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Consultation on 24 GHz and 38 GHz
Radiocommunications and Broadcasting Regulatory Branch
INDUSTRY CANADA
Room 1559 D – Jean Edmonds Tower North
300 Slater Street
Ottawa, Ontario
K1A 0C8

Attention: Mr. Jan Skora

Dear Mr. Skora:

RE: Gazette Notice No. DGRB-003-98 Comments on
Consultation on the 24 and 38 GHz Frequency Bands:
Proposed Policy and Licensing Procedures
Published in the Canada Gazette, Part 1 on September 5, 1998

RE: Gazette Notice No. DGRB-001-99 Consultation on the
24 and 38 GHz Frequency Bands: Proposed Policy and Licensing
Procedures, published in the Canada Gazette, Part 1 on January 2, 1999

WIC Connexus (“WIC”) is pleased to submit the attached Reply comments in Windows 95 Microsoft Word Version 7.0 with respect to the first round comments of other parties made in response to the above noted consultation paper.

WIC appreciates the extra two weeks allowed for Reply comments by interested parties and thanks the Department for its consideration in that regard.

Yours very truly,

Grant Buchanan,
Vice President, Corporate and Regulatory Affairs
WIC WESTERN INTERNATIONAL COMMUNICATIONS LTD.

GB/kt

Enclosure

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Reply Comments in response to the consultation on 24 GHz and 38 GHz.

A) INTRODUCTION

WIC offers the following reply comments. Any failure to address the positions taken by other parties in their initial comments should not be construed as agreement with those positions. Our thoughts are grouped thematically below.

B) SUPPLY AND DEMAND

Bell Canada (“Bell”) in its initial round comments, quoted from the Department’s Framework document which contains a section entitled “Spectrum Release Plan” which reads as follows:

“3. Spectrum Release Plan

An auction will be most successful when all pertinent information regarding the licences being auctioned is readily available at the beginning of the process. As several respondents in the recent consultation process pointed out, this should include information on spectrum the department plans to release in the future, the timing of its release, and the assignment mechanism.

This information will enable participants to more accurately assess the current and future marketplace when developing their business plans, and help them prepare a reasonable valuation for the spectrum in question. By reducing uncertainty, this information will give bidders greater confidence in determining an appropriate strategy.

Therefore, the department intends to commence the practice of issuing an annual plan that provides as much detail as possible on new frequency bands that may be opened for licensing. Furthermore, the department will identify the cases in which it expects first-come first-served licensing to be used and the cases in which a competitive licensing process, either an auction or a comparative review, will likely be used.” (Emphasis ours)

Bell noted that it was vital to have such “a comprehensive Canadian spectrum plan to enable bidders to determine whether this set of frequencies best meets their needs and roll-out timetable”.

WIC respectfully agrees and strongly recommends the release of such a plan either prior to or concurrent with the release of the Final Policy Paper in this regard.

This brings into relief the bigger question of supply and demand. PIAC stated the following in its initial comments,

“Demand not Demonstrated

The Department has not concluded the previous consultation on ‘First-Come, First-Served’ Licensing, since the consultation in December 1997. As part of the Criteria for moving from ‘first-come, first-served’ licensing to competitive licensing, a demand greater than the supply was a pre-requisite. I don’t believe the department has adequately justified the case for competitive licensing without a thorough demand analysis.

Industry Canada has not provided any justification for the use of a competitive licensing process in Canada in all locations when certainly some areas will not have sufficient demand for a long period of time, due to the availability of a larger portion of spectrum in the smaller population centres. This has been validated by the previous licensing of the LMCS band.”

This is what WIC was driving at in its initial round comments when it stated the following:

“In announcing a process relating to spectrum at 24 GHz and 38 GHz with no proposed bidder eligibility and caps of 400 MHz at 24 GHz and 700 MHz at 38 GHz, the potential scenario of four national wireless broadband point-to-multipoint competitors emerges (1 at 24 GHz, 2 at 28 GHz, and 1 at 38 MHz). It is to be recalled that the overall plan (at least at the time 28 GHz was opened up) was to provide wireless competition to incumbent wireline operators. Now, as recognized by the Department, the evolution of the various technologies makes clear that licensees at 24 GHz, 28 GHz and 38 GHz will all be in competition with each other in the business - not the residential - market.”

In fact, the situation may have even worsened since the initial round comments were filed in early December. A Press Report in mid-December stated the following:

“Look Communications Testing High-Speed
Internet Access Over Wireless Network

Wireless cable operator Look Communications Inc. appears confident that it will be awarded additional spectrum to offer a commercial high-speed Internet access service in its entire coverage area. Although Industry Canada has yet to announce a final process to allocate MCS (multipoint communications system) spectrum, Look expects that process to be launched soon, and that it will get the bandwidth it has requested.

