



TELUS

Floor 16  
200 Consilium Place  
Scarborough, Ontario  
Canada M1H 3J3

Ed Prior  
Director  
Government & Regulatory Affairs

416 279 7523 Telephone  
416 279 3166 Facsimile  
ed.prior@telus.com

June 30, 2009

Mr. Peter Hill  
Director, Spectrum Management Operations  
Radiocommunication and  
Broadcasting Regulatory Branch  
Industry Canada  
300 Slater Street  
Ottawa, Ontario  
K1A 0C8

Dear Mr. Hill:

Subject: **Reply Comments, Gazette Notice DGRB-002-09 Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences, March 2009**

### **Introduction**

TELUS Communications Company (TELUS) appreciates the opportunity to submit these Reply Comments to Industry Canada (the Department) on the issues raised in Canada Gazette Notice DGRB-002-09 (Consultation Paper) and on those arising from the responses of participating parties to the consultation. Failure by TELUS to address any statement or assertion made by any of the participating parties in this reply should not be construed by the Department or other parties as either agreement or disagreement with such statement or assertion.

TELUS begins by noting that there were responses received by the Department from eleven different parties. Of these six can be classified as active public service carriers and the six largest Cellular & PCS service providers in Canada while the seventh is the Canadian Wireless Telecommunication Association (CWTA) representing the broad consensus views of Canada's wireless industry. One party is a grouping of independent telephone companies, the Canadian Independent Telephone Company Joint Task Force (the Task Force), two others are start-ups based on Radio Policy 19 and/or secondary market trading. The last is a private individual asking for service extension into a specific rural area.

In our Reply Comments TELUS will centre its discussion around four broad categories of issues arising from the first, response stage of the present consultation. The issues relating to the Spectrum Licences, namely term and expectation of renewal will be dealt with first. The conditions of licence will be dealt with next and then the context of fee setting and finally an issue as to the efficacy of RP-19 will be discussed.

In our initial response to the Consultation Paper and in our present reply TELUS;

- Supports the Department's intention to renew these licences and call upon the Department to renew them for a 15-20 year term together with a high expectation of future renewal.
- Recommends that the R&D Condition of Licence be immediately eliminated given the priority for stimulating innovation should be investment in broadband wireless networks.
- Recommends that the Department take a holistic view of the benefits derived by Canadians through use of the spectrum and consult with the industry in setting the parameters for any study regarding fees.
- Supports an interim two year fee holiday and recommends the Department adopt a cost recovery fee model for spectrum licences on a go-forward basis.
- Recommends that the Department eliminate Radio Policy 019 given the expansion in coverage since licences were first issued.

## **1.0 Spectrum Licences**

### **(a) Licence Renewal**

In the Consultation Paper the Department stated "Industry Canada proposes to renew cellular and PCS licences where the licence is in compliance with all licence conditions."<sup>1</sup> In its response TELUS strongly supported the Department's proposal to renew the cellular and PCS spectrum licences and was joined in this support by all other active carriers participating in the consultation, the CWTA and the Task Force. While Lynx Mobility offered support for the renewal of current Cellular and PCS spectrum licences it also proposed that the Department reserve the right to expropriate portions of existing licences to support its own narrow business interest. TELUS strongly disagrees with this idea and will address it in more detail below. The key thing to note is the, essentially, unanimous support from Canada's wireless industry for the

---

<sup>1</sup> DGRB-002-09, Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences, Industry Canada, March 2009, section 3, page 5.

Department's proposal to renew cellular and PCS licences for the reasons outlined by the Department in their Consultation Paper.

As the CWTA put it "This renewal will ensure that licensees will continue to be able to deliver the services Canada's 21.6 million wireless subscribers demand".<sup>2</sup> That cuts to the heart of the matter, some \$25 billions already invested by the industry and the high level of population covered by voice and now data services. To reiterate, **TELUS strongly supports the Department's proposal to renew the cellular and PCS spectrum licences.**

(b) Expectation of Renewal

In our response to the Consultation Paper TELUS "**further recommends that the renewed licences come with a high expectation of renewal in order to solidify business certainty**"<sup>3</sup> and to reflect practices in markets managed by our major trading partners. As was pointed out by many parties in their responses Canada's wireless carriers have invested billions of dollars in building their networks and other infrastructure. Certainty is required by the investor community if the industry is to not only expand its geographical coverage but upgrade and enhance its networks ensuring Canadians are at the forefront of wireless innovation. TELUS, alone, has invested over \$10 billion in expanding its wireless capabilities since 1998.

