

## **4253311 Canada Inc.**

c/o NW Spectrum Co.  
12670 High Bluff Drive  
San Diego, California 92130

June 27, 2007

Leonard St-Aubin  
Director General  
Telecommunications Policy Branch  
Industry Canada  
1612A  
300 Slater Street  
Ottawa, Ontario, K1A 0C8

Re: Reply Comments of 4253311 Canada Inc.  
*Consultation on a Framework to Auction Spectrum in the 2 GHz Range,  
Including Advanced Wireless Services (“Consultation”)*  
*Canadian Gazette, Part I, dated February 16, 2007, Notice DGTP-002-07*

Dear Mr. Director General:

4253311 Canada Inc. (“4253311”), an existing wireless licensee of Industry Canada (the “Department”), hereby respectfully submits its brief reply comments on several key issues raised in the referenced Consultation concerning the licensing of Advanced Wireless Services (“AWS”) in Canada.

### 1. BACKGROUND.

4253311 is licensed by the Department to provide Wireless Communications Services (“WCS”) in portions of the 2.3 GHz band in various Tier 4 markets throughout Canada. 4253311 acquired its WCS licenses in 2004 and 2005 during a two-phase auction conducted by the Department. Earlier this year, all of the stock of 4253311 was acquired by a subsidiary of NextWave Wireless Inc., which holds WCS, AWS, Broadband Radio Service and other microwave licenses in the United States, and is an innovative developer of broadband wireless technologies and services worldwide.

As an existing wireless licensee and potential participant in any AWS auction the Department may conduct, 4253311 has an interest in the outcome of the Consultation started in February. To that end, 4253311 provides reply comments on three selected issues that were raised as part of the initial comments in this Consultation: (a) spectrum set-asides, (b) harmonization of spectrum band plans and (c) Canadian foreign ownership restrictions.

2. THE DEPARTMENT SHOULD APPROVE A SPECTRUM SET-ASIDE.

A number of the entities submitting initial comments in the Consultation supported the concept of setting aside a certain amount of spectrum in the AWS auction for which only new entrants would be eligible.<sup>1</sup> These submissions cited substantial, credible evidence regarding the current status of mobile wireless competition in Canada in support of this position, including, among others, the Final Report of the Telecom Policy Review Panel.<sup>2</sup>

4253311 agrees with those who support an AWS spectrum set-aside and recommends a spectrum set-aside of at least 40 MHz of AWS spectrum for new entrants, licensed in two 20 MHz Blocks. The Department should define “new entrants” to ensure the maximum opportunity for qualified applicants, including smaller, existing wireless spectrum holders and carriers that can provide competitive services with the existing major carriers. Clearly, nationwide carriers should be excluded from bidding on the set-aside spectrum.

Contrary to the warnings of opponents, such spectrum set-asides have been successful in bringing to the market innovative wireless services and wireless competition in the United States.<sup>3</sup> Other countries also have successfully employed set-asides to foster competition.<sup>4</sup>

There is no demonstrated reason for concluding that the same result could not occur in Canada. The Department should therefore adopt a spectrum set-aside as a key component of its final AWS auction plan.

3. THERE SHOULD BE SUB-BAND PLAN HARMONIZATION.

The Department has wisely selected the same spectrum bands, 1710-1755 MHz and 2110-2155 MHz, for AWS as allocated in the United States and elsewhere. 4153311 concurs in that designation. Global harmonization of spectrum allocations for AWS can help promote a greater level of technological innovation and more feature rich equipment.<sup>5</sup>

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<sup>1</sup> See, e.g., Comments filed by (a) Assembly of First Nations, (b) Boston First Nation, (c) Data & Audio-Visual Enterprises Inc., (d) Eastlink, (e) Eday Corporation (f) Harmony Mobile Networks, (g) Look Communications Inc., (h) MTS Allstream Inc., (i) Niagara Networks Incorporated, (j) Quebecor Media Inc., and (k) Wispra Inc.