With Industry Minister John Manley in attendance, Look announced in late November that it will begin technical trials of a high-speed Internet service this month in the greater Toronto area involving 20 to 30 users. It also said that it expects to launch a commercial Internet service offering speeds of 8 Mbps early in the new year.

‘I’m confident the process will be launched shortly and that we will be able to show Industry Canada that we can provide tremendous benefits to consumers and to small- and medium-sized businesses if they grant us some additional spectrum,’ Paul Lamontagne, Look’s executive VP in charge of the Internet project, told CCR.”

December 16, 1998 edition of Canadian Communications Reports

Once again, it would be helpful for industry participants to have a better idea of the Department’s perspective concerning the scope of the supply relative to the demand. This would be of great assistance in understanding how the Department plans to resolve the point-to-point versus point-to-multipoint conundrum. A variety of parties in their initial comments asserted that demand outstrips (or will outstrip) supply in the point-to-point area while others went the other way and asserted that the need was on the broadband point to multipoint side. Who is correct? Neither the Consultation Paper nor the parties’ comments were accompanied by expert analysis in this regard.

If competition is the “watch word”, then the question “Who is supposed to be competitive with whom?” needs to be answered. WIC entered into this exercise believing that competition to wireline incumbents for the benefit of consumers was the favoured policy. Assuming that it still is, that helps in coming to conclusions in a number of other areas as well as in formulating the overall Spectrum Release Plan.

C) **BIDDER ELIGIBILITY**

The incumbent telcos and related parties (i.e. Bell Canada, Mobility Canada, Telus) strongly opposed any sort of bidder eligibility restrictions while their challengers (and would-be challengers) feel constraints and/or exclusions on telephone company involvement in the 24 GHz and 38 GHz areas **are indeed** appropriate. WIC agrees with the latter view but wishes to comment on the issue of cable company involvement, a matter raised by several parties in the initial round of comments. The issue for this Consultation is whether or not Canadian cable companies ought to be excluded at the ownership level from the 24 and 38 GHz ranges. WIC does not think so for several reasons.

First, even in the LMCS proceeding, the one most commonly cited, the prohibition was only a 3 year moratorium which would expire this year. Second, the public policy rationale for that exclusion has now disappeared. At the time WIC acquired and first became interested LMCS, and even at the time of the 1996 Policy announcement by Minister Manley, LMCS was thought to be a platform to be used to compete with cable. Today, to the best of our knowledge, nobody in the world is using, or has any plans that contemplate using, LMCS or 24 and 38 GHz spectrum to compete with cable in its core business. These technologies are inefficient for video distribution.

Third, all of these technologies are, however, suitable for competing with the telephone companies in their core business, a task which cable operators are very interested in taking on. It thus does not seem to make policy sense to exclude cable from the wireless vehicles that will allow them to counterattack against telco competition in cable's core business. Indeed, one would think it would make sense not only to allow it but to encourage it.

For the same reason, it makes great deal of policy sense to restrict telco eligibility. As noted by City Wave Communications in its round one comments, all of the available spectrum could go to just 2 bidders, possibly the Eastern and Western based telcos who could use it to compete on each other's turf. The question needs to be asked whether that is the Department's vision for the highest and best use of the wireless spectrum involved. Even if such competition were to be desirable, why could those entities not lease spectrum from independent LMCS entrants?

D) SPECTRUM AGGREGATION LIMITS AND BLOCK SIZES

Once again, there is a clear division in Round 1 comments between the would-be large aggregators (most notably the phone companies) and those who need smaller point-to-point blocks. The Department's choice is clearly made more difficult by the lack of any hard evidence of demand one way or the other on the record of this proceeding. WIC's view is that the Department should be first and foremost interested in protecting the logic of the licenses it has already issued at 28 and 38 GHz. WIC also takes note of PIAC's comment that:

“...the matter of aggregation limit is irrelevant as those with ‘deep pockets’ will find the means to aggregate the spectrum required, irrespective of the intent to limit aggregations.”

