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Peter Hill
Director, Spectrum Management Operations
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Industry Canada
300 Slater Street
Ottawa, Ontario
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Dear Mr. Hill:

Subject: **Canada Gazette, Part I, Consultation on Transition to Broadband Radio Service (BRS) in the Band 2500-2690 MHz, March 2009, Notice DGRB-005-09, Reply Comments**

TELUS Communications Company (TELUS) appreciates the opportunity to submit Reply Comments pertaining to the issues and questions raised by Industry Canada (the Department) in Canada Gazette Notice DGRB-005-09 (Consultation Paper) and the statements contained in the responses of participating parties. It should be noted that failure by TELUS to address any statement or assertion made by any of the participating parties should not be construed by the Department as either agreement or disagreement with such statement or assertion.

In its comments below, TELUS reiterates and clarifies its initial recommendations that the Department:

- Establish and implement a firm transition date of March 31, 2011 for the entire spectrum in the 2500 – 2690 MHz band to BRS spectrum licences and place a moratorium on voluntary conversion to BRS until the same date.
- Require that ALL incumbents be relocated out of the clawback bands prior to March 31, 2011.
- Transition all MCS and MDS spectrum in Manitoba to BRS on March 31, 2011.

- Require that only spectrum that has been granted both a CRTC BDU Licence and a broadcast certificate be considered eligible for conversion to a BRS spectrum licence. Spectrum outside the footprint of a broadcast certificate should all be classified as unassigned and be subject to auction.
- Given the unique circumstances in this band, convert the MDS site licences at whatever tier (3 or 4) that the Department deems appropriate given the details of each site and ensure that any incumbent (MDS or MCS) is not allowed to bid on the spectrum that has been clawed back from them in the future spectrum auction.
- Work with the industry to develop a methodology to set fees at a fair and reasonable level.
- In keeping with research undertaken by the Department, set licence periods at a minimum of 15 years (preferably longer).
- Remove the current R&D condition of licence given the current and continuing investment in innovation by mobile operators.
- Champion cost recovery for licensees for provision of Lawful Intercept services.
- Proceed directly to the planned Public Consultation on the Policy and Licensing Framework for this band rather than first having a closed door process involving only incumbents.
- Do not compromise in the selection of a band plan but choose either the ITU-R or the FCC plan.

Firm Transition Date / Moratorium on Voluntary Early Conversion / No Head Start

As it has previously stated in its response, TELUS strongly advocates a firm transition date for the entire band and a moratorium on voluntary conversions across the band until such transition date for three main reasons – (i) business planning certainty, (ii) fundamental fairness and (iii) the fact that a “no head start” rule is unlikely to cause any harm.

TELUS supports the Department’s intention to set a firm transition date and sees as very logical a date of March 31, 2011 for the firm transition. TELUS is not concerned if the Department moves this date forward or backward by some number of months to accommodate any legitimate concerns of the several incumbents that have suggested some flexibility in timing is required. TELUS notes that all incumbents (save SSI Micro in the North) have supported a firm transition date in their responses.

As part of a firm transition date, the Department should NOT allow any mobile use of the band prior to the firm transition date. Once again, this position is based on the Department's obligation to provide fundamental fairness to the industry by allowing no head start as more fully argued in TELUS' initial Response. The Department should place a moratorium on voluntary conversions prior to the transition date.

TELUS reminds that in the more than three years since the voluntary conversion possibility was entertained, only one request has been submitted to convert one single transmitter in all of Canada. Further, the same operators who are requesting that an early conversion option be allowed are also, in other parts of their responses, talking about the hardship of transition and the need to get an ROI out of their FWA investment. Clearly establishing a moratorium on voluntary conversions until March 31, 2011 will not create any harm or hardship for any incumbent.

Eligibility for Conversion / Geographic Conversion

Commercial Incumbent Operators

While TELUS recognizes Look's modest investment and early gap filling role as DSL and cable HSIA took some time to roll out, it is clear from Look's financial statements that their operation has been in full decline for some time. They most certainly would have gone out of business were it not for speculative investment based on the potential for conversion of its spectrum to higher value mobile services. Craig Wireless BC is a skeleton operation at best, having committed limited investment in building out their network or marketing their BC service.

