November 1, 2001

Jan Skora
Director General
Radiocommunications and Broadcasting
Regulatory Branch
Industry Canada
300 Slater Street
Ottawa, Ontario
K1A 0C8

Dear Mr. Skora:

Subject: TELUS Reply Comments to 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

TELUS appreciates the opportunity to submit reply comments in response to comments tendered by the 21 other parties responding to the above captioned Gazette Notice.

In that Gazette Notice and the accompanying Proposed Policy, Licensing Procedures and Technical Considerations document (Policy Document) the Department requested input on a number of issues and questions. Failure to comment on any particular response or issue should not be construed as either agreement or disagreement with either any particular response or party.

5.2) Transition Policy Provisions

TELUS notes that none of the respondents submitted anything that contradicted the recommendations contained in the TELUS response with respect to section 5.2. Therefore, TELUS respectfully urges the Department to include the recommendations contained in our comments respecting transition policy provisions \(^1\) in the final Policy Document.

6.2 Eligibility to Acquire Spectrum and Spectrum Aggregation Limits

TELUS notes for clarity that of all the respondents, only Rogers \(^2\) chose to differentiate with respect to eligibility between cablecos and ILECS. We note that the definition of incumbent as

---


\(^2\) Rogers Wireless Inc. response to DGRB-006-01, October 15, 2001, paragraph 27
put forth in the Policy Document by the Department makes no such distinction, and effectively includes cable companies and their affiliates in their given service areas. Like the Department as well as all of the other respondents, TELUS sees no reason to differentiate between ILECs and cablecos in this instance.

TELUS notes that 12 of the 22 respondents felt either that no eligibility restrictions were necessary or did not even deign to discuss the issue. TELUS was unable to determine Rogers’ view on the subject. Of the remaining 9 respondents, 4 suggested that the telcos/cablecos/”big firms” should not be eligible to compete in the auction at all, 3 others recommended setting aside various portions of spectrum for new entrants only, 2 suggested that incumbents be limited to competing for only 100 MHz of spectrum.

In the Policy Document, the Department specifically requested that those parties favouring either set-asides or exclusions should justify their suggestions. This justification was to be measured by stipulating how such provisions would be in the public interest. TELUS notes that most of those who favoured such action failed to respond to the Department’s request and did not bother to attempt to justify their views at all. ABC Allen and Craig Wireless attempted to justify their suggestions, however they did so by claiming that the set-asides or exclusions might make it easier for “smaller” players to obtain spectrum in this auction. There was no demonstration that this result, even if it turned out to be correct, would advance the public interest as opposed to a few private interests. Therefore, TELUS submits that no party adequately demonstrated any public interest benefits that would accrue from either set-asides or exclusions.

Set-asides, in economic theory and in actual experience have been found to needlessly distort the values in a spectrum auction. New entrants will be successful if they simply value the offered spectrum more highly than the incumbents. Set-asides have not demonstrated that they benefit the consumer in terms of choice or service. This is the reason that the Canadian Government has, correctly in our view, resisted set-asides in Canada’s first two spectrum auctions. Both of these auctions have been recognized internationally and domestically as highly successful and efficient auctions. In the 24/38 GHz Spectrum Auction, new entrants won the vast majority of licenses without any set-aside, although the same fears were raised before that auction as well. The recent PCS spectrum auction attracted new entrants for an auction involving a relatively small amount of spectrum, and once again a new entrant was successful in acquiring spectrum in this auction. In practice, then, as well as theory, new entrants have been successful in both Canadian auctions and they did not need a set-aside to do it. We also take note of the fact that the FCC too has dropped set-asides because they do not provide sufficient public interest benefits. Indeed, the United States experience demonstrates that set-asides have caused more problems than benefits as witnessed by the continuing saga of Nextwave. This being the case, TELUS respectfully urges the Department not to take a backward step in this spectrum auction by adopting spectrum set-asides for new entrants.

Exclusions from participating in a spectrum auction are, in our view, directly opposed to the public interest. Canadian consumers deserve the best service that technology is capable of delivering to them. In those instances when the Department has barred participation by Canada’s

---

3 See Initial Comments of ABC Allen at bottom paragraph of page 3 and Initial Comments of Craig Broadcasting at third paragraph of page 2.
incumbents the development of new technology and services has typically floundered. TELUS respectfully urges the Department to avoid the use of exclusions in this auction.

