Dear Sir or Madam:

Re: Canada Gazette, Part I, March 9, 2012 – Consultation on the Licensing Framework for Fixed-Satellite Service (FSS) and Broadcasting-Satellite Service (BSS) in Canada, SMSE-003-12

I. Introduction

1. Ciel Satellite Limited Partnership (“Ciel”) is pleased to offer the following comments in connection with Industry Canada’s Consultation on the Licensing Framework for Fixed-Satellite Service (FSS) and Broadcasting-Satellite Service (BSS) in Canada (SMSE-003-12) (the “Consultation”).

2. Ciel is a licensed Canadian satellite operator established in 2004 with the goal of developing and commercializing Canadian spectrum-orbital resources and providing a full-service domestic competitive alternative for Canada’s broadcast, telecom, corporate and government satellite users. Ciel is majority-owned by SES S.A. (“SES”), a world-leading satellite operator with a fleet of 50 geostationary satellites that collectively reaches 99% of the world’s population. The matters raised in the Consultation and the potential impact of the proposed changes to the Canadian satellite licensing framework are vitally important to the current operations and future plans of both Ciel and SES.
3. Ciel successfully launched the Ciel-2 BSS satellite into the Canadian 129°W geostationary orbital position in 2008 and currently provides broadcasting satellite services in the North American market. Ciel holds approvals in principle to develop seven additional BSS and FSS frequency assignments and the commercial, technical and regulatory development of these frequency assignments is well underway. The policy amendments proposed in the Consultation will have a material effect on the future development of these frequency assignments by Ciel.

4. Industry Canada has historically been highly supportive of maintaining a dynamic and competitive marketplace for Canadian satellite services at both a domestic and international level. The Minister of Industry, the Honourable Christian Paradis, said recently that:

> What government must do is foster an environment that inspires the private sector to invest and grow. That means having a predictable regulatory framework that ensures an appropriate balance between competition and investment; one that encourages innovation and creativity and promotes the growth of successful telecom companies.\(^1\)

5. Ciel agrees entirely with this statement of principle. Canada is already widely respected as an international leader in spectrum regulatory matters and Ciel is confident that the Department will continue to build on this important leadership role as it works through the current consultative process.

6. The FSS and BSS spectrum-orbital resources identified in the Consultation provide the underpinning for modern commercial satellite communications and, as the Department notes in the introduction to the Consultation, satellite communications in turn play a vital role in addressing the unique geographical challenges faced by Canada. No other technology is better suited to providing telecommunications services over large geographic areas than satellite. Moreover, satellite communications are often the only viable means of linking rural and remote communities in Canada with the domestic and global communications infrastructure and this connectivity can be critical to the continued economic well-being of these communities. Given the importance of satellite communications to Canada, Ciel

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\(^1\) Address to the 2011 Canadian Telecom Summit, Toronto, Ontario, 31 May 2011.
agrees with Industry Canada that improvements can and should be made to the existing Canadian Satellite Licensing Framework.

7. Ciel also agrees with Industry Canada that the intrinsically transnational character of satellite communications should be taken into account in the analysis of the options for a new framework. As the Department points out in the Consultation, satellites operating in the ITU Region 2 geostationary arc over North America can provide service equally into the territory of Canada, the United States or Mexico, regardless of the licensing jurisdiction of the satellite. Indeed, such a satellite could conceivably provide service to both North America and South America. In an openly competitive environment, an operator has the ability to choose the most efficient, transparent and fair licensing regime in which to operate and if the new Canadian Spectrum Licensing Framework is viewed as uncompetitive with other jurisdictions in these respects, Canada risks losing the ability to pursue the public policy objectives set out in the Consultation.

8. Keeping these factors in mind, in Ciel’s view, the new Canadian Satellite Licensing Framework should:

- Establish a more efficient, transparent and fair licensing process that will encourage future investment and growth in Canadian satellite services;

- Impose reasonable fee structures and public benefit obligations that are comparable to and competitive with those imposed in other major licensing jurisdictions; and

- Provide flexibility to accommodate the rapidly evolving technological and commercial realities that characterize the commercial satellite operations and services business.

