

Comments of

Healthcare of Ontario Pension Plan

***Consultation on a Policy, Technical and Licensing Framework
for Use of the Bands 2000-2020 MHz and 2180-2200 MHz***

Canada Gazette, Part I, SMSE-011-14 (May 31, 2014)

June 23, 2014

1. In accordance with the procedures set out in Consultation on a Policy, Technical and Licensing Framework for Use of the Bands 2000-2020 MHz and 2180-2200 MHz, Canada Gazette, Part I, SMSE-011-14, issued on May 31, 2014 Healthcare of Ontario Pension Plan (“HOOPP”) submits the following comments in response to this Consultation Document.
2. In proposal B1 of the Consultation Document, Industry Canada (IC) proposes to maintain the provision of MSS in this band. The reasons stated relate to the importance of MSS in serving areas of the country which are not easily covered. The department notes that for these reasons, it is proposing to differ from the approach adopted by the FCC in that the IC policy “should continue to require MSS offerings in conjunction with the terrestrial services in order to encourage increased coverage.”
3. HOOPP is quite aware of the needs of the population in rural and remote areas and lauds the department for making the service to these regions a priority. As a shareholder of TerreStar Solutions Inc., HOOPP is very supportive of this company’s business plan to offer both MSS and ATC services across the country, with ATC being prominent in populated areas and MSS in all other regions of the country. To some extent it is a practical way for a single company to use the value of the ATC services to fuel the development of services to the underserved areas of the country.
4. The ATC service in Canada is critical to the future viability of a 4th Canadian wireless service provider in all regions of the country. The non-incumbent wireless carriers are spectrum starved and will never be able to compete with incumbent carriers unless they solve their spectrum deficiency problem. HOOPP believes that the 40 MHz of ATC spectrum can be a key ingredient to providing for the viability and competitiveness of the 4th wireless carrier(s).
5. As an institutional investor that has invested and will continue to invest in communications opportunities in Canada, HOOPP would like however to address a concern it has with the condition which makes the provision of ATC services dependent on the offering of MSS services by GAMMA Acquisitions Canada (GAMMA).

HOOPP suggests that it is not necessary for IC to require the provision of MSS services as a condition of the ATC licence and in fact it raises potential risks for investors, as it would appear that an investment in TerreStar’s ATC services could be jeopardized by the requirement of GAMMA to offer MSS services within 5 years. HOOPP believes that the obligation to offer MSS service should belong

to the entity having control over it - the one having the orbital space, the satellite and the MSS licence. HOOPP believes that the regulatory framework and regulatory decisions that are already in place for MSS and ATC in Canada and in the US are sufficient to ensure that MSS service will be delivered in Canada.

6. HOOPP therefore suggests that the department maintain its policy to maintain the provision of MSS in this band, but not require this as condition to the provision of ATC services.
7. In proposal C1, Industry Canada proposes that the licensees not be permitted to transfer any of the ATC spectrum to a large wireless service provider for the term of the licence. For any other transaction, the transferability and divisibility provisions outlined in Section 5.6.4 of CPC-2-1-23 will apply to any ATC spectrum transfers.
8. HOOPP understands fully the department's reasoning for not wanting this spectrum to be transferred to incumbents and supports the use of CPC-2-1-13 by the department to determine whether or not transactions are in the public interest. The use of this well consulted and defined procedure, with its subjective interpretation by government officials, is critical to the stability and repeatability that HOOPP and other investors seek in making investments.
9. HOOPP is concerned that an inflexible 20 year over-riding condition, with no opportunity to apply for transfers to incumbents, will create uncertainty and confusion in the marketplace, which is contrary to a stable investing environment. HOOPP would therefore recommend that the department eliminate the requirement that the licensees not be permitted to transfer any of the ATC spectrum to a large wireless service provider for the term of the licence, as it already has a perfectly useable CPC which has all of the tools necessary for transfer assessments. Should the department feel it necessary to have an overriding timeframe in which it wants to prohibit transfers to large incumbents, HOOPP would suggest using a 5 year timeframe, in a similar way it did for the AWS spectrum.
10. It has come to the attention of HOOPP that the Licence Transfer policy procedures are currently being challenged in the courts. It is HOOPP's view that even if these challenges are successful, the Minister still has adequate powers under current legislation to make determinations on all licence transfers.