



Craig Wireless Systems Ltd.

6th Floor, 177 Lombard Avenue
Winnipeg, MB R3B 0W5

t: 204.925.9125 f: 204.488.2710

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BY EMAIL

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

Dear Ms. Hall:

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

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

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

Yours very truly,

[original signed by J. Drew Craig]

J. Drew Craig
Craig Wireless Systems Ltd.

Encl.

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

REPLY COMMENTS OF CRAIG WIRELESS SYSTEMS LTD.

ON CONSULTATION ON TRANSITION TO BROADBAND RADIO

SERVICE (BRS) IN THE BAND 2500 - 2690 MHz

I. INTRODUCTION

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

CWS is in receipt of comments from the following interested parties in this proceeding: ABC Communications (ABC), Bell Canada, Inukshuk Wireless Partnership and Rogers Communications Inc. (collectively, Bell et al), Bragg Communications Inc. (Bragg), Cablevision TRP-SDM Inc., Ericsson Canada (Ericsson), Intel Corp. (Intel), Look Communications Inc. (Look), Martin Catudal, Manitoba School Divisions (MSD), MTS Allstream Inc. (MTS), Prairie Spirit School Division (PSSD), Radio Advisory Board of Canada (RABC), Sasktel, SSI Micro Ltd. (SSI), TELUS Communications Company (Telus), Wireless Communications Association International (WCAI), and the WiMAX Forum.

The following constitutes the reply comments of CWS in this proceeding. CWS has structured these reply comments to conform with the format and sequence of issues that are identified by the Department in the Consultation Paper. Failure on the part of CWS to address a specific issue or argument raised by another interested party in this proceeding should not be construed as agreement with or acceptance of such issue or argument where to do so would be contrary to the interests of CWS.

II. THE DEPARTMENT SHOULD ADOPT A FIRM TRANSITION DATE

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

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

Most parties to this proceeding support a firm transition date to BRS of March 31, 2011. These parties include: ABC, CWS, Bell et al, Cablevision TRP-SDM, Look, MTS Allstream, RABC, SaskTel, SSI and Telus. Although some of these parties noted that it may take time for certain incumbents in the band to re-locate to new frequencies, this does not preclude the adoption of a firm transition date for conversion to BRS.

As indicated in its comments of 15 June 2009 in this proceeding, CWS is actively pursuing the development of WiMAX and other technologies for deployment in the provinces of British Columbia and Manitoba and is on track to voluntarily convert all of its MDS spectrum to BRS before March 31, 2011.

Notwithstanding the foregoing, CWS notes that it may be possible for certain incumbent MDS and MCS operators to transition to BRS sooner than March 31, 2011. CWS therefore reiterates its recommendation that the incumbents use the stakeholder proposal development (SPD) process or other mechanisms to explore opportunities to transition to BRS earlier than March 31, 2011.

Where such arrangements cannot be negotiated, CWS supports the recommendation made by certain parties to this proceeding that all major commercial MCS and MDS operators in the band (including the operating subsidiaries of CWS) be given notification by the Department on March 31, 2010 to retune their equipment by March 31, 2011. With respect to some of the smaller MDS and MCS operators in the band, such as the school boards in Manitoba and certain licence-exempt BDU systems, CWS supports the requests made by these parties to be provided with a longer BRS transition period, provided that these transition periods do not prevent a major commercial operator in the band from converting to BRS by March 31, 2011 should it wish to do so.

Finally, CWS does not support the proposal made by Telus in this proceeding that the Department place a "moratorium" on voluntary conversions to BRS. This proposal runs directly counter to the policy articulated in *Policy Provisions for the Band 2500-2690 MHz to Facilitate Future Mobile Service*, DGTP 002-06, dated March 31, 2006, (the 2006 Policy) which permits incumbent MDS and MCS operators in the band to convert to BRS on a voluntary basis, provided that they are prepared to return approximately one third of their spectrum if they wish to provide mobile services in the band. This Policy has now been in

place for over three years and was adopted by the Department in an effort to promote flexible use of spectrum, innovation and competition, all of which are key objectives in the Department's *Spectrum Policy Framework for Canada*, dated June 2007.

According to Telus, a moratorium is needed on voluntary conversions to BRS in order to ensure "business certainty" and prevent incumbents in the band from gaining a "head start".

