Telesat Canada Comments

submitted to

Industry Canada
Spectrum Management and Telecommunications

on

Consultation Paper on Revisions to the Framework for Spectrum Auctions in Canada (DGTP-001-09, issued April 2009)

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Introduction

Telesat Canada ("Telesat") welcomes the opportunity to provide these comments on the issues raised in Industry Canada's *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*, DGTP-001-09, issued April 2, 2009 (the "Consultation").

The main questions raised in the Consultation concern (1) the use of auction types other than simultaneous multiple-round ascending; (2) the use of auctions as a means of awarding satellite licenses; and (3) the renewal of long-term spectrum licences. The Department also seeks comments on two other issues: (4) the research and development condition of licence; and (5) Tier areas for spectrum licensing.

Telesat's comments in this document are focussed on questions (2) and (4) listed above. Telesat's views on the remaining questions raised in the consultation are addressed in the comments submitted by the Canadian Satellite and Space Industry Forum (the "CSSIF"). As a founding member of the CSSIF, Telesat contributed to, and fully supports, the CSSIF submission in response to the Consultation.

Reform is Needed in the Award of Satellite Licences

Telesat believes that the current comparative process for the award of satellite licences is seriously flawed:

- The length of time between application for a licence and ultimate award is excessive. This is of particular concern in an environment where Telesat's competitors may file at the ITU through 'captive administrations'. A competitor may take note of Telesat's interest at the LOI stage, express its own interest and compete with Telesat for the Industry Canada authorization, while at the same time filing through its captive administration. The latter filing may achieve ITU priority by the time the Department's comparative process is complete and a satellite may be constructed and launched.

- The process is labour-intensive for both applicants and the Department.

- The decision criteria and their weightings are not clear, nor are the reasons for the licence award.

While reform is urgently required, auctioning of satellite spectrum is not a solution. It would, in fact, make a bad situation worse. Telesat supports the view that a first-come-first served approach to the award of satellite licences is the most expeditious and fairest method to award satellite licences.

Awarding Satellite Licences through Auctions is Inappropriate

Telesat fully endorses the CSSIF position that auctioning of satellite spectrum is inappropriate for the following reasons:

- The provisioning of services by satellite is inherently international;

- Auctioning of spectrum by a major space faring nation could set a precedent with serious unintended consequences;
- Auctioning of satellite spectrum by Industry Canada could disadvantage Canadian operators; and
- Satellite spectrum auctions would not promote spectrum efficiency.

We provide in the following paragraphs some supplementary comments on the second and third points.

Communications satellite technology has been instrumental in bridging communication gaps worldwide, and nowhere more so than in Canada, where for reasons of geography and demographics, satellite services are critical components of our national infrastructure. Regulators, including Industry Canada, need to ensure that their actions do not hamper the ability of satellite operators to furnish this infrastructure.

As outlined in the CSSIF response, satellite spectrum is international by its very nature and must be treated differently from wireless spectrum, which is essentially a national resource. In this regard, the following excerpt from the *Summary notes on the BR Workshop on the efficient use of the spectrum/orbit resource (Geneva, Switzerland 6 May 2009)*[1] is instructive:

> Continued access to satellite spectrum requires a balanced approach in the administrations' revenue generating policies that does not affect the long-term viability of satellite services and the industry as a whole. The impact of fees, auctions and other revenue-generating approaches, taken as a whole from all countries in which satellite resources are provided, can make deployment of this critical infrastructure economically unfeasible.

The issue of inappropriate fees and impact of satellite spectrum auctions has also been addressed in the European context[2]:

> Another kind of fee is more pernicious. Industry has resisted auctions based on the international nature of satellite communications. If each country within the service pattern of a satellite gets the notion of applying such fees, the basic viability of satellite service is threatened.

Telesat is the fourth-largest communications satellite operator in the world. While we operate worldwide with satellites licensed by five different administrations, the largest number of our satellites, associated with the majority of our revenues, are Canadian-licensed. Our head-office is in Canada and most of our highly-skilled employment is located in this country.

While Telesat supports fair competition and 'open skies', we are greatly concerned that regulatory provisions in Canada, such as the high cost of satellite licences, place

[1] http://www.itu.int/ITU-R/space/support/workshop-spectrum-2009/doc/BR_Workshop_notes.pdf
[2] Gerry Oberst, Global Regulations column, *Via Satellite*, April 2009.

Canadian-licensed operators at a disadvantage relative to foreign-licensed operators for whom our domestic market is fully open. Auctioning of satellite spectrum would greatly exacerbate this situation. Satellite operators, including Telesat, would re-evaluate the use of much less-attractive (auctioned) Canadian orbital spectrum in favour of spectrum licensed by other administrations without auctions. Of course, this would eliminate the possibility of Canada achieving social benefits as part of its licensing process. Furthermore, in the absence of the use of Canadian spectrum, the logic for an operator to locate its key functions and employment in Canada is greatly diminished.

In short, auctioning of satellite spectrum would be contrary to the national interest.

Research and Development (R&D)

Telesat is proud of its long history of R&D spending and close cooperation with the Canadian Space Agency, the Communications Research Centre, Canadian universities and other institutions. We maintain a state-of-the art R&D lab and a staff of engineers and technicians dedicated to R&D in Canada. Over the years, our R&D activity has resulted in the expansion of services into new frequency bands, the development of new services and applications, and the increase in efficiency and capabilities.

