III. The Globalization of Telecommunications

The international telecommunications sector is undergoing profound structural change. The old order, founded on bilateral traffic exchanges between monopoly carriers, is evolving towards a new regime driven by global market forces. Prices are less and less under the control of national regulators, and more and more dictated by the international marketplace.

The rapid globalization of telecommunications is largely due to a combination of *technological advances* and the *globalization of commerce.*

Technological innovations -- fiber optics, digital switching, compression, asynchronous transfer mode (ATM) -- are vastly expanding capacity and significantly reducing the cost of delivery to business users and consumers. Transmission and switching costs in particular have decreased dramatically.

A strong increase in demand for overseas services has resulted from the expansion of multinational corporations. These globally based companies are demanding customized end-to-end telecommunications services and international platforms.

In response to this combination of technological advances and market demands, a growing number of governments are liberalizing their national markets in order to harness the economic benefits of competition -- especially to promote *greater choice, new services,* and *lower prices* for end-users. Today, liberalization has become a global phenomenon, as competition is steadily moving to replace traditional monopolies.

The world's major carriers have been quick to respond to these new market demands and realities. Today, 13 of the world's 15 biggest carriers have formed global strategic alliances -- including the three major US carriers, AT&T, MCI and Sprint -- which are uniquely positioned to respond to customer demands for international service platforms and global connectivity.

One of the largest new "mega-carriers" is the WorldPartners global alliance. Led by AT&T, equity shareholders also include KDD of Japan, Singapore Telecom and UniWorld -- the latter being an alliance of AT&T, the Unisource European telecommunications alliance and Communications Network International (CNI) of Germany. There are also two major trans-Atlantic alliances: the Concert partnership between MCI and British Telecom (BT), and the proposed tripartite Phoenix alliance which would group Sprint, France Télécom and Deutsche Telekom. National carriers serving specific regions or market segments, including

Canadian carriers, are joining these global alliances as they seek to increase their world market share.

These mega-carrier alliances convey a vision that will undoubtedly shape the configuration of the global telecommunications industry in the future. In the near term, the market will be characterized by a limited number of fully-integrated global players offering end-to-end services -- from local to overseas as well as mobile communications.

Impact on the Canadian Market

The United States' market currently accounts for more than 25% of the world's international long-distance traffic and 33% of overall global telecommunications revenues. Furthermore, the drive to provide integrated end-to-end services has been led by the major US carriers, AT&T, MCI and Sprint. As a neighbour and the major trading partner of the United States, Canada is obviously being affected by these rapidly evolving market forces.

Indeed, the major US carriers have already extended their service reach into the Canadian market in a significant way. In 1993, Stentor entered into a technology partnership with MCI. It is understood to be finalizing arrangements to join the MCI/BT Concert alliance. Second, Unitel -- which in late September 1995 became more closely aligned with its minority shareholder through a planned major equity investment by AT&T -- is a fee paying member of the WorldPartners alliance. Third, Sprint Canada's parent company is 25%-owned by US Sprint which, in turn, is partnered with France Télécom and Deutsche Telekom in the proposed Phoenix alliance.

These alliances all offer common international switching platforms to Canadian customers. For example, Stentor will soon be able to offer Concert's global seamless virtual private network, private line and frame relay services, in conjunction with MCI's extensive overseas network. Likewise, Unitel now offers to Canadian customers services which are routed through WorldPartners' foreign nodes. Sprint Canada soon will be in a similar position.

In Canada's segregated marketplace, Teleglobe remains subject to *unique* national policy and regulatory constraints on rate-setting, return-on-investment regulation, transfer of assets restrictions, and both domestic and foreign carrier ownership ceilings. These constraints, justified in an historical context, prevent Teleglobe from responding adequately to customer needs and competitive pressures in the emerging global market, and from forming the alliances that will be necessary to do so in the future.

The Government must actively promote opportunities for the Canadian industry to develop the tools necessary to maintain its prominent position among world telecommunications players. It is only by ensuring the active and leading participation of the Canadian industry in the growth of the world's new telecommunications services that Canadian businesses and consumers will fully benefit from these global developments.

IV. Canadian Overseas Facilities-Based Competition

The Government should further liberalize Canadian telecommunications competition by opening the overseas market to facilities-based competition. Entry would be allowed to all Canadian carriers which obtain the appropriate licences. Competition should be introduced in the overseas facilities market upon establishment of the legislative and regulatory environment necessary to foster fair and sustainable competition.

This opening of overseas facilities-based competition means that Canadian carriers[15] -- such as Unitel and Sprint Canada, but not the Stentor carriers[16] -- will be allowed to obtain the appropriate licences to own or operate transmission facilities in international satellite and submarine cable systems in order to provide telecommunications services to the public.

It can be readily foreseen that, if permitted, Canadian carriers would seek to extend their networks and service offerings into overseas markets in a manner which is integrated with their business. Moreover, they can be expected to establish integrated domestic and overseas facilities for those market destinations justified by traffic volumes. This is significant because more than 50% of Canada's overseas calls terminate in only ten foreign countries.

