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11 January 2008

VIA EMAIL

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

Dear Mr. Wilson:

Subject: *Sharpening Canada's Competitive Edge – A consultation paper issued by the Competition Policy Review Panel*

1. Primus Telecommunications Canada Inc. ("Primus") is pleased to provide its answers to a number of the questions posed by the Competition Policy Review Panel ("the Panel") in its consultation paper issued on 30 October 2007.

Introduction

2. In summary, Primus believes that the foreign ownership restrictions limit the competitive potential of a number of players in the telecommunications market and should be eliminated. This would open the door to greater choice for end customers and increased responsiveness to their needs. Primus' submission is structured in the following manner. Since the issue of the foreign ownership levels of Canadian carriers is sector

specific, Primus will briefly introduce itself to the members of the Panel and explain its unique position in that sector. From there, Primus will identify the questions from the Panel's consultation paper that are of greatest importance to it and then proceed to identify the key problems generated by the restrictions for Primus and other similarly situated companies. Suggestions as to the approach that should be taken to remove the restrictions will conclude this submission.

About Primus

3. By way of introduction, Primus is a Canadian corporation with an all-Canadian management team. Primus has its head office in Toronto and has other offices in Markham, Oakville, London, Ottawa and Edmunston. It employs over 800 Canadians. Primus is wholly-owned by Primus Telecommunications International, Inc. of the United States.

4. Primus serves over 1 million customers across Canada. It offers competitively priced and high-quality voice, data, e-commerce, web-hosting, Internet and wireless services. Primus has built a strong public brand and customer following. For example, internal surveys conducted of Primus' business and residential customers indicate that almost 90% of customers would refer Primus to a friend or colleague. Indeed, Primus' Business Services division was awarded the 2006 Consumers' Choice Award Gold Award for Business Excellence in Ottawa and Toronto, for the quality of its product, customer service and value. Primus is converting that customer foundation and goodwill – together with its carrier partners – into a major industry player serving both the residential and business market segments in Canada.

5. Viewed from a regulatory perspective the Canadian telecommunications industry is divided into two categories – Canadian carriers and resellers. Canadian carriers are those companies that own and operate “a transmission facility used by that person or another person to provide telecommunications services to the public for compensation.”¹ All other non-Canadian carrier service providers are classified as resellers. As the Panel can appreciate, the range of service providers in the Reseller category is incredibly diverse. Primus is a reseller but that designation potentially radically understates the value it adds to the transmission facilities it leases from Canadian carriers, the resulting benefits to Canadian consumers and the investments it has made in the Canadian economy.

6. Primus has invested over one billion dollars in Canada over the last ten years, including key acquisitions of competitors or their customer assets². While operating under the foreign ownership restrictions, but to the maximum extent possible, Primus has invested over \$300 million in other forms of telecommunications network infrastructure and equipment³ including switches, Digital Subscriber Line Access Multiplexers (“DSLAMs”), routers, servers, operational support systems, SS7 signaling equipment as well as network operation and call centres. This equipment allows Primus to be self-sufficient in many respects and contributes to its consumer and business market presence as a full service provider.

7. On the other hand, however, the ownership restrictions have obliged Primus to enter into strategic relationships with certain Canadian carriers in order to actually achieve its business goals. From its very launch into the

¹ The *Telecommunications Act*, Part I, Section 2, Definitions.

² Primus has made and integrated over 20 acquisitions, including London Telecom (1999), AT&T Canada’s residential base/ACC (1999), Passport Online (2002), Group Telecom Centrex base (2003), and Magma (2004).

Canadian market, these relationships have made possible Primus' entry into first of all the long distance market, in 1997, and more lately the local telecommunications market.

8. In May 2004, in strategic partnership with MTS Allstream, Primus entered the residential local telephony market through MTS Allstream's network of co-location sites and its lease and resale of ILEC unbundled local loops to Primus.

