November 1, 2001

Mr. Jan Skora  
Director General  
Radiocommunications and Broadcasting Regulatory Branch

Mr. Michael Helm  
Director General  
Telecommunications Policy Branch

Mr. Robert McCaughern  
Director General  
Spectrum Engineering Branch

Industry Canada  
300 Slater Street  
Ottawa, Ontario  
K1A 0C8.

Dear Messers. Skora, Helm and McCaughern:

RE: Reply Comments - Canada Gazette Notice DGRB-006-01

Rogers Wireless Inc. is pleased to file the attached reply comments in response comments that have been filed regarding the above noted proceeding.

If there are any questions regarding these reply comments, please do not hesitate to contact the undersigned.

Sincerely,

Dawn Hunt  
DH:jt

Attach.
CONSULTATION ON THE AUCTION OF SPECTRUM LICENSES FOR WIRELESS COMMUNICATION SERVICES IN THE 2300 MHz BAND AND FIXED WIRELESS ACCESS IN THE 3500 MHz BAND

REPLY COMMENTS OF ROGERS WIRELESS INC.

November 1, 2001
INTRODUCTION

1. Rogers Wireless Inc. ("RWI") is pleased to submit the following reply comments in response to the comments filed by various parties on October 15, 2001 in relation to Canada Gazette Notice DGRB-006-01, ‘Consultation on the Auction of Spectrum Licenses for Wireless Communication Services in the 2300 MHz Band and Fixed Wireless Access in the 3500 MHz Band – Proposed Policy, Licensing Procedures and Technical Considerations’ ("the Notice").

2. RWI is in receipt of the comments that have been filed with Industry Canada ("the Department") by the following parties:

   - ABC Communications
   - Bell Mobility ("Bell")
   - Binary Solutions Ltd.
   - Canadian Wireless Telecommunications Association ("CWTA")
   - Craig Wireless Inc. ("Craig")
   - Grant Harding
   - Harris Canada Inc.
   - High-Speed Communications Inc.
   - Image Wireless Communications Inc. ("Image")
   - Lime Wireless Inc. ("Lime")
   - Me2 Connection Inc. ("Me2")
   - Microcell Telecommunications Inc. ("Microcell/Innuksuk")
   - Nokia
   - Northwestel
   - Peter Hayward
   - Radio Advisory Board of Canada ("RABC")
   - Telus
   - TeraGo Networks Inc.
   - Wicomm Inc.
   - Wi-LAN Inc.
   - The Wireless Guy Inc.
   - Weeks Law
3. RWI does not propose to respond to all of the comments made by other parties. Rather, RWI will focus on the principle issues in dispute.

4. RWI’s position on all of the issues raised within the Notice is set forth in RWI’s comments of October 15, 2001. Failure by RWI to respond to any argument raised by other parties that are in disagreement with RWI’s stated position does not signify RWI’s acceptance of any such opposing views.

**THE AUCTION OF THE WCS AND FWA BANDS**

5. RWI notes that the majority of respondents were in favour of the auction of the Wireless Communications Services (“WCS”) and Fixed Wireless Access (“FWA”) Bands.

6. However, some respondents expressed concerns that current economic conditions warrant that the auction be delayed until more favourable conditions prevail. For the reasons already outlined within RWI’s initial comments, RWI strongly believes that it is in the public interest that these bands be licensed as expeditiously as possible such that the benefits associated with telephony and broadband access service can be extended to Canadians as soon as possible.

**THE WCS BAND**

7. RWI notes that some parties (such as Craig and Image) have proposed that the WCS Band be licensed exclusively to parties that wish to use this band as a return path for multipoint distribution systems (“MDS”). RWI categorically opposes this proposal (“the MDS proposal”) for the following reasons.
The Notice has identified two primary objectives for the licensing of the WCS and FWA Bands to facilitate: (i) the provision of new competitive local telephony services, and (ii) the provision of broadband access services. RWI submits that the proposal to assign the WCS Band exclusively for an MDS return path does not satisfy either of these primary objectives. Instead, the MDS proposal would result in the augmentation of existing MDS services that have an ancillary interactive data component. It also implicitly assumes that the augmentation of MDS services are of greater benefit to Canadians than the provision of competitive telephony and broadband Internet services that are envisioned within the Notice. RWI submits that the Department should reject the MDS proposal.