Network facilities can generally be planned and acquired by carriers according to traffic needs and capacity availability. While facilities have traditionally been constructed on a joint-ownership consortium basis, provision is normally made by the owners for the subsequent sale of capacity on an incremental basis.[17] In addition, the current global proliferation of new carriers and the increasing demand for facilities has led to the construction of cable projects on a combined bilateral and private ownership basis.

The CANTAT-3[18] trans-Atlantic cable system is such an example. A portion of CANTAT-3 was initially subscribed for by the project consortium owners on a

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15 A "Canadian carrier" is a Canadian owned and controlled telecommunications common carrier, as defined in the *Telecommunications Act* S.C. 1993, c. 38, Section 2(1).

16 See Section VI, Treatment of the Stentor Carriers.

17 This is referred to in the industry as the sale of "indefeasible rights of use" or IRUs.

18 CANTAT-3 is a 7,500 km fiber optic cable which went into service in late 1994 between Canada and Northern Europe. It is capable of transmitting the equivalent of 300,000 simultaneous trans-Atlantic calls.

bilateral basis. However, a significant portion of the capacity was also maintained by promoters of the project including notably, Teleglobe Inc. for subsequent resale. A further such example is the proposed TAT-12/TAT-13 cable system being promoted by AT&T. Similar examples exist for new satellite projects. Additionally, the existing satellite consortia -- INTELSAT and INMARSAT -- are undergoing changes which will facilitate access to traditional satellite capacity by new carriers.

Teleglobe is convinced that significant benefits to the Canadian market will result from the introduction of overseas facilities-based competition. However, Teleglobe submits that Canadians will only achieve these benefits if a competitive environment that fosters fair and sustainable competition is established. For this to happen, the Government must initiate certain actions prior to the introduction of overseas facilities-based competition.

The terms and conditions under which overseas facilities-based competition will be introduced must be clearly defined and, in particular, must be non-discriminatory. This must be achieved expeditiously prior to the introduction of competition through consultations between Canadian carriers and the Government or through a public process initiated by the Government.

Important issues that would be addressed in such a process include: the establishment of an international accounting rate policy, proportionate return policy, interconnection arrangements foreign carrier agreements, licensing and bypass enforcement.[19]

A critical prerequisite to the opening of overseas facilities-based competition is the realization of legislative and regulatory reforms. Specifically, repeal of the *Teleglobe Act* and amendment of the *Telecommunications Act* are critical preconditions to the broadening of overseas competition in Canada. Similarly,

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[19] Accounting rates policy: Should there be uniform accounting rates for all Canadians overseas carriers?
Proportionate return: What are the rules regarding the sharing of return traffic among overseas carriers?
Interconnection arrangements: What should be the terms and conditions for interconnection between Teleglobe and other Canadian overseas carriers?
Foreign Carrier Agreements: Teleglobe submits that Canadian overseas carriers should be required to conclude an operating agreement with at least one authorized carrier in each country to which they propose to deliver traffic. How should this be implemented and enforced?
Licensing: What should be the licensing and reporting conditions for owning or operating satellite and submarine cable facilities in a competitive environment?
Bypass enforcement: How can the bypass prohibition be effectively enforced in a competitive environment?

substantial regulatory reforms, in addition to the proposals made by Teleglobe in the regulatory framework proceeding currently before the CRTC, are required to allow the Company -- and its competitors -- to operate successfully in an environment of full competition.

It is apparent that the further opening of the Canadian market to overseas facilities-based competition will immediately benefit those carriers and service providers that are affiliated with major US carriers -- namely Unitel and Sprint Canada. They will have access to resources and international network planning capabilities which will permit them to enter the overseas facilities market more quickly and with the necessary service platforms. As a precondition to the licensing of Canadian entities affiliated with US carriers, the Government should ensure that Canadian service providers are afforded US market entry opportunities broadly equivalent to those available to US companies in Canada.

Finally, the development of sustainable Canadian competition in overseas facilities-based services is directly dependant on the reaffirmation of the Government's policy promoting the use of Canadian facilities. Until a rules-based integrated North American market is established, the current prohibition on bypass of Canadian facilities must be maintained and enforced.

Teleglobe expects that the opening of the overseas facilities-based market will result in the development of competitive alternatives to Teleglobe and greater choice for Canadian businesses and consumers. The additional traffic-routing flexibility sought by the Government will be achieved by introducing such competition in Canada.

V. Prerequisite Legislative and Regulatory Changes

Legislative Changes

***In a fully competitive environment there is no justification for the Company to continue to be subjected to its own particular regime under the* Teleglobe Act. *All Canadian overseas carriers should operate under an amended* Telecommunications Act.**

At present, statutory ownership rules in the Canadian communications sector vary from one Act to another -- the *Telecommunications Act*, the *Broadcasting Act* and special Acts such as the *Telesat Act* and the *Teleglobe Act*.

For example, under the *Telecommunications Act,* foreign entities can indirectly own 33.3% of voting shares in a Canadian carrier or 20% directly.[20] With respect to the *Teleglobe Act*, direct foreign ownership of the Company by non-carriers is permitted up to the level of 20%.[21] At the same time, there is a flat prohibition on direct investment by foreign carriers in Teleglobe's voting shares -- an impediment unique to the Company among all Canadian carriers.[22]

The Government has recognized that discrepancies across the communications sector must be harmonized for the purposes of coherent national policy-making. The Minister of Industry is expected to address this problem when announcing the Government's information highway policy.

