



May 29, 2009

Peter Hill
Director
Industry Canada Spectrum Management Operations
300 Slater Street
Ottawa, Ontario
K1A 0C8

Subject: ***Gazette Notice DGRB-002-09 – Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences***

Dear Mr. Hill,

Lynx Mobility Inc. on behalf of itself, Naskapi Imuun and Omniglobe Networks is pleased to submit comments regarding ***Gazette Notice DGRB-002-09 – Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences.***

As a company committed to bringing wireless service to communities across Northern Canada, our ability to operate successfully is highly dependent on timely access to spectrum. We are therefore very grateful for the opportunity to share our views on this most important issue and trust that they will be given serious consideration to the benefit of northern Canadians.

Sincerely,

Jason Neale
President, Lynx Mobility
President and CEO, OmniGlobe Networks

Submission of
Lynx Mobility Inc.

regarding

Gazette Notice DGRB-002-09

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

May 29, 2009

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Introduction

1. Lynx Mobility Inc. on behalf of itself, Naskapi Imuun and Omniglobe Networks is pleased to submit comments regarding ***Gazette Notice DGRB-002-09 – Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences*** (“the Gazette Notice”).
2. Lynx Mobility, a partnership between Omniglobe Networks and Naskapi Imuun, is committed to bringing wireless service to remote communities across Northern Canada through a cost-effective and proven satellite-cellular integrated solution. We launched our full service in March of this year to several communities in the Kawawachikamach/Schefferville region, followed by the Kuujuarapik/Whapmagoostui region of Northern Quebec, with plans to expand our network to additional communities across Canada. As such, we have a direct interest in this proceeding and greatly appreciate the opportunity to provide our views on the issue of Cellular and PCS licence renewal.
3. Our experience thus far has shown us that there is great demand for wireless services among those who live in Canada’s remote north. We have noted a high level of frustration among local residents and community leaders regarding the lack of interest among incumbent carriers to expand their networks to northern regions. Not surprisingly, therefore, we have received a very enthusiastic welcome by the vast majority of communities that we have approached about our service.
4. In this submission, Lynx Mobility provides its views on how, within the context of licence renewal and through sound policy, the Department can expedite the introduction of wireless service to those Canadians still without access.

Spectrum Licences in the North are Severely Underutilized

5. We agree with the Department's assertion that the incumbents have succeeded in bringing quality wireless services to 98% of the population¹. We also agree that licence renewal is justified in areas where the current licensees already provide service and where they are in compliance with their conditions of licence, including the stipulation that requires them to provide access to at least 50% of the population of the licence service area.
6. We disagree, however, with the assertion that the licensees should be permitted to keep their licences in regions of the country where they have made clear by years of inaction that they have no intent to provide service.
7. Tens of licences are going completely unused in Canada's northern regions while hundreds of communities are without access to any wireless service. There is no justification for the Department to allow the spectrum to continue to languish in the hands of those who have shown little regard for these areas. By the time the current licences expire in 2011, cellular licensees will have had the opportunity to offer service in all parts of Canada for over a quarter of a century and national PCS licensees for over a decade and a half. It is safe to say that where they haven't yet built, especially in the more remote northern regions, it is unlikely that they ever will.
8. Ideally, licences should be reclaimed in every community where a licensee has failed to provide service. We understand the impractical nature of such a proposal and, therefore, we are **not** suggesting a community by community audit

¹ It should be noted that no single provider covers more than 94% of the population. See Rogers Corporate Fact Sheet for Q1 2009 http://www.rogers.com/cms/investor_relations/pdfs/2009_FactSheet_Q1.pdf

or the creation of new smaller licence areas beyond the 172 Tier 4 Service Areas for Competitive Licensing (“Tier 4 Areas”) established by the Department.² Rather, we are proposing the following:

Where an incumbent has failed to use a licensed spectrum block (i.e., any one of the two Cellular Blocks³ or 10 PCS Blocks⁴) in any one of the Tier 4 Areas, Industry Canada should reclaim the spectrum within that area and make it available to other parties on a First Come First Serve (FCFS) basis.

9. In other words, we propose that the Tier 4 area be carved out of the incumbent’s Tier 2 Regional or Tier 1 National Service Area licence for re-issuance to other parties.

10. To determine the extent to which licensed spectrum is going unused in Canada’s north, we performed an analysis of Industry Canada’s Assignment and Licensing System Database⁵ to examine spectrum usage in the 11 northern most Tier 4 Areas (excluding the Territories and Northern Quebec where there is ample spectrum available). As illustrated in Table 1, within the 11 areas there are 132 spectrum blocks - 11 areas x 12 spectrum blocks – all of which have been licensed.⁶ Of these, only 37, or 28%, are active.

