

Mr. Bernier, Mr. Mitchell, Mr. St-Aubin

Attention: Director General

Telecommunications Policy Branch

Industry Canada

300 Slater Street, Room 1612A

Ottawa, Ontario, K1A 0C8

Re: Notice DGTP-002-07: Consultation on a Framework to Auction Spectrum in the 2GHz Range including Advanced Wireless Services

Please find attached my comments to previous submissions to Industry Canada regarding the upcoming spectrum auction process. I have been a keen follower of the communications industry for the last 20 years, working within the field, consulting and investing. My travels have included extended work periods in Asia, Europe and Latin America.

Control of spectrum should be supremely guarded by the government it is one of Canada's natural resources and as such it cannot let a couple of companies control its destiny. We cannot allow another faux WiMax spectrum auction occurring.

I would suggest as a precursor, reading a very compelling paper by Tim Wu, a Columbia Law School professor: Wireless Net Neutrality
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=962027

This is a near exact examination of the Canadian market place with the exception that Mr. Wu states that the US market for the most part has been competitive. Canada does not have a true competitive market.

I have outlined some comments by other parties followed by my insights. In closing I have raised some other points for your consideration. I would like my comments posted on the Industry Canada website, however please withhold personal address and correspondence information.

Robert Simmons - Free Market Forces vs. Government Intervention In my view, the Canadian wireless industry today is healthy, vibrant, and robustly competitive. It has served and continues to serve Canadians extremely well and has done so largely because government has allowed market forces to work.

While the government should continue to encourage competition, in my view there is absolutely no need nor reason for the government to artificially create an additional carrier or otherwise interfere in the wireless market at this time. Free market forces are working well and should be allowed to continue to perform in a natural manner.

I believe that the potential benefits for Canadians resulting from the introduction of a new wireless carrier will actually be very marginal at this point. This must be weighed against the harm that can be caused

by subsidizing unviable entry. Indeed, until just a couple of years ago, we had an additional national carrier, Microcell, however that company effectively failed not just once but twice, at an enormous cost to investors, many of whom were Canadians. With penetration at an all-time high in Canada and prices lower than ever before, there can be no doubt that the difficulty, risk and investment required to viably enter the market today is far greater than it has ever been before.

Having said that however, if someone is willing to take that risk and make the necessary investments, they should not be prevented from doing so.

Therefore, I submit that the auction should be unfettered to the greatest degree possible and there should be no spectrum "set-aside" or artificial subsidization of a new entrant. If someone wishes to take the risk and make the investment to enter at this point, nothing prevents them from doing so using such an auction approach.

93% of the market is dominated by 3 facilities based Carriers. MVNO's that are set up are forced to deal with these Carriers based on their wholesale terms (Virgin with Bell and Amp'd with Telus). Should a potential MVNO not agree with one-sided terms, they have zero options for launching their network. This is very different from what long-distance and local access players (Ted Rogers) begged the CRTC to help with in the early 90's and persuaded them to implement. Rogers was behind Unitel and was given regulatory protection until Bell lost a certain share of market. Robert has clearly not traveled, since he does not recognize how Canadians are being raped for one of the highest data rates in the world in addition to having the 17th most competitive wireless voice market in the world (according to Seaboard Group) or even worse, 26th place among OECD countries. He clearly has a selfish interest based on his holding of Telus stock through their purchase of his Clearnet holdings previously (of which he was a major stakeholder).

Telus Comments

TELUS is not requesting that the government set-aside spectrum for us, although based on our record of investment in creating a third national 3G network we believe we would clearly qualify under any "beauty contest." We are not requesting this because we recognize that is not how markets operate. TELUS only asks that its rights to fully compete in this auction not be curtailed in order to create advantages for corporate interests that have no record of risk or investment in building this market. To restrict our access to essential spectrum resources would be a betrayal of the shareholders that risked so much when risk was required and the employees that built this company.

Regulatory interventions are costly

It must be remembered that set-asides,² mandatory roaming³ and forced tower sharing are the kind of regulatory interventions that led to uneconomic entry in the past. The consequences of making the wrong decision can be costly. Economists⁴ calculated that the failure of set-asides in the U.S. cost consumers about \$5.4 billion between 1996 and 1998.

