Decisions on the Licensing Framework for Fixed-Satellite Service (FSS) and Broadcasting-Satellite Service (BSS), Implications for Other Satellite Services in Canada, and Revised Fee Proposal
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1. **Intent and Scope**

The intent of this document is to announce decisions related to changes in various elements of Industry Canada’s satellite licensing framework, including:

- the use of a new first-come, first-served (FCFS) process to assign satellite spectrum, including for FSS and BSS spectrum;
- the licence and fee regime applicable to assignments of FSS and BSS spectrum; and
- the obligations associated with FSS and BSS satellite licences.

These issues were raised in the public consultation process initiated in March 2012 through *Canada Gazette* Notice SMSE-003-12 — *Consultation on the Licensing Framework for Fixed-Satellite Service (FSS) and Broadcasting-Satellite Service (BSS) in Canada.*

Licensing of other satellite services, such as mobile-satellite services, amateur and space science satellites, are already subject to FCFS licensing. Under this current FCFS process, Industry Canada works with applicants to improve their applications to a point where they are acceptable to the Department. This practice will be discontinued and, as noted in the consultation, the rules and procedures to be established under the new FCFS licensing process will be applied to the licensing of all satellites, as explained in Section 3.1.

1.1 **Mandate**

The Minister of Industry, through the *Department of Industry Act*, the *Radiocommunication Act* and the *Radiocommunication Regulations*, with due regard to the objectives of the *Telecommunications Act*, is responsible for spectrum management in Canada. As such, the Minister is responsible for developing goals and national policies for spectrum resource use and ensuring effective management of the radio frequency spectrum resource.

1.2 **Legislation**

The Minister of Industry is provided the general powers for spectrum management in Canada pursuant to Section 5 of the *Radiocommunication Act* and may set fees for spectrum licences under Section 19 of the *Department of Industry Act*. The Governor in Council may make regulations with respect to spectrum management pursuant to Section 6 of the *Radiocommunication Act*, as prescribed under the *Radiocommunication Regulations*.

1.3 **Implementation**

The implementation of the framework announced in this paper will take place in two stages. Those elements related to the licensing process and the licence conditions will take effect when new policy and procedures documents are published. The policy framework RP-008, *Policy Framework for the Provision of Fixed Satellite Services*, will be revised and expanded to apply to BSS, and Client Procedures Circular 2-6-02, *Licensing of Space Stations*, will be revised to explain the new licensing process. These documents will be published shortly, but Industry Canada will not lift the moratorium on new FSS and BSS licences until approximately one month after the date of their publication. This will give the industry an appropriate amount of time to review the decisions, the policy framework and the procedures, as well as to seek any necessary clarification. Existing approvals in principle for satellites not yet in operation that carry the public benefit condition are considered amended to the reduced level, as described in Section 3.3.
The second stage of this framework implementation is related to the new fee regime, which shall be subject to the process established by the *User Fees Act* (UFA). The new fees will therefore not be implemented until the UFA process is complete and a new fee order for satellite spectrum licences is in place. Until that time, Industry Canada will continue to issue approvals in principle, followed by radio licences once satellites are operational. The existing fee structure will apply.

Industry Canada is seeking additional comments on its revised fee proposal as outlined in Section 3.2 of this paper. The deadline for submitting comments to Industry Canada is December 6, 2013. There will be no opportunity for reply comments. Industry Canada will then begin the UFA process.

2. **Background**

As stated in the *Consultation on the Licensing Framework for Fixed-Satellite Service (FSS) and Broadcasting-Satellite Service (BSS) in Canada*, Industry Canada’s objective in modifying the licensing process for FSS and BSS licences is to establish an up-to-date, attractive licensing framework when it is compared with other comparable satellite licensing jurisdictions. Comments and/or reply comments were received from eight parties:

- Ciel Satellite Limited Partnership (Ciel);
- Hughes Network Systems LLC and Gamma Acquisition Canada ULC (Hughes/Gamma);
- 95WCanSatCo Satellite Communications Inc. (95WCanSatCo);
- Satellite Industry Association (SIA);
- Shaw Communications Inc. (Shaw);
- Telesat Canada (Telesat);
- Xplornet Communications Inc. (Xplornet); and
- the Government of the Northwest Territories (GNWT).

In its analysis of the comments and when making decisions on the satellite licensing framework, Industry Canada has considered the overall objective mentioned above, as well as the objective and enabling guidelines of the *Spectrum Policy Framework for Canada*.

3. **Discussion and Decision**

3.1 **Licensing Process**

3.1.1 **First-Come, First-Served (FCFS) Licensing Process**

The consultation paper proposed the introduction of an FCFS process for licensing FSS and BSS satellites as a timely, objective and predictable process that is also administratively simple. Comments and/or reply comments were received from Ciel, Hughes/Gamma, 95WCanSatCo, Shaw, SIA, Telesat, and Xplornet. All of these respondents supported the implementation of an FCFS process to assign satellite licences.

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1. It is important to note that even with the new FCFS process, the decision to issue a licence is subject to the Minister’s discretion, as provided for in Section 5 of the *Radiocommunication Act*. 

2
All of these respondents were also in favour of using spectrum licences as the vehicle for authorizing FSS and BSS spectrum. Many of the respondents urged Industry Canada to implement the new licensing process as soon as possible.

Although the issue was not specifically raised during the consultation, the parameters of a spectrum licence will include specific frequency bands at a particular orbital position. Spectrum licences will not define a coverage area; rather, they will include all territory visible from the satellite. This is consistent with the interpretation of satellite spectrum licences to date. There may be exceptions with respect to Canadian coverage, as outlined in Section 3.4 of this decision paper.

In addition to its support for an FCFS licensing process, Shaw suggested that Industry Canada implement a right of first refusal for direct-to-home (DTH) broadcasting incumbents regarding licences for frequencies where those incumbents already offer services. Shaw suggested that this could act both as a safeguard against frivolous applications and as a means to ensure continuity of service for existing DTH customers. Ciel, 95WCanSatCo, SIA, Telesat and Xplornet all disagreed with Shaw’s suggestion on the basis that imposing such regulatory constraints would discourage investment in, and development of, spectrum by satellite operators. Ciel, 95WCanSatCo and Telesat argued that because broadcasting makes up such a significant proportion of satellite operators’ business, market forces are sufficient to ensure service continuity and minimum disruption for DTH users. Xplornet disagreed with Shaw’s suggestion on the basis that one type of service should not take precedence over another, and that establishing any type of priority would undermine the impartiality of an FCFS process.

Industry Canada finds that regulatory intervention in this area would unnecessarily interfere with market forces and would undermine the ability of satellite operators to develop the licensed spectrum as they see fit. Additionally, Canadian DTH providers are eligible to apply for satellite licences directly if they see a need. Industry Canada will therefore implement an FCFS process without any rights of first refusal.

