



January 29, 1999

Mr. Jan Skora  
Director General  
Radiocommunications and Broadcasting Regulatory Branch  
Consultation on 24 and 38 GHz  
Industry Canada  
Room 1559D, Jean Edmonds Tower North  
300 Slater Street  
Ottawa, Ontario  
K1A 0C8

Dear Mr. Skora:

**Subject: Canada Gazette Notice No. DGRB-003-98 & DGRB-001-99,  
Consultation on the 24 & 38 GHz Frequency Bands:  
Proposed Policy and Licensing Procedures**

TELUS is pleased to provide that attached reply comments in response to the above captioned Gazette Notices.

TELUS urges Industry Canada to “stay the course” with its Framework for Spectrum Auctions in Canada. This would mean not imposing moratoria on the transferability and divisibility of spectrum acquired in the upcoming auction or imposing rollout requirements. We further urge the Department to “stay the course” in continuing to ensure that the broadest possible definition of bidder eligibility is maintained, retrograde steps such as spectrum aggregation limits are not introduced and that all measures to encourage a strong secondary market for spectrum in Canada are implemented.

Yours truly,

Ed Prior  
Director, Issues Management

## INTRODUCTION

1. In accordance with the procedure outlined in Industry Canada Gazette Notice No. DGRB 003-98, as modified by Industry Canada Gazette Notice No. DGRB 001-99, TELUS Corporation (“TELUS”) hereby submits the following Reply Comments. Failure to address any specific statement or claim of any party does not indicate agreement with that statement or claim and should not be construed as such.
2. In reviewing the comments submitted by other parties in response to Industry Canada Gazette Notice No. DGRB 003-98, Consultation on the 24 and 38 GHz Frequency Bands: Proposed Policy and License Procedures (the “Consultation”), TELUS observed certain common themes. There appeared to be a general consensus on some issues; mandated rollout requirements (simply not necessary in a competitive marketplace) and reserve prices (unsubstantiated and too high). Moratoria affecting transferability and divisibility were also generally frowned upon as being unnecessary and likely to hamper the development of secondary markets. Divergent opinions were prevalent on subjects such as eligibility and spectrum aggregation limits. TELUS has focused its reply comments on the more controversial areas to assist the Department in ensuring the Consultation and resulting 24 and 38 GHz spectrum licence auction stay true to the spirit of the Framework for Spectrum Auctions in Canada (the “Auction Framework”)<sup>1</sup>

### **Spectrum Aggregation Limits and Bidder Eligibility**

3. Spectrum caps are a bad idea. They are an application of monopolistic or, at minimum, oligopolistic regulation to a fully competitive environment. As TELUS argued in its initial comments, they are a premature application of the Merger Enforcement Guidelines and of other provisions contained within the *Competition Act*. There is no history of any party attempting to hoard spectrum and no evidence that any party will attempt to do so in the future. Spectrum caps, especially in the context of the range of services capable of being provided in the 24 and 38 GHz bands, fail to take into account the ability of other technologies to provide competing services. Moreover, the imposition of a cap is inconsistent with the licence holder’s ability to use the spectrum for whatever purpose technology and the market permit, and it seems to imply that the Department values the prospect of multiple licensees over the prospect of a multitude of service offerings. Market forces, not government, should decide the range of products and service offerings to be produced and the number of competitors to produce them. The role of Government should be limited to situations where market forces have failed. Again, TELUS submits that the *Competition Act* will provide the necessary safeguards.

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<sup>1</sup> Industry Canada Gazette Notice No. DGRB 002-98 Framework for Spectrum Auctions in Canada; issued September 5, 1998.

