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VIA e-mail

Subject: Consultation on the telecommunications foreign investment restrictions – Submission of Primus Telecommunications Canada Inc. and Primus Telecommunications Group Incorporated

1. Primus Telecommunications Canada Inc. is pleased to submit these comments pursuant to Industry Canada's consultation on the foreign investment restrictions in the telecommunications sector on behalf of itself and Primus Telecommunications Group Incorporated.

Yours truly,

Andrew Day

**Industry Canada Consultation on the Foreign
Investment Restrictions in the
Telecommunications Sector**

SUBMISSION OF

**PRIMUS TELECOMMUNICATIONS
CANADA INC.**

And

PRIMUS TELECOMMUNICATIONS GROUP INC.



30 July 2010

Introduction and Executive Summary

1. Primus Telecommunications Canada Inc. (“Primus Canada”) and Primus Telecommunications Group Incorporated (together, “Primus”) are pleased to submit these comments in response to Industry Canada’s consultation paper, entitled *Opening Canada’s Doors to Foreign Investment in Telecommunications: Options for Reform* (the “Consultation Paper”), which outlines three possible options for reforming the current framework that governs foreign direct investment (“FDI”) in Canadian telecommunications carriers.
2. Primus applauds the Department for undertaking a review of Canada’s telecom foreign ownership rules and welcomes the opportunity to share its views on this extremely important issue.
3. As will be elaborated upon below, Primus is of the view that the FDI restrictions for Canadian telecommunications carriers with less than 10% of total telecommunications revenues should be removed. This reform is urgently required and will provide substantial benefits in the form of increased investment, consumer choice and competition in the Canadian telecommunications market.
4. The urgent need for this reform is evidenced by the joint dominance of the telecommunications market by the incumbent telephone and cable companies. As noted in the CRTC’s 2010 Monitoring Report, the top 5 incumbent telephone companies and the top 5 cable carriers hold 94% of the telecommunications market. The removal of the FDI restrictions is a much needed step towards removing the impediments faced by new entrants and established non-incumbents and encouraging greater competition in the market.
5. Eliminating the FDI restrictions for telecommunication carriers with less than 10% of the total telecommunications market revenues will ensure that access to capital is available to the telecommunication carriers that need it the most. The incumbent telephone and cable companies, buoyed by their strong market positions, have an abundant access to significant capital and funding.

6. The Department's proposal to remove the FDI restrictions under the *Telecommunications Act*, while maintaining the FDI restrictions under the Broadcasting Act, is the correct approach. The telecommunications market is not subject to the broadcast specific cultural and social concerns. In contrast, removal of the telecommunications FDI restrictions will further the objectives set out in the *Telecommunications Act*.
7. In addition to the removal of the telecommunications FDI restrictions, the discriminatory restrictions imposed on resellers should likewise be removed. Resellers should be permitted to avail themselves of the same rights afforded to Competitive Local Exchange Carriers. This will allow resellers to enter and compete in the market in an efficient and competitive manner.

Primus Canada Overview

8. Primus Canada is the largest alternative telecommunications service provider in Canada. Founded in 1997, Primus Canada is an indirect wholly-owned subsidiary of Primus Telecommunications Group Incorporated., an American corporation based in McLean, Virginia and incorporated under the laws of Delaware. Under Canada's existing foreign ownership rules, Primus Canada is prohibited from operating as a telecommunications common carrier in Canada because its parent company is not "Canadian" within the meaning of section 16 of the Telecommunications Act. As a consequence, Primus Canada is only able to operate as a reseller in Canada's telecommunications market.
9. Primus Canada's status as a reseller imposes significant challenges and obstacles to competing in the Canadian telecommunications market. These include, but are not limited to, the necessity to rely on the wholesale services of incumbent carriers (who are also Primus Canada's largest competitors), the inability to own and control telecommunication facilities, reduced control of our service offerings and other operating and economic inefficiencies. Yet in spite of these challenges, Primus Canada has established itself as a competitive force, a consistent innovator and a significant investor in the Canadian telecommunications market. As a full service telecommunications provider, Primus Canada offers local and long distance telephone

services, TalkBroadband (a Voice over Internet Protocol service), wireless services, Internet services and business Internet Data services. Primus Canada's service offerings and rates are highly competitive and rival the offerings of its largest facilities-based competitors. This is underscored by the fact that Primus Canada currently serves over 1 million residential and business customers across the country.

