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Peter Hill
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Radiocommunications and
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Industry Canada
300 Slater Street
Ottawa, Ontario
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Dear Mr. Hill:

Subject: Canada Gazette, Part I, April 2009, Consultation on Revisions to the Framework for Spectrum Auctions in Canada, Notice DGRB-001-09

TELUS Communications Company (TELUS) appreciates the opportunity to submit Reply Comments to the issues and questions raised by Industry Canada (the Department) in Canada Gazette Notice DGRB-001-09 (Consultation Paper) and the statements contained in the responses of participating parties. Failure by TELUS to address any statement or assertion made by any of the participating parties should not be construed by the Department as either agreement or disagreement with such statement or assertion.

1.0 Conduct of Spectrum Auctions

TELUS began its response to the Consultation Paper by reminding the Department that spectrum auctions by their very nature and construction are to economically efficiently allocate spectrum by relying on market forces to allow those that value the spectrum the most to obtain that spectrum. If this is not done, if the auction format is twisted and distorted by interventionist additions to the auction's structure it does not matter in the end what format is chosen, the results will be distorted and not economically efficient nor have allocated spectrum to those valuing it the most.

TELUS pointed out in its response that the creation of a spectrum set-aside was bound to distort the prices paid in the subsequent spectrum auction due to the artificial (and in our view completely unnecessary) scarcity thrust upon the incumbent carriers who were legitimately seeking to increase network capacity, ensure an ability to leverage US carrier ecosystems and

respond to the competition already existing in Canada's wireless industry. As noted in our response "In essence, by creating a set aside and then not fixing the subsequent flaws in design that were a consequence of overlaying an extremely interventionist measure on a design created for a market driven auction, the government caused an overpayment of over \$2 billion ." ¹

TELUS is of the view that the \$2 billion overpayment was a direct result of the set aside (as described above) exacerbated by the perceived value to new entrants of globally unprecedented mandated tower sharing and in-territory roaming Conditions of License which together served to create an economically inefficient situation.

TELUS then pointed out that the Department further exacerbated the situation by defining new entrants for an auction of regional spectrum licences (Tiers 2 and 3) based on their national, not regional market share. This allowed wireless carriers with 61% market share or more in their region to become eligible to bid on the set aside spectrum in their regions. This also allowed regionally entrenched, large cable companies with large market share in data and video services and a long term relationship with the customers of the national wireless carriers to become eligible to bid on the set aside spectrum in their regions. The definition enriched those that did not need enriching, helped those that did not need help to either enter or continue in the Canadian wireless industry.

The Department, as pointed out above went further; it abandoned the policies that has served Canadians so well of promoting facilities based competition so that the "not so new" entrants were awarded preferential access to the networks and antenna/tower sites of the three national carriers. The sum of the effects of all of the compounded interventionist measures served to shift the cost of these measures from where they belonged (i.e. government coffers in support of a public policy decision or, alternatively, the balance sheets of well capitalized entrants through participation in an economically efficient spectrum auction) to the shareholders of the three national carriers. Rogers Communications in their response made the same point with respect to the 2008 AWS spectrum auction. "While Industry Canada's objective to add new carriers was achieved, it came at the cost of disrupting the efficient allocation of spectrum and placing a disproportionate cost burden on the incumbents. Using auction rules as a policy tool should therefore be reserved as a means of last resort. All other tools available to the Department should be exhausted before any consideration is given to the auction framework. Even then, the use of such tools must be balanced against their consequences." ²

This balance must always be critically weighed and TELUS reiterates that it does not matter the auction format if it is going to be distorted by grafted on interventionist measures that produce many unintended consequences. As we said in our response "**TELUS recognizes it was not the intent of the Department to push up returns to Treasury at the expense of the incumbents,**

¹ TELUS response to DGRB-001-09, Consultation on Revisions to the Framework for Spectrum Auctions in Canada, June 15, 2009, page 1.

