

**VIA E-MAIL**  
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July 22, 2010



Director General  
Telecommunications Policy Branch  
Industry Canada  
16<sup>th</sup> Floor, 300 Slater Street  
Ottawa, Ontario, K1A 0C8  
Canada

**Re:** Consultation Paper, June 2010  
*Opening Canada's Doors to Foreign Investment in  
Telecommunications: Options for Reform*

Dear Sir:

Intelsat Corporation ("Intelsat") is pleased to have the opportunity to provide comments on the options for reform, and certain other related issues, in response to Industry Canada's Consultation Paper in the above-captioned proceeding (the "Consultation").<sup>1</sup>

Intelsat operates the largest network of geostationary fixed-satellite service ("FSS") satellites around the world, providing video, voice and data services in some 200 countries, including Canada. Currently, some 27 satellites operated by Intelsat are included in Industry Canada's List of Satellites Approved to Provide Fixed-Satellite Services in Canada, using mainly C- and Ku-band frequencies.<sup>2</sup> In addition, as a telecommunications service provider in Canada offering international services, Intelsat -- through a subsidiary company -- holds a Basic International Telecommunications Services Licence ("BITS") from the Canadian Radio-television Telecommunications Commission ("CRTC"). As such, Intelsat

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<sup>1</sup> See <http://www.ic.gc.ca/eic/site/ic1.nsf/eng/05643.html>.

<sup>2</sup> Foreign satellites in this list are approved pursuant to the procedure set out in Industry Canada's Client Procedures Circular-2-6-01 (CPC-2-6-01), *Procedure for the Submission of Applications to License Fixed Earth Stations and to Approve the Use of Foreign Fixed Satellite Service (FSS) Satellites in Canada* (see [http://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/cpc2601e-issue3-july08.pdf/\\$FILE/cpc2601e-issue3-july08.pdf](http://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/cpc2601e-issue3-july08.pdf/$FILE/cpc2601e-issue3-july08.pdf)).

contributes annually to the CRTC's contribution regime designed to subsidize residential telephone service in rural and remote parts of the country.

Since the World Trade Organization ("WTO") Agreement on Basic Telecommunications in 1997 -- which liberalized the FSS marketplace to a significant extent -- Intelsat has offered a variety of satellite services to telecommunications service providers in Canada.<sup>3</sup> Today, Intelsat's satellites support a variety of offerings that, among other applications, provide voice and data service connectivity between Canada and the Caribbean, Africa, Middle East and the Pacific rim areas; provide global connectivity for Canadian Embassy communication networks; and provide monitoring services for oil and gas pipelines.

Intelsat has long favoured greater openness to foreign investment in the Canadian telecommunications market.<sup>4</sup> The company's satellites have contributed greatly to a more competitive marketplace in Canada, both in satellite communications as well as in the wider telecommunications sector. Canadian satellite operators, occupying Canadian-assigned orbital slots, have not suffered from this competition -- rather, they have grown and developed offerings as the market for the range of services only satellites can provide has also expanded since the WTO liberalization. Therefore, Intelsat supports efforts to remove all legislative or policy measures that restrict access and market-based competition in the Canadian satellite industry.

## I. Options for Reform Outlined in the Consultation Paper

The Consultation fulfills the government's pledge in the Throne Speech of March 2010 to "open Canada's doors further to venture capital and to foreign investment in key sectors including the satellite and telecommunications industries, giving Canadian firms access to the funds and expertise they need."<sup>5</sup> It also follows the government's initiative announced in the 2010 Budget Speech "to remove the existing restrictions on foreign ownership of Canadian satellites."<sup>6</sup> The Budget Bill to implement the Budget proposals contains an amendment to the

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<sup>3</sup> These commitments liberalized several key facets of the satellite carriage market in Canada. As a result, non-Canadians may (a) own and operate earth stations in both the fixed-satellite service and the mobile-satellite service, and (b) subject to the *Satellite Use Policy*, provide satellite-based carriage services to Canadians via earth stations communicating with foreign satellites occupying foreign orbital slots authorized by foreign authorities. For a list of Canada's WTO telecommunications commitments and exemptions, see [http://www.wto.org/english/tratop\\_e/serv\\_e/telecom\\_e/telecom\\_commit\\_exempt\\_list\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_commit_exempt_list_e.htm).

