December 15, 1999

Mr. R.G. Amero
Director
Space and International Regulatory Issues
Radiocommunications & Broadcasting
Regulatory Branch
Industry Canada
300 Slater Street,
Ottawa, Ontario
K1A 0C8

Dear Sir:

Re: Notice DGRB-015-99 – Call for Expressions of Interest to Develop and Operate a Fixed Satellite Space Station in Orbital Position 118.7° W Longitude to Serve the Canadian Market and Beyond

On October 6, 1999, Telesat Canada ("Telesat" or the "Company") submitted an application to Industry Canada (the "Department") for a licence to operate the Anik F3 space station in the 118.7° W longitude orbital location. In response to this request and pursuant to the December 1998 Policy Framework for the Provision of Fixed Satellite Services (the "Policy Framework"), the Department issued the above referenced Notice, inviting other parties to submit Expressions of Interest in this orbital position. In addition, parties were invited to submit comments on the nature of a potential competitive process that may be used to licence a space station operating at this position. This letter constitutes Telesat’s comments on the matter of the appropriate competitive process to follow should there be interest by other eligible parties in a Canadian fixed satellite service ("FSS") orbital location.

General Considerations

At the outset the Company would note that the 118.7° W longitude orbital position is not the only remaining Canadian FSS orbital position. As indicated in the Notice, in November 1997 when the Minister of Industry granted approval for Telesat to replace the aging Anik E satellites with the advanced Anik F satellites, it was also announced that the process to assign the remaining orbital FSS slots, at 114.9° W and 118.7° W longitude, would be open to all eligible, interested parties. As also indicated in the Notice, the December 1998 Policy Framework stipulated further that an open process would be initiated for these slots once the Department
received a well substantiated request or expression of interest to use these resources. Accordingly, Telesat is of the view that consideration should also be given to the availability of this other slot at 114.9° W longitude in the event that other parties submit expressions of interest in a Canadian FSS orbital slot in the current process.

Regarding Telesat’s specific interest in the 118.7° W longitude orbital slot, it should be noted that the Company has given careful consideration to the matter of which, if any, of the remaining Canadian orbital slots would best enable Telesat to meet its present and future customers’ requirements and business needs. Based on this careful review, the Company concluded that the 118.7° W longitude orbital slot provided the best fit with its current operations – including the need for satellite backup and diversity – and its future business plans. The requirements of other potential Canadian satellite operators would likely be quite different and could conceivably be just as easily met with the 114.9° W longitude orbital location. In the event that other expressions of interest should be forthcoming in this proceeding, the Company would urge the Department to consider the merits of each of the business cases, which one best serves the interests of Canadian business and public policy and advances a Canadian presence in the global telecommunications market. In addition, consideration should be given as to how the optimal use of all the remaining Canadian FSS orbital slots can be achieved collectively, and not consider each of these remaining slots in isolation. Indeed, this latter approach could create a situation of artificial scarcity. Such a situation would not serve the public interest, as it would mean that otherwise productive resources may remain idle, with less choice, fewer service options and more limited satellite diversity available to Canadian satellite service customers.

As a further general comment, Telesat would note that it is fully cognizant of, and supports the Canadian Government’s wish to promote competition in the Canadian satellite marketplace. Allowing Telesat the opportunity to use another Canadian FSS orbital slot in no way detracts from this public policy objective, particularly given the new reality of global satellite market competition and North American satellite market competition in particular. More specifically, effective March 1, 2000, not only is the Canadian FSS marketplace fully liberalized to other Canadian satellite system operators but, under Canada’s WTO commitment relating to trade in basic telecommunications services, foreign satellite operators will also be allowed to enter Canadian domestic FSS satellite markets (with the exception of delivery of direct-to-home satellite services regulated under the Broadcasting Act).

As indicated in the December 1998 Policy Framework:

“The WTO Agreement is an important ‘blue print’ for countries to remove trade barriers in telecommunications services and to move global satellite systems to full and open competition. The adoption of [the Policy Framework], in conjunction with legislative and regulatory amendments, makes Canada one of the most open and competitive telecommunications markets.”

