



15 July 2009

Director, Spectrum Management Operations
Radiocommunications and Broadcasting Regulatory Branch
Industry Canada
300 Slater Street
Ottawa, Ontario
Canada K1A 0C8

Mr. Connolly:

Re: *Canada Gazette Notice DGRB-001-09 – Consultation on Revisions to the Framework for Spectrum Auctions in Canada, April 2009 (the “Notice”) – Reply Comments*

I. Introduction

Ciel Satellite Limited Partnership (“Ciel”) is pleased to submit the following reply comments in connection with Industry Canada’s *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*. (DGRB-001-09). As noted in our original June 15th, 2009 filing, our comments will be confined to the question of the use of auctions for satellite spectrum.

Ciel notes that *every interested party that is directly involved in the satellite business voiced their opposition to the notion of using auctions for satellite spectrum or licences*. These parties include, the Canadian Satellite and Space Industry Forum (CSSIF), the Satellite Industry Association (SIA), SkyTerra (Canada) Inc., Ciel and Telesat. The reasons provided by these parties in opposition to the use of auctions for satellite spectrum were numerous and dealt at length with the unique issues and challenges confronting the

operation of satellites which can span several international borders as well as fundamental economic principles of efficient resource allocation.

In addition to the comments submitted by the five parties having direct experience in the satellite industry, seven other parties (primarily mobile telephony operators) filed comments. Of these parties, four (including Bell Mobility, MTS Allstream and Rogers) did not voice an opinion on the use of auctions for satellite spectrum. There were only three parties that supported the use of auctions for satellite: the CWTA, TELUS and SaskTel.

The combined commentary of the three opposing parties constitutes less than two pages of content, most of which demonstrates a lack of understanding of the very unique operating environment in which satellite operators find themselves. By contrast, the parties with direct experience in the satellite industry contributed almost thirty pages of factual information, analysis and conclusions on the feasibility of holding spectrum auctions for satellite licences.

Ciel does not intend to repeat in these reply comments the numerous reasons why spectrum auctions are not appropriate for satellite spectrum. Instead, it will focus on the arguments raised by the three proponents of satellite spectrum auctions, namely SaskTel, TELUS and the CWTA. Failure on the part of Ciel to address a specific issue or argument raised by one of these parties should not be construed as agreement with or acceptance of such issue or argument where to do so would be contrary to the interests of Ciel.

II. Comments of SaskTel

SaskTel stated its entire case for the use of auctions in three brief paragraphs:

SaskTel agrees with the Department's 2007 Spectrum Policy Framework for Canada, where it states "*market forces should be relied upon to the maximum extent feasible.*" We believe that the use of spectrum auctions to award satellite authorizations is the most effective way to utilize market forces in this licensing process.

As noted in the consultation, satellite orbital authorizations are unique in that they are much more heavily reliant on international coordination and processes, including discussions, negotiations, and approvals from the International Telecommunications Union (ITU). Prior to any proposed satellite authorization auction, it will be necessary for the Department to clearly identify the conditions of licence to be imposed on the auction winner. These conditions must include any implementation restrictions in terms of timeframes, or pre-requisite approvals. For cases where priority access to

orbital locations by Canada would be lost by a delay in implementation, the Department would have to establish ahead of time the consequences or possible penalties for the failure of a satellite authorization auction winner to meet implementation and satellite launch deadlines. It would then be up to potential auction participants to evaluate the opportunities and all of the risks involved, and then decide if they wish to participate in the auction, and the prices they wish to bid to meet their business objectives.

Despite the complexities of the satellite authorization process, the benefits derived from using market forces to assign licences via an auction process outweigh the added complexity of an auction. (This assumes that a thorough pre-auction qualification process is used that includes agreement by the participants to adhere to licence conditions that must be imposed to address the unique needs and complexities of the satellite orbital licensing process.)

Ciel notes that SaskTel ultimately relies solely on an unsubstantiated opinion that the benefits from an auction process for satellite licences would outweigh the added complexity of an auction. SaskTel has provided no factual or analytical basis for making this claim. It simply makes this assertion without truly understanding the numerous factors that make spectrum auctions for satellite licences a practical impossibility as described in detail in the submissions of Ciel, Telesat, CSSIF, SIA and SkyTerra Canada.

We would also note that SaskTel's recommendation is contingent on the use of a "pre-auction qualification process". However, SaskTel has not described how such a process would work, it has not estimated or discussed the costs of this process, nor has it provided any understanding of how this process might impact the efficient allocation of satellite spectrum. Once again, this displays a fundamental lack of knowledge on the part of SaskTel regarding the practical feasibility of conducting auctions of satellite licences.