9. Ciel’s specific responses with respect to the questions raised in the Consultation are set out below.
II. Licensing Process

10. Industry Canada currently employs a comparative review process for licensing commercial satellites using FSS and BSS spectrum. In order to improve the timeliness, administrative simplicity, objectivity and predictability of the process, Industry Canada proposes to implement a first-come, first-served ("FCFS") process for the future assignment of Canadian spectrum-orbital resources.

2-1 Industry Canada is seeking comments on the proposal to extend the use of an FCFS process to assign FSS and BSS spectrum licences.

11. Ciel agrees with Industry Canada’s assessment that an FCFS process would be “timelier, administratively simpler and arguably more objective” than comparative processes or auctions and therefore supports the Department’s proposal to extend the use of an FCFS process to assign Canadian FSS and BSS spectrum licences subject to the implementation of appropriate administrative and procedural safeguards.

12. The existing comparative process has served Canada well in the transition from the legislated monopoly environment that existed in the past to the current, more fully competitive, environment. The qualitative assessment of proposals to develop Canadian spectrum in the comparative process allowed the Department to ensure that fledgling operators such as Ciel were given a fair opportunity to enter the market, and although the comparative process was often less timely than it might have been, it led to the right result. However, recognizing that Canada is now well-served by the Canadian operations of two of the largest global satellite operators, the time is right to move to the more efficient FCFS process.

13. Ciel does not support the use of an auction process for the allocation of Canadian spectrum-orbital resources under any circumstances, for the reasons set out in detail in previous submissions to the Department. The Canadian satellite market is simply not suitable for the use of an auction methodology: there are too few likely participants to ensure an economically rational outcome of any auction process; the supply of Canadian satellite spectrum is relatively abundant and is already used in a
highly-efficient manner; and the complexities of ITU priority and coordination create significant uncertainties in calculating the value of spectrum-orbital resources. The use of auctions would place Canadian satellite operators at an enormous competitive disadvantage domestically and internationally, and would put Canadian policy at odds with that of the majority of other space-faring nations. The cost implications of an auction would divert revenue from investment in Canadian infrastructure, which would ultimately result in higher prices for end users.

14. An FCFS process has been applied successfully in the assignment of spectrum-orbital resources by a number of other major licensing jurisdictions, notably the United States and the United Kingdom. FCFS has generally proven to be an efficient, transparent and fair licensing process in those jurisdictions, and has provided predictable and timely results for satellite operators. The adoption by Canada of the FCFS process will provide similar benefits to Canada and Canadian satellite operators.

2-2 **Industry Canada is seeking comments on the issue of proactive filing to the ITU and on whether there are compelling arguments to continue this practice, to a limited extent, under the FCFS process.**

15. Under the FCFS process proposed in the Consultation, Canadian satellite operators themselves would identify the spectrum-orbital resources that are sought in their applications to Industry Canada. As a result, the Department proposes to no longer make proactive filings for such resources at the ITU as it has done in the past. Ciel supports this proposed approach, subject to the qualifications described below.

16. The identification, protection and development of valuable spectrum-orbital resources is a highly sophisticated and competitive undertaking at the domestic and international level. Given the wide potential service area of a satellite in geostationary orbit, there can be many competing claims to the same spectrum-orbital resource and satellite operators may often have a choice of the jurisdiction through which they would seek a licence and an ITU satellite network filing. The ITU filing process provides protection only on the basis of date priority, and therefore the ability of Canadian satellite operators to secure the spectrum-orbital resources
needed to provide service to Canadian users under an FCFS process would be largely dependent on the ability of Canada to be the first to file at the ITU. This suggests a FCFS process under which the applicant must prepare the initial ITU filings as part of its application and a requirement on the part of Industry Canada to submit such filings as soon as reasonably practicable thereafter. Although this may require more vigilance on the part of satellite operators, it does not appear to have hampered the ability of operators in other jurisdictions that use an FCFS process to identify and secure the necessary spectrum-orbital resources to support their future growth.

