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Mr. L. R. Wilson
Chair
Competition Policy Review Panel
280 Albert Street, 10th Floor
Ottawa, ON
K1A 0H5

Dear Mr. Wilson:

Subject: **Rogers Submission to Competition Policy Review Panel**

Introduction and Recommendation

1. Rogers Communications Inc. (Rogers) is pleased to provide its comments to the Competition Policy Review Panel in response to the issues raised in the Panel's Consultation Paper.
2. Rogers is a large diversified public Canadian communications and media company. We are engaged in wireless voice and data communications services through our Wireless division, Canada's largest wireless provider and the operator of the country's only Global System for Mobile Communications ("GSM") based network. Through our Cable and Telecom division we are one of Canada's largest providers of cable television, cable telephony and high-speed Internet access, and are also a national, full-service, facilities-based telecommunications alternative to the traditional telephone companies. Through our Media division, we are engaged in radio and television broadcasting, televised shopping, magazines and trade publications, and sports entertainment.
3. Rogers' submission will address the issues raised in the Panel's consultation paper concerning foreign ownership rules in the telecommunications, broadcasting and cultural industries market sectors.
4. Rogers submits that the current foreign investment rules for these three market sectors remain appropriate. The reasons for establishing the rules originally continue to be relevant today and for the foreseeable future. The rules should be maintained.

Current Foreign Investment Policies in the Telecommunications and Broadcasting Sectors

5. For the telecommunications and broadcasting sectors, the current policies require 80% Canadian ownership and control of telecommunications common carriers and broadcast licences and 66.6% for holding companies. Accordingly, these rules permit a foreign entity to own up to 46.7% of a Canadian common carrier or broadcaster.
6. In addition, no less than 80% of the Board of Directors members (and, in the case of broadcasting, the CEO) must be Canadians and the corporation must not be otherwise controlled by persons that are not Canadian.
7. Almost identical rules apply to Broadcasting Distribution Undertakings (BDUs), such as cable companies, which distribute video programming to Canadians, and to telecommunications carriers. The rules for the former are found in the *Broadcasting Act*, while the latter are found in the *Telecommunications Act*.

The Telecommunications Sector is Intensely Competitive and Internationally Successful

8. Page 42 of the consultation paper described the rationale for the foreign ownership rules in the telecommunications sector as follows:

Restrictions also reflected more general concerns about ensuring economic benefits. Other considerations, reflected in the Telecommunications Act's policy objectives, were that telecommunication systems are essential to safeguarding Canada's social and economic fabric, and that increased competition would lead Canadian service providers to use Canadian facilities. There is also the objective of addressing heightened concerns about national security and the use of telecommunication facilities to enable crime and terrorism.

9. Rogers agrees with these reasons underlying the current foreign ownership rules.
10. Rogers further agrees with the concerns regarding "hollowing-out" detailed clearly on pages 9 and 10 of the consultation paper.

These worries centre on the loss of head-office functions and the valued-added jobs, decision-making power, research and development activity and commitment to building Canada that accompany a corporate headquarters, as well as associated functions such as high value-added

consulting, legal and accounting services, and financial and underwriting services.

...

Large firms are not only significant employers. They are often generous and influential donors to charities, and sponsors of community activity, and their executives are often community leaders. Many Canadians question whether foreign owners will demonstrate the same level of dedication to their communities, and continue to provide career opportunities for young Canadians.

11. On page 21, the Panel poses three specific questions regarding sectoral investment regimes,
 1. **What changes, if any, are required to Canada's sectoral investment regimes to minimize or eliminate negative impacts on Canada's competitiveness?**
 2. **What have been the impacts of these investment regimes on productivity and competitiveness in the specific sectors?**
 3. **Are there alternative mechanisms that would achieve the non-economic policy objectives of the sector while also ensuring maximum competitiveness of firms operating in the sector?**
12. Rogers submits that the current ownership rules for telecommunications have not had negative impacts on Canada's competitiveness and productivity. Moreover, their application has seen great advances in Canadian telecommunications markets and Canadian success stories such as Rogers. Over the past 15 years, the Canadian telecommunications market has experienced an explosion of competition from Canadian companies transforming the sector from monopoly supply to a vibrant competitive marketplace with multiple local, long distance and Internet wireline providers. Canadian consumers have been well served.
13. The Canadian telecommunications market is a world leader. Canadian wireline service is of the highest quality at a low price amongst OECD and G8 countries. Wireline telephone service is available to 99.5% of Canadian households at a fixed monthly rate¹ and 98% of Canadian households subscribe to phone service. Canada leads the G8 in high-speed Internet penetration. Canadian