² Roger Communications (Rogers) response to DGRB-001-09, the Consultation on Revisions to the Framework for Spectrum Auctions in Canada, June 15, 2009, paragraphs 1, 1, page 7.

but that said, having seen the result there can be no justification in terms of fairness for creating the same conditions in future auctions.”³

This reminder to the Department was echoed by Bell Mobility when they said “Bell Mobility submits that since spectrum auctions are market-based, any intervention in the auction process designed to assist new entrants (e.g. spectrum set-asides), significantly conflicts with the intent and spirit of the Policy Framework’s enabling guidelines (a) and (d) which state that market forces should be relied upon to the maximum extent feasible, and regulatory measures, where required, should be minimally intrusive, efficient and effective, respectively. Such intervention would, in Bell Mobility’s view, perpetuate an antiquated command and control regime and would constitute unwarranted micromanagement of the wireless sector.”⁴ TELUS agrees.

The AWS spectrum auction was estimated to generate \$1 - \$1.5 billion in winning bids for AWS spectrum licences based on the historical pattern of results from identical spectrum having been auctioned in the United States. The Canadian AWS spectrum auction instead generated \$4.18 billion for these licences. To examine the reason for this huge discrepancy TELUS commissioned a study⁵ on this spectrum auction by NERA Economic Consulting. This report supports the assertions that TELUS has made in our Response and in these Reply Comments. The report found that “While Industry Canada’s objective to maximize social welfare was well intentioned, it failed to consider the side effects of its preferential treatment. Most significantly, the set-aside provision allowed entrants to bid on unrestricted spectrum with no intention of purchasing it, but with an objective of increasing the incumbent bidder’s spectrum prices. This and other auction design flaws contributed heavily to the record high prices paid for the unrestricted spectrum licences. Although the set-aside spectrum also sold at a premium, the premium was significantly lower than the one paid for unrestricted spectrum. Furthermore, given the attractive roaming and tower sharing provisions granted the winners of the set-aside spectrum licences, at least part of this overpayment can be attributed to the fact that it was worth more to entrants.”⁶

The NERA study concludes with four major recommendations for the Department. These can be summarized as;

- Carefully balance the costs and benefits of regulatory intervention, whatever type it may be.
- If the Department finds that regulatory intervention through preferential treatment is necessary
 - It must ensure that any benefits of such measures are limited to actual entrants – not regional or converged competitors

³ TELUS response, Op. Cit., page 6.

⁴ Bell Mobility (Bell) response to DGRB-001-09, the Consultation on Revisions to the Framework for Spectrum Auctions in Canada, June 15, 2009, paragraph 29, page 8.

⁵ Regulatory Policy Goals and Spectrum Auction Design, Lessons from the Canadian AWS Auction, A Statement by Christian Michael Dippon, NERA Economic Consulting, July 14, 2009.

⁶ Regulatory Policy Goals and Spectrum Auction Design, Op. Cit., page 42.

- It should focus on ex-post benefits, such as tax incentives, rather than ex-ante benefits such as spectrum caps or set-asides.
- Any benefits awarded to entrants should not come at the expense of the incumbents
- Industry Canada must strive to minimize the side effects of any regulatory intervention.

TELUS is placing the NERA study on the public record, not only to support our assertions, although it does that, but also to advance the discussion of economically efficient and fair spectrum auction design in order that past mistakes do not get carried into the future.

2.0 Spectrum Release Plan

An idea that surfaced during the Response phase of the Consultation is that of a Department created and published Spectrum Release Plan. As Rogers put it “Rogers therefore calls on Industry Canada to release a comprehensive 5 year schedule outlining the release of future spectrum including 700 MHz, 2.5 GHz and other spectrum. The timetable should set out the approximate dates for the auctions of each spectrum type and detail how much spectrum will be made available. This information will assist incumbents and new entrants alike.”⁷ The idea was supported by MTS when they said “Coupled with the timeliness of spectrum release, the industry would also benefit from greater clarity as to the overall release plans.”⁸ Further to this point TELUS suggests that the Department conduct the 700 MHz spectrum auction prior to the 2.5 GHz leftovers spectrum auction.

