

Canada Gazette Notice No. DGRB-002-09

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

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**Reply Comments
of**

Bell Mobility Inc.

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1.0 INTRODUCTION

1. Bell Mobility Inc. (Bell Mobility) is pleased to submit the following reply comments in response to Notice No. DGRB-002-09, *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).
2. Bell Mobility submitted comments in response to the Consultation on 29 May 2009 (the Comments).
3. In addition to Bell Mobility's Comments, Industry Canada's *Strategis* site also lists comments from the following parties: Canadian Independent Telephone Company Joint Task Force (CITC), Canadian Wireless Telecommunications Association (CWTA), First Networks Operations Inc. (First Networks), Lynx Mobility Inc. (Lynx), MTS Allstream Inc. (MTS), Mr. William T. Peterson (Mr. Peterson), Rogers Communications Inc. (Rogers), Saskatchewan Telecommunications (SaskTel), Corporation of the City of Thunder Bay (TBay Tel) and TELUS Communications Company (TELUS).
4. In the following reply comments, Bell Mobility will summarize the primary Consultation issues as addressed in the comments of interested parties. Bell Mobility will then address certain specific issues, raise in the comments of other parties, where deemed necessary. To facilitate the use of these reply comments Bell Mobility will caption its remarks with the Industry Canada or other party's specific issue being addressed.

2.0 RENEWAL OF CELLULAR AND PCS LICENCES

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

5. Bell Mobility's Comments supported the Department's proposal, based on the considerations discussed in the Consultation, to renew the existing cellular and PCS licences. Bell Mobility notes that the overwhelming majority of parties where also of this view.
6. Rogers for example states, at paragraph 10 of its comments, that it:

. . . 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.

7. TELUS for its part, states at page 2 of its comments, that:

TELUS agrees with the Department's intention to renew cellular and PCS licences where the licence is in compliance with the licence conditions by re-issuance or amendment.

8. Similarly, MTS, at paragraph 2, CWTA, at page 8, and SaskTel, at page 3, of their respective submissions uniformly supported the Department's proposal to renew the current cellular and PCS licences as being the appropriate course of action. Indeed, while there were comments suggesting a modification to the current licences in certain areas in the very far north, which are addressed below, Bell Mobility notes that no party expressed disagreement with the Department's general proposal to renew the existing cellular and PCS licences for an additional term.

9. Bell Mobility submits therefore that, based on the rationale outlined in the Department's Consultation as well as the comments received from interested parties, that the Department should renew the existing cellular and PCS licences with modifications to the applicable licence conditions as addressed below.

3.0 PROPOSED CHANGES TO LICENCE CONDITIONS AT RENEWAL

10. Bell Mobility's Comments provided its views on the licence conditions, proposed by Industry Canada in its Consultation, which would govern the renewed cellular and PCS licences. In the following reply comments Bell Mobility summarizes the positions taken by parties regarding the key licence conditions proposed in the Consultation.

3.1 Licence Term and Renewal

11. At paragraph 32, of its Comments, Bell Mobility noted that 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. Bell Mobility believes therefore that logic and timing dictates that this is a unique opportunity for the Department to appropriately revise these licence conditions which will apply for at least the next decade, in the Department's proposal. In the view of the majority of respondents, however, the licence term should be extended well beyond the 10-year term which the Department is proposing.

Licence Term

12. At paragraph 37, of its Comments, Bell Mobility stated that it did not believe that a 10-year licence term is sufficient given the development of the Canadian wireless market. Bell Mobility further submitted that, for the reasons discussed in its Comments, it is now timely for the Department to seriously consider the use of indefinite licence terms for wireless service providers operating as licensed Canadian radiocommunication carriers. Bell Mobility noted 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 actively considering the movement toward indefinite terms.

13. Significantly, Bell Mobility also stated that, even if indefinite or 20 year licence terms were applied, 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 or in the event of a national policy or spectrum management requirement arising.

