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June 30, 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 reply 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 background.

Dawn Hunt
DH/jt

Attach.

**Reply 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
March 28, 2009

June 30, 2009

Executive Summary

1. Rogers Communications Inc. (“Rogers”) is pleased to provide the following reply to the comments of other interested parties in response to the 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 notes that the following other parties have filed comments in response to the Consultation Paper:
 - a. Bell Mobility Inc. (“Bell”)
 - b. Canadian Independent Telephone Company Joint Task Force
 - c. Canadian Wireless Telecommunications Association (“CWTA”)
 - d. First Networks Operations Inc. (“First Networks”)
 - e. Lynx Mobility Inc. (“Lynx Mobility”)
 - f. MTS Allstream Inc.
 - g. Peterson, William T.
 - h. SaskTel
 - i. TBayTel
 - j. TELUS Communications Company (“TELUS”)
3. As outlined in greater detail below, the vast majority of parties fully support the Department’s proposal to renew cellular and PCS licences. These parties have also urged the Department to renew licences using longer licence terms than 10 years.
4. Most parties also agree that the condition of licence regarding research and development (“R&D”) is not appropriate and should be eliminated.

5. Like Rogers, some parties are opposed to mandatory roaming and antenna tower and site sharing in a highly competitive market such as the Canadian wireless market.
6. The majority of parties are firmly opposed to the notion that the Department will raise the level of cellular and PCS spectrum licence fees that licensees are required to pay. The Department should limit spectrum licence fees to a level that will only recover the Department's administrative cost of managing the spectrum.
7. Two parties do not agree with the Department's assessment of the successful rollout of cellular and PCS services in Canada. The position of these parties is seriously undermined by the fact that cellular and PCS licensees continue to expand their networks and enhance the services that they provide to Canadians. These parties are simply seeking to expropriate the spectrum held by cellular and PCS licensees at little or no cost to themselves.
8. Rogers stated its position on all of the important issues under consideration in its comments dated May 29, 2009. This reply is therefore limited to comments made by other parties. Rogers generally denies any assertions or arguments put forward in the comments of other parties which are inconsistent with the positions set out by Rogers. Failure by Rogers to address any assertions or arguments put forward by other parties should not be construed by the Department as acceptance or agreement on the part of Rogers.

Detailed Reply Comments

Service to Rural and Remote Communities

9. In their comments both First Networks and Lynx Mobility have taken issue with Industry Canada's assertion that:

The deployment of services in the cellular and PCS bands has been extremely successful. PCS and cellular service are in great demand, with more than 21 million wireless subscribers in Canada at the end of Q3/08. According to the CRTC's 2008 report to the government, 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 km.¹

10. According to First Networks, the statistics cited by the Department obscure the fact that the policies continue to leave huge areas of the country underserved and many rural and remote communities without any wireless mobile service whatsoever. While First Networks acknowledges that people in the relatively dense population centres in the south generally are adequately served and usually have access to more than one wireless service provider, in areas that are more distant from population centres or away from major transportation routes First Networks says that wireless service becomes progressively less available.
11. Rogers does not dispute the assertion by First Networks that in areas more distant from population centres or major transportation routes wireless services become progressively less available. This is true of all types of services, including roads and transportation, sewage and water, medical services, schools and retail services. However, Rogers strongly disagrees with First Network's assertion that this situation in the wireless market is a result of failed spectrum policies. As discussed further below, the impediment to ubiquitous wireless service in a country the size of Canada is an economic one, as it is for most other services in these regions. Industry Canada's spectrum policies have provided both incumbent wireless service providers and potential new entrants with access to the spectrum required to extend services to all regions of Canada. What is lacking are economically viable business plans to provide mobile wireless services to the vast areas of Canada characterized by very low population densities.
12. The truth is that Canada leads the world in extending wireless services to regions with extremely low population densities. Canada as a whole has a population density of approximately 3 persons per square kilometre. This is among the lowest population densities in the world. However, as the CRTC has noted in its 2008

¹ DGRB-002-09, p. 4.

report, 80% of the Canadian landmass contains just 2% of the country's population. Much of that area is virtually uninhabited and much of the remainder is very sparsely populated.

13. For its part, Rogers has continually assessed and reassessed its own business case for extending service to rural and remote areas and has continued to push out the boundaries of its coverage area over time as costs decline and synergies with other rural areas improve. This has resulted in the addition of approximately 71,000 square kilometres of additional network coverage and 521,703 additional POPs in the current licence period. In the same timeframe, Rogers has replaced analog service with digital service throughout its entire coverage footprint and is in the process of increasing data speeds across its network.
14. At the same time, Rogers has considered and implemented many proposals to extend coverage to unserved or underserved areas through innovative arrangements with third parties that may have a lower cost structure than Rogers – or may have access to governmental subsidies to extend service. These arrangements have included:
 - spectrum sub-licensing arrangements;
 - network lease arrangements;
 - reciprocal roaming arrangements; and
 - joint ventures.
15. Rogers is constantly reviewing new proposals from third parties and has incented third party network builds by offering co-branding, national and international roaming and other support to assist smaller operators in developing a viable business case.
16. As indicated by Industry Canada, these initiatives are bearing fruit – but it is a slow process given the very poor economics of extending service to remote and sparsely populated areas of the country.
17. This progress was recognized by Industry Canada in its Consultation Paper:

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.²

18. In its comments, First Networks has taken issue with the Department's assessment of the progress being made and has argued that a new spectrum policy is required:

