

## Position Paper Voxbone

### Opening Canada's Doors to Foreign Investment in Telecommunications:

#### Options for Reform

Consultation by Industry Canada, Consultation Paper June 2010

#### Executive summary

Voxbone welcomes the opportunity to comment on Industry Canada's consultation on the Opening of Canada's Doors to Foreign Investment in Telecommunications (hereafter "the Consultation"), available on <http://www.ic.gc.ca/eic/site/ic1.nsf/eng/05643.html>.

Voxbone agrees with the Throne's objective as announced in the speech on March 3, 2010 to "*...open Canada's doors further to...foreign investment in key sectors, including the satellite and telecommunications industries, giving Canadian firms access to the funds and expertise they need.*" This commitment was further highlighted in Budget 2010, which stated that "*increasing foreign investment is an important way of strengthening market competition and attracting new capital and innovative ideas from abroad.*"

In order to move forward on the commitment made in the March 2010 speech from the Throne, Voxbone suggests adopting the following options in order of preference:

- Option 3 – Complete remove the telecommunications restrictions of section 16 of the Telecommunications Act
- Option 2 – The Telecom/Competition Review Panel approach (i.e. relief of the restrictions of section 16 for carriers <10% market share)
- Option 1 – Increase direct limit for broadcasting and telecommunications to 49%.

#### Justification

If the Canadian Government is committed to ensure that Canadian companies have access to capital and expertise, to promote competition in the sector, and to improve services for consumers, it will be required to relax its restrictions on foreign investment in the telecommunications sector.

Voxbone operates in about 50 countries worldwide and concludes that the current legal environment in Canada must be one of the most restricted environments in the Western world. The Telecommunications Act does not authorize the Commission to permit a Canadian carrier to operate as a telecommunications common carrier if it is not Canadian-owned and controlled <sup>1</sup>.

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<sup>1</sup> Subsection 16(1) of the Act provides that "a Canadian carrier is eligible to operate as a telecommunications common carrier if it is a Canadian-owned and controlled corporation incorporated or continued under the laws of Canada or a province." Subsection 16(3) of the Act provides that a corporation is Canadian-owned and controlled if: (a) not less than eighty per cent of the members of the board of directors of the corporation are individual Canadians; (b) Canadians beneficially own, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than eighty per cent of the corporation's voting shares issued and outstanding; and (c) the corporation is not otherwise controlled by persons that are not Canadians.

Subsection 2(1) of the Act defines "control" to mean "control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, agreement or arrangement, the ownership of any body corporate or otherwise."

The test for Canadian ownership and control under the Telecommunications Act is comprised of both legal requirements and a factual requirement: an inquiry under the ownership and control regime as to whether a Canadian carrier is Canadian-owned and controlled, and therefore eligible to operate as a telecommunications common carrier, involves a determination of both de jure control (legal control) and de facto control (control in fact).

This double test makes it extremely difficult for a foreign carrier to legally start operations in Canada if it wants to create added value for consumers on the Canadian market beyond the mere reselling of services from local Canadian carriers.

## **It is time for a change**

There has been an increasing recognition that telecom carriers contribute to many aspects of Canada's economic prosperity and social well-being. The innovative ICT products and services coming onto the market can provide significant benefits to Canadian consumers and businesses.

Voxbone believes that it is time for substantial changes to Canada's current policy and regulatory approaches, some of which date back to the early part of the last century.

Although over the past 20 years, Canada's telecommunications markets have become increasingly competitive, the telecommunications restrictions result in Canadians being foreclosed to receive a wide range of new innovative services at prices and on conditions that are among the best in the world.

The Government and the CRTC should continue to accelerate the job of deregulating telecommunications markets, while retaining essential protections for end-users and for the maintenance of competitive markets. These changes should not only include the removing of the telecom restrictions to foreign investment in telecommunications (by repealing section 16 in its entirety).

The CRTC should also remove any restrictions to allow carriers to provide any kind of telecommunication services on the Canadian market, or at least extend the regulatory rights of competitive local exchange carriers (CLECs) to include all local telecommunications resellers who agree to accept the related service obligations.

## **The way forward**

Voxbone agrees with the Throne's objective as announced in the speech on March 3, 2010 to "*...open Canada's doors further to...foreign investment in key sectors, including the satellite and telecommunications industries, giving Canadian firms access to the funds and expertise they need.*" This commitment was further highlighted in Budget 2010, which stated that "*increasing foreign investment is an important way of strengthening market*

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Subsection 2(2) of the Regulations defines "Canadian," for the purpose of the Regulations and of section 16 of the Act, as, among others, a citizen who is ordinarily resident in Canada, a permanent resident in certain circumstances, and a qualified corporation. A "qualified corporation" is defined in subsection 2(1) of the Regulations as follows: *...a corporation in which those of its shareholders who are Canadians beneficially own, and control, in the aggregate and otherwise than by way of security only, not less than 66 2/3 per cent of the issued and outstanding voting shares, and which is not otherwise controlled by non-Canadians.*

*competition and attracting new capital and innovative ideas from abroad."*

In order to move forward on the commitment made in the March 2010 speech from the Throne, Voxbone suggests adopting the following options in order of preference:

- Option 3 – Complete remove the telecommunications restrictions of section 16 of the Telecommunications Act
- Option 2 – The Telecom/Competition Review Panel approach (i.e. relief of the restrictions of section 16 for carriers <10% market share)
- Option 1 – Increase direct limit for broadcasting and telecommunications to 49%.

Voxbone believes that Option 1 will not result in a dramatic improvement of the competitive environment and increased choice for Canadians if the Government wants to move forward with its objectives. Under this Option, the requirement that >80% of voting shares of a telecommunications carriers be held by Canadians would be reduced to 51%. All other current provisions, including those related to control in fact, would remain unchanged. This option is based in the proposal of the Chairman of the CRTC during his testimony before the Standing Committee in April 2010. Many foreign carriers and service providers will consider that this restriction (even in reduced form) still creates a substantial barrier to start investing in Canada.

## **About Voxbone**

Headquartered in Brussels, Belgium, Voxbone provides inbound voice services through worldwide local and toll-free phone numbers over its own private intercontinental VoIP network – the world's first and largest backbone dedicated to voice-origination services. The all-IP architecture of the Voxbone core network enables customers to rapidly deploy new communications services with local presence while reducing costs. It delivers high-quality call origination from 50 countries and more than 4,000 cities, as well as iNum® numbers that enable billing as local calls when dialed through participating carriers anywhere in the world. Through its number inventory, network, self-administered provisioning and comprehensive SIP adherence, Voxbone's global infrastructure enables its customers to expand to international markets quickly and efficiently. Founded in 2002 and privately held, Voxbone is the only carrier licensed in all 27 countries of the European Union. For more information on Voxbone, visit [www.voxbone.com](http://www.voxbone.com).

Voxbone, 25 July 2010

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