TELUS supports the call for a spectrum release plan outlining the timing for the 700 MHz and 2.5 GHz spectrum auctions.

3.0 Auction Related Matters

In our response TELUS called on the Department to better manage the Canadian ownership and control requirements aspect of the conduct of spectrum auctions in Canada. We asked that the process be changed such that potential participants in spectrum auctions file their Canadian ownership and control documents with the Department and have them fully approved prior to the start of the spectrum auction⁹. There are many benefits associated with this approach and TELUS notes that Bell agreed. “Bell Mobility believes that it is essential that bidders be qualified by Industry Canada as meeting the Canadian Ownership and Control rules before being deemed as eligible to participate in a spectrum auction. Once a bidder has paid tens, if not hundreds of millions of dollars to the Government, the Department will be under significant

⁷ Rogers response, Op. Cit., paragraph 27, page 9.

⁸ MTS Allstream (MTS) response to DGRB-001-09, the Consultation on Revisions to the Framework for Spectrum Auctions in Canada, June 15, 2009, paragraph 24, page 8.

⁹ TELUS response, Op. Cit., page 12.

pressure to ensure that the bidder passes the ownership conditions, even if such an outcome is not warranted.”¹⁰

The Department has offered two reasons in the past for not doing the qualification in advance of the auction.

Firstly, there is the administrative burden on the Department. But of the 27 qualified bidders for the AWS auction, 15 bought spectrum and had to be processed by the Department anyway. Of the 12 that didn't buy spectrum, all 12¹¹ were small 100% Canadian-owned companies representing a very limited burden on the Department in terms of advance qualification.

Secondly, the Department has suggested that advance qualification puts undue pressure on opportunistic new entrants and speculators to have to formalize their business construct before they were sure they had won spectrum. TELUS maintains that formalizing their business construct is the least they should do before being able to participate and by definition increase contention, in an auction, thereby potentially distorting auction outcomes. Of the 27 qualified bidders in the AWS auction, it appears that a pre-auction review would have only inconvenienced one or two bidders.

TELUS recommends that the Department switch to a process whereby potential spectrum auction participants are pre-cleared as meeting the Canadian ownership and control requirements prior to the auction commencement.

Additionally in our response TELUS said “Furthermore TELUS, at the Banff World Television Festival this year called on the government and the Department to reinvest the money earned in its upcoming spectrum auctions into the digital economy. As noted the government failed to capture any of the funds extracted from the wireless industry to reinvest into the wireless industry in such initiatives as lawful intercept cost recovery, lower licence fees, stimulate broadband expansion or other supportive programs to fund not the old economy but rather the emerging digital economy.”¹² Again Bell agreed with this suggestion in their response where they said “Another issue related to the Auction Framework, is the allocation of auction proceeds. Currently, the auction proceeds become part of the Government's general revenue, yet at the same time Government agencies demand, for example, expanded lawful intercept capabilities, but say they have no money to reimburse carriers for the cost incurred to do so. Bell Mobility believes that it is now time for Industry Canada to consider changes to the *Radiocommunication Act*. The changes envisioned would enable Government to use auction proceeds for projects and services related to the wireless industry such as increased wireless lawful intercept when deemed necessary, or the expansion of wireless service to un-served rural areas.”¹³ **TELUS**

¹⁰ Bell response, Op. Cit., paragraph 35, page 10.

¹¹ Mipps, TBayTel, Telehop, Triple Five, Jaguar, Wetsman Media, Golden Spike, 2096901 Ontario, Vianet, Canquest, Ruralcom, and SSI Micro.

¹² TELUS response, Op. Cit., page 18.

¹³ Bell response, Op. Cit., paragraph 38, page 10.

recommends that the Department implement the required changes to allow it to retain a portion of future auction proceeds in order to fund the cost of government policies imposed on wireless carriers.