17. Ciel recognizes and accepts that there could be circumstances under which Industry Canada may choose to make proactive filings with the ITU. These circumstances might include the need to address a pressing national requirement or create incentives for the development of underdeveloped services. However, such filings should be the exception, not the rule, and should only be made following a full consultation with Canadian satellite operators and other stakeholders. Ciel would expect that if there was a commercial opportunity to develop the spectrum-orbital resource identified in this way, it would be made available to all qualified Canadian satellite operators on a transparent and competitively fair basis.

18. As a procedural matter, Ciel notes that Industry Canada intends to publish a notice when an application is received from a satellite operator under the FCFS process, but does not indicate whether or not the ITU filing included in the application will already have been made when the notice is issued. In order to prevent other operators and administrations from taking advantage of the notice and rushing to file for the same resources ahead of Canada, the Department as a practical matter should not issue the notice until the filing included in the application has been submitted to the ITU.

2-3 Industry Canada is seeking comments on the following proposed rules for an FCFS satellite licensing process:

- applicants will be required to submit applications electronically and Industry Canada will establish the time of receipt through the electronic submission;
• if Industry Canada deems an application incomplete or inadequate (according to defined criteria), the application will be declined and no longer considered until submitted as a new application;

• if an application is on hand from a second applicant for the same spectrum when the first is declined, Industry Canada will immediately consider the second application;

• once a licence has been issued, any applications on hand for the same spectrum will be automatically dismissed; and

• two successful applications, received simultaneously, will result in both applications being approved, with the requested spectrum divided equally.

19. Ciel supports the Department’s proposal that applications for spectrum-orbital resources under the FCFS process be required to be submitted electronically and that the time of receipt would be established through a system time-stamp associated with the electronic submission. Ciel notes in this regard that the Department should seek to avoid, as much as possible, the implementation of filing windows or similar arrangements that could increase the likelihood of receiving multiple near-simultaneous applications and/or increase the potential for abuse or subsequent disputes arising on this basis. If the use of filing windows is unavoidable in some instances, the time at which the window opens must be unambiguously announced so that all potential applicants have reasonable notice of that information. For the same reason, Industry Canada should also consider carefully the manner in which the FCFS process is initially implemented.

20. Ciel does not support the Department’s proposal that an application deemed incomplete or inadequate would be declined outright and no longer considered until submitted as a new application. Rather, Ciel recommends that non-compliant applications should be returned to the applicant but not lose date priority until after a reasonable cure period has passed.

21. Ciel supports the Department’s proposal that if an application is on hand from a second applicant for the same spectrum-orbital resource when the first is declined, Industry Canada would immediately proceed to consider the second application.
22. Ciel supports the Department’s proposal that once a licence has been issued, any applications that have been received for the same spectrum would be automatically dismissed.

23. Ciel does not support the Department’s proposal that two successful applications, received simultaneously, would result in both applications being approved, with the requested spectrum to be divided equally. Although this may be a practical approach in the case of conflicting applications for terrestrial spectrum, it is not at all suitable to the satellite environment. Satellite projects are rarely scalable in a way that would allow an operator to proceed with the construction and launch of a satellite that would have access to only half (or less) of the spectrum available in a particular band at a particular orbital location. A far more realistic approach would be for the Department to encourage the competing applicants to arrive at a negotiated solution in such a situation, using the equal division of spectrum only as a last resort.

24. In addition to the proposed rules outlined in the Consultation, Industry Canada should also carefully consider and craft rules concerning the manner in which the FCFS process for Canadian-licensed satellites interacts with relative ITU date priorities and requests for Canadian market access by foreign-licensed satellites. Such rules would include a recognition of ITU date priority consistent with Canada’s obligations under international law.

