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May 29, 2009

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Sent via email: spectrum.operations@ic.gc.ca

**Re: Canada Gazette, Part I, March 28, 2009, Gazette Notice No. DGRB-002-09,
Consultation on the Renewal of Cellular and Personal Communications
Services (PCS) Spectrum Licences**

Rogers Communications Inc. (Rogers) appreciates the opportunity to provide comments on the above-noted consultation.

The documents are being sent in Adobe Acrobat Professional Version 8.0.
Operating System: Microsoft Windows XP.

Yours very truly,

A handwritten signature in black ink, appearing to be "Dawn Hunt", written over a white rectangular area.

Dawn Hunt
DH/jt

Attach.

**Comments of Rogers Communications Inc.
(Rogers)**

Canada Gazette Notice No. DGRB-002-09

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

Published in the Canada Gazette, Part I
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Introduction

1. The Department has issued a consultation paper titled **Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences – DGRB-002-09** (“the Consultation Paper”). In the Consultation Paper, the Department has invited comments on its proposal to renew cellular and PCS licences and regarding the licence conditions that will apply to new and renewed cellular and PCS licences.
2. Rogers Communications Inc. (“Rogers”) is pleased to provide the following comments regarding the important issues under consideration in the Consultation Paper.
3. The Department is well aware that Rogers has been part of the Canadian wireless industry from the outset and has invested billions of dollars in the development of its world-class mobile voice and broadband mobile data network, services and applications. As an agent of innovation, Rogers has made a substantial contribution to the development of the Canadian wireless market and we will continue to do our part in maintaining Canada’s position at the forefront of global wireless developments.
4. The current licence renewal proceeding provides the Department with an important opportunity to ensure that an industry leader such as Rogers will continue to have access to the spectrum it requires to navigate Canadians through the broadband mobile data revolution. It is also an ideal time to re-visit policy and licensing provisions that were developed in the context of a different stage in the history of the Canadian wireless industry and that are no longer relevant or necessary.
5. As outlined in greater detail below, Rogers fully supports the Department’s proposal to renew cellular and PCS licences. This action will promote the

continued orderly development of cellular and PCS networks and services in Canada. Rogers also believes that the Department should renew licences using a 15-year term, since this will provide licensees with greater certainty for corporate planning and funding purposes.

6. More than ever before, it is critical that the Department not impose a spectrum aggregation limit so that carriers such as Rogers will not be restricted in their ability to offer new bandwidth-intensive services and applications to the millions of Canadians they already serve and to the millions more that will be served in the coming years. It is also essential that Rogers continue to have access to additional mobile spectrum frequencies so that Rogers and its customers can continue to benefit from the global ecosystem for wireless network technology and consumer devices.
7. The time has come to remove the condition of licence regarding research and development, which no other country imposes on its licensed wireless carriers. The current proceeding also provides the Department with an opportunity to introduce a time limit on the conditions of licence for mandatory roaming and antenna tower and site sharing, so that new entrant licensees will have a strong incentive to invest in the expansion of their own wireless networks and consumers can fully benefit from facilities-based competition.
8. Lastly, but significantly, the Department should reverse the course that it has adopted regarding the level of cellular and PCS spectrum licence fees that licensees are required to pay. Considering the billions of dollars already paid by these licensees in the form of spectrum licence fees and spectrum auction payments, as well as the wireless industry's substantial contribution to the Canadian economy, it is clear that the Department is receiving more than a "fair return" for the use of the spectrum resource. The Department should limit spectrum licence fees to a level that will only recover the Department's administrative cost of managing the spectrum. This action would eliminate a

significant financial drag on the wireless industry and would result in more affordable services and greater investment in advanced wireless networks and services.

9. Following are Rogers' detailed comments regarding the issues outlined in the Consultation Paper.

The Department invites comments on its proposal to renew cellular and PCS licences.

10. Rogers fully supports the Department's proposal to renew cellular and PCS licences. Canadians in all regions currently have access to world-class mobile voice and broadband data services and cellular and PCS licences should be renewed so that this will continue to be the case.
11. Rogers agrees with the Department's assessment that "the cellular and PCS bands are well established", and that "The deployment of services in the cellular and PCS bands has been extremely successful".¹ The Department also rightly notes that "PCS and cellular services are in great demand" and that "wireless service is available to 98% of Canadians and covers 20% of the geography. This coverage is significant considering Canada's vast land mass, which covers just less than 10 million km²."²
12. This success story was no accident. Canadian wireless carriers together invested approximately \$20 billion in capital expenditures in the period between 1985 and 2005 and have only recently realized any economic profits from these substantial investments.³ The wireless market did not exist thirty years ago whereas today there are more than 21 million Canadians enjoying the economic and social benefits associated with wireless services.

