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Industry Canada
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**Reply Comments in Response to the Consultation on 24 and 38 GHz
DGRB-003-98, DGRB-002-98**

This letter comprises the reply by Wispra Inc. to the other 14 comments submitted as part of the consultation on 24 and 38 GHz (the “Consultation”). Wispra’s key positions (summarized in the attachment hereto) continue to be:

- aligning bands with the United States
- expeditious licensing
- bidding credits for small and medium enterprises
- ineligibility of ILECs and CATV operators, and
- the spectrum cap including LMCS

Wispra now adds its support for lower reserve prices and deposits.

Speed Wins – Slow Loses

Wispra agrees with Deputy Minister Kevin Lynch¹ that “Speed Wins” and adds the corollary that “Slow Loses.” The licensing of spectrum at 24 and 38 GHz is proceeding too slowly.

Since February 1996 when Industry Canada announced its intention to auction spectrum, the United States has completed 16 auctions and published plans for 10 more while Canada continues to plan its first one. Score: US 16, Canada 0, and counting.

AUCTIONS	UNITED STATES	CANADA
Completed	16	0
Planned	10	1
Total	28	1

¹ Spectrum 20/20 Conference, Dec 3, 1998

Given the delay in the Consultation, it appears unlikely that Industry Canada will meet its published objectives of starting this first auction in the second quarter and issuing licenses by September. Even with no further delays, it appears unlikely that 24 and 38 GHz licenses will be issued before the year 2000 and that anyone will be in service before mid-year 2000.

This will be more than two years after the United States issued similar licenses and two years after Wispra applied for 24 GHz licenses. Meanwhile, US service providers are operational now in both the 24 and 38 GHz bands. Please let there be no further delays.

Bidding Credits

Wispra proposed bidding credits for Small and Medium Enterprise (“SMEs”) in its letter to the Minister and again in its December 4 submission. Since bidding credits were not included in the Industry Canada proposal, Wispra will not have the opportunity to reply to comments by others on the subject. Since most comments in the Consultation were submitted by large established incumbents who would not qualify for bidding credits, Wispra does not expect much support for bidding credits in the reply comments. Wispra reiterates its support for bidding credits as necessary to enable smaller and medium enterprises to participate in the auction and notes the FCC’s continued use of such bidding credits in its many auctions to the same ends.

Eligibility Restrictions and Spectrum Caps

Wispra continues to support the need for eligibility restrictions and spectrum caps to prevent incumbent telephone companies, CATV operators and LMCS licensees from buying all of the auctioned spectrum and thereby preventing the emergence of new competitors. Again, a position that is not to the benefit of incumbents.

Reserve Prices

Wispra submits that the reserve prices proposed by Industry Canada are too high.

Wispra does not understand the concept introduced by Industry Canada that “reserve prices are...conceptually linked to the cost of managing the spectrum in question,” (the “Concept”). The FCC is setting low minimum prices to ensure that the spectrum is licensed.

Should the Concept have come from economics, then Industry Canada should be acting like a business with the objective of maximizing its profit from spectrum. It should stay in the spectrum business if its average revenue exceed its average cost. Fortunately this requirement is already met without any revenues from auctions, since the fees from cellular/PCS licensing alone well exceed the total cost of spectrum management.

Were it trying to maximize its profit as a rational spectrum seller, Industry Canada should be willing to sell new spectrum at any price above the marginal cost of producing it. The marginal cost of producing the current 1300 MHz of spectrum is perhaps close to the cost of running an auction, which should well below the total reserve price of \$18.3 million. Not selling spectrum below the proposed reserve price will only result in unsold spectrum and a lower profit from spectrum for Industry Canada. The Concept does not seem to follow economic theory.

Furthermore, since it is not a business only trying to maximize profits, Industry Canada should be willing to sell spectrum below its marginal unit cost in order to further its social policy objectives such as increasing the connectedness of Canadians. Unused spectrum benefits no one.

The FCC has lowered its minimum auction prices in order to sell available spectrum. It is reaucting 168 LMDS licenses for which there were no bids above the previous reserve price in the initial auction or licensees are in default². The FCC's new minimum bid prices are 1.6 to 6 times lower than the reserve price proposed by Industry Canada (see table).

Minimum Bid/Reserve Price Comparison

Proposed by:	Block	Block Size (MHz)	Minimum (US\$/pop)	Reserve (C\$/Point)	Ratio Can/US
FCC reauction	LMDS A	1,150	\$0.06	\$780	
Industry Canada	24 & 38 GHz	1,150	\$0.36	\$4700	600%
FCC reauction	LMDS B	150	\$0.03	\$3000	
Industry Canada	24 & 38 GHz	150	\$0.047	\$4700	160%

Wispra believes that the current high Canadian reserve prices will result in a large number of unsold licenses, especially in service areas not including a major city. If the US model holds, Industry Canada will then proceed to reauction the unsold licenses later at a lower reserve price. In the interim it will need to explain to Canadians why its high license fees are preventing Canadians in the unserved areas from getting new advanced telecommunications services. It is unlikely that most Canadians will understand the Concept.

To avoid all of this, Wispra recommends that Industry Canada reduce the reserve price and deposit amounts to a level where most areas will be licensed successfully the first time. Even a reserve price of C\$3000 per point (the US LMDS B reauction minimum) would be better than the proposed C\$4700. Wispra recommends a reserve price of C\$1500 per point.