4.0 Auction Format

In our response TELUS noted “As the Department notes in the Consultation Paper “Auctions are an efficient market-based means of assigning spectrum licences, through a fair and transparent process, to those who value them most” TELUS agrees.”¹⁴ We then went on “TELUS strongly believes that the Department’s priority should be a fair, market-based auction devoid of artificial and unnecessary interventions. Without further detail, we are somewhat agnostic on what type of auction is best and suspect that all would be destructive if the intervention employed and the gaming that played out in the AWS auction happened again.”¹⁵ When selecting a market-based tool in situations where demand exceeds supply, in our view the Department has an obligation to adopt and maintain a market-based approach to the conduct of a spectrum auction.

In our response, besides calling upon the Department to eliminate the use of interventionist tools and tactics in conjunction with a market-based allocation tool, TELUS outlined some of the major strengths and weaknesses of the various auction formats. In this context TELUS expressed our concern that spectrum harmonization with the U.S. and other jurisdictions be a paramount priority. The use of a combinatorial clock spectrum auction (CCA) format with an undefined block structure is something that the Department should only consider after significant study and meaningful industry consultation. We certainly do not see the possibility of using such a format for either of the upcoming 700 MHz or 2500 MHz leftovers auctions because of the importance of band-plan harmonization in both these cases. That said it might be possible to use a modified version of the CCA, one that recognizes the existing U.S. band-plan, in the 700 MHz spectrum auction.

That said TELUS believes that there is no one right auction format but that given the importance of spectrum allocation to the wireless industry it is extremely important for the Department to consult the industry whenever a new format is considered for adoption and use by the Department. In adopting the sealed-bid second-price or Vickery format the Department did so in a context of a process in which only two parties were interested. A separate consultation would have attracted much more interest and much more input to the Department. When proposing to adopt any new format for “major” spectrum auctions TELUS believes it incumbent on the Department to consult separately so that the issues surrounding the proposed format are not overshadowed by other considerations surrounding the auction of a particular band plan.

TELUS also believes that the Department needs to distinguish between free and clear mobile bands like AWS and 700 MHz and mobile bands like 2.5 GHz where there are many incumbents

¹⁴ TELUS response, Op. Cit., page 7.

¹⁵ TELUS response, Op. Cit., page 8.

resident in the band when developing a spectrum auction format. When considering auction design for a leftovers auction like the 2.5GHz band, where there is a high concentration of legacy spectrum ownership, a new mixed duplex mode band-plan, global versus regional harmonization issues, and an old incompatible licensing framework to convert, the department needs to take the time to craft a unique auction framework that is the best compromise for the tensions at hand.

Regarding the 700 MHz spectrum auction, for Bragg to say that there should be 700 MHz spectrum set aside for new entrants because incumbents have 850 MHz is patently (but understandably) naïve and demonstrably, in light of the AWS results, mischievous. LTE equipment for 850 MHz will be developed years behind 700 MHz equipment if 850 MHz even goes LTE versus 5G for example. The Department must take a neutral, open, market, non-interventionist approach to free and clear bands like 700 MHz. TELUS has pointed out above the many adverse and costly effects of such unnecessary interventionist policies. Further, all new entrants business plans fully admit to focusing on cream skimming – covering high density markets to get the biggest bang for their network investment and relying on mandated roaming to round out their offering. This is not something the Department need waste resources even considering; been there – done that – won't do it again should be the Department's mantra.

Even while this Spectrum Auction Framework Consultation proceeds, the Department has completed a second auction using an alternate format, the sealed-bid second-price or Vickery auction format. Given the inherent lack of price discovery in the Vickery auction format, TELUS repeats our suggestion, “when proposing to use this format for another spectrum auction the Department should be prepared to change the format if the number of participants or licences on offer seems likely to be more.”¹⁶ This suggestion was made in the context of any more than a very few bidders bidding on very few items.

