

March 22, 2000

Mr. Michael Helm
Director General
Telecommunications Policy
Regulatory Branch

and

Mr. Jan Skora
Director General
Radiocommunications and Broadcasting
Branch

Subject: Reply Comments – *Canada Gazette* Notice No. DGRB-018-99-- Consultation on the Proposed Policy and Licensing Procedures for the Auction of Additional Spectrum in the 2 GHz Frequency Range (PCS – 2GHz)

On behalf of the Bell Wireless Alliance, Bell Mobility is pleased to provide the attached reply in response to comments from other parties posted on the Department's Strategis website.

The Bell Wireless Alliance consists of Bell Mobility Inc., Island Telecom Inc., MTS Communications, MT&T Mobility Inc., NBTel Inc., NewTel Mobility Limited and Saskatchewan Telecommunications Holding Corporation.

These reply comments have also been submitted electronically pursuant to the procedure outlined in the notice.

Sincerely,

Brian O'Shaughnessy, P.Eng

Attachment

Reply Comments — *Canada Gazette* Notice No. DGRB-018-99

Bell Wireless Alliance Reply Comments re:

**Notice No. DGRB-018-99 – Consultation on the Proposed
Policy and Licensing Procedures for the Auction of PCS
Spectrum in the 2 GHz Frequency Range (PCS – 2GHz)**
Published in the *Canada Gazette, part 1* dated December 17, 1999

**Submission by
Bell Mobility Inc., Island Telecom Inc., MTS Communications Inc.,
MT&T Mobility Inc., NBTel Inc., NewTel Mobility Limited and
Saskatchewan
Telecommunications Holding Corporation**

22 March 2000

Reply Comments – *Canada Gazette* Notice No. DGRB-018-99

Bell Wireless Alliance reply comments re:

Notice No. DGRB-018-99 – **Consultation on the Proposed Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range (PCS – 2 GHz)** Published in the *Canada Gazette, Part 1* dated December 17, 1999.

1. INTRODUCTION

The Bell Wireless Alliance is pleased to provide the following reply in response to comments from other parties received further to the above notice.

The Bell Wireless Alliance (BWA) consists of Bell Mobility Inc., Island Telecom Inc., MTS Communications Inc., MT&T Mobility Incorporated, NBTel Inc., NewTel Mobility Limited and Saskatchewan Telecommunications Holding Corporation.

The BWA filed comments, in response to the Notice, on 1 March 2000.

Pursuant to the procedures outlined by the Department in its Notice, the BWA has reviewed the comments of other parties, which have been posted on the Department's *Strategis* website, and respectfully offers the following reply comments.

The BWA's failure to reply to any comment adverse to the interests of, or inconsistent with the positions taken by its members, should not be construed as agreement with such proposal.

2. EVOLUTION OF MOBILITY CANADA

In its comments, the BWA noted that Mobility Canada had been dissolved in 1999 thus enabling the former members to compete with one another on a national basis. The BWA also noted that, as a result, the Department's original four-player model for the Canadian wireless industry has changed, as the four players have now become five. The BWA expressed the view that this represented a significant change in the competitive make up and structure of the Canadian wireless industry.

The BWA notes that, with the exception of Clearnet and Microcell, virtually all other parties, e.g. CWTA, RABC, Rogers Wireless, TELUS and Joe Church, acknowledge that the Canadian wireless industry structure is now effectively a five-player model. While Rogers Wireless acknowledges the existence of the five-player industry structure, it joins Clearnet and Microcell in attempting to restrain, as a competitive strategy, the former Mobility Canada

members within their current licensed areas. The BWA submits that this position does not recognize the realities of the current wireless, or indeed, the Canadian telecommunications market.

