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15 July 2009

by Email

Mr. Peter Hill
Director – Spectrum Management Operations
Radiocommunications and Broadcasting Regulatory Branch
Industry Canada
300 Slater Street
Ottawa, ON K1A 0C8

Dear Mr. Hill:

**Subject: Reply Comments - Consultation on Revisions to the Framework for
Spectrum Auctions in Canada, Canada Gazette, Part I, 11 April 2009 -
DGRB-001-09**

Please find attached the reply comments of MTS Allstream Inc. in response to Gazette Notice DGRB-001-09 - *Consultation on Revisions to the Framework for Spectrum Auctions in Canada, Canada Gazette, Part 1, 11 April 2009.*

Yours truly,

A handwritten signature in blue ink, appearing to read 'Teresa Griffin-Muir', with a stylized flourish at the end.

for Teresa Griffin-Muir

c.c.: Marlene Floyd, MTS Allstream, 613-688-8770

Attachment

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*Consultation on Revisions to the
Framework for Spectrum Auctions in
Canada*

Canada Gazette, Part I, April 11, 2009

DGRB-001-09

Reply Comments of



15 July 2009

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INTRODUCTION

1. MTS Allstream is pleased to provide these reply comments to the Department in considering revisions to the Framework for Spectrum Auctions in Canada, pursuant to its consultation Gazette Notice DGRB-001-09, published in the Canada Gazette on 11 April 2009.¹
2. MTS Allstream commends the Department for raising many important and key issues that will affect the future of the wireless and mobile industry sector in Canada, a sector that will be a cornerstone of economic growth going forward.
3. As noted in MTS Allstream's 15 June comments to DGRB-001-09 (15 June Comments), the issuance of licenses for new spectrum in bands that are developing globally, in particular in support of widespread access to mobile broadband service, is important to enhance Canada's competitiveness and to bring the benefits of new technologies and services to Canadian consumers.
4. MTS Allstream believes it is important for Canada to move in lock-step with the US, given the integrated nature of the market and the increasing globalization of the industry. Canada is an active participant in spectrum allocation discussions at the global level, many of which are known well in advance of licensing processes. Following the same timeline as the FCC for the important award of advanced wireless services (AWS) spectrum, for example – a result of many years of planning – would have brought the benefits of new technologies, services and competitive choice to Canadians almost two years earlier.
5. A similar delay now appears to be developing with respect to 700 MHz range licensing, increasingly exacerbated by uncertainty surrounding the Canadian digital television transition, as discussed below.

¹ *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*, Canada Gazette Notice No. DGRB-001-09, 11 April 2009.

6. MTS Allstream has two overarching concerns that relate to the present consultation process. In particular:
 - The opportunity for the Department to auction 700 MHz spectrum in a timely fashion – which is critical to the future of the Canadian industry – appears to be increasingly jeopardized by the uncertainties surrounding the digital television transition. The US 700 MHz auction was completed in early 2008, approximately one year before the completion of the transition to terrestrial digital television, which is required to free up the spectrum; and
 - Certain comments filed in the present consultation contain a considerable level of rhetoric, made with no foundation, that calls into question fundamental aspects of the Department’s licensing policies, the intent of which is likely only to delay future auction processes and to bias licensing against anything but the current industry structure.
7. Therefore, prior to providing detailed reply MTS Allstream requests the Department to consider these overarching concerns, as discussed below. In our view, these issues have the potential to “derail” the Department’s good intentions in reviewing the framework for spectrum auctions in Canada.

Impact of uncertainty regarding DTV transition

8. On 6 July 2009, the Canadian Radio-television and Telecommunications Commission (CRTC) announced that broadcast television stations in all Canadian markets with more than 300,000 in population, in Provincial and Territorial capitals, as well as in cities served by multiple originating stations, would need to switch over to digital television².
9. Details of whether and how other areas in Canada will migrate to digital television are to be discussed at an upcoming CRTC hearing, as announced in Broadcasting Notice of

² Broadcasting Regulatory Policy CRTC 2009-406, *Policy determinations resulting from the 27 April 2009 public hearing*, 6 July 2009, (RP CRTC 2009-406), paragraph 77.

Consultation CRTC 2009-411.³ The CRTC also indicated that “The Commission affirms its commitment to ensure that, wherever possible, all Canadians will retain access to their existing local conventional television services. This may be accomplished through OTA transmission or via cable or satellite [broadcasting distribution undertakings] BDUs”.⁴

10. Furthermore, the CRTC is asking “Under what circumstances might some conventional television services not be required to convert to digital OTA transmission?”⁵
11. The impact of this announcement on the availability of the much awaited 700 MHz spectrum for mobile applications could be significant. This could include potential delays in awarding spectrum, the availability of only a patchwork of spectrum licenses or an uneven amount of spectrum, depending on the location, and eventually a negative impact on the widespread availability of innovative mobile broadband services to all Canadians, regardless of where they reside or travel.
12. The 700 MHz band is widely seen around the world as a key component of mobile fourth generation (4G) development supporting mobile broadband services.
13. Among other developed economies, the European Community has recently urged its member countries to accelerate their plans for their digital television transition as a key element supporting economic recovery – in part to free up the spectrum for use by new communications and content services. As expressed by Ms. Viviane Reding, EU Commissioner for the Telecoms and Media:⁶

*“Last but not least, I believe **the present economic crisis requires us to accelerate the ongoing switchover from analogue to digital TV in Europe.** The switchover will free very valuable radio spectrum, currently used by terrestrial analogue TV, for use by new communications and content services. This process has already been completed in Germany,*

³ Broadcasting Notice of Consultation CRTC 2009-411, *Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television*, 5 July 2009 (NC CRTC 2009-411).

⁴ NC CRTC 2009-411, paragraph 42.

⁵ NC CRTC 2009-411, paragraph 45.d).

⁶ V. Reding, EU Commissioner for Telecoms and Media, Speech/09/336, Lisbon Council, Brussels, 9 July 2009.