TELUS accordingly reiterates “**TELUS recommends that any move away to another auction format be the subject of a separate consultation, not one associated with a particular band but rather one that focuses purely on alternative auction formats, perhaps including industry workshops as part of the process.**”¹⁷

5.0 Future Regulation of Spectrum

In its Consultation Paper the Department asked for comments on the appropriate level of regulation the Department should use when managing spectrum into the future. TELUS, in its response said “In June of 2007 the Department incorporated this approach into the revised *Spectrum Policy Framework for Canada*. Of particular note are the provisions that:

“(d) Regulatory measures, where required, should be minimally intrusive, efficient and effective.

¹⁶ TELUS response, Op. Cit., page 11.

¹⁷Ibid.

- (e) Regulation should be open, transparent and reasoned, and developed through public consultation, where appropriate.
- (f) Spectrum management practices, including licensing methods, should minimize administrative burden and be responsive to changing technology and market place demands.
- (h) Spectrum policy and management should support the efficient functioning of markets by:
- Making spectrum available for use in a timely fashion;
 - Facilitating secondary markets for spectrum authorizations;”¹⁸

TELUS supports these guidelines as appropriate in determining the level of regulation for spectrum management into the future.”¹⁹ TELUS continues to support the guidelines as appropriate and notes that all respondents on this issue also agreed with and supported these guidelines.

6.0 Licence Renewal

As noted in our response to the Consultation Paper, TELUS agreed with the Department’s proposal that long-term licences continue to have a high expectation of renewal. TELUS made it plain in our response when we said “**TELUS recommends that all spectrum licences, those assigned by other licensing methods such as the cellular and PCS licences as well as auctioned spectrum licences come with a high expectation of renewal.**”²⁰

In our response we stated that TELUS “**respectfully recommends that spectrum licences be renewed for a period no less than 15 years and preferably for a period of 20 years.**” We continue to support this in concert with the rest of the industry.

7.0 Licence Fees

In the Consultation Paper the Department sought comments on whether there should be “fees imposed for renewed licences and be based on an estimation of the market value of the spectrum.”²¹ TELUS questions whether the Department is truly consulting on this question. In the Document seeking study proposals to determine the “value” of Cellular and PCS spectrum the Department states “In addition, PCS spectrum licences were auctioned in 2001. All these licences will be up for renewal at approximately the same time, April 1, 2011, and will attract an

¹⁸ DGTP-002-07, Spectrum Policy Framework for Canada, Industry Canada, June 13, 2007, section 4.4, page 9.

¹⁹ TELUS response, Op. Cit., page 6.

²⁰ TELUS response, Op. Cit., page 13.

²¹ DGRB-001-09, Consultation on Revisions to the Framework for Spectrum Auctions in Canada, Industry Canada, April 2009, section 5.3, page 9.

annual licence fee for the next 10 year licence term. (²²Emphasis added). The Department, while consulting on licence term, seems to have reached a decision before the consultation is complete. The Department seems also to have reached a decision that there will be renewal fees. The Department despite requests in this and other recent consultations to consult with industry on the terms of reference and scope of any fee study has clearly reached a decision as to terms of reference and scope of such a study. The Department in this document seems to have reached a decision given that it expounds on the purported benefits of spectrum license fees when they are “set to reflect the economic (market) value of the spectrum”.²³ It appears that the present and recent consultations on cellular and PCS spectrum licence fees are pro-forma and done only to satisfy the requirement to consult rather than to engage in a true dialogue with industry. TELUS believes that it would be a positive step for the Department to clarify where it stands in this regard. Believing they matter, our reply comments on the issue of licence fees follow.

