

July 15, 2009

Peter Hill  
Director, Spectrum Management Operations  
Radiocommunications and Broadcasting Regulatory Branch  
Industry Canada  
300 Slater Street  
Ottawa, Ontario K1A 0C8

Dear Mr. Hill:

**RE: CWTA Reply Comments Canada Gazette Notice Canada Gazette Notice DGRB-001-09 - Consultation on Revisions to the Framework for Spectrum Auctions in Canada**

The Canadian Wireless Telecommunications Association (CWTA) is in receipt of comments, filed by various parties, in response to the above noted consultation (the Consultation). CWTA is pleased to provide the following reply comments. Failure to respond to any specific comment or proposal made by any party should not necessarily be construed as concurrence with those comments.

### **Licence Renewals**

CWTA recommended that the Department begin to apply licence terms longer than 10 years. These longer terms bolster operator and investor confidence and encourage capital spending. This confidence can result in increased use of and build out of the spectrum and promote innovation. This view was widely supported by other parties:

o the Department should extend the terms to 15 or 20 years, or perhaps, indefinitely. Bragg submits that both of these measures would provide the assurances of stability and certainty that are necessary for licensees, the investment markets and consumers<sup>1</sup>

MTS Allstream believes that long license terms are necessary given the high investments required to be in wireless businesses. Long license terms also reduce uncertainty surrounding possible changes to license conditions on renewal.<sup>2</sup>

---

<sup>1</sup> Comments of Bragg Communications Inc. in response to DGRB-001-09, paragraph 4

<sup>2</sup> Comments of MTS Allstream. in response to DGRB-001-09, paragraph 65

Rogers believes that the licence term for renewed cellular and PCS licences should be longer than the 10-year term proposed by the Department and that these licences should have a high expectation of renewal. This approach would provide licensees with a greater degree of certainty with respect to the ongoing viability of their operations, for corporate planning purposes and in order to secure additional funding for their substantial ongoing investments.<sup>3</sup>

Clearly there is widespread support for longer licence terms. Such a move would also provide Canadian operators the same benefits as their international counterparts, because, as noted in the Consultation, other jurisdictions have been moving towards longer licence terms.

In addition to the longer term, CWTA emphasized that the presence of a high expectation of renewal is a very important indicator of certainty for licensees. Wireless operators have billions of dollars invested in networks, and have plans for continued investments into the future. In order to confidently invest in these networks, and to assure subscribers of a future service, licensees require certainty and predictability. This view was also widely supported by a number of parties.

Bell Mobility submits that not only should licensees anticipate a high expectation of renewal at the end of the initial term, they should also reasonably anticipate a high expectation of renewal at the end of each and every subsequent term, assuming compliance with conditions of licence as well as the absence of a fundamental reallocation of spectrum to a new service or the absence of an overriding policy need.<sup>4</sup> (emphasis in original)

Operating as a wireless licensee requires significant investments in network infrastructure, both on an initial basis, as well as on an ongoing basis. These investments are made with an expectation that there will be an opportunity to recoup the investments over time and, given the ongoing nature of the investments, the timeframe for earning a return on those investments would necessarily include a period that extends beyond the current licence term. As the history of the Canadian wireless industry demonstrates, it can take decades to recoup the initial investments alone. Accordingly, licensees must be permitted to operate within a framework that provides both licensees and investors with the certainty that comes with both a high expectation of renewal and infrequent licence renewals.<sup>5</sup>

SaskTel emphasizes the critical need for certainty for renewal of spectrum licences. Wireless operators have made, and will continue to make, investments of billions of dollars in network infrastructure. Canadians now rely heavily on the services provided by the wireless operators on a daily basis. In order to continue to make the investments required to grow and evolve these networks to meet new and increasing customer requirements, licence holders need the certainty of expected renewal of the licences. Without the certainty of licence renewal and network operation beyond the end of the licence term, these network investments

---

<sup>3</sup> Comments of Rogers Communications Inc. in response to DGRB-001-09, paragraph 63

<sup>4</sup> Comments of Bell Mobility in response to DGRB-001-09, paragraph 59

<sup>5</sup> Comments of Bragg Communications Inc. in response to DGRB-001-09, paragraphs 5, 6

will not be made. Therefore, SaskTel agrees with the Department's proposal for the continued inclusion of the phrase "high expectation of renewal" in spectrum licence conditions and Department policy documents.<sup>6</sup>

CWTA reiterates the request that the Department include the "high expectation of renewal" in both the text of the Auction Framework and renewal policy as well as the Conditions of Licence for specific licences.

