



2003-03-14

Mr. Jan Skora
Director General
Radiocommunications and Broadcasting Regulatory Branch
300 Slater Street
Ottawa, ON

Dear Mr. Skora

CWTA Comments - *Canada Gazette* Notice DGRB-004-02: Consultation on a New Fee and Licensing Regime for Cellular and Incumbent Personal Communications Services (PCS) Licensees as amended by DGRB 001-03

The Canadian Wireless Telecommunications Association (“CWTA”) provides the attached response to the above noted consultation (“the Notice”). CWTA acknowledges and agrees with the objective of rationalizing the disparate licensing regimes applicable to cellular and PCS licensees, and we support the harmonization of licensee rights with the rights associated with auctioned PCS spectrum. The benefits of rationalization and harmonization, however, are in stark contrast to the potentially severe consequences to both the industry and consumers of a more costly fee structure.

CWTA believes the Department has overestimated the fair economic value of the spectrum in question. Further, it is not clear that the Department has conducted the necessary assessments — as required by Treasury Board policies — of the impacts of licence fees; the cumulative effect of multiple fees on the industry; the public benefits of wireless telecommunications; or of the effect fees will have on overriding policy objectives such as Innovation, Connectedness, or Broadband deployment. As a result, CWTA urges the Department to recalculate the proposed fee level, taking into account its assessment of the above noted factors, and reduce the burden on the industry.

Sincerely,

Electronic filing

J. David Farnes
Vice President
Industry and Regulatory Affairs

DGRB 004-02

**Consultation on a New Fee and Licensing Regime for Cellular and
Incumbent Personal Communications Services (PCS) Licensees
as amended by DGRB 001-03**

Response of the

Canadian Wireless Telecommunications Association



**submitted to
Industry Canada**

March 14, 2003

1. 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.

EXECUTIVE SUMMARY

2. The cost of radio licence fees is probably the single most disputed issue between the radiocommunication industry and Industry Canada over the last two decades. The Department has transitioned from a policy of full recovery of spectrum management costs, to one of generating revenue that exceeds spectrum management costs to meet the Government's fiscal and social policy objectives, and most recently to one of recovering economic rent associated with the spectrum resource being consumed.
3. The result of these policy shifts has been a continuing escalation in the fees paid by the industry, particularly by cellular/PCS operators, without — as required by Treasury Board Guidelines — a clearly articulated, thorough examination or discussion of the appropriateness of such fees, or of the real impacts these fees have on the industry.
4. Industry Canada's spectrum licence fees are one of the largest government user charges in Canada. Cellular/PCS fees, at \$137 million annually (\$375,000 a day), represent about half of the total amount of spectrum licence fees collected by the Department despite the small fraction of available radio spectrum used by the industry.
5. The intent of charging rent-based fees for the use of public resources is to ensure that the financial benefits associated with their use are shared with the general public. As detailed below, the Canadian public is already recovering rent in the form of the numerous public benefits associated with the provisions of wireless services throughout Canada.
6. CWTA disagrees with the Department's assessment of the economic value of the spectrum assigned for cellular/PCS services. CWTA is also of the view that a rearward-looking, single network model that relies on the appropriateness of current fees — as proposed by the Department — is flawed. As a result, the proposed fees are much too high.
7. The Department has proposed a fee of \$0.052 per 1 MHz of assigned spectrum per person in a defined geographic area. CWTA estimates that, at an aggregate level, the proposed fees will result in an increase in cellular/PCS licence fee revenue of approximately 34% between today's fees and the end of the proposed transition period. In real terms, this represents an approximate \$50 million annual increase when the proposed regime is in full effect in 2011. Through the proposed transition period, the annual fee increase would be about 4.25%. CWTA forecasts no growth of fees under the existing regime. Even in the event of growth of 1.5% in fees annually, the proposed fee level is more than double any such growth.
8. One effect of high fees is to put the Canadian industry at a comparative disadvantage to the US industry. This runs counter to the telecommunications policy

objective defined within Section 7 (c) of the *Telecommunications Act*. CWTA estimates that Canadian licensees pay approximately \$12 per subscriber per year compared to U.S. CMRS operators that pay \$0.24 (US) per subscriber per year for comparable spectrum.

9. Despite the requirements of the Treasury Board's Cost Recovery and Charging Policy, there is no evidence provided by the Department of an analysis of either the impacts of licence fees; the cumulative effect of multiple fees on the industry; the public benefits of wireless telecommunications; or of the effect fees will have on overriding policy objectives.
10. In the view of the CWTA, the Government of Canada has established three overriding policy objectives that are very relevant to the wireless telecommunications industry. These overriding objectives are:
 - Innovation: to foster innovation in recognition of the importance it will play in our knowledge-based economy;
 - Connectedness: making Canada the most connected country in the world; and
 - Broadband: promoting the widespread availability of broadband facilities to Canadians.
11. The specific licensing and spectrum management actions of the Department must, in our view, support these three overriding policy objectives. Unfortunately, there is little provided by way of explanation in the consultation document to suggest how, if at all, the licence fee levels proposed by the Department will promote the government's objectives. The CWTA submits that the proposed fee levels will increase the existing burden on wireless carriers, thereby hindering the licensees' ability to: further innovate; expand networks to connect more Canadians; and invest in the delivery of new broadband mobile services.
12. Every dollar the government extracts from the operators represents one less dollar that the operators can invest in network resources or services. These fees also have a direct impact on the price of services that are provided to the consumer.
13. Government policies should work in favour of the consumer and help lower the cost of providing wireless services. CWTA believes that the government should take steps — in conjunction with spending programs — to reduce the costs of service providers to help expand and extend services. Cellular/PCS operators — unlike local wireline providers — receive no subsidies to serve high-cost areas. The most direct way the Department can lower costs for operators is to reduce licence fees.
14. CWTA submits that a cost-recovery model is still a legitimate option for the Department. Treasury Board policy allows such a system if a Department determines that on balance, policy objectives or the public interest would be best served under such an approach. Such a system is consistent with the fees imposed by the FCC for comparable spectrum in the United States, as well as a number of other government user charges in Canada.

15. If the Department chooses to pursue a rent-based policy, CWTA urges the Department to redevelop the model used to establish the fees. In doing so, the Department must fully assess the cumulative impact of all federal charges and obligations (including for example, CRTC Contribution obligations); the public benefits associated with the use of radio spectrum to provide cellular/PCS services; and the impact of any new fee on the government's policy objectives. CWTA submits that a fee range of between \$0.01 and \$0.037 is an appropriate starting point for consideration. This range is bounded by the amount Australia charges for comparable spectrum (\$0.01) and the amount that would maintain current aggregate fee levels (\$0.037).
16. In regard to the other components of the proposed regime, CWTA agrees with the objectives of rationalizing the disparate licensing regimes applicable to cellular and PCS licensees and the harmonization of licensee rights with the rights associated with auctioned PCS spectrum.
17. The proposed licence conditions reflect, for the most part, the generally-held understanding of the existing conditions in form and intent. However, CWTA has rather serious concerns regarding the significantly altered condition related to Radio Station Installations, as well as the new condition of licence concerning the System Access Fee (SAF). The condition for radio installations should not be modified while a national review of the Department's antenna tower policy is pending. The condition regarding the SAF is unnecessary and indeed, inaccurate.
18. CWTA is also of the view that the Department needs to re-examine its policies for under-served areas. The existing *Policy for the Provision of Cellular Services by New Parties* would not be an appropriate tool under the new regime.
19. Furthermore, the Department needs to establish a mechanism under the new regime for licensees to return spectrum, as well as a process for the subsequent reassignment of such returned spectrum.
20. CWTA requests that the Department clarify the mechanics of the service tiers and the process the Department will use to define the new tiers for local telephone providers and New Party licensees. Further, prior to the implementation of the new regime, CWTA encourages the Department to verify all of the population figures that will be relied upon to establish the new fees.
21. Subject to the Department's implementation of CWTA's recommendations, the proposed regime should be a success and benefit the Department, the Industry, and Canadians.