In our response to the Consultation Paper TELUS pointed out that nowhere is the Department authorized or required to impose fees based on an estimation of market value. Rather as we pointed out the Department is required to “maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource.”²⁴ TELUS in our response said “Clearly if government sought to create commercial return on spectrum, the ultimate impact would be to diminish investment in higher cost areas such that carriers ensure a reasonable return to their shareholders. This is not the goal of stewardship and it is not a holistic view of the matter.”²⁵ TELUS went on, in our response, to caution the Department when we stated “As the industry prepares to invest billions in 3G and LTE technology, infrastructure and services, the government should ask whether that investment is a fair return in itself and in turn whether higher taxes in terms of fee increases stimulates or deters said investment. If stimulating investment for the benefit of the Canadian public, because they are the beneficiaries of such investment, is the goal of public policy then higher fees are merely a prescription for failure.”²⁶

Other respondents also warned the Department of the harm inflicted on both the industry and the Canadian public through the imposition of high spectrum licence fees. SaskTel said “A renewal fee based on spectrum market value will place a substantial financial burden onto existing incumbent wireless service providers. The service providers in turn will have to pass on these costs to subscribers, and/or reduce their investments in network infrastructure and builds. Passing on these high costs to subscribers will result in higher costs for subscribers. Reductions in network infrastructure investment will mean a lower quality of service from the network, and a slower introduction of new technologies and new services. Both these outcomes adversely affect the general public.”²⁷ This sentiment was echoed by Bragg where they said “Therefore, Bragg

²² RFP, Study to determine the value of Cellular and Personal Communications Services (PCS) spectrum in Canada, Industry Canada, 2009, Section 3 page 14.

²³ Ibid.

²⁴ DGTP-002-07, Op. Cit., section 4.1, page 7.

²⁵ TELUS response, Op. Cit., page 16.

²⁶ TELUS response, Op. Cit., page 17.

²⁷ Saskatchewan Telecommunications (SaskTel) response to DGRB-001-09, the Consultation on Revisions to the Framework for Spectrum Auctions in Canada, June 15, 2009,, section 5.3 page 9.

submits that, if the Department wishes to set fees at a level that ensures “a fair return for Canadians”, the Department must set fees at a level that maximizes the number of Canadians who have access to wireless services at affordable rates. Excessive fees that have the effect of decreasing the affordability of services, or discouraging investment in higher cost serving areas, will not achieve that result.”²⁸ Rogers put it this way “Therefore, higher spectrum licence fees will raise the prices for wireless services in Canada, making Canada less competitive compared to our trading partners, which do not have these higher fees. To be clear, if the Department expects Canadian wireless prices to more closely resemble wireless prices in the U.S., then it should harmonize its spectrum licence fees with the U.S. FCC’s Regulatory Fee. Lower spectrum licence fees will eliminate a significant financial drag on licensees and will result in more affordable services and greater investment in advanced wireless networks and services.”²⁹

Most parties dealing with the issue of renewal fees recommended that if fees were to be imposed upon renewal of the spectrum licences that these should be set by a spectrum management cost recovery only model. The comment by Roger is typical “Rogers considers that if renewal fees are used, these should be used simply to recover the administrative costs of the renewal process, as is the case in the U.S.”³⁰ The parties recommending this approach did so not only for competitive equity with our major trading and roaming partner but also to unleash the economic benefits of investment as outlined above. Investment in new wireless broadband platforms leads directly to new services and spawns economically effective innovation for the benefit of Canadians.

In order to ensure that these benefits are unlocked some parties felt that there should be no further fees imposed upon licence renewal. The CWTA said “With the high expectation of renewal associated with auction licences, and the long time horizons for network deployment and return on investment, it is reasonable to conclude that the auction purchase price includes all the economic rents associated with the licence. Certainly it is clear that the Department has not evaluated this scenario.”³¹ Bell put it this way “Bell Mobility believes that the intent of that statement is directed toward the objective of fully exploiting and maximizing the economic and social benefits Canadians obtain from the spectrum through the full and efficient exploitation of that public resource in deriving positive economic and social externalities for the Canadian public. Thus, Bell Mobility submits that the proceeds of the auction compensate Canadian taxpayers for the use of the public resource and that there is no reason to implement fees at a later date. In fact, such fees actually serve to undermine this policy objective by acting as a drag on further, and accelerated, investments in wireless networks, applications and services.”³² TELUS believes that not only has the Canadian public been well served by the build-out of the wireless networks they have been fully compensated monetarily as well. As we noted in our

²⁸ Bragg Communications Inc. (Bragg) response to DGRB-001-09, the Consultation on Revisions to the Framework for Spectrum Auctions in Canada, June 15, 2009, paragraph 20, page 6.

