

Consultation Paper

Opening Canada's Doors to Foreign Investment in Telecommunications: Options for Reform

Submission by TeraGo Networks Inc.

A. Introduction

1. TeraGo Networks Inc. ("TeraGo") welcomes the opportunity to make this submission in response to Industry Canada's Consultation Paper entitled *Opening Canada's Doors to Foreign Investment in Telecommunications: Options for Reform* (the "Consultation").
2. The key question to consider in responding to this Consultation is whether the right framework is in place to encourage investment, innovation and competition in the Canadian telecommunications sector for the benefit of businesses and consumers. TeraGo submits that our current foreign ownership restrictions hinder these important government objectives for Canada's telecommunications industry.
3. The merits of liberalizing foreign investment restrictions in relation to Canadian telecommunications are numerous and are outlined below.

B. Submissions

4. Foreign ownership restrictions have been identified as a priority area of concern in the past and have received renewed government scrutiny recently for good reason. In the recent *Speech from the Throne* and *Budget 2010: Leading the Way on Jobs and Growth*, the Government of Canada committed 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
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access to the funds and expertise they need.” The Government has moved to address the first of these commitments, in tabling legislation to amend the *Telecommunications Act* for satellites as part of the *Jobs and Economic Growth Act*.

5. There has been an enormous amount of time and effort devoted to reviewing the issue of Canada’s restrictions on foreign investment in telecommunications. Over the past decade, several independent review bodies have recommended that the Canadian government loosen or eliminate these restrictions, citing benefits such as increased access to capital, faster technological transfer, along with more competitive prices and choices for consumers. The liberalization of foreign ownership in Canada’s telecommunications sector have been proposed by the House of Commons Standing Committee on Industry, Science and Technology in 2003, the Telecommunications Policy Review Panel in 2006 and the Competition Policy Review Panel in 2008. In each case, the appointed review body solicited comments from a broad range of stakeholders and experts in Canada and abroad, including academics, incumbent and new entrant telecommunications companies, cable companies, content producers, cultural groups and others. Taking into account these past proposals for change, we submit that the time has come for the Canadian government to fulfil its commitment made in its March 2010 *Speech from the Throne* and relax the restrictions on foreign investment in the telecommunications industry so that Canada can encourage a modern digital economy.
 6. For Canada to become a global leader in the digital economy, we need to ensure that we have a strategy that drives the creation of new products and services, accelerates the adoption of digital technologies and promotes the need for Canada to have a world class digital infrastructure. This view was echoed by the federal government in its recently released consultation paper on a digital economy strategy for Canada. The current foreign ownership restrictions do not lend support for this strategic imperative. Canada is lagging several of its international peers in responding to opportunities presented by the digital economy and TeraGo submits that a main reason for this is our restrictions on foreign ownership in telecom. The
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Organisation for Economic Co-operation and Development (OECD) has noted that only three of the 30 OECD member countries have investment and ownership restrictions that apply to all public telecommunications operators, with Canada having the most severe restrictions. Several OECD countries previously had foreign ownership restrictions, like Canada, but such countries have since opened their markets to foreign participation – Canada needs to do the same.

7. The current restrictions on foreign investment eliminate a major potential source of financing for smaller telecom competitors competing against the existing incumbents. From a global equity markets perspective, Canada's share of global market capitalization is less than 4% (Source: World Federation of Exchanges). Smaller companies such as TeraGo are in direct competition with the incumbents and foreign ownership restrictions are one of a number of impediments faced by these smaller entities in making inroads against their well-established rivals.
 8. TeraGo was incorporated in 1999 and was founded by a base of prominent private equity investors, including a US-based venture capital firm with extensive experience in technology start-ups. The initial founders, including the US investor, contributed significant capital to allow TeraGo to purchase spectrum in Industry Canada's first 24/38GHz spectrum auction and commence building its carrier-grade, fixed wireless, IP communications network in Canada. We were fortunate that our US investor had the patience and understanding to operate within the parameters of our severe foreign ownership rules, something that most non-Canadian investors would not tolerate.
 9. Smaller industry players and new entrants in the Canadian telecom landscape, including TeraGo and the AWS new entrants more recently, have played a major role in introducing innovative telecommunications services and providing choice and competitive to Canadians. TeraGo is proud to be Canada's leading alternative national broadband communications service provider to businesses, having developed and implemented a fixed wireless platform that
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competes directly against wireline carriers. We provide an essential service to businesses and public sector institutions in underserved business parks by providing these organizations with business-grade broadband, thereby allowing them to effectively run their mission critical applications. TeraGo has committed to providing business grade broadband to underserved markets to ensure that companies can remain a lynch pin in the success of the communities in which they are located.

