

**Gazette Notice No. DGTP-002-07**  
**Consultation on a Framework to Auction**  
**Spectrum in the 2 GHz Range including Advanced**  
**Wireless Services**

**Reply Comments of**

**Mipps Inc.**

**27 June 2007**

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## INTRODUCTION

1. These reply comments are filed by Mipps Inc. pursuant to Gazette Notice No. DGTP-002-07 – Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services ("the Discussion Paper").
2. In this submission, Mipps comments on the positions taken by other parties in their initial submissions of May 25, 2007. Mipps disagrees with the vast majority of statements made by the incumbent wireless service providers. Failure on our part to raise objections to positions put forward by these or other parties in this proceeding does not imply our agreement to said positions.
3. In our initial submission, we set out the rationale for why the Government should take steps to remove the major barriers that impede competitive entry into the wireless market. We provided unambiguous evidence, based on industry recognized metrics, that the Canadian wireless market is lagging behind other jurisdictions and we proposed steps that the Government should take before and after the auction that would achieve the desired results. These steps include an auction-specific spectrum aggregation limit (or alternatively a set-aside of one 30 MHz block for a new entrant) and mandated roaming and tower access provisions.
4. The incumbents in their submissions attempt to discredit or downplay the evidence brought by such an august body as the TPRP (upon which much of our argument was based) by re-interpreting the data to suit their own interests and by inventing or overplaying the significance of differences between the Canadian and U.S. markets. They also present arguments against Government intervention in the auction and promote a free market approach to the auction which they believe gives everyone an equal chance at obtaining spectrum.

5. In these reply comments, we debunk the incumbents' attempts to discredit the TPRP data and that of other industry detractors. We also show how the incumbents' idea of a free market auction will result in a virtual guarantee that no competitive entry will occur and, further, that promoting entry will not only not distort the market but will in fact maximize the benefits of AWS to Canadians.
  
6. As a side note, we would urge the Government to take the submissions made by the incumbents, and especially Telus, in light of the very quick about face that company took on the issue of set-asides. When it was contemplating making a bid for Bell Canada, the company publicly stated its support for a set-aside if the Government approved its purchase of Bell without the requirement to divest its wireless assets. The cynical and self-serving manner in which it would have attempted to manipulate that process reflects on its submissions in this process, which should be regarded in light of these developments.

## BRINGING DOWN THE BARRIERS TO ENTRY

### Barrier: Spectrum

7. Much of the initial submissions addressed the question of whether Canada's wireless market is competitive and based on that whether promoting market entry through the upcoming auction is sound public policy. We expect that much of the reply comments that the Department will receive will similarly debate this very important question. In fact, the second half of this submission, entitled "The Need for Competitive Entry" is dedicated to just that.
8. **In the end, however, it comes down to whether competitive entry is good for Canada or not.** We submit that regardless of the relative competitiveness of the Canadian market (and we continue to believe, based on sound supporting rationale, that it is sorely lacking), the introduction of new players into the market would be good for Canadian consumers and for Canada as a whole.
9. New entry would unleash hundreds of millions of dollars of investment that without entry would remain "locked up". The incumbents will spend what they will in order to keep pace with technology regardless of success at the auction, which to a greater or lesser degree is assured in any event. Thus, the only sure way to spur an influx of *new* capital into the sector that would otherwise not be spent is to create the conditions that will promote competitive entry.
10. New entry would also bring about greater innovation. As noted in the next section, the incumbents point to the existence of resellers and MVNOs as proof that the market is competitive. But do these resellers represent true

choice? To the extent that resellers are completely dependent on their underlying carriers, these providers have little flexibility in technology and service innovation. Unless the resale arrangements permit service providers to control their service offerings and allow innovation and flexibility in service features and offerings, only a new *facilities based* entrant would have the necessary incentive and wherewithal to spur innovation in technology and service development.

11. In fact, the existence of a new entrant is expected to reinvigorate the wholesale market as well by providing more and better choice to resellers and MVNOs and encouraging innovation within the reseller market through creative arrangements that allow sharing of network resources.