*Finland, Luxembourg, Sweden, the Netherlands, in Flanders here in Belgium as well as in major areas in Austria. The Commission estimates that the incremental value of this spectrum for wireless broadband across the EU is between €150 and €200 billion. Appropriate European coordination of Member States' work on the digital dividend would increase the potential economic impact of the digital dividend by an additional €50 billion between now and 2015. Every corner of Europe could reap this "digital dividend", without it costing the taxpayer a single cent – if all EU governments act now. I recall that the United States as a whole switched to digital TV last month. **I call therefore on all EU governments: Don't wait until 2012, the EU-wide deadline for the final analogue switch-off, to bring these benefits to your businesses and citizens. Act swiftly now.***

14. Most EU countries see freeing up the airwaves as a digital “dividend” – i.e. a major benefit for their economies – and already plan to have their digital transition completed in 2012. This will free up the spectrum for deployment by mobile carriers. A public consultation was initiated on 10 July 2009 to determine how EU countries should work together to maximize the benefits of this transition.
15. And of course, the US has just recently completed their transition to digital television last month paving the way for use of the spectrum in the 700 MHz band that was awarded by auction some 18 months ago.
16. In sharp contrast to the developments regarding the transition to digital television among Canada's key trading partners, the recent CRTC decisions add to the lack of clarity regarding future spectrum awards for mobile in Canada. The CRTC decisions also stand in contrast to the objectives of the Minister of Industry to develop an action plan to position Canada as a leader in digital media and the digital economy.⁷ An action plan for digital media and for the digital economy needs to address spectrum licensing policies in addition to other areas such as information and communications technology (ICT) policy, broadband infrastructure development, and education and tax initiatives. Otherwise, Canada will not be able to benefit from its own digital “dividend” in a timely fashion and its overall impact may be diluted.

⁷

Remarks of The Honourable Tony Clement, PC, MP, Minister of Industry, at Canada 3.0: Defining Canada's Digital Future, Stratford, Ontario, 8 June 2009.

17. MTS Allstream recommends that the Department provide clarifications regarding the planning for future spectrum awards in Canada and submits that there is urgency to do so in light of the substantial economic benefits to be derived from mobile broadband applications.

Misuse of the Department's process

18. The comments of Rogers, Bell and TELUS include a number of unsubstantiated allegations and unfounded broad criticisms concerning the 2008 Canadian auction of 2 GHz spectrum for AWS. These mainly revolve around alleged overpayments for spectrum won in the auction as well as criticisms of the auction format and in particular use of the set-aside mechanism that reserved certain licenses for entrant bidding.⁸ The two most extreme examples of this are:
 - TELUS claims that the Department collected almost twice as much in bids as it should have, stating at page 1 that: "Canadian carriers overpaid by over \$2 billion due to poor auction design". This represents 47% of the entire auction proceeds.
 - Rogers at paragraph 36 makes the claim that "over one-quarter of the bids made in the auction can be categorized as gaming behaviour".
19. If these statements were to be true, they essentially would call into question the entire process. The potential implications are far-reaching, going to the very heart of the Department's policies and the nature of how spectrum is to be licensed in the future. Despite this, these comments are made with nothing filed to back them up. There is no supporting analysis, no expert reports that could substantiate the points or justify what is being said, nor are there even footnote references to explain them. Allegations need to be substantiated otherwise the Department should not take them seriously.
20. If Rogers, Bell and TELUS have analyses, reports or other information that purport to substantiate their comments, these should have been put on the public record as part of

⁸ Note: References to comments herein are made for example as "Rogers at paragraph 40", meaning paragraph 40 in the comments of Rogers Wireless Inc. as filed 15 June 2009 in response to DGRB-001-09.

the comments phase of the process. TELUS at page 1 states explicitly that they have undertaken “research” that supports their claims. If such reports are indeed available or are filed in the guise of “reply” comments, then MTS Allstream would expect the Department to provide parties with a further opportunity to reply.

Detailed reply comments

Canada should be at the forefront of wireless technologies and developments

21. Rogers at paragraph 2 states that the wireless sector delivers services that have become a part of everyday life for many Canadians and plays a crucial role in the Canadian economy at large, and that enabling a vibrant wireless sector should be an important goal for Industry Canada. At paragraph 3 Rogers states that spectrum is essential to providing wireless services, and that without timely access to appropriate spectrum, Canada will fall behind the rest of the world in delivering the next generation of revolutionary wireless services.
22. Rogers goes on to suggest at paragraph 14, however, that:

The Department’s priority should be to ensure a neutral spectrum allocation process that stresses equality between the participants. Each carrier should be on an equal footing in seeking needed spectrum in configurations that allow for the delivery of the latest generation of data services.
23. It is clearly paradoxical for Rogers to suggest that the Department should work towards “enabling” a vibrant wireless sector and at the same time request processes that “stress equality” amongst participants in spectrum allocations.
24. The only industry participants that are even close to being “equal” are the three national incumbents – Rogers, Bell and TELUS. Rogers’ comments at paragraph 14 imply that the Department’s policies should simply support the *status quo*, and not be forward looking, contrary to Rogers’ assertions at paragraphs 2 and 3.

25. Rather than discussing how the Department could employ its spectrum auction framework to be supportive of moving Canada back to the forefront of the telecom industry and stimulating investment in digital and wireless broadband services, technology and deployment, Rogers, Bell and TELUS focus much of their commentary on unsubstantiated complaints about the new entrant set aside mechanism and the license values seen in the 2008 auction process. MTS Allstream addresses some of these areas in the following sections.
26. Contrary to the national incumbents' view that the *status quo* is fine, it is the ideal time for the Government to have a cohesive forward-looking policy and overall spectrum framework, in particular in the context of a digital policy for Canada. Canada's action plan for the digital economy needs to be all encompassing, including spectrum policy along with other key areas such as ICT policy, broadband infrastructure development and education and tax initiatives.
27. As was discussed in MTS Allstream's 15 June Comments, among other things, supportive spectrum policies would include ensuring Canada has a clear path to the auction of 700 MHz spectrum as well as the broadband radio service (BRS) 2500 MHz spectrum, both of which are global bands with developing ecosystems of new technologies and capabilities.
28. MTS Allstream supports the establishment of a separate Spectrum Management Agency, consistent with the recommendation of the Telecom Policy Review Panel. With a mandate specific to licensing spectrum, this agency would have a natural incentive to move more quickly and to "market" the spectrum. It would also not be prone to licensing delays due to externalities such as elections.
29. The Department also needs to continue to ensure that Canadian spectrum bands are harmonized with those of the US, and importantly should move in lock-step with US licensing to bring benefits such as new technologies, services and competitive choice to Canadians more quickly.

