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***Consultation on the Renewal of Cellular and Personal  
Communications Services (PCS) Spectrum Licences***

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**Comments**

**of**

**Bell Mobility Inc.**

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## EXECUTIVE SUMMARY

1. Bell Mobility is pleased to submit the following comments in response to Industry Canada's *Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences* that will expire in 2011.

2. Industry Canada invites comments on its proposal to renew the above licences as well as on the licence conditions that it proposes would apply to the renewed licences. Industry Canada further states that it intends to undertake a study of the value of spectrum and that this will be used in a separate consultation as input into the process of establishing a renewal fee applicable to the above licences.

3. Bell Mobility supports Industry Canada's proposal to renew cellular and PCS licences. Bell Mobility notes that Canada is a challenging market to serve. It is characterized by a small and dispersed population when compared to other countries, who either have the benefit of a much larger population base or those with a vastly smaller geographic area to serve. Substantial investments have been undertaken since 1985, cumulatively estimated to be in excess of \$30 billion, when one takes into consideration infrastructure investments, licence fee payments and related obligations. Indeed, Canadian licensees invest more per capita on wireless infrastructure, to serve a smaller population, than their U.S. counterparts.

4. Bell Mobility does not believe that a 10-year licence term is sufficient given the development and investment to date in the Canadian wireless market. Bell Mobility submits that it would be timely for the Department to seriously consider the use of indefinite licence terms for wireless licensees. Such a move would be consistent with the actions of other regulators, who have either moved to longer licence terms or who are moving to indefinite terms. Bell Mobility considers that, even with indefinite licence terms, the Minister has sufficient authority to amend or withdraw a licence in the unlikely event of a serious non-compliance issue arising or in the event of a national policy requirement.

5. Therefore, Bell Mobility recommends that the licence term, proposed in Industry Canada's Consultation, be replaced with one which conveys an indefinite licence term. Such term would be conditional on ongoing compliance with licence conditions as well as on the absence of an overriding policy or spectrum management need requiring recovery of the spectrum.

6. In the event that the Department does not implement indefinite licence terms, then Bell Mobility proposes that the following 20-year licence term be substituted for that proposed in the Consultation:

1. Licence Term

The term of this licence will expire on March 31, 2031.

At the end of this term and any subsequent terms, licensees will have a high expectation of renewal for a twenty-year term unless a breach of a licence condition has occurred, a fundamental reallocation of spectrum to a new service is required, or an overriding policy need arises. A public consultation regarding the renewal of the licence will begin no later than two years prior to the end of the licence term if the Department foresees the possibility that it will not renew this licence.

It should be noted that the licence is subject to relevant provisions in the *Radiocommunication Act* and the *Radiocommunication Regulations*. For example, the Minister continues to have the power to amend the terms and conditions of spectrum licences (paragraph 5(1)(b) of the *Radiocommunication Act*). Such powers would be exercised on an exceptional basis and only after full consultation.

7. Regarding licence fees, Bell Mobility notes that this matter is of critical importance to all licensees. Licensees are in the best position to advise the Department on the appropriate value of spectrum, as well as on the ongoing prospects for growth and profitability in the industry. They should be involved in any process Industry Canada elects to employ in arriving at that determination. In this regard, Bell Mobility believes that the first question to be addressed is whether renewal fees should apply at all for any spectrum, and in particular for the 2001 PCS auction licences.

8. Excessive fees are not conducive to investment and only serve to divert funds away from infrastructure investments. Despite the challenging economic times, Canadian wireless carriers have not asked for government assistance. Instead they continue to employ thousands of Canadians while investing billions annually in developing this enabling infrastructure. Compared to the U.S., where regulatory fees are based on a cost-recovery model, Canadian spectrum fees are tantamount to economic-rent seeking and, in Bell Mobility's view, are indefensible under the *User Fees Act*. This difference in methodology accounts for the vast disparity between Canadian and U.S. spectrum fee levels.

9. Bell Mobility does not believe that the 2007 *Spectrum Policy Framework (SPF)* can be properly construed as supporting fees that are economic-rent seeking. To the contrary, Bell Mobility believes that the intent of the SPF is directed more toward the objective of fully exploiting and maximizing the economic and social benefits Canadians obtain from the spectrum through the full and efficient use and exploitation of that resource for all Canadians. Indeed, fees which are restricted to cost-recovery levels would do more to increase and maximize the benefits that Canadians obtain from the spectrum by better facilitating deployment and use of the resource.

10. Canadian licensees have paid billions of dollars to the Federal government in spectrum-related fees since the 1980's. This, moreover, is over and above the billions of dollars in infrastructure investments, taxes paid to all levels of government and payroll charges that are required to operate the business and provide productivity and security enhancing wireless services to Canadians. In light of the economic downturn, now acknowledged as being more severe than originally anticipated, Bell Mobility believes that a "spectrum fee holiday" should be introduced immediately to assist wireless carriers to weather the current economic storm.

11. Alternatively, Bell Mobility recommends that Industry Canada adopt a cost-recovery regime for the purposes of setting licence fees going forward. Such a move would put Canadian licensees on an equal footing with their U.S. counterparts. In any event, Bell Mobility strongly recommends that Industry Canada include, consistent with the requirements of the *User Fees Act*, licensees in any activities aimed at determining the appropriate licensing fees to be applied to cellular and PCS licences in Canada.

## **1.0 INTRODUCTION**

12. Bell Mobility Inc. (Bell Mobility or the Company) is pleased to submit the following comments in response to the Department's *Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences*, as published in the *Canada Gazette*, Part 1, dated 28 March 2009 (the Consultation or the Document).

13. The intent of the Consultation is to consult on the renewal of cellular and PCS licences that will expire on 31 March 2011. The Document notes that these systems operate in the bands 824-849 MHz and 869-894 MHz for cellular and the bands 1850-1910 MHz and 1930-1990 MHz for PCS.

14. The licences in question include: (1) cellular and PCS licences awarded to the Company through the Department's comparative analysis process; as well as (2) PCS licences won by Bell Mobility in the 2001 PCS spectrum auction. The Document further notes that the decisions made as a result of this Consultation will also apply to cellular and PCS licences that expire after the above date.

15. The Department seeks comments on its proposal to renew the above licences and to consult on the licence conditions that would apply to renewed cellular and PCS licences as well as to any new licences, in those bands, subsequently issued by Industry Canada. Industry Canada further indicates that it intends to undertake a formal study to assess the current "market value" of the cellular and PCS spectrum licences as input into the process of establishing a renewal fee applicable to the above licences. To that end, the Department has indicated in meetings with industry representatives, that once the above study is completed it will launch a separate consultation that will seek comments on a proposed renewal fee.