8. RWI notes that MDS licensees have been licensed primarily for the provision of broadcast television and programming services. As per the Department’s spectrum management and telecommunications policy entitled Part 6: Application Procedures and Rules for Multipoint Distribution Television Broadcasting Undertakings (MDS-TV) – BPR, Part 6, Provisional, dated September 1999, these licensees may make an application to the Department for permission to use excess MDS capacity for their ancillary interactive data services. In the case of data associated with interactive television, the bandwidth requirement for the return path is relatively small. Return path spectrum in the 2.1 GHz and 2.5 GHz range has also been provided to these licensees for other ancillary data services. Therefore, MDS providers do not need the WCS spectrum for their interactive television or other data applications.

RWI further notes that Craig has received approval for an application that it made to the Canadian Radio-television and Telecommunications Commission (“CRTC”) in which it requested an extension to the deadline by which it must implement its MDS service in major centers throughout the
Province of British Columbia ("BC"). It would be contrary to sound public policy to set aside spectrum for an MDS service which is not currently being implemented.

In light of the above, RWI submits that it would not be in the public interest to consider the MDS proposal. Parties advancing that proposal appear to be more concerned with preventing the entry of a fixed wireless competitor than with determining the best use of the spectrum.

9. RWI notes that Telus has proposed that “the Super 2 GHz radio systems displaced pursuant to this policy be able to be re-deployed and re-licensed as non-standard (i.e. subject to a 6 month notification period) in rural areas”. In the event that the Department would consider this proposal, RWI recommends that the final policy clearly indicate that any such re-deployment and re-licensing will not be permitted in areas that have already been licensed for WCS (licensed by auction or, post-auction, by first-come-first-served).

10. As already outlined within RWI’s initial comments, equipment that is suitable for the WCS Band is available and has been commercially deployed in the US by, for example, AT&T Wireless Service Inc. ("AWS"). RWI notes that AWS issued an announcement on October 23, 2001 within which AWS stated that it “decided to exit the fixed wireless business over the next several months”. RWI fully expects that some parties to this proceeding will draw attention to this announcement and may assert that it demonstrates that the Department should not license the WCS Band, or that a telephony/broadband access service is not viable in the WCS Band. RWI submits that any such assertions should be rejected by the Department on the basis that, within the same announcement, AWS has stated the following:
It is important to note...that the fixed wireless technology works and AT&T Wireless successfully built a business that provides a wireless first mile connection to customers' homes, enabling voice and broadband services.

11. It is evident from the following statement contained within the same announcement, that AWS has decided to exit the fixed wireless business in order to focus on the core areas of its business and as a result of mounting pressure within capital markets:

   This decision is the right decision, given our strategic priorities and the additional capital our fixed wireless business would require going forward.

THE FWA BAND

12. RWI notes that some respondents felt that greater clarity is required regarding the future use of the FWA Band before a final determination can be made respecting the bandwidth to be auctioned. However, none of these respondents have attempted to demonstrate that the WCS and FWA Bands cannot be de-coupled and that the auction of the WCS Band cannot proceed in the event that uncertainties surrounding the FWA persist. RWI submits that the public interest would be best served by proceeding with the auction of the WCS Band, if the status of the FWA remains unclear.

13. With respect to Bell’s assertions that point-to-point systems should be permitted within the FWA Band, RWI submits that point-to-point systems in the FWA or WCS Bands should only be permitted to the extent that such systems are ancillary to point-to-multipoint systems that have been deployed
for the provision of telephony and/or wireless broadband services within these bands. Further, RWI submits that, as suggested by Bell, compliance of any such point-to-point systems with technical standards associated with the FWA and WCS Bands should be mandatory. RWI submits that the approach described above would be consistent with the Department’s proposal that these bands be licensed for the primary purpose of encouraging the provision of telephony and broadband services. Without these restrictions, incumbent local exchange carriers (“ILECs”) and their affiliates might secure licenses within these bands for the sole purpose of precluding the provision of competitive telephony and wireless broadband services.

