

Our ref.: 1100-4
CTIS (WebCIMS): 65154

Mr. Fernand R. Léger
Director, Spectrum and Radio Policy
Telecommunications Policy Branch
Industry Canada
300 Slater Street, Room 1604A
Ottawa, Ontario K1A 0C8

Dear Mr. Léger:

I am writing in response to Notice No. DGTP-001-05 – Consultation on a Renewed Spectrum Policy Framework for Canada and Continued Advancements in Spectrum Management – published in Part I of the *Canada Gazette* of May 14, 2005.

As Commissioner of Official Languages, I am submitting comments on the issues that I consider relevant to my mandate. This review provides an excellent opportunity to consider the needs of official language minority communities,¹ to support their development and to promote Canadian linguistic duality, pursuant to Part VII of the *Official Languages Act*.

Part A – Consultation on the Revision to the Spectrum Policy Framework for Canada

Proposed Changes to the Core Objectives

For over a decade, the Office of the Commissioner of Official Languages has been doubling its efforts to raise the awareness of federal institutions concerning their obligations under Part VII of the *Official Languages Act*. In its review of Canadian spectrum policy, Industry Canada is proposing to rewrite the core objectives of the Spectrum Policy Framework for Canada. The Department must ensure that the proposed new core objectives enhance the vitality of Anglophone and Francophone minorities in Canada and foster the full recognition and use of English and French in Canadian society. Consequently, it is my view that the Department should be guided by section 41 of the *Official Languages Act*, as well as subparagraph 3(1)(d)(iii) of the *Broadcasting Act*.

¹ Official language minority communities are Francophone and Acadian communities outside Quebec and Anglophone communities in Quebec.

Concerning core objective 1,² it is important to remember that for official language communities, and especially official language minority communities, access to new technologies and to radiocommunication and telecommunication services strengthens their social structures and contributes to their economic development, as well as to their health, culture and educational development. In some communities, high-speed Internet access is possible only through wireless technology. Internet access is important, since it enables Canadians across the country to share their culture and knowledge, obtain information in their first official language and stay informed about what is happening in the world.

For remote communities in particular, the Internet is often the only means of accessing government services, such as health care, employment opportunities and e-learning, in the official language of their choice. I therefore expect Industry Canada to ensure that the actions taken to promote and support the development and operation of radiocommunication services aim to strengthen the social structures and support the development of official language minority communities.

Regarding core objective 2,³ it is my duty to point out that the language rights of Canadians cannot be left to market forces alone. In the broadcasting and telecommunications field, it is important to consider the impact of decisions on minority language groups. Indeed, economic incentives for establishing broadcasting and telecommunication services and structures may be insufficient in the case of communities located in rural and sparsely populated regions, thereby compromising the development and vitality of these communities, especially official language minority communities. For example, the range of television stations offered by conventional cable TV operators and the range of radio stations vary depending on the dominant language in their service area and on the community's economic capacity to support operators and develop infrastructure.

Consequently, a number of official language minority communities have access to only a limited choice of programs in their language. Satellite and terrestrial broadcasting networks provide communities with access to a greater variety of programs and information in their language and help them keep abreast of world events. In order to fulfill the commitment set out in Part VII of the *Official Languages Act*, the Government of Canada has the responsibility to facilitate access to broadcasting and telecommunication technologies and services where market forces are not sufficient to meet the communities' needs.

Industry Canada is proposing to change core objective 6 in order to "facilitate the use of spectrum in rural and remote communities and regions." In reviewing the needs of these communities, it is important to consider the specific needs of official language minority communities. In fact, many of these communities are located in rural areas, far from urban centres and in sparsely populated areas. Wireless technology is a very useful means of communication for these communities, providing access, in their official language, to services that they would not otherwise be able to receive. It is my view that, in order to fulfill its responsibilities under Part VII of the *Official Languages Act*, Industry Canada must ensure that

² Namely "To promote and support the orderly development and efficient operation of radiocommunication systems and services to provide economic, social and cultural benefits for Canadians."

