Thursday November 1, 2001

Mr. Michael Helm
Director General
Telecommunications Policy Branch
300 Slater Street
Ottawa, Ontario
K1A 0C8

RE: Reply Comments to Submissions for Canada Gazette Notice DGRB – 006 – 01
"Consultation on the Auction of Spectrum Licenses for Wireless Communications
Services in the 2300 MHz Band and Fixed Wireless Access in the 3500 MHz Band –
Proposed Policy, Licensing Procedures and Technical Considerations"

Dear Mr. Helm;

After reviewing the submissions to the above noted consultation document, Me2 is pleased to
provide the following reply comments;

1. General;

Me2 is pleased to note the overwhelming response in favour of an auction process
moving forward immediately. Specifically we note that of the 22 submissions, 14
respondents were in favour of an auction, 6 were opposed, 1 is split between not
auctioning WCS but auctioning FWA and 1 does not object but rather just makes
negative comment. We therefore congratulate the Department on the development of
what appears to be a very favourable policy proposal.

2. Negative Comments Received;

Of the six negative submissions we note that two appear to be almost identical. They do
not tell us much about themselves nor do they provide any support for their arguments.
The extent of their interests cannot be determined so it is impossible to ascertain their
expertise in making such comments. We can therefore only conclude that these
submissions are merely self-serving in terms of perhaps “fearing competition” rather than
supporting an argument of why it would not be in the best interests of all Canadians to
proceed expeditiously with an auction immediately.

Two licensees holding spectrum in the MDS and MCS frequency bands (below the FWA
frequency band) also provide negative submissions. We acknowledge and applaud
Image Wireless (an MDS licensee operating in Saskatchewan) for their efforts on behalf
of Rural and Remote communities. However, we disagree with their argument that an
auction should not take place until they have had an opportunity to complete
development of their network. Image believes that they should somehow have access to
the WCS band in order to supplement their MDS license and expand their network. While we can understand their desire, we do not see how this is in the best interests of all Canadians especially on a grand scale. Image further suggests that equipment is not economically available for any purpose other than to support MDS operators. Image concludes that this being the case, the WCS spectrum should therefore be made available to MDS operators and due to the lack of economically viable equipment; we should abandon any notion of developing the FWA band. In response to this submission we point to the submissions provided by the equipment manufacturers that tend to suggest something quite different and highlight for the Department the dire need for a “Set Aside” of spectrum and serious Incumbent restrictions.

Microcell holds the MCS license described above and also provides a negative submission opposing any notion of an auction. Microcells key argument is premised on a view that; economic times are such that insufficient capital is available in the Canadian market to support an auction at this time. We reject this argument and submit that there is always money available for a solid business case.

In May 2000, a consortium consisting of Internet Direct (a national Internet services provider), Look (a licensed MDS operator) and Microcell were awarded virtually a national MCS license. This license was roughly equivalent to 100 MHz of FWA spectrum and was intended to benefit all Canadians. In spite of promises at the time, this group has failed to develop the license to any benefit for Canadians. Internet Direct and Look have since merged and Microcell managed to raise almost $150 million for the sole rights to the MCS spectrum. Look accepted the buyout offer for the spectrum and the Inukshuk license is, for all intents and purposes, a Microcell asset. We can understand that Microcell is holding a very expensive and undeveloped asset that they need to protect. However, we must ask, is protecting Microcell’s asset in the best interests of all Canadians?

In 1998, MaxLink and WIC both held LMCS licenses that were awarded in 1996 under a comparative licensing process. This is the exact process that awarded both Image and Microcell with their licenses for MDS and MCS spectrum respectively. MaxLink and WIC had not developed their licenses to anyone’s benefit and it was rapidly becoming clear to them that they may soon face the prospect of a 24/38 GHz auction. They realized the auction would precipitate competition and were in the process of revamping their business cases. Not surprisingly, they were opposed to the notion of an auction and stated such in the consultation process. We most humbly submit that the submissions received from both Image and Microcell are quite similar in nature to those of MaxLink and WIC.

