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**Call for Applications to Develop and Operate Direct
Broadcast Satellite (DBS) Facilities in the 91° West
Longitude Orbital Position to Serve Canadian
Broadcasting Needs**

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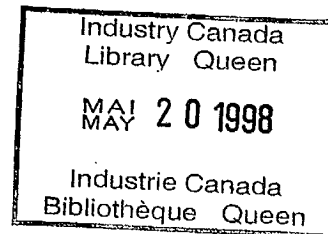
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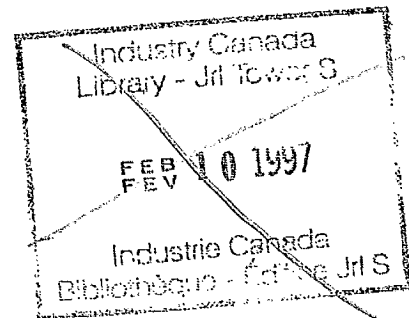


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DEPARTMENT OF INDUSTRY

RADIOCOMMUNICATION ACT

Notice No. DGTP-009-96

Call for Applications to Develop and Operate Direct Broadcast Satellite (DBS) Facilities in the 91° West Longitude Orbital Position to Serve Canadian Broadcasting Needs

This Notice announces the release of a paper entitled **Call for Applications to Develop and Operate Direct Broadcast Satellite (DBS) Facilities in the 91° West Longitude Orbital Position to Serve Canadian Broadcasting Needs**. The purpose of the paper is to promote the early deployment and operation of Canadian DBS facilities, to serve Canadian broadcasting needs in accordance with existing satellite policies, utilizing the 91° West Longitude DBS orbital position and associated frequency bands described in the paper. This Notice and the referenced paper invite detailed submissions from prospective satellite facility providers by the submission filing dates of December 16, 1996 and February 28, 1997, as may respectively be required of the applications under the provisions of said referenced paper.

This Gazette Notice and the referenced paper are available electronically on the Internet at:

World Wide Web (WWW)

<http://info.ic.gc.ca/ic-data/telecom/gazette/dgtp-e.html>

Gopher

[info.ic.gc.ca port 70/Industry Canada Documents/
telecomm/gazette](gopher://info.ic.gc.ca:70/Industry%20Canada%20Documents/telecomm/gazette)

Anonymous file transfer (FTP)

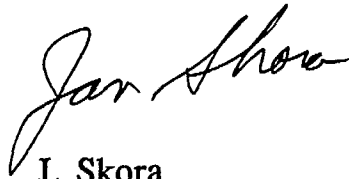
[info.ic.gc.ca/pub/ic-data/telecom/gazette](ftp://info.ic.gc.ca/pub/ic-data/telecom/gazette)

Copies of these documents are also available from the Communications Branch, Industry Canada, 235 Queen Street, Ottawa, Ontario K1A 0H6, telephone (613) 947-7466, and from the offices of Industry Canada at Moncton, Montreal, Toronto, Winnipeg and Vancouver.

Dated at Ottawa this 7th day of November, 1996.



L. Shaw
Director General
Telecommunications Policy Branch



J. Skora
Director General
Radiocommunication and
Broadcasting Regulatory Branch

Call for Applications to Develop and Operate Direct Broadcast Satellite (DBS) Facilities in the 91° West Longitude Orbital Position to Serve Canadian Broadcasting Needs

1. Introduction

Industry Canada has received applications for the development and operation of Direct Broadcast Satellite (DBS) facilities to provide capacity for satellite distribution undertakings currently licensed by, or seeking licences from, the Canadian Radio-television and Telecommunications Commission (CRTC) under the *Broadcasting Act*. These applications, for the use of Canadian DBS orbital positions and associated frequency bands, were predicated to varying degrees on the utilization of satellite capacity by American service providers for the U.S. market, and accordingly, on the receipt of approval by U.S. regulatory authorities. Such approvals as have been sought have not been forthcoming.

In recent months, in the course of consultations with Industry Canada, various Canadian parties (carriers, broadcasters, Direct-To-Home [DTH] licensees and potential licensees, manufacturers and others) have expressed growing interest in exploring the viability and benefits of developing DBS facilities to serve Canada. Canadian requirements may be sufficient to support one or more Canadian DBS satellites to meet the immediate and critical shortage of satellite facilities for Canadian broadcasters. Given the importance the Canadian government places on the early introduction of DTH/DBS services, the demand from Canadians for such services (as evidenced by the "grey market"), the regulatory uncertainties relating to serving foreign markets, and the critical shortage of Canadian satellite facilities, the Department is herewith initiating this call for applications to deploy satellite facilities in the Canadian DBS orbital position located at 91° West Longitude.