16. In the following comments, Bell Mobility will address the issues, raised in the Consultation, in the order of their appearance in the Document. Our comments will commence with views regarding the proposal to renew the existing cellular and PCS licences. The Company will then address the respective conditions of licence that the Department proposes to apply to both renewed and new licences going forward. The Company will also provide its views on other proposed changes, as outlined in the Document, to the existing conditions of licence. Finally, while Bell Mobility recognizes that the issue of renewal fees will be addressed in a future consultation, the Company offers its comments regarding renewal fee issues raised as a result of the Consultation.

17. To facilitate the use of this submission, Bell Mobility will precede its comments by captioning the Department's specific question or the proposed condition of licence to which the Company's comments are addressed.

## 2.0 RENEWAL OF CELLULAR AND PCS LICENCES

### *The Department Invites Comments on Its Proposal to Renew Cellular and PCS Licences*

18. The Consultation notes that the 800 MHz cellular licences were initially launched into service in Canada on 1 July 1985. In this regard, in 2010 the original cellular licensees will mark 25 years of providing wireless services to Canadians. The Department further notes that in December 1995, subsequent to a comparative licensing process, Industry Canada awarded the initial Canadian PCS licences to: (1) cellular incumbents, who were each awarded 10 MHz PCS radio licences in their respective operating areas; and (2) two new entrants, who were each awarded a national 30 MHz PCS radio licence. By 2004, both new entrants had been acquired by TELUS and Rogers Wireless.

19. The Consultation further notes that 40 MHz of PCS spectrum was held in reserve, following the 1995 comparative licensing process, and that much of this spectrum was subsequently auctioned by the Department in a January 2001 spectrum auction. The auction was conducted pursuant to the Department's *Framework for Spectrum Auctions in Canada* (Issue 1, 1998).

20. The Consultation states that, subsequent to receiving the legislative authority to employ spectrum auctions as a licensing instrument, the Department conducted a spectrum auction in 2001 which awarded successful bidders with longer-term, i.e. 10-year versus 5-year, PCS spectrum licences. The auctioned spectrum licences also included other enhanced licence privileges, e.g. transferability and divisibility rights and did not require site-specific radio authorizations as was previously the case. By contrast, the Department notes, a number of cellular as well as incumbent PCS licensees had been selected through a comparative licensing process and operated under five-year radio licence authorizations. These non-auction licensees were also required to obtain a radio licence for each radio site in their network. Similarly, the fees for non-auctioned licences were charged on a per station basis and varied based on the number of channels used at each station.

21. Subsequent to an extensive public consultation, it is noted, in December 2003 the Department released *Spectrum Licensing Policy for Cellular and Incumbent Personal Communications Services (PCS) Canada Gazette Notice DGRB-006-03* (the Harmonization Consultation). This decision, resulting from the Harmonization Consultation, announced the

Department's policy regarding the transition of cellular and incumbent PCS radio licences to geographic spectrum licences, and also simplified and harmonized the associated licensing and fee structure. The new spectrum licensing policy introduced licences with 10-year terms, as well as a single fee structure for all non-auctioned PCS and cellular licences. The Department's spectrum licensing policy also meant that, henceforth, licensees would be charged for all spectrum held by them, as opposed to only being charged for spectrum in use, which was formerly the case. The Consultation further notes that the new fee and licensing regime for cellular and incumbent PCS licensees came into effect on 1 April 2004. New spectrum licences were issued at that time and were subsequently updated in November 2005. It is noteworthy that the ramp up to the new fee regime commenced in 2004 and will continue until 2011.

22. The Consultation states that many cellular and PCS licences are now nearing the end of their licence term. In general, the Department notes, radio and spectrum licences are renewed by the Department unless a breach of licence condition has occurred, a fundamental reallocation of spectrum to a new service is required, or an overriding policy need arises.

23. Citing its recent 24/38 GHz Licence Renewal and Advanced Wireless Services (AWS) auction consultations, Industry Canada states that when undertaking a renewal consultation for long-term licences, the Department will generally include a review of the extent of deployment of the spectrum by licensees, a scan of the general environment as well as the demand for the spectrum from other parties.

24. The Consultation notes that unlike the recently-licensed AWS spectrum, the cellular and PCS bands are both well established. The Department states that the deployment of services in both the cellular and PCS bands has been extremely successful. The Consultation notes that PCS and cellular services are in great demand, with more than 21 million wireless subscribers in Canada at the end of Q3/08. The Department also cites the CRTC's 2008 report to the government to the effect that wireless service is available to 98% of Canadians and covers 20% of the geography. Industry Canada considers that this coverage is significant given Canada's vast land mass, which covers just less than 10 million km<sup>2</sup>.

25. Given the above considerations, Industry Canada states that it proposes to renew cellular and PCS licences where the licensee is in compliance with all applicable conditions of licence. Industry Canada states that licences will be renewed for a 10-year term and will be required to remain in compliance with the revised licence conditions proposed in Appendix A to

the Consultation Document. The Department states that it is not proposing a condition of licence regarding deployment, for either the cellular or PCS renewed licences, due to the extensive services being offered in those bands and the opportunities available for others to gain access to unused spectrum in the cellular band.

26. Bell Mobility supports the Department's proposal to renew cellular and PCS licences where the licensee is substantially compliant with applicable licence conditions. Bell Mobility further recommends that, as the Department has suggested in the past, that any question of non-compliance be discussed with the licensee(s) in question before a final determination is made regarding compliance status. Further, and while Bell Mobility agrees with the Department's conclusions regarding the extensive development and deployment of Canada's cellular and PCS infrastructure, we note that Canada is a challenging market in which to develop wireless networks. In this regard, not only is the area to be covered considerable in its sheer mass, as the Department notes above, but it is also characterized by a relatively small and dispersed population when compared to other countries. The U.S., for example, with a similar geographic make-up, has an available market roughly ten times the size of that in Canada much of which is concentrated in several very large cities or regions. Even the U.K., with a vastly smaller geographic area to build-out, has a wireless market almost twice the size of that available in Canada. Nonetheless Canadian cellular and PCS licensees have undertaken substantial investments, cumulatively estimated to be in excess of \$30 billion, when one takes into consideration both infrastructure investments, licence fee payments and licence-related obligations incurred since the launch of cellular service in 1985. Indeed, Canadian carriers invest more per capita on wireless infrastructure, to serve a smaller market, than their U.S. counterparts.