Xplornet acknowledged Industry Canada’s plans to undertake a consultation on earth station licensing at a later date, and stated that earth station licensing was critically important to them. Xplornet suggested that, as an interim measure until the earth station consultation can be completed, Industry Canada include customer terminals as part of the licence and fee schedule for Ka band satellite spectrum licences.

Industry Canada recognizes the challenges posed by customer terminals in the Ka band, and has adopted system licensing (including customer terminals) on a case-by-case basis. Industry Canada will continue to do so until the earth station consultation is concluded.

\[
\text{Industry Canada will implement a first-come, first-served licensing process to assign FSS and BSS licences.}
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\text{Spectrum licences will replace radio licences as the instrument used to authorize the use of FSS and BSS satellite spectrum once the new fee order is in place. The licences will include all territory visible from the satellite.}
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3.1.2 Rules for the New FCFS Licensing Process

Industry Canada proposed a series of rules for the new FCFS process. Comments and/or reply comments were received from Ciel, 95WCanSatCo, Shaw, Telesat and Xplornet on this issue. There was general agreement on the following proposed rules: electronic submission of applications, with the order of receipt established with the system time-stamp; the proposal that once an application is declined, Industry Canada proceed immediately with the evaluation of a second application, if on hand; and that once a licence has been awarded, all other applications for the same spectrum be dismissed.

There were three areas where respondents suggested alternatives to Industry Canada’s proposals. The first area was Industry Canada’s proposal that once an application is deemed incomplete or inadequate, it will be declined and will not receive further consideration until submitted as a new application. Comments and/or reply comments supporting an alternative approach were received from Ciel, 95WCanSatCo, Telesat and Xplornet. These respondents supported the idea that instead of declining an application outright, Industry Canada could give applicants a limited period of time (a “cure period”) to correct any oversights without losing their priority status.

Industry Canada acknowledges that the FCFS process, as proposed, represents a significant change from the current FCFS process that is in place for MSS, space science and some FSS/BSS licensing, which allows for Industry Canada to work with an applicant on an iterative basis to improve its application. However, Industry Canada believes that the introduction of a cure period could introduce greater subjectivity and distortion into the process by allowing an inadequate or defective application to maintain priority over a second, but complete, application. It would also add delays in the treatment of applications. Industry Canada has determined that it will allow an applicant to correct only administrative or typographical errors identified by the Department, but only at the Department’s request. Applicants will not have the opportunity to address any other deficiencies in the application, but will be permitted to submit a new application for the same spectrum if the first application is denied.

A second area where respondents suggested changes was in the treatment of simultaneous applications. Ciel, Telesat and Xplornet suggested that based on the difficulty of building a functioning system with only half of the requested spectrum, if two applications for the same spectrum are received simultaneously, the applicants should be given an opportunity to negotiate, prior to Industry Canada making a licensing decision, to divide the spectrum. Both 95WCanSatCo and Shaw supported this proposal, with 95WCanSatCo adding that in the event of an unsuccessful negotiation, Industry Canada could use a comparative review process to select the successful applicant.

As noted in the consultation, it is highly unlikely that two applications will be received simultaneously. Industry Canada does recognize the challenges that two successful applicants would face if they receive a licence for only half of the requested spectrum. However, Industry Canada believes that allowing applicants to negotiate in advance of a licensing decision would introduce unreasonable delays and subjectivity in the treatment of applications. Both of these results would be inconsistent with the objectives of the FCFS process.

Industry Canada is of the view that the same results can be accomplished with the approach proposed in the consultation. If two applications are received simultaneously for the same spectrum at an orbital position,2 and both applications are approved, the spectrum will be divided equally between the two applicants. The applicants are then free to negotiate between themselves and return to Industry Canada

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2 The same orbital position includes applications for positions spaced less than the minimum spacing required, as defined in CPC-2-6-02.
with a request to amend or return the licence(s). Industry Canada believes that this approach is more consistent with relying on market forces in the management of spectrum.

Industry Canada recognizes that the FCFS process is a significant change from the current process and that the possibility of multiple applications for the same spectrum and orbital location is highest in the first few minutes following the end of the moratorium. Therefore, a special procedure will be applied, as outlined in Section 4.

A third and final area where respondents suggested an alternative approach was Industry Canada’s intention to publish a notice of receipt of application on its website. Ciel and Telesat proposed that this notice not be published until the related filings are submitted to the ITU. Telesat further suggested that Industry Canada establish a 20-day service standard for the submission of filings to the ITU, from the time that the filings are received by the Department. This suggestion was supported by Ciel.

Industry Canada finds that the simplest and most transparent way to address this issue is to require the submission of the relevant ITU filing (advance publication of information (API), or coordination information for planned bands) with the application. An application will therefore be considered incomplete, and subsequently denied, unless accompanied by this filing. Once the filing has been forwarded to the ITU, the Department will publish a notice that an application has been received. Industry Canada considers that a service standard of 15 business days is appropriate for the submission of filings to the ITU, and will implement this standard. A new milestone will also be established for the submission of the coordination package to Industry Canada for forwarding to the ITU. Full procedural details are included in the revised CPC-2-6-02.

Industry Canada will adopt the following rules for an FCFS licensing process:

- Applicants will be required to submit applications electronically, and Industry Canada will establish the time of receipt through the electronic submission;

- An application must be accompanied by the relevant ITU filing information, and once the filing has been forwarded to the ITU, a notice will be published that an application has been received;

- If Industry Canada deems an application incomplete or inadequate (according to defined criteria, as explained in the revised CPC-2-6-02), the application will be declined. Applicants will be allowed to correct typographical or administrative errors in their application, at the request of Industry Canada;

- If an application is on hand from a second applicant for the same spectrum and position when the first application is declined, Industry Canada will immediately consider the second application;

- An applicant whose application has been declined can submit a new application for the same spectrum and position. That application will be considered in the order in which it is received;

- Once a licence has been issued, any applications on hand for the same spectrum and position will be automatically dismissed; and
Two successful applications for the same spectrum at an orbital position, received simultaneously, will result in both applications being approved, with the requested spectrum divided equally.

These rules will apply to all satellite licensing, not only to the FSS and BSS licences. The rules are clearly defined in the revised CPC-2-6-02.

3.1.3 Assessment Criteria

In its licensing activities, Industry Canada’s primary objective has been to help ensure that Canadian satellite users (e.g. broadcasters, government institutions and telecommunications firms) have access to the satellite capacity that they need to carry out their respective functions, and to help ensure that services are available throughout Canada. As a member of the ITU, Industry Canada is also responsible for ensuring that Canadian licensees comply with internationally agreed upon spectrum policies and regulations.

