use of the electromagnetic spectrum, and the Internet, which is an intricate network of computer networks, are now making it possible to transmit voice and data communications and audio and video entertainment services over telephone, microwave, satellite and cable television company facilities. Traditionally, because of technological constraints, audio and video communications were the distinct preserve of telephone and radio or television facilities and networks. Recent innovations, however, have blurred the conventional boundaries between telecommunications, broadcasting distribution and computing activities, and are

[T]here are some troubling trends. The income gap with our largest trading partner, the United States, is growing. … Fierce global competition for the best knowledge workers is a hallmark of the knowledge economy. Canada's share of North American foreign direct investment, or FDI, is declining. [Peter Harder, Industry Canada, 12:9:35]

1 Broadcasting distribution undertakings ("BDUs") include cable companies, direct-to-home (DTH) satellite service providers and multipoint distribution systems.

paving the way for the convergence of information carriage services over what has been dubbed the "Information Highway."

[I]f you talk to the high-tech companies, the answer is "You ain't seen anything yet" in investment in … the next generation wireless, the next generation satellite, the next generation digital TV, interactive TV, interactive wireless, radio … The industry is telling us "We need access to funds." [Michael Binder, Industry Canada, 12:11:05]

Telephone, broadcasting distribution undertakings and independent Internet service providers, who are chasing the same customers in the provision of Internet and broadband services, are eager to build this digital highway. This commercial enthusiasm, however, brings with it both advantages and drawbacks. On the negative side, simultaneous and competitive development of services is leading to duplicative infrastructure. On the positive side, the move to a more competitive market structure promises more new value-added services, greater managerial efficiency, and a more efficient deployment of telecommunications infrastructure — all of which are likely to outweigh the added costs of duplication. In any event, competition is undermining the long-standing "natural monopoly" structure of the telephone and cable television networks and the need for heavy-handed regulation.[2]

I try very hard … not to use the word "deregulation,"... we have not sought in this country … to go abruptly from monopoly to total free competition. We have gone through a transition, where the incumbent [has] obligations to subsidize remote and rural service. … So the word … is "liberalization," [Hudson Janisch, University of Toronto, 16:16:40]

In the transition from monopoly to competition, Canada's regulator — the Canadian Radio-television and Telecommunications Commission (CRTC) — has adopted a regulatory forbearance model. This model is based on a different concept than that of complete deregulation, as it involves discretionary decision making by the regulator on the means, terms, and timing of implementation. In practice, regulatory forbearance involves only a limited withdrawal of industry supervision and/or a substitution of less burdensome forms of regulation (sometimes called light-handed regulation). In Canada's case, the historical, regulated cross-subsidy pricing formulas among various telecommunications services and a commitment to universal service remain intact. Hence, a review of the foreign ownership rules in telecommunications must take into consideration their impacts on these public policies, on the

[2] In the case of telecommunications, a "natural monopoly" is said to arise because service provision requires an expensive up-front capital outlay involving an extensive cable network, the construction of numerous call-switching stations, and the creation of a variety of support services. The development of these infrastructure and services engender economies of scale so large that one firm can deliver the services at far less cost than two or more firms. To avoid the costs of duplicative infrastructure, governments have granted territorially defined monopolies to selected companies in return for their adherence to regulations aimed at protecting consumers from monopoly pricing structures, as well as for their compliance and cooperation in pursuing other public policy objectives.

authority of the CRTC, and on the forbearance structure already in place.

The Speech from the Throne in 2002 emphasized that the knowledge economy demands more creative approaches to regulation, and the concept of "Smart Regulation" was born. At the request of the Minister of Industry, this committee has been given a mandate to review all foreign ownership restrictions imposed on telecommunications common carriers. Similar restrictions are imposed on broadcasting distribution undertakings — different from that of telecommunications carriers today only in that the Chief Executive Officer of a broadcasting carrier must be a Canadian — and are undergoing simultaneous review as part of a general study of the broadcast sector by our sister committee, the House of Commons Standing Committee on Canadian Heritage.

We don't lose any control over the system if we open up foreign ownership. The CRTC continues to have … the same regulatory powers. [Francis Fox, Rogers AT&T Wireless Inc., 13:16:55]

The mandate of this committee's review was to examine the impact on the telecommunications industry of foreign direct investment restrictions applicable to telecommunications common carriers, and whether changes could be made to these restrictions without compromising national interests. To accomplish this task, the Committee has structured this report into four chapters. In Chapter 1, the Committee reviews Canada's foreign ownership restrictions in the context of the foreign ownership regimes of other Organisation for Economic Co-operation and Development (OECD) member countries. The Committee also examines Canada's relative position in terms of its commitments to liberalize telecommunications services among signatory countries of the Agreement on Basic Telecommunications. In Chapter 2, the Committee investigates allegations of adverse impacts on investment, industry structure, and financial stability of the sector of Canada's foreign ownership restrictions. The Committee also reviews the legislative framework and regulatory structure of the telecommunications sector to see if they encourage investment and innovation within the sector. In Chapter 3, the Committee considers various foreign ownership rules and other policy instruments in the context of five policy options. The Committee selects the option it believes best balances the objectives of ensuring Canada's identity and sovereignty, and encouraging FDI as a means of

Neither culture nor content are part of this review. It should be stressed that the context [of the review is] one of policy mechanisms, not policy objectives. … The question for the review is how best to achieve these objectives. [Peter Harder, Industry Canada, 12:9:40]

This review is not about whether we should change these policy objectives … Rather, it is a review which seeks to understand if there are better policy mechanisms or instruments for achieving these objectives. [Peter Harder, Industry Canada, 12:9:50]

maintaining a modern telecommunications infrastructure and services. In Chapter 4, the Committee explores whether changing the FDI restrictions applicable to telecommunications common carriers will increase access to emerging telecommunications technologies or improve services for consumers. The Committee also addresses the issue of technological convergence and examines whether broadcasting distribution undertakings should be subject to the same foreign ownership rules as telecommunications common carriers. Finally, the Conclusion summarizes the Committee's recommendations to the government.

CHAPTER 1
FOREIGN OWNERSHIP RULES AND RATIONALE

The Foreign Ownership Policy Decision and the *Telecommunications Act*

For most of Canada's history, there has been substantial foreign investment in its telecommunications sector. Like most other capital-intensive industries in Canada, the telecommunications sector could not have developed as extensively and as quickly as it did if it were not for foreign capital, particularly American capital. Foreign ownership restrictions, or foreign direct investment restrictions, in telecommunications are a relatively recent phenomenon in Canada. Foreign ownership restrictions imposed on telecommunications common carriers first appeared in Canada in 1984 when the Department of Communications issued its first national cellular radio licence to Rogers Cantel Inc. The chosen limit was 20% of the voting stock in the corporation. In 1987 and then in 1991, the *Teleglobe Canada Act* and the *Telesat Canada Act*, respectively, placed foreign ownership restrictions on telecommunications companies — the two companies that bear these names. Also in 1987, the Minister of Communications issued a comprehensive policy document, entitled *A Policy Framework for Telecommunications in Canada*, in which the government stated "domestic ownership of Canada's telecommunications infrastructure is essential to national sovereignty and security." At this same time, the Minister announced that:

> *To harmonize Canadian policy with that of other countries and ensure our national sovereignty, security and economic, social and cultural well being, legislation will soon be tabled. The guidelines of Canadian control and 80 percent ownership for Type I carriers are effective from the time of announcement.*

Although this rule came into effect in 1987, the specifics of its application were not embodied in law until the passage of the *Telecommunications Act* in 1993. Section 16 of the Act requires that in order to be eligible to operate in Canada, a telecommunications common carrier

Under the Telecommunications Act*, telecommunications carriers that own or operate facilities are required to be Canadian owned and controlled. That means that Canadians must own not less than 80% of the corporation's voting shares, 80% of the members of the board of directors must be Canadian, and the corporation must not be otherwise controlled by persons who are not Canadian.* [Larry Shaw, Industry Canada, 12:9:50]

The regulations also permit up to one-third for an ownership of the voting shares of a telecom holding company. This is done by defining "What is Canadian" for the purposes of the Act. Obviously a Canadian citizen is a Canadian for the purpose of measuring Canadian ownership, but also a Canadian corporation or a qualified corporation … is defined as "Canadian". To be a qualified corporation, it must have a maximum of one-third foreign ownership and be controlled, in fact, by Canadians. [Larry Shaw, Industry Canada, 12:9:50] must be a “Canadian-owned and controlled corporation,” incorporated or continued under the laws of Canada.[3] More specifically, subsection 16(3) of the Act defines Canadian ownership and control as follows:

(*a*) not less than eighty per cent of the members of the board of directors of the corporation are individual Canadians;

(*b*) Canadians beneficially own, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than eighty per cent of the corporation’s voting shares issued and outstanding; and

(*c*) the corporation is not otherwise controlled by persons that are not Canadians.

[F]or example, if we use BCE as the holding company, and Bell Canada as the operating company, there can be up to 20% direct foreign ownership of Bell Canada, and up to one-third foreign ownership of BCE. When you do the math and work it through, you end up with 46.6% combined direct and indirect foreign ownership. [Larry Shaw, Industry Canada, 12:9:50]

This domestic ownership requirement was later supplemented by an indirect ownership rule. In 1994, the Government of Canada promulgated the *Canadian Telecommunications Common Carrier Ownership and Control Regulations*, which set the minimum Canadian ownership level for ownership at the holding company level at 66⅔% of voting shares.[4] Since 27 November 1996, section 10 of the *Radiocommunication Regulations*, pursuant to the *Radiocommunication Act*, requires that persons or entities eligible to be issued radio licences as radiocommunication common carriers must meet Canadian ownership and control requirements that are identical to those established for telecommunications common carriers.

BCTel and QuebecTel were grandfathered under the Telecommunications Act when it came into force. However, since that time, the company has merged with AGT, or what became TELUS … is now below the ownership level so that TELUS is no longer grandfathered. It’s subject to exactly the same rules as every other company … [Larry Shaw, Industry Canada, 12:11:00]

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[3] All facilities-based “basic” telecommunications service companies (not resellers and not value-added service providers) are covered under the Act, but BCTel and QuébecTél were provided a “grandfathering” exception. These two companies were at the time 50% owned by GTE Inc., which was later acquired by Verizon Inc. However, with the merger of BCTel, QuébecTél and AGT Inc. (itself a merger of two Alberta-based telephone operating companies) to form TELUS Corporation, there has been significant foreign ownership dilution that puts the merged telecommunications company in compliance with both the direct 20% and the aggregate 46⅔% ownership rules of the Act. The grandfathering clause did not carry over to TELUS Corporation and has been expunged.

[4] The 66⅔% minimum level for Canadian ownership meant that a foreign company that held 20% of the voting stock of a Canadian telephone operating company could now also have a 33⅓% stake in a company that held the remaining 80% voting stock of the Canadian telephone operating company. Multiplying 33⅓% by 80% and adding 20% leads to the current aggregate direct and indirect foreign ownership limit of 46⅔%.

Canada and the World

In 1987, the Government of Canada justified its imposition of foreign ownership restrictions on facilities-based telecommunications carriers in order "to harmonize Canadian policy with that of other countries and ensure our national sovereignty, security and economic, social and cultural well-being." However, just 10 years later, Canada and many countries belonging to the World Trade Organization (WTO) adopted the Agreement on Basic Telecommunications (ABT), which has led to significant liberalization of trade and investment in basic telecommunications services. Under the ABT, many member countries of the OECD have reduced or eliminated their foreign ownership restrictions, and Canadian policy is out of step with that of the international community: almost all other OECD countries have more liberal telecommunications foreign investment regimes than Canada. Indeed, Industry Canada reports that only Turkey has tighter restrictions on foreign capital investment in basic telecommunications (see Figure 1.1). By the end of 2003, Canada's FDI regime could be the most restrictive in the OECD.

[A]lmost all other OECD countries have telecommunications investment regimes more liberal than Canada. Only Turkey is more closed, but it too has indicated that when its monopoly for the state owned provider ends later this year, it will allow up to 49% foreign investment. [Peter Harder, Industry Canada, 12:9:40]

Like Canada, many OECD countries have relatively small economies that are challenged by sovereignty issues. Some of these countries have concluded that the benefits of increasing access to foreign capital outweigh the implicit costs of any associated loss in sovereignty. Other nations have sought policy mechanisms other than industry-wide foreign ownership restrictions to resolve their sovereignty issues (see Appendix 4). For example, in New Zealand, there is a statutory 49.9% limit on foreigners owning shares in Telecom New Zealand, along with the government possessing a "golden share" or "Kiwi share";[5] all other telecommunications operators are not subject to any restrictions whatsoever on the foreign direct investment they obtain. In Australia, the once fully government-owned and leading telecommunications company, Telstra, will be subject to a 35% limit on total foreign ownership and a 5%

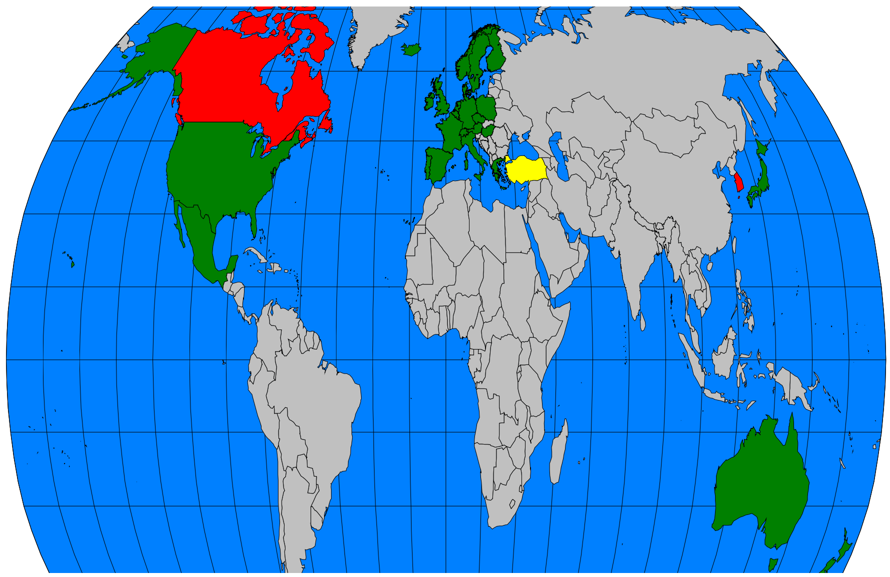
Golden shares are also a tool that is used to limit access to incumbents … these golden shares are held by governments in Italy, Hungary, Netherlands, Spain and Turkey. I should note that the European Commission has said that it will take action against member states that continue to maintain golden shares. [Dimitri Ypsilanti, Organisation for Economic Co-operation and Development, 19:15:40]

[5] A "golden share" is a share held by the government in a privatized company that could entitle the government to a veto over major dispositions of assets, a change of control, mergers or other major corporate changes. A golden share is commonly used to permit the government to relinquish majority ownership over state-owned enterprises, yet still retain a measure of control to assuage the political opposition to privatization.

limit on individual foreign ownership, while the rest of the sector must undergo a foreign investment approval regime which is applied to all sectors of the economy. Public ownership of the incumbent telecommunications provider is also a popular alternative.

Australia has a system of prior approval, which most market players don't view as being restrictive in that it's automatically granted to WTO signatories, the signatories of the basic telecom agreement with the WTO. [Dimitri Ypsilanti, Organisation for Economic Co-operation and Development, 19:15:35]

Figure 1.1
International Benchmarking
Investment Restrictions in OECD Countries



Similar to Canada	Less Restrictive than Canada	More Restrictive than Canada
South Korea	Australia, Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States	Turkey

New Zealand is an interesting case because they have a two-tier approach to limiting ownership in the incumbent. First, there's an overall limitation of 10% on voting shares that any single party can hold without any prior consent. In addition, there's a cap on foreign ownership. [Dimitri Ypsilanti, Organisation for Economic Co-operation and Development, 19:15:35]

Source: Industry Canada, *Reviewing Telecommunications Foreign Investment in the Context of the Innovation Strategy*, p. 5.

The sovereignty issue, however, also concerns countries with large economies. The United States has established a licensing regime whereby the country's regulator, the Federal Communications Commission (FCC), reviews all foreign mergers or takeovers within the sector that involve more than 20% of the voting stock of a telecommunications common carrier to ensure that they are in the "public interest." Clearly, the experiences of these countries, in terms of striking the right balance between encouraging investment in the telecommunications sector and maintaining their sovereignty and security, are of particular interest to the Committee.

There are no restrictions on the nationality of people who run a Telco. British Telecom is now actually run by a Dutchman. One of the mobile companies has a chief executive who is American. One of two deputy chief executives in BT is French; and we benefit hugely from the range of expertise that having these executives come into the UK has delivered. [David Edmonds, OFTEL, Government of the United Kingdom, 22:9:45]

The ABT and WTO Negotiations

Foreign ownership regimes have been, and continue to be, a negotiating element in WTO negotiating rounds, the next round of which will take place sometime between 2005 and 2007. Canada should, therefore, consider any initiative to liberalize its foreign ownership restrictions in the context of overall trade policy. Canada might be able to extract concessions in telecommunication services or in some other important domain, such as agriculture, in return for liberalizing its foreign ownership regime in telecommunications.

We made significant contributions to liberalization in several areas of which you're familiar while dodging the main bullet on removal or substantial reduction of foreign investment restrictions. [Gerald Shannon, International Trade Consultant, 24:16:00]

Figure 1.2 maps out the relative positions of a number of ABT signatory countries in terms of foreign ownership restrictions and liberalized services. Canada places well in terms of liberalized services, but is among a handful of countries that impose broad foreign ownership restrictions (majority foreign ownership disallowed). Examples of the services covered by the ABT include voice telephony, data transmission, telex, telegraph, facsimile, private leased circuit services, fixed and mobile satellite systems and services, cellular telephony, mobile data services, paging, and personal communications systems.

Canada has long been an influential member of the WTO … and it is always with some pride that I point out … the influence this country has had in shaping the new pro-competitive international telecommunications regime. I fear that if we do not finally act to remove restrictions on foreign ownership our influence will turn to embarrassment. [Hudson Janisch, University of Toronto, 16:15:55]

Figure 1.2
Scope for Liberalization and Foreign Ownership Restrictions: Partial List of WTO Signatories

I would not be one who would argue that we should dismantle our regime until such time as we were in a negotiating mode and we would be really satisfied we would get something for our offering. [Gerald Shannon, International Trade Consultant, 24:17:30]

Foreign Ownership Restrictions	***All or nearly all***		***Wide Range***		***Moderate Range***
Broad	Canada Mexico	 South Korea	Poland Turkey	Portugal South Africa	India Brazil Tunisia
Narrow	U.S. Italy Japan	France Australia New Zealand	Hungary		
None	U.K. Iceland Norway Sweden Austria Chile Finland	Germany Denmark Luxembourg Belgium Switzerland Netherlands	Ireland Bolivia Spain Peru Bulgaria Greece Jamaica	Argentina Czech Rep. Slovakia Venezuela Romania Pakistan	Hong Kong

Services Liberalized

Source: Globerman and Hagan, in Orr and Wilson, *The Electronic Village: Policy Issues of the Information Economy*, C.D. Howe Institute, 1997.