SPECTRUM LICENCE FEES

22. At the outset, CWTA wishes to address its concerns about the proposed fee level contained in the Notice. Radio licence fees are probably the single most disputed issue between the radiocommunication industry and Industry Canada in the last two decades. The Department has gone from a policy of full recovery of spectrum management costs¹, to one of generating revenue that exceeds spectrum management costs to meet the Government's fiscal and social policy objectives², and most recently to one of recovering economic rent associated with the spectrum resource being consumed³.
23. The result of these policy shifts has been a continuing escalation in the fees paid by the industry, particularly by cellular/PCS operators, without — as required by the Treasury Board Guidelines — a clearly articulated, thorough examination or discussion of the appropriateness of such fees, or of the real impacts they have on the industry and on federal government policy objectives.
24. The first step of such an examination requires a separation of the *cost-recovery* and *economic rent* components of the licence fee. It is the economic rent component that represents the largest part of the licence fees. The CWTA does not object to a user charge designed to recover the costs incurred by the Department in the role of spectrum manager. CWTA does not strictly oppose the objective of setting fees to ensure efficient utilization of a scarce resource or a fair economic return to the general public. CWTA disagrees with the Department's assessment of the economic value of the spectrum assigned for cellular/PCS services, and doubts the Department has factored public benefits into the fee calculation.
25. In the Notice, the Department has proposed a fee of \$0.052 per 1 MHz of assigned spectrum per person in a defined geographic area (per MHz per pop). As described in the Notice, this number is derived from a portion of the current licence fees paid by one operator. Inherent in this are two key assumptions: 1) that the current fee levels are appropriate, and 2) that any one network is an appropriate model system.

Current Fees are Excessive

26. Several factors call into question the appropriateness of the current fee levels as a measure for the economic value of cellular/PCS spectrum, including the lack of any supporting measures or formulae at the time the fees were established, and the fact that under the current regime, the industry has yet to be profitable.
27. At the time the current fee regime was established, the Department acknowledged that it was designed to recover more than the costs of spectrum management. As stated when it called for applications for PCS, "Industry Canada continues to be of the view that radio licence fees should reflect the economic value of the radio

¹ Discussion Paper on non-broadcast radio licence fees in Canada, March 1984

² General Radio Regulations, Part I – amendment, Canada Gazette, December 19, 1992, p. 3931

³ *Consultation on Radio Licence Fees – Phase 1*, Industry Canada, February 19, 1996, p. 1 and *Consultation on a New Fee and Licensing Regime for Cellular and Incumbent Personal Communications Services (PCS) Licensees*, Industry Canada, December 21, 2002, p. 7

frequency resource consumed"⁴. While the Department has subsequently studied alternative models for licence fees that attempted to measure economic value, CWTA is unaware of any models or formulae that were used to establish the licence fees as they currently exist.

28. It is also important to note that under the existing fee schedule, most cellular/PCS licencees, and the industry as a whole, have yet to achieve profitability. Charging rent-based fees for the use of public resources attempts to ensure that the financial benefits associated with their use are shared with the general public. As noted above and detailed below, the Canadian public is already recovering rent in the form of the numerous public benefits associated with the provisions of wireless services throughout Canada.
29. CWTA strongly believes that the public benefits arising from the use of the radio spectrum resource are substantial and, accordingly, they warrant a significant reduction in the spectrum licence fee applied by the Department. For example, the Department states in the Notice that RWI's cellular network "covers more than 93% of the Canadian population and the major traffic corridors". At the end of 2002, there were approximately 11.9 million wireless subscribers in Canada. According to Statistics Canada, the population of Canada at that time was about 31.4 million. Therefore, approximately 40% of the population use wireless services, while 93% have access to these services. CWTA submits that these levels of coverage and subscription imply that use of cellular/PCS spectrum provides benefits for virtually all Canadians, not only cellular/PCS licensees. These benefits include an array of useful applications such as public safety, business efficiency, and personal convenience. Other benefits include direct and indirect employment, R & D, innovation, and the provision of highly advanced services to Canadians in both urban and rural areas, in all regions of Canada. Rather than one, or a few, corporations and their shareholders benefiting from the use of this spectrum, the entire economy benefits from the provision of wireless services by means of radio spectrum.
30. CWTA estimates that cellular/PCS licensee fees amount to over \$137 million annually. On a per subscriber basis, this is equivalent to approximately \$12 per subscriber per year. This is in stark contrast to the United States, where CMRS operators pay \$0.24 (US⁵) per subscriber per year for comparable spectrum. The result is that U.S. operators have more funds available to invest in infrastructure and services. High fees directly impact costs and increase prices for consumers. As demonstrated after the changes in the Canadian Radio-television and Telecommunications Commission ("CRTC") Contribution Regime, licencees are unable to absorb government-imposed obligations. In a highly price-elastic market such as wireless telecommunications, these increased prices will reduce the level of demand for service and the extent of market penetration.
31. This scenario puts the Canadian industry at a comparative disadvantage to its US counterpart and makes little sense given the Government's objective to make Canada the most connected country in the world. This disadvantage also runs counter to the telecommunications policy objective defined within Section 7 (c) of

⁴ Policy and Call for Applications: Wireless PCS in the 2 GHz range, Industry Canada, June 15, 1995, p. 14

⁵ \$0.24 (US) equals \$0.36 (CDN), Bank of Canada, March 3, 2003

the *Telecommunications Act*. The intent of that objective is "to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications".

Single Network Model

32. As described in the Notice, the fees proposed by the Department were established using the 800 MHz cellular network of Rogers Wireless Inc. (RWI) as a benchmark. This proposal assumes that one network can be effectively used to model the optimal deployment and spectrum utilization for the diverse competing networks in Canada. It also disregards a significant portion of RWI's licenced spectrum.
33. CWTA submits that no single network is appropriate for use as a basis for spectrum licence fees. Spectrum utilization and network deployment is dependant on a number of factors including technology choices, network loading, consumer demand, marketing considerations, network design philosophies, and availability of capital. Each of these factors is unique to each licensee, and indeed each network.
34. Even if one network was an acceptable model, CWTA submits that one portion of a network must not be used in isolation. As the Department is aware, RWI operates three networks — one analogue, two digital — using cellular, incumbent PCS, and today, auctioned PCS spectrum. Nearly 30% of the spectrum subject to this consultation used by RWI to provide mobile wireless services is the 10 MHz of incumbent PCS spectrum awarded in 1995. Both digital networks match the reach and coverage of the analogue cellular network and are capable of using each spectrum band. Using multi-band handsets, RWI's customers are seamlessly and transparently served by all of these bands. Therefore, the notion that is implicit in the Department's proposed use of RWI's 800 MHz cellular network as a model is incorrect. RWI's mature and national network utilizes more than simply the 800 MHz cellular band. As a result, it is not appropriate to isolate the 800 MHz band in arriving at a suitable model system.
35. Beyond this, CWTA submits that a rearward-looking model, such as the one proposed by the Department, does not serve the Department or the Industry as well as would a forward-looking model that thoroughly examines the impact of all fees and the public benefits of the resource use. CWTA notes the proposed fee was designed for analogue systems, but will apply for the next decade or longer, to networks that are substantially digital.
36. CWTA notes that the Department could have elected to use the 2000 acquisition of Clearnet Communications Inc. ("Clearnet") by Telus Corporation ("TELUS") or the 2001 PCS spectrum auction as proxies for the value of cellular/PCS spectrum. CWTA submits that neither of these "proxies" is a valid spectrum pricing benchmark.
37. The 2001 PCS spectrum auction prices reflected an artificial scarcity of spectrum that was created when the Department withheld 40 MHz of spectrum in the PCS 'C' block (30 MHz) and the PCS 'E' block (10 MHz). Together, these withheld blocks comprise 33% of the 120 MHz of allocated PCS spectrum in Canada, or 50% of assigned PCS spectrum in Canada. The effect of this artificial scarcity was that the prices paid at auction were unnaturally inflated.