14. Alternatively, if the Department was not prepared to issue indefinite term licences, Bell Mobility recommended that the Department move to a 20-year licence term for the cellular and PCS licences.

15. Bell Mobility notes that there is a striking consistency of opinion, regarding this issue, evident in the comments of other parties. It is noteworthy that increased business and investment certainty was the key rationale contributing to the consistence of this view.

16. TELUS, for example, points out the irrational nature of the 10-year term when it notes, at page 4 of its comments, that:

Most businesses in Canada do not operate under the threat of a ten year end to their ability to do business and reap returns from their investments.

17. As a result, at page 4, TELUS states that it:

. . . recommends that the cellular and PCS spectrum licences be renewed for a period of no less than 15 years and preferably for a period of 20 years.

. . .

Longer terms engender greater certainty and therefore greater willingness to invest for long term stability and success. This greater investment brings newer

services to market faster to meet the emerging requirements of Canadian consumers and businesses. . . . (Emphasis in original)

18. MTS, at paragraph 8 of its comments, submits that:

. . . 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.

19. SaskTel similarly notes in its comments, at page 4, that:

. . . spectrum regulators in other jurisdictions are issuing and renewing spectrum licences for 15 and 20 year terms. In the case of cellular and PCS bands which are well developed, with extensive deployments by operators, a longer licence term is warranted. SaskTel recommends that the Department consider a longer licence renewal term, such as 15 or 20 years. The longer term will allow the established operators greater certainty and more flexibility in long term planning for technology evolution and continued network expansion.

20. For its part, Rogers considers, at paragraph 25 of its comments, that it " . . .believes that the licence term for renewed cellular and PCS licences should be longer than the 10-year term proposed by the Department . . ."

21. The CWTA similarly noted, at page 3 of its comments, that:

The Department has proposed to renew cellular and PCS licences for a period of 10 years. . . . CWTA submits that in order to provide greater certainty to licensees, the Department should seriously consider issuing licences for longer terms.

Other jurisdictions have been moving towards longer licence terms. These longer terms help bolster operator and investor confidence and are intended to encourage investment. This confidence can result in increased use of and build out of the spectrum and promote innovation. The Department [itself] has recognized this international trend on a number of occasions.

22. Bell Mobility has long been of the view, as stated in its Comments, that it is no longer appropriate, given the financial and operational scale of the licensees not to mention a customer base numbering in the millions, to continue with 10-year licence terms. Wireless licensees are no longer nascent operations with a few hundred thousand customers. Today they are multi-billion dollar enterprises with millions of customers dependent on the services they provide. Bell Mobility agrees therefore that, due to its business needs and the continued requirement to

invest hundreds of millions of dollars annually in capital, the certainty of a longer licence term is required.

23. Interestingly in a separate, but contemporary, consultation dealing with renewal matters in another band, the Department itself acknowledged the notion when it stated:

At the time that the . . . policy was written, it was anticipated that 10-year terms were sufficient to provide licensees and investors the required certainty for long-term investment.

Since the release of the policy in . . . 1999, there has been a trend towards longer licence terms in a number of countries to provide greater investment certainty. . . . 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.¹

24. In the course of this Consultation, two related issues arose which Bell Mobility submits are relevant to the issue of longer term licences. The first issue relates to the United States Federal Communications Commission's (FCC) use of 10-year licence terms; and the second relates to the Minister's ability to revoke or amend a licence in the event of non-compliance or in the event of a national policy or spectrum management requirement arising where indefinite or 20-year terms are applied.

25. Regarding the situation in the United States, Bell Mobility understands that the FCC continues, for the most part, to apply 10-year licence terms. However, as noted in our Comments at paragraph 35, the spectrum management practice in that jurisdiction is to automatically renew the cellular and PCS licences at term. As noted by Bell Mobility, in its Comments, there is no consultation or debate regarding the renewal, the licences are automatically renewed at term. The degree of business and investment certainty which this practice confers on the U.S. licensees, as Bell Mobility noted in its Comments, is considerable and its effect on the U.S. industry should not be understated.