The Committee heard from a number of trade experts, but none were able to shed any light on the prospects of extracting concessions in return for relaxing Canada's foreign ownership restrictions. At first glance, most other signatories have already made such reforms, and have also liberalized their services. One country that would likely place a significant value on a less restrictive foreign ownership regime in Canada is the United States. Although some major U.S. investors, such as SBC Communications Inc. (the parent company of Southwestern Bell Telephone Company) and AT&T Corporation, have recently decided to withdraw their investments in Canada, the Committee cannot *a priori* rule out the possibility of gaining U.S. concessions if Canada liberalizes its foreign ownership regime.

Now, a timetable for these broader changes … I think it could coincide with the current schedule for the WTO talks, which are scheduled to be concluded by January of 2005. So … it could be appropriate and indeed it might even enhance Canada's negotiating position in the upcoming WTO round. [Michael Sabia, Bell Canada Enterprises, 20:9:25]

Reforms recommended by the Committee, as laid out in this report, are necessary, and the sooner the better. Since WTO negotiations take many years to conclude — sometimes as much as a decade — only definite and substantive concessions could possibly justify delaying reforms to Canada's telecommunications sector.

CHAPTER 2
FOREIGN OWNERSHIP RESTRICTIONS AND INVESTMENT: IS THERE A CONNECTION?

Canada is a world leader in the telecommunications equipment and services sectors. According to the OECD, Canada's relatively high standing in telecommunications services is attributable in large part to the regulatory policy frameworks governing the sector. Despite this accolade, the OECD notes that some reforms to the regulatory framework governing the sector are required; in particular, the OECD recommends that Canada eliminate the restrictions on foreign direct investment in the sector since they likely harm the development of local facilities-based competition.[6] A number of Canadian telecommunications experts, as well as many industry participants, agree with this conclusion and suggest that these restrictions have reduced the availability of investment dollars for building a modern telecommunications infrastructure, retarded the deployment of broadband services, and lengthened the transition period from what was once a monopoly industry to a more competitive structure. Since such adverse impacts run counter to other policy objectives of government — namely, maintaining a modern telecommunications sector and fostering innovation, as well as promoting broadband deployment — policy-makers must be kept apprised of these collateral impacts and should periodically review the policy options available to properly balance all these government objectives.

Restrictions on foreign investment, far from contributing to Canada's telecom policy, are in fact limiting our industry. The rules may in theory apply equally to all, but in practice a two-tier system of access to capital has been established. Restricting foreign investments has a particularly negative effect on new entrants, the very players who are driving innovation. [André Tremblay, Microcell Telecommunications Inc., 13:15:55]

[A]ccess to capital is essential for dynamic and efficient industry and squeezing out foreign capital is inconsistent with an effective capital market. [Konrad von Finkenstein, Competition Bureau, Industry Canada, 23:16:50]

With this task in mind, the Committee begins with an evaluation of the evidence concerning the alleged adverse impacts of Canada's foreign ownership restrictions on investment in telecommunications. We will first attempt to determine whether or not these restrictions are a significant impediment to investment in telecommunications, as well as looking to the statistics to see if they are a binding constraint on the balance sheets

[6] OECD, *OECD Reviews of Regulatory Reform Canada: Maintaining Leadership Through Innovation*, 2002, p. 122-123.

of key telecommunications companies. The Committee will also consider the impact of these restrictions on the financial stability of the sector. Finally, the Committee will address other influential factors that affect investment decisions in Canada's telecommunications sector and industry structure, notably the regulatory framework.

It's imperative that Canada complete the transition to competition. … Absent robust, extensive and intensive competition the telecommunications system cannot be the enabler of economic activity, productivity and employment that it must become. [Richard Schultz, McGill University, 21:16:05]

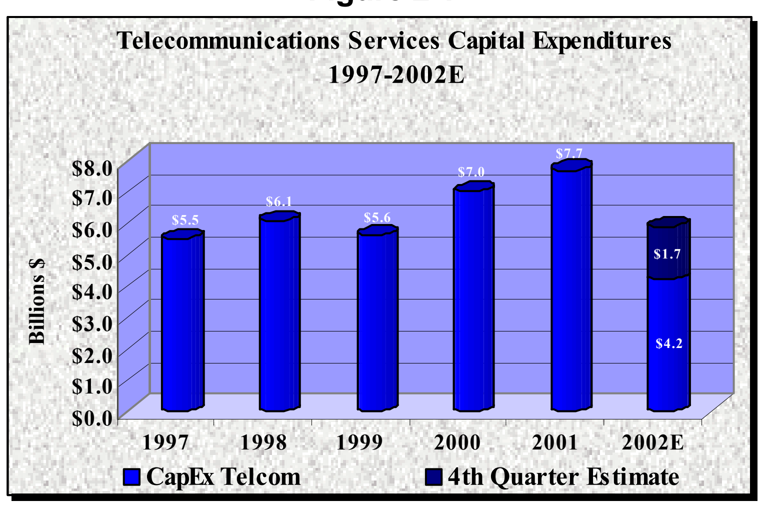
Foreign Ownership Restrictions and Foreign Direct Investment

A. The Statistical Evidence

The Committee was provided with statistical evidence that investment in Canada's telecommunications sector has grown continuously throughout the 1990s in nominal terms, but has languished in both real and relative terms during this time — a period that coincides with the application of Canada's foreign ownership restrictions in the telecommunications sector. Figure 2.1 points out that capital expenditures made by wireline and wireless telecommunications services providers rose modestly in the late 1990s, spiked in 2000 and 2001, but plummeted in 2002. The capital expenditures of wireline and wireless telecommunications companies in 2002 were no greater than those of 1997 levels in real terms (i.e., discounted for inflation).

The foreign investment restrictions are also contradictory to other government policies, in particular, development of broadband access and interestingly, the promotion of foreign direct investment. [Robert Yates, Lemay-Yates Associates Inc., 26: 9:20]

Figure 2.1



Includes only wireline and wireless telecommunications services; 2002 Fourth Quarter is an Industry Canada estimate based on Statistics Canada data.

Source: Statistics Canada, quarterly and annual telecommunication statistics publications.

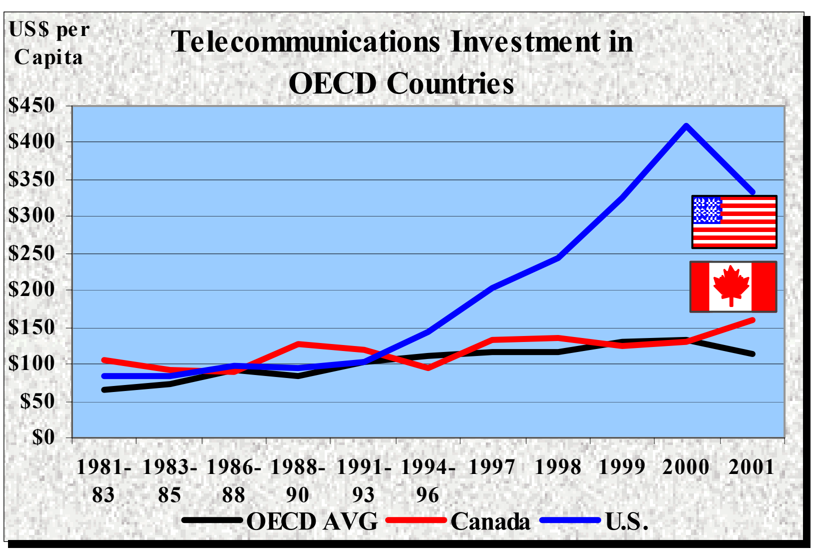
Figure 2.2 is even more discouraging. Between 1981 and 1993, Canada was by far the leading destination for investment in telecommunications throughout the OECD. Since then, Canada has lost its top ranking to the United States, and has only slightly outperformed the rest of the OECD.

Purely risk capital in Canada is a $2.5 billion industry per year. Bell Canada spends twice that in cap ex every year. You're not going to build an industry to compete with Bell Canada on a $2.5 billion risk capital business. [Robert Yates, Lemay-Yates Associates Inc., 26:10:05]

Between 1981 and 1993, per capita investment in the Canadian telecommunications sector was 31% higher than the average in OECD countries (excluding Canada and the United States) and 15% higher than in the United States. Of particular interest here is that Canada continued to outperform both the United States and all other OECD countries by more than 15%, on average, between 1990 and 1993 in spite of enduring a more severe recession — both in terms of its depth and duration — than did most of these countries. Between 1993 and 2001, however, investment in the Canadian telecommunications sector per capita was 49% lower than that of the United States, although it was still 8% higher, on average, than that of all other OECD countries.

Foreign capital is not just about bringing cash to Canada but involves bringing outside financial ideas, financial influence, sources of technology and managerial efficiency to Canadians. [Konrad von Finkenstein, Competition Bureau, Industry Canada, 23:16:50]

Figure 2.2



Source: *OECD Communications Outlook 2003 Working Party on Telecommunication and Information Services Policies*.

Our experience over the last 15, 20 years has certainly been that inward investment has been a stimulus, far beyond just the stimulus of the finance that has come in, which is considerable — we get some $50 billion a year inward investment — but a stimulus in terms of ideas and activity. It has been of tremendous benefit to a very small island. [Claire Durkin, Department of Trade and Industry, Government of the United Kingdom, 22:9:50]

Clearly, the United States has proven to be the leading magnet for investment in telecommunications infrastructure since 1993. The United States is more rapidly transforming and preparing itself for the knowledge-based economy than are other OECD member countries. Yet some industry analysts argue that the United States has over-invested in the telecommunications sector. In any event, if this trend continues, the Committee is concerned that Canada, whose primary competitor country is the United States and not other OECD countries, will become a laggard in telecommunications infrastructure and services, which could further hinder Canada's industrial competitiveness in the years to come.

*Staying strong and healthy at home in Canada requires unfettered access to both Canadian and international capital markets. [*Leonard Asper, CanWest Global Communications, 26:9:15]

The above data suggest that problems in attracting investment in Canada's telecommunications sector transcend the business cycle; there are structural forces at play. Although Canada's poor performance in attracting investment relative to the United States coincides with the period in which foreign ownership restrictions were in force, the Committee does not attribute this deterioration solely to foreign ownership restrictions. Other factors such as population density and distribution, productivity issues, tax levels and structure, regulatory policy and fiscal policy may also have had an impact. The Committee will now look to supporting anecdotal evidence.

B. The Anecdotal Evidence

Like other competitors, Microcell has had some success in attracting foreign investment. But our experience is that the legal limits on permissible foreign holdings, especially for equity, are reached quickly, often well before financing needs are met. After the limits are hit, foreign investment must be restricted to non-voting equity. [André Tremblay, Microcell Telecommunications Inc., 13:15:55]

The Committee heard from all types of telecommunications common carriers. Wireless companies, incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs), and cable television companies recounted their unique experiences in raising investment capital under the current foreign ownership regime. The Committee will cite some of the anecdotes from each class of competitor, but it may be useful to precede them with an indication of the foreign composition of each company's shareholdings.

Table 2.1
Foreign Ownership in Canadian Wireline and Wireless Operators

Wireline Operators	2001	Wireless Operators	2001
BCE	11.1%	Bell Mobility	28.9%
Bell Canada	28.9%	TELUS Mobility	26.7%
TELUS	26.7%	Rogers AT&T	31.1%
AT&T Canada	46.7%	Clearnet	n.a.
Call-Net	25.0%	Microcell	26.4%
GT Group Telecom	25.0%		

Source: BCE Financial Reports and LYA International Inc. in BCE Inc., Submission to the House of Commons Standing Committee on Industry, Science and Technology, February 2003, p. 25, Tables 2 and 3.

Table 2.1 indicates that, of the six leading wireline telecommunications carriers in Canada by 2001, only AT&T Canada had reached its maximum allowable direct and indirect foreign ownership, though Call-Net Enterprises and GT Group Telecom may have reached the maximum allowable direct ownership limit. For the most part, direct and indirect foreign ownership together varied between 25% and 31% in 2001. Foreign ownership restrictions were, therefore, a binding constraint on only one operator in 2001, and there was ample foreign investment "headroom" remaining then. Unfortunately, the data are more than two years old, and a lot has changed since then. The sector has seen a number of bankruptcy filings and capital restructurings, with the result that the data may be misleading.

Wireless telecommunications companies not affiliated with an incumbent wireline company were emphatic that Canada's foreign ownership restrictions are an impediment to realizing their investment plans. Recent new entrants such as Microcell Telecommunications argued that strategic investors were essential to their investment plans, not only for the badly needed capital they would provide, but also for their managerial expertise, operational know-how and technology transfers; in turn, Canadian institutional investment is often conditional on there being such a strategic investor. Microcell claims that Canadian capital markets do not

[T]he bulk of higher risk capital comes from beyond our borders … [b]ut more than just the pure dollars, in order for us to successfully compete against the large goliath incumbents Bell Canada or TELUS, competitive providers like us need to be able to align ourselves strategically with international partners who expect to have the ability to exert influence commensurate with their committed risk, certainly not an unreasonable requirement. [John McLennan, AT&T Canada, 14:15:50]

Canadian private equity investors … were only interested in participating if a knowledgeable telecom investor came along, or, more important, if a strategic investor came along. In talking to those knowledgeable investors, certainly what we found was that the restriction on foreign ownership in Canada is a tremendous impediment to entering the market. [Edward Giacomelli, Microcell Telecommunications Inc., 13:17:00]

The ability to obtain financing under the present investment restrictions is starkly asymmetrical. The ILECs can fund their day-to-day operations from internally generated cash flows and do not need risk capital. Competitors, on the other hand, which are building new businesses and new networks are highly dependent on external sources of financing … [Robert Yates, Lemay-Yates Associates Inc., 26:9:20] have many of these strategic investors, at least not in sufficient number to meet Microcell's and other telecommunications companies' financial needs. In its pursuit of foreign strategic investors, Microcell was, on a number of occasions, turned away when it could offer only non-voting stock, something in which strategic investors have little interest. Strategic investors demand a say in the operations of the companies in which they invest, a say that is commensurate with the size of investment they make. Foreign ownership restrictions have thus curtailed Microcell's investment agenda and the roll-out of its services.

[T]he restrictions on foreign investment serve to shut out a major potential source of financing for the telecom competitors in Canada. The restrictions do not do this for the ILECs, for the large telephone companies. The large telephone companies have many diverse sources of financing for their activities. [Robert Yates, Lemay-Yates Associates Inc., 26:9:20]

Rogers AT&T Wireless echoed many of the frustrations Microcell expressed. For Rogers AT&T, a traditional wireless company with 20 years of history, the impact of Canada's foreign ownership restrictions was felt hardest on its cost of capital and, therefore, mostly on its "bottom line," which has yet to show a positive balance. The removal of the foreign ownership restrictions would allow it to pursue a more aggressive deployment in third-generation (3G) wireless technologies.

If I may be permitted to borrow a phrase from George Orwell's Animal Farm, "All animals are equal but some animals are more equal than others." [André Tremblay, Microcell Telecommunications Inc., 13:16:05]

AT&T Canada and Call-Net told almost identical stories. These wireline companies are in direct competition with the incumbents, and foreign ownership restrictions are just one of a number of impediments they face in making inroads against their well-established rivals. The type of investors they seek cannot easily be found in Canada, but they can be found in the United States and possibly in other foreign capital markets. The case of AT&T Canada was particularly telling, as it recently lost AT&T Corporation of the United States as an investor subsequent to the Canadian company's capital reorganization, which saw many creditors become equity investors.

In the context of our high capital costs, the current obstacles to foreign capital are an impediment. If such restrictions are eliminated, Rogers Wireless will have better access to foreign capital at a lower cost. Removing the restrictions will enable firms like Rogers to obtain equity funds at a reasonable cost, to be less dependent on its debt and to make the network investments required to meet consumers' needs. [Francis Fox, Rogers AT&T Wireless Inc., 13:15:40]

According to Call-Net, the removal of the restrictions by themselves will be of little value to wireline competitors. Indeed, Call-Net claims that the removal or relaxation of the foreign ownership restrictions without further reforms to the regulatory framework might put it at a greater competitive disadvantage with incumbents, such as Bell Canada and TELUS Corporation, rather than improve its relative situation. Therefore, AT&T Canada and Call-Net have called for the immediate removal of the foreign ownership restrictions as the first step in a multi-stage reform of the regulatory framework. They claim that, once these reforms are in place, AT&T Canada and Call-Net will be attractive higher-risk investment opportunities for foreign investors.

[A]s a result [of the foreign ownership restrictions], whatever kind of shares we … issue …, they will be devalued by virtue of those rules, and therefore, the cost to us to go out and raise money … is higher. We're either paying more to borrow money or we're paying more indirectly to issue equity because we're selling that equity at a substantial discount compared to our American compatriots who are in the same business. [John Tory, Rogers Cable Inc., 25:16:00]

Bell Canada Enterprises (BCE) and TELUS Corporation recounted very different experiences than their much younger competitors. Neither incumbent claimed to have been constrained in any way by the foreign ownership restrictions, which apparently have not imposed any impediment to their investment plans. Both companies successfully raised equity capital in the past year in spite of considerable turmoil in the capital markets. Moreover, since 2000, both companies were able to reduce their foreign equity participation.

Both BCE and TELUS favoured the removal of Canada's foreign ownership restrictions provided a number of conditions were met, including, most importantly, the rejection of tiering or licensing regimes in their stead. While both companies were sceptical that such a move would spur any significant new FDI in the near term — because of prevailing financial uncertainty — they believed that Canada would benefit from a liberalized investment framework in the longer term.

Leading with such a review [on foreign ownership restrictions] is like trying to fix your four flat tires on your car by filling up the gas tank. Until you have fixed the real problem, the one preventing you from moving forward, you are not going to go anywhere. More foreign capital won't get competition moving. It won't level the playing field. It won't reduce the inflated rates that we pay to the incumbents for access to their networks that they inherited from a 100-year monopoly. [William Linton, Call-Net Enterprises Inc., 14:16:00]

Where these two companies differed was on the issue of regulatory reform. TELUS expressed concern over the regulatory regime in Canada, as it believed that, for different reasons than AT&T Canada and Call-Net, recent decisions by the CRTC cast doubt on the investment climate. BCE expressed concern over alternative regimes, such as that of the United States, and advised caution in terms of regulatory reform of what is, in its opinion, one of the best regulatory frameworks in the world.

If we were to list the three most urgent areas of attention for us as a competitive telco, foreign ownership might come in a distant fourth. Do we support the liberalization of the restrictions? Yes. But in the absence of domestic telecom policies that clearly encourage competition to us this is a dead issue right now. [William Linton, Call-Net Enterprises Inc., 14:16:00]

The cable television industry brought up a number of administrative complexities created by foreign ownership restrictions. Its representatives also came armed with a complete impact statement of these restrictions on the incumbent telephone and cable television companies. According to the industry's research, the restrictions add 76 basis points to a telephone company's weighted-average cost of capital (WACC) and 189 basis points to a cable television company's WACC. Given that the asset base of the combined telecommunications and cable television sector approaches $67 billion, the total cost of the foreign ownership restrictions is estimated at $675 million per annum. Rogers Cable, Shaw Communications and COGECO Inc. then emphasized the point that the removal of the foreign ownership restrictions could lead to much-needed and improved profitability in the telecommunications sector, lower pricing of its services, and/or an extension of broadband networks into less densely populated regions.