38. The acquisition of Clearnet by TELUS was not confined solely to radio spectrum, but included a customer base, proven management team, marketing methods, supply agreements, goodwill, infrastructure, real estate, and a cross-Canada presence with two digital networks. All of these factors contributed to the value that TELUS assigned to Clearnet.
39. Moreover, both the auction and acquisition of Clearnet took place at a time when the high technology sector was dramatically overvalued and overpriced by public capital markets. The subsequent bursting of the "tech stock bubble" is evidence of this fact. CWTA strongly believes that if the same auction and acquisition took place today, valuations and prices would be substantially lower. Therefore, neither the 2001 PCS spectrum auction, nor the TELUS acquisition of Clearnet, provide a valid or useful proxy of the value of cellular/PCS spectrum in Canada. Accordingly, these "proxies" should not be used to determine the spectrum licence fees for cellular/PCS spectrum.

Industry Canada Proposed Fees

40. Considering the fact that current fee levels are unduly high and the Department's model is flawed, CWTA submits that the aggregate level of fees resulting from the new regime should be lowered. CWTA believes that fee levels should *at a maximum* maintain the level currently collected under the existing regime. The industry cannot hope to maintain low consumer prices and achieve profitability in the face of increasing input costs, such as the fee that has been proposed in the Notice.
41. While the Notice does not present any impact analysis of the proposed regime, CWTA estimates that the proposed fees will result in an increase in cellular/PCS licence revenue to the Department of approximately 34% between today's fees and the end of the transition. In real terms, this represents nearly \$50 million annually when the proposed regime is in full effect. Through the proposed transition period, the aggregate annual fee increase is about 4.25%.
42. Although the Notice does not attempt to explain or justify this increase, CWTA believes that the Department has assumed that, under the current spectrum fee regime, the total amount of spectrum licence fee revenue would increase between 2003 and 2011. CWTA estimates that such growth, at an aggregate level, will not occur, meaning that the current fee level will, at most, be maintained.
43. First, the historical growth of spectrum licence fees is attributable to the use of non-auctioned spectrum. However, going forward, some licensees will make increasing use of the spectrum that they acquired in the 2001 PCS spectrum auction. By doing so, these licensees will have the ability to deploy additional coverage and capacity without having to pay additional spectrum licence fees. Therefore, past growth in the amount of spectrum licence fees collected by the Department is not a valid proxy for the future growth of these fees.
44. Second, all carriers pursue plans that aim to minimize the spectrum fees payable. This objective is supported by the deployment of more spectrum-efficient technologies, and the further conversion of analogue channels to digital.

45. Technological improvements include: transceiver vocoder technology, data compression technology, frequency hopping techniques, "smart" antenna design, signal processing, noise and interference elimination and higher-order modulation techniques. All of these technological improvements will allow cellular/PCS licensees to expand and improve coverage, without the need to implement additional radio channels and base station sites, or to pay additional spectrum licence fees.
46. Further, as demand for digital services grows, and demand for analogue services declines, cellular/PCS licensees are replacing analogue technology with higher capacity digital technology. The net effect of this trend over time will likely be an overall reduction in the number of radio channels. The same will be true when 2nd generation ("2G") technology is replaced by 2.5G technology, and when 2.5G technology is replaced by 3rd generation ("3G") technology, and so on. As lower capacity channels are replaced with higher capacity channels, the number of overall channels in the network will decline. As a result, spectrum licence fees will also decline.
47. All of these factors will offset the effects of continued network expansion, subscriber growth, and the provision of higher bandwidth services that have, historically, resulted in an increase in the total spectrum fees paid by licensees.
48. Even in the event of organic growth of 1.5% annually, the proposed fee level is more than double any such growth. It is more likely however, that under the current regime, licensees would be successful at maintaining or reducing licence fees between 2003 and 2011. Under such a scenario, the total fee increase caused by the proposed fees would be greater than CWTA's estimated 34%.

49. Further, because the fees proposed by the Department are tied to population, it is likely that the Department has assumed that for every additional subscriber, more revenue will be generated. CWTA submits that while the cellular/PCS industry has shown tremendous subscriber growth in the last 8 years, that trend is beginning to slow as penetration surpasses 40%. Merrill Lynch has recently reported that "the market growth curve is flattening faster than [we] expected ... compared to [Merrill Lynch's] current U.S. market forecasts⁷". In addition, the average revenue per user (ARPU) has declined significantly. As shown in Figure 1, between 1995 and 2001 ARPU declined 30% from \$73 to \$51 per month.

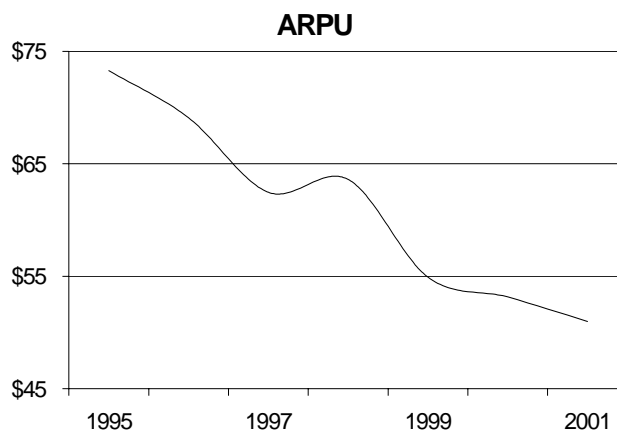


Figure 1⁶

⁶ Compiled from *Quarterly Telecommunications Statistics*, Statistics Canada

⁷ *Canadian Wireless Services*, Merrill Lynch, February 24, 2003, p. 3

These two factors; declining subscriber growth rates, and declining ARPU, both suggest that, going forward, licence fees will represent a larger and larger proportion of subscribers' monthly bills.

50. CWTA notes that cellular/PCS licencees already pay approximately 50% of all licence fees collected by the Department, despite having a small fraction of assigned spectrum. The 130 MHz of spectrum subject to this consultation represents only 0.22% of the spectrum under 60 GHz that the Department considers useable⁸. This is in stark contrast to the 1053 MHz of "useful" spectrum allocated to broadcast services⁹. CWTA notes that Broadcasters indirectly pay fees to cover the Department's spectrum management costs and a form of economic rent. In 2001-2002 the amount paid by Broadcasters was \$85.7 million¹⁰. If calculated on a per MHz per pop basis, even if Broadcasters only reach 50% of the population, the rate is \$0.0056 or one tenth (1/10) of that proposed by the Department for cellular/PCS fees.
51. CWTA further notes that spectrum licence fees represent one of the largest sources of user-charge revenue for any federal department¹¹. Other federal user charges are explored in more detail below.
52. Using the total licence fees currently paid and the total spectrum assigned for cellular/PCS, CWTA estimates that a fee of \$0.037 per MHz per pop would generate the same amount of licence fee revenue for the Department as it currently collects. CWTA believes that the application of the proposed fee (\$0.052) would result in an unreasonable and unwarranted increase in the fees paid by cellular/PCS licensees, and in the aggregate revenue collected by the Department.