In order to perform these functions, Industry Canada assesses each satellite licence application against a set of criteria. The consultation sought comments on a set of proposed criteria to be used under the new FCFS licensing process, as well as on additional criteria that would be suitable. Five respondents provided comments and/or reply comments (Ciel, 95WCanSatCo, Shaw, Telesat and Xplornet). Of these respondents, only Ciel and Telesat addressed every criterion. The other three respondents commented on the viable implementation plan, the financial plan and the benefits to Canadians. None of the respondents suggested additional or alternate criteria.

Eligibility and Compliance with Regulatory Requirements and Spectrum Utilization Policies

There was consensus around the core criteria that licence holders be Canadian entities, and that the projects be in compliance with regulatory requirements and spectrum utilization policies. The Radiocommunication Regulations require that a licence holder be a Canadian entity, and is a necessary condition in any event. These criteria will be maintained.

Compliance with Spectrum Utilization Policies

Telesat highlighted that where satellites are providing service in jurisdictions outside of Canada, relevant domestic spectrum policies and regulations may differ from those within Canada. They proposed that the requirement to comply with Canadian spectrum utilization policies not apply in those instances. Industry Canada is in agreement with this proposal, and has clarified the requirements in the revised CPC-2-6-02.

Canadian Direction and Control

The Radiocommunication Act is applicable to spacecrafts (satellites) under the direction or control of Canadian entities, as set out in Section 3(b) of the Act. In order to assert jurisdiction over given spacecrafts and to ensure compliance with other domestic and international regulatory requirements, Industry Canada has required that such direction or control be established through the use of physical control facilities located in Canada. Telesat and 95WCanSatCo agreed with the continuation of this requirement, whereas Ciel argued that contractual control of the satellite (in cases where control facilities are located outside Canada) was sufficient for the Minister to exert his jurisdiction over the
Industry Canada recognizes that the satellite industry is evolving. International partnering, for example, which sees one operator’s payloads on another operator’s spacecraft, is becoming more common in satellite projects. The Department believes that Canadian operators should have access to such opportunities where possible, even though primary control facilities may not be located in Canada.

Industry Canada will allow such instances of contractual control of a satellite on a case-by-case basis. As Industry Canada is mindful of its domestic and international obligations, licensees intending to use primary control facilities located outside of Canada must also provide for secondary or backup control facilities located in Canada. In considering applications where the primary control facilities will be located outside of the country, Industry Canada will review the related agreements, the plans for the proposed facilities and other arrangements in order to ensure their adequacy in providing for sufficient control by the applicant and to ensure compliance with all regulatory requirements. Information requirements are set out in the revised CPC-2-6-02.

### Viable Implementation Plan and Financial Plan

The consultation noted two elements within the implementation plan: (i) a technical plan and (ii) information describing the applicant’s operation as a Canadian satellite operator or a well-developed plan to become a Canadian satellite operator.

#### Technical Plan

With respect to the technical plan, Industry Canada currently assesses satellite applications for their technical feasibility, with a view to verifying that the satellite will fulfill the service parameters specified in its application and to verifying that it complies with Canadian and international regulations and policies. Respondents generally agreed that although some technical assessment is required in order to verify regulatory compliance, any additional assessment would be subjective and would undermine the predictability and objectivity of the new process.

Industry Canada agrees with the need to reduce the potential for subjectivity in the assessment process and intends to develop service rules for satellite bands against which it will assess applications. Until such time as these rules are developed, however, Industry Canada will only assess technical plans to ensure: (1) compliance with applicable ITU technical requirements; (2) compliance with Canadian coverage requirements; (3) coexistence with other assignments for Canadian satellites; and (4) minimum spectrum efficiency. Information requirements are provided in the revised CPC-2-6-02.

#### Canadian Satellite Operator and Financial Plan

With respect to the aspects of the implementation plan relating to the performance as a Canadian satellite operator, or the plans to become one, in the past Industry Canada has required applicants to provide business information and a financial plan that includes sufficient evidence to demonstrate its ability to finance the implementation and operation of its proposed satellites. Ciel, 95WCanSatCo, Shaw, Telesat and Xplornet unanimously commented that the assessment of this information is entirely subjective, and strongly encouraged Industry Canada to eliminate these criteria. Telesat suggested that as an alternative to providing this information with each application, applicants could be pre-qualified by providing information on a regular basis to Industry Canada. Ciel disagreed with this approach, characterizing it as being subjective.
While Industry Canada agrees with these comments, its objective in licensing satellite spectrum is to help ensure that services result from the issuance of a licence and to ensure that these services are made available to Canadians. To fulfill this objective, Industry Canada has assessed the financial and business plans associated with the implementation of a satellite project. With the new FCFS licensing process and the removal of the requirement to assess business and financial plans, it would be easier for applicants to submit frivolous or obstructive applications that may result in the issuance of licences, with no resulting services to Canadians.

Industry Canada believes that the process safeguards, which are identified in Section 3.1.4 of this decision paper (specifically the requirement to pay fees immediately on licence issuance and the strict enforcement of milestones), will serve as a partial substitute for the assessment of the viability of the project. The fee, in particular, will be similar in financial effect to the performance bond that is required by the Federal Communications Commission (FCC) in the United States. Either the applicant will self-finance to pay the fees, or a financial institution will conduct a due diligence review of the project prior to lending funds to the applicant.

As the new fee safeguard will only be available to Industry Canada upon the approval of the new fee order following the completion of the UFA process, in the interim, applicants will be required to submit an affidavit, signed by the Chief Executive Officer or the Chief Financial Officer of the company, stating that the required financing is available and that the implementation plan is sound.

Benefits to Canadians

There was general agreement among the respondents that assessing the benefits of a project to Canadians was highly subjective. Shaw, Telesat and Xplornet expressed concern that retaining this criterion could turn the FCFS process into a comparative process. Although Ciel also considered this criterion to be subjective and not appropriate in its current form, they would support the continuation of this criterion if it was well-defined, specific and measurable, which would help ensure transparency and predictability.

Industry Canada is of the view that assessing benefits to Canadians as a criterion is useful in a comparative process, as applicants may commit to providing greater benefits to Canadians than other applicants offer as a means to obtain a licence. Under an FCFS process, the criterion of a projected benefit to Canadians is unnecessary and will not be included as an assessment criterion. Industry Canada remains committed to helping ensure adequate coverage in Canada for the provision of services. The requirement for Canadian coverage will be further addressed in Section 3.4 of this decision paper.

Industry Canada will apply the following assessment criteria under the new FCFS process:

- The applicant must be an entity eligible to hold a licence under the Radiocommunication Act and Radiocommunication Regulations;
- The project must comply with the ITU Radio Regulations. For services in Canada, the project must also comply with Canadian spectrum allocation and utilization policies;
- The applicant must have direction and control over the licensed satellite, which may be achieved through the use of physical control facilities in Canada or by way of contractual control with certain additional requirements;
• The applicant must submit a technical plan, which will be assessed only to:
  o verify compliance with applicable international and, where applicable, Canadian rules and regulations;
  o ensure Canadian coverage;
  o ensure the ability to coexist with other assignments for Canadian satellites; and
  o prevent misuse of spectrum.

