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Consultation on 24 GHz and 38 GHz
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**DGRB-003-98 - Comments in Response to the Consultation on 24 GHz and 38 GHz
(and DGRB-002-98 regarding the Framework for Spectrum Auctions in Canada)**

I am pleased to provide the following comments, on behalf of the Public Interest Advocacy Centre (PIAC), regarding the matters of spectrum auctions in regard to the matter of the proposed policy and licensing procedures for the 24 GHz and 38 GHz bands.

PIAC is a not-for-profit charitable organization that represents the interests of consumers in matters relating to communications policy and regulation, and other utilities. PIAC's member organizations represent over two million Canadians.

Our primary concern with regard to the Framework for Spectrum Auctions is that it is being presented as a "fait accompli," and not subject to further review and consultation. The comments of PIAC are associated with both the Framework document, the outstanding policies and procedures relevant to this consultation and the proposals for the 24 GHz and 38 GHz bands.

Yours sincerely,

Andrew Reddick
Director of Research

GENERAL COMMENTS

We express grave concerns again that Industry Canada is pressing forward with spectrum auctioning without adequate review, analysis and consultation on the short and long term consequences of its actions. Particularly when, over the full consultation on this subject, there has been an expressed desire by the majority of the respondents not to proceed with spectrum auctioning in Canada.

Our general comments relate to the following subject matter:

1.0 FRAMEWORK ON SPECTRUM AUCTIONS AND 24/38 GHz CONSULTATION

Demand not Demonstrated

The Department has not concluded the previous consultation on “First-Come, First-Served” Licensing, since the consultation in December 1997.¹ As part of the criteria for moving from “first-come, first-served” licensing to competitive licensing, a demand greater than the supply was a pre-requisite. I don’t believe the department has adequately justified the case for competitive licensing without a thorough demand analysis.

Industry Canada has not provided any justification for the use of a competitive licensing process in Canada in all locations when certainly some areas will not have sufficient demand for a long period of time, due to the availability of a larger portion of spectrum in the smaller population centres. This has been validated by the previous licensing of the LMCS band.

No Licence Transfer Policy

The department states that any transfer between the successful bidders and others will be subject to the Transfer of Licences Policy. To date, there still has not been an update of this policy for public consultation.

Installment Payments

There was some concern expressed by respondents to ensure that smaller firms would be able to enter into the market for radio spectrum. It appears that there is no provision for payments, other than full payment within a specified time frame.

Set-Asides for New Entrants

There was to have been a provision for set-aside for spectrum for new entrants. This policy is not being adhered to in the consultation on the 24/38 GHz bands. In fact, we would go even further and stipulate that successful bidders should be required to provide a portion, not less than 10%, of their spectrum for public services, which will include health, education, libraries, community centres, etc.

¹ “Proposals to Improve the Radio Licensing Process for Dealing with Applications on a “First-Come, First-Served Basis,” DGTP-009-97, December 1997.

Consumer Prices

We disagree with the statement that “Auction bids depend on consumer prices; consumer prices do not depend on auction bids.” In fact, we submit that the opposite is true.

Aggregation Limits

The matter of aggregation limits is irrelevant as those with “deep pockets” will find the means to aggregate the spectrum required, irrespective of the intent to limit aggregations. There is a reference within the document that some bidders may want to “hoard” spectrum for future uses. This is obviously directed toward the larger players in the industry, not the new entrants.

Connectedness Objectives?

The auction process is intended to further the agenda of the government regarding the “connectedness” of Canadians. Are there assurances in place that the auction process will contribute to the objectives of “timely and efficient access” and “affordable and accessible?”

Existing Users

Licensing in the 38 GHz band has been available for a period of time.

What is the policy of the department of the incumbents who were licensed on a “first-come, first-served” basis?

Annual Plan

The department stated that it would provide users and the public an indication of those areas of the spectrum which would be the subject of competitive bidding. There is no indication when this plan would be available.

Research and Development Commitments

We contend that the licensees be required to fund research and development projects in line with the “connectedness” and “public services” requirements.

