

3 November 2017

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**Re: Gazette Notice SLPB-008-17 – Extension to the reply comment period:  
ISED Consultation on a Technical, Policy and Licensing Framework for  
Spectrum in the 600 MHz Band – Cogeco Reply Comments**

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In accordance with the procedure set out in the above-noted consultation, please find attached the reply comments of Cogeco Communications Inc. (“Cogeco”).

Cogeco thanks ISED for the opportunity to submit reply comments in this proceeding and remain available to answer any questions you may have regarding this submission.

Yours very truly,

Michel Messier  
Senior Director, Regulatory Affairs, Telecommunications

c.c.: Nathalie Dorval, VP Regulatory Affairs and Copyright, Cogeco Inc.  
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**Innovation, Science and Economic Development Canada  
Spectrum Management and telecommunication**

**Consultation on a Technical, Policy and  
Licensing Framework for  
Spectrum in the 600 MHz Band**

***Canada Gazette, Part I, August 19, 2017,*  
Notice No. SLPB-005-17 and  
Gazette Notice SLPB-008-17, October 20, 2017**

**Reply Comments of  
Cogeco Communications Inc.**

**3 November 2017**

## **Introduction**

1. Cogeco Communications Inc. (“Cogeco”) respectfully submits reply comments with respect to Innovation, Science and Economic Development Canada (ISED)’s *Consultation on the Technical, Policy and Licensing Framework for Spectrum in the 600 MHz Band*, Canada Gazette, Part I, SLPB-005-17, dated 19 August 2017, modified in Gazette Notice SLPB-008-17, dated 20 October 2017 (the “Consultation Document”).
2. Following close examination of the many and varied positions submitted by other interested parties, Cogeco is pleased to have this opportunity to address again the very important issues related to the release of the 600 MHz spectrum throughout Canada.
3. Interested parties agree that this is a key proceeding with far-reaching consequences for the future of mobile wireless service in Canada and corresponding implications for innovation, the economy, and the choice, prices and quality of mobile services all Canadians will be able to enjoy in the years ahead. Like Cogeco, many parties believe the capabilities of 5G networks holds great promise in providing advanced services in such diverse sectors across the economy as health care, agriculture, transportation, smart cities, and the Internet of Things (IoT). Some parties, like Cogeco, also point out the importance of considering the allocation of the 600 MHz spectrum in conjunction with other upcoming spectrum to be released.
4. There are, however, several identifiable camps of interest: the entrenched national mobile network operators (collectively the national “MNOs” -- Bell Mobility Inc., TELUS Communications Inc., and Rogers Communications Canada Inc.), the larger, regional, competing MNOs (Shaw Communications Inc., Bragg Communications Inc. operating as Eastlink, Quebecor Media Inc./Videotron), and the smaller, rural operators wishing only to serve very small areas or populations and their advocates. While there is certainly widespread overlap with this latter group and

Cogeco, Cogeco might be seen as standing in a fourth camp of interest, being a regional facilities-based carrier with operations in certain areas in the provinces of Quebec and Ontario and the goal of becoming a quad player in these areas.

5. Cogeco sought to be reasonable in its submission of October 2nd, 2017, only suggesting proposals that are workable for new entrants and based on strong public policy principles. The Company is simply asking that fair conditions be put in place to allow an enhanced level of competition to flourish for the benefit of Canadians everywhere across the country. Cogeco is pleased to see the submission of similar proposals and support from various parties on its positions.

6. Cogeco has expressed strong interest in entering the mobile wireless market in the areas in which the Company currently has customers and notes with deep concern that the regional wireless providers who already have spectrum are arguing that the 600 MHz spectrum set-aside should only be made available to those who are already offering services in the wireless market in Canada. This is not only flagrantly self-serving but it also runs directly counter to ISED's pro-competitive policy and is contrary to the interests of potential new entrants and consumers. It would represent a fundamental change in ISED's set-aside proposal and one which would have serious and negative implications for the competitive landscape.

7. Based on the history of failure by companies who went into business as wireless-only, Cogeco understands that it would not be prudent to encourage again such speculative new entrants. It appears that the wireless-only new entrant model has not proven to be financially viable in Canada.

8. However, Cogeco is firmly convinced that, as a solid "quad player" with a high-performance facilities-based network and a sound track record of serving the communities in which it operates, it will be able to bring a strong, innovative, and competitive offering to market. Moreover, many Canadians will no doubt welcome

having a greater choice of wireless service providers who have a long track record in term of provisioning commercial telecommunication services. It is predictable that players who are already offering mobile wireless services would wish to close the door firmly behind them, but it is unlikely Canadians would agree that this is in their best interest.

9. Cogeco also notes that larger players support Tier 2 licensing (Bell, Quebecor, Rogers, Sasktel, Shaw, TELUS with some qualifications). They are able to bid vast sums for large swaths of territory and population and meet roll-out obligations simply by serving the lucrative urban areas. Other, smaller providers – including those aspiring mobile wireless providers -- go to some length in their submissions to explain why, to better suit their customer base and business model, they require access to spectrum on a more granular basis: Tier 3 (Eastlink), a divided Tier 2 (Tbaytel), Tier 4 and smaller licence areas (BCBA, CCSA, Cogeco, Ecotel, ITPA, MRC de Témiscouata, Sogetel). It seems clear that Tier 2 licensing areas serve the interests of larger MNOs and are ill-suited for smaller regional players and their underserved customers in terms of wireless options.

10. Licensing on a basis of Tier 4 and smaller areas would mean that non-urban customers will be able to enjoy access to services much more quickly as the roll-out requirements in Tier 4 service areas, unlike Tier 2, cannot be met by merely serving one large city.

11. In Cogeco's opinion, even the roll-out schedules proposed in Annex F to the Consultation Document are lax compared to the coverage plans that a strong regional provider like Cogeco would wish to undertake in the course of providing service to its customers. Cogeco would be willing to accept a condition of licence for a Tier 4 or smaller service area where the coverage requirement for year 20 proposed in Annex F of the Consultation Document would be brought up to year 5. This would go a long way towards serving Canadians outside the metropolitan

centres and assist Government in its universal access goal of bringing the full suite of digital services to every Canadian.