• The applicant must submit a signed affidavit from the Chief Executive Officer or Chief Financial Officer (or equivalent) stating that the company has the financial and operational capability to complete the project.

These criteria are described in detail in the revised CPC-2-6-02. With the exception of Canadian coverage requirements, the criteria will apply to all satellite licensing, including MSS.

Industry Canada will no longer evaluate:

• performance as a Canadian satellite operator, or plans to become one;
• financial plans; or
• benefits to Canadians that will result from the project.

3.1.4 Process Safeguards

In the consultation, Industry Canada noted that an FCFS process may be subject to greater abuse than other types of processes, in terms of applicants seeking an excessive number of licences for speculative or obstructive reasons. Industry Canada included a number of possible measures in the consultation, both financial and administrative, designed to prevent such abuse. In some instances, the proposed measures were essential elements of the new licensing framework, but also had safeguard effects. Comments and/or reply comments on these measures were received from Ciel, 95WCanSatCo, SIA, Telesat and Xplornet.

Financial Measures

The financial measures noted in the consultation paper were the application fees, the submission of first-year licensing fees with the application, the performance bonds and the payment of fees upon approval of an application. There was general opposition to the use of financial measures, with the exception of some support for the introduction of application fees. The basis of the opposition was that such measures would increase costs and discourage investment.

While there was some support for application fees (Ciel, Telesat and Xplornet), Industry Canada has determined that the level at which the fee must be set (to recover costs of processing the application only) would be too low to act as an effective measure in preventing abuse. Similarly, because of the short time frame between submitting an application and the issuance of a licence (45 business days) under the new process, the submission of the first year’s licence fee with the application would have no significant safeguard effect.

Payment of licence fees upon approval of an application is an essential element of the proposed FSS and BSS licensing and fee regime, and will be addressed further in Section 3.2.1 of this paper. Industry
Canada finds that the effect of this aspect of the fee regime will also significantly constrain potentially abusive behaviour of licence holders.

While Industry Canada considers that a requirement for applicants to post a bond and the imposition of fines for breach of licence conditions could be effective measures to help prevent abuse, these measures would require legislative changes. Additionally, Industry Canada believes that having licence fees effective upon approval would have much the same effect as the financial consequences of performance bonds, and that bonds would therefore not be necessary. Finally, although fines may be effective, Industry Canada has concluded that they are currently not necessary as a measure to prevent abuse when considering the measures that will be adopted.

Administrative Measures

The administrative measures noted in the consultation paper were the strict enforcement of milestones and the limits on both pending applications and unused licences. There was general support for strictly enforcing milestones (Ciel, SIA, Telesat and Xplornet), with most respondents urging that Industry Canada maintain discretion to consider amendments to milestones. According to 95WCanSatCo, the strict enforcement of milestones, with licence revocation as the outcome, is punitive and unnecessary. They suggested that Industry Canada give applicants the opportunity to correct issues leading to a missed milestone.

Under the new FCFS process, Industry Canada expects that it will receive applications with well-developed plans for the use of the spectrum at the requested orbital position. Milestones are intended to ensure that licensees make diligent and timely progress in the construction and implementation of their satellites and in the provision of service. Industry Canada will therefore establish a five-year time frame with standard milestones for the implementation of satellite projects. These milestones requirements will be as follows: (1) within six months of the issuance of the licence or approval, the licensee must submit the ITU coordination request information; (2) within two years, the licensee must demonstrate that a satellite construction contract is in place and that the satellite design conforms with the authorized plan as well as any applicable technical requirements; (3) within 30 months, the licensee must demonstrate that construction has commenced; (4) within four years, the licensee must demonstrate that a launch contract is in place; and (5) within five years, the licensee must place the satellite into operation.

Adherence to these milestones, demonstrated through progress in construction and the launch of a satellite, will help to ensure that valuable spectrum is not held by licensees that are unable or unwilling to proceed with their plans. In keeping with strict enforcement of milestones, Industry Canada does not anticipate granting milestone extensions in the absence of extraordinary circumstances. Where milestones have been missed and have not been extended, the Department will initiate a revocation process aimed at freeing licences in order to make the spectrum available to others. Industry Canada is mindful, however, that a decision to commence a revocation process is a serious matter, and that a reasonable opportunity should be provided to licensees to show cause as to why their licence(s) should not be revoked. If a revocation decision is made, the former licensee will be allowed to reapply for the same spectrum. A description of the revocation process is included in the revised CPC-2-6-02.

The implementation of these predetermined, strictly enforced milestones, when used in conjunction with payment of fees upon approval, should be effective in preventing warehousing of licences. The new predetermined milestones will not be applied to existing approvals. However, the existing milestones for these approvals will be strictly enforced.
There was some support for limits on the number of pending applications from any one operator (Ciel and 95WCanSatCo). In addition to acting as a minimal safeguard, limits on pending applications will be necessary to enable Industry Canada to process FCFS applications within the service standard. As a consequence, an applicant (including its affiliates as defined in the Canada Business Corporations Act) will be permitted to have only two applications under consideration by Industry Canada at any one time. There will be no annual limit, nor a limit by band. The limit on pending applications will not affect the number of licences that may be held by the applicant. Industry Canada finds that a limit of two pending applications at any one time should not affect the legitimate needs of satellite operators to pursue their business plans.

Industry Canada will therefore adopt the following measures to safeguard the FCFS process from abuse: (1) payment of licence fees upon approval of an application; (2) strict enforcement of milestones; and (3) a limit of two pending applications for each applicant (including its affiliates) at any given time. Industry Canada believes that the aggregate effect of these measures will be helpful in limiting abuse of the FCFS process, without being onerous for applicants and licensees with bona fide plans. Initially, Industry Canada will rely solely on administrative measures (enforced milestones and limits on pending applications) until the adoption of the new fee regime.

The following measures will be implemented for all satellite services in order to safeguard the new FCFS process:

- Strict enforcement of milestones; and
- Limit of two pending applications from an operator (and affiliates) at any one time.

Standard milestone requirements will be applied as follows, based on the date of licence issuance:

- 6 months – Submit ITU coordination package;
- 2 years – Construction contract in place; satellite design consistent with licence approval;
- 30 months – Construction has commenced;
- 4 years – Launch contract is in place; and
- 5 years – Satellite is in operation.

Upon approval of the new fee regime, the fees charged at licence issuance will have the effect of safeguarding against abuse.

