



1 March 2004

Mr. Larry Shaw
Director General
Telecommunications Policy Branch
Industry Canada
300 Slater Street
Ottawa, Ontario
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Dear Mr. Shaw:

Subject: Bell Wireless Alliance Comments in response to - Consultation on the Spectrum for Advanced Wireless Services and Review of the Mobile Spectrum Cap Policy, Canada Gazette - Part 1, Notice No. DGTP-007-03, dated October 2003.

Don Woodford
Director -
Government &
Regulatory Affairs

1. Bell Mobility, on behalf of the Bell Wireless Alliance (BWA), is pleased to submit the attached comments in response to Industry Canada's consultation on the spectrum for advanced wireless services and review of the mobile spectrum cap policy.
2. As noted in these comments, the BWA considers that the Department's anticipated timing of this licensing process is one of the key matters raised in this consultation. In this regard, the Department's discussion paper anticipates that the spectrum being addressed in the Consultation will be licensed in the 2005 to 2006 timeframe. The validity of this assumption is important since it will define the timeframe within which the licensing processes, including related additional public consultations, triggered by this Consultation will unfold. The BWA is of the view that this licensing process must be directly linked to the wireless carriers' operational requirements for this spectrum. In this regard, and based on a careful analysis of its future operational requirements, the BWA considers that the 2008 to 2009 timeframe would be a more realistic view of when its members will require additional spectrum and the timeframe in which spectrum should be licensed.
3. The BWA appreciates the opportunity to collaborate with the Department in its consultation on spectrum and policies for advanced wireless services. As usual, the BWA notes its availability to discuss any of the attached comments in further detail at the Department's convenience.

Yours truly,

Attachment

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Canada Gazette Notice No. DGTP-007-03

Consultation on the Spectrum for Advanced Wireless Services
and Review of the Mobile Spectrum Cap Policy

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Bell Wireless Alliance
Comments
on behalf of

Aliant Telecom Inc.
Bell Mobility Inc.
MTS Communications Inc.
MTT Mobility Inc.
Northwestel Mobility Inc.
Saskatchewan Telecommunications
and
The Corporation of the City of Thunder Bay

1 March 2004

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EXECUTIVE SUMMARY

s1. The Bell Wireless Alliance (BWA) is please to submit the following comments in response to Industry Canada's *Consultation on the Spectrum for Advanced Wireless Services and Review of the Mobile Spectrum Cap Policy (the Consultation)*.

s2. The BWA applauds the Department's initiative in moving to ensure that, when required, sufficient spectrum is available to enable the continued growth and expansion of Advanced Wireless Services (AWS) in Canada. This initiative will allow Canadian wireless carriers to ensure that Canada's wireless infrastructure continues to act as an enabling technology that contributes to the competitiveness of Canadian businesses and the well-being of its citizens.

s3. The BWA notes that the Department has recognized the fundamental requirement for the harmonization of the AWS spectrum allocation throughout North America. Harmonization of the wireless frequencies for AWS will facilitate the availability of seamless North American roaming and, through the achievement of economies of scale at the manufacturer level, will contribute to the wider availability of new equipment and terminals for the Canadian market at the most reasonable cost possible. The BWA supports this initiative.

s4. The BWA also supports the Department's decision to allocate the 1710-1755 MHz band paired with the 2110-2155 MHz band for base uplink purposes. The allocation will facilitate North American and global harmonization.

s5. The Department's discussion paper anticipates that the spectrum being addressed in the Consultation will be licensed in the 2005 to 2006 timeframe. The BWA considers that this timing issue is one of the key considerations raised in the Consultation. This assumption, will define the timeframe within which the licensing processes triggered by this Consultation, including further related public consultations, will unfold. If this timing assumption is premature, it will nonetheless start the clock ticking on a process that will prematurely and needlessly extract perhaps billions of dollars from the industry before that financial commitment is warranted by actual spectrum requirements. The BWA is of the view that this, or indeed any, licensing process contemplated by the Department must be directly linked to the industry's operational requirement for additional spectrum. The BWA considers, based on a careful analysis of its own future spectrum requirements, that the 2008 to 2009 timeframe would be a more realistic view of when its members will require additional spectrum for AWS and when the spectrum should be licensed.

s6. Concerning the mobile spectrum cap policy, for the reasons outlined in these comments, the BWA is strongly of the view that the continued retention of a mobile spectrum cap is no longer appropriate and that it does not contribute to fostering competition and choice of services to Canadians. In the BWA's view the Department would continue to retain, absent the cap, sufficient tools to address issues of market power or spectrum dominance should it perceive, at any time, a need to do so. Concerning timing, the BWA considers that a decision to rescind the mobile spectrum cap policy should be effective immediately and further notes that such a decision would align Canada's spectrum policy with that of its major trading partners.

s7. Concerning the proposed measures to promote advanced mobile telephony services in rural Canada, the BWA finds the Department's analysis compelling and, subject to the caveats outlined in these comments, supports the Department's proposal to facilitate the extension of advanced wireless services to rural and remote areas.

1.0 INTRODUCTION

1. Bell Mobility, on behalf of the Bell Wireless Alliance (BWA), is pleased to submit the following comments in response to Notice No. DGRB-007-03 – *Consultation on the Spectrum for Advanced Wireless Services and Review of the Mobile Spectrum Cap Policy*, as published in the *Canada Gazette*, Part 1, dated October 2003 (the Consultation). Bell Mobility notes that it participated in the development of the comments of both the Canadian Wireless Telecommunications Association (CWTA) and the Radio Advisory Board of Canada (RABC) in response to the Consultation. Bell Mobility notes that the BWA fully endorses the submissions of both of those parties.

2. The BWA consists of Aliant Telecom Inc. (Aliant), Bell Mobility Inc. (Bell Mobility), MTS Communications Inc. (MTS), MTT Mobility Inc., Northwestel Mobility Inc. and Saskatchewan Telecommunications (SaskTel) and, for the purposes of this submission, The Corporation of the City of Thunder Bay.

