



**Canadian  
Association of  
Broadcasters**

**L'Association  
canadienne des  
radiodiffuseurs**

September 7, 2005

*Via e-mail: [wireless@ic.gc.ca](mailto:wireless@ic.gc.ca)*

Director  
Spectrum and Radio Policy  
Telecommunications Policy Branch  
Industry Canada  
1604A, 300 Slater Street  
Ottawa, ON K1A 0C8

**Re: Industry Canada Gazette Notice DGTP-001-05: Consultation on a renewed spectrum policy framework for Canada and continued advancements in spectrum management**

Dear Sir,

1. The Canadian Association of Broadcasters (CAB) – the national voice of Canada’s private broadcasters, representing the vast majority of Canadian programming services, including private television and radio stations, networks and specialty, pay and pay-per-view television services – is pleased to submit these comments in response to the above-noted Gazette Notice.
2. The CAB recognizes that Industry Canada’s role is not one of licensing broadcasters *per se*. Rather, Industry Canada authorizes the use of technical facilities, required to operate broadcasting undertakings that have been licensed by the Canadian Radio-television and Telecommunications Commission.
3. However, Canada’s private broadcasters rely on the Government of Canada’s Spectrum Policy Framework to ensure access to sufficient amounts of spectrum to satisfy their statutory and regulatory requirements under the *Broadcasting Act*.
4. Accordingly, this submission addresses several of the core objectives and policy guidelines issued in the Gazette Notice, and quoted below, that could, if adopted/implemented, have an impact on the ability of Canada’s private broadcasters to meet those requirements.

**Re: Section 6.1.2 *Proposed Core Objectives***

**Proposed Core Objectives (Section 6.1.2)**

*(1) To promote and support the orderly development and efficient operation of radiocommunication systems and services to provide economic, social and cultural benefits for Canadians;*

5. The CAB supports this objective.

*(2) To promote economically efficient resource allocation and reliance on market forces and economic incentives to assign the spectrum;*

6. The CAB notes that this second objective should more directly serve to uphold the first. Spectrum assignment decisions should of course take into account market forces and economic incentives, but not to the exclusion of the cultural or social benefits referenced in objective 1.

7. Moreover, the CAB notes that the *Broadcasting Act*, the *Telecommunications Act*, and the *Radiocommunications Act* all contain specific objectives with respect to resource allocation and spectrum assignment, each of which should properly take precedence over any objectives established in the context of this policy review.

8. Any existing legislative objectives would naturally supersede any ‘core objectives’ stemming from this policy review, particularly when it comes to the establishment of priorities vis-à-vis resource allocation and spectrum assignments. Accordingly, the CAB submits that it is incumbent upon Industry Canada to ensure that any ‘core objectives’ stemming from this policy review are consistent with pre-existing legislative objectives and priorities.

*(3) To ensure that radiofrequency spectrum is available to support Canadian sovereignty, security and public safety needs;*

9. The CAB supports this proposed objective.

*(4) To regulate wisely and only when required;*

10. The CAB supports this proposed objective.

*(5) To facilitate the implementation of advanced communications technologies and services to benefit all Canadians;*

*(6) To facilitate the use of spectrum in rural and remote communities and regions;*

11. The CAB submits that proposed Objectives 5 and 6 are largely repetitive, inasmuch as the term “all Canadians” would reasonably be interpreted to include those in “rural and remote communities and regions.” Similarly, the term “advanced communications technologies” would reasonably be seen to encompass those that make use of spectrum.
12. The CAB submits that it would be preferable to combine Objectives 5 and 6 along the following lines:

*(5) To facilitate the implementation of advanced telecommunication and radiocommunication technologies to benefit Canadians in all communities and regions.*

*(7) To advance Canadian spectrum interests internationally;*

13. The CAB supports this proposed objective.

*(8) To consult widely and on a regular basis on matters affecting the Program.*

14. The CAB supports this proposed objective, provided that consultations include both spectrum users and members of the general public.

### **Re: Section 6.2.2 *New Policy Guidelines***

#### **New Policy Guideline 3 - Radio Systems or Services Displacement**

*The Department will reallocate spectrum, which could result in displacement of existing services or systems from a particular band, only where necessary. A reasonable period of notice will be given to existing spectrum users, including any conditions or circumstances associated with a displacement to make spectrum available for new services.*

15. The CAB has concerns with respect to this proposed new policy guideline, inasmuch as it has the potential to significantly impact the ability of broadcasters to meet their regulatory requirements under the *Broadcasting Act*.
16. The CAB notes that, as presented here, frequency displacements might be imposed by Industry Canada during a broadcaster’s license term, jeopardizing its ability to meet any technical and/or non-technical conditions of license imposed by the CRTC through its own regulatory processes. The CAB further notes that this cross-jurisdictional situation is unique to broadcasters, inasmuch as Industry Canada has exclusive regulatory power over non-broadcasting licensees.

17. Accordingly, the CAB strongly submits that — notwithstanding matters of the gravest public interest — no broadcaster should be compelled to disrupt its technical operations during a CRTC-mandated licence term.
18. Rather, Industry Canada should intervene, where appropriate, in CRTC licensing and licence-renewal processes where the licensee in question would be impacted by a proposed reallocation of spectrum.
19. The CAB submits that only through these measures can broadcasters be certain that their ability to meet their regulatory requirements will not be unduly impaired because of a unilateral reallocation of spectrum by Industry Canada.

#### **New Policy Guideline 4 - Economic Principles of Spectrum Management**

*The Department will capture economic rents for the public where rents exist and recover spectrum management costs where rents do not exist.*

20. The CAB recognizes that radiofrequency spectrum is a valuable public resource, and that public administration of radiofrequency spectrum is required to ensure that the public interest is best served by its allocation and utilization.
21. Accordingly, the CAB notes that numerous conditions of licence (COLs) currently apply to all broadcasters. These COLs typically set specific expenditure and programming requirements, and are assumed in exchange for the use of spectrum in the course of operating a broadcasting undertaking. Moreover, historically the CAB has not objected to fees designed and implemented on a pure cost-recovery basis to offset the operational costs associated with spectrum management and other regulatory functions carried out by Industry Canada and the CRTC.
22. However, the CAB has also taken the position (in the context of an ongoing legal action), that fees levied by Industry Canada and/or the CRTC that are calculated in relation to broadcasters' revenues constitute a tax, and as such, are unlawful.
23. Accordingly, this proposed guideline should be amended to reflect the fundamental principle that the only fees collected by Industry Canada, in relation to the use of radiofrequency spectrum by broadcasting undertakings, will be those calculated on a pure cost-recovery basis.

### **New Policy Guideline 5 - Licensing Process**

*A competitive licensing process, either an auction or a comparative review, will be used when the Department believes that the demand may exceed the supply.*

24. The CAB submits that this proposed guideline should be amended to indicate that this procedure would not apply with respect to the assignment of broadcasting frequencies, since the “comparative review” already takes place within CRTC licensing processes.

### **Conclusion**

25. The CAB thanks Industry Canada for the opportunity to participate in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read 'Glenn O'Farrell', written in a cursive style.

Glenn O'Farrell  
President & CEO

cc: CAB Engineering and Technology Council

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