Finally, WIC wishes to support the comments of MaxLink relating to an exception for existing LMCS licensees with respect to connecting base stations beyond the reach of existing fibre networks. MaxLink's proposal read as follows:

“Aggregation Section 3.3.1 - To the extent that spectrum in these ranges may be the most practical option for connecting base stations that are beyond the reach of existing fiber [sic] networks - at least in the short-term - MaxLink would like to be able to seek access to this spectrum in its license [sic] areas. Access to shared spectrum should be adequate for this application, and therefore MaxLink would propose an exception from the aggregation limits, at least in cases where an LMCS provider is using shared spectrum for point-to-point applications within its feeder network. Priority access to this spectrum in these limited circumstances may be a worthwhile policy use of the spectrum involved.”

On the other hand, consistent with its view that new point-to-multipoint spectrum releases at this juncture are not appropriate, WIC does not support MaxLink's proposal to reverse the Department's decision to defer the release of Blocks C and D of LMCS spectrum. WIC is working hard to move forward and provide service and value using the spectrum already allocated by Industry Canada.

E) FEES VERSUS AUCTION PRICES

Bell stated in its round one filing that Canadian LMCS prices are \$0.75 “per pop” versus \$1.72 “per pop” in the U.S. for (LMDS) A block licences and a 0.65 cents “per pop” for (LMDS) B block licences. Bell then stated that

“The Canadian formula of approximately \$.75/POP equates to slightly less than [sic] 30% of the value of a national LMDS licence in the U.S., accounting for differences in available bandwidth and currency exchange rates.”

We wish to clarify the record by providing an analysis of the real costs of licence fees which is attached as Schedule 1.

This does not detract from WIC’s view, shared by most if not all of the parties in Round 1, that the reserve bid levels suggested by the Department are unrealistically high and should be lowered.

It highlights, however, the point made in the Department’s Framework Document that:

“...the department still feels there is a need to discuss how incumbent operators will be dealt with in an auction scenario. Progression towards the establishment of a homogeneous regime with respect to licence rights will be required for the creation of a fully functioning secondary market for spectrum. **The department intends to discuss possible adjustments to licence definitions, terms, conditions and fees for incumbent licensees in another consultation process.**” (emphasis ours)

As noted by WIC in its initial comments, to the best of our knowledge such a process has not been commenced, but we would respectfully recommend that it should be.

F) CONDITIONS OF LICENCE

Not surprisingly, most parties want to eliminate conditions of licence, in some cases for some very good reasons. As noted by Maxlink in its initial comments, acceptance of the auction process itself presupposes, in WIC’s view, a surrendering of the concrete, measurable industrial benefits that might otherwise have been achieved in favour of more ethereal, trickle-down, competitive benefits. Since WIC has a number of the former type of conditions of licence (i.e. real, measurable ones) on its 28 GHz licences, WIC’s interest is one of fairness.

G) CONCLUSION

WIC appreciates the opportunity to participate in this process and looks forward to contributing to the various other related processes that WIC strongly believes are necessary in order to ensure a successful, competitive wireless industry in this country. WIC's vision of a staged competitive entry does not include flooding the market with additional broadband capacity during the start-up phases of the Department's existing licensees. We appreciate that our views put us on the opposite side of this issue from our colleagues in the telephone companies whose approach, not surprisingly, is to "let the market decide" if we can paraphrase their collective approach. Our view is that such open entry would run countercurrent to the Department's previously stated policy of allowing "the pioneering new [LMCS] entrants to implement their systems and establish their viability" with a goal of providing serious competition to incumbents.

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COMPARISON OF FCC AUCTION RESULTS TO I/C LICENCE FEES

	<u>Canada</u>	<u>U.S.</u>	
GHz	1.0	1.3	
Term	15 years	15 years	
U.S. Cash Proceeds		578,700,000	
Exchange Rate, say, \$.703		<u>1.42</u>	
		823,186,344	
Canada Cash Proceeds:			
\$1/household/year	\$ 1.00		
# households (below)	125,207,050		
15 Years Proceeds	\$ 125,207,050		
PV disct. 10% investment factor	\$61,848,646		
Households in Licensed Area	7,500,000	95,637,340	248m pop 1998; 2.6 people/hh
Proceeds/household	\$ 8.25	\$ 8.61	
GHz factor		1.3	
Adjusted proceeds/household	\$ 8.25	\$ 6.62	

Households (1.5% growth per year compounded):

Year 1	7,500,000
Year 2	7,612,500
Year 3	7,726,688
Year 4	7,842,588
Year 5	7,960,227
Year 6	8,079,630
Year 7	8,200,824
Year 8	8,323,837
Year 9	8,448,694
Year 10	8,575,425
Year 11	8,704,056
Year 12	8,834,617
Year 13	8,967,136
Year 14	9,101,643
Year 15	<u>9,329,184</u>
Total Households	<u>125,207,050</u>