3. The spectrum holdings, of the majority of the above entities, includes cellular licences, operating in the 800 MHz band, as well as Personal Communications Services (PCS) licences, operating in the 1.9 GHz band. In the latter case, these holdings include PCS licences awarded through the 1995 Comparative Review process as well as licences obtained through Industry Canada's 2001 PCS Spectrum Auction (PCS Auction).

4. Included in the spectrum acquired through the PCS Auction were licences obtained by Bell Mobility in both British Columbia and Alberta. Counting these licences, the members of the BWA now operate as wireless service providers (WSPs), offering both public switched mobile services and other mobile services, such as wireless data and Internet access, in every province and territory in Canada. Combined, the members of the BWA have almost two decades of experience in building and operating public spectrum-based networks in the challenging mix of urban and rural operating areas that make up the Canadian wireless sector.

5. In addition to providing wireless services to all of Canada's major urban centres, the members of the BWA are particularly proud of their track record in providing public switched mobile and other wireless services to those parts of the country which are predominantly rural in nature and which are characterized by smaller population concentrations, whether in Atlantic Canada, Manitoba, Saskatchewan, the Territories or Ontario and Québec. Employing

innovative business solutions, as exemplified by the Bell Mobility – TELUS Mobility wireless rural resale arrangement, Bell Mobility is now extending its services to customers residing in the rural areas of British Columbia and Alberta.

6. The BWA applauds the Department's initiative in moving to ensure that sufficient spectrum is available, when required, to enable the continued growth and expansion of advanced wireless services in Canada. This initiative will continue to allow Canadian wireless carriers to ensure that Canada's wireless infrastructure continues to act as an enabling technology that contributes to the competitiveness of Canadian businesses and the well-being of its citizens.

7. The BWA also notes that the Department has recognized the fundamental requirement for the harmonization of the Advanced Wireless Services (AWS) spectrum allocation throughout North America. Harmonization of the wireless frequencies for AWS will facilitate the availability of seamless North American roaming and, through the achievement of economies of scale at the manufacturer level, will contribute to the wider availability of new equipment and terminals for the Canadian market at the most reasonable cost possible.

8. The BWA supports the Department's decision to allocate the 1710-1755 MHz band paired with the 2110-2155 MHz band for base uplink purposes. This allocation, which is harmonized with the United States Federal Communications Commission (FCC) allocation and in alignment with the International Telecommunications Unions (ITU) allocation, will facilitate North American and global harmonization.

9. At section 5.4 of the discussion paper, the Department states its anticipation that the spectrum being addressed in the Consultation will be licensed in the 2005 to 2006 timeframe. This is perhaps the key issue raised in the Consultation since this assumption will define the timeframe within which the licensing processes considered by this Consultation will unfold. The accuracy of this assumption is critically important to the wireless services providers for a variety of reasons. If this timing assumption is premature or wrong, it nonetheless starts the clock ticking on a process that will prematurely extract perhaps billions of dollars from the industry before that financial commitment is warranted by actual operational requirements for additional spectrum. This is important to Canada as a whole as well as to the carriers individually. The premature financing of this spectrum will cause carriers to carry this financial burden years before they will receive any revenue from their use of this spectrum. This will hinder the

development of advanced services and deployment of network enhancements. If the carriers are not required to prematurely finance participation in a financially significant auction, this will position them to continue to fulfill their role as the provider of a national wireless telecommunications infrastructure that will be an important contributor to Canada's global competitiveness. The BWA notes the CWTA's statement to the effect that it believes that "the licensing of this spectrum will be required no earlier than 2007." The BWA strongly endorses this view and further notes that it considers, based on a careful analysis of its own future operational requirements, that the 2008 to 2009 timeframe would be a more realistic view of when its members will require additional spectrum.

2.0 BWA COMMENTS ON SPECIFIC QUESTIONS RAISED IN THE CONSULTATION

In the following sections, the BWA provides its comments on the specific questions posed in the Department's Consultation document. For convenience, and where applicable, the BWA has encapsulated the Department's specific question preceding its comments.

Canadian Initiatives to Allocate Spectrum (Section 2.2)

10. The BWA notes and acknowledges the various efforts, both international and domestic, that have been undertaken by the Department to prepare for the allocation and eventual release of additional spectrum for AWS in Canada. The BWA supports the RABC's observation that, to achieve large-scale commercial deployments of IMT-2000 networks, it is essential to ensure ubiquitous operations throughout North America and, indeed, globally. The BWA therefore also concurs with the Department's promotion, in international fora, of the 1710-1850 MHz and the 2110-2150 MHz bands for this purpose. The BWA concurs with the submissions of the RABC and CWTA to the effect that, in the longer term, the designated bands should be 1710-1770/2110-2170 MHz for global harmonization where the upper band is used for downlink. The BWA also supports the ancillary comment to the effect that there may be a requirement for additional spectrum to accomplish continental harmonization.

Principles Applicable to Mobile-Satellite Services (MSS) Spectrum and Return Spectrum for MCS/MDS (Section 2.4)

11. The BWA concurs with the proposal that the MSS spectrum allocations should be harmonized over the North American market to ensure the economic viability of the service.

3.0 PROPOSED CHANGES TO THE CANADIAN TABLE OF FREQUENCY ALLOCATIONS (Section 3)

12. The BWA has reviewed the proposed changes to the *Canadian Table of Frequency Allocations* outlined in the Consultation paper in support of the AWS allocation. In general, and subject to the following specific comments, the BWA supports the proposed changes.

3.1 Bands 1710-1755 MHz and 2110-2155 MHz (Section 3.1)

The Department seeks comments on the proposed changes to the Canadian Table for the bands 1710-1755 MHz and 1755-1850 MHz. The Department seeks comments on the proposed changes to the Canadian Table of Frequency Allocations for the band 2110-2155 MHz.