ELIGIBILITY AND SPECTRUM AGGREGATION LIMITS

14. With respect to whether any spectrum should be set aside for new entrants, RWI notes that the positions of the parties are polarized.

15. Those in favour of set-aside spectrum (including Image, Lime, Me2, and others) have founded their position upon the notion that new entrants, or “smaller players”, have made a significant contribution to the state of telecommunications in Canada, and that their successful acquisition of spectrum within these bands should be a necessary outcome of the licensing process.

16. A number of these respondents, and others (such as Microcell/Innuksuk), have focused attention upon a number of failed or derelict wireless broadband enterprises in Canada in an attempt to demonstrate that set-asides for new entrants and small players are justified, or that the Department should not license the WCS and FWA bands.
17. Some of these parties have explained in detail how, in their view, the proposed set-asides should be structured. Others have provided more nebulous suggestions that “bidding preferences” ought to be extended to small players, and have failed to define these preferences. Invariably, all such schemes amount to a distortion of the auction process in favour of those parties that have developed these proposals.

18. Respondents, such as Me2, have proposed that restrictions be placed upon any party that presently holds a spectrum licence for bandwidth that is greater than or equal to 10 MHz of spectrum, within the 100 MHz through to 40 GHz bands. RWI notes that this would eliminate most, if not all, fixed and mobile wireless carriers that have already demonstrated that they are able to fund and successfully operate a viable, facilities-based telecommunications service. At the same time, it would ensure that the licensing process would be biased in favour of those parties that have made no such demonstration. It would also increase the risk that the Canadian telecommunications landscape will be littered with another generation of failed or derelict enterprises that have not been able to fund the implementation of services that would benefit Canadians and that have allowed the spectrum resource to lay idle.

19. Those parties opposed to setting aside spectrum for new entrants have identified set-aside allocations as being an inefficient and flawed means of allocating a scarce public resource.

20. Contrary to the views of those parties that support set-asides, and those parties that oppose the licensing of the WCS and FWA bands, RWI strongly believes that the examples supplied by these parties should compel the Department to reject the notion that set-asides are desirable.
21. In RWI's view, the lesson to be gained from the failed and derelict state of certain wireless broadband enterprises is that special allocations of radio frequency spectrum to new entrants and small players is a risky venture that does not necessarily result in the productive use of a scarce public resource or in the extension of services and benefits to Canadians. It also exposes the fallacy that emphasis should be placed upon the provision of broadband access services within the WCS and FWA Bands.

22. Within the parameters of the two competition principles, the scarce public resource under discussion within the Notice should be licensed to those that value it the most, and to those who will derive from it the services that will benefit Canadians. It would not be in the public interest to, effectively, "hand out" this resource to a party simply because they are a "new entrant" or a "small player", especially if such players lack the demonstrated capability to implement a viable service.

23. Innukshuk, for example, has allowed a significant portion of spectrum to lie fallow since having been licensed, at relatively minor cost, in 1999. Canadians have been denied all of the benefits associated with the use of the spectrum that was licensed to Innukshuk.

24. It is alarming that Microcell/Innukshuk, within its comments, has tied the fate of its 2.5 GHz enterprise to the future relaxation of the Canadian ownership and control requirements. RWI notes that Microcell/Innukshuk considered that it had ample capital funds and access to capital to execute its business plan at the time it was licensed.

25. The example of Innukshuk, and others, also demonstrates that substantial spectrum allocations have already been made to facilitate the provision of wireless broadband access services to little effect. RWI continues to believe
that a local telephony component will be a significant part of the service bundle that will be provided by use of the WCS and FWA Bands.