12. To a large MNO, serving customers outside of the metropolitan area may be at best an after-thought or more likely carried out, if at all, only to avoid violating a long-term condition of licence attached to a 20 year licence term. For companies like Cogeco, however, its core focus is outside the large metropolitan centres, in particular on smaller markets, and these customers are not seen as second class citizens but held in the highest regard. Without them there is simply not a business. Perhaps this key point is one that must be fully appreciated in order to understand the importance of Tier 4 or smaller licensing areas.

13. The MNOs also argue that a set-aside is either unnecessary or that it should be even more severely limited (to 20 MHz of spectrum). This would in effect leave room for only one player who is not a national MNO, given that bidding in the open blocks, while theoretically possible, is unlikely to be successful for a regional (or smaller) provider. Cogeco believes that with the overwhelming dominance of the large incumbents, ISED's proposed set-aside of 30 MHz is insufficient given the rapidly accelerating broadband needs of all Canadians and the goal of creating a robust, competitive marketplace.

14. Cogeco respectfully suggests that there is no justification for making more spectrum (40 MHz) available to the already dominant companies who own the bulk of the mobile spectrum than the amount of spectrum proposed to be set aside for regional providers (30 MHz). These regional providers will also require access to sufficient spectrum (at least 20 MHz each) to meet their customers' increasing broadband demands. Making 40 MHz available to the national MNOs would simply exacerbate an existing imbalance.

15. Cogeco strongly recommends that ISED increase the set-aside to 40 MHz, which would move one more block into the set-aside portion. In the absence of an overall sub-GHz spectrum cap, this is critically important to ensure that the large players are not able to buy up extra spectrum for the purpose of foreclosing competition. Naturally the large MNOs would prefer to have a windfall in the form of access to all seven blocks but Cogeco is confident ISED appreciates the importance of ensuring wider access to this important public resource.

16. Cogeco strongly supports the following for ISED allocation of spectrum in the 600 MHz band and under these conditions would commit to participating in the upcoming auction:

- a. The definition of set-aside eligible must remain as proposed by the Department, namely, ***those registered with the CRTC as facilities-based-providers, that are not national incumbent service providers, and that are actively providing commercial telecommunication services to the general public in the licence area of interest, effective as of the date of application to participate in the 600 MHz auction.*** To limit the set-aside eligibility only to existing wireless operators and to exclude other facilities-based carriers would be to close the door prematurely on the possibility of a more vibrant competitive landscape as new entrants could not hope to win spectrum in an auction when bidding directly against the large national wireless incumbents.
- b. At the very least for the set-aside spectrum, the size of the tiers must be further refined from the broad swath approach proposed with the Tier 2 service areas to the more narrowly circumscribed Tier 4 service areas (with certain important changes). This will accommodate the plans of smaller players who are best positioned to move quickly to meet the evolving needs of rural Canadians. Due to the critically important nature of

the tier size and the many anomalies in the Tier 4 service areas as currently configured (of which Cogeco is aware of four in the areas in which it operates), Cogeco suggests that ISED undertake a separate consultation on this particular issue in advance of the auction. As Cogeco notes in its submission of 2 October 2017, the FCC auctioned 600 MHz spectrum in the United States after having adopted new licence areas consisting of 416 Partial Economic Areas (PEAs).

- c. The amount of set-aside spectrum must be increased to 40 MHz, in recognition of the demand by regional providers and to partially redress the imbalance in spectrum holdings between the national MNOs and their smaller competitors and a 20 MHz cap must be introduced for set-aside-eligible bidders who have already benefited from spectrum set-asides in the AWS-1 or AWS-3 auctions.
17. In addition, Cogeco suggests that, coupled with the move to Tier 4 licensing at the very least for the set-aside spectrum, the roll-out conditions of licence associated with year 20 be brought forward to year 5. Rapid and improved access to digital services will greatly enhance the global competitiveness of Canadians in all communities across Canada.
18. Cogeco also has specific recommendations with respect to subordinate licences, which addresses the issue of licensed but unused spectrum.
19. Below and for those questions relevant to its business plans on which it holds a strong position, Cogeco is pleased to provide its comments in relation to responses filed by other interested parties. Failure to address any specific issue raised or position adopted by another party should not be considered by ISED or any other person as Cogeco's agreement with that issue or position.

**Question 1A: ISED is seeking comments on its proposal to implement a set-aside as a pro-competitive measure in the auction process for the 600 MHz band.**

20. Cogeco fully supports ISED's proposal to set aside spectrum as a pro-competitive measure and, should the conditions set for the auction be fair and reasonable, intends to compete aggressively for spectrum within this set-aside portion.

21. There is, however, clear dissension among parties on the need for a set-aside and, if one is deemed to be necessary and appropriate, what the proper amount of set-aside spectrum should be. The national MNOs are universally opposed to ISED making any portion of the 600 MHz spectrum available for auction which they would be precluded from accessing, while others generally argue that a set-aside is essential to restrict the possibility of foreclosure, to partially redress the imbalance in spectrum that exists between the national MNOs and others, and to improve the competitive landscape in Canada.

22. That this issue is hotly debated is not surprising. The incumbent MNOs are seeking access to the full seven blocks of spectrum in order to further consolidate their powerful positions in the marketplace. ISED has demonstrated clearly its position that it is in the public interest to ensure that other viable competitors have access to spectrum.

23. TELUS Communications Inc., for one, states it was "shocked" that the Department is considering a set-aside of 30 MHz, claiming it "*unjustifiably maintains the trend of providing regional operators with preferred access to a disproportionate amount of spectrum...*" (par. 27). While opposed in principle, however, TELUS would wish to be considered set-aside-eligible if the Department were to go ahead and adopt this approach.