2. Purpose of Notice

By means of this Notice, Industry Canada is inviting interested parties to submit applications to provide for the early deployment and operation of Canadian DBS satellite facilities, to serve Canadian broadcasting needs in accordance with existing satellite policies, utilizing the 91° West Longitude DBS orbital position and associated frequency bands described in Section 3 of this document. Given the importance of deploying Canadian DBS facilities at the earliest possible opportunity, the selection process will be effected in two steps. If an applicant is

able to demonstrate, in accordance with the criteria set out in Section 5, that it has, in the opinion of the Minister, a credible plan for deploying commercially operational DBS facilities capable of serving all regions of Canada within six months of the first submission filing date, then only that applicant will be considered for a radio authorization. The DBS facilities referred to above may comprise interim satellite facilities in any suitable orbital position(s) with DBS transmission capacity of at least ten high-powered DBS transponders. Any interim arrangements must permit, with minimal disruption, transition to the permanent satellite facilities in the 91° West Longitude orbital position for which authorization is sought. If there are more than one applicant able to demonstrate credible plans for deploying commercially operational DBS facilities capable of serving all regions of Canada within six months of the first submission filing date, then only those applications will be evaluated in accordance with the criteria set out in Section 6. If there are no such submissions, then all the detailed submissions will be evaluated in accordance with the criteria set out in Section 6 after the second submission filing date.

The deployment of the proposed satellite facilities must not be conditional on the receipt of revenues from the provision of services to foreign markets where such provision requires the approval of foreign regulatory authorities, though applicants may reference their capabilities to take advantage of such additional business opportunities as might arise after the possible implementation of new policies, intergovernmental arrangements, or trade agreements. Entities which have already submitted to Industry Canada a DBS facility application may wish to submit a new or modified application so as to participate in this call for applications. Industry has suggested that the Canadian government explore with the United States options for the reciprocal use of DBS facilities; should currently applicable satellite policies significantly change, the Department will permit interested parties to submit, or revise, applications in a manner consistent with the new policies.

A successful applicant would receive authorization under the *Radiocommunication Act*, which authorization could include terms and conditions relating to, among other things, the requirement to complete any necessary modification procedure that would have to be followed through the International Telecommunication Union (ITU) to expand the coverage designated for the 91° West Longitude orbital position. It is not envisioned that the instant selection process will result in the

issuance of authorizations for facilities that utilize other than the orbital position at 91° West Longitude, but if there are two or more sufficiently meritorious applications, all of which demonstrate, in accordance with the criteria set out in Section 5, credible plans for the commercially operational deployment of DBS facilities capable of serving all regions of Canada within six months of the first submission filing date, then authorizations may be issued for facilities that utilize the orbital position at 91° West Longitude and at one other Canadian DBS orbital position. As well, the demonstration of sufficient interest in the deployment of DBS facilities may encourage Industry Canada to initiate further competitive selection processes for other orbital positions in the near future. It is understood that the Minister need not choose any applicant to develop DBS facilities as a result of this licensing process.

3. Canadian DBS orbital positions and associated spectrum resources

Canada secured, at the 1983 Regional Administrative Radio Conference (RARC), six DBS orbital positions (at 70.5°, 72.5°, 82°, 91°, 129° and 138° West Longitude) and the associated frequency bands (DBS downlink in band 12.2 - 12.7 GHz, and uplink in band 17.3 - 17.8 GHz). The availability of these DBS resources was publicized in 1983 with the release of a report examining various models for DBS services. Also, in 1993 and again in 1995, the Department published Canada Gazette Notices regarding available orbital and spectrum resources for Canada. (For more information on DBS resources, see Industry Canada's document entitled "Policy for the Use of the Geostationary Satellite Orbit by Canadian Satellite Networks", RP-002, issued January 1995.)

In compliance with the existing ITU DBS Plans contained in the Radio Regulations, Appendices 30 and 30A, each Canadian orbital position is limited to serving a specific area of Canada. The expectation of the plan was that early generations of satellites would serve the country from two or three orbital positions. In order to expand the coverage designated for any orbital position in the plan (to, for example, full Canadian coverage), a specified modification procedure would have to be followed through the ITU, which process involves coordination with potentially affected countries. Canada has begun this process

for five of the orbital positions (those located at 72.5°, 82°, 91°, 129° and 138° West Longitude), and information about the modification filings is available from Mr. Ronald Amero, Manager, Space Services, Industry Canada, telephone (613) 998-3759, facsimile (613) 952-9871, Internet: Amero.Ron@ic.gc.ca.

Appendices 30 and 30A of the ITU Radio Regulations specify in detail the technical parameters which are the basis of the DBS Plans. In particular, the Plans specify the radio frequency channelization (often referred to as the "satellite transponders") to be used. In the Americas, the Plan provides for 32 transponders, which are grouped such that the even-numbered transponders use one direction of polarization (left hand circularly polarized, or "LHCP") and the odd-numbered channels use the opposite polarization (right hand circularly polarized, or "RHCP"). While advances in technology make possible the co-location of two satellites or the use of one larger satellite with all 32 channels, the preferred approach is to use two DBS satellites, physically separated in orbit, so that one satellite carrying 16 even-numbered LHCP transponders is placed 0.4° from a second satellite carrying the remaining 16 odd-numbered RHCP transponders.

