December 17, 2012

Manager
Spectrum Auctions
DGSO
Industry Canada
300 Slater Street
Ottawa, Ontario K1A 0C8

Dear Sir,

Re: Canada Gazette, Part I, October 18, 2012, Consultation on Renewal Process for 2300 MHz and 3500 MHz Licences, DGSO-006-12

1. Tbaytel is pleased to provide the following response to Gazette Notice DGSO-006-12, Consultation on Renewal Process for 2300 MHz and 3500 MHz Licences, (“the Consultation”).

2. Under the Consultation, Industry Canada (the “Department”) seeks comments with regard to the licence renewal process for the 2300 MHz and 3500 MHz spectrum licences. Specifically Industry Canada is looking for input on the proposed wording of the condition of licence related to deployment as well as comments on the departments proposed options for renewal in the 2300 MHz and 3500 MHz bands.

3. Tbaytel will only comment on the 3500 MHz fixed wireless access (“FWA”) band at this time as this is the only spectrum in this consultation that Tbaytel is currently licenced for. Tbaytel’s response follows below; failure by Tbaytel to address any part of the consultation document does not constitute agreement with a proposal where such agreement would be contrary to our business interests.

Background

4. Tbaytel is a regional provider of wireless mobile and broadband services operating throughout Northern Ontario, from the Manitoba border in the west to just west of Sault Ste
Marie in the east and the Canada/USA border to the south. Tbaytel has been providing wireless mobile service in The City of Thunder Bay since 1986 and in 2001 Tbaytel successfully acquired a licence to provide advanced wireless services in Northern Ontario. Currently Tbaytel provides both CDMA and 4G HSPA+ wireless service to its subscribers and roaming partners throughout Northern Ontario.

5. In 2006, Tbaytel acquired licences in the 3500 MHz band in three service areas; Kenora/Sioux Lookout, Marathon, and Thunder Bay. The 3500 MHz spectrum allows for the provision of fixed wireless access by the licence holder. Tbaytel is currently using its acquired spectrum to provide its customers with point-to-point broadband FWA.

6. Prior to responding to the questions posed by Industry Canada in its consultation on the renewal process for 2300 MHz and 3500 MHz licences Tbaytel would first like to comment that it is Tbaytel’s position that Industry Canada should extend all licences held in the 3500 MHz band without conditions for all licensees. The reasons that were previously provided and accepted for the granting of extensions in the past remain today. The lack of appropriate, commercially available equipment for commercial deployment continues to be an ongoing issue along with technical compatibility issues with current and next generation WiMAX equipment. Furthermore, there remains much uncertainty in the 3500 MHz band both globally and more importantly to Canadian carriers and consumers in the US with regard to spectrum allocation and the availability of equipment. In the US, the Federal Communications Commission (“FCC”) has yet to release their determinations regarding the potential reallocation of the 3500 MHz band. The importance of this decision and its potential ramifications on the 3500 MHz band in Canada is significant and must not be downplayed.

7. By providing an extension without conditions, Industry Canada would not disadvantage any licensee and would allow for the upcoming determination by the FCC on the use of the bands in the US to be released. This in turn would provide Industry Canada and Canadian carriers the opportunity to align the Canadian bands with the US and increase the value of the spectrum to all spectrum holders. Harmonizing Canada’s 3500 MHz band plan globally or
with the US will provide those carriers in the Canadian industry with access to standardized products and ensure the most effective use of spectrum.

**Proposed Changes to the Current Deployment Requirement**

8. Industry Canada is proposing the following wording for the condition of licence:

   *The licensee must demonstrate to Industry Canada that its spectrum is being put to use at a level acceptable to the Department by the end of the licence term. Licensees must demonstrate coverage at the level indicated on Industry Canada’s Spectrum Management and Telecommunications website: Tier 4 Deployment Requirements for 2300 and 3500 MHz Licences, [http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf10287.html](http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf10287.html).*

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<th>(1) Industry Canada seeks comments of the proposed wording of the condition of licence related to deployment.</th>
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<td><strong>A.</strong> deployments of fixed links not servicing an end user directly should be considered as an alternative method to meet WCS and FWA spectrum deployment licence conditions; and</td>
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<td><strong>B.</strong> when a requirement is considered for fixed links not servicing an end user directly should be set at 15 links per million population, per Tier 4 area at the end of the licence term.</td>
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9. Tbaytel is currently one of the carriers in the Partial Deployment Category which represents only 9% of the Total Number of Licences in the 3500 MHz FWA band. Even with two extensions provided to all licensees, 74% of all licences still have not been deployed. This is a clear indicator that there is a systemic cause for the severe lack of deployment. It is Tbaytel’s opinion that Industry Canada should extend licences without conditions for all licensees.

10. However, should the Department continue to seek licence conditions Tbaytel believes that the new wording proposed by Industry Canada changing the condition of licence relating to deployment is helpful but premature. Tbaytel notes the original deployment condition was the Minimum Population Coverage in percentage while the proposed change to the deployment condition of licence is the Minimum Proposed Number of Links. Now there are two criteria that carriers can use to meet their minimum deployment requirements. The new
condition of licence regarding deployment would seem to make meeting the deployment conditions more attainable but this continues to disregard the real issues causing the dismal lack of deployment which are uncertainty both globally and in the US on the future use of the 3500 MHz spectrum band and the lack of a significant equipment ecosystem.

