



May 29, 2009

Michael D. Connolly
Director General
Radiocommunications and Broadcasting Regulatory Branch
Industry Canada
300 Slater Street
Ottawa, Ontario K1A 0C8

Dear Mr. Connolly:

RE: Canada Gazette Notice DGRB-002-09 - Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences

The Canadian Wireless Telecommunications Association (CWTA) is pleased to provide comments in response to Canada Gazette Notice DGRB-002-09 - *Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences*. CWTA supports the Department's intent to renew the cellular and PCS licences that expire on March 31, 2011.

CWTA is the authority on wireless issues, developments and trends in Canada. It represents cellular, PCS, messaging, mobile radio, fixed wireless and mobile satellite carriers as well as companies that develop and produce products and services for the industry.

CWTA will also be submitting comments in response to Canada Gazette Notice DGRB-001-09 – *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*. In CWTA's view, the sequencing of these two important consultations has added unnecessary complications to the process. Had the broad policy issues contained in the *Consultation on Revisions to the Framework for Spectrum Auctions* been addressed and resolved, then the application of the policy to these specific licences would be much more straightforward.

The renewal of these licences is unique in that they include spectrum licences that were issued through comparative licensing processes; through auction; and through first-come, first-served (FCFS) assignment.

As the Department has noted, the cellular and PCS bands are well established and the deployment and adoption of services has been extremely successful. As of the first quarter of this year, there were more than 21.6 million subscribers in Canada. Canada's cellular/PCS networks reach 98% of the population and cover a geographic area of approximately 1,300,000 square kilometers.

This vast network footprint is the result of significant investment by the licencees. More than \$22 billion in capital expenditures were made by cellular/PCS licencees by the end of 2007. This investment does not take into account the billions paid in spectrum licence and auction fees paid to the Department.

Demand for mobile voice and data services remains strong, and the number of subscribers continues to grow. Consumption by individuals of both voice and data continues to grow. Data services in particular have been growing rapidly over the last 12 months. As an example, during the first three months of 2009, Canadians sent about 7.8 billion text messages, nearly double the number of messages sent in the first quarter of 2008. In order to keep pace with this demand, licencees continue to invest heavily in their networks.

FUTURE RENEWALS

Regarding the matter of future renewals, CWTA wishes to clarify the Department's intention, and requests the Department apply standard and consistent language. In many previous licencing and policy documents, the Department has explicitly said that licencees had a "high expectation of renewal":

...the department intends to auction licences with a 10-year term and a **high expectation of renewal** at the end of the term.¹

The department will offer licences with a ten-year term and a **high expectation of renewal** at the end of the term.²

The term of this licence will be ten years from the date of licence issuance. At the end of this term and any subsequent terms, the licensee will have a **high expectation of renewal** for a further ten-year term³

A spectrum licence issued via an auction will generally be valid for ten years from the date of licence issuance with a **high expectation of renewal** for a further ten-year term⁴

At the end of this term and any subsequent terms, licensees will have a **high expectation of renewal** for a ten-year term⁵

The licences will be issued for a ten-year term from the date of issuance with a **high expectation of renewal** for a further ten-year term⁶

CWTA notes that despite the fact the policy for the cellular/PCS licences included a reference to a high expectation of renewal; the licences themselves did not include that provision:

¹ Framework for Spectrum Auctions in Canada – 1998, Section 6.5

² DGRB-003-99 / DGTP-005-99 - *Policy and Licensing Procedures for the Auction of the 24 and 38 GHz Frequency Bands*, Section 3.5

³ *DGRB-005-00 / DGTP-007-00 — Policy and Licensing Procedures for the Auction of the Additional PCS Spectrum in the 2 GHz Frequency Range*, Section 9.1

⁴ Framework for Spectrum Auctions in Canada (Issue 2) – 2001, Section 4.5

⁵ DGRB-006-03 - *Spectrum Licensing Policy for Cellular and Incumbent Personal Communications Services*, Section 4.1.1.1

