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

VIA ELECTRONIC TRANSMISSION TO: telecominvestment@ic.gc.ca

Re: Industry Canada Consultation Paper, “Opening Canada’s Doors to Foreign Investment in Telecommunications: Options for Reform”

Dear Director General:

The United States Council for International Business (USCIB)¹ and the U.S. Chamber of Commerce² are pleased to submit these comments in response to the options and key issues raised in Industry Canada’s Consultation Paper of June 2010, “Opening Canada’s Doors to Foreign Investment in Telecommunications: Options for Reform” (“Consultation Paper”). We applaud the Canadian Government for moving forward by exploring options to liberalize Canada’s telecommunications market and welcome the opportunity to present the expansive benefits of open foreign ownership policies to Industry Canada.

Importance of Telecommunications Foreign Direct Investment (FDI)

¹ The United States Council for International Business (USCIB) is unique in that it represents all facets of the telecommunications and information services industry – including international carriers, long distance carriers, incumbent local exchange carriers, competitive local exchange carriers, wireless carriers, broadband providers, Internet and value-added service providers, satellite service providers and manufacturers, equipment manufacturers, software companies and business users.

² The U.S. Chamber of Commerce is the world’s largest business federation representing more than three million businesses and organizations of every size, sector, and region,

Telecommunications is a capital intensive industry, and access to capital is key to ensuring the deployment and expansion of a robust network. Countries that have eliminated barriers to FDI have benefited from greater commitment and longer-term engagement by foreign investors as well as new management approaches, technology, and skills. FDI has typically been the driver of telecom sector growth in liberalizing economies.

Foreign direct investment in telecom infrastructure brings more than hard currency. Companies investing in national telecom bring with them new technologies, business processes and methods, and valuable global brands. By far the greatest rewards to countries that have opened up their telecoms sectors to investment are the indirect revenues, the benefits that are spread throughout the economy and society as a whole as more and better communications services benefit everyone. This view is echoed by the Organization for Economic Co-operation and Development (OECD) which notes:

“ICT has had, and will continue to have, significant economic implications. Businesses are transforming their supply and demand chains, as well as their internal organisation to fully exploit ICT. Governments are restructuring their internal functions and the way they deliver services and generally interact with citizens and businesses. People are modifying their consumption and spending patterns, as well as their behaviour. In the process, nearly every economic variable of interest is affected.”³

Significantly, a guiding principle continues to control in many circumstances where investment has occurred – capital goes where it is welcome, and stays where it can grow. Many investors have either limited their investments in or kept away from countries that have placed restrictive caps on the level of FDI in the telecom sector, particularly where foreign investment is restricted to a minority share and foreign suppliers are unable to exercise operational control of their affiliates.

Over the last two decades, most countries have taken significant steps to allow the flow of FDI in their telecom sectors. For example, the U.S. presently permits up to 100% FDI in domestic telecom companies, and do the EU Member States, Japan,⁴ Australia,⁵ and New Zealand,⁶ among others. However, many still limit foreign ownership to less than 100%. Under Canada’s current law, foreign investment in a facilities-based telecommunications carrier is limited to a maximum of 46.67%.⁷

This foreign ownership restriction in telecommunications, one of the most restrictive and inflexible set of rules limiting foreign investment in the telecommunications sector among all

³ OECD (2005), Working Party on Indicators for the Information Society, “Guide to Measuring the Information Society,” DSTI/ICCP/IIS (2005)6/FINAL (<http://www.oecd.org/dataoecd/41/12/36177203.pdf>), at p. 11, para. 12.

⁴ Foreign capital participation in NTT Corp. must be less than 1/3.

⁵ No restrictions on industry as a whole; some restrictions on Telstra (government-owned incumbent).

⁶ No foreign ownership restrictions except for Telecom New Zealand (government-owned incumbent).

⁷ The existing restrictions do not include the ownership and operation of “international submarine cables or earth stations that provide telecommunications services by means of satellite.”

OECD member countries,⁸ prevents U.S. and other telecommunications service providers from owning and operating a greater share of telecommunications transmission facilities in Canada. The restriction also discourages investment and innovation and prevents open competition, to the detriment of Canadian businesses and consumers.

Comments on the Consultation Paper

In recognition of the need to encourage investment, innovation and competition in Canada's telecommunications sector and to take consistent policy actions to ensure that Canadian consumers and businesses reap the benefits, Industry Canada requests comments on three options for removing or relaxing the current restrictions on foreign direct investment (FDI) in the telecommunications sector:⁹

- Option 1: Increase the limit for direct foreign investment in broadcasting and telecommunications common carriers to 49 percent;
- Option 2: Lift restrictions on telecommunications common carriers with a 10-percent market share or less, by revenue; or
- Option 3: Remove telecommunications restrictions completely.

We support the complete removal of foreign investment restrictions in Canada's telecommunications sector as set out in Option 3 and recommend that Canada eliminate all existing regulatory measures which artificially and unnecessarily restrict market access by foreign investors, such as those which currently apply to resellers.¹⁰ The removal of this foreign investment restriction would increase telecommunications market entry and investment in Canada, open broad access for Canadian carriers to international capital markets, and encourage sustainable facilities-based competition in the Canadian telecommunications industry and broader economic growth.