<sup>2</sup> See Comments of Mipps Inc., at p. 4; see also, Appendices B and C to comments of MTS Allstream, Inc.

<sup>3</sup> See Comments of MTS Allstream, Inc., at pp. 33-34, discussing the United States experience with MetroPCS and Cricket Wireless.

<sup>4</sup> *Id.*, at pp. 31-33 discussing UK experience.

<sup>5</sup> See Comments of Nokia Seimens Networks Canada, Inc., at p. 2

However, the Department's proposed sub-band plan differs slightly from the plan adopted by the United States. The Department is proposing to divide the 90 MHz of AWS spectrum into 5 spectrum Blocks. The United States plan includes 6 different Blocks.

Several commenters urged that the Department "harmonize" its sub-band plan with that of the United States. For example, the Canadian Wireless Telecommunications Association ("CWTA") urged the Department to harmonize its sub-band plan with that of the United States to facilitate cross border roaming and simplify coordination.<sup>6</sup> MTS Allstream, Inc., another Canadian telecommunications service provider, also urged such synchronization.<sup>7</sup>

4253311 strongly recommends that the Canadian sub-band plan match the plan adopted in the United States. Such harmonization makes imminent technical and business sense. It will be critical for ensuring the availability of equipment and avoiding potential complicated negotiations in multiple standards bodies.<sup>8</sup>

4. CANADA'S FOREIGN OWNERSHIP AND CONTROL RESTRICTIONS ARE A BARRIER TO NEW WELL-FUNDED COMPETITORS AND SHOULD BE REMOVED OR RELAXED.

Canada's own Commissioner of Competition is "firmly of the view" that the current Canadian limitations on foreign ownership and control limit competition in Canada's wireless markets.<sup>9</sup> The Commissioner unequivocally observes "that the appropriate way to compensate for any lack of competition attributable to the foreign investment restrictions is to remove them....",<sup>10</sup> in part because "foreign investment restrictions are intimately tied to the viability of new entrants into wireless services markets."<sup>11</sup> The Commissioner goes on to cite similar recommendations made in Canada's House of Commons and by other analysts of the issue.<sup>12</sup>

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<sup>6</sup> Comments of the CWTA, at p. 16-17; see Comments of MTS Allstream, Inc., at p. 49.

<sup>7</sup> See Comments of MTS Allstream, Inc., at p. 49

<sup>8</sup> See Comments of Nortel, at p.1.

<sup>9</sup> Comments of Commissioner of Competition, at p.15.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*, at p.16.

<sup>12</sup> *Id.*, at pp.16-17.

The Commissioner is not alone in his recommendations. Other commenters also favor relaxation of the existing Canadian restrictions on foreign investment, for analogous reasons. For example, Primus Telecommunications Canada, Inc. confirms that the restrictions “limit the ability of players to (a) raise the capital to start up and sustain activity and (b) initiate new business activities.”<sup>13</sup>

4253311 concurs with the analyses of the Commissioner of Competition and other parties who advocate elimination or relaxation of the existing restrictions on foreign ownership and control of wireless licenses. The removal or substantial relaxation of those restraints will likely free up additional capital and expertise for potential new entrants into Canada’s wireless market. If at all possible, these restrictions should be lifted in connection with the AWS auction.

4253311 commends the Department for initiating this proceeding to bring AWS to the Canadian wireless market. 4253311 urges the Department to ensure that the licensing rules it adopts encourage competition and innovation by new wireless entrants, including foreign investment, and promote harmonization with the AWS licensing regime adopted by the United States.

Respectfully Submitted,

4253311 CANADA INC.

By: /s/ George Alex  
George Alex  
Treasurer

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<sup>13</sup> Comments of Primus Telecommunications Canada, Inc., at p.2.; *see also* Comments of Craig Wireless Systems Inc., at p.2.