Of all the negative submissions received we would like to highlight Mr. Harding’s comments and concern that major players would only dominate the process and then “concentrate on the urban market”. We agree with Mr. Harding’s view that unless the major players are fairly restricted by the Department from dominating the process, true competition and the development of Rural and Remote communities will not occur for quite some time. Mr. Harding’s negative comments appear to be apathetically derived from historical events, as should be the case in view of the most recent PCS auction.

Bell Mobility also provides a generally negative submission that suggests they are not in favour of an auction at this time. Bell asserts that;
a. They have concerns over the placement of 3G PCS spectrum in the US and this issue should first be addressed prior to an auction occurring
b. They have economic concerns over the undermining of the wireless industry in general as a direct result of this auction

Bell Mobility does review the proposed auction structure and comments as follows;

a. They support flexibility in the eventual usage of the spectrum and that the usage should be decided by the winning bidder
b. They support the proposed block allocations for WCS and FWA spectrum
c. They oppose any determination of how much spectrum should be offered at 3.5 GHz due to the uncertainty of 3G PCS placement in the US
d. They oppose any more competition in the industry as would be the case via a New Entrant Set Aside

Bell suggests in their submission that they “support the development of competition in all telecommunications markets”. The content of their submission tends to propose something quite different. To the point, Bell opposes any New Entrant participation just as they did in the 1995 PCS licensing. When ClearNET and Microcell were awarded licenses, more Canadians could finally afford to own cell phones and Bell watched their market share and profits erode in the face of this New Entrant competition. In general, Bell’s comments tend to suggest that they are more in favour of a delay of this auction. Bell does not present any compelling arguments for why the auction should not go ahead immediately.

3. Positive Comments Received;

By far the majority of submissions received were in favour of an auction moving forward immediately. We have segmented these respondents into four groups; Associations, Equipment Manufacturers, Incumbents (major players, Cable and Telephone companies) and Potential New Entrants.

a. Associations;

We applaud the two Associations (CWTA and RABC) who responded to the consultation document as they were generally in favour of an auction. We also note that both Bell and Telus helped prepare their submissions and we are not surprised that some of their members are not in favour of an auction until events at lower bands (PCS, MCS and MDS) are much better defined. We support the RABC’s view that is in favour of full flexibility in deciding the nature of which services are to be offered. We note that the RABC supports the single 15 + 15 MHz paired spectrum block to be offered in the WCS Band.

With issues at lower bands better defined, it appears that none of the RABC members are concerned with how much spectrum is to be offered in the FWA band. To reiterate, we suggest (along with other respondents) that there is a wide array of alternatives to resolve the issues at lower bands. We therefore submit that these alternative resolutions represent what is in the best interests of all Canadians.
We are also delighted to note that other RABC members suggest and support the notion that “New market Entrants would help stimulate competition”. We strongly support that argument for reasons already stated in our earlier submission.

b. Equipment Manufacturers;

Of the two equipment manufacturers that responded we note that;

1. Both manufacturers were in favour of an auction as this would obviously precipitate potential and immediate sales of existing product.

2. Wi-LAN demonstrates that they have equipment available immediately for FWA and it appears they have no difficulty migrating product offerings between the WCS and FWA bands.

3. We note that equipment availability was a precondition for making the FWA spectrum more widely available in the original FWA policy in 1997.

4. Nokia appears to not favour an auction at 2.3 GHz and instead proposes this spectrum be reserved for those licensees at lower bands (MCS and MDS) displaced by 3G mobile allocations in the US.

5. Nokia also suggests that further segmenting the 2.3 GHz band would not be spectrally efficient nor would it support a competitive business case. This is in sharp contrast to the Rogers request we find in the next section. We agree with Nokia and note that while the Rogers AT&T request may work well in the short term, we are skeptical that the WCS band split would serve the long-term needs of, and therefore would in any way benefit, all Canadians.