³ Namely "To promote economically efficient resource allocation and reliance on market forces and economic incentives to assign the spectrum."

any decision concerning spectrum use in remote communities and regions enhances the vitality and development of minority communities. I therefore expect the Department to comply with the Government of Canada's Official Languages Accountability and Coordination Framework,⁴ which states that "every federal institution, as part of its strategic planning, implementing its mandate and policy and program development process, will need to [...] demonstrate that it has considered the needs of minority communities."

A number of organizations are active in official language minority communities across Canada. During public consultations, as suggested in core objective 8,⁵ particular attention must be paid to include these organizations in the consultations. The Official Languages Accountability and Coordination Framework clearly states that every federal institution must "consult affected publics [...], especially representatives of official language minority communities, in connection with the development or implementation of policies and programs." Yet, in the course of my duties, I have found that there are still situations where federal institutions did not consider the needs of the communities and where these communities had to turn to the courts to secure their rights. I therefore expect Industry Canada to respect the principle of consultation with minority communities.

New Policy Guideline 9 – Availability of Advanced Communication Services for all Canadians

First of all, I would like to congratulate Industry Canada for recognizing that Canadian societal needs are not met by market forces alone and that a degree of government intervention is therefore required. However, I would like to point out the importance of taking the specific needs of official language minority communities into account in facilitating access to spectrum.

Community radio stations play an important role in the development of Anglophone and Francophone minority communities. In its *Action Plan for Official Languages*, the Government of Canada recognized that community radio was a priority area for action for promoting community life. The recent Canadian Radio-television and Telecommunications Commission (CRTC) decision to not grant a licence to a Francophone community broadcasting station in Ottawa (CRTC 2005-257) prompts me to raise certain issues here concerning radio spectrum allocations.

Urban communities, such as the Ottawa-Gatineau area, often face a shortage of frequencies and spectrum saturation. Consequently, when a frequency becomes available, a community radio station must compete with a number of commercial radio stations to obtain an operating licence. As part of its commitment to support the vitality and development of official language minority communities, the Government of Canada must promote the establishment of a community radio station when the community expresses the need for such a station.

Consequently, it is my view that Industry Canada should use the authority granted to it under paragraph 26(1)(b) of the *Broadcasting Act* to reserve – across the country – certain frequencies for the exclusive use of community radio stations and to take into consideration the specific needs of minority communities in awarding these frequencies.

⁴ Government of Canada, *The Next Act: New Momentum for Canada's Linguistic Duality. Action Plan for Official Languages*, 2003.

⁵ Namely "To consult widely and on a regular basis on matters affecting the Program."

New Policy Guideline 15 – Public Consultation

As indicated above, federal institutions must consult representatives of official language minority communities concerning the development or implementation of policies and programs. At first glance, it may not be obvious that decisions taken in certain fields, such as spectrum management, can have an impact on official language minority communities. That is why it is important, during any public consultation, to ensure that the needs of these communities are taken into account. The Government of Canada must recognize that linguistic duality is not limited to cultural fields, but also has an impact on all areas of government intervention.

Part B – Consultation on Advancing the Canadian Spectrum Management Program

Fostering Advanced Communication Services in Rural Canada

Many official language minority communities are located in rural regions, far from urban centres and in sparsely populated areas. Others are located in large urban centres where the spectrum is congested and sometimes even saturated. And still others are located in areas where satellites are the only way for these communities to receive broadcasting and telecommunication services. Spectrum use policies must take these specific situations into consideration and vary accordingly. Likewise, spectrum use policies should be detailed in order to better reflect the Government of Canada's commitment to enhance the vitality and assist the development of official language communities. Access to modern communication services, such as broadband Internet services, is indeed contributing to the economic development of official language minority communities, as well as to their health, culture and educational development. Similarly, community radio stations play an important role in strengthening the social structures of official language minority communities and promoting community life. Spectrum use policies should therefore vary based on the specific needs of the population served, attaching particular importance to the linguistic situation of a community, i.e. whether it is an official language minority or majority community.

In order to fulfill its responsibilities under Part VII of the *Official Languages Act*, Industry Canada must ensure that any changes to the Spectrum Policy Framework for Canada and to spectrum management enhance the vitality and development of official language minority communities and foster the full recognition and use of English and French in Canadian society.

Thank you for giving me the opportunity to comment on this document.

Yours sincerely,

Dyane Adam