¹ *Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences (DGRB-002-09)*, p. 4.

² *Ibid*, p. 4.

³ *A Study On the Wireless Environment in Canada*, Wall Communications, 2006, p.9.

13. For its part, Rogers invested about \$9.1 billion in capital expenditures in wireless services between 1987 and 2008. Significantly, Rogers has surpassed all of the coverage commitments it made in the comparative review processes for the licensing of cellular and PCS spectrum in 1985 and 1995, respectively.

14. As of December 31, 2008, Rogers had approximately 8 million wireless customers, which represented approximately 37% of the total Canadian wireless market. Rogers' GSM voice service is currently available to nearly 95% of the Canadian population. Rogers' next generation ("3.5G") wireless services using Universal Mobile Telephone System/High-Speed Packet Access ("UMTS/HSPA") technology are currently available to over 75.6% of the Canadian population and this coverage continues to expand. Rogers' 3.5G service provides our customers with a true broadband experience and download speeds of up to 7.2 Mbps.

15. Rogers' selection of GSM has provided our customers with access to a wide variety of the most advanced and affordable consumer handset devices, as well as the broadest worldwide roaming footprint. Rogers' advanced high-speed wireless data services include mobile access to the Internet, wireless e-mail, digital picture and video transmission, mobile video, music downloading, video calling and two-way short messaging service ("SMS").

16. It is important to note that the quantity of cellular and PCS spectrum licensed to Rogers has allowed Rogers to build and operate the most reliable wireless voice network in Canada, with the fewest dropped calls and the clearest reception. Our licensed spectrum has also proven to be crucial in providing Rogers with the ability to swiftly and gracefully transition from previous generation technologies to more advanced and efficient next generation technologies, while at the same time ensuring that there is minimal disruption

to the quality of service that we provide to our customers. It would not be possible for Rogers to maintain its high standard of service, to rapidly adopt next generation technologies, or to satisfy unprecedented levels of demand for bandwidth-intensive services and applications if Rogers was constrained by the Department's policies in the amount of licensed mobile spectrum that it is permitted to hold.

17. It is clear from Rogers' significant accomplishments and contribution to the development of world-class wireless services in Canada that the Department should renew Rogers' cellular and PCS licences.

18. Apart from noting the significant breadth of cellular and PCS service coverage in Canada, the Consultation Paper has also noted that some rural areas of the country are still unserved by cellular and PCS services. At the same time, the Department has correctly noted that "Licensees continue to slowly expand their services".⁴ Rogers agrees with this assessment and notes that it will continue to expand the breadth of its network where such expansion will be economically viable. Rogers, for example, recently publicly announced an investment of \$42 million in 48 new sites in Northern Alberta to enhance and expand its advanced 3G voice and data network.⁵

19. In the Consultation Paper, the Department states that there are existing mechanisms for other interested parties to obtain spectrum in unserved and underserved areas of the country. Specifically, the Department has referenced secondary markets, which includes the use of spectrum licence transfers and subordinate licensing agreements. Another available mechanism identified by the Department is the Policy for the Provision of Cellular Services by New Parties ("RP-019"), which enables parties to apply for authorization to provide cellular services in unserved and underserved

⁴ *DGRB-002-09*, p.4.

⁵ 'Rogers expands its most reliable wireless network in Alberta', March 2009

communities. The Department has suggested that future consultations may be issued to consider expanding RP-019.

20. For its part, Rogers has participated in good faith discussions with various parties from time to time, and we have entered into mutually beneficial arrangements that have resulted in the provision of wireless services using Rogers's licensed spectrum in communities that could not otherwise have been economically served.
21. Rogers agrees with the Department that a secondary market for spectrum exists in Canada. However, we do not believe that the Department should retain RP-019, much less expand it. Rogers' experience is that parties have abused this policy by attempting to simply warehouse spectrum rather than put the spectrum to efficient use. For example, on the basis of RP-019, parties have attempted to convince the Department to reclaim part of the cellular spectrum held by licensees such as Rogers, despite the fact that these parties do not have a viable business case for putting the spectrum to use. The abuse of RP-019 in this manner results in frivolous requests that consume the valuable resources of the Department and licensees such as Rogers, and it does not result in the provision of cellular services in unserved areas by new parties.
22. Instead of retaining this policy, the Department should rescind it and allow licensees to make voluntary arrangements with third parties by means of other mechanisms such as, for example, subordinate licensing. As noted above, Rogers has already entered into voluntary arrangements and we will continue to evaluate opportunities as they arise in order to expand coverage for our customers. Parties interested in serving unserved areas will also have the option of acquiring spectrum licences in the secondary market and by participating in spectrum auctions.

