



File: 48075

June 26, 2007

Director General  
Telecommunications Policy Branch  
Industry Canada  
1612A, 300 Slater Street  
Ottawa Ontario K1A 0C8

Dear Mr. St-Aubin:

Re: Reply Comments to Canada Gazette Notice DGTP -002-07  
Consultation on a Framework to Auction Spectrum in the 2 GHz Range

Network BC is pleased to provide its reply comments to the above referenced proceeding. Let us briefly introduce ourselves.

### Introduction

As you may be aware, the government of British Columbia has undertaken an ambitious project to facilitate the provision of broadband connectivity to 366 communities within British Columbia that have a health care centre, library, school or a government office. With that project now complete, British Columbia is turning its attention to population clusters that were not included in the original 366 communities, including over 100 First Nation communities.

In this day and age, there is an increasing demand for the provision of broadband and other advanced wireless services necessary to support e-government, e-education, e-health initiatives and enable wireless service providers to provide their services within their respective communities. Unfortunately, the provision of last mile services in many rural and remote unserved or underserved communities is impossible as many of those communities are just too

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small to justify the capital expenditure required to provide last mile broadband and advanced wireless services. While it is often cost prohibitive for the incumbent service providers to enter into those marketplaces there are in Canada a growing number of regional wireless service providers that are interested in and capable of providing advanced wireless services in these difficult to serve locations.

With this context in mind, we would like to provide our comments in reply to a variety of submissions now before Industry Canada in respect to this proceeding.

### **More competition: The “haves” and the “have-nots”**

On reviewing the filed submissions and having regard to a very lively and animated debate of a industry representatives from Videotron, Toronto-Hydro Telecom, MTS/Allstream, Bell Canada, Rogers and TELUS that occurred at the Telecom Summit on June 13, 2007 one is immediately struck by how industry has become aligned between the “have’s”, those that currently have wireless spectrum, and the “have-nots”, those that would like to obtain wireless spectrum.

Let’s start with the “have-nots” notably Videotron, Toronto-Hydro Telecom, MTS/Allstream (the “national have-not’s”), a host of other potential regional or rural entrants (the “regional have-not’s”) such as Barrett Xplore, Shaw Communications and numerous other small regional wireless service providers. The “have-nots” also includes those interested citizens that express the concern that auctioning spectrum “may reasonably serve to allocate spectrum in urban and more heavily populated centers [but will] not necessarily produce the best results in sparsely populated and/or remote area.”<sup>1</sup>

At the 2007 Telecom Summit, the national have-not’s, notably Videotron, indicated that unless and until new competitors are introduced into the marketplace that market prices will not decrease. Videotron, perhaps in alliance with others, also aspires to become the fourth national carrier and not only promises more competitive pricing but also more attractive service offerings. Theirs is not an easy task. The low hanging fruit (the 57% of customer that already have wireless service providers) has already been harvested yet the national have-nots still want the opportunity to compete with their the established, well experienced incumbents. To do so, however, they need access to spectrum and, to avoid planting new forests of new towers, access to towers and reasonable roaming conditions.

The “haves” are Bell, TELUS and Rogers or, the “incumbents”. At the 2007 Telecom Summit the incumbents indicated that they have expended some \$20 billion in capital bringing wireless services to Canadians. They have indicated in their submissions and at the Telecom Summit that they don’t want others to share their infrastructure, permit roaming or suffer the presence of other competitors unless those potential competitors purchase spectrum through what they characterize as a “level playing field spectrum auction”. The incumbents say that the available spectrum is a valuable commodity that has significant value that should therefore be auctioned to