24. It is interesting to note that TELUS claims to be very concerned about the taxpayer being “*fairly compensated*” (par. 10.b.iv) on the one hand yet argues that set-aside eligible bidders should not be allowed to bid on the open spectrum as, TELUS claims (par. 40), they “*displayed some of the most blatant examples of gaming behaviour on the global spectrum auction record by deliberately and systematically pushing open spectrum prices up in each of the service areas in Canada.*” To be clear, Cogeco does not support any bidding that is less than honest. Nonetheless, it is manifestly disingenuous of TELUS to claim the taxpayer should be fairly compensated yet complain about the prices paid for spectrum in an open auction when that money compensates the taxpayer for use of that valuable public asset. Moreover, one has to assume that if a national MNO bid up to those prices then they must have believed there was a solid business case even at those price points. In fact, most quad players would acknowledge that their wireless division is the most attractive and the one that is growing most rapidly.

25. Cogeco believes that the 600 MHz spectrum which is not set-aside should, as proposed by ISED, be truly open for all to bid on. It is inconceivable that, as TELUS proposes, set-aside-eligible bidders would be restricted and not able to bid on the open spectrum. This would have the indefensible effect of providing a safe zone for the non-eligible (i.e. national) MNOs to bid in.

26. In paragraph 9 of its submission, Bell Mobility Inc. accuses ISED of ignoring the interests of established carriers and submits that basing the claim that the national incumbents have market power on a 2014 Competition Bureau statement is a flawed conclusion and that, among other things, it is out of date.

27. To the contrary, Cogeco refers to a statement made this year on February 15, 2017 by the Competition Bureau in the matter of Bell’s acquisition of MTS:

*Based on an analysis of the information collected during this inquiry, the Competition Bureau (Bureau) concluded that as a result of coordinated*

*behaviour among Bell, TELUS and Rogers, mobile wireless prices in Canada are higher in regions where Bell, TELUS and Rogers do not face competition from a strong regional competitor. Conversely, the Bureau concluded that where Bell, TELUS and Rogers face competition from a strong regional competitor, prices are substantially lower. The Bureau concluded that the lower prices are caused by the presence of a strong regional competitor who can disrupt the effects of coordination among Bell, TELUS and Rogers.*

28. This was, the Bureau stated, based on a thorough pricing analysis using confidential internal company data. It would be exceedingly difficult, then, for any one company to dispute it credibly in the absence of access to all the facts to which the Bureau was privy.

29. In addition, the Bureau stated the following:

*Multi-media exposure among Bell, TELUS and Rogers is significant, and encompasses a number of geographies and business lines at both the wholesale and retail level. Information collected during the inquiry supported the likelihood the Bell, Rogers and TELUS weigh the advantages from vigorous competition in one area against the danger of retaliation in other areas. Ultimately, the Bureau found that multi-market exposure softens competition among Bell, TELUS and Rogers.*

30. This is a strong argument indicating the clear need for regional providers. It is critically important that ISED set the conditions to allow competition to flourish for the benefit of Canadians. In this proceeding, this means that sufficient spectrum must be set aside for regional or smaller facilities-based carriers to bid on without facing foreclosure risk.

31. For its part, Rogers recognizes that this auction is an opportunity to “*re-set the competitive landscape*” (par. E2) and Cogeco agrees heartily with this particular statement. Rogers then, however, goes on to argue that a set-aside is not necessary because the regional MNOs are “*all well-capitalized, highly-competitive, companies with an established presence in their operating regions which are not in need of taxpayer-subsidized spectrum prices*” (par. 39). The stark reality is that 92% of

revenues in the sector continue to accrue to the national MNOs<sup>1</sup> and that the national MNOs hold most of the commercial mobile radio spectrum and virtually all of the sub-GHz commercial mobile radio spectrum.<sup>2</sup> Pro-competitive measures such as a set-aside are clearly still required.

32. Together with Bell and TELUS, Rogers also argues that set-asides drive up spectrum costs, which diverts capital from expanding coverage and investing in new technologies (par. 35-36). There is, however, no credible evidence that the ability of the national MNOs to invest in networks has been significantly constrained by its spectrum costs compared to those of the regional MNOs. Indeed, TELUS notes that the national MNOs have deployed 11,741 700 MHz sites while Eastlink has deployed 308 and Shaw and Videotron have deployed none (TELUS par.41). There is no apparent *cause and effect* relationship, then, between spectrum costs and ability/willingness to deploy. This is not surprising, upon reflection, as well-run businesses are unlikely to overbid to the point of hampering their own ability to conduct business.

33. There is clearly a massive imbalance between the large incumbents and others which the national incumbents try to downplay. It is hardly surprising, then, that Cogeco and Rogers are at odds with respect to how the competitive landscape should best be re-set.

34. The national MNOs consider the set-aside to be a form of public subsidy, arguing that the regional providers should be required to bid directly against Bell, TELUS and Rogers in order to secure spectrum and that they are all well-financed and able to compete for spectrum in the open market.

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<sup>1</sup> CRTC, 2016 Communications Monitoring Report, pages 286-7.

<sup>2</sup> Quebecor Comments, paragraphs 28 and 30 and Shaw Comments, Figures 2 and 5 at paragraphs 27 and 30.

35. Cogeco would argue that the fact that the competitors are financially sound strongly suggests there is room in the wireless market for others who are also facilities-based carriers and it would be grossly premature to close the door now. This is particularly important when examining the coverage that the MNOs have achieved to date. There is spectrum that is still not being utilized -- in some cases decades after licensing (refer to Annex B of Cogeco's submission of October 2, 2017) -- and there are still broad areas of the country with insufficient levels of competition as widely pointed out by many interested parties.

36. Cogeco believes that the goal of a vibrantly competitive, mobile wireless marketplace based on strong levels of infrastructure investment can be achieved in Canada, that movement is certainly being made in that direction, but that with the national MNOs having 90% of subscribers and 92% of revenues there is clearly much progress yet to be made.

37. Should competitors to the national MNOs now fall behind in access to spectrum, or in the case of Cogeco not even be allowed entry, just as data demand is accelerating to new heights and as 5G is in the offing, the significant gains enjoyed by the Canadian consumer which can be directly attributed to viable and sustainable competition will stall or be lost entirely. Canadians will be disadvantaged in their global competitiveness without certain and widespread access to an increasingly vibrant and robust competitive wireless market.