23. In any event, expanding RP-019 would not increase the viability of providing wireless services in unserved and underserved communities. For example, it is highly unlikely that expanding this policy to include PCS and/or AWS spectrum would improve the business case for serving such communities. It is doubtful that incorporating these bands in the policy will reduce the cost of building and operating wireless services in these areas.

24. Rogers firmly believes that it would be more effective for the Department to concentrate its efforts on the use of the \$225 million that was allocated in the 2009 Federal budget for the development and implementation of a strategy for extending broadband coverage to unserved communities.⁶ As noted above, Rogers' 3.5G mobile broadband data service provides a true broadband experience and speeds of up to 7.2 Mbps and it is based on standardized, future-proof technology. It is therefore ideally suited to address the broadband service needs of Canadians living in unserved communities. To be clear, the Department should implement a policy whereby these funds could be used by wireless licensees to transform non-viable expansion projects into viable opportunities, resulting in a win-win-win outcome for Canadians, the Department and wireless licensees.

The Department seeks comments on all licence conditions for renewed cellular and PCS licences.

Licence Term and Renewal

25. Rogers believes that the licence term for renewed cellular and PCS licences should be longer than the 10-year term proposed by the Department and that these licences should have a high expectation of renewal. This approach would provide licensees with a greater degree of certainty with respect to the

⁶ Department of Finance Canada, *Canada's Economic Action Plan – Budget 2009*, January 2009, p. 153.

ongoing viability of their operations, for corporate planning purposes and in order to secure additional funding for their substantial ongoing investments.

26. While it's true that the Department's use of a 10-year term is consistent with the licence term typically used by the US Federal Communications Commission ("FCC"), other jurisdictions use much longer terms. The UK's Office of Communications ("Ofcom"), for example, uses indefinite licence terms for 2G spectrum licences⁷ and 21-year terms for 3G spectrum licences.⁸ The Australian Communications and Media Agency ("ACMA") uses 25-year terms for 2G licences and 15-year terms for 3G licences.⁹ Rogers believes that a 15-year licence term for renewed cellular and PCS licences would be a reasonable first step in the direction of the much longer or indefinite licence terms that are used elsewhere in the world.

27. In Appendix A of the Consultation Paper, the Department has provided the proposed conditions of licence for the renewed cellular and PCS licences. Rogers notes that the Department has proposed in Section 1, Licence Term, to mirror the language that it used in the AWS conditions of licence. We also note that this appears to be a change to the renewal expectancy of cellular and PCS licences since it deviates from the language that is found in the existing cellular and PCS conditions of licence.

28. Specifically, we note that the existing conditions of licence provide that the licence "will likely be renewed" unless, among other things, a breach of licence has occurred. The proposed conditions of licence do not contain any language regarding the likelihood of renewal. We also note that, although the AWS conditions of licence do not contain any language regarding the likelihood of renewal, the Department has amended section 4.1 of the AWS

⁷ Ofcom, *Application of Spectrum Liberalisation and Trading to the Mobile Sector*, Feb 2009, Section 1.8.

⁸ Ibid, Section 9.6.

⁹ ACMA, *Five Year Spectrum Outlook: 2009-2013*, March 2009, p. 23.

Licensing Framework such that it states that “the AWS licences will have a high expectation of renewal”.¹⁰

29. Lastly, we note that the *Framework for Spectrum Auctions in Canada* (the *Auction Framework*) provides that spectrum licences issued via an auction will have a high expectation of renewal.¹¹ Moreover, the Department has recently proposed in a separate consultation that auctioned licences will continue to have a high expectation of renewal.¹²

30. For the reasons provided above, Rogers believes that it would be appropriate for the Department to clearly state in the conditions of licence for the renewed cellular and PCS licences that the cellular and PCS licences will have a high expectation of renewal.

Spectrum Aggregation Limit

31. We agree with the Department that, in accordance with the August 27, 2004 decision by the Minister of Industry rescinding the mobile spectrum cap, the spectrum aggregation limit condition of licence is no longer required.¹³

32. Rogers has played a significant role in driving broadband mobile data usage in Canada and we will need access to additional spectrum from time to time in order to support new services and applications, such as, for example, increasingly popular bandwidth-intensive applications. As noted above, Rogers’ 3.5G network covers more than 75% of the Canadian population and we have introduced a variety of popular smartphone consumer devices in Canada. Smartphones include revolutionary devices such as Research in

¹⁰ *Responses to Questions for Clarification in the AWS Policy and Licensing Frameworks*, February 2008, pp. 24-25.