27. Given the substantial nature of these investments, Bell Mobility believes that, as is the case in other countries, this significant commitment should be acknowledged and reflected in the conditions of licence attached to these investments. Bell Mobility's views, in this regard, will be addressed further in the following comments regarding applicable conditions of licence.

### **3.0 PROPOSED CHANGES TO LICENCE CONDITIONS AT RENEWAL**

#### ***The Department Seeks Comments on All Licence Conditions for Renewed Cellular and PCS Licences (See Appendix A for A Complete List Of Conditions)***

28. In this section Bell Mobility provides its comments regarding the conditions of licence which the Department proposes for renewed cellular and PCS licences. While the Department proposes changes to only some of the existing licence conditions, for the purposes of completeness, Bell Mobility will address all of the conditions of licence proposed in Appendix A to the Consultation. In this regard, Bell Mobility will caption its comments with the specific condition of licence being addressed in the comments.

### **3.1 Licence Term and Renewal**

29. The Consultation notes that the licence conditions currently applicable to cellular and PCS spectrum licences were most recently updated in November 2005, following the consultation which harmonized the auctioned and non-auctioned licences, as addressed above, and currently apply to spectrum licensed either through a competitive (i.e. comparative analysis or spectrum auction) or an FCFS (first-come, first served) licensing process.

30. The Department notes, as a result, that all cellular and PCS licences currently state:

The term of this licence will expire on [date].

At the end of this term, licences will likely be renewed for a ten-year term unless a breach of a licence condition has occurred, a fundamental reallocation of spectrum to a new service is required, or an overriding policy need arises. A public consultation regarding the renewal of the licence will begin no later than two years prior to the end of the licence term if the Department foresees the possibility that it will not renew this licence.

31. The Department proposes to renew cellular and PCS licences for a 10-year term where the licensee is in compliance with all applicable licence conditions. Further, the Document notes, comments will be sought on licence terms in general in the concurrent Consultation on *Revisions to the Framework for Spectrum Auctions in Canada*, Gazette Notice DGRB-001-09, April 2009 (the Auction Framework Consultation).

### ***Bell Mobility Comments***

32. At the outset, Bell Mobility notes that while it will provide its comments with respect to licence terms in general, as part of the Department's Auction Framework Consultation, in addition the Company will provide its views regarding licence term and renewal considerations in these comments. This is primarily because the cellular and PCS licences being discussed in this Consultation, are the most significant spectrum licences in Canada to which the proposed licence and renewal terms will apply. Indeed, industry participants have noted that the logical sequence would dictate that the Department first would revise and finalize its applicable framework documents, in this instance the Auction Framework, and then subsequently consider any upcoming renewals within the context of that revised framework. Nonetheless, Bell Mobility believes that it is useful, from a contextual perspective, to discuss the related issues of licence term and renewal within the context of the existing cellular and PCS licences.

### ***Licence Term***

33. First regarding licence term, at pages 30 and 31 of its 25 May 2007 comments in response to *Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services*, Notice No. DGTP-00-07, (AWS Comments) Bell Mobility expressed the view that:

It is time to change the way we think about established radiocommunication carriers with a large customer base. Wireless telecommunications in 2007 is business on a large scale, e.g. \$20 billion invested to date with approximately \$1.5 billion a year invested on an ongoing basis with direct and indirect employment of 25,000 Canadians. The entities providing facilities-based wireless services in Canada today are large, well financed and well managed Canadian corporations. Given the cumulative and ongoing investment in the sector, the costs of licence withdrawal at the end of a licence term of short duration would be both enormous and devastating for the affected firm.

From a customer perspective, is it practical that a spectrum licence could even be withdrawn? What would happen to the affected carrier's customer base, and their business, personal and 911 calls, in such an eventuality? This is not to suggest that the Minister would not have recourse in the event of a substantial issue of non-compliance. As the Consultation Paper notes, the *Radiocommunication Act* provides the Minister with virtually unlimited authority to modify or withdraw the licence. Bell Canada submits however that the financial and customer realities of the Canadian wireless market and industry today are such that the issue of substantial non-compliance is not likely to arise.

Bell Canada believes that it is in the public interest that Industry Canada should promote a stable investment climate in the sector and suggests therefore that the

licence term of any AWS spectrum acquired through an open auction be set with an indefinite term.

34. Other advanced spectrum regulators, including the U.S.'s Federal Communications Commission (FCC) and the U.K.'s Office of Communications (Ofcom), are moving in this direction. Indeed, the Department's recent *Consultation on the Renewal of 24 and 38 GHz Spectrum Licences and Spectrum Licence Fees for 24, 28 and 38 GHz Bands*, Notice No. DGRB-001-08, April 2008 noted, at page 4, in discussing these bands that:

Since the release of the [24/38 licensing] policy in May 1999, there has been a trend towards longer licence terms in a number of countries to provide greater investment certainty. For example, Guatemala, France and Australia provide 15-year terms. The United Kingdom provides 20-year terms for 3G licences and New Zealand provides 20-year terms for cellular spectrum rights. The United States has generally maintained 10-year terms. Longer and indefinite licence terms are generally viewed as providing a more stable investment climate for licensees recognizing the initial investment in spectrum licences and the need to establish networks and recover costs. (emphasis added)

35. Regarding the U.S., it is noteworthy that while the FCC generally maintains a 10-year licence term, for all intents and purposes, unlike Canada, U.S. licences continue to be automatically renewed at term without consultation or debate. The resultant degree of certainty and stability which this approach confers on the U.S. wireless industry is in marked contrast to the increased degree of uncertainty which recent Industry Canada pronouncements, regarding licence renewal have created in the Canadian wireless industry. Most significantly, the uncertainty being created in the Canadian wireless industry now coincides with a period in history when licensees are dealing with business uncertainty on an unprecedented scale as a result of the global economic climate.

36. In this regard, Industry Canada itself, at page 7 of its Auction Framework Consultation, acknowledges the importance of "long-term certainty" and stability in the market when it notes that:

The Department recognizes the significant investments made by licensees to establish networks and the importance of long-term certainty that the industry requires to provide a stable investment climate.

