

**COMMENTS IN RESPONSE TO GAZETTE
NOTICE DGTP-010-09**

CONSULTATION ON THE SPECTRUM ALLOCATIONS
AND SPECTRUM UTILIZATION POLICIES FOR THE
FREQUENCY RANGE 1435-1525 MHZ (L-BAND)

submitted by



Date: 12 March, 2010

I. Introduction

1 This submission is filed by CBC/Radio Canada in response to Gazette Notice DGTP-010-09, as amended.

2 The Corporation has contributed to, and generally supports the submission of the Radio Advisory Board of Canada (RABC), subject to the comments below which relate to Industry Canada's proposal to rescind the DAB designation in the frequency range 1452-1492 MHz to be replaced by a designation for flexible use (fixed, mobile and broadcasting).

II. Summary of CBC/Radio Canada's Position

3 CBC/Radio Canada conditionally supports the Department's proposal to rescind the DAB allotment plan in the 1452-1492 MHz band; provided that Industry Canada reserves all or a portion of this band for assignment to new types of broadcasting services, including media and mixed media services provided by broadcasting undertakings, thereby retaining broadcasting as the primary use in the range 1452-1492 MHz rather than being co-primary with mobile and fixed radio.

4 This would be consistent with Industry Canada's vision in Gazette Notice DGTP-010-09, Section 4.2 which contemplates this spectrum being used in part for multi media broadcasting services. It would also be consistent with the CRTC's Digital Radio Policy as set forth in Broadcasting Notice CRTC 2006-160, 15 December, 2006. In that Notice the CRTC recognized the potential use of the L-band for innovative new broadcasting and multi-media services.

5 This approach would also be consistent with the policy objectives in the *Broadcasting Act* which require the Canadian broadcasting system to be readily adaptable to scientific and technological change, thereby enabling new and emerging digital media platforms to reflect Canada's linguistic duality and cultural diversity in a manner that is consistent with traditional broadcasting platforms. These policy objectives cannot be satisfied if the broadcasting industry is denied access to the underlying spectrum required to deliver these services.

6 While the proposal to make broadcasters' use of this segment of the L-band co-primary with fixed and mobile wireless services would in theory open up this spectrum for new broadcasting services, the economic imbalance between these competing uses would, as discussed below, inevitably result in the preclusion of broadcasters from use of this spectrum. It is for this reason that broadcasting services should have the only primary use designation.

7 In the alternative, if the Department is determined to follow through with its plan to make mobile and fixed wireless co-primary with broadcasting in this frequency range, CBC/Radio Canada urges the Department to recognize that co-primacy with fixed and mobile radio will effectively foreclose use by broadcasting undertakings in this range, thereby giving rise to the need to make other comparable spectrum available for their use. One possible alternative would be to make channels 5 and 6 on the analog band available to broadcasters to be used for digital radio.

III. Impact of the Proposed Changes on Broadcasters and Broadcasting Services

8 The declining use of DAB might well lead the Department to conclude that this spectrum range should no longer be limited to audio broadcasting services, but that determination should not lead the Department to conclude that the frequency range should be opened up to non-broadcasting related services on a co-primary basis.

9 Such a policy would be short-sighted given the pace of change in wireless technology and the evolution of broadcasters to multi-media platforms. This evolution was recognized by the CRTC in its Digital Radio Policy (Broadcasting Notice CRTC 2006-160, 15 December 2006). In that policy statement, the CRTC expressly recognized the potential use of the L-band by broadcasters to deliver innovative programs in a variety of technical formats:

DMB, DVB-H and other multimedia technologies

58. There was a general consensus that the Commission's new policy framework should encourage technical innovation. More specifically, parties suggested that the Commission consider permitting experiments and field trials using DVB-H or DMB technologies to deliver a mix of audio, video and related data services in the L-band.
59. However, concerns were expressed regarding the availability of sufficient spectrum resources. In this regard, the CAB suggested that the licensing of permanent services should await further proceedings that would identify suitable bands for such transmissions.
60. The Commission acknowledges the important role that broadcasters play in the development of new technologies and agrees that such technologies could deliver innovative programming in a variety of technical formats that could attract early adopters, provided that the spectrum capacity issues can be satisfactorily addressed and technical authorization is obtained from the Department.

