

Canada Gazette Notice No. DGRB-012-07

**Update on Consultation for the AWS Policy Framework and
deadline Extension for the Consultation on Proposed
Conditions of Licence (DGRB-010-07)**

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Clarification Questions
of
Bell Mobility Inc.

22 January 2008

Specific Detailed Clarification Questions related to: Notice No. DGTP-007-07: Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range, 28 November 28 2007

Spectrum Set-aside

1. **Q.** Please clarify why the Department chose to establish the new entrant set-aside at 40 MHz rather than 30 MHz which, in the circumstances, would be a more spectrally rational, reasonable and efficient level for Canada?

2. **Q.** Please clarify how it is appropriate that set-aside blocks B (20 MHz) and C (10 MHz), which will initially have no customers and no actual wireless operations at the close of the auction, are licensed on a Tier 2 basis while incumbents, who going into the auction have millions of customers and who operate on a national basis, are restricted to Tier 3 licences?

3. **Q.** Given the absence of a spectrum cap, is it correct that all the available core AWS spectrum in both the AWS incumbent category (i.e. 50 MHz) and new entrant category (i.e. 40 MHz) could be acquired by a single incumbent bidder or new entrant bidder?

4. At page 5 of its November 28 Policy Framework the Department states that:

"To be eligible for the set-aside, a new entrant is defined as:

An entity, including affiliates and associated entities, which holds less than 10 percent of the national wireless market based on revenue."

5. **Q.** Based on the above definition does this mean that MTS Mobility, which holds 45 MHz of cellular and PCS spectrum within Manitoba along with a 61% market share qualifies as a "new entrant" within Manitoba?

6. **Q.** If the answer to (5) above is "yes", please clarify how this is in the best interests of Manitobans vis-à-vis the fostering of a more competitive wireless market in that Province?

7. **Q.** Please clarify that those incumbents who have no spectrum or share of the wireless market within Manitoba and Saskatchewan are nonetheless not permitted to bid on new entrant spectrum within Manitoba or Saskatchewan?

8. At page 5 of its November 28 Policy Framework the Department states that:

"An associated entity is defined as:

Any entities who enter into any partnerships, joint ventures, agreements (including agreements in principle) to merge, consortia or any arrangements, agreements or understandings of any kind, either explicit or implicit, relating to the acquisition of the licences being auctioned or relating to the post-auction market structure, will be treated as Associated Entities. The existence of such agreements, arrangements or understandings must be disclosed in writing to the department at the time of application and this information will be disclosed to other bidders and to the public. Changes made after the application deadline which create an Association with another applicant are not permitted, and any applicant who has formed such an Association will be disqualified from participating in the auction." (Emphasis added)

9. Q. Will it be possible for potential regional new entrant licensees resulting from the auction to subsequently combine together to create a national service offering? (Ref: page 8 of its November 28 Policy Framework "***This definition*** [of a national new entrant] ***includes a group of new entrants collectively holding all Tier 2 or Tier 3 service areas, or a combination of Tier 2 and Tier 3 service areas, covering all of Canada in the AWS or PCS bands and cooperating to provide a national service.***" Emphasis added).

10. If the answer to question 9 is "yes", how does the Department intend to ensure that the potential formation of such associated entities are made known to other bidders prior to the start of the auction?

11. At page 6 of its November 28 Policy Framework the Department states that:

"Should an entity qualify as a new entrant at the time of licensing, this designation would remain valid throughout the term of its licence even if the entity is successful in growing its market share beyond 10 percent of the national market share based on revenue."

12. Q. Please clarify that if a new entrant resulting from the 2008 AWS auction were to subsequently grow its market share in the Canadian wireless market beyond 10% through merger or corporate acquisition or similar means within the initial 10 year term, that such entity would continue to be designated as a "new entrant"?