[C]hanging the foreign ownership restrictions is necessary. It's not the total solution to the problem. It's a piece of the puzzle, so please let's get on with it. [John McLennan, AT&T Canada, 14:16:25]

Cost of Capital and Financial Stability

Statistical evidence demonstrates that investment in Canada's telecommunications sector relative to that of other OECD countries has declined in the past decade. This decline coincides with the application of Canada's foreign ownership restrictions. The anecdotal evidence, as provided by the telecommunications companies themselves, further suggest that these restrictions are at least partially linked to Canada's relatively poor investment record in the telecommunications sector. The companies claim that the link between foreign ownership restrictions and relatively poor investment is the cost of capital. Simply put, foreign ownership restrictions limit the pool from which telecommunications companies can draw investment, and the resultant reduced supply of investment capital raises the cost of equity capital. Particularly hard hit are the new entrant firms or CLECs that are forced to substitute debt capital for equity capital, thereby raising their debt-equity ratios to realize their investment plans. Higher debt-equity ratios among the new entrants mean greater financial leverage and increased vulnerability to failure, particularly in economic downturns. In a world of increasingly risk-averse investors, higher debt-equity ratios also mean a higher WACC, and a higher WACC means less investment.

From the point of view of corporate governance … [l]imitations on the type and amount of allowable foreign investment have the serious consequence of driving up the cost of financing. [André Tremblay, Microcell Telecommunications Inc., 13:16:00]

[I]nvestors, foreign or domestic, can clearly invest in ILECs and expect a predictable return and dividends. ILECs do not attract and in fact do not need risk capital. Competitors on the other hand are dependent on the availability of risk capital, which is a severely limited resource if only Canadian sources are considered. [Robert Yates, Lemay-Yates Associates Inc., 26:9:25]

Investments can also be financed by internal sources of capital. The incumbent telecommunications companies have greater access to internal sources of capital than new entrants. Incumbent telecommunications companies, with more than 100 years' head start in the deployment of infrastructure, have also acquired the necessary technical and managerial expertise and have built a solid reputation for providing a satisfactory return on investment. These factors also influence a company's cost of capital. Canada's foreign ownership restrictions cannot, therefore, be the sole cause of the imbalance in the cost of capital between ILECs and CLECs, nor can their removal be a complete remedy to the sector's capital woes.

[I]nvestors are influenced in their assessment of where to invest by the certainty of a company's cash flow. … Free cashflow and its relationship to debt levels has emerged as a major credit rating determinant. It's these ratings that drive investors' perception of risk and subsequently the cost of debt and equity. [James Peters, TELUS Corporation, 16:15:40]

Evidence supports the theory that foreign ownership restrictions raise the cost of capital which, in turn, reduces capital investment. The Committee was told that, in late 2001, BCE's average cost of capital was about 6.3%, while the cost of capital for a typical wireline CLEC, e.g., GT Group Telecom, was in the order of 20%. In a case where both BCE and GT Group wanted to raise and invest $1 billion, the nearly 14% differential in the cost of capital between the two companies would have required GT Group to bear nearly $140 million in additional financing costs each year. As it turned out, this differential was unsustainable, and not surprisingly, in mid-2002 when the financial bubble in telecommunications burst, GT Group sought court protection from its creditors. Although the Committee realizes that this episode fits the scenario described above, more evidence — industry-wide evidence — would be helpful.

Our foreign ownership rules haven't protected Canada from instability in the marketplace. Per capita, we may have had even more instability than the U.S. We've had a number of bankruptcies; all the major competitors have either restructured or are going through restructuring … [Larry Shaw, Industry Canada, 12:11:20]

A much broader examination of the cost of capital impact of Canada's foreign ownership restrictions was provided to the Committee. Network Research Inc. conducted a study of the impact of Canada's foreign ownership restrictions in telecommunications that included Aliant Telecom, Bell Canada, Manitoba Telecom Services (MTS), SaskTel, TELUS, COGECO Cable, Rogers Cable, Rogers Communications, Shaw Communications, Videotron Cable Systems and

[I]t's not about selling a business, it's about selling equity at fair prices, so that you can keep a healthy balance between debt and equity. Indeed, the markets are too narrow in Canada. [Louis Audet, COGECO Inc., 25:16:00]

We could open the floodgates tomorrow and invite every international investor we can find to invest as much as they would like in the Canadian telecom industry, but why would anyone who could so much as balance a chequebook choose to invest in a sector that has claimed so many victims [Group Telecom, Accent, C1 Communications and Connect, 360 Networks and MaxLink] and seen so many investments disappear? [William Linton, Call-Net Enterprises Inc., 14:16:00]

Although the competitive telecom industry landscape is certainly mired with failures and exits, as we all know, experience from the past indicates that foreign entities are interested in investing in the Canadian market and in telecom competitors. [Robert Yates, Lemay-Yates Associates Inc., 26:9:20]

These rules … have a very asymmetric effect because the very companies that could be doing the new things and the dynamic things are the ones that get impacted most by the rules. [Robert Yates, Lemay-Yates Associates Inc., 26:10:05]

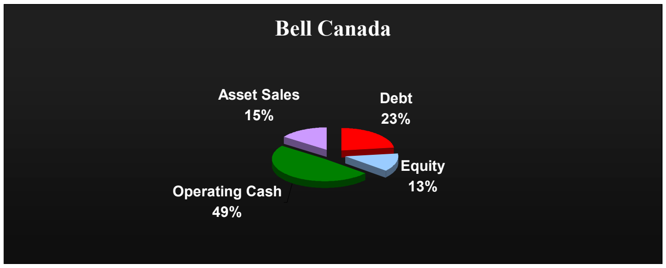
Vidéotron Ltée.[7] The researchers estimated the cost of capital for Canadian incumbent telephone companies and Canadian cable television companies to be 8.9% and 10.37%, respectively. These estimates were obtained using 25-year equity market returns, adjusted for stock betas to account for perceived risk and market volatility. The study's two main findings were:

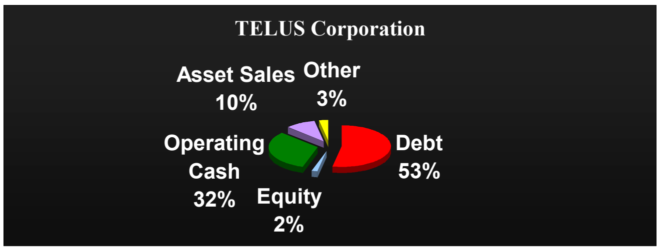
- Foreign ownership restrictions increase the cost of capital by at least $1.06 per month per subscriber for an incumbent telephone company, and by at least $2.61 per month per subscriber for Canadian cable companies.
- A cost of capital differential of approximately 1.18% exists between Canada's incumbent telephone carriers and Canadian cable companies, and cannot be sustained indefinitely. This incremental cost equates to about $1.46 per month per cable subscriber.

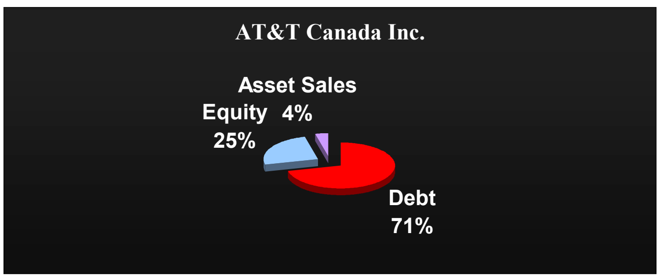
The debt-equity ratio profile of the industry, as suggested above, is also borne out by research. Before the recent restructurings of Call-Net, AT&T Canada and GT Group, the book equities of these companies were negative, so a debt-equity ratio calculation was not even possible. In its place, the Committee refers to data in Lemay-Yates Associates Inc.'s study of the sources of financing of five major telecommunications carriers between 1998 and 2002 (see Figure 2.3). The incumbents clearly have a decisive advantage over new entrants in terms of the diversity of sources of financing. While the Committee believes that Canada's foreign ownership restrictions have contributed to the scale and profile of debt-equity ratios across the industry, it cannot determine its exact contribution because new entrants in capital-intensive operations typically have higher debt-equity ratios than their incumbents; these two factors, along with others, cannot be separated out.

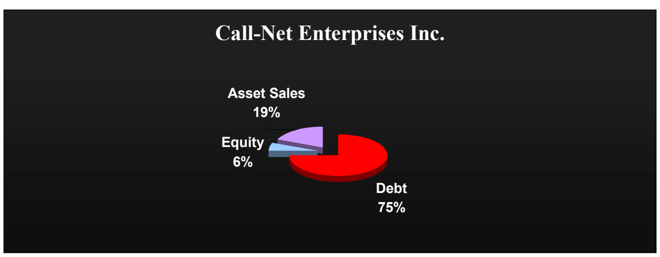
[7] Network Research Inc., *The Implications of Foreign Ownership Restrictions Upon the Canadian Cable Television Industry*, February 2003.

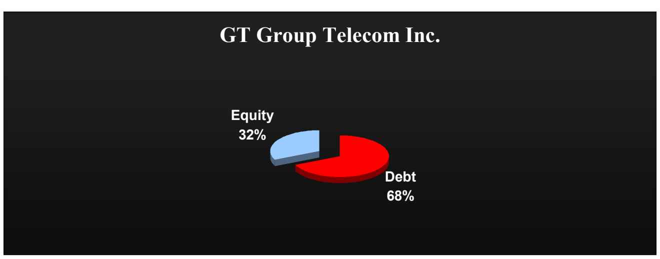
Figure 2.3
Sources of Financing of Major Telecommunications Carriers in Canada — 1998-2002











Source: Lemay-Yates Associates Inc., *Access to Capital — Impact of Foreign Ownership Restrictions on Telecom Competitors*, February 2003.

It is clear that the two major area monopoly providers who do a good job have strong balance sheets and are well funded to move forward. Their competitors are not in the same set of circumstances and as a consequence this creates certainly not a level playing field in terms of serving the best interests of Canadians.
[Vic Allen, Upper Canada Networks, 14:15:35]

[G]iven the limitation on foreign equity participation, competitors have ended up with very high debt levels typically 70% or more of financing which is far higher than the ILECs. [Robert Yates, Lemay-Yates Associates Inc., 26:9:25]

Investment, Industry Structure, Legislative Framework and the Regulatory Environment

Because of their monopoly legacy and the fact that they continue to control well over 90% of their local markets and the attendant certainty of revenue earnings and cash flow, I call them near monopolies. [John McLennan, AT&T Canada, 14:15:55]

A recurring theme in the Committee's hearings was that Canada has modern telecommunications infrastructure, and that Canada is a world leader in both the telecommunications equipment and services sectors. Consequently, Canadians enjoy some of the highest quality telecommunications services at the lowest prices in the world. The Committee recognizes that Canada's current position as a world-leader in this industry is in part due to a modern regulatory framework. In the words of the OECD:

> *The regulatory framework is transparent and allows for full participation of all interested parties. Consensus building has been a key factor in the development and implementation of regulations.*[8]

The best example in Canada is look at long distance … it must be 10% of the cost of what it was. … It's been a wonderful example of what competition can do in an area. We just want to extend that to local services for residential. We want to extend it to business services and to do that we need a few changes to the current policies set in place. [William Linton, Call-Net Enterprises Inc., 14:17:10]

It is clear to the Committee that the telecommunications landscape is changing rapidly and that the private sector is adapting well to the introduction of new, innovative technologies and is investing for the future (see Chapter 4). The Committee is not convinced, however, that Canada's legislative framework in telecommunications services sector is showing the same flexibility. For example, while the OECD is generally supportive of Canada's regulatory framework, it is critical of Canada's reliance on foreign ownership restrictions in telecommunications to address sovereignty and security concerns in a period when many other OECD countries have modified their regulatory regimes to address these concerns in other, less discriminatory ways. The Committee believes that it is essential that the federal government and Parliament keep abreast of technological and industrial changes in the telecommunications services sector. The legislative framework governing the sector should reflect, and even anticipate, change in order that growth and innovation is not constrained by outdated legislation. The Committee therefore believes that there should be routine parliamentary review of the

[8] OECD, *Regulatory Reform in Canada — From Transition to New Regulation Challenges — Reform in the Telecommunications Industry*, 2002 p. 5.

Telecommunications Act. Accordingly, the Committee recommends:

1. **That the Government of Canada amend the *Telecommunications Act* to require a mandatory five-year review of the Act by a parliamentary committee.**

[T]he telecommunications service rates in effect in Canada are among the lowest in the world, and, in many cases — and this is often the problem — the services are provided at a loss. [Jean-François Hébert, Association des Compagnies de Téléphone du Québec, 16:15:30]

Foreign ownership restrictions are a barrier to entry into telecommunications, through their effect on a new entrant company's cost of capital. A higher cost of capital slows the rate of capital investment and, in turn, the roll-out of competitive services. However, foreign ownership restrictions are not the only barrier to entry into the telecommunications sector. There are a number of competition-related issues, each probably more important than foreign ownership restrictions that must be worked out before any appreciable investment, foreign or domestic, will be directed towards Canadian telecommunications companies and the expansion of their infrastructure.

The Committee was told of a number of such barriers to entry into the local services market. They include local residential and business prices set below their costs, the determination and pricing of an "essential facility" of an ILEC, and problems related to the co-location of a CLEC's facilities with those of an ILEC. The Committee also recognizes that there may be other barriers than those listed here. Together, they may explain the lack of any appreciable telephone wireline competition in the local services market.

The most important change is the requirement for competitors … to have access to those parts of the network that will not be duplicated. They are called essential parts of the network. So for example, the drops that are into your house will never be duplicated. … We need reasonably priced access to those services … [William Linton, Call-Net Enterprises Inc., 14:16:05]

Beginning with the pricing barrier — whereby prices for local telephone services in some areas are sometimes lower than their cost — there is clearly a conflict between public policy objectives. Prices are kept low by regulation and are financed by cross-subsidy policies among different services to fulfil the objective set out in section 7(*b*) of the *Telecommunications Act*, "to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada." The Committee has no quarrel with the balancing act that the CRTC has chosen here. Recent rate-rebalancing decisions of the CRTC have managed this issue well.

You are not going to overbuild the telecommunications infrastructure, especially the local part of the infrastructure. Nobody is ever going to finance that. … [W]e need access to that, not below the incumbent telcos' costs but at a reasonable reduction in price from retail … [John McLennan, AT&T Canada, 14:16:10]

In dealing with the other barriers, the CRTC has made a number of decisions that it believes are consistent with its preference for "facilities-based competition." In the CRTC's opinion, over the long term, facilities-based competition will best achieve the objectives set out in the *Telecommunications Act*. The CRTC also recognizes that a transition period to a facilities-based competition era is needed and requires acceptance of a hybrid approach, whereby CLECs will use a combination of their own telecommunications facilities and those of an ILEC. The hybrid approach combines facilities-based competition and resale competition, and is justified as a means to accelerate the realization of full-fledged facilities-based competition.

A number of interveners challenged the CRTC's interpretation of the *Telecommunications Act* and a number of its consequential decisions. AT&T Canada, Call-Net, the Competition Bureau and a number of telecommunications experts focused their complaints on what they see as the CRTC's pursuit of facilities-based competition to the exclusion of all other forms of competition. AT&T Canada and Call-Net also contested CRTC decisions on what constitutes an "essential facility" at this early stage of competition and on the pricing of such ILEC facilities. AT&T Canada and Call-Net prefer a much broader definition of an essential facility than determined by the CRTC, as well as pricing of such facilities at a wholesale price — not retail.

The Commission believes that in time, … facilities-based competition will best achieve the objectives set out by Parliament … in the Telecommunications Act. However, … it is necessary to have a period of transition … characterized … by a hybrid approach that allows new entrants to use the facilities of the incumbent telecommunication companies that are deemed to be essential ... [Charles Dalfen, Canadian Radio-television and Telecommunications Commission, 23:15:25]

The Committee notes that nowhere in the *Telecommunications Act* is a limit placed on the form of competition required to achieve its stated objectives as described in section 7(*f*), "to foster increased reliance on market forces for the provision of telecommunications services …" and in section 7(*g*), "to encourage innovation in the provision of telecommunications services." In the Committee's view, Canada should embrace all forms of competition, not just "facilities-based competition." Although facilities-based competition is viewed by many (including the OECD) as the only form of competition in the telecommunications industry that is "sustainable and effective,"[9] Canada's vast geography and low population density pose particular challenges to this model. In Canada, facilities-based competition is unlikely to be feasible in a large number of communities in Canada, and resale competition may be the only form of competition that some remote and rural regions of Canada are ever likely to see. Facilities-based competition in Canada is, as put succinctly by the Commissioner of Competition, "pipe dreaming."

The decision that came out from the regulator … very specifically said that they want facilities-based competition and facilities-based competition only. We have tried to make the point quite a number of times that there is no capital in the world available to overbuild a local telephone network. [John McLennan, AT&T Canada, 14:16:30]

At the same time, the Committee understands that facilities-based competition, rather than resale competition, would better promote innovation in telecommunications over the longer term, because innovators will be better able to reap the benefits of their innovations. The goal of facilities-based competition is laudable and probably achievable in many urban areas of Canada.

I think it's too optimistic, too utopian to think that we can have pure facilities-based competition in Canada, we just don't have the sufficient people and density and [we have] the great geographic distances. [Konrad von Finkenstein, Competition Bureau, 23:17:35]

The Committee also takes issue with SaskTel's view that "it is far too early to conclude that local competition has failed in Canada and further regulatory intervention is required" [Donald Ching, SaskTel, 24:16:20]. When the incumbents maintain 92.2% of the local business lines and 99.4% of the local residential lines for a total 96.8% of all end-user phone lines six years into the transition from monopoly to competition,[10] something is demonstrably wrong.[11] At the same time, the Committee recognizes that this same pattern (competition developing more rapidly in the long-distance market than in local markets) has been witnessed throughout the OECD, and that, on average, overall competition has built up more rapidly in Canada than in other OECD countries.

On the specific issues of access to capital in the telecom sector, TELUS strongly believes that the government must also undertake a timely review of the Canadian telecommunications regulatory regime as called for by the innovation strategy to ensure that the CRTC decisions are also instilling investor confidence and promoting investment. [James Peters, TELUS Corporation, 16:15:40]

[9] See, for example, Dimitri Ypsilanti, submission to Committee, meeting no. 19.

[10] CRTC, *Status of Competition in Canadian Telecommunications Markets — Deployment/Accessibility of Advanced Telecommunications Infrastructure and Services*, December 2002, p. 39-40.

[11] Data as of 31 December 2000. See Commissioner of Competition, Telecom Public Notice CRTC 2001-37 *Price Cap Review and Related Issues*, October 2001, p. 20-21.

The Committee understands that the CRTC has a difficult role. Moreover, the Committee is aware that there are already a number of mechanisms or processes in place to deal with these differences of opinion. Cabinet appeals are already under way and the Committee does not want to interfere with the regulatory process.

CHAPTER 3
PUBLIC POLICY OBJECTIVES AND INSTRUMENTS: A BALANCED APPROACH

Policy Objectives and Options

In 1987, the Government of Canada justified the imposition of foreign ownership restrictions on telecommunications common carriers by arguing that they "ensure our national sovereignty, security and economic, social and cultural well-being." In 2003, this committee is reviewing this contribution, and the need for foreign ownership restrictions in realizing this public policy objective. At the outset, the Committee would like to reaffirm the objectives of the *Telecommunications Act*, in particular that "telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty." Telecommunications uniquely contribute to our identity and sovereignty as a nation by enabling Canadians to build the social and commercial networks upon which a country can develop and grow, particularly important in an increasingly knowledge-based economy. The Committee is also committed to the Government of Canada's objective of encouraging FDI as a means of maintaining modern telecommunications infrastructure and services. In the interest of balancing these two objectives, the Committee will evaluate foreign ownership restrictions and other policy instruments in the context of the following five policy options;[12] it will then recommend one option.

