

December 4, 1998

Consultation on 24 GHz and 38 GHz

Radiocommunications and Broadcasting Regulatory Branch

Industry Canada

Room 1559D – Jean Edmonds Tower North

300 Slater Street

Ottawa, Ontario

K1A 0C8

To Whom it may concern:

I am pleased to convey the preliminary comments of TELUS on the Consultation on the 24 and 38 GHz Frequency Bands: Proposed Policy and Licensing Procedures.

We look forward to the adoption of our proposals and the opportunity to comment in the reply phase.

Yours truly,

Ed Prior

Director, Issues Management

TELUS

**Comments in Response to the Consultation on 24GHz and
38 GHz**

**Industry Canada Gazette Notice No. DGRB-003-98
Consultation on the 24 and 38 GHz Frequency Bands:
Proposed Policy and Licensing Procedures**

TELUS comments in response to the consultation on 24GHz and 38GHz

**Industry Canada Gazette Notice No. DGRB-003-98 – Consultation on the 24 and 38 GHz
Frequency Bands: Proposed Policy and Licensing Procedures**

1.0 Introduction

TELUS Corporation (TELUS) has reviewed Industry Canada's (the Department's) document entitled "Consultation on the 24 and 38 GHz Frequency Bands: Proposed Policy and Licensing Procedure" as outlined in Gazette Notice DGRB-003-98.

TELUS is generally supportive of the submissions of the Radio Advisory Board of Canada (RABC) and the Canadian Wireless Telecommunications Association (CWTA) on this consultation paper. TELUS differs, however, from these submissions on matters such as those of license packages, spectrum caps, rollout requirements and some of the licensing process issues.

2.0 Response to specific questions raised in the Consultation Paper

Section 3.1.1 The 24 GHz Band

Interested parties are requested to comment on the 24 GHz band plan. Any alternate band plan proposals are welcome.

TELUS is supportive of the band plan as presented. A major reason for this support is the harmonization of the band plan with that in the United States. Such harmonization between the two countries promotes wider and more economic choices for service providers such as TELUS in delivering innovative and cost-effective services to Canadians.

Section 3.1.2 The 38 GHz Band

Interested parties are requested to comment on the 38 GHz band plan and proposed options.

TELUS is supportive of option 2, that of setting aside 900 MHz for broadband wireless services (exclusive use). TELUS is against the reservation or warehousing of spectrum at any time. We believe that the entire 900 MHz should be offered at auction. In areas where there is not sufficient demand surplus blocks will either default to a First Come First Serve (FCFS) basis or remain in the Department's stock of inventory. The spectrum blocks not allocated through the initial auction process may then form part of another auction or be made available, after a public consultation process, on a shared basis. In this way the Department or any other party is not prejudging the market demand for a particular block in a particular geographic area and parties wishing to pay market rates to obtain such spectrum will be able to do so. Offering all 900 MHz during an auction will also serve to protect those wishing to pay market price by ensuring that this price is not made artificially high through unnecessarily limiting the supply.

Comments are sought on the amount of spectrum that is required to support the business plans of the operators wishing to continue to deploy point-to-point systems in the shared blocks. Further comments are sought on the spectrum policy provisions contained within Appendix A.

TELUS does not currently deploy point-to-point systems in the shared blocks. As outlined above, we believe that since 500 MHz of spectrum at 38 GHz is already designated for sharing, the remainder should be available, at market rates, for those parties willing to pay such market rates as determined through an auction or reserve price for those blocks not contested in such an auction. Any remaining blocks can then be considered for designation as shared use in those

geographic areas where they continue to exist. This method serves to "level the playing field" for all wireless operators for the provision of infrastructure inputs into their service delivery business models.

TELUS is generally supportive of the spectrum policy provisions contained in Appendix A.

3.2 Allocation Issues

Comments are sought on the proposed changes to the Canadian Table of Frequency Allocations and views on suitable sharing and coordination criteria which would facilitate the use of these bands by the fixed service and by incumbent primary services.

TELUS notes that Industry Canada will need to propose an addition of a fixed allocation for Region 2 at the next International Telecommunications Conference in the bands 24.25-242.45 GHz and 25.05-25.25 GHz on a primary basis. If it is not possible to obtain a Region 2 allocation, the Department will need to add a footnote in the international Region 2 Table of Frequency Allocations specifying that these bands are allocated on a primary basis to the fixed service in Canada. The world has changed, and once spectrum is auctioned, the successful bidders have the right to unfettered use of the spectrum they have acquired.

3.3.2 Eligibility Requirements

Comments are sought on the eligibility requirements proposed.

TELUS notes that the Department has raised the idea of imposing a spectrum cap for the 24 & 38 GHz auction. TELUS believes that there should be no spectrum cap and indeed if the Department instead, addressed the artificial spectrum shortage there would be no need to penalize those parties choosing to offer services through wireless technology.