Additionally as TELUS pointed out "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 networks. Given the huge embedded investment and ongoing capital and operating expenditures made by all the cellular and PCS carriers coupled with the current economic recession, having a high expectation of renewal attached to these licences culminates in lower costs of capital and longer planning horizons for these networks".<sup>4</sup>

The huge embedded investment by Canada's mobile wireless industry and the ongoing deployment of new sites and new technology alone should and are sufficient to justify the licenses coming with a high expectation of renewal. In DGRB-001-09 the Department supported this principle by stating that it 'recognizes 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. It is therefore proposed that licences continue to have a high expectation of renewal per the existing framework'.<sup>5</sup> The Department in that Gazette Notice was speaking specifically about auctioned spectrum licences but the logic is exactly the same for the cellular and PCS spectrum licences awarded by different licensing methods and currently the subject of this Consultation Paper. **TELUS recommends that the Department revert to the use of a high expectation of renewal for all cellular and PCS licences, those that are the subject of this consultation as well as auctioned spectrum licences.**

---

<sup>2</sup> CWTA response to DGRB-002-09, May 29, 2009, Conclusion, page 8.

<sup>3</sup> TELUS response to DGRB-002-09, May 29, 2009, page 5.

<sup>4</sup> Ibid.

<sup>5</sup> DGRB-001-09, Consultation on Revisions to the Framework for Spectrum Auctions in Canada, Industry Canada, April 2009, section 5, page 7.

### (c) Term of Licence

Another important issue raised in the response phase was the term of the licence. In the Consultation Paper the Department proposed to renew the cellular and PCS spectrum licences for a period of 10 years. The Task Force of Canada's independent telephone companies expressed their support for the ten year renewal proposal but reserved its full comments on renewal term for the DGRB-001-09 consultation. Every other active carrier responding to the Consultation Paper called on the Department to establish minimum 15 year licence periods, some wanted 20 year terms and one Bell "submits, for the reasons discussed in these comments, that it is now timely for the Department to seriously consider, assuming ongoing substantial compliance by licensees with condition of licence, the use of indefinite licence terms for wireless service providers operating as Canadian radiocommunication carriers. Bell Mobility notes that such a move would be consistent with the actions of other regulators who have either moved to 15 or 20 year licence terms, and who are considering the movement to indefinite terms."<sup>6</sup>

Indeed the call for indefinite or 15 – 20 year licence terms comes from the same logic, supported by the Department that calls for a high expectation of renewal of spectrum licences. This call for greater investment and planning certainty was supported by a report commissioned by the Department where the authors favoured very long (30 – 40 years) licence terms.<sup>7</sup> After carefully considering the responses of all parties to this consultation TELUS sees nothing to change the recommendation made to the Department in our response and we herein reiterate – **TELUS respectfully 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 at a minimum.**

## 2.0 Conditions of Licence

### (a) Research & Development Requirement

The Department noted in the Consultation Paper that "The Department is in the process of reviewing this condition of licence and, given that it applies to many licences other than cellular and PCS, discussions will take place in the upcoming *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*."<sup>8</sup> In spite of the Department apparently deferring discussion to that other consultation all active carriers considered it important enough to request the Department to remove this requirement as a condition of licence. Rogers spoke for the entire Canadian wireless industry when they said "Rogers opposes the research and development ("R&D") condition of licence... This condition therefore has served its purpose and should be

<sup>6</sup> Bell response to DGRB-002-09, May 29, 2009, paragraph 37, page 10.

<sup>7</sup> Study of Market-based Exclusive Spectrum Rights, McLean Foster & Co. in collaboration with Prof. Martin Cave, Robert W. Jones and Dr. William Lehr for Industry Canada, August 31, 2007, page 7.