With respect to MCS spectrum, Inukshuk was given its near national 96MHz license in a Comparative Requirements contest and failed to meet its original build out and learning plan requirements in 2003, and again in 2004 when it was granted a one year extension. Inukshuk only started building out to a defined Industry Canada schedule in 2006 under new ownership to ensure that further delinquency on build-out conditions did not result in the loss of their mobile conversion windfall.

This is the context in which the 2006 Policy and the clawback therein was developed and should serve to guide 1) the decision regarding eligibility for conversion in terms of what level of authorization (CRTC authorizations, BDU and RDU licenses, etc) is necessary and sufficient, 2) the geographic conversion generosity of the Department and 3) the auction framework for the upcoming leftovers auction to be determined following further consultation.

1) What is necessary and sufficient for conversion eligibility of MDS?

In TELUS's view, for MDS site licenses to be deemed eligible for a mobile conversion windfall, at a minimum they should be authorized by a CRTC BDU licence and an Industry Canada

broadcast certificate. All other MDS spectrum not meeting this geography-based requirement should be put up for auction for all to buy.

While some parties suggest that merely the existence of an application for a broadcast certificate should be sufficient to justify conversion to a mobile spectrum license (i.e., windfall), TELUS is strongly opposed to the Department operating on such a basis.

2) How generous should the Department be in conversion of MDS site licenses?

In their responses to the Consultation Paper, Inukshuk and Look use build-out metrics to attempt to equate the relatively more mundane process of renewing mobile spectrum licenses to the process of converting the 2500 MHz band from fixed to mobile. These are completely different matters. The CRTC licence lists the specific community and the Broadcast certificate delineates a specific coverage contour. In TELUS' view, the only spectrum that should be eligible for a mobile conversion windfall should be active-in-use spectrum (in the geographic and frequency domains) for both MDS and MCS. Despite this view, it appears that the Department is planning to convert MCS spectrum licenses as is, save the clawback. TELUS is not clear on the Department's rationale in this regard. Nonetheless, for MDS, given the lack of MDS service build-out, conversion should directly relate to the active contour of each individual, active site with that spectrum falling outside of these contours being subject to auction.

The Department needs to consider long and hard the trade-off in the 2500 MHz band conversion process between fairness (when it comes to geographic conversion and resulting auction framework) and expedience (in terms of being sure not to overcomplicate the process with no material benefits accruing).

This fairness concern is very material. It is not reasonable to give incumbents a larger mobile conversion windfall than that which can be supported by use, while at the same time forcing band entrants to pay top dollar at auction. Limiting the conversion windfall to only a tier size (tiers 3 or 4) that can be justified by use is more than fair to incumbents and limiting this generosity is fairer to potential new band entrants. It is important for the Department to balance the interests of both incumbents in this band and potential new entrants.

Lastly, TELUS believes the argument put forth to justify tier 2 conversion on the basis of aggregation risk is misplaced. Incumbents generally already operate in key markets which drastically reduce aggregation risk.

3) What are some key considerations in the auction framework?

Since other respondents have in their responses raised the issues of licence tiers at auction, spectrum caps, and other matters related to the forthcoming consultation on the spectrum auction in this band, TELUS offers the following comments in advance of the next consultation on the 2500-2690 MHz band.

To begin with the issue of which licensing tiers to use in a spectrum auction is a completely different question than what tiers to consider for a conversion windfall. The first relates to auction efficiencies and the second to windfalls accruing to band incumbents due to a fortuitous ITU-R decision. When it comes to the issue of licensing tiers for mobile licenses in a spectrum auction, most 2500-2690 MHz band incumbents support the logic of Tier 2 licenses. TELUS, in the general case, agrees. For instance, in our view the clawback bands should be auctioned as a single Tier 1 license or, at the smallest, Tier 2 licenses.

