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29 May 2009

by Email

Mr. Peter Hill
Director, Spectrum Management Operations
Industry Canada
300 Slater St.
Ottawa, ON K1A 0C8

Dear Mr. Hill:

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

1. Pursuant to Gazette Notice DGRB-002-09, *Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences*, Canada Gazette, Part I, 28 March 2009 (DGRB-002-09)¹, MTS Allstream hereby submits its comments.
2. In DGRB-002-09 Industry Canada (the Department) is soliciting comments from interested parties on its proposal to renew cellular and personal communications services (PCS) licences set to expire in 2011, as well as the licence conditions that would apply to new and renewed cellular and PCS licences. The Department notes in DGRB-002-09 that they will be launching a separate consultation seeking comments on a proposed renewal fee for the cellular and PCS licences. MTS Allstream will also be commenting on many of the issues relevant to the renewal of the cellular and PCS licences in response to DGRB-001-09, *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*² (DGRB-001-09).
3. While MTS Allstream is generally supportive of the Department's proposed approach to the renewal of PCS and Cellular licences, as outlined in DGRB-002-09, MTS Allstream submits the following recommendations:

¹ *Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences*, Canada Gazette, Part I, 28 March 2009, as amended by the 14 April 2009 extension letter from Michael D. Connelly, Director General, Radiocommunications and Broadcasting Regulatory Branch.

² *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*, Canada Gazette, Part 1, April 2009.

- a. The Department should amend the text of the proposed condition of licence to indicate that there will be a “high expectation of renewal” for cellular and PCS licences;
- b. Consistent with international standards, the length of the renewal term of the cellular and PCS licences should be extended to 20 years;
- c. The condition of licence requiring spectrum licensees to invest 2% of their adjusted revenues to Research and Development (R&D) expenditures (R&D Condition of Licence) should be removed; and
- d. Further consultation with licensees is required on the appropriateness of any proposed renewal fee associated with the PCS and Cellular licences.

Licence Renewal

4. In DGRB -002-09, the Department states that the Conditions of Licence for cellular and PCS spectrum licences “**will likely be renewed** for a ten-year term”³ (emphasis added).
5. This statement stands out in its departure from past conditions of licence and policy assertions of the Department on the expectation for renewal of spectrum licences.⁴ For example, the Department’s future framework for spectrum auctions states that licences will have a **high expectation of renewal** for an additional term.
6. Existing cellular and PCS licensees have made significant investment in the network infrastructure used to offer the mobile services delivered over this spectrum. This investment has been predicated on the expectation that there will be an opportunity to make a reasonable return on this investment over time and through the continued use of

³ DGRB-002-09, *Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences*, Section 4.1, page 5

⁴ See: *Framework for Spectrum Auctions in Canada – 1998*, Section 6.5; DGRB-003-99 / DGTP-005-99 - *Policy and Licensing Procedures for the Auction of the 24 and 38 GHz Frequency Bands*, Section 3.5; DGRB-005-00 / DGTP-007-00 — *Policy and Licensing Procedures for the Auction of the Additional PCS Spectrum in the 2 GHz Frequency Range*, Section 9.1; *Framework for Spectrum Auctions in Canada (Issue 2) – 2001*, Section 4.5; DGRB-006-03 - *Spectrum Licensing Policy for Cellular and Incumbent Personal Communications Services*, Section 4.1.1.1; DGRB-006-09 – *Licensing Framework to Auction Spectrum in the Bands 849-851 MHz and 894-896 MHz for Air-Ground Services*, Section 4.1; DGRB-001-09 – *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*, Section

the cellular and PCS spectrum. As investment is ongoing the timeframe would necessarily include a period that extends beyond the licence period. Therefore the licensee should have the assurance that comes with a licence condition that stipulates that there is a high expectation of renewal.