26. Regarding the second issue, i.e. the Minister's ability to revoke or amend a licence in the event of non-compliance or in the event of a national policy or spectrum management requirement arising where indefinite or 20-year terms are applied, Bell Mobility again notes a

¹ DGRB-001-08, *Consultation on the Renewal of 24 and 38 GHz Spectrum Licences and Spectrum Licence Fees for the 24, 28 and 38 GHz bands*, page 4.

striking consensus of opinion that the Minister's ability to revoke or modify licences is not fettered or diminished by the use of indefinite or very long term licences. This consensus of opinion is reflected in the comments of a number of respondents including Bell Mobility², CWTA³, SaskTel⁴ and TELUS⁵. The key conclusion, in the comments of each party that addressed the issue, was that even if indefinite or very long term licences were applied, the Minister still retains the authority to revoke or modify licences in the appropriate circumstances.

27. Bell Mobility submits therefore that, as the Department has acknowledged in its comments above, the business and investment certainty conferred by very long term licences is an international trend which only serves to enhance investment in the strategic national wireless infrastructure. Bell Mobility submits that there can be no more appropriate time, then with the renewal of the substantial cellular and PCS spectrum licences, to move in this strategic direction.

Renewal Expectancy

28. In its Comments Bell Mobility noted that the 2003 Harmonization Consultation consulted on and approved the following 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.

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)

29. When the licences were administratively updated in November 2005 however the licence term was inappropriately modified to read:

² At paragraph 37.

³ At page 4.

⁴ At section 4.1.

⁵ At pages 3 and 4.

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.

30. Now, in the Consultation, there is a further significant diminution of the renewal expectance with the proposed licence term reading as follows:

This licence is issued for a 10-year term. The process for issuing licences after this term and any issues relating to renewal will be determined by the Minister of Industry following a public consultation.

31. Bell Mobility strongly disagrees with the proposed licence term and does not believe that it is reasonable for the Department to expect that licensees will commit billions of dollars in capital investment given a complete lack of renewal expectancy whatsoever. Bell Mobility recommends instead that the Department revert to the wording and intent conveyed in the licence term consulted on by the Department in 2002 and subsequently adopted in its 2003 Harmonization Decision. While still not providing the automatic renewal that our counterparts in the U.S. enjoy, such action would be procedurally correct, in light of the Department's 2003 Harmonization Decision, and place Canada on a similar footing as other countries.

32. Again, there is a consensus of opinion, among responding licensees, that the Department should rectify this serious matter. In addressing this matter the CWTA stated, at pages 2 and 3 of its comments, for example that:

CWTA notes that despite the fact the policy for the cellular/PCS licences included a reference to a high expectation of renewal; the licences themselves did not include that provision [e.g.]:

At the end of this term, licences will likely be renewed for a ten-year term

In the *Consultation on Revisions to the Framework for Spectrum Auctions*, the Department has 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." Th[e] importance of this point cannot be understated. Wireless operators have billions of dollars invested in networks, and have plans for continued investments into the future. Furthermore, nearly two-thirds of Canadians subscribe to wireless service. In order to confidently invest in these networks, and to assure subscribers of a future service, licensees require certainty and predictability.

...

CWTA believes the statement "high expectation of renewal" is a very important indicator of certainty for licensees. Since, according to *Consultation on Revisions to the Framework for Spectrum Auctions* it is the Department's intent, CWTA requests the inclusion of "high expectation of renewal" in both the text of the renewal policy and the Conditions of Licence.

33. Bell Mobility⁶, MTS⁷, Rogers⁸, and TELUS⁹ all strongly recommend and believe that due process requires that the Department revert to the licence term consulted on and adopted in the Harmonization Consultation which term includes the high expectation of renewal for current and subsequent terms, assuming compliance with licence conditions as well as the absence of an overriding policy or spectrum management requirement. Further, consistent with Bell Mobility's view, a number of parties also expressed the view that it is important that the high expectation of renewal be shown on the actual spectrum licence, and not just referenced in related consultation and policy documents.