In section 3.3.1 the Department has proposed two principles. Given that the successful bidder should be free to use the spectrum in accordance with their business plan, not a directive from the Department, it would seem that the principles are an attempt to pre-judge what will be offered and how it will be offered. TELUS therefore opposes the principles as an attempt to manage the market place. This is a task best left to the firms that are risking their resources and to the customers whom they are serving. In this context the Department must recognize the over-all level of competitiveness and the changing nature of the Canadian telecommunications industry. The use of spectrum within the 24 and 38 GHz bands to offer services is merely one choice within the terrestrial wireless array of choices. There are other technologies and other means to offer these services. Industry Canada must remain technology and band neutral in this regard. The Department can best meet its objectives of providing sufficient spectrum to support viable business plans and accommodating a range of service providers by ensuring that it makes available the abundance of spectrum in all bands suitable for offering telecommunications services in a timely fashion.

At footnote 9 of the Consultation Paper, the Department references the Merger Enforcement Guidelines as being pertinent to the analysis regarding bidder eligibility and spectrum aggregation limits. In relying on the guidelines without fact-specific analysis, the Department assumes, as evidenced by the principles listed, that a concentration of spectrum beyond the aggregation limit, will necessarily have anti-competitive effects on the marketplace. The

Department's concern seems to be with a licensee who would acquire excess spectrum simply to block competitors. For reasons provided in the comments on *4.6 Implementation of Services* below, TELUS submits that the concern is unfounded. In any event, section 78(e) of the *Competition Act*, in defining those activities which could be considered "anti-competitive acts," states:

Pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;

TELUS feels strongly that any imposition of spectrum aggregation limits would constitute an improper and premature application of the merger enforcement guidelines. Further, the Department would be usurping the role of the Competition Bureau. Finally, having regard to the divisibility, transferability, and freedom of use of the auctioned spectrum licenses, the Department has no basis upon which to assert that a party exceeding the proposed aggregation limit would not put the spectrum to its most efficient use or, for that matter, even choose to retain that volume of spectrum.

4.2 Service Areas

Comments are sought on the proposal to use Tier 3 service areas for the licensing of the 24 and 38 GHz bands.

TELUS has no comments on the use of Tier 3 for the licensing of the 24 and 38 GHz bands.

4.5 Transfer and Division of Licenses and Flexibility of Use

Comments are sought on a moratorium of up to three years on the transferability of licenses following this licensing process.

TELUS strongly disagrees with the suggestion that there should be a moratorium on the transferability of licenses following this licensing process. In this regard the Department's own Framework for Spectrum Auctions in Canada suggests that the establishment of an active secondary market in spectrum was an efficient method of ensuring spectrum flowed to those that valued it most highly.

Imposition of a moratorium would be a regressive step by the Department and should be avoided. Rather than seek to impose a moratorium the Department should facilitate and encourage the establishment of a strong secondary market for spectrum.

Comments are sought on a moratorium of up to three years on the divisibility of licenses following this licensing process.

For the same reasons that TELUS is opposed to the imposition of a moratorium on the transferability of licenses under this process, TELUS is also opposed to the imposition of a moratorium on the divisibility of licenses. The encouragement of the development of a strong secondary market should become a public policy goal. The suggestion of the imposition of a moratorium is completely contrary to this ideal and in our view is to be avoided.

4.6 Implementation of Services

Comments are sought as to whether there should be a condition of license that requires licensees to implement their services within a specified time period that is less than the proposed license renewal period. Further, views are sought on the possible mechanisms that could be employed to verify the implementation of service within the stated time period.

TELUS is opposed to the imposition of any rollout requirements.

In the current discussion paper, the Department is proposing that the successful bidders will be required to pay for their spectrum within 45 days. Having received market value for this spectrum the Department should then leave it the successful bidder's business plan to determine the optimum time to roll out services. The financial commitment made by the successful bidder is proof that the spectrum will be used effectively, either by the acquirer or within the secondary market. Indeed, market forces will ensure that the resource obtained at market value will be employed in an efficient fashion. Imposition of rollout conditions pre-judges the readiness of the market or of technology and can force actions that are counter to sound service provisioning or efficient use of the spectrum.

4.7 Proposed Conditions of License:

TELUS has examined the proposed conditions of license and while agreeing that some of the proposed conditions are necessary and reasonable, finds that others are either unnecessary or burdensome or both.

The first concern is with proposed Condition of License number 2. While agreeing with the objectives of the Solicitor General's Enforcement Standards for Lawful Interception of Telecommunications (Rev. Nov.95) we find these standards too over-reaching in their applicability. They are based on a voice circuit network topology, not the multi-channel approach that this spectrum will likely be used for. We would prefer an approach that involved a public consultation by the Department to define the capabilities of current technology that will be used in the 24 and 38 GHz bands to meet the requirements under these Standards. The condition of license applicable to these Standards, for the license term, would then be set out prior to the auction. This approach would ensure certainty for all licensees over the initial license term regarding the cost imposed on Licensees to meet the Standards.