Teleglobe has a particular interest in the ownership issue as well as in other statutory limitations on the Company's conduct and operation. Relaxation of these

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20 AT&T's recently announced plans to increase its equity investment in Unitel from 22% to as much as 46%, would translate -- precisely how is not clear -- into an indirect investment representing only 33% of Unitel's voting shares, to comply with the *Telecommunications Act.*

21 Section 5(1) of the *Teleglobe Act* provides that the articles of incorporation of Teleglobe shall contain: "...b) provisions imposing constraints on the issue, transfer and ownership, including joint ownership, of voting shares of the new corporation to prevent non-residents, including any designated telecommunications common carrier that is a non-resident, from holding, beneficially owning or controlling, directly or indirectly, otherwise than by way of security only, in the aggregate voting shares to which are attached more than twenty percent of the votes that may ordinarily be cast to elect directors of the new corporation".

22 Section 5(2) of the *Teleglobe Act* provides that "... a) non-resident that is a telecommunications common carrier, and; b) no associate of such a non-resident, other than a designated telecommunications common carrier, shall hold, beneficially own or control solely or jointly, directly or indirectly, any voting share of the new corporation otherwise than by way of security only".

restrictions is necessary for Teleglobe to attract capital and enter into strategic partnerships with domestic and foreign carriers in order to secure international traffic sources. Furthermore, in a fully competitive environment there is no justification for the Company to continue to be subjected to its own particular regime under the *Teleglobe Act.*

Domestic Ownership

In 1987 the government set limits on the Canadian designated common carriers'[23] ownership of Teleglobe at a maximum 33.3% of the Company's voting shares.

In the context of privatizing Teleglobe, there was a policy rationale for not permitting the Company to be owned and controlled by what were, at that time, essentially monopoly telephone companies (now Stentor). This approach arguably left the government and the CRTC with the flexibility to facilitate the subsequent introduction of competition into the domestic long distance market.

The context of the industry has changed significantly since privatization. The introduction of competition in the overseas facilities-based market segment would have a significant impact on Teleglobe's business and client relationships with Canadian domestic carriers. Therefore, given the potential entry into Teleglobe's current market by carriers that could offer both domestic and overseas traffic on an integrated basis, there would be no continuing logic for Teleglobe to remain subject to any special and unique ownership restrictions. Elimination of the *Teleglobe Act*[24] would notably serve to remove the domestic ownership restrictions on the Company's voting shares.

Foreign Ownership

In 1987 the government determined that foreign carriers would not be allowed to own any of Teleglobe's voting shares, although foreign individuals were allowed to acquire up to 20%. While these limits may have been appropriate at the time of Teleglobe's privatization, they are not in keeping with current global trends or the *Telecommunications Act.*

At present, more than 30 countries permit foreign carriers to take equity positions in their domestic international carriers. About 20 of these countries have no restrictions or allow majority foreign carrier ownership. Six countries allow 49% foreign carrier participation, including Canada's NAFTA partner, Mexico.

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[23] Op cit, fn. 7.

[24] Some sections of the *Teleglobe Act* may have relevance in a competitive environment and might have to be transferred to the *Telecommunications Act.*

In the United States, legislation limits foreign ownership for common carrier radio licensees to 20% (direct) and 25% (indirect). However, these limits can be waived and there are no statutory foreign ownership restrictions on carriers that operate without radio licences. Proposed US legislation, passed by both houses of Congress, is expected to be signed into law in the next few months. It could lift ownership restrictions on a reciprocal basis.

In Canada, the Information Highway Advisory Council (IHAC) recommends[25] that foreign ownership levels for all federal communications legislation (including the *Teleglobe Act*) should be harmonized at the 20% (direct) and 33.3% (indirect) threshold as provided for in the *Telecommunications Act.*

Given telecommunications trends toward global competition, the Company must be allowed to benefit from enhanced access to foreign capital and the ability to forge alliances with foreign telecommunications players. Teleglobe therefore recommends that the Government eliminate the *Teleglobe Act,* and moreover submits that the *Telecommunications Act* be amended to increase the foreign ownership ceiling, including by foreign carriers, to 49%. These changes would maximize the potential for foreign alliance formations and capital infusion without relinquishing effective Canadian control.

Regulatory Changes

Regulatory changes are needed to provide an environment of fair and sustainable facilities-based competition in overseas telecommunications. Further deregulation of Teleglobe, particularly in the area of pricing flexibility, is a necessary prerequisite to increased overseas competition.

As indicated in the *Gazette* Notice, on 21 December 1994 Teleglobe filed an application with the CRTC containing proposals for the future regulatory framework for the Company.[26] On 10 March 1995, the CRTC began a public proceeding on Teleglobe's application to modify its regulatory regime.[27] Teleglobe filed its Reply Argument on 26 September 1995,[28] and a decision by the federal regulator is expected soon.

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25 Op cit, fn. 3.

26 Review of the Regulatory Framework of Teleglobe Canada Inc., Volumes I and II, 21 December 1994.

27 Op cit, fn. 4.

28 Review of the Regulatory Framework for Teleglobe Canada Inc., Reply Argument of Teleglobe Canada Inc., 26 September 1995.