¹¹ *Framework for Spectrum Auctions in Canada*, October 2001, Issue 2, p.7.

¹² *Consultation on Revisions to the Framework for Spectrum Auctions in Canada (DGRB-001-09)*, April 2009, p.7.

¹³ *DGRB-002-09*, p. 6.

Motion's 'Blackberry' and the Apple 'iPhone' which allow business and consumer users to increase their productivity by leveraging the benefits of broadband mobile services and applications while they are on the move. Rogers recently publicly disclosed that smartphone devices comprised 50% of its mobile device upgrades in the fourth quarter 2008¹⁴ and the first quarter 2009¹⁵ and we expect this trend to continue. Similarly, Rogers has observed a significant trend in customer demand for subscriptions of 3.5G lap-top modem sticks that support download speeds of 7.2 Mbps.

33. A recent study regarding mobile data trends noted that the popular iPhone smartphone device typically generates 30 times the mobile data traffic of a basic-feature mobile phone and that lap-tops equipped with a 3.5G modem will generate 450 times the traffic of a basic mobile phone.¹⁶ For these reasons, mobile data traffic is currently forecasted to double every year between 2009 and 2013.

34. Not surprisingly, these trends are having a profound effect on the volume of traffic that is carried on wireless networks and this is compelling carriers to consume more radio spectrum than ever before. This global phenomenon has been explained by a noted industry expert in the following terms:

The convergence of the Internet and mobile computing is accelerating the consumption of licensed spectrum. For example, watching a YouTube video on a mobile phone or wireless enabled laptop consumes almost one hundred times the data bandwidth of a mobile voice call. And whereas a mobile voice call typically consumes 6 – 12 kbps, enhanced high-speed mobile Internet access consumes up to 5 Mbps on today's deployed networks. Thus, within the next decade, licensing significant amounts of additional spectrum will be imperative if the United States

¹⁴ Rogers Fourth Quarter 2008 Financial and Operating Results, February 2009.

¹⁵ Rogers First Quarter 2009 Financial and Operating Results, April 2009.

¹⁶ *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update*, January 29, 2009.
http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf

wants its mobile operators to continue expanding and upgrading the country's wireless broadband networks.¹⁷

35. Likewise, if Canada is to fully benefit from the broadband mobile data revolution, incumbent licensees such as Rogers will continue to need access to additional mobile spectrum so that they may continue to support bandwidth-intensive applications for an increasing number of Canadians, while maintaining the reliability of their network. It is imperative therefore that the Department uphold its decision to eliminate the mobile spectrum cap. Rogers must be permitted to freely participate in the licensing process for upcoming releases of additional spectrum.

Research and Development

36. Rogers opposes the research and development ("R&D") condition of licence. As the Department has noted elsewhere, "Initially, this condition of licence was established to stimulate R&D in the telecommunications sector" and more than a billion dollars has been invested in R&D since the first licences were issued by the Department in the mid-1980's.¹⁸ This condition therefore has served its purpose and should be eliminated.

37. Rogers agrees with the Telecommunications Policy Review Panel Final Report and the OECD Telecommunications Regulatory Institutional Structures and Responsibilities report that cautioned against the mix of regulation and industrial development strategy.¹⁹ The Department has other alternatives for encouraging R&D in Canada. We would also note that the US, UK and Australia do not impose an R&D condition of licence and Rogers is not aware of any other jurisdiction that imposes such a condition of licence. In any event, market forces will ensure that wireless equipment

¹⁷ *Mobile Broadband Spectrum Demand*, Rysavy Research, December 2008, p.3.

¹⁸ *Consultation on Revisions to the Framework for Spectrum Auctions in Canada (DGRB-001-09)*, p.9.

¹⁹ *Ibid*, p.10.

manufacturers and licensees will continue to invest heavily in R&D to enhance their competitive position.

Lawful Interception

38. The Department has proposed that the existing condition of licence regarding lawful interception will apply to the renewed cellular and PCS spectrum licences.²⁰

39. With respect to lawful interception, it is important to note that cellular and PCS licensees, such as Rogers, have a long history of cooperation with law enforcement and security agencies, subject to appropriate legal process and judicial oversight. Moreover, Rogers' significant investment in technology, resources and expertise that are required to support lawful interception activities is a substantial benefit that accrues directly to the Canadian public.

40. Notwithstanding the above, Rogers has the following two concerns with the proposed condition of licence.

41. First, Rogers believes that any lawful interception obligations imposed as a condition of licence should be limited to circumstances where commercially available standards-based network technology is available. Where such technology is not available, the implementation by licensees of non-standards-based solutions should be funded by the Federal government. This approach would be entirely appropriate given the substantial benefit accruing to the Canadian public.