**2-4 Industry Canada is seeking comments on the assessment criteria to be used in an FCFS process. In their comments, respondents are encouraged to elaborate on these or any other criteria they deem suitable.**

25. The assessment criteria to be used in the FCFS process must be entirely objective for the process to function fully as intended. The introduction of subjective assessment criteria could seriously compromise the transparency and predictability of the process. Industry Canada has proposed in the Consultation that applications would be assessed based upon the following criteria:
- **Eligibility** - an applicant must be eligible to hold a licence under the *Radiocommunication Regulations*, and as such, must be a Canadian entity. Ciel supports the application of this criterion in the assessment of applications.

- **Compliance** - a proposed satellite project must comply with regulatory requirements and spectrum policies, namely, the ITU *Radio Regulations*, and Canadian spectrum allocations and spectrum utilization policies. In addition, the spacecraft must be under Canadian direction and control. Ciel supports the application of these criteria, but notes that Canadian spectrum allocations and spectrum utilization policies may have limited application in a situation where a Canadian satellite operator applies for spectrum-orbital resources outside of ITU Region 2 through the Canadian administration. Similarly, although *de facto* legal control of the satellite must remain with the licensed Canadian entity at all times, there should be no further expectation that the satellite be controlled using TT&C facilities located in Canada.

- **Implementation Plan** - an applicant must demonstrate a “viable implementation plan”, which on the one hand, would show that the proposed deployment and operation of the satellite and delivery of the identified benefits to Canadians are technically feasible, and on the other hand would describe the applicant’s operation as a Canadian satellite operator with licences in good standing or, alternatively, the applicant’s well-developed plan for becoming a satellite operator. Ciel does not support the application of these criteria in the assessment of applications due to their almost entirely subjective nature. Assessment of an applicant’s technical plan for compliance with Canadian and international regulations may be necessary to ensure compliance with the first criteria cited above. However, any further assessment by the Department of the “viability” of an applicant’s proposal, or whether an applicant’s plan to become a satellite operator is “well-developed” is, by its nature, a subjective assessment and not appropriate in a FCFS process.

- **Financial Plan** - an applicant must also supply a financial plan, which would be expected to include sufficient information demonstrating the applicant’s ability to
finance the implementation and operation of its proposed satellites. Ciel does not support the application of this criterion in the assessment of applications, again, due to the subjective nature of any assessment of the requirement.

- **Benefits** - an applicant must supply sufficient information to demonstrate how the implementation of the satellite project will provide benefits to Canadians, such as capacity and services to serve Canada or securing access to orbital positions for the future provision of service in Canada. Ciel does not support the application of this criterion in the assessment of applications, again, due to the subjective nature of any assessment of the requirement. However, should Industry Canada elect to establish specific, measurable benefit requirements as part of the new Satellite Licensing Framework, criteria that assess whether the applicant’s proposal meets or does not meet those requirements would be appropriate.

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### 2-5 Industry Canada is seeking comments on measures to minimize the potential for abuse of an FCFS process.

26. Ciel notes Industry Canada’s observation in the Consultation that it is not uncommon for satellite operators to seek licences without necessarily having fixed and firm plans for implementation in order to have the flexibility to pursue business opportunities as they develop. In Ciel’s experience, this is normal business practice and is not an approach to the development of spectrum-orbital resources that necessarily ought to be discouraged. However, Ciel also recognizes that there is a slight potential for applicants to abuse an FCFS process by seeking an excessive number of licences for blatantly speculative or obstructive reasons and that the implementation of reasonable safeguards to limit such abuse in some circumstances may be appropriate.

27. On balance, however, and for the reasons noted in response to item 2-4 above, Ciel does not believe that the use of subjective assessment criteria is proper in an FCFS process, and therefore the enforcement of such criteria should not be available to the Department as a mechanism for addressing this concern.
28. As a general observation, Ciel does not support the implementation of the “financial measures” proposed in the Consultation, because measures of this kind tend to discourage competition. Financial consequences are not often effective in modifying the behaviour of well-financed incumbent stakeholders, while they can have a disproportionately punitive effect on new entrants. Industry should approach the use of financial measures very cautiously so as not to discourage new investment and innovation in the development of Canadian spectrum-orbital resources.

