ACTRA

Submission to the
House of Commons Standing Committee on Industry, Science and Technology

In the Matter of

"Canada's Foreign Ownership Rules and Regulations
in the Telecommunications Sector"

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INTRODUCTION

On behalf of our 21,000 members, ACTRA welcomes the opportunity to participate in the Standing Committee on Industry, Science and Technology's study of "Canada's Foreign Ownership Rules and Regulations in the Telecommunications Sector." We bring the particular perspective of professional performers working in the English-language recorded media in Canada. Our members, who live and work in every corner of the country, bring Canadian stories to life in film, television, sound recordings, radio and digital media.

Canada's professional performers believe that ownership of our cultural industries by Canadians is crucial for both our economic and cultural sovereignty. We also believe that it is a mistake to think that you can relax foreign ownership rules for telecommunications without negatively affecting Canadian culture.

With increasing corporate consolidation and the rapid evolution of technology – telecommunications and broadcasting are inextricably linked. Current limits to foreign ownership of Canadian telecommunications and broadcasting must be maintained to ensure that these economically and culturally vital industries are controlled by Canadians, for Canadians.

When it comes to the question of foreign ownership in telecommunications, ACTRA has an easy and simple solution: the government should do nothing. Do not weaken the rules.

FOREIGN OWNERSHIP RESTRICTIONS TODAY

Controlling our own communications systems is an essential and longstanding principle of Canadian cultural and communications policies.

Section 7(a) of the *Telecommunications Act* clearly states the legislation's objective is "to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions." Furthermore, the *Telecommunications Act* states, "A Canadian carrier is eligible to operate as a telecommunications common carrier if it is a Canadian-owned and controlled corporation incorporated or continued under the laws of Canada or a province."

Currently, corporations operating as telecommunications carriers must meet the following requirements:

- At least 80% of its board of directors must be individual Canadians.
- Canadians must own at least 80% of its voting shares.
- The corporation must not be otherwise controlled in fact by non-Canadians.
- At least two-thirds of the voting shares of a carrier's parent company must also be held by Canadians.

The principle of majority-Canadian ownership is also enshrined in the *Broadcasting Act*. Section 3(1)(a) of the *Broadcasting Act* states that "the Canadian broadcasting system shall be effectively owned and controlled by Canadians."

On March 9, 2010, the Standing Committee on Industry, Science and Technology agreed to the following motion:

> That given the recent cabinet decision on Globalive Communications Corporation, that the Committee begin a review of Canada's foreign ownership rules and regulations under the *Telecommunications Act*, the *Radiocommunications Act*, the *Broadcasting Act* and any other legislation deemed appropriate.[1]

In the last federal Throne Speech and Budget, the Conservatives announced plans to relax foreign ownership rules. Industry Minister Tony Clement later indicated the government was looking to allow greater foreign investment in the telecommunications industry. This announcement came on the heels of the government overturning a CRTC decision that determined start-up mobile operator Globalive Wireless (Wind Mobile) did not meet Canadian ownership and control requirements under the *Telecommunications Act*. Although Globalive is 65%-owned by Egypt's Orascom Telecom, the government ruled that the company technically met legal requirements on the basis of Canadian-held voting shares.

In 2006, a special Telecommunications Policy Review Panel report recommended to the government that foreign ownership rules for telecommunications be relaxed and also recommended further review of foreign ownership rules under the broadcasting policy. ACTRA strenuously opposed the "Compete to Win" report.

In 2007, the CRTC approved the takeover of Alliance Atlantis by CanWest Mediaworks, a transaction that ACTRA maintains challenges Canada's foreign ownership limits. Sixty-four percent of the equity and financing come from U.S. investment bank Goldman Sachs, giving a U.S. company a majority stake in a Canadian broadcaster, contrary to the *Broadcasting Act* that requires Canadian ownership of broadcasters.

In 2008 the Competition Policy Review Panel recommended reducing or eliminating foreign ownership restrictions for network infrastructure-based operators. Finally, in February 2010, the CRTC recommended that especially with increased convergence in Canada's telecommunications and broadcasting industries "control of communications companies should remain in domestic hands."[2]

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

In some countries it may be conceivable to talk about telecommunications and broadcasting separately, but that is not the case in Canada. Here, convergence isn't just a buzzword it's our reality. Perhaps even more than any other country, Canada's telecommunications and broadcasting sectors are inextricably linked.