10. Despite operating on an uneven playing field, Primus Canada has been responsible for introducing several innovations to the Canadian telecommunications industry. Primus Canada was the first company in Canada to offer a national local Voice over Internet Protocol service in 2004 and it was the first in Canada to deploy a high-speed Internet access service based on ADSL2+ technology. Primus Canada also introduced a number of value-added telecommunications services and features, such as Telemarketing Guard (a patented innovation which gives our customers the ability to screen calls from telemarketers) and My Phone Portal services (which allow customers to view their call history, check their voicemail, apply call forwarding and fully manage their phone service from an online portal).
11. Finally, Primus has invested hundreds of millions in the Canadian economy since its inception in 1997 and has created a significant number of employment opportunities across Canada. Most recently, Primus created 113 Canadian job opportunities by expanding its technical support and customer service operations located in Edmundston, New Brunswick. In total, Primus Canada currently employs over 700 hundred people across Canada.
12. All of these achievements have been gained through the hard work and diligence of our employees and by leveraging whatever limited competitive advantages can be achieved in the face of significant obstacles posed by Canada's FDI restrictions in the telecommunications sector. However, in order for Canadians to experience the true benefits of competition and investment in this sector of the economy, further reforms are needed. Canada must eliminate its anachronistic FDI restrictions on telecommunications common carriers because these restrictions stifle innovation, investment and competition in a key segment of the economy.

13. As discussed more fully below, Primus fully supports the Department's proposed "Option 2", namely the removal of the foreign ownership restrictions for telecommunication common carriers with revenues of less than 10 percent of total telecommunications market revenues. In fact, despite being handicapped by Canada's telecom foreign ownership rules, we believe that Primus Canada's history of innovation, investment in and dedication to the Canadian telecommunications market is proof of Primus' commitment to this market and, in fact, provides a strong indicator of the types of benefits to competition, innovation and investment that will occur if the telecommunications foreign ownership rules are amended in the manner contemplated by Option 2.

The need for reform

14. A review of the current state of the Canadian telecommunications market evidences the urgent need for reform. According to the CRTC's 2010 Communications Monitoring Report, the 5 largest incumbent telephone companies and the 5 largest cable companies hold 94% of the total telecommunications market¹. In contrast, resellers currently hold approximately 4% of the market, while other carriers hold only 2% of the market². Furthermore, while the market shares of the incumbent cable companies have increased over the past few years, these are the only companies that have made any notable gains. The market shares of resellers and other carriers have remained stagnant, which suggests that Canada's wireline telecommunications services market is solidifying the market duopoly made up of the incumbent telephone companies and incumbent cable companies.

15. Many factors have contributed to the current state of competition in Canada's telecommunications service market. Since the local telephony market was first opened up to competition in 1998, many companies have entered - and exited - the market. Few have been able to survive the challenges associated with competing via co-location and unbundled local loops, building their own last mile networks or "greenfield" developments. The rules that have been established for mandated access to wholesale facilities and services are not adequate and, as noted in a recent

¹ Canadian Radio-Television and Telecommunications Commission, *CRTC 2010 Communications Monitoring Report*, July 2010, p. 111.

² *Ibid*, p. 116, Table 5.1.4.

study by the Berkman Center at Harvard University, Canada has an inconsistent track record in the implementation and enforcement of these rules³. The ILECs and cable companies also continue to reap the benefits of their former monopoly legacies, which facilitated the building of their ubiquitous networks and dominant market positions.

