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Spectrum Management and Telecommunications

Renewal Process for Cellular and Personal Communications Services (PCS) Spectrum Licences

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1. Intent

The intent of this document is to announce decisions made regarding the renewal process for cellular and Personal Communications Services (PCS) licences that begin expiring on March 31, 2011, as well as the applicable conditions of licence. The cellular band is 824-849 MHz/869-894 MHz and the PCS band is 1850-1910 MHz/1930-1990 MHz. These decisions will also apply to all other cellular and PCS licences once they come to the end of their term.

2. Background

In March 2009, Industry Canada issued *Canada Gazette* notice DGRB-002-09 – *Consultation on the Renewal of Cellular and Personal Communications Services (PCS) Spectrum Licences* (renewal consultation paper), which sought comments on the Department's renewal proposal and the licence conditions that would apply to cellular and PCS licences issued through the renewal process.

In total, 11 comments were received from stakeholders by the May 29, 2009 deadline and nine reply comments were also received. The respondents included: Bell Mobility, Canadian Independent Telephone Company Joint Task Force, Canadian Wireless Telecommunications Association, First Networks, Lynx Mobility, MTS Allstream, Rogers Communications Inc., SaskTel, TBayTel, TELUS and Mr. William Peterson.

Some respondents commented on interdependencies between this consultation and DGRB-001-09 – *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*. The interdependencies were considered when formulating both decision papers.

3. Discussion and Decisions

3.1 Renewal Process for Cellular and PCS Licences

The majority of cellular and PCS licences are nearing the end of their licence term. Most licences will expire between 2011 and 2013. Others, which were recently acquired through the *Policy for the Provision of Cellular Services by New Parties* (RP-019)¹ process, will expire in 2021. In the renewal consultation paper, the Department sought comments on its proposal to renew cellular and PCS licences that continue to be in compliance with all licence conditions. The proposal took into account the general environment in the cellular and PCS bands, including the extent of deployment of services, as well as the demand for the spectrum from other parties.

Industry Canada recognizes that significant investments have been made by licensees to establish networks and the importance of long-term certainty to provide a stable investment climate. As a result, these long-term spectrum licences have a high expectation of renewal unless a breach of licence condition has occurred, a fundamental reallocation of spectrum to a new service is required, or an overriding policy need arises. In the case of the cellular and PCS bands, the Department recommended in the renewal consultation that, as no fundamental reallocation was anticipated and no overriding policy

¹ RP-019 — *Policy for the Provision of Cellular Services by New Parties*, available at <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf01593.html>.

need been identified, unless a licensee was found to be in non-compliance with its conditions of licence, current cellular and PCS licences would be renewed.

All but two stakeholders agreed with one Department's proposal to renew licences as described above. Those who disagreed felt that licences should not be renewed in areas that are not deployed, regardless of whether a certain level of deployment was a condition of licence. Lynx Mobility proposed that, where an incumbent has failed to deploy, "the Tier 4 area be carved out of the incumbent's Tier 2 Regional or Tier 1 National Service Area licence for reissuance to other parties on a first-come, first-served (FCFS) basis."

The Department recognizes that, although some rural areas of the country remain unserved by cellular and PCS, licensees are expanding their services to additional areas and there are mechanisms in place to facilitate access to spectrum for those who are interested in acquiring spectrum in unserved and underserved areas, such as provisions for subordinate licence arrangements, spectrum licence transfers (in whole or in part) and the RP-019 policy described below.

Respondents who filed reply comments pointed to these mechanisms when remarking that the main reason why some rural areas remain unserved is that the high cost of deployment makes it financially unsustainable. They further noted the options to use secondary markets or RP-019 for spectrum access. Some respondents commented on shortcomings of the RP-019 policy, in particular the amount of time required from the initial application until the licence is issued. They also highlighted the fact that the RP-019 policy currently only applies to cellular spectrum. The Department has taken careful note of these comments and is consulting broadly, through the 700 MHz consultation, on the challenges and specific problems affecting the deployment of mobile services to low density rural and remote areas. Furthermore, some PCS spectrum licences are available for licensing on an FCFS basis in a few areas of the country.²

As mentioned above, if a licensee is found to be in compliance with all of its conditions of licence, licences will be issued for a full subsequent term. Where compliance can be achieved in the near term, the Department may consider issuing short-term interim licences on a case-by-case basis.

Where all conditions of licence for the current PCS/cellular licence have been met, licensees will be eligible to be issued a new licence for a subsequent term, through this renewal process, in accordance with the conditions set out below.