12. To the extent that the incumbents will develop new applications and technologies to the same degree regardless of whether or not they win additional spectrum, only new entry guarantees a greater degree of innovation, both from the new entrant, as noted, but also by the incumbents who will be faced with additional competition. Competitive entry, therefore, will promote new investment and spur higher levels of innovation.

### ***Now is the Time***

13. The Government is in a unique position to set policy that will create the conditions that will provide for these outcomes. And, as the saying goes, **there is no time like the present for the Government to act.**

14. The AWS auction represents the last and best opportunity to introduce new entry. As the Minister announced at the Canadian Telecom Summit, the next auction (for 700 MHz spectrum) will likely not take place for another four years, at which time the market may be too highly penetrated to allow for

viable entry. At the current time, however, penetration rates are still low enough to offer a new entrant a fighting chance for success.

15. Furthermore, it is widely recognized that we are on the verge of a revolution in wireless technology that will see data speeds increase at an exponential rate and spur a torrent of innovative services and applications for consumers and businesses alike. In many ways, the situation is similar to the advent of digital cellular in the mid-1990s and packet technologies earlier in this decade, both of which created a watershed for new services and applications.

16. Just as the advent of digital technology created the conditions for the successful spawning of two new players that became viable industry participants, the introduction of wireless broadband technologies should also be seen as a prime opportunity to introduce new entry to ensure that Canadians benefit from AWS to the maximum extent possible.

### ***Incumbents Disagree***

17. Incumbents, on the other hand, argue against using the auction to promote new entry for several reasons, including the following:

- Promoting entry through set-asides or aggregation limits runs counter to the Policy Direction;
- An unfettered auction will allow the market to decide whether entry is feasible. Set-asides, on the other hand, promote inefficient entry and inevitably lead to market failure;
- Set-asides can result in entities purchasing spectrum for speculative reasons;

- Set-asides lead to artificially low auction revenues and therefore preclude the Government and, by extension, taxpayers from extracting the maximum value from a scarce resource; and
- Experience in the U.S. and the U.K. show how set-asides lead to unwanted outcomes.

18. Each of these is refuted below.

***“Promoting entry runs counter to the Policy Direction”***

19. The incumbents all claimed that using a set-aside in the AWS auction runs counter to the market forces doctrine in the Policy Direction issued to the CRTC in December 2006.

20. In making this claim, the incumbents are focusing on one aspect of the Direction while completely ignoring other equally important elements. The Policy Direction clearly requires that competition from new technologies be enabled, that there be increased incentives for innovation and investment and in particular, the impediments faced by new and existing carriers seeking to develop competing network facilities must be considered.

21. The spirit of the Direction applies as much to wireless as it does to wireline since there are many regulatory parallels between the two.

22. First, in the wireline market, it has already been found (CRTC Decision 2006-15 as amended) that three facilities based carriers is sufficient competition to allow the Commission to forbear from regulating retail markets. In the wireless market, there are already three facilities based providers. The incumbents have used this parallel fact to mislead with distorted claims. They argue that the existence of three players means no regulation at all is

warranted and therefore intervention by the Government in the AWS auction is similarly unwarranted. **This is a patently false claim.**

23. The existence of three facilities based carriers allows the *retail* market to be forborne. When it comes to the wholesale market, the Government and the CRTC recognize the potential for abuse by incumbent carriers, dominant or not. That is why incumbents will continue to be required to offer interconnection at cost based rates because it is precisely with respect to access to the network that the incumbent retains its dominance, even if that dominance is not necessarily apparent in the retail market. This is especially so with respect to facilities that are truly essential, i.e. that are unavailable anywhere else aside from the incumbent.

24. The same holds true no less in wireless. Access to spectrum is an absolute barrier to entry similar to interconnection in the wireline context. To the extent that the incumbents can influence detrimentally the ability of new entrants to obtain spectrum, the Government must take action to ensure that this does not occur. Thus, if it can be shown that incumbents have the means and the incentive to block entry, auction policy must address this reality by creating an even playing field to promote entry. This brings us to the incumbents' second argument.