Cleartnet noted that the dissolution of Mobility Canada was preceded by similar changes in the wireline market with the break up of the Stentor Alliance. In light of the changes in the wireline market, the BWA submits that the subsequent evolution of Mobility Canada was both a logical and, likely, inevitable result of those earlier developments. In any event, the paradigm has shifted in the Canadian telecommunications industry and the former Stentor members are well along the way toward establishing their competitive national infrastructures. What is being proposed by some competitors, however, is that Industry Canada ignore the fact that, in the wireline market, TELUS and the Bell-allied companies are already operating on a national basis. Under the restrictive market structure contemplated by its national competitors, the TELUS and Bell-allied companies will be providing a range of facilities-based wireline services throughout Canada, but would be precluded from providing facilities-based wireless services. The BWA submits that such a proposal does not stand the test of reasonableness and, more significantly, would leave the TELUS and Bell-allied companies at a substantial disadvantage in the marketplace in relation to their competitors.

As the BWA noted in its comments, an agreement is in place that provides the former Mobility Canada members with the ability to compete nationally on a resale basis. The BWA agrees with TELUS, however, when it states that this is a short-term solution without long-term viability. One of the inherent characteristics of competition in telecommunications is that competitive markets evolve quickly. The Mobility Canada carrier resale agreement was implemented in May 1999, before Industry Canada released its spectrum cap decision in November of that year. In this regard, the carrier resale agreement was designed and implemented in the absence of knowing either if or when the spectrum relief policy would be changed. In the absence of any degree of certainty, concerning the eventual outcome or timing of any change to the policy, the Mobility Canada agreement was implemented as an interim measure. The BWA does not consider, however, that a viable business strategy can be built on the basis of a resale model. Such an arrangement would not provide the degree of business certainty that the BWA believes would be absolutely necessary in order to deploy a successful competitive strategy throughout Canada. While resale arrangements may be satisfactory for some purposes, BWA notes that its intention is to maintain, and indeed, enhance its role as a market leader in the development and introduction of new wireless capabilities and service offerings. In order to develop new and innovative services and to be first to market with such services, a service provider must enjoy the control over its network that resale arrangements cannot provide. The use of resale arrangements by the BWA, over the long term, would also preclude it from offering the same range of services and network functionalities throughout Canada. Under the restrictive market structure for TELUS and the BWA, put forward by competitors such as Microcell, Cleartnet and Rogers Wireless, they

would be able to roll out new services to all their customers, yet TELUS and the BWA would be seriously handicapped in the crucial areas of innovation and the development of new services. The BWA further notes that resale arrangements typically limit the ability of a service provider, operating under such an arrangement, to plan into the distant future or to maintain the confidentiality of its current marketing initiatives. Key marketing and operating parameters, such as quality and cost control, are also beyond the influence of the reseller because it is relying on a competitor's network. Microcell's proposal, therefore, that the BWA employ wholesale/resale arrangements on its competitors' infrastructures, is not acceptable to the BWA as the basis for a long-term competitive strategy.

3. NATIONAL VERSUS REGIONAL LICENSING

The BWA also notes a certain degree of confusion, among competitors, as to the status of Mobility Canada's existing PCS licences. Rogers Wireless, for instance, suggests that the BWA and TELUS should not be able to extend their facilities-based networks beyond their existing territories because they never qualified as national carriers in their own right and were not subject to expensive national rollout commitments. Clearnet, however, notes that in 1995, Mobility Canada bid for and won a "national PCS licence."

The BWA notes that Mobility Canada's 1995 application was indeed for a national licence, to be held by the individual shareholders, in order to "operate a national Personal Communications Services (PCS) network in the 2 GHz range." In terms of national rollout commitments, as the Department noted at page 10 of its consultation paper, all licensees are subject to the same national coverage requirements as a condition of licence. Moreover, as the BWA noted in its comments, the regional focus of the former Mobility Canada members has resulted in those carriers building out extensive regional wireless networks in Canada's rural and smaller markets. The BWA submits that its build-out in such areas far exceeds the minimal regional presence that their competitors have deployed simply to meet their conditions of licence. As a result, the wireless network coverage provided by a SaskTel Mobility or NewTel Mobility, for example, typically extends well beyond the urban centres served by their competitors in those markets.

Finally, in this regard, the Department correctly summarizes the situation concerning the status of the Mobility Canada licences in its discussion paper. In its discussion of national versus regional licensing, at page 9, the Department notes that:

Since the introduction of cellular services in 1985, the Department has encouraged national mobile coverage of cellular and PCS services through licensing on a national basis, and by requiring that certain roll-out obligations be met by service providers.