Comments of Related Incumbents

Wispra is concerned that the large majority of the comments submitted in December represent the interests of incumbents rather than the Canadian public. Only two of the 15 submissions were from new entrants (Wispra and CityWave) and only one from an independent party (PIAC). All of the rest were from large established incumbents and their affiliates (major carriers, radio licensees, associations and major suppliers) who made submissions in their own self interest (as well they should). Many commenters or their affiliates are active in multiple domains, such as RCI (cable, cellular, PCS, CATV, 38 GHz) and Bell Canada (ILEC, cellular, PCS, 38 GHz, supplier). Half (including Wispra) hold shared 38 GHz point to point licenses and most of them (excluding Wispra) argue for increasing that allocation. The chart in the attachment demonstrates the interrelated nature of the commenters. It is not in the best interest of most of these inclumbents to support increased competition from new entrants using broadband wireless communications technology.

² FCC DA 98-2266 November 6, 1998, Report No. AUC-99-23-A (Auction No. 23)

An example of such a conflict is MaxLink who acknowledges that its submission “risks sounding very self-serving.” It is the sole LMCS licensee with 1000 MHz of spectrum (well above the proposed spectrum cap for new entrants) in 33 of Canada’s largest service areas. It has recently benefited from an 18 month delay in its license obligations and in the licensing of new competitors in the remaining LMCS spectrum. In its lengthy submission MaxLink espouses the merits of “introducing competition,...stimulating innovation...and advancing the Canadian industrial activity.” At the same time, MaxLink argues that “incumbents must be excluded from entry in the new local wireless sector,” that MaxLink must have “access to this [24 and 38 GHz] spectrum in its license [sic] areas” and that “delaying the licensing of competitive spectrum” is needed so that it does not experience increased competition. Wispra submits that a head start in licensing of over two years and being in service more than one year ahead of any new broadband wireless competitors is already an undue advantage for the LMCS licensees.

Although there is variation among the submissions, many of the incumbents argue for:

- slower licensing process (to delay new competition)
- no eligibility restrictions (especially if applied to them)
- no spectrum cap (if they have spectrum or can afford a lot)
- no obligation to build out (allowing stockpiling)
- no restrictions on subdivision and transfer (allowing buyout of others)
- more 38 GHz shared point to point licenses (if they are already licensees)

Conclusions

Wispra submits that the public interest of Canadians is best served by increasing the connectedness of Canadians and by increased competition. This requires:

- bidding credits for SMEs (to enable their participation)
- alignment with the US (to improve equipment availability and pricing)
- speedy licensing (to speed increased competition)
- restricting the eligibility of dominant telephone and cable companies (to have competition)
- spectrum cap of 700 MHz including LMCS spectrum (again, for competition)
- build out requirements to ensure the spectrum is used (as in the United States)
- restrictions on subdivision and transfer (to reduce speculation)
- no increase in shared 38 GHz spectrum (since other bands are available)
- lower reserve prices and deposits (to sell spectrum in non-urban areas)

Thank you for the opportunity to submit Wispra’s views on the comments of the other parties to the Consultation on 24 and 38 GHz.

Yours truly,



SUMMARY OF WISPRA'S DECEMBER 1998 COMMENTS

CONSULTATION ON 24 & 38 GHZ

Wispra's comments on the Consultation on 24 GHz and 38 GHz submitted December 4, 1998 supported the following:

- opening up the 24 and 38 GHz bands and aligning them with the United States
- auctions as the most expeditious way to license the frequencies
- bidding credits to enable Small and Medium Enterprises ("SMEs") to participate in the auctions
- making ILECs and CATV operators ineligible for licensees in their serving territories to allow a competitive market place
- a 700 MHz spectrum cap for the combined 24, 28 (LMCS), and 38 MHz bands.
- licensing the 59 Tier 3 service areas
- packaging spectrum into blocks of 400 MHz at 24 GHz and 400, 300 and 200 MHz at 38 GHz.
- a 10 year license term with a high expectation of renewal
- allowing transfer and division of licenses after three years
- setting service implementation requirements measured after three years
- standard conditions of license: Canadian ownership, 2% R&D, wiretapping, etc.
- technical considerations based on RABC input
- the proposed auction process and design with the recommended modifications
- the proposed financial aspects of the auction: reserve prices, deposits, bid payments, etc.
- maintaining the shared point-to-point 38 GHz allocation at five channels
- starting the auction in 2Q1999

Support for these positions is provided in Wispra submission document of December 4, 1998.

Wispra's key positions are: aligning bands with the United States, expeditious licensing, bidding credits, ineligibility of ILECs and CATV operators and the spectrum cap.

**RELATIONSHIP AMONG COMMENTERS
CONSULTATION ON 24 & 38 GHZ**

	Competitor			Radio Carrier			Related Party		New SME CLEC	Other
	LMCS	ILEC	CATV	Cell/PCS	38 GHz Pt to Pt	Broad- cast	Associa- tion	Supplier		
MaxLink	█				█					
Connexus	█				█		█			
Bell		█		█			█	█		
Telus		█		█			█			
RCI			█	█	█	█	█			
Mobility		█		█	█		█	█		
Clearnet				█	█		█			
Microcell				█	█		█	█		
CBC						█				
CWTA	█	█		█	█		█	█		
RABC	█	█		█	█		█	█		
Nortel		█		█				█		
CityWave					█				█	
Wispra					█				█	
PIAC										█