

Consultation on an Application to Use Mobile Satellite Spectrum to Provide Complementary Terrestrial Mobile Service to Improve Satellite Coverage

**Industry Canada – Canada Gazette Notice DGTP-009-01,
October 19, 2001**

Reply Comments of W2N Inc.

W2N Inc. (“W2N”) hereby provides the following reply comments in response to Industry Canada’s consultation notice referred to above (the “*Consultation Notice*”).

In our initial comments, W2N welcomed the prospect of opening the L-band and other MSS spectrum bands to competitive entry for terrestrial mobile services. However, W2N opposed TMI’s plan to restrict such mobile terrestrial use to TMI alone. In the following reply comments, we will respond to some of the positions advanced by other participants in this proceeding. Failure by W2N to address any particular position should not be viewed as support for that position.

Flexibility is Good

Industry Canada has traditionally been open to the flexible use of spectrum, as a means of maximizing the efficient use of spectrum and ensuring that spectrum can be redeployed to new applications. In its recently issued “Guidelines on the Licensing Process and Spectrum Release Plan (2001 Edition)”, RP-020, December 2001, Industry Canada discussed its flexible approach to releasing spectrum as follows (p.1):

The Department has indicated that such a plan can only be a “best effort” forecast of spectrum to be licensed, and must be sufficiently flexible to adjust to spectrum demand,

public interest, international and commercial developments, as well as other unforeseen factors that may arise. This list of spectrum resources will be updated regularly to reflect changes in spectrum policies, demand for certain bands, and particular directions to advance competition and the public interest. (underlining added)

There are many examples in the past where Industry Canada has taken the initiative to redeploy spectrum. For example, in 1996, Industry Canada accommodated the needs of wireless operators for additional spectrum through the redeployment of point-to-point microwave at 1.9 GHz to PCS . Similarly, Industry Canada permitted the redeployment of mobile dispatch frequencies to ESMR. In each case, the redeployment achieved benefits by facilitating the introduction of new services of value to Canadian consumers, and introducing new competitors into the Canadian market.

TMI's application to redeploy the L-band from MSS to open it to terrestrial applications is a request for the flexible use of the L-band spectrum.¹ W2N encourages Industry Canada to adopt a flexible approach to the L-band because flexibility allows for spectrum to achieve its highest and best use. It is quite clear that most MSS operators have not succeeded, and that redeployment to terrestrial use is desirable. Absent a flexible approach, this spectrum will remain underutilized.

Flexibility does not, however, mean that Industry Canada must rescue TMI's unsuccessful business plan to develop its MSS business. A MSS business can be viable if managed and operated properly, as Inmarsat points out:²

¹ The FCC's NPRM in the proceeding that is parallel to that underway by Industry Canada is entitled: "In the matter of Flexibility for Delivery of Communications"

² Inmarsat Comments, pp. i-ii

Inmarsat offers a wide range of services to users who have mobile communications needs or who are beyond the reach of terrestrial communications networks.... Inmarsat has built a vibrant business serving these types of [MSS] needs, rather than attempt to compete with cellular providers.

In contrast to Inmarsat's pride in its success, the comments of MSV (the parent of TMI) are full of despair and excuses for failure, citing inability to service urban environments, unavailability of low cost terminals, and high priced service for consumers.³ The solution to TMI's lack of success is not, however, to reward MSV with a terrestrial cellular licence, as MSV would like. The solution is to recognize that the L-band spectrum is not being exploited optimally, and that a process of re-deployment should be undertaken in which all interested parties, including W2N, can participate.

Implementation is Feasible

MSV points to a number of difficulties in co-ordinating a separate L-band terrestrial network with MSV's satellite network. In this way, MSV attempts to justify its theory that only integrated terrestrial/satellite operators should be permitted. In our earlier comments, we explained that this theory was completely self-serving and unconvincing.⁴ We will address one of MSV's arguments in the following paragraphs.

MSV argues that there is no role for terrestrial-only operators in the L-band co-ordination meetings where the L-band spectrum is re-allocated each year among the 5 MSS operators.⁵ The difficulties, according to MSV, are (1) the rules of this club do not contemplate the participation of non-MSS operators, (2) the terrestrial and satellite

³ MSV Comments, pp. 4-5

⁴ W2N Comments, p. 12

operators will spar with one another for spectrum allocation, and (3) the results of these closed-door sessions may be highly prejudicial to a terrestrial operator. MSV believes that these hurdles are sufficient to foreclose the possibility of distinct terrestrial operators.

We expect that establishment of terrestrial service using the L-band will complicate the inter-operator negotiations and lead to new incentives. That will be the case regardless of whether only the five satellite operators offer terrestrial service, or whether other operators are allowed to do so. Consequently, even under MSV's preferred scenario, the MSS club is bound to become less harmonious as operators negotiate over both their satellite and terrestrial needs at the annual meetings. However, we do not view the arrival of terrestrial-only operators as leading to significantly more complexity.

In the near term, the Canadian L-band operators – both space and terrestrial – will want to co-operate in preparing for the five-party meetings. In order to provide a forum for such co-operation, the Canadian L-band licensees should establish an operators' forum under the leadership of Industry Canada.⁶ Together, they will work out their objectives and tradeoffs in advance of the annual negotiations. It will not be necessary for all operators to attend the negotiations; rather, MSV could do so as their representative. The requirement for such co-operation would become a condition of any licence that Industry Canada awards to L-band operators.