***“An unfettered auction will allow the market to decide whether entry is feasible.”***

25. By making this claim, the incumbents suggest that all players, new and existing, enter the auction on an even basis. It is simply a matter of business case that will determine who can pay more for the spectrum. The player with the superior business case, according to this reasoning, will ultimately triumph.

26. This reasoning is only partially true. In an unfettered auction, the player with the best business case would triumph. However, by definition, incumbents will always have a far superior business case to the vast majority of entrants.

27. There are two reasons for this. First, there is the inherent incentive on the part of incumbents to keep competition out. Incumbents generally are able to model how incremental competition would affect pricing and market share and can impute a value to keeping new entrants out. This additional value applies only to incumbents and not to new entrants and therefore represents a premium that the incumbents can afford to spend on spectrum over new competitors. Second, the incumbents already have a national network. Therefore, they can deploy it much more cost-effectively than can a new entrant.

28. This can be seen clearly in three examples. First, the purchase by Telus of Clearnet in 2000. Telus paid \$7 billion, an amount clearly beyond the ability of a new entrant to pay. In fact, by Telus' own admission, the company's stock price decreased significantly following the purchase due in part to the high price paid<sup>1</sup>. This is a clear indication that the investment community would not have backed an independent bid. Only Telus could accomplish this because of its position as a major regional incumbent with healthy near monopoly wireline cash flow **and** the dual incentive of creating a national network while simultaneously removing a major national competitor. Thus, the value to Telus was greater than to new entrants while, at the same time, its position in the market meant it could afford to pay the premium.

29. A similar dynamic was apparent in the 2000 CANADIAN PCS auction where the incumbents easily outbid numerous new entrant bidders including a consortium that included Sprint Corp., a large vertically integrated telecom provider in the US. Again, the advantages of incumbency allowed the

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<sup>1</sup> Telus Submission, page 39

incumbents to pay greater amounts than anything a rational new entrant business plan would justify.

30. The third example is more current. During the week of June 13, Telus announced its intentions to submit a bid to purchase Bell Canada. (A week later the company announced it had changed its mind.) In speculating on the implications of a Telus bid, there was virtually unanimous agreement among analysts and industry watchers that Telus would be capable of paying a higher price than other non-industry participant bidders (private equity firms) because of the synergies that would be gained.

31. All of the factors that have historically allowed incumbents to pay a premium for spectrum (and for competitors) apply equally to the upcoming AWS auction. Incumbents can pay more for spectrum because they already have a national network. This allows them to deploy the new spectrum at a much lower cost than would be possible by new entrants. Further, as already noted, the fact that at the same time a potential competitor will be barred from entering the market only serves to increase the value of the spectrum to incumbents. Therefore, the dual benefits of lower-cost deployment due to existing network and the ability to bar competition allow incumbents to place a premium on the value of the spectrum.

32. Clearly, the claim that an unfettered auction provides a level playing field is patently false. The only way to introduce new competitive players to the market and achieve the benefits noted above, namely investment and innovation, is to promote it through intelligent auction policies that provide the basis for new entry.

***“Set-asides can result in entities purchasing spectrum for speculative reasons”***

33. This argument only holds true if one assumes that bidders will act irrationally in an auction. As noted earlier, new entrants have only one basis upon which to formulate their bid strategy and that is their business case. It is expected that strong national and regional players will bid on spectrum, including Videotron in Québec and MTS Allstream elsewhere. While these companies cannot compete with incumbents for spectrum for the reasons given above, the value of spectrum to them ostensibly would be no greater than to any other new entrants, be it a domestic or foreign player.

34. Speculators would be foolhardy to attempt to outbid these large players for the spectrum in anticipation of foreign ownership rules being relaxed in the short term and the commensurate ability to sell the spectrum at a profit to a large foreign conglomerate. First of all, it is far from certain that foreign ownership rules will be relaxed any time in the near or even medium term. Second, even if foreign ownership was permitted, any speculator would be taking the significant risk that a foreign entity would want to pay more (considerably more to make it worthwhile) than the large domestic providers that are expected to participate in the auction.