¹ Canadians benefit from the absence of local measured service which sees local calling charged on a per-minute or call basis in many countries.

broadband penetration is substantially ahead of countries such as the United States, Australia and the United Kingdom. Canada ranks 7th in penetration in the OECD and number one in terms of penetration when adjusted for population density.²

14. Cable TV penetration is available to approximately 95% of the households in Canada. This world-leading cable infrastructure has allowed the cable industry to play its leadership role in the successful Canadian deployment of high-speed broadband services described above. In addition, cable companies across Canada have aggressively launched residential local telephone services over the past three years providing facilities-based competitive alternatives to the incumbent local telephone companies.
15. At a recent CRTC proceeding concerning mandated wholesale access to carriers facilities in order to promote competition, a recognized international telecom lawyer from Australia testifying on behalf of Bell Canada commented on the state of facilities-based residential telecommunications competition in Canada,

To me that's where you [Canada] are in a very different position. The rest of us outside North America suffer from what I call "cable envy". You know, if you read the beginning of every regulatory report, it says, "If we had as much cable as North America has, I wouldn't write the rest of this report. I would stop right here in the introductory paragraph".

The rest of us are using a ladder of investment to climb to where you are. So I must admit it's a little strange when I come here and I see one of the world's most complete ladders of investment in a market that actually already has where the rest of us are struggling to get to.³

16. Given this strong record of success what voices are crying for changes to the current rules? Although the 2006 Telecom Policy Review (TPR) Panel was not charged with studying the matter of foreign ownership it did make recommendations in an "Afterword" to its report. The TPR Panel argued that,

The case for liberalization of Canada's foreign investment restrictions is strongest in the newer emerging markets, where Canadian performance

² Countries that have absolute penetration rates above that of Canada include Iceland, Denmark, Netherlands, countries that are very compact in size.

³ CRTC Essential Services Proceeding, Transcript Volume 4, October 12, 2008, paragraphs 7687 and 7688, Testimony of Mr. Peter Waters of Gilbert & Tobin Lawyers, Sydney, Australia and Hong Kong, China.

lags that of other countries – such as those in the mobile and fixed wireless markets.⁴

The TPR Panel believed that additional competition would benefit Canadian consumers in wireless markets.

17. The TPR Panel then went on to recommend a phased approach whereby

the Telecommunications Act would be amended to give the federal Cabinet authority to waive the foreign ownership and control restrictions on Canadian telecommunications common carriers when it deemed a foreign investment in the public interest.

*...
During the first phase there should be a presumption that investments in any new start-up telecommunications investment or in any telecommunications common carrier with less than 10% of the revenues in any telecommunications service market are in the public interest*

18. Rogers does not agree that Canadian performance is lagging that of other countries in the world in the wireless sector.⁵ In the fixed wireless market, the Inukshuk network covers all of the major population centres of Canada. The network is owned and constructed jointly by Rogers and Bell Canada. Services are sold and marketed by the two companies independently. Other fixed wireless providers include affiliates of municipal hydroelectric companies.
19. In the mobile market, advanced wireless services are available to over 95% of the Canadian population. Rates (measured by average revenue per minute) are the fifth lowest in the OECD. Rogers' UMTS/HSPA (Universal Mobile Telephone System/High Speed Downlink Packet Access) network, available to all major Canadian population centres, is the most advanced in the world. The success story that is Research in Motion, in large part, began with the deployment of its first blackberry service with Rogers. The Canadian wireless industry was more than equal to the task and RIM has gone on to become the global power that it is today.
20. In any event however, the recent release of the federal government's spectrum auction policy has removed any need to entice foreign suppliers to compete in Canada through the elimination of the current foreign ownership rules. The

⁴ Telecommunications Policy Review Panel Final Report 2006, page 11-21.

⁵ See Rogers' submissions to Industry Canada in the Spectrum Auction Policy Review.

spectrum auction policy is explicitly designed to promote the entry of new competitive wireless providers through a series of supportive policies. Spectrum has been set-aside for new entrants and access to incumbent's facilities and services has been mandated.

