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VIA EMAIL AND COURIER

Mr. Leonard St. Aubin
Director General
Telecommunications Policy Branch
Industry Canada
1612A, 300 Slater Street
Ottawa, Ontario
K1A 0C8

Dear Mr. St. Aubin:

Subject: *Canada Gazette*, Part I, February 16, 2007
Consultation on a Framework to Auction Spectrum in the 2 GHz Range including
Advanced Wireless Services
Notice Reference Number DGTP-002-07

Introduction

1. Further to the above-noted Notice, Primus Telecommunications Canada Inc. (“Primus Canada”) makes submissions with respect to the Gazette Notice No. DGTP-002-07 – Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services.

2. Primus Canada echoes and supports Mipps Inc.’s submission dated May 25, 2007. Like Mipps Inc., Primus Canada applauds the Department on the timeliness of this consultation and wishes to provide its views and recommendations on the conduct of the AWS auction as well as suggested policies for the industry post-auction.

About Primus Canada

3. Primus Canada is the largest alternative reseller of telecommunications services in Canada. In particular, Primus Canada was the first Mobile Virtual Network Operator (MVNO) in Canada and today is one of the largest MVNOs in Canada. Primus Canada is an independent, standalone Canadian corporation, with an all-Canadian management team and a majority Canadian Board of Directors. We have a head office in Toronto, and offices in several communities across Canada.

4. Primus Canada is wholly-owned by Primus Telecommunications International, Inc. based out of McLean, Virginia. As such, Primus Canada is prohibited by the foreign ownership restrictions set out in the *Telecommunications Act*, the *Radiocommunication Act* and the *Direction to the CRTC (Ineligibility of Non-Canadians)* from owning or operating any transmission facilities or holding any broadcasting licences. Nonetheless, Primus Canada has made considerable contributions to the Canadian economy and has invested heavily to the extent permitted in network infrastructure in Canada since 1997. We offer services in all regions of the country, including wireline and wireless services, Internet, data centre and managed services, Voice-over-Internet Protocol, (VoIP) and long distance services. Since entering the Canadian telecommunications market, Primus Canada has offered Canadians competitive choice and pricing, by offering a broad range of low cost, high quality innovative and competitive services to over one million Canadian residential and business consumers. Given the above, Primus Canada is an important component of the Canadian telecommunications market.

The New Entrant's Perspective on Competitive Entry in the Wireless Market

5. Market forces are artificially constrained in the wireless industry by both the need for appropriate spectrum, which is only made available at occasional and indeterminate intervals, and the current restrictions on foreign ownership.

6. Primus Canada submits therefore, that ideally, , steps should first be taken to remove these restrictions in order to permit and encourage free competition in the Canadian wireless market. In this regard, Primus Canada further submits that a relaxation of the foreign ownership rules would permit entities such as Primus Canada, already a viable competitive entrant, to acquire and operate radio spectrum, thereby increasing competition in the wireless industry.

7. As Primus Canada has advanced previously, the foreign ownership restrictions are hardest on new entrants to the telecommunications industry in Canada and limit the ability of players to (a) raise the capital required to start up and sustain activity and (b) initiate new business activities. Particularly in the wireless industry, the downside to the foreign ownership restrictions, which result in impediments to growth and competitiveness in the market, clearly outweigh any benefits of the now archaic restrictions, which benefits could be derived by restricting use and content, rather than investment and ownership.

8. Primus Canada submits that if foreign ownership restrictions were removed such that Primus Canada could participate in the spectrum auction, the following steps must be taken in respect of the auction, in order to permit competitive entry, increase competition and provide a level playing field to new entrants who are fundamentally handicapped in trying to make a viable and sustainable business when competing with established players who have many years of head start and control essential components required by any new competitor: (a) the auction must be structured such new entrants have a legitimate opportunity to obtain spectrum; (b) rooftops and tower locations already being used by incumbent providers must also be made available for use by new entrants; and (c) new entrants must be able to negotiate wholesale roaming arrangements with incumbent providers. Primus Canada will briefly discuss each point in turn.

(a) *Creating an Auction Structure to Permit Competition*

Primus Canada supports Mipps Inc.'s submissions in respect of the need to both permit and encourage new competitors and competition through the upcoming spectrum auction. This can be best accomplished in Primus Canada's opinion, by a spectrum aggregation limit on auction spectrum. Primus Canada favours a spectrum aggregation limit of 20 MHz out of the 100 MHz of the combined AWS/PCS spectrum. Placing a limit on the amount of spectrum that any one party can acquire at the auction is inherently non-discriminatory. A 20 MHz block should be sufficient for all players for at least the medium term and at the same time, this option allows for up to two new entrants in each license area. The band plan proposed in the Discussion Paper, specifically the 30 MHz block, would be restructured to a 20 Mhz and a 10 Mhz blocks if this proposal is adopted. The fact that the blocks are not harmonized with those of the U.S. should pose no serious issues as long as the minimum channel size remains 5 MHz. The fact that the licenses will be transferable and divisible gives the lie to the notion that band edges must be precisely harmonized with that of the U.S.