...In the case of Rogers Cantel Inc., an authorization was granted to serve all regions of Canada. A second national cellular radio infrastructure was facilitated by granting licences to the regional telephone companies operating under the Mobility Canada Alliance. (emphasis added)

Clearly, the former Mobility Canada licensees were authorized as national licences, with attendant national coverage requirements, and have been operated by Mobility Canada's members as such. The BWA submits that it is even more appropriate now to issue such authorizations for the use of additional spectrum as national licences, to ensure the continuation of full national and regional deployment of wireless services and the development of new services on a national basis. Further, as the BWA noted in its comments, the mobility aspect inherent in wireless services also requires that they be provided on a national basis. These include services such as those pioneered by SaskTel Mobility and Bell Mobility and referenced in the BWA's comments (e.g. wireless electronic commerce, wireless banking and wireless online purchasing). Without national licences, the BWA would be precluded from providing such innovations nationally to all Canadians. The BWA, therefore, suggests that it would be in the public interest for former Mobility Canada members to be eligible to bid on licences that are authorized nationally.

The BWA notes that the majority of parties, including those who desire to geographically limit the former Mobility Canada members, tend to share the BWA's view, that authorizing licences on a national basis is the preferable approach. The BWA notes that some parties who state that they would otherwise agree with national licensing, have instead recommended a combination of national and regional licensing, and do so primarily in order to restrain the former Mobility Canada members. The BWA submits that, in such cases, these parties, despite a belief that national licensing is the correct approach, find themselves having to recommend regional licenses in order to accommodate their competitive gaming strategies. Based on the BWA's recommendation that former Mobility Canada members be permitted to acquire spectrum nationally, the BWA strongly recommends that the auctioned spectrum be authorized as national licences. The BWA notes that a number of parties echoed the view expressed in the Department's consultation paper, i.e. that national licensing is a proven and effective way to ensure that all regions benefit from the deployment of PCS spectrum and that such an approach substantially supports the federal government's Connectedness Agenda.

The BWA, therefore, strongly recommends that the remaining 40 MHz of PCS should be allocated as national spectrum blocks. The BWA's comments noted, as did the comments of a number of parties, that other than the former Mobility Canada licensees, Rogers Wireless,

Cleartnet and Microcell each have national licences. Moreover, as the Department notes in its consultation paper, even the Mobility Canada authorizations have been effectively operated as national licences. The BWA submits that national licensing remains the correct approach and would be in the public interest.

4. ELIGIBILITY TO ACQUIRE SPECTRUM

Generally all parties agree that the Department's 1995 Licensing Policy for PCS has been singularly successful in stimulating competition in the wireless sector and in providing Canadians with consumer choice and wireless prices which are among the lowest in the world. Most parties, e.g. CWTA, RABC, Cleartnet, Microcell, Rogers Wireless and BWA noted that a high degree of service innovation is also evident in the industry. With the exception of two potential new entrants, there was agreement on the view that the introduction of a new entrant, i.e. a party not currently licenced to provide PCS/cellular service, could seriously weaken the health of the industry and would, therefore, not be in the public interest. In this regard, the BWA and the majority of parties, e.g. CWTA, RABC, Cleartnet, Rogers Wireless and Microcell, all share the concern raised in the Department's consultation paper that a licensing policy, which either permits or guarantees the entry of new service providers, could splinter and weaken the mobile wireless telecommunications market in the longer term. Consequently, the BWA continues to be strongly of the view that, to ensure the ongoing health and viability of the Canadian wireless industry, limiting participation in the auction to existing licensees would be in the public interest.