***“Set-asides lead to artificially low auction revenues”***

35. Incumbents' claims in this regard completely distort the Government's objectives in using auctions to license spectrum. While Industry Canada cites "their ability to return appropriate compensation to Canadian taxpayers for the use of a public resource"<sup>2</sup> as one of the benefits of auctions, at the same time it also states that "the Government's objective in conducting auctions is not to raise revenue, rather it is to award licences fairly, efficiently and effectively so as to ensure that the Canadian public derives the maximum possible benefit from the spectrum resource."<sup>3</sup>

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<sup>2</sup> <http://strategis.ic.gc.ca/epic/site/smt-gst.nsf/en/sf01854e.html>

<sup>3</sup> Ibid

36. The Department further states that “to promote strong competition in the wireless communications sector, spectrum aggregation limits or set-asides for new entrants can be used where necessary to ensure a diversity of players in the market-place.”<sup>4</sup>

37. Therefore, maximizing revenues from auctions has never been the goal of Government policy while establishing set-asides and other incentives was considered from the very start by Industry Canada as a tool to be used when deemed necessary.

***“Experience in the U.S. and the U.K. show how set-asides lead to unwanted outcomes.”***

38. Incumbents bring examples from auctions in the US and UK to show how set-asides and similar mechanisms can go awry. The example from the U.S is the 1996 C-block auction, which supposedly cost U.S. taxpayers over \$5 billion and delayed the sale of the spectrum to a viable contender by three years.

39. The provisions established by the FCC for the now infamous C-block auction go well beyond what is being contemplated here. The C-block auction limited eligibility to “designated entities” with revenues lower than a specified threshold. In addition, and from here comes the majority of the eventual problems, bidders were permitted time to make good on their bids.

40. This is not being contemplated at all in this auction primarily because of the lessons learned from the C-block auction. A letter of credit will be required upfront and a full payment will be due within a short time of the auction’s completion. The LoC ensures companies cannot bid beyond their capabilities while the short turnaround time for payment means that any default, which

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<sup>4</sup> Ibid.

comes with significant penalties, will become apparent very quickly. Therefore, there is little concern that a set-aside in the upcoming auction will result in anything close to the aftermath of the FCC's C-block fiasco.

41. Claims that a set-aside in the AWS auction will lead to a result similar to that which occurred in the UK UMTS auction are likewise unfounded. The result that Telus found so distasteful was that setting aside the A-block allowed a large multinational firm, Hutchison, to buy spectrum at a subsidized price compared to the incumbents.

42. Again, this is unlikely to happen in Canada. Foreign entities are not allowed to bid in the auction, at least as majority owners. Rather, large domestic firms are expected to bid and be successful in a set-aside auction. And with respect to any subsidy or discount, without such discount (which is really no discount at all but a levelling of the paying field) new entrants would be shut out of the auction for all the reasons provided above.

### **Barrier: Network Access – Roaming and Tower Sharing**

43. In our initial submission and in those of many other parties, both mandated roaming and tower-sharing were identified as key enablers of a competitive market. Without access from day one to a national network, it would be nearly impossible for a new entrant to compete and is analogous to the need by wireline carriers for interconnection.

44. Similarly, access to incumbents' towers is crucial to enable the deployment of a new entrant's network. The Canadian landscape is nearly saturated with communications towers as it is and it would be extremely difficult and inappropriate from a public policy perspective for entrants to be forced to erect new towers and thereby add to the visual pollution that already exists. Further, rooftop exclusive arrangements that incumbents currently enjoy run

counter to the public interest as these rooftops, which are in short supply, are essential to enabling competitors to deploy the antennas that are required to cover urban areas.

45. Incumbents argue that what is really being requested is mandated roaming and mandated tower access at regulated rates. They argue further that these provisions are unprecedented. They are wrong on all counts. As far as Mipps is concerned, we are requesting mandated roaming in the same way that incumbents were required, as a condition of license, to offer resale and roaming to the PCS entrants in the late 1990s. We are asking for essentially the same thing with the caveat that deadlines must be placed on negotiations to ensure that incumbents don't use their market power to abuse the process.
46. Incumbents argue further that mandated roaming will act as a disincentive to network deployment.
47. If all a new entrant wanted was the ability to roam on an incumbent's network it would enter into negotiations to become an MVNO. Clearly, the disadvantages of total dependence on the underlying carrier have moved players away from this paradigm and spurred them to free up capital to purchase spectrum. It is simply not rational for an entity to invest significant sums in spectrum only to allow the resource to lie dormant while the entrant ties its fate to that of the underlying carrier.
48. The truth is that mandated roaming is not precedent-setting. It was seen as essential to facilitate entry in the late 1990s and is similarly essential today. As for tower sharing, it has been an unofficial policy of the Government for many years, one which the Department encouraged in various fora and at every opportunity for reasons of environmental safety and good community relations.