3.2 Research and Development (R&D)

34. In its Comments Bell Mobility noted that it supported the Department's proposal, in its concurrent Auction Framework Consultation¹⁰, to eliminate the R&D licence condition entirely. Further, Bell Mobility indicated that it did not agree with the inclusion of the R&D requirement as a condition in the renewed licences. Bell Mobility indicated its belief that the condition should be discontinued effective immediately; and that, at the very least, it should not be included in the renewed licences resulting from this Consultation.

35. Bell Mobility notes that there was considerable support for this view evident in the comments of other parties. Rogers¹¹, TELUS¹², CWTA¹³, MTS¹⁴, SaskTel¹⁵ and TBTel¹⁶ noted the Department's proposal in the Auction Framework Consultation to dispense with the

⁶ At paragraphs 49 and 50.

⁷ At paragraphs 4 to 6.

⁸ At paragraphs 27 to 30.

⁹ At page 5.

¹⁰ Gazette Notice DGRB-001-09, *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*, published in the *Canada Gazette*, Part 1, dated 11 April, 2009, section 6.1

¹¹ At paragraphs 36 and 37.

¹² At page 6.

¹³ At pages 4 and 5.

¹⁴ At paragraphs 10 to 12.

¹⁵ At section 4.3.

¹⁶ Throughout its submission.

condition and, as a result, all uniformly disagreed with its inclusion as a condition in the renewed cellular and PCS licences.

36. Bell Mobility and Rogers, in their comments, cited the Department's Auction Framework Consultation wherein Industry Canada stated that:

The Department notes . . . 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.

37. Bell Mobility submits that the above rationale is correct and, on its face, warrants the immediate elimination of the R&D condition from the existing licences not to mention the renewed cellular and PCS licences.

3.3 Mandatory Roaming & Site Sharing

38. In its Comments, at sections 3.12 and 3.13, Bell Mobility stated that it continued to believe that mandatory roaming and site sharing was not appropriate in the highly competitive wireless industry.

39. At paragraph 48 of its comments Rogers states that it too ". . . does not support the conditions of licence for mandated roaming and . . . site sharing . . ." Rogers also expresses the view that the licence conditions related to mandated roaming and site sharing should be clarified. In this regard, Rogers takes the position, with respect to the mandatory roaming requirement, that:

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 in original).

40. Rogers states that it considers that these timeframes are too vague to provide new entrants with an incentive to invest in their own facilities such that Canadians will fully benefit from facilities-based competition. Consequently, 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.

41. Bell Mobility fully supports Rogers' recommendation and requests that the mandatory licence condition be clarified to state that it must be provided, to eligible licensees, for a period of no longer than 10 years. Bell Mobility further agrees, with Rogers' contention at paragraph 50, that such course of action would be entirely consistent with the Department's objectives when it first imposed these conditions of licence, namely that:

The policy intent is to enable market entry while new entrants are building out their networks.¹⁷ (Emphasis in original)

3.4 Annual Reporting

42. Regarding the Annual Reporting process, Bell Mobility's Comments expressed concern with the increased administrative burden reflected in the proposed licence conditions. Bell Mobility noted, in this regard, that the Department's 2003 Harmonization Consultation was in step with spectrum regulators in other countries who were proactively reducing the administrative burden which governments placed on licensees and businesses in general. Bell Mobility's Comments further noted that the 2007 SPF also directs the Department to be mindful of the administrative burden it places on licensees. Unfortunately, in Bell Mobility's view, what we observe in the proposed licence conditions amounts to a significant increase in the administrative burden associated with the Annual Reporting requirements. Since this seems out-of-step with the Department's commitments to reduce, rather than increase, the administrative burden on licensees, we continue to recommend that the Department make the changes outlined in section 3.14 of our Comments.