The BWA does not support the comments by Joe Church to the effect that all incumbent wireless carriers have market power and should, therefore, be excluded from being eligible to acquire additional PCS spectrum. As noted in the BWA's comments, no Canadian wireless service provider has market power. The same conclusion was reached by the CRTC in its determination in *Applications Requesting Interconnection with the Telecommunications Networks of the Federally Regulated Cellular and Personal Communications Services Providers and Related Issues, Telecom Order CRTC 98-1092*, 3 November 1998. In addressing applications by Aireach Integrated Network Ltd. et al, the Commission concluded at paragraph 27 that:

...As previously noted, the circumstances that exist in the wireline industry are different from those prevailing in the PCS and cellular markets. In particular, in contrast to the wireline market, facilities-based entry was the initial form of competition in the wireless market. The Commission considers that the cellular

and PCS markets are sufficiently competitive such that it cannot be said that facilities are monopoly controlled or cannot be economically or technically duplicated. As a result, none of the wireless providers can be said to have dominant market power or to control bottleneck or essential facilities. ...

Moreover, the comments of numerous parties in response to this notice, e.g. Rogers Wireless, Clearnet, Microcell and the CWTA, all attest to the high degree of competitiveness evident in the Canadian wireless market, a key factor relied on by the Commission in reaching its determination.

5. SPECTRUM STRUCTURE

Concerning spectrum structure, the BWA notes that the majority of submissions (e.g. the BWA, Clearnet, Microcell, Rogers Wireless, RABC and CWTA) recommend and support a subdivision of the remaining 40 MHz of PCS spectrum into 4 x 10 MHz blocks.

6. SERVICE INNOVATION

The BWA submits that the record demonstrates, contrary to the statements of Joe Church at page 8 of his submission, that service innovation abounds in the wireless sector. As noted in the BWA's comments, not only did the licensing of PCS set a new standard in wireless voice telephony services, it has also resulted in the variety of wireless Internet services recently launched in Canada. Moreover, the competitiveness of the Canadian wireless sector is driving service providers and equipment vendors alike to innovate and offer value-added services as a means of differentiation in the marketplace.

The BWA submits, therefore, that wireless service innovation was significantly enhanced by the licensing of PCS and continues to accelerate as demonstrated by the increasing number of wireless Internet applications being developed and launched.

7. TECHNICAL ISSUES

In its consultation paper, the Department asked parties to address the technical challenges that would exist in the context of 2G deployment, initial 3G deployment, and the anticipated evolution from 2G to 3G.

Parties expressed varying views in response to this issue with two potential new entrants, Joe Church and Goldberg, suggesting that, for a variety of reasons, incumbent providers may be reluctant to evolve quickly to 3G services. At the outset, the BWA notes that this suggestion is made with no basis whatsoever. In its comments, the BWA noted that, assuming the BWA-

recommended spectrum structure, it does not anticipate any significant technical challenges in evolving 2G technology to anticipated 3G standards. The BWA remains firmly of that view. The BWA also notes that the market forces at play, in the highly competitive wireless sector, can be relied on to ensure that technological evolution will not be held back by one or two service providers attempting to address issues related to sunken investment.

8. SPECTRUM AGGREGATION ISSUES

8.1 ESMR Service

The BWA does not support Clearnet's proposal, at page 27 of its comments, for what would essentially amount to a change in the Department's Spectrum Cap Policy. In this section, Clearnet is proposing that its Enhanced Services Mobile Radio (ESMR) spectrum holdings be excluded for the purposes of applying the Spectrum Cap.

The BWA disagrees with Clearnet's proposal for the following reasons. The Department has only recently reviewed and revised the Spectrum Cap Policy culminating in its November 1999 policy statement. The appropriate time for Clearnet to address the suitability of the treatment of ESMR would have been as a part of that process. The BWA submits that it would be entirely inappropriate and unfair to other parties to change the new policy at this time, so shortly after its release.

Concerning ESMR service specifically, the BWA notes that ESMR is a high-mobility radiotelephony service which is entirely substitutable for cellular and PCS service and is, therefore, appropriately captured by the current policy. The BWA notes that for regulatory purposes, the CRTC also classifies ESMR along with PCS and cellular services, as part of its public switched mobile services category.

Therefore, BWA submits that Clearnet's ESMR service is aptly captured by the spectrum cap policy as it currently exists.