TREASURY BOARD POLICY

53. It is clear that spectrum licence fees are a form of user charge. CWTA notes that the Treasury Board's Cost Recovery and Charging Policy¹² ("the Treasury Board Policy") identifies a number of requirements that govern the extent to which federal government departments may impose user charges. As noted above, and as stated in the Treasury Board Policy, one objective of user charges is "to earn a fair return for the Canadian public for access to, or exploitation of, publicly-owned or controlled resources".
54. The Treasury Board Policy also states that it "is government policy to implement user charges for services that provide identifiable recipients with direct benefits beyond those received by the general public, unless overriding policy objectives would be compromised". Similarly, the Treasury Board Policy states that

⁸ *Questions And Answers: Wireless Broadband Communications at 24 GHz and 38 GHz Proposed Policy and Licensing Procedures*, Industry Canada, <http://spectrum.ic.gc.ca/auctions/engdoc/q&ajim.html>, see response to Question 17

⁹ Application by the Canadian Association of Broadcasters (CAB) for the Repeal of Part II of the *Broadcasting Licence Fee Regulations, 1997*, CAB, January, 2002, http://www.cab-acr.ca/english/research/02/sub_jan2402.pdf, para. 55

¹⁰ *Part III Report on Plans and Priorities, 2002-2003 Estimates*, CRTC, p. 33

¹¹ *List of External User Charges; Year-Over-Year Comparison*, Treasury Board of Canada Secretariat, June 25, 1999

¹² Treasury Board of Canada Secretariat, *Cost Recovery and Charging Policy*, April 8, 1997.

departments “have an obligation to consult with other affected parties to ensure that competing policy objectives are not compromised”.

55. A fundamental principle contained in the Treasury Board Policy is that user charges “cannot be used simply as a means of generating revenue to meet the funding requirements of a department or agency”. As a result, federal departments must conduct meaningful consultations with affected clients and, as stated within the Treasury Board Policy, “the aim of consultations should be to avoid imposing unreasonable cost burdens on clients”.
56. Before imposing user charges, federal departments must “conduct impact assessments to identify all significant effects, positive and negative, and factor those results into sound fee-setting decisions”. The Treasury Board Policy further requires that government departments “work with clients to assess the cumulative impact of multiple fees from all federal sources, and assess proposed fees in that context”.
57. CWTA notes that the Notice contains no reference to these elements of the Treasury Board Policy, and the Association doubts that the proposed spectrum licence fee has been devised in accordance with these requirements. For this reason, CWTA believes that the proposed licence fee is unreasonable and must be re-calculated and significantly reduced.

Required Impact Assessments

58. As noted above, a clear economic basis for the current or proposed fees is not apparent. In addition, CWTA submits that the current fee level — and as a result, the proposed fees — fail to adequately consider either the cumulative impact of multiple fees from all federal sources or the public benefits associated with cellular/PCS service, as required by the Treasury Board Policy.¹³
59. CWTA urges the Department to bear in mind that the cost of these fees directly impacts the ability of carriers to innovate and meet the service level and price expectations of both consumers and government. Additional costs to the industry would directly affect demand for wireless services and therefore would unequivocally impact Canadian businesses and consumers. A full assessment of these issues will help the Department determine an appropriate fee. As discussed in more detail below, such an assessment is required by the Treasury Board Cost Recovery and Charging Policy.
60. CWTA has long argued for a more holistic approach to the various charges and fees imposed by government¹⁴. Fairness dictates that the regulatory obligations established in the pursuit of government policy objectives cannot and must not be examined in isolation from other obligations. The entire “regulatory package”, meaning all obligations established by the government in pursuit of public policy objectives, must be examined in concert.

¹³ *Cost Recovery and Charging Policy*, Treasury Board of Canada Secretariat, April 8, 1997, p. 3

¹⁴ See for example, CWTA comments re: CRTC Public Notice 99-6, CWTA Submissions to the Standing Committee on Finance in preparation for The Budget, Years 2000, 2001, 2002, CWTA comments re: Bell Review and Vary Application - Decision 2000-745, CWTA response to the Federal Government’s Innovation Strategy Consultation

Overriding Policy Considerations

61. In the view of the CWTA, the Government of Canada has established three overriding policy objectives that are very relevant to the wireless telecommunications industry. These overriding objectives are
- Innovation: to foster innovation in recognition of the importance it will play in our knowledge-based economy,
 - Connectedness: making Canada the most connected country in the world, and
 - Broadband: promoting the widespread availability of broadband infrastructure to Canadians.
62. The specific licensing and spectrum management actions of the Department must, in our view, and according to Treasury Board policies, support these three overriding policy objectives. Unfortunately, there is little provided by way of explanation in the consultation document to suggest how, if at all, the licence fee levels proposed by the Department will promote the government's objectives. The CWTA submits that the proposed fee levels will increase the burden on wireless carriers thereby hindering these carriers' ability to further innovate, to expand networks to connect more Canadians and invest in the delivery of new broadband mobile services.
63. The Department stated when it introduced its PCS policy "Wireless networks in general, and personal communications services in particular, are expected to play key roles in the development of the Canadian information highway".¹⁵ More recently, the Department has said "The importance of the telecommunications sector to the Canadian economy has become increasingly critical — the availability of low cost, sophisticated, universally available telecommunications services is one of the platforms on which an innovative society and economy are being built."¹⁶ Therefore, it would be consistent with Department policy to establish a fee that, unlike the proposed fee, does not create an undue burden on the industry.
64. The telecommunications industry in Canada, and indeed globally, is in the process of recovering from a period of very serious economic and financial challenges. On a broader level, domestic and global economies are shrouded in uncertainty as geopolitical events cast further doubt over the speed and nature of an economic recovery for the telecommunications sector. Several noteworthy firms in Canada have undergone financial restructuring, or have collapsed. Within the Canadian wireless sector, some companies are struggling to survive, while profitability continues to elude the sector as a whole. Financing costs for even the most successful companies have increased. At the same time, the competitive status of the Canadian wireless industry, described by knowledgeable observers as intense, is reflected in industry-wide ARPU which has been declining for several years. While

¹⁵ *Policy and Call for Applications, Wireless PCS in the 2 GHz Range*, Industry Canada, June 15, 1995, p. 3

¹⁶ *Foreign Ownership Restrictions Applicable to Communications Common Carriers*, Industry Canada, November 19, 2002, electronic version <http://www.strategieinnovation.gc.ca/cmb/innovation.nsf/MenuE/Invest02>

good news for Canadian wireless consumers, it increases the financial challenges facing service providers.