> *[W]e need to keep in mind the appropriate role of two quite distinct sets of policy instruments. Foreign ownership on the one side and … regulation [on the other side]. If restrictions on foreign ownership are relaxed or eliminated, this does not mean that associated policy goals cannot be better achieved by regulation without depriving us of the benefits of an infusion of foreign capital, outside new ideas, new sources of technology and management efficiency.* [Hudson Janisch, University of Toronto, 16:15:55]

> *We believe that the complete liberalization of the foreign ownership regime in Canada is inevitable and we believe that Canada cannot act like, you know, the mythological King Canute trying to roll back the wave here. This doesn't work. … We believe that these changes are also highly complex because of changes in technology, and they're given. Like King Canute, we can't roll those back either.* [Michael Sabia, Bell Canada Enterprises, 20:9:30]

***Status Quo*: Canadian Control**

Currently, the *Telecommunications Act* stipulates that to operate in Canada, a telecommunications common carrier must be "Canadian-owned and controlled" in that: (*a*) 80% of the Board of Directors of the corporation must be Canadian; (*b*) Canadians must beneficially own, directly or indirectly, not less than 80% of the

12 The Government of Canada has not sought a mandate to nationalize this industry; therefore, federal government ownership and the issuance of a "golden share" are not relevant policy instruments and are not included in the five policy options.

corporation's voting shares; and (*c*) the corporation must not be otherwise controlled by persons who are not Canadians. Foreigners are permitted to own not more than 46⅔% of the voting shares of a telecommunications common carrier (including both direct holdings and indirect holdings through a holding company). The rules apply only to voting shares, based on the assumption that only voting shares permit control; however, many other factors may contribute to control.

Canadians don't want further foreign ownership. There's a Decima poll out that suggests that 72% of Canadians are opposed to the kinds of changes that are potentially being contemplated and advocated by others. [Brian Payne, Energy and Paperworkers Union of Canada, 21:15:35]

BCE Inc. has proposed a variant on the *status quo*. It recommends that the Government of Canada consider reducing the current 66⅔% minimum Canadian ownership requirement of a holding company to 51%. This alternative would permit foreigners to own, directly and indirectly, up to 59% of the voting shares of a telecommunications common carrier. Since the Canadian status of a holding company is determined by regulation, the Government of Canada would not need to seek formal Parliamentary approval for such a change. However, this proposal would not address the issue of *de facto* control, an important consideration deserving further study.

Another alternative that is similar to the *status quo* would be to: (1) lower the minimum requirement for direct ownership in a telecommunications common carrier from 80% Canadian to 51% Canadian; (2) discard the indirect ownership regulations; and (3) introduce limits, e.g., 10%, on individual ownership of voting shares. Canadian majority ownership and control would thus be preserved. This variant on the *status quo* might require a "grandfathering" clause for a number of existing operations, if adverse financial impacts are to be avoided. It would also be more restrictive and might pose a greater barrier to FDI than the current rules. Some OECD countries have, in fact, adopted similar rules (see Appendix 4).

Canada could increase foreign ownership rules at the holding company level, from the current 33% to 49%, for both telecom companies and cable distributors. The 20% threshold that exists on the books today would remain unchanged at the operating company level … and none of that would require any legislative changes. [Michael Sabia, Bell Canada Enterprises, 20:9:25]

Some witnesses suggested that one advantage of the current Canadian ownership and control rules, as well as the above two proposals, is their simplicity. Limiting foreign involvement to a non-controlling status makes it easier to ensure sovereignty over such considerations as maintaining a head office in Canada, performing research and development (R&D) in Canada and favouring Canadian facilities, thereby indirectly favouring Canadian jobs, commerce and economic development. Other policy instruments that would address these sovereignty issues involve some amount of discretion and uncertainty, and would be more cumbersome and costly to administer.

Say what you will about investment restrictions, they at least provide certain knowledge of the degree of foreign investment penetration permitted. [Gerald Shannon, International Trade Consultant, 24:16:10]

Other witnesses suggested that the primary disadvantage of any foreign ownership regime involving restrictions is that it is a very blunt way of achieving sovereignty objectives; and that restrictions on shareholdings have adverse impacts on the Canadian economy. By limiting the investment pool from which to draw, foreign ownership restrictions raise the cost of capital and slow the rate of capital investment for companies seeking outside equity financing. Moreover, foreign ownership restrictions disproportionately affect new entrants or CLECs relative to incumbents or ILECs because the former disproportionately finance their investments using outside sources of capital relative to the latter. New entrants, therefore, respond to higher-cost equity capital by shifting more towards debt capital as a means to finance their investments, thereby raising their debt-equity ratios. Higher debt-equity ratios across the industry translate into a less financially stable industry, particularly evident in periods of economic downturn; in such circumstances, debt-servicing charges can sometimes overwhelm a company's liquidity position and force capital restructurings, including bankruptcy. For all these reasons, competition is held in check, which leads to slower integration of the newest infrastructure and services into the Canadian marketplace. This situation occurs even when the FDI does not entail any changes to the operating company's strategic direction (e.g., maintaining a head office in Canada, performing R&D in Canada, or favouring Canadian facilities).

[W]e can already stack the per cents and get 46.7%, I doubt that 49% would make any appreciable difference. [Robert Yates, Lemay-Yates Associates Inc., 26:10:20]

Canadian Majority Ownership: The 51%/49% Rule

A relatively easy way of significantly modifying the current foreign ownership regime would be simply to discard the Canadian control rules while maintaining the requirement for Canadian majority ownership. The most widely used majority ownership rule today is the 51%/49% rule, which would permit foreigners to directly acquire as much as 49% of the voting shares in a corporation.

[W]e … recommend immediate removal of these restrictions for new entrants even if it is deemed appropriate that the restrictions stay in place for incumbent players for a period of time or upon the achievement of certain competitive milestones. [André Tremblay, Microcell Telecommunications Inc., 13:16:05]

This policy option would increase the foreign ownership permitted for a telecommunications common carrier only slightly, but possibly cede control of the company to foreign interests. If foreigners were more concerned about acquiring control of the carrier, rather than achieving majority ownership of it (to lower financial risk of their investment), then FDI would be more likely to flow to the Canadian telecommunications sector, in particular its new entrants, bringing with it new ideas, innovation, jobs and a more competitive environment than the current regime.

Some witnesses believe that the downside to this option is that the sovereignty objective might be more difficult or administratively costly to achieve. The takeover of an incumbent Canadian telecommunications common carrier by foreigners might be followed by a move of its head office and R&D facilities to the foreign owner's home base, taking many high-paying jobs with them. Foreign owners might also assign a lower priority to rural and remote regions than do Canadian owners. However, evidence suggests that the CRTC has the authority and the means to maintain the cross-subsidy of services across the country, as well as to maintain an incumbent provider's commitment to universal service. Moreover, the Minister of Industry, under the *Investment Canada Act*, can address head office and R&D concerns in the "public interest."[13] These alternative measures, while not a perfect substitute for foreign ownership restrictions, may in fact be superior policy instruments when addressing sovereignty concerns.

[A] tiering approach will not, it cannot … deprive incumbents of the benefits of foreign capital and business know-how. [Richard Schultz, McGill University, 21:16:10]

Incumbent Provider Restrictions: Tiering

Another easy modification to the current restrictions would be to simply change the rules' scope of application. Instead of applying the current foreign ownership restrictions to all telecommunications common

[13] The Free Entry Approach discussed below provides more detail on the powers conferred to the Minister of Industry under the *Investment Canada Act*.

carriers operating in Canada, one could adopt a tiered approach. Under this approach, current foreign ownership restrictions would continue to apply to incumbent telecommunications common carriers (ILECs) but would be removed from all other industry participants. A variant would be to remove the indirect ownership regulations and lower the direct ownership requirement from 80% to 51% for the Canadian companies that remain subject to the restrictions; this is indeed the preferred option of some OECD countries.

[W]e believe that … the foreign investment restrictions should be fully liberalized symmetrically, meaning that no company should be placed at a competitive disadvantage by liberalizing the rules for some companies but not others competing in those markets. [Michael Murphy, The Canadian Chamber of Commerce, 17:15:50]

Since the history of telecommunications in Canada involves many provincially and territorially based monopolies, complemented by many very small municipal telecommunications companies (which also meet the definition of an incumbent), the companies that would be subject to the restrictions might be further refined to include only "large" incumbent telecommunications common carriers. Under tiering, which could only be a transitional option, legislators would be challenged to determine when a large incumbent ceased to be dominant, after which the restrictions could be safely removed. What competitive or market share "milestone" would have to be reached for the removal of the foreign ownership restrictions imposed on large incumbents? Or would a behavioural condition, such as some level of customer defection to rivals in response to a price change by an incumbent, be more appropriate? A periodic legislative review of this issue would be advisable.

It has been suggested that it might be appropriate to adopt an asymmetrical tiered ownership regime … To deprive incumbents … of the benefits of foreign capital, technology and business know-how in order to give new entrants who would have access to foreign capital technology and business know-how would simply lead to a less dynamic market overall in which the public at large would lose out in order to satisfy the private interests of new entrants. [Hudson Janisch, University of Toronto, 16:16:00]

The primary advantage of this option is that it would alleviate new entrant firms' concerns regarding access to capital and the cost of capital, while retaining sovereignty safeguards that are a greater concern when it comes to large incumbents. Second, once a proper definition of a large incumbent telecommunications common carrier was adopted, little or no administration would be required.

Tiering … is arbitrary and it's discriminatory. … Today we [Bell Canada] operate in western Canada. Our company in western Canada is a new entrant. Today, TELUS, based in western Canada, operates in our core market. In our core market they're a new entrant. Well, how do they get placed? How do we resolve that from a tiering point of view? [Michael Sabia, Bell Canada Enterprises, 20:9:20]

There are three main disadvantages to this approach. First, tiering creates an "unlevelled playing field." Since the ultimate objective of the regulatory forbearance approach to deregulation is a competitive marketplace, it may be unwise to tilt the underlying market conditions in favour of any industry participant, or class of participants. There is no evidence to suggest that artificial rules designed to bolster one class of competitors (or handicap another class) can create anything but artificial competition. A truly competitive marketplace offers the promise of the best combination of product selection, service quality and prices. An artificially constructed competitive marketplace offers something less.

We find that the fundamental flaw … if you allow a special category of regulation for a new entrant, then a foreign company could buy that new entrant and all of a sudden you've got a foreign company with access to large pools of capital; that new entrant which may have been small, which may have been fledgling, develops into a competitor under a privileged set of rules ... [Francis Fox, Rogers AT&T Wireless Inc., 13:16:20]

Second, any definition of a large incumbent would likely include, among others, Bell Canada and TELUS Corporation. Bell Canada is dominant in Central Canada, but it is not the dominant player in Western Canada. By the same token, TELUS Corporation is a large incumbent in Western Canada, but it is a new market entrant in Central Canada. What would be the point of shackling both these potential rivals from competing aggressively with each other? Although neither Bell Canada Enterprises nor TELUS Corporation is currently constrained by the current foreign ownership restrictions, this might not continue to be the case. Moreover, this type of competition is just as important as competition with new entrants and it may become even more so in the near future.

Finally, it is conceivable that a new entrant or CLEC could be taken over by a large foreign telecommunications company and could gain access to capital at lower cost than its large incumbent competitor. Such a takeover would defeat any attempt to level access to capital among industry participants and could result in a greater imbalance in the opposite direction.

Canada could remove its foreign investment restrictions while implementing a licensing system in the context of a policy stating that the transfer of licences of major companies would require government approval. Proposed mergers could be denied or approved, subject to conditions reflecting the public interest such as location of head office, levels of R and D, etc. [Peter Harder, Industry Canada, 12:9:40]

Licensing with "Public Interest" Conditions: The Discretionary Approach

Licensing telecommunications common carriers would allow the CRTC or the Minister of Industry to permit foreign control of providers without sacrificing Canadian control over their operations (i.e., sovereignty). Licence conditions could include R&D targets or the development or maintenance of services to rural and remote regions. Failure to abide by the conditions of a licence could result in any number of sanctions, including, as a last resort, the revocation of the licence.

It is important to bear in mind that a foreign takeover of a Canadian telecommunications provider is a concern *only* when the target of the takeover is an incumbent. The concern is that if a U.S. company, for example, were to take over a Canadian incumbent, then the U.S. company could move its head office and R&D facilities to its home base, taking high-paying jobs with it.

Licensing, frankly licensing is about uncertainty. By its nature, it creates discretion. It adds burdens and all of that we believe rather than being a positive move in enhancing investment can become a negative move. [Michael Sabia, Bell Canada Enterprises, 20:9:20]

While licensing would address sovereignty concerns, it would likely discourage the free flow of capital. Licensing places a great deal of discretion in the hands of the licensing authority, which introduces a degree of uncertainty in the investment climate stemming from concerns about possible political interference. Uncertainty is something investors prefer to avoid and, in a global capital market, investment capital would tend to flow to jurisdictions where the investment climate is more predictable. Licensing also involves a degree of continuing government oversight and involvement, and runs the risk of distorting markets — a phenomenon that frequently occurs when government regulators impose controls on the operation of markets and the flow of capital investment. Additionally, in terms of administrative costs, licensing is the most expensive option of the five approaches considered by the Committee.

The problem of uncertainty in the investment climate could be improved (although not completely solved) by clearly setting out, in regulations or guidelines, the factors governing licensing decisions. A transparent decision-making procedure would be less prone to becoming "politicized," and would permit potential foreign investors to better assess the risks and costs of investing and operating in Canada.

Regulatory oversight should remain in the hands of regulators. Review of licence transfers or of mergers and acquisitions should be done by those agencies or bodies currently in place. Case by case ministerial approval or the creation of new regulatory entities would generate uncertainty for the international investment community and would deter, rather than spur, both foreign investment in Canadian companies and innovation. [Michael Murphy, The Canadian Chamber of Commerce, 17:15:50]

Three basic models of licensing could apply to the telecommunications sector:

1. All telecommunications common carriers would be required to have a licence to operate.
2. All telecommunications common carriers would be required to have a licence, but different classes of licences would apply to different types of industry participants.

Now it has been suggested … that if foreign ownership restrictions were relaxed or eliminated there should be a residual government discretion to block or modify any investment deemed not to be in the public interest. This type of unstructured public interest test is dangerously vague and non-transparent and will lead to excessive delays and under the table bargaining. [Hudson Janisch, University of Toronto, 16:15:55]

[A]n integral part of full liberalization of foreign investment restrictions would … maintain a transparent and predictable regulatory framework. This means that no new licensing measures should be introduced that would counteract the benefits that may be accrued through lessening of foreign investment restrictions … [Michael Murphy, The Canadian Chamber of Commerce, 17:15:50]

We believe that the rules should be changed for all carriers large and small. We recommend a complete elimination of the rules ... [Francis Fox, Rogers AT&T Wireless Inc., 13:16:20]

3. Only incumbents (ILECs) would be required to have a licence.

With the removal of the foreign ownership restrictions, the cost of capital could be expected to decline across the industry. However, if the licensing system that replaced these restrictions were not transparent and not predictable, licensing would once again raise the cost of capital to those subject to it. The net effect on the cost of capital thus cannot be ascertained.

In models 2 and 3, non-incumbents are favoured over their incumbent rivals. This favouritism could be expected to translate into a more balanced cost of capital structure across the industry. In effect, the free cash flow advantage enjoyed by incumbents, which translates into a cost of capital advantage over non-incumbents, would be attenuated by the burdens inherent in the conditions of licence(s) in models 2 and 3.[14]

In the absence of other business considerations, new market entrants would be better able to access capital (both equity and loan capital), invest more, and more quickly establish a viable market presence. Over time, such investments will erode the ILEC's dominance, at which point the restrictions could be removed for all operators. As noted above, in the discussion of tiering, the challenge for legislators would be to determine at what point an incumbent ceases to be dominant; what competitive or market share "milestone" is appropriate? Or would a behavioural condition, such as some level of customer defection to rivals in response to a price change by an incumbent, be more appropriate? A periodic legislative review of this issue would be advisable.

No Foreign Ownership Restrictions: The Free Entry Approach

The free entry approach would place no restrictions on foreign ownership. Foreign takeovers would, however, remain subject to review by the Minister of Industry under the *Investment Canada Act*. There are several advantages to this approach. First, it would tend to make Canada more attractive to international capital. Second, it would permit

[14] Free cash flow is defined to be operating cash flow (that is, operating income less capital expenditures) less interest expense.

capital markets themselves to determine the most efficient allocation of resources. Moreover, some witnesses suggested that free entry might, over time, encourage the private sector to bring new services to remote and rural communities, since, of all five options considered by the Committee, free entry results in the lowest capital cost structure across the industry. Other advantages of this approach are that it is simple and avoids administrative costs (which eventually get factored into existing price or tariff structures or tax burdens).

We think that to have a sustainable, competitive model you have to have access to a pool of funds at the best possible price. We think that lifting the foreign ownership restrictions means that we'll have larger access of funds and would probably decrease, by at least 100 basis points, the cost of debt funding for us. [Francis Fox, Rogers AT&T Wireless Inc., 13:16:55]

It has been argued, on the other hand, that this approach might pose an unacceptable risk to Canadian sovereignty, since it could allow foreign entities to control dominant telecommunications providers. Moreover, it would not permit the government to have a strong role in mandating the development of new services to rural and remote communities. However, these concerns could be addressed through CRTC regulation and/or initiatives such as Industry Canada's Broadband for Rural and Northern Development Pilot Program.[15]

[M]any of the goals of restrictions on foreign investment can be more effectively achieved if you look to regulation rather than to restrictions on foreign investment. [Hudson Janisch, University of Toronto, 16:16:55]

Some of these concerns about foreign takeovers of ILECs under a free entry approach could be addressed in large measure by the provisions of the *Investment Canada Act*, which is administered by Industry Canada.[16] The Act prescribes thresholds which, if passed, make the acquisition[17] of a Canadian business subject to a "net benefit" review by the Minister. For WTO investors, the threshold for direct acquisitions in 2003 is set at $223 million. An indirect acquisition by or from a WTO investor is not reviewable. The threshold for non-WTO investors is $5 million for direct acquisitions and $50 million for an indirect acquisition; however, the

[T]he issue of research and development is not really the issue of telecommunications investment. It's true that telecommunications carriers do some adaptation of technology, but the real technology know-how is in the equipment companies and they are not subject to the regulations under the Telecommunications Act. [Hudson Janisch, University of Toronto, 16:17:20]

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[15] This program provides financial assistance to remote and rural communities to build a business plan for the deployment of broadband services. Successful applicants may also receive funding towards implementing their plans.

[16] The Department of Canadian Heritage retains review of certain investments (set out in Schedule IV of the *Investment Canada Regulations*) including, among other activities, production, distribution, sale or exhibition of film or video products.

[17] An indirect acquisition is a transaction involving the acquisition of shares of a company incorporated outside of Canada, which owns subsidiaries in Canada. If, however, the value of the assets of the Canadian part is more than 50% of the value of the assets of its parent, it is considered a direct acquisition. An asset transaction where the vendor is the Canadian business in Canada is considered a direct acquisition.