Opening Bids

13. At page 6 of its November 28 Policy Framework the Department states that:

"The opening bid for each service area and for both the set-aside spectrum and non-set-aside spectrum blocks will be equivalent to the lower of a) the current Personal Communications Services/cellular licence fee or b) the 2001 PCS auction results. This amount represents rates currently paid for spectrum by incumbent operators. Bids at or above this amount ensure that Canadians obtain a return for the use of this spectrum comparable to returns currently being generated from similar spectrum resources. . . . The opening bids are provided in the tables found in Annex 1."

14. Q. We have reviewed a) the current Personal Communications Services/cellular licence fee paid by incumbents and b) the 2001 PCS auction results and in neither case can we associate those rates with the opening bids found in Annex 1. Please clarify how the Department established such a relationship as stated above.

Geographic Tiers

15. At page 7 of its November 28 Policy Framework the Department states that:

"For the AWS spectrum, the department had proposed a range of Tier 2, 3 and 4 service areas. Comments received indicated that tier size should reflect the potential use of the spectrum across the country and the costs of providing mobile services. Licensing large geographic areas may lead to rural/urban imbalances. On the other hand, licensing small areas may fragment the geographic markets such that efficient use of mobile spectrum could be compromised. For example, a bidder who succeeds in winning an entire region except for the largest urban centre may not have a viable business opportunity. Taking into account these issues, the department is adopting the use of Tier 2 and 3 service areas as described in Figure 2."

16. In its *Consultation on the Proposed Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Band*, December 1999 (leading to the 2001 PCS auction) the Department noted (at section 4.3.2) that:

"Given the likelihood that mobile services will be offered with this new [PCS] spectrum, reasonably large service areas would appear warranted. Therefore, should regional spectrum blocks be offered, the Department proposes that Tier 2 service areas, as defined in the document entitled *Service Areas for Competitive Licensing*, be used."

17. In its 2000 *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Band*, June 2000 the Department subsequently decided to utilize Tier 2 service areas for the 2001 PCS Auction noting that:

"Supporters of regional spectrum blocks suggested that these would provide the greatest degree of flexibility for those requiring spectrum for expansion or to meet capacity constraints in certain areas. Regional spectrum blocks can also be aggregated by those wishing to provide national services. Therefore, the Department will make available for licensing the PCS spectrum blocks on a regional basis using the Department's Tier 2 geographic service areas."

18. Q. Given all of the above, please clarify how the Department would reconcile the fact that the 2007 AWS decision restricts incumbent licensees to Tier 3 service areas which are not as spectrally efficient?

Roaming

19. At page 8 of its November 28 Policy Framework the Department states that:

"The department agrees that mandated roaming is important to promote competition and supports the orderly development of radiocommunication in light of the policy objectives of the Telecommunications Act. Recognizing that one or more regionally based new entrants may emerge from this auction, the department is mandating roaming outside of licensees' territories for at least the 10-year term of AWS licences. Roaming is to be made available at commercial rates. As well, to facilitate new entry, incumbents will be required to make roaming available to new entrants within their licensed service areas, also at commercial rates, for a period of 5 years while the licensee builds out its network. In the event that a national new entrant is successful in the auction, roaming within its licensed areas may be extended for an additional 5 years if the spectrum is used in accordance with the roll-out targets specified in Annex 2."

20. Q. Please clarify what the Department means by "at least" in the quote, "***the department is mandating roaming outside of licensees' territories for at least the 10-year term of AWS licences.***"?

21. At page 8 of its November 28 Policy Framework the Department states that:

"In the event that a national new entrant is successful in the auction, roaming within its licensed areas may be extended for an additional 5 years if the spectrum is used in accordance with the roll-out targets specified in Annex 2.

A national new entrant is defined as a new entrant that has acquired licences for all Tier 2 or Tier 3 service areas, or a combination of Tier 2 and Tier 3 service areas, covering all of Canada in the AWS or PCS bands. This

definition includes a group of new entrants collectively holding all Tier 2 or Tier 3 service areas, or a combination of Tier 2 and Tier 3 service areas, covering all of Canada in the AWS or PCS bands and cooperating to provide a national service. (Emphasis added)

22. Q. Please clarify how the Department will treat a request, "**from a group of new entrants**" for an additional 5 year extension to the in-territory roaming mandate, in the event that one or more of the licensees in the group has not met the roll-out targets specified in Annex 4.