37. Consequently, Bell Mobility does not believe that a 10-year licence term is sufficient given the development of the Canadian wireless market. Bell Mobility submits, for the reasons discussed in these comments, that it is now timely for the Department to seriously consider,

assuming ongoing substantial compliance by licensees with conditions of licence, the use of indefinite licence terms for wireless service providers operating as licensed Canadian radiocommunication carriers. Bell Mobility notes that such a move would be consistent with the actions of other regulators who have either moved to 15 and 20 year licence terms, and who are considering the movement toward indefinite terms. In this regard, Bell Mobility further notes that, even with indefinite licence terms, the authority granted the Minister under the *Radiocommunication Act*, including Section 5(1), provides the Department with the ability to amend or withdraw a licence in the unlikely event of a serious non-compliance issue arising or in the event of a national policy requirement.

38. In its Auction Framework Consultation Industry Canada states at page 2, regarding Spectrum Management in Canada, that:

Decades ago, at the inception of wireless communications, the practical necessities of managing interference led governments to rely heavily on a command and control method of spectrum management. Times have changed since then and governments have been moving away from a heavy-handed regulatory approach to one that provides more flexibility and a greater reliance on market forces. Industry Canada has also been making this shift. Spectrum licences are issued on a technology-neutral basis to the extent practical in order to allow licensees to adjust their systems to meet their needs. In the mid-1990s, spectrum auctions were introduced; a significant step in the direction of greater reliance on market forces in the assignment of licences. Similarly, the decision to allow the use of secondary markets for licences obtained in an auction licensing process recognized the benefits of allowing for adjustments in the market. Since that time, Industry Canada has continued to migrate toward a spectrum management regime that is less characterized by command and control regulation and is more reliant on market forces to achieve the greatest economic and social benefits from the usage of the spectrum resource.

39. Bell Mobility agrees with the Department's approach in this regard and believes that it is now time for Industry Canada to take the next logical step along the continuum of spectrum management development and move toward indefinite, or at the very least, 20-year licence terms with a permanent high expectation of renewal assuming compliance with conditions of licence.

40. Bell Mobility further notes in this regard that a study, commissioned by the Office of the Minister of Industry and recently posted to the Department's website, i.e. *Study of Market-based Exclusive Spectrum Rights*, 31 August 2007, (the Cave Study) supports this view in its findings.

The study, authored by McLean Foster & Co. in collaboration with noted spectrum management specialists Prof. Martin Cave, Robert W. Jones and Dr. William Lehr, states at page 7:

We have considered both very long-term licences, which safeguard investment in assets over a term of 30-40 years, and long-term licences for, say, 15-20 years, which give the regulator the opportunity to recover spectrum at intervals when it is desirable to do so.

On balance, very long-term arrangements are more favourable on the grounds that they give better investment incentives and involve a clearer definition of licensee's rights. ...

41. Bell Mobility strongly supports the authors' conclusions regarding the favourability of very long-term licences. We vary slightly from the authors in that in our view, even in a circumstance where very long-term licences were issued, the Minister has more than sufficient legislative authority to recover spectrum in any circumstances which would warrant such an action in the national interest. Further, we note that recent experience in Canada regarding the recovery of portions of the 2.5 MHz band supports this view.

### **Licence Renewal Expectancy**

42. Regarding licence renewal, Bell Mobility notes that while the licence term in the harmonized licences, updated in November 2005, does read as noted in paragraph 30 above, the Company's review of the record of the Harmonization Consultation suggests that this licence term language varies, in wording as well as in intent, from that which was consulted on and adopted by the Department<sup>1</sup>, and as a result is in error.

43. In the Department's Harmonization Consultation and resultant decision, for example, Industry Canada proposed and adopted the following Licence Term wording:

#### 1. Licence Term

The term of this licence will expire on March 31, 2011. At the end of this term and any subsequent terms, licensees will have a high expectation of renewal for a 10-year term unless a breach of a licence condition has occurred, a fundamental reallocation of spectrum to a new service is required, or an overriding policy need arises. A public consultation regarding the renewal of the licence will begin no later than two years prior to the end of the licence term if the Department foresees the possibility that it will not renew this licence.

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<sup>1</sup> In *Spectrum Licensing Policy for Cellular and Incumbent Personal Communications Services (PCS)*, Notice No. DGRB-006-03, December 2003, page 6.

It should be noted that the licence is subject to relevant provisions in the *Radiocommunication Act* and the *Radiocommunication Regulations*. For example, the Minister continues to have the power to amend the terms and conditions of spectrum licences (paragraph 5(1)(b) of the *Radiocommunication Act*). Such powers would be exercised on an exceptional basis and only after full consultation (emphasis added)

44. Consequently, not only could licensees anticipate a high expectation of renewal at the end of the initial term, they could also reasonably anticipate a high expectation of renewal at the end of each and every subsequent term, assuming compliance with conditions of licence as well as the absence of a fundamental reallocation of spectrum to a new service or the absence of an overriding policy need.

45. Further, as noted above, this Consultation also addresses the renewal of Bell Mobility's 2001 PCS auction licences. In this regard, the Department's final *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range*, 28 June 2000 (the Final PCS Auction Policy), upon which Bell Mobility relied in its participation in that auction, adopted licence term wording virtually identical to that in paragraph 43 above.

46. In Bell Mobility's view the above licence term sends the appropriate signals of stability and certainty to both licensees as well as to the investment markets while at the same time not fettering the Minister's authority or ability to take the appropriate actions in exceptional circumstances.

47. Bell Mobility also believes that it is important that the specific operable licence term should be included in the actual licence issued by the Department. In Bell Mobility's respectful submission it is not sufficient to merely state the expectancy in the associated auction policy or consultation documents. In this regard, it is noteworthy that the SPF itself identifies, at section 4.4 (h), that "clearly defining the obligations and privileges conveyed in spectrum authorizations" as one of the SPF's Enabling Guidelines.

### ***Bell Mobility's Recommendation***

48. In consideration of all of the above, Bell Mobility recommends that the licence term, proposed in Appendix A to the Department's Consultation, be replaced with a licence term which conveys an indefinite licence term. Such a licence term would, of course, be conditional

on ongoing compliance with conditions of licence as well as on the absence of an overriding policy or spectrum management requirement which would require recovery of the spectrum.

49. If the Department elects not to move to indefinite licence terms at this time, Bell Mobility proposes that the following 20-year licence term condition be substituted for that proposed in Appendix A and that it apply to all renewed cellular and PCS licences:

#### 1. Licence Term

The term of this licence will expire on March 31, 2031.

