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Peter Hill  
Director, Spectrum Management Operations  
Radiocommunications and Broadcasting  
Regulatory Branch  
Industry Canada  
300 Slater Street  
Ottawa, Ontario  
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Dear Mr. Hill:

Subject: **Canada Gazette, Part I, Consultation on Transition to Broadband Radio Service (BRS) in the Band 2500-2690 MHz, March 2009, Notice DGRB-005-09**

TELUS Communications Company (TELUS) appreciates the opportunity to respond to the issues raised by Industry Canada (the Department) in Canada Gazette Notice DGRB-005-09 (Consultation Paper). TELUS has an interest in the Band 2500-2690 MHz and looks forward to the Department moving ahead with the initiatives outlined in the Consultation Paper. TELUS supports the Department's 2006 policy decision, DGTP-002-06 – Policy Provisions for the Band 2500-2690 MHz to Facilitate Future Mobile Service. TELUS also participated in the drafting of the RABC response to DGRB-005-09 and generally supports that response. The TELUS response will use the numbering and headings contained in the Consultation Paper.

In its comments below, TELUS recommends that the Department:

- Establish and use a firm transition date of March 31, 2011 for the entire spectrum in the band to BRS spectrum licences and place a moratorium on voluntary conversion to BRS until the same date.
- Require that ALL incumbents be relocated out of the clawback bands prior to Mar 31, 2011.

- Transition all MCS and MDS spectrum in Manitoba to BRS on March 31, 2011.
- Require that only spectrum that has been granted both a CRTC BDU Licence and a broadcast certificate can be considered eligible for conversion to a BRS spectrum licence. Spectrum outside the footprint of a broadcast certificate should all be classified as unassigned and be subject to auction.
- In this unique case, convert the MDS site licences at whatever tier (3 or 4) that the Department deems appropriate given the details of each site.
- In keeping with research undertaken by the Department, set licence periods at a minimum of 15 years and preferably longer.
- Remove the current R&D condition of licence given the current and continuing investment in innovation by mobile operators
- Champion cost recovery for licensees for provision of Lawful Intercept services.
- Proceed directly to the planned Public Consultation on the Policy and Licensing Framework for this band rather than first having a closed door process involving only incumbents
- Do not compromise in the selection of a band plan but choose either the ITU-R or the FCC plan.
- Work with the industry to develop a methodology to set fees at a fair and reasonable level.

### **3. Consultation on a Firm Transition Date**

*The Department is seeking comments on its proposal to adopt a firm transition date to BRS rather than renew MCS and MDS licences*

*Should a firm transition to BRS be adopted, the Department is proposing March 31, 2011 as the transition date to BRS, as it coincides with the end of licence term for the current MCS Licences.*

TELUS submits that the Department got it right in its 2006 Policy Decision<sup>1</sup> (the Policy) for this band. This Policy designated the band for mobile, fixed and broadcasting use thus ensuring maximum flexibility in this band for spectrum holders either incumbents or new entrants to the band, albeit only after completion of a transition process as outlined in the Policy. The main provision lacking in the 2006 Policy Decision, from a TELUS perspective, was a firm transition date. Instead the Policy provided for a voluntary, operator by operator approach with the timing of the transition entirely dependant upon the current incumbent.

TELUS firmly believes that a firm transition date to BRS instead of at time of individual licence renewal or conversion is required for three reasons:

- The first is the need for business certainty. At anytime but, especially in a recessionary economic climate, businesses require certainty around licence conditions, of timing of transitions for spectrum licences and especially the timing of the associated capital and operating expenditures associated with such a transition. As the Department well knows, the planning and budgeting cycles for major investment in new spectrum and new and innovative services demand a stable and secure planning horizon. A firm transition date provides the required certainty.
- TELUS believes that the second chief public policy rationale for a firm transition date to BRS for this band is the fundamental principle of process fairness and equity. Lack of a firm transition date for this band will confer on the incumbents a head start in the preparation, timing and introduction of new mobile service in this band on a large geographical basis i.e. provincial or national depending upon the spectrum transitioned and its timing. This is clearly unacceptable on a Public Policy basis and its concomitant attention to the interests of all Canadians and the sound management of spectrum. Too, the conferral of such a head start will only decrease the value of the spectrum to be auctioned as the purchasers of this spectrum will be second or depending on the services to be introduced fifth or sixth into the market and price the value of the spectrum accordingly.