### 3.1.5 Service Standards

Industry Canada proposed a service standard of 45 business days to make a decision regarding a satellite spectrum licence application. Comments and/or reply comments were received from Ciel, 95WCanSatCo, Telesat and Xplornet, all of which were in support of the proposed standard. Industry Canada will adopt a service standard of 45 business days for the consideration of satellite spectrum applications. In some instances (e.g. for applications requiring a review of existing policy, for spectrum for which no policy exists, or for an unusually complex network), the Department will not be able to meet the service standard. In those instances, applicants will be notified. Telesat also suggested the implementation of a 20-day service standard for the submission of filings to the ITU, which was supported by both Ciel and 95WCanSatCo. Industry Canada will adopt a service standard of 15 business days for the forwarding of filing information to the ITU. The revised CPC-2-6-02 includes a description
of the requirement and timing for submission of this information to Industry Canada.

**Industry Canada will adopt a service standard of 45 business days for the consideration of satellite spectrum applications. This service standard will apply to all satellite licensing, not just to FSS and BSS. In some instances (e.g. for applications requiring a review of existing policy, for spectrum for which no policy exists, or for an unusually complex network), Industry Canada will not be able to meet the service standard and the applicant will be notified.**

**Industry Canada will also adopt a service standard of 15 business days to forward filing information to the ITU.**

**While Industry Canada is not required to implement a service standard until such time as the new fee order is in effect, it will introduce this service standard immediately to ensure the timely treatment of applications.**

### 3.2 Licensing and Fee Regime

As discussed in Section 1.3 of this paper, the implementation of a new fee regime is subject to the process defined by the UFA and will therefore be implemented only after that process is complete and a new fee order for satellite spectrum licences is in place. With this decision paper, Industry Canada is seeking additional comments on its revised fee proposal as outlined in this section of the paper. Comments are due to Industry Canada by December 6, 2013. There will be no opportunity for reply comments. Industry Canada will then begin the UFA process. The licensing and fee regime described in this section applies only to FSS and BSS spectrum, and includes the use of that spectrum in support of other services (e.g. feederlinks for MSS or tracking, telemetry and control (TT&C) for any service when the TT&C frequencies are in FSS bands).

In the consultation, Industry Canada recognized the international nature of satellite operations as well as the fact that fees and regulatory requirements imposed on Canadian satellite operators could put them at a competitive disadvantage when compared with those of their foreign counterparts. Industry Canada established key factors in implementing the new fees for FSS and BSS, including administrative simplicity; reflecting a portion of market value; predictability and technological-neutrality.

The consultation proposed a number of elements for the new fee regime. The first element was the proposal to issue spectrum licences immediately following approval of an application, as opposed to doing so only once a satellite was launched (and issuing an approval in principle in the interim, as is the practice with radio licences). Comments and/or reply comments were received from Ciel, Hughes/Gamma, 95WCanSatCo, SIA, Telesat and Xplornet, which were all in favour of the proposal to introduce spectrum licences. Industry Canada has determined that once the new fee regime is in place, spectrum licences will be issued immediately upon approval of an application to authorize the use of FSS and BSS spectrum. Existing radio licences will be converted to spectrum licences when the new fee order is approved. In the interim, radio licences will be issued for new authorizations on the use of FSS and BSS spectrum until the new fee order is in place.
The second element included a number of proposals related to the fee regime, which will be applied to the new spectrum licences as follows.

### 3.2.1 Fees Payable on Licence Issuance

The consultation proposed to apply fees immediately on licence issuance, based on the amount of spectrum authorized. Comments and/or reply comments were received from Ciel, Hughes/Gamma, 95WCanSatCo, SIA, Telesat and Xplornet. All of these respondents but Hughes/Gamma supported basing fees on the amount of spectrum assigned. All of these respondents supported the issuance of the licences immediately on approval. However, charging fees on licence issuance in advance of the operations of the satellite was strongly opposed by all respondents who commented on that issue. The main arguments were that it may discourage investment and would not serve to accelerate the speed at which a satellite can be built or the date by which that spectrum can be brought into use. Additionally, operators argued that the satellite environment was not comparable to the terrestrial environment, so the continuation of the existing model where fees are only applicable upon operation of the satellite was most appropriate.

Industry Canada is of the view that having fees become effective immediately respects the value of the spectrum as reserved (and therefore unavailable for others to use), and helps to ensure that only bona fide applications are submitted. It is similar in effect to the requirement in the United States to provide a performance bond until the satellites are in operation. Charging fees on the licence issuance is also a cornerstone in allowing for the implementation of a simpler, faster and more objective licensing process. The fees will act as a partial substitute for Industry Canada’s former review of business and financial plans as part of licence applications. As described in Section 3.1.4 of this paper, most respondents argued for the removal of the business plan and financial plan assessment criteria, suggesting that it is too subjective. Instead of Industry Canada undertaking this analysis, applicants will be required to certify that they have the necessary funds to proceed with the project as set out in the application.

Industry Canada finds that charging fees on licence issuance would create a competitive fee regime, if set at an appropriate level. Recognizing that this is a significant change from current practice, Industry Canada proposes to establish an escalating fee, similar to what was proposed for the transition of existing approvals in principle. The new spectrum licence fee would ramp up in increments of 25% over three years and would reach the full level at year four. The full fee would apply as soon as the satellite is operational, even if that happened earlier than year four. With this approach, as well as a new five-year satellite implementation period, the total fees payable prior to satellite operations for a bona fide application will still represent a small fraction of the total project costs.

Industry Canada proposes to establish an escalating fee that will be applicable on the licence issuance, and will be based on the amount of spectrum authorized.
3.2.2 Fee Level

The consultation also proposed to set fees on a per-megahertz basis for licensed spectrum. Ciel, 95WCanSatCo, Telesat and Xplornet supported this proposal. Hughes/Gamma was opposed, arguing that it would discourage the expansion of satellite service into higher frequency bands where high throughput service requires more bandwidth. They were also concerned with how Industry Canada would charge for spot-beam reuse.

Industry Canada finds that the proposal to assign fees based on the total amount of spectrum assigned is the appropriate approach. The amount of spectrum assigned will not be affected by multiple spot-beam reuse. This model will be predictable and simple to administer, and it will eliminate the need for traffic reporting. It should also serve to encourage spectrum efficiency, as it will be in the operators’ best interests to maximize the use and reuse of the spectrum for which they will pay a fixed cost.

In the consultation, Industry Canada proposed a model based on three fee levels, each applicable to different bands of spectrum. Comments and/or reply comments were received from Ciel, Hughes/Gamma, 95WCanSatCo, Shaw, SIA, Telesat and Xplornet. All of these respondents welcomed the lower fees, but six respondents argued for the establishment of a single fee, at or below the Level A fee proposed in the consultation ($112/MHz).

