



**Craig Wireless Systems Ltd.**

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June 15, 2009

**BY EMAIL**

Ms. Heather Hall  
Manager, Emerging Networks  
Radiocommunications and  
Broadcasting Regulatory Branch  
Industry Canada  
300 Slater Street  
Ottawa, Ontario  
K1A 0C8

Dear Ms. Hall:

**Re: *Canada Gazette, Part I, March 14, 2009, Notice No. DGRB-005-09:  
Comments of Craig Wireless Systems Ltd. on Consultation on Transition  
to Broadband Radio Service (BRS) in the Band 2500-2690 MHz***

In accordance with the procedures set out in the above-referenced Gazette Notice, please find attached the comments of Craig Wireless Ltd. on the Department's *Consultation on Transition to Broadband Radio Service (BRS) in the Band 2500-2690 MHz*.

If you have any questions regarding the attached comments, please do not hesitate to contact the undersigned.

Yours very truly,

A handwritten signature in black ink, appearing to read "J. Drew Craig", is written over a horizontal line.

*for* J. Drew Craig  
Craig Wireless Systems Ltd.

Encl.

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**Canada Gazette, Part I, March 14, 2009, Notice DGRB-005-09**

**COMMENTS OF CRAIG WIRELESS SYSTEMS LTD.**

**ON CONSULTATION ON TRANSITION TO BROADBAND RADIO**

**SERVICE (BRS) IN THE BAND 2500 - 2690 MHz**

**I. INTRODUCTION**

Craig Wireless Ltd. ("CWS") is pleased to submit these comments in response to Industry Canada's *Consultation on Transition to Broadband Radio Service (BRS) in the Band 2500-2690*, DGRB-005-09 (the "Consultation Paper") published in the Canada Gazette on March 14, 2009.

CWS provides broadcast distribution and Internet access services in the provinces of British Columbia and Manitoba through its subsidiaries, Craig Wireless British Columbia Inc. (CWBC) and Craig Wireless Manitoba Inc. (CWMI). Although CWS currently provides these services using both multi-point distribution service (MDS) and "pre-WiMAX" technologies which operate in the 2500-2690 band, it is actively pursuing the development of next generation technologies, such as mobile WiMAX and LTE, for the purposes of deploying high data rate wireless services in the band.

Given its status as an incumbent MDS operator, as well as its future plans for the development of the 2500-2690 MHz band, CWS has a direct interest in the outcome of this proceeding. It therefore offers the following comments on the issues raised in the Consultation Paper for the Department's consideration.

**II. THE DEPARTMENT SHOULD ADOPT A FIRM TRANSITION DATE**

*The Department is seeking comments on its proposal to adopt a firm transition date to BRS rather than renew MCS and MDS licences.*

*Should a firm transition to BRS be adopted, the Department is proposing March 31, 2011, as the transition date to BRS, as it coincides with the end of licence term for the current MCS licences.*

As indicated above, CWS is actively pursuing the development of WiMAX and other technologies for deployment in the provinces of British Columbia and Manitoba and is on

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track to voluntarily convert all of its MDS spectrum to BRS before March 31, 2011. For this reason, CWS supports a mandatory BRS transition date of no later than March 31, 2011<sup>1</sup> in the two provinces where it currently provides services, namely British Columbia and Manitoba.

Notwithstanding the foregoing, CWS notes that it may be possible for certain MDS and MCS operators to transition to BRS sooner than March 31, 2011. CWS therefore recommends that the stakeholder proposal development (SPD) process referenced in the Department's Consultation Paper<sup>2</sup> be used by the participants in that process to explore opportunities to transition to BRS earlier than March 31, 2011.

### **III. CRITERIA TO BE USED FOR BRS LICENCES**

#### **a) MCS Licences in Manitoba**

*The Department seeks comments on the options that should be applied to the Manitoba school boards and the commercial MCS licensee:*

- *Option 1 - Eligible for conversion to BRS;*
- *Option 2 - Subject to a transition policy; or*
- *Option 3 - Grandfathered.*

In the province of Manitoba, both CWS as well as a handful of provincial school boards hold MCS spectrum authorizations. According to the Consultation Paper, the MCS authorizations held by the school boards range in size from 1.5 MHz to 26.6 MHz, whereas the MCS authorizations held by CWS range in size from 6 MHz to 24 MHz and are paired, in some instances, with an additional 10 MHz of spectrum in the 2150 to 2160 MHz band.