4. TELUS voiced its objection to the proposed eligibility principles in its initial comments to this Consultation stating that they are an attempt to prejudge what service will be offered and how it will be offered. For the reasons cited in those comments, TELUS opposes Microcell's attempt to restate the principles in an even more restrictive and anti-competitive manner.<sup>2</sup> Microcell's proposal introduces a particularly onerous and competitively inequitable requirement on only some potential participants; that of presenting and justifying a business case as a condition of participation. This amounts to the importation of comparative review requirements into what was initially intended to be a pure spectrum licence auction. Moreover, since new entrants are under no comparable obligation to disclose their business plans, the Department could not possibly conduct an assessment of the anticipated degree of competition for any given service. Finally, that the Department would consider excluding existing providers of telecommunications services in particular circumstances pre-supposes that these providers would be successful at auction. There is absolutely no foundation for the belief that these providers will be the highest bidders.
5. Spectrum does not have an absolute value. Any bidders in the forthcoming spectrum auction will have developed business plans that suggest the amount they are willing to pay to acquire a given block of spectrum. This will depend on a number of factors, chief among them is the anticipated return on the investment. Basic business principles suggest that no auction participant, including those who might have otherwise been excluded by the proposed eligibility principles, will value acquisition over profit. In the Auction Framework the Department recognized that a secondary market will ensure that spectrum licences will go to firms with a more valuable new use in a transfer that benefits not only both parties, but consumers as well. TELUS submits this same principle applies at auction. The spectrum licences will go to the firms with more valuable uses, and consumers will ultimately benefit. The Department can not predict the outcomes, and it should therefore refrain from interfering with the process.
6. The Department should disregard Microcell's invitation to micro-manage the wireless industry through asymmetrical regulation. TELUS submits that symmetrical deregulation should be the goal. Not to belabour the point, but if the Department does choose to follow Microcell's recommendations and consider excluding telephone and cable companies, how far would it go? Would the added degree of scrutiny and the risk of exclusion extend to Microcell itself? After all, Telesystem Ltd., Microcell's largest shareholder (31.3%), is a "world leader in telecommunications" and part owner of former overseas long distance monopolist Teleglobe Inc.<sup>3</sup> Two other significant Microcell shareholders; Call-Net Enterprises Inc. ("parent company of Sprint Canada, one of the largest long-distance telecommunications company in the country") and Le Groupe Vidéotron Ltée ("international telecommunications company offering broadcast, telephone, and interactive multimedia services")<sup>4</sup>, are themselves formidable

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<sup>2</sup> Microcell Telecommunications Inc., Comments in Response to the Consultation on 24 and 38 GHz, Canada Gazette Notice No. DGRB-003-98, submitted December 4, 1998, at page 6.

<sup>3</sup> Microcell Shareholders: [http://www.microcell.ca/en/tele/tel\\_act.htm](http://www.microcell.ca/en/tele/tel_act.htm)

<sup>4</sup> Ibid

players in the Canadian telecommunications market. Assuming these shareholders were desirous of working in concert towards a specific goal, they could arguably exert some degree of market power. TELUS submits it would be clearly inappropriate for the Department to deny Microcell an opportunity to bid for a spectrum licence based on such an assumption. In respect of telephone and cable companies, the situation should be no different. To ascribe intent to exert undue market power to certain companies and thereby preclude participation in the auction creates economic distortions in the auction and the marketplace, distortions that are certainly not in the interests of consumers.

7. LMCS spectrum in the 28 GHz frequency band was originally envisioned to bring competitive residential services to the marketplace. This was the reason that the spectrum was given to the incumbents. This original bargain, perhaps because it was exclusionary and not subject to market discipline, has not materialized. The goal appears to have shifted and this broadband frequency will be very useful to existing licensees in competing directly with successful bidders in the 24 and 38 GHz spectrum auction. This fact underscores TELUS' comments on the need to let the market dictate the services it wants, the providers it will support and therefore the technology used to provide services. Given the increasing convergence of technology that can be used to provide similar service capability, technological neutrality must become a reality. Consumer decision making is driven by what a service provides rather than the technology used to provide it and the market, given its freedom, will support a multiplicity of service providers and technologies to provide these services. Restrictions on bidder eligibility, as suggested by the current LMCS licensees, only serves to deny the market the multiplicity of service providers and their varied solutions. This is contrary to Canada's telecommunications policy and to consumer welfare.

### **Importance of Transferability and Divisibility of Licences**

8. TELUS has always advocated that a licence holder should be granted the maximum flexibility to transfer and subdivide their licence. The development of an effective and efficient secondary market depends on this flexibility. A moratorium, of whatever length, is certain to create inefficiencies. For example, a successful auction participant whose business need is for a smaller block of spectrum than that proposed by the Consultation would be required to sit on the excess spectrum acquired for 3 years. The obvious inefficiencies are two-fold. First, the acquirer's capital investment in this spectrum would be excessive and partially unrecoverable during the moratorium. Second, and what should be of greater concern to the Department, is the resulting inability of small and medium enterprises to acquire spectrum on a scale commensurate with their business plans through a secondary market.

9. It has been suggested by some respondents (e.g. Wispra<sup>5</sup>) that a delay in transferability of licences serves to discourage speculative bidding and further that this discouragement outweighs the benefits of secondary market transactions. There has been no evidence offered to suggest that speculative bidding will occur at all, and there is certainly no evidence on the record to support the contention that there can be benefits associated with hindering the natural development of a secondary market.
10. Concerns about speculative bidding, likely brought on by monitoring the problems experienced in U.S. spectrum auctions, are ill-founded in the Canadian context. Pre-auction deposits and the obligation to make payment in full within 45 days of auction remove all financial incentives to engage in speculative bidding. It may be reasonable to expect that a successful bidder will be able to derive a profit in a secondary market from selling multiple small blocks; fortunately, this would be entirely consistent with the goals of transferability and divisibility. However, to suggest that the value of the complete spectrum block acquired would appreciate to such a degree between auction and the time of payment that speculative bidding would appear attractive is simply ludicrous.