Third, in the 2.5GHz band, a “no head start” rule with respect to mobile is unlikely to cause harm. Incumbents have had more than 3 years under the policy to apply to transition to mobile and, with one minor exception, have not done so. At this point in the development of 2.5GHz band policy, linking start-up to the auction of the balance of the band’s spectrum is unlikely to cause prejudice to any party.

There are a small number of operators in this band across Canada with different business plans. There is general lack of clarity about which spectrum is actually assigned and in use, in the geographic dimension. The evolution of this band would benefit from clarity as to which spectrum is unassigned and to be auctioned with the spectrum to be clawed back. The certainty

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<sup>1</sup> DGTP-002-06, Policy Provisions for the Band 2500 – 2690 MHz to Facilitate Future Mobile Service, Industry Canada, March 30, 2006.

this would establish would ensure a better ability to plan, particularly in light of the possibility that spectrum at 700 MHz will be auctioned in the same planning time frame. It would also ensure fundamental fairness and equity in the development, roll out and competitive provisioning of the flexible mobile services envisaged for this band by both incumbents and new entrants.

**TELUS recommends the Department adopt the firm transition date of March 31, 2011 for all spectrum and spectrum holders in this band.** TELUS further recommends that the Department not grant any more BRS licences in this spectrum band until the firm transition date. This will not only provide planning and business certainty but also equity and fairness by preventing a head start on BRS services by incumbents in the band. This is important for all non-incumbent but potential entrants. TELUS notes that the RABC response echoes this call for March 31, 2011 as a firm transition date. As noted in that response the fact the MDS operator's CRTC Broadcast Distribution Licences (BDU licences) expire in August of 2011 will require the Department to develop a bridging policy for this period.

**TELUS further recommends that any of the systems operating in the 2535 – 2568 MHz and 2657 – 2690 MHz portion of the band be given notification on March 31, 2010 to retune or cease operating by March 31, 2011.**

#### 4.2.1 MCS Licences in Manitoba

*The Department seeks comments on the options that should be applied to the Manitoba school boards and the commercial MCS licensee:*

- *Option 1 – Eligible for conversion to BRS*
- *Option 2 – Subject to a transition policy; or*
- *Option 3 – Grandfathered*

**TELUS respectfully submits that the spectrum of the Manitoba school boards and the commercial MCS licensees be made subject to the transition policy according to the band plan adopted for this spectrum and that this occurs on the recommended transition date of March 31, 2011.** If this spectrum is not subject to transition there will be no spectrum in this band available for non-incumbents and therefore no truly national service possible.

#### 4.2.3 CRTC – Licensed MDS Broadcasting Stations

*Industry Canada invites comments on which component(s) (i.e. CRTC Decision, Industry Canada broadcasting certificate, and CRTC licence) should be required for licensed MDS in order to qualify for conversion to BRS in a given area.*

*Should MDS stations that do not meet the eligibility criteria be protected through a transition policy (notification period prior to displacement) in the event that a firm transition date to BRS is adopted?*

**TELUS submits that only spectrum that has been granted both a CRTC BDU licence and a broadcast certificate can be considered eligible for conversion to BRS. Spectrum outside the footprint of a broadcast certificate should all be classified as unassigned and be subject to auction.** A general CRTC licence does not bestow any right to spectrum. Only a broadcast certificate authorizes a right to use spectrum. Wireless BDUs cannot lay claim to spectrum for which a certificate from Industry Canada has never been granted.

In our view MDS stations not meeting the eligibility criteria should be protected by notifications of displacement that we suggest be issued a year prior to the firm transition date of March 31, 2011. On the date of issuance of such notification the affected station's status should be frozen with respect to any activity and the spectrum licence, effective March 31, 2011 would revert to Industry Canada or any such licensee as may have acquired the spectrum licence through any process that Industry Canada may have conducted prior to the firm transition date

#### **4.2.4 CRTC Licence-Exempt Broadcasting Stations in Rural Areas**

*Comments are also sought on whether CRTC licence-exempt systems that serve small, rural and remote communities having small populations should be treated differently from the CRTC-licensed systems.*