We applaud the manufacturers for supporting an auction and presenting their existing product offerings that would support immediate use of the spectrum. We also support Nokia’s suggestion for alternative resolutions to the issues facing licensees at lower bands.

c. Incumbents (major players, Cable and Telephone companies);

Of the big three Incumbent players that completely dominated the 2001, 3G PCS auction, we are pleased with the display of interest as provided in the submissions from Telus and Rogers. We believe that participation of this group to a limited degree may well be in the best interests of all Canadians as long as they are fairly restricted and not allowed to dominate this auction.

1. Telus Mobility

Telus generally supports the proposed structure of 15 + 15 MHz paired blocks @ 2.3 GHz and 50 MHz paired blocks @ 3.5 GHz. Telus does discuss their concerns over how much spectrum should be auctioned at 3.5 GHz due to the uncertainties surrounding 3G placement in the US and the alignment of the 3650 to 3700 MHz frequency band. Not
surprisingly, this ILEC spent approximately $356 million for 5 licenses in the 2001 3G PCS auction (third highest bidder) does not support a New Entrant “Set Aside” that would precipitate competition and erosion of Incumbent market share and revenues. We are pleased that Telus does generally support the notion of an auction for the FWA band if 3G PCS and 3650 to 3700 MHz issues are resolved.

2. Rogers Wireless Inc. (RWI, Rogers or Rogers AT&T)

We are pleased to note that Rogers is in favour of an immediate auction. Rogers supports the flexibility of usage for the spectrum but they do not support the allocation of a single 15 + 15 MHz block in the WCS band. Instead, RWI recommends two 7.5 MHz paired blocks be adapted. We note that RWI is the only respondent to make this suggestion. We appreciate Rogers association with AT&T who operates a similar network on the platform known as their “Angel” technology. However, we are skeptical that meeting RWI’s short-term needs would necessarily serve the long-term needs of all Canadians as previously mentioned.

Rogers supports the proposal that 200 MHz could be auctioned in the FWA band, but not at the expense of holding back an auction for WCS spectrum. While we can appreciate their eagerness to begin bidding just as we are, we are not in favour of the added cost for running two auctions that would definitely not be in the interest of all Canadians.

Rogers claims to support “enhancing competition” by foreclosing opportunities for monopoly carriers or carriers with “market power” to prevent competition through the acquisition and aggregation of any of the spectrum bands in question. In essence, RWI presents some very compelling arguments as to why the ILEC’s and their affiliates should be restricted in this auction. Rogers, however, fails to present any credible arguments as to why Cable companies and their affiliates should not be similarly restricted. We believe it would be extremely difficult for the Department to discern the distinction between ILEC’s and ILEC affiliates from the Cable companies and their Cable affiliates. This is in fact the predominant fallacy in the entire Rogers argument as it does not hold true under each circumstance where it is put to the test.

RWI’s arguments would be convincing were it not for the fact that the ILEC’s they refer to, Bell and Telus, are not even making submissions to this consultation document. It is the ILEC’s wireless affiliates that are responding in direct competition with RWI. RWI appears to somehow forget that they are directly affiliated with Rogers Cable, the cable Incumbent with “market power” in their franchised territory.

While we entirely agree with and congratulate RWI on the depth of solid arguments proving that, “the ILEC’s should be fairly restricted”, we fail to see the distinction they are trying to make between themselves and the ILEC’s wireless affiliates in terms of “market power”. By Rogers own arguments, they do in fact demonstrate the possession of “market power”
in terms of one or more telecommunications services in a given region. Within their franchised territories, Rogers offers the @HOME Internet and cable services as well as cell phone services. On numerous occasions we have heard that these Incumbent Cable providers will offer voice services through their “set top boxes”.

RWI proceeds to argue that ILEC’s must hold “market power” because they report virtually no loss of market share within their franchised territories. We find it ironic that Rogers would even contemplate using this argument as the cable industry was deregulated virtually at the same time the ILEC’s monopoly ended. To date, the cable companies have provided just about every excuse as to why they cannot share their networks. If pressed they would have to demonstrate a ridiculously smaller penetration rate on their networks in comparison and as a direct result of their excuses and refusal to open up their networks as ordered. In support of the ILEC’s, at least they have complied with the order to open up their networks.