The second concern is with proposed Condition of License number 6. This proposed condition of license unfairly discriminates against and penalizes those firms that employ wireless technology versus landline technology. It does this by introducing a cost that firms using other technologies are not required to incur. The rationale for this proposed license condition has likely disappeared

as it was imposed on wireless firms before the advent of full competition across all telecommunications services. Further it was imposed before it was possible to assert that holders of this spectrum had paid full market value for their spectrum. Given the adoption of an auction methodology to allocate spectrum that is no longer the case. It now serves as a disincentive for the use and development of wireless technology. TELUS recommends that the Department not implement this proposed Condition of License. Holders of spectrum, obtained at full market value will have ample incentive to ensure the development of new and innovative capabilities concerning the technology they deploy.

The third concern is with proposed Condition of License number 7. TELUS considers this burdensome and as noted above with respect to the audited statement of research and development expenditures unnecessary. An alternative to the proposed requirements is that licensees would provide, on a fiscal year end basis, a copy of their corporate annual report to demonstrate their continued eligibility as outlined in proposed Condition of License number 1.

TELUS would also note that the eligibility section does not preclude non-carriers to bid for the spectrum. The proposed conditions of license are those typically imposed on carriers. It is important that all conditions of license be the same for all successful bidders regardless of their status. If the Department finds some of the conditions of license are not suitable for private firms then they should eliminate these. Spectrum licenses, especially those that are auctioned should be as unfettered as possible.

5.3 Communications between Licensees

Comments are sought on a suitable trigger mechanism and the appropriate value.

TELUS is supportive of the proposals by the RABC with respect to this question.

5.3.1 Implementation

Comments and proposals are sought on the most suitable models and trigger mechanisms to be used by Industry Canada when called upon to arbitrate on an unresolved dispute resulting from interference being experienced between systems operating on these bands.

TELUS is supportive of the comments of the RABC with respect to this question.

5.4.2 Adjacent-Channel/Same-Area Systems

Comments are sought on the suitability of an emission limit to reduce the occurrence of adjacent channel block interference under the current proposals for spectrum and geographic distribution.

TELUS is supportive of the comments of the RABC with respect to this question.

6.1 Proposed Auction Process

Comments are sought on the steps outlined below that the Department expects to utilize for the licensing process for the 24 GHz and 38 GHz bands.

TELUS is generally supportive of the Department's proposals as outlined. TELUS is opposed,

however, to the Department's proposals with respect to those licenses for which only one qualified bidder has indicated an interest. Because the Notification of Interest is voluntary and bidders may not wish to directly signal interest, adoption of such a proposal may result in spectrum being assigned that might otherwise have been the subject of competitive bidding. It might also be the case that a bidder may become interested in the license due to the progress of the auction, i.e. not being successful on the license of initial interest the bidder's interest may shift to one that was not previously identified. It is therefore imperative that all licenses remain eligible for auction until the close of the auction. Only then should such licenses that have not been the object of a bid be offered to those parties that had expressed interest according to the Department's proposal.

With respect of the reply comment period, TELUS, although encouraged by the Department's expeditious time lines, is in this instance, fully supportive of the CWTA's proposal for moving this date to allow for reflection and comment, as this will be Canada's first spectrum auction.

6.2 Auction Design

Comments are sought on the proposed auction attributes discussed below.

TELUS believes that auction efficiency is improved through the use of discretionary bidding. The Department's rationale for the use of non-discretionary bidding is, and in our view remains, unconvincing. In this continuum, TELUS supports the use of multiple increment bidding before that of non-discretionary bidding. Also, given TELUS' vehement opposition to the imposition of spectrum caps, it can not support the proposed enforcement mechanism contained in paragraph 6.2.10.

On other aspects raised in this question, TELUS is generally supportive of the comments expressed by the CWTA.

7.1 Reserve Price:

Comments are sought on the absolute and relative level of reserve prices.

The Department has proposed a reserve price of \$4700 per bidder eligibility point. TELUS notes, as does the RABC and the CWTA, that the Department arrived at this number by assuming that the cost of spectrum management in Canada is \$1 million per year per 1 GHz, distributing this annuity over an infinite number of years, and then converting the annuity number into a lump sum up-front payment at a discount rate of 6.5%. However, if the annuity was distributed over a 10-year period instead, to correspond to the 10-year license period, the Department would have obtained a lump sum up-front payment of approximately \$7.19 million, less than half of the currently proposed reserve price figure.

TELUS joins many other parties in recommending that the Department re-examine its cost recovery formula in light of the above-noted comments. In particular, given that the initial license term is proposed to be ten years, it would be more reasonable for the annuity to be distributed over the 10-year license period. If, however, the Department aims to take into account the long-term nature of the auctioned licenses, then distributing the annuity over an infinite period may be appropriate. TELUS emphasizes that in this latter case the Department should impose no license renewal fees as the spectrum management costs will already have been

recovered by the reserve price and any bids exceeding the reserve price.

7.2 Pre-auction Deposits

Given the concerns outlined above regarding reserve prices, TELUS feels that if the reserve prices were brought into line, as outlined above, then the manner and policies surrounding deposits are suitable.

Appendix A

Comments are sought on the policy provisions outlined in this attachment.

As outlined above, TELUS believes that the entire 900 MHz should be available for auction. Given this caveat the policy as outlined are acceptable.