*Should these undertakings not be eligible for conversion and a firm transition date to BRS is adopted, the Department seeks comments on what should constitute a suitable notification period for these stations to retune to available frequencies or cease operating. Notification would be given only if the MDS station would prevent the deployment of a BRS system.*

TELUS submits that the same principles apply. Licence exempt systems still require a broadcast certificate. If a system has a certificate then they should be entitled to retain any spectrum authorized on such certificate upon transition, other than any spectrum in the 2535 – 2568 MHz and 2657 – 2690 MHz range. TELUS agrees with the proposal that notification of a requirement to retune to available frequencies only be given in those cases where it is required to deploy a BRS system which is dependent upon the final band plan. TELUS recommends that any of the systems operating in the 2535 – 2568 MHz and 2657 – 2690 MHz portion of the band be given notification on March 31, 2010 to retune or cease operating by March 31, 2011. TELUS further notes that there appears to be only three such license exempt systems operating in total across the country and hence this notification process should be easily handled by the Department.

#### **4.3.2 MDS Authorizations**

*Industry Canada seeks comments on whether Tier 3 or Tier 4 licence areas are most appropriate for the conversion of site-specific MDS licences to BRS spectrum licences, where applicable, and for conversion of MDS authorizations, including Industry Canada spectrum licences issued in the 2596-2690 MHz band.*

TELUS notes that the Department has a precedent in the BRS spectrum licence issued to Craig Wireless British Columbia Inc. effective October 1, 2008. In this instance and absent a policy to the contrary it was found that the broadcast contour associated with the Vancouver MDS authorization fell almost entirely within the boundaries of Tier 4-152 licence area. The Department accordingly made the reasonable assumption that a Tier 4 licence was warranted. TELUS also notes that the assignment of the licence as Tier 4 was conditional on the outcome of the present consultation.

In the Consultation Paper the Department states that “The Department notes that there are certain advantages to using Tier 4 areas to define the BRS authorizations for operators converting from MDS. In particular, by using the smallest tier areas, the Department is able to more closely match the contour maps of the MDS authorization.”<sup>2</sup> Further along the Department states “Tier 3 areas are larger than Tier 4 areas and would facilitate the planning and implementation of large scale, high mobility systems. They are also consistent with the smallest licence area issued for mobile operations in the AWS auction.”<sup>3</sup>

Given the unique set of circumstances within this portion of the band TELUS supports conversion of MDS site licences at whatever tier (3 or 4) that the Department deems appropriate given the details surrounding each site.

In determining the tier, the Department should take care not to provide a windfall to incumbents. That is, incumbents should not be granted a significant amount of spectrum for which they did not have broadcast certificates and for which there could be significant demand at an auction.

Given the complexities of this band an exception in this case would be fine to TELUS but in general terms TELUS does not support the use of tier 4 licence areas for mobile spectrum for the reasons noted by the Department.

## **5. License Fees**

TELUS understands that the Department intends to consult on a new licence fee applicable to all BRS licences issued to incumbents through either the voluntary conversion process or the transition policy. As noted above TELUS has recommended that the Department place a moratorium on voluntary licence conversions and use a firm transition date for conversion of the entire spectrum to BRS spectrum licences on March 31, 2011 and the developed licence fees should apply on this date. TELUS reserves its right to comment on the structure of the fees in the next phase of this consultation process.

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<sup>2</sup> DGRB-005-09, Consultation on Transition to Broadband Radio Service (BRS) in the Band 2500-2690 MHz, Industry Canada, March 2009, section 4.3.2, page 8.

<sup>3</sup> Ibid.

## 6. Licence Conditions

*Industry Canada seeks comments on these licence conditions proposed for voluntarily converted BRS licences.*

TELUS notes that the Department proposes that the Licence Conditions outlined in the Consultation paper be interim and apply only to voluntarily converted BRS licences as they would be subject to change following the consultation on the policy and licensing framework for the auction of available and liberated spectrum in the band 2500-2690 MHz. This is disturbing as it implies that the Department will proceed to convert MCS or MDS licences and authorizations to BRS spectrum licences before a firm transition date and before any licensing process involving new entrants in this band has taken place. As outlined above under our response to Section 3 this would give current incumbents a head start in the deployment of mobile services in this band. This is against the principles of competitive neutrality expected of a Canadian government department and TELUS would strongly urge the Department not to do so. TELUS strongly suggests that the Department place a moratorium on any conversions of spectrum in this band to BRS spectrum licences until such time as the policy and licensing framework for the auction of spectrum in this band is finalized, the auction held and licenses issued. Such an approach is equitable and will ensure that the Canadian public receives the highest return possible from the auction.