- **Submission of Fees with Application** — Ciel does not support the approach of requiring that the first year’s licence fees (or a letter of credit for such amount) be submitted with the application and held on account with the Department. The development cycle for a satellite project can extend over many years following the award to an operator of a spectrum-orbital resource and the imposition of this kind of additional financial burden will not have the effect, as the Department suggests, of speeding up the cycle. The fact is that a satellite will be constructed and launched only when the operator is satisfied that sufficient demand exists in the market to justify the investment in doing so. Materially increasing the carrying cost of the spectrum component of the investment cannot change that fact. However, Ciel supports the implementation of a modest non-refundable application fee, provided that the level of the application fee is based on recovery of the Department’s reasonable administrative costs related to processing the application.

- **Charging Fees on Approval** — For the reasons expressed above, Ciel does not support the suggestion that licence fees would be collected beginning immediately following approval of an application. Contrary to what the Department suggests, this change would not provide an effective incentive to bring satellite spectrum into use sooner. The preparation of a complete application for submission under an FCFS process, including preparation of the associated ITU filings and an undertaking to reimburse the Department for ITU cost recoveries, can already cost upwards of $150,000 for each application. This is a substantial commitment of time and resources on the part of a satellite operator to developing a spectrum orbital resource. The development and realization of satellite projects is entirely
paced by the market and imposing spectrum carrying costs beyond the investment already made by the operator in securing and developing the spectrum-orbital resource will do nothing to speed up the cycle. Although this may represent current practice for licensing spectrum for terrestrial use, the characteristics of the development of satellite spectrum are entirely distinct from terrestrial spectrum. For example, it can take many years to properly plan, construct and launch an FSS or BSS satellite and the vast majority of the costs associated with these networks are incurred entirely up front, before the satellite network is launched. By comparison, many terrestrial networks can be rolled-out within a matter of months following the issuance of a licence, and the roll-out itself can be targeted to specific geographic areas as a means of controlling costs (including licence fees) and as a means of generating revenues to support the build-out to additional geographic areas.

- **Other Financial Measures** — For the reasons expressed above, Ciel does not support the implementation of the other financial measures suggested, such as performance bonds, fines and other penalties, with the possible exception of the imposition of fines in the instance of a breach of the *Radio Regulations*. Industry Canada should not pursue the legislative amendments that would be required to enable these measures.

- **Pending Application Limits** — Ciel partially supports the imposition of a reasonable limitation on the number of pending applications from one operator that would be considered by the Department at any one time, as a measure to be adopted to deter spurious applications instead of the financial measures described above. Such limitations should be applied by spectrum band (e.g. C-band, Extended Ku-band) and should take into account the legitimate needs of satellite operators to pursue their business plans. Ciel suggests that an appropriate limitation would be that one operator could expect to have the Department process no more than five applications relating to any given spectrum band at the same time, provided that the Department retained the flexibility to vary this rule to reflect special circumstances that may arise.
• **Application Limits in Certain Circumstances** — The Department has suggested establishing a rule whereby applicants that have established a pattern of missing milestones, requesting reductions in obligations or surrendering licences before milestones expire, would not be permitted to file additional applications for a specified period of time, or would be subject to a lower limit on the number of pending applications. Ciel does not support the establishment of such a rule, as it would be too insensitive to various market factors that could affect why milestones set at the time of grant may no longer be realistic or reasonable at the time they must be met. Ciel strongly discourages Industry Canada from pursuing this sort of approach to spectrum regulation.

• **Strict Enforcement of Milestones** — The Department notes that under the new Canadian satellite licensing framework, development milestones will be strictly enforced in accordance with the conditions of licence, and missing them will result in the revocation of a licence. Ciel partially supports this approach. Ciel agrees that in general, development milestones should be reasonably enforced, with revocation of the licence being the penalty for missing a milestone. However, it is important that Industry Canada retain the flexibility to provide relief or adjust milestones in the appropriate circumstances. In Ciel’s view, Industry Canada should take into account the various market factors that could affect why milestones set at the time of grant may no longer be realistic or reasonable at the time they must be met.