38. The regional providers know that their winnings at such an auction would be scant should they be required to bid directly against the incumbents.

39. Cogeco applauds ISED's intent to establish a technical, policy and licensing framework -- including a set-aside -- that will further the goal of long-term, sustainable competition in the Canadian wireless market with all the benefits that will accrue.

***Question 1B: ISED is seeking comments on its proposal to set aside 30 MHz of spectrum in the 600 MHz band for eligible entities and to have open bidding (no pro-competitive measures) on the remaining 40 MHz in the band.***

40. While Cogeco supports the set-aside as an essential, pro-competitive measure, 30 MHz is simply not enough spectrum to satisfy the needs of regional competitors. Cogeco strongly encourages ISED to set aside 40 MHz of spectrum for set-aside-eligible participants. This would provide the possibility of two regional providers having access to 20 MHz each. This set-aside would still leave the national MNOs with 30 MHz of spectrum with which to augment their already impressive spectrum holdings while precluding the possibility of foreclosure risk.

41. Cogeco notes that many other interested parties are making the same request for a 40 MHz set-aside -- the BCBA, Eastlink, MRC de Témiscouata, Quebecor, Shaw, and Sogetel. These include the very players who are able to challenge the national incumbents and, by their regional nature, are able to provide faster coverage and more responsive levels of service to their non-urban customers. These are also the very players who are keeping the national MNOs from becoming complacent and who are responsible, as ISED points out in the Consultation Document, for consumer prices that are 36% lower than they would be otherwise. It is essential that regional providers continue to be allowed to play this critical, competitive role, and that other, strong new entrants, be given the opportunity to bolster these efforts.

***Question 1C: ISED is seeking comments on its proposal to limit the eligibility criteria to bid on set-aside spectrum to those registered with the CRTC as facilities-based-providers, that are not national incumbent service providers, and that are actively providing commercial telecommunication services to the general public in the licence area of interest, effective as of the date of application to participate in the 600 MHz auction. [footnote removed]***

42. Cogeco strongly supports ISED's proposal with respect to the eligibility criteria for bidding on the set-aside spectrum as its business case going forward hinges on the ability to enter the wireless market as a strong, regional facilities-based carrier. Without access to this spectrum Cogeco is effectively locked out of the wireless market and is thwarted in its desire to provide the full range of services to its customers as a quad player.

43. Cogeco was not surprised to see that the existing wireless providers wish to limit eligibility to bid on set-aside spectrum to existing mobile wireless providers. The national and regional mobile network operators are in a rapidly growing business and are clearly keen to keep viable competitors out.

44. Eastlink, for one, categorizes its proposal to insert the requirement that an eligible facilities-based carrier (FBC) must be actively providing commercial "mobile wireless" telecommunications service in the area as a "minor update to protect competition" (par. 21).

45. Cogeco submits that this change would be neither minor nor in the interest of protecting competition. It would, in fact, represent a major departure from what the Department was proposing. Not only would such a significant change fail to protect competition, it would serve to stifle it by keeping Cogeco and other facilities-based carriers out of the market.

46. Eastlink also raises its concern about basing eligibility for bidding on the set-aside on the definition of carriers registered with the CRTC, suggesting that this definition is too broad and would capture, for example, very small carriers installed at carrier hotels. This, Eastlink claims, has led in the past to misuses and abuses of the regulatory regime. Cogeco believes that Eastlink is grossly overstating this risk in order to limit participation in the auction, that any such risk is in fact very small, and that the benefits of including FBCs in the definition far outweigh any risks. Moreover, Tier 4 licensing and a more rigorous roll-out requirement, as Cogeco proposes, would address any lingering concerns.

***Question 1D: ISED is seeking comments on its proposal to limit the transferability of the set-aside spectrum for the first five years of the licence term.***

47. Cogeco remains in favour of the limit proposed by ISED, noting that while there was good support for this proposal there were also other suggestions, ranging from Bell who believes limits of transferability to be unnecessary to the BCBA who believes the limitation should extend to the entire licence term. Cogeco suggests a limit on transferability is necessary in order to maintain the integrity of the set-aside and that five years is an appropriate length of time.

***Question 1E: ISED is seeking comments on its proposal to auction the set-aside spectrum as three separate paired blocks of 5+5 MHz.***

48. Cogeco supports auctioning the spectrum in blocks of 5+5 MHz and notes widespread agreement on this (with a few exceptions). This provides flexibility for a wide range of service providers.

***Question 2: ISED is seeking comments on its proposal to use Tier 2 service areas across the country, except in the three Territories (Yukon, Northwest Territories and Nunavut) where Tier 4 service areas would apply.***

49. Cogeco strongly supports licensing 600 MHz spectrum using Tier 4 service areas, while urging ISED to modify four unusually large Tier 4 areas. Indeed, this issue is so important that Cogeco urges ISED to consult on the best configuration for specific licence areas across Canada in advance of the auction. This would allow any entity to highlight service areas which it has identified as having issues and inconsistencies with Statistics Canada boundaries or with regional municipality boundaries.

50. Cogeco notes that larger players support Tier 2 licensing (Bell, Quebecor, Rogers, Sasktel, Shaw, TELUS with some qualifications). They are able to bid for large swaths of territory and population and meet roll-out obligations simply by serving the lucrative urban areas. Other, smaller providers – including aspiring providers -- go to some length in their submissions to explain why, to better suit their customer base and business model, they require access to spectrum on a more granular basis: Tier 3 (Eastlink), a divided Tier 2 (Tbaytel), Tier 4 and smaller licence areas (BCBA, CCSA, Cogeco, Ecotel, ITPA, MRC de Témiscouata, Sogetel).

51. It seems clear that Tier 2 licence areas serve the interests of larger MNOs rather than the smaller players and their customers.