<sup>8</sup> Consultation Paper, Op. Cit., section 4.3, page 6.

eliminated.”<sup>9</sup> And again when they added “The Department has other alternatives for encouraging R&D in Canada. We would also note that the US, UK and Australia do not impose an R&D condition of licence and Rogers is not aware of any other jurisdiction that imposes such a condition of licence. In any event, market forces will ensure that wireless equipment manufacturers and licensees will continue to invest heavily in R&D to enhance their competitive position.”<sup>10</sup>

Moreover, it is important to recognize that innovation can no longer be narrowly defined by tax definitions of R&D. Innovation now is more likely to occur at the edge of broadband networks where application providers flourish. It seems to be accepted that the more robust the network the more the innovation that arises from its use. TELUS believes that there is a direct link between investment today in NGN wireless broadband and the subsequent use of these networks to create innovation and produce economic growth. It is clear from discussions between industry and government on stimulating ICT that economic growth is driven by the quality of our networks. The process begins by stimulating investment and removal of this Condition of Licence would do much to aid that process.

In 2008 and 2009 billions of dollars are being directed into next generation HSPA networks that will unleash the power of the internet in the mobile space as much as investment in cable modem and DSL unleashed the power of the internet stimulating the generation of hundreds of thousands of innovative applications and solutions. To this end, investment in enhanced wireless platforms has to be priority number one.

For all the reasons outlined and as stated in our response to the Consultation Paper “**TELUS notes that this particular condition of licence has, in our view, outlived its usefulness and should be removed.**”<sup>11</sup>

#### **(b) Spectrum Aggregation Limit**

As we stated in our response **TELUS supports the Department’s intention to remove the Spectrum Aggregation Limit for Cellular and PCS spectrum in accordance with the August 27, 2004 decision by the Minister of Industry to rescind the then mobile spectrum cap relating to Cellular and PCS spectrum.**

#### **(c) Resale and Roaming**

As we stated in our response **TELUS agrees with the Department that the new conditions of licence that came into effect on November 29, 2008 and apply to all cellular, PCS and AWS licences supersede the existing licence conditions concerning resale and roaming and therefore these preceding conditions should be removed.**

<sup>9</sup> Roger response to DGRB-002-09, May 29, 2009, paragraph 36, page 12.

<sup>10</sup> Rogers response, Op. Cit., paragraph 37, page 12.

<sup>11</sup> TELUS response, Op. Cit., page 6.

#### (d) Implementation of Spectrum Usage

As we stated in our response **TELUS agrees with the Department that the extensive deployment of this spectrum means that there is no longer any need for an implementation licence condition. TELUS supports the Department's decision to remove this licence condition from all cellular and PCS licences, both incumbent and auctioned licences.**

#### (e) Lawful Interception

TELUS notes that on June 18<sup>th</sup> of this year the Federal Government tabled Bill C-47, an Act regulating telecommunications facilities to support an investigation. This bill, in effect, extends the existing condition of licence for holders of spectrum licences to all telecommunications service providers. While a discussion of this bill is not appropriate within the context of this consultation TELUS notes that if the bill was to be passed the Department should remove the current condition of licence respecting lawful intercept. TELUS further notes that the bill contains provisions to compensate some telecommunications service providers for initial installation of the required capability to perform lawful intercept functions but contains no provisions to compensate telecommunications service providers for the ongoing operating costs of providing this service to law enforcement agencies.

Moreover the application of this Condition of Licence may not be as uniform as the Department has laid out in the Consultation Paper. As Rogers points out, in the context of cellular and PCS licence renewals "It is clear from the information provided above that the lawful interception condition of licence has always applied only to PCS spectrum and this provision was deliberately maintained by the Department in the final policy that it issued after the consultation process that was conducted in 2002. Rogers believes that the Department should uphold its previous decision and existing policy in this regard and add the footnote to the renewed cellular and PCS licence condition such that the application of the lawful interception condition will be limited to PCS spectrum."<sup>12</sup>

As we stated in our response **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.** TELUS understands that should Bill C-47 be passed as law then the Department will have to delete this condition of licence and it will be replaced by the provisions of the Bill but because the passage of the bill is uncertain and the timing of any passage also uncertain, until that time TELUS calls upon the Department to amend this Condition of Licence as we have recommended.