9. In 2003, Primus Canada's parent, Primus Telecommunications International Inc., acquired a minority interest in Globility Communications Corp. ("Globility"). Globility is a Canadian corporation operating as a CLEC with facilities in major population centres across Canada. Then, on June 12, 2006, Primus announced in partnership with Globility the construction of a local co-location network covering three million households and businesses in five provinces. This phase of the network build, a joint endeavor with Globility, uses state-of-the-art ADSL2+ technology. Globility constructed the co-location sites and now resells leased ILEC local loops to Primus. Primus has located DSLAM equipment in Globility's co-location space and is able to offer its own high-speed internet access service to its retail customers.

10. In the areas served by this local network, Primus has introduced enhanced local phone service. Its customers are able to take advantage of advanced calling features including voicemail to email, call screening, and a secure web portal to view call history, configure features, and click to dial.⁴

³ The *Telecommunications Act* refers to this equipment as "exempt transmission apparatus".

⁴ Primus press release, dated 12 June 2006.

11. By leveraging its strategic partnerships in the manner described above, Primus offers residential consumers and business technological and service innovation and competitive pricing. In fact, Primus has been and continues to be a leading innovator in the telecommunications market. In January 2004, it was the first company in Canada to offer local Voice over internet Protocol (“VoIP”) service. Primus was also the first in the country to deploy a high-speed Internet access service based on ADSL2+ technology. ADSL2+ is the next generation of DSL technology and can provide faster download and upload speeds over existing copper telephone lines than current DSL services offered by the Incumbent Local Exchange Carriers (“ILECs”)⁵.

12. As a further example of its drive to innovate, Primus is working with Mipps Inc.⁶ to conduct trials of standards-based WiMax 16e equipment. Working with Mipps Inc. and other partners, Primus has deployed this equipment, is conducting technical tests and user trials to determine WiMax service performance characteristics. This standards-based WiMax trial is the first of its kind in Canada.

13. On 20 September 2007, Primus launched its Telemarketing GuardTM service (“TMG”). TMG dramatically reduces the number of unsolicited telemarketing calls received by Primus customers. TMG automatically identifies phone calls from frequent mass telemarketers and can block those calls, send them to voice mail or allow the call to proceed, depending on the customer’s preference. Users can also create their own “deny” list to permanently reject specific telemarketer numbers and create an “allow” list for certain telemarketers from whom they may wish to receive calls.

⁵ Primus’ ADSL2+ technology offers to consumers Internet access speeds of up to of 22 Mbps.

⁶ Mipps Inc. acquired 3.5Ghz licenses in a recent spectrum auction.

14. On 7 May 2007, Primus announced the introduction of its newest service for the business market, Primus Hosted PBX. This fully managed and scalable telephony service uses VoIP technology over a dedicated DS-1 circuit to the Primus network.

15. The following achievements also demonstrate Primus' commitment to competition and/or to investing in telecommunications infrastructure to the greatest extent possible under the current restrictions:

- Primus is a significant reseller of Centrex III services, providing competitive local telephony alternatives in the business market
- Primus is a significant reseller of DSL services and has invested heavily in network equipment to interface with its wholesale DSL providers to ensure a high quality service for Primus' end customers
- Primus operates cutting-edge data centres in Vancouver, Toronto, Ottawa and London. These data centres not only house customer computer equipment in managed collocation arrangements, but are also sources of high-end data services (e.g. web hosting, managed services, hosted IP PBX, and IP VPN services)
- Primus has invested in a nationwide telecommunications network, including a leased backbone network, DMS switches, STPs to support CCS7 signaling, and SCPs to support centralized service logic (e.g. for pre and post paid calling cards). Primus is in the process of deploying a distributed soft-switch platform to support its increasingly diverse local customer base and to enable cost-effective growth of its network

- Primus provides direct links into the United States through two cross border crossing points providing links to international gateways in New York and Washington⁷. Through these links, and with strategic partnerships and alliances in Canada and abroad, Primus provides worldwide reach to Canadian consumers for voice and internet services
- Primus has a track record of providing innovative services to its end customers. Working with Mipps Inc., Primus has offered end customers unlicensed wireless microwave access services for a number of years. Primus also provides lower cost long distance services to cell phone users via its Wireless Access Service. Primus offers SIP-based network connections to facilitate rapid turn-up of new customers. Primus also continues to develop and offer new customized calling services for its customers using its centralized database and signaling infrastructures.