Public Benefit Considerations

65. With respect to the public benefits derived from cellular/PCS service, CWTA would note 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 throughout Canada. As outlined above, the federal government's Connectedness Agenda and the Broadband initiative are both intended to increase the availability of communications to the Canadian public. Cellular/PCS operators have made, and continue to make significant contributions to Canada's telecommunications infrastructure and to a climate of innovation. Specifically, cellular/PCS service provides significant benefits to the Canadian public:
- Close to 12 million Canadians use cellular/PCS devices on a daily basis, representing 37% of all connections to the PSTN. This number continues to grow steadily.
 - The cellular/PCS operators employ some 14,000 Canadians directly. Most of these employees are in highly skilled positions, and earn, on average, 30% more than the average Canadian worker. This does not include the thousands of jobs created by the sub-sectors that produce goods and services for the industry.
 - Canada's wireless industry makes important direct contributions to the Canadian economy. For example, since 1996 Canada's cellular/PCS operators have invested more than \$1 billion in capital expenditures every year on mobile phone communications networks, products and services.
 - In the third quarter of 2002 alone, Canada's cellular/PCS operators contributed about \$1.3 billion to Canada's GDP. In 2001, the wireless carriers contributed about \$4.9 billion to Canada's GDP.
 - Wireless also makes important indirect contributions to the economy, as it is an enabling technology for many other sectors of the economy. In addition to constructing essential communications infrastructure, wireless technology fosters increased efficiency by employees by enabling them to provide faster customer service. It allows companies to monitor equipment in remote locations. It enables businesses to track mobile assets. For many small and medium enterprises, the convenience of mobile communications is vital and can contribute to work-life balance. It makes possible immediate, virtual meetings at which crucial business decisions can be made. In short, wireless can enhance productivity in every sector – and fundamentally improve the way a business operates.
66. The Department itself has stated: "The telecommunications industry's impact on the Canadian economy goes beyond the revenues and employment generated by the industry itself. Telecommunications, including wireless services, provides a critical

infrastructure for knowledge-based and other economic sectors, which has an enormous 'enabling' impact on the rest of the economy".¹⁷

67. Additional costs to the industry would directly affect demand for wireless services and therefore would unequivocally impact the wireless industry's ability to expand its networks and coverage. This in turn, would have a negative affect on Canadian businesses and consumers.

Impact of Multiple Fees

68. In addition to spectrum licence fees, cellular/PCS operators pay a number of fees or charges that support public policy objectives and that are above and beyond typical corporate taxation. All PCS licensees, as noted in the Notice, are required to dedicate 2% of adjusted gross revenue to designated Research and Development activities representing an aggregate expenditure in excess of \$50 million a year. As telecommunications providers, cellular/PCS operators are required to pay into the National Contribution Fund established by the CRTC to subsidize local (wireline) telephone service in high-cost serving areas. CWTA estimates that the Contribution obligation for cellular/PCS operators was \$185 million in 2001, and \$75 million in 2002 which represent increases of 1056% and 369%, respectively, from the approximately \$15 million paid in 2000.
69. Beyond these direct charges, policy and regulatory decisions such as lawful intercept requirements and items such as the provision of 9-1-1 service impose indirect costs on the industry. Further, the industry is expected to, and does, contribute significant resources to domestic and international regulatory activities. Through the Radio Advisory Board of Canada, licensees assist in the development and maintenance of numerous technical standards and plans. Licensees also help advance and protect Canada's interests at international fora such as CITEL and the ITU.
70. Certain provinces also impose charges on the industry, for example the province of Newfoundland and Labrador collects a tax under the "[Newfoundland] *Taxation of Utilities and Cable Television Act*". This requires that 2.5% of gross revenues be paid to the provincial government. When combined with the administrative costs associated with determining and paying the tax, this represents a significant obligation.
71. Every dollar the government extracts from the operators represents one less dollar that the operators can invest in network resources or services. At a time when the financial market for the telecommunications sector is beginning to rebound, the government should not be making decisions that will make profitability more difficult. Increasing costs to the industry through licence fees will dampen investor confidence and further reduce the availability of capital.
72. From a consumer's point of view, service quality can be measured in terms of connection quality, extent of network availability, and the variety of applications offered. From an operator perspective, connection quality requires a certain level of network density, network reach requires geographic deployment, and applications

¹⁷ A *Spectrum Management Framework for Canada* (2002 Revised Edition), Industry Canada

require constant development or procurement of new and innovative services. Success is only achieved when the appropriate balance of each of these objectives is met. Operators must constantly choose where to devote the finite resources available to achieve this balance. Increased licence fees would reduce the amount of available resources.

73. At a time when the government is making decisions to improve the cost and availability of telecommunications service to Canadians and attempting to create a supportive environment for competition, it is counter-intuitive to increase the cost of one of the most important inputs for cellular/PCS licensees – the most competitive segment of the entire telecommunications industry in terms of price, selection, and reach. Government policies should work in favour of the consumer and help lower the cost of providing wireless services. Under these circumstances the prudent decision is to *at most* maintain current fee levels. CWTA recommends that, in conjunction with spending programs, the Department should reduce the costs of service providers to help expand and extend services. For cellular/PCS operators, the most direct way the Department can achieve this is to reduce licence fees.

Specific Treasury Board Policy Requirements

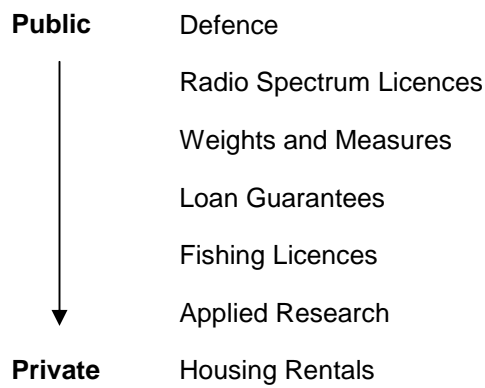
74. As noted already, the Government of Canada has established, in the view of the CWTA, three overriding policy objectives relevant to the wireless telecommunications industry. These overriding objectives are: Innovation, Connectedness, and Broadband. The specific licensing and spectrum management actions of the Department must support these three overriding policy objectives. Unfortunately, there is little provided by way of explanation in the consultation document to suggest how, if at all, the licence fee levels proposed by the Department will promote the government's objectives. The CWTA submits that the proposed fee levels will increase an already unfair burden on wireless carriers thereby hindering these operators' ability to: further innovate; to expand networks to connect more Canadians; and invest in the delivery of new broadband mobile services. In fact, the Treasury Board policies require that all overriding policy objectives be considered before departments establish fees.
75. As mentioned, Government responsibilities as they relate to setting and establishing user charges stem from the policies developed by the Treasury Board Secretariat. The implementation requirements of the Treasury Board's Cost Recovery and Charging Policy outline of a number of underlying principles that departments must adhere to when user charges are being introduced or amended. These principles include consultation and the use of appropriate costing and pricing practices.
76. Within the requirement for consultation, and as noted above, the Treasury Board Policy requires, *inter alia*, that Departments¹⁸:
- Conduct impact assessments to identify all significant effects, positive and negative, and factor those results into sound fee-setting decisions. [These assessments should] focus on such economic factors as

¹⁸ Treasury Board of Canada Secretariat, Cost Recovery and Charging Policy, April 8, 1997, p. 3

competitiveness, product development, investment, and the levelness of the playing field with competitors in other jurisdictions,

- work with clients to assess the cumulative impact of multiple fees from all federal sources, and assess proposed fees in that context

77. In determining appropriate costing and pricing practices, the Treasury Board Policy notes that when there is a mix of public and private benefits, fees should be lower than full cost¹⁹. While differentiating between public and private benefits is difficult, the Treasury Board Policy presents a continuum, with examples, between purely “public” and purely “private” goods²⁰. Clearly the Treasury Board has determined that public benefits are derived from the use of radio spectrum to provide communications.



78. CWTA fully supports the Department’s consultation activities and considers that the Notice meets most of the Policy requirements. The Association submits, however, that the proposed fees do not fully meet these principles. The Department has not demonstrated that the government’s policy objectives to promote connectedness, deliver broadband services and foster innovation would not be compromised by the proposals contained in this consultation. Rather, the Department appears solely focused on the economic return to the Government from providing the licensees with access to spectrum.

