

January 29, 1999

Reply Comments
Consultation on 24 GHz and 38 GHz
Radiocommunications and Broadcasting Regulatory Branch
Industry Canada
300 Slater Street
Ottawa, Ontario
K1A 0C8

Dear Sir or Madam:

**Subject: Reply Comments in response to the consultation on 24 & 38 GHz
Gazette Notice No. DGRB-003-98 – Consultation on the 24 & 38 GHz
Frequency Bands: Proposed Policy and Licensing Procedures**

1. CLEARNET Communications Inc. (CLEARNET) is pleased to submit the reply comments below in response to our review of the public submissions made on the above noted paper.
2. Clearnet has received and reviewed comments from the following parties:
 - Bell Canada
 - Canadian Wireless Telecommunications Association
 - Canadian Broadcasting Corporation
 - CityWave
 - Clearnet Communications Inc.
 - MaxLink
 - Microcell
 - Mobility Canada
 - Nortel Networks
 - Public Interest Advocacy Group
 - Radio Advisory Board of Canada
 - Rogers Communications Inc.
 - Telus
 - WIC Connexus
 - Wispra

3. Clearnet's reply comments are restricted to just one aspect, that of eligibility criteria and conditions of licence applicable to bidders. Failure by Clearnet to address other issues raised in the Industry Canada document or in the public comments submitted by others should not be construed as acceptance or approval.
4. Clearnet notes that the Radio Advisory Board of Canada (RABC) and the Canadian Wireless Telecommunications Association (CWTA) share its concerns that certain aspects of the Department's proposed eligibility criteria and its proposed conditions of licence will create inequities between bidders. This is contradictory to the goal of fair, transparent and objective licence selection as espoused by the Department as the key reason for using auctions. In Clearnet's view, in order to hold a truly fair and equitable bidding process in which bidders are neither favoured nor disadvantaged, the Department must establish a common set of eligibility criteria and conditions of licence, which can be applied to each and every bidder and winning licence holder.
5. The comments from the RABC, the CWTA and Clearnet noted that the proposed eligibility requirements, as written, would allow for private applicants as well as "Canadian Carriers" to enter the bidding process and hold licences. Over the years, the Government has established significant differences in the regulatory frameworks for Canadian Carriers and private licensees. One key difference is in the eligibility criteria as defined in the regulations pursuant to the Telecommunications Act and the Radiocommunication Act.
6. Under these regulations, Canadian Carrier applicants are obliged to meet a maximum 20% foreign ownership limit and also must be controlled in fact by Canadians. Private applicants must only be Canadian corporations or individuals and are not obliged to meet any foreign ownership or control test. Typically, the availability and cost of capital for a particular applicant are tightly linked to whether or not these regulations apply. Historically, in a number of countries of the world including the US, the cost of capital has been lower than in Canada. Similarly, capital for certain higher risk, New Economy investments have been more available from sources outside Canada. Private applicants who freely avail themselves of foreign/US capital would, therefore, be favoured in the auction process over Canadian Carriers

whose sources of capital and costs of capital are much more dominated by the smaller Canadian domestic market. Noting that the sources and cost of capital for each is different, one class of applicant is therefore favoured more than the other in bidding. Allowing both classes of applicants to compete as eligible bidders sets up unfair distortions in the auction process.

7. One solution to this inequity might be for the Department to rule as ineligible all private applicants who may wish to enter the bidding, thereby reserving the 24 & 38 GHz bands for the exclusive use of Canadian Carriers. Clearnet would not support this modification as this, in itself sets up new inequities that are equally undesirable. It is also inconsistent with the Department's design of the band plan where a number of smaller 100 MHz licences were established which are ideal for the smaller (private) user.
8. Therefore, Clearnet recommends that the Department eliminate any proposed eligibility criteria that would cause a differential in costs between bidders, even if this requires the elimination of the Canadian ownership rules for this particular bidding process.
9. Similarly, there are conditions of licence, which apply unequally to successful bidders. Notably, the Department proposes that all successful licensees be obliged to satisfy the Solicitor General standards of wiretap. While it is clear that these standards could be applied to Canadian Carriers, it is hard to understand how the Department could apply them to private applicants where their application makes no logical sense. As a Canadian Carrier, Clearnet knows from first-hand experience that satisfying these wiretap standards is a costly obligation. If this condition of licence applies only to certain bidders, there will be significant differences in the costs for those that have to meet them versus those that do not. Those private bidders that do not will have a significant advantage in bidding and ultimately in winning a licence because they can bid more than those encumbered by the costs of satisfying this licence condition.
10. Therefore, Clearnet recommends that the Department eliminate any proposed licence condition that would cause a differential in costs between bidders, such as the requirement to meet the Solicitor Generals Standards.

Sincerely,

Parke Davis
Director, Inter-Carrier Relations