Similarly, in the Government’s Press Notice accompanying the release of this new policy framework, Industry Minister Manley is quoted as saying:

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1 Policy Framework, p. ii.
"The new, open fixed satellite policy will benefit Canadians in all regions of the country with access to a wide range of advanced and competitive satellite services. It’s a major step forward in the government’s strategy to promote competition, innovation and growth in Canada’s telecommunications industry.\(^2\)

Indeed, one of the immediate effects of the implementation of these policies is that Canadian satellite operators will be competing head-to-head with the world’s largest satellite operators, including the “big three” U.S. satellite operators – PanAmSat, GE Americom and Loral Skynet – in core Canadian markets. These U.S. satellite operators are all larger than Telesat and currently own and operate more than 30 FSS satellites and use more than 25 orbital positions in the highly desirable North American orbital arc. Many of those satellites’ footprints cover significant portions, and in some cases all of Canada. Moreover, each of these operators also has firm plans and ITU filings to augment their North American satellite fleets in the near future and to increase the number of orbital positions allocated to them for their conventional FSS and new Ka-band business. The Department’s Procedure for the Submission of Applications to Licence Fixed Earth Stations and to Approve the Use of Foreign Fixed Satellite Service (FSS) Satellites in Canada, CPC-2-6-01, dated November 1, 1999, has also established streamlined procedures under which these foreign satellite operators may commence operations in Canada.

In addition to U.S. satellites, numerous other geostationary FSS satellites operated by international carriers or organizations (e.g., New Skies and INTELSAT) offer at least partial coverage of the North American region, including Canada. In this regard it should be noted that INTELSAT satellite capacity is now accessible to Canadian service providers for international traffic on the same basis as if they enjoyed Signatory status.

With or without other Canadian satellite operators, the Canadian satellite services marketplace will therefore be fiercely competitive. Maintaining a strong Canadian presence in this wide-open marketplace will be a challenge for any Canadian satellite operator, Telesat included. Indeed, it was largely the recognition of the fact that the Canadian FSS satellite marketplace will soon be just one small component of the much larger, wide-open North American satellite marketplace that prompted Telesat to develop plans to expand the scope and scale of its small satellite fleet, including its application for the licence to operate Anik F3 in the 118.7° W longitude orbital slot. For any Canadian satellite operator to compete effectively in the new wide-open North American satellite marketplace and to provide adequate backup for its customers, size and diversity of their satellite fleets are extremely important considerations.

Should there be other expressions of interest for use of an FSS orbital slot in this proceeding, Telesat proposes that it should first be determined whether the other applicant(s) would in fact require the use of the 118.7° W longitude position rather than the 114.9° W longitude position. If not, then Telesat, as the first applicant (and assuming that its application fully meets all the Government’s public policy criteria) would be awarded the 118.7° W longitude slot and be able to proceed without delay. The Department could then conduct a competitive selection process for the 114.9° W longitude position, open to all parties specifically interested in using that orbital position.

For the use of any Canadian orbital position, Telesat urges the Department to evaluate the specific and overall merits of each application and suggests that strong consideration be given to soundness of each business case – specifically, which application best serves the telecommunications needs of all Canadians and best meets the public policy objectives of the Government. Furthermore, in the development and procurement of the satellite, which applicant will make the greatest contribution to, and use of Canadian telecommunications equipment manufacturers and suppliers. Given the growing scarcity of orbital positions in the North American arc, Telesat submits that it is incumbent on the Government to ensure that the remaining Canadian FSS orbital locations awarded are used effectively and that the award furthers the development and the presence of a Canadian satellite system in the competitive global satellite market. Finally, any application should also be evaluated on the technical capabilities of the proposed satellite as well as on the financial abilities and satellite operation and management competencies of the prospective satellite operator.