In the aforementioned proceeding Teleglobe proposes the establishment of a new regulatory regime that includes price cap regulation for telephone services, limited forbearance for business services, complete forbearance for non-Canadian traffic, and streamlined procedures for tariff filings. The proposal essentially would replace rate-base rate-of-return regulation with price regulation, but involves little actual deregulation.

Teleglobe recognizes that this process is the regulatory responsibility of the CRTC and is being conducted in parallel with this mandate review. However, Teleglobe submits that the approval of the Company's regulatory framework proposals is a necessary prerequisite to the introduction of overseas facilities-based competition.

Additional regulatory streamlining, beyond that requested in the current regulatory framework proceeding, will also be required, particularly in the area of rate setting. Teleglobe must have greater flexibility to tailor its rates to meet individual customer requirements in an environment of overseas facilities-based competition.

Teleglobe's likely future competitors would include, inter alia Unitel, Sprint and *fONOROLA*, which are not required to file tariffs with the CRTC[29]. These service providers would also have the advantage of controlling end-user traffic in all segments of the Canadian long-distance market. In such circumstances, it would be unjust to impose upon Teleglobe a more burdensome regulatory regime than its competitors.

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[29] Telecom Decision CRTC 95-19, Forbearance -- Services Provided by Non-Dominant Canadian Carriers, 8 September 1995, p. 13.

VI. Treatment of the Stentor Carriers

The Government should delay the entry of the Stentor carriers into the overseas facilities-based market, in recognition of the vulnerability of Teleglobe's investments in its extensive overseas network.

As noted in Section II, "Teleglobe's Mandate: An Historical Perspective", the Company has evolved over the years, largely as a result of government policy, to become a unique and highly specialized component of the Canadian telecommunications industry.

As a result of Teleglobe's historical role as the sole provider of overseas facilities, the Company has made substantial capital investments in order to give the entire domestic industry -- resellers and alternative carriers as well as Stentor -- easy access to its global network which connects with destinations in more than 230 foreign countries and territories.

In fact, through Teleglobe's investments, Canadian businesses and end-users enjoy access to one of the most extensive overseas networks in the world.

If competition is opened in Teleglobe's market without first putting restraints on the Stentor carriers, Teleglobe would find itself in a highly vulnerable position. Over 80% of Teleglobe's current traffic comes from Stentor, and if that traffic were suddenly shifted away from Teleglobe to other facilities, the Company would be faced with a massive amount of stranded investment in its overseas network. As a matter of fundamental equity, this would be unfair to Teleglobe and its shareholders, who have made major investments in this network over the years, in good faith, in order to fulfill the Company's mandate to carry all of Canada's overseas traffic.

In recognition of the Company's unique position in the Canadian marketplace, and the current dependence of Teleglobe on Stentor's traffic, the Government should delay Stentor entry into the overseas facilities-based market until transitional rules have been developed and market conditions have evolved such that excessive Teleglobe stranded investment would not occur.

It is noted that Teleglobe's vulnerability was previously recognized by the CRTC in its decision to introduce "joint use" resale competition in the overseas market in 1991.[30] Responding to Teleglobe's concerns about the likely impacts on the

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[30] Op cit, fn. 11.

Company if the Stentor carriers were allowed to compete in the overseas resale market, the CRTC stated that:

> *The Commission agrees with Teleglobe that the diversion by domestic carriers of ITS [international telephone service] traffic could have a significant impact on Teleglobe's position in the Canadian and international telecommunications industries. The Commission therefore concludes that domestic telecommunications carriers should be prohibited from engaging in liberalized resale. Moreover, in the Commission's view, the diversion of ITS traffic by the carriers to any reseller(s) could result in similar consequences. Accordingly the Commission directs the carriers under its jurisdiction not to route their ITS traffic through a reseller of Teleglobe's private lines. In addition, Teleglobe is directed to file proposed tariff revisions prohibiting joint-use resellers of its private lines from carrying the ITS traffic of domestic carriers.*[31]

The effect of the CRTC's decision was to allow consumers to enjoy the benefits of increased choice and lower prices resulting from overseas resale competition without causing undue harm to Teleglobe.

All Canadian service providers, including Stentor, should be allowed to increase their ownership in Teleglobe. This would permit these carriers to participate in the overseas facilities-based market while avoiding the situation whereby Teleglobe's network investments would be placed in a vulnerable position immediately upon the opening of competition.[32]

Canadian overseas facilities-based competition should be as open as possible, but measures should be taken to ensure that it will be fair. The Company believes that its proposed approach, while delaying the Stentor carriers from independently entering the overseas market, is the most pragmatic one given Teleglobe's unique circumstances.

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[31] Op cit, fn.11.

[32] It is recognized that Teleglobe's call for further deregulation in an environment of overseas facilities-based competition, addressed in Section V, may have to be tempered if the Stentor carriers acquired control of Teleglobe. In the circumstance of Stentor control of Teleglobe, it might be appropriate to regulate Teleglobe as a dominant carrier -- that is, Teleglobe would be subject to greater regulation than new entrants to the overseas facilities-based market.