11. Until these issues are cleared up changing the condition of licence is not a solution. Changing the condition of licence with all the uncertainty surrounding the global use of the 3500 MHz spectrum will only lead to an administrative and regulatory burden as further industry consultation and changes will most likely be warranted upon the conclusion of the FCC’s 3500 MHz band plan review.

**Proposed Changes to the Licence Term Condition of Licence**

*Industry Canada invites comments on the options for renewal in the 2300 MHz and 3500 MHz bands.*

(2) For the 2300 MHz band, which of the two options is preferred?
(3) For the 3500 MHz band, which of the two options is preferred?

*In responding to the following questions, provide supporting rationale for each band separately.*

(4) For Option 1:

A. Should licence terms be extended?
   a. If so, should they be extended by the same length for all licensees?
      i. Is three years an appropriate extension?
   b. Or, should the licence terms be extended to a fixed date for all licensees?
      i. Would December 2017 be an appropriate extension date?

B. Should the deployment requirement also be extended to the end of the proposed term?

C. In considering an extension of the licence term, do you expect equipment in the 2300 MHz band to become available soon enough to achieve the deployment requirements by December 2017?

D. In considering an extension of the licence term, do you expect LTE equipment in the 3500 MHz band to become available soon enough to achieve the deployment requirements by December 2017?
E. Are there any additional considerations that should be taken into account by Industry Canada?

(5) For Option 2:

A. Given the potential upcoming changes, is 10 years an appropriate term for new licences issued through the renewal process?

B. Should deployment requirements apply to new licences under the renewal process? If so, what should the deployment requirements be?

C. Are there any additional matters that should be considered by Industry Canada when issuing a new licence for a new term?

(6) Are there any other options for the licence renewal process that Industry Canada should consider?

(7) Industry Canada invites comments on the proposed wording of the condition of licence related to the licence term.

12. Tbaytel’s comments on the options for renewal are in reference only for the 3500 MHz band and Option 1: Extend Initial Licence Term specifically as the preferred option. Tbaytel believes with all the uncertainty in the 3500 MHz band the most logical option is for Industry Canada to extend all existing licences and to do so without conditions.

13. The licence terms should be extended as the conditions that previously warranted an extension to the licences continue to exist today. In the 3500 MHz band there is compatibility issue between the current WiMAX version and the next generation. Furthermore, as noted in this consultation document, “At the moment, there is no commercially available 3rd Generation Partnership Project (3GPP) LTE equipment for this band”¹, and the “LTE equipment ecosystem is expected to evolve over the next few years as these new band plans are developed internationally and as operators begin deploying in this band”².

14. The fact that there are significant issues with the commercial availability of equipment or lack there of, along with the uncertainty of the FCC’s possible reallocation of the 3500 MHz

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¹ Paragraph 49 of the Consultation
² Paragraph 49 of the Consultation
band in the US provide reason enough for Industry Canada to extend the licence terms for all licensees.

15. Further, Tbaytel is of the understanding that there are other options IC can implement if desired to offset the uncertainty of the 3500 MHz band. There is the possibility of aligning this band with the Third Generation Partnership Project (“3GPP”) band structure or re-framing the band to Time Domain Duplex (“TDD”) as this is mobile spectrum in Asian Countries. Other considerations IC can look at include spectrum swaps for adjacent areas to reduce interference and/or regulating the band to mobile.

16. The extension should be of consistent duration for all licensees as this will ensure that no licensees are disadvantaged and all licensees are afforded the same period of time before compliance is required. Three (3) years is the minimum period for an extension but Tbaytel is of the opinion that five (5) years is the most appropriate extension period. A five (5) year extension will allow for the evolution of the LTE equipment ecosystem and sufficient time for both vendors and operators to deploy the equipment into their networks. Furthermore, a five (5) year extension will allow for the release of the FCC’s decision on the reallocation of the 3500 MHz band in the US and its subsequent impact and provide Industry Canada ample time to have a consultation on a band plan and alignment with the US bands.

17. If Industry Canada opts to extend the licence terms to a fixed date for all licensees, Tbaytel agrees with the Department that December 2017 would be an appropriate extension date. Not only does the fixed date for all renewals create a cleaner administrative process for Industry Canada it allows an appropriate time period to resolve the issues currently surrounding the 2300 MHz and 3500 MHz bands.

18. As previously mentioned above it is the opinion of Tbaytel that all licences should be extend without conditions for all licensees. However, if Industry Canada continues to include the current conditions of licence, then the deployment requirements should also be extended to the end of the proposed term for the same reasons as noted above regarding uncertainty surrounding equipment and band plans.
Conclusion

19. As the Department itself has noted in its consultation paper, there will be “significant changes over the next few years to international allocations for the mobile service and frequency arrangements in the 3500 MHz band”\(^3\). Making decisions at this time of uncertainty globally and more importantly to the Canadian industry in the US will only create more uncertainty and could lead to further stratification of the band along with the needless expenditure of industry resources.

20. Tbaytel once again urges Industry Canada to extend without conditions all licences for all licensees in the 3500 MHz band. Such an extension will not prejudice any licensee and will allow for a clearer picture to emerge on the direction the FCC decides to go with the 3500 MHz band in the US. Once the FCC has released their finds Industry Canada can initiate a new consultation which will provide the Department and the Canadian industry an opportunity to align its 3500 MHz band with that in the US, creating a much more valuable block of spectrum for all stakeholders.

21. Tbaytel thanks the Department for the opportunity to provide our views on this consultation.

Respectfully,

Stephen Scofich
Regulatory Analyst

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\(^3\) Paragraph 51 of the Consultation