² As defined in “Service Areas for Competitive Licensing” <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf05909.html>

³ The A Block is held by Rogers and the B Block is held by the ILECs within their respective wireline operating territories.

⁴ A, B1, B2, B3, C1, C2, C3, D1, E, F as per <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09431.html>

⁵ See <http://www.ic.gc.ca/eic/site/sd-sd.nsf/eng/Home>

⁶ From <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09431.html> and discussion with Industry Canada staff

Table 1: Licensed Spectrum in Northern Tier 4 Service Areas, May 2009

Service Areas	Tier 4	004	005	103	104	118	130	146	147	166	168	169		
	Corresponding Tier 2	01	01	09	09	10	11	12	12	13	13	13		
Spectrum Blocks	Cellular	A			x	x	x	x	x	x	x	x	x	
		B	x	x	x	x	x	x	x	x	x	x	x	
	PCS	A			x	x			x	x	x	x		
		B1									x			
		B2												
		B3												
		C1												
		C2												
		C3						x		x	x			
		D1												
		E					x						x	x
		F				x	x			x	x			

Legend: x Active Inactive

11. Thus, our findings show that almost three quarters of spectrum blocks licensed for use in Canada’s northern regions are lying dormant. While there are small pockets of wireless service in each of these Tier 4 service areas, the vast majority of the communities are still without service.

12. This clearly substantiates our claim that licensed spectrum in the north is severely underutilized by incumbents. Literally hundreds of communities cannot be economically covered by incumbent networks that are designed for higher-density regions. Prime spectrum is languishing in the hands of companies focused on the more profitable southern regions, at the expense of northern residents.

Other Mechanisms for Licensing Entrants Are Inadequate

13. In the face of all this, the Gazette Notice seems to take the view, at least preliminarily, that the failure of incumbents to introduce service in the north and other unserved areas need not pose a concern since there are other mechanisms available for others interested in taking up the slack.

“Although some rural areas of the country are still unserved by cellular and PCS, service is being provided in areas where licensees have determined that there is a viable and sustainable business case. Licensees continue to slowly expand their services to Canadians and there are mechanisms in place for others who are interested in obtaining spectrum in unserved and underserved areas.”⁷

14. The Gazette Notice identifies these mechanisms as **Secondary Markets** and **RP-019**. Neither of these, in our view, can ensure that those unserved to date will gain access to service in an efficient and fair manner.

Secondary Markets: Relegating Spectrum Management to the Incumbents

15. “Secondary markets” refers to the ability of incumbents to sub-lease through subordinate licensing or transfer outright their spectrum to other parties. The logic here is that, since spectrum is transferable, the market can be relied upon to determine the right conditions for service introduction even if the current licensee has no interest in serving a particular area.

16. With 72% of all licensed spectrum blocks in the north unused, it would be unwise to leave the fate of unserved areas in the hands of the same incumbents that have neglected to provide service in these areas until now, not due to any malice but because the region simply does not fit into their plans and priorities.

⁷ Gazette Notice, pg. 3

17. As it is, rural and remote service providers like Lynx Mobility are forced to negotiate with incumbents who are entirely preoccupied with the competitive landscape of Southern Canada. By relying on secondary markets, the Department is effectively relegating the task of spectrum management to incumbents who naturally do not have the rural/remote public interest in mind, leaving residents of the north stranded until such time as incumbents feel it is in their interests to deal.

18. But, some may argue, though service may be delayed because of it, still the Minister in his 2006 Policy Direction to the CRTC called for a greater reliance on market forces. Allowing secondary markets to determine when and how service is introduced in unserved areas is in line with the Minister's own stated preference.

19. We would suggest that the Government generally and Industry Canada in particular have time and again demonstrated their willingness to intervene in markets where it deems that market forces are not sufficient to achieve other overarching public policy objectives.

20. The Government, for its part, has made enhancement of the lives of rural, remote and First Nations communities a prime objective. In the November 2008 Throne Speech, First Nations figured prominently in the Government's agenda:

Our Government will also take steps to ensure that Aboriginal Canadians fully share in economic opportunities.

21. This commitment was actualized in the 2009 Budget, wherein the Finance Minister, in an effort to bridge the "gaps in access to broadband..., particularly in

rural and remote communities”⁸ unveiled the rural broadband initiative that will invest \$225 million in bringing Internet service to unserved communities.

22. The rural broadband initiative demonstrates two very important truths:

- The Government has, as a prime objective, the economic and social development of remote northern and aboriginal communities, including investment in telecom infrastructure in recognition of the vital role ICT has in the fabric of a fully functional society; and
- The Government does not expect market forces alone to achieve these objectives on its behalf.