$5-million threshold also applies to indirect acquisition if the asset value of the Canadian business being acquired exceeds 50% of the asset value of the global transaction.

I'd like to see this committee recommend the removal of the foreign review restrictions … it's one step on what is apparently a tough and long journey. But it would be a strategic step. [Vic Allen, Upper Canada Networks, 14:16:45]

The Act provides for the review of investments in Canada by non-Canadians in order to ensure a "net benefit" to Canada. The "net benefit" is determined according to the following factors:

- the effect on the level of economic activity in Canada, including the effect on employment, on resource processing, on the utilization of parts and services produced in Canada and on exports from Canada;
- the degree and significance of participation by Canadians in the Canadian business or new Canadian business and in any industry or industries in Canada;
- the effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;
- the effect of the investment on competition within any industry in Canada;
- the compatibility of the investment with national industrial, economic and cultural policies; and
- the contribution of the investment to Canada's ability to compete in world markets.

[I]t seems to me that reliance on such a blunt instrument is a rather sad comment on the effectiveness of the range of alternative government instruments such as regulation, competition policy, taxation, and departmental scrutiny. [Richard Schultz, McGill University, 21:16:00]

Objectives and Instruments: Striking a Balance

The Committee has carefully considered the advantages and disadvantages of the policy options presented during the hearings. We recognize that the best policy must strike a balance between two primary objectives: removing or reducing impediments to foreign investment in Canadian telecommunications in order to stimulate competition and innovation within the sector while, at the same time, maintaining Canadian sovereignty and security.

Replacing foreign investment restrictions with new regulations would not increase the attractiveness of Canada as a place to invest in telecommunications and, in fact, could prove to have the opposite effect. [Michael Murphy, The Canadian Chamber of Commerce, 17:15:50]

The Committee is of the view that removing or reducing impediments to foreign investment can best be accomplished by removing entirely the current foreign ownership restrictions on telecommunications common carriers. We are aware of the concerns expressed by many Canadians about the possibility of a foreign takeover of an incumbent Canadian carrier. These concerns are related to the potential for the Canadian carrier's head office, R&D facilities and associated jobs to be moved to the foreign owner's home country subsequent to the takeover. However, the Committee shares the views of some industry experts who have assessed this potential and determined it to be very limited. In fact, these experts estimate that, because of its modern telecommunications infrastructure, Canada is very likely to attract more jobs and R&D work in the telecommunications services sector than it will lose. Furthermore, we are confident, however, that the *Investment Canada Act* provides the government with the tools it needs to ensure that substantial foreign investment will be carried out in a way that is consistent with the public interest. Finally, the CRTC has the authority and means to ensure that telecommunications services are provided at affordable prices to rural and remote regions of the country. Accordingly, the Committee recommends:

2. **That the Government of Canada prepare all necessary legislative changes to entirely remove the existing minimum Canadian ownership requirements, including the requirement of Canadian control, applicable to telecommunications common carriers.**

[A]ny framework that's developed to change the foreign ownership regime must be predictable with discretion kept to a minimum. … Any change in the foreign ownership regime that expands uncertainty, enhances discretion, will again chill investment. [Michael Sabia, Bell Canada Enterprises, 20:9:20]

[F]oreign ownership limits must be symmetrical for all Canadian telecom companies. [James Peters, TELUS Corporation, 16:15:40]

The foreign ownership regime should be technologically and competitively neutral and the rules of the game should not be changed in midstream by economically disadvantageous some competitors by adhering to obsolete labels such as traditional carrier. [James Peters, TELUS Corporation, 16:15:45]

CHAPTER 4
THE CHANGING TELECOMMUNICATIONS LANDSCAPE AND CONVERGENCE

Over the past two decades, the technological and competitive global telecommunications landscape has changed dramatically. Networking technologies, especially the Internet, have revolutionized the way that consumers and industry conduct their activities. The growing digitalization of communications networks means that data, audio and video can increasingly travel over the same or multiple delivery platforms; this convergence of technologies has blurred the lines that used to separate the services offered by the various telecommunications and broadcasting market sectors. At the same time, the global liberalization of telecommunications markets has increased competition and innovation in the telecommunications sector.

Our industry continues to be very much in the midst of change. … Advances in technology have changed a lot of things. Digitization, the Internet have created a common platform, a universal medium that allows any kind of information to be delivered any time, anywhere over any device. … The barriers that once separated the different silos in this industry frankly are being trashed by the technology itself. [Michael Sabia, Bell Canada Enterprises, 20:9:20]

Changes to the telecommunications market in Canada mirror global trends: regulatory reform has allowed the market to move from a monopoly to a more competitive regime, and Canadians have access to a wide variety of modern telecommunications services delivered over multiple delivery platforms. Canada is a world leader in both the telecommunications equipment and services sectors. Compared to consumers in other OECD countries, Canadians have relatively high-quality services at a low price, and have access to the newest technologies available on the telecommunications market. However, competition for local telephone service is still limited, and not all regions of the country have access to new technologies (e.g., high-speed Internet) and a choice of services.

[O]nly a handful of OECD markets had competitive telecom frameworks in 1993. Today 29 of 30 OECD countries have fully competitive telecommunications markets. The last country to open up will be Turkey, which will do that January 1, 2004. [Dimitri Ypsilanti, Organisation for Economic Co-operation and Development, 19:15:30]

In this chapter, the Committee explores whether changing the FDI restrictions applicable to telecommunications common carriers could increase access to emerging telecommunications technologies or improve services for consumers. The Committee also addresses the issue of technological convergence and examines whether broadcasting distribution undertakings should be subject to the same foreign ownership rules as telecommunications common carriers.

Canadians have always been innovators in this industry. I'll just give you a few examples … the world's first domestic communications satellite in geostationary orbit, the first cellular phone service in North America, the first OECD country to launch residential high-speed Internet access, the first wireless Internet browser in North America … [Michael Sabia, Bell Canada Enterprises, 20:9:20]

The Canadian Telecommunications Landscape

The introduction of new technologies, competition and convergence has changed the face of the telecommunications landscape around the world. In recent years, nearly all OECD countries have liberalized their telecommunications markets. A series of reforms to the Canadian telecommunications regulatory framework over the last 20 years (see Appendix 2) has opened the telecommunications services sector to competition, resulting in the elimination of almost all of the original telephone monopolies in Canada. Incumbent carriers still dominate the Canadian telecommunications services sector in terms of share of total market revenues, but this share has decreased gradually over the last few years (from 83.4% in 1998 to 78.5% in 2001[18]). Although there is considerable competition in the long-distance wireline market, (e.g., competitors' share of total long-distance minutes was 35.8% or 26% of total revenues in 2001[19]), competition in local wireline services (which is the largest component of total telecommunications service revenues) is limited, but growing. In 2001, the competitors' share of local business revenues was 4.7%, up from 0.6% in 1998. For the local residential market, the competitors' share of revenues was 0.4% in 2001.[20]

[W]e believe that the path that we will go down in creating local residential competition, and we will create it, is first with the expansion of cable telephony. It's happening in EastLink in Halifax. EastLink today has 25% share in the greater Halifax market. This is going to happen if for no other reason than as we participate in the video business through our satellite company, they will come into the telephone business. This is inevitable. [Michael Sabia, Bell Canada Enterprises, 20:9:35]

The three markets that have experienced the highest growth rates in recent years are data and private line services, mobile communications and the Internet. Growth in these areas reflects rapid technological changes and competition that have led to greatly improved services for consumers. Technological advances in the areas of fixed wireless broadband, 3G wireless and satellite-based communications promise to change the telecommunications services sector even further, particularly in terms of providing broadband

18 CRTC, *Status of Competition in Canadian Telecommunications Markets Deployment — Accessibility of Advanced Telecommunications Infrastructure and Services*, December 2002, p. 14.

19 Ibid., p. 25.

20 Ibid., p. 39-40.

access to the Internet. Utility companies' entry into the telecommunications services market will offer additional choice to consumers, especially in the area of broadband access for the business sector.

[I]t's immensely expensive to replicate the wire line network of the existing telecoms. I think the answer to that is to be technologically innovative and imaginative. … [T]he way to compete with a wire line system isn't to duplicate the wireline system, the way to come on it is to come around behind it with a wireless system. [Hudson Janisch, University of Toronto, 16:16:20]

The telecommunications landscape has been further transformed by technological convergence, which has led to overlap in the distribution networks and services offered by telecommunications carriers and broadcasting distribution undertakings. Telephone companies, using digital video compression, can send video signals to customers over their existing infrastructures. Since 1998, telecommunications common carriers have been allowed to apply for broadcasting distribution licences. The CRTC has already licensed some telecommunications carriers (NBTel, SaskTel, MTS and Télébec) to operate as cable distribution undertakings, and BCE owns both Bell Canada and Bell ExpressVu, a direct-to-home (DTH) satellite distribution undertaking. Conversely, cable companies, using either circuit-switched or Internet Protocol-based technology, can provide local telephone service over their cable networks. The only cable service provider in Canada to provide local telephony service at present is Eastlink in Nova Scotia. In the important high-speed Internet market, telecommunications companies (using digital subscriber line [DSL] technology) and cable companies (via cable modem) compete head-to-head. Other technologies, such as DTH satellite and multipoint distribution systems (MDS), also offer high-speed Internet access to customers, and fixed wireless broadband is available in certain areas of the country. Vertical integration and cross-media ownership further cloud the line separating the telecommunications and broadcasting industries, with companies such as BCE holding ownership stakes in telecommunications, broadcasting distribution, programming and print media.

Restricting foreign investments has a particularly negative effect on new entrants, the very players who are driving innovation. [André Tremblay, Microcell Telecommunications Inc., 13:15:55]

New Entrants and Access to New Technologies and Services

Facilities-based competitive service providers ("new" entrants to the industry) have played a major role in introducing innovative telecommunications services to Canada. Their presence in the market has led to greater choice for customers, higher quality services and a range of new services. New entrants have made huge capital investments to expand and improve networks and bring new products to market. These investments allow them to compete against incumbent telephone companies, but they also result in large start-up losses for new entrants. In order to make (and continue making) such investments and remain competitive, new entrants require access to large sources of risk capital at a reasonable cost, capital that cannot be accessed from Canadian sources alone. The facilities-based competitive service providers argue that restrictions on FDI limit investment in infrastructure, increase the cost of capital, and, ultimately, delay the diffusion of new telecommunications technologies. The Committee shares these views and believes that removing FDI restrictions would stimulate competition and increase innovation in the telecommunications service industry.

A sustainable, robust competitive telecommunications system is a sine qua non for the pursuit of any strategy for innovation. Without healthy telecommunications competition Canada will unavoidably be reduced to the status of an innovation laggard, not an innovation leader. Without the compelling, powerful force of competition, our telecommunications providers will inevitably be satisfied with being innovation application purchasers, not creators. [Richard Schultz, McGill University, 21:16:05]

Universal Access to Services

Canadian telecommunications policy, like that of many other OECD countries, has as one of its objectives the provision of basic telecommunications services at affordable rates to consumers living in all regions of the country. This policy is set out in section 7(*b*) of the *Telecommunications Act* of 1993: “to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada.” Canada’s large land mass and its low population density make the provision of telecommunications infrastructure to all Canadian communities an expensive proposition. Universal access has historically been supported by cross-subsidies among services: profitable areas (usually urban) and profitable services (long distance, optional services) subsidize local service and areas with high operating costs (usually rural or remote). The result of this policy is that more than 98% of Canadian households have basic telephone access.

The telephone infrastructure and system was brilliantly conceived and set up over the first 125 years … All of the profits and money and additional cash was generated in the large urban areas … [T]here were very elaborate systems set up to roll that excess capital out into the rural areas, and the non-populated areas to create basic ubiquitous telephone service at a very, very low cost. But who paid for that was downtown Toronto. And that’s the way it’s been set up all over the world. It was simple but brilliant. [John McLennan, AT&T Canada, 14:17:00]

In the “new,” knowledge-based economy, technologies that allow information to be rapidly and widely disseminated are generally viewed as important social and economic development tools. These technologies help create new economic opportunities and improve people's education, skills and quality of life. In this economy, universal access to basic telecommunications services and important emerging technologies is thus more critical than ever before.

The Internet and Broadband Access[21]

One of the most important information and communications technologies in terms of its socio-economic potential is the Internet. Although Canada first connected to the Internet in 1981, a commercial market for Internet access did not develop until 1991. In 1999, the CRTC introduced, as a basic service objective for wireline companies, the provision of "individual line local service with touch-tone dialling, provided by a digital switch with capability to connect via low speed data transmission to the Internet at local rates."[22] At the time of this decision, more than 97% of access lines already met this goal.

[T]here have significant changes in the telecommunications market. Perhaps the most significant has been explosive growth of the Internet and services supported by high-speed networks. For the OECD, we've estimated that there are now about 250 million Internet subscribers and 52 million of these subscribe to high-speed Internet broadband connections. [Dimitri Ypsilanti, Organisation for Economic Co-operation and Development, 19:15:30]

Basic dial-up access (telephone line and modem) to the Internet is relatively cheap and widely accessible, but the service is slow and the technology is not sufficient for high bandwidth applications. A wide range of communications services and applications requires high levels of bandwidth. Canada enjoys one of the highest broadband penetration rates in the world. Compared to other OECD countries in the first half of 2002, Canada's penetration rate (approximately 10.3%) was second only to Korea's (approximately 19.2%), and ahead of Sweden's (6.8%) and the United States' (5.8%).[23] Despite this relatively high penetration rate, broadband access is not available across all regions of Canada.

Various carrier technologies available in Canada deliver high-speed (broadband or wideband) Internet access. The two most popular technologies for residential

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21 A number of definitions of "broadband" exist. The National Broadband Task Force defined broadband as a high-capacity, two-way link between an end user and access network suppliers that is capable of supporting full-motion, interactive video applications (faster than 1.5 Mbps with current technology). Actual (vs. theoretical) speeds for DSL and cable modem services are generally lower than this definition, and are referred to as "wideband." The Committee uses the term "broadband" as shorthand for high-speed (i.e., wideband and broadband) Internet access.

22 Telecom Decision, CRTC 99-16, *Telephone Service to High-Cost Serving Areas*.

23 OECD, *Broadband Access for Business*, 2002, p. 14.

subscribers are DSL and cable modem, but they are not available in all regions of the country. Satellite technology is widely available, but is relatively expensive. A number of communities have access to fixed wireless broadband service, but it too is relatively expensive. In late 2001, mobile providers began to provide Internet access via their 2.5G networks, but the access speeds offered are only slightly faster than those provided by narrowband technologies. In 2001, 1.6 million Canadian households subscribed to the Internet via cable and 924,000 via DSL. Only 9,000 households used another technology for high-speed access (most via fixed wireless access; less than 1% of residential subscriptions were provided directly over fibre).[24] For businesses, high-speed Internet access makes considerable use of fibre-optic cable, which provides true broadband access to the Internet (in 2001, 54% of high-speed Internet access expenditure by business was on fibre, 32% on DSL, and 14% on cable or other technologies).[25]

I think it's important that Canada be moving forward in the 21st century on all cylinders and not have 25 to 30% of the country and the rural economy not functioning. [Vic Allen, Upper Canada Networks, 14:16:45]

Recent figures indicate that 76% of Canadian communities (or 15% of the population) do not have high-speed access to the Internet, whereas 15% of communities have one supplier of high-speed Internet access, and 9% of communities have two or more suppliers.[26] The majority of Canada's rural communities do not have high-speed access. Expanding broadband to all communities in Canada is an extremely expensive proposition requiring large amounts of capital. Extending broadband services to rural and remote areas is not commercially viable at this time because of the large gap between the incremental costs of constructing and operating new facilities, and the price that consumers and businesses are willing to pay for the services. Although some emerging technologies such as satellite and wireless offer some promise in reducing deployment costs for broadband in rural and remote areas, mass-market deployment of these technologies is, by some estimates, up to five years away.[27]

[R]egions with low-density population, whether in rural or remote areas, have remained almost untouched by competition. The competitors concentrated their investments in high-population density areas, and were almost absent from the rural or remote region. Even the major licensees, namely those which controlled the market when the competition came into play, limited their investments in low-population density regions. … [Jean-François Hébert, Association des Compagnies de Téléphone du Québec, 16:15:30]

24 CRTC (2002), p. 50.

25 Ibid, p. 47.

26 Ibid, p. 77.

27 Michael Sabia, Bell Canada Enterprises, submission to the Committee.

In 2001, the National Broadband Task Force recommended that the federal government review whether foreign investment restrictions applicable to telecommunications common carriers and broadcasting distribution undertakings restrict, or are likely to restrict, increased industry participation in the competitive deployment of broadband infrastructure in Canada.[28] This question is raised in Industry Canada's discussion paper on FDI restrictions applicable to telecommunications common carriers.[29] Most witnesses appearing before the Committee indicated that changes to FDI restrictions would not change the speed or nature of broadband deployment in these communities. These witnesses pointed out that an injection of new money into the industry (whether from foreign or domestic sources) would go to those markets where the greatest opportunity for a rapid return on investment exists. In their view, rural and remote areas would be unlikely to attract new monies for the development of broadband facilities since there is no opportunity for investors to recoup their investment. A few witnesses, however, suggested that increased access to cheaper capital on foreign markets would make it easier for companies to construct a viable business case for expanding their networks into otherwise unprofitable communities. On a global level, there is no clear link between the liberalization of foreign ownership and control rules and increased access to broadband. The two OECD countries with the highest broadband penetration rates (Korea at 19.2% and Canada at 10.3% in the first half of 2002) both have restrictions on FDI in their telecommunications sectors, whereas countries without such restrictions have lower penetration rates (e.g., United States at 5.8% and the United Kingdom at 1.3%). Many OECD countries (regardless of FDI regimes) have divides between rural and urban areas in terms of access to broadband.

Regardless, if we are talking about restrictions on foreign investments or anything else, the situation will not change as regards low population density regions in either the short or medium term. [Jean-François Hébert, Association des Compagnies de Téléphone du Québec, 16:15:35]

[T]here is no link whatsoever between expanding high-speed broadband service to rural and remote regions of Canada and the lifting of foreign ownership restrictions. The factor limiting broadband expansion is the lack of an underlying business case to justify the investment. [Donald Ching, SaskTel, 24:16:20]

[T]he cable industry supports liberalization of foreign ownership rules for broadcast distribution undertakings and telecom companies. We believe there are significant benefits that would flow from these changes in terms of access to larger pools of capital at lower cost. It would increase incentives to expand our integrated broadband networks, and it would increase competition and innovation in these industries. [Janet Yale, Canadian Cable Television Association, 25:15:30]

The central governments of most OECD countries believe that widespread broadband access is important for future socio-economic development and global competitiveness, and many of them have introduced

[28] See recommendation 9.2 in National Broadband Task Force, *The New National Dream: Networking the Nation for Broadband Access*, Industry Canada, 2001.

[29] Industry Canada, *Foreign Investment Restrictions Applicable to Telecommunications Common Carriers*, Discussion Paper, November 2002.

policies to encourage investment in broadband infrastructure and to improve broadband access. Canadian federal and provincial initiatives in this area include: (a) contracting for government institutes or personnel, (b) providing seed funding to community projects, (c) providing capital funding for infrastructure projects, (d) offering research and development tax credits to equipment manufacturers, (e) funding trials for broadband applications, and (f) developing and supporting online content.[30] The most recent federal initiative, the Broadband for Rural and Northern Development Pilot Program, provides funding through a competitive process to bring publicly available broadband access to Canadian communities, with priority given to First Nations, northern, remote and rural communities which are currently without DSL or cable modem service. This program forms part of the federal government's commitment to ensure broadband access is available to all Canadian communities by 2005. Many witnesses stressed that the private sector should drive the roll-out of broadband across Canada. At the same time, however, witnesses indicated that there is a role for government in facilitating the deployment of broadband to areas where there is no business case for such deployment.