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<sup>1</sup> Assembly of First Nations Submission dated May 25, 2007

ensure that Canadians receive full value for this valuable commodity. Of course, what the incumbents generally fail to mention is that the spectrum allocations of 1985 and 1995 were awarded on a competition basis rather than by auction. The incumbents don't mention the fact that even if new entrants were to be allocated some spectrum that they would have to compete for customers in a marketplace that already has 57%<sup>2</sup> (a number that was cited at the 2007 Telecom Summit) wireless market penetration or that the issuance of national licenses does not necessarily mean that citizens in remote or rural regions will obtain advanced services as it would seem that such spectrum would be used to enable the incumbents to compete with each other in the more densely populated areas. Indeed, as pointed out in a study prepared for the Canadian Wireless Telecommunications Association it was reported that:

An increasing number of Canadian cities have access to high speed broadband mobile services. However, certain areas of Canada, particularly remote rural and northern areas continue to be served only by analogue cellular networks. Roaming and sharing arrangements have had an impact on delaying the expansion of 3G networks, especially in rural and northern communities.<sup>3</sup> (underscore added)

Network BC submits that while spectrum auctions appear to be a fair and equitable mechanism to ensure that a valuable resource is judiciously allocated that this process of allocation, in and of itself, can create significant barriers to marketplace entry and potentially reduce the number of service providers interested in participating in the auction. As pointed out by Toronto Hydro Telecom:

The licenses that were granted in 1985 and 1995 were subject to annual licensing fees rather than having to pay upfront auction bid payments. Licensing fees are paid annually and tend to parallel growth in revenue. By contrast bid auction payments are paid long before the operator has any revenue. Hence auctions tend to result in a requirement for significant capital up front. In today's risk adverse Canadian investment environment auctions tend to disadvantage a new entrant. The uncertainty of the outcomes of auctions to other approaches tends to add risk as well as complexity. They also tend to reduce the pool of potential service providers.<sup>4</sup>

*Reply comments regarding the setting aside of spectrum for new entrants*

In reply to the comments of the incumbents, NWBC submits that the primary beneficiaries of the incumbent's services will continue to be those citizens that reside in the larger urban centres. After all, that is where their competition is most intense and where the incumbents can realize the maximum return on their invested capital. Not an unreasonable business response. But what about the smaller or more remote communities? Should they not be afforded access to advanced

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<sup>2</sup> Wall Communications Inc. cites a penetration rate of 52% at the end of 2005 so 57% does not appear to be out of line. Wall Communications Inc. *A Study on the Wireless Environment in Canada, September 29, 2006, page 57.* This study was filed by the Canadian Wireless Telecommunications Association on May 25, 2007 as part of its evidence in this proceeding.

<sup>3</sup> Wall Communications Inc., page 35

<sup>4</sup> Toronto Hydro Telecom, May 25, 2007 Submission, page 4

wireless services by local service providers that are primarily interested in providing services to their own communities?

While NWBC recognizes that the available spectrum is a valuable commodity, we are concerned that if no spectrum is set aside for new entrants that they will simply not be able to develop services for their own market areas. As with any economy, niche market service providers are important to economic development and customer choice. In a marketplace that has a significant barrier to entry, such as the requirement for licensed spectrum, it is important that the local service providers not be foreclosed from attempting to deliver new services within their own marketplaces. Accordingly, in reply to the incumbents protest that spectrum is a valuable commodity that should be auctioned off to the highest bidder, Network BC submits that this ignores the fact that the incumbents were the beneficiaries of a process that resulted in the allocation of spectrum at no up-front cost to the incumbents. In fact, by setting aside spectrum, Industry Canada would actually be affording the new entrants the same opportunity as was originally afforded to the incumbents. The incumbents state that they have invested some \$20 billion in capital to build out their networks. Network BC submits that the new entrants would face other even more daunting economic challenges being the attraction of a customer base where already some 57% of potential customers are already committed to the incumbents.