CWS believes that the existing holders of MCS spectrum authorizations in the province of Manitoba should be eligible to convert their spectrum to BRS based on their existing use and development of spectrum in the 2500-2690 MHz band. CWS notes in this regard that

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<sup>1</sup> CWS recognizes that the expiry date established by the CRTC for holders of MDS BDU broadcasting licences is August 31, 2011 (and not March 21, 2011). This fact, however, does not alter CWS' support for a mandatory transition date of March 31, 2011. In fact, as noted above, CWS supports the adoption of earlier transition dates where these can be negotiated through the SPD process.

<sup>2</sup> Consultation Paper, page 14.

both CWMI and the school boards have taken technical and financial risks to develop their MCS spectrum authorizations and there is no policy basis to revoke their spectrum rights simply because the regulatory framework in Manitoba is different than elsewhere in Canada. All other holders of MCS spectrum authorizations in Canada are being given an opportunity to convert their licences to BRS authorizations. In these circumstances, it would be manifestly unfair to deprive MCS licensees in the province of Manitoba of an opportunity that is being afforded to all other MCS licensees in Canada.

With respect to the question as to whether any of the existing MCS licence holders in the province of Manitoba should be required to “return” any of their MCS spectrum if they wish to provide mobile services, CWS believes that it would not be appropriate to require these licence holders to do so given the very small amounts of spectrum that were originally licensed to these entities and given the markedly different regulatory framework that was established in the province of Manitoba for MCS spectrum compared to that which was established for the rest of the country. CWS notes in this regard that all other MCS licensees in Canada hold 96 MHz of spectrum. By comparison, MCS licensees in Manitoba have roughly one quarter of this amount. Needless to say, if one of these licensees was required to return one third of a total spectrum grant of, say 26 MHz, this would leave this entity with an insufficient amount of spectrum to develop next generation BRS services, such as 4G LTE systems which are based on a minimum 20 MHz paired allocation.

Furthermore and in any event, CWS notes that the “spectrum return” policy articulated in *Policy Provisions for the Band 2500-2690 MHz to Facilitate Future Mobile Service*, DGTP 002-06, dated March 31, 2006, (the Policy) appears to be predicated on the assumption that it is only parties that were authorized to use the full allocation of MCS or MDS spectrum in the 2500-2690 MHz band that are required to return approximately one third of this spectrum. This is evident from section 3 of the Policy which contemplates the return of two blocks of spectrum representing 33 MHz each. If this Policy was applied to an MCS licensee in Manitoba, it would mean that the licensee would have to return all of its licensed MCS spectrum to the Department.

Finally, CWS submits that all existing holders of MCS spectrum authorizations in the province of Manitoba should endeavour to convert their spectrum to BRS by March 31,

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2011 or sooner if they are in a position to do so. As the only other holder of an MDS authorization in the province of Manitoba, CWS is prepared to work with the affected school boards to facilitate this transition.

**b) MCS Licences in Other Provinces**

As indicated above, CWS supports a mandatory BRS transition date of no later than March 31, 2011 in the two provinces where it currently provides services, namely British Columbia and Manitoba. CWS understands that most current generation MCS equipment can be re-tuned to frequencies throughout the entire 2500 - 2690 MHz band. Provided there is sufficient channel separation for the duplex method used, there is no reason, therefore, why MCS licensees cannot also transition to BRS by March 31, 2011. In fact, as noted above, it may be possible for certain MDS and MCS operators to transition to BRS sooner than March 31, 2011. For this reason, CWS submits that the SPD process should be used to explore these opportunities.

**c) MDS Authorizations**

*Industry Canada invites comments on which component(s) (i.e. CRTC Decision, Industry Canada broadcasting certificate, and CRTC licence) should be required for licensed MDS in order to qualify for conversion to BRS in a given area.*

*Should MDS stations that do not meet the eligibility criteria be protected through a transition policy (notification period prior to displacement) in the event that a firm transition date to BRS is adopted?*

In the view of CWS, as long as an MDS operator has received a CRTC decision authorizing it to provide service in a given area and has submitted an application to the Department for the requisite broadcasting certificate, this should entitle the MDS operator to convert to BRS in the area in question.

**d) CRTC Licence-Exempt Broadcasting Stations in Rural Areas**

*Comments are also sought on whether CRTC licence-exempt systems that serve small, rural and remote communities having small populations should be treated differently from the CRTC-licensed systems.*

*Should these undertakings not be eligible for conversion and a firm transition date to BRS is adopted, the Department seeks comments on what would constitute a suitable notification period for these stations to retune to available frequencies or cease operating. Notification would be given only if the MDS station would prevent the deployment of a BRS system.*

CWS does not have any comments on this issue at the present time. CWS reserves the right to submit comments on this issue in its reply comments in this proceeding.