Rogers point 45 is incongruous in that RWI points to the fact that New Entrants have been responsible for developments that have forged the PCS segment into the most competitive market segment of the overall telecommunications industry. What is missing in their submission is that they fail to discuss that RWI was one of the two Incumbents that failed to innovate the cellular industry when left to their own devise. This very fact prompted the Department to select two New Entrants (namely ClearNET and Microcell) to provide the “much-needed” industry innovation that eventually lead (the “Mobility’s” and RWI) to make the significant changes RWI refers to in point 45. If the Department considered RWI to be an Incumbent then, we fail to comprehend why it would be considered any different now.

Rogers point 50 is also not totally factual. Rogers Cable has virtually the same embedded coax wire based access to most every home within their franchised territory as do the ILEC’s. We fail to see the difference. We agree with Rogers point 54 in that “it is very likely that a New Entrant will use the license to provide services in competition with the ILEC’s existing local telecommunications services”. We also agree with point 58 that any “economies of scope” arising via the provision of services to Rural and Remote communities would be dwarfed by the opportunity that would be lost if New Entrants were prevented from entering the market. While it is difficult not to agree with these arguments, we find it extremely difficult to discern the distinction between Rogers and the ILEC’s. Therefore, we do not see Rogers as anything close to being a New Entrant. In fact, we would have to question that when it becomes economically viable for Cable operators to offer voice services via their “set top boxes”, would they continue to pursue development of the spectrum licenses?

We strongly agree with RWI’s point 60 confirming that it is hard to believe that any economies of scope could be achieved by any of these Incumbents that duplicates the capabilities of their existing networks. Again our only problem is with a clear distinction between the ILEC’s
“twisted pair” and the Cable companies “single wire”. Furthermore the Cable companies contend that their “single wire” is far superior to the ILEC’s twisted pair in capability. We therefore agree that “it would be anti-competitive in nature” for either of these Incumbents to be allowed to dominate this auction and therefore they should be fairly restricted.

Points 68 and 69 are plainly interesting. Rogers points out that both ILEC’s and Cable companies were fairly restricted from participating in the LMCS process in 1996. In comparison of the LMCS scenario to a WCS/ FWA licensing process, it needs to be noted that the LMCS licensing was meant to provide an “alternative to cable” services. In the present case, the WCS and FWA licensing is meant to provide an “alternative to voice” services. In LMCS, the licensing was also meant to provide “more choice” from New Players. The problem for RWI in this argument is that it backfires when considering that ILEC’s did not provide “cable services” in 1996 and were still fairly restricted. Today, Rogers cable does not provide wireline (by choice) “voice services”. If ILEC’s were considered Incumbents in 1996, Cable companies would have to be viewed as Incumbents today. It should also be noted that the LMCS licensing failed only because equipment was not readily available as the technology required was quite advanced. For the WCS/ FWA licensing, the technology is much simpler and is readily available.

In conclusion, we can appreciate that Rogers does not want to see any more New Entrants as is evidenced in their point 97. Providing the Department sees fit to fairly restrict the ILEC’s and their affiliates only, RWI makes the statement; “Therefore in these circumstances, a “Set Aside” for New Entrants is not warranted”. From this statement it can easily be observed that; RWI is relatively confident of dominating the auction with ILEC restrictions as was the case in the most recent PCS auction.

d. Potential New Entrants;

By far, the majority of positive submissions in support of an auction were from Potential New Entrants. Eight submissions in all included an existing MDS licensee. This demonstration of support for the proposed process definitely outweighs the submissions provided by any of those opposed to an auction. Furthermore, these submissions prove that if Incumbent Cable and Telephone companies (and their affiliates) are fairly restricted in this process, there are a number of willing New Entrants available to successfully participate. The inclusion of these New Entrants will undoubtedly provide real and sustainable competition driving the development of this New Market segment. We submit this is to the benefit of all Canadians including those in Rural and Remote communities.