Small Players

There is a degree of complexity and confusion regarding the accessibility for the smaller players and new entrants in this industry. Canada has thrived on the development of new entrants and small players to create a growing and competitive wireless industry.

The Framework suggests that small players identify themselves so that others can join in alliances or partnerships and this will create a large amount of complexity and confusion. In fact, it is likely that the only entrants to provide services in the smaller communities may be the smaller players. The cable television industry serves as an excellent example.

Fees

The matter of fees is still under review by the department, and we welcome the statement that recalibration of fees will not be undertaken. However, there should be a caveat attached to the statement that under auctioning, there will be no further fees payable. It is premature to accept that competitive bidding will continue and that technology and policies are unchangeable.

2.0 CONSULTATION ON "FIRST-COME, FIRST-SERVED" LICENSING AND SPECTRUM AUCTIONING

The following are a sample of comments provided by the respondents:

- The comparative licensing process does not make any accommodation for non-profit, educational, small business, or to systems operating in limited areas.
- The comparative licensing process is the best alternative for Canada. The use of spectrum auctioning is an abdication by the Minister and the Department of their spectrum management mandate and of their duty to exercise informed judgment within the public interest.
- Any major departure from this model (comparative assessment) should preserve the stability of the industry and the high level of customer service and choice now enjoyed by Canadians.
- We have serious doubts that this particular method of administering a scarce public resource will prove to be in the public interest in the long term.
- The introduction of spectrum auctioning has a serious potential to place several public policy objectives in conflict.
- A mixture of market-based and non market-based systems will create distortions in the value of licensee's business.
- Higher costs equate to higher fees.
- Auctioning mixes licence selection with setting of the licence fee.
- Auctioning limits public benefits, competition and entrance.
- Auctions are inconsistent with good spectrum management.
- Auction market values are not consistent.
- Government has conflicting objectives.
- Auctioning impacts other policies and objectives.
- Auctions should include all spectrum users.
- We are concerned with jeopardizing the ability for new entrants to continue to grow and offer greater value to Canadians by introducing an allocation system that blindly rewards the highest bidder. In the Canadian context, this is likely to be the dominant player in the market. Such an outcome is clearly not in the public interest.

-The Canadian public would be better served by a continued examination of how to improve existing administrative allocation processes and by the search for new methodologies that permit dynamic allocations, rather than by the selective use of auctions.

-The future role of government in regulating the supply and control of the spectrum in the longer term may be in jeopardy.

The following are comments previously submitted by PIAC, which are still relevant:²

-Auctioning is nothing more than a tax grab by government that will mean less competition, higher consumer prices, and no public benefits such as job creation and research and development in Canada.

-The Minister can create spectrum scarcity and benefit from it.

-Canada has benefitted from timely licensing.

-Spectrum auctions are seen as an attempt by Industry Canada to abdicate its responsibilities to select and license Canada's service providers.

-The comparative selection process as opposed to the auction option should be the preferred process for licensing spectrum.

-Auctioning diminishes greatly or negates government's ability to effect social policy objectives.

-Auctioning confers ownership of spectrum on service providers, eliminating the Department's ability to set and implement policy.

-Auctioning eliminates the Minister's discretion in the selection process.

-It is against the public interest.

-It is likely to limit deployment to largest markets.

-Fees should not be any higher than costs of administration.

-Digital technologies and spread spectrum render spectrum usage paradigm obsolete.

-The process is lengthy.

² "Inappropriateness of Spectrum Auctioning in a Canadian Context," report prepared for PIAC by Max E. Melnyk, December 1997.

-Auctioning is inflationary and additional costs will eventually be recovered from the user.

-It is disruptive to the process as it allows entrants based on bidding rather than overall savvy, corporate strengths and credibility.

-Auctions are uncertain; the players, the results and subsequent service implementation are not known.

-Only those likely to benefit from spectrum auctions favour spectrum auctions.

-Auctions are not in the public interest.