26. RWI notes that a number of parties have suggested that various carriers should be restricted. Some parties have identified “big players”, whereas others have isolated those with “deep pockets”, as warranting some form of restriction. In these cases, no attempt has been made to define these categories.

27. Other parties have asserted, either directly or indirectly, that incumbent cable companies and wireless service providers (“WSPs”) should be restricted. The nature of the proposed restrictions ranges from restricting these incumbents from the auction, to restricting them from bidding on the WCS Band, to limiting them to a portion of the FWA Band. RWI submits that the justification supplied by these parties is cursory, unsubstantiated and subjective. Bidding restrictions represent sound public policy only when they prevent potential anti-competitive conduct. Otherwise, these restrictions only serve to “handicap” the auction process in a way that does not benefit consumers or promote economic efficiency. The Department has identified objective competition principles in the Notice and in Issue 2 of Framework for Spectrum Auctions in Canada to ensure that any restrictions in the auction process would increase rather than decrease competition. None of the parties supporting restrictions for incumbent cable companies and WSPs have justified their proposed restrictions on the basis of these principles. Accordingly the Department must reject these proposals.

28. As RWI has demonstrated within its initial comments, high-speed Internet access and mobile wireless services have been found to be highly competitive. Therefore, Cable companies and WSPs merit no restriction whatever.
29. In contrast, RWI has already shown that, on the basis of the two competition principles, ILECs and their affiliates should be restricted within their traditional operating territories where they exercise market power and where competitive alternatives to their local telephony services are not available and cannot be provided by any other means than the Bands under consideration.

30. RWI notes that Bell and Telus have suggested that eligibility should be granted to any party that is a radiocommunication carrier and that is in compliance with Canadian ownership and control requirements. RWI recommends that the Department reject these proposals on the basis that they are inconsistent with the two competition principles that are identified in the Notice.

**LICENSING PROCESS & FINANCIAL ASPECTS**

**Implementation of Services**

31. RWI notes that Telus has proposed that service implementation requirements should not be imposed, and that a service implementation assessment should be conducted by the Department at the end of the 10-year license term. In response, RWI submits that, if permitted by the Department, the Telus proposal would likely result in the warehousing of spectrum within these bands by ILECs and their affiliates. The motivation of such carriers would be to preclude others from acquiring the spectrum, while at the same time relieving them of any obligation to make responsible and efficient use of the spectrum, or to extend any benefits that would otherwise accrue to Canadians. Clearly, such a strategy would be anti-competitive. In RWI’s view, the likelihood of such anti-competitive behaviour indicates that more stringent implementation
requirements than those proposed by the Department in the Notice, should be applied to the ILECs, for spectrum within their incumbent operating territory.

32. RWI submits that the Telus proposal would not result in the responsible or efficient use of a scarce public resource, it would not be consistent with the Department’s objective of extending telephony and wireless broadband services to Canadians and, therefore, it would not be in the public interest. RWI recommends that the Department reject the Telus proposal.

Financial Provisions

33. RWI notes that Lime has undertaken an elaborate tinkering with the Department’s proposal that would, in effect, confer unwarranted advantages upon Lime and other prospective “SMEs” (defined by Lime as new entrants and small/medium players having annual revenues of less than $50,000,000). For example, Lime has proposed lower deposits and opening bids for SMEs, as well as a 50% discount on letters of credit associated with SMEs. Lime has further proposed that SMEs only be required to expend $10,000 per year on research and development (R&D). RWI has serious concerns with all these proposals, as set out below, and recommends that the Department reject Lime’s proposals.

