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Manager, Emerging Networks  
Industry Canada  
300 Slater Street  
Ottawa, Ontario K1A 0C8

Dear Sir/Madam:

Re: *Canada Gazette* Notice DGTP-002-10  
*Consultation on the Use of the Band 25.25 – 28.35 GHz*, DGTP-002-10, May  
2010

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1. Mobilexchange Spectrum Inc. ("MSI") is pleased to provide its comments in the above-cited consultation on the use of the band 25.25 – 28.35 GHz ("28 GHz").
2. The comments are submitted in Adobe Portable Document Format ("PDF"). The operating system used by the originating computer used to create the file is Microsoft Windows XP Professional Service pack 3 and the PDF file was created using Scansoft PDF Converter Professional version 4.
3. MSI is concerned that the conditions proposed in section 5.2 of the corresponding consultation document ("DGTP-002-10") could be construed as being at odds with the policy articulated for the licensing of unassigned and returned 24, 28 and 38 GHz spectrum in *Decision on the Renewal of 24 and 38 GHz Spectrum Licences and Consultation on Spectrum Licence Fees for 24, 28 and 38 GHz Bands*, DGRB-004-09, March 2009 ("DGRB-004-09").
4. Industry Canada (the "Department") cannot issue a clarification (e.g., "DGTP-002-10") to a policy (e.g. "DGRB-004-09") that ends up undermining the very policy that is being clarified. Such a result would undermine the reasonable expectations of parties that have been developing their business plans based on

the original policy decision. Accordingly, MSI submits that the conditions proposed in section 5.2 of DGTP-002-10 can only be implemented if and to the extent that they do not conflict with the policy articulated in DGRB-004-09.

5. In Decision DGRB-004-09 the Department stated:

“The Department will implement a first-come first-served process for the unassigned and returned 24, 28 and 38 GHz Spectrum. The Department reserves the right to review the use of the first-come first-served process and to consider a competitive licensing process at any time should demand warrant.

The Licensing process for the 24, 28 and 38 GHz will be set out in a Client Procedures Circular (CPC) to be developed prior to the finalization of the fees.”

6. By treating the 24, 28 and 38 GHz spectrum bands together, the Department clearly signaled that it would allow the same uses to be made of all three of these spectrum bands. In other words, parties reading that policy had the reasonable expectation that the area licensing would be permitted in all three bands for areas that were the same as the tiered areas for which 24 and 38 GHz licences had already been permitted. This view is reinforced by the Department’s statement that one of the reasons for making spectrum in all three bands available is “that demand for backhaul from AWS licence winners is expected to increase”. Clearly the demand for this type of backhaul will be present over the same large areas that AWS licensees are authorized to serve.
7. Therefore, no condition proposed in DGTP-002-10 intended to clarify the first-come, first-served (“FCFS”) regime adopted in DGRB-004-09 should be adopted except if and to the extent that the condition provides for the same types of uses and service areas already permitted for the 24 and 38 GHz bands.
8. MSI will now turn to a discussion of each of the conditions proposed in section 5.2 of DGTP-002-10 in light of this context.
9. Proposed condition (a): **Assignment of blocks will be on an ‘as needed’ basis. Licensees will be required to demonstrate their need for spectrum for each request.**
10. Some licensees are in the business of managing spectrum for other parties. In each such case, the demand for spectrum will be determined by the licensee’s customers. This type of business model has already been adopted by some licensees of 24/38 GHz spectrum. Therefore, if this condition is adopted, it should be interpreted to accommodate demand expected to be generated by the customers of proposed licensees based on reasonable forecasts provided by the proposed licensees.

11. MSI seeks a clarification to this effect from the Department to ensure that the 28 GHz spectrum can be utilized for the same types of applications for which 24 and 38 GHz licences have been authorized. Otherwise, existing licensees will have no viable options for expanding their businesses and serve the needs of their customers (wholesale or retail) once the spectrum in their existing licensed bands is fully utilized in particular geographic areas. Such an outcome would conflict with the Department's stated objective in DGRB-004-09 of not withholding spectrum from the market as warranted.
12. Proposed condition (b): **A second block will only be assigned to a licensee in the same service area when the original block assignment cannot be reused.**
13. This condition is consistent with best spectrum conservation practices, and MSI endorses it.
14. Proposed condition (c): **Assignments will be brought into service within a period not greater than six months from receipt of an approval-in-principle/licence.**
15. MSI has no objection to this condition.
16. Proposed condition (d): **A licensee will be assigned the same frequency blocks, to the extent possible, in all authorized service areas.**
17. MSI does not object to this condition, so long as it is clear that the only reason that a licensee would not be assigned the same frequency blocks in all authorized service areas is because that frequency is already in use by another licensee and cannot be shared as a technical manner.
18. MSI seeks a clarification of this condition to this effect to ensure that a carrier is able to standardize on equipment in the same frequency throughout its authorized service area. This is necessary to enable such a carrier to plan its network and take advantage of available economies of scale associated with the use of equipment utilizing the same frequency throughout its operating territory.
19. Proposed condition (e): **Requests for wide area authorization, for example, large regions of a province, will not be considered.**
20. This condition would prevent the very type of area licensing that is presently permitted for the 24 and 38 GHz bands. A carrier would not be able to integrate the use of 28 GHz spectrum into its network in order to serve demand throughout its operating territory or engage in the kind of long-term network planning that is facilitated by licensing based on geographic tiers. Therefore, such a condition would substantially increase the costs and complexity of microwave backhaul and fixed wireless deployments.

21. In conclusion, this proposed condition is contrary to the policy articulated in DGRB-004-09 and to the public interest. MSI urges the Department not to adopt the condition.
22. Proposed condition (f): **Point-to-point systems may have shared access where it is determined that their usage requirements are low.**
23. MSI does not object to this condition, so long as it is clear that area licensing (including wide area authorization, for example, for large regions of a province) is not prohibited, as discussed above.
24. Proposed condition (g): **Should demand exceed supply in a particular area, the Department reserves the right to review the use and consider a competitive process at any time.**
25. This condition is entirely consistent with the Department's statement to the same effect in DGRB-004-09. MSI does not oppose this condition, other than to state the somewhat obvious caveat that spectrum already licensed should not be subject to such a competitive process while the term of the licence is still in effect.
26. In reference to Licensing Options (6.) MSI is similarly concerned that the two options differ substantially from the DGRB-004-09 decision.
27. Option 6.1 converts the area licensing, that has been successfully adopted in the 24 and 38 GHz bands, to common carriers site by site microwave licensing which historically was deployed for point-to-point links private line applications. This form of licensing will substantially diminish the potential value of the 28 GHz spectrum for large area wireless backhaul deployment, as has been adopted in the 24/38 GHz bands.
28. In Option 6.2 the service area should be the same as the tier allocation adopted both for the access 2 GHz bands and the backhaul 24/38 GHz bands. Any deviation from these established service areas will be contrary to DGRB-004-09 decision and very difficult for the wireless carriers to deploy.
29. The "DGRB-004-09" decision provided for continuity of microwave deployment in the upper 20 to 40 GHz bands and created opportunities to deploy the returned and reserved 28 GHz band under the same deployment principals as for the 24/38 GHz bands.
30. The proposed deployment/licensing conditions in "DGTP-002-10" are significantly at odds with industry expectations based on "DGTP-004-09" and if adopted will significantly reduce the effectiveness and commercial benefits of this Canadian resource.

31. If there are any questions concerning these comments, please do not hesitate to contact the undersigned.

Yours truly,

Michael Kedar  
President