This position is consistent with recent statements made by representatives of the Government of Canada. In the March 3, 2010 "Speech from the Throne,"¹¹ the Government of Canada committed to opening Canada's doors further to venture capital and to foreign investment in key sectors, including telecommunications, in order to attract new capital and to encourage innovation and competition.¹²

⁸ Consultation Paper, p. 6. According to the OECD, out of its three member countries that have investment and ownership restrictions that apply to all public telecommunications operators, Canada has the most restrictive and inflexible sets of rules. The other two countries are Mexico and Korea. See OECD FDI Restrictiveness Index: 2010 Update, pp. 15, 19, & 21 (<http://www.oecd.org/dataoecd/32/19/45563285.pdf>). See also OECD page on Canada (http://www.oecd.org/topicdocumentlist/0,3448,en_33873108_33873277_1_1_1_1_37421,00.html); OECD Report on geographically segmented regulation for telecoms, Jun. 22, 2010, at pp. 8, 34, 36-37, 44 (<http://www.oecd.org/officialdocuments/displaydocumentpdf/>); OECD 2009 Communications Outlook (http://www.oecd.org/document/44/0,3343,en_2649_34225_43435308_1_1_1_1,00.html); and OECD Communications Outlook 2007 (<http://213.253.134.43/oecd/pdfs/browseit/9307021E.pdf>).

⁹ Consultation Paper, pp. 9-10.

¹⁰ See generally, Canadian Telecommunications Common Carrier Ownership and Control Regulations, SOR/94-667.

¹¹ "A Stronger Canada, A Stronger Economy, Now and for the Future," Speech from the Throne to Open the Third Session of the Fortieth Parliament of Canada, Mar. 3, 2010 (<http://www.speech.gc.ca/eng/media.asp?id=1388>) ("Speech from the Throne").

¹² Speech from the Throne, p. 7.

In its March 2010 “Budget,”¹³ the Government of Canada recognized the benefits of lifting the restrictions on FDI in the telecommunications sector:

“The Government of Canada is committed to ensuring that Canadians can benefit from increased competition and investment in the telecommunications sector, which will lead to greater innovation and lower prices for consumers. Increasing foreign investment is an important way of strengthening market competition and attracting new capital and innovative ideas from abroad¹⁴... increased competition for telecommunications will also foster investment and create jobs for Canadians.”¹⁵

The recommendation of Canada’s Competition Policy Review Panel (CPRP) in its June 2008 “Compete to Win” report favors the elimination of foreign investment restrictions for investments in service providers as well.¹⁶ In this report, sixty-five specific policy recommendations to the Government of Canada focused on the anti-competitive results of Canada’s protectionist law and policy, including the specific recommendation that:

“telecommunications and broadcasting foreign investment restrictions should be liberalized in a manner that is competitively neutral for telecommunications and broadcasting companies.”¹⁷

The Panel had the benefit of substantial resources, processes and input, as well as the guidance of leading Canadians advising the Government. These recommendations were entirely consistent with the 2006 recommendations of the Telecommunications Policy Review Panel¹⁸ and the April 2003 recommendations of the Standing Committee on Industry, Science and Technology entitled “Opening Canadian Communications to the World.”¹⁹ The latter report concludes that:

“Foreign ownership restrictions have played a role in impeding capital investment by new entrants in the Canadian telecommunications sector in the past decade. They also have been a factor in the recent financial instability of the industry, which saw a number of capital restructurings and bankruptcies. Moreover, since telecommunications is a critical element of the global, networked, knowledge-based economy, these restrictions are also likely stifling Canada’s productivity and economic growth performance.

¹³ Leading the Way on Jobs and Growth, Canada’s Economic Action Plan, Year 2, Budget 2010, tabled in the House of Commons by the Honourable James M. Flaherty, P.C., M.P., Minister of Finance, Mar. 4, 2010 (“Budget 2010”).

¹⁴ Budget 2010, p. 96.

¹⁵ Budget 2010, p. 10.

¹⁶ Competition Policy Review Panel, “Compete to Win,” Final Report-June 2008 ([http://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/vwapj/Compete_to_Win.pdf/\\$FILE/Compete_to_Win.pdf](http://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/vwapj/Compete_to_Win.pdf/$FILE/Compete_to_Win.pdf)) (“CPRP Final Report”); See also, pp. 45-49.

¹⁷ CPRP Final Report, Recommendation 11, p. 49.

¹⁸ See generally, Telecommunications Policy Review Panel Final Report 2006 (“TPRP Final Report”), at Chapters 1-3. In this June 2006 report, Canada’s Minister of Industry issued a proposed policy directive consistent with relaxation of telecom regulation in favor of a general ‘market forces’ criterion. See TPRP Final Report, at Recommendation 3-1.

¹⁹ Report of the Standing Committee on Industry, Science and Technology, “Opening Canadian Communications to the World,” Apr. 2003.

“In summary, foreign ownership restrictions compromise, among other important economic contributions, the diffusion of new communications technologies and Canadians’ access to modern communications services. For all these reasons, the Committee recommends the complete removal of Canada’s foreign ownership restrictions applicable to telecommunications carriers.”²⁰

We urge the Canadian Government to remove the current FDI restriction in telecommunications as set out in Option 3 of Industry Canada’s June 2010 Consultation Paper, and as recommended in recent statements made by representatives of the Government of Canada, as soon as possible. The elimination of the FDI limit to permit 100% foreign direct investment in the telecommunications sector is consistent with the well-established benefits of open foreign ownership policies and the Government of Canada’s stated goals to maximize investment potential, speed the development and adoption of new technologies, and introduce new competition in Canada’s telecommunications sector.

²⁰ Id. at Conclusion.