Although each of the Canadian DBS orbital positions has access to the full 500 MHz DBS frequency allocation, applicants may wish to apply for a portion (probably one-half) of the spectrum capacity available at the 91° West Longitude orbital position. Any such application should, in addressing the criteria set out in Sections 5 and 6, consider the possibility that another authorization will be issued to enable the use of the remainder of that orbital position. Industry Canada will, of course, also examine the impact of any such application on the use of the remaining spectrum and orbital position resource.

4. Policy considerations relating to DBS facilities applications

The consideration by Industry Canada of applications for authorization of radiocommunication facilities is done under the authority of the *Radiocommunication Act* and with regard for the policy objectives set out in Section 7 of the *Telecommunications Act*.

In undertaking the solicitation, evaluation and authorization of DBS facilities pursuant to this Notice, Industry Canada is giving particular regard to the following specific objectives:

- (i) The earliest possible deployment of facilities, in a manner that will address the requirements of Canadian satellite distribution undertakings to the greatest possible extent;
- (ii) The implementation of facilities that will advance competition in the provision of telecommunications services (which services include the carriage of broadcast programming), and that will foster the future introduction of new and innovative applications; and
- (iii) The promotion of industrial benefits, including the support of research and development activities, the enhancement of the capabilities of the satellite equipment manufacturing sector, and the expansion of economic opportunities to foster jobs and growth.

Consistent with the objectives of the *Telecommunications Act*, current policies governing the use of satellite facilities generally require the use of Canadian facilities for traffic that originates in Canada and is destined for reception in Canada. More specifically, and as set out in the 1995 governmental policy clarification concerning the use of Canadian satellite facilities for the transmission of Canadian programming services in Canada (appended at Annex A), current policies require that a Canadian broadcasting undertaking make use of Canadian satellite facilities to carry all Canadian programming services. The undertaking may use either Canadian or non-Canadian satellite facilities to carry foreign originated services that are intended primarily for foreign audiences and are authorized, in whole or in part, for distribution in Canada by the CRTC. A Canadian broadcasting undertaking cannot use exclusively foreign satellites for the distribution of its services to Canadians. Applications in this proceeding for authorization of DBS facilities will be considered only in the context of these existing policies.

Applicants should take into consideration the existing Telesat Canada monopoly. In the 1992 Telesat Canada privatization Agreement, the Government of Canada agreed that no one except Telesat would be licensed to operate a satellite to

provide fixed satellite services in Canada, or between Canada and the United States, until at least April 2002. This monopoly did not extend to the operation of satellites to provide mobile satellite services, direct broadcast satellite services, earth exploration satellite services, any combination of those services, or fixed satellite services that are necessary for the provision of those services. Portions of the 1992 privatization Agreement relevant to the Telesat Canada monopoly (Schedule V, including the definitions of satellite services) are appended at Annex B.

Applicants are also reminded that, pursuant to the 1972 exchange of letters between Canada and the United States, the domestic satellite carriers of each nation are permitted to provide assistance to each other in cases where the other party experiences capacity shortages or emergencies (caused by, for example, the catastrophic failure of a satellite).

5. Selection Process

Pursuant to the instant selection and authorization process, applicants are invited to submit detailed applications, which will be evaluated in accordance with the criteria set out in Section 6. However, applicants able to commit themselves to deploying commercially operational DBS facilities capable of serving all regions of Canada within six months of the first submission filing date could find it advantageous to document their compliance with the following eligibility criteria:

- the applicant, or the entity to be formed by the applicant to hold the radio authorization, meets the Canadian ownership and control requirements, as set out in Section 6.1;
- the applicant has a credible plan for deploying in commercially operational status, within six months of the first submission filing date, DBS facilities capable of serving all regions of Canada, which DBS facilities may comprise interim satellite facilities in any suitable orbital position(s) with DBS transmission capacity of at least ten high-powered DBS transponders, where any interim arrangement permits, with minimal disruption, transition to the permanent satellite facilities in the 91° West Longitude orbital position for which authorization is sought;

- the applicant can demonstrate that it has sufficient satellite transmission capacity to reasonably meet the requirements of those licensed and seeking licences to operate DBS/DTH satellite distribution undertakings;
- the applicant is able to demonstrate that it will establish its DBS facilities in accordance with the provisions of the international radio regulations;
- the applicant has, or has assured access to, the financial resources required to establish and operate the satellite facility;
- the applicant has demonstrated reasonable plans to meet the objectives related to industrial benefits set out in Section 4; and
- the applicant has, or has access to, the operational and technical experience and competence for the procurement, launch and operation of the satellite, and for the maintenance of effective control and operation of the satellite.