23. Q. Please clarify that "**a group of new entrants**" which does not hold licences "**covering all of Canada in the AWS or PCS bands**" does not qualify as a "national new entrant".

24. At page 8 of its November 28 Policy Framework the Department states that:

"Specifically, Industry Canada will be requiring that, where technically feasible, cellular, PCS and AWS licensees offer automatic digital roaming on their networks:

- to all cellular, PCS and AWS licensees outside of their licensed area, for at least the 10-year term of AWS licences;

- to all new entrants, in their licensed areas for a period of 5 years commencing with the date of issuance of their licence;

... "

25. Q. Please specifically clarify whose "**licensed area**" (i.e. incumbents, new entrants, all licensees) the Department is referring to in the phrase "**to all cellular, PCS and AWS licensees outside of their licensed area, for at least the 10-year term of AWS licences;**".

26. Q. Since it is the Department's intention that mandated roaming will be provided "**where technically feasible**", please clarify that by the phrase "**where technically feasible**", the Department's intention is that mandated roaming is to be provided between technically compatible incumbent carriers (i.e. CDMA – CDMA) but not between technically incompatible incumbent carriers (i.e. CDMA – GSM).

27. Q. Please clarify that roaming means access to an incumbent's network strictly for the provision of voice and non-broadband data (e.g. does include SMS) connectivity and does not

include access to an incumbent's underlying services (e.g. features, voice mail, access to incumbent's customer service, etc.).

28. **Q.** Please clarify the requirement for roaming does not include providing access to new entrants within their built area for the purposes of capacity off-load or quality enhancement.

29. **Q.** Please clarify that, pursuant to the Department's AWS decision, incumbent carriers are permitted to roam on the networks of regional and/or national new entrants that may result from the Department's AWS auction, e.g. in rural areas covered by a new entrant but not by incumbent licensees.

30. **Q.** The FCC's August 2007 roaming decision does not require licensees to provide in-territory roaming. For the purposes of the FCC's decision, in-territory is defined as any area where the requesting licensee has spectrum licences or spectrum usage rights. Please confirm that, consistent with the FCC's August 2007 mandated roaming decision, subsequent to the initial AWS new entrant five year build-out period, incumbent licensees will not be required to provide roaming to new entrant licensees in any area where the new entrant AWS licensee has spectrum licences or has spectrum usage rights (e.g. leased spectrum or is a member of group designated to be a national new entrant).

Antenna Tower and Site Sharing

31. At page 9 of its November 28 Policy Framework the Department states that:

"Industry Canada has concluded that it is in accordance with the orderly development and efficient operation of radiocommunication in Canada to mandate antenna tower and site sharing and to prohibit exclusive site arrangements for all licensees including broadcasting certificate holders."

32. **Q.** Please specifically clarify who may demand sharing from licensees, both incumbent and/or new entrant, i.e. AWS licensees, any and all licensees, operators of unlicensed spectrum, utilities, governments, SILEC wireless licensees, amateur radio operators, fixed wireless licensees, etc.?

33. **Q.** Please confirm that Industry Canada's "***policy to mandate antenna tower and site sharing and to prohibit exclusive site arrangements for all licensees***" will also apply to all federal (excepting instances involving legitimate national security concerns), provincial,

municipal and utility (e.g. hydro, water works, etc.) antenna towers and sites that are subject to Industry Canada's jurisdiction regarding the approval of antenna sites, as well as to wireless licensees and broadcasters.

34. **Q.** As the Department is aware, many Canadian municipal tower siting protocols reflect a preference for multiple, but smaller towers, as an alternative to a large tower collocating several licensees. Please clarify whether or not, as a result of the Department's mandated tower sharing policy, the Department will be overriding those protocols.