52. Licensing on a Tier 4 basis would mean that non-urban customers will be able to enjoy access to services much more quickly as the roll-out requirements in Tier 4 service areas, unlike Tier 2, cannot be met by merely serving one large urban market.

53. In Cogeco's opinion, even the roll-out schedules proposed in Annex F to the Consultation Document are lax compared to the coverage plans that a strong

regional provider like Cogeco would wish to undertake in the course of providing service to its customers. Cogeco would be willing to accept a condition of licence for a Tier 4 service area where the coverage requirement for year 20 would be brought up to year 5. Such a requirement would go a long way towards serving Canadians outside the metropolitan centres while assisting Government in its universal access goal to bring the full suite of digital services to every Canadian including those in rural and remote areas.

54. To a large MNO, serving customers outside of the metropolitan area may be at best an after-thought or more likely carried out, if at all, only to avoid violating a long-term condition of licence attached to a 20 year licence term. For companies like Cogeco, however, its core focus is on smaller markets and these customers are not seen as second class citizens but held in the highest regard. Without them there is simply not a business. Perhaps this key point is one that must be fully appreciated in order to understand the importance of Tier 4 licensing.

55. Two of the interested parties who agree with Cogeco that licensing 600 MHz spectrum on a Tier 2 basis would not be appropriate, Eastlink and Tbaytel, propose service areas larger than Tier 4. While Cogeco firmly believes licensing at Tier 4 levels or smaller would best achieve ISED's goals, Cogeco agrees with Eastlink that *"auctioning spectrum at Tier 3 levels would better enable those truly interested in serving rural areas to acquire much needed low-band spectrum in those serving areas"* (par. 44) than would auctioning the spectrum at Tier 2 levels. In the event ISED does not agree with BCBA, CCSA, Cogeco, Ecotel, ITPA, MRC de Témiscouata and Sogetel to use Tier 4 or smaller service areas, Cogeco urges ISED to consider at least using Tier 3 service areas.

56. Because Tier 3 service areas are larger and less aligned with existing operating territories, Cogeco would expect that the Tier 3 coverage requirements would remain as proposed by ISED in the Consultation Document, i.e., 10 years. Further, there are

anomalous Tier 3 service areas which would need be revised for the same reasons as Cogeco's proposal to revise a few Tier 4 areas. These include in particular Tier 3-25 Toronto which requires modification in the same way as proposed for Tier 4-077 Toronto.

57. It is also readily apparent from comments filed in this proceeding, including Cogeco's, that the current boundaries of several Tier 4 areas must be reviewed in order to facilitate the roll-out of services in rural and remote areas. Cogeco considers that the modifications it proposes in Annex A of its submission dated October 2<sup>nd</sup>, 2017 are both critical if ISED is to achieve its objectives of supporting sustained competition and of facilitating deployment and timely availability of services across the country, including rural areas, and necessary if Cogeco is to participate in the 600 MHz auction.

58. In light of all of the comments made regarding the need for revisions to Tier 4 areas, Cogeco also urges ISED to launch a follow-up proceeding to investigate whether the current definitions of Tier 4 areas are fit for purpose, whether they facilitate the roll-out of networks and services in rural and remote areas, and whether and how they could be sub-divided or replaced by a different set of areas. Cogeco notes there is precedent for this approach, insofar as the FCC auctioned 600 MHz spectrum in the United States after having adopted new licence areas consisting of 416 Partial Economic Areas (PEAs). The licence areas used in Canada should:

- a. reflect the divisions and commuting habits of the Canadian population;
- b. be fair and of comparable sizes in terms of population unless there is major metropolitan centre; and
- c. foster more facilities-based competition from existing registered service providers by not being unduly large and misaligned with existing operating territories.

**Question 5: ISED is seeking comments on:**

**a) The advantages and disadvantages of the three auction formats being considered for the 600 MHz auction:**

- i. Combinatorial clock auction, using the WARP-based activity rule (annex A);**
- ii. Combinatorial clock auction, using the GARP-based activity rule (annex B);**
- iii. Enhanced combinatorial clock auction (annex C).**

**b) Where there is a preference for one of the options, respondents are asked to provide a rationale and explanation.**

59. Cogeco notes that there is no obvious consensus on this matter. In Cogeco's opinion, package bidding is essential so there can be some cohesion to one's bidding strategy and to limit exposure risk.

60. After additional investigation and careful consideration of the comments of the other parties in this consultation on the auction formats, Cogeco recommends that ISED use a modified format of option i., which consists of a conventional Combinatorial Clock Auction ("CCA") maintaining WARP activity rules, as was done for the 700 MHz and 2500 MHz Canadian auctions, but adding the disclosure of the information on its expected discount to each bidder after each clock round.

61. The Enhanced Combinatorial Clock Auction ("ECCA") proposal has a number of desirable features, which Cogeco believes would be positive for the CCA auction process. In particular:

- Provision of discount information to bidders during the clock rounds;

- Certainty surrounding the max and protection bids, ensuring bidders can be sure of winning their final clock package; and,
- Capping supplementary round bid values to reduce the impact of “strategic bidding”.

62. Cogeco believes the above features of the ECCA proposal could be applied in option i., i.e. through modifications to ISED’s established CCA process that it has successfully used in the 700 MHz and 2500 MHz auctions.

***Question 6: ISED is seeking comments on:***

- a) The proposal that winners of more than one block in a single service area be assigned contiguous blocks; and***
- b) The proposed structure of the assignment stage, including the order of the assignment rounds and the combination of service areas into a single assignment round.***

63. Cogeco agrees with the proposal to assign contiguous blocks to winners of more than one block in a single service area. Cogeco notes that this proposal was widely endorsed.

***Question 8: ISED is seeking comments on the proposed Affiliated and Associated Entities rules that would apply to bidders in the 600 MHz auction.***

64. Cogeco expresses its ongoing concern that allowing associated entities to bid separately could compromise the integrity of the spectrum assignment process. Accordingly, Cogeco is proposing that entities associated through network sharing

agreements, such as Bell and TELUS nationwide and Rogers and Vidéotron in Quebec, should not be permitted to bid separately.