3.2 Evaluation of Deployment Levels for PCS Licensees

PCS licences issued since 2001 (both via auction and FCFS processes) generally have the following condition of licence:

"Within five years of the initial date upon which the licence is issued, the licensee must demonstrate to the Department that the spectrum has been put into use. The establishment of coverage to 50% of the population within the licensed service area, or some other indicator of usage that is acceptable to the Department, will be required."

² <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09944.html>

The Department has reviewed current deployment levels for all PCS licensees. Where deployment for a particular licence meets or exceeds coverage to 50% of the population within the service area, that licence will be considered to have met the deployment requirement and, assuming that all other conditions are also met, it will be eligible for renewal.

Where deployment for a particular licence meets or exceeds coverage to 50% of the population within the licensed service area, that licence will be considered to have met the deployment requirement.

3.3 Licence Conditions to be Applied to Cellular and PCS Licences Issued Through the Renewal Process

The proposed licence conditions for cellular and PCS licences to be issued through the renewal process were included as an appendix to the renewal consultation paper. These conditions differed slightly from the conditions imposed on cellular and PCS licences at the time that the renewal consultation was launched, with the majority of the changes being made to update the text to be consistent with wording used by the Department on spectrum licences in other bands.

Generally, most of the respondents were in agreement with the proposed licence conditions, with the exception of the licence term (see discussion below).

A discussion follows on the conditions of licence that were highlighted in the renewal consultation and the conditions of licence that will apply to the renewed licences are included in Annex A.

Licensees are reminded that the Minister of Industry continues to have the power to amend the terms and conditions of spectrum licences under subsection 5(1) of the *Radiocommunication Act*.

3.3.1 Licence Term Upon Renewal

In the renewal consultation, the Department sought comments on its proposal to issue cellular and PCS licences for a 10-year term where the licensee is in compliance with all licence conditions. All who commented on this issue preferred longer terms (15 to 20 years), with a few respondents proposing indefinite licence terms. It was also suggested that the Department consider changing the *Radiocommunication Act* or *Radiocommunication Regulations* to provide additional authority to revoke a licence during the term of a licence, for example, in the case of a fundamental reallocation or overriding policy need. Currently, the *Radiocommunication Act* grants the Minister of Industry the powers to revoke licences during the licence term, but only on certain specific grounds: with the consent of the licence holder, where the *Radiocommunication Act*, the *Radiocommunication Regulations* or the terms or conditions of licence have been contravened, or where an authorization was obtained through misrepresentation or for non-payment of fees.

Industry Canada has recently released Issue 3 of *Framework for Spectrum Auctions in Canada*, along with the related *Decisions on the Revisions to the Framework for Spectrum Auctions in Canada and Other Related Issues*, announcing that the Department is adopting a flexible approach in determining licence terms (up to 20 years) based on the specific spectrum being offered and subject to a public consultation preceding the auction or renewal process. Prior to modifying the overarching Auction Framework, the Department studied what is being done internationally with respect to licence terms. Many countries, such as Australia, the United Kingdom and the United States, are moving away from a prescriptive style of spectrum management to one that embraces more flexibility and less regulatory intervention, while retaining necessary regulatory powers to manage the spectrum effectively when required. In keeping with a more market-based approach, these countries have adopted longer licence terms, with some countries (e.g. the United Kingdom) introducing indefinite terms.

When considering longer licence terms, the need for ministerial latitude to manage the spectrum effectively must also be considered. The Department must ensure that any required changes can be implemented during a licence term. The likelihood that a change would be required during a licence term would depend on both the length of the term and the stability of the market associated with the spectrum in question. In the case of cellular and PCS bands, given the international allocations and the existence of equipment ecosystems for these bands, there is little risk that there will be any usage changes to this spectrum in the foreseeable future. Also, in light of the comments received and upon further review of licence terms internationally, the Department recognizes that licence terms longer than 10 years would provide greater incentive for investment and innovation in the telecommunications industry. Industry Canada has therefore decided to establish longer term licences for cellular and PCS licences.

Consequently, at the end of the current licence term, where conditions of licence have been met, cellular and PCS licence holders will be eligible for a new licence with a 20-year term. As stated in the Auction Framework, these licences will have a high expectation of renewal for another licence term unless a breach of licence condition has occurred, a fundamental reallocation of spectrum to a new service is required or an overriding policy need arises.

At the end of the current licence term, and where licensees are in compliance with all conditions of licence, new cellular and PCS licences will be issued with a term of 20 years.