10 As discussed further below, wireless mobile services are increasingly being allocated spectrum in a number of bands. At the same time, large quantities of spectrum have been reallocated from broadcasting uses to public safety, mobile or flexible broadband applications.

11 As noted by the CRTC in its Digital Radio Policy, the broadcasting sector is already suffering from a lack of available spectrum – particularly in the FM band. At the same time, broadcasters are trying to adapt to changing technology and the challenge of making their services available on multiple platforms. The availability of L-band spectrum for use by broadcasters for multimedia services would encourage these developments.

12 As a user of the L-band for DAB services, CBC/Radio Canada is concerned that the Department's proposal to accord mobile and fixed radio primary status in this frequency range and "to let market forces play a greater role in determining the services to be offered in this spectrum" will favour users of mobile spectrum over providers of broadcasting services and will inevitably lead to the exclusion of both public and private broadcasting uses of this spectrum due to the comparatively weaker economics of the broadcasting sector.

13 While the Gazette Notice states that "spectrum resources should be allocated and assigned in such a way as to maximize the economic and social benefits for Canadians", the proposal to pit mobile radio uses against broadcasting uses, and to rely increasingly on market forces to determine ultimate use in this frequency range, will inevitably negate the inclusion of broadcasting services and related social benefits accruing from the provision of broadcasting services in this frequency range.

14 While there may be voracious demand for more spectrum by wireless mobile carriers, it is Industry Canada's role to allocate spectrum in a manner that meets Canada's social, as well as economic needs. This cannot be done by relying on spectrum auctions alone. Pitting mobile radio interests against broadcasting interests will inevitably favour the former over the latter. This would constitute an abdication of Industry Canada's responsibility to manage this valuable public resource in a manner that best meets both social and economic needs of Canadians.

15 The Canadian Broadcasting System is subject to a number of statutes and regulations including the *Broadcasting Act*, which set out clear and specific policy objectives for the regulation and supervision of the Canadian broadcasting system. The broadcasting system must notably reflect Canada's linguistic duality and cultural diversity and comprise public, private and community elements. It must also be readily adaptable to scientific and technological change.

16 Therefore, while the formulation of broad spectrum policy is the responsibility of Industry Canada, the Department's policies should encourage the development of new and emerging broadcasting platforms in a manner that takes into account, and furthers the objectives of the *Broadcasting Act*.

17 In light of these considerations, CBC/Radio-Canada conditionally supports Industry Canada's proposed policy of making the frequency range 1452-1492 MHz available for the delivery of multi-media services by broadcasters – but it opposes making mobile and fixed wireless uses co-primary with broadcasting uses in the same frequency range.

18 This change to the proposed spectrum use policy applicable to the frequency range 1452-1492 MHz would give the broadcasting industry the opportunity to develop technologies to deliver innovative new broadcasting services using this range, including media and multi-media services.

IV. Increasingly, Spectrum is being Diverted from Use by Broadcasters

19 Spectrum is increasingly being diverted from broadcasting to other uses – most notably mobile wireless services.

20 In the CRTC’s 2006 public proceeding on over-the-air television, the Department submitted that, from the perspective of efficient and effective management of the radio spectrum, serious consideration should be given to specifying a date for the shut down of OTA analog television transmission. Such a date could be closely aligned within a North American market time frame with a view to ensuring that Canadians will be able to receive Canadian OTA digital television. (Broadcasting Public Notice CRTC 2007-53)

21 This led to the Commission’s decision to set a 2011 cut-off date for conversion to digital OTA. This conversion, which is costing Canadian broadcasters hundreds of millions of dollars, will free up large amounts of spectrum for redeployment. The spectrum efficiencies that are being achieved are being paid for by the broadcasting sector and, in particular, by over-the-air television broadcasters.

22 In Gazette Notice DGTP – *Policy Provisions for the Band 2500-2690 MHz to Facilitate Future Mobile Service*, the Department instituted a change in policy that entailed the discontinuance of Multipoint Communications Systems (MDS) in the sub-band 2500-2596 for broadcasting purposes. Again this process was driven in part by the lack of commercial success of the MDS systems and in part by “an overriding policy need to accommodate the introduction of new services, such as mobile and broadband Internet access and to encourage the most efficient use of the spectrum.”