With increasing corporate consolidation and the rapid evolution of technology – telecommunications and broadcasting have converged. Vertical integration means that telephone companies own cable, broadcast and satellite assets; and cable companies own telecommunications, satellites and broadcasters. Moreover, content is bring delivered to Canadians through all of these channels – telecoms and ISPs are effectively becoming

[1] Standing Committee on Industry, Science and Technology, *Minutes of Proceeding*, March 9, 2010 http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4336405&Language=E&Mode=1&Parl=40&Ses=3

[2] CRTC, *Navigating Convergence: Charting Canadian Communications Change and Regulatory Implications*. Section 4.2.2, February 2010 http://www.crtc.gc.ca/eng/publications/reports/rp1002.htm#t422

broadcasters. You cannot separate them and this reality shows no signs of changing any time soon; if anything we can expect the lines to blur even further.

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

> The spheres of telecommunications and broadcasting are rapidly evolving and converging into a single world of communication...The largest Canadian communications companies engage in content production, broadcasting, broadcast distribution and telecommunications access. In 2008, 80% of communications revenues in Canada were generated collectively by eight communications companies that provided both broadcasting and telecommunications services.[3]

The Conservative government recognized the extent of convergence when it created the Canada Media Fund, which merged the pre-existing Canadian Television Fund with the Canada New Media Fund. The innovative Convergent Funding Stream supports Canadian projects on at least two distribution platforms, one of which is television.[4] This forward-thinking strategy will encourage the distribution of Canadian programming across multiple platforms to Canadians and audiences around the world.

When describing the economic impact of Canada's cultural industries in a speech at the 2009 Banff World Television Festival, Minister of Canadian Heritage James Moore said: "I mention all of this combined for a reason – because they are converged. They are not converging, the convergence is now, and Canada's new creative economy is here today."[5]

Canada's largest communications companies understand today's converged environment and are preparing to take advantage of new digital opportunities.
In March, Shaw Communications announced it was sinking $100 million into building infrastructure to enter the cellular market in 2011, adding to its powerful presence in satellite, cable, telephone, and internet. Looking to the future, Shaw is planning how best to offer broadcasting across multiple platforms should the conglomerate gain control of Canwest Global – a move widely anticipated by industry analysts. [6]

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

CANADA'S UNIQUE GEOGRAPHIC & ECONOMIC POSITION

Canada is not alone in taking precautions to ensure foreign ownership does not get out of hand. Almost half of the OECD countries have restrictions on the ownership of telecommunications and broadcasting – including the United States. Spain, Australia, New

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[3] CRTC, *Navigating Convergence*, Section 3.10
[4] Canadian Media Fund, *Convergent Funding Stream*, http://www.cmf-fmc.ca/index.php?option=com_content&view=article&id=87&page_mode=create&Itemid=78
[5] The Honourable James Moore, *Speech at 2009 Banff World Television Festival*, June 7, 2009 http://www.pch.gc.ca/pc-ch/minstr/moore/disc-spch/index-eng.cfm?action=doc&DocIDCd=SJM090401
[6] Globe and Mail, *Shaw steps up with 'a quad play'* by Iain Marlow, April 13, 2010 http://www.theglobeandmail.com/globe-investor/shaw-steps-up-with-a-quad-play/article1529697/

Zealand, Norway, Korea and Japan also have restrictions.[7] While the level of restrictions varies, none of them are in Canada's position of sitting within broadcasting distance of the biggest exporter of English-language cultural material in the world.

Canada is also exceptional in the high level of convergence between broadcasting and telecommunications; no other country shares the same level of cross-ownership in these industries. At these Committee Hearings Dimitri Ypsilanti OECD Head of Information, Communications and Consumer Policy, noted that while Canada has strict foreign ownership rules, he also conceded that Canada in a unique position: "To my knowledge, there are no countries where the telecom operator actually own broadcast facilities, in the sense of terrestrial broadcast facilities."[8]

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

CANADIAN CULTURAL SOVERIEGNTY

Increased foreign control of Canadian telecommunications and broadcasting would damage Canada's sovereignty over cultural policy, jeopardize Canadian content regulations and deepen the crisis in Canadian TV drama. Even with current Canadian majority ownership of our telecoms and broadcasters, Canadians are fed a steady diet of U.S. programming. Our culture is being marginalized and would be more so with a relaxing of ownership rules. Without Canadian ownership of our airwaves, the future of Canadian broadcasting and Canadian culture will be at stake.

