

SaskTel Response to:

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

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Table of Contents

INTRODUCTION:	3
1.0 ASSOCIATED ENTITIES	3
2.0 DISCLOSURE	6
3.0 APPLICATION DETAILS	6
4.0 TIMING	6

Introduction:

On December 21, 2007, Industry Canada released “*Licensing Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range*” (‘the Licensing Framework’).

Pursuant to Gazette Notice No. DGRB–012-07 “*Update on Clarification Questions for the AWS Policy Framework and Deadline Extension for the Consultation on Proposed Conditions of Licence (DGRB-010-07)*” (‘the Notice’), Saskatchewan Telecommunications (“SaskTel” or “the Company”) is pleased to submit the following questions requesting clarification of the AWS spectrum auction policy, procedures and Licensing Framework.

SaskTel's questions relate to four topic areas: the definition of Associated Entities; information to be made public during the auction; flexibility of the bidding process; and the timing of auction applications relative to answers provided by the Department in response to questions raised in response to the Notice. SaskTel addresses each topic area separately, with a short description of the Company's concerns and the viewpoint from which the questions are asked, followed by the Company's specific questions.

SaskTel respectfully requests that the Department, when publishing these questions, not identify publicly that SaskTel is the author of these inquiries.

1.0 Associated Entities

SaskTel fully agrees with the need to preserve the integrity of the auction by ensuring that bids come from unrelated competitors who are not acting in collusion with each other. However, the Company requests additional clarification regarding some of the language used in certain sections of the Licensing Framework. The Company also requests clarification of the tools the Department will use to identify Associated Entities and the options available to parties whom the Department may deem to be associated although the parties themselves do not agree with that assessment.

Section 5.2 deals with the prohibition of collusion. The first paragraph of this section states:

Applicants are prohibited from co-operating, collaborating, discussing or negotiating settlement agreements with competitors, relating to the licences being auctioned or relating to the post-auction market structure, until the deadline for the final payment on high bids.

Section 5.3 deals with the identification, for the purposes of the Licensing Framework, of affiliates and Associated Entities. This section defines Associated Entities 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.....”

The term “post-auction market structure” seems very wide and encompassing. This term, plus the reference above to the negotiation of settlement agreements, has caused confusion regarding the extent of the prohibition on discussions with competitors. In the telecommunications industry, there are many agreements and business arrangements made between market players in order to deliver various services and ensure interoperability between networks. Many of these agreements do not affect decisions being made regarding AWS spectrum acquisition, nor will they affect strategies and decisions made during the AWS spectrum auction. For instance, SaskTel notes that the term ‘settlement agreements’ is often understood in the Canadian telephone industry to refer to agreements regarding payments between competitors for the origination or termination of traffic. SaskTel wishes to confirm that the prohibition on negotiations referred to above relates solely to negotiations regarding bidding strategies, bid amounts, or licenses to be bid on in this auction, and not to other unrelated business dealings which may occur. Questions 1.1 and 1.2 explore these issues.

SaskTel notes that it is possible for two parties to believe that they are not Associated Entities but for the Department to hold a contrary view. Should the parties subsequently be found to be Associated Entities by the Department, they would then be barred from both becoming qualified bidders in a given service area. Should this occur, it would lead to a situation where two parties had not had discussions regarding auction strategy due

both to the Department's anti-collusion rules and to their own unwillingness to cooperate with competitors. However, the parties would not have been aware of this finding prior to submitting their bid applications. Questions 1.3 to 1.6 explore the implications of such a situation.

- 1.1 Please provide further clarification and examples of agreements and arrangements that would be seen as affecting the "post-auction market structure", and the types of agreements that would not affect the market structure.
- 1.2 Please provide further clarification and examples of settlement agreements that would be seen as affecting the "post-auction market structure", and settlement agreements that would not affect the market structure.
- 1.3 Please confirm that two parties considered to be Associated Entities may bid independently in different service areas.
- 1.4 Since only one of the Associated Entities is permitted to become a qualified bidder in a given service area, how will the single bidder be chosen in the event the two Associated Entities are unable to agree on acceptable terms?
- 1.5 In the event the same rules are adopted in answer to question 1.4 as were adopted in the 2000 auction, what recourse does the smaller bidder have in the event the larger bidder is uncooperative?
- 1.6 Two or more parties may submit applications based on the belief that they are not Associated Entities and yet be deemed by the Department to be Associated Entities. In this case will the parties, who could no longer be seen to be violating the collusion rules, be allowed to modify their bids to reflect their changed circumstances?

2.0 Disclosure

SaskTel has certain questions regarding the amount of information to be released publicly during the auction.

- 2.1 Section 5.4.2 of DGRB-011-07 states that, on March 7, 2008 a list of all applicants will be made public. What information will be contained in this list besides the name of the applicants?
- 2.2 Section 5.5 of DGRB-011-07 states that, on March 24, 2008, a list of all qualified bidders will be made public. What information will be contained in this list besides the name of the qualified bidders?
- 2.3 During the auction, will the names of the bidders be anonymous or will the names of the high bidders by service area be available to other bidders?

3.0 Application Details

SaskTel has certain questions regarding the flexibility of the auction process.

- 3.1 Will a bidder be restricted to bidding in the auction in only the specific service area and frequency block pairing set forth in their application?
- 3.2 If a bidder is eligible for set aside spectrum, will that bidder be able to bid on either set aside spectrum or non-set aside spectrum as they desire or will they be limited to the service area and frequency block pairing set forth in their application?

4.0 Timing

SaskTel is concerned with the timing of the AWS spectrum auction policy and procedures question and answer process. With the scheduled publication of answers on February 27, 2008, and the AWS auction application deadline of March 3, 2008, there is less than one

week provided to potential bidders to analyze and resolve any issues raised by the Department's answers, and to prepare and submit the application form and documentation. The issues raised by the Department's answers could be complex, and the current schedule leaves very little time to resolve these issues to the satisfaction of the Department, and prepare the necessary documentation for the auction application.

SaskTel recognizes and commends the Department's desire to adhere to a timeline that allows the AWS spectrum auction to begin on May 27, 2008 as announced. However, the Company feels that time must be provided for the satisfactory resolution of issues raised in the question and answer process.

SaskTel therefore respectfully requests that the timeframe between the publication date of the answers to the submitted questions, and the application date for participation in the AWS spectrum auction, be lengthened. This can be accomplished by publishing the answers earlier, extending the AWS auction application deadline, or both. In the alternative, SaskTel urges the Department to release as many answers as possible prior to the February 27 deadline for the release of all answers.