79. Similarly, the Department has not presented any impact assessments to identify all significant effects, positive and negative. Nor has it demonstrated how the results of any such assessments have been factored into the fee it has proposed. The consultation paper does not include evidence of any such impact assessments, nor does it contain any assessment of the cumulative impact of multiple fees from all federal sources. Therefore, the CWTA strongly believes that the proposed fee is unreasonably and unjustifiably high.

Spectrum Fees in Context

80. Spectrum licence fees represent only one of a multitude of user charges put in place by Canadian governments. All of these charges are intended to promote

¹⁹ *ibid.*, p. 3

²⁰ *ibid.*, note 1, p. 6

economic efficiency²¹ by recovering costs associated with services or providing a return to the public for use of a public resource. In the context of this consultation, it is enlightening to both put spectrum licence fees in perspective, and compare them with other charges collected by the government.

81. As stated earlier, cellular/PCS licencees pay more than half of all of the spectrum fees collected by Industry Canada. This amounts to approximately \$137 million annually. That is more than \$375,000 a day or \$4.30 every second.
82. Below is a table that identifies a selected group of user fees and the amounts collected by the federal government. The listed charges had among the highest revenues of any individual fee between 1994 and 1998²². Spectrum fees are amongst the highest of this group.

Dept. ²³	RCMP	Industry	CIC	DFAIT	DFO
\$(000's)	Contract Policing	Radio Licence Fees	Right of Landing Fee	Import/Export Permit Fees	Commercial Licences
1996-97	\$ 738,282	\$ 149,369	\$ 167,313	\$ 10,046	\$ 31,300
1997-98	\$ 731,085	\$ 189,848	\$ 119,708	\$ 13,830	\$ 27,000
1998-99	\$ 756,900	\$ 180,900	\$ 106,500	\$ 12,900	\$ 28,000
1999-00	\$ 765,100	\$ 180,900	\$ 131,000	\$ 13,400	\$ 28,500
2000-01	\$ 776,300	\$ 191,800	\$ 131,000	\$ 13,900	\$ 26,200
2001-02	\$ 776,300	\$ 254,500	\$ 147,000	\$ 16,800	\$ 14,100
2002-03	\$ 776,300	\$ 253,000	\$ 125,000	\$ 14,500	\$ 13,700

83. CWTA notes that both the Royal Canadian Mounted Police (RCMP) and Citizenship and Immigration Canada (CIC) charges appear to be cost recovery instruments. The RCMP Contract Policing charges represent the costs of police services the RCMP provides to eight provinces, the three territories, more than two hundred municipalities, sixty-five Aboriginal communities and three airports. The Citizenship and Immigration Canada Right of Landing Fee is a \$975 fee payable by all immigrants 19 years of age and over who apply to become permanent residents of Canada.
84. The other resource-based fee in the list is the Department of Fisheries and Oceans' Commercial fishing licences. CWTA notes that these fees have decreased since 2000. This does not seem to correspond with any fishery closures, as the annual value of commercial landings has increased in that period to over \$2 billion. This licence fee decrease appears to coincide with the publication of a report entitled "*Cumulative Impact of Federal User Fees on the Commercial Fish Harvesting*"

²¹ User Charging in the Federal Government – A Background Document, Treasury Board Secretariat, p. 8

²² *List of External User Charges: Year-Over-Year Comparison*, Treasury Board Secretariat. The amounts in the table were compiled from this document as well as Departmental *Part III Reports on Plans and Priorities*. These figures are estimates and as a result, there may be discrepancies between CWTA figures and those presented in this table.

²³ RCMP: Royal Canadian Mounted Police; Industry: Industry Canada; CIC: Citizenship and Immigration Canada; DFAIT: Department of Foreign Affairs and International Trade; DFO: Department of Fisheries and Oceans

*Sector*²⁴. The purpose of the report was to study the combined affect of various user charges on fish harvesting operations to provide guidance about the future of licence fees or other charges.

85. Despite the more limited public benefit associated with fishing relative to the use of radio spectrum (as evidenced by the continuum in paragraph 77), fishing licence fees are falling, while the Department has proposed an increase to spectrum licence fees. In CWTA's view, this inequity is likely a result of the fact that the Department has failed to conduct an assessment similar to the cumulative impact assessment that was conducted by the Department of Fisheries and Oceans, as required by the Treasury Board's Policy.
86. Provincial governments collect most of the resource royalties in Canada. For example, the Government of Newfoundland and Labrador collects royalties from the exploitation of oil and gas resources. In 2002 the province collected about \$50 million. In the same year, the value of oil production was estimated at \$3.5 billion. For oil and gas — an industry the federal and provincial governments have invested heavily in — the value of production is directly linked to the non-renewable natural resource consumed by the industry.
87. After examining spectrum licence fees in this wider context, it would appear to CWTA that they are not wholly consistent with other charging activities of the federal or provincial governments either in terms of absolute amounts, or relative to the benefits associated with resource use.
88. CWTA notes that the 2003 Federal Budget announced that the Treasury Board policies regarding user charges will be revised²⁵. These pending changes create a level of uncertainty for the Association as this policy establishes the rationale and processes for establishing charges such as spectrum licence fees. Further analysis or review by the Department may be necessary when the new guidelines are released.

Alternative Fee Designs

89. The Department has clearly stated its intention to collect licence fees that reflect the economic value — as perceived by the Department — of the spectrum assigned to licencees. As explained in detail above, CWTA disagrees with the Department's current assessment of that value, and disagrees with the level of economic rent that the Department wishes to collect by means of spectrum licence fees.
90. CWTA submits that a cost-recovery model is still a legitimate option for the Department. As discussed earlier with regard to FCC practices, such a system is consistent with the fees imposed for comparable spectrum in the United States, and a number of other user charges in Canada.

²⁴ *Cumulative Impact of Federal User Fees on the Commercial Fish Harvesting Sector*, Gardner Pinfold Consulting Economists Ltd. and GS Gislason & Associates prepared for Fisheries and Oceans Canada, March, 1999

²⁵ *Improving Expenditure Management and Accountability* (Chapter 7 of the Budget Plan 2003), Department of Finance Canada, February 18, 2003, p. 21

91. In the alternative, if the Department chooses to pursue a rent-based policy, CWTA urges the Department to fully assess the cumulative impact of all federal charges and obligations (including for example, CRTC Contribution obligations); the public benefits associated with the use of radio spectrum to provide cellular/PCS services; and the impact of any new fee on the government's policy objectives. Since it would appear that such an assessment has not been conducted, CWTA submits that the current and proposed fees are too high. CWTA would suggest a fee range of between \$0.01 and \$0.037 as an appropriate starting point for consideration.
92. CWTA notes that for non-auction spectrum at 1800 MHz, Australia charges licensees \$0.01 (AUS²⁶) per MHz per pop²⁷. This regime establishes the low end of CWTA's proposed range. Australia's geography and population distribution are very similar to Canada in that the majority of the population is localized in well-defined urbanized areas with wide expanses of undeveloped territory. Australia is also similar to Canada culturally and economically. Of note is the fact that mobile wireless penetration in Australia exceeds 60%, which is much higher than Canada's, which is currently 40%.
93. The high end of CWTA's proposed range is the fee that would generate the same amount of licence fee revenue for the Department as is currently extracted from the cellular/PCS industry. As explained earlier, that figure is \$0.037 per MHz per pop.