---

<sup>12</sup> Rogers response, Op. Cit., paragraph 46, page 15.

### 3.0 Licence Fees

In our response TELUS outlined our concerns related to the Department's disclosure that "Industry Canada is undertaking a formal study to assess the current market value of cellular and PCS spectrum."<sup>13</sup> TELUS is concerned that the Department may be equating a fair return to the public to "market value" of cellular and PCS spectrum. We consider this an inappropriate comparison given the externalities benefiting the public from investment in infrastructure and services. This is because in these consultation papers the Department speaks, in our view erroneously, of maximizing the return, through fees, to the Canadian public. In our response TELUS said "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." Rather than justify a regime to maximize rents on spectrum licensees this objective requires that the Department take a holistic look at all the benefits to Canadians derived from up-to-date, ubiquitous, broadband mobile networks and the continuing large investments required by the licensees. TELUS asserts that such a holistic view of the net benefits accruing to Canadians is the right focus for the Department."<sup>14</sup>

It is interesting to note that every party responding to the Consultation Paper that dealt with the issue of licence fees held the same opinion. Rogers for example stated "It is evident therefore that the overall thrust of the SPF is that the Department will regulate in a less intrusive fashion and that it will grant increased flexibility to radio spectrum licensees. The SPF does not define any imperative for the Department to re-calibrate the level of spectrum licence fees that it collects."<sup>15</sup> Bell succinctly summed up their comments on such an interpretation with "In any event, Bell Mobility 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 of rent-seeking level."<sup>16</sup> While the CWTA phrased it thusly "CWTA respectfully submits that the 2007 SPF does not contain that statement, or any mention of fees."<sup>17</sup> In other words the Department seems to be undertaking a study for all the wrong policy reasons i.e. maximize fee levels instead of the required holistic view of the benefits that derive to the Canadian public arising from the high levels of investment made by Canada's wireless carriers. It was this concern that caused TELUS, in our response to say to the Department "**TELUS strongly recommends that the**

---

<sup>13</sup> Consultation Paper, Op. Cit., section 5.2, page 7.

<sup>14</sup> TELUS response, Op. Cit., page 9.

<sup>15</sup> Rogers response, Op. Cit., paragraph 71, page 22.

<sup>16</sup> Bell response, Op. Cit., paragraph 119, page 28.

<sup>17</sup> CWTA response, Op. Cit., page 7.

**Department establish a consultation aimed at determining the terms of reference and methodology for such a study before launching it and if such a study has begun that it be halted until such a consultation has been completed.”<sup>18</sup>**

TELUS believes that a properly designed study that focused on a holistic view of the use of the radiofrequency spectrum would result in fees that are lower than today’s current fees. In our response we stated “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.”<sup>19</sup> Respondents addressing the fee level in this current consultation favoured levels that allowed the Department’s costs to be recovered. The CWTA detailed this approach when they said “CWTA submits however, that a cost-recovery model is a legitimate option that the Department should consider and would provide a return to the public. A cost recovery approach would also be consistent with Federal Communications Commission (FCC) practices for comparable spectrum. The FCC recently released its assessment on 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 \$ 3,888,000 – a far cry from \$129,983,142. 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.”<sup>20</sup> This was echoed by Rogers when they stated “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.”<sup>21</sup> Bell submitted “In light of the economic downturn, which the Finance Minister is now acknowledging as being more severe than originally anticipated, Bell Mobility believes that a “spectrum fee holiday” should be introduced immediately to assist wireless carriers to weather the current economic storm. 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.”<sup>22</sup>

**TELUS supports an interim fee holiday for the next 2 years .** We believe because of poor auction design the Treasury obtained a \$2 billion windfall just prior to the recession from the

---

<sup>18</sup> TELUS response, Op. Cit., page 10.

<sup>19</sup> Ibid.