<sup>4</sup> Intelsat is a member of the Satellite Industry Association ("SIA"), which advocates on behalf of the satellite industry in various policy forums, and before regulatory and governmental agencies throughout the world. In 2008, SIA presented a written submission to the Competition Policy Review Panel in which it advocated for the removal of limits on foreign ownership in the telecommunications sector, and also for consequential changes to Industry Canada's *Satellite Use Policy*. Intelsat continues to support SIA's call for greater liberalization in these areas.

<sup>5</sup> Speech from the Throne, by Her Excellency the Right Honorable Michaëlle Jean, Governor General of Canada, as delivered on March 3, 2010 (see <http://www.sft-ddt.gc.ca/eng/media.asp?id=1388>).

<sup>6</sup> The Budget Speech 2010, by the Honorable James M. Flaherty, P.C., M.P., Minister of Finance, as delivered on March 4, 2010 (see <http://www.budget.gc.ca/2010/pdf/speech-eng.pdf>).

*Telecommunications Act* to permit foreign ownership of Canadian satellite operators, and this amendment is currently in the Senate on its way to becoming law.<sup>7</sup> Intelsat joins with many others in the satellite and telecommunications industry in welcoming this change.

This Consultation has been a long time coming, and Intelsat very much hopes it will lead to legislative initiatives in the near future. There have been a plethora of studies on the issue, most recently by the Telecommunications Policy Review Panel (“TPRP”) in 2006 and the Competition Policy Review Panel in 2008, and reports by various Parliamentary Committees that have canvassed the options and heard from countless industry players and experts on this issue. The time is ripe for action, and Intelsat very much looks forward to the introduction of proposed legislation following the Consultation.

### **Option 1: Increase Direct Limit for Broadcasting and Telecommunications to 49 percent**

Option 1 would increase the percentage of voting shares that can currently be held by non-Canadians, from 20% to 49%. It would apply to both the broadcasting and telecommunications sectors, and is the only proposed option that would increase foreign ownership in broadcasting. *De facto* control of broadcasting entities and telecommunications carriers would still have to be in Canadian hands. In Intelsat’s view, this proposal -- while it increases foreign ownership limits substantially and encompasses both broadcasting and telecommunications -- would not achieve the government’s goal of attracting more foreign investment.

In a global economic marketplace, foreign investors do not merely seek greater investment thresholds, but rather the ability to control their investment and oversee a company’s operations and growth as part of their global portfolio. As important as foreign investment is to build out new networks and enhance competition in various sub-markets, the key to making Canada’s telecommunications sector truly competitive in the global marketplace is to attract strategic investors with expertise, experience and standing in foreign markets.

Due to the capital and technology-intensive nature of a satellite enterprise, access to global know-how and significant sources of capital is essential to the establishment and maintenance of a satellite industry. Such investors are generally not merely interested in making a significant investment in a telecommunications venture -- especially a start-up or one without much market share -- without the ability to control the company, set its strategy, and manage its growth.

To remain relevant in the global marketplace, Canada must compete with other nations for the capital of sophisticated strategic investors willing to invest in Canada’s satellite industry. Policies that not advance the competitive and market-expansion goals intended to be served by a relaxation of the current restrictive limits on foreign investment preclude foreign satellite operators from investing in Canada.

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<sup>7</sup> See <http://www.budget.gc.ca/2010/pdf/budget-planbudgetaire-eng.pdf>.

### **Option 2: The Telecommunications Policy Review Panel / Competition Policy Review Panel Approach**

This option, endorsed by the TPRP, would remove the foreign investment limits for start-up telecommunications companies, and for so-called “small industry players” whose revenues are less than 10% of total telecommunications market revenues. Since those total revenues were \$4.08 billion in 2008, 10% would still constitute a service provider of a significant size.

While this option provides for a more cautious, phased approach towards a fully open telecommunications market, as noted below, Intelsat strongly favours the adoption of Option 3, the unrestricted opening of the foreign investment rules.

One problem with a phased approach is that amending legislation on ownership in this sector appears to be a rather difficult process. Because of the inherent capital and technology-intensive nature of the satellite industry, there is a strong disincentive to market entry by foreign satellite companies if the market remains difficult to access. There is a risk that moving from a 10% solution to a fully open regime could take several years and, therefore, Canada would lose out to other more liberalized jurisdictions in attracting the foreign capital it hopes to attract by reducing the current barriers.