## Summary

49. New entry is good for the Canadian market and good for Canadians. It will spur new investment and leading-edge innovation as new competitors build on networks and vie to differentiate themselves from incumbents.
50. Competitive entry will also reinvigorate the wholesale market by providing choice and the potential for creative arrangements and resource sharing leading to innovation at the wholesale level.
51. An unfettered auction favours the incumbents since their existing network and the incentive to block competition allow them to spend more than a new entrant on spectrum.
52. Spectrum aggregation limits or a set-aside in the auction is consistent with the Policy Direction in that it removes an impediment to access and a barrier to entry.
53. While a set-aside auction may garner less revenue than one that is completely open, the Department never claimed revenue maximization as an overarching goal when it instituted auctions as a tool for spectrum allocation. On the other hand, Government policy leaves room for either a set-aside or spectrum aggregation limits when warranted.
54. Mandated roaming is a tool that has been used in the past to facilitate entry and the Government should not shy away from using it in this instance as well.
55. Mandated tower sharing and the prohibition against exclusive rooftop arrangements are good from so many different public policy perspectives, all of which were included in many of the initial submissions including that of Mipps, and which in any event are well-known to Industry Canada. Claims by

incumbents against such provisions should be seen for the self-serving arguments that they are.

## **THE NEED FOR COMPETITIVE ENTRY**

56. The incumbents premise their main arguments regarding the competitiveness of the Canadian market on two main points. First, they attempt to discredit the methods used by “detractors” to prove that the Canadian market is less competitive and to replace market metrics used by the majority of analysts and the OECD with data of their own choosing. Second, they attempt to show that the market today is competitive solely due to the choice of MVNOs. Both of these are refuted in this section.

### **Competition – “Yes” or MV“NO”**

57. Each of the incumbents has made much of the fact that there are numerous resellers and MVNOs in the Canadian market and have even identified regional carriers as additional competition. None of these can be said to represent true competition.

58. First the regional carriers. MTS, Sasktel and even Aliant are brought by some of the incumbents as examples of additional competition. They clearly are not. Aliant is wholly owned by Bell. MTS and SaskTel while not owned by Bell are limited to their respective operating territories and are, in fact, the incumbents where they provide service. Further, since Bell Mobility does not compete in these provinces, there are only three facilities based carriers, the same as in the rest of the country. Therefore, the existence of these “competitors” does not reflect on the competitiveness of the Canadian market as a whole.

59. The existence of MVNOs (Virgin, Primus, Videotron, etc.) is used by the incumbents as proof positive that the market is competitive from both retail and wholesale perspectives – retail, because of all the additional brands, and wholesale because the mere existence of these companies shows that there

is competition among the incumbents for the business of the resellers, leading to competitive wholesale terms.

60. This is just not the case. The most successful of the MVNOs is Virgin, which claimed at the Canadian Telecom Summit to have 400K subscribers. However, Virgin is majority owned by Bell Canada; in our view this makes it more of a subsidiary of an incumbent than an actual competitor. Subscriber numbers of the other resellers and MVNOs are not generally available. However, based on market activity (advertising, etc.), we would be surprised if in total these other companies had more than 100K subscribers, if that many. We suggest that the independent resellers and MVNOs make up a small and so far insignificant portion of the market.

61. One company, Videotron, does make its wireless subscribers counts public and they are very telling. As of Q1 2007 (about 6 months after launch), the company had a total of 20,000 subscribers. When compared to the company's stellar achievements in wireline, where it was able to attract 163K subscribers within nine months of launch, this number begs for an explanation.