8.2 Secondary Aggregation Limits

In a similar vein, at page 41, Clearnet proposes that, should the former Mobility Canada members be permitted to acquire additional spectrum outside their traditional areas, they be subject to a "secondary aggregation limit." Specifically, Clearnet proposes that former Mobility Canada members be restricted to obtaining no more than 20 MHz of the remaining PCS spectrum.

As noted above, the BWA submits that the Department's Spectrum Cap policy has only recently been reviewed and modified. The BWA submits that it would be entirely

inappropriate to add a further restriction, applicable to only certain parties, after the fact. Moreover, having decided to employ market-based mechanisms such as auctions to allocate spectrum, it would be inappropriate for the Department to influence the participation of a key potential bidder by applying further restrictions such as those proposed by Clearnet.

Finally, in this regard, the BWA notes that the Spectrum Aggregation Limits, addressed at section 3.1 of the consultation paper, are outlined as the applicable aggregation limits, not as proposals open to discussion.

9. CONDITIONS OF LICENCE

9.1. Research and Development

The BWA noted in its comments that the allocation of spectrum by auction is a fundamental change in the approach to assigning spectrum rights in Canada. Unlike the Department's Comparative Licensing process, which is essentially an administrative process, auctions represent a market-based approach to the allocation of spectrum. Among other things, the BWA expressed the view that it does not believe that it would be appropriate for government to attempt to extract even further "rent" in the form of a mandated R&D requirement, especially when that commitment, in and of itself, can be quite substantial.

The BWA acknowledges that R&D is a key ingredient for business success in technologically-based industries such as wireless communications. The BWA also considers that R & D investment, especially that associated with spectrum obtained through competitive auction, should be determined by a carrier's business model rather than by government fiat. In summary, the BWA continues to hold the view that it is neither necessary nor appropriate for the Department to stipulate a Research and Development investment mandate for that spectrum which is awarded through auction.

The BWA's comments noted, however, that, should the Department decide that an R&D mandate is appropriate, then the proposed processes to track the R&D commitment, in the event of secondary market transfers, appears to be overly burdensome and onerous. The BWA continues to hold the view that should the final licensing policy include an R&D mandate, that it be left to the parties involved in the transfer to negotiate the appropriate arrangements as part of their business discussions. Such arrangements would address the responsibility for ensuring that all past and future R&D requirements are appropriately allocated, among the parties to the transaction, as well as the manner for reporting same to the Department.

9.2 Timing of the Department's Allocation Process

The BWA notes, with some concern, Clearnet's suggestion at page 6 of its comments, that the release of additional PCS spectrum by fall of 2000 is not a critical issue. Elsewhere, at page 46 of its comments, addressing the issue of the timing of the release of the Department's final licensing policy, Clearnet recommends that a minimum period of between 9 to 12 months elapse between the release of the final licensing policy and auction rules, and the subsequent start of the auction. Clearnet attempts to rationalize its proposal by suggesting that the PCS spectrum under consideration in this consultation process is more appropriately dealt with in ITU-WRC 2000 scheduled for May 2000.

At the outset, the BWA notes that PCS spectrum blocks "C" and "E", which are the subject of this consultation paper, are already allocated and in use in the United States. The BWA submits, therefore, that Clearnet's comment that had this spectrum been allocated in Canada subsequent to WRC-2000, thus enhancing North America's flexibility regarding 3 G spectrum planning, is a moot point. The BWA notes, in this regard, that the current PCS "C" and "E" spectrum blocks will not even be considered within the context of WRC-2000 discussions concerning 3G allocations.

In its comments, the BWA commended the Department on the timely release of its PCS Auction consultation paper. The BWA also expressed the view that the expeditious release of additional PCS spectrum would substantially advance the Government of Canada's Connectedness Agenda. The BWA continues to believe that this is the case and that the Department is following the right course in moving forward in an expeditious manner. As with a number of their other recommendations, the delays Clearnet is proposing appear to be based essentially on Clearnet's interest in postponing the introduction of new innovative services by its competitors rather than on public interest considerations. Contrary to Clearnet's stated views, some of BWA's members, e.g. Bell Mobility, are in need of additional spectrum to meet current capacity demands. Consequently, while the spectrum in question will assist in the evolution toward 3G services, the present urgency surrounding this spectrum relates as well to the capacity constraints currently being experienced by some wireless carriers. BWA notes that Rogers Wireless, beginning at page 6 of its comments, states that it expects existing spectrum to come under "extreme pressure" over the next few years as capacity is driven by a rapidly expanding customer base and by new wide-band services. Rogers notes in this regard that it is "already facing spectrum shortages in major urban areas."