⁶ DGRB-006-09 – *Licensing Framework to Auction Spectrum in the Bands 849-851 MHz and 894-896 MHz for Air-Ground Services*, Section 4.1

At the end of this term, licences **will likely be renewed** for a ten-year term⁷

In the *Consultation on Revisions to the Framework for Spectrum Auctions*, the Department has recognized “the significant investments made by licensees to establish networks and the importance of long-term certainty that the industry requires to provide a stable investment climate.” This importance of this point cannot be understated. Wireless operators have billions of dollars invested in networks, and have plans for continued investments into the future. Furthermore, nearly two-thirds of Canadians subscribe to wireless service. In order to confidently invest in these networks, and to assure subscribers of a future service, licencees require certainty and predictability.

The Department has addressed this requirement for certainty in the *Consultation on Revisions to the Framework for Spectrum Auctions* and has specifically included the provision for a high expectation of renewal.

Currently, the Framework provides that a spectrum licence issued via an auction will generally be valid for 10 years from the date of issuance, **with a high expectation of renewal** for a further 10-year term,⁸

Despite all of this, in the present consultation, the Department has the likelihood of renewal of cellular/PCS licences in two different ways (the policy text, and the text of the Licence Condition) , neither of which include the phrase high expectation of renewal.

The Department proposes to renew cellular and PCS licences for a 10-year term where the licence is in compliance with all licence conditions.⁹

This licence is issued for a 10-year term. The process for issuing licences after this term and any issues relating to renewal will be determined by the Minister of Industry following a public consultation.¹⁰

CWTA believes the statement “high expectation of renewal” is a very important indicator of certainty for licencees. Since, according to *Consultation on Revisions to the Framework for Spectrum Auctions* it is the Department’s intent, CWTA requests the inclusion of “high expectation of renewal” in both the text of the renewal policy and the Conditions of Licence.

LICENCE TERM

The Department has proposed to renew cellular and PCS licences for a period of 10 years. CWTA considers that 10 years should be considered a minimum for licence terms. CWTA submits that in order to provide greater certainty to licensees, the Department should seriously consider issuing licences for longer terms.

Other jurisdictions have been moving towards longer licence terms. These longer terms help bolster operator and investor confidence and are intended to encourage investment. This confidence can result in increased use of and build out of the spectrum and promote innovation. The Department has recognized this international trend on a number of occasions.

⁷ Conditions for PCS and Cellular Spectrum Licences (Updated November 1, 2005)

⁸ DGRB-001-09 – Consultation on Revisions to the Framework for Spectrum Auctions in Canada, Section 5

⁹ DGRB-002-09 - Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences, p. 5

¹⁰ DGRB-002-09 - Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences, p. 9

...there has been a trend towards longer licence terms in a number of countries to provide greater investment certainty. For example, Guatemala, France and Australia provide 15-year terms. The United Kingdom provides 20-year terms for 3G licences and New Zealand provides 20-year terms for cellular spectrum rights.¹¹

Longer and indefinite licence terms are generally viewed as providing a more stable investment climate for licensees recognizing the initial investment in spectrum licences and the need to establish networks and recover costs.¹²

In the United Kingdom, Ofcom has introduced indefinite licence terms for its auctioned spectrum but retains the power to revoke licences where overriding reasons of spectrum management require it to do so¹³

CWTA recognizes that even with a longer-term or indefinite licence, that there may be overriding spectrum management reasons to modify or remove a licence. These longer terms would not in any way prevent the Minister from revoking a licence if the terms or conditions of licence have been contravened, or where an authorization was obtained through misrepresentation or for non-payment of fees. The Minister would also retain the ability to modify the terms or conditions of a licence during a term.

If the Department is concerned that the *Radiocommunication Act* or the *Radiocommunication Regulations* do not provide sufficient authority to act or to revoke a licence for spectrum management reasons during the term of a licence, then CWTA submits that the necessary legislative or regulatory changes should be pursued.

RESEARCH AND DEVELOPMENT

The Department has proposed to maintain the Research and Development condition of licence pending the results of the *Consultation on Revisions to the Framework for Spectrum Auctions*.

