

Spectrum Management and
Telecommunications Policy

Radio Systems Policy

Policy for the Provision of Cellular Services by New Parties

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Policy for the Provision of Cellular Services by New Parties

INDUSTRY CANADA

RADIOCOMMUNICATION ACT

NOTICE NO. DGTP-005-98

POLICY FOR THE PROVISION OF CELLULAR SERVICES BY NEW PARTIES

Introduction

The purpose of this Notice is to effect changes to the policy respecting the authorization of cellular service providers operating in the frequency bands of 824-849 MHz and 869-894 MHz, so as to extend the provision of cellular services to unserved and underserved areas in a timely and orderly manner, by enabling entities, other than those which previously were or could have been authorized to offer such services, to proffer cellular services. This Notice also solicits public comment on the appropriateness of extending analogous policy provisions to broadband Personal Communications Services (PCS) in the 2 GHz range, as well as to other similar mobile telephony services utilized by members of the public.

Background

Canada Gazette Notice DGTP-002-96, dated February 14, 1996, invited public comments on a proposal to amend the policy respecting the authorization of cellular service providers. The current policy provides that wireline telephone companies may be assigned, for the operating territories within which they offer public switched telephone service, one of the two frequency sub-bands allocated for cellular telephony; the other of the two sub-bands was assigned, following a comparative selection process, to the company now known as Rogers Cantel Inc. for the provision of nationwide cellular service. The Notice proposed that this policy be amended to permit third parties (parties which were not affiliated with either the local wireline telephone company or Rogers Cantel Inc.) to apply for authorization to provide cellular services to communities where (competitive) cellular service was not being offered at the time the application was made. The initial view of the Department was that, in order to advance the identified telecommunications policy objectives, the Department should effect an amendment to the current policy so as to provide a framework within which it would entertain *bona fide* and complete applications from potential third party cellular service providers for unserved geographic areas (or areas being served by only one cellular service provider), in those situations where the local wireline telephone company and Rogers Cantel Inc. (or the local wireline telephone company or Rogers Cantel Inc., as the case may be), had received appropriate notification of the intention of that third party to initiate cellular service and had not thereafter undertaken to provide sufficiently comprehensive cellular service, in substantially the entire identified geographic area, within a time period of not longer than one year.

Public Submissions

In response to the solicitation for public comments set out in the aforementioned *Canada Gazette* Notice DGTP-002-96, twelve timely submissions were received. The submissions were about evenly divided between those supporting and those opposing the implementation of a policy framework to permit third party cellular service provision.

Commentators supporting the policy proposal expressed the view that the decision to allow third party cellular service would expand or facilitate the deployment of mobile telephone services to unserved or underserved areas, and would offer opportunities for smaller operators to provide niche market services in remote areas. Some commentators sought to minimize any unfavourable impact on established service providers by proposing that third party cellular service should only be authorized after an established service provider had been given essentially a right of first refusal to serve the area in question. Suggestions were also made that a comparative process should be employed to select a third party licensee, and that a third party cellular service provider should be able to utilize any cellular sub-band or portion thereof.

Commentators opposed to the policy proposal argued that the introduction of third party cellular service providers would fragment the national service and lead to isolated networks. Some commentators suggested that the provision of third party cellular service would present technical difficulties, introduce investment uncertainties, and remove the incentives for established service providers to pursue expansion. Recommendations were made that alternatives be sought to third party cellular service provision, such as expanding the existing cellular networks, utilizing mobile satellite services, encouraging distributorship agreements between established service providers and potential third party service providers, and using the trunked mobile radio band and SMR/ESMR technologies.

Discussion

The current policy for the authorization of cellular service providers was developed at a time when the Canadian cellular industry had not yet come into existence. Today, the industry is a relatively mature one: cellular services are available to over 90% of Canadians, there are over three million subscribers, cellular infrastructure is available from a number of competing vendors, and the regulatory procedures which enable entities to obtain interconnection rights (and thereby access to the public switched telephone network of a wireline telephone company) have become commonplace and standardized. The cellular industry has been successful in deploying equipment over much larger geographical areas (throughout both urban and rural areas and along major transportation corridors) than were originally envisioned by the industry or required as a condition of licensing by the Department; however, some regions have less comprehensive coverage than others, and there are still a number of smaller and more remote communities throughout Canada to which the cellular service providers have not extended services. The Department has received representations requesting that third parties (i.e., parties affiliated with neither the local wireline telephone company nor Rogers Cantel Inc.) be permitted to provide cellular services in communities where such services are not currently being offered.