Inukshuk rightly talks of the great need for operators to provide more capacity over time to satisfy growing demand for mobile data. TELUS agrees with the idea in the general sense; however, if the Department looks around the world there is nowhere on earth with as high a concentration of 2500 MHz band ownership than in Canada. Not even in the US. So it stands to reason that global economics and pricing trends will mean that Inukshuk will be able to deliver a superior 2500 MHz band service WITHOUT any need for spectrum in the clawback bands.

While TELUS does not support spectrum caps, band caps, set asides, special discounts or divisibility or transferability restrictions, we believe that the 2500 MHz clawback and leftovers auction framework¹ presents a very unique challenge to the Department, the main issue being that currently approximately 77% of the band, on a MHz/pops basis, before clawback is held or is scheduled to be held by one party. It would be unfortunate if incumbents, particularly Inukshuk, currently holding approximately 77 % of the MHz-pops in the band, after getting a mobile conversion windfall were allowed via the auction framework to drive up pricing in the clawback auction.

TELUS firmly believes that given the history and intent and purpose of the clawback, no incumbent (MDS or MCS) should be able to bid at auction on the spectrum which was clawed back from them.

Further, it is worth noting that although TELUS is not an incumbent in the 2500-2690 MHz band, TELUS has had a material interest in the band ever since the ITU decision to allocate it predominantly as global mobile FDD spectrum. TELUS has actively participated in the discussions and process that culminated in the Department issuing DGTP-002-06, Policy Provisions for the Band 2500-22690 MHz to Facilitate Future Mobile Service on March 30, 2006.

As much as the March 2006 Policy is a result of the M&A activity that preceded it, the March 2006 Policy implicitly dictated the M&A activity that has ensued in the band since 2006. That is, the acquisition of Look Communications Inc. (Look) by Inukshuk was largely a direct strategic result of the 2006 policy that made Look and the other struggling MDS operators a prime target for Inukshuk (but not so much band entrants) due to the nature of the IMT-2000 FDD pairing and the 2006 Policy's precisely specified FDD clawback

¹ Unlike the straightforward, fully un-held 700MHz band and AWS band for that matter.

Manitoba Incumbents

TELUS reiterates that all MCS and MDS spectrum in Manitoba should be transitioned to BRS spectrum on the firm transition date. In particular, this entails:

- Displacing the systems of any and all incumbents – commercial operators, school boards and license exempt operators alike – from the clawback bands (the 2535 – 2568 MHz and 2657 – 2690 MHz portions of the band) via notification on March 31, 2010 to retune or cease operating by March 31, 2011.
- Displacing any license exempt or non-commercial operators from the balance of the FDD portion of the band (2502 – 2535 MHz and 2624 – 2657 MHz portions of the band) via notification on March 31, 2010 to retune or cease operating by March 31, 2011.
- TELUS supports the input of respondents who suggested that band auction proceeds be used to cover the cost of displacing the Manitoba school boards.

In TELUS' view, failure to proceed as above would leave Manitobans without the same access to services and opportunities as the rest of the country.

Regarding Manitoba licensees who note that they do not own the full MCS or MDS allotment: In TELUS' view it is important, in the interests of general fairness that these licensees are clawed back on a pro rata basis even when they don't span the clawback bands. In the case where a commercial incumbent does not span the clawback bands they should be required to give back 33% of their spectrum and the band should be re-arranged such that all incumbents are reduced to approximately 66% of their spectrum and no incumbent remains in the clawback bands.

Licence Fees/Licence Conditions

In our response to the Consultation Paper TELUS requested that “the Department should work with industry to establish a methodology to set fees at a fair and reasonable level.”² We also reminded the Department that the Spectrum Policy Framework does not require setting fees to reflect market value but rather to take “a holistic view of the impact of licence fees to the industry in terms of investment and capability to spend on deployment and innovative service and solutions for Canadians.”³ Inukshuk went further in their response where they stated “we respectfully submit that any such fee proposed by the Department should be set at a nominal level to only recover the Department's administrative costs, as is the case in the US.”⁴ TELUS agrees with and supports this approach. In our view this approach is consistent with a holistic

² TELUS response to DGRB-005-09, Consultation on Transition to Broadband Radio Service (BRS) in the Band 2500-2690 MHz, June 15, 2009, page 10.