30. As noted by Rogers at paragraph 28, delaying the availability of spectrum shuts operators out of deploying new technologies since, as Rogers sets out in paragraph 51, technologies are often band-specific. MTS Allstream agrees with Rogers at paragraph 28 that spectrum needs to be brought to market as technological standards are becoming firm and similar spectrum is being released worldwide.
31. However, there is also a need to ensure that different players in the industry have equitable access to different types of spectrum, i.e. high versus low frequency ranges. Future auction processes should take into account the overall holdings of parties via different bands.
32. New bands and technologies create the opportunity for new providers. Rogers at paragraph 5 suggests that the next generation of wireless technology, "4G" or fourth generation, "requires" the use of larger blocks of contiguous spectrum. Data transmission over wireless always benefits from accessing wider swaths of spectrum. But on the other hand, newer 4G technologies such as "long term evolution" (LTE) are more flexible in terms of the type of bandwidth they need.
33. LTE in particular "will operate in spectrum allocations of different sizes, including 1.25 MHz, 1.6 MHz, 2.5 MHz, 5 MHz, 10 MHz, 15 MHz and 20 MHz in both the uplink and downlink."⁹ Thus incumbents such as Rogers, Bell and TELUS can add incremental capacity to implement LTE and do not in fact "need" large amounts of new spectrum.
34. The FCC in its 700 MHz auction conducted in 2008, the largest auction ever in the US and widely expected to be the focus of 4G LTE deployment, used a variety of block sizes of 6 MHz, 10 MHz, 12 MHz and 22 MHz.¹⁰

⁹ "Long Term Evolution of the 3GPP radio technology", Third Generation Partnership Project technical paper, 2008.

¹⁰ Auction 73 Fact Sheet, FCC.

***Set aside mechanism served its purpose and was not the source of auction
“gaming”***

35. A number of comments falsely accuse the license set-aside mechanism as the source of alleged “gaming” of the 2008 AWS auction process:
- Bell at paragraph 27 suggests that the parking of points led to an “inefficient” increase in the price of blocks available to incumbents and suggests the solution is not to “impose” set-asides.
 - Telus at page 5 similarly blames the set aside mechanism for promoting “fake bidding” by entrants, increasing prices for incumbents.
 - Rogers blames entrants for “massive gaming” at paragraph 16 and at paragraph 35 suggests that non-set-aside licenses covering major urban areas were “free parking zones” since entrants could rely on being overbid by incumbents. Rogers at paragraph 36 claims that one quarter of the bids in the auction exhibited “gaming behavior”.
36. First, these comments have to be taken with the proverbial “grain of salt”. Bidders in an auction cannot know as a matter of fact what other bidders actually intended to do or why they behaved in a certain way during bidding. Moreover, auction bid values are a function of what bidders perceive they are willing to pay at a particular time and in a particular context. Put another way, hindsight is always 20/20.
37. Patterns of bidding can be analyzed post-auction, but as noted above, neither Rogers, Bell or TELUS have provided any evidence or analysis in their comments to support their broad accusations of gaming or “fake” bidding in the 2008 auction.
38. SaskTel for one has been a participant in many auctions. At page 5 of its comments it presents the opposite view going so far as to say that there is “no evidence” of signaling or coordinated bidding, actions that could be considered as “gaming”, in previous simultaneous multiple round ascending (SMRA) auctions.

39. Bell does not explain why it considers the prices it paid to be “inefficient”. The objective of any bidder in any auction is to pay the least amount possible for the goods purchased. No one is happy to pay more than they expected to pay, but this in and of itself says nothing about the overall efficiency of the auction outcome.
40. If Rogers, Bell and TELUS wish to make a case, it is incumbent on them to put evidence on the public record. This allows parties to engage in a thorough debate on the auction process and the Department can then make necessary corrections to the process that would address inappropriate auction behaviour.

The non-set-aside licenses were not a set-aside for Rogers, Bell and TELUS

41. Second, Rogers, Bell and TELUS have misinterpreted the notion of setting aside licenses as meaning that the non-set-side licenses were set-aside for them.
42. Rogers goes so far, at paragraph 40, to refer to the non-set-aside licenses as “their” spectrum (referring to incumbents). This was of course not the case, by definition, the non-set-aside licenses were not set aside and so they were available for bidding by all parties.
43. TELUS at page 5 reveals a similar bias when it suggests that “fake” bidding is when an entrant bids on a non-set aside license without bidding on the equivalent set-aside license. TELUS does not explain how this behaviour is more “fake” than, for example, Rogers bidding in the same market on both the AWS A and F block licenses.¹¹
44. At the end of the auction it was abundantly clear that Rogers was only interested in the AWS A block having won 57 out of 59 licenses available. Further, in the end Rogers’ AWS F block bidding only served to raise the cost for TELUS or Bell, as TELUS and Bell eventually outbid Rogers to win these licenses in most cases.

¹¹ Note: MTS Allstream in its 15 June Comments at paragraph 9 incorrectly identified that Rogers had acquired 58 of 59 A block licenses. This should have read that Rogers acquired 57 A Block licenses and 2 F Block licenses. Instead of 59 E/F licenses, TELUS actually acquired 58 E/F block licenses and one A block license. Bell, as stated, acquired 51 E/F block licenses and one A block license and other bidders acquired the remaining seven non-set aside licenses.

45. Rogers' bidding on AWS F blocks during the auction may have been "gaming" behaviour or it may simply have been opportunistic bidding in an attempt to get more licenses at lower prices. TELUS has no way of knowing if Rogers really wanted to buy F block licenses, any more than whether entrants really wanted to buy non-set aside licenses. Even though Rogers' bidding behaviour is no less "fake" than entrant bids on non-set aside blocks, TELUS does not accuse it as "fake".
46. TELUS, Rogers and Bell make no objection to each others' bidding behaviour. They are merely upset by entrants actually having bid on licenses that were not part of the set aside.
47. TELUS at page 12 goes so far as to object to anonymous bidding in auctions so it can retain the power to "discipline" auction participants via "retaliatory" bidding. Presumably they would not use this ability to try to discipline Rogers or Bell.
48. The notion that the non-set-aside licenses were "their" licenses means that Rogers, Bell and TELUS entered the auction with a sense of entitlement to the A, E and F AWS block licenses and thus interpreted or misinterpreted entrant bidding on non-set-aside licenses as "parking", "fake" bidding or "gaming".
49. In any case, the incentive to "massively game" an auction or "park" on licenses is very low. The standing high bidders after each round are liable for paying what they have bid if bidding stops at that point. "Fake" bidding in the 2008 auction process could have cost bidders hundreds of millions of dollars. For example:
 - In Round 16 of the 2008 auction, Bragg was standing high bidder on the AWS F license covering Toronto with a bid of \$235 million;
 - In Round 18, Videotron was standing high bidder on the AWS F license covering Montreal at \$174 million; and
 - In Round 23 Globalive was standing high bidder at \$95.5 million for the AWS A license covering Vancouver.