VII. Access to the US Market

As a precondition to the licensing of Canadian entities affiliated with US carriers, for overseas facilities-based services in Canada, the Government should ensure that Canadian service providers are afforded US market entry opportunities broadly equivalent to those available to US companies in Canada.

As described in Section III, "The Globalization of Telecommunications", major US-based carriers are playing a leading role in the development of international markets. Furthermore, the largest US carriers -- AT&T, MCI and Sprint -- are already heavily involved in the Canadian market in association with major Canadian carriers. As a result, these US carriers are in a strong position to leverage the services and network capabilities of the US market to gain market advantage as soon as the Canadian overseas market is opened to facilities-based competition.

The Government should ensure that, as long as the telecommunications markets of the United States and Canada remain distinct, facilities-based market entry opportunities are available to each country's carriers on fair and broadly comparable terms. Canadian service providers, including Teleglobe, should be allowed access to the US overseas market in a similar way as US service providers have access to Canadian markets.

At present US-based carriers are afforded exactly the same treatment as Canadian service providers in Canada's domestic and overseas resale markets. Moreover, US firms may acquire significant equity participation in Canadian domestic carriers. There are no ownership restrictions on resellers in Canada, and even wholly-owned foreign resellers are not required to obtain a licence or file tariffs.

This is not the case in the United States, where a licence (Section 214 authorization) from the Federal Communications Commission (FCC) is required for international resale, and foreign-affiliated entrants must first run the gauntlet of opposition from the incumbent US carriers in order to obtain such a licence. Additionally, in the United States, international simple resale (ISR)[33] has been approved only to Canada and the United Kingdom, whereas Canada has approved ISR to *all* countries which also allow it.

Recent US policy proposals would allow the rules limiting foreign investment in radio-based common carriers to be lifted on a reciprocal, bilateral basis. They are

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[33] The FCC views ISR as the resale of international private lines which are interconnected to the public switched network at one or both ends. In Canada, ISR involves interconnection at both ends.

outlined in draft telecommunications reform legislation passed by the US Senate and House of Representatives last summer[34]. Furthermore, in February 1995 the FCC issued a Notice of Proposed Rulemaking to govern the future participation of foreign carriers in the US international facilities-based market.[35] A ruling is anticipated by the end of this year.

It is important that the Government appreciate that there are often major "gaps" between telecommunications policy and market realities. This is currently the case in US telecommunications. The biggest US international carriers, led by AT&T, are highly protective of their home markets. Despite the above-noted indications that the Congress and the FCC appear to favour a "market entry equivalency" approach which could lessen the restrictions on foreign participation in the US market, experience indicates that obtaining FCC approval for foreign-affiliated carriers to enter any segment of the US market can be a complex and lengthy process. This is true even in market segments such as international resale which are already liberalized in Canada.

Teleglobe USA's applications to the FCC for international resale authority, filed on 4 August 1995,[36] have been strongly opposed by AT&T and MCI in a clear attempt to protect their home markets. While the FCC has yet to decide on these

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34 Senate Bill S.652 passed 15 June 1995 would allow the FCC to waive limits on investment in licensed common carriers for companies from countries that allow an equal level of US investment in their common carriers. The House version, H.R.1555, passed 4 August 1995 would require investment restrictions to be waived where the US is party to an international agreement with the home country of the applicant which requires the US to provide national or MFN treatment. Such waivers, however, also would have to be found by the FCC to be "in the public interest" -- the test for which could include equivalent access to the applicant's home market. See *Telecommunications Competition and Deregulation Act of 1995*, Section 106; and *Communications Act of 1995*, Section 302, 104th Congress, 1st Session.

35 FCC, Notice of Proposed Rulemaking In the Matter of Market Entry and Regulation of Foreign-affiliated Entities, IB Docket No. 95-22, released 17 February 1995, Section III(B). The proposed "effective market access" test would apply above a to-be-decided foreign investment level. It would apply only with respect to the market segment for which entry is requested.

36 In the Matter of Teleglobe International (U.S.) Inc. ("Teleglobe USA"), Applications for Authority Pursuant to Section 214 of the *Communications Act of 1934*, as Amended, File Nos. I-T-C-95-466, I-T-C-95-467 and I-T-C-95-468, 4 August 1995. (Teleglobe USA is indirectly owned by Teleglobe Inc.)

applications, the experience of Optel Communications,[37] and that of *fONOROLA*[38] indicate that such opposition is influential and can result in the delay of Canadian access to the US market.

With the introduction of facilities-based competition, the Canadian overseas market would be opened to the participation of powerful US carriers -- notably, AT&T through its investment with Unitel, and Sprint through its participation in Sprint Canada. The lack of comparable market access by Canadian companies in the United States makes the current situation increasingly unfair to Canadian service providers.

As the Government considers opening the Canadian overseas market to increased participation by foreign, and particularly US service providers, it is imperative that Canadian service providers have the opportunity to expand their North American market presence if they are to be able to grow and prosper in the new international competitive environment. It is therefore essential that the Government take action to ensure that Canadian-affiliated service providers have access to the US overseas market in a similar way as US-affiliated service providers currently have access in Canada.