62. The answer is obvious. Videotron owns all of the facilities that it uses to offer local telephony but none of the ones it uses to offer wireless. It therefore has little if any control over services, applications and of course price. The company is completely dependent on its underlying carrier, has little flexibility in the way it prices services and structures its offerings and, therefore, is challenged vis a vis its ability to differentiate itself from the competition.

63. However, if Videotron and other MVNOs were able to negotiate flexible resale arrangements, they could potentially represent viable competition. Unfortunately, in the current environment, this just isn't possible. There are two ways to make this come about: the establishment of a regulated

wholesale regime that keeps the incumbents honest in their dealings with MVNOs and resellers and/or setting auction policy that enables competitive entry.

64. It is precisely Videotron's lack of success in the market place that indicates the shortcomings and limitations inherent in the reliance on a restricted reseller environment to provide additional competition. Clearly, to achieve an environment of true choice, Canadians need and deserve the opportunity to choose from additional facilities based providers, the existence of which will create the right conditions for the empowerment of MVNOs through access to unbundled resale arrangements.

### ***Coordinated Activity***

65. There is one additional point regarding the competitiveness, or lack thereof, within the current market structure even with the existence of numerous MVNOs. The incumbents argue in various parts of their submissions that the CRTC and the Competition Bureau have proclaimed in various rulings over the last number of years that the market in its current three-player configuration is competitive. Rogers suggests that the Competition Bureau's ruling in favour of its purchase of Microcell reflects the Bureau's belief that the market is not characterized by "coordinated behaviour".

66. We would suggest that incumbent activity that has taken place as far back as 2001 (after Telus bought Clearnet) may indicate otherwise. In 2001, Telus raised its System Access Fee from \$4 to \$6.95. Rogers and Bell followed suit within six months. More recently, over the past 12-18 months, All carriers have pushed back the start of the free weekend clock first from 6 p.m. to 7 p.m. and finally to where it is currently, at 8 p.m.

67. Finally, to quote a Merrill Lynch analyst speaking on an MTS Allstream analyst conference call (May 8 2007), "most of the industry moved from 25 cents to 30 cents on overage and long distance last year". When prices for telecommunications services are generally falling and when in the U.S. most providers give away long distance, an industry-wide increase in overage and long distance rates is highly suspect, and in our view is evidence of an extreme lack of competitiveness in the market, if not outright coordination among the operators.

## **A Question of Metrics**

68. We would preface our comments in this section by stating that the question of what metrics best reflect reality and best portray the relative competitiveness of any jurisdiction is of secondary importance. The bigger question, as noted in the first half of the submission, is that of barriers to entry, which we believe need to be addressed regardless of the competitiveness of the industry. This is certainly so in light of the fact that while the metrics themselves are objective reality, how they are interpreted is highly subjective as can be seen from the numerous differing yet scholarly opinions on the import of this or that piece of data. Having said that, it is still important to rebut to the extent possible the positions of the incumbents on the proper metrics and their interpretation if only to ensure that the Department is not swayed by the incumbents' blatant distortion of facts in their attempts to explain away what are obvious shortcomings in the Canadian wireless market.

69. In its initial submission, Mipps made a strong case for competitive entry based on industry-standard metrics used by the majority of analysts, the OECD and the Telecom Policy Review Panel (TPRP). Noting the lower price per minute and the higher penetration rates in the U.S. (and in almost every other market), we suggested that the market in Canada is not as competitive as it

should be and argued that competitive entry is the only sure way to correct the imbalance.

### ***Penetration***

70. Specifically, we cited the large gap in end-2006 penetration rates between Canada (58%) and the U.S. (74%<sup>5</sup>) as well as evidence, similar to that of the TPRP Report, that on average, rates in the U.S. were lower than rates in Canada. Other submissions cited the much higher penetration rates (>100%) in Europe as evidence of lower levels of competitiveness in Canada.

