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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C., 20554

FEB 7 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests	)	MM Docket No. 94-150
	)	
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221

To: The Commission

COMMENTS OF CANWEST GLOBAL COMMUNICATIONS CORP.

CanWest Global Communications Corp. ("CanWest") hereby submits its comments in the above-captioned proceedings.

CanWest is a leading international television broadcaster with interests in broadcasting properties in Canada, Australia and New Zealand. Since its founding in the 1970s, CanWest has expanded by acquiring and developing underperforming broadcast assets and through the start-up of new television broadcasting properties, primarily in English-language markets. In this connection, CanWest is one of the largest non-U.S. purchasers of television

programming produced in the United States, purchasing over $150 million of programming from American producers.

In view of its experience as a leading television broadcaster active internationally in major English-language markets around the world, CanWest supports the Commission's efforts to modify its broadcast ownership and attribution rules to reflect the changing competitive dynamics of the U.S. video marketplace. CanWest believes it could make a valuable contribution to competition and diversity in the domestic U.S. market, but current restrictions on foreign investment bar its active participation. Accordingly, CanWest urges the Commission to take steps to liberalize its rules governing foreign investment in U.S. broadcast properties, much as it has done in the telecommunications and satellite areas. As will be shown below, such steps would be consistent with both marketplace realities and international trade principles.

The Communications Act grants the FCC discretion to approve foreign ownership in excess of 25 percent in corporations which control broadcast licensees. Section 310(b) of the Act provides that the FCC can approve ownership in excess of the 25-percent benchmark if it finds that approval would serve the public interest, 1/ and the Commission has made clear that the public interest will be examined in a case-by-case review of each application.

CanWest respectfully submits that there are compelling reasons why the public interest would be served by licensing broadcast facilities controlled by

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1/ *See* 47 U.S.C. §§ 310(a), (b).

entities with significant Canadian ownership. Recognizing that determinations will be made on an individual basis, CanWest respectfully urges the Commission to note that there are at least four reasons why corporations with Canadian ownership in excess of 25 percent are particularly good candidates for an affirmative public interest determination under Section 310(b).

Reciprocity. When reviewing applications involving Canadian ownership, the FCC should consider favorably the level of access that U.S. broadcast investors enjoy in Canada. Canada allows foreign companies to own unlimited amounts of non-voting stock, and up to 33 percent of voting stock of Canadian broadcasting holding companies and up to 20 percent of direct broadcast licensees for a combined maximum foreign ownership of 46.7 percent of voting stock and unlimited non-voting stock. 2/ The United States repeatedly has reaffirmed its goal of freer international trade and investment in communications. Broadcasting is an area where Canada has offered Americans substantial investment opportunities. Thus, given Canada's unilateral liberalization of its broadcast ownership rules, it is in the U.S. public interest to recognize Canada's open policy by considering favorably broadcast applications that involve significant Canadian

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2/ The FCC's consideration of such access under section 310(b) is consistent with U.S. and Canadian commitments under the North American Free Trade Agreement ("NAFTA") and the Uruguay Round Trade Agreement ("URTA"). The United States, Canada and Mexico made commitments regarding the trade in services and the provision of telecommunications services in the NAFTA. While the United States expressly reserved its restrictions on foreign ownership of broadcast facilities from NAFTA and URTA obligations, exercise of FCC discretion under section 310(b) does not violate U.S. obligations under NAFTA and the URTA.

investment in order to encourage Canada to continue to provide a more relaxed foreign ownership regime in respect of broadcasting. Indeed, such American companies as Westinghouse, Gaylord Entertainment and Disney/ABC immediately responded to the Canadian government's liberalization measures by acquiring the maximum voting interests (33 percent) and higher economic interests in major Canadian program services.

Mutual Open Investment Policies. Canada's rules regarding broadcast investment are perhaps the most relevant to the Commission's public interest examination under Section 310(b), but they are merely one example of an overall policy -- adopted by both governments -- of open capital flows across the border. In the NAFTA, both governments recognized the benefits of open investment, and committed themselves to minimizing restrictions on capital flows over the full spectrum of economic activity. 3/ This policy reflects the judgment of the marketplace: the United States is Canada's largest foreign investor, holding about $70 billion in direct investment at the end of 1994, which is about 65 percent of total foreign direct investment in Canada. 4/ American investment in Canada is widely dispersed, including $12.3 billion in the Canadian finance, insurance and

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3/ North American Free Trade Agreement, Chapter 11.