Industry Canada finds that the establishment of a single fee is appropriate for all FSS and BSS spectrum, and proposes a level of $120/MHz. At this level, fees payable for operational satellites and existing approvals will be commensurate with an equivalent cost in comparable jurisdictions. Industry Canada proposes to apply the fee of $120/MHz in 25% increments over a three-year period, beginning at licence issuance. The full fee would apply as soon as the satellite is operational, even if that happens earlier than year four.

Industry Canada expects to review its licence fees a minimum of once every 10 years. However, fees may be amended at any time within that period should unforeseen circumstances require an adjustment, and as permitted by law. A public consultation would be undertaken before any such changes are made.

| Industry Canada proposes to establish the fee for all FSS and BSS satellite spectrum on a per-megahertz basis. |
| Industry Canada proposes to establish a single fee of $120/MHz for all FSS and BSS spectrum. |
| Industry Canada proposes to apply the fee in 25% increments over a three-year period from licence issuance, reaching the full $120/MHz in year four. The full fee would apply as soon as the satellite is operational, even if that happens earlier than year four. |

3.2.3 Emerging Bands

In the consultation, Industry Canada sought comments on whether spectrum licences should be used for the assignment of emerging bands, as well as on an appropriate fee level for those bands. Ciel, 95WCanSatCo and Telesat responded to this issue, stating that it was unclear what Industry Canada meant by an “emerging band.” A definition as “any new spectrum not in commercial use” was proposed.
by 95WCanSatCo, who also suggested a discounted fee. Ciel further supported a discounted fee, whereas Telesat proposed that Industry Canada establish a nominal fee for experimental licences for which no revenue is generated.

Industry Canada considers that the best approach is to issue spectrum licences for the assignment of all FSS and BSS bands, regardless of whether they are emerging bands. Industry Canada proposes to apply the lower fee of $120/MHz to all FSS and BSS bands, eliminating the requirement to monitor the change in status of a band from emerging to commercial.

Industry Canada is not proposing any special licensing or fee measures for emerging bands.

3.2.4 Implementation

Industry Canada proposed a number of implementation measures in the consultation in terms of the transition to the new fee regime. The first measure was that the new fee will be effective immediately upon the approval of the fee order for all existing licences for in-use spectrum. All four respondents to this proposal (Ciel, 95WCanSatCo, Telesat and Xplornet) supported it. Industry Canada will proceed with this measure. Telesat also suggested that in the interim, Industry Canada eliminate the requirement to submit annual traffic reports. However, as long as radio licences are the instrument used to authorize spectrum, traffic reports will continue to be required in order to calculate radio licence fees prescribed under the Radiocommunication Regulations.

The second measure proposed by Industry Canada was that the fee for existing approvals for assigned, unused spectrum be introduced in 25% increments over three years, following the approval of the fee order. All respondents which commented (Ciel, Hughes/Gamma, 95WCanSatCo, Shaw, SIA, Telesat and Xplornet) opposed this proposal. This opposition is consistent with their overall opposition to charging fees before satellites are operational. Telesat also added that if Industry Canada does proceed with this transition, existing approvals should be grandfathered.

As discussed in Section 3.2.1 of this paper, charging fees immediately on issuance of a spectrum licence, in advance of satellite operations, is a cornerstone of the new licensing regime. Industry Canada considers that a three-year transition period for existing approvals is a reasonable measure, particularly when that period will only begin once the fee order is approved. This measure is also consistent with the proposal to apply the new fee on an escalating basis for new licences.

The third implementation measure proposed in the consultation was that the new fee, in full, would be applicable to all new licences issued after the approval of the fee order. Four respondents (Ciel, 95WCanSatCo, Telesat and Xplornet) commented in support of this proposal, with the exception that fees only be applicable on operation of the satellite. As discussed above, Industry Canada proposes to implement the new fee in 25% increments over a three-year period, once the fee order is in place.

Industry Canada proposes to implement the new fee in the following manner, upon approval of the fee order:

- For existing licences for in-use spectrum, radio licences will be converted to spectrum licences and the new fee will be effective immediately;
- Approvals in principle will be converted to spectrum licences and the new escalating fee will
be applicable; and

- All new spectrum licences issued will be subject to the new escalating fee upon issuance.

**Industry Canada is seeking additional comments on this revised fee proposal as outlined in Sections 3.2.1 to 3.2.4 of this paper. Comments are due to Industry Canada by December 6, 2013. There will be no opportunity for reply comments.**

### 3.2.5 Term of Licences

In the consultation paper, Industry Canada proposed to set the satellite spectrum licence term at 20 years, to reflect a five-year development period and a typical 15-year life expectancy for a satellite. Comments and/or reply comments were received from Ciel, 95WCanSatCo, Shaw, Telesat and Xplornet, with all of these respondents supporting the proposed term and adding that there should be a high expectation of renewal. Xplornet also suggested that licences be renewed automatically when the life of an existing satellite goes beyond 15 years. Industry Canada will issue 20-year licences with a high expectation of renewal. Fees will be payable annually. If a satellite lasts longer than expected, the licensee can request an amendment to the licence to extend its term.

Industry Canada also sought comments on the introduction of a new short-term licence, as well as on what would be an appropriate term and fee for such a licence. Comments and/or reply comments were received from Ciel, 95WCanSatCo and Telesat, which all supported the establishment of such a licence. Ciel and Telesat suggested charging the same fee, but on a pro-rated basis, whereas 95WCanSatCo stated that the Department should use its discretion in setting an appropriate fee.

Industry Canada finds that it is not necessary to establish a specific short-term licence with its own fee. Rather, Industry Canada may issue a licence with a shorter term than 20 years. For terms of less than one year, the annual fee of $120/MHz will apply on a pro-rated, monthly basis, based on the length of the term. For terms longer than one year, the full annual fee will apply.

**The term of satellite spectrum licences will be set at 20 years with a high expectation of renewal. Industry Canada may issue licences with a shorter term.**

**For those licences with terms of less than one year, the annual fee will be applied on a pro-rated basis at a monthly rate of $10/MHz. For terms greater than one year, the full annual fee of $120/MHz will apply.**

### 3.3 Public Benefit Condition of Licence

In the consultation, Industry Canada recognized that the inclusion of a public benefit obligation on Canadian operators is a factor affecting the international competitiveness of Canada’s licensing regime. Industry Canada also recognized, however, that those obligations currently in place were accepted by operators when licences were issued, and in most cases there are existing beneficiaries in place. Industry Canada did not, therefore, propose to eliminate these existing obligations, but did seek comments on how the public benefit conditions of licence could be improved or clarified. Industry Canada sought comments on whether the condition of licence should be applied to new satellite spectrum approvals.
Comments and/or reply comments were received from five respondents on this issue (Ciel, 95WCanSatCo, Shaw, Telesat and GNWT).