First Networks is of the opinion that the view expressed in this statement is incorrect on two counts. The first incorrect assumption is that the existing business model of the incumbent carriers is capable of eventually providing service in all areas of the country and secondly that the existing spectrum policy options for non-incumbent or third parties to provide service adequately address the service in rural remote areas. First Networks believes that both of these premises are incorrect. The resolution therefore is that a different model supported by different rules must be employed to provide service.³

19. Turning to the first point made by First Networks, Rogers does not agree that Industry Canada has inferred that the existing business model of the incumbent carriers is capable of providing service in all areas of the country. For its part, Rogers readily acknowledges that a viable business model does not exist for extending ubiquitous mobile wireless services to all areas of the country. However, it is an economic obstacle that prevents ubiquitous coverage and it is not dependent on any particular business model being adopted. As in the case of wireline broadband services, there are some regions of the country that are so sparsely populated they are unlikely to be reached except by satellite or government subsidized wireless service. This is a fact of life that is dictated by the geography and demographics of Canada, as well as the limitations of existing cellular and PCS technology. In some of these areas satellite services may remain the only form of telecommunication services for the foreseeable future and Industry Canada's policies have encouraged the deployment of such services by Telesat Canada and other parties.

² Ibid, p. 4.

³ First Networks Comments, p. 3.

20. For these same reasons, First Networks is wrong when it suggests that a different set of spectrum policy rules would cure the problem. The problem does not lie in the rules – there is plenty of spectrum available. The problem lies in the economics of extending service to areas that cannot support the cost of service. This is a double whammy. Since the remote areas generally have the highest cost of service and also have the lowest density of population, they are the least able to generate the revenues required to cover the associated costs. In other areas of telecommunications, such as basic telephony and broadband services, the CRTC and Canadian and provincial governments have recognized that subsidies are required to extend these services to these regions. Cellular and PCS services are no different. Without government subsidies it is unrealistic to think of ubiquitous wireless services to all of the remote and rural areas of Canada.
21. First Networks appears to recognize this economic impasse when it makes the following statement in its submission – but it still infers that this is a result of the comparative economic choice made by wireless carriers to maximize their return on capital:
- Under the current wireless business model, the incumbent mobile license holders must invest in infrastructure upgrades where they can get the best return and where they can protect their highly competitive urban market share. This does not and cannot translate into bringing cellular service to the ‘unserved and underserved’, ‘rural and remote’ markets. There is simply no incentive to spend network capital in areas that have little prospect of earning a return comparable to the returns on investment in dense urban areas. So while the statistic accurately portray that 98% of Canadians have access to wireless services, there are two thirds of a million people who lie outside the service boundaries who lack any wireless service and many times more who lack a choice of service providers. Currently there is no viable plan in place to address this gap in wireless service.⁴
22. Using First Networks’ own analysis, Canada has approximately 670,000 persons living in approximately 80 million km² of landmass. This works out to an average population density of 1 person per 119 km² and includes men, women and children. The decision to serve or not to serve this area is not based on comparative return on private capital. It is based on the lack of any business

⁴ Ibid, p. 3.

model that is capable of ubiquitous coverage, other than one that incorporates massive government subsidies. To put this in perspective, Rogers estimates that it would cost well in excess of the gross revenues of the entire Canadian wireless industry to cover the cost of extending ubiquitous cellular/PCS services to this area.

23. In its comments, First Networks suggests that incumbent wireless carriers are not taking advantage of flexible, IP-based, satellite network designs that are used in other parts of the world to serve areas that are characterized by dispersed populations inhabiting large geographic areas. First Networks suggests that lack of knowledge about these alternative technologies has led to a lack of support for low-cost network solutions. According to First Networks “The current wireless development model in Canada discriminates against the rural/remote and unserved/underserved areas. A one-size fits all approach to the provision of wireless service has served rural and remote areas poorly and needs to be amended to encourage development of these markets.”⁵ This has led First Networks to propose a number of changes to the manner in which spectrum is managed in Canada.
24. First Networks’ plea for a different spectrum policy in urban and rural areas of Canada sounds like a sensible suggestion – but it is based on a false set of assumptions.
25. First, the Department does not mandate either the type of technology used by cellular and PCS licensees or the business models used. It allows market forces and entrepreneurial and engineering ingenuity to determine both the network configuration and the technology used. For its part, Rogers is constantly assessing new technologies and new cost-effective ways to provide wireless services. Contrary to what First Networks suggests, competitive market forces have always incented wireless carriers in Canada to expand their coverage

⁵ Ibid, p. 4.

footprint. Competition for new customers and the demands of existing customers for broader coverage incents Rogers and its competitors to constantly examine least-cost solutions to network expansion and to consider proposals from third parties to enter into cooperative arrangements to accomplish this objective. These incentives are already present – it is the economic reality that is slowing things down.