16. Primus has made great strides in providing Canadian consumers and businesses with new, innovative and competitively priced services. Despite this, and as described below, the foreign ownership restrictions have exacted a very real cost in terms of efficiency, competitive presence and activity in the retail market. Elimination of the restrictions would permit Primus to continue to climb the ladder of investment and contribute further to the CRTC's goal of facilities based competition.

⁷ Primus has a Class A International Services Licence.

The Review Panel's Questions

17. In the balance of this submission Primus will respond to a number of the questions posed by the Panel. The fact that Primus has not responded to any particular question(s) should not be interpreted as agreement with the positions of other parties in this process, where such agreement is not in the interests of Primus.

18. Primus' submission addresses the following questions as posed by the Panel:

- How do Canada's policies impacting direct investment, both inward and outward, affect Canada's competitiveness as a destination for FDI and as a platform for global growth?
- Do Canada's economic policies appropriately reflect our increased integration with the North American and global economy? How might these policies be changed to better reflect this new competitive environment?
- What changes, if any, are required to Canada's sectoral investment regimes to minimize or eliminate negative impacts on Canada's competitiveness?
- What have been the impacts of these investment regimes on productivity and competitiveness in the specific sectors?
- 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?

- What further could be done in Canada to promote an ongoing review of Canadian competition, investment and productivity performance aimed at Canada's sustained competitiveness?

Primus' Response

19. Despite the fact that Primus has to date achieved considerable success in the Canadian market via its own substantial investments in network equipment and its alliances with Canadian carriers, it believes that the restrictions should be eliminated to facilitate even greater investment and competitive activity and allow it to own and operate the sub-categories of telecommunications facilities from which it is currently restricted – transmission facilities and microwave licenses. Elimination of the restrictions would also allow Primus to acquire Competitive Local Exchange Carrier (“CLEC”) status and engage in broadcast carriage. There are a number of reasons why the restrictions should be eliminated.

20. First of all, building a national service provider of sufficient size and strength to compete against the incumbent service providers (i.e. the ILECs and cable television companies) - thereby providing maximum choice and bringing the benefits of competition to end-customers - requires a large and prolonged financial investment in technology, network assets and people. The impact of the foreign ownership restrictions on non-ILEC, non-cable company industry players has been significant and negative on the cash flow of these companies (e.g. slower geographic expansion, slower ramp-up of new services, less investment in marketing and sales, fewer staff to help build the business). Over time, the restrictions have short changed a number of potentially viable players in the industry forcing them into

receivership before they could realise their full potential. Lack of additional capital has also delayed research and development by companies such as Primus. In times of capital shortage, the focus inevitably shifts from growth and innovation to survival (to the detriment of consumers and competition).

21. The ILECs and cable companies constitute an access (i.e. “last mile network”) duopoly in Canada. Every competitor to the duopoly relies on the access facilities of the ILECs and to a far lesser extent the facilities of the cable companies. Without access to customers via these networks, competition would die. While Primus does not believe that the access networks of the duopoly can be duplicated to any meaningful extent, the restrictions prevent companies such as Primus from even beginning to, directly itself, address the issue of self-providing competitive access to any significant degree. In addition, by restricting capital, the restrictions reinforce competitors’ reliance on the wholesale offerings of the ILECs and other Canadian carriers, which are a more “pay as you grow” option than investment in new transmission facilities.

22. The restrictions hit non-ILEC, non-cable service providers the hardest by limiting potential business initiatives. The restrictions have prevented Primus from building a telecommunications carrier operation, which in turn has limited its ability to make greater investments in certain telecommunications technology. For example, Primus has a national backbone network through an IRU with a Canadian carrier. However, the restrictions constrain Primus’ ability to augment its backbone network. Since it is not permitted to own or operate its own transmission facilities, it has had to rely on network capacity leased from other carriers. These arrangements involve fixed amounts of transmission capacity. Augmenting

this capacity requires both an interest on the part of carriers and successful negotiations and both of these factors are outside the control of Primus.