10. Smaller telecom companies and new entrants make significant operational and capital investments in hiring a large base of employees, expanding and improving networks and bringing new products to market. These smaller players have continued to create jobs and employ a large number of Canadians at a time when the Canadian economy is not thriving and larger telecom companies are reducing their workforces. TeraGo, for example, employs hundreds of direct employees and contractors and supports many Canadian vendors and distributors. Investments by these companies allow them to compete against the incumbents, but they also result in large start-up and continued operating losses. Unlike large telecom enterprises that are in the mature stage of their business cycles and are generating large positive cash flows to fund their continuing operations, companies in the start-up, early and medium-term phases of their growth operate in negative cash flow positions. In order to make (and continue making) investments and remain competitive, smaller entities require access to large sources of capital at a reasonable cost, capital that cannot be accessed from Canadian sources only. Incumbents have many diverse sources of financing that are not available to smaller telecom companies. Therefore, restrictions on foreign ownership limit investment in infrastructure, increase the cost of capital and, ultimately, delay the diffusion of new telecommunications technologies.
 11. By loosening foreign ownership restrictions, the federal government will promote competition and investment to drive a world class digital infrastructure for the benefits of all Canadians, including residents, businesses and public sector institutions. TeraGo submits that measures to
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liberalize foreign investment should provide an opportunity to promote the growth and development of new entrants and smaller competitors in the Canadian telecom marketplace, rather than merely provide an opportunity for shifting of corporate control between existing market participants.

12. Removing restrictions on foreign investment is consistent with the Government's approach to rely more market forces and less on regulation in the telecommunications sector. For example, in 2006, the federal government issued a Policy Directive to the Canadian Radio-telecommunications Telecommunications Commission (CRTC) to regulate the telecommunications sector in a manner that interferes to the minimum extent possible with competitive market forces.
13. TeraGo is proud of its ability to offer economical, highly reliable and scalable wireless broadband services to Canadian businesses and public institutions, as well as wireless backhaul services for Canadian wireless new entrants, as an alternative to the wireline services offered by the incumbent local exchange carriers. In our view, without greater access to non-Canadian sources of capital, smaller entities such as TeraGo cannot compete against the existing incumbents over the long term. In addition, these restrictions also limit the ability of TeraGo (and other smaller telcos) to participate in joint venture initiatives and acquisition opportunities abroad, thereby limiting mechanisms through which we can export our services and become more innovative and competitive in Canada and internationally.

C. Conclusions

14. In sum, TeraGo applauds the initiative of the Canadian government to move forward with its commitment to liberalize foreign ownership restrictions in the Canada's telecommunications section. TeraGo submits that the Government should immediately adopt the proposed changes advocated by the Telecommunications Policy Review Panel in 2006 and the Competition Policy Review Panel in 2008 with respect to exempting start-up telecommunications
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companies, as well as existing smaller industry players, from the existing restrictions on foreign investment in telecommunications. Specifically, the *Telecommunications Act* should be amended so that telecommunications common carriers with telecommunications revenues of less than 10 percent of total telecommunications market revenues would be relieved from the current provisions of section 16 of the *Telecommunications Act*. In order to encourage long-term investments in Canada's telecommunications industry, smaller telecommunications companies that are successful in growing their markets shares in excess of 10 percent of total telecommunications market revenues would continue to be relieved from compliance with the foreign ownership provisions. After an initial five-year phase-in period, the federal government should then implement a broader liberalization of the foreign investment rules and remove telecommunications restrictions completely.

15. This two-phased approach would allow for the fulfilment of the Government's core objective of increasing the competitive landscape in the Canadian telecom industry by encouraging new entrants and strengthening smaller competitors like TeraGo, which would benefit all Canadians.

July 30, 2010