The Appropriate Licensing Process

Regarding the specific type of competitive licensing process that should be used in the event that other eligible parties do express an interest in a Canadian FSS orbital slot, the Department has indicated that this could consist of either a comparative selection process or a spectrum auction. Telesat is on record as being strongly opposed to any auctioning of spectrum or orbital slots for satellite systems. The Company will not repeat those arguments in detail here but would like to re-iterate the following points.

In a spectrum auction process a set of minimum eligibility standards or qualifications that must be met by the applicant are usually established, but there is generally no incentive or advantage to surpass these minimum standards or to offer anything else. This also implies that all unique attributes, qualifications or other non-monetary attributes or benefits over and above the minimum requirements which an applicant might be bringing to the table would be given no weight in the auction process and subsequent award of spectrum.

In many cases involving spectrum, this may not be a problem or concern. However, in Telesat’s view, the situation is totally different in the case of satellite systems meant to provide essential broadcasting and telecommunications services to all regions of Canada. In this case, a strong performance record in the satellite industry, a solid record of research and development and innovative service development in the field, the presence of or access to supporting infrastructure and highly-trained personnel, and a host of other elements, will be of tremendous importance if the underlying Canadian social, cultural and economic public policy objectives are to be satisfied. In such circumstances, a comparative review that may involve some “subjective” evaluations is far superior to an “objective” evaluation which is meant to establish a market value for a license but which essentially assumes away or ignores important non-monetary considerations and bid components in the process.

1 See, for example, the Telesat and TMI Communications joint comments of November 28, 1997, submitted to the Department in response to Canada Gazette Notice No. DGRB-003-97, Consultation on Issues Related to Spectrum Auctioning.
The award of satellite spectrum is too important to be left to the vagaries of the market and a high-bid auction process. What will generally be far more important than any monetary bid in determining who should be assigned Canadian satellite spectrum and orbital slots will be the commitment, knowledge, supporting infrastructure and expertise of the applicants for those resources. These necessary qualifications and non-monetary bid components can only be judged and ultimately acted upon through a comparative selection review process; they are not amenable to a full and proper review through a market auction.

Telesat also notes the statements in the Notice suggesting that a comparative selection process may be more onerous and more time consuming than a spectrum auction:

"[A] comparative selection process … is usually a long and intensive process that would involve the issuance of a Call for Applications, the preparation of such applications, a departmental review and rating of the applications, and an announcement of the award of the spectrum licence to the successful applicant.

Spectrum auctions are an alternative selection process available to the Department that could speed up the award of a licence."

However, the Company would note that in the current process, even before deciding upon which competitive selection to follow, the Department already has Telesat’s complete application and has requested that other parties file detailed information as part of their Expression of Interest. This information is to include the following:

"The applicant must provide evidence of having, or being able to secure, the financial, technical and operational resources, as well as the competencies to plan, develop and operate a fixed satellite space station including the establishment of associated control earth stations in Canada. As well, the submission must indicate the applicant’s acceptance of the expected conditions of licence, as detailed in Section 4.

The submission must also provide an overview of the proposed satellite network capacity and capability, estimated cost, anticipated in-service date and life-expectancy of the network, Canadian geographical service areas, any proposed non-Canadian geographical service areas, frequency bands and associated transponder plan, and anticipated ground segment characteristics."

In the Notice that Department also stated that:

"The Department would use a simplified version of a multiple-round auction, using the relevant attributes described in the Framework for Spectrum Auctions in Canada, released in August 1998. Such a process would involve a consultation addressing issues related to the spectrum auction process in question and a second call for applications to participate. Only eligible entities would be permitted to participate in the auction itself, and the highest bidder would be
awarded a spectrum licence provided their bid is paid in full at the close of the auction.” (emphasis added)

In the present case, given the level of the detailed information already requested, the need for the Department to review this material to ensure that the applicant is eligible, the further consultation process on the spectrum process and the holding of the auction process itself, it would appear that an auction process may in fact be more onerous and more time consuming than would a comparative selection process.