16. The removal of Canada's FDI restrictions as contemplated under Options 2 and 3 in the Consultation Paper will not eliminate all of the impediments to competition that currently exist in Canada's telecommunications market. However, removing the foreign investment restrictions is an important and much needed step in the right direction that will encourage - and support - competition from new entrants and established non-incumbents.

The foreign investment restrictions should be removed for telecommunications common carriers with less than 10 percent of total telecommunications market revenues

17. In its Consultation Paper, the Department outlines three possible options for reforming the current framework that governs FDI in the telecommunications services sector. Primus fully supports the approach recommended by the Telecommunications Policy Review Panel and the Competition Policy Review Panel. This approach, which is identified as Option 2 in the Consultation Paper, would remove the restrictions on foreign investment for telecommunication companies with less than 10 percent of total telecommunications market revenues.
18. This approach is both principled and balanced and will ensure that the revised foreign investment framework will bring immediate benefits to consumers in the form of increased competition, innovation, and investment. One of the largest barriers faced by new entrants and non-incumbent telecommunication companies is access to capital. Simply put, acquiring capital to invest in a market that is dominated by the incumbent cable and telephone companies, who together enjoy a 94% share of total telecommunications revenues, is a daunting task. Removing these barriers will allow new entrants and non-incumbents to obtain necessary financing to make greater

³ Berkman Center for Internet and Society, *Next Generation Connectivity: A review of broadband Internet transitions and policy from around the world*, Harvard University, February 2010.

investments in the Canadian telecommunications market. These investments will, in turn, lead to greater competition, consumer choice and innovation, all of which will benefit Canadian consumers and the economy as a whole. In fact, competition, innovation and investment are key drivers in boosting the productivity of Canada's economy, something which numerous economic studies and reports have cited as one of Canada's most significant economic challenges in the coming years.⁴

19. In contrast to the struggles that new entrants and non-incumbent telecommunications companies confront in raising capital under the existing FDI restrictions, the incumbent telephone and cable companies have no difficulties whatsoever in gaining ready access to financing and capital under these rules. This is largely due to their former monopoly status and the significant size of their respective customer bases and revenues – as well as the insulation from competition that the current FDI restrictions provide. As an example, TELUS, an incumbent telephone company with revenues of \$9.6 billion in 2009 and 11.7 million Internet, wireless and wireline customers⁵, recently closed a \$1 billion debt offering on 23 July 2010⁶. Bell Canada, an incumbent telephone company with telecommunication revenues of \$13.6 billion in 2009 and 15.7 million Internet, wireless and wireline customers⁷, closed a \$1 billion debt offering in June 2009⁸. Rogers, a diversified company with telecommunications and broadcasting assets, closed a \$1.75 billion debt offering in 2008⁹.

20. Given the duopoly that now characterizes Canada's wireline telecommunications markets, it is clear that the only companies that can thrive under Canada's FDI restrictions are the incumbent telephone and cable companies. In fact, these companies have an incentive to advocate against any changes to the rules because they know that this is an effective means of sheltering themselves from true competition.

⁴ i.e. The Government of Canada, *Improving Canada's Digital Advantage: Strategies for sustainable prosperity*, 2010.; Council of Canadian Academies, *Innovation and Business Strategy: Why Canada Falls Short*, April 2009.; Certified General Accountants Association of Canada, *Fading Productivity: Making Sense of Canada's Productivity Challenge*, 2007.

⁵ TELUS, *2009 Corporate review*, pp. 6 – 9.

⁶ TELUS, *TELUS closes debt offering C\$1 billion 5.05% 10-year notes*, 23 July 2010.

⁷ Bell Canada, *2009 Annual Report*, pp. 21, 41.

⁸ Bell Canada, *2009 Third quarter shareholder report*, 11 November 2009, p. 18.

⁹ Rogers Communication Inc., *Rogers Communications Inc. closes US \$1.75 billion offering of debt securities*, 6 August 2008.

