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Telecommunications Policy Branch  
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Enclosed are comments on:

Notice No. DGTP-002-07- Consultation on a framework to auction spectrum in the 2 GHz range including Advanced Wireless Services, as per the Canada Gazette, Part I, published 2007 February.

Although spectrum licencees do not hold a monopoly on the spectrum granted as a result of spectrum, there is substantial certainty in the licencees ability to control the use of that same spectrum.

The vast majority of Canadian licencees of spectrum that provide Advanced Wireless Services also offer the needed equipment for consumers to use that same spectrum. Most consumers know this equipment as a cellphone. In the early years of development of this industry, such equipment was only sufficiently advanced enough to make and receive phone calls, and the only real differentiation between equipment from different manufacturers was on the basis of quality and cost.

Today, however, such equipment is vastly improved, and can also offer many additional services and capabilities. It is no longer possible to differentiate between two cellphones solely on the basis of quality and cost. Other features such as local wireless or infrared communication, the ability to run software, or to act as a local audio or video recording or playback unit, all with or without Internet access, are now common across the industry. In addition, there is a great variance in the capability of various devices within each feature. Innovation is rampant within the device market.

Such diversity is best handled by having consumers choose the devices that best fits their individual wants and needs, in accordance with the cost of such devices. There are sufficient manufacturers of such devices that a thriving market should exist for consumers to choose devices.

Spectrum licencees, however, prefer to bundle the cost of devices into the usage costs of the service. Although consumers obtain some benefit from a low initial cost to acquire the cellphone, they then pay for the device via their monthly service fees. The actual cost of using the spectrum is inflated by an unknown amount. Usage fees also never change, implying that should a consumer keep a device for a long time, the carrier is paid back far more than necessary to recoup the cost of the device. However, consumers are generally not allowed to obtain a subsidy on more than one device. Should a consumer wish to switch to a new device after only a short period of time, the carrier will charge a significantly higher amount for the new device.

At the same time, the spectrum licencees wish to operate an efficient business, and so restrict the choice of consumers to only a few devices from the larger market for devices. Largely

in pursuit of further efficiencies, the spectrum licencees also make no provision for consumers to supply their own equipment and to pay only for the costs associated with using the spectrum.

Such a situation is akin to the historical situation where your home landline telephone could only be provided by the provider of the telephone service. Such rules were eventually seen as both unnecessary and market-distorting. The ability of consumers to connect their own data devices, such as modems, to the phone line, was a critical feature in the development of the Internet capabilities we enjoy today.

Although the need to carefully control the equipment used may have been appropriate in the early days of the wireless industry, we now have a mature industry, with only a few stable standards in use worldwide for spectrum use via cellphones and other devices for Advanced Wireless Services. Continuing to allow spectrum licencees to create market-distorting rules that verge on monopoly-like power is no longer appropriate.

As a condition of spectrum licencing, Industry Canada needs to require that licencees establish and publish reasonable rules that allow consumers to independently acquire safe equipment to connect to the licenced spectrum. Such rules will allow markets in devices and capabilities to grow, fostering innovation, and unimpeded by the licencees need for internal efficiencies. Furthermore, it will provide for the growth of a market in spectrum use alone, ensuring that licencees establish usage rates based on a market for the spectrum they have licenced.

Finally, acting to separate the market for spectrum from the market for devices will help to ensure that, in the longer term, spectrum use is efficiently managed by both licencees and consumers. As Industry Canada has recognized that spectrum is a fundamental resource, it is wise to enable it to be used in as efficient a manner as possible.

Chris Smith