IX. SERVICES

Basic Telecommunications

The Communications Act provides the Federal Communications Commission (FCC) with broad discretionary powers regarding the licensing and foreign ownership of telecommunications services. The test normally applied by the FCC when deciding the exercise of this discretion is the "public interest, convenience and necessity test" (PCN). The criteria are not defined, providing the FCC the administrative leverage to deny service applications by foreign telecommunications service providers in a manner which could constitute a barrier to these foreign companies.

Section 310 of the Communications Act prohibits direct foreign ownership in common carrier radio licensees greater than 20%. While the statute gives the Federal Communications Commission (FCC) the discretion to allow greater than 25% "indirect" foreign ownership in the parent of a licensee, the FCC has never exercised this discretion to the extent of allowing foreign control. This effectively precludes substantial foreign investment in the U.S. local exchange (mobile and microwave licenses) and long distance (microwave and satellite licenses) markets. Foreign ownership limitations apply to common carrier radio licenses needed to provide long distance service.

A U.S. carrier engaged in international long distance services and controlled by a foreign carrier is subject to full dominant carrier regulation (eg. the same as AT&T) unless it can satisfy the FCC that its foreign affiliate is unable to discriminate against unaffiliated U.S. carriers in its home market. All other carriers (eg. MCI, Sprint) are subject to streamlined regulation only.

In February 1995, the FCC proposed new rules to increase competition in the United States and to open foreign communications markets to U.S. industry. These new rules would enable the FCC to consider whether effective market access is, or soon will be, available to U.S. carriers seeking to provide basic telecommunications carrier services in the home country of the carrier seeking entry to the United States when deciding whether companies from those countries will be allowed to own or invest in U.S. communications companies.

Maritime Transport

Several U.S. programs and legislation serve to benefit the U.S. shipping, and shipbuilding and repair industries. For example, an operating differential subsidy (ODS) is paid to some U.S.-flag vessels in international shipping services to improve their competitiveness with respect to foreign-flagged vessels. Under the Capital Construction Fund (CCF) and the Construction Reserve Funds (CRF) tax deferral benefits are available to operators and owners of American vessels to construct, reconstruct or acquire vessels which have been constructed in the United States. In November and December 1994, regulations enacted under the Oil Pollution Act (OPA 90) introduced U.S. requirements for insurance certificates of financial responsibility and tug escorts for tankers transiting short sections of U.S. territorial waters in the Strait of Juan de Fuca on voyages into B.C. ports. These examples, along with the more significant legislation described below, serve to restrict access to the U.S. market for Canadian shipping and shipbuilding companies.