50. The total of these three examples alone exceeds \$500 million in bids that entrants Bragg, Videotron and Globalive would have had to pay if bidding on these licenses had ended – a high risk indeed if these companies were not prepared to actually purchase the licenses.
51. It should also be kept in mind that these entrants could have placed AWS F block and AWS A block bids in an “open” auction, absent a set aside. A set aside mechanism has nothing to do with whether bidding is “fake” or not.
52. For example, Jaguar Wireless participated in the auction by placing bids solely on the AWS A license covering Toronto. Whether or not Jaguar was engaging in “gaming” behaviour could be subject for debate, but Jaguar would have had to pay \$213 million if bidding had stopped in Round 16. The AWS A license for Toronto was ultimately won by Rogers, as Rogers overbid Jaguar and Jaguar did not re-bid later.
53. In an “open” auction, Jaguar or another bidder could have done exactly the same thing. Bidders cannot be prevented from “gaming”, if indeed that was the case here, but measures can be added to the auction mechanism to address this, as discussed later.
54. As noted in MTS Allstream’s comments, the set aside mechanism did what it was supposed to do in that it allowed entrants to purchase 40 MHz of AWS spectrum. Without the set aside, or another mechanism limiting bidding behaviour, this outcome would have been very unlikely. As in past auctions, Rogers, Bell and TELUS clearly indicated their intent to overbid everyone in order to buy virtually all of the spectrum licenses that are made available.
55. Mechanisms other than the set aside could possibly have accomplished the same goal of ensuring that there would be market entry. Alternative mechanisms could have included spectrum aggregation limits (i.e. restricting the amount of MHz any one player can purchase in the auction process), spectrum caps (i.e. limiting the total MHz holdings across comparable bands), or restrictions on how many licenses can be bid (e.g. limiting licensees to one license per market).

56. Any or all of these could form part of the consultation for the rules leading to the next auction. But the key element, as per MTS Allstream's comments, is to ensure that no bidder or group of bidders is able to monopolize bidding in auction processes.

Allegations of overpayment in the 2008 auction process

57. TELUS suggests that analyst expectations before the 2008 auction were for total bidding of \$1 to \$1.5 billion and that the industry subsequently overpaid by \$2 billion. TELUS does not identify which analysts made these predictions, or when they were made nor does it present any justification for a whopping \$2 billion overpayment, or 47% of the entire auction proceeds.
58. Without substantiation or any analysis, TELUS places the blame for "overpayment" on the set aside mechanism. This puts any blame in the wrong place.
59. The opening bid prices and bid increments for Stage 1 of the auction were known almost six months before the auction began and these parameters applied to all licenses in the auction, set-aside and non-set-aside alike.¹²
60. The Department set the opening bids to be almost triple what it had originally proposed. In the 2007 consultation, the opening bid, for example, for 20 MHz nationally was proposed as \$46 million.¹³ This was increased in the final policy framework, following extensive comments and reply comments by many parties including Rogers, Bell and TELUS, to \$117 million.¹⁴ The Department did this to ensure that bid amounts would represent "rates currently paid for spectrum by incumbent operators" and "ensure that Canadians obtain a return for the use of this spectrum comparable to returns currently being generated from similar spectrum resources".¹⁵

¹² *Policy Framework for the Auction for Spectrum Licenses for Advanced Wireless Services and other Spectrum in the 2 GHz Range*, Industry Canada, November 2007 (Policy Framework).

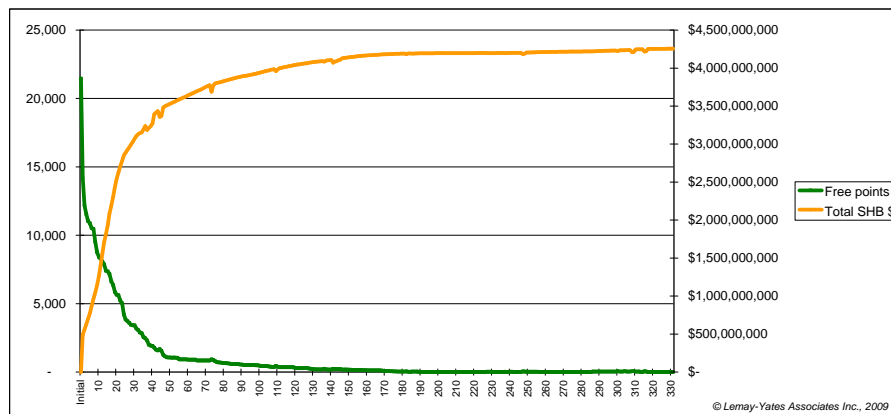
¹³ DGTP-002-07, *Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services*, Table 3, February 2007.

¹⁴ *Policy Framework for the Auction for Spectrum Licenses for Advanced Wireless Services and other Spectrum in the 2 GHz Range*, Industry Canada, November 2007, Annex 1.

¹⁵ *Policy Framework for the Auction for Spectrum Licenses for Advanced Wireless Services and other Spectrum in the 2 GHz Range*, Industry Canada, November 2007, page 6.

61. Further, the Department placed the bid increment at 15% per round for Stage 1 of the auction. This was another factor known well ahead of time and in fact was the same parameter that had been used by the Department in the 2001 Additional PCS auction process.¹⁶
62. Based on a 15% bid increment, the total auction value could have doubled after only six rounds. In fact, the standing high bids (SHBs) passed \$1 billion, double that of the opening round, in Round 8 and doubled again, passing \$2 billion in Round 16.
63. For TELUS' assertion that the industry "overpaid" by \$2 billion to be correct, the auction would have had to end a couple of rounds later. The \$2.3 billion mark (the point at which the auction value would have been \$2 billion less than the actual \$4.3 billion in proceeds) was passed in Round 18. This is illustrated below.

Figure 1 – Total auction proceeds and free points by Round



64. At Round 18, as shown above, the auction was clearly far from being over. The activity level represented by "free points", points not on standing high bids that could be used to re-bid in the following round, was in the range of 50% of total points.