Network BC therefore supports the following principles:

- the Department ought to develop a competitive rather than an auction process that will enable new entrants to acquire a reasonable amount of set-aside spectrum. In that regard, Network BC agrees with Shaw Communications that a competition “would allow the government to maximize its policy objectives to provide innovative, converged broadband services to Canadians in direct competition to the wireless incumbents”<sup>5</sup>.
- in determining who should qualify for the set aside spectrum, Network BC respectfully submits that new entrants should include non-incumbent wireless service providers so long as they are not affiliated with an incumbent. In our view, affiliation would mean that the incumbent has an equity interest in the service provider or is otherwise able to influence the decision making ability of the new entrant.
- NWBC therefore proposes to exclude the incumbent wireless service providers that currently offer mobility or cellular services from the set aside spectrum. We would also propose that new entrants that are affiliated with the large service providers should be excluded from the set aside spectrum.

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<sup>5</sup> Shaw Communications Inc. Submission dated May 25, 2007, “*Consultation on a Framework to Auction spectrum in the 2GHz range including Advanced Wireless Services*” paragraph 22

### *Comments regarding a single block or multiple blocks of spectrum*

In our experience, in British Columbia rural and remote wireless service providers tend to be regional operators which, for a variety of business reasons, tend not to offer services in territories that are already served although, of course, some service providers operate in more than one region. There simply is not enough business to support more than one service provider. That being the case, it might be preferable to segregate the spectrum into a number of blocks but enable the new entrants to acquire spectrum in several regions in order to offer alternate national services. Network BC therefore supports the concept of allocating set-aside spectrum into multiple blocks to enable multiple, regional wireless service providers to acquire set-aside spectrum.

### *How would this be in the public interest?*

In response to the incumbent's assertion that available spectrum is valuable and that auctioning the same can lead to significant financial returns for Canada, Network BC suggests that it cannot be in the public interest if the spectrum auction process focuses only on monetary issues without regard to other issues. Clearly, as indicated in their submissions and at the Telecom Summit, the incumbents are comfortable competing with each other and do not wish to see a fourth national carrier invade their marketplace. If the figures<sup>6</sup> that Videotron quotes in its recent national advertising campaign are any where near correct, prices will remain high unless a new national service provider is introduced. Videotron also reports that "a recent public opinion survey found that: 60% of Canadian consider their wireless service to be "expensive", 72% of Canadians think that the objective of government should be to ensure greater competition in the wireless industry [and] 52% of Canadian support allowing foreign wireless companies to buy Canadian licenses and compete for wireless services in Canada."<sup>7</sup>

Network BC also notes the June 20, 2007 announcement confirming that TELUS and Bell Canada have entered into formal merger negotiations. It was further reported that TELUS has indicated that it would only be interested in proceeding with the merger on the condition that it be allowed to maintain its national wireless business.<sup>8</sup> While this is not an unreasonable position take, one is again struck by the immense imbalance that a potential new entrant could face in an approximately 50 billion dollar capitalized competitor. However, it was recently reported in the *Globe and Mail*<sup>9</sup> that TELUS has now reversed its position on set-asides, tower and roaming access and is now supportive of the same as part of its attempt to meet anticipated regulatory objections to TELUS' proposed acquisition of Bell Canada. While Network BC would be supportive of TELUS' new position, we would strongly encourage that access to towers, related support structure and roaming be closely monitored should new entrants require access to the

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<sup>6</sup> *Globe & Mail*, June 18, 2007. Videotron says that "In Canada's protected wireless market Canadian consumers pay high prices – for frequent callers up to **55% more per minute than US consumers.**"

<sup>7</sup> *Globe & Mail*, June 18, 2007 - advertisement

<sup>8</sup> *Globe & Mail*, June 21, 2007, page A-10

<sup>9</sup> *Globe & Mail*, June 22, 2007, page B7 (Getting the deal past regulators the hard part)

same to avoid opportunities to create other barriers to entry. Perhaps some form of tariff process would be appropriate.