26. First Networks also blames the situation in rural and remote areas on a lack of available spectrum in the hands of those parties who are willing to address the problem. First Networks cites the fact that some incumbent carriers are “sitting” on unused PCS spectrum as well as the alleged failure of the RP-019 and subordinate licensing processes to put unused spectrum in the hands of parties who are willing to extend service to rural and remote areas. This perception has led First Networks to propose a number of changes to Canadian operation policy including:
- a. prohibiting the deployment of 700 MHz spectrum by carriers that have not deployed 850 MHz spectrum in rural areas;⁶
 - b. expanding the scope of RP-019 to include 1.9 GHz spectrum;⁷ and
 - c. reform of the RP-019 process.⁸
27. Lynx Mobility has taken a similar position to that advanced by First Networks and has proposed that Industry Canada reclaim unused spectrum blocks:
- Where an incumbent has failed to use a licensed spectrum block (i.e., any one of the two Cellular Blocks or 10 PCS Blocks) in any one of the Tier 4 Areas, Industry Canada should reclaim the spectrum within that area and make it available to other parties on a First Come First Serve (FCFS) basis.⁹
28. Lynx Mobility has sought to justify this proposal on the grounds that, by its calculations, almost three quarters of spectrum blocks licensed for use in Canada’s northern regions are lying dormant.

⁶ Ibid, p. 5.

⁷ Ibid, p. 7.

⁸ Ibid, pp. 7-8.

⁹ Lynx Mobility Comments, p. 3, para. 8.

29. Rogers does not dispute Lynx Mobility's claim that significant amounts of spectrum remain unused in Northern regions of Canada. The population densities of the areas in question are so low that it is difficult to conceive that demand for service will ever outstrip the available supply of spectrum in these areas. However, the answer does not lie in taking this spectrum away from current licensees and putting it in the hands of third parties, such as New Networks or Lynx Mobility.

30. Unlike other parties, Lynx Mobility has not seen fit to participate in spectrum auctions where spectrum in rural and remote areas of the country has often been available at the reserve price or has gone unpurchased by any party. To seek the redistribution of other parties' spectrum at no cost to itself in these circumstances smacks of opportunism. If Lynx Mobility has a viable business plan for the provision of service to rural and remote parts of Canada, it can avail itself of this unused spectrum by participating in auctions, purchasing it in the secondary market, or following existing channels for subordinate licences or unallocated spectrum, as it has done, for example, in Northern Quebec, where it acquired a licence for available PCS spectrum using the Department's FCFS process. The fact that it has not seen fit to purchase spectrum of its own in a spectrum auction, when other smaller entities have successfully done so, points to the lack of a viable business case or an unwillingness to invest in such a business model.

31. There is evidence that other parties have taken advantage of the opportunities presented by Industry Canada's licensing policy. For example, in the recent AWS auction, a number of smaller players purchased spectrum in the G licence block and a number of blocks went through the auction unsold.

Licence Block	Location	Licensee
G	Nova Scotia & PEI	Blue Canada (licence yet to be issued)
G	New Brunswick	Unsold
G	Northern Ontario	Unsold
G	Alberta	Novus
G	British Columbia	Novus
D	Huntsville	Rich Telecom
D	Chatham	Celluworld
D	Dawson Creek	Rich Telecom

32. Similarly in the PCS auction, a number of spectrum blocks in rural and remote areas of Canada went unsold. Some of these are still held by Industry Canada and some have since been licensed to smaller operators, including Lynx Mobility.

Licence Block	Location	Licensee
2-07a	Northern Quebec	Group CLR
2-07b	Northern Quebec	Lynx Mobility
2-07c	Northern Quebec	Unsold
2-07d	Northern Quebec	Harmony Mobile Networks Inc.
2-11b	Saskatchewan	Yamartech Group Inc.
2-14a	Yukon, N.W.T. & Nunavut	ICE Wireless
2-14b	Yukon, N.W.T. & Nunavut	Unsold
2-14c	Yukon, N.W.T. & Nunavut	Unsold
2-14d	Yukon, N.W.T. & Nunavut	Harmony Mobile Networks Inc.
2-15f or TEL 02	Quebec Tel Area	Harmony Mobile Networks Inc.

33. Industry Canada's website reveals that there has also been significant activity in the secondary market for spectrum. This includes a number of spectrum divisions and transfers that have made spectrum available outside of the auction process. It is therefore apparent that the movement towards increased transferability and divisibility of spectrum licences, as well as the subordinate licensing process, have presented increased opportunities for smaller wireless carriers to enter the market and to put their business models into operation.

34. Lynx Mobility's and First Networks' criticism of the incumbent carriers' business model appears to ignore the fact that other relatively small companies are entering the wireless market with their own business plans taking advantage of existing spectrum allocation policies. If Lynx Mobility believes that satellite can provide a high quality, low cost back-haul solution for the extension of mobile wireless services to rural and remote parts of Canada, it is at liberty to initiate such a service. The fact that incumbent carriers are not using that model does not prevent Lynx from trying it. That is what competitive markets are all about. In the broadband sector, Barrett Xplore has adopted a similar model. The difference is that Barrett Xplore has invested in its business model and has not sought to expropriate other carriers' spectrum.

35. First Networks' proposal to prohibit the deployment of 700 MHz spectrum by carriers that have not deployed 850 MHz spectrum in rural areas is similarly flawed. First, Rogers and other incumbents are continuing to expand service in rural areas of Canada. None of the incumbents have ignored these areas. Secondly, it is virtually impossible to provide a truly ubiquitous service in Canada for the reasons discussed above, so the criterion proposed by First Networks is not a valid one. Thirdly, to restrict the deployment of 700 MHz spectrum in the manner proposed by First Networks will hurt consumers in all regions – not help them.

36. As regards the call by First Networks and Lynx Mobility for reform of the RP-019 process and its expansion to include 1900 MHz spectrum, Rogers opposes both proposals. As discussed in its May 31 comments, Rogers has significant concerns with the manner in which the RP-019 process has been abused by some parties that have used it to assert claims for unused spectrum in vast areas without a viable business plan. Merely asserting a desire to use another party's spectrum should not be sufficient to gain access to that spectrum. Such claims must be accompanied by legitimate business plans that are capable of implementation. Otherwise, the spectrum will simply lie dormant in another party's hands – a party that has not seen fit to invest in providing service to the region in question.