21. In effect, the federal government has taken steps consistent with the adoption of alternative mechanisms contemplated in the Review Panel's third question referenced above in paragraph 11. While question 3 asks what alternative mechanisms might protect Canadian sovereignty if foreign ownership restrictions were lifted in order to promote competition the government has approached the matter the other way around. The government has intervened in the market to promote competition through alternative mechanisms while the foreign ownership restrictions have remained in place.
22. Consequently, the one issue that the TPR Panel believed warranted the partial modification of the current ownership rules has been specifically addressed in another manner. While Rogers strongly disagrees with the spectrum auction policy, the fact is that the policy is now in place.
23. The existence of the spectrum auction policy therefore argues strongly for the continued application of the current foreign ownership rules. Absent these rules there would be nothing to prevent companies that will purchase spectrum at lower-than-market rates and benefit from advantageous rights to incumbent's facilities and services from selling themselves or their spectrum and rights to a foreign company at the earliest opportunity. In other words, immediately flipping themselves to a foreign owner.
24. Rogers submits that this is not what the government had in mind when it established the spectrum auction policy. The government must have understood that policy was inconsistent with liberalization of the foreign ownership rules in telecommunications, in the near term. The government could not have intended to subsidize the entry of foreign wireless carriers into Canada at the expense of the Canadian taxpayer and the domestic incumbents who have invested upwards of \$20 billion in wireless infrastructure over the past 20 years.
25. Finally, in regard to telecommunications specifically, Rogers submits that current Canadian rules are not out-of-place with those of other countries. What sets Canada's rules apart in many instances is that they are *ex ante*, transparent and clear. As noted in the consultation paper, many other countries have similar explicit rules while others maintain public ownership in the principal wireline companies as a means of control. The United States applies national security reviews at the level of the Committee on Foreign Investment and the FCC must

approve any transaction in the wireless industry that involves a greater than 25% foreign ownership interest.

Liberalizing Foreign Ownership is Complicated in a Converging Telecommunications and Broadcasting Marketplace

26. Cable TV companies, such as Rogers, have been traditionally regulated under the *Broadcasting Act* as BDUs, while the traditional telephone companies such as Bell Canada have been regulated as common carriers under the *Telecommunications Act*.
27. Over the past decade, market convergence has seen the cable companies enter into telecommunications markets and also be regulated under the *Telecommunications Act*. Similarly, the telephone companies have entered into the broadcast distribution undertaking market and become regulated by the *Broadcasting Act*. Increasingly, both cable companies and telecommunications companies are deploying networks which use fibre optics for all but the last mile or last block. These networks transmit digital bits. The bits may be part of a voice, data or video communication, or all three. The business operations and the technology of cable operators and telecom carriers are therefore increasingly similar.
28. Therefore in order to remove foreign investment restrictions in an effective and fair manner, the restrictions would have to be removed from both the *Telecommunications Act* and the *Broadcasting Act* in order that existing companies not be disadvantaged. To explain, it would be unfair to permit certain telecommunications companies to operate under liberalized rules under the *Telecommunications Act* while at the same time constraining the abilities of other very important companies under *Broadcasting Act* rules that have not been liberalized. Such an asymmetry would distort the markets.
29. Further complicating matters, the *Broadcasting Act* applies to distribution undertakings, such as Rogers, Quebecor and Bell and to programming undertakings such as operated by CBC, CTV, Quebecor and Rogers. The former activity involves distribution or carriage issues while the latter always involves content and sometimes involves distribution in the case of over-the-air broadcasters.
30. Consideration of amendments to the *Broadcasting Act* to permit foreign ownership would raise a number of issues with respect to the promotion of Canadian content and talent in both the television and radio industries.

31. A solution to these complications might be to separate carriage (telecommunications and BDU) and content under different legislation. Rogers submits examination of this issue would involve a separate process from this Panel's review.

Canadian Cultural Industries Are Important

32. Rogers submits that current policy measures in place regarding cultural industries are appropriate and should be maintained.
33. Given Canada's relatively small, diverse population, and given that its cultural businesses are small in comparison to global competitors, in particular to the enormous U.S competitors right next door, the existing public policies supporting Canadian cultural industries are necessary to provide for the availability of a range of Canadian cultural products. Rogers submits that market forces alone will not ensure the availability of products with a Canadian perspective.
34. In addition, Rogers notes that it participated in the development of the submission to the Panel from Magazines Canada and endorses the positions expressed in that submission.

Conclusion

35. Rogers submits that the current sector-specific foreign ownership rules should be maintained in the telecommunications, broadcasting and cultural industries. The public policy considerations that originally led to the rules remain valid today.
36. These industries are currently successful in Canada. They are both competitive and productive.
37. The federal government has intervened in the wireless telecommunications market to promote further competition through its spectrum auction policy. In light of the spectrum policy rules it would be especially inappropriate to liberalize the foreign ownership rules.
38. If, contrary to Rogers' recommendation, the foreign ownership rules are changed they must be changed in the same manner at the same time for both the broadcasting and telecommunications sectors given the increasingly converged nature of these industries today.

39. Rogers appreciates the opportunity to provide these comments. Rogers would be pleased to meet with the Panel should the Panel consider that a meeting would be useful in it.

Yours very truly,



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Vice President – Regulatory

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