13. The BWA agrees with the changes proposed in this section. The BWA supports the proposed band pairing with a 400 MHz separation. The BWA also supports a one - two year displacement notice (as per section 6.5 of the Consultation) for the current fixed stations, similar to that which was used for other transition policies. The BWA notes that some RABC members consider that, in major urban areas and along major highway corridors, a one-year displacement period is acceptable. However, and in light of the assumption that AWS competitive licensing processes will occur later than 2005, the BWA supports the RABC proposal that this priority status date should be fixed relative to the date of the future competitive licensing process and not an absolute date fixed independently of that activity. The RABC has noted that, in the event that an auction was to occur prior to April 2006, a timeframe not supported by the BWA, then in urban areas, fixed service displacement and mobile service start may be requested by auction winners prior to 1 April 2007. Conversely, the RABC has also noted that existing users may find this timeframe unacceptable. The BWA supports the RABC's contention that Industry Canada needs to address this issue and also supports the RABC's recommendation that it be addressed by Canadian CXYZ footnote being re-stated as follows:

ADD CXYZ (CAN-03) In the bands 1710-1755 MHz and 2110-2155 MHz, existing fixed stations will have priority over the mobile service until April 1, 2007 one year after AWS competitive licensing process commences, but not later than 1 April 2007. After this date, specific fixed stations will need to be displaced where necessary to enable the implementation of Advanced Wireless Services (AWS). The displacement of fixed stations as well as the implementation of AWS systems will be governed by a spectrum utilization policy. The earliest mandatory date for fixed service frequency assignment, that may be subject to displacement, will be after the mobile service has co-primary status. In the

longer term, the bands should be 1710-1770/2110-2170 MHz for global harmonization where the upper band is for downlink.

3.2 Bands 1850-1990 MHz, 1990-2025 MHz and 2160-2200 MHz (Section 3.2)

3.2.1 Band 1850-1990 MHz

The Department seeks comments on the proposed changes to the Canadian Table of Frequency Allocations in the band 1850-1990 MHz.

14. The BWA supports the proposed adoption of the international IMT-2000 footnotes.

15. In regard to draft Canadian footnote CZZZ, the BWA agrees with the comment of the RABC to the effect that the FCC has yet to decide on the frequency range and that as carriers generally support continental harmonization, this situation would suggest that it would be premature for Industry Canada to do so at this time.

3.2.2 Bands 1990-2025 MHz and 2160-2200 MHz

The Department seeks comments on the proposed changes to the Canadian Table of Frequency Allocations in the bands 1850-1990 MHz, 1990-2025 MHz and 2160-2200 MHz.

16. The BWA supports the establishment of harmonized spectrum for North American mobile-satellite services and terrestrial wireless services. The BWA notes that the U.S. has decided to re-allocate the MSS spectrum in the bands 1990-2000 MHz, 2020-2025 MHz and 2165-2180 MHz to the mobile and fixed services. The BWA recommends that the Department follow a similar course of action in Canada.

17. In regard to draft Canadian footnote, CYYY the BWA again notes that the FCC has yet to decide on the applicable frequency range allocation and, as previously noted, since carriers generally support continental harmonization, the BWA would again suggest that it would be premature for Industry Canada to do so at this time.

3.3 Band 2155-2160 MHz

The Department seeks comments on the proposed changes to the Canadian Table of Frequency Allocations in the bands 1850-1990 MHz, 1990-2025 MHz and 2160-2200 MHz.

18. The BWA supports the proposed changes, that would see the allocation of the 2155-2160 MHz band for AWS paired with 1755-1760 band MHz. The BWA therefore also supports the proposed spectrum utilization policy proposed to govern the future use of spectrum for this band. In the longer term the BWA also agrees, as the RABC has noted, that the allocated bands should be 1710-1770/2110-2170 MHz for global harmonization where the upper band is for downlink.

4.0 PROPOSALS FOR SPECTRUM UTILIZATION POLICIES

19. Consistent with its comments in the Introduction, the BWA supports the intention to license additional PCS or AWS spectrum in order to permit the wireless industry to plan for new mobile services as well as for technological development, but does so only if that process is directly linked to the industry's requirement for additional spectrum. As the BWA has previously noted, and based on its members' analysis of its future spectrum requirements, we strongly feel that the Department's estimate of this licensing being required in the 2005 to 2006 timeframe is premature by several years. In this regard, the BWA anticipates that it will not require this spectrum prior to 2008 at the earliest. With this overarching view in mind, the BWA offers its comments on the Department's specific questions.

4.1 Proposal for the Bands 1710-1755 MHz and 2110-2155 MHz

The Department seeks comments on the proposed spectrum policy to designate the paired bands 1710-1755 MHz with 2110-2155 for Advanced Wireless Services, including 3G.

The Department seeks preliminary comments and suggestions on the size of spectrum blocks and the pairing and combination for the channelization of the paired bands which would best advance the Canadian wireless infrastructure and serve the public interest.

20. The BWA considers that the date for mobile co-priority status with fixed systems should be within one year of the date that the AWS competitive licensing process commences but in

any event not later than the proposed fixed date of 1 April 2007. In this regard, the BWA agrees with the transition policy outlined in section 6.5 of the Consultation.

21. The BWA supports the Department's initiative in promoting an environment that will enable the flexible and innovative use of the spectrum to encourage the deployment of AWS. The BWA agrees that AWS will include, but will likely not be limited to, third generation cellular services. The BWA supports the Department's proposal to encourage flexibility to innovate in technology and service applications which can be supported within the fixed and mobile service allocations as well as within the parameters of applicable international and domestic regulations, including the harmonization of the North American public wireless infrastructure. The BWA agrees that such an environment will be required to encourage the development of the envisaged services including voice, video and data, both mobile and fixed, with increasing transmission capacities. The BWA also agrees that this should help facilitate the achievement of economies of scale and roaming benefits, to subscribers and service providers as well as to manufacturers, as the RABC has noted.