The conditions of licence will refer to a high expectation of renewal (see Annex A for the complete list of licence conditions).

The Minister of Industry continues to have the power to amend the terms and conditions of spectrum licences pursuant to paragraph 5(1)(b) of the *Radiocommunication Act*.

3.3.2 Research and Development (R&D)

Currently, many long-term licences (including cellular and PCS) have a condition of licence which requires licensees to invest a percentage of their adjusted gross revenues on research and development (R&D). Licensees must also submit annual R&D statements demonstrating their level of investment. Because the condition of licence applies to long-term licences in many bands, comments were sought on the continued need for this condition of licence in DGRB-001-09, *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*. A decision regarding the R&D condition of licence will be released separately. Until such time, the condition of licence remains in effect but may be amended during the licence term.

3.3.3 Resale and Roaming

All who provided comments on the existing resale and roaming condition of licence on cellular and PCS licences agreed that it has been superseded by the new conditions of licence for mandated roaming is therefore no longer required.

Licensees should, however, take note of the conditions of licence for mandated roaming and antenna tower and site sharing,³ which came into effect on November 29, 2008. These conditions will continue to be included on all cellular and PCS licences.

The conditions of licence for resale and roaming, which had been included on cellular and PCS licences, have been superseded by the conditions of licence for mandated roaming and tower sharing, which continue to apply.

3.3.4 Implementation of Spectrum Usage

In the past, when initially licensing any new service, the Department has generally included a condition of licence requiring that the spectrum be put to use within a specified time frame (referred to as “implementation of spectrum usage”). This condition is normally put in place to encourage deployment and to deter spectrum acquisition either for speculation, warehousing or anti-competitive purposes. Currently, PCS licences issued since 2001 have a deployment requirement, whereas it was removed for cellular and PCS licences issued prior to 2001 as the condition was deemed to have been met.

Of those who commented on this issue, six respondents (the Canadian Independent Telephone Company Joint Task Force, Sasktel, CWTA, Bell, Rogers and TELUS) agreed that this condition of licence is no longer required. Three respondents (Lynx, First Networks and William Peterson) expressed their concerns about the lack of deployment in rural areas of the country, but did not recommend deployment requirements for the renewed term.

The cellular and PCS markets are now well established. According to the Canadian Radio-television and Telecommunications Commission, deployments provide mobile phone services to 99% of Canadians. While it is true that some areas of the country do not yet have cellular or PCS services available, in

³ [CPC-2-0-17](#) - *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*

general, licensees deploy when a viable and sustainable business case can be made. Mechanisms are currently in place, such as secondary markets and RP-019, which can facilitate access to these unserved and underserved areas. It is noted that direct subsidies are also effective in providing service to rural and remote areas and that some PCS spectrum is available for FCFS licensing.

First Networks commented on issues such as the length and cost associated with the RP-019 public process. Lynx Mobility suggested a complete redesign of the process, including wide-area applications, timelines for each stage, elimination of the notice period and broadening the policy's applicability to PCS spectrum. Rogers Communications Inc. recommended rescinding the policy and allowing licensees to make voluntary arrangements. TELUS recommended that, rather than expanding the policy, the Department eliminate it. These proposals are noted and are being considered separately. Any changes to the RP-019 policy would be preceded by a consultation.

Imposing further deployment conditions where the initial condition has already been met is not considered to be justified at this point in time and may create investment uncertainty. Therefore, no deployment conditions of licence will be applied to the cellular and PCS licences issued for 20-year terms through the renewal process.

The Department will continue to consider comments on challenges and specific problems affecting the deployment of mobile services to low-density rural and remote areas, and is considering these issues in the consultations for the 700 MHz and 2500 MHz bands.

There will be no Implementation of Spectrum Usage condition of licence on cellular and PCS licences issued for 20-year terms through this renewal process.

3.3.5 Lawful Intercept

Historically, a footnote has been included to indicate that the lawful intercept condition of licence applies only to PCS licences. Some of the respondents highlighted that the footnote in the appendix containing the proposed conditions of licences had inadvertently been omitted. The omission has been corrected such that the condition continues to only apply to PCS licences.

4. Licence Fees

Incentive fees that reflect a measure of market value of the spectrum encourage licensees to consider the cost of holding additional spectrum in balance with alternative available inputs (e.g. technical adjustments to networks, additional infrastructure, etc.) and their operating costs to meet their objectives, while dissuading the over-use and anti-competitive behaviour that often accompany free or under-priced goods. As a result, consumers and businesses receive new and better services, competition is promoted and investment is stimulated.