35. **Q.** If the answer to question 34 is "yes", please clarify what steps the Department will be taking to inform affected municipalities of its new policy.

36. **Q.** Please clarify that if an existing tower or site has to be modified to accommodate a sharing request, that the requesting party is entirely responsible for all resulting costs associated with such modification(s).

37. **Q.** The Department notes that commercial arbitration will be used to resolve disputes which the tower owner and requesting party are unable to resolve through commercial negotiation. Disputes which are based on technical or structural issues however will require expert assistance to resolve. Please clarify that the Department will be adjudicating instances where the parties are unable to mutually resolve disputes which are technical and/or structural in nature.

38. **Q.** It is very important that a revised CPC-2-0-03 Radiocommunication and Broadcasting Antenna Systems, reflecting the new mandated sharing policy, be in place before new entrant build-out commences so that all parties are operating by a common set of rules and procedures (e.g. public/LUA notification/consultation, timelines, dispute resolution, etc.). What will be the Department's process for revising the CPC?

39. **Q.** The Department's decision that exclusive rooftop agreements cannot be enforced interferes with the property rights of landlords/building owners. Please explain why this is not an improper restraint of trade. Please also explain why this does not constitute an overly intrusive interference with market forces.

40. **Q.** Please clarify that existing tenants located on incumbent licensee towers (e.g. others mobile licensees, utility tenants, Inukshuk) will be protected from technical interference from requesting parties, i.e. sharing will also be subject to technical feasibility and cost recovery.

41. **Q.** Regarding the technical studies required to determine technical feasibility of a sharing request, please clarify that the requesting party is responsible for all costs incurred to undertake such studies by tower owners as well as by any existing tenants already located on the tower/site.

42. **Q.** Licensees have entered into long-term agreements with many parties (e.g. other mobile or fixed licensees, government Departments, utilities, etc.) to provide access to towers/sites on an on-going basis. Please clarify that new entrants requesting access to towers/sites will not have preferential priority over such existing users.

43. **Q.** Please clarify how tower owner licensees are expected to adjudicate instances where new entrants and/or other tower tenants both want access to preferential locations (i.e. higher versus lower placement) on a tower.

Roll-out Obligations, Licence Term and Renewal

44. *At page 10 of its November 28 Policy Framework the Department states that:*

"The AWS licences will be issued for a 10-year term similar to other spectrum licences. AWS licence renewal will be subject to a public consultation process initiated in year eight, as proposed in the AWS consultation paper. The nature and details of this process will be developed through a separate consultation to be initiated by the department in the context of the Framework for Spectrum Auctions in Canada. The renewal process developed through that consultation may apply to all auctioned licences, including AWS.

The renewal process, which will form the basis of the follow-up consultation, will include consideration of:

- the extent of geographic coverage across the licensed area;***
- whether there is interest in the licence from other parties;***
- whether licence fees should apply for a subsequent licence term; and***
- whether renewal in whole or in part supports the orderly development of radiocommunication in light of the policy objectives of the telecommunications Act given known future factors, pressures and the spectrum environment.***

Beyond consideration of the above factors, other reasons for non or partial renewal may include:

- ***a fundamental reallocation of spectrum to a new service is required;***
- ***an overriding policy need or spectrum management concern arises;***
- ***national security, treaty or other international obligations or requirements;***
- ***a breach of licence condition;***
- ***the spectrum has not been deployed, or not sufficiently deployed over the licensed area;***
- ***whether there is interest from others for access to the spectrum; and***
- ***other relevant factors which might be raised in the public consultation.***

While licences are renewable where the spectrum is used in accordance with the AWS licence, the department will make appropriate decisions at the appropriate time."

