

Look Communications Inc.



Reply Comments for

Gazette Notice No. DGRB-005-09

**Consultation on Transition to Broadband
Radio Services (BRS) in the Band
2500-2690 MHz**

July 17, 2009



July 17th 2009

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

Sent via email: spectrum.operations@ic.gc.ca

Look Communications Inc. Response to Proposals in:

Gazette Notice DGRB-005-09 — March 10 2009: Consultation on Transition to Broadband Radio Services (BRS) in the Band 2500-2690 MHz

Dear Director:

Look Communications Inc. (“Look”) is pleased to provide reply comments to the above noted consultation. The focus of Look’s reply comments will be on the issue of eligibility criteria and geographic area conversion for MDS operators as well as transition issues.

Look’s management and technical group are available to discuss any or all of these matters.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Owen Scicluna', is written over a light blue horizontal line.

Owen Scicluna
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Attachment

1. MDS Eligibility Criteria

1.1 Broadcast Certificate Vs. Broadcast Licence – What is More Important?

Telus claims that,

Spectrum outside the footprint of a broadcast certificate should all be classified as unassigned and be subject to auction. A general CRTC licence does not bestow any right to spectrum. Only a broadcast certificate authorizes a right to use spectrum.

Look does not agree with Telus' assertion. Telus' interpretation completely ignores the authoritative status of CRTC broadcasting licences and it claims that a broadcast certificate is analogous to a spectrum licence. The role of a broadcast certificate is to certify that a broadcast installation meets the technical requirements of the department for operation. It is a technical certificate only and is sometimes named as such.¹ The technical nature of a broadcast certificate is defined in Broadcasting Procedures and Rules 1 (BPR-1)

The Radiocommunication Act stipulates that no radio apparatus that forms part of a broadcasting undertaking may be installed or operated without a broadcasting certificate issued by the Minister of Industry. Pursuant to paragraphs 5(1)(a) and (d) of the Radiocommunication Act, the Minister is empowered to fix the terms and conditions of the broadcasting certificate and to establish technical requirements and standards in relation to broadcasting undertakings.²

An application for a broadcast certificate is a non-competitive process for areas where a broadcast licence is mandatory. For territories where a broadcast licence is issued by the CRTC only the holder of a broadcast licence can apply for a broadcast certificate in the MDS band. As such, the right to use MDS spectrum is ultimately conferred by the broadcast licence.

MDS operators such as Look underwent a competitive process to secure a MDS broadcast licence. For Look, the first time was in 1997 for its Southern Ontario through to Kingston licence³ and the second time in 1998 for its Ottawa region and Quebec licence⁴ (both were combined into a single licence in 2004). In view of this, it is

¹ *Framework for Spectrum Auctions in Canada*, August 1998, p. 2.

² *Broadcasting Procedures and Rules (BPR-1)*, p. i.

³ *Broadcasting Decision CRTC 97-370*, August 1997.

⁴ *Broadcasting Decision CRTC 98-55*, February 1998.

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important to consider that the right to use MDS spectrum ultimately flows from the broadcast licence while the broadcast certificate simply serves as a technical certificate to authorize a specific installation to operate within certain technical parameters established by Industry Canada.

The role of broadcast licences has been debated in past consultations, especially in view of the fact that some international jurisdictions now auction broadcast licences. In a consultation that ultimately resulted in the development of the policy titled *Framework for Spectrum Auctions in Canada*, the Department raised the question of whether it would be appropriate for it to auction licences for broadcasting services. The Department noted significantly that licences issued under the *Broadcasting Act* confers a right to licensees to operate a radio apparatus. Specifically, the Department stated the following in this regard:

Some interest has been expressed in the extent to which the Department might implement auctions for broadcast services. It should be noted that broadcast licences are issued by the Canadian Radio-television Telecommunications Commission (CRTC) under the Broadcasting Act. Where a licence issued under the Broadcasting Act entitles the licensee to operate a radio apparatus, the applicant must obtain a broadcast certificate (or assurance that such a certificate will be issued) from the Minister of Industry. Broadcast certificates are issued by the Minister on a non-exclusive basis and as such are not amenable to auction.⁵

In light of the above, the Department concluded that it would not be appropriate for it to auction spectrum allocated to broadcasting services and that its role would be limited to issuing broadcasting certificates that would cover the technical aspects of broadcasting licences already issued by the CRTC.

Industry Canada will not auction spectrum allocated to broadcasting services. The issuance of broadcasting licences continues to be the responsibility of the Canadian Radio-television and Telecommunications Commission (CRTC) under the Broadcasting Act. The Minister of Industry's role in broadcasting extends to spectrum management and the technical aspects of broadcasting, including determining frequency allotments and issuing technical certificates to broadcasting licensees selected by the CRTC.⁶

This approach to broadcasting licences and broadcasting certificates was upheld by the Department in the 2001 update to the *Framework for Spectrum Auctions in Canada* where it states:

⁵ *Consultation on Issues Related to Spectrum Auctioning*, August 1, 1997, p.8.

⁶ *Framework for Spectrum Auctions in Canada (Issue 1)*, August 1998, p. 2.

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2.2 When auctions will not be used

The instances in which auctions will not be used as a spectrum assignment mechanism are outlined below.

2.2.1 Broadcast Licences

The issuance of broadcasting licences is the responsibility of the Canadian Radio-television and Telecommunications Commission (CRTC) as outlined in the Broadcasting Act. The Minister of Industry's role in broadcasting extends to spectrum management and the technical aspects of broadcasting, including determining frequency allotments and issuing technical certificates to broadcasting licensees selected by the CRTC. Thus, broadcasting licences will not be the subject of an Industry Canada spectrum auction.⁷

It is clear from the above that Industry Canada has consistently recognized that broadcasting licences issued by the CRTC confer a legitimate right to operate a radio apparatus within a given area and that broadcasting certificates that address certain technical matters would be issued to parties that have received a CRTC broadcasting licence.