In this regard, it should also be noted that, in contrast to many other selection processes where numerous national, regional and/or local service area spectrum licences are to be awarded and where large numbers of applicants for these licences are expected, the selection process for satellite spectrum in this case involves only two licences at most, and in all likelihood, with only a few parties actually expressing an interest in those licences. Under these circumstances, the administrative burdens and time delays often associated with a comparative selection process will simply not materialize.

Recent experience also confirms that a comparative selection processes can be successfully completed in short time frames. For example, in the recent award of BSS spectrum, from the December 16, 1996 date the “fast track” applications were received, the Department was in a position to render its decision on these applications in less than a month. Similarly, the Department required less than 40 days to render its decision on the spectrum award to Telesat from the time the Company’s application was received on February 28, 1997.

Telesat further notes that the international coordination of the Canadian orbital locations for North American coverage under the existing trilateral plan remains ongoing and that the continued and effective use of the Canadian orbital locations is subject to further coordination and agreement with the appropriate administrations.

With specific regard coordination of the 118.7° W longitude orbital location, the Company notes the following statements made in the Notice:

“Auctions are generally not an appropriate spectrum assignment methodology for satellite systems where a significant level of international co-ordination is required. However, Industry Canada is of the view that the co-ordination process for this orbital position is sufficiently advanced to support using an auction for the provision of service in Canada.”

Telesat agrees that auctions are not an appropriate assignment mechanism where a significant level of international coordination is required, and questions whether the coordination process for the 118.7° W longitude slot is sufficiently advanced to dismiss this concern. The Company’s own experience relating to the coordination of Anik F1 in the 107.3° W longitude orbital slot is instructive in this regard. Even though Telesat is currently operating an Anik E satellite in this orbital slot, it remains in coordination discussions with a number of parties concerning the use of Anik F1 in this slot. For a currently unused slot such as 118.7° W longitude, successful coordination promises to be just as challenging, if not more so.
In this regard, Telesat would note the Department’s other statements in the Notice concerning the coordination issue:

"Industry Canada will assist the successful applicant in the international co-ordination of the proposed satellite network with the satellite and terrestrial networks of other countries. Within the framework of the ITU Radio Regulations, the Department will attempt to achieve the most favourable conditions possible during this process, but the nature of the co-ordination agreement is very much dependent on the expertise that the successful candidate brings to the negotiation table. Industry Canada cannot provide any assurance or guarantee as to the ultimate success of the co-ordination process, nor foresee any limitations or restrictions that may need to be placed upon the satellite network as a result of the co-ordination process." (emphasis added)

Indeed, given that there is some uncertainty as to the ultimate success of the international coordination process, including the possibility that some unforeseen limitations or restrictions may apply, the issue arises as to whether or not potential bidders in a satellite spectrum auction process can be provided with a clear indication of what they are actually bidding for.

On a related point, it should be noted that under a comparative selection process and existing spectrum licence fee arrangements, substantial monies would be paid by the successful applicant for the use of this orbital slot. Indeed, in the case of satellite facilities such fees are already a significant expense in Canada and are set well in excess of the cost of spectrum management. Under current licensing arrangements, satellite operators are also subject to other public interest obligations, including substantial minimum research and development commitments, industrial benefit requirements, national coverage obligations, and “fair and reasonable efforts” on the part of the licensee to promote Canadian manufacturers, designers and suppliers of telecommunications components for use in the construction of the satellite.

In sum, Telesat remains firmly of the view that auctions are not appropriate mechanisms for assigning satellite spectrum or orbital slots, and strongly supports the use of a comparative selection process for this purpose.

Telesat appreciates the opportunity to provide its comments on these important matters and trusts that the Department will find them useful in its deliberations. Telesat respectfully urges the Department to recognize the competitive environment which exists in the global satellite market and issue a timely decision which allows Telesat to fulfill its growth plans. Should the Department require further assistance, the Company would be pleased to assist in any way it can.

Sincerely,

Teo H. Ignacy