¹⁶ DGRB-011-07, *Licensing Framework for the Auction for Spectrum Licenses for Advanced Wireless Services and Other Spectrum in the 2 GHz Range*, December 2007, Section 6.5 and *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum*, 28 June 2000, Section 7.8

65. The collective view of the active bidders was that the prices could be higher than they were at Round 18, otherwise they would have simply stopped bidding (as TELUS itself could have done at that point). Stage 1 of the auction did not end until Round 34 due to continuing high bidding activity by incumbents and entrants alike.
66. The reason for the rapid increase in license value during Stage 1 of the auction was due to the high opening bid prices and the 15% per round increment, factors set by the auctioneer and not by the bidders. The opening bids and bid increments resulted in high values, not the set aside mechanism or entrant bidding.
67. TELUS is trying to place the blame for high values on entrant bidding in order to make a case against having a set-aside mechanism in the next auction. Accepting TELUS' disingenuous view could create misguided auction policy.
68. It is clearly the motivation of bidders in any auction to pay the least amount possible. The Department, as the auctioneer, has to pay close attention to the parameters of its bidding process and these parameters need to be carefully scrutinized as part of the consultation surrounding the rules going into a specific auction process.
69. Rogers presents a similar view to that of TELUS, except that it claims that incumbents overpaid by only \$250 to \$400 million, in the range of 10% of what was paid in total for the non-set-aside licenses. Rogers seems to have overlooked the fact it was the collectivity of all the bidding that caused the prices to increase, not just that of entrants. In fact, for licenses won by incumbents, bid price increases in the range of \$250 to \$400 million can be accounted for by cases of incumbents overbidding each other with no involvement by entrants. This is illustrated in the table below.

Table 1 – Incumbent bidding to win selected non-set aside licenses

Value rank	License	Winning incumbent bid			Highest entrant bidding value			Incumbent-only bidding to win	
		Round	Incumbent	Value (\$M)	Last round	Entrant	Value (\$M)	# bids	Incumbent bidders
1	3-25f Toronto	19	Bell Mobility	\$ 314	16	509 - Bragg	\$ 235	5	Rogers, Bell, TELUS
3	3-13f Montréal	21	Telus	\$ 234	18	506 - Videotron	\$ 174	3	Rogers, TELUS
4	3-13a Montréal	22	Rogers	\$ 192	18	506 - Videotron	\$ 143	3	Rogers, TELUS
10	3-47f Calgary	45	Telus	\$ 57	36	501 - Shaw	\$ 40	6	Rogers, TELUS
11	3-47a Calgary	46	Rogers	\$ 54	29	501 - Shaw	\$ 31	7	Rogers, TELUS
13	3-15f Ottawa/Outaouais	53	Telus	\$ 45	35	506 - Videotron	\$ 38	4	Rogers, TELUS
16	3-39a Winnipeg	86	Rogers	\$ 35	82	503 - MTS	\$ 32	2	Rogers, TELUS
19	3-09a Québec	128	Rogers	\$ 35	102	513 - Globalive	\$ 21	13	Rogers, Bell, TELUS
22	3-43f Saskatoon	316	Rogers	\$ 32	132	521 - Sasktel	\$ 21	9	Rogers, TELUS
24	3-12a Trois-Rivières	100	Rogers	\$ 21	37	513 - Globalive	\$ 10	18	Rogers, Bell, TELUS
28	3-41f Regina	315	Telus	\$ 18	141	521 - Sasktel	\$ 11	11	Rogers, TELUS
				Incumbent value	\$ 1,037 million	Highest entrant value		\$ 757 million	
				Increase due to incumbents overbidding each other				\$ 280 million	

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70. In total the results for the licenses, shown in the above table, account for \$280 million of the price increases in the final rounds of bidding for non-set aside licenses after entrants stopped bidding on them. For example:

- For the Toronto AWS F license, entrant bidding ended in Round 16. Following that Rogers, Bell and TELUS placed five more bids on this license, increasing the price by \$79 million until its ultimate sale in Round 19;
- In the case of the AWS A license for Trois-Rivieres, Globalive stopped bidding at Round 37. Following that Rogers, Bell and TELUS placed 18 more bids more than doubling the final sales price which was reached in Round 100; and
- MTS Allstream bid on the Winnipeg AWS A license and was standing high bidder at Round 82. Following that Rogers and TELUS each placed bids increasing the final sales price by \$3 million.

71. Clearly entrant bidding contributed to the price increases up until the point entrants stopped bidding, but it was the incumbents who continued to bid after the entrants had stopped. Entrants dropped out as bid prices increased beyond certain levels, but as their bidding illustrates, Rogers, Bell and TELUS continued bidding until they won the non-set aside licenses, giving no indication that they had reached a maximum bid amount.¹⁷

¹⁷ Entrants won only 7 non-set aside AWS licenses, all AWS E block, out of 177 included in the auction covering the AWS A, E and F blocks.

72. Table 1 provides a clear indication of why the set aside was needed in the first place. Rogers, Bell and TELUS clearly had far greater amounts to spend than entrants did, including enough to support bidding against one another. If not for the set aside, Rogers, Bell and TELUS would likely have bought all of that spectrum as well.
73. Contrary to TELUS' assertion regarding their expectation of auction proceeds, the ultimate price in an auction cannot be predetermined. There is no evidence or justification for suggesting that the industry overpaid by \$2 billion. And Rogers' allegation of incumbents overpaying by 10% can be accounted for by incumbents bidding against each other.
74. Three of the four most expensive licenses in the auction were sold in Stage 1 when the bid increment was still at 15%. The high opening bid price and the 15% increment were the source of the very rapid increases in bid prices early in the auction, not the set aside mechanism.
75. Many factors play into the auction outcome. Whether bidders have overpaid or not is highly subjective. For example, Rogers at paragraph 19 says UK auction set aside was a subsidy to entrants, while TELUS at page 3 says UK price was excessively high and led to exit from market.
76. This same contradiction with respect to the Canadian 2008 AWS auction is exhibited by TELUS at page 19 where it suggests that if government intervention is warranted (to support entry) then "benefits awarded to entrants" could be provided via "direct subsidy" (presumably instead of having a set aside in an auction).
77. Set aside licenses were indeed sold at lower prices per MHz than non-set aside AWS licenses. TELUS' suggestion does not provide a "solution" to this. If a direct subsidy were to be awarded to entrants, this would simply distort bid values since entrants would be incented to factor the subsidy into their bidding.

A debate about auction formats can only serve to delay the next auction

78. The vast majority of comments on auction format, including those of MTS Allstream, were supportive of the SMRA approach to running spectrum auctions in Canada. As MTS Allstream noted in its 15 June Comments, the SMRA auction, run with the appropriate mechanisms to limit monopolization and hoarding and with some procedural changes, as discussed in the next sections, should be the “default” process used in Canada for spectrum auctions.
79. Combinatorial bidding or other more complex mechanisms would not have changed the outcome, for example, in the 2008 auction process.
80. Although MTS Allstream does not see any impetus for considering other auction formats, MTS Allstream agrees with TELUS at page 11 that any move away from the SMRA format for auctions should be subject to a separate consultation.
81. It is only Rogers that contends at paragraph 31, that SMRA auctions are “flawed” due to alleged geographic and capacity aggregation risks which they consider “severe” for incumbents.
82. This comment by Rogers is belied by Rogers’ own bidding experience. Neither this “flaw” nor the “severe” risk prevented Rogers from aggregating 57 of the 59 AWS A Block licenses available in the 2008 auction. Further, these flaws and severe risks did not plague Rogers as a bidder in the 2001 auction of Additional PCS spectrum, held using a similar SMRA format.
83. In the 2001 auction Rogers was the only bidder to acquire licenses for the PCS C1 block. Acquisition of this block granted Rogers quasi-national coverage¹⁸ contiguous with the PCS F block previously awarded to Rogers in the comparative selection process for PCS licenses in 1995.¹⁹ In fact, the 2001 and 2008 auction processes, run using the

¹⁸ Rogers acquired all of the PCS C1 licenses (labeled as “A” in the auction) except for two that remained unsold at the end of the auction (Northern Quebec and Territories).