34. All of Lime’s proposals have the objective of substantially relieving SMEs of the reasonable obligation that prospective bidders demonstrate that they are fully capable of meeting financial obligations associated with the auction. In light of recently reported business failures in the telecommunications industry, RWI believes that financial obligations that aim to ensure that prospective bidders possess a minimum degree of viability, should not be diluted and rendered ineffective.
35. In response to Lime’s proposal regarding R&D, RWI submits the following. Lime’s proposal that SMEs be required to meet a minimum annual R&D requirement of $10,000 is entirely arbitrary. It would also result in R&D obligations for SMEs that are radically less onerous than obligations that would be imposed on “larger” licensees. For example, under Lime’s proposal, a SME with revenues of $49,000,000 would be required to make an annual R&D expenditure of $10,000. A “larger” licensee, (a non-SME) with annual adjusted gross revenues of $50,000,000 would be required to meet the existing R&D requirement of 2% and, accordingly, would be required to make an annual R&D expenditure of $1,000,000. Further, to adopt such a proposal would serve to diminish the benefits that Canadians and the economy generally receive from the R&D activities of radiocommunications common carriers.

36. Clearly, this arrangement would not be fair. RWI notes that the existing R&D requirement, applied as a percent of the licensee’s gross adjusted revenues, already accounts for the fact that smaller licensees may have smaller revenues and should expend a smaller amount for R&D. Unlike the arbitrary $10,000 threshold proposed by Lime, the 2% requirement is flexible over time and does not need to be adjusted to account for inflation or any other relevant fluctuations. RWI recommends that Lime’s proposal be rejected.

OTHER ISSUES

37. RWI notes that Microcell/Innuksuk has raised a number of issues that fall outside the scope of the Notice.

38. For example, Microcell/Innuksuk has proposed that the licensing of the WCS and FWA Bands will be destructive of the wireless broadband industry in
Canada, and has recommended that the Department not proceed with the licensing of these bands.

39. Further, Microcell/Innukshuk has suggested that the Department relax the current requirements regarding Canadian ownership and control, on the basis that this will allow struggling enterprises such as Microcell/Innukshuk to secure scarce capital. This in turn would provide Microcell/Innukshuk with the means to make responsible use the substantial portion of spectrum in the 2.5 GHz band that has been licensed to it. Microcell/Innukshuk has asserted that the relaxation of these requirements must be completed prior to the licensing of any additional spectrum for wireless broadband services.

40. Microcell/Innukshuk has also used this consultation to suggest that the Department should adopt the same policy as was recently adopted by the US Federal Communications Commission (“FCC”) which adds a mobile allocation to the 2.5 GHz band. Apart from the obvious fact that this proposal has not been the subject of a public consultation in Canada, RWI notes that the adoption of it by the Department would be unfair. RWI understands that the US FCC adopted said policy on the basis that US licensees in the 2.5 GHz band have made substantial investments through the deployment of commercial systems within this band. By contrast, Microcell/Innukshuk has not implemented a commercial service within this band.

41. Further, within its initial comments, Microcell/Innukshuk has opposed certain licensing provisions on the basis that they would “distort” the market. On the other hand, Microcell/Innukshuk appears to favour what would amount to a colossal market distortion should it be permitted to retain its 2.5 GHz licence and to use it to provide mobile wireless services in competition with licensees that have paid very substantial sums for mobile wireless spectrum licences.
42. As stated above, RWI wonders whether the issues that have been raised by Microcell/Innukshuk were identified as being prerequisites to the successful implementation of its multipoint communications systems (“MCS”) service when, in 1999, it filed its MCS licence application. RWI suspects that no such caveats were provided to the Department at that time.

43. As already noted, the experience of Microcell/Innukshuk should instruct the Department to treat proposals that favour “hand outs” to new entrants with skepticism and care. Such proposals risk that the spectrum resource will not be put to responsible and efficient use, and that services and benefits will not be extended to Canadians.

44. In short, RWI understands that Microcell/Innukshuk would have the Department, the industry and Canadians stand idly by as it undertakes the series of steps that it now says are necessary in order for it to begin offering a viable MCS service.

45. RWI recommends that the Department reject Microcell/Innukshuk’s proposals in their entirety.

46. RWI thanks the Department for the opportunity to present its views in this public process and refers the Department to RWI’s initial comments of October 15, 2001 for its position on the remaining issues identified within the notice.