May 25, 2007

Mr. Leonard St-Aubin
general
nacommunications Policy Branch
Industry Canada
200 Slater Street
Ottawa, Ontario K1A 0C8

Dear Mr. St-Aubin:

The Assembly of First Nations (AFN) is pleased to submit the attached comments in response to the notice on “Notice DGTP-002-07: Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services,” dated February 17, 2007.

As you may be aware, the AFN is a democratically accountable non-partisan organization representing 633 First Nations across Canada. Our constituency is made up of First Nation citizens living both on and off reserve, and in the North. As the national organization representing First Nation citizens in Canada, we are committed to working with the Government of Canada to address the needs and interests of First Nation citizens across the country.

Please contact Judy Whiteduck, our Director of Economic Development, to discuss any follow-up.

Sincerely,

Richard Jock
Chief Executive Officer
Canada Gazette Notice No. DGTP-002-07

Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services

Published in the Canada Gazette, dated 17 February 2006

Comments by the Assembly of First Nations

May 25, 2007
Introduction

The Assembly of First Nations (AFN) is pleased to submit the following comments in response to the Notice DGTP-002-07: Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services, as published in the Canada Gazette, dated 17 February 2007.

The following comments provided by the AFN respond to sub-sections under section 2.7, Addressing the Potential for New Entry and 1.7.1, Fostering a Competitive Wireless Market. For ease of reference, the comments are numbered according to the Notices’ numbering system and are captioned by the specific question posed in the Department’s Notice.

Comments

2.7 Addressing the Potential for New Entry

In consideration of the present circumstances, the Department seeks comments on whether there is a need for measures intended to enable market entry in the AWS spectrum auction.

1. The AFN recommends that all public resources, including spectrum be administered by an agent of the crown in such a manner as to provide for the best interests of all Canadians, regardless of their social, economic and/or geographic characteristics.

2. Aboriginal communities – and First Nations communities specifically -- are of specific concern to the administration of the spectrum. The AFN is concerned that spectrum auctions that may reasonably serve to allocate spectrum in urban and more heavily populated centers do not necessarily produce the best results in sparsely populated and/or remote areas.

3. The Canadian wireless market is characterized by intense multiparty competition in urban areas. Typically major urban centers are served by at least two and often more wireless service providers. Customers in these areas have a choice of suppliers and benefit from the favourable rate plans and good hardware offers as competitors vie for customers.

4. This is in considerable contrast to rural and remote areas and especially in First Nation communities where there will be at best one service provider, usually the wireless company owned by the incumbent telephone company. More typically, there is no wireless service at all in First Nation communities.

5. Lack of service in rural and remote areas does not arise because of a lack of available spectrum to provide service. Rather it results from the expense of
building out service in sparsely populated areas relative to the market potential in these areas. The returns have simply not been attractive enough to produce a competitive market in these areas.

6. The allocation of spectrum however does have an impact on the likelihood of new competitors deciding to offer service in place such as First Nation communities. The normal assignment of spectrum, such as the allocation of cellular spectrum in the 800 MHz and 1.8 GHz bands, has placed that entire spectrum in the hands of the established incumbent wireless carriers. Spectrum in these bands is therefore unavailable or difficult for third parties to obtain even when either one or both incumbent wireless providers do not provide service in certain areas. This presents a barrier to new entrants by limiting access to spectrum. Without spectrum there is no service and no new service providers.

7. Spectrum auctions of frequencies other than those currently associated with cellular service have also been problematic in rural areas. For example, spectrum auctions held by Industry Canada in the recent past have shown that there is a ready market for auctioned frequencies in the populated areas. However, there was considerably less interest in the use of the frequency bands in rural areas. As a result these frequencies in rural areas are unassigned and there is no clear process for potential new service providers to gain access to spectrum that they may otherwise have been able to use to offer services in rural areas.

8. Previous and existing spectrum allocation methods therefore have not served First Nation communities very well and have not produced the kind or level of services that other Canadians have come to expect.

9. In the case of First Nation spectrum participation and competition, ex-post solutions to wireless competition do not present realistic opportunities for their entry as wireless providers.

10. Compounding the lack of First Nation participation in spectrum auctions with the ineffectiveness of ex-post solutions to wireless competition only serves to augment the situation for those rural and remote communities that remain under serviced or not serviced at all.

11. The AFN believes that in order for the agent of the crown to administer spectrum in the best interest of all Canadians, Industry Canada must introduce specific measures to enable market entry of First Nation participants in the spectrum auction.

12. Industry Canada has a duty to ensure that its policies serve Canadians in all geographic areas. It must address issues of access to spectrum based on its experience of the results previous spectrum allocations. The policies that have served urban populated areas have not served less populated areas well. Often these policies have not served remote First Nation communities at all. Industry
Canada must therefore adjust its allocation policies to account for the very large areas of Canada that have been left underserved by the traditional wireless services providers.

1.7.1 Fostering a Competitive Wireless Market

The Department seeks comments as to whether a certain amount of spectrum should be set aside for new entrants. Comments should include a precise description of those who should or should not be entitled to bid.

Comments are sought on the amount of spectrum that could potentially be set aside. Comments should include whether a single block should be set aside or if the set-aside could be broken up into 2 or more blocks.

Comments should stipulate how such provisions would be in the public interest, and provide supporting evidence or rationale.

Comments are sought on the implementation of the set-aside post auction and the duration of any conditions of license specific to the set-aside that may affect the license such as divisibility and transferability.

1. The AFN recommends that a clearly defined amount of spectrum be set-aside for the entry of First Nations parties.

2. In general, First Nation communities tend to be located in rural, remote and / or sparsely population areas. The typical geography of reserve lands (read communities) are such that the utility services available to neighboring communities do not extend beyond the reserve boundaries. In the case of spectrum, set-asides of specific pockets wherein there are located First Nation communities would address the issues of un-serviced and under-serviced communities.

3. The AFN understands that spectrum is a public resource in Canada, and therefore it is the duty of the federal agent (Industry Canada) to insure that all Canadians have access to this resource in order to participate in the economy. As stated in Notice No. DGTP-002-07 (page 3), “The development and use of world class information and communication technologies and services will further enable Canadians to fully participate in the new economy.”

4. Some First Nation communities do not have equal opportunity to participate in the new economy because they do not have access to wireless services, and given the previous statement, First Nation peoples and communities are disadvantaged from realizing the benefits of participating in the new economy.
5. In an Industry of Canada report issued in 1995, it was noted that access to spectrum would be used to stimulate competitive and comprehensive service offerings (section 1.1).

6. The AFN is concerned that this did not happen, specifically in the case of First Nation communities.

7. The history of First Nation community development in recent Canadian history illustrates the need to address the persistent gap between First Nation peoples and the rest of Canada. Ignoring the need to introduce spectrum set-aside for First Nation peoples would only serve to perpetuate the already challenging socio-economic development reality for First Nation peoples.

8. First Nation poverty is the one of greatest social injustices in Canada today. As a public resource, the Government of Canada must consider their duty to consult with Aboriginal peoples and First Nations specifically to address these shortcomings.

Please contact Judy Whiteduck, AFN's Director of Economic Development, for any follow-up (613-241-6789 or jwhiteduck@afn.ca).