Licence Term

7. In DGRB-002-09, the Department is proposing to renew cellular and PCS licences for a ten-year term and is also seeking comment on the appropriate licence term for spectrum licences in general in the consultation initiated by DGRB-001-09.
8. MTS Allstream submits a 20 year term would be more appropriate than the 10-year term that is currently proposed. A 20-year term is not only consistent with international standards, but it also better reflects the amount of the embedded investment made by licensees in order to deploy the spectrum.
9. The Department itself has noted that internationally “[l]onger 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 cost.”⁵ This international trend for longer licence terms has led to the introduction of longer or indefinite licence terms in the United Kingdom, France, New Zealand Australia and Guatemala.⁶

Condition of Licence- R&D expenditure

10. The Department has proposed that the condition of licence requiring licensees to invest 2% of their adjusted gross revenues on R&D remain in effect subject to any decision made on this issue as a result of the upcoming consultation DGRB-001-09.
11. The R&D condition of licence was originally established to stimulate R&D in the telecommunications sector, with hopes of spurring innovation and encouraging competitive growth in the industry. The telecommunications industry is a “strong

⁵ DGRB-001-08 – *Consultation on the Renewal of 24 and 38 Ghz Spectrum Licences and Spectrum Licence Fees for 24, 28 and 38 Ghz Bands*, Section 4.1.

⁶ DGRB-001-08 – *Consultation on the Renewal of 24 and 38 Ghz Spectrum Licences and Spectrum Licence Fees for 24, 28 and 38 Ghz Bands*, Section 4.1.

performer in terms of R&D spending, with more than a billion dollars invested since the first licences were issued” and with many wireless carriers exceeding the required level of R&D.⁷

12. Competition spurs innovation and investment and given the competition that will result from the recent AWS auction, as well as the industry’s proven track record on R&D spending, MTS Allstream believes it is no longer necessary to include the R&D condition of licence. Further, the administrative burden of reporting R&D expenditures on an annual basis far exceeds the original purpose and intent of the condition and the condition of licence should be removed. In the alternative should the Department determines that a condition of licence mandated R&D expenditures by the licensee remains necessary, then MTS Allstream would agree with the Department’s proposed changes to the annual reporting of R&D expenditures.

Resale and Roaming

13. MTS Allstream is of the view that the condition of licence associated with resale and roaming in the current licence is reflected in, and therefore superseded by, the new conditions of licence for mandated in and out of territory roaming and antenna tower and site sharing.

Spectrum Fees

14. In DGRB-002-09, the Department suggests that fees shall be applied to the renewed PCS and Cellular spectrum licences and that this renewal fee will be based on the “market value” of the spectrum rather than, for example, cost-recovery. The Department has also indicated that it is undertaking a formal study to assess the current market value of cellular and PCS spectrum and that, following this study, it will launch a separate consultation seeking comments on a proposed fee.
15. As part of that consultation, MTS Allstream intends to provide comments on the appropriateness of imposing a renewal fee for cellular and PCS licences, as well as the

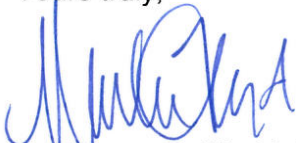
⁷ *Consultation on Revisions to the Framework for Spectrum Auctions in Canada, Canada Gazette, Part 1, April 2009, Section 6.1*

assumptions and methodologies used by the Department in its study that will be used to establish any proposed renewal fee.

Conclusion

16. The Department has itself recognized 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.⁸ In keeping with this, MTS Allstream submits the following recommendations for the renewal of cellular and PCS licences:
- a. The Department should amend the text of the proposed conditions of licence to indicate that there will be a “high expectation of renewal” for cellular and PCS licences;
 - b. Consistent with international standards, the length of the renewal term of the cellular and PCS licences should be extended to 20 years;
 - c. The condition of licence requiring spectrum licensees to invest 2% of their adjusted revenues to Research and Development (R&D) expenditures (R&D Condition of Licence) should be removed; and
 - d. Further consultation with licensees is required on the appropriateness of any proposed renewal fee associated with the PCS and Cellular licences.

Yours truly,



For Teresa Griffin-Muir
Vice President, Regulatory Affairs

c.c: Michael Connolly, Industry Canada

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⁸ Consultation on Revisions to the Framework for Spectrum Auctions in Canada, Canada Gazette, Part 1, April 2009, Section 5.