2-6 *Industry Canada is seeking comments on the establishment of a 45-business-day service standard to issue a satellite spectrum licence.*

29. Industry Canada proposes to establish a service standard of 45 business days for the issuance of satellite licences under an FCFS licensing process. Ciel supports the establishment of such a standard and Ciel believes that this service standard should be required to be met in all but the most exceptional of circumstances. One of the major benefits of implementing an FCFS process is predictability, and if the Department is unable to meet the service standard on a regular basis, this benefit would be lost.
III. Fee Structure

30. Industry Canada proposes to implement spectrum licences as the means for authorizing the use of the commercial FSS and BSS spectrum. Ciel supports this proposal. A fee structure that is based on the amount of spectrum assigned incentivizes the efficient use of spectrum by the operator and is therefore beneficial to all stakeholders. The elimination of the need for detailed traffic reports is also an improvement over current practice.

3-1 Industry Canada is seeking comments on the proposal to issue spectrum licences immediately following approval, and to apply fees upon issuance based on the amount of spectrum authorized.

31. Ciel supports the proposal to issue spectrum licences immediately following approval and to apply fees based on the amount of spectrum authorized. However, for the reasons already stated in response to item 2-5, Ciel does not support the Department’s proposal to apply such fees immediately upon issuance of the licence.

32. It is inappropriate to apply the practices used for terrestrial spectrum licences to satellite. The development times, sales cycles and business models applicable to the implementation of a satellite network are completely different than those applicable to terrestrial networks. Ciel does not accept that the application of fees in this way would better reflect the value of the spectrum, nor would it help to encourage spectrum efficiency and timely use as the Department claims. Indeed, the imposition of these additional fees would be directly at odds with Industry Canada’s stated goal of maximizing economic and social benefits for Canadians, in that such fees would almost certainly make it more difficult and costly to deploy new Canadian satellite networks.

3-2 Industry Canada is seeking comments on the proposal to set annual fees on a per-megahertz basis for licensed spectrum.

33. Ciel supports the Department’s proposal to set annual fees on a per-megahertz basis for licensed spectrum. Such an approach encourages the efficient use of the
spectrum orbital resource by the operator and provides a predictable and transparent mechanism for the calculation of fees.

3-3 Industry Canada is seeking comments on the following rates for each applicable band, as described in Annex A:

Level A — $112 per MHz for C band, extended Ku band, X band, other Ka band and NGSO satellite systems.

Level B — $152 per MHz for Ku band not shared with terrestrial service, extended Ka band and BSS bands.

Level C — $176 per MHz for Ka band spectrum not shared with terrestrial services.

34. Ciel agrees in general with the factors identified by Industry Canada as being relevant to a determination of the appropriate fees. In particular, the Department should aim to implement a reasonable fee structure as part of the new Canadian satellite licensing framework that is competitive with those imposed by other licensing jurisdictions. Although it is somewhat difficult to draw useful comparisons among the various jurisdictions due to differences in licensing methodologies and obligations imposed, what is clear from the Nordicity study cited in the Consultation is that the current Industry Canada fees regime is currently not at all competitive with those of the other major licensing administrations.

35. The specific methodology by which the Department determined the proposed fees and the relative value of the spectrum segmented into the three proposed fee tiers is not described in the Consultation. The conclusions of the Nordicity study (which would have resulted in a four-fold increase in the fees assessed) appear to have been rejected outright by the Department and beyond the basic research presented by Nordicity, the actual basis of the Department’s recommendations is not entirely clear. Similarly, there appears to be no rational basis for the establishment of a three-tier scale of fees, nor for the allocation of any particular spectrum band to any particular tier. It is somewhat difficult, therefore, for Ciel to assess and comment in any detail on the validity of the Department’s proposed approach.
36. Ciel notes that the proposed annual per MHz rate of $112 for the so-called Level A spectrum bands would generally meet the criterion identified above of being competitive with the rates imposed by the United States for the use of similar spectrum. However, the proposed annual per MHz rate of $152 for the so-called Level B spectrum bands would not. Ciel recommends that the Department avoid entirely the unnecessary complexity of assigning varying perceived commercial values to various spectrum bands and instead apply the Level A rate to all Canadian spectrum-orbital resources.