3.5 Licence Fees

43. Bell Mobility's Comments noted 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 is, Bell Mobility's Comments noted, 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 global economic downturn, Bell Mobility recommended

¹⁷ *Responses to Questions for Clarification on the AWS Policy and Licensing Frameworks*, February 2008, Section 2.4.

that a "spectrum fee holiday" should be introduced immediately to assist wireless carriers to weather the current economic storm. This recommendation was made in light of the fact that spectrum licensing fees are among the highest user fees charged by the Federal Government and the fact that a fee holiday would free up funds enabling carriers to continue to invest in the sector while employing thousands of Canadians.

44. Bell Mobility's Comments also questioned the Document's interpretation of the SPF's policy objective, i.e. to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource. Contrary to the Department's interpretation, Bell Mobility stated that the policy objective does not either primarily or even remotely justify establishing fees for spectrum. Bell Mobility noted that, to the contrary, it considers 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 economy and users. Bell Mobility further stated that it 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.

45. As an alternative to a "spectrum fee holiday" Bell Mobility recommended that any renewal licence fees should be established on a cost recovery basis as is the case in the United States where, it was noted, spectrum management regulatory fees are a minute fraction of those which apply in Canada. Indeed Bell Mobility questioned, given that the United States is a logical and relevant comparator, for the purposes of the international comparison required under section 4(3) of the *User Fees Act*, whether the Department could actually comply with the requirements of that section.

46. Bell Mobility notes that all parties who commented on the matter were consistent in their view that the Department's interpretation of the 2007 SPF is faulty and cannot be used to infer that the Department is required, let alone directed, to identify the market value of spectrum in determining spectrum fees.

47. Rogers, for example, states at paragraph 57 that:

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.

48. Instead, Rogers notes at paragraph 60 that, ". . . the SPF points to the wide-ranging benefits that Canadians derive from the use of the spectrum resource."

49. The CWTA similarly noted, at pages 6 and 7, regarding the 2007 SPF that:

CWTA notes that the Department relies on the 2007 Spectrum Policy Framework for Canada (SPF) for the policy rationale and directive that "the Department must earn a fair return for the Canadian public for the privilege of access to spectrum". CWTA respectfully submits that the 2007 SPF does not contain that statement, or any mention of fees.

...

CWTA notes that there is a significant distinction between the market value of spectrum, and a fair return to the public. While the market value would represent the benefit accruing to the licensee for access to and use of the spectrum, the fair return to the public would also include the benefits accruing to the public from the availability of the services using the spectrum. The 2007 SPF 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. In CWTA's view, this means that the Department should thoroughly examine all public and private benefits associated with the licences.

50. TELUS states, at page 9, that:

TELUS . . . notes that the Spectrum Policy Framework (SPF) itself does not speak of ensuring, let alone maximizing, a return for the Canadian public. As stated in the SPF the "Framework is comprised of a Preamble, a Policy Objective (the Objective) and a set of Enabling Guidelines (the Guidelines)." A careful review of these three elements will find no reference to such a requirement. What is referenced is a requirement to "maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource."

51. As an alternative to its "spectrum fee holiday" recommendation, Bell Mobility proposed that the Department should move to a cost-recovery model to establish renewal fees going forward. Bell Mobility notes that a number of parties expressed a similar view in their comments. The CWTA, in a submission speaking on behalf of the entire industry, states at page 7 that:

The Department has clearly stated its intention to impose a fee that reflects "a fair return to the Canadian public". CWTA submits however, that a cost-recovery model is a legitimate option that the Department should consider and would provide a return to the Canadian public.

52. Whereas Rogers, at paragraph 77, submits that:

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.