Applicants should note that the successful demonstration of the above would enable the Minister to make a decision on whether the subject process will continue to a comparative and evaluation step, or whether, in the event that there is only one applicant able, in the opinion of the Minister, to meet all the above-identified conditions, an authorization can be awarded forthwithly.

In the event that there are two or more applicants which have demonstrated their ability to meet the eligibility criteria set out above for the commercially operational deployment of DBS facilities capable of serving all regions of Canada within six months of the first submission filing date, only the detailed submissions of those applicants will be evaluated in accordance with the comparative evaluation criteria set out in Section 6; consequently, applicants able to meet the conditions of Section 5 may nonetheless wish to have regard to, and to address, the criteria identified in Section 6. Because of the possibility, set out in Section 2, that authorizations for facilities utilizing other than the 91° West Longitude orbital position may be issued if there are two or more sufficiently meritorious applications meeting the criteria set out in this Section, applicants seeking to establish that their submissions meet the criteria of this Section should indicate whether they would be willing to proceed if there were to be an authorization in

another orbital position and whether they would be willing to deploy their facilities in an orbital position other than the 91° West Longitude orbital position; as well, in addressing the above criteria and (if applicable) those of Section 6, they should set out their financial, technical and other plans on the assumption of there being issued both an authorization to use a single orbital position and authorizations to use more than one orbital position.

In the event that there are no applicants proceeding under this Section, all the detailed submissions will be evaluated, after the second submission filing date, in accordance with the comparative evaluation criteria set out in Section 6.

6. Comparative Evaluation Criteria

The following are the eligibility and evaluation criteria which will be employed by Industry Canada, and accordingly, applicants are encouraged to address the enumerated requests for information in the most complete possible manner, so as to permit the Department to fully assess the merits of their individual submissions.

6.1 Ownership And Control

The applicant must be Canadian owned and controlled, and will be so owned and controlled if, were it a Canadian carrier, it would be eligible to operate as a telecommunications common carrier under the *Telecommunications Act* and the regulations made thereunder. Applicants must submit sufficient documentation, as set out in Annex C, to permit confirmation of this status.

6.2 Timely Deployment of Sufficient Satellite Capacity and the Ability to Implement Interim Measures

As discussed above, the early deployment of DBS facilities capable of meeting the needs of Canadian broadcasters has been identified as a key policy objective. Applicants should identify the major project milestones, with the expected dates of their completion, which would lead to the deployment of operational DBS facilities to provide services to Canadians. Applicants which are able to provide a credible plan for the earliest possible deployment of DBS facilities will be favoured.

DBS facilities operated by a common carrier shall be made available for use by those licensed or seeking licences under the *Broadcasting Act* to operate satellite distribution undertakings in Canada. Applicants which provide evidence of their ability to meet the demonstrated needs of the greatest number of such undertakings will be favoured in the selection process.

Industry Canada is also seeking a description of any interim measures which might be implemented prior to the launch of the DBS satellites, in order to enable the most rapid possible introduction of DTH/DBS services to Canadians. Any such submission should set out a reasoned strategy under which broadcasters and consumers would effect a transition to more permanent facilities. Applicants which are able to support the most prompt introduction of services by existing DTH licensees will be favoured in the selection process.

6.3 Advancement of Competition

The enhancement of the efficiency and competitiveness of Canadian telecommunications is a general objective of Canadian telecommunications policy and a specific objective of this call for applications. The deployment of DBS facilities is expected to enable new competitive services to be offered to consumers, with the result that Canadians will obtain additional choices and other benefits. Such benefits could obviously be expected with respect to broadcasting services, but they might also be found in complementary service applications, available either in the near term or in the intermediate future. Applicants which describe how their proposals enhance competition in the Canadian marketplace will be favoured.

6.4 Industrial Benefits

Applicants proffering the most comprehensive industrial benefits resulting from the selection by the Minister of their applications will be favoured in the comparative process.

An applicant should address, at a minimum, the research and development activities relating to satellite communications that it is currently undertaking or would support, either in-house or through arrangements with equipment suppliers

or other organizations, and the quantum of such support. The research and development plan should cover an initial period of at least five years.

An applicant may also wish to describe how the acceptance of its DBS application would foster the future introduction of new and advanced broadcasting and telecommunications technologies and services, such as advanced digital compression technology or the multimedia service applications being proposed for the Ka-band. An applicant may wish to set out how its application would enhance the abilities of satellite equipment suppliers to offer products, for both DBS satellites and for such future endeavours as those that will make use of the Ka-band, otherwise provide broadband services, or offer additional innovative satellite services. Applicants might also want to outline any experimentation that they have undertaken which would support their plans for the introduction of advanced and innovative services.