37. Furthermore, Rogers submits that there is no rationale for the RP-019 process to apply at all in circumstances in which other usable spectrum is available and is currently unlicensed – such as the spectrum highlighted above.
38. Lynx Mobility's proposal to abbreviate the current safeguards embodied in the RP-019 process are not acceptable to Rogers. To permit wide area applications without regard to the RP-019 safeguards and without establishing a *bona fide* business case to extend service to the areas in question, would amount to little more than an invitation to expropriate another party's spectrum.
39. Lynx Mobility's proposal to eliminate the requirement for prior negotiation with the incumbent whose spectrum is being sought, where previous negotiations have failed, also ignores the fact that business models and network deployment plans are tailored to the specific region in question – both with regard to demographics and topography. The fact that one business model is non-viable in a given region does not mean that it is non-viable in another.
40. Similarly, Lynx Mobility's proposal to do away with the notice period in RP-019, and to replace it with an FCFS process, ignores the public interest in ensuring that the potential licensee has the best possible plan for providing service to the community in question.
41. Eliminating the safeguards embodied in the RP-019 process would simply open the door to spectrum grabs – possibly by speculators with no concrete plans to ever serve the markets in question. This would undermine the integrity of the licensing process and ultimately the value of auctioned spectrum in Canada.
42. For all of these reasons Rogers urges the Department to reject the submissions of First Networks and Lynx Mobility and to continue to rely on market forces as the most appropriate and efficient allocator of spectrum in Canada.

44. Apart from Lynx Mobility and First Networks, Rogers notes that most licensees agree with the Department's that the extent to which cellular and PCS networks have been rolled out throughout Canada has been a resounding success. We also note that there is very little support for the continued use of RP-019.
45. For example, like Rogers, TELUS notes that RP-019 is redundant since cellular and PCS networks are gradually expanding, independent of this policy:
- such a mechanism was unnecessary when it was introduced and given the service availability and continuously expanding geographic coverage is even more unnecessary today. TELUS respectfully recommends that rather than expanding the policy, the Department eliminate RP-019.¹⁰
46. 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. The Department should implement a policy whereby the \$225 million that was allocated in the 2009 Federal Budget budget for extending broadband coverage to unserved communities could be used by wireless licensees to transform non-viable expansion projects into viable opportunities.

Licence Term and Renewal

47. In its comments, Rogers urged the Department to renew cellular and PCS licences since licensees such as Rogers have successfully extended world class wireless services to all regions of Canada. Renewing cellular and PCS licences will ensure that Canadians in all regions will continue to benefit from the availability of these critical enablers. We note that there is broad support for the renewal of cellular and PCS licences.
48. For example, Bell voices its support for the renewal of licences in the following terms:

¹⁰ TELUS Comments, p. 2.

Bell Mobility supports the Department's proposal to renew cellular and PCS licences where the licensee is substantially compliant with applicable licence conditions. Bell Mobility further recommends that, as the Department has suggested in the past, that any question of non-compliance be discussed with the licensee(s) in question before a final determination is made regarding compliance status.¹¹

49. Rogers fully supports Bell's position in this regard. We also agree with Bell that "Canada is a challenging market in which to develop wireless networks" in that the area to be covered is "considerable in its sheer mass" and "is also characterized by a relatively small and dispersed population when compared to other countries", such as, for example, the U.S. and the U.K..¹² Bell also notes significantly that "Canadian carriers invest more per capita on wireless infrastructure, to serve a smaller market, than their U.S. counterparts".¹³
50. Rogers also agrees with CWTA that renewing cellular and PCS licences will allow licensees to continue to satisfy the many millions of Canadians that use wireless services. Specifically, the CWTA states the following:
- CWTA supports the Department's intent to renew the cellular and PCS licences. This renewal will ensure that licencees will continue to be able to deliver the services Canada's 21.6 million wireless subscribers demand.¹⁴
51. In supporting the Department's proposal to renew cellular and PCS licences, MTS Allstream has cited the "significant investment in the network infrastructure" that licensees have made.¹⁵ TELUS similarly notes that "Multiple carriers have built out networks costing billions of dollars in these bands".¹⁶
52. In light of these significant investments, nearly all parties advocated the use of longer terms for renewed licences, and they believe that renewed licences should

¹¹ Bell Mobility Comments, p. 7, para. 26.

¹² Ibid, p.7, para. 26.

¹³ Ibid.

¹⁴ CWTA Comments, p.8.

¹⁵ MTS Allstream Comments, p. 2, para. 6.

¹⁶ TELUS Comments, p. 3.

have a high expectation of renewal. These parties have noted that the use of longer licence terms would provide licensees with greater certainty and that it would also be consistent with the increasingly common use of longer or indefinite terms by regulators in other jurisdictions.

53. For example, CWTA states that licences with a high expectation of renewal would provide licensees with the certainty and predictability they require when making their substantial investments in cellular and PCS services:

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.” This 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.¹⁷

54. MTS Allstream notes that a longer term would allow licensees to recover their substantial investments in the cellular and PCS bands:

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 spectrum.¹⁸

55. Bell states that the use of longer terms is warranted and notes that this would not in any way undermine the Minister’s authority or ability to reallocate spectrum or to ensure that licence conditions are satisfied by licensees. Bell states the following in this regard:

Therefore, Bell Mobility recommends that the licence term, proposed in Industry Canada’s Consultation, be replaced with one which conveys an indefinite licence term. Such term would be conditional on ongoing compliance with licence conditions as well as on the absence of an overriding policy or spectrum management need requiring recovery of the spectrum.¹⁹

¹⁷ CWTA Comments, p. 3.