45. Q. Please clarify that auctioned licences will continue to have a high expectation of renewal, consistent with the Department's current *Framework for Spectrum Auctions in Canada* (Issue 2) which states (Section 4.5 – Licence Term) that:

"A spectrum licence issued via an auction will generally be valid for ten years from the date of licence issuance with a high expectation of renewal for a further ten-year term unless a breach of licence condition has occurred, a fundamental re-allocation of spectrum to a new service is required, or an overriding policy need arises."

46. Q. Please clarify what the Department means by the statement that: "***The renewal process, which will form the basis of the follow-up consultation, will include consideration of: . . . • whether there is interest in the licence from other parties;***".

47. Q. Please clarify what the Department means by the statement that: "***The renewal process, which will form the basis of the follow-up consultation, will include consideration of: . . . • whether renewal in whole or in part supports the orderly development of radiocommunication in light of the policy objectives of the Telecommunications Act given known future factors, pressures and the spectrum environment.***".

48. Q. Please clarify what the Department means by the statement that: "***Beyond consideration of the above factors, other reasons for non or partial renewal may include: . . . • whether there is interest from others for access to the spectrum;***".

49. **Q.** Please clarify what the Department means by the statement that: "***Beyond consideration of the above factors, other reasons for non or partial renewal may include: . . . • other relevant factors which might be raised in the public consultation.***".

50. **Q.** Please clarify what the Department means by the statement that: "***While licences are renewable where the spectrum is used in accordance with the AWS licence, the department will make appropriate decisions at the appropriate time.***".

PCS Expansion Band

51. At page 11 of its November 28 Policy Framework the Department states that:

"In the auction process, the department will use geographic Tier 2 as proposed in the AWS consultation paper. . . . The opening bids and roll-out conditions for this spectrum are the same as for the AWS band which are outlined in Annexes 1 and 2."

52. **Q.** Please clarify why Tier 2 service areas are deemed appropriate for the PCS expansion band but not for the AWS core band.

53. **Q.** Given that the core PCS spectrum band is widely deployed throughout Canada, as well as the fact that, as acknowledged in the Department's February 2007 AWS Licensing Consultation paper, the PCS Expansion Band is an adjunct to the core PCS band, please clarify why any roll-out conditions are either appropriate or required for the 10 MHz PCS Expansion Band.

The Band 1670-1675 MHz

54. **At page 11 of its November 28 Policy Framework the Department states that:**

"In the auction process, Industry Canada will use geographic Tier 2 as proposed in the AWS consultation paper."

55. **Q.** Please clarify why Tier 2 service areas are deemed appropriate for the minor (i.e. 5 MHz wide) 1670-1675 MHz band but not for the non-new entrant AWS core band (i.e. 40 MHz wide).

56. **Q.** Given the characteristics, nature and size (i.e. 5 MHz) of the 1670-1675 MHz band, please clarify why it would not be more appropriate to license this spectrum on a Tier 3 service area basis.

Conditions of Licence

57. At pages 11-12 of its November 28 Policy Framework the Department states that:

"To implement measures such as mandatory antenna tower and site sharing and mandatory roaming for all licensees, conditions of licence will have to be added to existing licences.

Section 5(1)(b) of the Radiocommunication Act gives the Minister the power to amend any existing condition of licence. Industry Canada will undertake a public consultation on the conditions of licence being proposed. This consultation will be confined to the implementation of the policy measures announced earlier in this document. It will address conditions of licence for both mandatory antenna tower and site sharing and mandated roaming and will propose:

- wording of the conditions of licence; and***
- provisions on the operative conditions such as dispute resolution mechanisms and time frames.***

...

The comment period will be 30 days so as to ensure that affected licensees are aware of the new provisions and have an opportunity to provide comments. A reply comment period is not considered necessary in this circumstance.

Following the consultation, the final conditions of licence will be made public so that all those affected are aware of the changes. They will be announced before the deadline for applications for the auction, to allow parties to make fully informed decisions, in a Canada Gazette notice and also posted on Industry Canada's Spectrum Management and Telecommunications website".