65. Cogeco notes that, while most interested parties agree with ISED's proposal, a few adopt positions similar to Cogeco, notably Eastlink, Ice Wireless, and Rogers.

66. Eastlink, for example, states (par 69-70):

*Bell and Telus should be required to bid as a single Associated Entity under these auction rules. It seems that every auction Bell and Telus bid separately and then, almost immediately following the auction, swap licences regionally to ensure each has access to the other's spectrum in the region where that particular partner is responsible for their shared network. In this way, Bell and Telus inevitably end up with at least twice the spectrum that any other entity is able to secure.*

...

*Eastlink submits that this result ultimately undermines the Department's objectives of sustainable facilities-based competition in the retail wireless market.*

67. Ice Wireless expresses concern with respect to the proposed associated entities rules (par.17), noting that:

*Ice Wireless is opposed to any rule that allows Affiliated or Associated entities to make separate bids or that applies spectrum limits with regards to non-set-aside licences separately between Affiliated or Associated entities. Specifically, Ice Wireless is concerned that the rules regarding Associated entities could result in the manipulation of bidding to allow aggregation in excess of what is permitted by the licensing framework. Such separation works strongly against smaller providers and new entrants, does not further telecommunications policy with regards to competitiveness and affordability, and is not in the best interest of the consumer.*

68. Rogers submits that the proposed associated entity and anti-collusion rules were insufficient to prevent coordinated bidding (par.155): "*Long-standing network sharing partners already have well developed bidding strategies and no collusion is*

*necessary to achieve their auction goals. They each know exactly what to do without breaking any rules. These rules are ineffective on their own.”*

69. To remedy this, Rogers proposes a 20 MHz cap on the amount of spectrum any specific bidder could win. Rogers also proposes strengthening the associated entity rules to recognize existing relationships between the national carriers, not just those who have specifically agreed to share 600 MHz spectrum and to impose a 30 MHz cap on 600 MHz spectrum that the associated entities are permitted to hold between them, if they should seek to transfer spectrum between themselves after the auction.

70. Cogeco agrees with Eastlink, Ice Wireless and Rogers that allowing associated entities to bid separately would result in a concentration of spectrum in the hands of the associated entities. Cogeco considers that the associated entities would inevitably seek to combine the use of their separate spectrum holding through their network sharing agreements. This would put new entrants and smaller bidders at a commercial disadvantage as they would not have access to the same bandwidth as the associated entities, which in turn would make it difficult for ISED to achieve its stated objectives for the 600 MHz auction, in particular *“to support sustained competition, so that consumers and businesses benefit from greater choice.”*

71. Cogeco agrees with Rogers that the associated entity rules clearly need to be strengthened. It is exceedingly unlikely that two carriers in a long-standing network sharing arrangement with respect to several spectrum bands other than the 600 MHz band would both acquire 600 MHz spectrum and then not seek to include it within the scope of their network sharing arrangement. It is not sufficient for ISED to consider two entities to be not associated simply because they do not yet have an agreement to share 600 MHz spectrum, when they have an agreement to share networks using other spectrum.

72. Further, Cogeco agrees with Rogers' proposal that bidders who agree to share, swap or transfer between them 600 MHz spectrum after the auction be required to return spectrum, if between them they hold more than 30 MHz. This measure would ensure smaller bidders and new entrants are not unduly disadvantaged and will give ISED the opportunity to make that excess spectrum available to other carriers.

***Question 10: ISED is seeking comments on its proposal to issue spectrum licences in the 600 MHz band with a 20-year licence term and the proposed wording of the condition of licence above.***

73. In its 2 October 2017 comments, Cogeco agrees with ISED's proposal to issue spectrum licences with a 20-year licence term. Cogeco notes its concern, though, that issuing long-term licences on a Tier 2 service area basis with a high expectation of renewal would reduce the licensee's incentive to use the spectrum in all parts of the service area. Cogeco recommends that ISED licence the spectrum on a Tier 4 or smaller licence area basis in order to address this issue.

74. Cogeco notes that almost all interested parties support the use of 20-year licence terms. The exceptions are BCBA and CCI Wireless, who both recommended 5-year licence terms, and the Railway Association of Canada, which proposes annual licence terms (although it is not clear whether they are speaking only to the licence which would be given to them).

75. While Cogeco fully supports the objective underlying the BCBA and CCI recommendations, namely to create the incentive to invest and to deploy networks, Cogeco considers that a 5-year term would have the opposite effect. Five years is simply too short a period of time for a carrier to deploy a network and earn a return on that investment, and the heightened uncertainty and risk created by the need to renew licences every five years is likely to make carriers more cautious and

therefore to take fewer risks with respect to capital. This also would have the effect of depressing the value of licences and most likely the corresponding prices that bidders would be willing to pay to secure them. Further, Cogeco considers that the underlying objectives of the BCBA and CCI Wireless can be achieved if ISED licenses 600 MHz spectrum on the basis of Tier 4 or smaller service areas, imposes minimum coverage licence conditions in the first five years on a Tier 4 basis, and prevents the transfer of set-aside spectrum to non-set-aside-eligible entities during the first five years of the licence term.

***Question 11: ISED is seeking comments on the proposals on the condition of licence related to transferability and divisibility, and the proposed wording above.***

76. Cogeco agrees with ISED's proposed conditions of licence regarding the transferability and divisibility, both in terms of geographic area and bandwidth, of licences. Cogeco also agrees with the proposal that set-aside spectrum not be transferable to non-set-aside-eligible entities during the first five years of the licence term.

77. Most interested parties similarly agree with ISED's proposals. A number, however, propose changes to the treatment of set-aside spectrum, but there is little consensus on what those changes ought to be.

78. The BCBA, for example, considers that set-aside spectrum should not be transferable to set-aside-ineligible entities for the entire term of the licence. CCI Wireless opposes any transfer to any entity for the entire term of the licence.