71. The incumbents, in countering these arguments, state that citing comparisons of penetration rates without “the proper qualifications” distorts the true picture. Specifically, they argue that market conditions in the U.S. and Europe are different from Canada and that these differences explain the gaps in penetration. Some of these market variations include:

- The U.S. had an 18 month head start
- Canada’s large land mass makes it more difficult to provide service
- Penetration rates in Europe are inflated due to double counting of customers that have multiple SIM cards

### ***The 18 Month Myth***

72. The argument that the 18 month head start in the U.S. is somehow relevant to current penetration rates is patently absurd. According to the CTIA’s Wireless Industry Survey, at the end of 1985 - two full years after service was initially introduced in the U.S. and six months after service introduction in Canada - there were 340,213 wireless subscribers in the U.S., representing less than 1/5 of 1% of the total U.S. population and insignificant compared to the 233

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<sup>5</sup> Estimate based on CTIA web site.

million subscribers at the end of 2006.<sup>6</sup> Furthermore, watershed events since then, most of which occurred at around the same time in Canada as in the U.S. (in some cases earlier in Canada), have led to much higher growth and penetration levels than anyone would ever have imagined possible back in 1985 and have completely eclipsed the early years, which were characterized by very slow growth. To name a few:

- the introduction of the phone-in-a-box which made it possible for people to sign up for wireless service in thousands of retail locations instead of a limited number of “service centres”;
- the introduction of second and third generation digital technologies facilitating deployment of advanced services and dramatically increasing phone utility and voice quality; and
- huge leaps in microchip and battery technologies that have led to improvements in phone ergonomics (size and weight) and utility.

73. Clearly, the 18-month head start, at the end of which significantly less than 1% of the U.S. population were using wireless services, has little if anything to do with the 16% gap in penetration rates that existed at the end of 2006, more than 20 years after service was initially launched in North America.

### ***“Size Matters”***

74. Another difference cited by the incumbents is Canada’s large land mass compared to that of the U.S. Rogers submits that in Canada, 16.8 million subscribers are found within a land mass of 10 million sq km whereas in the U.S., 208 million subscribers are served within 9.6 million sq km.

75. The flaw (one could say the attempt to mislead) in this comparison is quite obvious. Whereas the land mass covered by wireless services is greater in

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<sup>6</sup> CTIA web site: [http://files.ctia.org/pdf/CTIA\\_Survey\\_Year\\_End\\_2006\\_Graphics.pdf](http://files.ctia.org/pdf/CTIA_Survey_Year_End_2006_Graphics.pdf)

Canada, the vast majority of the 16.8 million subscribers live in a relatively narrow band of territory in the southern part of the country. Coverage beyond this band is sparse and of lower quality, especially as far as the national providers are concerned. (Where service is provided by regional operators – usually a small ILEC - coverage is usually vastly superior to that of the national provider.) Subscribers in the U.S., on the other hand, are spread out across the entire territory. We would suggest that a comparison that accounts for the local context would yield much more comparable results.

### ***Even after Adjusting for Multiple SIMs, Canada Lags Behind Europe***

76. The incumbent claim of double counting in European markets due to multiple SIM cards is a fact that cannot be denied. However, even after adjusting to take this factor into account, as Rogers does, penetration rates are still significantly lower (by 10 to 25 bases points) in Canada than the majority of countries listed, with the exception of Romania, Turkey and South Africa, two of the three having introduced service years after Canada. Further, as noted below, double counting also leads to a lower than actual MOU per month figure. The incumbents fail to adjust their numbers to account for this fact.

### **Minutes of Use and Revenue per Minute**

77. Instead of penetration, the incumbents argue, metrics such as average minutes of use and average revenue per minute provide a better picture of the relative competitiveness in the various markets.

78. In fact, Mipps in its initial submission compared average per minute rates between Canada and the U.S. and found Canadian rates to be, on average, 64% higher. Minutes of use, as well, were compared and Canada was found to lag the U.S. by a similarly wide margin. The incumbents argue that comparison to the U.S. is unfair (for the reasons given above) and a more

accurate picture can be drawn from comparisons to Europe, against which Canada (conveniently) compares favourably with respect to these metrics.

79. We have already placed into doubt the arguments used by the incumbents to excuse the huge gap in competitiveness between Canada and the U.S. and, thereby, have shown that the U.S., as the market most similar to Canada, is the best benchmark to use in assessing the Canadian market. Therefore, even by the incumbents' own preferred metrics, the Canadian wireless market compares very unfavourably to its closest trading partner.