22. The BWA also concurs with the Department's proposal to designate the band 1710-1755 MHz to support mobile terminal transmit paired with the band 2110-2155 MHz for base station transmit for the provision of AWS. The BWA further recommends that spectrum blocks should be an integer multiple of 5 MHz in the 1710 MHz band paired with a corresponding block 400 MHz higher i.e., units of 5+5 MHz or multiples thereof. The BWA further notes that these block sizes will be capable of supporting all of the identified international IMT-2000 technologies.

23. While the BWA supports the use of a competitive licensing process to govern the release of this spectrum, we also note that the Department has a number of competitive licensing mechanisms available to it including the comparative licensing process as well as spectrum auctions. The BWA believes that the Department should give serious consideration to all available competitive licensing options, in light of conditions existing in the Canadian wireless sector at the time of the actual licensing, prior to deciding on the adoption of any particular licensing mechanism.

24. If, however, the Department does consider that a public auction might be employed, the BWA strongly submits that the Department should immediately consider legislative action to enable the Department to use a portion of the, what will likely be substantial, auction proceeds

to accomplish government objectives/requirements in the wireless sector, such as wireless lawful access or wireless priority access requirements. The BWA notes that the U.S. has started to do exactly this, i.e., with the diversion of a portion of future auction proceeds to accomplish the reallocation of U.S. federal government spectrum users in association with that country's 3G allocation process. Concerning timing, as noted previously in these comments, the BWA is strongly of the view that the envisaged timeframe is premature by several years. Consequently, the Department would, in the BWA's view, have sufficient time to consider and act on this proposal.

4.2 Proposal for a Spectrum Utilization Policy in the Bands 1910-1920 MHz and 1990-2000 MHz

The Department seeks comments on the interest and need to designate the bands 1910-1920 MHz and 1990-2000 MHz for the extension of the band 1850-1990 MHz for PCS or AWS. The Department is seeking views on whether a new designation for this band would best serve the public interest and put the spectrum to the best and highest use.

25. Consistent with the RABC's comments on this section, while the BWA also welcomes the possibility for additional PCS/AWS spectrum, we would also urge caution as:

- The narrower duplex band separation of only 10 MHz may cause interference problems (e.g., emissions from base transmitter at 1930 MHz into base receiver at 1920 MHz) unless extra filtering is deployed at the 1920 and 1930 MHz band edges.
- Annex 3 of ITU-R Rec M.1036-2 (06/03) indicates that "minimum centre gaps of 20-30 MHz seem achievable in the future." Like the RABC, the BWA would urge caution in modifying the PCS minimum gap to be less than 20 MHz.
- Existing PCS mobiles would be unable to access this extra band causing potential roaming issues.

26. Again, the BWA notes that as the FCC has yet to make its frequency allocation decision and as the BWA supports continental harmonization, we would suggest that it is premature for Industry Canada to do so at this time.

4.3 Proposal for the Bands 2020-2025 MHz and 2155-2180 MHz

The Department seeks comments on the interest and need to designate the bands 2020-2025 MHz and 2155-2180 MHz to particular terrestrial services or applications.

27. Consistent with the RABC's comments, the BWA also supports the future designation of the 2155-2180 MHz band paired with the 1755-1780 MHz band and also agrees that these bands should be the subject of a future spectrum utilization policy for the introduction of AWS. The bands should be 1710-1770/2110-2170 MHz for global harmonization where the upper band is for downlink. In this regard, as the RABC has noted, there may be a requirement for additional spectrum to accomplish continental harmonization.

5.0 REVIEW OF THE MOBILE SPECTRUM CAP POLICY

5.1 Background

28. The Consultation paper notes that, coincident with the 1995 policy to license new spectrum in the bands 1850-1910 MHz and 1930-1990 MHz (2 GHz PCS bands), the Department established a mobile spectrum cap policy. The 1995 spectrum cap policy established an aggregation limit of 40 MHz as the maximum amount of spectrum a wireless carrier and its affiliates could hold. The spectrum identified under the cap, at that time, included the 800 MHz cellular band spectrum, the 2 GHz PCS bands and spectrum used for similar high-mobility telephony service such as Enhanced Specialized Mobile Radio systems (ESMR). The Consultation paper expresses the view that, by limiting spectrum concentration, the spectrum cap policy helped establish a level playing field, among incumbent cellular licensees and new PCS entrants, with the aim to foster competition and choice of services to consumers. The Consultation paper notes that other policy provisions, e.g., national licences, resale and roaming requirements, etc., were also introduced to advance competition.

29. The Consultation paper further notes that during the late 1990s, Canada experienced a renewed competitive environment in the provisioning of mobile telephony services with strong marketing rivalry, a significant decrease in pricing and the availability of a wide range of service packages responsive to consumer demand.

30. The Department launched a full review of the spectrum cap policy in 1999 in preparation for the licensing of the remaining 40 MHz of PCS spectrum which had been held in reserve

since 1995. The BWA's predecessor organization, Mobility Canada, filed comments in the Department's 1999 consultation. The review concluded that maintaining the spectrum cap while increasing it from, 40 MHz to 55 MHz, would continue to foster competition, safeguard against spectrum concentration and give reasonable opportunities to all interested parties to acquire new spectrum.

31. The Consultation paper notes that, subsequent to the 2001 PCS Spectrum Auction, the current situation is that three of the four PCS carriers are at, or are near, the 55 MHz spectrum cap limit in several regions of Canada. The current Consultation proposes to allocate at least 90 MHz of new spectrum to accommodate Canadian AWS wireless services, including 3G. Given this backdrop, the Department notes that it is planning to release additional spectrum and as some of the wireless carriers are approaching the existing 55 MHz cap, it is timely to have a full review of the spectrum cap policy. At a minimum, the Consultation notes, the current spectrum cap limit of 55 MHz needs to be increased in order to permit wireless carriers to acquire new spectrum resources to expand their networks and introduce new services.