It is further estimated that the U.K. set-aside in the Universal Mobile Telephone Service (UMTS) auction induced an inefficiency of approximately £450 million. Spectrum caps⁶ and set-asides reduce the

number of bidders for certain spectrum bands and ultimately reduce the price paid for that spectrum. This in turn results in a material loss to taxpayers, in effect a gift to the entrant. Alternatively, a setaside reduces the spectrum supply available to incumbents and thereby increases their cost resulting in a subsidy from incumbents to new entrants. The latter is a particularly offensive form of intervention since incumbents underwrite their competitors' cost of entry. This, coupled with other policy measures which would force incumbents to share their network with the entrant, is not remotely close to reliance on market forces.

Of greater concern, from a public policy perspective, is the potential for a firm to receive government assistance when it is not needed to enter the marketplace.

Amongst the potential entrants into this auction are companies that include a regional telephone company (ILEC), a large cable company and at least one hydro company. All of these companies have the opportunity to acquire the backing of U.S. carriers and private equity funds.

Fairness dictates opportunity to fully bid For TELUS in particular, which has neither the same amount of spectrum nor the video presence of its competitors, additional spectrum is crucial for its plans to introduce more wireless entertainment options for consumers.

Eliminating an opportunity to fully bid on a significant portion of the new spectrum is economically damaging and inflicts a disproportionate penalty on TELUS relative to larger competitors that have more spectrum.

TELUS is in a unique position relative to other incumbents. TELUS' 800 MHz⁷ spectrum covers a much lower population than either Bell or Rogers. TELUS also has significantly less spectrum in total than Rogers. Finally Bell and Rogers share 100 MHz of spectrum across Canada that can be used to support WiMAX, an alternative advanced wireless service technology.

Out of all the Carriers Telus clearly has the most closed mobile data environment. They have continuously blocked 3rd party mobile websites from customers unless they are able to attach a premium to the content. This is akin to Telus' ISP dictating which websites its DSL customers could surf on. It is ironic that Telus is doing a flip-flop with regards to open auctions and the purchase of BCE:

<<http://www.thestar.com/Business/article/229364>>
<http://www.thestar.com/Business/article/229364>

But Entwistle says Telus's proposal to set aside wireless spectrum for new entrants in an upcoming auction will continue to ensure healthy levels of competition.

Telus had previously opposed such measures along with BCE and Rogers Wireless Communications Inc., arguing for a free market.

Entwistle defended the change of heart. "The status quo isn't going to be a survivor here. There is going to be a major change in the Canadian

telecommunications industry. Our future is inexorably linked to that of BCE's."

If Telus wants open competition, change foreign ownership rules and allow European and US based Carriers to build networks, let the Big 3 really compete for spectrum. This is the only way to give Canadians choices they deserve.

Bell Comments

Claims have been made that the wireless industry is not competitive enough, such that government should intervene. As a result, Industry Canada is considering auction restraints for the purpose of facilitating new entry in the industry, in the belief that such entry will provide sustainable competition and enhanced consumer welfare benefits.

These claims, however, are being made by those who stand to benefit from government intervention. Their data ought to be considered in that light. They offer simple comparisons that do a disservice to the real debate of the issues. The reality is that the Canadian industry shows all the markings of intense competition. It is a lively market in which competitors gain and lose ground in each business cycle.

A double benefit

An unrestrained auction provides a double benefit for Canadians: they become the beneficiaries of the advances and innovations that the competitive Canadian wireless industry will deliver through AWS spectrum, and government coffers receive significant revenues to use in the best interests of all. There are ripple effects, as well. Advances in wireless telecommunications facilitate commerce, improve productivity and enhance Canadians' quality of life.

Should the Department decide to intervene in the industry by setting aside spectrum and otherwise assisting new entrants, it will be stepping away from its spectrum steward role. Instead, it will be implementing industrial policy via the spectrum auction. Such policy inevitably will require continued micromanagement in an effort to achieve and maintain certain market outcomes. It is a misguided, unnecessary approach to the issues at hand.