If there are calls for the Department to proceed, these calls should be interpreted as calls to finish the licensing and policy job before proceeding on a piece-meal basis. The licensing and policy job is completed when the policy associated with the spectrum auction of available and liberated spectrum is set and the spectrum auction complete.

Given the preceding, TELUS hereby provides its comments to the Department on the interim Licence Conditions on a non-prejudicial basis. TELUS will not comment on every prospective interim licence condition and where there is no comment this should not be construed as either agreement or disagreement with that condition of licence.

### 6.1 Licence Term

TELUS notes the Department intends to have the BRS licences expire on March 31, 2021 whether through conversion or issued as part of a transition process after adopting the firm transition date of March 31, 2011. This would make the transitioned licences effectively a 10 year licence term and the one converted licence a 11 year term (TELUS repeats its call for the Department to place a moratorium on further conversions). **TELUS strongly recommends that the Department adopt a 15 to 20 year licence term together with a high expectation of renewal for these licences.** As noted in the Consultation Paper the renewal process for these licences will be part of a separate consultation in the context of the DGRB-001-09 *Consultation on Revisions to the Framework for Spectrum Auctions in Canada* and TELUS will be participating in that process. In this context however TELUS believes that the greater the

certainty associated with these licences the greater incentive the operators will have to invest in deployment of networks and services and the greater willingness investors will have in advancing operators the funding to do so. As TELUS notes in its response to another consultation undertaken by the Department “Most businesses in Canada do not operate under the threat of a ten year end to their ability to do business and reap returns from their investments. Longer terms engender greater certainty and therefore greater willingness to invest for long term stability and success.”<sup>4</sup>

### **6.10 Lawful Interception**

With respect to Lawful Interception TELUS notes that the Department has stated that it continues to meet with Public Safety Canada and the Department of Justice on the new legislative package initiative covering Lawful Interception requirements. Wireless and wireline operators through ITAC and the CWTA have met with Industry Canada, these same Departments as well as the Minister’s offices. We have requested that the Government be mindful of 4 main reasonable concerns respecting these requirements. These are:

1. legislated cost recovery compensation for telecommunications carriers in the performance of these requirements;
2. a reasonable transition period for new requirements coming into force;
3. availability of standards based solutions plus a safe harbour for equipment meeting standards but not law-enforcement requirements; and
4. clarity in defining and mandating requirements.

**TELUS requests that, on behalf of the wireless industry, Industry Canada champion these requests in their inter-departmental meetings and any Ministerial briefings on this topic based on the material supplied to the Department.**

### **6.11 Research and Development (R&D)**

Respecting the proposed interim 2% R&D requirement **TELUS respectfully suggests that this requirement be withdrawn.** When the current mobile wireless industry was in its infancy such a requirement might have been relevant. The time is past where such a policy will be of assistance in furthering the development of a wireless R&D community in Canada. Many of the vendors that supply the industry are global in nature and TELUS and all Canadian carriers need the freedom to invest in the most cost effective and practical solutions wherever these might be developed. As TELUS noted in our response to DGRB-002-09 “Canadian carriers are highly incented to find ways to innovate their offerings in order to differentiate themselves and attract

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<sup>4</sup> TELUS response to DGRB-002-09, Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences, March 2009, submitted May 29, 2009, page 4.

and retain the subscribers required to earn a return on the significant network investment.”<sup>5</sup> TELUS further noted “According to the Department of Finance, Canada’s SR&ED program compares favourably with other similar world class incentive programs. Accordingly, the level of R&D generated by wireless development should be optimal based on the income tax incentives for SR&ED and there should be no need to have an artificial requirement in the licence conditions for, especially, cellular and PCS spectrum to conduct R&D just for the sake of conducting R&D.”<sup>6</sup> The BRS spectrum is expected to be global and the services offered are expected to be similar to the services offered in other mobile bands. Simply put, there is no longer any need to maintain this condition of licence.