32. The Department also indicates its view that any changes to the spectrum cap policy should be announced in sufficient time before the licensing of new spectrum. Consequently, in moving forward with the spectrum cap review, the Department wishes to assess the public interest in retaining the mobile spectrum cap policy or any competitive benefits in rescinding the spectrum cap altogether. Finally, the Department notes that with four national PCS networks in place, an extensive coverage of the Canadian population, a service penetration approaching 40%, a new era of mobile data service emerging and a substantial amount of new spectrum to be released, the Department believes that it is timely to consider whether the spectrum cap continues to be relevant and serve the public interest in advancing competition and ensuring choice of services to consumers.

33. To this end, the Department invites comments on several specific issues relevant to its review of the spectrum policy with a view to establishing the public interest in that regard. For ease of reference, each of the Department's questions are encapsulated below and are followed by the BWA's comments in response to the question.

5.2 Would the retention of a mobile spectrum cap continue to play an important role in fostering competition and choice of services to Canadians? Provide the rationale for your position.

34. The BWA notes the Department's comment in this Consultation to the effect that "[b]y limiting spectrum concentration, the spectrum cap policy helped establish a level playing field among the licensees with the aim to foster competition and choice of services to consumers" (emphasis added) (section 5.1, page 19). This differs from the position taken by the Department in its 1999 consultation where the Department seemed to attribute considerably more weight to the role of the cap policy in developing a competitive wireless market in Canada.

35. In its comments, filed in the Department's 1999 review of the spectrum cap policy, Mobility Canada took the position that it was the decision by the Minister to licence four blocks of PCS spectrum, i.e., resulting in two new entrants, which had primarily resulted in increased competition in the Canadian wireless sector. Mobility Canada further submitted that, given this fundamental policy decision, it could discern no evidence that would suggest that competition would not have been as successful in the absence of a spectrum cap. Given developments within the Canadian wireless sector since 1999, the BWA remains firmly of that view.

36. By any measure, the Canadian wireless sector is even more vigorously competitive in 2004 than it was at the time of the Department's last review in 1999. In terms of telecommunications service revenues, the mobile market surpassed the long distance market in 2001 as the second largest segment. In its Consultation, the Department notes that four major mobile operators account for over 99% of the mobile market, with no entity dominating in terms of either revenues or subscribers. The Department also notes that it commissioned a consultant's study in 2001 to assess the competitiveness of the Canadian wireless industry. The study found that, whereas prior to the introduction of PCS, airtime had been priced for most users at \$.50 per minute, that this rate has greatly diminished and that many packages no longer require long-term service contracts. (section 5.3, page 21).

37. In this Consultation, the Department further notes that since the last review of the spectrum cap in 1999, the Canadian wireless industry structure has changed such that now three of the four PCS carriers are incumbent regional or national cellular licensees. The BWA notes that two key changes have occurred since 1999, which have consolidated the degree of competition existing in the Canadian wireless sector. First, the dissolution of the Stentor Alliance commencing in 1998, saw the emergence of TELUS as a major national competitor

moving into Eastern Canada subsequently prompting Bell Canada's entry into Western Canada. Specifically with respect to wireless, this development led to the dissolution of the Mobility Canada alliance as TELUS Mobility and the Bell affiliated wireless entities began competition in each others' traditional operating territories. Second, acquisition of PCS licensee Clearnet Communications Inc. and its 30 MHz national licence, by TELUS in 2001 consolidated and strengthened the wireless industry virtually overnight. As a result, the Canadian wireless industry now consists of three very strong entities, in the form of the BWA, Rogers Wireless Inc. and TELUS Mobility and, a fourth competitive alternative in the form of Microcell Telecommunications Inc. which has a significant presence in its home territory of Québec. At the same time, the industry saw in excess of \$12 billion invested in the development of digital wireless networks and total employment in the sector exceeding 25,000 people.

38. From all of the above, the BWA submits that the intended objectives of the 1995 licensing policy, including the spectrum cap, i.e., to foster increased consumer choice, to stimulate jobs, investment as well as telecommunications related R&D and provide improved services at a reduced cost to the consumer have been achieved. The Consultation paper notes that the Canadian wireless industry is going through an important period of building new, advanced digital infrastructures and providing greater transmission speeds for a range of data services. While the Department, through this Consultation, is laying the ground work for the eventual release of additional spectrum, the BWA submits that removal of the spectrum cap will be a key step toward enabling the Canadian wireless industry to realize its full potential.

39. There can be no doubt, as we enter 2004, that the Department's 1995 policy of licensing four PCS blocks of spectrum has resulted in a vigorously competitive Canadian wireless industry with all its associated benefits. In this regard, both industry participants, independent industry observers and Canadian regulators acknowledge the success of the competition policy applied in the sector and the highly, some characterize it as intensely, competitive nature of the Canadian wireless industry.

40. In summary, the BWA is of the view that the principal driver of increased competition was the government's licensing policy, which increased the number of service providers in the Canadian market, and not the spectrum cap. The fact remains that the wireless market is highly competitive and consumers are realizing the benefits of competition. Therefore, the BWA is strongly of the view that the continued retention of a mobile spectrum cap is no longer

appropriate and would not continue to play an important role in fostering competition and choice of services to Canadians.

5.3 *Would the removal of the mobile spectrum cap enable the wireless carriers to offer greater choice of services to consumers and foster competition? Provide the rationale for your position.*

41. The BWA is strongly of the view that the removal of the mobile spectrum cap will be essential to enable the wireless carriers to offer greater choice of services, particular advanced wireless services, to consumers and to further foster competition in the Canadian wireless industry. As noted above, the Canadian wireless industry is going through an important period of building new, advanced digital infrastructures and, in the future, will be providing greater transmission speeds for a range of advanced wireless data and multimedia services.