CWTA is of the view that the Research and Development condition is an artifact from a previous era that is no longer appropriate or required. It originated out of an expressed preference for Research and Development commitments contained in the original cellular licensing process. The condition was intended to encourage the growth of Canada's domestic wireless telecommunications equipment, software, and services sectors, in what was at the time a nascent industry. The vibrant and growing wireless clusters that have since developed in Calgary, Montreal, Ottawa, Toronto, Waterloo and Vancouver demonstrate there is no longer a need for this artificial inducement.

As a result of this condition, more than a billion dollars invested since the first licences were issued. As the Department notes in the *Consultation on Revisions to the Framework for Spectrum Auctions*, wireless companies invest in research to remain competitive, and have generally exceeded the amount required by the condition of licence.

¹¹ Gazette Notice - DGRB-001-08 - Consultation on the Renewal of 24 and 38 GHz Spectrum Licences and Spectrum Licence Fees for 24, 28 and 38 GHz Bands, Section 4.1

¹² Gazette Notice - DGRB-001-08 - Consultation on the Renewal of 24 and 38 GHz Spectrum Licences and Spectrum Licence Fees for 24, 28 and 38 GHz Bands, Section 4.1

¹³ Gazette Notice DGRB-001-09 – Consultation on Revisions to the Framework for Spectrum Auctions in Canada, Section 5.1

This condition adds a financial and administrative burden on licencees and suppresses network investment. Consumer demand for voice and data services is putting considerable pressure on the capacity of wireless networks. This is in turn driving significant investments in the capacity and speed of wireless networks. Given the current economic climate, and the government's desire to make investments to stimulate the economy, licencees should be provided maximum flexibility to invest all available resources as they choose.

To CWTA's knowledge, no other jurisdiction applies a comparable obligation. CWTA recommends the Department discontinue this condition.

LICENCE CONDITIONS

Subject to the above comments, CWTA generally supports the Department's proposed changes to the Conditions of Licence. Specifically, CWTA supports the removal of the Spectrum Aggregation Limit; the removal of the existing resale and roaming requirements; and the absence of an implementation of spectrum usage requirement.

FEES

Since the launch of cellular service, the Department has modified its objectives for licence fees a number of times. The Department has transitioned from a policy of full recovery of spectrum management costs, to one of generating revenue that exceeds costs to meet the Government's fiscal and social policy objectives, to one of reflecting the economic value of the spectrum resource being consumed, and most recently to one that will earn a fair return for the Canadian public. This has generally resulted in an escalation in the fees paid by the industry, particularly by cellular/PCS licensees. In 2008/2009, cellular/PCS licensees paid \$129,983,142 in spectrum licence fees, representing 57% of all the licence fee revenue collected by the Department. This does not include the \$5.7 billion paid in the auctions for PCS and AWS spectrum.

In this respect, CWTA notes that the Department has focused its use and application of economic principles almost exclusively to the mobile wireless industry. This continued pursuit of economic rents from one segment of the gamut of spectrum users effectively discriminates against those licencees and their customers.

CWTA urges the Department to ensure that economic principles are applied equitably to all commercial spectrum users. The report *Study of Market-based Exclusive Spectrum Rights*¹⁴, prepared for the Department, provides an overview of the significant advancements in spectrum policy and the application of economic principles that have occurred internationally and recommends that the Department "accelerate the pace of reform of spectrum management in Canada".

The report also provides a roadmap to implementing a system of Spectrum Trading and market-based Exclusive Spectrum Rights that would apply to all commercial and public sector spectrum users. CWTA requests the department commence a consultation on these recommendations.

¹⁴ *Study of Market-based Exclusive Spectrum Rights*, McLean Foster & Co., in collaboration with Prof. Martin Cave, Robert W. Jones and Dr. William Lehr for Industry Canada, 2007

Fee Proposal

For more than a decade the Department's auction policies have indicated that the question of whether or not renewal fees would be applied was a matter for consultation, and was to be determined. These statements are included in the two issues of the *Framework for Spectrum Auctions in Canada*, and the Policy and Licencing documents for the auctions of spectrum in the 24&38 GHz, 2 GHz (PCS), 2300&3500 MHz, and 2 GHz (AWS) bands.