¹⁹ Rogers later went on to double its national capacity by acquiring the PCS A block when it acquired Microcell in 2004. Rogers also has national coverage with the Cellular A block in 850 MHz.

SMRA format, permitted Rogers to improve its geographic and capacity aggregation nationally.

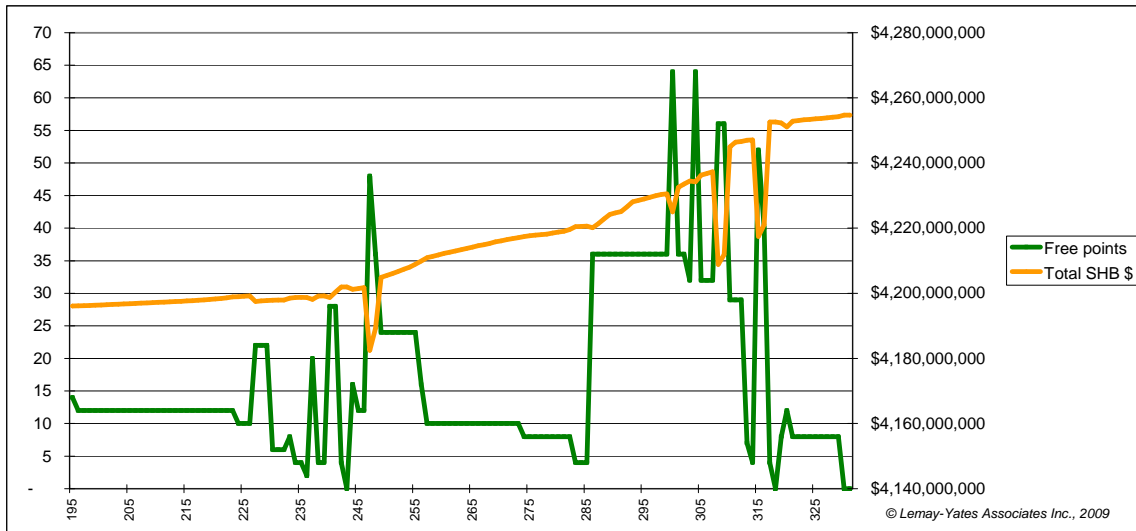
84. Rogers at paragraph 39 goes on to identify that the use of both Tier 2 and Tier 3 geographies in the 2008 auction made it “harder for bidders both to aggregate licenses and to switch between lots”, and that it was “impossible to switch fluidly back and forth between groups of Tier 2 and Tier 3 lots”.
85. This was another non-issue for Rogers since the non-set-aside AWS licenses were only available using Tier 3 geographic areas. Even if Rogers had wanted to acquire the Tier 2 G block or I block licenses, they are neither comparable spectrum to, nor are they substitutable for, AWS.
86. In the 2008 AWS auction process, to which its bidding clearly attests, Rogers was only interested in the AWS A block licenses and had no need to switch back and forth between tiers or lots, fluidly or otherwise. It would seem that Rogers is only raising geographic non-issues and alleged frequency contiguity problems in order to stir up a debate around things that have not been problematic for them in past auctions or other licensing processes.
87. At paragraph 57, Rogers urges the Department to “study” other auction formats closely. Rather than studying auction formats, MTS Allstream’s view is that the Department’s priority should be to ensure that there is a clear path to the release of spectrum to ensure that it is licensed in a timely fashion, ideally in lock-step with the US.
88. This is particularly the case for key mobile bands that are established globally and have been subject to years of development. For example, the Department should put in place a process to ensure the timely release of the important 700 MHz spectrum, which is dependent on completion of the digital television transition. The US 700 MHz auction was held some 18 months ago and there is not yet even a plan to auction this spectrum in Canada.

Industry Canada needs a better stopping rule to help address auction duration

89. TELUS at page 5 states that “The set-aside provision also provided entrants with a possible strategic advantage because it allowed them to bid on open spectrum to maintain eligibility”. TELUS goes on to affirm that this among other things “likely explains the record number of rounds it took to complete this auction.” TELUS suggests this alleged activity by entrants is a result of “flawed design” of the auction. Bell expresses a similar view at paragraph 28 stating that “parking” of points by entrants contributed to the length of the auction.
90. MTS Allstream agrees that there may have been flaws in some of the details of the 2008 AWS auction process, but disagrees with TELUS and Bell as to the source of the issue. The problem was not entrant bidding tactics and “point parking”, but the Industry Canada stopping rule.
91. The Industry Canada stopping rule (i.e. the way that the end of the auction is determined) is set up in a way that is prone to gaming and can result in the auction lasting a very long time.
92. In the Industry Canada SMRA auctions conducted to date, the auction proceeds in three stages. In the third and final stage, bidders are required to keep all of their bidding points active (i.e. a bidder’s points have to be on standing high bids or re-bid on licenses in the following round, otherwise they disappear). The auction can only end once there is a round with exactly 0% activity. In other words, any bid, even one with a minute bidding value, will keep the auction alive.
93. One way for bidders to extend the length of the auction is to continue “playing” points in order to keep a minimal level of bidding activity. Bidders can do this by overbidding themselves (jump bidding) or withdrawing high bids from small licenses with the risk of incurring penalties.