53. The rationale for this recommendation from the industry, touched on in Rogers' comment above and elaborated on in Bell Mobility's Comments, is also important. The CWTA's comments also address this rationale, at page 7, when they state that:

A cost recovery approach would . . . be consistent with Federal Communications Commission (FCC) practices for comparable spectrum. The FCC recently released its assessment of the Regulatory Fees for fiscal year 2009 and will apply a rate of \$0.18 per active telephone number for CMRS Mobile Services. A fee of that amount in Canada would result in the collection of roughly [\$4 million from U.S. carriers] — a far cry from [the \$130 million the Department collects from Canadian carriers]. CWTA notes that one of the reasons cited for the direction of the AWS auction policy was that Canada's industry exhibited "higher prices, less innovation, lower uptake and lower rates of usage" than in the United States. If the Department believes that Canadian pricing should resemble pricing in the U.S., CWTA submits it would be reasonable to expect the Department to align spectrum licence fees with the cost-based fees.

54. Rogers reinforces this view, at paragraph 77 of its comments, when it states that:

. . . 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. (Emphasis added)

55. Bell Mobility, along with the vast majority of licensees, reiterates its call for the Department, in the absence of a "spectrum fee holiday", to indicate its intention to move to a cost-recovery regime for the establishment of renewal fees for the cellular and PCS licences. Bell Mobility submits that it is simply no longer appropriate, as stated in our Comments, that Canadian spectrum licence fees historically have been and are approximately 36 times the level of comparable U.S. spectrum fees.

56. Bell Mobility also stated its view that licensees should be involved, from the outset, in any process used to arrive at the determination of an appropriate renewal fee. Bell Mobility

believes that this would also be entirely consistent with the spirit of the *User Fees Act's* requirement for consultation with fee payers. Bell Mobility does not however support the proposal by TELUS, at page 9 of its comments, to use the Radio Advisory Board of Canada (RABC) as a forum to help define what is meant by a "fair return". Bell Mobility submits that the subject matter of such a process is beyond the technical orientation which is the RABC's functional area of expertise.

3.6 Service to Unserved and Underserved Areas

Remote Areas

57. The comments of Lynx Mobility (Lynx) and First Networks Operations Inc. (First Networks) address the issue of licence renewal in remote areas, including the far north, some of which are classified as unserved or underserved areas. Lynx and First Networks primary argument is that because the business case is untenable, incumbents have not deployed service to certain of these areas and therefore their PCS and 800 MHz spectrum licences in those areas should not be renewed. Instead, they propose, the spectrum should be made available on a first come, first served basis to entities, presumably such as Lynx and First Networks, who purport that they can utilize the spectrum.

58. First Networks contends, in this regard, that the existing wireless business model ". . . *does not and cannot* translate into bringing cellular service to the "unserved and underserved", "rural and remote" markets."(Emphasis in original)

59. In its Consultation the Department noted, in this regard, that:

The deployment of services in the cellular and PCS bands has been extremely successful. According to the CRTC's 2008 report to the government, wireless service is available to 98% of Canadians . . .

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.

60. In its Consultation the Department concludes, on the basis of service having been extended to 98% of Canadians, that the deployment of cellular and PCS has been successful. Bell Mobility agrees with the Department's conclusion and with the Department's proposal, as a

result, to renew the existing cellular and PCS licences having complied with licence conditions including deployment.

61. Bell Mobility is certainly not suggesting that 98% availability is sufficient. To the contrary, Bell Mobility's desire would be to achieve 100% availability. However, given the massive build out of wireless services in Canada over the past twenty-five years and the fact that, as the Department notes above, "licensees continue to slowly expand their services to Canadians" we submit that renewal of the existing cellular and PCS licences is appropriate in the circumstances. Indeed Canada is not alone in its continuing endeavour to achieve 100% availability. At a March 2009 U.S. CTIA – The Wireless Association forum entitled *Spectrum Dynamics in the 21st Century: The Link Between Sound Spectrum Policy and America's Place in the Global Economy*, various U.S. FCC and Commerce Department participants, who are responsible for spectrum management regulation in the United States, noted the continuing challenge of extending wireless networks into the "rural and remote areas" of that country.

