

Basic Telecommunications

The 1934 Telecommunications 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 Telecommunications Act prohibits direct foreign ownership in common carrier radio licensees greater than 20%. While the statute gives the 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.

In November 1995 the FCC adopted new rules to include additional factors in its public interest review, and will now consider whether U.S. telecommunications carriers have "effective opportunities" to compete in foreign markets when it considers applications by foreign carriers to serve the U.S. market. This introduces a principle of reciprocity which Canada has traditionally opposed in favour of MFN (most favoured nation) treatment.

Major new U.S. telecommunications legislation, the United States Telecommunications Act, was passed by Congress on February 1 and signed into law on February 8, 1996. There is a status quo position on foreign ownership of telecommunications services. The bill leaves considerable discretion to the FCC when it considers applications by foreign carriers to serve the U.S. market. The FCC analysis would include public interest factors that take account of broad trade and foreign policy, national security and law enforcement. The subjective nature of these criteria, which are unrelated to telecommunications services, creates uncertainty for Canadian companies applying for greater participation in the U.S. telecommunications market.

Negotiations on liberalization of basic telecommunications services are currently underway under the provisions of the WTO-based General Agreement on Trade in Services (GATS). These negotiations are set to conclude by April 30, 1996. The key issues for market access in this sector are foreign