3-4 Industry Canada is seeking comments on using spectrum licences for the assignment of emerging bands and on what an appropriate fee level would be for those bands.

37. Ciel does not understand what is meant by the reference to an “emerging band” in the Consultation. If the Department’s intention is to encourage the development of particular new spectrum bands, it might be appropriate in some limited circumstances to offer operators a discount on the usual annual per MHz licence fee, although such circumstances would be rare. Special fee provisions for developmental or experimental payloads would also be appropriate and should reflect the non-revenue generating nature of these activities.

3-5 Industry Canada is seeking comments on the proposal to make the new fees for existing licences for in-use spectrum effective immediately upon approval of the fee order.

38. Ciel supports the proposal to make the new fees for existing licences for in-use spectrum effective immediately upon approval of the fee order, and urges the Department to expedite the process required under the User Fee Act.

3-6 Industry Canada is seeking comments on the proposal to introduce the fee for existing approvals for assigned, unused spectrum in 25% increments over a three-year period after the approval of the new fee order.
39. For the reasons set out in the response to items 2-5 and 3-1 above, Ciel does not support the proposal to introduce the fee for existing approvals for assigned, unused spectrum-orbital resources in 25% increments as described in the Consultation. Canadian satellite operators applied for and were granted Approvals in Principle to develop spectrum-orbital resources based on certain rules that were in place at the time of those applications. The operators’ on-going business plans for the development of such spectrum are also based on these assumptions. The existing rules should continue to apply to outstanding Approvals in Principle until such time as the spectrum is brought into commercial service, at which point the proposed spectrum fees would apply.

3-7 Industry Canada is seeking comments on the proposal to introduce the fee for all new licences immediately upon approval of the fee order.

40. Ciel supports the proposal to introduce the fee for all new licences immediately upon approval of the fee order, subject to Ciel’s earlier comments in response to items 2-5 and 3-1.

3-8 Industry Canada is seeking comments on the proposal to set the licence term at 20 years, based on the estimated life expectancy of 15 years for a satellite plus development time.

41. Ciel supports the proposal to establish a spectrum licence term of 20 years, however, there should be a reasonable expectation of renewal for the incumbent operator, provided that the existing spectrum licence is in good standing.

3-9 Industry Canada is seeking comments on the introduction of a new short-term satellite spectrum licence, on what would be an appropriate term, and on whether a flat fee or calculated fee should be applied.

42. Ciel agrees with the Department that there may well be circumstances in which a licence term shorter than 20 years or even shorter than one year would be suitable. Ciel suggests that short-term licences could be subject to the same annual per MHz
rate charged for a longer-term licence, pro-rated to reflect the actual duration of the licence.

IV. Public Benefit Condition of Licence

4-1 Industry Canada is seeking comments on possible changes to the existing public benefit conditions of licence to improve their effectiveness, as well as any new ways in which the obligation could be implemented.

4-2 Industry Canada is seeking comments on whether to maintain the public benefit condition of licence for new satellite spectrum approvals.

43. In the Consultation, the Department acknowledges that the “global nature of telecommunications and the opening of Canada to foreign satellite operators under the World Trade Organization’s General Agreement on Basic Telecommunications have changed the nature of the Canadian market for satellite services.” The Department further acknowledges that “[S]ome of the traditional conditions of licence imposed by Industry Canada must be examined in this context to determine whether they are still valid and whether they place Canadian operators at an unreasonable disadvantage in relation to their foreign competitors.”

44. Ciel agrees. The Canadian market for satellite has undergone several changes over the past 15 years. Canadian satellite operators compete on a North American-wide and global basis and it is essential that they not be placed at a disadvantage relative to other satellite operators that do not have a public benefit or R&D condition of licence.