94. The ending rounds of the 2008 auction are shown below – showing “free points” and total standing high bids.²⁰

Figure 2 – Bidding activity during the final rounds of the 2008 auction



95. Although there were at least six rounds where the number of points available or “free” for bidding was very low and close to zero, and in fact, two rounds where there were exactly zero points available and the auction should have ended, the auction was “re-started” by bidding activity on small licenses.
96. Further, during Stage 3 of the auction there were 40 bids placed which were jump bids on very small licenses accounting for <0.1% of the total auction value and more than 30 withdrawals of standing high bids.²¹

²⁰
²¹

Stage 3 of the auction, during which bidders are required to be 100% active began in Round 201. Per analysis conducted for MTS Allstream by Lemay-Yates Associates Inc. The jump bids and withdrawals during Stage 3 of the 2008 auction were: at Round 227 Globalive withdrew from E. NB D and Huntsville A, at Round 233 Rogers withdrew from NS and PEI I, at Round 236 Rich Telecom withdrew from Dawson Creek and Rogers jump bid N. ON I, at Round 237 Rogers withdrew from Nfld G and Saskatchewan I, at Round 238 Globalive jump bid on Cornwall A, at Round 240 TELUS withdrew from NS and PEI I and N. ON G, at Round 241 Rogers jump bid Upper Outaouais, Pembroke, Lethbridge, Okanagan and Thompson/Cariboo F, at Round 243: Rogers jump bid N. ON I, at Round 244 Rogers withdrew from New Brunswick G, at Round 245 Rogers jump bid N. ON I, at Round 247 Bell withdrew from N. QC I and NWT G and SaskTel withdrew from S. NB D, W. NB D, Regina A and Okanagan A, at Rounds 252 and 254 Globalive jump bid Cobourg D, at Round 255 Globalive jump bid Brockville and Cobourg D at Round 256 Globalive jump bid Brockville D, at Rounds 257 and 258 Globalive jump bid on Cobourg D, at Rounds 259 and 260 Globalive jump bid Pembroke and Cobourg D, at Round 269 Globalive jump bids Cornwall, Brockville and Cobourg D, at Round

97. Jump bids and withdrawals increase bidding activity and thus prevent the auction from closing. While entrants contributed to jump bid and withdrawal activity, they were aided and abetted by the incumbents, as illustrated below for jump bids during Stage 3:

Table 2 – Jump bidding during Stage 3 of the 2008 auction

		No. jump bids *	
Incumbents	Bell	4	40%
	Rogers	10	
	Telus	2	
Entrants	Bragg	1	60%
	Globalive	23	
Total		40	

* During Stage 3 of the 2008 auction

© Lemay-Yates Associates Inc., 2009

98. Rogers, Bell and TELUS all engaged in jump bidding, the effect of which made no material change to either the auction proceeds or the outcome of licensing, rather the only impact was to extend the end of the auction.
99. Bell at paragraph 28 states that “hundreds of millions of dollars were spent as a result of the extended length” of the auction. This was clearly not the case as can be seen in Figure 1. All of the bidding in the 130 rounds of Stage 3 of the auction only increased the total standing high bids by \$58 million or less than 1.4% of the ultimate auction proceeds. The extended length of the auction was of course an administrative burden for the participants and represented an unnecessary delay in the entire process.
100. For future auction processes, the Department could consider improving its auction stopping rule and thereby leaving the Department greater latitude in managing the end of the auction by excluding jump bidding as “active” bidding and allowing the auction to

271 Globalive jump bid Cobourg D, at Round 277 Bell jump bid Cobourg F, at Round 280 TELUS jump bids Pembroke and Moose Jaw F, at Round 285 Rogers jump bid N. ON I, at Round 286 Rogers withdrew from E. ON I and N. ON I, at Round 289 Rogers jump bids on London/Woodstock/St. Thomas A, at Round 300 – Bragg withdrew from New Brunswick C, S. NB A and W. NB E, at Round 302 and 303 Globalive jump bid Territories D, at Round 304: Globalive withdrew from New Brunswick B, at Rounds 306 and 307: Bell jump bid Western New Brunswick F, at Round 308: SaskTel withdrew from Saskatoon A, at Round 309: Globalive jump bid Pembroke, Cornwall, Brockville and Cobourg E, at Round 310: TELUS withdrew Territories E, at Round 315 Bell withdrew from Territories G, Globalive withdraws from Nfld I, TELUS withdraws from NS and PEI I, N. ON G and Saskatoon A, at Round 318 Rogers uses a proactive waiver, at Round 319 Rogers withdrew from New Brunswick I, at Round 320 Telus withdrew from Gaspésie E and Globalive jump bid

end even if there are some “free” points that are not being bid and the Stage 3 activity level was less than 100%.²² These and other aspects of how the auction works in detail should be subject to public review in a consultation leading to the next auction.

Auction deposits and top-ups

101. In the 2008 auction, incumbents almost universally outbid entrants on the non-set-aside licenses. Despite increasing the bid prices, often by outbidding each other in order to win virtually all of the non-set-aside licenses, Rogers, Bell and TELUS now try to place the blame for high prices on entrant bidding.
102. Rogers, Bell and TELUS rush to the conclusion that the solution to allegedly overpaying for licenses would have been to run the auction without the set aside. However, without the set-aside, the same outcome would no doubt have occurred and Rogers, Bell and TELUS would have outbid all of the entrants in order to buy all the licenses.
103. Clearly no auction mechanism is perfect and the Department needs to pay careful attention to the details of how the auction works, including, for example, the opening bid values and bid increments. The solution is not to throw out the set-aside “baby” with the auction “bathwater”.
104. Further, for future auction processes the Department should consider bidder prequalification and, in particular, the nature of the deposit that is required in order to participate. In past auctions, the dollar amount put on deposit in order to qualify to bid did not necessarily bear any relationship to the amounts bid during the auction itself, nor the winnings of an individual bidder at the end of the auction.

Territories D, at Round 321 Bell withdrew from N. QC G, at Round 327 Bragg jump bid Windsor/Leamington E and at Round 328 Bell jump bid Windsor/Leamington E.

²² In the US, the FCC auctions have typically proceeded with only two stages – where the second and final stage bidding requirement is for 95% of points to be active. The FCC can then end the auction even if not all of the points are active. The FCC excludes jump bidding from the assessment of how many points are “active” and may also specify that the auction will end after a set number of rounds. See for example the rules surrounding the 2006 AWS auction – FCC Public Notice DA 06-238, 31 January 2006, page 8.