## **8. Stakeholder Proposal Development on a Band Plan for BRS**

TELUS is somewhat puzzled by the process discussed in section 8 of the Consultation, i.e., Stakeholder Proposal Development on a Band Plan for BRS. The Department has said that such a process “involves the facilitation of discussions with MCS and MDS incumbents, with the goal of developing proposals to align the spectrum they would retain following the transition to BRS with a new internationally compatible band plan applicable to BRS.”<sup>7</sup> Why isn’t this consultation a public consultation and part of the already announced Departmental consultation in this band “on a Policy and Licensing Framework for the Auction of Liberated and Available Spectrum”<sup>8</sup>?

Section 9.1 of the present Consultation paper that announces the upcoming public consultation identifies the band plan and relevant technical issues as one of the three major elements to be consulted upon. The requirement for an additional private or semi-private consultation in advance is further called into question by the Department’s announced intention, contained in the 2006 Policy for this band to move the band to an internationally compatible band plan. Given this, the closed consultation represents an opportunity for incumbents to try to influence the process to the detriment of potential new entrants to this band and as such should be avoided.

As the Department correctly points out in the Consultation paper “Frequency planning and the details of implementation have a significant impact on the usability and value of the spectrum”<sup>9</sup>. The development of a band plan for BRS is a key and vital issue with respect to the use and value of this spectrum. Given this importance any consultation with respect to developing a band plan for this spectrum should be public and conducted as part of the public process leading to a Policy and Licensing Framework for the Auction of Liberated and Available Spectrum which the Department has already undertaken to conduct. TELUS fails to see the requirement for this intermediate and closed consultation involving only band incumbents when the Department’s policy includes the goal to attract new entrants to this band in order to enhance the competitive service offerings in this band. In this context TELUS notes that the Department has also said it

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<sup>5</sup> TELUS response to DGRB-002-09, Op. Cit., page 5.

<sup>6</sup> Ibid.

<sup>7</sup> Consultation Paper, Op. Cit., section 8, page 14.

<sup>8</sup> Consultation Paper, Op. Cit., section 9.1, page 16.

<sup>9</sup> Consultation Paper, Op. Cit., section 8, page 14.

will consult incumbents in this band on the migration of the incumbent's network and terminal facilities and devices. In our view this topic is best addressed in the public consultation announced and can be examined in the context of a transition period beginning now and ending with the firm transition date of March 31, 2011.

TELUS reminds the Department as did the RABC in their response that this band, "2500-2690 MHz has been identified by ITU-R as an IMT band and has the potential to be the only globally harmonized band so far for both downlink and uplink. For information, RABC has identified two alternative band plans employed by other administrations (see reference list in Annex 1). Even though the two alternatives look similar on a high level, they are different in detail. It is important that the Department decide on which plan should be implemented for the Canadian market recognizing that a compromise arrangement between the two plans will not be in the public interest."<sup>10</sup>

## 9. Additional Consultations

TELUS notes that the Department has announced three additional public consultations for this band, the first on the policy and licensing framework as noted above, the second on licence fees and the third on the renewal process for long-term licences as part of the consultation on the Framework for Spectrum Auctions in Canada. Given the three public consultations on all aspects related to this band TELUS continues to question the need and propriety of an additional, closed consultation on matters going to the very heart of the viability and worth of the spectrum to be made available to potential new entrants in this band.

With respect to the planned consultation on licence fees the Department notes that the "licence fees should reflect the market value of the spectrum to the extent possible."<sup>11</sup> TELUS reminds the Department that the Spectrum Policy Framework does not require this but rather that the Department seek to ensure the maximum social as well as economic benefits for Canadians. This in our view requires the Department to take a holistic view of the impact of licence fees to the industry in terms of investment and capability to spend on deployment and innovative services and solutions for Canadians. **TELUS believes that the Department should work with industry to establish a methodology to set fees at a fair and reasonable level.** We suggest that the RABC could provide a forum to help define what is meant by fair return or market value.

All of which is respectfully submitted.

Yours truly,

(Submitted electronically)

Ed Prior

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<sup>10</sup> RABC response to DGRB-005-09, Consultation on Transition to Broadband Radio Service (BRS) in the Band 2500-2690 MHz, May 29, 2009, section 8, page 5.

<sup>11</sup> Consultation Paper, Op. Cit., Section 9.2, page 16.