²⁹ Roger response, Op. Cit., paragraph 71, page 20.

³⁰ Roger response, Op. Cit., paragraph 68.5, page 19.

³¹ Canadian Wireless Telecommunications Association (CWTA) response to DGRB-001-09, the Consultation on Revisions to the Framework for Spectrum Auctions in Canada, June 15, 2009, page 4.

³² Bell response, Op. Cit., paragraph 80, page 22.

response “In this context the McLean Foster or Cave report is instructive where it states “In recent years, spectrum revenues have far exceeded the cost of the spectrum management program. For the six years from fiscal year 1998/99 to 2006/07, program expenditures totalled some \$549.8 million while program revenues from the same period totalled \$3.011 billion, made up of \$2.078 billion from licence fees, \$888.3 million from auctions (revenues which are amortized over ten years) and \$44.4 million from equipment certification fees.”³³ These totals do not, of course given the time the report was written include the \$4.25 billion extracted from the wireless industry due to the AWS spectrum auction.”³⁴ TELUS feels that the sums generated from spectrum auctions are full and sufficient compensation for the spectrum licences and renewal fees are therefore not justified nor required.

TELUS recommends that the Department not implement spectrum licence fees upon renewal. In the alternative, if the Department does implement fees upon renewal they should be set at levels based solely on spectrum management cost recovery.

8.0 R&D Condition of Licence

TELUS, in concert with all industry participants commenting on this issue, in our response to the Consultation Paper, in our response to DGRB-001-09 (Renewal of Cellular and PCS Spectrum Licences) and in our reply comments to the latter consultation recommended that the continued need for this particular condition of licence, if it ever existed has long since past. TELUS has recommended that the Department eliminate this condition of licence immediately. There is wide spread recognition of the natural competitive incentive wireless carriers have to invest in order to spur continuing innovation for their competitive advantage. The CWTA has communicated this industry consensus in a letter dated June 25, 2009. This letter ended by stating “CWTA submits that there is a clear rationale to immediately remove or suspend application of the R&D licence condition. This will provide licensees with the needed flexibility to invest as dictated by market conditions and respond to the unparalleled demand for broadband wireless service. This will advance Canada’s digital infrastructure and act as a further catalyst for innovation in all sectors of the economy.”³⁵

The Department in the Consultation Paper stated “Industry Canada continues to recognize the need for the government “to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services”³⁶ The Department notes, however, that two recent reports, the *Telecommunications Policy Review Panel Final Report* and the *OECD Telecommunications Regulatory Institutional*

³³ Study of Market-based Exclusive Spectrum Rights, McLean Foster & Co., August 31, 2007, section 4.9.3, page 68.

³⁴ TELUS response, Op. Cit., page 16.

³⁵ Letter from CWTA to Helen McDonald, Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Industry, Canada, June 25, 2009, page 3.

³⁶ Section 7(g) of the *Telecommunications Act*.

Structures and Responsibilities cautioned against a mix of regulation and industrial development strategy. Other areas of Industry Canada are recognized as being well placed to further this policy objective.³⁷ By removing the regulatory condition of licence the Department not only reduces the regulatory burden on wireless carriers but allows for other areas of the Department to create programs that stimulate investment in new technology and services. TELUS believes there is a direct link between investment today in wireless infrastructure and services and the subsequent increased use of these networks with the concomitant innovation that flows naturally from that greater capability and potential. To reiterate, **TELUS believes that this condition of licence has outlived its usefulness and should be eliminated immediately.**

