



June 15, 2009

VIA E-MAIL ONLY:
spectrum.operations@ic.gc.ca

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

Dear Mr. Hill:

Re: Canada Gazette, Part I, Gazette Notice DGRB-005-09 - Consultation on Transition to Broadband Radio Service (BRS) in the Band 2500-2690 MHz, March 14, 2009

1. Bragg Communications Inc. ("Bragg") appreciates the opportunity to respond to the issues raised by Industry Canada (the "Department") in Canada Gazette Notice DGRB-005-09, *Consultation on Transition to Broadband Radio Service (BRS) in the Band 2500-2690 MHz* (the "Consultation Paper").
2. Bragg does not intend to comment herein on all of the issues raised in the Consultation Paper. Rather, the present comments are restricted to the issues raised in section 3 regarding whether a firm transition date is either necessary or appropriate. However, Bragg reserves the right to provide further comments on any and all issues raised in the Consultation Paper in Bragg's subsequent submissions.

Introduction

3. In March 2006, the Department issued policy decision DGTP-002-06 - *Policy Provisions for the Band 2500-2690 MHz to Facilitate Future Mobile Service* (the "Policy Decision"), wherein the Department announced its policy on the use of the spectrum in the 2500-2690 MHz band, and the Department's plan for enabling implementation of mobile services for both Multipoint Communication System

("MCS") and Multipoint Distribution Service ("MDS") operators. In the Policy Decision, the Department concluded that, for a variety of reasons, it was not prepared to launch a spectrum re-farming exercise at that time. Instead, the Department established a voluntary transition regime. However, in the Consultation Paper, the Department is seeking comments as to whether it should renew the MCS and MDS licences (which expire in 2011) and continue with the voluntary conversion to BRS, or adopt a firm transition date (March 31, 2011) for the implementation of BRS and related transition policies.

4. In these comments, Bragg sets out its position that, while Bragg does not take issue with the Department's plan to eventually convert the 2500-2690 MHz band to BRS, Bragg submits that it is neither necessary nor appropriate for the Department to force that transition in 2011.

The Department's Proposal Equates to Converting the Band to Mobile Spectrum

5. The 2006 Policy Decision adopted a spectrum utilization policy that designates this band for mobile, fixed and broadcasting use. The Consultation Paper cites the desire to provide flexibility as the policy rationale for the conversion: "[t]ransition to BRS licensing is intended to provide maximum flexibility to operators by allowing them to offer a variety of services based on market demand rather than on a single purpose licence...".¹ However, Bragg submits that it is most likely that any spectrum (including BRS) that is converted to multiple-use spectrum (including mobile usage), and then subsequently auctioned off, will be purchased exclusively by companies seeking to use it for the single purpose of providing mobile services. The reasons for Bragg's belief are twofold. Firstly, it is unlikely that there would be any non-mobile applicants that would be able to compete with a mobile operator with respect to the valuation of spectrum in an auction process. The Department need only compare the revenues generated by the mobile spectrum licensees with those generated by non-mobile licensees to confirm the veracity of this statement. Similarly, the potential for the spectrum to be used for mobile services would lead to the spectrum being valued at prices that would provide little or no incentive for an applicant intending to employ the spectrum for non-mobile uses to purchase it. It would simply not be a rationale course of action given the significantly lower revenues generated by non-mobile uses.
6. In light of all of the foregoing, Bragg submits that allowing multiple uses for a band that include mobile usage equates to converting the band into mobile spectrum.

A Fixed Transition Date Would Encourage Spectrum Hoarding by Incumbents

7. Bragg submits that, before forcing a conversion to BRS, the Department should consider whether there is a demonstrated need for the additional mobile spectrum that would be generated by the conversion. Bragg argues that it has been clearly established in other Department consultations that the incumbent operators in

¹ See page 1 of the Consultation Paper.