### ***What about Europe?***

80. What about Europe? First of all, we believe that the U.S. is the market most closely comparable to Canada in its structure, technologies, service platforms and service packages. Europe, on the other hand, has very different market dynamics and any comparison to it is not nearly as meaningful.

81. Having said that, we do not shy away from meeting head on the claims of the incumbents that the Canadian market is much more competitive than Europe when using their preferred metrics as the basis for comparison. On the face of it, Canada places well relative to Europe in these metrics. However, we submit that the incumbents have failed to contextualize their findings and are guilty of using these metrics – to paraphrase Rogers - without the necessary qualifications.

82. We suggest that major differences in the way Europeans use their phones could provide insight into the variances between Europe and Canada with respect to the incumbents' preferred metrics. SMS and text messaging, which became popular in Europe with the launch of GSM in the early-1990s (when price per minute was much higher) has remained a favoured mode of communications among Europeans. In 2004, SMS traffic in OECD countries

grew overall by 16.7%<sup>7</sup> to over 35 billion messages, and by much higher rates in individual countries such as Denmark (61.4%), Sweden (51%), France (30.5%), Italy (27%) and the U.K. (20.8%), reflecting that popularity of the service has not abated with voice price decreases.

83. The much greater use and reliance on text messaging and SMS is an obvious example of how Europeans use their phones differently from North Americans. This simple fact goes a long way in explaining the lower European average MOU statistics and, consequently, the higher average revenue per minute data.

84. By contrast, SMS is only now becoming popular in North America, which didn't even rate a mention in the OECD chart referenced above.

85. Further, while Rogers provided adjusted penetration rates to account for multiple SIM card users, no such adjustments were made to the minutes of use metric, resulting in artificially low MOU per user statistics in Europe. To provide an accurate comparison between average MOU data between Canada and Europe, the number of users needs to be adjusted in the same way as Rogers made adjustments to penetration rates.

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<sup>7</sup> OECD Communications Outlook 2005

**Minutes of Use in North America and Selected European Markets,  
Adjusted**

	<b>SIMs/user reported data<sup>8</sup></b>	<b>Reported Minutes of Use<sup>9</sup></b>	<b>Real Minutes of Use</b>
Canada	1	411	411
Italy	1.75	122	214
Spain	1.44	156	225
UK	1.42	157	223
Germany	1.25	89	111
France	1.17	254	297

***Other factors that cast doubt on the reliability of the Incumbents' data***

86. We are not privy to the research used by the incumbents so we cannot ascertain the basis that underlies the data they have presented. However, we would suggest that in examining the data provided by the incumbents, the Department should ask the following two questions: 1) Is the country data presented an average over all carriers within the country or is it representative of only one operator? and 2) Are the minutes of use outgoing only? Because of Calling Party Pays, we suspect that some operators may only capture billable outgoing minutes. If country data is really representative of only a subset of carriers in a country and/or the MOU represents outgoing only, the data presented is understated in terms of minutes of use and over stated with respect to ARPM.

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<sup>8</sup> Rogers Submission pg. 33

<sup>9</sup> Ibid pg. 34

## Summary

87. The mere existence of brands within a market is not an indication of the existence of rigorous competition at the wholesale or retail levels, especially when the largest one by far is a subsidiary of an incumbent and the rest are struggling to attract subscribers.

88. The qualifications brought by the incumbents to discredit industry-recognized metrics as the basis upon which to assess the competitiveness of the Canadian market compared to that of the U.S. are misleading and inappropriate.

89. As such, the U.S. market *is* an appropriate benchmark to assess the Canadian market and due to their similarities comparisons between the two countries should be given more weight than comparisons with Europe.

90. In assessing how Canada compares to Europe, the Department needs to take into account the stark differences between the two markets.

91. Based on all of the foregoing, the Government needs to be concerned about the lack of competitiveness in the Canadian market. Having said that, the mere enabling of competitive entry, for all the reasons provided in the previous section, is sufficient justification for taking steps, such as spectrum aggregation limits or set-asides, to enable competitive entry.