9. Should the Department determine that a spectrum cap is not in the public interest, Primus Canada would support a set-aside of spectrum for new entrants as a second option since it still achieves the over-arching goal of permitting competitive entry.

(b) *Tower Sharing*

10. Most key rooftops and tower locations are already used and controlled by incumbent providers. New entrants must either negotiate sharing arrangements with the incumbents or build its own network. Given the problems associated with a proliferation of towers, such as economic inefficiency, health and environmental concerns and the unsightliness of multiple towers, Primus Canada submits that, as was recommended by Telecom Policy Review Panel in its Telecom Policy Review Panel Final Report, policies be created to encourage tower sharing wherever possible and the removal of all barriers to entry in this area, such as exclusivity agreements between incumbent providers and rooftop owners¹. Towers and rooftops are an essential facility for any competitor.

(c) *Mandated Roaming*

11. As with tower sharing, an inability to negotiate wholesale roaming arrangements with incumbent providers in the wireless industry can serve as a barrier to entry for a new entrant. Mandating that incumbent providers provider new entrants with wholesale access to roaming arrangements ensures that competitors can offer a national wireless service that is attractive to consumers and truly creates competition, and Primus Canada supports the creation of such a policy post-auction.

¹ Telecom Policy Review Panel Final Report, p. 5-13.

The User's Perspective: The Need for Mandated Access

12. If foreign ownership rules are not relaxed, and a foreign-owned competitive entrant like Primus Canada is not permitted to participate in the spectrum auction, Primus Canada submits that certain steps must be taken to ensure that access to wireless access service is mandated for non facilities-based competitive entrants like Primus Canada (collectively, "Users") who must purchase wholesale wireless service from spectrum radio owners.

13. As set out above, as a US-owned company, Primus Canada is restricted in the extent that it can invest in wireless licenses. Accordingly, Primus Canada's competitive activities in Canada are limited in its sole capacity as a reseller of telecom services such as wireless, and as a result, is completely dependent on (and at the mercy of) the facilities, services, rates and quality of the facilities based providers in Canada. The situation is no different where Primus Canada seeks to obtain wholesale access to wireless services from wireless license owners in Canada.

14. Primus Canada submits that the wireless spectrum enabled by the AWS auction will be itself an essential service. This spectrum can be seen as an alternative to local loop access. As with local loops, this wireless spectrum will be important to new entrants in order for them to compete in the wireless market. Additionally, the spectrum, like other services, gives the incumbent providers who control the service the ability to lessen or prevent competition in the downstream market.

15. As with all essential services, in order to ensure that competition is not thwarted by those who control the service, a robust access regime must be created. In this regard, Primus Canada submits that policies must be created to ensure that owners of the spectrum license offer a wholesale version of the wireless access service and that pricing for the wholesale access be on a "cost-plus" basis. In that regard, Primus Canada suggests that a reasonable mark-up would be cost plus 15%, with the cost of the spectrum appropriately amortized across the expected retail and wholesale customer base.

Conclusion

16. The wireless landscape in Canada today is not nearly as competitive as it could be, particularly when compared to other countries. The negative result for the Canadian business and residential consumers is higher prices, less choice and less innovation. It is clear that given spectrum requirements and ownership restrictions, truly competitive market forces cannot develop without an appropriate regulatory regime.

17. Primus Canada submits that in order for true competition to exist in the Canadian wireless market, steps must be taken to ensure that new entrants have an opportunity to acquire spectrum in the AWS spectrum auction, including (a) the relaxation of foreign ownership rules to permit more new entrants the opportunity to acquire spectrum, (b) policies to encourage tower sharing (c) mandated roaming arrangements, and (d) an auction structure implemented such as spectrum caps to permit new entrants to obtain spectrum. Further, Users of the spectrum who rely on wholesale access from license owners, must have wholesale access to wireless service at a fair price.

18. We thank you for the opportunity to participate in this process, and we look forward to continuing the dialogue with you.

Yours truly,

A handwritten signature in cursive script that reads "Edmund N. Chislett". The signature is written in black ink and is positioned below the "Yours truly," text.

E. (Ted) Chislett