



**Reply Comments to Innovation, Science and Economic Development
Canada from**

SSI MICRO LTD.

In Response to DGSO-002-19

**“Consultation on the Spectrum Licence Renewal Process for Non-
Auctioned Broadband Radio Services (BRS) Licences”**

June 18, 2019

A. Introduction and Summary

1. SSi Micro Ltd. (“SSi”) is pleased to submit these comments in response to the submissions of other parties to Canada’s Minister of Innovation, Science and Economic Development (“ISED” or the “Department”) concerning Canada Gazette notices DGSO-002-19, ***“Consultation on the Spectrum Licence Renewal Process for Non-Auctioned Broadband Radio Services (BRS) Licences”*** (the “Consultation”) and DGSO-003-19, extending the period for reply comments.
2. We note that there is a high degree of consensus in favour of the positions that SSi took in response to a number of issues raised in this Consultation.
3. Moreover, we note that several parties took the opportunity afforded by this Consultation to express general views concerning the matter of licence fees, which the Department had noted would be considered in a separate consultation. Without prejudice to our participation in any such consultation, we note our support for the observations made by Rogers Communications Canada Inc. (“Rogers”) and TELUS Communications Inc. (“Telus”) that generally, licence fees are higher than they should be, and if there is to be any harmonization among fees it should be to a lower level of fees.
4. In particular, we support Rogers’ observation that, at a minimum, fees for BRS Licences should be “significantly less” than the current fees for cellular and PCS licences, and moreover that the latter fee levels should be reduced. Rogers suggests that ISED follow the U.S. Federal Communications Commission in setting spectrum licence fees at a level that permits cost recovery only, a move which would contribute to the ability of small licensees, in particular, to do more to help Canadians realize the benefits of their spectrum resources.

Question 1: Renewal of Non-auctioned BRS Licences

5. Like SSi, most other parties support ISED’s proposal to renew non-auctioned BRS Licences for which the conditions of licence have been met (Question 1).
6. The objection of Xplornet Communications Inc. (“Xplornet”) to this proposal, that it is inconsistent with how ISED proposes to treat spectrum in another band (3500 MHz) that might possibly be used to provide similar services in the market, does not address the specific circumstances of the BRS licences, and should not deter the Department from carrying out its original proposal.

7. Ecotel Inc. (“Ecotel”) proposes a much more aggressive regime. Any non-auctioned BRS licence that does not comply with the stringent conditions for deployment that Ecotel advances should, in their view, have its licence removed so that the Department can reassign the spectrum on a first come, first served basis.
8. In effect, what Ecotel is proposing would force licensees to make short-sighted investments so as to be able to meet an artificial standard – to demonstrate “they have real customers using the spectrum” – solely in order to maintain licences they had validly acquired. Instead of monitoring developments and working with manufacturers to make suitable equipment available at a price and quantity that enables the licensee to offer desirable and well-priced services to the public, BRS licensees would be forced by Ecotel’s proposal to put something, anything, in place for the sole purpose of retaining their rights to use the spectrum. This is conducive to inefficient spectrum use.
9. Moreover, Ecotel’s proposal could undermine ISED’s ability to ensure that spectrum is managed in the interests of the Canadian public to which it belongs. The proposal to re-assign BRS spectrum on a first come, first served basis implies that Ecotel thinks ISED should implement a policy to favour any possible use of spectrum that meets the commercial interests of “other operators,” at the potential expense of carefully planned, long-term service deployment that serves the interests of a broader public.
10. Ecotel’s proposal is short-sighted, punitive, and conducive to the inefficient use of spectrum. We urge ISED to reject it.

Question 2: Term of Renewal for Non-auctioned BRS Licences

11. In Question 2, ISED proposes to renew complying non-auctioned BRS Licences for a new term of 14 years that would expire on March 31, 2035.
12. We note that the major point of disagreement over this proposal was that this period is too short. Bell Mobility Inc. (“Bell”), Rogers and Xplornet all expressed support for licence periods of at least 20 years’ duration, although Rogers and Xplornet acknowledged ISED’s desire to harmonize the expiry of non-auctioned BRS Licences with those acquired by auction.
13. We believe that Xplornet’s formula achieves a reasonable balance. That is, ISED should implement the 14-year renewal policy it proposed, but both non-auctioned and auctioned BRS Licences should “benefit from a high expectation of renewal for future terms of 20 years” thereafter.