The economic benefits, including the employment opportunities, that would result from the investment in research and development, or in the other activities undertaken by the applicant, should be fully described.

6.5 Financial and Institutional Competence

An applicant must submit a business plan that will demonstrate an ability to deploy and operate the DBS facilities. To that end, the business plan should describe any proposed or extant business and commercial arrangements, the quantity and source of proposed financing, and the revenue and expense projections for the life of the satellites. Such plans should be supported by appropriate financial statements, and will be assessed by Industry Canada as to their credibility. At minimum, the financial statements of the applicant and/or its parent companies for the past three years should be included, and the assumptions respecting the revenue and expense projections should be clearly enumerated.

Applicants may wish to consult with the Competition Bureau of Industry Canada with respect to any potential implications under the *Competition Act*.

An applicant should also describe its institutional capabilities, including, in particular, previous experience in telecommunications and related businesses, the

abilities and expertise of its management and staff, and such arrangements or agreements with other companies and organizations as would enhance the ability of the applicant to carry out the project.

Applicants will be evaluated on the capabilities demonstrated by their inclusive, comprehensive and reasoned submissions.

6.6 Technical Requirements and Capabilities

Applicants must submit technical information to describe the essential technical operating parameters of the satellite and earth station facilities, the limits of the service area and the relative signal strength throughout the service area, and other information for radio coordination and technical evaluation (that is, information necessary to determine if the application is in conformity with the ITU DBS Plans or with the proposed modifications thereto submitted by Industry Canada, or whether a further request for modifications will be necessary). Any applicant proposing to modify the existing ITU DBS Plans, in accordance with the Industry Canada proposal or otherwise, should include an appropriate technical and interference analysis sufficient to carry out international coordination, and the applicant should commit to providing, if successful in its application, such additional information and assistance as might be required during future international coordination activities. Applicants which can demonstrate the broadest possible geographic coverage of Canada, with the highest quality of signals to all regions of Canada, will be favoured.

Applicants must indicate their operational and technical experience and competence, or how such expertise would be acquired, for the procurement, launch and operation of the satellites, and for the maintenance of effective control and operation of the satellites. Applicants will be evaluated on such existing or acquired operational and technical experience and competence.

Applicants are reminded of Provision 2674 of the ITU Radio Regulations, which addresses the obligations regarding broadcasting-satellite service coverage of another country in the absence of an agreement with that country. Since at this time there are no agreements with the United States or any other country respecting such coverage, applicants should indicate how, and to what extent, they are able to comply with this Provision.

7. Fees

Industry Canada is of the view that fees should reflect the economic value of the radio frequency spectrum resource consumed. However, in the absence of a market-based mechanism by which such economic value could be ascertained, the Department recognizes that such determinations are difficult.

Industry Canada, having analyzed the potential Canadian market value of the orbital and spectrum resources in question, proposes an annual authorization fee, to be fixed by the Minister under the *Department of Industry Act*, of \$67,000 per authorized satellite transponder, payable whether or not the transponder is in actual use. The pro-rated balance of the then-current fiscal year's authorization fee will be due within 30 days of the issuance of the radio authorization by the Minister. Thereafter, the annual fees will be due on April 1st of each year. In the future, the Minister may adjust the fee that was initially fixed, as better information about market determined valuations becomes available or as other circumstances (including obtaining the ability to supply satellite transmission capacity for the delivery of services outside Canada) so warrant.

Applicants must include with their submission an irrevocable financial instrument, such as a standby letter of credit, in a form acceptable to the Department, with a value of 20% of the total annual value of the authorization fee. The financial instrument will only be drawn upon if default of the initial authorization fee occurs and only in the amount that corresponds to 20% of the authorization fee. The financial instrument will be returned to those applicants who are unsuccessful.

The Department notes that DBS has the potential to compete with both existing and future spectrum-based ("over the air" transmissions) and non-spectrum based (coaxial and fibre optic cable) technologies in the provision of broadcasting services, and the inherent nature of satellite transmission technology is such as to permit services to be provided outside the geographical area of Canada if appropriate regulatory approvals can be obtained. The Department is concerned that the choice of technologies not be distorted by the availability of spectrum at a cost that is not representative of the opportunity cost associated with its use. Interested parties are therefore invited to comment, in their submissions or in other correspondence to be received by the Department no later than the first submission filing date, on the appropriateness of the proposed fee.

8. Transfer of Authorizations

Consistent with general policy in this area and the specific provisions of the regulations made under the *Radiocommunication Act*, the transfer of an authorization to another party will not be allowed without a full review of the application by Industry Canada and approval by the Minister. In the absence of exceptional circumstances, no transfer of authorization will be permitted in the first three years after the award of an authorization is granted under this selection process.