¹⁸ MTS Allstream Comments, p.3, para. 8.

¹⁹ Bell Mobility Comments, p. 1, para. 5.

In the event that the Department does not implement indefinite licence terms, then Bell Mobility proposes that the following 20-year licence term be substituted for that proposed in the Consultation²⁰

56. While pointing out that the U.K.'s Office of Communications (Ofcom) is using 20-year terms for 3G licences, Bell notes that the U.S. Federal Communications Commission's (FCC's) continued use of shorter 10-year terms is off-set by the fact that U.S. licences are "automatically renewed at term without consultation or debate".²¹ Rogers agrees with Bell's assessment, and we also agree that:

The resultant degree of certainty and stability which this approach confers on the U.S. wireless industry is in marked contrast to the increased degree of uncertainty which recent Industry Canada pronouncements, regarding licence renewal have created in the Canadian wireless industry.²²

57. Saskatchewan Telecommunications (SaskTel) reaches much the same conclusion as Bell where it states the following:

SaskTel notes 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. SaskTel notes that even with a longer licence term the Minister would still retain the power to revoke or modify a licence for just cause such as contravention of licence conditions.²³

58. TELUS supports a longer term since it is highly unlikely that cellular and PCS spectrum will need to be reallocated for other services:

Realistically there will be no reallocation in this band as it is already being used for what are almost certainly the highest valued services for the foreseeable future.²⁴

²⁰ Ibid, p. 2, para. 6.

²¹ Ibid, p. 10, para. 35.

²² Ibid.

²³ SaskTel Comments, p. 4.

²⁴ TELUS Comments, p. 3.

59. TELUS also notes that the use of longer licence terms are recommended in a 2007 report prepared for the Department by noted spectrum management experts.

Specifically, TELUS states that:

The call for lengthier licence terms finds support in the McLean Foster report prepared for the Department in 2007. The report's authors say "We have considered both very long-term licences, which safeguard investment in assets over a term of 30-40 years, and long-term licences for, say, 15-20 years, which gives the regulator the opportunity to recover spectrum at intervals when it is desirable to do so. On balance, very long-term arrangements are more favourable on the grounds that they give better investment incentives and involve a clearer definition of licensee's rights. However, departures from this may be appropriate in specific bands."²⁵

60. TELUS also highlights the disparity between the substantial investments made by cellular and PCS licensees and the lack of certainty that these parties have beyond the current ten-year licence term. TELUS correctly concludes that the use of longer terms will promote greater investments in wireless networks and services:

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. 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.

Ian Munro made much the same point when he said "The more uncertainty that the government injects into future licence terms, the greater will be the disincentive for licensees to invest in new and better technology and service offerings (and the lower will be the initial auction revenues for such licences)."²⁶

61. TELUS further notes that the use of a longer licence term would also be appropriate given the significant amount of time that had elapsed before the three largest wireless carriers fully paid off their respective investments.

The nature of the wireless networks business, and other high fixed cost businesses, is one of significant upfront investment with returns only earned over a long period of time. A review of the public financial statements of the three largest wireless carriers in Canada shows that it took over 21 years before the industry was able to earn back the investment made to establish the networks.²⁷

²⁵ Ibid, p. 4.

²⁶ Ibid.

²⁷ Ibid, p. 5.

Spectrum Aggregation Limit

62. In its comments, Rogers highlighted the dramatic growth of traffic carried on its network as a result of the emergence of 3.5G services and applications, as well as smartphone consumer devices and 3.5G lap-top modem sticks. Understandably, the increasing popularity of broadband mobile data services and applications is compelling carriers to consume more radio spectrum than ever before. 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.
63. For these reasons, Rogers strongly agrees with the Department that the spectrum aggregation limit condition of licence is no longer required. Rogers also believes that the Department's previous decision to rescind the mobile spectrum cap should be upheld. Rogers notes that other cellular and PCS licensees share Rogers' views in this regard.
64. For example, TELUS agrees that the spectrum aggregation limit condition of licence should be deleted, noting that this would be consistent with the 2004 decision by the Minister of Industry to rescind the mobile spectrum cap.²⁸ Bell²⁹ and SaskTel³⁰ also agree with the deletion of this condition of licence.

²⁸ Ibid.

²⁹ Bell Mobility Comments, p. 24, para. 98.

³⁰ SaskTel Comments, p. 4.

Eligibility

65. Bell has suggested that, in cases where the ownership and control of a given licensee has recently been reviewed by the Department, they should be permitted to simply attest to the fact that no material changes have occurred since their last review. Bell states the following in this regard:

Bell Mobility also believes, as a related matter, that Industry Canada should streamline its foreign ownership review processes in certain cases. It is extremely wasteful, for both the Department and existing licensees, for the Department to conduct exhaustive ownership and control reviews on licensees who have been reviewed in the recent past. In such circumstances, and absent any valid Departmental reason to initiate a full review, Bell Mobility submits that licensees could attest to the fact that no material changes have occurred since the Department's most recent review.³¹

66. Rogers agrees with Bell that this approach would be a more efficient and less intrusive form of regulation and, therefore, that it would be more consistent with the December 2006 Governor in Council policy direction to the Canadian Radio-television and Telecommunications Commission (CRTC) directing the CRTC to rely on market forces to the maximum extent feasible and to regulate in a manner that interferes with market forces to the minimum extent necessary.