9.0 New Licence Tier

In its Consultation Paper the Department sought comments on the establishment of a new Tier level that would differentiate urban and rural areas. TELUS opposes this approach because we feel that introducing another Tier level; especially a smaller one injects unneeded complexity in frequency coordination and administration. In our response we noted **“A better way, in TELUS’s opinion, as outlined above, is for the Department to move to implement full secondary markets with self-certification (no requirement for Ministerial approval).** Spectrum licences are fully divisible in both the frequency and geographic domains and can accommodate the need for smaller licences for those companies interested in serving only smaller rural areas. The Department might consider setting up a form of secondary trading agora to facilitate the identification of both supply and demand and to facilitate such transfers.”³⁸ It is worth noting in this context that there was no support for establishment of a new tier level. As an example, “In summary, SaskTel does not support the idea of separate urban and rural licensing tiers due to the added complexity of implementing such an arrangement. SaskTel believes that an urban and rural tier structure will not by itself stimulate rural service development and that other mechanisms are available and would be more effective.”³⁹ Bell said “Bell Mobility does not support the establishment of a new Tier level, nor do we support the continued use of Tier 4 service areas. The more granular the service area, the more difficult it is to implement the spectrum. Moreover, the problem of frequency coordination at the border of adjacent service areas will be severely magnified as a result of the use of numerous small licence areas.”⁴⁰

In our reply comments to the DGRB-002-09 consultation TELUS offered another alternative measure to deal with service in rural and remote areas. We said **“Alternatively TELUS suggests that the Department consider an increase in its planned stimulus funding in its rural and remote proposal. Under such a model revenues from past and future auctions could be set aside in a high cost wireless fund. Parties willing to build in identified high cost areas could**

³⁷ DGRB-001-09, Op. Cit., section 6.1, page 10.

³⁸ TELUS response, Op. Cit., page 19.

³⁹ SaskTel response, Op. Cit., page 12.

⁴⁰ Bell response, Op. Cit., paragraph 96, page 27.

obtain support for network extension under such a plan.”⁴¹ This approach was echoed by the CWTA when they said “If the business case for services in certain rural and remote areas warrant government support , then that should come in the form of direct funding available to any licensee.”⁴² Rogers stated “Finally, the Department should continue to provide financial incentives for carriers to deliver services in uneconomic regions such as they recently did with the Building Canada Fund.”⁴³

TELUS believes the Department has a number of alternative solutions available to it and does not need to create a new Tier level.

Conclusion

In conclusion TELUS;

- Strongly requests the Department to carefully balance the costs and benefits of regulatory intervention in any licensing process but especially spectrum auctions
- Recommends that if any intervention can be justified the Department;
 - Ensure that any benefits are limited to actual entrants, not regional or converged competitors
 - Focus on the use of ex-post versus ex-ante benefits
 - Ensure that any benefits awarded to entrants not come at the expense of incumbents but rather via a direct government subsidy.
 - Minimize the side effects of any regulatory intervention
- Supports the use of spectrum auctions where demand exceeds supply
- Urges the Department to consult solely and widely on any auction format to be used for major spectrum auctions other than SMRA.
- Calls on the Department to pre-screen potential spectrum auction participants with respect to any Canadian ownership and control requirements.
- Recommends to the Department that;
 - Renewed spectrum licences have a high expectation of renewal
 - Renewed spectrum licences have a minimum term of 15 or 20 years
 - The Department conduct a full public consultation on any condition of licence to be changed on renewal of spectrum licences

⁴¹ TELUS Reply Comments to DGRB-002-09, June 30, 2009, page 9.

⁴² CWTA response, Op. Cit., page 7.

⁴³ Roger response, Op. Cit., paragraph 76, page 21.

- Adopt cost based spectrum licence fees.
- Recommends that the Department eliminate the R&D condition of licence.
- Recommends that the Department not adopt a new licence tier but rather use alternatives such as secondary markets and rural stimulus plans.

All of which is respectfully submitted.

Yours truly

{ Submitted via email }

Ed Prior

Attachment: Regulatory Policy Goals and Spectrum Auction Design
Lessons from the Canadian AWS Auction,
A Statement by Christian Michael Dippon, NERA Economic Consulting
July 14, 2009