9. Further Application Information

9.1 Performance guarantees

It is of utmost importance that an applicant successful because of its commitment to have its DBS facility in commercial operation within six months from the submission filing date in fact meet that commitment. Therefore, applicants wishing to avail themselves of the procedure set out in Section 5, wherein applicants able to meet the eligibility criteria set out in that Section are advantaged in the selection process, are required to file a performance guarantee with their applications. The performance guarantee shall be an irrevocable standby letter of credit containing the elements in Annex D, and shall be subject to the approval of the Minister. The Government of Canada shall have the right to draw against the letter of credit in the event the successful applicant does not meet the required deadline.

A drawing against the letter of credit shall not prejudice the power of the Minister to suspend or revoke the radio authorization under Section 5(2) of the *Radiocommunication Act*.

9.2 Clarification

General inquiries, strictly on clarification of the policy or on procedural requirements and procedures contained in this document, must be submitted no later than November 25, 1996 in writing to the office of the Director General, Radiocommunication and Broadcasting Regulatory Branch, at the address set out below. All questions received and responses will be made public as quickly as

possible thereafter. There will be no individual responses and the parties requesting clarification will remain anonymous. All questioners and any other known interested parties will be sent the questions and the responses.

After a submission filing date, Industry Canada may request additional information from an applicant for the clarification or resolution of issues arising during the evaluation of the applicant's submission. Any such request will be made in writing to the applicant, and the response of the applicant is to be made in writing. Direct contact with Departmental officials concerning the merits of any submission will not be entertained. This does not limit contact with Departmental officials concerning the process in general or for other unrelated issues, nor does it preclude requests for information relating to the proposed modifications of the ITU Plans for five of the Canadian DBS orbital positions.

9.3 Public Access to Documents

Industry Canada recognizes that certain portions of the submissions may be considered confidential by an applicant. In these instances, applicants must clearly identify the information considered confidential and, if claiming confidentiality, must submit both a non-confidential and a confidential version of the submissions. Industry Canada will make available for viewing, beginning shortly after the second submission filing date and extending for a period of one year after the completion of the selection and authorization process, the non-confidential submissions, and the non-confidential portions of any materials provided in response to an Industry Canada request for clarification, at the Industry Canada libraries located at 365 Laurier Avenue West, Ottawa and at Industry Canada offices in Moncton, Montreal, Toronto, Winnipeg and Vancouver. During the same period, copies of the non-confidential submissions will be made available via a commercial printing service, which will charge a reasonable fee for this service. After this period, arrangements for the viewing of the non-confidential submissions may be made through the office of the Director General, Radiocommunication and Broadcasting Regulatory Branch.

Applicants should be aware that information which they have identified as being confidential may be subject to release upon request under the *Access to Information Act* and should therefore refer to this Act. As a guide in determining whether

information could be released pursuant to such a request, a list of some of the questions used as part of any review under the *Access to Information Act* is provided in Annex E.

9.4 Number of Copies

By a submission filing date, applicants are to provide in writing twelve (12) copies of the submissions due at that time. Should applicants consider portions of their submissions to be confidential, they are to provide in writing twelve (12) copies of their confidential submissions and twelve (12) copies of their non-confidential submissions.

10. Invitation to Submit Applications

Complete applications should be submitted to the Director General, Radiocommunication and Broadcasting Regulatory Branch, Industry Canada, 300 Slater Street, Ottawa, Ontario, K1A 0C8. Applications seeking to demonstrate that they can deploy commercially operational DBS facilities capable of serving all regions of Canada within six months of the first submission filing date must be received by the first submission filing date of December 16, 1996, and all other applications must be received by the second submission filing date of February 28, 1997.

Dated at Ottawa this 7th day of November, 1996.



L. Shaw
Director General
Telecommunications Policy Branch



J. Skora
Director General
Radiocommunication and Broadcasting
Regulatory Branch

ANNEX A

Governmental Policy Clarification Concerning the Use of Canadian Satellite Facilities for the Transmission of Canadian Programming Services in Canada

The following is a clarification of Canadian policy concerning the use of Canadian satellite facilities, as it applies to broadcasting undertakings.

One of the policy objectives in Section 7 of the *Telecommunications Act* is: "to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada". A long-standing application of this policy is to ensure the use of Canadian satellite facilities for traffic originating in Canada and destined for Canadians.

A policy objective of the *Broadcasting Act* is that: "each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources".

In this context, where a Canadian broadcasting undertaking wishes to use foreign satellite facilities, the Canadian policy concerning the use of satellite facilities should be interpreted as follows:

- the undertaking should make use of Canadian satellite facilities to carry (i.e. receive and/or distribute to Canadians) all Canadian programming services but may use either Canadian or non-Canadian satellite facilities to carry foreign originated services that are intended primarily for foreign audiences, and are authorized, in whole or in part, for distribution by the CRTC; and
- under no circumstances should an undertaking use exclusively foreign satellites for the distribution of its services to Canadians. However, in the case of emergencies leading to lack of availability of Canadian or foreign satellite facilities, back-up agreements between the two countries would be utilized.