With regard to cellular and PCS licence fees, and, as stated in *Decisions on Revisions to the Framework for Spectrum Auctions in Canada*, "As set out in subsection 5(1.3) of the *Radiocommunication Act*, bids paid for licences obtained under a competitive bidding process, such as an auction, are deemed to be in

lieu of fees. Therefore, no annual fees apply during the term of the auctioned licence.” For PCS licences, the terms of the auctioned licences begin to expire in April 2011.

As noted in the renewal consultation paper, the fee order in DGRB-005-03, *Radio Authorization Fees for Wireless Telecommunication Systems that Operate in the Radio Frequency Bands 824.040 MHz to 848.970 MHz, 869.040 MHz to 893.970 MHz or 1850 MHz to 1990 MHz*, covers all frequency bands included in the renewal consultation paper and sets the fee at \$0.03512361 per MHz per population.

At the time that the renewal consultation paper was issued, it was intended that the fee order would be reviewed and possible fee changes implemented. However, in November 2010, the Minister announced that fees for cellular and PCS licences would be frozen for the time being. Until further notice, the existing annual licence fee⁴ will apply consistently to all cellular and PCS licences irrespective of the initial licensing process. This includes licences issued through the renewal process which were initially issued through the auction process. The Minister may review and amend the fees during the licence term after consulting with licensees.

The current annual fee of \$0.03512361 per MHz per population will continue to apply to all new cellular and PCS licences, including those initially assigned by auction. The Minister may review and amend the fees during the licence term after consulting with licensees.

⁴ Notice No. DGRB-005-03 — *Radio Authorization Fees for Wireless Telecommunication Systems that Operate in the Radio Frequency Bands 824.040 MHz to 848.970 MHz, 869.040 MHz to 893.970 MHz or 1850 MHz to 1990 MHz* available at: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08105.html>.

**Annex A - Conditions of Licence for Cellular and PCS Licences
Issued Through the Renewal Process
(Effective April 2011)**

The following conditions apply to any licences issued through the Renewal Process for PCS and Cellular Licences, 2011, including those initially assigned by auction. It should be noted that the licence is subject to relevant provisions in the *Radiocommunication Act* and the *Radiocommunication Regulations*. For example, the Minister continues to have the power to amend the terms and conditions of spectrum licences (paragraph 5(1)(b) of the *Radiocommunication Act*).

1. Licence Term

This licence will expire on the date indicated above.

At the end of this term, the licensee will have a high expectation that a new licence will be issued for a subsequent term through a renewal process unless a breach of licence condition has occurred, a fundamental reallocation of spectrum to a new service is required, or an overriding policy need arises.

The licensee must pay the annual licence fee before March 31 of each year for the subsequent year (April 1 to March 31).

2. Licence Transferability and Divisibility

The licensee may apply, in writing, to transfer its licence in whole or in part (divisibility), in both the bandwidth and geographic dimensions. Departmental approval is required for each proposed transfer of a licence, whether the transfer is in whole or in part. The transferor(s) must provide an attestation and other supporting documentation demonstrating that all conditions, technical or otherwise, of the licence have been met. The transferee(s) must provide an attestation and other supporting documentation demonstrating that it meets the eligibility criteria.

The Department may define a minimum bandwidth and/or geographic dimension (such as the grid cell) for the proposed transfer. Systems involved in such a transfer shall conform to the technical requirements set forth in the applicable standard.

The licensee may apply to use a subordinate licensing process.

For more information, refer to Client Procedures Circular CPC-2-1-23, *Licensing Procedure for Spectrum Licences for Terrestrial Services*, as amended from time to time.

3. Eligibility

A licensee operating as a radiocommunication carrier must comply on an ongoing basis with the eligibility criteria in subsection 10(2) of the *Radiocommunication Regulations*. The licensee must notify the Minister of Industry of any change that would have a material effect on its eligibility. Such notification must be made in advance for any proposed transactions within its knowledge.

For more information, refer to Client Procedures Circular CPC-2-0-15, *Canadian Ownership and Control*, as amended from time to time.

4. Displacement of Incumbents

The licensee must comply with the revised transition policy outlined in Appendix 2 of the *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range* issued on June 28, 2000, and the procedure for the relocation of incumbent microwave stations outlined in Client Procedures Circular CPC-2-1-09, *Displacement of Fixed Service Stations Operating in the 2 GHz Frequency Range to Accommodate Licensed Personal Communications Services (PCS)*, as amended from time to time.