23. If the Government is concerned about Broadband Access, it should also be concerned about access to wireless services. In fact, the January 2006 Telecommunications Policy Review Panel Report, arguably the blueprint for and impetus behind every major telecom policy initiative since its publication, equates the importance of wireless and broadband in terms of their key role in bringing economic and social benefits to Canadians:

“Unless it improves its performance in delivering **advanced broadband and wireless services**, Canada risks slipping behind other countries in providing the infrastructure to deliver the kinds of economic and social benefits needed to improve the productivity and competitiveness of the Canadian economy, improve the quality and efficiency of government and public services, and build a more inclusive society.”⁹ (Emphasis added)

24. Aside from all of the economic and life-standard enhancing potential that wireless shares with broadband, *wireless service will also save lives*. Countless deaths occur each year in the north in snowmobile and other accidents, deaths

⁸ Budget 2009, pg. 153

⁹ “Telecommunications Policy Review Panel Final Report”, pg. 1-13

that may have been prevented had a call for help been possible. The life-saving potential of wireless alone should be sufficient to spur the Department to take whatever measures necessary to facilitate speedy introduction of service in these areas. Surely, the lack of available spectrum should not pose an impediment when so much of it is going unused by the incumbents.

25. Industry Canada, for its part, has also shown its willingness to intervene in the market to achieve important objectives. In the 2008 AWS spectrum auction, the Department set aside spectrum for new entrants because:

“ensuring opportunities for new facilities-based entrants into telecommunications markets is ... an important policy issue.”¹⁰

26. The Department justified its decision thus:

The measures being taken are intended to ensure an opportunity for entry by addressing the potential to exploit spectrum as an entry barrier. The department is satisfied that the potential benefits of new entry warrant these measures. Conversely, the department is also satisfied that in the absence of these measures, there exists a potential that reliance on market forces alone may serve to unduly restrict market entry, which could reduce innovation to the detriment of the industry's advancement and, ultimately, to wireless users across Canada.¹¹ (Emphasis added)

27. Our proposal for spectrum reclamation where service has yet to be introduced more than two decades after wireless was launched in Canada is in precise line with the Department's objectives and justification for setting aside spectrum in the AWS auction. Like the set-aside, our proposal:

¹⁰ “Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range”, pg. 4

¹¹ Ibid.

- a. ensures opportunities for new facilities-based entrants into telecommunications markets; and
- b. addresses the potential for incumbents to exploit spectrum as an entry barrier.

28. From a strictly logical perspective, if the Department was prepared to act where there were already three providers in the market, surely it should do so where none yet exists.

29. In summary, freeing up languishing spectrum to facilitate the quick and efficient deployment of wireless services in unserved areas, as we are proposing, is consistent with both:

- the Government's agenda for enhancing the lives of northern and aboriginal Canadians; and
- the Department's own established policies and objectives.

RP-019 – A Policy in Need of an Overhaul

30. The second mechanism the Gazette Notice cites as an alternative for new entrants to obtain spectrum in unserved areas is RP-019. RP-019 as it is currently structured simply does not accommodate the needs of the residents of unserved communities or the market entrants who wish to serve them. In fact, the policy seems to be more concerned with the interests of the licensed incumbents than those of northern Canadians.

31. RP-019 was initiated in an era of station licensing (as opposed to the current spectrum licensing) where every channel at every cell site required a separate authorization. More importantly, at the time it was unrealistic for a new entrant

- to be capable of affordably offering service in a small market or group of small markets on a stand-alone basis without almost complete reliance on a national incumbent. In addition, the way the Department licensed spectrum at the time was to give notice that a licence was becoming available and to initiate a comparative review if more than one entity expressed interest. Finally, cellular licensing had been around for a dozen years while PCS was in its infancy.
32. RP-019 reflects all of the above. It requires a separate process for each community, in line with station licensing, it encourages franchisee arrangements with an incumbent and includes a notice period inviting competitive applications. Finally, it applies to cellular and not PCS.
33. The archaic elements of the process in our experience have caused unnecessary and costly delays. Lynx Mobility applied under RP-019 in August 2008 for licensing in three Labrador communities, and by the time we receive our licence, we expect that almost a full year will have elapsed. While this may have been an exceptional case, we estimate that the minimum elapsed time for an application is 6-8 months. By contrast, consider the process for licensing land mobile frequencies (in an area that may already have numerous land mobile providers), which we understand takes only 13 weeks. In light of the importance the Government has placed on the development of northern and remote communities, the difference is too stark to ignore and belies the priorities that the Government itself has established.
34. Thus, while RP-019 has the potential to result in a licence, the way is fraught with unnecessary risk and costly delays and runs counter to the interests of residents of these areas and ultimately counter to the Government's own objectives.