To that end, Teleglobe strongly urges the Government to initiate a process to develop a bilateral regulatory agreement in order to establish fair market access and expedite the licensing of Canadian-affiliated service providers in the United States.[39] This should be a prerequisite to the opening of the Canadian overseas

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37 Optel is Teleglobe's US "non-carrier" partner in the CANUS-1 submarine cable between Canada and the United States. Conditional Cable Landing Licence granted 10 March 1993; Final Cable Landing Licence granted 20 October 1994. While Optel received a final licence to land the CANUS-1 cable (which was brought into service in October 1995), the authorization is "without prejudice" to future action by the FCC on issues raised in a Petition for Reconsideration filed by AT&T.

38 *fONOROLA*, 7 FCC Rcd 7312 (1992). *fONOROLA* is one of the few Canadian service providers authorized to operate in the United States. The company is currently authorized to provide IMTS, facsimile and data service through the resale of private lines provided by US facilities-based carriers, between the United States and Canada.

39 In the *fONOROLA* licensing proceeding, the FCC found that Canada provides broadly equivalent opportunities to US companies in the international resale market segment. Moreover, the agreement reached between the FCC and the UK's Department of Trade and Industry to authorize international simple resale between the two countries provides a precedent for negotiating such a bilateral regulatory agreement.

facilities market to US-affiliated Canadian carriers, in order to provide a level playing field for competition.[40]

In the longer term, Teleglobe is of the view that Canadian, US and Mexican carriers should compete on an equal footing in a *single* North American telecommunications market within the NAFTA framework. This subsequent "NAFTA phase" is inextricably linked to the Government's policy on bypass. It is addressed in the next section.

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[40] It is suggested that the current WTO/GATS negotiations on basic telecommunications could be used as a vehicle for Canada-US bilateral negotiations on market access.

VIII. Promoting Canadian Infrastructure in a North American Context

Until a rules-based integrated North American market is established, the current policy regarding bypass of Canadian facilities must be maintained and enforced. Teleglobe recommends that the Government enter into formal negotiations with the United States and Mexico to establish a framework for a North American-wide marketplace for basic telecommunication services.

The promotion of the use of Canadian facilities is a *public policy* objective explicitly set out in the *Telecommunications Act*, which states in Section 7(e):

> *It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives .... e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;...*[41]

Bypass of Canadian facilities constitutes a serious challenge to the achievement of this longstanding policy objective. Policy-makers are well apprised of this issue: traffic originating in Canada is routed by some Canadian service providers through the United States and thereafter identified as US traffic to foreign correspondents, thereby bypassing Teleglobe's facilities. Bypass of Teleglobe's facilities also occurs when inbound traffic is routed through the United States and identified as US traffic when it is sent on to Canada.

The CRTC rendered a decision on this practice in 1991,[42] prohibiting bypass for all types of basic services. It must be said, however, that *enforcement* of the prohibition to date has been ineffective. In August 1995[43] the Commission simply reiterated that it is up to the carriers to enforce their tariffs. However, because of its unique industry situation, Teleglobe is not in the position to enforce the bypass prohibition. Service providers which bypass Teleglobe generally do so without using the Company's services. Teleglobe therefore is placed in the position of bearing the consequences of bypass without having the appropriate enforcement

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41 Op cit, fn. 5.

42 Telecom Decision CRTC 91-10, Teleglobe Canada Inc. -- Resale of Transborder Services, 26 June 1991.

43 Telecom Decision CRTC 95-17, TelRoute Communications Inc. -- Bypass Restrictions, 15 August 1995.

tools. Simply put, the Company needs greater support from the regulator and the Government in the enforcement of Canadian bypass policy.

Based on current trends, the Company anticipates that outbound overseas traffic bypass, which is currently estimated at about 20% of Canadian overseas traffic, would continue to increase if enforcement measures are not strengthened. The consequences for Teleglobe would be a serious constraint on the growth of this source of Company revenues. The impacts of bypass are also potentially significant for Canadian domestic carriers where US networks may be deployed to route Canada-to-Canada traffic (e.g. from Montreal to Vancouver).

It is essential to develop effective enforcement of bypass prohibitions to give Canadian overseas facilities-based competitors an opportunity to develop and mature. Enforcement of bypass prohibitions is also needed to encourage investment in Canada's "on-ramp" to the rapidly developing global information highway.

It is notable that the Government has set three major policy objectives for Canada's information highway strategy:[44]

- Creating jobs through innovation and investment in Canada;
- Reinforcing Canadian sovereignty and cultural identity;
- Ensuring universal access at reasonable cost.

Teleglobe suggests that it would be very difficult to achieve these objectives if lack of enforcement of bypass restrictions results in the migration of the Canadian overseas facilities network to the United States.

New competitors must not use the opening of the overseas facilities market as simply another opportunity to bypass Canadian infrastructure. Therefore, the Company recommends that the Minister put in place tools[45] to ensure compliance with Section 7(e) of the *Telecommunications Act* promoting the use of Canadian facilities and the CRTC bypass restrictions on Canada-overseas traffic routing. As well, each new overseas carrier should be required to certify such compliance as a condition of licence.

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[44] Op cit, fn. 3, p.xxi.

[45] Reporting procedures, such as those used in the United States by the FCC, could be put in place to provide evidence of compliance.

Moreover, Canadian overseas carriers should be required to conclude an operating agreement with at least one authorized common carrier in each country to which it proposes to deliver traffic, either directly or through a standard transiting arrangement.