79. At the opposite end of the spectrum, Bell proposes that there be no restrictions on the transferability of set-aside spectrum. Rogers considers that set-aside

spectrum should not be transferable at all during those first five years, while Quebecor proposes that set-aside spectrum be transferable only to set-aside eligible entities during the first ten years of the licence. Eastlink agrees with the ISED proposal but suggests that any open spectrum won by a set-aside-eligible entity be freely transferable, notwithstanding that it was won by a set-aside-eligible entity, while Xplornet proposes that, as an exemption, set-aside spectrum be transferable during the first five years if it was part of a swap of an equivalent amount of spectrum with another carrier (whether or not set-aside-eligible).

80. Cogeco continues to support the proposal to limit the transferability of set-aside spectrum during the first five years of the licence. This period of time represents an appropriate balance between affording the licensee the ability to transfer spectrum, preventing national incumbents from consolidating control over spectrum in Canada,<sup>3</sup> and giving ISED's pro-competitive measures time to result in effective and sustained competition. It is important that the period of time during which the transferability of set-aside spectrum is constrained be equal to or longer than period of time of the licence condition for minimum network deployment. This would ensure spectrum is put to use by the winning bidder instead of being transferred to non-eligible national incumbents as an "exit" strategy for "surplus" excess spectrum.

81. Cogeco does see merit and fairness in Eastlink's proposal that any spectrum won by a set-aside-eligible entity outside of the set-aside spectrum should be transferrable within five years, keeping in mind that the Minister retains the right to approve or deny applications. If spectrum is won in the open market auction there is no reason to place onerous restrictions on the licence simply because the participant is also eligible to bid elsewhere.

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<sup>3</sup> Shaw noted that, on a national, weighted MHz per population basis, the three national incumbent MNOs control between them 90.8% of low-band spectrum and some 77% of all commercial mobile radio spectrum. Shaw Comments, paragraphs 26 and 29.

82. Cogeco wishes, however, to highlight comments made by Ice Wireless, the MRC de Témiscouata and Sogetel. Ice Wireless notes (par. 20) that “*divisibility is particularly important in that many, if not all, service areas encompass regions with vastly different geographic and socio-economic areas. ... The ability to obtain sub-licences is critical to small operators.*” Both the MRC and Sogetel propose that ISED establish mechanisms to encourage subordinate licensing of spectrum, in order to facilitate the acquisition of spectrum and the deployment of networks in rural areas:

*... afin de favoriser le déploiement en milieu rural, la MRC suggère également la mise en place de mécanismes pour inciter la subrogation du spectre, puisque cela permettrait à des fournisseurs de services régionaux d’accéder au spectre non utilisé à un prix raisonnable. Cela faciliterait le déploiement de la technologie en milieu rural.*<sup>4</sup>

*... Sogetel recommande que l’on puisse établir des mécanismes et règles concernant la subordination du spectre afin de permettre aux fournisseurs de service régionaux de pouvoir obtenir du spectre non utilisé par les fournisseurs titulaires du spectre.*<sup>5</sup>

83. Cogeco agrees with Ice Wireless, the MRC and Sogetel that ISED should establish mechanisms to encourage the ability to obtain subordinate licences. In order to achieve ISED’s goals of supporting sustained competition so that consumers and businesses benefit from greater choice, and of facilitating deployment and timely availability of services across the country, importantly including rural areas, ISED needs to ensure licensees have the incentive, and regional and rural carriers have the ability, to get spectrum into the hands of those regional and rural carriers who will in fact use the spectrum to deploy networks and services.

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<sup>4</sup> MRC de Témiscouata Comments, paragraph 56.

<sup>5</sup> Sogetel Comments, paragraph 62.

**Question 12: ISED is seeking comments on the proposed deployment conditions of licence as stated above.**

84. Cogeco notes that no party is suggesting outright that ISED's proposed roll-out requirements are too stringent.

85. The MRC de Témiscouata suggests more aggressive population coverage targets, namely 70% by year 5, 80% by year 10 and 90% by year 20. Sogetel proposes 5, 10 and 20 year coverage obligations which would depend on the population of the Tier 4 area in question.

86. Cogeco recognizes that much effort went into the development of the very specific roll-out proposals by area that ISED has put forward and Cogeco respects the differences proposed by licence area. However, Cogeco believes the timing of the proposed roll-out requirements are much too lax.

87. Cogeco is confident that, with a framework in place as proposed in paragraph 17 of its submission dated October 2, 2017, it is able to accept as a condition of licence by year 5 the proposed roll-out requirements suggested by ISED by year 20. This not only represents a plan that accelerates deployment as anticipated by ISED by 15 years, but also it is notable that accomplishing this on a Tier 4 basis would mean massive digital advances for non-urban Canadians.

88. Cogeco submits that any aggressive competitor in the Canadian mobile wireless industry would be able to accept its suggested roll-out requirements as a condition of licence and recommends ISED implement these in its policy framework.

***Question 13: ISED is seeking comments on proposed conditions of licence outlined in annex G that would apply to licences issued through the proposed auction process for spectrum in the 600 MHz band.***

89. Cogeco generally supports the proposed conditions of licence in Annex G, although the Company notes the concerns expressed by Eastlink in the AWS Renewal proceeding that the tower sharing process ought to be reviewed.

90. Most commenters also support ISED's proposed conditions of licence. Several, however, recommend that ISED remove or modify the R&D condition and that ISED reduce the administrative burden associated with annual reporting. Cogeco has no specific views on these conditions but agrees with the underlying spirit of the comments, namely that these conditions of licence should be reviewed to ensure they remain fit for purpose. Cogeco strongly encourages ISED to review them in consultation with the public in order to ensure they achieve their intended purpose with the minimum of burden on licensees.

91. Bell proposes (par. 78-84), among others things, that ISED remove the mandatory roaming condition. Cogeco strongly disagrees. The availability of wholesale roaming services is so critical to the establishment of sustained mobile wireless competition that it should remain a condition of licence in mobile wireless spectrum licences, despite the fact that the CRTC decided to regulate the rates, terms and conditions upon which the national incumbent MNOs offer the services.