³ Ibid

⁴ Inukshuk response to DGRB-005, Consultation on Transition to Broadband Radio Service (BRS) in the Band 2500-2690 MHz, June 15, 2009, page 21, paragraph 64.

view of the impact of licence fees and we recommend the Department adopt this approach for all licence fees.

Also in our response TELUS recommended that “the Department adopt a 15 to 20 year licence term together with a high expectation of renewal for these licences.”⁵ For all the reasons outlined in our response to this consultation and the others immediately preceding this one, centering mainly on the requirement for greater business certainty, TELUS reiterates our recommendation.

In concert with our response to other, recent consultations conducted by the Department TELUS also requested the Department “Champion cost recovery for licensees for provision of Lawful Intercept services.”⁶ TELUS has a long history of cooperation with law enforcement agencies and security agencies and feels that cost recovery is an equitable solution for the obligations imposed. Additionally, in our response to the current consultation regarding the Research and Development Condition of Licence TELUS suggested to the Department “that this requirement be withdrawn.”⁷ In this context Inukshuk stated “This condition therefore has served its purpose and should be eliminated.”⁸ No party in the present consultation nor in the others conducted this year has called for the retention of this Condition of Licence, rather all parties commenting have agreed that this Condition of Licence is no longer needed and should be rescinded. TELUS recommends that this Condition of Licence be swiftly removed.

Band plan

TELUS reiterates its view that the Department needs to pick one band plan or the other, either the ITU-R plan or the US FCC plan. Given the relative size of the Canadian market there can be no made in Canada compromise between the two plans. The Radio Advisory Board of Canada made the same point when they stated “It is important that the Department decide on which plan should be implemented for the Canadian scene recognizing that a compromise arrangement between the two plans will not be in the public interest.”⁹ TELUS understands that this issue will be dealt with in a future consultation but on a preliminary basis is of the view that the ITU-R plan is the right plan for Canada.

SDP

TELUS is, once again, not an incumbent in the 2500 MHz band but nonetheless is still a very directly involved party with a valid stake in the development of a band plan. TELUS feels

⁵ TELUS response, Op. Cit., page 7.

⁶ TELUS response, Op. Cit., page 8.

⁷ Ibid

⁸ Inukshuk response, Op. Cit., page 18, paragraph 53.

⁹ Radio Advisory Board of Canada response to DGRB-005-09, Consultation on Transition to Broadband Radio Service (BRS) in the Band 2500-2690 MHz. June 15, 2009, section 8, page 7.

strongly that there is nothing to be gained from running a non-public consultation process on the 2500 MHz band plan in advance of a public consultation on the band plan.

If the Department feels that it needs the SDP or that the SDP is in some way already under way, then TELUS demands that it be opened up and made accessible to affected parties such that the concerns and issues of said affected parties can be addressed at the requisite time and not after the fact and after important decisions with broad effect may have been made.

Conclusion

TELUS sees the 2500-2690 MHz band in Canada as a unique band. Given the ITU-R decision it is also potentially a very valuable band. It presents the Department with many challenges not the least of which is striking the proper balance in converting present MDS and MCS licences to BRS spectrum licences. The Department must limit the extent that incumbents benefit from an unearned windfall at the expense of new band entrants. A further challenge surrounds the issue of a head start by band incumbents in rolling out BRS services. The Department must ensure that this does not happen. There is also the issue of ownership concentration in the band. This skews input in any “stakeholder only” consultation on the band plan and is a very good reason for the Department to dispense with the SPD and move directly to the public consultation on the band plan. TELUS appreciates the opportunity to provide the Department with our recommendations on these issues.

All of which is respectfully submitted.

Yours truly,

(Sent electronically)

Ed Prior