Teleglobe submits that until a rules-based integrated North American market is established, the current prohibition on bypass must be maintained and enforced. The Company urges the Government to enter into NAFTA[46] negotiations with the United States and Mexico to establish a framework for a North American-wide marketplace for basic telecommunications services. In an integrated North American market, Teleglobe and other Canadian service providers would be able to pursue their activities in the US and Mexican markets with no greater barriers to entry or post-entry regulatory burdens than those placed on US and Mexican carriers in their home and other NAFTA markets. The specific terms and conditions for an integrated North American market should be subject to negotiations in areas such as investment, cross-border services, telecommunications regulation and dispute settlement

Key to the successful creation of a North American market in basic telecommunications services is the establishment of binding rules. The Government should not consider lifting the current bypass prohibition before such common rules are in place.

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[46] North American Free Trade Agreement between Canada, Mexico and the United States (NAFTA), 1992.

IX. Teleglobe's Performance

In 1992, the government reviewed Teleglobe's performance as part of the five-year mandate review. At that time it stated that:

> *Since being privatized in 1987, Teleglobe Canada has consistantly provided efficient, high-quality telecommunications facilities and services to Canadians ... An independent study found that Teleglobe Canada fulfilled the government's expectations in terms of its performance objectives. For example, Teleglobe Canada charges the third lowest price for international calls among countries of the Organization for Economic Cooperation and Development (OECD), and since 1987 has reduced its tariffs by an average of 39 percent.*[47]

Teleglobe has continued to reduce its prices aggressively. Since 1992, Teleglobe's wholesale rates for telephone services[48] have decreased by 23%.

In the current CRTC regulatory framework proceeding, Teleglobe has demonstrated that, taking into account differences in industry structure and costs, the Company's overseas rates compare favourably with US rates identified by intervenors.[49]

In terms of quality, Teleglobe has ensured its high level of performance through continued investment in advanced facilities and technology. The Company's switching and transmission network ranks among the best in the world. Teleglobe was the primary motivation behind the development of CANTAT-3, the most advanced and highest capacity trans-Atlantic cable system currently available. The Company also has complemented this network facility with an advanced network management centre. As a result, Teleglobe has kept Canadian overseas telecommunications in the vanguard of global development in this sector.

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47 Op cit, fn. 8.

48 This includes the most recent price decrease filed with the CRTC, which is pending approval. See Teleglobe Canada Inc., Tariff Notice No. 419, Revision to the International Globeaccess Service Tariffs (CRTC 9015), 1 September 1995.

49 Op cit, fn. 27.

X. International Considerations

If the Government introduces overseas facilities-based competition, it should adopt a policy in favour of multiple signatories to INTELSAT and INMARSAT.

The *Gazette* Notice identifies that, as part of Teleglobe's privatization, the Company was designated Canada's signatory to the intergovernmental treaty organizations, INTELSAT and INMARSAT.

The Notice observes that these organizations will be affected by the emergence of competing international satellite systems. Teleglobe welcomes the introduction of such competition, provided it is on a fair basis.

If Teleglobe's recommendation to introduce overseas facilities-based competition is accepted, the Company sees no policy rationale for remaining as the sole Canadian signatory to INTELSAT and INMARSAT. Teleglobe therefore advocates a policy in favour of *multiple signatories* to these organizations by Canadian overseas carriers, subject to any limitations established by these organizations.

The Government's regional and global satellite policy, issued in November 1994,[50] states that its aim is "to permit the orderly provision of mobile satellite services via regional and global satellite systems in the Canadian market." The Government added that the goal of the policy was to enable Canadians to benefit fully from these regional or global satellite systems and to encourage Canadians to be active in their development, ownership and operation.

Teleglobe's position is fully in line with the Government's regional and global satellite policy.

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[50] Policy Framework for the Provision of Mobile Satellite Services Via Regional and Global Satellite Systems in the Canadian Market, *Canada Gazette* Notice No. DGTP-001-94, Industry Canada, 5 November 1994.

XI. Responses to Questions Raised in the *Gazette* Notice

Teleglobe has elaborated its position on the issues raised by the Government in the main text of this submission. This section addresses the specific questions raised in the *Gazette* Notice.

Performance

1. *Has Teleglobe continued to improve the quality of its services and the prices that are offered to domestic service providers?*

   Since the renewal of its mandate in 1992, Teleglobe has continued to reduce its prices aggressively. Since that time, Teleglobe's wholesale rates for telephone services[51] have decreased by a further 23%.

   With respect to quality, Teleglobe has ensured its high level of performance through continued investment in advanced facilities and technology. The Company's switching and transmission network ranks among the best in the world. Teleglobe was the primary motivation behind the development of the most advanced and highest capacity trans-Atlantic cable system currently available. The Company also has complemented this network facility with an advanced network management centre. As a result, Teleglobe has kept Canadian overseas telecommunications in the vanguard of global development in this sector.