Conclusion

Bell believes strongly that the Canadian wireless industry is highly competitive. We believe there simply is no need to entertain the measures being considered by the Industry Canada in its Consultation Paper. Based on the evidence in this submission, we believe such measures are not in Canadians' best interest. A restrained auction will not supply Canadians with the maximum benefit for their resource. It could, instead, do damage to the liveliest sector of the Canadian telecommunications industry.

Very interesting comments from Bell. A soon to be Bell controlled by US based interests since it cannot manage its business effectively and has very poor leadership at senior levels and on their Board. Given their disposition to selling out to US based private equity groups, how can they make any credible comments about enhancing Canadians quality of life? To the comment about Canada being a beneficiary of advances, Canada is a laggard with regards to features and services on voice and

data networks compared with many emerging countries, let alone 1st world nations.

To Bells comment about the industry being 'highly competitive', just look at what happened in the WiMax auction spectrum, whereby Bell and Rogers bought up all the spectrum then post-auction decided to 'share' the spectrum, thereby effectively creating no competition. What have Canadians seen in the way of WiMax service penetration? Correct, zero! Why? Because it's incredibly disruptive to wireless, wireline and hi-speed access.

Case Study - Inukshuk

- Carriers are trying to 'fiercely' compete for WiMax spectrum (again, limited supply of a Canadian natural resource)
- Rogers and Bell obtain the majority of spectrum
- Later decide to 'pool' their spectrum together and effectively create a monopoly by way of Inukshuk
- WiMax would have been a way for new entrants to be able to compete with Wireless Carriers and hi-speed access providers, now there is one less channel for disruption. You have 2 players now effectively controlling the new, viable means for disrupting their traditional businesses in DSL and Cable modems, how do you say 'stagnant innovation and higher consumer prices'
- The losers? Canadian consumers and Canadian business.

Where is the Canadian government policy leadership in this regard? How can this effectively happen?

Comments by Rogers

Recommendations

- We recommend that Industry Canada support the current regulatory environment of the mobile wireless industry, treating all stakeholders evenly and fairly, and preserving the industry's demonstrated competitiveness.
- There should be no set aside for new entrants, as this would unnecessarily interfere with the efficient allocation of scarce spectrum resources, inviting entry by speculators with no interest in building a new network or offering services.
- Spectrum set-asides are mechanisms that regulators can use to dictate outcomes in spectrum auctions. Spectrum set-asides produce distortions in the auction process and in the marketplace.
- They encourage uneconomic entry by removing spectrum from the full competitive bidding process. This tends to lower the price of spectrum available to new entrants below its fair market value.
- They limit the amount of spectrum available to incumbents, thereby increasing the price of the remaining spectrum that is available to them and possibly limiting their ability to acquire sufficient spectrum to satisfy their business plans.

- They also reduce the revenues available to the government from the sale of spectrum.
- There should be no auction cap which limits a bidder's ability to acquire spectrum, nor any type of spectrum cap. Spectrum aggregation limits constitute another form of regulatory intervention that are designed to interfere with the efficient allocation of resources pursuant to an open auction process.
- There should be no mandated roaming either in or out of territory. Canadians already have access to international roaming arrangements and the networks of Canadian wireless carriers are already integrated into a single interconnected network allowing communications with each other.
- The focus of any regulatory intervention should be on measures that increase competition - not diminish or distort it. Tower sharing is a measure that could actually assist new entry without the distortions that accompany set-asides, spectrum caps and mandated roaming.
- Tower Sharing should be required where practical, at commercially negotiated rates.
- The license term for this spectrum should be 15 years, consistent with the US, and with a high degree of expectation of renewal.
- Instead of a 2% R&D requirement, mobile licensees should be provided with the flexibility to devote 2% of adjusted gross revenue to either R&D, or new service deployment in rural/non-urban areas.
- New entrants acquiring spectrum should be required to roll out to 75% of the population within five years. This would be consistent with the federal government's objectives of encouraging facilities based competition and extending reliable and advanced communications services to both urban and rural areas.

Interesting comments from Rogers, which 15 years ago was begging for regulatory relief in the long-distance market. This is quite opposite from some of their views such as on Tower sharing, where they would own the leverage to dictate the price they want to provide access to a 3rd party. If local access can be regulated, something as simple as Tower Sharing should be as well. They are a co-conspirator in the WiMax faux auction, later known as 'Inukshuk'.