42. The BWA considers that, in the long run, spectrum caps reduce a carrier's flexibility to develop and deploy innovative new wireless services such as Internet access and 3G multimedia. In turn, that reduces some of the benefits of competition that could otherwise have been realized by Canadian wireless consumers. One of the principal policy goals of the Department's PCS licensing policy was to offer more than just wireless voice functionality to Canadians. New services such as high-speed Internet access and wireless multimedia are bandwidth intensive. The continued consumer and corporate demand for wireless services will, likely by 2008 for the BWA, place constraints on the ability of some its members to offer more bandwidth intensive services in major urban centres while continuing to offer high quality wireless voice connectivity. Wireless carriers need spectrum to provide advanced wireless services and to continue to expand and improve their existing networks. By definition therefore removal of the spectrum cap will enable carriers to acquire the spectrum they need to offer a greater choice of services to consumers. In the vigorously competitive Canadian wireless industry, where industry participants must respond immediately to their competitor's service and marketing innovations, this will act as a catalyst to foster increased competition throughout Canada.

5.4 Could concern regarding significant dominance in spectrum holdings be addressed through other mechanisms? Please specify what these mechanisms could be and indicate related conditions - for example limiting the amount of spectrum which could be acquired in the licensing process or relying solely on the provisions of the Competition Act.

43. The BWA does not consider that removal of the spectrum cap would either lessen competition or cause unwanted side effects, such as significant dominance in spectrum holdings, for the reasons set out below. However, should it consider that safeguards are required, the Department retains, absent the cap, sufficient tools to address issues of market power or spectrum dominance should it perceive a need to do so. First, all licence approvals or transfers are controlled by the Minister under the *Radiocommunication Act*. Consequently, the Department can assess any requests for spectrum transfers, including those proposed through corporate acquisitions, on a case-by-case basis. Second, Industry Canada ultimately controls the supply of spectrum and can counter any concern about consolidation by simply issuing more spectrum. Third, the Competition Director, pursuant to his or her authority under the *Competition Act*, has the authority to review any significant spectrum transactions using its market power tests. In the event that the Director were to identify any concerns, the Bureau can propose a variety of remedies or can recommend that the transaction in question be denied. Given the existence of a dynamically competitive wireless sector and other regulatory oversight tools available to achieve specific policy goals, there is no requirement for arbitrary limits as represented by such a blunt policy tool as the spectrum cap policy. The BWA is also of the view that the *Competition Act* provides sufficient safeguards against anti-competitive consolidation.

44. Finally, the BWA agrees that, if despite the existence of all of the above safeguards and regulatory oversight controls, the Department has residual concerns related to the question of spectrum dominance, it could impose a spectrum cap within a given licensing activity whether that were a comparative application process or a spectrum auction. Such a policy could, for example, limit the amount of spectrum that a single entity and its affiliates could acquire within the licensing round and apply that cap for a reasonable period after the licensing activity. The BWA considers that a two-year period, during which entities could not acquire additional AWS spectrum following the licensing activity, would be reasonable.

5.5 *If the Department was to determine that the retention of a mobile spectrum cap is in the public interest, at what limit should it be set? Please provide a rationale for the limit you propose.*

45. As noted in these comments, the BWA is strongly of the view that retention of a mobile spectrum cap is not in the public interest. In fact, what the spectrum cap is increasingly likely to do is constrain the ability of some carriers to fully serve all market segments and, in the future, offer those advanced wireless services requiring significantly increased bandwidth, due to a shortage of spectrum.

46. If however the Department were to determine that the retention of a mobile spectrum cap is in the public interest, the BWA considers that the cap should be raised to a limit of 95 MHz from its current level of 55 MHz. The rationale for this level is simply that, in the BWA's analysis, some of its members would likely require as much as an additional 40 MHz of spectrum to accommodate the high bandwidth services contemplated under the AWS designation and to accommodate anticipated growth in the use of wireless voice services, particularly in Canada's larger urban centres.

5.6 *When should the decision on the spectrum cap become effective?*

47. The BWA considers that the decision on spectrum cap, whether to rescind or raise the cap, should be effective immediately.

5.7 *What other information could assist the Department in determining the public interest in considering changes to the mobile spectrum cap?*

48. The BWA notes that, by rescinding the mobile spectrum cap, Canada would be in accord with its major industrial trading partners in this regard. In the U.S. for example, an FCC review of the spectrum cap policy and a concurrent assessment of the state of competition in the mobile industry concluded in 2001 that the policy would be rescinded completely effective 1 January 2003. This decision was made on the basis that there was sufficient competition in the U.S. marketplace such that a spectrum cap policy was no longer warranted and the cap was rescinded on 1 January 2003.

49. The BWA submits that the Canadian wireless sector, relatively speaking, is no less competitive in the estimate of a number of independent observers. The CRTC, for example, in

its most recent report on the status of competition in Canadian telecommunications markets notes that, "[t]he mobile market continued to be very competitive...Four major mobile entities accounted for over 99% of the mobile market, with no entity dominating in terms of either revenues or subscribers"¹ (emphasis added).

50. Similarly, in 2001 the Department commissioned a study with Wall Communications to conduct A Competitive Assessment of the Canadian Mobile Wireless Industry. The study found that, "...the Canadian mobile wireless industry displays a relatively high degree of competitiveness, although certain conditions need to be monitored to ensure that the highly competitive nature of the industry continues."² The study also found that airtime, which was priced on average at \$.50 per minute with a \$40 monthly charge prior to the introduction of PCS, have greatly diminished and that many packages no longer require long-term service contracts.

51. Consequently, the BWA submits that, based on the FCC's logic that given that there was sufficient competition in the U.S. marketplace such that a spectrum cap policy was no longer warranted, that identical circumstances now exist in Canada and that therefore the Canadian spectrum cap should be rescinded immediately. Finally the BWA would submit that while, in its view, the mobile spectrum cap may have had little impact on either new entrants or incumbents in the first several years of offering PCS service in Canada, its continued application on a going-forward basis will almost certainly distort the economics of the wireless market and dampen investment in the development of more bandwidth intensive services.

6.0 PROPOSED TRANSITION POLICY FOR DEALING WITH INCUMBENTS

General Principles when Re-assigning Spectrum (Section 6.1)

52. The BWA agrees that a radio licence does not confer ownership or continued right to a particular radio frequency, and that reasonable notice should be given to users who are impacted by any displacement of their services or systems to other bands.