Research and Development

67. In its comments, Rogers explained why the R&D condition of licence should be eliminated. Market forces will ensure that wireless equipment manufacturers and licensees will continue to invest heavily in R&D to enhance their competitive position. No other country imposes any such condition on its licensees and the Department has other more appropriate methods of encouraging industrial development. Rogers notes that most other parties also believe that this condition of licence is no longer appropriate or necessary.

³¹ Bell Mobility Comments, p. 16, para. 58.

68. TELUS believes that the condition is redundant since licensees must continually innovate on order to remain competitive:

Canadian carriers are highly incented to find ways to innovate their offerings in order to differentiate themselves and attract or retain the subscribers required to earn a return on the significant network investments.³²

69. MTS shares much the same view and also notes that the R&D reporting requirement is an unreasonable administrative burden:

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 conditions and the condition of licence should be removed. In the alternative should the Department determine 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.³³

70. SaskTel states that competitive market forces are sufficient to ensure that licensees will continue to invest in R&D:

Competitive pressures in the wireless industry are forcing the development of new technologies with higher bandwidths, and new applications and services in order to continue to meet the future needs of our customers. As noted in the DGRB-001-09 consultation, many licensees already exceed the 2% minimum requirement for R&D investment.³⁴

71. TBayTel submitted that the removal of this requirement would free up capital that could be used for the purpose of expanding cellular and PCS services in rural and remote areas.³⁵

³² TELUS Comments, p. 6.

³³ MTS Allstream Comments, p. 4, para. 12.

³⁴ SaskTel Comments, p. 4.

³⁵ TBayTel Comments, pp. 4-7.

72. CWTA agrees that the removal of this requirement would give licensees greater flexibility to direct their investments to the addition of capacity and higher data speeds that are required to support the surging demand for new services.

This condition adds a financial and administrative burden on licencees and suppresses network investment. Consumer demand for voice and data services is putting considerable pressure on the capacity of wireless networks. This is in turn driving significant investments in the capacity and speed of wireless networks. Given the current economic climate, and the government's desire to make investments to stimulate the economy, licencees should be provided maximum flexibility to invest all available resources as they choose.³⁶

73. Bell sees the R&D requirement as one of many financial burdens that are imposed on licensees in a haphazard manner, without any attempt made by the Department and other federal departments or agencies to understand the collective impact of such measures. Accordingly, and in light of the present economic pressures, Bell calls for the removal of the R&D condition:

Bell Mobility notes that in the Harmonization Consultation it and other carriers identified that the cumulative effect of uncoordinated government fees, taxes and financial obligations related to licensing, originating from several distinct Federal departments and agencies, has placed a significant and onerous financial burden on all licensees. This burden is, however, particularly onerous in a time of significant economic downturn such as is currently being experienced in global economies including Canada. Reduction in this burden would, in our view, provide a significant positive economic stimulus by making such funds available for infrastructure investment. It would appear to Bell Mobility that the elimination of unnecessary financial burdens, such as the research and development licence condition, would be a particularly timely and beneficial move on Industry Canada's part.³⁷

74. Rogers fully agrees with the comments of these parties in this regard and we urge the Department to eliminate the R&D condition of licence immediately.

Lawful Interception

75. Rogers' comments supported lawful access obligations to the extent that commercially available standards-based network technology is available to comply

³⁶ CWTA Comments, p. 5.

³⁷ Bell Mobility Comments, p. 20, para. 79.

with any such requirements. Rogers also noted that this condition has always only applied to PCS licences and that this should continue.

76. Like Rogers, TELUS also urged the Department to reflect the importance of industry standards in this condition of licence.

TELUS believes that any application to packet switched or other new technologies must recognize the necessity for industry wide standards for intercept capability - i.e. for the Carriers to implement this capability, requirements should be tied to the presence of standardized solutions versus jury rigged, stand-alone Canadian solutions.³⁸

77. Rogers agrees with the following submissions of Bell and TELUS that licensees should receive compensation for providing this public benefit:

In addition, Bell Mobility believes that carriers should be compensated for any and all costs incurred in meeting this condition.³⁹

TELUS recommends the Department amend this condition of licence in order that wireless carriers are able to be compensated for the provision of these services to LEAs.⁴⁰

Resale and Roaming

78. In its submission, Rogers supported the proposal that the existing conditions of licence regarding resale and roaming should be removed. Bell,⁴¹ SaskTel⁴² and TELUS⁴³ also supported this proposal.

79. Like Rogers, Bell is opposed to the conditions of licence for mandatory roaming and antenna tower and site sharing since such conditions are “not appropriate in the highly competitive wireless industry”.⁴⁴

³⁸ TELUS Comments, p. 7.

³⁹ Bell Mobility Comments, p. 19, para. 74.

⁴⁰ TELUS Comments, p. 7.

⁴¹ Bell Mobility Comments, p. 25.

⁴² SaskTel Comments, p. 5.

⁴³ TELUS Comments, p. 6.

⁴⁴ Bell Mobility Comments, p. 21.