With respect to the area covered by the CRTC broadcasting licence, it is important to note that the Department has viewed such areas as “authorized serving areas” irrespective of whether a broadcasting certificate has been issued. Look notes in this regard that, at the time that the Department imposed a moratorium on MDS broadcasting spectrum in unlicensed areas, it recognized the authoritative nature of the serving areas defined in CRTC broadcasting licences.

The moratorium on unassigned spectrum-areas will not affect existing MDS broadcasting licences and the authorized serving areas or the ability of the Commission to deal with these licences as required, e.g. modifications, renewals, transfers, etc.⁸

Moreover, Look believes that it would be entirely unreasonable for the Department to restrict conversion of MDS to BRS to areas where MDS licensees have broadcasting certificates since it was the Department itself that imposed a moratorium on new applications for broadcasting certificates in the band 2500-2690 MHz.⁹ Absent this moratorium, the licensees would have been at liberty to further develop their systems and services and may have sought new broadcasting certificates in order to do so. At the same time it is significant to note that, while the Department has imposed a moratorium

⁷ *Framework for Spectrum Auctions in Canada (Issue 2)*, October 2001, p. 3.

⁸ *Moratorium on Multipoint Distribution Services (MDS) Broadcasting Spectrum in Unlicensed Areas (SAB-001-03)*, June 2003.

⁹ *Consultation on Transition to Broadband Radio Service (BRS) in the Band 2500-2690 MHz (DGRB-005-09)*, March 2009, p. 1.

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on new certificates, this has been done despite the fact that the CRTC broadcasting licences and authorized service areas are still valid.

Now that the Department will effect a transition from MDS broadcasting licensing to BRS licensing, there is a need to transfer the licensing authority from the CRTC to Industry Canada. As this is essentially a transfer from one authority to another authority, it would be grossly unfair to strip an MDS licensee of its legitimate right to operate a radio apparatus within the area covered by its CRTC broadcasting licence(s).

It is clear therefore that Telus' assertion that a CRTC licence does not bestow any right to spectrum and that only a broadcast certificate authorizes a right to use spectrum is false. A CRTC broadcast licence most certainly grants an operator the right to use MDS spectrum and the broadcast certificate simply serves as a technical certification for a specific installation. Further, Telus' claim that the conversion of MDS to BRS must be limited to areas where a broadcasting certificate has been issued ignores the authoritative status of CRTC broadcasting licences and CRTC authorized service areas. Lastly, it would be unreasonable and unfair for the Department to restrict conversion to BRS in the manner advanced by Telus since the Department's moratorium on new broadcasting certificates has prevented MDS licensees from further developing their services despite the fact that their CRTC broadcasting licences and authorized serving areas are still valid. In light of the above, the Department should disregard Telus' claims and proceed with converting MDS to BRS in the manner proposed by Look in its comments.

1.2 Service Area Definition for the Eligibility Criteria

Both the RABC and SaskTel note that the department intends to apply a set of criteria to determine if a MDS operator meet the eligibility requirements for a BRS licence in a given area, but the area for the conversion has not been defined by these parties. For example, SaskTel states that

SaskTel understands that there may be discrepancies between the service areas identified by the broadcast certificates and the market areas defined by the CRTC

Neither the RABC nor SaskTel proposed a solution to this dilemma, leaving the matter in the hands of Industry Canada. Look urges Industry Canada to adopt the proposal put forward by Look. The Look proposal takes into consideration several eligibility criteria and introduces additional requirements such that BRS licences would only be issued to those entities that have satisfied a minimum implementation requirement that is similar to that used for PCS and AWS licences.

2. Service Area Tier Size for MDS Licence Conversion

Look supports the comments by MTS Allstream, Inukshuk and Craig Wireless for Tier 2 area allocations for MDS licences. This agrees with the Look proposal for a mix of Tier 2, 3 and 4 licences as warranted by the province-size scale of the MDS licence service areas (most MDS broadcast licences are regional licences). Although certain parties support the use of Tier 3 areas for conversion of MDS to BRS, it is significant that some of these parties have acknowledged that the use of larger service areas would be more appropriate for wide area, high mobility systems. Given the vast area assigned to MDS licensees, and the need for them to be on an equal footing with MCS licensees, Tier 2 licences should be used for converting MDS to BRS, subject to the requirements outlined in Look's proposal.

3. Call for a Moratorium on BRS Licence Conversions

Telus has urged the Department to place a moratorium on the conversion to BRS licensing until after a BRS auction. Telus claims that a converted BRS licensee would have a competitive advantage since they can begin their implementation of BRS before the auction.

Telus' position contradicts the Department's 2006 policy for the voluntary conversion from MCS and MDS to mobile licences¹⁰ and it would be grossly unfair to MDS and MCS operators whose business plans have been affected, if not put on hold for three years, as they have waited for the current consultation to commence.

In any event, following the BRS auction, new licence holders will enjoy a benefit over incumbents in that they will not need to worry about having to transition existing networks and customers from MCS or MDS to BRS.

In the meantime, Telus is free to develop its HSPA network and earn mobile broadband revenue while MCS and MDS licensees will likely need to undergo at least another year of consultations before the BRS band plan is finalized. MCS and MDS licensees have patiently waited for three years for this series of consultations to begin and it will be some time before it will be completed.

Look appreciates this opportunity to provide its comments to the Department.

*****End of Document*****

¹⁰ *Policy Provisions for the Band 2500-2690 MHz to Facilitate Future Mobile Service (DGTP-002-06).*