42. Second, Rogers believes that it would not be appropriate for the Department to apply this condition of licence to cellular spectrum since the condition has

²⁰ *DGRB-002-09*, p.10.

historically applied only to PCS spectrum and the Department has not provided any justification for amending this approach.

43. Rogers notes in this regard that, in December 2002, the Department released a consultation paper in which it proposed a new licensing regime for cellular and PCS spectrum. The Department noted at the time that the lawful interception condition of licence applied only to PCS licences.²¹ Although one objective of that consultation was to harmonize cellular and PCS licences and conditions of licence, the Department recognized that some variations between the revised cellular and PCS conditions of licence would be necessary “given the legacy requirements of cellular and incumbent PCS licensees”.²² One such difference proposed by the Department was that the lawful interception condition would apply to PCS licences, but not to cellular licences.²³

44. In December 2003, the Department issued its final policy with respect to the spectrum licensing issues under consideration in the 2002 consultation paper. In the final policy, the Department adopted, among other things, its earlier proposal that the lawful interception condition of licence would only apply to PCS licences.²⁴ The resulting conditions of licence, dated November 1, 2005, contain a footnote in Section 11 which clearly states that the lawful interception condition of licence is “Applicable to PCS spectrum only”.²⁵

45. Paradoxically, this footnote was missing from a letter, dated November 8, 2005, which included sample conditions of licence, and was issued by the

²¹ *Consultation on a New Fee and Licensing Regime for Cellular and Incumbent Personal Communications (PCS) Licensees (DGRB-004-02)*, December 2002, p.12.

²² *Ibid*, p.13.

²³ *Ibid*, p.19.

²⁴ *Spectrum Licensing Policy for Cellular and Incumbent Personal Communications Services (PCS) (DGRB-006-03)*, December 2003, p.10.

²⁵ See [http://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/LicenceConditionsPCS-eng.pdf/\\$FILE/LicenceConditionsPCS-eng.pdf](http://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/LicenceConditionsPCS-eng.pdf/$FILE/LicenceConditionsPCS-eng.pdf)

Department to cellular and non-auctioned PCS licensees.²⁶ Rogers notes that the footnote was included in a letter that was issued by the Department, dated June 1, 2007, with respect to Rogers' auctioned PCS spectrum licences.²⁷ The footnote does not appear in most of the hard copy cellular and PCS licences that were issued by the Department in the 2005 timeframe, although the licences associated with one of Rogers' licensed PCS blocks clearly limit the application of the lawful interception condition to PCS spectrum. Rogers believes that the omission of the footnote from its other cellular and PCS licences is simply the result of a clerical oversight, since this omission is not consistent with the final policy issued in December 2003.

46. It is clear from the information provided above that the lawful interception condition of licence has always applied only to PCS spectrum and this provision was deliberately maintained by the Department in the final policy that it issued after the consultation process that was conducted in 2002. Rogers believes that the Department should uphold its previous decision and existing policy in this regard and add the footnote to the renewed cellular and PCS licence condition such that the application of the lawful interception condition will be limited to PCS spectrum.

Resale and Roaming

47. Rogers agrees that the existing conditions of licence regarding resale and roaming should be removed. The resale condition is not consistent with the Department's stated objective of encouraging facilities-based competition.²⁸ The analogue roaming condition is no longer relevant since, as the Department notes, analogue cellular networks have been phased out.

²⁶ See [http://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/letter%20to%20PCS%20incumbents.pdf/\\$FILE/letter%20to%20PCS%20incumbents.pdf](http://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/letter%20to%20PCS%20incumbents.pdf/$FILE/letter%20to%20PCS%20incumbents.pdf)

²⁷ See [http://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/Letters-to-PCS-rogers.pdf/\\$FILE/Letters-to-PCS-rogers.pdf](http://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/Letters-to-PCS-rogers.pdf/$FILE/Letters-to-PCS-rogers.pdf)

²⁸ *Responses to Questions for Clarification on the AWS Policy and Licensing Frameworks*, February 2008, Section 2.1.