Question 3: Development Levels to be Applied to Non-auctioned BRS Licences

14. The Department's question concerning the development levels that should be applied to non-auctioned BRS licences generated a bit more controversy. While most parties generally considered ISED's proposal to be appropriate, Rogers and Ecotel objected.
15. Rogers considered that deployment obligations should be removed in respect of licence areas that meet the coverage requirements imposed on the original non-auctioned BRS licences, but suggested that if deployment conditions are considered necessary, they should be harmonized with those imposed on auctioned BRS licences.
16. Ecotel proposed more stringent deployment conditions, presumably so as to facilitate the re-use of spectrum within licensed areas where the licensee has not deployed or offered service.
17. Although SSi agrees with Ecotel that ISED should facilitate licensees' efforts to subordinate unused spectrum where another operator demonstrates that it can make better use of the spectrum to offer valuable services to the Canadian public, we do not agree that ISED should impose stringent deployment conditions on non-auctioned BRS licences in order to provide licensees with incentives to enter into subordination agreements. In particular, Ecotel appears to be calling for deployment to be measured according to standards that differ depending on whether the area in question is a central or relatively remote part of a licensed serving area.
18. Ecotel's proposal undermines ISED's decisions concerning the size and composition of licensed serving areas. In addition, it introduces an arbitrary, after-the-fact condition that could undermine the investment decisions already made by licensees. Licensees evaluate options for service deployment according to a range of considerations, including precisely the composition of a licensed area – and the potential market (or markets) the area contains. If at this point in their licence terms they face significant revisions to deployment conditions so as to make the more-remote parts of their serving territories available to other operators, their investments and plans would be disturbed for the sole benefit of potential entrants such as Ecotel itself.
19. As we have said in response to other Consultations, SSi supports ISED's efforts to ensure that subordination is a viable and attractive option to ensure that spectrum is used efficiently to offer services that meet ISED's standards of the public interest. We are not convinced that Ecotel's proposal in this Consultation is conducive to this outcome.

Question 4. Conditions of Licence for Renewed BRS Licences

20. The Department's final question, concerning the proposed conditions of licence ("CoL") to be applied to new BRS licences that are issued through this renewal process, stimulated the greatest controversy among the parties that offered comments on the Consultation.
21. SSi, Xplornet, and Saskatchewan Telecommunications ("SaskTel") supported ISED's proposal in the interests of harmonizing CoL between non-auctioned and auctioned BRS licences.
22. Most other parties agreed that harmonization was a valuable objective, but took issue with one or more of the proposed CoL, not only as they apply to non-auctioned BRS licences, but also as they apply to other categories of licensees.
23. Rogers, Bell and Shaw Communications Inc. ("Shaw") all singled out the CoL requiring licensees whose revenues exceed a certain threshold to spend 2% of adjusted gross revenues resulting from the use of the licence on eligible research and development (R&D) activities related to telecommunications.
24. We note in particular Rogers' observation that the R&D CoL has served its purpose and mixes spectrum management objectives with industrial development techniques. We would support Rogers' call to phase out the R&D CoL.
25. However, we do not support Bell's alternative proposal to extend the obligation to all licensees, irrespective of their revenue levels. Given the large sums that qualifying R&D requires, obliging a small licensee to devote a proportion of its revenue to funding research and development serves neither industrial development nor spectrum management objectives. This is particularly the case because a small licensee is unlikely to be able to carry out qualifying R&D itself: at best, it can contribute a little to someone else's project, and may or may not derive either scientific or commercial benefits from that contribution. All such a proposal will achieve is to further impoverish new and niche players and reduce their incentives to enter into the Canadian market for wireless communications services.
26. Bell and Telus also call for the removal of ISED's mandatory roaming CoL, arguing that it is no longer required in view of recent determinations by the Canadian Radio-television and Telecommunications Commission ("CRTC") to require those two operators, plus Rogers, to offer certain wholesale wireless roaming services on a mandated basis.
27. We urge the Department to reject these proposals. The Commission's determination responds to particular market circumstances and applies to specified national wireless carriers and services. It does not serve the same purpose as ISED's CoL, nor does it replace the general CoL. Moreover, the current Consultation cannot create an adequate record to support the removal of this condition of licence from all categories of spectrum licence, as these two parties appear to advocate.

28. Rogers raises an important issue concerning the scope of the lawful interception capabilities that licensees are required to support. We believe the Department should give some consideration to reviewing this issue in more depth in a separate Consultation.
29. Finally, Bell also urges the Department to consider reducing the annual reporting requirement for all spectrum licences. Again, we are sympathetic to this request and would support a proceeding by which the Department evaluates both the benefit and the burden of its current reporting requirements with a view to streamlining their scope and frequency.
30. We appreciate the opportunity afforded by this Consultation to provide our views on these important issues.

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