23 Unlike the analog conversion program, the MDS process allowed licensees in the 2500-2596 MHz range to return one-third of their spectrum to Industry Canada for redeployment and to retain two-thirds for flexible use under new Broadband Radio Service (BRS) licences. To date, the only MDS provider to convert its spectrum to BRS, Look Communications, has sold its BRS licences to a mobile wireless service provider.

24 Another example of the reclamation of spectrum from the broadcasting sector is the re-designation of television channels 63-64 and 68-69 for public safety purposes.

25 These examples of diverting spectrum away from broadcasting uses in favour of mobile wireless and other uses are occurring at the same time as there are acute shortages of spectrum for broadcasting purposes. These shortages are most apparent in respect of ethnic radio services, minority language radio services and FM radio services in markets adjacent to large metropolitan areas like Toronto. By way of example, the shortage of available spectrum in Hamilton, Ontario means that the citizens in one of Canada's largest cities cannot access local content on CBC Radio One.

26 The current scarcity of spectrum for broadcasting purposes will be exacerbated if the Department follows through with its plan to make mobile and fixed wireless uses co-primary with broadcasting services in the sub-band 1452-1492 MHz. This will impair the ability of broadcasters to use this part of the L-band for the types of innovative media and multi-media services envisaged by the CRTC in its Digital Radio Policy.

V. Efficient Allocation of Spectrum vs. the Public Interest

27 It is Industry Canada's responsibility under the *Radiocommunication Act* to manage radio spectrum, which is a scarce public resource.

28 While spectrum auctions may be an appropriate mechanism to allocate a specific frequency range among competing suppliers of the same service (such as mobile or fixed radio service providers) it is not an appropriate mechanism for allocating spectrum between competing social interests.

29 That type of allocation requires the Minister to exercise his discretion to manage radio spectrum in a manner that satisfies the public interest.

30 Pitting the economic resources of the broadcasting sector against the economic resources of mobile wireless carriers will inevitably deny broadcasters access to this frequency range due to the very different economic models under which they operate.

31 At the same time, the Canadian broadcasting system is vital to both the national identity and the social and economic fabric of Canada. Access to radio spectrum is essential to the delivery of broadcasting services to the Canadian public.

32 Industry Canada, as the manager of spectrum in Canada, therefore has an important role in sustaining the ability of broadcasters to satisfy the policy objectives set forth by Parliament in the *Broadcasting Act*. This role was described by the CRTC in its Digital Radio Policy:

The Department and the Commission play complementary roles in the Canadian broadcasting system. The Department allocates frequency spectrum for broadcasting and authorizes any new technical standards for use in the frequency spectrum allocated to broadcasting services. The Commission licences, regulates and supervises the broadcasting system in a manner that further the objectives set out in the Broadcasting Act (the Act). Objectives relevant to the introduction of DRB include those set out in section 3(1)(d)(iv), which provides that the Canadian broadcasting system should be "readily adaptable to scientific change," and section 5(2)(f), which provides that the Canadian broadcasting system should be regulated and supervised in a flexible manner that "does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians."

(Broadcasting Public Notice CRTC 2006-160, para. 33)

33 The Department's proposal to change the permitted use of spectrum in the 1452-1492 MHz range requires it to relax its use of market forces as the preferred allocator of scarce spectrum among competing uses, and to make an allocation based on the public interest, recognizing that spectrum is critical to the on-going evolution of public and private broadcasting services in Canada.

VI. CBC/Radio-Canada Proposal

34 In light of the forgoing, CBC/Radio Canada conditionally supports the proposal to rescind the current DAB usage plan in the 1452-1492 MHz range but respectfully urges the Department to make the following changes to the proposed policy in that set-band.

- Retain broadcasting as primary in the range 1452-1492 MHz.
- Do not make mobile or fixed radio uses co-primary.
- Give the broadcasting industry the opportunity to develop new technologies and services that make use of this frequency range, including new media and multi-media services.
- In the alternative, if the Department nonetheless decides to make mobile and fixed wireless co-primary with broadcasting uses in this frequency range, recognize that this decision will foreclose use by broadcasting undertakings in this range thereby giving rise to a need to make other comparable spectrum available for broadcasting purposes, such as television channels 5 and 6 which could be used for radio services.