At the end of this term and any subsequent terms, licensees will have a high expectation of renewal for a twenty-year term unless a breach of a licence condition has occurred, a fundamental reallocation of spectrum to a new service is required, or an overriding policy need arises. A public consultation regarding the renewal of the licence will begin no later than two years prior to the end of the licence term if the Department foresees the possibility that it will not renew this licence.

It should be noted that the licence is subject to relevant provisions in the *Radiocommunication Act* and the *Radiocommunication Regulations*. For example, the Minister continues to have the power to amend the terms and conditions of spectrum licences (paragraph 5(1)(b) of the *Radiocommunication Act*). Such powers would be exercised on an exceptional basis and only after full consultation.

50. Bell Mobility notes that adoption of the above wording, which is based on the Department's decision in its Harmonization Consultation, restores the intent of the licence term expectancy as it existed at that time and honours the Final Licensing Policy established by the Department for the 2001 PCS Auction.

### **3.2 Licence Transferability and Divisibility**

51. This condition notes that the licensee may apply, in writing, to transfer its licence in whole or in part (divisibility), in both the bandwidth and geographic dimensions. The Consultation states that Departmental approval is required for each proposed transfer of a licence, whether the transfer is in whole or in part. The transferee(s) must also provide an attestation and other supporting documentation demonstrating that it meets the eligibility criteria and all other conditions, technical or otherwise, of the licence.

52. The Consultation notes that the Department may define a minimum bandwidth and/or geographic dimension (such as the grid cell) for the proposed transfer and that systems involved in such a transfer shall conform to the technical requirements set forth in the applicable standard.

### ***Bell Mobility Comments***

53. Bell Mobility is supportive of this condition which, we note, was one of the enhanced spectrum rights associated with the introduction of spectrum auctions in Canada in the late 1990's. At the same time we note Industry Canada's comment at page 4 of the Consultation to the effect that, "Although these [transferability] options are available to cellular and PCS licensees, the Department notes that there has been limited activity to date in this regard." Bell Mobility also agrees with this view and notes that it reflects similar regulatory experience with the transferability right in both the FCC and Ofcom jurisdictions as well.

54. While Bell Mobility believes nonetheless that the transferability condition should be maintained we also consider that activity under this condition may increase if the Department allowed licensees to effect transfers without Departmental approval. A self-reporting regime could be established, for eligible licensees, along with the development of an appropriate database on the Department's website which could track and list current licensees and their spectrum holdings.

55. Indeed the Cave Study, noted above, cites, at page 6, as one of its key recommendations:

Tradable licences, where they apply, should become fully transferable (primary users may replace each other), and sub-leasing/sub-division should be possible. Ministerial approval for every trade should not be required and should be replaced by a self-certification process under which those involved in the trades self-certify that they have met all of the government requirements (which could be enumerated as a check list) (emphasis added)

### **3.3 Eligibility**

56. This condition indicates that a licensee operating as a radiocommunication carrier must comply on an ongoing basis with the eligibility criteria in section 10(2) of the *Radiocommunication Regulations*. The licensee must notify the Minister of any change that

would have a material effect on its eligibility. Such notification must be made in advance for any proposed transactions within its knowledge.

### ***Bell Mobility Comments***

57. Bell Mobility concurs with this condition of licence.

58. Bell Mobility also believes, as a related matter, that Industry Canada should streamline its foreign ownership review processes in certain cases. It is extremely wasteful, for both the Department and existing licensees, for the Department to conduct exhaustive ownership and control reviews on licensees who have been reviewed in the recent past. In such circumstances, and absent any valid Departmental reason to initiate a full review, Bell Mobility submits that licensees could attest to the fact that no material changes have occurred since the Department's most recent review.

### **3.4 Displacement of Incumbents**

59. This condition stipulates that the licensee must comply with the revised transition policy outlined in Appendix 2 of the *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range* issued on 28 June 2000, and the procedure for the relocation of incumbent microwave stations outlined in *Client Procedures Circular CPC-2-1-09, Displacement of Fixed Service Stations Operating in the 2 GHz Frequency Range to Accommodate Licensed Personal Communications Services (PCS)*.

### ***Bell Mobility Comments***

60. Bell Mobility supports this condition of licence and notes the Department's continued reliance on the 2001 PCS Auction Policy in this regard. As noted above, Bell Mobility agrees with this dependence and notes that, where still applicable or unless altered through public consultation, all aspects of the applicable licensing policy, including those related to renewal expectancy, should continue to remain in force.

### **3.5 Radio Station Installations**

61. This condition states that although site-specific radio licences are not required for each radio station, the licensee must ensure that each radio station is installed and operated in a

manner that complies with *Client Procedures Circular CPC-2-0-03, Radiocommunication and Broadcasting Antenna Systems*, as amended from time to time.

***Bell Mobility Comments***

62. Bell Mobility concurs with the proposed condition of licence.

**3.6 Provision of Technical Information**

63. The proposed condition states that when the Department requests technical information on a particular station or network, the information must be provided by the licensee according to the definitions, criteria, frequency, and timelines specified by the Department.

***Bell Mobility Comments***

64. Bell Mobility concurs with the proposed condition of licence.

**3.7 Compliance with Legislation, Regulation, and Other Obligations**

65. This proposed condition states that the licensee is subject to, and must comply with, the *Radiocommunication Act*, the *Radiocommunication Regulations* and the International Telecommunication Union's *Radio Regulations* pertaining to its licensed radio frequency bands. The licence is issued on condition that the certifications made in relation to this licence are all true and complete in every respect. The licensee must use the assigned spectrum in accordance with the *Canadian Table of Frequency Allocations* and the stated spectrum policy.

***Bell Mobility Comments***

66. Bell Mobility concurs with the proposed condition of licence.

**3.8 Technical Considerations**

67. This proposed condition stipulates that the licensee must comply on an ongoing basis with the technical aspects of the appropriate Radio Standards Specifications and Standard Radio System Plans, as amended from time to time.

### ***Bell Mobility Comments***

68. Bell Mobility concurs with the proposed condition of licence.

### **3.9 International and Domestic Coordination**

69. This proposed condition states that the licensee must comply with the current and future agreements established with other countries. Although frequency assignments are not subject to site licensing, the proposed condition states that the licensee may be required to furnish all necessary technical data for each relevant site.

70. In addition, the Consultation proposes that the licensee will use its best efforts to enter into mutually acceptable sharing agreements that will facilitate the reasonable and timely development of its respective systems, where applicable, and to coordinate with other licensed users in Canada and internationally where applicable.