58. **Q.** Regarding paragraphs 1 and 2 above, please clarify whether the Department intends to modify all existing licences including those previously awarded through a competitive spectrum auction process (e.g. the 2001 PCS auction)?

59. **Q.** Given that the conditions of licence (CoL) applicable to mandated tower and antenna site sharing and mandated roaming will only be available after January 22 (i.e. related submissions are due to be filed on January 22 along with these Clarification Questions), how will interested parties be able to seek clarification on the final CoL for these [mandated tower

and antenna site sharing and mandated roaming] policies and related interpretation and implementation issues?

Questions related to: Notice No. DGRB-011-07 — Licensing Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range, December 22, 2007

60. At page iii of its Licensing Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range, December 22, 2007 (December 22 Licensing Framework) the Department states that:

"The Department released its Consultation on Proposed Conditions of Licence to Mandate Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements (Gazette Notice DGRB-010-07), which addresses specific conditions of licence for current licensees with respect to the implementation of measures from the policy framework. Following the close of the supplementary consultation, the final conditions of licence will be made public so that all those affected are aware of the changes prior to the deadline for auction applications."

61. **Q.** Please clarify that potential applicants will not have to file auction applications prior to the release of the Department's decision regarding its supplementary consultation in DGRB-010-07 i.e. regarding mandated tower and antenna site sharing and mandated roaming?

Licence Term

62. At page 6 of its December 22 Licensing Framework the Department states that:

"The AWS licences will be issued for a 10-year term similar to other spectrum licences. At a minimum of 2 years before the end of this term, and any subsequent terms, the licensee may apply for licence renewal for an additional licence term of up to 10 years. AWS licence renewal will be subject to a public consultation process initiated in year eight. The nature and details of this process will be developed through a separate consultation to be initiated by the Department in the context of the Framework for Spectrum Auctions in Canada. The renewal process developed through that consultation may apply to all auctioned licences, including AWS."

63. **Q.** Please clarify whether the above paragraph is signalling the Department's intention to completely rewrite the "Framework for Spectrum Auctions in Canada" including its fundamental principles.

64. Q. Please clarify when the Department intends to initiate the consultation referred to above.

65. At page 7 of its December 22 Licensing Framework the Department states that:

"Licences acquired through the set-aside may not be transferred or leased to, divided among, or exchanged with companies that do not meet the criteria of a new entrant, for a period of 5 years from the date of issuance."

66. Q. Please clarify whether or not, in the event of a liberalization in the *Canadian Ownership and Control* criteria prior to the five year period identified above, foreign entrants would be eligible to acquire or lease licences acquired through a set-aside?

67. Q. Please clarify what the Department's policy will be, regarding the applicable licences, in the event of insolvency of a new entrant licensee? For example, in the absence of an alternate new entrant licensee willing or financially capable of acquiring the licence of the insolvent licensee, is it the Department's intention to warehouse the spectrum in its inventory until the five year period expires?

68. Q. Please clarify whether the response to question (67) would be influenced by the demonstrated operational need of an incumbent for additional AWS spectrum.

69. Q. Please clarify why set-aside spectrum could not be leased to an incumbent given that the new entrant licensee would remain the owner of record of the spectrum in question.

Radio Station Installations

70. At page 8 of its December 22 Licensing Framework the Department states that:

"While site-specific radio licences will not be required for each radio station, licensees must ensure that each radio station is installed and operated in a manner that complies with Industry Canada's Client Procedures Circular 2-0-03, Radiocommunication and Broadcasting Antenna Systems, Issue 4, effective January 1, 2008 (CPC-2-0-03), as amended from time to time, and which is available at: <http://ic.gc.ca/epic/site/smt-gst.nsf/en/sf08777e.html>."

71. Q. Please clarify the Department's process and timeline for revising CPC-2-0-03 in light of the Department's decision regarding mandated tower and site sharing?