The Department has previously imposed an R&D obligation as a Condition of Licence for a number of commercial satellites. This is typically expressed as a requirement to spend on R&D a minimum of 2% of gross revenues resulting from operation of the satellite in question, averaged over a five year period. For those satellites where an R&D obligation does not apply, a similar requirement exists to contribute a percentage of gross revenues, or contribute equivalent satellite capacity, to special initiatives such as improving connectivity in underserved areas of Canada.

While the advancement of social goals and industrial development strategy through licence conditions may be desirable, the Department must consider such conditions in the context of the open and highly competitive satellite market discussed above. An R&D or other public benefit obligation is really a thinly disguised licence fee, the cost of which must ultimately be passed on to the end user. Thus, the Department needs to ensure that the total financial obligations imposed on a Canadian-licensed satellite do not render such domestic satellites non-competitive against foreign-licensed satellites authorized to serve the Canadian market.

R&D obligations currently included in licence conditions also impose an additional burden. Only R&D expenditures that meet the definition adopted by the Canada Customs and Revenue Agency (CCRA) are permitted, and audited statements must be provided. Since CCRA is oriented to tax policy, R&D may be somewhat narrowly-defined by CCRA, and legitimate R&D expenditures may be disqualified, or qualified only after lengthy discussions with CCRA auditors, a time-consuming and non-productive activity.

In an open and competitive market an appropriate R&D expenditure is essential for any operator to remain competitive. A satellite operator must continuously improve

processes, solve technical problems, and support technology developments in space and earth segment designs in order to ensure competitive service offerings and growth. Inadequate R&D funding will have negative implications in terms of growth and market share, and ultimately may threaten the very survival of the licensee. In other words, market forces will drive R&D expenditure, and there is no need for a 'big stick' approach via licence conditions. Stimulating innovation through the appropriate amount and timing of R&D expenditure should be the prerogative of the licensed Canadian operators.

Finally, we note that the last dozen FSS and BSS Licences granted by Department do not have any specific R&D obligations, presumably indicating the Department's policy shift on this matter in an appropriate direction.

Spectrum Fees

As indicated above, R&D requirements and certain other public benefit obligations are effectively additional licence fees that are being borne by Canadian–based companies and not by their global competitors in the context of an open and highly competitive satellite market. Telesat submits that Industry Canada must consider carefully the total financial obligations, of which mandated R&D obligations form only a component, imposed on a Canadian-licensed satellite. Industry Canada must ensure that it does not render such domestic satellites non-competitive vis-à-vis foreign-licensed satellites authorized to serve the Canadian market.

Simply put, the level of Canadian fees is disproportionately high when compared with other relevant jurisdictions. The fee structure in Canada varies by individual satellite due to the differing nature of the traffic on each, but the following totals for Telesat's 2009 licence submission are instructive:

- Fixed Satellite Service renewal fees: $3.66M
- Fixed Satellite Service additional fees (issuance fees and changes): $0.976M
- Broadcast Satellite Service fees: $2.1M

In total, Telesat's 2009 annual renewal fees for 10 satellites located in the six Canadian-licensed orbital positions exceeded $6.7M. In comparison, space station fees proposed for 2009 in the United States[3] are $USD 127,175 per satellite per year. Hence, a competitor to Telesat operating the same number of satellites licensed by the United States would have paid 10 times $127, 175 or $1.27 M - about 20% of that paid by Telesat, when exchange rates are taken into account. Moreover, in other relevant jurisdictions, such as the Netherlands and the United Kingdom, the fees are zero or set on a cost recovery basis.

Telesat believes that the current methodology and fee levels applicable to satellite licensing are outdated and in need of urgent reform. Based on correspondence with Industry Canada, it is Telesat's understanding that the long-awaited separate consultation

[3] FCC 09-38, *Notice of Proposed Rulemaking and Order, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Released May 14, 2009.

on the licensing and fee regime for fixed and broadcasting satellites is forthcoming. Telesat looks forward to the opportunity to provide detailed comments on this matter. Since Canadian licence fees are part of the cost structure which Canadian operators need to recover in all markets, their current high level puts Canadian operators at a competitive disadvantage compared to our foreign-licensed competitors- even in the Canadian market. This has an impact on the long-term viability of Canadian operators and therefore Telesat strongly urges the Department to initiate its long-awaited and promised consultation as soon as possible.

Conclusion

Telesat fully supports the comments of the CSSIF concerning the inadvisability of auctioning satellite spectrum. Satellite spectrum cannot be equated with terrestrial wireless spectrum, as it is by its very nature trans-national. Any move to auctioning satellite spectrum would be contrary to the national interest.

Telesat has for many years been an active proponent of R&D expenditure – an investment that has returned dividends to the Company and to the nation. While we will continue to invest in R&D, we believe the amounts and timing of such expenditure are best left to management, and not imposed as a condition of licence.

Canadian satellite operators are being placed at a competitive disadvantage as a result of inappropriately high licensing fees for fixed and broadcasting satellites. As a matter of urgency, the Department needs to initiate its long-promised public consultation on this subject.