23. Most importantly, Primus is unable to operate in the local market as a full fledged CLEC. Rather, it has had to make arrangements with a number of CLECs operating in the market and has managed to achieve at least the appearance of a facilities-based local exchange carrier to its end-customers. In both of its commercial arrangements Primus resells wholesale local telephony services facilitated through CLECs. Through its arrangement with Globility, Primus is able to offer its own high speed Internet access service as part of a bundle of local, long distance and high speed Internet access. However, both of the arrangements involve an intermediary between Primus and its retail customers. It would be faster and more efficient for it to be able to operate as a CLEC and it would permit Primus to directly benefit from interconnection arrangements, access to databases and numbering resources that are reserved for CLECs only.

24. Finally, the particular reseller business model used by Primus (a hybrid combination of leased transmission facilities and its own telecommunications network equipment) is under increasing pressure in Canada through the Governor-in-Council's Policy Directive to the CRTC and the CRTC's continued emphasis on facilities based competition. Assuming that this pressure mounts, the ability of resellers across the country to effectively compete with the incumbents and provide new, innovative and lower priced services to end customers may diminish over time. Eliminating the restrictions and permitting all service providers wishing to invest in transmission facilities to become Canadian carriers is one way that the federal government can ensure that Canadian consumers continue to benefit from the choices and rates offered by independent

service providers. A greater number of carriers in the market will contribute to the CRTC's model of facilities based competition and enjoy greater stability.

25. Primus believes that the foreign ownership restrictions should be removed in their entirety in the telecom sector. Efforts to achieve the policy objectives contained in the *Telecommunications Act* should focus on market behaviour and the use of telecommunications networks and not on the source of capital used to fund these networks, or which entities should be entitled to own transmission facilities. Restricting foreign investment hinders the achievement of the following policy objectives found in section 7 of the *Telecommunications Act*:

(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;

(f) to foster increased reliance on market forces for the provision of telecommunications services...;

(g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;

(h) to respond to the economic and social requirements of users of telecommunications services.

26. Rather, eliminating the restrictions would actually assist players in the market to achieve these policy objectives.

Primus Proposal

27. The foreign ownership restrictions should be eliminated in the telecom sector. However, a policy distinction should and could be made between “carriage” and “content” in recognition of the importance of protecting Canada’s cultural identity and sovereignty. Primus acknowledges the fact that in a converged environment individual companies could be, and indeed are subject to both the telecommunications and the broadcasting ownership regimes and that eliminating the restrictions only for Canadian carriers (i.e. in the telecommunications market) may not be workable. Therefore, the restrictions should be eliminated from both the telecommunications and broadcast carriage operations of service providers. However, the rules as they relate to how broadcast distribution undertakings and cable companies carry content services should and could be maintained.

28. As an alternative to the complete elimination of the restrictions, if there are concerns over public interest issues (e.g. national security or the other issues identified by the Panel), then Primus submits that a regime whereby the ownership restrictions remain imposed on incumbent carriers only should be implemented. The restrictions should be removed on all non-incumbent carriers. All resellers interested in becoming carriers should be permitted to do so. This would promote the building of new transmission facilities and other facilities-based activity in the Canadian telecommunications market. This new investment would spur competition in that market.

29. There are other tools by which the federal government and its various agencies can protect and promote the interest of the Canadian public and protect Canada's cultural sovereignty. An example of one such tool is the *Investment Canada Act* that mandates that foreign investors file notifications for certain business activities. This is another alternative that should be considered by the Panel.

Conclusion

30. In conclusion, Primus believes that the foreign ownership restrictions should be eliminated in the telecom sector. As described throughout this submission, Primus has made great strides in providing Canadian consumers and businesses with new, innovative and competitively priced services. Despite this, the foreign ownership restrictions have exacted a very real cost in terms of efficiency, time to market, competitive presence and activity in the retail market. Elimination of the restrictions would permit Primus to continue to climb the ladder of investment and contribute further to the CRTC's goal of facilities based competition and continue its drive to offer innovative new services at competitive rates to Canadian consumers.

Yours truly,

A handwritten signature in black ink, appearing to read "E. (Ted) Chislett". The signature is written in a cursive, flowing style.

E. (Ted) Chislett

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