2. *How should Teleglobe's performance be measured? Should its rates be benchmarked with those of similar US carriers? Are other comparisons of rates and services more appropriate?*

   With Teleglobe's proposal for overseas facilities-based competition, it will be the marketplace that will best determine how to measure Teleglobe's performance. Furthermore, with over 200 available US international tariffs, the establishment of a US benchmark would not be a simple matter. Nevertheless, in the current CRTC regulatory framework proceeding, Teleglobe demonstrated that, taking into account differences in industry structure and costs, the Company's overseas rates compare favourably with US rates identified by intervenors.[52]

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[51] Op cit, fn. 8.

[52] Op cit, fn. 27, pp. 21-25.

Competition

1. *Given that international telecommunications is of great importance to the competitiveness of Canada, would a single independent Canadian overseas carrier continue to serve the best interests of Canada and Canadians?*

2. *Would entry of additional facilities-based overseas carriers stimulate job creation, innovation and investment? Would this entry further reduce costs and prices and increase consumer choice for Canadian users, including domestic service providers?*

   Teleglobe submits that the Government should take the necessary steps to introduce facilities-based competition in the overseas telecommunications market. In the Company's view, while the development of Teleglobe's advanced network to serve the entire domestic market has well served the interest of Canadians and the development of services competition in Canada, those interests now will best be served by competition in every aspect of Canadian telecommunications. Given world trends toward convergence and globalization, the Government should move quickly to establish the required legislative and regulatory framework to permit the transition to full competition in the overseas facilities market. In this way, the Government's objectives with respect to its information highway strategy -- including creating jobs through innovation and investment as well as increasing customer choice at reasonable cost -- can best be achieved.

3. *If facilities-based competition were to be introduced, would there be specific services that should continue to be offered on a monopoly basis?*

   With the introduction of facilities-based overseas competition, no services should continue to be offered on a monopoly basis.

4. *What models could be viable alternatives to the single-carrier model? What conditions of entry should apply and who should be excluded, if anyone? What should be the role of other carriers currently operating in Canada?*

   Teleglobe submits that its proposals for overseas facilities-based competition by Canadian carriers as defined in the *Telecommunications Act*, with the exception of the Stentor carriers, could provide a viable alternative to the single-carrier model as soon as the following prerequisites are met:

- The terms and conditions under which facilities-based competition will be opened in the overseas market must be clearly defined and non-discriminatory. This can be achieved through consultations between Canadian carriers and the Government or through a Government-initiated public process.

- All restrictions on the ownership of Teleglobe by Canadian carriers must be lifted. The *Teleglobe Act* should be eliminated. Furthermore, the *Telecommunications Act* should be amended to set the foreign ownership ceiling at 49%, including by foreign carriers.

- Regulatory reforms, including the adoption of the proposals made by Teleglobe in the regulatory framework proceeding now before the CRTC, are required to allow the Company, and its competitors, to operate successfully in an environment of full competition.

- Until a rules-based integrated North American market is established the current prohibition on bypass of Canadian facilities must be maintained and enforced. The Government must ensure that Canadian service providers are afforded US market entry opportunities equivalent to those available to US companies in Canada.

As discussed in Section VI, Treatment of the Stentor Carriers, the Government should delay the entry of the Stentor carriers into the overseas facilities-based market, in recognition of the vulnerability of Teleglobe's investments in its extensive overseas network, until the problem of potentially massive stranded investment is resolved.

Traffic Routing

1. *Are there alternative models which would respect the* Telecommunications Act *objective [par. 7(e)] concerning traffic routing, but allow more flexibility than presently exists?*

   Traffic routing "flexibility" will be achieved through overseas facilities-based competition by Canadian carriers.

2. *Should specific traffic routing conditions imposed by the CRTC be lessened or eliminated, allowing the emergence of a more integrated North American market? What would be the likely consequence of this, and how could it be accomplished while respecting the statutory objectives quoted above?*

Teleglobe recommends that the Governement enter into formal negotiations with the United States and Mexico to establish a framework for a North American-wide marketplace for basic telecommunications services. The consequences of attaining a rules-based integrated North American market would be to increase dramatically the markets open to Canadian overseas carriers. Until a rules-based integrated North American market is established under a NAFTA framework, the current policy regarding bypass of Canadian facilities must be maintained and enforced.

International Considerations

1. *Should Teleglobe remain the sole Canadian signatory to INMARSAT and INTELSAT?*

   If Teleglobe's recommendation to introduce overseas facilities-based competition is accepted, the Company sees no policy rationale for remaining the sole Canadian signatory to INTELSAT and INMARSAT. Teleglobe, therefore, advocates a policy in favour of *multiple signatories* to these organizations by Canadian overseas carriers.

2. *If there were to be multiple signatories or another signatory other than Teleglobe, on what basis should signatories to organizations such as INMARSAT and INTELSAT be selected?*

   Canadian overseas carrier signatories should be selected based on the criteria and limitations established by these organizations.

3. *Are the objectives of the global and regional mobile satellite policy attainable given the current Teleglobe mandate? Are changes required to the mandate and/or policy to best assure the attainment of these objectives?*

   The Government's regional and global satellite policy, issued in November 1994,[53] states that its aim is "to permit the orderly provision of mobile satellite services via regional and global satellite systems in the Canadian market". The Government added that the goal of its policy is "to enable Canadians to benefit fully from these regional or global satellite systems and to encourage Canadians to be active in their development, ownership and operation."

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[53] Op cit, fn 50.