The objectives of the *Radiocommunication Act*, as well as the objectives set out in Section 7 of the *Telecommunications Act* (to which the Minister of Industry may also have regard in exercising his or her powers under the *Radiocommunication Act*) include, with particular importance in the

instant discussion, rendering accessible to both rural and urban areas telecommunications services of high quality, enhancing the efficiency and competitiveness of Canadian telecommunications, and responding to the economic and social requirements of telecommunications services users. It is the view of the Department that without additional flexibility in the authorization process, an unacceptably long time may elapse before cellular services are brought to rural and remote communities, because, in part, of the continuous investments and efforts required from the cellular service providers to modernize existing infrastructure and increase service capabilities.

Policy Revision

Having regard to the received public submissions and to the Department's internal study of the identified issues, the following policy changes are being effected.

In order to advance the Department's goal of extending the competitive provision of mobile wireless telecommunications services to the greatest possible number of Canadians, the Department will accept applications from potential new cellular service providers (that is, parties which are not affiliated with either the local wireline telephone company or Rogers Cantel Inc.) for authorization to offer cellular mobile voice telephony services in areas where competitive cellular service provision is not being offered at the time the application is made. The Department will also accept applications from potential new service providers to utilize the cellular sub-bands to offer services other than cellular mobile voice telephony services in areas where competitive cellular service provision is not being offered at the time the application is made.

The Department will accept *bona fide* letters of intent from potential new service providers outlining proposals to offer specified services in one particular cellular sub-band, within a geographic area that is not being served by any cellular service provider or that is being served by only one cellular service provider. Because established service providers may wish to entertain franchisee, distributorship, or resale arrangements with other parties, and because such arrangements could provide for the convenient and rapid extension of services to the unserved or underserved community, a potential new cellular service provider must confirm in its letter of intent that it has held discussions with the entity which could have sought site-specific radiocommunication licences in respect of such services in such area (i.e., the local wireline telephone company or its affiliate, or Rogers Cantel Inc.). The potential new service provider must propose establishing services in such manner that, were its plans to be implemented, it would, in respect of the proposed services, be a Canadian carrier within the meaning of the *Telecommunications Act*. While the Department would generally expect that a potential new service provider requesting the use of a specific cellular sub-band to provide cellular mobile voice telephony services would not be an affiliate (within the meaning of subsection 35(3) of the *Telecommunications Act*) of an entity authorized to provide such services in any other cellular sub-band in the same geographic area, the Department will accept applications to provide services other than cellular mobile voice telephony services from any party.

Upon receipt of a *bona fide* letter of intent, the Department will give public notice of the application in one or more newspapers of general circulation within the proposed service area. Within a prescribed 45-day period from the publication of the notice, any other potential service provider may file with the Department a *bona fide* letter of intent. Following the prescribed period, if no other *bona fide* letters of intent are received, the Department will invite the potential new service provider to submit a comprehensive application (covering such matters as, *inter alia*,

Canadian ownership and control of the would-be service provider, corporate affiliations, systems implementation and technology, network capability and service features, and financial capability), and upon receipt and review of the same, may issue the necessary authorization in respect of the subject application, may refuse the application, or may take such further actions as are appropriate to resolve any outstanding issues prior to making a decision on the issuance of the radio authorization. In the event that two or more *bona fide* letters of intent, concerning more applications than can be accommodated in the available spectrum, are received by the Department before the expiry of the prescribed period, a competitive licensing process will be initiated.

Where there is only one provider of cellular mobile voice telephony services in a given geographic area and that service provider is not the local wireline telephone company or its affiliate, or Rogers Cantel Inc., any party will be eligible to submit an application to provide cellular mobile voice telephony services in the cellular sub-band that is not being utilized to provide such services.