In general, New Entrants are united in their concern that Incumbents will be allowed to unfairly dominate the process. All submissions virtually agree that no restrictions on Incumbents and their affiliates will lead to development of the spectrum in “urban” centers only. This would leave Rural and Remote communities behind and for the most part, “forgotten”. Potential New Entrants in
general applaud the implementation of a proposed “Set Aside” of spectrum and urge the Department to follow through on this specific and very important item of their proposal.

4. Conclusions;

In review of the submissions, we recommend that the Department develop their final policy and immediately proceed with the auction process. In particular we urge the Department to consider;

a. Incumbents (all major players, Cable and Telephone companies and their affiliates) should be fairly restricted in the process from dominating. The “Set Aside” spectrum for New Entrants only will accommodate this function. We strongly believe this scenario would represent the best interests of all Canadians especially those in Rural and Remote communities.

b. This process should be crafted in parallel fashion to the 1995 PCS decision to “Set Aside” spectrum for New Entrants, (ClearNET and Microcell). Canada is quite unique in the sense that Canadian markets tend to respond well to certain market conditions and traditional ideas that have worked in the past. As a direct result of the Departments prudence at the time, the 1995 PCS decision has seen many major benefits achieved for all Canadians, carriers and investors alike.

c. We urge the Department to consider making the greatest amount of spectrum available to New Entrants only. (130 MHz total, comprised of 30 MHz @ 2.3 GHz and 100 MHz @ 3.5 GHz)

d. Full flexibility of usage for the spectrum being auctioned should be implemented. This will afford development of the spectrum in terms of new services and networks to the best interests of all Canadians.

e. Existing First Come, First Served (FCFS) license holders should have their existing licenses extended to at least six months following the auction process in order to foster the greatest potential for developing services in Rural and Remote communities.

f. Virtually all submissions agree with the Departments proposed block size allocations in both WCS and FWA frequency bands. This response strongly suggests that the Department’s proposal to auction WCS spectrum in one 15 + 15 MHz paired block and four 25 + 25 MHz paired blocks for FWA is entirely acceptable to the majority of market stakeholders.

g. The Department needs to consider that Rogers is anything but a New Entrant. Allowing Rogers or any Cable company to be viewed as anything but an Incumbent with real “Market Power” would be tantamount to letting the “fox into the henhouse”. All Cable companies have the same access to the market via embedded cable plant as do the ILEC’s with their twisted pair. In fact, if Rogers were to be handed the designation of a New Entrant, they would have an even “Greater Monopoly” than the ILEC’s in which to bundle more services. This designation would complete Rogers stranglehold on the market by giving them more voice and @HOME data capabilities to complement their existing offerings.
We urge the department to seriously consider that ILEC’s and their affiliates along with all Cable companies and their affiliates should be fairly restricted from participating in the process as anything other than Incumbents. We cite and agree with most of the arguments RWI puts forth in their submission but we highlight the similarities they have in common with the ILEC’s. We further note that Rogers has recently proved they can compete with the ILEC’s in terms of placing “the second highest bidder “in the most recent 3G PCS auction and in fact they outbid ILEC Telus.

We firmly believe and history has shown that Cable companies would not in any way create more competition in the marketplace. In fact it would just be more of the same capabilities as we noted from the 1995 PCS decision. Only under the threat of competition from New Entrants will Cable companies ever respond. Rogers was deemed an Incumbent in the 1995 PCS decision and in the 1996 LMCS process. RWI is merely their affiliate.

h. The development of WCS and FWA networks in Rural and Remote communities is undeniably linked to a decision that allows a “Set Aside” of spectrum for New Entrant participation.

On behalf of Me2, we would like to thank the Department for this opportunity to provide our views and comments in this consultation process.

Yours truly,

Douglas Evashkow
President