35. We would submit, therefore, that reclaiming unused spectrum and re-issuing it to bona fide new entrants on a first come first served basis is the best way to facilitate the introduction of wireless service in unserved areas in Canada's north.

The Alternative to Spectrum Reclamation – Redesign RP-019

36. From the foregoing, it is clear that our preference is for Industry Canada to reclaim spectrum unused in any complete Tier-4 area. However, should the Department for whatever reason decide that this is not its preferred course of action, we would suggest that Industry Canada consider making the following changes to RP-019 and thereby bring the licensing interval in line with other FCFS licensing processes such as land mobile.

37. As noted above, RP-019 is an archaic process sorely in need of updating. We identified four problem areas that lead to risk and delay; following are some suggestions for eliminating or at least mitigating these difficulties.

- a. **Wide area applications should be permitted.** The current process requires a separate application and thus a separate process for each community. Consistent with spectrum licensing, a new entrant should be permitted to apply for an entire Tier 4 area, should it choose to do so, instead of having to submit a Letter of Intent for each individual community. In this way, information requests between new entrant, incumbent and Industry Canada would be minimized, reducing unnecessary bureaucracy and shortening delays;
- b. **Prior negotiations with the incumbent should be eliminated in certain circumstances.** The current process requires prior (failed) discussions

between the incumbent and the entrant. Once it has been established that no deal is possible, the Department then clarifies with the incumbent whether it has imminent plans for the community or area. This two-stage query, where the entrant attempts to negotiate first and then the Department clarifies the incumbent's intention can cause delays of up to three months.

This is absolutely unnecessary, especially if, based on past discussions, it is known that the incumbent is not interested in working with a particular entrant. In such a case, the process should be permitted to move directly to the clarification stage.

c. **Timelines should be established and enforced for each stage including:**

- the interval from when the Letter of Intent is received by Industry Canada to when a letter is sent from the Department to the incumbent requesting clarification of its plans;
- The interval between the Department's letter requesting clarification and the incumbent's response.

d. **The notice period should be eliminated altogether or at least limited to the extent possible:** The current process requires 45 days notice in newspapers local to the community in question. The delay caused by this requirement can be upwards of double or more of the actual notice period itself since it involves the Department of Public Works which has its own set of procedures and timelines.

In our view, the notice is completely unnecessary. The Department should declare that forthwith, any applications received under RP-019 will be considered on an FCFS basis, obviating the need for any notice

whatsoever and eliminating close to three months or more from the process. Should the Department feel that some notice is required, it should be limited to the Canada Gazette, which is predictable, less costly and has minimal delays.

- e. **The RP-019 policy should be applied to PCS licences.** If RP-019 applies to cellular, so should the policy apply to PCS. As illustrated in Table 1, the vast majority of unused spectrum blocks are in the PCS spectrum range. There is no reason why PCS spectrum should be exempt. Blocks that were licensed by comparative review in the mid-1990s should come under RP-019 immediately while the policy should be applied to auctioned licences at the time of renewal.

38. With the above changes implemented, significant delay will be eliminated while many more options will be available to entrants who wish to use RP-019 to obtain spectrum in order to provide badly-needed service.

39. If the Department were to choose only one change to make to the process, we would suggest point “d” since it has the most potential to eliminate delays and risks while at the same time causing current licensees little or no harm.

Summary of Proposals

40. Residents of northern Canada need access to vital spectrum so that wireless services can be deployed in unserved areas in an efficient, fair and speedy manner. With renewal of licences in 2011, this is the perfect opportunity to review how spectrum is used in these areas and develop sound policies that ensure it is being put to its best use.

41. Our primary proposal to achieve this objective is the following:

Where an incumbent has failed to use a licensed spectrum block (i.e., any one of the two Cellular Blocks or 10 PCS Blocks) in any one of the Tier 4 Areas, Industry Canada should reclaim the spectrum within that area and make it available to other parties on an FCFS basis.

42. Failing this, we propose that at the very least the Department consider badly needed changes to RP-019 that will ensure that the licensing interval for applications made under the policy will approach that of other FCFS licences such as land mobile:

- a. **Wide area applications should be permitted;**
- b. **Prior negotiations with the incumbent should be eliminated where the answer is known based on previous negotiations;**
- c. **Timelines should be established and enforced for each stage;**
- d. **The notice period should be eliminated altogether or limited to the extent possible and RP-019 applications should be considered on an FCFS basis; and**
- e. **The RP-019 policy should be applied to PCS.**

43. Finally, if the Department should wish to select just the one change that would have the greatest impact time-wise and least harm to incumbents, then it should choose “d”, **eliminating or constraining the notice period**, which would serve to shorten the process by up to three months but would not affect the rights of incumbents who would be notified in any event by the applicant, Industry Canada or both.