The imposition of any renewal fees [would be] addressed in a consultation process that would commence no later than two years prior to the end of the licence term.¹⁵

...a consultation process will commence no later than two years prior to the end of the licence term if the department foresees...**if renewal fees ...are contemplated.**¹⁶

The imposition of any renewal fees in the subsequent term will also be addressed in a consultation process that will commence no later than two years prior to the end of the licence term.¹⁷

A public consultation regarding the renewal of the licence will commence no later than two years prior to the end of the licence term...**if renewal fees are contemplated.**¹⁸

...a consultation regarding the renewal of the licence will commence no later than two years prior to the end of the licence term...**if renewal fees are contemplated.**¹⁹

...a consultation regarding the renewal of the licence will commence no later than two years prior to the end of the licence term...**if renewal fees are contemplated.**²⁰

The renewal process, which will form the basis of the follow-up consultation, will include consideration of: ...**whether licence fees should apply** for a subsequent licence term;²¹

CWTA expected the Department to consider: first, whether or not renewal fees would be applied; second, if fees were to be applied, would they be cost-recovery, or economic rent-seeking; and third, what fee should be proposed. In the present consultation, and the *Consultation on Revisions to the Framework for Spectrum Auctions* the Department has indicated that it will forgo the question of whether or not renewal fees should be applied and that it will propose a fee that will be based on the "market value" of the spectrum.

CWTA notes that the Department relies on the 2007 *Spectrum Policy Framework for Canada* (SPF) for the policy rationale and directive that "the Department must *earn a fair return for the Canadian*

¹⁵ Framework for Spectrum Auctions in Canada – 1998, Section 6.5

¹⁶ DGRB-003-99 / DGTP-005-99 - *Policy and Licensing Procedures for the Auction of the 24 and 38 GHz Frequency Bands*, Section 3.5

¹⁷ DGRB-005-00 / DGTP-007-00 — *Policy and Licensing Procedures for the Auction of the Additional PCS Spectrum in the 2 GHz Frequency Range*, Section 4.3

¹⁸ Framework for Spectrum Auctions in Canada (Issue 2) – 2001, Section 4.5

¹⁹ DGRB-003-03 — *Policy and Licensing Procedures for the Auction of Spectrum Licences in the 2300 MHz and 3500 MHz Bands*, Section 6.1

²⁰ DGRB-003-03 — *Policy and Licensing Procedures for the Auction of Spectrum Licences in the 2300 MHz and 3500 MHz Bands* (Revised July 2004), Section 6.1

²¹ Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range

*public for the privilege of access to spectrum*²². CWTA respectfully submits that the 2007 SPF does not contain that statement, or any mention of fees. That statement was contained in the previous (2002) version of the SPF, which was superseded by the 2007 version that was “streamlined, shortened, updated, and reoriented to reflect current practices and current government policy.”²³

CWTA notes that if renewal fees are to be collected, the answer to the question of whether or not the Department ought to seek economic rents may differ between the licences issued as a result of an auction, and those that were not. It is possible to conclude that the auction purchase price includes all the economic rents associated with the licence.

The Department has clearly stated its intention to impose a fee that reflects “a fair return to the Canadian public”. CWTA submits however, that a cost-recovery model is a legitimate option that the Department should consider and would provide a return to the Canadian public. A cost recovery approach would also be consistent with Federal Communications Commission (FCC) practices for comparable spectrum. The FCC recently released its assessment of the Regulatory Fees for fiscal year 2009 and will apply a rate of \$0.18 per active telephone number for CMRS Mobile Services²⁴. A fee of that amount in Canada would result in the collection of roughly \$3,888,000 — a far cry from \$129,983,142. CWTA notes that one of the reasons cited for the direction of the AWS auction policy was that Canada’s industry exhibited “higher prices, less innovation, lower uptake and lower rates of usage” than in the United States²⁵. If the Department believes that Canadian pricing should resemble pricing in the U.S., CWTA submits it would be reasonable to expect the Department to align spectrum licence fees with the cost-based fees.