By way of response, CWS notes that one of the principal objectives of the 2006 Policy was to create greater business certainty in relation to the 2500 - 2690 MHz band in order to permit incumbents in the band to transition to new technologies, rather than force them to adhere to unworkable business models and/or outdated technology. Although the 2006 Policy may not provide Telus with the type of "business certainty" that it is seeking, the vast majority of parties in this proceeding do not appear to agree with this assessment. The 2006 Policy has provided these parties (and the public more generally) with a "roadmap" as to how spectrum in the 2500-2690 MHz band will be licensed by the Department on a going forward basis and has allowed these parties to formulate concrete submissions in this proceeding as a consequence. The 2006 Policy has also provided much needed certainty to existing operators in the band, including those faced with stranded investments arising from what the Department, itself, has described as a "fundamental reallocation" of spectrum in the band.

However, more to the point, Telus' arguments regarding the need for greater "business certainty" come too late. If Telus had wanted greater certainty than that which is contained in the 2006 Policy and/or a moratorium on voluntary conversions of MCS and MDS spectrum, it should have sought greater certainty and/or a moratorium in the proceeding leading up to the 2006 Policy. Clearly, the Department did not see a need for a moratorium or additional rules at the time that it released its 2006 Policy.

With respect to Telus' argument that a moratorium on the voluntary conversion to BRS is needed in order to prevent incumbents in the band from gaining a head start, CWS notes that there are several frequency bands that are currently in use and, indeed, licensed to Telus, which can be used for advanced mobility applications. The fact that spectrum in the 2500-2690 MHz band can also be used for these applications does not detract from the

fact that Telus is in a far better position than, say CWS, to gain a “head start” in the market for advanced mobility services. Telus is one of the largest providers of mobile wireless services in the country and, given its large holdings of mobile wireless spectrum, it is not clear why Telus feels that it might be at a disadvantage vis-à-vis service providers that have not yet deployed mobile wireless networks in the 2500-2690 MHz band.

In the view of CWS, Telus’ arguments do not stand up to any meaningful scrutiny. These arguments are self-serving and appear to be more concerned with stifling competition and innovation than promoting these important policy objectives.

III. CRITERIA TO BE USED FOR BRS LICENCES

a) MCS Licences in Manitoba

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

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

In its 15 June 2009 comments in this proceeding, CWS submitted that all existing holders of MCS spectrum authorizations in the province of Manitoba should be eligible to convert their spectrum to BRS based on the financial investments that they have made to develop and make use of spectrum in the 2500-2690 MHz band.

Several parties supported this position in their 15 June 2009 comments, including: the RABC, MTS Allstream, MSD, ABC and Telus, whereas other parties only supported the ability of the single commercial MCS operator (i.e., Craig Wireless Manitoba Inc. or “CWMI”) to convert to BRS.

In the view of CWS, both CWMI and the Manitoba school boards have taken the technical and financial risks to develop their MCS spectrum. Just because one class of MCS licence holder in the province of Manitoba is not engaged in the provision of commercial services does not mean that this class of licence holder should be denied a right that is being granted to all other MCS licensees in Canada. If this position were to prevail, then other non-commercial operators, such as SaskTel, should not be eligible for conversion to BRS either.

With respect to the conversion date for MCS spectrum in Manitoba, CWS supports the requests made by certain parties to this proceeding that some of the smaller MDS and MCS operators in the band, including the school boards in Manitoba, be provided with a longer BRS transition period, provided that these transition periods do not prevent a major commercial operator in the band (such as CWMI) from converting to BRS by March 31, 2011 should it wish to do so.

CWS also supports the request by the Manitoba school boards for government funding to assist them in the conversion of their MCS spectrum to BRS spectrum.

b) MCS Licences in Other Provinces

As indicated above, CWS generally supports a transition date to BRS of March 31, 2011. CWS understands that most current generation MCS equipment can be re-tuned to frequencies throughout the entire 2500 - 2690 MHz band. Therefore, provided there is sufficient channel separation for the duplex method used, there is no reason why commercial MCS licensees cannot also transition to BRS by March 31, 2011. In fact, as noted above, it may be possible for certain MDS and MCS operators to transition to BRS sooner than March 31, 2011. In this regard, CWS recommends that the incumbents use the SPD process or other mechanisms to explore opportunities to transition to BRS earlier than March 31, 2011. However, where such arrangements cannot be negotiated, CWS supports the recommendation made by certain parties to this proceeding that all commercial operators in the band be given notification by the Department on March 31, 2010 to retune their equipment by March 31, 2011.

c) MDS Authorizations

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

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

CWS continues to be of the view that if an MDS operator has received a CRTC decision authorizing the operator to provide service in a given area and the operator has submitted

an application to the Department for the requisite broadcasting certificate, this should entitle the operator to convert to BRS spectrum in the area in question.

d) CRTC Licence-Exempt Broadcasting Stations in Rural Areas

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

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

CWS supports the request made by certain small licence-exempt BDU systems to be provided with a longer BRS transition period, provided that such transition period does not prevent an incumbent commercial operator in the band from converting to BRS by March 31, 2011 should it wish to do so.