62. Regarding First Networks contention that the existing wireless business model does not and cannot translate into bringing cellular service to the unserved and underserved, rural and remote markets, Bell Mobility submits that the Canadian experience demonstrates that this statement is a generalization which does not portray an accurate picture. For example, not all of the 98% of Canadians who are within reach of wireless networks live in highly-concentrated, urban areas. Many of these Canadians live in areas that are correctly classified as remote and rural. Similarly, one has to remember that in the very early days of the industry, outside of a few metropolitan cities, virtually all of Canada constituted unserved and underserved territory. Clearly this is no longer the case, as the Department notes above. Significant expansion of the wireless coverage area has and continues to be made throughout Canada. Progress has and is being made but clearly where one is talking about a very sparse population distributed over a vast geographical area, it will take more time. Bell Mobility notes however that it continues to monitor both alternate technological and business models to achieve 100% availability.

Other Mechanisms

63. As the Department further noted above there are mechanisms in place for parties who are interested in obtaining spectrum in unserved and underserved areas. The Department notes, in its Consultation, that these mechanisms include: (1) the use of secondary spectrum markets; and (2) the Department's *Policy for the Provision of Cellular Services by New Parties*,

RP-019 (RP-019 or the Policy), which enables entities to apply for authorization to provide cellular services in unserved and underserved communities. Regarding RP-019 the Department notes that:

This policy continues to provide an opportunity for those interested in deploying services, but have been unable to establish an agreement to do so with an existing licensee. Future consultations may be issued to consider expanding this policy. (Emphasis added)

64. Lynx and First Networks also address these mechanisms in their comments. Regarding secondary spectrum markets, the views of both of these parties can be summed up in the words of First Networks when it states that:

Although this type of arrangement would appear to offer a reasonable means of gaining access to unused spectrum, in practice it is difficult to work out mutually satisfactory commercial arrangements between two such entities.

65. Bell Mobility notes that its experience to date indicates that mutually beneficial commercial arrangements have been and, as this Consultation proceeds, are being negotiated in the secondary spectrum market, almost entirely in areas characterized as rural and remote, and we certainly see a role for this mechanism especially if, as recommended in our Comments, the Department facilitates the process by employing a self-reporting regime which does not require Ministerial approval for each and every transaction. Similarly, we note Rogers statement, at paragraph 20 of its comments, that:

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.

66. Contrary to the view of Lynx and First Networks, Bell Mobility submits that the record demonstrates that secondary spectrum markets work and, if anything, we would submit that the Department should facilitate such transactions by replacing Ministerial approval with a self-reporting regime again as recommended in our Comments.

67. Regarding RP-019, both Lynx and First Networks recommend significant and extensive changes to the Policy that would amount to a complete re-casting of that Policy. Bell Mobility submits that these comments are beyond the scope of this Consultation given that the Department has stated, as noted above, that a future consultation may be issued to consider

expanding this policy. To be clear, Bell Mobility is in agreement with Rogers and TELUS when they state that not only should RP-019 not be expanded but rather that it should be eliminated. In any event, Bell Mobility submits that the issue of RP-019 is not relevant to the question of the renewal of the cellular and PCS licences, was not identified by the Department as an area for comment in this Consultation and therefore is not within the scope of this Consultation. Bell Mobility would submit therefore that the comments of Lynx and First networks regarding the Policy should be dismissed by the Department for the purposes of this Consultation.

4.0 CONCLUSION

68. 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 which will apply to the renewed licences for at least the next decade or, in the recommendation of most respondents, considerably longer.

69. Finally, Bell Mobility continues to believe that the matter of renewal fees is critical to the industry and that it is both appropriate and in accordance with the spirit of the *User Fees Act* that licensees be closely involved with any activities initiated to arrive at a determination of those fees.

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