### **Option 3: Remove Telecommunications Restrictions Completely**

Option 3 proposes to remove the ownership restrictions in telecommunications completely. Intelsat very much favours this option, which would not only signal Canada’s acceptance of the international nature and connectedness of telecommunications, but also put Canada on the same footing in this area as the majority of developed countries. Such an opening of the marketplace would in no way limit the ability of the CRTC to regulate the industry under the *Telecommunications Act*, to ensure respect for its policy goals. Nor would it limit Industry Canada in its regulatory activities under the *Radiocommunication Act*, to ensure the orderly management of the radio frequency spectrum and that licensees of spectrum fulfill the purposes of that legislation and the policies developed under it.

The concerns that by removing the limits of foreign ownership somehow give foreign-owned carriers *carte blanche* to avoid service objectives are manifestly wrong. The policy goals of competition, encouraging service and spectrum efficiencies, contribution to remote and underserved areas, and the myriad other social and economic goals imbedded in the legislation and in regulatory policies developed under them, will continue to apply. Should foreign investors such as Intelsat decide to enter the Canadian telecommunications market, they would have every intention of living up to all the regulatory and policy goals that apply to Canadian carriers, just as foreign-licensed satellites that currently serve the Canadian market currently comply with all applicable CRTC and Industry Canada rules and regulations.

It is important to note as well that a total relaxation of the foreign ownership rules for telecommunications carriers will ensure reciprocal rights for Canadian carriers in gaining access

to foreign markets, which is increasingly important in a field as international as satellite communications.

## **II. Canada's Satellite Use Policy**

As indicated above, Canada's commitments under the 1997 WTO Agreement opened the FSS market in important ways, including allowing the ownership of earth stations by non-Canadians. However, these commitments kept in place certain restrictions contained in Industry Canada's Satellite Use Policy (the "Policy").

Currently, the Policy is contained in Annex C of Industry Canada's RP-008, *Policy Framework for the Provision of Fixed Satellite Service* (revised September, 2005).<sup>8</sup> The Policy has the effect of requiring Canadian licensed Direct-to-Home ("DTH") television distributors to make use of Canadian satellites to carry Canadian programming, but permits them to use either Canadian or foreign-licensed satellites to carry foreign programming that is intended primarily for foreign audiences, but is approved for carriage in Canada by the CRTC. Exceptions are made in the Policy for satellite radio broadcasting (where economics make Canadian satellites for such an application impossible), and for the interim or emergency use of foreign satellites where Canadian satellites are temporarily unavailable.

In Intelsat's view, such a policy is inconsistent with the proposed legislation to remove the foreign ownership limits on satellite operators. If foreign interests will soon be able to wholly own Canadian-licensed satellite operators, which may carry Canadian programming for DTH distribution, why cannot foreign-licensed satellites, which may be owned by these same interests do the same? If a competitive marketplace in FSS satellite services is to be truly embraced, this last hold-over from an earlier time of market protection and monopoly services should be done away with at once.

The Policy has its mirror in U.S. satellite policy, which prevents U.S. DTH distributors from making use of Canadian satellites to distribute U.S. programming to customers in the United States. The restrictions are therefore reciprocal, and removing the restriction in Canada will not only make the policy consistent with the liberalization of the foreign ownership rules, but ensure the ability of Canadian licensed satellite operators to serve the burgeoning U.S. DTH market. The relationship between Canada and the United State in satellite services has always been closely intertwined, given the cross-border footprints of most FSS satellites that serve North America, and removing the last remaining restrictions in this Policy will ensure a more competitive and reciprocal marketplace across the full range of FSS services in this region.

Satellite technology inherently transcends political or man-made borders, and there is no technological reason why a Canadian satellite could not serve the satellite communications needs of telecommunications and broadcasting undertakings in the United States, and vice versa. From an efficiency and planning perspective, there are gains to be had from the elimination of rules or

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<sup>8</sup> See <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08264.html>.

policies that artificially distort network planning decisions that would otherwise be made in order to optimize the use of available satellite and network facilities.

**Conclusion**

For the reasons noted above, Intelsat strongly supports Option 3 in the Consultation, which would completely remove the current limits on foreign investment in the telecommunications sector in Canada. Intelsat also supports a consequential change to Industry Canada's Satellite Use Policy, so that Canadian DTH television distributors can access either Canadian or U.S.-licensed satellites, and thereby bring about a reciprocal change in U.S. policy. Intelsat appreciates Industry Canada's initiative in introducing this Consultation, and hopes that legislation will quickly follow to bring about the benefits of a more open foreign investment regime.

Respectfully submitted,



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Vice President and Deputy General Counsel