The 2500 MHz Band 3G Problem

A number of respondents addressed the impact of 2500 MHz band considerations on this proceeding. These issues largely arise as a result of the ITU identification of the 2500 MHz band for possible 3G use. In its letter conveying the 2500 MHz MCS spectrum licenses to the MCS licensees, the Department stated that the “system implementation and learning commitments under these licenses are deferred until such time as the Department formally advises you of its decisions regarding the future of the 2500 MHz band in Canada. Should migration to a new band be required, the Department is prepared to issue licenses in an alternative band, likely to be 3500 MHz, to permit an orderly conversion of your existing systems within a three year period. It is anticipated that during this transition period that new system builds will be made in the alternative band.”

The initial term of the licenses was shortened to three years ending March 31, 2003 from the originally contemplated 10-year term.

Because of these events, significant uncertainty has surrounded the MCS services and licensees and more recent decisions in the United States from FCC and NTIA have further complicated the situation.

While the specifics of their comments varied somewhat, nevertheless it is interesting that each of those who addressed the 2500 MHz issue suggested that the Department refrain from auctioning either some or all of the FWA and WCS spectrum until a number of these other issues, questions and uncertainties had been resolved. Microcell, for example, requested that the Department confirm Inukshuk in their current 2500 MHz band for the full ten-year license term and refrain from proceeding with the auction. Nokia called for “reserving the proposed 30 MHz allocation at 2300 MHz for services displaced by 3G mobile allocations.” Rogers suggested “If uncertainty surrounding the FWA Band persists, the licensing of the FWA Band should be delayed and the licensing of the WCS Band should proceed.” Bell Mobility and the RABC joined TELUS in recommending that the Department sort out the issues arising from FCC 01-256 and the follow-on NTIA announcement prior to proceeding with the proposed spectrum auction.

---

4 In this regard please see the Initial Comments of: TELUS at section 4.2 (first 2 paragraphs), RABC at section 4.2 (first 2 paragraphs), Bell Mobility at paragraphs 14 & 15, Rogers Wireless at paragraphs 17 & 21, Microcell at the last 2 paragraphs of section 2.3 and Nokia at section 2.1.1
5 Industry Canada letter to the MCS Licensees, posted on the Strategis website dated December 21, 2000
6 FCC First Report and Order and Memorandum Opinion and Order, FCC 01-256, September 24, 2001
8 Microcell Telecommunications Inc. response to DGRB-006-01, October 15, 2001, 4.0 Conclusions
9 Nokia response to DGRB-006-01, section 2.1.1 WCS spectrum at 2300 MHz
10 Rogers Wireless Inc. response to DGRB-006-01, October 15, 2001, paragraph 119
11 Bell Mobility response to DGRB-006-01, October 15, 2001, paragraphs 14 & 15
12 Radio Advisory Board of Canada response to DGRB-006-01, section 4.2, first two paragraphs
13 TELUS response to DGRB-006-01, October 15, 2001, section 4.2, first two paragraphs
TELUS also notes that there appeared to be surprisingly little, if any, suggestion contained in any
of the comments that there was any urgent requirement to release the FWA or WCS spectrum
quickly. Perhaps this is a function of current market and economic conditions, or perhaps this is
due to lack of market demand. Perhaps this is due to the fact that there have been a number of
high-profile failures in the fixed wireless arena [Winstar, Teligent, MaxLink, Norigen, etc.]
combined with a number of other recent setbacks [such as AT&T’s decision to write off its fixed
wireless investment, or Sprint’s announcement that it had decided to stop marketing its ION &
MMDS services]. Perhaps it is a combination of all of these, but in any event, it is evident that
an unusual lack of enthusiasm for additional fixed wireless spectrum appears to exist at the
present time. TELUS would note that there is no urgent requirement in Canada to designate the
2500 MHz band for 3G at this time, given the auction of the PCS reserve spectrum earlier this
year.

The lack of urgent requirements for additional spectrum at the present time simply underscores
the prudence of restraint at this time. Such restraint may well avoid unnecessary uncertainty and
this ought to benefit a large number of stakeholders including the MCS licensees, the potential
auction participants, the Department and the public.

TELUS submits that auctioning these bands without resolving these questions is “putting the cart
before the horse” and urges that the Department resolve this issue before undertaking any
spectrum auction in the 2300 and 3500 MHz bands. It is premature for the Department to
proceed until more certainty has been established, and that a well-considered and coherent
spectrum plan has been formulated which has a reasonable certainty of standing up over a
reasonable length of time.

Should the Department decide to proceed to reallocate the 2500 MHz band for 3G, TELUS
believes it should proceed in accordance with its own letter to the MCS licensees, move them to
appropriate 3500 MHz spectrum prior to the auction and arrange for the 2500 MHz band to be
licensed in a fair, open and competitive process at an appropriate future date.

Yours truly,

(电子文件)

Ed Prior
Director, Government
& Regulatory Affairs