IV. GEOGRAPHIC SERVICE AREAS FOR MCS AND MDS LICENSEE

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

Most parties to this proceeding have recommended that either Tier 2 or Tier 3 licence areas be used for the conversion to BRS spectrum. These parties include the following: CWS, RABC, MTS Allstream, SaskTel, Look, the WiMAX forum, Intel, and Bell et al. Among the reasons given by these parties for the use of Tier 2 or Tier 3 serving areas are that licences covering these areas will:

- Maximize the deployment of mobile broadband services to consumers;
- Provide the most competitive environment for 4G mobile services;
- Align the geographic serving areas of BRS licences with the geographic serving areas used in other mobile wireless bands, such as the PCS, cellular and AWS bands;

- Reduce the number of BRS licences that must be managed by Industry Canada, thereby reducing the administrative burden on the Department;
- Reduce the fragmentation of spectrum into small geographic serving areas which would be detrimental to the ability of consumers to benefit from seamless mobile broadband services across the country;
- Align the serving areas of converted BRS licences with the BRS licences that will be auctioned by the Department;
- Serve as an easier size for operators to coordinate as opposed to Tier 4 licences.

There were only two parties that recommended the use of Tier 4 serving areas, namely ABC and Telus. ABC recommended the use of Tier 4 serving areas because, among other things, it would “encourage deployment by small and local Internet service providers.” As a provider of MDS and MCS services in rural and underserved areas, CWS understands the initial appeal of Tier 4 licences; however, it must be borne in mind that the mobile service has now been allocated to the 2500-2690 MHz band. As such, it is critically important that consumers in this band be able to benefit from seamless mobile broadband coverage as they travel throughout Canada and its various regions. This is a difficult objective to achieve if the geographic serving areas for BRS licences are fragmented or constrained to Tier 4 serving areas. CWS also notes that there may be other frequency bands, such as the 2.3 and 3.5 GHz bands that are better suited to the requirements of the “small and local Internet service providers” that are referenced in ABC’s comments.

With respect to the submissions of Telus on this issue, it would appear that Telus generally supports the licensing of larger service areas, such as those found in Tier 2 and Tier 3. However, in the case of holders of MDS authorizations, Telus takes the position that Tier 3 or Tier 4 licences are more appropriate because these would match the existing service area contours of MDS transmitters.

By way of response, CWS notes that Telus stands virtually alone in this proceeding in recommending Tier 4 serving area licences. This is because there are no advantages to be gained from issuing licences over such a small service area. In fact, as Telus itself

acknowledges, there are many disadvantages from adopting a Tier 4 licensing approach as documented in detail in the submissions of numerous other parties to this proceeding.

Furthermore, as noted by CWS in its 15 June 2009 comments in this proceeding, the coverage contours of many MDS systems extend beyond the geographic boundaries that have been used to define Tier 4 serving areas. Given the fact that MDS operators currently provide service to customers located in these outlying areas, it would not be appropriate to force these operators to scale back their operations in order to conform to the contours of a smaller, Tier 4 serving area. In the vast majority of instances, the Tier 4 serving area boundaries do not reflect the true coverage of existing MDS systems and would be entirely inappropriate for a mobile service in any event, because customers of mobile services have an expectation that they can receive service from their chosen mobile provider throughout a much larger geographic region.

In the view of CWS, only a Tier 2 licensing approach satisfies all of the criteria identified by interested parties in this proceeding for BRS spectrum and only a Tier 2 licensing approach will provide the most competitive environment for 4G mobile services. CWS therefore reiterates its proposal that the Department adopt a Tier 2 licensing approach to the licensing of BRS spectrum.

V. CONDITIONS OF LICENCE

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

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

Research and Development

As indicated in its 15 June 2009 comments in this proceeding, CWS submits that if the Department determines that the R&D condition of licence should be eliminated as a result of the proceeding initiated by DGRB-001-09, then the R&D licence condition proposed in Item 6.11 of the Consultation Paper should be eliminated as well.

VI. CONCLUSION

CWS thanks the Department for the opportunity to submit these reply comments and looks forward to the Department's determinations on the issues raised in this proceeding.