III. CWTA

The CWTA has provided the following commentary (reproduced in its entirety) on the issue of using auctions for satellite spectrum:

CWTA supports the use of auctions for assigning satellite authorizations, as this approach would be consistent with the Spectrum Policy Framework guideline to rely on market forces "to the maximum extent feasible." In this respect, CWTA notes that the Department has focused its use and application of economic principles almost exclusively to the mobile wireless industry. Further, the application of economic principles has by and large been limited to extracting funds from licencees. This

continued pursuit of economic rents from one segment of the gamut of spectrum users effectively discriminates against those licencees and their customers.

CWTA urges the Department to ensure that economic principles are applied equitably to all commercial spectrum users. The report *Study of Market-based Exclusive Spectrum Rights*, prepared for the Department, provides an overview of the significant advancements in spectrum policy and the application of economic principles that have occurred internationally and recommends that the Department “accelerate the pace of reform of spectrum management in Canada”.

The CWTA has not provided any analysis on the economic characteristics of using auctions for satellite spectrum. The gist of the CWTA argument seems to be that spectrum auctions have been used for the sole purpose of extracting economic rents from mobile service providers and, while this purpose only provides a limited and incomplete application of economic principles, it should still be extended to other spectrum users as a matter of “equitability”. Ciel notes that the CWTA’s position leaves an extreme gap between their support of adopting a complete set of economic principles on the one hand and their appeal to “equitability” on the other hand (even if the pursuit of equitability creates major economic distortions for one industry segment).

With respect to the CWTA’s reference to the Department’s *Spectrum Policy Framework*, we note that the Department has not stipulated a blind reliance on market forces (let alone auctions) regardless of how such reliance would impact the efficiency and operation of a given market. Rather, the Spectrum Policy Framework proposes reliance on market forces “to the maximum extent possible”, thereby fully allowing for specific circumstances that would lead to other approaches. It should not be assumed, in any event, that spectrum auctions are the most effective method of promoting reliance on market forces.

Finally, with respect to the report referenced by CWTA, entitled *Study of Market-based Exclusive Spectrum Rights* (the “Report”), this document makes reference to the satellite sector in only a handful of instances. Moreover, even where satellite spectrum is mentioned, there is no fulsome consideration of whether or not it should be subject to the same spectrum licensing approaches as those applied to terrestrial wireless spectrum. In fact, the 113 page Report almost exclusively references PCS, cellular, broadband and terrestrial broadcasting spectrum.

The Report also notes “that a totally free market spectrum approach has not been implemented by any country.”

IV. TELUS

In its comments, TELUS adopts the following position:

TELUS encourages the Department to use auctions to select those to whom a satellite authorization will be issued, in those cases where there is competitive interest. Given that there would generally be only one authorization issued at a time and given that the financial requirements of a satellite launch limit the number of applicants this would seem a good place to use a Vickery [sic] auction format with a rigorously developed reserve price to lessen any concerns respecting gaming or collusion that might arise.

Like SaskTel, these comments demonstrate fundamental lack of knowledge of the international regulatory framework that applies to satellite operators as well as the specific market characteristics and operational factors that make the use of auctions for satellite spectrum inappropriate. In short, TELUS has provided a recommendation that is based on an untested and unsubstantiated opinion.

Moreover, the suggestion to use a Vickrey format would require the Department to develop a “rigorously developed reserve price”. Given the many unique complicating characteristics of the satellite industry (as described in the June 15, 2009 submissions of Ciel and every other party with experience in the satellite industry), TELUS has provided no guidance on how such a reserve price could be developed, let alone what that types of cost would be associated with this exercise.

V. Conclusion

The record of this proceeding and, in particular, the submissions of those parties with actual experience in the satellite industry, demonstrates that auctions of satellite spectrum are inappropriate and, indeed, unworkable. The submissions of SaskTel, CWTA and TELUS demonstrate a fundamental lack of understanding of the operating environment in which the satellite industry finds itself and the inherently international nature of the provision of satellite-based services. Ciel recommends that the Department give no weight to these

submissions and reiterates, instead, its request that the Department reject the use of spectrum auctions for satellite licences .

All of which is respectfully submitted.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Gibson', with a long horizontal flourish extending to the right.

Scott Gibson

Vice President & General Counsel
Ciel Satellite Limited Partnership