### ***Bell Mobility Comments***

71. Bell Mobility concurs with the proposed condition of licence.

### **3.10 Lawful Interception**

72. This proposed condition stipulates that licensees operating as radiocommunication carriers and using this spectrum for circuit-switched voice telephony systems must, from the inception of service, provide for and maintain lawful interception capabilities as authorized by law. The requirements for lawful interception capabilities are provided in the *Solicitor General's Enforcement Standards for Lawful Interception of Telecommunications* (Rev. Nov. 95). These standards may be amended from time to time.

73. The proposed condition further notes that the licensee may request the Minister of Industry to forbear from enforcing certain assistance capability requirements for a limited period. The Minister, following consultation with Public Safety Canada, may exercise the power to forbear from enforcing a requirement or requirements where, in the opinion of the Minister, the requirement is not reasonably achievable. Requests for forbearance must include specific details and dates indicating when compliance to the requirement can be expected.

### ***Bell Mobility Comments***

74. Bell Mobility notes that historically this licence condition applied only to PCS licences. The proposed wording in the Consultation, however, would result in this licence condition applying to cellular as well as PCS licences. Bell Mobility believes that this may be the result of administrative error. As a result, while Bell Mobility agrees with the proposed licence condition applying to PCS licences, it should not apply to cellular licences. Bell Mobility notes that an appropriately worded footnote in the renewed licences, could draw this distinction. In addition, Bell Mobility believes that carriers should be compensated for any and all costs incurred in meeting this condition.

### **3.11 Research and Development**

75. This proposed condition states that the licensee must invest, as a minimum, 2 percent of its adjusted gross revenues resulting from its operations in this spectrum, averaged over the 10-year term of the licence, in eligible research and development activities related to telecommunications. Eligible research and development activities are those which meet the definition of scientific research and experimental development adopted in the *Income Tax Act*. Adjusted gross revenues are defined as total service revenues, less inter-carrier payments, bad debts, third party commissions, and provincial and goods and services taxes collected. Businesses with less than \$5 million in annual gross operating revenues are exempt from research and development expenditure requirements, except where they have affiliations with licensees that hold other licences with the research and development condition of licence and where the total annual gross revenues of the affiliated licensees are greater than \$5 million.

### ***Bell Mobility Comments***

76. Bell Mobility notes that in the concurrent Auction Framework Consultation the Department is seeking comments on the continued suitability of this condition. In the Auction Framework Consultation the Department states that:

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." The Department notes, however, that two recent reports, the *Telecommunications Policy Review Panel Final Report* and the *OECD Telecommunication Regulatory Institutional Structures and Responsibilities*, cautioned against the mix of regulation and industrial

development strategy. Other areas of Industry Canada are recognized as being well placed to further this policy objective.

77. Bell Mobility raised similar concerns in its comments in response to the pre-auction consultations leading to the 2001 PCS Auction. The concerns were raised again in our comments in response to the Department's Harmonization Consultation (2003) and the AWS Licensing Consultation (2007).

78. The Department estimates that the licence condition has generated \$1 billion in associated research and development investment since its introduction in the 1980's. Bell Mobility does not agree with its inclusion as a condition in the renewed licences but instead supports the Department's proposal, in its concurrent Auction Framework Consultation, to eliminate the condition entirely. While Bell Mobility believes that the condition should be discontinued effective immediately, at the very least it should not be included in the renewed licences resulting from this Consultation.

79. Bell Mobility notes that in the Harmonization Consultation it and other carriers identified that the cumulative effect of uncoordinated government fees, taxes and financial obligations related to licensing, originating from several distinct Federal departments and agencies, has placed a significant and onerous financial burden on all licensees. This burden is, however, particularly onerous in a time of significant economic downturn such as is currently being experienced in global economies including Canada. Reduction in this burden would, in our view, provide a significant positive economic stimulus by making such funds available for infrastructure investment. It would appear to Bell Mobility that the elimination of unnecessary financial burdens, such as the research and development licence condition, would be a particularly timely and beneficial move on Industry Canada's part.

### **3.12 Mandatory Antenna Tower and Site Sharing**

80. The proposed condition states that licensees operating as radiocommunication carriers must comply with the mandatory antenna tower and site sharing requirements set out in Client Procedures Circular CPC-2-0-17, *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*, as amended from time to time.

***Bell Mobility Comments***

81. Bell Mobility continues to believe that mandatory tower and site sharing is not appropriate in the highly competitive wireless industry.

**3.13 Mandatory Roaming**

82. The proposed condition states that the licensee must comply with the mandatory roaming requirements set out in Client Procedures Circular CPC-2-0-17, *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*, as amended from time to time.

***Bell Mobility Comments***

83. As with the previous condition, Bell Mobility continues to believe that mandatory roaming is not appropriate in the highly competitive wireless industry.

**3.14 Annual Reporting**

84. This condition stipulates that the licensee must submit an annual report for each year of the licence term, including the following information:

- a statement indicating continued compliance with all conditions of licence;
- an update on the implementation and spectrum usage within the area covered by the licence;
- existing audited financial statements with an accompanying auditor's report;
- a report of the research and development expenditures for licensees whose annual gross operating revenues exceed \$5 million (the Department reserves the right to request an audited statement of research and development expenditures with an accompanying auditor's report);
- supporting financial statements where licensees are claiming an exemption based on an annual gross revenue of less than \$5 million; and
- a copy of any existing corporate annual report for the licensee's fiscal year with respect to the authorization.

85. The condition further proposes that all reports and statements are to be certified by an officer of the company and submitted, in writing, within 120 days of the licensee's fiscal year-end, to the address below. Where a licensee holds multiple licences, the reports should be broken down by service area. Confidential information provided will be treated in accordance with section 20(1) of the *Access to Information Act*.

### ***Bell Mobility Comments***

86. Bell Mobility believes that the Annual Reporting process should be streamlined and we have a number of concerns with the proposed condition. First, a key objective of the Harmonization Consultation, as noted by the Department at page 7 – Proposed Framework – of that consultation was that, "This approach has the added benefit of reducing the administrative burden on licensees as well as the Department." In this regard, in 2003 the Department was in step with spectrum regulators in a number of other countries who were proactively reducing the administrative burden which governments placed on licensees and businesses in general. This still seems like the correct approach to Bell Mobility. The 2007 SPF is also mindful of the administrative burden placed on licensees by the Department. We note however that the general thrust of the proposed annual reporting requirement is to increase, not decrease, the administrative burden on Canadian licensees. In this regard, Bell Mobility notes the proposed new requirement that the annual reports now be certified by an officer of the company.