Network BC therefore respectfully submits that setting aside spectrum for new entrants would be in the public interest as that could promote local economic development and could potentially contribute to the delivery e-government, e-health and e-education to all of our citizens irrespective of their physical location within their respective provinces. In specific response to the incumbents, theirs is a position that promotes preservation of the status quo which Network BC suggests is contradictory to Canada's efforts to promote marketplace competition.

**Note:** During an early morning radio news broadcast on June 26, 2007 it was reported that TELUS has decided to withdraw its interest in acquiring Bell Canada. If that is the case, one would hope that TELUS does not also reverse itself on its stated support for spectrum set-asides, roaming and tower access.

*Comments on set-aside post auction, duration of conditions, divisibility and transferability*

The incumbents, not unreasonably, take the view that there should be no set-aside and therefore they don't really comment on these issues. However, we feel that it is important to comment on these issues.

In our respectful view there should be a set-aside but the same should not be unconditional. That is, awarding spectrum to a new entrant that later becomes unable to utilize or operationalize the spectrum is as bad as awarding the spectrum to an incumbent that only intends to use the same in large target market areas. While Network BC agrees that the Department cannot ensure business viability, we submit that if the spectrum is not utilized within a reasonable period of time, say three years, that such awarded spectrum should be made available for reallocation. The only provisos to this might be the unavailability of the equipment required to utilize the spectrum or other unforeseen technical issues.

The issues of divisibility and transference are somewhat more problematic. In respect to divisibility, Network BC takes this to mean that a new entrant can resell some of the spectrum to another service provider. A simple prohibition to resale (but not sharing) might be sufficient to address that issue particularly if the spectrum is allocated at no cost or pursuant to some other form of non-compensatory process. That could address any potential concerns about arbitrage or profiteering if the spectrum is allocated at no or some nominal charge. On the other hand, Network BC would not be supportive of rules that would operate to restrict the ability of small wireless service providers to build their businesses and later sell the same to another entity such as an incumbent. There must exist an opportunity for the business owner to exit and a valuable aspect of that would be the customer base and the associated spectrum. The Department would have to consider what a reasonable time frame might be before the allocated spectrum could be transferred. Perhaps transferring to a party that can use the spectrum rather than allowing the same to languish unused would be the preferred option.

## Summary comments

In summary, Network BC agrees with the submissions that support the concept of set-asides as a method of enabling new entrants to enter into the wireless marketplace, particularly in rural and remote areas where the incumbents have little or no interest in providing services. A fair allocation of spectrum to those entrants could contribute to economic development in those areas, contribute to the closure of Canada's digital divide and contribute to the health, education and general well being of those of our citizens who live outside of larger urban areas.

Network BC also submits and supports the view that while the incumbents can easily acquire the entire spectrum and then only roll-out their services in the most lucrative markets, this leads to the inevitable result that rural and remote communities will once again become isolated. On the other hand, awarding spectrum to rural and/or regional interests that are interested in providing services to their core markets just makes sense. They don't have to pay for spectrum that they won't use yet they will be able to serve markets that might not otherwise expect to receive those services due to other competing priorities of the incumbents. Should they be left isolated for this reason? We suggest not.

The remaining question relates to the fourth national wireless service provider. In a sense, they introduce a potentially new dynamic to marketplace that should not be over-looked. In that respect, Network BC respectfully suggests that they ought to be afforded the opportunity to offer national services, excluding rural and remote areas that are awarded to local service providers, in competition to the incumbents. However, given the fact that the incumbents have had some 20 years to harvest the low hanging fruit, have tied consumers to long term contracts, have been able to build infrastructure without having to purchase spectrum, we respectfully submit that Industry Canada should at least attempt to level the playing field in some manner. We leave it to Industry Canada to determine the most appropriate way to do that.

In conclusion, Network BC is generally supportive of the "have-not's" and TELUS to the extent that it says that it is supportive of a set-aside for new entrants, will permit access to its support structure and is prepared to allow roaming on its network.

Respectfully submitted,



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cc: Mr Dave Nikolejsin  
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