21. It is also important to recognize that competition for capital is increasingly waged on a global scale. For a company such as Primus Telecommunications Group Inc., which has significant operations in the United States, the United Kingdom, Western Europe, Australia and Brazil in addition to its substantial investment in Primus Canada, it is a necessity to make capital allocation decisions based upon which markets could offer the best returns. From this perspective, the current economic and operating 'costs' imposed by the FDI restrictions in Canada impose a relative disincentive to investment as compared with other regions.
22. To eliminate this negative factor, Primus believes that the option offering the most immediate benefits would be removing the FDI restrictions for telecommunication companies with less than 10% of total telecommunication market revenues. This option will produce immediate benefits for the Canadian economy in the form of increased investments in the Canadian telecommunications sector, which in turn will result in increased competition, consumer choice and innovation.
23. In addition, Primus fully supports the recommendation of the Telecom Policy Review Panel to maintain exemptions from the FDI rules for companies that are able to grow their respective telecommunications market shares beyond the 10% threshold. In the absence of this condition, there would be little incentive for foreign investors to make substantial incremental investments in Canada. Primus agrees that this condition is absolutely essential to ensuring long-term investment in the Canadian telecommunications market.
24. Finally, Primus supports the recommendation of the Telecommunications Policy Review Panel to implement a two phased approach to Canada's FDI restrictions¹⁰. The first phase would consist of the removal of the restrictions for telecommunication common carriers with less than 10% of the total telecommunications market revenues, as outlined in the Consultation Paper (and as discussed above) and the second phase would consist of a further review process to consider the appropriateness of removing the foreign investment restrictions for all telecommunication common carriers including those holding more than a 10% share of the market.

25. However, while Primus believes that the most immediate benefit would be gained by removing the foreign investment restrictions in the manner discussed above, Primus would also support the full and immediate removal of the foreign investment restrictions for all telecommunication carriers if this is deemed appropriate.

Focusing on the FDI restrictions under the *Telecommunications Act* is appropriate

26. Primus notes that the focus of this consultation is on the FDI restrictions that apply to telecommunications common carriers under the *Telecommunications Act*. Primus believes that this approach is correct. As noted in the consultation paper, broadcasting raises important cultural and social concerns. Given the pressing need for reform of the foreign investment framework for telecommunications, this is neither the time nor the forum to address these broadcasting specific concerns.

27. In contrast, telecommunications is not subject to the same cultural and social considerations that surround broadcasting. Further, it is clear that the objectives set out in the *Telecommunications Act* will be furthered by the removal of the foreign investment restrictions as discussed above. Indeed the removal of the foreign investment restrictions in this manner will further the following objectives that are set out 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 and to ensure that regulation, where required, is efficient and effective;

(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;

¹⁰ Telecommunication Policy Review Panel, *Final Report 2006*, pp. 11 – 26.

28. While Primus fully anticipates that there will be some parties to this proceeding that will argue that it is not possible to relax the FDI restrictions under the *Telecommunications Act* without similarly relaxing FDI restrictions under the *Broadcasting Act*, these arguments should be rejected out of hand. If a carrier wishes to avail itself of more liberalized FDI rules under the *Telecommunications Act*, it merely needs to structure its operations so as to take advantage of these rules. In fact, there are already instances in the market today where, for example, the operations of a broadcasting distribution undertaking (“BDU”), such as Bell ExpressVu, are structurally separate from the distribution network that it uses to deliver its services. Moreover, there are provisions in the *Telecommunications Act*, such as section 28, which give the CRTC the power to ensure that holders of broadcast licences have access to sufficient telecommunications network capacity for the transmission of programs.
29. In short, there is very little merit to the argument that lifting the FDI rules under the *Telecommunications Act* without also doing so under the *Broadcasting Act* will lead to “asymmetries” in the treatment of carriers and cable companies under these two Acts. Most of the incumbent cable companies are now carriers and most of the incumbent telephone companies hold BDU licences under the *Broadcasting Act*. If these entities do not wish to take advantage of liberalized ownership rules under the *Telecommunications Act*, they are not being forced to do so. By the same token, however, if they do wish to take advantage of these rules, both of these entities will have equivalent rights to do so.