4/ *See* U.S. Department of State National Trade Data Bank, *Economic Policy and Trade Practices: Canada* (Oct. 28, 1996); U.S. Department of State, *Background Notes - Canada* (Oct. 28, 1996); U.S. Department of Commerce, *Survey of Current Business* (Sept. 1996).

real estate industries, $8.7 billion in the Canadian transportation equipment industry and $8.8 billion in the Canadian petroleum industry. 5/

The economic benefits of open investment, recognized by both governments, have equal application in the U.S. broadcasting industry: an inflow of capital will create more opportunities for expansion and permit upgrading of programming, equipment and facilities, which is particularly important in an environment where FCC policy is requiring conventional broadcasters to upgrade their facilities from analog to digital. Non-economic objectives can be advanced as well: greater availability of capital will assist the Commission's objective of greater minority ownership and will permit better financing of underdeveloped UHF stations. Diversity of ownership in general is particularly important in an era of increasing concentration of ownership due to the Telecommunications Act of 1996, whose provisions we support in general and commend the Commission on its foresight in that regard.

Canadian-American Cooperation. The Communications Act's limitations on foreign ownership stem in part from concerns that foreign control of U.S. broadcasting facilities could raise questions of national security and possible use for foreign propaganda. This is not a concern for Canadian equity interests. Canada and the United States have the closest integration of security and defence establishments of any two countries in the world. Canadian-American cooperation

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5/ *See* U.S. Department of State National Trade Data Bank, *Economic Policy and Trade Practices: Canada* (Oct. 28, 1996).

is so close that the Canadian economy is integrated into the U.S. industrial base for purposes of U.S. military planning, 6/ and export licenses are not required for exports to Canada of most types of defence technology. 7/ Similarly, Canada and the United States have made special commitments in the NAFTA to ensure North American energy security, including non-discriminatory access for the United States to Canadian energy supplies, with only the most restrictive exceptions. 8/

The extensive partnership between the United States and Canada in foreign and security policy makes it inconceivable that increased investment by Canadian firms in the U.S. broadcasting industry would pose any threat whatsoever to the U.S. national security.

Integration of Canadian and American Broadcast Industries. Canadian investment in U.S. broadcast facilities should be considered favorably for a fourth reason: the existing level of integration of the U.S. and Canadian broadcast industries. This integration is evidenced by many facts: the close geographical proximity of Canadian population centers to the United States means

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6/ *See, e.g.* Agreement Establishing a Joint Industrial Mobilization Committee, United States-Canada, April 12, 1949, 63 Stat. 2331, TIAS 1889.

7/ U.S. International Traffic in Arms Regulations, 22 C.F.R. § 126.5.

8/ NAFTA, Arts. 603, 605, 607. Canada may invoke the national security exception for energy trade only where an import or export restriction is necessary to permit the supply of a military establishment, to fulfill critical defense contracts, to respond to armed conflict, to assure nuclear weapons non-proliferation, or to respond to direct threats of disruption in the supply of nuclear materials for defense purposes.

that American broadcast signals fill Canadian airwaves. About 50 percent of all programming on Canadian television is owned by U.S. interests. Advertisements placed by American interests are seen by Canadians on both American and Canadian broadcast channels. This integration reflects both the extensive relationship of the two economies and the similarities of Canadian and U.S. audiences.

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Signals, advertising and programming currently reach both markets relatively freely. The benefits of integration would be enhanced if capital also were permitted to flow freely. In light of these facts, the public interest generally is not served by restricting Canadian ownership of U.S. broadcast facilities. We encourage the Commission to consider allowing Canadian controlled companies full reciprocity with Canadian broadcast foreign ownership so that access to capital, ownership diversity and programming choices are enhanced.

Respectfully submitted,

CanWest Global Communications Corp.

By: _____
Greg Gilhooly
General Counsel

February 7, 1997