92. TELUS proposes (par 127-139) that the mandatory roaming condition not apply to in-territory roaming when 600 MHz spectrum is used for 5G technologies, and that it not apply to in-footprint roaming using other technologies. Cogeco disagrees with both proposals. The need for mandatory roaming to ensure sustained competition does not vary depending upon the generation of the technology being used in the network. TELUS's proposal would distort competition in the provision of 5G services

even before the first ones are launched commercially. Further, it would result in a service which is very complex to manage and to use. It was this very complexity which led the CRTC in Telecom Regulatory Policy 2015-177 not to adopt the urban vs. rural and in-territory vs out-of-territory rate structure proposed by the national incumbent MNOs for wholesale roaming services.<sup>6</sup> Cogeco supports the continued application of the mandatory roaming condition of licence to in-footprint and in-territory roaming for the reasons set out in *Revised Frameworks for Mandatory Roaming and Antenna Tower and Site Sharing*.<sup>7</sup>

93. Cogeco notes that a couple of commenters raised the issue of subordinate licensing, notably the CCSA (par. 22) who recommends encouraging spectrum licence holders “to sub-divide and sublicense their spectrum holdings in rural and remote areas,” CanWISP (par. 17) who stated that “large operators receiving requests for spectrum sub-licensing must respond in a timely manner with a reasonable offer to the demand. ... The goal should be to share and not for the large operator to keep spectrum. This must be part of the licence conditions,” and Ecotel (par. 31) who recommends that “ISED should start contemplating additional license conditions to facilitate or mandate subordination agreements in locations where licensed spectrum is not put to use and even though the deployment condition within a bigger license area is reached.” Ecotel also cites situations where it had requested sub-ordination and been refused without explanation or simply ignored.

94. Cogeco agrees that ISED should address this issue, as mentioned in paragraph 83 above, and reiterates that mechanisms should be established by ISED to encourage the ability to obtain subordinate licences. It is apparent that there is valuable spectrum that has been licensed but that remains unused, in some cases for years or decades. This is not the best use of this scarce and valuable resource

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<sup>6</sup> CRTC TRP 2015-177, paragraph 137.

<sup>7</sup> *Revised Frameworks for Mandatory Roaming and Antenna Tower and Site Sharing*, March 2013, DGSO-001-13, section 5.1.

and it is not in the best interest of Canadians. These efforts by incumbent licence holders to preserve their market power and to prevent an open market for the resource are having a direct and negative impact on residents of rural and remote areas.

***Question 14: ISED is seeking comments on the proposed opening bids as presented in table 1.***

95. Cogeco notes that Ecotel and Sogetel comment, like Cogeco, that the opening bids would need to be adjusted to reflect licensing on a Tier 4 basis. Several others make comments similar to Eastlink's (par. 81) that "*the proposed opening bids are very high*" and TELUS (par. 145-146) notes that the proposed opening bids are too high to permit price discovery (which is a concern because the final prices in the 700 MHz auction might be higher than the value of 600 MHz spectrum). Because the 700 MHz spectrum was the first sub-1GHz spectrum made available in over twenty years, that band may have had more value to operators. Considering that a number of operators have not yet fully deployed their 700 MHz spectrum, the appetite for and value of 600 MHz may be different and it would be therefore important to allow for price discovery. If this is a concern, Cogeco supports TELUS's proposal for lower opening bids or Quebecor's proposal (par. 102) to apply ISED's methodology to the four most recent auctions and base opening bids on the average of those results.

96. Cogeco also notes that the 600 MHz spectrum, at the very least the set-aside spectrum, needs to be licensed on the basis of Tier 4 or smaller licence areas. The opening bid prices for Tier 4 service areas must take into account the significantly lower price of spectrum in non-urban service areas that was observed in the 2008

AWS-1 auction.<sup>8</sup> At a high-level, Cogeco agrees with Quebecor, TELUS and others that ISED's proposed opening bid prices for 600 MHz spectrum are not adequate to support regional and smaller players in fostering competition in the wireless market and in better serving rural areas.

**Question 15: ISED is seeking comments on the proposed eligibility points for spectrum licences in the 600 MHz as outlined in table 2, and pre-auction deposits as outlined above.**

97. Cogeco notes that a number of commenters, notably CCI Wireless (p. 9), Quebecor (par. 104), Sogetel (par. 73) and TELUS (par 147), express positions similar to Cogeco's, namely that the proposed eligibility points would need to be adjusted to reflect any changes to the proposed opening bids.

98. Cogeco agrees with the MRC de Témiscouata (par. 71) that "*le format des enchères devrait être revu pour favoriser le développement des réseaux cellulaires en milieu rural.*" Cogeco notes that the technical, policy and licensing framework as a whole should encourage the deployment of networks in rural and remote areas.

99. Shaw notes that the 600 MHz band will not be available immediately after the auction, as the transition of over-the-air television stations currently occupying the band is not scheduled to end until 2021 or 2022 depending on the area.

100. Cogeco encourages ISED to consider favourably Shaw's proposal (par.112) that 50% of the auction proceeds be payable only when the spectrum has been vacated in the service area in question (backed by an irrevocable letter of credit). It would be unfair to require a bidder to pay for spectrum that it cannot use for several years for reasons that are not under its control. Cogeco notes that Shaw assumed

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<sup>8</sup> Opening bid prices would similarly need to be adjusted, of course, if ISED were to licence 600 MHz spectrum on a Tier 3 basis.

that the spectrum would be licensed on a Tier 2 basis. By licensing 600 MHz spectrum on a Tier 4 basis as proposed by Cogeco, the OTA television transition is likely to end earlier in more areas, and therefore ISED is likely to receive the final tranche of the auction proceeds earlier than under Shaw's proposal. The financial risk borne by ISED would, therefore, be considerably less than under Shaw's proposal.

***Question 16: ISED is seeking comments on the proposed renewal process for spectrum licences in the 600 MHz band.***

**101.** Cogeco notes that most commenters agree with ISED's proposed renewal process for spectrum licences in the 600 MHz band. Cogeco agrees as well with the caveat that there must be mechanisms in place to ensure the return of unused spectrum.

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