45. Furthermore, the existence of “public benefit” capacity in the marketplace raises issues of subsidized competition for commercial service providers that are trying to deliver services to the same markets. In addition, given that the intended beneficiaries of this capacity are “public institutions”, the public benefits condition raises concerns about the potential bypass of government procurement rules.

46. Although the policy objective of improving connectivity, especially in remote and underserved areas of the country, is an important objective, this should not place
Canadian-licensed operators at a competitive disadvantage relative to other operators serving the Canadian market. Indeed, given the concerns noted above, not to mention the difficulty of administering and enforcing the public benefit condition of licence, Ciel believes that the public benefit condition should be removed from subsequent authorizations. In the view of Ciel, the needs of remote and underserved areas are best met through a combination of mechanisms, such as public-private partnerships, targeted subsidy programs, and competitive bidding processes with transparent government procurement rules.

V. Canadian Coverage

47. Canadian satellite stations operating in Canadian orbital positions are currently required as a condition of licence to provide service to all regions of Canada, including the North. Foreign satellites providing services in Canada are not subject to this requirement.²

5-1 *Industry Canada is seeking comments on how best to implement a requirement for minimum Canadian coverage.*

48. Ciel recognises and supports the Department’s objective of ensuring that Canadian satellite users have access to the satellite capacity they need and that satellite services are available throughout all of Canada, including the North. However, the current requirement that every Canadian-licensed satellite maintain an ability to provide full Canadian coverage is not always the most effective means of achieving this goal and can impose a considerable additional burden on Canadian satellite operators while generating very little tangible benefit for Canadian satellite users. In light of this experience, Ciel believes that Industry Canada should adopt a much more flexible, demand-based approach to implementing the requirement for minimum Canadian coverage, as suggested in the Consultation.

² Foreign-licensed satellite operators have been permitted to deliver services in Canada since the implementation of the 1997 World Trade Organization Agreement on Basic Telecommunications Services. The *List of Satellites Approved to Provide Fixed-satellite Services (FSS) in Canada* maintained by Industry Canada currently shows nearly 80 foreign satellites licensed to provide service in Canada.
49. Ciel’s experience with the Ciel-2 satellite offers an excellent example of the inefficiency that can arise as a result of the existing practice. Ciel designed and constructed the Ciel-2 satellite so as to provide full coverage of the areas of Canada visible from the licensed orbital location at 129°W, as it was required to do under the applicable conditions of licence. However, the service area of the satellite was technically limited to west of the Ontario-Quebec border due to the extreme westerly location of Ciel-2 in the geostationary arc. As a result, although the available capacity was duly reserved for and offered to Canadian satellite users, it remained unsold at the time of launch primarily due to the coverage limitations. Ultimately Canadian users saw no benefit and Ciel saw no return on the substantial investment required to fulfil this condition of licence.

50. Ciel supports the Department allowing greater flexibility in the implementation of any requirement for minimum Canadian coverage that may be maintained by Industry Canada in this process. For example, an operator should have the opportunity to demonstrate that there is already sufficient capacity available, either from itself or from other operators, to meet the demand in Canada for the types of services that the satellite will offer. If such capacity is already available, the operator should be relieved of the Canadian coverage requirement. Satellite operators should also be permitted the flexibility to meet Canadian coverage requirements across their fleet, rather than on each individual satellite.

51. In addition, Ciel believes that in the future it may make sense for Canada to actively support the existing and growing international businesses of Canadian satellite operators through the licensing of spectrum-orbital resources outside of ITU Region 2. Obviously, having a strict national coverage obligation in this scenario would not make sense, and it is important that the new Canadian Satellite Licensing Framework remain flexible enough to accommodate these sorts of future spectrum development activities.

VI. Conclusion

52. Responsible stewardship of Canadian spectrum-orbital resources is essential to Canada’s future growth and prosperity and Ciel fully supports the review of the
existing Licensing Framework initiated in the Consultation as a positive step in this on-going process.

All of which is respectfully submitted.

Sincerely,

Scott Gibson
Vice President & General Counsel
Ciel Satellite Limited Partnership