5. Radio Station Installations

The licensee must comply with Client Procedures Circular CPC-2-0-03, *Radiocommunication and Broadcasting Antenna Systems*, as amended from time to time.

6. Provision of Technical Information

When the Department requests technical information on a particular station or network, the information must be provided by the licensee according to the definitions, criteria, frequency, and timelines specified by the Department. For more information, refer to Client Procedures Circular CPC-2-1-23, *Licensing Procedure for Spectrum Licences for Terrestrial Services*, as amended from time to time.

7. Compliance with Legislation, Regulation, and Other Obligations

The licensee is subject to, and must comply with, the *Radiocommunication Act*, the *Radiocommunication Regulations* and the International Telecommunication Union's *Radio Regulations* pertaining to its licensed radio frequency bands. The licence is issued on condition that the certifications made in relation to this licence are all true and complete in every respect. The licensee must use the assigned spectrum in accordance with the *Canadian Table of Frequency Allocations* and the spectrum policies applicable to these bands.

8. Technical Considerations

The licensee must comply on an ongoing basis with the technical aspects of the appropriate Radio Standards Specifications and Standard Radio System Plans, as amended from time to time.

9. International and Domestic Coordination

The licensee must comply with the obligations arising from current and future frequency coordination agreements established with other countries and shall be required to provide information or take actions to implement these obligations as requested by the Department. Although frequency assignments are not subject to site licensing, the licensee may be required to furnish all necessary technical data for each relevant site.

The licensee must use its best efforts to enter into mutually acceptable sharing agreements that will facilitate the reasonable and timely development of their respective systems, where applicable, and to coordinate with other licensed users in Canada and internationally where applicable.

10. Lawful Interception (Applicable to PCS frequencies only)

Licensees operating as radiocommunication carriers and using this spectrum for circuit-switched voice telephony systems must, from the inception of service, provide for and maintain lawful interception capabilities as authorized by law. The requirements for lawful interception capabilities are provided in the *Solicitor General's Enforcement Standards for Lawful Interception of Telecommunications* (Rev. Nov. 95). These standards may be amended from time to time.

The licensee may request the Minister of Industry to forbear from enforcing certain assistance capability requirements for a limited period. The Minister, following consultation with Public Safety Canada, may exercise the power to forbear from enforcing a requirement or requirements where, in the opinion of the Minister, the requirement is not reasonably achievable. Requests for forbearance must include specific details and dates indicating when compliance to the requirement can be expected.

11. Research and Development

The licensee must invest, as a minimum, 2 percent of its adjusted gross revenues resulting from its operations in this spectrum, averaged over the term of the licence, in eligible research and development activities related to telecommunications. Eligible research and development activities are those which meet the definition of scientific research and experimental development adopted in the *Income Tax Act*. Adjusted gross revenues are defined as total service revenues, less inter-carrier payments, bad debts, third party commissions, and provincial and goods and services taxes collected.

To facilitate compliance with this condition of licence, the licensee should consult the Department's *Guidelines for Compliance with the Radio Authorization Condition of Licence Relating to Research and Development* (GL-03).

12. Mandatory Antenna Tower and Site Sharing

Licensees operating as radiocommunication carriers must comply with the mandatory antenna tower and site sharing requirements set out in Client Procedures Circular CPC-2-0-17, *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*, as amended from time to time.

13. Mandatory Roaming

The licensee must comply with the mandatory roaming requirements set out in Client Procedures Circular CPC-2-0-17, *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*, as amended from time to time.

14. Annual Reporting

The licensee must submit an annual report for each year of the licence term, including the following information:

- a statement indicating continued compliance with all conditions of licence;
- an update on the implementation and spectrum usage within the area covered by the licence;
- existing audited financial statements with an accompanying auditor's report;
- a report of the research and development expenditures for licensees operating as radiocommunication carriers (the Department reserves the right to request an audited statement of research and development expenditures with an accompanying auditor's report); and
- a copy of any existing corporate annual report for the licensee's fiscal year with respect to the authorization.

All reports and statements are to be certified by an officer of the company and submitted, in writing, within 120 days of the licensee's fiscal year end, to the address below. Where a licensee holds multiple licences, the reports should be broken down by service area. Confidential information provided will be treated in accordance with subsection 20(1) of the *Access to Information Act*.

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15. System Access Fees or Network and Licensing Charges

Licensees are not required nor permitted to levy charges to their subscribers on behalf of Industry Canada. In particular, charges which appear to be for spectrum management purposes, such as system access fees or network and licensing charges, are not mandated by Industry Canada.