It should be understood that a range of licensing options is possible under this policy. For example, in the case of a pay-per-program or multi-channel (other than simply multiplexed) undertaking, the Commission could choose to authorize a pre-existing foreign component which is intended primarily for foreign audiences, within the licensed undertaking or separate from, but linked to, the licensed undertaking. In either case, the Canadian component would be carried on Canadian satellites while the foreign component could use either Canadian or foreign satellites.

ANNEX B

Extract from the 1992 Telesat Privatization Agreement

SCHEDULE V

Statement of Telecommunications Policy Respecting Telesat Canada (section 8.1)

Introduction

The Government of Canada has prepared this statement of telecommunications policy for the guidance of potential purchasers of the government's shares of Telesat Canada. It is intended to define and clarify the policy environment that will apply to Telesat once the government has sold its majority shareholding in the company. This statement should be considered in conjunction with the *Telesat Canada Reorganization and Divestiture Act* and the *Radiocommunication Act*. Attached for clarification is a glossary of key terms used in this policy statement.

Background

Through its participation in the ownership of Telesat, the government has achieved its objective of encouraging the introduction, development and use of satellites and space technology in the domestic commercial telecommunications sector. The company now operates successfully in a competitive business environment without any financial assistance from the government.

Telesat is the only Canadian telecommunications carrier owning and operating commercial fixed satellites in Canada. It also serves as the primary vehicle for providing the northern and remote areas of Canada with access to telephone, broadcasting and other telecommunications services.

While the government is selling its investment in Telesat, it recognizes the key role Telesat plays in the Canadian telecommunications industry and the economy. The importance of Telesat as a link that binds our vast country cannot be ignored. It is for this reason that Telesat will be required to continue to provide satellite facilities that ensure the availability of telecommunications services to all parts of Canada.

Sole Provider Status

The government is aware of the significant investment made by Telesat Canada in building and launching its two new Anik E series satellites in 1991. The government also understands that Telesat's ability to earn a reasonable return on that investment and charge fair and reasonable prices to its customers requires a reasonable level of satellite utilization over the next decade.

Accordingly, the government has decided that as a matter of federal telecommunications policy, no Person, other than Telesat Canada, will be granted or permitted to hold a licence to operate a satellite to provide fixed satellite services in Canada, or between Canada and the United States, for a minimum of ten years following the closing of the sale of the government's Telesat shares. The Minister of Communications has the power to ensure adherence to this policy through his licensing powers under the *Radiocommunication Act*. This policy will not extend to the operation of satellites to provide mobile-satellite services, direct-broadcasting satellite services, earth exploration satellite services or any combination of these services together with fixed satellite services that are necessary for the provision of those services. Fixed satellite services may be used in conjunction with those services only if: (i) the fixed satellite services are ancillary to the other services; and (ii) it is generally accepted practice to use the accompanying fixed satellite services in conjunction with the other services.

Adopting this policy will enhance Telesat's ability to fulfill its mandate. It will also serve to prevent fragmentation of the satellite telecommunications industry, since traffic levels over the next ten years are not expected to be high enough to warrant the entry of another operator without jeopardizing the ability of the industry to provide service to Canadians in the future. Moreover, in the matter of fixed satellite services between Canada and the United States, the government will use its best efforts to ensure equitable use of Canadian satellites.

Service to Northern and Remote Regions

The government recognizes the vital role Telesat plays in bringing broadcasting, telephone and other telecommunications services to Canadians from one end of the country to the other. Even Canadians living in northern and remote regions of the country enjoy access to these services in much the same manner as their southern

counterparts. As a matter of government telecommunications policy, Telesat Canada will be required to maintain and operate satellites that are capable of providing telecommunications services to Canada's northern and remote areas.

GLOSSARY

This glossary has been prepared by the Department of Communications for use with the Statement of Telecommunications Policy issued by the Minister of Communications. The satellite services referred to below are operated in the frequency bands allocated to the particular satellite service by the Department of Communications.

"fixed satellite service" means a radiocommunications service between one or more fixed points by means of one or more satellites. For these purposes, transportable earth stations can be used within the fixed satellite service, provided that they are stationary while in operation.

"mobile-satellite service" means a radiocommunications service between mobile earth stations or between a mobile earth station and a fixed earth station by means of one or more satellites. It includes the land mobile-satellite service, the aeronautical mobile-satellite service, and the maritime satellite service.

"direct broadcasting-satellite service" means a radiocommunications service in which signals are transmitted or retransmitted by satellite and are intended for direct reception by individual members of the general public.