[I]t is imperative that the private sector drive this roll-out, relying on competitive market forces. The roll-out of the federal government of this deployment should be to ensure that any contributions required to facilitate broadband development are introduced in the least market-distorting manner possible. Indeed the government has already begun some projects to this end. [Michael Murphy, The Canadian Chamber of Commerce, 17:15:55]

Based on the evidence it heard, the Committee is not convinced that changing the restrictions on FDI applicable to telecommunications common carriers will lead to increased access to broadband in rural and remote communities in the short term.

[I]t's no longer readily apparent who in Canada is a telecommunications service provider. With convergence attempts to label companies as pure cable, wireless, telephone, broadcast or Internet service providers are virtually impossible. [James Peters, TELUS Corporation, 16:15:45]

Convergence and Broadcasting Distribution Undertakings

Technological advances and convergence of technologies, especially over the last decade, have blurred the lines that previously separated the services offered by telecommunications common carriers and broadcasting distribution undertakings ("BDUs," including cable companies, DTH satellite service providers and MDS). Telecommunications carriers and BDUs are now competing for the same customers in some markets (e.g., high-speed Internet service). The telecommunications

[30] CRTC (2002), p. 75.

and broadcasting landscape is further complicated by vertical integration and by cross-media ownership. Clearly, defining an enterprise as a pure "telco" or "BDU" on the basis of their underlying distribution networks or the services they provide is becoming more and more difficult (see Figure 4.1). In an era of digitalization and convergence, an examination of potential changes to FDI restrictions (or any other component of the regulatory framework) applicable to telecommunications common carriers must take account of the impact of such changes on BDUs.

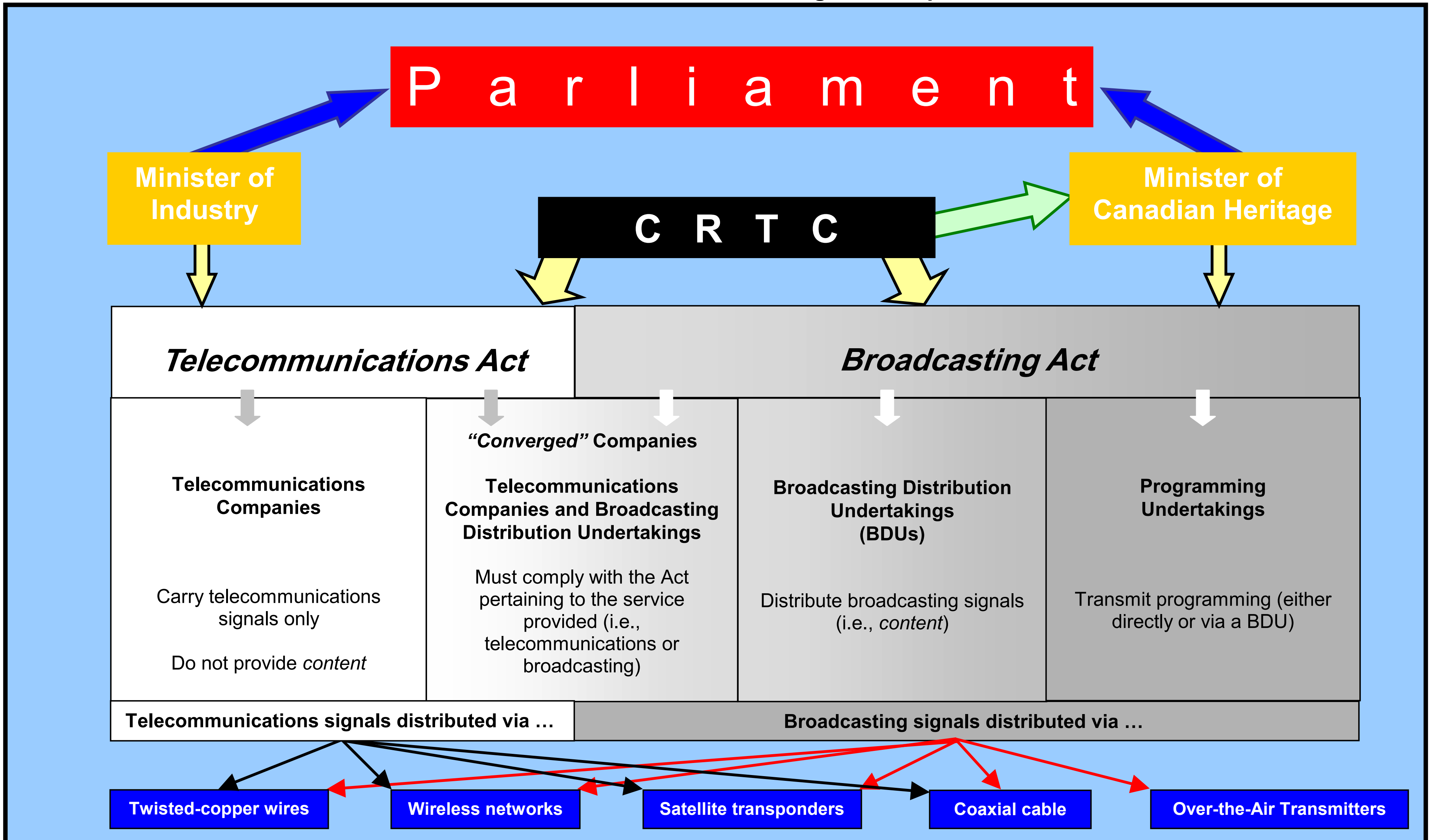
[W]e believe that, in order to maintain a fully competitive and innovative communications sector and to enhance the overall business climate in Canada, the foreign investment restrictions should be fully liberalized symmetrically, meaning that no company should be placed at a competitive disadvantage by liberalizing the rules for some companies but not others competing in those markets. [Michael Murphy, The Canadian Chamber of Commerce, 17:15:50]

Section 3(*a*) of the *Broadcasting Act* states, "the Canadian broadcasting system shall be effectively owned and controlled by Canadians." The definition of "Canadian" for the purposes of the Act, and the rules pertaining to ownership, are laid out in a direction to the CRTC from the Governor in Council.[31] Under the Direction, a corporation that meets the definition of a "qualified corporation" is classified as Canadian. A non-Canadian may own directly up to 20% of the voting shares of a Canadian corporation before that corporation loses its status as a qualified corporation. A non-Canadian may also own up to 33⅓% of the voting shares of a holding company before a subsidiary corporation of the holding company loses this status. Therefore, non-Canadians may, directly and indirectly, hold up to 46⅔% of a Canadian corporation. Furthermore, a corporation's chief executive officer and at least 80% of its directors must be Canadian in order for it to meet the definition of a "qualified" corporation. If a non-Canadian controls a Canadian corporation (by any means), regardless of the number of voting shares held, the corporation loses its status as a qualified corporation. The Direction states that broadcasting licences may be issued only to qualified corporations.

[W]e are suggesting that competitive equity will require that cable companies and telephone companies be treated the same way under liberalized foreign ownership rules. [Louis Audet, COGECO Inc., 25:15:40]

[31] *Direction to the CTRC (Ineligibility of Non-Canadians)*, 1997, www.crtc.gc.ca/eng/LEGAL/NONCANAD.HTM. The first version of this direction was issued in 1969. At that time, restrictions prohibited the direct or indirect acquisition by a foreign interest of more than a 20% stake in any broadcasting undertaking.

Figure 4.1
Telecommunications and Broadcasting Landscape in Canada



Note: Grey shading represents the institution's degree of influence over content; Green arrow represents a reporting obligation; Blue arrows represent a ministerial responsibility; Yellow arrows represent a decision-making authority

Many BDUs argue that if the FDI restrictions applicable to telecommunications common carriers are loosened or removed altogether, the same should be done for BDUs. They argue that their industry relies heavily on capital investment and that they too need improved access to foreign capital at a lower cost to ensure continued growth, competition and innovation in the sector. These companies point out that because of technical convergence, many of them are competing in the same markets as telecommunications common carriers, and should be subject to the same ownership rules. The BDUs suggest that if the telecommunications companies were subject to less stringent FDI restrictions than were BDUs, BDUs would be at a competitive disadvantage. They argue that the removal or relaxation of the restrictions only for telecommunications common carriers will distort competition for capital, impair the development of competition among various technologies, reduce choice for consumers, and contradict the principle of technological neutrality in Canadian regulatory policy. The Competition Bureau agrees with these arguments and suggests that all carriers of signals (be they telephone or broadcasting) should enjoy the same access to capital and be subject to the same ownership rules.

[W]e're talking about signals being transported over a pipe. Whether that signal is a telephone signal, whether it's an Internet signal or whether it's a broadcasting signal, it makes no difference … [Y]ou have a pipe and you're sending electronic signals through it. The rules for that should be the same. [Konrad von Finkenstein, Competition Bureau, Industry Canada, 23:17:00]

Opponents of an extension of any change in FDI restrictions to BDUs argue that despite technological convergence, BDUs and telecommunications common carriers are not the same "animal." They point out that there are cultural issues attached to the operation of BDUs that, at least at this juncture, are not associated with telecommunications common carriers. The opponents suggest that allowing foreigners to control BDUs would have a negative impact on the government's cultural policy goals.

Once the ownership distribution genie is let out of the bottle, the prospect of non-Canadian influence over programming services is raised. [Phyllis Yaffe, Alliance Atlantis Communications Inc., 17:15:40]

Although the CRTC is responsible for setting the general rules about which signals may or may not be carried by BDUs, BDUs influence programming in that they make decisions about which services to market, package and promote, about channel positioning, and about retail rates. Opponents of changing the restrictions on FDI for BDUs suggest that the restrictions ensure that these programming decisions are made by Canadians, not by foreign interests, and that BDUs continue to

Any changes in the rules that applies only to telecom companies would soon be of competitive significance to broadcasters as telecom companies move increasingly into the BDU and broadcasting businesses. [Leonard Asper, CanWest Global Communications, 26:9:10]

[I]t is difficult at times to make the distinction between content providers and carriers … particularly with distribution undertakings and programming. But I would suggest it's not impossible. In fact, much of our framework of telecommunication and broadcasting turns on that very distinction. [David Johnston, University of Waterloo, 17:16:45]

transmit a wide range of Canadian programming. They argue that if the rules were changed, foreign companies might gain strategic control of a Canadian BDU and would promote their own (non-Canadian) content. Furthermore, they suggest that since foreigners are permitted to own minority ownership stakes in programming undertakings, a foreign media conglomerate that owns such stakes and controls a Canadian BDU would have even more ability to influence programming decisions. Such influence over programming, critics argue, would undermine one of the goals of the *Broadcasting Act* that the Canadian broadcasting system maintain and enhance national identity and cultural sovereignty.

BDUs have suggested that the problem can be solved by structural separation. … This is not an acceptable solution … In the current situation, the role of a BDU is central and critical to the Canadian broadcasting system. Whereas a telephone company is prohibited from controlling or influencing the content of what is being carried, the BDUs function is very different. It has a very active role in controlling or influencing what the content provider offers [Grant Buchanan, Directors Guild of Canada, 19:15:50]

A representative of CanWest Global Communications Corp., a Canadian-owned and controlled international media company, who appeared before the Committee contended, however, that the nationality of the owner of a programming undertaking has no measurable impact on the programming that the undertaking carries. He suggested that television programming schedules in Canada are a reflection of CRTC requirements and the expectations of viewers and advertisers. To illustrate his point, he described CanWest's television networks abroad; CanWest's foreign broadcasting operations are locally regulated, and local management determines the content. Its international operations meet or exceed regulatory or licence requirements for local content in each of the jurisdictions where it operates. The programming carried on CanWest's foreign television networks does not reflect the fact that CanWest is a Canadian-owned and controlled company.

[W]e recognize that the more we move to incorporate satellite and cable television companies, the closer we move to Canada's vital cultural interests. A delicate balance … is the centrepiece of the challenge … [Michael Sabia, Bell Canada Enterprises, 20:9:20]

The BDUs suggest that the separation of distribution undertakings from programming undertakings would eliminate the concerns about self-dealing described above. Under such an arrangement, BDUs that own programming services could spin them off into a separate company and retain the transmission assets in the original company. Only the transmission assets would be eligible for sale to non-Canadians. Furthermore, BDUs note that the CRTC would continue to ensure that BDUs respect Canadian content requirements, regardless of whether the undertakings are owned by domestic or foreign interests.

Canadian Content and the Role of the CRTC

The *Broadcasting Act* sets out various cultural policy and other public policy objectives related to the Canadian broadcasting system. One of the major goals of the Act and its regulations is the maintenance and development of Canadian content in the Canadian broadcasting system. According to the CRTC, Canadian content is "… about Canadian artists and Canadian stories having access to Canadian airwaves." The federal government deems Canadian content to be important for cultural and economic reasons: Canadian programs and music "give voice to Canadians, to their talent and their shared experiences," and provide jobs for Canadians in the creation, production and distribution of material.[32]

[F]rom the Commission's perspective we administer the rules that government chooses to give us … we've lived with some changes in the rules and we've never found them an obstacle to doing our work. [Charles Dalfen, Canadian Radio-television and Telecommunications Commission, 23:15:35]

The CRTC interprets and applies the broad policy objectives of the *Broadcasting Act* by establishing specific policies and regulations in the following areas: (a) creation and production of Canadian programs and music; (b) financial support by the broadcasting system for the creation of Canadian content; (c) how much Canadian content must be aired on radio and television; (d) ratio of Canadian and non-Canadian programming services distributed by Canadian cable companies, DTH satellite services and multipoint distribution systems; and (e) Canadian ownership and control of the broadcasting system. Television programs and music must meet certain requirements in order to qualify as Canadian.[33]

No evidence was presented to the Committee to suggest that the CRTC's capacity to regulate BDUs (or for that matter, programming undertakings) would be compromised if these undertakings were foreign-owned and/or controlled. The CRTC confirms that it has adjusted to new ownership rules in the past and will do so again should Parliament change them once more. Many other industries in Canada are wholly or partially foreign-owned and controlled. These industries (as well as domestic-owned industries) must still abide by regulatory

32 CRTC, *Canadian Content*, www.crtc.gc.ca/eng/INFO_SHT/b306.htm.

33 *See CTRC, Canadian Content for Radio and Television*, www.crtc.gc.ca/eng/INFO_SHT/G11.htm. A review was initiated in April 2002 to address the requirements that must be satisfied for a film or television production to be considered as Canadian content. Recommendations arising from the review will be presented to the Minister of Canadian Heritage at the end of March 2003.

requirements imposed by provincial and federal governments to achieve various public policy objectives. The Committee believes that in the absence of restrictions on foreign ownership for BDUs, CRTC regulations (along with other policy instruments, such as subsidies) are sufficient to support and promote Canadian content in the Canadian broadcasting system. Structural separation of broadcasting and programming undertakings would act as a further safeguard. Furthermore, the Committee notes that the *Investment Canada Act* reviews major investments in Canada by foreigners to ensure that such investments are of “net benefit” to Canada. Additional provisions in the Act and in the *Investment Canada Regulations* allow for the review of investments that would otherwise not normally be reviewed under the Act if the Governor in Council deems that they relate to Canada’s cultural heritage or national identity.

Clearly the carriage company could not own any channels, do any broadcasting or do anything content. All they will be doing is conveying an electronic signal. Now you set up the framework that way, it's up to them whether they want to take advantage of themselves and split themselves or whether they think they are not synergies and having the two under one roof and pay the penalty of foreign ownership restriction. That's for them to decide. [Konrad von Finkenstein, Competition Bureau, Industry Canada, 23:17:00]

The Committee is of the opinion that telecommunications common carriers and BDUs can no longer be separated on the basis of their underlying distribution networks or the services they provide. The Committee believes that carriage and content are distinct entities, and that distribution can be separated from programming undertakings. Cultural policy objectives can thus be achieved by treating content and carriage separately. In light of technological convergence, the Committee therefore recommends:

3. **That the Government of Canada ensure that any changes made to the Canadian ownership and control requirements applicable to telecommunications common carriers be applied equally to broadcasting distribution undertakings.**

[W]e believe that structural or that ownership separation could be achieved quite easily in a number of different ways, the rules, as they relate to how broadcast distribution undertakings, cable companies, carry content services would remain unchanged. [John Tory, Rogers Cable Inc., 5:15:45]

The Committee believes that full liberalization of foreign ownership rules on a symmetrical basis for all carriers of signals competing in the same markets is the best way of achieving the government objectives laid out in the *Telecommunications Act* and the *Broadcasting Act*. The Committee is of the opinion that changes to the foreign ownership restrictions must be accompanied by a broad review of the political governance structure of both telecommunications carriers and broadcasting distribution undertakings. That review must address whether our current legislative approach and the division of departmental responsibilities between Industry Canada and Canadian Heritage is optimal in light of technological and services convergence. It should also address whether the CRTC has — and will continue to have — the necessary tools to ensure that issues such as universal access to services and Canadian culture and values continue to be protected and promoted. As such, the Committee recommends:

4. **That the Government of Canada strike a special parliamentary committee to undertake a comprehensive review of the governance structure of both telecommunications and broadcasting sectors in Canada in light of technological convergence. The review should include, as a minimum, an examination of:**

   (a) the regulatory framework governing Canada's telecommunications and broadcasting sectors;

   (b) approaches that the federal government could adopt to continue to facilitate broadband deployment in rural and remote communities;

   (c) federal departmental organization (Industry Canada and Canadian Heritage); and

   (d) the jurisdiction, role and mandate of the Canadian Radio-television and Telecommunications Commission.

CONCLUSION

In reviewing Canada's foreign ownership regime applicable to telecommunications common carriers, the Committee found that the regime is too restrictive when compared to that of other OECD member countries, and that the restrictions are having a negative impact on the Canadian telecommunications industry. Foreign ownership restrictions have played a role in impeding capital investment by new entrants in the Canadian telecommunications sector in the past decade. They have also been a factor in the recent financial instability of the industry, which saw a number of capital restructurings and bankruptcies. Moreover, since telecommunications is a critical element of the global, networked, knowledge-based economy, these restrictions are also likely stifling Canada's productivity and economic growth performances.

[F]oreign ownership restrictions are a particularly blunt and self-destructive way of seeking ends far more readily achieved by regulation. [Hudson Janisch, University of Toronto, 16:15:55]

In summary, foreign ownership restrictions compromise, among other important economic contributions, the diffusion of new communications technologies and Canadians' access to modern telecommunications services. For all these reasons, the Committee recommends the complete removal of Canada's foreign ownership restrictions applicable to telecommunications common carriers.

*[N]o single factor would have a greater positive impact for the prospects of telecom growth and competition than eliminating the [foreign ownership] restrictions as quickly as possible, at least as they apply to new entrants. [*André Tremblay, Microcell Telecommunications Inc., 13:15:55]

While this reform could conceivably lead to foreigners gaining control of a Canadian telecommunications carrier, the Committee is confident that the *Investment Canada Act* provides the government with the tools it needs to ensure that substantial foreign investment will be carried out in a way that is consistent with the public interest. The CRTC also has the authority and means to ensure that telecommunications services are provided at affordable prices to rural and remote regions of the country.