87. Bell Mobility also notes that Industry Canada is also proposing a new requirement, again increasing the administrative burden on licensees, which would require that:

Where a licensee holds multiple licences, the reports should be broken down by service area. Confidential information provided will be treated in accordance with section 20(1) of the *Access to Information Act*.

88. Bell Mobility notes that this would significantly increase the volume of work associated with the compilation of the annual reporting process and does not believe that such increased detail would serve any useful purpose. Bell Mobility therefore recommends that the Annual Report, as it does today, address the licensee's total operating area.

89. Regarding the research and development audited report, as noted above, Bell Mobility believes that the condition of licence itself is not appropriate and should be removed as is being proposed by the Department in the concurrent Auction Framework Consultation. Assuming that

the condition is removed, as a result of the Auction Framework Consultation, then of course, the requirement for an annual research and development filing, including the associated externally audited report, would also be removed.

90. Finally, regarding the annual reporting process, the Consultation notes that:

All reports and statements are to be certified by an officer of the company and submitted, in writing, within 120 days of the licensee's fiscal year-end, to the address below.

91. Bell Mobility notes that, with Departmental approval and in order to facilitate the filing process, for over a decade it has filed its annual report within 180 days, as opposed to 120 days, following the Company's fiscal year-end.

### **3.15 System Access Fees or Network and Licensing Charges**

92. This proposed condition of licence states that licensees are not required nor permitted to levy charges to their subscribers on behalf of Industry Canada. In particular, charges which appear to be for spectrum management purposes, such as system access fees or network and licensing charges, are not mandated by Industry Canada.

#### ***Bell Mobility Comments***

93. Bell Mobility concurs with the proposed condition of licence.

### **3.16 Amendments**

94. This proposed new condition of licence states that the Minister of Industry continues to have the power to amend the terms and conditions of spectrum licences (subsection 5(1) of the *Radiocommunication Act*).

#### ***Bell Mobility Comments***

95. Bell Mobility concurs with the proposed condition of licence.

### **3.17 Other Changes to Conditions of Licence Proposed by The Department**

96. In addition to the above conditions of licence, the Consultation proposes a number of other deletions from the current conditions of licence. These are addressed below.

### **3.18 Spectrum Aggregation Limit**

97. The Consultation proposes that in accordance with the 27 August 2004 decision by the Minister of Industry rescinding the mobile spectrum cap, that this condition of licence is no longer required.

#### ***Bell Mobility Comments***

98. Bell Mobility concurs with the proposed deletion.

### **3.19 Research and Development**

99. The Consultation notes that currently, a licence condition requires licensees to invest a percentage of their adjusted gross revenues on research and development and submit annual research and development statements demonstrating their level of investment. The Department is in the process of reviewing this condition of licence and, given that it applies to many licences other than cellular and PCS, discussions will take place in the upcoming Consultation on Revisions to the Framework for Spectrum Auctions in Canada. The research and development licence condition will remain in effect, subject to the decisions made in the aforementioned consultation.

#### ***Bell Mobility Comments***

100. Bell Mobility notes that it has extensively address this matter in section 3.11 above and refers the Department to those comments.

### **3.20 Resale and Roaming**

101. The Consultation notes that this condition of licence was originally established to assist in the development of PCS networks across Canada, following the initial deployment of cellular analogue networks. The Department notes that analogue cellular networks have been phased out across Canada and PCS networks are well established. As a result, Industry Canada

proposes to remove the existing conditions of licence relating to resale and roaming, as they have been superseded by the new conditions of licence for mandated roaming and antenna tower and site sharing.

***Bell Mobility Comments***

102. Bell Mobility concurs with the proposed deletion.

**3.21 Implementation of Spectrum Usage**

103. The Department's consultation discussed the issue of implementation of spectrum usage in the context of renewal of the cellular and PCS licences. In establishing the conditions of licence for the next licence term, the Department noted that auctioned PCS licences have an implementation of spectrum usage condition of licence whereas incumbent PCS and cellular licences had their implementation licence condition removed.

104. The Department notes that the cellular and PCS markets are now well established. Cellular and PCS licensees (both auction and non-auction) have deployed services and, as noted in the Consultation, 98% of the Canadian population is covered.

105. The Consultation proposes that there is, therefore, no longer a need for an implementation licence condition. As a result, Industry Canada is not proposing a condition of licence for implementation of spectrum usage on the new [and renewed] cellular and PCS licences.

***Bell Mobility Comments***

106. Bell Mobility concurs with the Department's proposal deletion.

**3.22 Licence Fees**

107. In section 5 of the Document the Department outlines its approach regarding the establishment of licence fees for the renewed cellular and PCS licences. The Document refers, at page 7, to the SPF which states that ". . . the Department's policy objective is to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource." Later, also on page 7, the Document states that:

As mentioned above, the SPF dictates that in managing spectrum, the Department must "earn a fair return for the Canadian public for the privilege of access to spectrum – a public resource." The challenge is to set fees that reflect the underlying market value while taking into account the wide variations in different markets and comparing prices paid for the spectrum in different auctions, which is further complicated by varying economic conditions, different auction bidding strategies and the overall demand for the spectrum at the time.

108. The Document considers, also at page 7, that:

In the context of setting of regulatory fees, this is done through the establishment of fees that estimate the value of the spectrum licences.

109. It is noted that the federal *User Fees Act*, came into effect in March 2004, with the aim of strengthening the elements of accountability, oversight and transparency in the management of user fee activities, and formally outlines certain additional requirements for the setting of new and amended fees.

110. The Consultation also states, again at page 7, that:

High mobility spectrum, such as cellular and PCS, is a very valuable resource and expectations suggest continuing growth and profitability in this sector.

111. Finally, in this regard, Industry Canada states that it is undertaking a formal study to assess the current market value of cellular and PCS spectrum. The Document states that the study will include, but not be limited to, an international fee comparison and a review of prices paid for similar spectrum in Canada. Once the study is complete, the Department will launch a separate consultation seeking comments on the proposed fee. The revised fee, it is proposed, will apply to the renewed licences following the end of their current term in 2011 as well as to any new cellular and PCS licences subsequently issued by the Department.

### ***Bell Mobility Comments***

112. At the outset, Bell Mobility notes that this item is of critical importance to all licensees. The issue, while it will be fully debated in a further consultation, is intricately intertwined with the present discussion regarding conditions of licence that will apply to the renewed cellular and PCS licences. Licensees are in the best position to advise the Department on the appropriate value of cellular and PCS spectrum and they should be involved in any process the Department elects to employ in arriving at that determination.