Comments by Canadian Wireless Telecommunications Association (CWTA) The Canadian wireless market has been competitive from the outset and its dynamic growth and constant innovation are a direct result of competitive market forces. Billions of dollars have been invested in Canada's cellular/PCS networks that currently reach 97% of the population and cover a massive area. Canadians have access to the most advanced wireless services and are among the heaviest users of wireless services in the world. This market should be permitted to continue to develop on the basis of competitive market forces and the framework used for the licensing of additional mobile spectrum should reflect this objective.

The CWTA therefore recommends that Industry Canada rely on market forces to the maximum extent and should refrain from the use of artificial measures such as spectrum set-asides, spectrum caps and mandated roaming when licensing this spectrum. The continued reliance on competitive market forces will ensure that Canadian taxpayers receive the fair market value for this valuable public resource and that an important, intensely competitive and successful market will not be distorted.

This approach would also be consistent with recent federal government telecommunications directives to rely on competitive market forces to a greater extent, to minimize the extent to which competitive markets are regulated, and to encourage facilities-based competition.

Further, the CWTA strongly recommends that Industry Canada license this spectrum using Tier 2 service areas and harmonize the AWS band plan with the AWS band plan used in the US. These actions are crucial to the development of high quality and affordable mobile services that will be integrated with the US mobile networks and will benefit from economies of scale.

By relying on competitive market forces and harmonizing with the US, the federal government will ensure that Canadians will continue to have access to the most advanced wireless services in the world and that this competitive market will continue to innovate and rapidly develop.

7.7 CONCLUSION

Comparing the state of competition today with five years ago, the major structural changes in the market have been the loss of one facilities-based provider and the entry of several MVNOs. In terms of performance characteristics, there appears to be some lessening of focus on price reductions with more emphasis on the introduction of several new services and packages, particularly in the data area.

As was the case five years ago, from a competitive analysis perspective, the limited opportunity for network-based entry remains the single most important issue. Whether a new network-based entrant can survive in the market is a relevant question as there is evidence that the market does not have the ability to support a fourth network provider. Nonetheless, predictions of market behaviour and survivability are just that: predictions. Reality can, and often does, differ from predictions.

In any event, economists place considerable reliance on the ability of new players to enter a market as an important trait that can help discipline competitive behaviour. As long as new competitors can enter relatively quickly, existing competitors must be vigilant in maintaining a healthy competitive posture. While the ability to enter is readily available at the retail level (as an MVNO for example), ease of entry is lacking at the facilities level.

We would note that net income in the industry has been positive and growing (after many years of losses) in the last three years. Is this a sign of a less competitive market or the inevitable outcome of "just rewards" after several years of no profitability? Clearly, the industry could not continue to survive while shouldering losses indefinitely, so achieving financial health is not surprising nor undesirable. Further,

customer choice still remains relatively strong. However, we believe that even though industry performance has been admirable in many respects over the last five years, retaining the means to permit or even encourage new facilities-based entry should be an ongoing policy consideration based simply on the relatively small number of facilities-based service providers. The exact mechanism for ensuring there is an ongoing potential for new entry will likely require further policy debate and discussion.

Depending on which research you follow Canada is anywhere from 26th among OECD countries to 17th (Seaboard Group) in terms of wireless competition. Peter Barnes, the chairman at the CWTA, has publicly stated that Canada is ranked 3rd among industrialized countries in wireless competitiveness. With all due respect to Mr. Barnes, which planet is he originally from? The argument is always given that 'it's difficult' to build networks in the Canadian market because of its 'expansiveness'. However let's compare average gross margins between Canadian and US Carriers. Average gross margins for US based Carriers - 22%, Canadian Carriers 41% - how can this happen if it's more expensive to build networks to service Canadians'? This argument does not hold water given the revenue that has been earned by Canadian Carriers. While they say that 'there have been several years of losses', the Carriers have owned market capitalizations in excess of \$\$ Billions!