Therefore, while the demand for the spectrum under consideration in this consultation is indeed related to 3G deployment in Canada, the urgency for its release is related to the capacity constraints being experienced by some wireless carriers today. The BWA notes in this regard that Clearnet found itself in a similar situation in early 1999, when it took the

Department to task for not moving fast enough in addressing Clearnet's request, at that time, for temporary relief from the spectrum cap in order to address capacity constraints being experienced in its "Mike" ESMR network. Aligning itself with the concept that "speed wins" and expressing its "high hopes and expectations for Canada's ability to move fast", Clearnet in January 1999 expressed its discouragement at the time-consuming nature of the Department's process.

In the current consultation process, the BWA notes that, since the release of its spectrum cap policy in November 1999, the Department has made every effort to move expeditiously, slowed only once in response to requests from some elements of the industry. The BWA believes that the Department is on the right track and should maintain its current momentum. In any event, the BWA notes that timing is of the essence in order to first allocate the spectrum and then enable the successful bidders to finalize their deployment plans.

Finally, the BWA notes that the positions of the existing five service providers, concerning their respective spectrum requirements, vary considerably. Some BWA members, along with Rogers Wireless, and likely TELUS Mobility, are or soon will be experiencing severe spectrum shortages in their larger urban centres. Such shortages have the potential to impact the service provided to customers and seriously slow network expansion. The BWA notes that, in contrast, Clearnet stated at the time of its January 1999 application for spectrum relief that "Clearnet is licensed for 30 MHz of PCS spectrum of which only 5 MHz is currently being utilized." (Clearnet letter to I.C. January 6, 1999, page 2). As 800 MHz incumbents, Rogers Wireless and the former Mobility Canada members were restricted to 10 MHz of PCS spectrum in 1995 and this is contributing to the current need for additional spectrum. Consequently, Clearnet with likely 70% of its 1.9 GHz PCS capacity still unused is understandably in no rush to see additional PCS spectrum deployed any time soon.

10. CONCLUSION

The BWA appreciates the opportunity to participate in this important consultation process. The BWA believes that the policy determinations flowing from this consultation will significantly influence the future development of wireless telecommunications in Canada.

The BWA notes that the majority of parties commenting recognize that a five-carrier wireless industry structure has evolved as a result of the dissolution of Mobility Canada. The BWA notes that this evolution mirrors and complements similar developments in Canada's wireline telecommunications industry.

The majority of parties also expressed concerns about the ability of the Canadian wireless market to support new entrants. The BWA concurs with the majority view that the licensing of new entrants would result in a splintering of the Canadian wireless market and would not

be in the public interest. It follows, therefore, that the BWA does not recommend that any spectrum be set aside for new entrants.

As the Department noted in its consultation paper, the former members of Mobility Canada were subject to the same national coverage requirements as all other wireless carriers. The BWA notes that the former members of Mobility Canada have unsurpassed records in developing their wireless networks extensively throughout Canada's regions. Allowing these carriers to acquire additional spectrum on a national basis will enable them to continue to provide viable competitive networks and continue the deployment of advanced wireless services throughout Canada.

The BWA does not support the proposals of Clearnet to exclude its ESMR service for the purposes of determining the spectrum aggregation limit. Similarly, the BWA does not believe it appropriate to apply a secondary aggregation limit to the former members of Mobility Canada.

Concerning timing, the BWA notes that the record indicates that some incumbent carriers are currently experiencing capacity constraints in their networks. The BWA believes, therefore, that it is important that the Department continue to address in an expeditious manner the release of additional PCS spectrum as contemplated in its consultation paper.

All of which is respectfully submitted.