"earth exploration-satellite service" means a radiocommunications service between earth stations or between earth stations and satellites, in which the information collected or distributed relates to characteristics of the earth and its natural phenomena.

ANNEX C

Information Related to Ownership and Control

1. Incorporation documents

- 1.1 The incorporating documents, including any by-laws relating to control matters, for the company and any related holding company.

2. Shareholdings

- 2.1 The details of the authorized and issued shares for each class of shares for the company and any holding company.
- 2.2 The details of the rights, privileges, restrictions and conditions of each class of shares for the company and any holding company.
- 2.3 The details of the beneficial ownership by Canadians (as defined in the Canadian Telecommunications Common Carrier Ownership and Control Regulations), and by non-Canadians, of each class of shares for the company and any holding company.
- 2.4 The copies of all shareholder agreements for the company and any holding company.

3. Directors

- 3.1 The name and citizenship of each member of the board of directors of the company and any holding company.
- 3.2 The details of any agreements or arrangements related to the election of directors of the company and any holding company.

4. Officers

- 4.1 The name and citizenship of each officer, and office held, of each officer of the company and any holding company.
- 4.2 The details of any agreements or arrangements related to the appointment of officers of the company and any holding company.

5. Financing

- 5.1 The complete details of the financial structure of the company and any holding company, including the source of debt and equity financing. The share structure, source of financing (banks, shareholders, passive investors, etc), and the domestic and foreign funding obtained through both voting and non-voting investments, should also be described.

6. Agreements

- 6.1 Copies of any agreements between the company and any foreign partner or affiliate.
- 6.2 The details of any other agreement or arrangement which could affect whether the company or any holding company are or are not controlled in fact by Canadians.

ANNEX D

Elements of the Irrevocable Standby Letter of Credit

The irrevocable standby letter of credit shall be issued by a financial institution ("Issuer") which is a member of the Canadian Payments Association and shall:

- 1) provide for a face amount of \$5,000,000.00;
- 2) provide for sight payment to the Receiver General for Canada ("Beneficiary") by way of the Issuer's draft against presentation of a written demand for payment, signed by the Minister of Industry or the Deputy Minister of Industry, stating that the Applicant is in default of its obligation to commence commercial operation of its DBS facility within six months from the first submission filing date of December 16, 1996;
- 3) provide that the Issuer shall honour the Beneficiary's demand for payment on sight without inquiring whether the Beneficiary has a right as between itself and the Applicant to such payment;
- 4) provide that it is subject to the International Chamber of Commerce (ICC) Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500; and
- 5) provide that the letter of credit shall expire on December 31, 1997, if not drawn upon on or before that date.

ANNEX E

Release of Information under the *Access to Information Act*

The questions below are used during any review of information with respect to section 20(1) of the *Access to Information Act*.

Section 20(1)(a) of the *Access to Information Act*

1. Is any information considered to be a "trade secret"?
2. If so, in what way is the information a "trade secret"?

For a record to qualify as a trade secret it must meet all of the following requirements:

1. it must consist of information;
2. the information must be secret in an absolute or relative sense, that is, known only by one or a relatively small number of persons;
3. the possessor of the information must demonstrate that they have acted with the intention to treat the information as secret;
4. the information must be capable of industrial or commercial applications; and
5. the possessor must have an interest (eg. an economic interest) worthy of legal protection.

Information or data not meeting the requirements of a "trade secret" may nevertheless qualify for exemption under other provisions applying to section 20(1).

Section 20(1)(b) of the *Access to Information Act*

1. Is the information financial, commercial, scientific or technical information?
2. Who provided the information to the department?
3. Has the information been consistently treated as confidential?
4. What measures have been taken to consistently treat the information as confidential?
5. Is any information in the records publicly known or readily available upon request from the third party itself or another source?

Section 20(1)(c) of the *Access to Information Act*

1. Could the disclosure of information reasonably be expected to result in material financial loss to you?
2. Could the disclosure of the information reasonably be expected to result in material financial gain to someone else?
3. In what way could there be a material financial loss or gain resulting from the disclosure of information?
4. Could the disclosure of information prejudice your competitive position?
5. Describe in what way there could be a prejudice to your competitive position by the disclosure of the information.

Section 20(1)(d) of the *Access to Information Act*

1. Could the disclosure of the information reasonably be expected to interfere with contractual or other negotiations of your firm/company?
2. If so, in what way?
3. Are such contractual or other negotiations now underway or are they clearly expected in the near future?

Alinéa 20(1)d) de la *Loi sur l'accès à l'information*

1. La divulgation des renseignements risque-t-elle vraisemblablement d'entraver des négociations menées par votre entreprise ou votre société ou à d'autres fins?
2. Dans l'affirmative, de quelle façon?
3. Ces négociations sont-elles en cours ou doivent-elles avoir lieu dans un avenir rapproché?