TRANSITION BETWEEN REGIMES

94. CWTA notes that the Department has proposed to begin the transition to the new fee regime on April 1, 2004, and to graduate any fee changes until 2011. This date in 2011 corresponds to the end of the term of the licences awarded as a result of the PCS Auction in 2001 as well as the proposed extended term for cellular and incumbent PCS licences.
95. CWTA would expect that at the end of the auction term, those licences would be treated in the same manner, in terms of conditions and rights, as all other cellular/PCS spectrum as determined through this consultation. With the high expectation of renewal given in the auction policy, some licencing regime will be needed. CWTA understands that the Minister's discretion cannot be fettered, but for business planning and investment purposes, a level of certainty is required. CWTA requests that the Department provide clarification in the final policy stemming from this consultation.
96. CWTA notes that in the U.S. at this time, there is no policy expectation that any fees will be payable at the end of an auction term. CWTA believes that the fees proposed in this consultation should not apply to spectrum renewed at the end of the auction term. CWTA again requests clarification in the final policy stemming from this consultation.

²⁶ \$1 (AUS) equals \$0.90 (CDN), Bank of Canada, March 3, 2003

²⁷ PMTS Class B licences operating at 1.8 GHz, *Apparatus Licence Fees and Charges*, Australian Communications Authority, May 31, 2002, http://www.aca.gov.au/licence/fees/assigned_licence_fees.htm

LICENCE CONDITIONS

97. In general, CWTA supports most of the licence conditions as proposed in the Notice provided that the costs associated with these conditions are factored into the setting of an appropriate fee. As noted already, CWTA believes that this was not done in the development of the proposed fee, meaning that the proposed fee is not appropriate and is too high. The proposed conditions suitably reflect the generally-held understanding of the existing licence conditions in form and intent.
98. In particular, CWTA supports the specification that the lawful intercept condition only applies to circuit-switched voice telephony systems.
99. CWTA has rather serious concerns, however, regarding two of the proposed conditions, namely the existing condition dealing with Radio Station Installations, and the new condition of licence regarding the System Access Fee ("SAF").

Radio Station Installations

100. CWTA notes that a dramatic change has been proposed with respect to the condition of licence pertaining to radio station installations. As presented in the Notice, the proposed condition requires (emphasis added):
 - consultation on **all** radio station installations, rather than the existing policy of consultation on **significant** installations, and
 - consultation with **all** local municipalities or land use authorities rather than the existing policy of consultation with **the appropriate** land use authority.
101. Further, the reference to CPC-2-0-03 *Environmental Process, Radiofrequency Fields and Land-use Consultation* is located in a separate paragraph and now appears to be an additional obligation rather than the method to achieve compliance.
102. These changes may not appear to be significant, but they represent a substantial change in policy. CWTA is concerned that this policy change has been presented while the announcement of a national review of the Department's antenna tower policy is pending²⁸. The Association is extremely concerned that the Department appears to be embarking on a dual and possibly simultaneous policy consultation on the same issue. This amounts to placing stakeholders in a situation of double jeopardy. CWTA submits that it would be inappropriate to modify this condition of licence prior to the completion of a full and complete consultation process.
103. In any event, cellular/PCS licensees are already consulting with the appropriate authorities as required by local policies. Therefore, the introduction of this more onerous condition of licence is unnecessary. A new requirement that licensees consult, even where consultation is not required by local policies, would likely have the effect of stalling, if not paralyzing, the ongoing deployment of cellular/PCS

²⁸ *Allan Rock Announces National Antenna Tower Policy Review*, Industry Canada press release, October 31, 2002

networks. CWTA believes that if local land use authorities determine that consultation is necessary, they will amend their by-laws policies.

104. As noted, the cellular/PCS licensees already, and will continue to, perform public consultation for antenna structures to the degree required by the local community. CWTA believes that this approach is more efficient than implementing a broad policy in an attempt to deal with rare exceptions. The current process works well and reflects the wishes of the local communities.

105. In the alternative, if the Department insists on modifying this condition of licence, CWTA recommends that the wording be modified to reflect the fact that public consultation will only be necessary if required by local policies. The CWTA recommends the following wording in this regard:

- *Prior to installation of antenna structures, consultation has taken place with all local municipalities or land use authorities, as may be required by local by-laws, with the aim of developing consensus solutions...*

106. CWTA believes that this wording will effectively balance the concern that consultation be undertaken, with the objectives of facilitating the orderly development of telecommunications services in rural and urban areas, in all regions of Canada.

System Access Fee

107. The Department has proposed an unprecedented condition relating to billing practices and customer contact. This proposed condition would require the reproduction of certain prescribed text in customer contract and information materials whenever a "System Access Fee", "Network and Licensing Charge" or similar line item appears on customer invoices.

108. As the Department knows, the SAF has been a component of wireless pricing in Canada since the 1980's. The SAF was encouraged by the Department when it delegated management of subscriber terminals to the licensees as part of the regime established in 1986. The SAF was developed to offset the costs assumed by the industry for this new role and to offset the costs of the increased spectrum licence fees. To reiterate, this policy change increased both the administrative responsibilities and costs of the cellular operators and increased the level of their licence fees. As stated by the Department to consumers at the time, "your cellular service operator will be reflecting this increase in their costs in their invoicing of you"²⁹. Clearly the Department expected the operators to pass these costs on to consumers.

109. Over time, the components of the SAF have changed. Today, the SAF is designed to recover a number of recurring costs associated with providing wireless services, including network costs, spectrum licence fees, and the CRTC Contribution regime.

²⁹ Letter from Department of Communications, Director General, Radio Regulatory Branch to cellular subscribers, February 9, 1987 (attached as Appendix A)

110. The CRTC recently ruled on the subject of the SAF, as well as other similar charges put in place by wireline telecommunications providers, in the context of the Contribution regime. The CRTC found that “the record of this proceeding equally demonstrates that the purpose of these charges is not exclusively the recovery of contribution costs”³⁰. By extension, it should be clear that the SAF is not presented as directly reflecting the cost of any single government fee or charge, including spectrum licence fees. As identified in the Notice, all of the carriers define the SAF differently, for example:

- Bell Mobility: The Annual System Access Fee is charged by Bell Mobility to help in recovering the significant costs associated with the operation of its wireless network, including costs for ongoing maintenance, new equipment installations, technology upgrades and government license fees.
- Rogers Wireless: The System Access Fee is billed in advance each month to cover various operational costs associated with the operation, expansion and maintenance of our network.
- TELUS Mobility: A significant portion of the Network and Licensing Charges cover government licensing charges, with the remainder going towards the cost of operating a wireless network including ongoing maintenance, new equipment, installations, and technology upgrades.

111. CWTA notes that none of these SAF descriptions are false or misleading and, therefore, there is no need for the proposed mandatory SAF text.

112. In some cases the SAF is approved by the CRTC. For those carriers that are still rate-regulated by the CRTC, the SAF or similar charge is part of an approved tariff. For example, Prince Rupert City Telephones’ General Tariff Item 9 states simply “A System Access Fee (SAF) of \$6.95 per month is applied to each Cellular customer. This charge is prorated according to the month of activation.”

113. Further, CWTA submits that the Department may not have the authority to impose such a condition, as it would impair the service providers’ right to commercial speech, guaranteed under the *Charter of Rights and Freedoms* and it does not appear to be consistent with the Minister’s powers under Section 5 of the *Radiocommunication Act*.

114. It also appears that the Department has not considered the substantial costs that would be associated with changes to contracts, billing systems, tariffs (where applicable) and other customer contact information.

