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**To:** Ministry of Economic Development

**From:** Andrew Kreig  
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**Date:** September 14, 2007

**Re:** Comments on Discussion Paper, “Radio Frequency Auction: 2.3 GHz and 2.5 GHz Bands” (August 2007)

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The Wireless Communications Association International, Inc. (“WCA”) appreciates the opportunity to the Ministry’s request for comment on the Discussion Paper titled “Radio Frequency Auction: 2.3 GHz and 2.5 GHz Bands,” in which the Ministry proposes a variety of rules that will govern the auction and subsequent use of spectrum in the 2.3 GHz and 2.5 GHz bands for wireless broadband service.

WCA is the trade association of the wireless broadband industry. Its membership includes a wide variety of wireless broadband system operators, equipment manufacturers and consultants interested in global deployment of broadband wireless access (“BWA”), whether it be fixed, portable or mobile. WCA is truly an international organization – it currently has nearly 230 members on six continents, including most of the BWA sector’s leading carriers and vendors. In addition to being BWA’s primary advocate in the United States, WCA actively assists in developing positions on spectrum policy before the International Telecommunications Union and other international fora. Most recently, through the efforts of its Global Development Committee, WCA has participated in proceedings before the European Commission (“EC”) and the national telecommunications regulatory authorities in the United Kingdom, Germany, Italy Japan, Norway, and Brazil, each time endorsing a regulatory framework that promotes technological and service flexibility for BWA providers and vendors. WCA thus has a direct and immediate interest in the Ministry’s proposed rules for the 2.3 GHz and 2.5 GHz band, as they will bear directly on deployment of wireless broadband service in that spectrum, including but not limited to services using WiMAX technology.

At the outset, WCA applauds the Ministry’s efforts to create a regulatory environment that encourages growth of and investment in wireless broadband services. In particular, WCA agrees with the Ministry’s assertion that “flexibility and innovation will be necessary to find the right [technology] solution” for the 2.3 GHz and 2.5 GHz bands, and that “it is not the

government's role to pre-judge likely commercial outcomes and to restrict the availability of spectrum to ensure commercial viability of spectrum holders.”<sup>1</sup> WCA has long believed that that competition is created by lowering barriers to entry, and that barriers to entry are lower where regulators give service providers maximum flexibility to select and deploy the technologies that are best suited for their operations. Moreover, the governing regulatory framework must give service providers a fair opportunity to evaluate emerging technologies and determine which of them are most suitable for satisfying the changing demands of their customers.<sup>2</sup>

WCA does not offer any specific comment on the relative merits of the 2.3 GHz and 2.5 GHz bandplans proposed in the Discussion Paper (designated as Options A, B and C). Generally speaking, however, the bandplans that are ultimately selected should be sufficiently flexible to permit wireless broadband operators to deploy those technologies that they believe will best satisfy market demand and otherwise achieve their service objectives (including any needs for services capable of global roaming).<sup>3</sup> That result cannot be achieved if regulators (intentionally or not) adopt bandplans that effectively confine service providers to a limited universe of technologies irrespective of market demand. As recognized in the Discussion Paper, “it would be unwise to lock [service providers] in a sole technology solution.”<sup>4</sup>

In addition, and again as a general proposition, WCA believes that restrictions on eligibility for licenses in the 2.3 GHz and 2.5 GHz bands should not be necessary if there is no compelling evidence of potential anti-competitive conduct by users of that spectrum. In a similar vein, WCA submits that any licenses auctioned for the 2.3 GHz and 2.5 GHz bands should be freely tradable among qualified parties. In the US, a vibrant secondary market for licenses has proven to be an efficient vehicle for putting spectrum in the hands of those who value it the most and thus are most likely to put spectrum to its highest and best use. Indeed, the FCC has long been of the view that economic efficiency is best promoted “by providing spectrum users with flexibility of spectrum use and ease of transferability in order to allow maximization of the value of the services provided.”<sup>5</sup>

In sum, the Ministry's proposals are a critical step towards promoting deployment of wireless broadband service in New Zealand. WCA urges that the Ministry remain committed to a market-based regulatory model and technological and service neutrality, such that competitive forces and customer demand, not government mandates, become the drivers of wireless broadband deployment throughout the country.

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<sup>1</sup> See Discussion Paper, pp. 2, 11.

<sup>2</sup> These principles lay at the core of WCA's 2002 proposal to overhaul the licensing and technical rules in the US for provision of wireless broadband service in the 2.5 GHz band. The Federal Communications Commission (“FCC”) has now adopted much of WCA's proposal, and as a result wireless broadband operators now have an unprecedented opportunity to expedite deployments of 2.5 GHz wireless broadband service across the country without the burden of outdated or unnecessary regulation.

<sup>3</sup> However, WCA does not oppose the Ministry's proposal to permit operators in the 2.3 GHz and 2.5 GHz spectrum to negotiate guardband protection among themselves, as opposed to auctioning the spectrum with predesignated guardbands already built into it. See Discussion Paper at 14.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> Report of the Spectrum Policy Task Force, Federal Communications Commission, ET Docket No. 02-135, at 21 (Nov. 2002).