The Restrictions on Resellers Should also be Removed

30. In addition to removing the FDI restrictions for telecommunications common carriers, Primus is also of the view that the restrictions currently imposed by the CRTC on resellers who wish to enter the market for local telephony services should also be removed. These restrictions treat resellers in a discriminatory fashion because they prevent resellers from availing themselves of certain rights (and obligations) that have been accorded exclusively to Competitive Local Exchange Carriers, which contravenes Canada’s market access commitments under the General Agreement on Trade in Services Agreement on Basic Telecommunications Services.

31. These rules artificially restrict competition in the market by limiting the ability of resellers to enter the market in a cost efficient and competitive manner. Primus, therefore, submits that, consistent with the recommendation of the Telecom Policy Review Panel¹¹, these discriminatory rules should be eliminated.

Removing the Telecommunications FDI Restrictions will Increase Competition, Innovation and Investment in Canada's Telecommunications Industry

32. Competition, innovation and investment are the key benefits that will flow from the removal of the FDI restrictions in Canada's telecommunications market.

33. By removing these restrictions, new entrants and non-incumbents will have increased access to financing and capital, which will allow them to embark on network build-out and other capital intensive projects. While it is unlikely that any single competitor will ever be able to overbuild the existing networks of the ILECs or incumbent cable carriers, access to increased capital will indeed foster the construction and expansion of facilities. The type of network build-outs will likely vary depending on the types of services offered, but each build will be a product of investment and will contribute to the existence of alternative sources of supply with all of its attendant benefits, including increased competition and customer choice.

34. In addition, increased investment will produce other benefits for the Canadian economy, most notably the creation of Canadian jobs in the telecommunications and construction industry sectors. In this regard, Primus fully agrees with the following findings contained in the Telecommunication Policy Review Panel Report¹²:

In the telecommunications sector, it is not clear that such a job loss would occur, given the strong incentives for the foreign acquirer to retain and attract highly qualified individuals to run the knowledge-intensive telecommunications business. It is also noted that new "greenfield" investment, domestic or foreign, in the Canadian telecommunications sector would likely create new employment. Such investment could also provide incentives for increasingly mobile and talented individuals to stay in Canada rather than migrate to other locations around the world.

¹¹ Telecommunication Policy Review Panel, *Final Report 2006*, 2006, pp. 3-43 – 3-46.

¹² *Ibid*, p. 11 – 22.

35. A natural result of greater investment in telecommunications networks will be an increase in the competitive supply for telecommunication companies seeking to expand their networks and service capability through the lease of network facilities and an increase in the availability of alternative service providers to Canadian consumers. An increase in backbone and transport network facilities will result in greater competition in the wholesale market and, therefore, increased customer choice. This will allow telecommunications service providers to leverage competitive supply arrangements in order to increase the efficiency and reach of their networks. Incremental increases in access networks will similarly increase competition in the retail market as new telecommunications service providers compete for customers on the basis of services provided, customer service, pricing and other characteristics. Moreover, the supply of unbundled services in the wholesale market will continue to play an important role in promoting competition in retail markets due to the significant impediments inherent in building local access and transport networks.
36. The existence of numerous telecommunications service providers will also intensify the pace of innovation in the market. Competitors have been responsible for bringing numerous innovations to the market which would not have occurred but for the existence of alternative suppliers in the market. This innovation will continue, indeed, and increase in a market characterized by numerous competitors competing vigorously for retail customers.
37. Accordingly, it is clear that removing the FDI restrictions will bring substantial benefits to the Canadian telecommunications industry in the form of increased competition, innovation and investment.

Conclusion

38. For all the reasons outlined above, Primus strongly supports the removal of the telecommunications FDI restrictions. In addition, the discriminatory restrictions imposed on resellers should also be eliminated. These two actions will foster and encourage competition from new entrants and established non-incumbents. Substantial benefits in the form of increased consumer choice and investment will also

result. Accordingly, Primus respectfully requests that these urgent reforms be implemented without delay.

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