48. Rogers does not support the conditions of licence for mandated roaming and antenna tower and site sharing and we believe that these conditions should be clarified. Under the current conditions of licence, roaming must be provided to “all cellular, PCS and AWS licensees outside their licensed area, for at least the 10-year term of the AWS licences” and to “national new entrants who have substantially met the five-year roll-out requirements outlined on their licence...for an additional five years” (Emphasis added).
49. Rogers believes that these timeframes are too vague to provide new entrants with an incentive to invest in their own facilities so that Canadians will fully benefit from facilities-based competition. Rogers recommends that the Department should clearly state in the conditions of licence that roaming must be provided to licensees outside their licensed areas, and to qualifying national new entrants within their licensed areas, for a period of no longer than 10 years.
50. Rogers believes that this course of action would be entirely consistent with the objectives of the Department when it first imposed these conditions of licence. For instance, the Department clearly stated at that time that “The policy intent is to enable market entry while new entrants are building out their networks” (Emphasis added).²⁹ By definition therefore, mandatory roaming serves a temporary objective and the condition of licence should be clarified to more accurately reflect the transitory nature of that objective.

Implementation of Spectrum Usage

51. Rogers agrees that, in light of the ubiquitous rollout of wireless services in Canada, there is no longer a need for the condition of licence regarding the implementation of spectrum usage for cellular and PCS licences. As noted

²⁹ Ibid, Section 2.4.

above, the Department has found that “the cellular and PCS markets are now well established” and that 98% of the Canadian population is covered.

52. Since the Spectrum Policy Framework directs the Department to rely on market forces to the maximum extent feasible, the Department should allow market forces to determine the extent to which cellular and PCS licensees will continue to roll out their services and the timeframes in which they will do so.³⁰

Licence Fees

53. In section 5 of the Consultation Paper, the Department indicates that it is currently reviewing the market value of cellular and PCS spectrum with a view to applying a revised spectrum licence fee following a separate consultation.

54. The scope and objective of the department's review is summarized as follows:

Industry Canada is undertaking a formal study to assess the current market value of cellular and PCS spectrum. 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. Once a decision has been made, the revised fee will apply to the renewed licences following the end of their current term.³¹

55. The Department explains that the basis for its review of the market value of this spectrum is the policy objective that is found in the renewed 2007 *Spectrum Policy Framework for Canada* (“SPF”). The Department elaborates on this objective as follows:

The 2007 *Spectrum Policy Framework for Canada* (SPF) states that the Department's policy objective is to maximize the economic and social benefits

³⁰ *Spectrum Policy Framework for Canada*, June 2007, p.9.

³¹ *DGRB-002-09*, p. 6.

that Canadians derive from the use of the radio frequency spectrum resource. Market forces are relied upon to the maximum extent feasible to promote the efficient assignment of spectrum and to earn a fair return for the Canadian public for the privilege of access to spectrum, which is a public resource. In the context of setting of regulatory fees, this is done through the establishment of fees that estimate the value of the spectrum licences.³²

56. The Department further justifies its intentions regarding a revised licence fee in the following terms:

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.”³³

57. Rogers has serious doubts regarding the Department’s interpretation of the SPF and we question the validity of the Department’s approach for revising cellular and PCS spectrum licence fees.

58. While the SPF clearly 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”³⁴, it is silent with respect to the supposed need for the Department to “earn a fair return for the Canadian public for the privilege of access to spectrum”. The idea of a “fair return” is simply not found in the SPF.

59. The SPF also makes no mention of spectrum licence fees, nor does it establish that the current market value of spectrum is a necessary consideration for the Department in setting the level of spectrum licence fees.

60. Instead, however, the SPF points to the wide-ranging benefits that Canadians derive from the use of the spectrum resource. The SPF states the following in this regard:

³² Ibid, p.7.

³³ Ibid, p.7.

³⁴ *Spectrum Policy Framework for Canada*, p.8.

The radio frequency spectrum is a unique resource from which all aspects of society benefit. It provides access for Canadians to a range of private, commercial, consumer, defence, national security, scientific and public safety applications.³⁵

61. The SPF also emphasizes that the general economic and social benefits which Canadians derive from the use of spectrum relate to factors such as job creation, revenues, investment and the increasing use of wireless services by Canadians. For example, the SPF states:

The wireless telecommunications sector plays an important role in the Canadian economy, accounting for 25,000 jobs, over \$9.5 billion in revenue, and a \$4.1 billion investment in infrastructure. In recent years, the number of wireless subscribers has increased at a compound annual growth rate exceeding 17% to reach 14.9 million while revenue has grown at a rate of 14% to reach \$9.5 billion.³⁶

62. Similarly, the SPF describes the economic and social benefits in the following terms:

By establishing the proper policy and regulatory environment, the government has enabled a very vibrant wireless sector that is growing at twice the rate of the Canadian economy and significantly contributing to Canadian jobs and prosperity.³⁷

63. The SPF also notes that new and innovative wireless technologies are in and of themselves socially and economically beneficial:

In light of the dynamic spectrum management environment and the challenges for government and industry in rolling out new and innovative radio technologies for the social and economic benefit of Canadians, the Department has taken the opportunity in this review to streamline the Framework.³⁸

(Emphasis added)

64. It is clear therefore that, in establishing the policy objective of maximizing the economic and social benefits that Canadians derive from the use of the spectrum resource, the SPF dictates that the Department's spectrum management policies should be geared to promoting the benefits outlined

³⁵ Ibid, p.1.