Canada have no need for additional mobile spectrum, nor will they in the near future. For example, Bragg directs the Department to the comments filed in response to Gazette Notice DGTP-002-07, *Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced wireless Services*. In that consultation, multiple parties filed submissions that clearly demonstrated that Bell, TELUS and Rogers all had a significant surplus of spectrum. As explained by MTS Allstream in its comments, and as verified in the report prepared by Lemay-Yates Associates, and filed by Mobilexchange Ltd., at the time of the 2007 consultation, the incumbent Canadian operators owned more mobile spectrum than their US counterparts. Specifically, the Lemay-Yates report showed that the amount of mobile spectrum available to Canadian incumbent operators before the Canadian AWS auction was higher on average than the amount of spectrum held by US operators after the auction of AWS licences in the United States.

8. Bragg submits that circumstances have not changed significantly since 2007. In fact, in the AWS auction, Canadian incumbents purchased virtually all the spectrum that was not set aside for new entrants. Accordingly, Bragg submits that there is nothing to suggest a need for additional spectrum for Canadian incumbent operators.
9. Bragg also notes that the AWS auction concluded on July 21st, 2008, just before the economic downturn hit the industry. Accordingly, as new entrants are struggling to construct new wireless networks, they are facing economic circumstances that are far less favourable than those existing when the spectrum was acquired. For this reason, Bragg submits that proceeding with the licensing of new mobile spectrum in the near term would simply allow incumbent operators (i.e., those with the deepest pockets) to hoard additional spectrum for which, as demonstrated above, they have no need. In other words, making additional mobile spectrum available at this time would simply allow the incumbents to further solidify their market advantage.

A Fixed Transition Date Would Not Benefit Competitors

10. Bragg further submits that forcing a conversion to BRS would not benefit competitors.
11. As noted by the Department in the Consultation Paper, the propagation characteristics of the 2500-2690 MHz band are good, but not as good as those of the 700 MHz spectrum. As a result, Bragg submits that, if the Department wants to make additional spectrum available to Canadian operators, it should focus its efforts on the 700 MHz band recently auctioned in the US, rather than the proposed fixed-date conversion to BRS. If 700 MHz spectrum were to be auctioned by the Department under conditions similar to those applied to the recent AWS auction (including a set-aside for new entrants), it would provide an opportunity for new entrants to secure this spectrum for their rural deployments and allow them to build networks comparable in coverage and site density to those built by incumbents operating within the 850 MHz band. The better propagation characteristics of the 700 MHz spectrum would clearly allow entrants to compete

with incumbents on a level playing field with respect to deployment of rural coverage. 700 MHz availability would also significantly reduce market entrants' capital requirements for their network build.

12. Bragg submits that BRS spectrum simply does not present the same advantages as the 700 MHz spectrum.

Conclusion

13. For all of the foregoing reasons, Bragg submits that it is neither necessary nor appropriate for the Department to establish a fixed transition date for the BRS conversion. A forced conversion would provide no benefit to competitors while simultaneously permitting further spectrum hoarding by the incumbents. In Bragg's view, the only valid reason for making new mobile spectrum available to Canadian operators in the near term would be to permit new entrants to take advantage of the propagation characteristics of the 700 MHz spectrum.
14. Nonetheless, Bragg appreciates that the Department likely wants to ensure that MCS and MDS spectrum can be converted to BRS should a valid need arise. To that end, Bragg proposes that the *current* MCS and MDS licensees be permitted to renew their *existing* licences for another 2 years when those licences expire in 2011. This would not only allow the Department to retain the flexibility to address market needs in case of industry or technological changes, it would also allow the Department more time to develop a strategy for BRS conversion that truly ensures that Canadians citizens are benefiting from the spectrum.

Sincerely,



Natalie MacDonal
Director, Regulatory Matters
Bragg Communications Inc.

Tel: (902) 431-9979
Fax: (902) 446-9979

*** END OF DOCUMENT ***