¹ CRTC Report to the Governor in Council, Status of Competition in Canadian Telecommunications Markets and on the Deployment and Accessibility of Advanced Telecommunications Infrastructure and Services, November 2003, Executive Summary, page iii.

² A Competitive Assessment of the Canadian Mobile Wireless Industry, Wall Communications Inc., November 2001, Executive Summary, page 4.

Current Situation in the Band 1710-1755 MHz (Section 6.2)

53. In light of the 1999 Spectrum Utilization Policy 1-3 GHz, which discouraged further licensing of microwave systems in this band in view of international IMT-2000 developments, the BWA supports a moratorium on the licensing of any new fixed microwave stations in the band 1710-1755 MHz.

Current Situation in the Band 2110-2150 MHz (Section 6.3)

54. The BWA supports continuing the moratorium imposed 21 January 1995 on any further licensing of new fixed microwave stations in the bands 1990-2010 MHz and 2110-2200 MHz in order to facilitate the possible introduction of AWS.

Current Situation in the Band 2150-2155 MHz (Section 6.4)

55. The BWA supports the notification period applied to incumbents in the band 2110-2150 MHz should apply to this band.

7.0 PROPOSED TRANSITION POLICY FOR DISPLACEMENT OF FIXED ASSIGNMENTS

The Department invites comments on the proposed spectrum transition policy for the displacement of incumbents in the bands 1710-1755 MHz and 2110-2155 MHz.

The Department also welcomes views from microwave licensees or other existing service providers on which bands could best meet their service requirements for the future. (Section 6.5)

56. The BWA supports the proposed one/two year displacement notice and transition provisions which were used for PCS and outlined in section 6.5. However if auctions occur in the 2005 to 2006 timeframe (as suggested in section 6.5), we note that auction winners may wish to deploy in urban/major highway areas after a one year notice, which could occur before the proposed 1 April 2007 priority designation date. The BWA suggests that Industry Canada address this inconsistency.

8.0 MEASURES TO PROMOTE ADVANCED MOBILE TELEPHONY SERVICES IN RURAL CANADA (Section 7.0)

57. The Consultation paper notes that, for expediency, the Department is using this discussion paper to seek comments on a separate but emerging issue which may facilitate the development of advanced digital mobile telephony services in underserved rural and remote areas of Canada. The Department further notes that conclusion of this issue will be addressed separately from this Consultation on AWS.

58. The Department notes that a general objective of the *Telecommunications Act* is to promote the availability of reliable and affordable telecommunications service to all regions of Canada. It is further noted that due to the economics of rural communications, the availability of advanced and innovative telecommunications services tends to lag behind the services available in urban areas of the country.

59. The Department notes that in 1998 it implemented Radio Systems Policy 019, Policy for the Provision of Cellular Services by New Parties (RP-019) to foster the expansion of cellular telephony services to areas of Canada that it defined in the policy as being "unserved and underserved" areas. In general, the policy facilitated access to the 800 MHz cellular spectrum by new parties (i.e., other than the traditional 800 MHz licensees) wanting to develop mobile cellular telephony services or fixed wireless access facilities. Under the policy, potential new parties can apply for authorization to provide cellular telephony services to communities and along highways where cellular service is either not available (i.e., unserved areas) or only available from one of the two traditional wireless carriers (i.e., underserved areas).

60. The Department notes that, recently, there have been certain changes in digital technology and in the availability of 2 GHz PCS spectrum which may be used to develop advanced digital mobile telephony and ancillary services in rural and remote communities of Canada. For example, with the auction of the remaining 2 GHz PCS spectrum in 2001, bidders were able to acquire specific blocks of spectrum for certain geographic areas to further develop PCS services. The Department notes that the 2001 Spectrum Auction resulted in 52 of the 62 PCS spectrum licences being awarded. Consequently, the 10 remaining PCS spectrum licences, mostly in unserved and underserved rural areas, received no bidding activity and are now available for assignment. The Department also notes that analogue cellular equipment will be discontinued by most major manufacturers within 5 to 8 years. Also, some of the national

operators are discontinuing the sale of stand-alone analogue cellular and this infrastructure is quickly being replaced by digital telephony networks.

61. The Department notes that two situations are emerging that may impact the development of advanced digital telephony services in rural areas:

- 1) New carriers gaining access to the 800 MHz cellular spectrum through the New Party Cellular Policy may wish to offer digital telephony and ancillary services using digital technology (second generation and beyond) already adopted by the four national PCS carriers. The Department notes that some of these small rural carriers have requested that the Department facilitate the development of commercial roaming arrangements due to their unique circumstances. The Department also states its belief that the public interest would be served if these rural wireless carriers acquiring 800 MHz spectrum could be readily afforded commercial roaming arrangements with the 800 MHz networks of the national PCS carriers where the rural carriers do not compete with the national PCS carriers in their network serving areas.
- 2) With the availability of 2 GHz spectrum through various means, some of which are described above, the Department states that new rural carriers may be operating in an unserved and/or underserved rural and remote parts of Canada where the provisioning of advanced digital mobile telephony and ancillary services is of importance to Canadians. Hence the Department states its belief that the public interest would be served if these rural carriers are readily afforded commercial roaming arrangements with national PCS carriers in cases where the rural carriers do not compete directly with the national PCS carriers in their network serving territories.

62. Compellingly, the Department notes that digital telephony roaming service, which is commonly available to foreigners travelling in Canada or to those urban-dwelling Canadians travelling in many regions of the world, may not be available to Canadian subscribers of rural carriers travelling within in Canada. The Consultation considers that, as mobile telephony services have become an essential service to many Canadians, it is important that, without affecting or distorting competition in urban areas of Canada, these rural networks be fully integrated into the national telecommunications system. Consequently, the Department further

considers that new rural carriers, that do not compete in any other area with national cellular or PCS carriers, warrant special consideration in reaching commercial digital roaming arrangements to assist the integration of their services with other national or regional telecommunication systems. The Department states that permitting non-competing operators to enter into preferential digital roaming arrangements with established national and regional carriers, may be justified due to their unique situation and the public interest, in view of the objectives of the *Telecommunications Act*.