³⁶ Ibid, p.1.

³⁷ Ibid, p.1.

³⁸ Ibid, p.6.

above. The SPF does not directly or indirectly correlate this policy objective with the notion that the Department must extract “a fair return” from wireless licensees in the form of exorbitant spectrum licence fees.

65. Even the emphasis placed by the SPF on “a greater reliance on market forces” and on “market-based policies and regulation” does not provide any basis for the Department to assess “the current market value” of cellular and PCS spectrum and to revise the licence fee so that the Department will “earn a fair return”. Instead, the theme running through the SPF is that Industry Canada’s management of the spectrum resource is to be less intrusive and prescriptive and more flexible, such that market forces will determine how spectrum is used and managed.

66. For instance, the Department explains that it conducted a consultation to consider updating the SPF at a time when other countries were making changes to their spectrum management programs and were benefiting by:

moving from a prescriptive form of spectrum management to one that embraces flexibility and a greater reliance on market forces, particularly with respect to spectrum used for commercial purposes.³⁹

67. Significantly, during the same timeframe, the federal government took receipt of the 2006 Telecommunications Policy Review Panel (“TPRP”) report and, on December 14, 2006 the Governor in Council issued a policy direction to the Canadian Radio-television and Telecommunications Commission (“CRTC”) directing the CRTC to rely on market forces to the maximum extent feasible under the *Telecommunications Act*, and to regulate where there is still a need to do so in a manner that interferes with market forces to the minimum extent necessary. The impact of the TPRP report on the renewed SPF is highlighted by the Department where it states:

³⁹ Ibid, p.2.

In this context, the Department has taken the opportunity, within the existing legislative authorities, to combine over eighteen months of public consultation and industry discussion with these new broad policy orientations, to create an even more progressive and renewed *Spectrum Policy Framework for Canada*.⁴⁰

(Emphasis added)

68. The numerous references in the SPF to “market forces” and “market-based policies and regulation” are therefore to be understood in the context of this major shift in policy. This is corroborated by the fact that one of the many consequences of the policy direction was that the CRTC was ordered by the Governor in Council to more aggressively forbear from regulating retail local exchange services.⁴¹ The CRTC also conducted public proceedings that resulted in the simplification of the regulatory regime that applies to wholesale services and the elimination and simplification of the apparatus that is used to regulate a host of other telecommunications services.⁴² It is clear therefore that “a greater reliance on market forces” and “market-based policies and regulation” is to be understood as meaning lighter, less intrusive regulation and allowing market forces, not government regulations, to discipline market behavior.

69. This new approach is reflected in the section 4.4 of the SPF. There, the Department states:

In developing these revised guidelines, the Department recognizes, as do many other administrations, the importance of relying on market forces in spectrum management, to the maximum extent feasible. This includes aspects such as the removal of barriers to secondary markets for spectrum authorizations.⁴³

(Emphasis added)

70. “Enabling guidelines” were added to the SPF in order to reflect the Department’s new light-touch, more flexible, market-based approach to

⁴⁰ Ibid, p.iii.

⁴¹ Order Varying Telecom Decision CRTC 2006-15, *Forbearance from the regulation of retail local exchange services*, P.C. 2007-532, April 2007.

⁴² See Telecom Decision CRTC 2008-17 and Telecom Decision CRTC 2007-51.

⁴³ *Spectrum Policy Framework for Canada*, p.8.

managing the spectrum resource. The enabling guidelines that were added to the SPF include the following:

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

:

(h) Spectrum policy and management should support the efficient functioning of markets by:

- permitting the flexible use of spectrum to the extent possible;

:

- facilitating secondary markets for spectrum authorizations⁴⁴

71. It is evident therefore that the overall thrust of the SPF is that the Department will regulate in a less intrusive fashion and that it will grant increased flexibility to radio spectrum licensees. The SPF does not define any imperative for the Department to re-calibrate the level of spectrum licence fees that it collects.

72. It is true that the 2006 TPRP report includes in its numerous recommendations a recommendation that the Department apply “market-based pricing for non-auction licences”.⁴⁵ However, while other provisions of the TPRP report were explicitly incorporated in the SPF, this particular recommendation was not, and the Department cannot now point to the SPF as the basis for its proposed licence fee review.