## Licence Fees

In the Consultation, the Department concluded that fees should be imposed for renewed licences and should be based on an estimation of the market value of the spectrum in question and stated the intention to impose fees that reflect a fair return to the Canadian public. As CWTA noted, 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. CWTA remains of the view that a fee regime based on recovery of the Department's spectrum management costs would earn a fair return to the Canadian public. Again, this view was widely supported by other parties.

Bell Mobility disagrees that the establishment of fees are required in order to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource. The implementation of such fees is not regulation in a manner that interferes with market forces to the minimum extent necessary. Bell Mobility notes that one of the purposes of the *Policy Framework* revision was to make the language and intent of the *Policy Framework* consistent with the Governor in Council issued policy direction to the Canadian Radio-television and Telecommunications Commission (CRTC), which required greater reliance on market forces.<sup>7</sup>

Rather than justify a regime to maximize rents on spectrum licensees this objective requires that the Department take a holistic look at all of the benefits to Canadians derived from up-to-date, ubiquitous, broadband mobile networks and the continuing large investments required by the licensees. **TELUS asserts that such a holistic view of the net benefits accruing to Canadians is the right focus for the Department. We submit that rather than develop market-based formulas outside of a consultative process, the Department work with industry to establish a methodology to set fees at a fair and reasonable level.**<sup>8</sup> (emphasis in original)

---

<sup>6</sup> Comments of SaskTel in response to DGRB-001-09, page 7

<sup>7</sup> Comments of Bell Mobility in response to DGRB-001-09, paragraph 79

<sup>8</sup> Comments of TELUS Communications Company in response to DGRB-001-09, page 16

Bragg submits that any licence fees applicable in renewal terms should be based on a cost-recovery model, as is the case in the United States. As the Department notes in the Consultation Paper, establishing the fair market value of spectrum would be an extremely complex process due to the dissimilarity between markets. Additionally, and more importantly, Bragg questions the basis for the Department's statement that, in setting licence fees, the goal should be to "earn a fair return for the Canadian public."<sup>9</sup>

Rogers considers that if renewal fees are used, these should be used simply to recover the administrative costs of the renewal process, as is the case in the U.S. Renewal fees need to be set in a way in which they can be anticipated by licence holders and administrative cost recovery is the simplest way to do this. Such a regime would be much more predictable than alternatives such as market-based pricing and would encourage efficient allocation of spectrum.<sup>10</sup>

Simply put, the level of Canadian fees is disproportionately high when compared with other relevant jurisdictions.<sup>11</sup>

It is readily apparent that there is widespread disagreement with the Department's proposed approach to renewal fees for auction licences. Several parties commented on the need for a collaborative effort between the Department and Licensees to establish a workable regime. Given the extant gulf between the Department and the industry, CWTA suggests the Department pursue this recommendation.

## **Research and Development**

The Consultation sought comments on the continued need for the condition of licence requiring that licensees invest a percentage of their adjusted gross revenues in R&D. CWTA recommended the Department discontinue this condition. CWTA notes that parties express nearly unanimous support for the elimination of this condition. No party advocated for its continuation.

Rogers opposes the research and development (R&D) condition of licence. As the Department has noted elsewhere, "initially, this condition of licence was established to stimulate R&D in the telecommunications sector, and more than a billion dollars has been invested in R&D since the first licences were issued by the Department in the mid-1980s. The R&D condition therefore has served its purpose and should be eliminated."<sup>12</sup>

Bragg submits that there is no demonstrated need for maintaining the current condition of licence requiring that licensees invest a percentage of their adjusted

---

<sup>9</sup> Comments of Bragg Communications Inc. in response to DGRB-001-09, paragraph 14

<sup>10</sup> Comments of Rogers Communications Inc. in response to DGRB-001-09, paragraph 69

<sup>11</sup> Comments of Telesat Canada in response to DGRB-001-09, page 5

<sup>12</sup> Comments of Rogers Communications Inc. in response to DGRB-001-09, paragraph 71

gross revenues in R&D. Market forces will be sufficient to ensure that both wireless equipment manufacturers and licensees continue to invest heavily in R&D.<sup>13</sup>

Interestingly, it seems that this licence condition has not been applied equitably in recent years. As Telesat notes:

“that the last dozen FSS and BSS Licences granted by Department do not have any specific R&D obligations, presumably indicating the Department's policy shift on this matter in an appropriate direction.”<sup>14</sup>

Given the broad-based support and strong policy rationale for removing the condition, CWTA requests the Department remove or suspend application of this condition as soon as practicable.