<sup>20</sup> CWTA response, Op. Cit., page 7.

<sup>21</sup> Rogers response, Op. Cit., paragraph 77, page 24.

<sup>22</sup> Bell’s response, Op. Cit., paragraphs 124, 125, page 29.

AWS auction. A fee holiday is more likely to stimulate even more new investment than a tax cut. **TELUS recommends that after the fee holiday the Department adopt a cost recovery model for the purpose of setting spectrum licence fees going forward.**

To reiterate, as we outlined in our response;

- “TELUS reminds the Department that when looking at fee levels in a future consultation, its SPF requires that it take a holistic view to industry benefits and economic well being.
- Finally, TELUS urges the Department to consult on the terms of reference and methodology of any study designed to address cellular and licence fees.”<sup>23</sup>

Further as outlined above TELUS;

- supports an interim fee holiday for the next two years
- recommends that the Department adopt a cost recovery model for setting spectrum licence fees on a go-forward basis after the fee holiday.

#### **4.0 RP-19**

In our response to the current Consultation TELUS called on the Department to eliminate RP-019. TELUS notes that two respondents have called on the Department to expand the provisions of this policy. TELUS firmly opposes and expansion of RP-019 and repeats our recommendation **“TELUS respectfully recommends that rather than expanding the policy, the Department eliminate RP-019.”**<sup>24</sup>

In this present consultation the Department noted “There is, therefore, no longer a need for an implementation licence conditions.”<sup>25</sup> It did this because as it noted “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<sup>2</sup>”<sup>26</sup> TELUS reminds that the report is over a year old at this time and the percentage of population and geography covered is likely higher in both cases. The department goes on to note “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.”<sup>27</sup> As noted above, if the Department revises the way it uses to devise rates for cellular and PCS spectrum to the more holistic view required by the SPF the resulting lower licence fees will accelerate the build-out of cellular and PCs networks to the current underserved areas of Canada. A process as the Department notes that is happening even at present fee levels.

<sup>23</sup> TELUS response, Op. Cit., page 11.

<sup>24</sup> TELUS response, Op. Cit., page 2.

<sup>25</sup> DGRB-002-09, Op. Cit., section 4.5, page 6.

<sup>26</sup> DGRB-002-09, Op. Cit., section 3, page 4.

<sup>27</sup> Ibid.

TELUS suggests rather than tinker with RP-019 as suggested by some parties the Department eliminate the policy altogether and concentrate on implementation of a fungible secondary market as recommended in the McLean Foster report the Department commissioned. Together with an organized secondary market “agora” that would facilitate a secondary market by allowing a place where buyers and sellers can meet for the purpose of buying or selling spectrum such a system would address the needs of that very small (less than 2% of the total population) that does not have service at this time. Expropriating carrier’s spectrum to address this issue is to hold wireless networks to a much higher standard than terrestrial networks or other services such as water and power.

Finally TELUS notes that there is still PCS spectrum available, since 2001, on a First Come First Served basis in N. Quebec, Saskatchewan, Yukon, N.W.T. and Nunavut should any new party want to provide service to a currently underserved area. This spectrum availability together with the continuing expansion of present networks should make any further action on this issue unnecessary.

**Alternatively TELUS suggests that the Department consider an increase in its planned stimulus funding in its rural and remote proposal. Under such a model revenues from past and future auctions could be set aside in a high cost wireless fund. Parties willing to build in identified high cost areas could obtain support for network extension under such a plan.**

## **Conclusion**

In our initial response to the Consultation Paper and in our present reply TELUS;

- Supports the Department’s intention to renew these licences and call upon the Department to renew them for a 15-20 year term together with a high expectation of renewal.
- Recommends that the R&D Condition of Licence be immediately eliminated.
- Recommends that the Department take a holistic view of the benefits derived by Canadians through use of the spectrum and consult with the industry in setting the parameters for any study regarding fees.
- Supports an interim two year fee holiday and recommends the Department adopt a cost recovery fee model for spectrum licences on a go-forward basis.
- Recommends that the Department eliminate Radio Policy 019.

Yours truly,

{Submitted electronically}

Ed Prior