#### **IV. GEOGRAPHIC SERVICE AREAS FOR MCS AND MDS LICENSEE**

*Industry Canada seeks comments on whether Tier 3 or Tier 4 licence areas are the most appropriate for the conversion of site-specific MCS licences to BRS spectrum licences, where applicable, and for conversion of MDS authorizations, including Industry Canada spectrum licences issued in the 2596-2690 MHz band.*

CWS submits that Tier 2 serving area licences are the most appropriate for the conversion of both MCS and MDS licences to BRS. CWS notes in this regard that once MCS and MDS spectrum is converted to BRS spectrum, MCS and MDS operators will become direct competitors of each other. In the view of CWS, in order to ensure a level playing field between these two operators, MCS and MDS operators should be treated in a competitively neutral fashion. Since most MCS licences have been issued on a province-wide, Tier 2 serving area basis (including in the province of British Columbia where CWS currently operates a Class 1 MDS BDU system), CWS submits that it would be unfair to restrict MDS operators to geographic serving areas that are significantly smaller than the geographic areas that are currently licensed to MCS operators.

In fact, if the Department intends to conduct an auction of returned MDS and MCS spectrum, it is more than likely that the participants in this auction will request spectrum blocks that cover the same geographic areas that are assigned to existing MCS operators (i.e., Tier 2 blocks) in order to ensure that the new entrants are on the same competitive footing as the incumbents. Needless to say, if the Department grants these requests (which is not an unrealistic assumption) without also creating Tier 2 spectrum licences for MDS operators that convert to BRS, this would mean that MDS operators would be treated differently than all other BRS licensees in the band. In the view of CWS, the Department should endeavour, to the greatest extent possible, to align the geographic service areas for BRS licences within the band.

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In fact, given that the mobile service has now been allocated to the 2500-2690 MHz band, the Department should endeavour also endeavour to align the geographic service areas for BRS licences with those that have been assigned to mobile spectrum in other bands. CWS notes in this regard that many of the blocks of spectrum that were made available in last year's AWS auction were classified as Tier 2 licences, and most other blocks of spectrum in the PCS and cellular bands are classified in the same manner. The Department should adopt a similar approach to the geographic serving areas associated with MDS spectrum that is converted to BRS spectrum.

In no event, should the geographic serving areas for an existing MDS operator be any smaller than a Tier 3 serving area. It is important to note in this regard that the coverage contours of many existing MDS system, extend beyond the geographic boundaries that have been used to define Tier 4 serving areas. Given the fact that MDS operators currently provide service to customers located in these outlying areas, it would not be appropriate to force these operators to scale back their operations in order to conform to the contours of a smaller, Tier 4 serving area. In the vast majority of instances, the Tier 4 serving area boundaries do not reflect the true coverage of existing MDS systems and would be entirely inappropriate for a mobile service, in any event, because customers of mobile services have a minimum expectation that they can receive service from their chosen service provider beyond the boundaries of the municipality in which they live. Mobile customers expect, at a minimum, that they can receive service from their chosen mobile provider throughout a much larger geographic region. CWS therefore submits that the Department should not assign Tier 4 serving areas to any BRS authorizations.

## **V. CONDITIONS OF LICENCE**

*Industry Canada seeks comments on these licence conditions proposed for voluntarily converted BRS licences.*

CWS has reviewed the licence conditions that are proposed in the Consultation Paper and does not have comments on these conditions at this time except with respect to the condition of licence relating to research and development (R&D).

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## **Research and Development**

CWS notes that in *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*, DGRB-001-09, issued in April 2009, the Department has invited interested parties to comment on the ongoing need to include a condition of licence relating to R&D. CWS believes that such a condition is not required because market forces ensure that R&D will be conducted by competing firms regardless of whether they are required by condition of licence to perform such R&D. The only difference between the former situation (i.e., market forces) and the latter (i.e., an explicit condition of licence requiring R&D spending) is that the R&D condition of licence distorts the timing of when a given firm will engage in R&D expenditures. In the view of CWS, this timing should be determined by conditions in the market, and not through artificial regulatory requirements which can create an inefficient allocation of resources.

One way or the other, if the Department determines that the R&D condition of licence should be eliminated as a result of the proceeding initiated by DGRB-001-09, CWS submits that the R&D licence condition proposed in Item 6.11 of the Consultation Paper should be eliminated as well.

## **VII. CONCLUSION**

CWS thanks the Department for the opportunity to submit these comments and looks forward to the reply stage of this proceeding.

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