72. At pages 8-9 of its December 22 Licensing Framework the Department states, regarding ***Lawful Interception***, that: "***Licensees may request the Minister of Industry to forbear from enforcing certain assistance capability requirements for a limited time period.***"

73. **Q.** Please clarify whether or not forbearance from a condition of licence will be made a matter of public knowledge?

Licensing Process

74. At page 10 of its December 22 Licensing Framework the Department states that:

"This licensing process is conducted in accordance with the Framework for Spectrum Auctions in Canada (October 2001), which is available at: <http://ic.gc.ca/epic/site/smt-gst.nsf/en/sf01626e.html>. Licensees should also familiarize themselves with Client Procedures Circular 2-1-23.

The comments received in the consultation process indicated a general agreement with the Department's proposed steps for licensing spectrum in the 2 GHz range including Advanced Wireless Services, Personal Communications Services and 1670-1675 MHz, in accordance with the general rules outlined in the Framework for Spectrum Auctions in Canada. The process by which interested parties may apply to participate in the auction is outlined below.

75. **Q.** Please specifically clarify which general rules outlined in the *Framework for Spectrum Auctions in Canada* continue to apply and which do not (e.g. the transferability of auctioned licences now appears to have been modified)? Are there other enhanced spectrum rights, originally included in the *Framework for Spectrum Auctions in Canada*, which no longer apply or which have been modified?

Auction Design and Rules

76. **Q.** Please clarify if the auction software will automatically prevent incumbents from bidding on new entrant blocks or will this have to be managed by incumbent bidders.

77. **Q.** Please clarify if a soft copy of the output format can be provided in advance of the mock auction.

78. Q. Can a new entrant applicant simultaneously bid on both new entrant spectrum blocks as well as on those spectrum blocks available to incumbent carriers?

79. Q. If the answer to question (78) is "yes", what is the mechanism to prevent the new entrant from participating in the incumbent auction solely for the purpose of gaming up the price paid by legitimate incumbent bidders for non-new entrant spectrum?

80. Q. Please confirm that if the answer is "yes" the new entrant will have to pay the higher of the two bids placed in either block if it backs out of incumbent block.

Bid Payment

81. At page 26 of its December 22 Licensing Framework the Department states that:

"A payment for the remaining eighty percent (80%) of the total of the high bids will be due within thirty business days of the cessation of bidding. If the provisional licence winner fails to make this final payment within the specified period, then the provisional licence winner's irrevocable standby letter of credit will be drawn upon. If the value of the provisional licence winner's irrevocable standby letter of credit, combined with any partial payment, is less than the required amount, then the provisional licence winner will forfeit its right to have the licence(s) issued to it and again, the provisional licence winner will be subject to the applicable forfeiture penalties."

82. Further, at page 29 (Issuance of Licences) of its December 22 Licensing Framework the Department states that:

"Provisional winners of spectrum licences will have those licences issued to them on completion of the following: (1) payment of the sum of their standing high bids and the sum of their penalties, if any; and (2) a determination by the Department that the Canadian ownership and control requirements have been met. Depending on the complexity of the provisional winners' ownership and control structures and the responsiveness of the winners in providing any required additional documentation, this determination may take several months to complete."

83. Q. Please clarify how the Department intends to address the situation, encountered in the 2001 PCS Auction, where parties who had submitted their remaining 80% of total high bids within the required 30 business day timeframe encountered delays of up to a year in receiving their licences while the Department (and the Justice Department) determined compliance with *Canadian Ownership and Control* criteria.

84. **Q.** Where the delay in licence issuance is not attributable to the provisional licensee, does the Department intend to compensate the provisional licensee (e.g. payment of interest on the submitted bid payment) in the event that there is a significant & material delay in licence issuance.

85. At page 26 of its December 22 Licensing Framework the Department states that:

"It is important to note that these bid payments for the initial 10-year term are in lieu of any fees fixed for the radio authorization under the Radiocommunication Act or any other Act."

86. **Q.** Please clarify if any fees will apply to the auctioned licences subsequent to the initial 10 year term.

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