The US market while not perfect, is much better than Canada in terms of wireless competition, in their case you have 3 tiers of multiple Carriers all competing fiercely for their customers:

- o National - Verizon, ATT, TMobile, Sprint etc.
- o Regional - Dobson
- o Localized - Cincinnati Bell

The 'features' that the CWTA speaks about, likely data services, are extremely costly for Canadians. European business people have joked that it is cheaper for them to use mobile data while roaming in Canada than it is for a Canadian to use mobile data on their own soil.

Voice Roaming in the US is very expensive for Canadians. Canadians are paying exorbitant fees to roam in the US causing more and more savvy Canadian business people to buy US based Carrier calling plans for single rate long distance rates for the US and North America.

Comments by Ontario Chamber of Commerce

The Ontario Chamber of Commerce believes that the government should continue its policy of allowing the wireless market to develop with little interference from regulatory agents. In this way, market outcomes will foster healthy competition and innovation among all providers, existing and new.

Government interference in the marketplace is not warranted in the wireless sector. It is a competitive market with no dominant competitor and therefore offers businesses the optimal prices and services that the market can bear. To distort the market's behaviour by regulation in support of new entrants, would in effect restrict competition and

favour certain players at the expense of optimal outcomes for customers.

The Ontario Chamber of Commerce believes that an open marketplace for spectrum, with a leveling playing field for all bidders, will foster healthy competition and innovation among providers. New entrants should bid for the spectrum on the same terms as incumbents.

Limits on the acquisition of spectrum are another restriction which would interfere with an open marketplace and optimal outcomes in the wireless sector. For the market for spectrum to operate efficiently, all players must have the opportunity to bid on the entire spectrum that is in their business interests.

Wireless providers have built their networks absent of regulatory interference. They have also negotiated roaming agreements on a commercial basis with other providers and without regulatory interference.

By mandating roaming agreements, the government would be interfering in the market and introducing a distortion which would very likely affect investments in network infrastructure by the incumbent carriers. Government should not introduce any disincentives to investment in a sector which requires major capital expenditures to maintain and expand the network infrastructure.

The government (in particular Liberal) over the last 15 years has show very poor policy leadership with regards to wireless and as a result Canada has suffered in terms of innovation and leadership. What we need is 'pure' market competition by allowing foreign companies the opportunity to set up facilities based Carriers in Canada. The Ontario Chamber of Commerce should recognize this would:

- Create more jobs for Canadians in business and technical roles
- Create real competition for Canadians customers
- Create better rates for Chamber of Commerce members

Some other overall points for Industry Canada to think through regarding the current state of the Canadian market:

Mobile Data Applications

Mobile data content applications are for the most part US based. Small software developers throughout Canada have a very tough time acquiring business from Canadian Carriers. There are no 'can-con' rules and as a result Canadians are consumers of American/European/Asian mobile data applications.

System Access Fee Scam

The 'system access fee' scam is another popular way for all Carriers (with the exception of Virgin) to charge a mysterious fee for no reason at all. Disguised as a fee for paying the government, Bell has

backtracked on this before and all Carriers have now trained their call centre reps to 'explain' it as a fee for maintaining the network etc. (in light of the class action suit filed against Carriers in the Province of Saskatchewan). Is this hidden price gauge necessary in light of Canadian Carriers average gross margin of 41%? Why should Carriers be allowed to practice misleading pricing to Canadians? Note: this marketing scam is now being used by Rogers for their home phone service.

Real 'Open Competition'

Open competition would ideally mean allowing US/European based competitors to join in the spectrum auction, providing real competition to the incumbents. This would be healthier for Canadians, business and government.

Global Leadership

As I have mentioned I have developed business globally and I can say from experience, aside from the success of RIM's Blackberry, Canada is not known internationally as a progressive player in wireless communications. Sweden, Norway, Iceland, India and China are much further ahead due to policy decisions made by government with a diligent attempt to foster success. Unfortunately the previous ruling Liberal government did nothing over the last 14 years to help in this regard.

We need to make the correct decisions at the policy level to ensure that Canadians are protected from the self-interests of the dominant Carriers, so we can take a path back to being leaders for what we were once known for.

Best,

Bruce Roberts

Telecom Consulting Group Inc.