We don't lose any control over the system if we open up foreign ownership. The CRTC continues to have … the same regulatory powers. [Francis Fox, Rogers AT&T Wireless Inc., 13:16:55]

The removal of these restrictions, however, is not a panacea for the telecommunications sector. The Committee is not convinced that removing the restrictions on FDI applicable to telecommunications common carriers will, for example, lead to increased access to

Rural Canada has to have affordable access to broadband and right-of-way. It needs a choice of carriers and suppliers and that means a competitive environment must exist … [Vic Allen, Upper Canada Networks, 14:15:40] broadband in rural and remote communities in the short term.

The Committee further believes that telecommunications common carriers and broadcasting distribution undertakings can no longer be separated on the basis of their underlying distribution networks or the services they provide. The Committee believes that carriage and content are distinct entities, and that distribution can be separated from programming undertakings. Cultural policy objectives can be achieved by treating content and carriage separately. For these reasons, the Committee recommends the complete removal of the foreign ownership restrictions imposed on broadcasting distribution undertakings. The Committee views full liberalization of the ownership regime on a symmetrical basis to all carriers of signals competing in the same markets as being the best way of achieving government objectives as laid out in the *Telecommunications Act* and the *Broadcasting Act*.

The Committee is also of the opinion that reforms to Canada's foreign ownership regime must be the first step in a multi-step reform of the telecommunications and broadcasting sectors in Canada. From the Committee's perspective, regulatory reform may be necessary to ease the transition from monopoly to a more competitive structure; and given technological and industrial convergence between telecommunications and broadcasting, reform of Canada's political governance structure for these sectors may also be required. Because such reforms go beyond the Committee's current mandate, the Committee recommends a broad review of these issues by a special parliamentary committee.

Finally, the Committee is confident that these recommendations reflect the expert testimony it received; this testimony was thorough and comprehensive. The report's recommendations imply that more work remains to be done in this important area, and the Committee is prepared to provide more parliamentary guidance in the near future. The Committee also looks forward to having the Minister appear before the Committee to explain how the federal government will act on the Committee's recommendations.

[T]here's no distinction between carrying a telephone signal and the carriage of a broadcasting signal. Consequently the carriers … be they telephone companies or broadcast distribution undertakings should enjoy the same access to capital and be bound by the same ownership rules. Anything less would give one sector an unfair advantage over and distort economic decision making. [Konrad von Finkenstein, Competition Bureau, Industry Canada, 23:16:50]

The foreign ownership regime should be technologically and competitively neutral and the rules of the game should not be changed in midstream by economically disadvantageous some competitors by adhering to obsolete labels such as traditional carrier. [James Peters, TELUS Corporation, 16:15:45]

It won't change the fact that this country's policies have never been adjusted to fully integrate the idea of competition and, as a result, most competitors have floundered rather than flourished. There is a way to fix it. The government, the CRTC and the industry must work together to create a framework that is fair to both the incumbents and the competitors, one that promotes rather than just permits competition. [William Linton, Call-Net Enterprises Inc., 14:16:00]

APPENDIX 1
GLOSSARY OF SELECTED TELECOMMUNICATIONS INDUSTRY TERMS[1]

2.5G Wireless

2.5G wireless is associated with such mobile data technologies as short message service (SMS), wireless application protocol (WAP), and general packet-switched radio service (GPRS). These technologies allow "always on" access to e-mail and other Web-based services from mobile handsets at access speeds slightly faster than those provided by narrowband technologies.

3G (Third Generation) Wireless

The next generation of wireless communications that will eventually provide data at rates similar to cable and ADSL, and that will be based upon a common worldwide standard for broadband mobile communications. Analogue cellular and digital PCS are considered to be the first and second generations of wireless telecommunications.

ADSL (Asymmetric Digital Subscriber Line)

Technology that employs standard twisted-pair copper telephone wire to transmit and receive information at high speeds. It is termed "asymmetric" because data move in one direction faster than in the other, i.e., the download speed is faster than the upload speed.

Bandwidth

The amount of data that can be transferred over a connection per unit time (usually measured in bits per second, kilobits per second or megabits per second). The greater the bandwidth, the more data can travel through the channel.

Broadband

A connection to the Internet that works at high speeds because of its greater bandwidth. The National Broadband Task Force defined broadband as a high-capacity,

[1] Principal sources for information and/or definitions: Canadian Radio-television and Telecommunications Commission, Industry Canada and the International Engineering Consortium.

two-way link between an end user and access network suppliers capable of supporting full-motion, interactive video applications. At the time of its report, it concluded that based on today's technology and applications, a minimum two-way, or symmetrical, transmission speed of 1.5 Mbps per individual user is required to meet this standard.

Broadcasting Distribution Undertaking (BDU)

An undertaking for the reception of broadcasting and the retransmission thereof by radio waves or other means of telecommunication to more than one permanent or temporary residence or dwelling unit or to another such undertaking. Examples of BDUs include cable companies, direct-to-home (DTH) satellite service providers and multipoint distribution systems (MDS).

Cable Modem

A device installed in the home that allows the subscriber to connect to the Internet at high speeds using a local cable television line.

Cellular Service

A type of wireless communication that uses many base stations to divide a service area into multiple "cells." Cellular calls are transferred from base station to base station as a user travels from cell to cell.

Coaxial Cable

A type of cable that can carry large amounts of bandwidth over long distances. The cable is composed of a copper wire surrounded by insulation, which is itself surrounded by a grounded shield of braided wire (thus minimizing electrical and radio frequency interference). Cable television and cable modem service both use this cable.

Central Office (CO)

An office where subscriber home and business lines are connected to a local loop. The central office has switching equipment that can switch calls locally or to long-distance carrier phone offices.

Co-location

An arrangement that provides access to the ILEC's central office space for the purpose of interconnecting telecommunications carriers.

CLEC (Competitive Local Exchange Carrier)

A company that has registered with the CRTC to provide local exchange services in competition with the incumbent telephone companies. The CLEC either provides its own network and switching or resells the local telephone company's phone service.

Dark Fibre

Optical fibre infrastructure that is in place but is not connected to in-service transmission equipment. Information is transmitted over optical fibre using light pulses — which is why unused fibre is dark.

DSL (Digital Subscriber Line)

Technology that employs standard twisted-pair copper telephone wire to transmit and receive information at high speeds (see also ADSL).

Essential Facility

According to the CTRC, a facility, function, process or service that meets three criteria: it is monopoly controlled; a CLEC requires it as an input to provide services; and a CLEC cannot duplicate it economically or technically. Facilities that meet this definition are subject to mandatory unbundling and mandated pricing. ILECs must also treat the tariffed rates for these facilities as costs in applying the imputation test.

Exchange

The basic unit for the administration and provision of telephone service by an ILEC, which normally encompasses a city, town or village and adjacent areas. Within an exchange and to other exchanges that have extended area service or similar services with that exchange, all subscribers in Canada may place an unlimited number of calls of any duration to all other subscribers without incurring long distance toll charges.

Explicit and Implicit Subsidy

Local residential rates have traditionally been set below cost. The resulting shortfall has been funded by profits (i.e., contribution) from other services. The toll contribution is an explicit charge on long distance services and service providers. Implicit subsidies represent the internal flow of profits from certain local services, such as optional and some business services.

Facilities-based Provider

A company that provides a service on a facilities-based basis. The same company may also be a resale-based provider of other services: a company may therefore be described as a facilities-based provider only with regard to a given service.

Facilities-based Service

A distinct telecommunications service provided by a supplier using physical telecommunications facilities owned by the same supplier.

Fibre Optics

Refers to the medium and the technology associated with the transmission of information as light impulses along a glass or plastic wire or fibre. Fibre optic networks are broadband communications systems that are far less subject to electromagnetic interference than are networks based on copper wires.

GSM (Global System for Mobile Communication)

Globally accepted standard for digital cellular communication. The system is deployed widely across Europe and around the world, especially at the 900, 1800, and, in Canada, 1900 MHz frequency bands.

ILEC (Incumbent Local Exchange Carrier)

A company that, prior to the introduction of local competition, provided monopoly local telephone service.

Imputation Test

A test adopted by the CRTC to detect anti-competitive targeted pricing strategies. This test ensures that all telephone company services are priced to recover all causal costs including contribution and network access charges.

Internet Protocol (IP)

The Internet Protocol is the method by which data are sent from one computer to another on the Internet. Data travel over an IP-based network in the form of packets; each IP packet includes both a header (indicating source, destination and other information about the data) and the message data. Each host (computer) on the Internet has at least one IP address that uniquely identifies it from all other computers on the Internet.

Internet Telephony

Communications (e.g., voice and fax) that are transported via the Internet, rather than over the public switched telephone network (see also Voice Over Internet Protocol).

LEC (Local Exchange Carrier)

Either an ILEC or a CLEC.

Lit Fibre

Optical fibre cable attached to in-service transmission equipment.

Local Loops

A term used to describe the copper wire that connects a business or residence to the telephone company's central office and the public switched telephone network.

PCS (Personal Communications Service)

A wireless telephone service that operates in a similar way to cellular telephone service, but which generally uses completely digital technology for transmission and reception. In Canada and the United States, PCS spectrum has been allocated for use by public systems at the 1900 MHz frequency range.

Point-of-Presence (POP)

A point-of-presence is an access point to the Internet. Each POP has a unique Internet Protocol address.

Programming Undertaking

An undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus.

PSTN (Public Switched Telephone Network)

Refers to the worldwide dial-up telephone network made up of switching technology and transmission media that is used to communicate voice, other audio, video and data signals.

Router

A physical device that joins multiple networks together. On the Internet, a router is a device or software that determines the next network point to which a packet (unit of data) should be forwarded to reach its destination.

Satellite Link

A microwave link that uses a satellite to receive, amplify and retransmit signals to another location.

T-1

Digital carrier system that supports 24 standard voice channels.

Unbundled Local Loops

Local loops that are controlled by an ILEC, but for which access is provided to other telecommunications service providers if the loops are considered to be an essential facility. This access is usually provided in return for fixed and/or recurring compensation.

Unbundling

The policy of requiring ILECs to make available individual essential facilities on a tariffed basis.

Voice over Internet Protocol (VoIP)

A form of Internet telephony. In an Internet telephone call, the analogue voice signal is converted to digital format and the signal is compressed into Internet protocol (IP) packets for transmission over the Internet (thus avoiding the tolls of the public switched telephone network); the process is reversed at the receiving end.

Wireless

Any broadcast or transmission that can be received through microwave or radio frequencies without the use of a cable connection for reception.

Wireline

A system that uses wires or cables instead of air-borne radio frequencies to transmit signals.

APPENDIX 2
MAJOR EVENTS IN CANADIAN TELECOMMUNICATIONS

Year	Policy change
1978	Initiation of a cost inquiry to establish uniform approved costing methodologies to be used, among other things, for the identification of cross-subsidies. This concluded with Phase III 1985.
1979	Telephone companies' monopoly on private (leased) lines connected to PSTN ended (Telecom Decision CRTC 79-11).
1980	Liberalisation of telephone set and customer premises equipment markets.
1984	Regional duopolies in mobile cellular market set up.
1985	CRTC denies request to interconnect with incumbents by CNCP for the provision of long distance competitive services. Concluded that benefits would not be sufficient.
1989	Supreme Court confirms Federal jurisdiction over Provincial telephone companies.
1992	Market for public long distance voice services opened to competition (Telecom Decision CRTC 92-12).
1992	Pre-selection for long distance introduced and framework for subsidy (contribution) from long distance to support local residential service rates formalised (Decision 92-12).
1993	*Telecommunications Act* passed.
1994	Establishment of new regulatory framework: Review of Regulatory Framework (Decision CRTC 94-19).
1995	Competitive wireless Personal Communications Systems licensed.
1997	Canadian Radio-television and Telecommunications Commission (CRTC) announced regulatory framework for competition in local telephone services (Decision CRTC 97-8).
1998	CRTC liberalised public pay telephone service market (Decision CRTC 98-8).
1998	Price Caps implemented (Decision CRTC 98-2).
1998	The Government of Canada liberalised the facilities-based international telecommunications market.
1998	Regulatory framework for international services established (CRTC 98-17).
1999	The CRTC required cable carriers to provide discount Internet service to other ISPs (Decision CRTC 99-11).
1999	Resellers provided with access to central office switches through competitive co-location facilities (CRTC 99-1107).
2000	Telesat Canada's monopoly on satellite telecommunication carriage ended.
2000	Long distance competition introduced in the areas served by Northwestel (mainly Northwest Territories, Yukon, Nunavut and northern British Columbia) (Decision CRTC 2000-746).
2001	Changes to the Contribution Regime (universal service funding) come into effect (CRTC 2000-745).

Source: *OECD Reviews of Regulatory Reform: Maintaining Leadership Through Innovation Canada*, 2002, p. 109.

APPENDIX 3
QUESTIONS ON THE IMPACT OF FOREIGN INVESTMENT RESTRICTIONS

Question 1

Do current Canadian foreign investment restrictions significantly affect the amount of capital available in Canada to invest in the telecommunications industry?

Question 2

Should Canada's relative per-capita investment performance in this sector be a source of concern, or has there simply been 'over-investment' in the U.S.?

Question 3

To what extent, if any, can differences in investment levels be attributed to foreign investment restrictions?

Question 4

Are there foreign companies that would like to establish operations in Canada and, if so, would their entrance likely affect the provision of new or improved services to Canadians, and stimulate a more competitive Canadian market structure?

Question 5

Could altering Canada's foreign investment restrictions materially affect the ability of new competitive providers to establish and maintain financial stability, and to what extent can one link any relaxation of foreign investment restrictions with the creation of a more competitive Canadian telecommunications industry?

Question 6

Would altering the foreign investment restrictions assist the deployment of broadband infrastructure in rural and remote communities?

Question 7

Should Canada adopt the approach of other countries by placing restrictions only on the existing traditional telecommunications service providers?

Question 8

If this approach were adopted in Canada, which companies would be required to continue to be Canadian owned and controlled? All incumbent providers? Just large incumbent providers?

Question 9

Should the current ownership and control limitations be maintained for these companies, or should the voting limitation be raised from the current 20 per cent limit for operating companies to some other level, while retaining the majority Canadian ownership and control? What would be an appropriate level?

Question 10

Should the U.S. approach of licensing be applied in Canada? Would all telecommunications carriers need to be licensed?

Question 11

The government could review all applications for licence transfers and ensure the continued Canadian ownership and control of 'major' companies in the context of merger and acquisition proposals. If this approach were taken, how should a 'major' company be defined?

Question 12

In cases in which mergers and acquisitions are approved, what conditions would be appropriate to ensure the achievement of other public policy objectives?

Question 13

Were the government to make any changes to these foreign investment restrictions, would it be appropriate to introduce some form of delay between when the changes would be announced and when they would take effect?

Source: Industry Canada, *Foreign Investment Restrictions Applicable to Telecommunications Common Carriers*, Discussion Paper, p. 7-8.

APPENDIX 4
SUMMARY OF FOREIGN INVESTMENT RESTRICTIONS IN OTHER OECD COUNTRIES

Australia

Telstra, once full privatization is implemented, will be subject to a 35% limit on total foreign ownership and a 5% limit on individual foreign ownership. There is a legislative requirement ensuring that Telstra's Chair, and the majority of Telstra's directors, are Australian citizens and that Telstra's head office, base of operations and place of incorporation remain in Australia. Prior approval is required for foreign involvement in the establishment of new entrants to, or investment in existing businesses in, the telecommunications sector.

Austria

No foreign ownership restrictions.

Belgium

No foreign ownership restrictions.

Czech Republic

No foreign ownership restrictions.

Denmark

No foreign ownership restrictions.

Finland

No foreign ownership restrictions.

France

20% limitation on direct foreign investment (for companies outside the European Economic Area) for the mobile communications sector.

Germany

No foreign ownership restrictions.

Greece

No foreign ownership restrictions.

Hungary

No foreign ownership restrictions.

Iceland

No foreign ownership restrictions.

Ireland

No foreign ownership restrictions.

Italy

No foreign ownership restrictions.

Japan

Foreign ownership of NTT is restricted to up to 20% of issued shares.

Korea

The limit of foreign shareholding for facilities-based service providers is 33% (20% for KT). Individual shareholding is restricted up to 10% for facilities-based service providers (15% for KT).

Luxembourg

No foreign ownership restrictions.

Mexico

Concessions are only granted to individuals or corporations of Mexican nationality. Foreign investment can be no greater than 49% except for cellular telephony services where permission is required from the Commission of Foreign Investment for a greater level of foreign participation.

Netherlands

No foreign ownership restrictions.

New Zealand

No single foreign entity is permitted to own more than 49.9% of shares of Telecom New Zealand and government permission is required for any single foreign investor wishing to own more than 10% of Telecom NZ. Government's Kiwi (or golden) share provides special voting rights to control the maximum shareholding of any single foreign party and transfers of blocks of shares among parties. No restrictions on other operators.

Norway

The PTO is a limited company in which the state must own shares. A change in ownership requires approval by Parliament.

Poland

Foreign ownership restriction for national and local telecommunication services, mobile services and cable television services: shares of foreign equity in company cannot exceed 49%, share of votes of the foreign organization and of the organizations controlled by foreign equity at the general shareholders meeting shall not exceed 49%; Polish citizens residing in Poland shall have the majority on the management and the supervisory boards. Provision of international telecommunication networks and services and radio-communications networks and services providing international services restricted to entities with 100% Polish capital share. Foreign ownership limitations cancelled when the Telecommunication Law entered into force (01/01/2001).

Portugal

No foreign ownership restrictions.

Spain

Preliminary administrative authorization required when any individual or corporation, whether national or foreign, is about to obtain control over 10% or more of Telefonica equity.

Sweden

No foreign ownership restrictions.

Switzerland

No foreign ownership restrictions; federal government required to retain majority shareholding in Swisscom.

Turkey

After the monopoly has ended in 2004 new licences will require not less than 51% equity by Turkish citizens.

United Kingdom

No foreign ownership restrictions

United States

20% of capital stock of a common carrier radio licensee may be foreign-owned. This level may be exceeded unless FCC determines that foreign ownership is not in the public interest. Wireline common carriers are not subject to these restrictions.