### **Licence Area Tiers for Spectrum Licencing**

The Consultation sought comments on the establishment of a new Tier level to differentiate between urban and rural areas ostensibly to encourage the development of wireless networks in rural and remote areas. CWTA recommended that the Department focus on expanding and enhancing existing secondary markets and pursue the implementation of Spectrum Trading and market-based Exclusive Spectrum Rights.

Such an approach is consistent with the move away from command and control, bureaucratic spectrum management regime towards an efficient, transparent system that provides flexibility and relies on market forces. This objective to rely on market forces is now entrenched in the *Spectrum Policy Framework*.

Parties generally expressed agreement with CWTA's position, and a number of parties noted the technical problems that would arise from the proposed Tier change.

Bell Mobility does not support the establishment of a new Tier level, nor do we support the continued use of Tier 4 service areas. The more granular the service area, the more difficult it is to implement the spectrum. Moreover, the problem of frequency coordination at the border of adjacent service areas will be severely magnified as a result of the use of numerous small licence areas. “Border areas, between alternate service providers, can be classified as areas with greatly reduced spectral efficiency since part of the spectrum is unused in order to not create interference into the neighbouring system or suffer the effects of interference from neighbouring systems. To maximize spectral efficiency, it is recommended that the number of licences around border areas be minimized to the greatest extent possible. This implies that service areas should have the greatest amount of geographic area so that border areas constitute a small percentage of the total area.”<sup>15</sup>

---

<sup>13</sup> Comments of Bragg Communications Inc. in response to DGRB-001-09, paragraph 25

<sup>14</sup> Comments of Telesat Canada in response to DGRB-001-09, page 5

<sup>15</sup> Comments of Bell Mobility in response to DGRB-001-09, paragraphs 96 and 97

Another difficulty will be in vastly increased complexity with frequency coordination at service area boundaries. With an urban / rural tier split, the boundary becomes by definition very close to congested urban areas. With the present service area tiers, in almost all cases the service areas are defined away from major centres, making frequency coordination much simpler. It is anticipated that frequency coordination will become very difficult where urban / rural tiers are applied.<sup>16</sup>

There are other, more appropriate policy tools to address rural development than either the auction framework or other changes to the spectrum licencing regime. The Department has at its disposal other methods to spur investment in rural regions of Canada in order that all Canadians benefit from advanced wireless services.

The fact remains that rural and remote areas are extremely difficult to serve in a manner that is economically viable. Despite these difficulties, Canada's wireless networks cover a geographic area of approximately 1,300,000 km<sup>2</sup>. This area is larger than the combined areas of France, Germany and the United Kingdom. To put this in perspective, those three countries have a combined addressable market six and a half times larger than Canada.

Rather than reverting to more command and control spectrum management regime, the Department should focus on its other policy tools to promote service expansion to rural and remote areas. Targeted funding, such as the \$225 million broadband fund in the last budget is a way to harness market forces, achieve rural and remote deployment, and treat service providers equitably. Going forward, the Government could use the proceeds from future spectrum auctions to offset the costs of deploying wireless services in rural or remote areas, rather than applying all the funds to general revenue.

## **Conclusion**

CWTA supports the Department's intent to update the 2001 Spectrum Auction Framework. In order for licensees to fully benefit from the renewed framework, CWTA recommends the Department ensure and enhance certainty for licencees, create an appropriate fee and licencing regime, and continue to advance the application of economic principles.

Sincerely,

*Filed electronically*

J. David Farnes  
Vice President,  
Industry and Regulatory Affairs

---

<sup>16</sup> Comments of SaskTel in response to DGRB-001-09, page 12