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

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

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

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[7] OECD, *Communications Outlook 2009,* Pages 47-49 & 228-237, August 2009
http://www.oecd.org/sti/telecom/outlook

[8] Standing Committee on Industry, Science and Technology, *Minutes of Proceeding*, April 13, 2010

CANADIAN ECONOMIC SOVEREGNTY

Performers are excited by the opportunities the expanding digital world is creating. ACTRA members have a vital stake in the future of all Canadian media, the emergence of digital media and the new forms of distribution. Canada's creative community is responsible for the content that Canadians want to access using digital technology. As such, we have a number of creative ideas to help the government and our industry work together to face the current challenges and welcome any opportunity to participate in conversations about how Canada can best take the lead in the emerging digital economy.

However, if Rogers, Telus and Bell's telecom interests are sold-off to foreign interests, Canadians will lose control not only of our telecom and satellite industries, but we will be one small step away from ceding complete control of our broadcasting and media industry. And that would be catastrophic not only for Canadian culture, but also for our economic sovereignty.

Culture is a serious business that plays a critical role in the economic health of our country. Canada's cultural industries contribute more than $85 billion – constituting 7.4 per cent of Canada's real gross domestic product (GDP) – and more than 1.1 million jobs to our economy.[9] In 2007/08, the film and TV industry represented $5.2 billion in production, generating 131,600 jobs – that's 51,700 full-time jobs directly in production, and a further 79,900 spin-off full-time jobs in other industries in the Canadian economy.[10]

In 2008, Canada's communications sector in particular – which includes telecommunications and broadcasting – accounted for nearly 4.5% of Canada's GDP. Broadcasting revenues represented approximately one quarter (26%) of that amount and telecommunications revenues accounted for approximately three quarters (74%).[11] In other words, any regulatory changes would inevitably have profound economic impacts.

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

It is the government's duty to strive to make our telecommunications and broadcasting industries stronger. Canadians are rightfully proud of Canadian companies, such as Research In Motion (RIM), who have become global players while attracting the best ideas,

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[9] Conference Board of Canada, *Valuing Culture: Measuring and Understanding Canada's Creative Economy*, August 28, 2008

[10] CFTPA. *The Guide 2009*, February 2009

[11] CRTC, *Communications Monitoring Report, 2009,* Section 3.1, August 2009 http://liveweb.crtc.gc.ca/eng/publications/reports/policymonitoring/2009/cmr31.htm

[12] Canadian Press, *Sudbury strike becomes longest in Inco's history; little hope for resolution* by Kristine Owram, April 6, 2010 http://www.google.com/hostednews/canadianpress/article/ALeqM5j9ONJ-uvH5ZhfZyo8TUsPLJJwfUg

pushing innovation and increasing our country's wealth. But Canadians do not agree that opening the doors to foreign investment is the only or the best way to achieve these goals.

COMPETITION WITHOUT FOREIGN OWNERSHIP

Some argue that foreign ownership is the golden ticket to giving Canadian consumers a break on their mobile and cable bills. There is no question Canadians are being gouged by cable and telecoms. But the problem here is not lack of foreign ownership, its lack of regulation. There is no evidence that allowing foreign ownership brings down cable or wireless bills and makes prices fairer. But there is proof that regulation does.

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

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

CANADIANS AGREE: KEEP IT CANADIAN

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

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

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

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

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

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

CONCLUSION

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

ACTRA's message is clear: current limits to foreign ownership must be maintained to ensure that our broadcasting and telecommunications industries are controlled by Canadians, for Canadians. We believe that Canadian voices are worth hearing, sharing and celebrating. We must not open the door to foreign ownership and allow those voices to be drowned out.

Thank you for allowing ACTRA to participate in this important discussion.

All of which is respectfully submitted.

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