⁵ MSV Comments, p. 17

⁶ Industry Canada will recall that such a co-operative approach was employed several years ago in regards to Teleglobe's participation in Intelsat. Although Teleglobe was the only authorized Canadian participant, it agreed to meet and co-ordinate with other Canadian users of Intelsat services.

In the longer term, it will probably be necessary to revisit the five-party agreement between the L-band licensees in order to amend it to properly reflect the interests of the terrestrial operators.

GMDSS and AMS(R)S Priority

One of the questions posed by Industry Canada concerns priority access by GMDSS and AMS(R)S to L-band spectrum. MSV points out that real time priority access and pre-emptive operation of these safety services has already been implemented in the current MSS control mechanisms.⁷ MSV suggests, however, that having independent operators in the L-band could complicate these priority access and pre-emptive functions.

W2N does not believe that the presence of independent terrestrial operators will result in any significant degree of complication. Telus Mobility, for one, makes some useful and uncomplicated suggestions for accommodating terrestrial operators.⁸ However, to allay any possible concerns that Industry Canada may have on this score, Industry Canada may wish to impose a licence condition requiring terrestrial and operators to accede to priority access and pre-emptive operation for GMDSS and AMS(R)S in accordance with ITU regulations, and that they demonstrate this functionality to Industry Canada prior to commencing service.

⁷ MSV Comments, p. 19

⁸ Telus Mobility Comments, p. 6

Licence Fees

As the terrestrial use of the L-band will compete with cellular and PCS operators, W2N agrees with Telus Mobility that these competing operators should incur the same fee schedule.⁹ Thus, if the terrestrial licences are granted pursuant to an auction, the auction fees constitute the licence fees. If, however, the licences are granted pursuant to a comparative selection process, the fee schedule established for the cellular and 1996 PCS licensees should be imposed.

Bell Mobility, which does not favour independent terrestrial operators, argues that the MSS fee schedule should be employed, as the system will remain primarily a MSS.¹⁰ Yet Bell Mobility acknowledges that because “the current L-band MSS model has not proven to be viable” a “larger market access with ubiquitous service offering, including in urban areas, is necessary...”¹¹ What Bell Mobility is really saying in these latter comments is that the service will become very much a terrestrial service – one that competes head-to-head with cellular and PCS operators in urban areas. Indeed, it is this urban traffic that will be the salvation of the MSS model that, in Bell Mobility’s view, “has not proven to be viable”. As such, there is no reason to apply the much less expensive MSS fee schedule to the terrestrial L-band operations.

How Much Spectrum is Enough?

In our initial comments, we argued that TMI’s application should be denied because otherwise it will lead to a breach of the spectrum cap rules found in RP-021.

⁹ Telus Mobility Comments, p. 8

¹⁰ Bell Mobility Comments, p. 7

¹¹ Bell Mobility Comments, p. 5

MSV and its affiliate, Bell Mobility, disagree. They maintain that the spectrum cap was never intended to apply to MSS spectrum.¹² MSV adds that the use of MSS spectrum for terrestrial use is not a request for new spectrum such that the spectrum cap is violated. Bell Mobility argues that FCC does not include MSS spectrum in its calculation of the spectrum cap and “the FCC has not proposed the consideration of the spectrum cap” in its NPRM to examine MSV’s application to redeploy the L-band for terrestrial use.

Both MSV and Bell Mobility have ignored the straight-forward wording of RP-021. In it, Industry Canada quite clearly states that the spectrum cap includes, among other things, “spectrum licensed for cellular mobile radiotelephony services, and for similar public high-mobility radiotelephony services”. It is undeniable that TMI wants the MSS spectrum to offer a public high-mobility radiotelephony service. As such it is caught by the spectrum cap rule, and regardless of whether the spectrum is newly licensed or reused.

It is a *non-sequitor* for MSV to say that the spectrum cap was never intended to apply to MSS spectrum. The premise of this statement is that the MSS spectrum was intended to apply to public high-mobility radiotelephony service. But this premise is flatly wrong. The very purpose of TMI’s application is to change the use of MSS spectrum to allow it to be used for public high-mobility radiotelephony. If MSS spectrum were intended for such use, no application to change the use would be needed.

Bell Mobility’s reference to the FCC’s approach is of no relevance. As Industry Canada is aware, the FCC has recently decided that the wireless market is sufficiently

¹² MSV Comments, p.22; Bell Mobility Comments, p.7

competitive in the USA that the spectrum cap will no longer needed to foster a competitive market and can be phased out. Industry Canada, however, has decided in RP-021, which was issued barely 2 years ago, that the spectrum cap should be maintained in Canada. The Canadian market is clearly much less competitive than the US market. Indeed, as noted in our initial comments, that there are more than 34 million people in the US that live in areas where they access to seven or more competing mobile wireless providers.¹³ This is more than all of the people in Canada, none of whom have access to more than four such competing providers, and a significant number of whom have access to only one or two providers. Therefore, Bell Mobility's reference to the FCC's spectrum cap approach is of little relevance and no assistance to Industry Canada in this proceeding.

January 11, 2002

¹³ W2N Comments, p. 4, footnote 4. Note that the 34 million person figure has increased by 170% in one year, suggesting that the US market is becoming even more competitive as operators extend their networks further.