Source: *Organisation for Economic Cooperation and Development,* Communications Outlook 2001*, Paris 2001.*

APPENDIX 5
LIST OF WITNESSES

Associations and Individuals	Date	Meeting
Department of Industry	28/01/2003	12
Michael Binder, Assistant Deputy Minister		
Pierre-Yves Boivin, Economist		
Peter Harder, Deputy Minister		
Larry Shaw, Director General, Telecommunications Policy Branch		
Ericsson Canada Inc.	29/01/2003	13
Lionel Hurtubise, Chairman		
Peter Minaki, Director, Regulatory and Government Relations		
Microcell Telecommunications Inc.		
Ed Giacomelli, Managing Director, Rothschild (Toronto)		
Dean Proctor, Vice-President, Regulatory Affairs, Microcell Telecommunications Inc. and Inukshuk Internet Inc.		
André Tremblay, President and Chief Executive Officer		
Rogers AT & T Wireless		
Francis Fox, President, Strategic Relations		
Dawn Hunt, Vice-President, Government and Intercarrier Relations		
AT & T Canada	03/02/2003	14
John McLennan, Vice-Chairman and Chief Executive Officer		
Chris Peirce, Vice-President, Regulatory and Government Affairs		
CallNet Enterprises Inc.		
Jean Brazeau, Senior Vice-President, Regulatory Affairs and Strategic Partnerships		
William Linton, President and Chief Executive Officer		
Ian Scott, Vice-President, Government Affairs		
Upper Canada Networks		
Vic Allen, Chief Executive Officer		
“Union des consommateurs”	04/02/2003	15
Jean Sébastien, Telecommunications Policy Analyst		
Xit Telecom		
François Ménard, Project Manager, Telecommunications		

Associations and Individuals	Date	Meeting
"Association des Compagnies de Téléphone du Québec inc."	05/02/2003	16
Serge Désy, General Manager		
Jean-François Hébert, General Counsel		
TELUS Corporation		
James Peters, Executive Vice-President, Corporate Affairs and General Counsel		
University of Toronto		
Hudson Janisch, Professor, Faculty of Law		
Alliance Atlantis Communications Inc.	12/02/2003	17
André Bureau, Chairman, Astral		
Michael MacMillan, Chairman and Chief Executive Officer		
Jay Switzer, President and Chief Executive Officer, CHUM Limited		
Phyllis Yaffe, Chief Executive Officer		
Canadian Chamber of Commerce (The)		
Michael Murphy, Senior Vice-President, Policy		
Daniel Roseman, Principal, Roseman Associates		
University of Waterloo		
David Johnston, President		
Directors Guild of Canada	17/02/2003	19
Grant Buchanan, Partner		
Organization for Economic Co-operation and Development		
Dimitri Ypsilanti		
Bell Canada Enterprises	18/02/2003	20
Bernard Courtois, Executive Counsel		
Michael Sabia, President		
Dominion Telecom Inc.		
Anthony Keenleyside, Barrister, McCarthy Tétrault		
Friends of Canadian Broadcasting		
Ian Morrison, Spokesperson		
McGill University	19/02/2003	21
Richard Schultz, James McGill Professor, Department of Political Science		

Associations and Individuals	Date	Meeting
National Alliance of Communications Unions	19/02/2003	21
Ron Carlson, Administration Vice-President, Communications, Energy and Paperworkers Union of Canada (CEP)		
James Kinkaid, Research Department		
Neil Morrison, Vice-President, Telecommunications Workers Union		
Bruce Murdock, Vice-President, Media, Communications, Energy and Paperworkers Union of Canada		
Brian Payne, President, Communications, Energy and Paperworkers Union of Canada		
Government of the United Kingdom	20/02/2003	22
Claire Durkin, Department of Trade and Industry		
David Edmonds, Director of OFTEL		
Alan Richmond, Second Secretary (Economic), British High Commission		
Canadian Radio-television and Telecommunications Commission	24/02/2003	23
David Colville, Vice-Chairperson, Telecommunications and Commissioner, Atlantic Region		
Charles Dalfen, Chairman		
Department of Industry		
Konrad von Finckenstein, Commissioner of Competition		
“Association québécoise de l’industrie du disque, du spectacle et de la vidéo”	25/02/2003	24
Francine Bertrand-Venne, General Manager, “Société professionnelle des auteurs et compositeurs du Québec (SPACQ)”		
Anne-Marie Des Roches, Public Affairs Director, “Union des artistes (Uda)”		
Solange Drouin, General Manager and Vice-President to Public Affairs		
Lise Lachapelle, General Manager, “Association des réalisateurs et réalisatrices du Québec (ARRQ)”		
Yves Légaré, General Manager, “Société des auteurs de radio, télévision et cinéma (SARTEC)”		
Richard Paradis, “Association canadienne des distributeurs et exportateurs de films (ACDEF)”		
Claire Samson, President and General Manager, “Association des producteurs de films et de télévision du Québec (APFTQ)”		
SaskTel		
Donald Ching, President and Chief Executive Officer		

Associations and Individuals	Date	Meeting
As an Individual	25/02/2003	24
Gerry Shannon, Consultant in International Trade		
Canadian Cable Television Association	26/02/2003	25
Louis Audet, President and Chief Executive Officer, COGECO Inc.		
E.S. Rogers, President and Chief Executive Officer, Rogers Communications Inc.		
Jim Shaw, Chief Executive Officer, Shaw Communications Inc.		
John Tory, President and Chief Executive Officer, Rogers Cable Inc.		
Janet Yale, President and Chief Executive Officer		
“Université du Québec à Montréal”		
Mathieu Arès, “professeur, économie politique internationale, chercheur au Groupe de recherche économique et sécurité de la Chaire Raoul-Dandurand et chercheur au CEIM”		
Michèle Rioux, Professor, Research Director to CEIM		
CanWest Global Communications Corp.	27/02/2003	26
Leonard Asper, President and Chief Executive Officer		
Geoffrey Elliot, Vice-President		
As an Individual		
Robert Yates, Lemay-Yates Associates Inc.		

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this report within one hundred and fifty (150) days.

A copy of the relevant Minutes of Proceedings of the Standing Committee on Industry, Science and Technology (*Meetings Nos. 27, 28, 29, 30, 31 and 36 which includes this report*) is tabled.

Respectfully submitted,

Walt Lastewka, M.P.
Chair

BLOC QUÉBÉCOIS DISSENTING OPINION

Background

The Liberal government, extensively financed by the telecommunications industry, has given the Committee on Industry, Science and Technology a mandate to study the restrictions on foreign investment in telecommunications.

The recommendations adopted by the Committee do not resolve the difficulties experienced by most telecommunications carriers, are contrary to the interests of Quebec's consumers and workers, and constitute a failure to protect the Canadian and Québec cultural sphere. For these reasons, the Bloc Québécois is opposed to any increase in foreign investment in telecommunications carriers. In our opinion, relaxing the ownership rules is not an appropriate solution. The industry's problems go far beyond the ownership issue.

Cultural sovereignty

We oppose the idea of doing away with the status quo because we think that deregulation of ownership would irreparably erode the government's ability to regulate local content delivery.

We note that ownership controls have made it possible to maintain the content requirements that have served the cultural industries well in Québec and Canada. We believe that this framework must be maintained and that it must certainly not be studied in a vacuum, with no attention to the position of the Standing Committee on Canadian Heritage.

The Bloc Québécois's Members are once again amazed that it is up to them to remind parliamentarians from other parties, and particularly other MPs from Québec, that cultural sovereignty must be jealously protected and not undermined.

An industry neglected by the federal government

The consultations that led up to the Committee's Report spotlighted some of the main issues confronting telecommunications carriers:

- high debt levels
- shrinking market capitalization

- declining investments
- inadequate regulations
- etc.

The Bloc Québécois is receptive to the complaints of the telecommunications carriers. We believe it is necessary to rethink government intervention in this sector, in order to stimulate innovation and competition.

On the other hand, the Bloc Québécois does not believe that deregulating ownership and allowing an influx of foreign capital would resolve the difficulties that are eating away at the industry.

In the short term, the arrival of new capital, without changes to the conditions for access to the networks of the incumbent carriers, would at best make it possible to wipe out the carriers' debts and at worst encourage an unhealthy price war. The incumbents, which are still in a monopoly situation, would undoubtedly resist assaults from new competitors by cutting prices temporarily and investing massively in advertising and promotion to win back their customers. In the end, the new capital would oblige the telecommunications carriers to invest excessively in marketing at the expense of R&D and infrastructure investment.

Protecting the consumer

The Committee's recommendations do not reflect the best interests of consumers. Let us recall that:

- when Quebec's *Union des consommateurs* appeared before the Committee on February 4, 2003, it called for maintenance of the restrictions on foreign ownership. The Union fears a drop in quality of service;
- a Decima poll conducted in December 2002 found that 72% of consumers were opposed to any change making possible increased foreign ownership of media and telecommunications undertakings.

The Bloc Québécois considers that deregulation of ownership does not respond to the needs of consumers, whose priorities are:

- fair consumer pricing, and
- access to the technology.

The Bloc Québécois members on the Committee note that the CRTC, especially in outlying regions, has not been able to ensure democratic access to communications technologies. It is legitimate to think that freer ownership will erode still further the CRTC's capacity to regulate the industry.

Protection for workers

More foreign involvement in the communications sector will result in fewer jobs. A variety of evidence, rejected by the Liberal majority, made these points:

- The National Alliance of Communications Unions, representing employees with such companies as Aliant, Bell Canada, Manitoba Telecom Services, Sasktel, Telus and AT&T Canada, considers that “centralization of essential services and networks will displace employees south of the border.”[1]
- In the view of the *Union des consommateurs*, “Diluting Canadian ownership has as a corollary a reorganization of those companies which would encourage strategic north-south alliances with a view to increasing productivity. Given the type of services offered in the telephone industry, this is an area that is particularly prone to delocalization of activities.”[2]

The Bloc Québécois cannot join in encouraging the federal government to send thousands of workers in the telecommunications industry down such an uncertain path.

Protecting the Canadian and Quebec telecommunications market

The rules on foreign investment are currently under negotiation at the WTO. The negotiations on telecommunications are scheduled to conclude by 2005.

It seems to us highly inappropriate for a parliamentary committee to recommend the softening of the Canadian position at this stage of multilateral negotiations without having obtained guarantees of reciprocity from our partners. We think the Committee’s Report will weaken Canada’s bargaining position. As a result, we share the opinion expressed by a number of telecommunications carriers, including BCE, which are calling for caution. Canada must not show its hand before the current negotiations are completed.

The Bloc Québécois wishes that recommendation 4 and 1 of the report be quickly implemented by allowing members of the Canadian Heritage committee to participate at the Joint committee.

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1 Pess release, February 19, 2003.

2 Brief tabled by the *Union des consommateurs*.

Conclusion

In Canada, so-called “deregulation” has never happened. Since long-distance competition was introduced, the CRTC has been more active than ever.[3] For example, it has had to establish standards for interconnection between incumbent networks and those of newcomers and ensure that those standards are respected. In our opinion, it would be more accurate to speak of a period of “re-regulation”, where the CRTC has tried to introduce competition into telecommunications by applying an asymmetrical system designed to allow newcomers to compete with local monopolies. The Bloc Québécois regards this policy as a failure that has given Canadian and Québec consumers and investors the worst of both worlds:

- a more cumbersome regulatory framework;
- slower penetration of new communications technologies in outlying regions, despite promised service improvement plans;
- an end to cross-subsidization and an increase in rates for basic services;
- a weakening of incumbent carriers without any real increase in competition;
- a slow-down in R&D investment.

In the opinion of the Bloc Québécois, reducing the restrictions on foreign ownership would only accelerate these phenomena and erode the ability to protect Québec and Canadian culture. We therefore dissociate ourselves from this Report.

Paul Crête, MP for Kamouraska—Rivière-du-Loup—Témiscouata—Les Basques and Bloc Québécois Industry Critic

[3] Kevin G. Wilson: “Du monopole à la compétition : la déréglementation des télécommunications au Canada et aux États-Unis”, Université du Québec — Télé-université, Sainte-Foy, 1999.

NDP DISSENTING OPINIONS

Foreign Investment Restrictions Applicable to Telecommunications Common Carriers

Brian Masse, MP
NDP Critic for Industry Science and Technology
April, 2003

"Leading with such a review (on foreign ownership restrictions) is like trying to fix your four flat tires on your car by filling up the gas tank. Until you have fixed the real problem, the one preventing you from moving forward, you are not going to go anywhere. More foreign capital won't get competition moving. It won't level the playing field."

William Linton, Call-Net Enterprises Inc.

The Minister of Industry, Allan Rock, has called upon the Standing Committee on Industry, Science and Technology to conduct a review of Canada's restrictions on foreign direct investment (FDI) in the telecommunications industry. Some have argued that there is an imbalance between investment in the sector and Canadian public policy on sovereignty; creating barriers to innovation and growth in the sector.

As part of this study, the Committee heard from a number of witnesses, and has produced this report. I cannot support the recommendations in the report as there was not sufficient proof demonstrated that the removal of restrictions on FDI will achieve balance in the telecommunications sector. In addition, there was considerable testimony that suggests the industry as a whole is in desperate need of a more comprehensive study prior to any decisions that will have irreversible effects on the industry, and Canadian consumers. Furthermore, testimony clearly demonstrated that there is no consensus on this particular issue, while the common theme of the need for a broader study emerged. Ironically one of the recommendations in this Committees' report is for further study, but ***after*** lifting FDI restrictions. I believe this is putting the cart before the horse, and will outline dissenting recommendations for consideration.

<u>**List of Dissenting Recommendations**</u>

1. **The Government of Canada strike a House of Commons committee to undertake a comprehensive review of the governance structure of both telecommunications and broadcasting sectors in Canada to study technological convergence. Included in these examinations, as a minimum, should be the examination of:**

(a) the regulatory framework governing Canada's telecommunications sector with a view to determining the relationship between it and monopoly, competition, foreign direct control of ownership, broadcasting distribution undertakings, consumer pricing, employment and national sovereignty;

(b) approaches that the federal government could adopt to continue to facilitate broadband deployment in rural and remote communities;

(c) federal departmental organization (Industry Canada and Canadian Heritage); and

(d) the jurisdictional role and mandate of the Canadian Radio-television and Telecommunications Commission (CRTC).

2. That the Government of Canada amend the Telecommunications Act to require a mandatory five-year review of the Act by a parliamentary committee.

Information and communication technologies have always played a crucial role in the development of social, economic and public policy. During the past several years, Canadians have witnessed and been introduced to a number of services that have had considerable impact on their personal and professional lives. In more recent years, the rapid pace of technological change has complicated legislative relationships, regulations, and departmental responsibilities. Despite all these factors, many witnesses identified that Canada is a world leader in terms of service availability, consumer options and pricing***.***

"Firstly, I would like to reiterate a comment made by Mr. Sabia of BCE, when he was before this Committee last week. Mr. Sabia said, and I agree, **"Canada has gotten it right."**

Donald Ching, President and CEO Sasktel

The actual mandate of the Committee's review included measuring FDI and national interests: however much of the testimony centred on a philosophical debate of lifting restrictions and the relationship it would have on increased competition and the injection of fast capital. It should be again noted that several witnesses expressed concerns of other issues facing the industry. When determining lifting restrictions on FDI, a number of fundamental questions and answers need to be considered, such as:

- Is there an imbalance in Canadian public policy compromising access to capital for national interests?

- Could lifting FDI restrictions correct this imbalance?

- Can new FDI improve national sovereignty?
- Does new FDI improve access to rural and remote areas?
- Would lifting FDI restrictions result in new capital, and if so, would it be enough to make a difference for the industry?
- Is a total elimination of FDI restrictions the only way to increase access to capital?
- Will consumers benefit from reduced prices?

What will happen with the lifting of FDI restrictions are a series of probabilities that could complicate or worsen the current state of the industry. Additional questions about lifting FDI restrictions that need more analysis are:

- Will Canadians lose control of a very important piece of infrastructure?
- Will Parliament have introduced changes to an industry prior to a full evaluation of the entire industry?
- Will it be impossible or fiscally improbable for Parliament to reverse these changes should new recommendations emerge following a comprehensive review?
- When FDI restrictions are lifted will it make investment complicated knowing there is a more comprehensive review by the House and Senate?
- Could this FDI scoped approach undermine the industry further, and result in detrimental impacts on Canadian consumers and culture?
- Is this issue really about **control**, as there are no current restrictions on non-voting foreign investment?

Dissention from Committee Recommendations

Despite the presence of several alternatives to the immediate lifting of FDI restrictions, the recommendation to the Government of Canada in this report is to eliminate all Canadian ownership requirements. This approach is one that opens our entire telecommunications infrastructure to the world and could lead to the complete elimination of Canadian controlled companies. It also ignores the reality that many companies have not reached their limit of voting FDI options, and can still attract more in the current legislative environment.

In addition, it does not address the consequences of such a decision in terms of national sovereignty, consumer protection, employment and the relationship of this action to that of a more comprehensive review as suggested in the recommendations found in this report. What we do know is that Canadians are concerned about this issue:

"Canadians don't want further foreign ownership. There's a Decima poll out that suggests that 72% of Canadians are opposed to the kinds of changes that are potentially being contemplated and advocated by others."

Mr. Brian Payne, Energy and Paperworkers Union of Canada

For these reasons, and others, I believe it is crucial to not act on FDI regulations in isolation.

Aside from the above noted issues there are several others matters worth noting and requiring further analysis. They involve access to capital, fair competition, infrastructure sharing agreements, new entrants versus existing entrants, trade policy strategies and several issues surrounding culture. The mere fact that many industry companies, labour representatives, experts, organizations, academics and government institutions have raised a variety of issues in many different contexts warrants careful consideration of a national asset prior to the most radical option: the complete elimination of FDI restrictions.

In conclusion, I do not believe that denying FDI at this moment is the end of the process or debate, rather it should start a more comprehensive examination of issues facing this industry as a priority. To quote Alexander Graham Bell ***"When one door closes another opens; but we often look so long and so regretfully upon the closed door that we do not see the ones which open for us."*** The Committee's work has not been in vain, rather it has opened a more important door that we need to walk through ***first***. This in itself will lead to some improvements to attract capital cheaper for companies as Mr. Leonard Asper articulated during witness deliberations, ***"That's why even the perception that the market is more open would help Can West and other companies with international ambitions to have those kinds of discussions with international companies that have a more valuable stock price or currency."***

MINUTES OF PROCEEDINGS

Tuesday, April 8, 2003
(*Meeting No. 36*)

The Standing Committee on Industry, Science and Technology met in camera at 4:20 p.m. this day, in Room 536, Wellington Building, the Chair, Walt Lastewka, presiding.

Members of the Committee present: Larry Bagnell, Paul Crête, Walt Lastewka, Serge Marcil, Brian Masse, Dan McTeague, Hon. Gilbert Normand, James Rajotte and Brent St. Denis.

In attendance: From the Library of Parliament: Lalita Acharya, Geoffrey P. Kieley and Dan Shaw, Research Officers.

Pursuant to Standing Order 108(2), the Committee resumed consideration of Foreign Investment Restrictions Applicable to Telecommunications Common Carriers.

It was agreed, — That the Draft Report (as amended) be concurred in.

Ordered, — That the Chair present the Third Report (as amended) to the House at the earliest possible opportunity.

It was agreed, — That pursuant to Standing Order 109, the Committee request that the Government table a comprehensive response to this report within one hundred fifty (150) days.

It was agreed, — That the Chair be authorized to make such typographical and editorial changes as may be necessary without changing the substance of the Draft Report to the House.

It was agreed, — That 1000 copies of the Report be printed in both English and French in tumble format.

It was agreed, — That a News Release be issued.

It was agreed, — That a Press Conference be held on Monday, April 28, 2003, at 3:30 p.m. following the tabling of the Report.

It was agreed, — That the Committee authorize the printing of dissenting and/or supplementary opinions as an appendix to this report, immediately following the signature of the Chair.

It was agreed, — That any dissenting and/or supplementary opinions be limited to not more than three (3) pages.

It was agreed, — That any dissenting and/or supplementary opinions be received by the Clerk no later than Friday, April 11, 2003 at 12:00 p.m.

It was agreed, — That the proposed budget in the amount of $12,000 be adopted and that the Chair present the said budget to the Subcommittee on Committee Budgets of the Liaison Committee.

At 5:38 p.m., the Committee adjourned to the call of the Chair.

Jean-François Pagé
Clerk of the Committee