Four of these respondents expressed firm opposition to this condition of licence: Ciel, 95WCanSatCo and Telesat argued that the public benefit obligation places Canadian operators at a competitive disadvantage in comparison with their foreign-licensed competitors. 95WCanSatCo viewed the obligation as being effectively an additional tax burden on Canadian-licensed operators, noting that the obligation was far more onerous than the actual licence fees and that these extra costs are passed down to end users. Shaw echoed this concern, stating that companies which provide satellite DTH and satellite-based distribution are subject to more contributions than their major competitors in terrestrial broadcasting, creating an unfair disadvantage and undermining their competitiveness.

The GNWT, on the other hand, emphasized the distinct telecommunications needs of northern communities, particularly the unaffordable costs of replacing capacity that is currently accessible via the public benefit condition and which is used to provide government services, such as education and tele-health. The GNWT stated that the public benefit condition of licence should be continued. Although Ciel, 95WCanSatCo and Telesat also recognized the needs of the North, they each stated that there are other better-suited mechanisms to address the objective, such as public-private partnerships or targeted subsidy programs.

The Government of Canada has made significant funding investments in northern connectivity through programs such as Broadband Canada and Infrastructure Canada. However, to establish a level playing field for Canadian satellite operators in the global context, Industry Canada must balance the objective of improving connectivity with the need to minimize the regulatory and administrative burdens placed on licensees.

Industry Canada imposes national coverage requirements through the conditions of licence. If Canadian operators choose to be licensed by other jurisdictions under what they may perceive to be a more attractive licensing regime, Industry Canada will lose a key instrument to influence the availability of satellite capacity for Canadian use.

The public benefit condition of licence was derived from a similar condition that required licensees to direct 2% of their adjusted gross revenues toward research and development (R&D). In the FSS/BSS satellite licensing regime, the public benefit condition replaced the R&D obligation for all but one satellite licence, with the value set at the same level as the level for R&D (i.e. 2%).

Industry Canada finds that at 2% of adjusted gross revenue, the public benefit condition of licence is inconsistent with the objectives set out in the consultation and imposes a regulatory burden that places Canadian operators at a competitive disadvantage when compared to foreign-licensed operators. For existing approvals in principle and future licences, Industry Canada will reduce the public benefit obligation to 0.5% of adjusted gross revenue.

Where Industry Canada has issued approvals in principle for satellites not yet in operation, those approvals are considered amended such that the value of those conditions is set at 0.5% of adjusted gross revenue generated by the satellites. Industry Canada notes that the public benefit conditions of licence may be further amended, following consultation, to define how and when the conditions must be met. Examples of initiatives that Industry Canada would consider acceptable include FSS capacity for government or public institutions in remote or northern areas, discounted pricing for FSS services in those areas, or infrastructure projects that will enhance remote or northern connectivity.
The public benefit obligations set out in existing licences under which satellites are operational will continue to apply as they are currently written.

The existing public benefit conditions of licence set out in licences under which satellites are currently operational will continue to apply as they are currently written.

Effective immediately, existing approvals in principle for satellites not yet in operation, with public benefit conditions of licence, are considered amended such that the obligations are set at 0.5% of adjusted gross revenue for the particular satellite. The conditions of licence may be further amended, following consultation, to better define how and when they must be met.

New FSS and BSS satellite licences issued will be subject to a public benefit condition of licence set at 0.5% of adjusted gross revenue for that particular satellite.

3.4 Canadian Coverage

As stated in the consultation, the requirement for Canadian-licensed satellites to cover the entire country to the extent possible from the specific orbital position has been an objective in Industry Canada’s consideration of licence applications in commercial FSS and BSS. Because satellites will remain the only technology able to reach many remote areas of Canada for the foreseeable future, Industry Canada remains committed to maintaining this obligation. The consultation sought comments on how best to implement this requirement.

Comments and/or reply comments were received from Ciel, 95WCanSatCo, Shaw and Telesat. In general, the three satellite operators viewed the Canadian coverage requirement as onerous and unnecessary, stating that there is currently very limited demand in Canada for satellite capacity. Ciel specifically commented on the considerable capital investment that was required for them to provide Canadian coverage and capacity on Ciel-2, which ultimately saw no return. While Telesat was opposed to any requirement to cover all of Canada, it stated that if such a requirement were imposed, Industry Canada should allow it to be met on the basis of an entire fleet, not per each individual satellite.

Some operators (Ciel and 95WCanSatCo) stated that coverage should not be required where there is no market. According to 95WCanSatCo, the requirement should be removed completely, except for bands that support broadband connectivity. Ciel suggested that Industry Canada adopt a more flexible, demand-based approach for the implementation of a coverage requirement, and had no objection to a suggestion by Shaw that there be a set period of time at the beginning of project development where capacity is offered exclusively to Canadian users.

Shaw, as the only satellite customer to address this issue, commented that a full coverage requirement should be maintained on each individual satellite, and that access to the capacity be offered exclusively to Canadian customers for six months. Their argument stemmed from their requirement, as a Canadian broadcaster, to provide full Canadian coverage and they noted how much more complicated and expensive it would be to source this coverage across multiple satellites. As with comments in Section 3.1.1 of this paper, Ciel and Telesat responded that market forces are sufficient to ensure satellite operators provide coverage for their broadcasting customers and to minimize potential disruption for DTH providers.
Industry Canada remains committed to requiring Canadian coverage for satellites positioned between 70°W and 130°W in the geostationary arc (the “Canadian arc”) and considers coverage to include the concepts of area, signal strength and capacity. Because of the long operational lifetime of a satellite, were Industry Canada not to maintain this coverage obligation, the result could be a situation where no Canadian capacity exists when services are required in the future. However, Industry Canada recognizes the significant economic costs of maintaining coverage to all regions of Canada in the absence of market demand, and will therefore implement the following approach.

For any geostationary orbit (GSO) satellite to be positioned between, and including, 70°W and 130°W, operators will be required to cover the entire Canadian territory visible from the satellite. Operators must reserve 50 percent of the satellite capacity for use by Canadians for a minimum period of six months from the time of approval, during which time Industry Canada will expect a reasonable effort be made to market the capacity to Canadian users. For any non-geostationary orbit (NGSO) satellite, operators will be required, to the extent possible from the satellite’s position in orbit, to cover the entire Canadian territory visible from the satellite. NGSO satellite operators must reserve an amount of satellite capacity for use by Canadians that is proportional to the Canadian territory covered vis-à-vis the entire territory covered from the position in orbit. Specific requirements for different bands or services will be established in the future.