63. Hence, in order to foster the development of advanced digital mobile telephony and ancillary services in unserved and underserved areas by the national cellular and PCS carriers, the Department notes that it is predisposed to assisting non-competing rural carriers in the integration of their networks and services with the rest of the national telecommunication system.

64. The Consultation also notes that there are several potential mechanisms which could be used to effect such a policy and that these include, i) the statement of a Departmental policy with regards to affording commercial roaming for non-competing rural carriers in unserved or underserved areas of Canada; or, ii) the statement of a policy and imposing a new condition of licence on the existing national and regional PCS carriers. Finally, the Consultation reiterates that there is no intent by the Department to affect any new or ongoing commercial roaming and resale arrangements or to affect fair competition or any action by the CRTC under the *Telecommunications Act*.

Consequently, the Department invites comments on:

1. ***The proposal to afford preferential commercial roaming arrangements to small rural carriers with national and regional cellular and PCS carriers where the rural carriers;***
 - a) ***do not compete in the same serving territories having network facilities,***
and
 - b) ***operate solely in an unserved or underserved area.***

65. The BWA finds the Department's analysis compelling and, as a result, supports government's proposal to facilitate the extension of advanced wireless services to rural and remote areas, in the manner proposed. The Department's observation that a situation could

exist where digital wireless roaming service, commonly available to foreigners travelling in Canada or to Canadians travelling in many regions of the world, may not be available to Canadian subscribers of rural carriers in Canada, would in the BWA's view be fundamentally unfair to Canadians living in remote areas. Furthermore, facilitation of special commercial roaming arrangements between small rural carriers and national and regional carriers where the rural carriers:

- a) do not compete with the national and/or regional in the same serving territories having network facilities; and
- b) operate solely in an unserved or underserved area as defined in RP-019

would be an economical and effective means of extending advanced wireless services to such areas.

66. The Department notes that there is no intention on its part to affect any new or ongoing commercial roaming and resale arrangements or to affect fair competition in the Canadian wireless sector. Indeed, the BWA is strongly of the view that any such result, intended or accidental, would be totally unjustified given the competitive nature and history of the Canadian wireless sector. Consequently, the BWA believes that there are a number of important caveats which would have to govern such a policy to ensure that the Department's true goal and objectives in advancing this proposal are met.

67. In this regard, Bell Mobility considers that the following overarching principle should be understood as underlying the Department's proposal:

68. Since it is IC's stated intention to not affect or interfere with competition in non-rural areas of Canada, the intention of this policy proposal is to facilitate the provision of digital roaming capability to Canadian citizens living in the areas defined by Industry Canada as unserved (i.e., where neither cellular licensee has activated their license) or underserved (i.e., where only one of the cellular licensees has activated their license.) Consequently, it is IC's intention to facilitate the provision of digital roaming to Canadians living in remote and rural areas of Canada. It is not IC's intention to encourage or facilitate, intentionally or unintentionally, the ability of rural carriers to compete in urban areas of Canada.

69. Since the Department recognizes that it would not be appropriate for it to thwart the successful working of the highly competitive wireless market, the requirement that such arrangements be limited to small rural carriers that do not compete in the same serving territory having network facilities is critical to the success of such a policy proposal. Absent such a bright line delineation between which (rural) carriers would and would not qualify for such arrangements would make such a policy impossible to implement without risking unintended distortion of the competitive wireless market in urban areas. Such a result would not be fair to national or regional carriers who would, were such a situation to arise, be effectively forced to compete against their own service, which is what would be the case if they were required to provide digital roaming to their direct competitors operating in the same urban markets. This clear, enforceable delineation also ensures that the Department's true policy objective, i.e., of facilitating the extension of advanced wireless services to unserved and underserved areas, is achieved and not the unintended result of giving either existing wireless competitors or new entrants an unfair competitive advantage.

70. The BWA also submits that small rural carriers, operating in unserved or underserved areas, should only be permitted to access such arrangements on the basis of mutually acceptable commercial arrangements arrived at with the hosting regional or national cellular and PCS carrier. Consequently, the BWA does not understand that the phrase "preferential commercial roaming arrangements" to mean "better rates" nor would we support the notion of preferential rates in this context. The regional and national cellular and PCS carriers have made substantial investments, in the order of billions of dollars, in the development of their wireless infrastructures. Such investments were made absent any requirement to provide digital roaming to small rural carriers. The BWA submits that modifying the applicable rules at this stage would unfairly disadvantage those carriers who have made substantial wireless network infrastructure investments while advantaging entities who have made no such investments. Indeed, the BWA's concurrence with the Department's proposal is based on its understanding that the policy will only apply to those small, rural carriers operating solely in unserved and underserved areas who do not directly compete with the incumbent carriers and is not intended to impose mandatory digital roaming arrangements, either by design or accident, between competing licensees operating in the same serving territories.

2. The mechanisms that may best implement this proposal?

71. The BWA considers that the appropriate manner in which to give effect to any such new policy, if adopted, would be by means of the statement of a Departmental policy. This is the mechanism used by the Department to implement its "Third Party Policy" and such an approach should be equally effective in this case. Conversely, implementing any such a policy by means of a condition of licence would be confusing in that it could be taken as implying that the provision of digital roaming in this manner is mandatory requirement. The BWA does not believe that these arrangements should be mandatory. Rather, government policy should facilitate, but not mandate, such arrangements. The willingness of regional and national cellular and PCS carriers to enter into such arrangements, however, would be facilitated by their explicit knowledge that they are not exposing themselves to undue competitive risk by doing so.

9.0 CONCLUSION

72. The BWA appreciates the opportunity to participate in this Consultation and looks forward to future stages of this process at a later date.

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