### **Bidding Credits**

11. TELUS urges the Department to completely disregard Wispra's proposal to incorporate "bidding credits" into the forthcoming auction. Bidding credits were not part of the comprehensive Auction Framework and they should certainly not be included in the forthcoming auction simply on Wispra's assertion that the FCC has supposedly figured out how to do it right. Moreover, unlike the FCC, the Department is under no obligation to provide a taxpayer-borne subsidy such as bidding credits to encourage participation of a diversity of firms. TELUS maintains that the benefits ultimately sought by proponents of bidding credits, that of greater immediate participation by small and medium enterprises, can be obtained through an active secondary market, unencumbered by moratoria on transferability and divisibility.

### **Other Matters**

12. As TELUS noted above, there are certain areas of the Consultation for which there was widespread agreement. The following paragraphs briefly address those areas and other issues raised in the comments received by the Department.
13. With respect to rollout requirements, TELUS encourages the Department to take notice of the widespread opposition to the imposition of rollout requirements. The Department must recognize, as have the participants in this Consultation, that the

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<sup>5</sup> Wispra Inc., Reply Comments in Response to the Consultation on 24 and 38 GHz, submitted December 4, 1998, at page 15.

competitive marketplace creates the proper incentives to ensure timely deployment of services by licensees.

14. There appears to be a general consensus that the reserve prices proposed by the Department are largely unsubstantiated and excessive. As TELUS proposed in its initial comments, a modification, either through the use of a ten-year annuity period or the abolition of fees beyond the initial ten-year licence term, would result in a more appropriate and justifiable reserve price. TELUS also notes with interest, comments suggesting the prices are out of line with fees associated with other bands, effectively penalizing broadband licensees on the basis of bandwidth. TELUS encourages the Department to re-examine its proposed reserve prices and the methodology in which it derives such prices to ensure the prices are reflective of the actual spectrum management costs.
  
15. PIAC (the Public Interest Advocacy Centre) has suggested that “successful bidders should be required to provide a portion, not less than 10%, of their spectrum for public services, which will include health, education, libraries, community centres, etc.”<sup>6</sup> However, they have failed to provide any evidence that such allocations are needed or even desired by the proposed recipients. Furthermore, PIAC does not specify whether they are suggesting that licensees provide 10% of their services to the above-mentioned groups at no cost or merely 10% of their allocation. Either way, such an allocation would constitute a heretofore unheard of degree of selective taxation on private enterprise. TELUS, like many other carriers, is, of its own volition as a good corporate citizen, already involved in extensive community development activities. Mandating charitable service to business is not the role of government. If the federal government decided, for public policy reasons, that subsidized access to the radio frequency spectrum for “public service” organizations was a goal of government, subsidies should be explicit, transparent and borne by all taxpayers. PIAC’s suggestion would result in a hidden tax, imposed only on wireless users as service providers would, of necessity, increase charges to consumers to recoup their investment on the “donated” spectrum. Individuals, governments, small and large business, charitable organizations, and public institutions have their telecommunications needs met by the competitors in the telecommunications marketplace. From among these competitors, all individuals and organizations can select the most efficient provider of services.
  
16. To impose a 10% “Spectrum Tax”, as has PIAC has proposed, further penalizes industry participants (consider licence fees, user fees, research and development requirements, multiple levels of taxation, etc...) seeking to develop and deploy wireless technologies. PIAC is essentially suggesting that licensees bidding for spectrum should also be bidding for the “right” to give it away. Again, such largesse is better left to the government under an explicit social policy program. Finally, the Department has stated that “priority users will not have to participate in an auction to

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<sup>6</sup> PIAC Comments in Repsonse to the Consultation on 4 and 38 GHz, submitted December 4<sup>th</sup>, 1998 at page 1.

acquire the frequencies, in bands designated for priority services, that they require for carrying out their operations.”<sup>7</sup> In defining “priority users,” there was no mention of “health, libraries and community centres,” and there was certainly no mention of “etc...”

## **Conclusion**

17. TELUS encourages the Department to adhere to the policies and purpose of the Auction Framework. TELUS submits that this can be done by acknowledging the clear industry opposition to moratoria on transferability and divisibility, rollout requirements, and excessive reserve prices. The Department should also disregard eleventh hour proposals on matters not appearing in the Auction Framework such as bidder credits and mandated charitable spectrum allocations. Finally, the Department will maintain the integrity of the Auction Framework and protect the interests of users by permitting full participation by all interested industry participants, allowing the marketplace to pick the winners and losers.

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<sup>7</sup> Auction Framework, section 2.2 at page 5.