Potential new service providers should be aware that the Department will impose certain technical and regulatory requirements on, and will provide certain flexibilities to, their operations. These include the following:

- The equipment proposed to be used by the new service provider must comply with all the relevant technical standards (Radio Standard Specifications and Standard Radio System Plans) then in effect for the requested cellular sub-band.
- The full frequency range of the requested cellular sub-band may be utilized, if so justified. New service providers will be permitted to offer, in their requested frequency ranges, services other than cellular mobile voice telephony services (such as, for example, fixed wireless access services). A potential new service provider proposing to offer services that do not include cellular mobile voice telephony services will be required to leave unutilized sufficient spectrum in the requested cellular sub-band to permit the effective and efficient provision of cellular mobile voice telephony services within that geographic area.
- A new cellular service provider will be required to offer interconnection to the public switched telephone network. New entrants are encouraged to negotiate appropriate agreements with the wireline telephone companies, and are reminded of the authority of the Canadian Radio-television and Telecommunications Commission (CRTC) under the *Telecommunications Act* in respect of such matters.
- A new cellular service provider will be required to offer roaming to the national network of the established service provider elsewhere operating in the requested cellular sub-band. Again, the Department encourages new entrants to negotiate appropriate agreements with the respective established service providers, and reminds entrants of the authority of the CRTC under the *Telecommunications Act* in respect of these matters as well.
- The new service provider will not generally be expected to make a commitment to research and development funding, or to provide facilities resale opportunities over and above those mandated by the CRTC.

Potential new service providers are cautioned that the Department does not generally expect to receive letters of intent outlining proposals to offer services, utilizing a specific cellular sub-band, in an area geographically contiguous to an area which is being served by an established cellular

service provider utilizing that same sub-band and which is within the operating territory of that service provider.

The described policy change takes effect upon publication of this Notice in the *Canada Gazette*. All aspects of the relevant extant policies not herein amended remain applicable and in force.

Further Public Consultation

Personal Communications Services in the 2 GHz range were not the subject of Notice DGTP-002-96, but affiliates or direct representatives of all the authorized PCS providers except Microcell Connexions Inc. submitted comments in response to the above-referenced Notice, and the Microcell group of companies has elsewhere undertaken a commitment to make a wide range of existing and evolving service capabilities available to PCS providers, on an impartial basis, through an open network architecture. As well, subsequent consultations with the authorized PCS providers were undertaken in respect of the extension of the proposed policy to PCS.

The implementation plans of all the authorized PCS providers described construction of infrastructure in major urban areas and along high-traffic transportation corridors, largely paralleling the cellular infrastructure that had earlier been deployed. It is the initial view of the Department that significant deployment of PCS infrastructure in rural and remote communities, and thus those communities' access to the benefits of PCS, are unlikely without the participation of new service providers. The functional similarities between cellular services and PCS have also been noted.

Accordingly, public comment is being herewith solicited about whether and under what conditions the policy revision effected by this Notice in respect of cellular service providers, *supra*, should be analogously extended to PCS providers operating within the frequency plan for licensed PCS operations set out in the paper announced by *Canada Gazette* Notice DGTP-005-95/DGRB-002-95, dated June 9, 1995, so as to permit new parties (that is, parties which are not affiliated with a PCS provider authorized to utilize any of the frequency blocks in the 2 GHz range) to apply for authorization to offer PCS in geographical areas in which mobile telephony competitive services are not being offered at the time the application is made. This Notice also raises for comment which, if any, other similar mobile telephony services offered to the public might be the subject of equivalent policy revisions, pursuant to which the Department would entertain applications for authorizations from new parties, and the conditions under which such new parties would be eligible to apply and under which their service areas would be determined. Commentators, in addressing these matters, may wish to have regard to the questions, with due alteration of details, set out in the aforementioned *Canada Gazette* Notice DGTP-002-96.

Receipt of Submissions

The Department of Industry invites written submissions from all interested parties on the additional issues identified above. Submissions should be addressed to the Director General, Telecommunications Policy Branch, Industry Canada, 300 Slater Street, Ottawa, Ontario, K1A 0C8. To ensure consideration, submissions must be received on or before June 30, 1998. All submissions must cite the *Canada Gazette* Part I Notice publication date, title and the Notice reference number.

All submissions received in response to this Notice will be made available, about two weeks after the closing date of this Notice, for viewing by the public during normal business hours at the Industry Canada Library, 235 Queen Street, West Tower, 3rd Floor, Ottawa, Ontario, and at the offices of Industry Canada in Moncton, Montreal, Toronto, Winnipeg and Vancouver, for a period of one year from the close of comments.

This Canada Gazette Notice is available electronically on the Internet at:

World Wide Web (WWW)
<http://strategis.ic.gc.ca/spectrum>

March 12, 1998

Michael Helm
Director General
Telecommunications Policy Branch

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