115. In any event, the proposed text is factually incorrect. For example, the Department continues to ignore the reality that the fees it imposes on the industry do indeed increase costs to consumers. Its assertion that there is no correlation between licence fees and the number of subscribers served is illogical in that, under the proposed regime, fees are tied to population.

³⁰ CRTC Telecom Decision 2002-65, para. 32

116. For the reasons outlined above, CWTA is strongly opposed to the introduction of a licence condition regarding the SAF message. If the Department has specific concerns regarding the SAF messaging used by a particular licensee or licensees, CWTA is of the view that, rather than use a condition of licence, the Department should deal directly with the licensee(s) in question.

LICENCE RIGHTS

Harmonized Rights

117. CWTA supports the Department's efforts to harmonize the rights associated with cellular and incumbent PCS licences with those of the auctioned PCS spectrum. Divisibility and Transferability, an extended term, and the removal of site specific radio authorizations should all benefit the industry and consumers. CWTA notes that these measures will also reduce the management burden of the Department, thereby reducing the spectrum management costs to be recovered by licence fees.

Return of Unused Spectrum

118. For clarity, CWTA seeks confirmation that licencees will have the option of returning to the Department portions of licences that may be disaggregated in terms of either spectrum or geography. While licensees will be permitted to transfer portions of their licences via the secondary market, CWTA strongly believes that the option of returning licences directly to the Department should also be available. The CWTA would expect that the process for returning spectrum would be simple and straightforward, requiring nothing more than a letter to the Department from a licensee requesting that its licence(s) be amended to reflect the reduced spectrum holdings. Such a scheme is critical given that the Department has proposed that fees will be payable whether or not a licensee is using its spectrum in a given geographic area.

119. A similar opportunity is proposed in the Notice for treatment of the Independent telephone companies, whereby they will have the right of first refusal where they have not yet applied for a spectrum licence to offer service in their operating territory. The provisions proposed above would extend similar flexibility to all licensees.

120. CWTA notes that a decision to return spectrum would clearly indicate the lack of a sound business case supporting the deployment of service. Unlike local wireline service where Contribution is available to subsidize service to high cost serving areas, cellular/PCS operators must rely solely on their ability to generate revenue equal to or greater than the costs of providing service. Given that the marginal costs of expanding an existing network are significantly less than the costs of establishing a new network, existing operators have the greatest capacity to provide service in higher cost and marginal areas. Where a business case has established that the best option for a licensee is to return spectrum, it is unlikely that a new entrant without existing infrastructure would be able to make viable use of the spectrum. Significantly, there are no examples of the application of the Department's New Party policy without the presence of government funding.

121. Regardless, in the event that spectrum is returned to the Department, some method for re-assigning this spectrum will need to be established. CWTA recommends that the Department initiate a public consultation to examine the means by which returned spectrum is re-licensed by the Department.

Policy for the provision of Cellular Services by New Parties

122. The Department has suggested that the *Policy for the Provision of Cellular Services by New Parties* (RP-019) will be used to assign licences that are not taken up by the Independents and that this policy will remain in force for areas where competitive cellular service provision is not being offered. While CWTA understands the Department's intention to encourage the extension of service to under-served areas, it is incongruous for new entrants to be able to effectively expropriate a licence that is subject to ongoing payments. The Association does not believe RP-019, as it exists, is the appropriate tool under the new regime.

123. It is difficult to imagine how a licensee could fairly negotiate the terms of a licence transfer or division with a third-party, when that same third-party has the option to request that the Department transfer spectrum holdings from the licensee to that third-party. CWTA submits that RP-019 must be revised or revoked, and suggests that any revision be undertaken through a separate consultation in conjunction with the licensing of returned spectrum addressed above.

Flexibility

124. CWTA supports the proposition that licensees be allowed full flexibility in the provision of services using the assigned spectrum, particularly with respect to the choice of network technologies. CWTA notes that one of the limitations on this flexibility is, understandably, the applicable Canadian spectrum allocation. Currently, the Canadian allocations for cellular and PCS spectrum are different. For 800 MHz cellular spectrum, there is a Mobile primary allocation and Fixed secondary allocation whereas 1900 MHz PCS spectrum has Fixed and Mobile co-primary allocations³¹. This divergence may result in some differences in the types of service that may be deployed by the licensees. Changes to frequency allocations are very complex undertakings, and therefore CWTA is not advocating any change at this time. This issue may however warrant further consideration by the Department.

MECHANICS

125. CWTA notes that there appear to be inaccuracies in the population figures presented for the Service Areas TEL-45, TEL-46, and TEL-47. In particular, the population for TEL-46: Northern British Columbia appears to be overstated by approximately 100,000. While CWTA has reviewed the population figures for provincial and national service areas, the Association is unable to verify the accuracy of all of the service areas, in particular the new local telephone company service areas. In light of the one error identified above, CWTA encourages the Department to seek the assistance of Statistics Canada to verify all of the population figures that will be relied upon under the new regime.

³¹ *Canadian Table of Frequency Allocations*, Industry Canada, December, 2000

126. CWTA supports the use of constant population figures for the entire term of the authorizations and does not object to the use of 1996 census data. The CWTA does have some concern about which census data may be used after 2011. Population changes over 15 years (1996 to 2011) can be dramatic, and may present some problems. CWTA suggests that the choice of appropriate census data after 2011 would best be examined as part of a consultation closer to the end of the term.
127. For clarification, CWTA requests confirmation of the applicability of the proposed regime to those licensees authorized through the New Party policy RP-019.
128. CWTA also requests further clarification with respect to service tiers and the process the Department will use to define the new tiers for local telephone providers and New Party licensees.

CONCLUSION

129. CWTA supports the rationalization of the disparate licensing regimes and the harmonization of licensee rights. However, CWTA submits the proposed fees are unjustifiably high.
130. CWTA believes the Department has overestimated the fair economic value of the spectrum in question. CWTA submits that the Department must, as a matter of fundamental importance, conduct the necessary assessments — as required by Treasury Board policies — of the impacts of licence fees; the cumulative effect of multiple fees on the industry; the public benefits of wireless telecommunications; and of the effect fees will have on overriding policy objectives such as Innovation, Connectedness, and Broadband deployment. Any new fee must reflect such assessments.
131. Subject to the Department's implementation of CWTA's recommendations, the proposed regime should be a success and benefit the Department, the Industry, and Canadians.

Appendix A



Government of Canada
Department of Communications

Gouvernement du Canada
Ministère des Communications

300 Slater Street,
Ottawa, Ontario.
K1A 0C8

Cantel Inc.
40 Eglinton Avenue East
Toronto Ontario
M4P 3A2

February 9, 1987

Dear Sir/Madam:

As part of the Government's de-regulation initiatives, the Department of Communications has introduced amendments to its radio regulations to eliminate the need for licences for cellular mobile radios, effective April 1, 1987. This measure will reduce the paper burden and associated costs and delays for all parties involved. As a cellular subscriber and currently the holder of a radio licence for your cellular phone, you are hereby advised that you will no longer be required to hold a radio licence nor be required to pay the Department of Communications annual radio licence fees for your cellular phone effective April 1, 1987. This is made possible by the nature of cellular radiotelephone operations which enables effective regulation of the system via licensing of the cell site stations of the service provider.

In order to continue to meet its cost recovery objectives and so as not to transfer the costs of the spectrum management program to the Canadian taxpayer, the Department will compensate for this loss of mobile station revenues by increasing its radio licence fees paid by the providers of cellular services. Your cellular service provider will be reflecting this increase in their costs in their invoicing of you.

This change does not affect licences for other radio services.

Yours truly,

R.W. Jones
Director General
Radio Regulatory Branch

Canada