Operators may be granted a waiver from the coverage requirement if they can demonstrate that Canadian needs will be met (if there is adequate capacity on existing Canadian satellites to meet known demand, or if there are other opportunities on future licensed satellites to obtain capacity when Canadian customers are ready to commit). If a waiver is granted, the licence would specifically exclude areas of Canada, and Industry Canada would allow other operators to apply for and obtain the licence to serve those areas, subject to coordinating their use of spectrum with previously licensed operators. Licensees will be expected to facilitate, where practicable, coexistence with other Canadian satellite networks for the provision of services in Canada. Details of this requirement and of the conditions under which a waiver may be granted are included in the revised CPC-2-6-02.

Industry Canada finds that this initial reservation of capacity for use in Canada is a reasonable measure that provides a meaningful opportunity for Canadian users to acquire Canadian FSS and BSS capacity. It also provides flexibility for Canadian operators to pursue other markets if there is no Canadian demand.

For Canadian-licensed FSS and BSS satellites located in the geostationary arc between and including 70°W and 130°W, Industry Canada will maintain a requirement to cover the entire Canadian territory visible from the satellite and operators will be required to reserve 50 percent of capacity for Canadian use for a minimum period of six months from the time of approval.

If there is no Canadian demand, operators can request a waiver from the coverage and/or capacity reservation requirements. Details on this process are defined in the revised CPC-2-6-02.

For satellites in non-geostationary orbit, Industry Canada will require satellites to cover all of Canada visible from the satellite(s) and to reserve a proportion of capacity that is commensurate with the amount of Canadian territory covered in relation to the entire coverage area.

If a waiver is granted, the licence will specifically exclude the use of the spectrum in the relevant areas of Canada. In such cases, other operators will be allowed to apply for and be issued a
licence in order to use the same spectrum in Canada, subject to successful coordination. Industry Canada will expect licensed operators to coordinate with future applicants wishing to provide services in Canada, unless they can demonstrate that it is technically not possible to do so.

3.5 Filing to the International Telecommunication Union (ITU)

3.5.1 Proactive Filing

Industry Canada sought comments on whether to continue the practice of proactive filing to the ITU under an FCFS licensing process. Comments and/or reply comments on this issue were received from Ciel, Hughes/Gamma, 95WCanSatCo, Shaw, Telesat and Xplornet. Most of these respondents supported the elimination of proactive filing, with some suggesting that under certain circumstances (i.e. to address a particular national requirement), Industry Canada should submit proactive filings and offer these licences on an FCFS basis.

Xplornet maintained that Industry Canada should continue to file proactively to the ITU, both to protect current resources and to seek new opportunities for Canada. Xplornet commented that Industry Canada should continue to consult with spectrum users on future requirements and to protect Canada’s rights to the orbital positions that provide the best coverage of Canada.

Industry Canada considers that under the new FCFS licensing regime, the onus should be on satellite operators to identify orbital positions and associated spectrum that are most appropriate for the development of their business plans. Operators will be responsible for preparing and submitting the filings, at their own expense, through Industry Canada. As a general practice, Industry Canada will no longer file proactively for positions at the ITU and will cease the annual consultations that have been undertaken in the past to identify positions of interest to Canada. Industry Canada will not maintain existing, unassigned filings, and these will be left to expire unless an applicant requests and obtains the corresponding licence.

Hughes/Gamma requested that Industry Canada support competing filings to the ITU. Industry Canada will forward filings for the same spectrum and orbital positions from more than one operator, but a licence will only be issued to the first applicant with an acceptable application. Industry Canada will also continue the practice of submitting a filing on behalf of an operator, in advance of receiving an application for the spectrum. The filing will be submitted without prejudice to a licensing decision. All ITU costs will be borne by the operators.

Industry Canada does recognize, however, that there may be some instances when it is necessary or desirable to submit a filing to the ITU on behalf of Canada, in the absence of a request by a Canadian operator, and will do so at its discretion if the need arises.

Industry Canada will no longer consult annually on what orbital positions are of interest to Canada. Industry Canada will normally submit filings to the ITU only at the request of a licence applicant or a Canadian operator.

Notwithstanding the above, Industry Canada may, at its discretion and on an exceptional basis, submit proactive filings if warranted for strategic reasons.
3.5.2 Filing Outside the Arc

Satellite licensing, as well as the overall management of spectrum, has traditionally focused on ensuring that services are available for Canadians, within Canada. The policy objective of the Spectrum Policy Framework for Canada is, indeed, to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource. As a result, Industry Canada has typically only filed at the ITU for positions that can better serve Canada.

Although not specifically raised in the consultation, Telesat’s comments included a request that Industry Canada support Canadian operators by licensing satellites that are located outside of the Canadian arc, a practice known as “filing outside the arc.”

In the undertaking of licensing activities under the Radiocommunication Act, the Minister of Industry may also have regard for telecommunications policy objectives, as set out in Section 7 of the Telecommunications Act. One of those objectives is to “enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications.”

Industry Canada believes that the existence of a strong, internationally competitive Canadian satellite industry helps to ensure that Canadian operators continue to provide services in Canada, which the Department deems to be in the public interest. Industry Canada will, therefore, support Canadian operators by filing to the ITU for positions that are outside of the Canadian arc, but only for those operators which already have at least one licensed satellite serving Canada.

As stated in Section 3.1.3 of this paper, for services outside of Canada, applicants will not be required to comply with Canadian spectrum policies or with the national coverage and capacity obligations set out in Section 3.4. All other aspects of the new licensing and fee regime will apply to these licences, including standard milestones.

Industry Canada will submit ITU filings and process applications for satellite spectrum at orbital positions outside of the Canadian arc (70°W to 130°W). In such cases, applicants must have at least one operational satellite serving Canada.

All elements of the licensing and fee regime will apply to these filings and applications, with the exception of compliance with Canadian spectrum utilization policies and national coverage requirements.

4.0 Transitional Measures

Following the publication of this decision paper, the policy framework and the procedures documents, Industry Canada will provide assistance and advice to stakeholders in order to help clarify the new licensing regime. One week after publication of the procedures documents, Industry Canada will hold a session with interested parties to answer questions. Within the week following that session, each interested party will be able to submit a single mock application and Industry Canada will provide feedback on whether it meets the new assessment criteria, as well as feedback on how to address any deficiencies in the application. Industry Canada will not accept genuine applications until this feedback has been provided to all parties. To this end, the moratorium may be extended if necessary.
As discussed in Section 3.1.2, the possibility of receiving two applications for the same spectrum and orbital location is highest in the first few minutes following the end of the moratorium. Any such applications received during the first five minutes after the moratorium is lifted will be considered to have been received simultaneously. Those applications that are successful will be approved, with the requested spectrum divided equally. After the first five minutes, the permanent rules will apply, as defined in CPC-2-6-02.

Industry Canada will set the date for lifting the moratorium when the new policy and procedures documents are published.

Requests for the same spectrum and orbital position received with the first five minutes of the implementation of the new process will be deemed as being received simultaneously.

5.0 Obtaining Copies