105. For example, as discussed above, Jaguar Wireless in the 2008 AWS auction bid up to Round 16 on one license, to the point where it was standing high bidder and potentially liable for a \$213 million payment. Jaguar had only put \$10 million on deposit.
106. Whether Jaguar Wireless actually had \$213 million to spend is a matter for conjecture as Jaguar was overbid by Rogers and ended up paying nothing at all, but its behaviour may have been different if it had been required to top-up its deposit to reflect its actual bidding.
107. If bidders indeed have substantial funds to pay for licenses, then there is no reason why their deposits should not be more reflective of the amount they are bidding, and thereby provide a disincentive for bidders to “game” the auction and “park” points.
108. While the Department has access to a mechanism to request additional deposits and intervene in the auction²³, to MTS Allstream’s knowledge the Department has never used it. As UK’s Ofcom proposes to do, this mechanism should be made automatic, requiring bidders to raise deposits in order to be “in line with their highest bid up to that point in the auction” as a “way of managing the credit risks imposed by individual bidders on the efficiency of the auction process.”²⁴

Areas of agreement in comments

Need clarity in future spectrum releases and continue to align with the US

109. MTS Allstream noted in its 15 June Comments that in addition to ensuring that spectrum is licensed in a timely fashion, ideally in lock-step with the US, the Department should endeavor to ensure that there is a clear path to release of spectrum. This is particularly the case for key mobile bands that are established globally and have been subject to years of development, such as the 700 MHz spectrum, which is dependent on the digital

²³ DGRB-011-07, *Licensing Framework for the Auction for Spectrum Licenses for Advanced Wireless Services and Other Spectrum in the 2 GHz Range*, December 2007, Section 6.5 and *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum*, 28 June 2000, Section 5.4.1.

²⁴ “Digital Dividend Review: geographic interleaved awards 470 - 550 MHz and 630 - 790 MHz – Consultation on detailed award design”, Ofcom, 12 June 2008, Paragraph 7.58.

television transition, and for which there is not yet any plan for future licensing. The 700 MHz auction took place in the US some 18 months ago.

110. A similar point is also made in Rogers comments at paragraph 27, where Rogers states that a “comprehensive and reliable five-year schedule” is needed including 700 MHz, 2.5 GHz and other spectrum.

An auction design using substitutable blocks is not appropriate

111. As MTS Allstream noted in its 5 June Comments, that “while certain attributes of substitutable blocks may be attractive, it is not clear that they would have resulted in any different outcome in the 2008 auction in Canada.”
112. As Bell noted in its comments at paragraph 100, block design should allow for the integration of national and regional systems. In the 2008 auction, the Department did just that by using the AWS band plan that had been established by the FCC in the US, thus the Canadian system will remain fully integrated with that of the US.
113. As TELUS pointed out in its comments at page 10, bidders cannot be allowed to define their own band plan, given the importance of harmonizing with the US. MTS Allstream agrees with this.
114. The only commenter that appears somewhat supportive of using substitutable blocks to supposedly allow bidders to reduce exposure to fragmented spectrum and non-contiguous blocks is Rogers.
115. Rogers does not present any evidence surrounding the point and, in fact, of all the players in Canada, Rogers itself should be the least concerned about it. Rogers has national spectrum footprints in the 850 MHz cellular band (national B block licensee), the 1900 MHz PCS band (national A and F block licenses as well as quasi-national C1 and other PCS licenses) and in the AWS band (57 of 59 A block licenses and two F block licenses).

Longer license terms are necessary

116. MTS Allstream continues to believe, as set out in our comments, that longer license terms are necessary given the high investments required to be in the wireless business. Longer license terms also reduce uncertainty surrounding possible changes to license conditions on renewal.
117. There appears to be almost universal agreement on this point. Rogers at paragraph 64 suggests 15 years, Bell at paragraphs 10, 59, and 68 states that license terms should be indefinite or at least 20-years, and TELUS at page 14 identifies that renewed licenses should have terms of 15 to 20 years. Similar statements are made by Bragg and SaskTel.

There should be a high expectation for renewal of licenses

118. Per MTS Allstream's 15 June Comments in the consultation on cellular and PCS license renewal, spectrum licenses should come with a high expectation of renewal for subsequent terms.²⁵
119. This same view is echoed by Bell at paragraphs 10, 59 and 68, by Rogers at paragraphs 66 to 68 and by TELUS at page 13. MTS Allstream agrees that changes to license conditions for renewed licenses should only be made following a public consultation, as suggested by Bell at paragraph 76 and TELUS at page 15.

Renewal fees, if warranted, could reflect direct administrative costs

120. Per MTS Allstream's comments, the Department could consider instituting a standard cost-based fee for spectrum administration, to recover the direct costs of spectrum management. For existing licenses, this could be put in place for renewal terms. This

²⁵

MTS Allstream 29 May 2009 comments and 30 June 2009 Reply Comments to Gazette Notice DGRB-002-09, *Consultation on the Renewal of Cellular and Personal Cellular Service (PCS) Spectrum Licenses*.

would be consistent with the Spectrum Policy Framework objective to “minimize administrative burden”.²⁶

121. In addition, trying to calibrate fees to auction results is problematic and creates uncertainty, as the Department itself has set out, as cited by Bell at paragraph 84:

The natural day-to-day variations of the marketplace for all resources — be they minerals, timber or spectrum — show the difficulty in trying to assign a valuation derived from a past market transaction to today's or tomorrow's situation. The Department recognizes that re-calibration of incumbents' fees could create significant uncertainty for licensees who acquired their licences in good faith under the fee regime in existence at that time. Uncertainty created by re-calibration would damage established businesses that had made plans and secured financing under the rules of the day. These uncertainties could have a major impact on the availability of financing, investment in new technologies, and the provision of new services.

122. Rogers at paragraph 70 states that fees for renewed licenses could be direct administrative costs. TELUS at page 17 suggests that the PCS fees established in 2003 are too high and that rather than developing a market-based formula for fees, the Department should work with industry to establish a methodology to set fees at a fair and reasonable level. Bell at paragraphs 16 and 92 state that renewal fees should be based on cost-recovery and determined before the auction. Other parties, including the CWTA and Bragg, also support that fees could be set at cost recovery levels.

The R&D condition of license is no longer necessary

123. MTS Allstream continues to believe it is no longer necessary to include the research and development (R&D) condition of license, as per MTS Allstream's comments in the consultation on cellular and PCS license renewal.²⁷
124. There appears to be universal agreement on this point, including Bell at paragraphs 17 and 95, Rogers at paragraph 71, TELUS at page 18 as well as others including SaskTel,

²⁶ DGTP-001-07, *Spectrum Policy Framework for Canada*, Enabling Guideline (f), June 2007.
²⁷ DGTP-001-07, *Spectrum Policy Framework for Canada* Enabling Guideline (f), June 2007.

CWTA, Bragg, Telesat, SkyTerra, and the Canadian Independent Telephone Company
Task Force.

Conclusion

125. There are a number of fundamental issues that have been raised by parties, in some cases with no substantiation. MTS Allstream therefore reserves the right to request additional opportunity to reply if other parties file new evidence supporting their unsubstantiated comments in the guise of reply.

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