73. In any event, Canadians have already received more than “a fair return” for the spectrum resource in the form of the substantial auction payments and licence fees paid by the licensees. For example, the Department recently extracted \$4.25 Billion from the wireless industry in the Advanced Wireless Services (“AWS”) auction, thanks in large part to auction rules that directly resulted in incumbent licensees paying artificially inflated prices for the spectrum they acquired. The Department also collected \$1.48 Billion when it

⁴⁴ Ibid, p.9.

⁴⁵ *Telecommunications Policy Review Panel Final Report*, 2006, p. 5-21.

conducted an auction for PCS spectrum during the high-flying, “Dot-Com” era. On top of these substantial payments are the annual spectrum licence fees paid by cellular and PCS licensees which currently total in the range of \$130 to \$140 Million per year. Rogers alone pays approximately \$50 Million per year in spectrum licence fees.

74. If the Department intends to determine what quantum will constitute a “fair return”, then it must also consider the wireless industry’s significant contribution to the Canadian economy in terms of employment, the billions of dollars of private investment made in cellular and PCS networks and services, and the resulting benefits that accrue to Canadian consumers and businesses in the form of convenience, productivity and competitiveness enabled through the availability of wireless services.

75. In addition, the Department must also accept that Canadians have benefited from the fact that cellular and PCS licensees have invested a minimum of 2% of their adjusted gross revenues in R&D and have been required to provide lawful intercept capabilities that result in significant public safety and national security benefits. All such benefits accrue to the Canadian public as a result of the use of the spectrum resource and must be taken into consideration by the Department.

76. The notion that Canadian carriers might pay fees that reflect the “market value” of spectrum or “a fair return” is even more outrageous when compared to the practice in the US. There, cellular and PCS licensees are merely required to pay a “Regulatory Fee” that is intended to recover no more than the cost of the US FCC’s regulatory activities on behalf of the wireless industry. This fee is re-calculated on an annual basis to reflect the expected level of the FCC’s costs and the forecasted number of wireless subscribers in

a given year.⁴⁶ To illustrate, the Regulatory Fee as of April, 2009 was set at \$0.17 per wireless unit (equivalent to a working wireless telephone number).⁴⁷ Rogers notes that the total amount that it would remit to the Department each year on the basis of the FCC's Regulatory Fee is a fraction of what it currently remits to the Department in spectrum licence fees.

77. If licence fees will be imposed for renewed licences, they should be set at a nominal level to only recover the Department's administrative costs, as is the case in the US. To do otherwise would place Canadian wireless carriers at a significant disadvantage relative to their peers in other jurisdictions. Further, it is important for the Department to understand that spectrum licence fees, like all costs, are passed on to consumers. Therefore, higher spectrum licence fees will raise the prices for wireless services in Canada, making Canada less competitive compared to our trading partners, which do not have these higher fees. To be clear, if the Department expects Canadian wireless prices to more closely resemble wireless prices in the US, then it should harmonize its cellular and PCS spectrum licence fees with the US FCC's Regulatory Fee. Lower spectrum licence fees will eliminate a significant financial drag on licensees and will result in more affordable services and greater investment in advanced wireless networks and services.

Conclusion

78. As explained above, the current licence renewal proceeding provides the Department with an important opportunity to ensure that cellular and PCS licensees will continue to have access to the spectrum they require to navigate Canada through the broadband mobile data revolution. It is also an

⁴⁶ Title 47 of the *Code of Federal Regulations*, Part 1 § 1.1163.

⁴⁷ *Federal Communications Commission Wireless Telecommunications Bureau Fee Filing Guide*, April 2009, Part C.

ideal time to re-visit policy and licensing provisions that are no longer relevant or necessary.

79. Rogers fully supports the Department's proposal to renew cellular and PCS licences. This action would promote the continued orderly development of cellular and PCS networks and services in Canada. The Department should renew licences using a 15-year term, since this will provide licensees with greater certainty for corporate planning and funding purposes.
80. The Department must not impose a spectrum aggregation limit. Carriers such as Rogers must not be restricted in their ability to offer new and innovative bandwidth-intensive services and applications.
81. The Department should remove the condition of licence regarding research and development. No other country imposes such a condition on its licensed wireless carriers. The Department should also introduce a time limit on the conditions of licence for mandatory roaming and antenna tower and site sharing, in order to more effectively promote facilities-based competition.
82. Lastly, the Department should reverse the course that it has adopted regarding the level of cellular and PCS spectrum licence fees that licensees are required to pay. The Department is receiving more than a "fair return" for the use of the spectrum resource. Spectrum licence fees should be limited to a level that is required to recover the Department's administrative cost of managing the spectrum.
83. Rogers appreciates this opportunity to share its views with the Department regarding these important issues.

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