Implementation of Spectrum Usage

80. The Consultation Paper states that the rollout of cellular and PCS services in Canada has been very successful and 98% of the population is covered. As noted above, Rogers and other licensees fully agree with the Department's assessment and these parties have submitted that cellular and PCS licences should be renewed. For the same reasons, Bell,⁴⁵ SaskTel⁴⁶ and TELUS⁴⁷ have also submitted that there is no longer a need for the condition of licence regarding the implementation of spectrum usage for cellular and PCS licences.

Licence Fees

81. In its comments, Rogers submitted that 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.

82. We note that in the submissions filed by other parties there is strong opposition to the notion that the Department may increase the spectrum licence fees that apply to cellular and PCS licences. These parties have also disagreed with the Department's interpretation of the *Spectrum Policy Framework*.

83. At the outset, Rogers shares Bell's concern that the Department appears to have jumped to the conclusion that a renewal fee should apply to auctioned spectrum and that the renewal fee should be set at a higher level than is currently applied to cellular and PCS spectrum licences. We agree with Bell that it is highly prejudicial for the Department to have arrived at these conclusions before having ever

⁴⁵ Ibid, p. 25, para. 106.

⁴⁶ SaskTel Comments, p. 5.

⁴⁷ TELUS Comments, p. 2, and pp. 6-7.

conducted a proceeding to examine the issues or before undertaking the impact assessment that is required under the provisions of the *User Fees Act*.⁴⁸

84. With respect to the question as to whether spectrum licence fees should apply for any spectrum, Rogers fully supports the following assessment made by Bell:

Bell Mobility notes, for example, that: (1) fees are not conducive to investment and in fact that funds used to pay fees are funds that are not available for infrastructure investments; (2) while government is actively and massively assisting a number of struggling industries, Canadian carriers have not asked for help but instead continue to employ thousands of Canadians while investing billions annually in wireless infrastructure, and infrastructure which is recognized by government as being an enabler for virtually every other sector of the economy; and (3) compared to the U.S., where regulatory fees are currently based on a cost-recovery model, Canadian spectrum fees are tantamount to economic rent-seeking, and defensible under the *User Fees Act*.⁴⁹

85. Rogers also agrees with Bell where it states that, under the requirements of the *User Fees Act*, it is incumbent on the Department to consider the spectrum licence fee model used in the U.S., especially in light of the fact that Canadian spectrum fee levels are approximately 36 times the level of fees paid in the U.S.

The CWTA estimates, for example, that in 2008/2009 Canadian licence fees will amount to approximately \$130 million for the industry. Conversely, however, applying the FCC's cost-recovery model (i.e. \$0.18 per active wireless number) the CWTA estimates that Canadian carriers would pay less than \$4 million dollars in annual regulatory fees. Moreover, in addition to regulatory fees which are restricted to cost-recovery levels, comparable U.S. wireless licensees also benefit from the investment certainty and stability conferred on their industry as a result of automatic licence renewal. Given that the U.S. would be an obvious international comparator, Bell Mobility seriously questions whether the Minister could comply with section 3 of the *User Fees Act* which requires a comparison with other countries with whom such comparison is relevant.⁵⁰

86. With respect to the level off fees currently paid by cellular and PCS licensees, TELUS submits that the current spectrum licence fee is excessive and the amount

⁴⁸ Bell Mobility Comments, p. 27, para. 115.

⁴⁹ Ibid, p. 28, para. 117.

⁵⁰ Ibid, p. 28, para. 118.

of cellular and PCS fees that the Department extracts in a single year would go a long way to extending coverage in rural and remote areas if licensees were permitted instead to invest these funds in wireless infrastructure.

TELUS is of the view that even this level is too high as it extracts approximately \$130 million annually from Canada's wireless carriers. To put that amount into context the department is looking at ways to spend \$225 million to extend service to rural and remote areas of Canada. That \$130 million could otherwise be spent on network investment by operators assuming a corresponding reduction in licence fees.⁵¹

87. Rogers agrees with TELUS that it is unreasonable that the wireless industry should contribute over half of the non-broadcasting spectrum fee revenue collected by the Department, while using only a fraction of the spectrum resource.⁵²

88. Rogers also fully supports Bell's proposal that a "spectrum fee holiday" should be granted to cellular and PCS licensees in light of the current financial difficulties confronting all business sectors. Bell states the following in this regard and also suggests that the Department should limit the fees it collects to an amount that is required to cover its cost of managing the spectrum.

Bell Mobility believes that a "spectrum fee holiday" should be introduced immediately to assist wireless carriers to weather the current economic storm.⁵³

Alternatively, Bell Mobility recommends that Industry Canada adopt a cost-recovery regime for the purposes of setting licence fees going forward. Such a move would put Canadian licensees on an equal footing with their U.S. counterparts.⁵⁴

89. Like Rogers, TELUS has urged the Department to take into consideration the substantial economic benefits that accrue to the Canadian economy as a result of the wireless industry's use of the spectrum resource. Rogers fully agrees with TELUS that these economic benefits are part of the "fair return" that Canadians already receive for the use of spectrum by cellular and PCS licensees. TELUS states the following in this regard:

⁵¹ TELUS Comments, p. 10.

⁵² Ibid.

⁵³ Bell Mobility Comments, p. 3, para. 10.

⁵⁴ Ibid, p. 3, para. 11.