113. Further, as noted above, the proposed licence fee study will develop renewal fees that will apply to: (1) PCS licences obtained at auction; as well as (2) incumbent cellular and PCS licences not obtained through an auction licensing process. Regarding the auction licences, Bell Mobility notes that the Department's auction policies and related documentation have indicated, since the 1990's, that the determination of whether or not to even apply renewal fees, for auctioned licences, was itself an issue that would be addressed through a public consultation.

114. However without any input from licensees the Department now concludes, at page 7 of the Consultation, that "expectations suggest" continued growth and profitability in the wireless sector. This, coupled with the Department's accompanying conclusion to the effect that cellular and PCS spectrum is "a very valuable resource" strongly implies that the Department has pre-determined the outcome of its licence fee study.

115. Section 4(1)(c) of the *User Fees Act*, requires that a regulating authority must "conduct an impact assessment to identify relevant factors, and take into account its findings in a decision to fix or change the user fee". Section 4(3), *Comparison with other countries*, of the *User Fees Act*, requires that "if the amount of user fee being proposed by the Minister pursuant to subsection (2) is higher than that existing in a country with which a comparison referred to in paragraph (1)(f) is relevant, the Minister must as part of the proposal being made give reasons for the difference." In the absence of an impact assessment being conducted or any factual input that we are aware of, Bell Mobility believes that it is highly prejudicial for the Department to have arrived at the conclusions outlined in the preceding paragraph. Indeed the publically available information available to date, i.e. regarding 1 Q 2009 licensee operating results, suggests, to the contrary, that growth and profitability are in decline in the sector due to the current economic turmoil.

116. Consequently, Bell Mobility believes that the first question to be addressed is whether renewal fees should apply at all for any spectrum, and in particular for the 2001 PCS auction licences.

117. Bell Mobility notes, for example, that: (1) fees are not conducive to investment and in fact that funds used to pay fees are funds that are not available for infrastructure investments; (2) while government is actively and massively assisting a number of struggling industries,

118. The CWTA estimates, for example, that in 2008/2009 Canadian licence fees will amount to approximately \$130 million for the industry. Conversely, however, applying the FCC's cost-recovery model (i.e. \$0.18 per active wireless number) the CWTA estimates that Canadian carriers would pay less than \$4 million dollars in annual regulatory fees. Moreover, in addition to regulatory fees which are restricted to cost-recovery levels, comparable U.S. wireless licensees also benefit from the investment certainty and stability conferred on their industry as a result of automatic licence renewal. Given that the U.S. would be an obvious international comparator, Bell Mobility seriously questions whether the Minister could comply with section 3 of the *User Fees Act* which requires a comparison with other countries with whom such comparison is relevant.

119. Bell Mobility also disagrees with the Document's comments concerning the SPF and the interpretation that the policy objective, i.e. to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource, primarily or even remotely justifies establishing fees for spectrum. To the contrary, Bell Mobility believes that the intent of that statement is directed more 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. Indeed, an interpretation to the effect that spectrum user fees which are restricted to cost recovery levels, as is the case in other jurisdictions, would do more to increase and maximize the benefits that Canadians obtain from the spectrum resource by better facilitating use of the resource. In any event, Bell Mobility does not believe that Industry Canada is correct in pointing toward the SPF as a rationale for suggesting that spectrum licence fees must be increased to a cost plus or rent-seeking level.

120. The Document also states that, ". . . in the context of setting of regulatory fees, this is done through the establishment of fees that estimate the value of the spectrum licences." Bell Mobility strongly disagrees with this statement. Clearly, in other jurisdictions, such as the U.S.,

"regulatory fees" applicable to wireless licensees are certainly not established through an estimate of the value of the spectrum licences. To the contrary, the FCC's current approach, as the Department noted in its 24/38 GHz Renewal Consultation and as addressed above, is to restrict spectrum fees to a level sufficient to recover the FCC's cost of managing the associated spectrum. This is a fundamental reason why Canadian spectrum fees are approximately 36 times the level of comparable U.S. spectrum fees.

121. The Cave Study, commissioned by the Department and recently posted to its website, supported this contention when it noted at page 68 that:

. . . spectrum revenues have far exceeded the costs of the spectrum management program. For the six years from fiscal 1998/99 to 2006/07, program expenditures totalled some \$549.8 million while program revenues for 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.

122. Similarly, in this regard, a recent paper authored by Ian Munro, then of the Atlantic Institute for Market Studies (AIMS), notes at page 20 that:

More troubling is the proposal to impose a new licence fee for renewal, on top of the bid prices originally paid in the auction. So long as these licences are subject to the forces of supply and demand in the secondary market, the imposition of new fees will do nothing to improve allocative efficiency.

123. Mr. Munro's opinion is particularly instructive since he was a key member of the Industry Canada team that introduced spectrum auctions to Canada in the 1990's.

124. Bell Mobility notes that, when one takes into account the cumulative affect of annual licence fees as well as spectrum auction payments, Canadian licensees have paid billions of dollars to the Federal government in spectrum-related fees since the 1980's. This, moreover, is over and above the billions of dollars in infrastructure investments, taxes paid to all levels of government and payroll charges that are required to operate the business and provide productivity and security enhancing wireless services to Canada and its citizens. In light of the economic downturn, which the Finance Minister is now acknowledging as being more severe than originally anticipated, Bell Mobility believes that a "spectrum fee holiday" should be introduced immediately to assist wireless carriers to weather the current economic storm.

125. Alternatively, Bell Mobility recommends that Industry Canada adopt a cost-recovery regime for the purposes of setting licence fees going forward. Such a move would put Canadian licensees on an equal footing with their U.S. counterparts. In any event, Bell Mobility strongly recommends that Industry Canada include, at the outset, licensees in any and all activities aimed at determining the appropriate licensing fees to be applied to cellular and PCS spectrum in Canada.

#### **4.0 CONCLUSION**

126. Bell Mobility appreciates the opportunity to provide its comments on the Department's proposal to renew the cellular and PCS licences that expire in 2011 as well as to provide its views regarding the proposed licence conditions especially those concerning the related issues of licence term and renewal expectancy.

127. Finally, Bell Mobility believes that properly addressing the matter of licence fees is critical to the industry and the Company looks forward to collaborating with the Department in this regard.

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