CWTA looks forward to providing comments on the planned formal study to assess the current market value of the spectrum licences and the separate consultation on the fee that will ultimately be proposed. CWTA notes that there is a significant distinction between the market value of spectrum, and a fair return to the public. While the market value would represent the benefit accruing to the licensee for access to and use of the spectrum, the fair return to the public would also include the benefits accruing to the public from the availability of the services using the spectrum. The 2007 SPF states that the Department’s policy objective is to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource. In CWTA’s view, this means that the Department should thoroughly examine all public and private benefits associated with the licences.

With respect to the public benefits derived from cellular/PCS service, CWTA notes that the Federal government has consistently and repeatedly stressed the importance of telecommunications for Canadians. The objectives of the *Telecommunications Act* and the *Radiocommunication Act* aim to achieve widely deployed, affordable and reliable telecommunications infrastructure. These objectives are in place specifically because of the public benefits derived from the availability of telecommunications.

²² DGRB-002-09 - Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences, p. 7

²³ DGTP-001-07 – New Spectrum Policy Framework for Canada, p. ii

²⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, MD Docket No. 09-65, *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, p. 56

²⁵ Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range, p. 2

CWTA strongly believes that the public benefits arising from the use of the radio spectrum resource are substantial. Specifically, mobile wireless service provides significant benefits to the Canadian public. The Department has recognized this as well. The 2007 SPF noted “The wireless telecommunications sector plays an important role in the Canadian economy”²⁶. Today more than 21.6 million Canadians use cellular/PCS devices on a daily basis, representing more than half of all connections to the PSTN. Canada’s wireless industry makes important direct contributions to the Canadian economy and is an enabling technology for many other sectors of the economy.

The United Kingdom’s Ofcom, and its predecessor, the Radiocommunications Agency have studied the economic impact of the use of radio spectrum on several occasions²⁷. In 2006, it was estimated that Public Mobile services contributed a net economic benefit of £21.8 billion and produced a consumer surplus of £18.9 billion²⁸. Studies of the United States wireless industry have estimated the consumer surplus at \$81 billion²⁹ and \$157 billion³⁰.

CWTA submits that all of the public benefits of wireless services need to be adequately measured and taken into account as the Department establishes its fee proposal.

CONCLUSION

CWTA supports the Department’s intent to renew the cellular and PCS licences. This renewal will ensure that licencees will continue to be able to deliver the services Canada’s 21.6 million wireless subscribers demand. To ensure that the renewals provide the benefit to licencees and Canadians, CWTA recommends the Department:

- apply a “high expectation of renewal” using a standard and consistent language;
- undertake necessary actions to apply longer licence terms;
- discontinue the Research and Development Condition of Licence; and
- apply a cost-recovery fee for licence renewals – or – conduct a full assessment of all of the public benefits attributable to wireless services.

Sincerely,

Filed electronically

J. David Farnes
Vice President,
Industry and Regulatory Affairs

²⁶ DGTP-001-07 – New Spectrum Policy Framework for Canada, p. 1

²⁷ See for example, *The Economic Impact of Radio*, Radiocommunications Agency 2001; *The Impact of Radio*, Radiocommunications Agency, 2002 Update; *Economic impact of the use of radio spectrum in the UK*, by Europe Economics for Ofcom, 2006

²⁸ ; *Economic impact of the use of radio spectrum in the UK*, by Europe Economics for Ofcom, 2006

²⁹ Advanced Wireless Services, Spectrum Sharing, and the Economics of an Interference Temperature, Thomas W. Hazlett and Matthew L Spitzer, 2004

³⁰ *The Impact of the US Wireless Telecom Industry on the US Economy*, Ovum for CTIA, 2005