Measuring the economic contribution our investment adds in terms of fees already paid, investment in plant and operating expenses, including employment, are all factors that contribute to fair return. TELUS believes that the taxes the business pays are also an important component of a return to the Canadian public. TELUS also considers that a fair return must include compensation for Government managing the spectrum.⁵⁵

90. Similarly, Bell makes the following important observation regarding the substantial contribution made by the Canadian wireless industry, above and beyond spectrum fees:

Bell Mobility notes that, when one takes into account the cumulative affect of annual licence fees as well as spectrum auction payments, Canadian licensees have paid billions of dollars to the Federal government in spectrum-related fees since the 1980's. This, moreover, is over and above the billions of dollars in infrastructure investments, taxes paid to all levels of government and payroll charges that are required to operate the business and provide productivity and security enhancing wireless services to Canada and its citizens.⁵⁶

91. CWTA notes that studies have been undertaken in other jurisdictions and demonstrate that wireless services make a substantial economic contribution. Specifically, CWTA states the following in this regard:

The United Kingdom's Ofcom, and its predecessor, the Radiocommunications Agency have studied the economic impact of the use of radio spectrum on several occasions. In 2006, it was estimated that Public Mobile services contributed a net economic benefit of £21.8 billion and produced a consumer surplus of £18.9 billion. Studies of the United States wireless industry have estimated the consumer surplus at \$81 billion and \$157 billion.

CWTA submits that all of the public benefits of wireless services need to be adequately measured and taken into account as the Department establishes its fee proposal.⁵⁷

92. With respect to the Department's assertion that increasing spectrum licence fees is consistent with, or necessitated by, the principles enshrined in the *Spectrum Policy Framework*, Rogers would note that a number of parties have forcefully rebutted this claim.

⁵⁵ TELUS Comments, pp. 8-9.

⁵⁶ Bell Mobility Comments, p. 29, para. 124.

⁵⁷ CWTA Comments, p. 8.

93. For example, the CWTA has highlighted the fact that the *Spectrum Policy Framework* is completely silent with respect to spectrum fees or a “fair return” and it provides no basis whatsoever for an increase in the level of spectrum fees.

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. That statement was contained in the previous (2002) version of the SPF, which was superseded by the 2007 version that was “streamlined, shortened, updated, and reoriented to reflect current practices and current government policy.”⁵⁸

94. TELUS exposes the same critical flaw in the Department’s proposal where it states the following:

TELUS further 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).”¹⁴ 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.”¹⁵ Rather than justify a regime to maximize rents on spectrum licensees this objective requires that the Department take a holistic look at all of the benefits to Canadians derived from up-to-date, ubiquitous, broadband mobile networks and the continuing large investments required by the licensees.⁵⁹

95. Bell correctly points out that the emphasis of the *Spectrum Policy Framework* is on exploiting the spectrum resource to drive economic and social benefits, and not to simply extract excessive licence fees.

Bell Mobility believes that the intent of the SPF is directed more toward the objective of fully exploiting and maximizing the economic and social benefits Canadians obtain from the spectrum through the full and efficient use and exploitation of that resource for all Canadians. Indeed, fees which are restricted to cost-recovery levels would do more to increase and maximize the benefits that Canadians obtain from the spectrum by better facilitating deployment and use of the resource.⁶⁰

⁵⁸ Ibid, pp. 6-7.

⁵⁹ TELUS Comments, p. 9.

⁶⁰ Bell Mobility Comments, p. 3, para. 9.

96. For all of these reasons, Rogers urges the Department to reverse the course that it has adopted regarding the level of cellular and PCS spectrum licence fees that licensees are required to pay.
97. Although, as noted above, Rogers fully supports the submission of TELUS regarding the substantial contribution already made by the Canadian wireless market to the Canadian economy, we do not agree with TELUS that the Radio Advisory Board of Canada (RABC) would be an appropriate venue to discuss these and other issues related to the “fair return” that Canadians already receive from the wireless industry.⁶¹ Rogers submits that this issue extends well beyond the scope of the RABC’s highly valued technical expertise.

Annual Reporting

98. Rogers agrees with the following submission of Bell that the Department should decrease, not increase, the annual reporting requirements that are imposed on cellular and PCS licensees as a condition of licence. We agree with Bell that decreasing this burden would be consistent with the principles found in the *Spectrum Policy Framework*.

In this regard, in 2003 the Department was in step with spectrum regulators in a number of other countries who were proactively reducing the administrative burden which governments placed on licensees and businesses in general. This still seems like the correct approach to Bell Mobility. The 2007 SPF is also mindful of the administrative burden placed on licensees by the Department.⁶²

Conclusion

99. 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

⁶¹ TELUS Comments, p. 9.

⁶² Bell Mobility Comments, p. 22, para. 86.

data revolution. It is also an ideal time to re-visit policy and licensing provisions that are no longer relevant or necessary.

100. Rogers fully supports the Department's proposal to renew cellular and PCS licences. The Department should renew licences using a 15-year term, since this will provide licensees with greater certainty for corporate planning and funding purposes.
101. 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.
102. The Department should reject the claims of Lynx Mobility and First Networks that unused spectrum in remote areas should be reclaimed, that incumbents should be precluded from acquiring 700 MHz spectrum and that RP-019 should be modified. Instead, the Department should allow licensees to continue to expand their networks and to explore opportunities to improve the economics of serving remote areas.
103. The Department should remove the condition of licence regarding R&D immediately. No other country imposes such a condition on its licensed wireless carriers. The Department should also remove the conditions of licence for mandatory roaming and antenna tower and site sharing, in order to more effectively promote facilities-based competition.
104. 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.

105. Rogers appreciates this opportunity to share its views with the Department regarding these important issues.

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