CANADA GAZETTE NOTICE NO. SLPB-002-17

CONSULTATION ON A LICENCE RENEWAL PROCESS FOR ADVANCED WIRELESS SERVICES AND OTHER SPECTRUM

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REPLY COMMENTS
OF
BELL MOBILITY INC.

14 AUGUST 2017

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1.0 INTRODUCTION

1. There was general agreement among interveners with many of the views expressed in Canada Gazette Notice No. SLPB-002-17, *Consultation on a Licence Renewal Process for Advanced Wireless Services and Other Spectrum* (the Notice). Specifically:

- the equipment ecosystem is well-established for AWS-1 spectrum, maturing for G Block and undeveloped for I Block;
- when Conditions of Licence (CoLs) have been met, licences should be renewed;
- 20-year renewal terms are appropriate for AWS-1 and G Block, but as discussed below, the situation for I Block is not straightforward and warrants special consideration; and
- most of the proposed CoLs in Annex A of the Notice are acceptable, i.e., eligibility; licence transferability, divisibility and subordinate licensing; radio station installations; provision of technical information; compliance with legislation, regulations and obligations; technical considerations and international domestic coordination; mandatory antenna tower and site sharing; and amendments.

2. With widespread support from interveners, Innovation, Science and Economic Development Canada (ISED) should have confidence in setting its renewal policies related to the above issues for the spectrum in question. However, on several other issues, interveners broadly disagreed with the proposals advanced in the Notice, or there was not unanimous support from interveners for a particular viewpoint. Each of these issues will be discussed below.

2.0 RENEWAL OF I BLOCK LICENCES

3. Interveners were unanimous in concluding that an equipment ecosystem for I Block has not yet developed but views differed on the appropriate course of action for ISED to take in consideration of this fact. While Shaw[1] and Telus[2] supported the proposed 10-year renewal term, Eastlink[3] and Xplornet[4] recommended that I Block licences should be renewed for 20 years to allow sufficient time for the ecosystem to develop and mature. In contrast, Sasktel,

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1 Shaw Comments, paragraph 53. Note that all references to "Comments" in this document refer to the 25 July 2017 submissions to ISED filed by the company in question in response to the Notice.
2 Telus Comments, paragraph 27.
3 Eastlink Comments, paragraphs 19 and 23.
4 Xplornet Comments, paragraph 6.

perhaps because it holds no I Block licences, recommended that I Block licences should be returned to ISED.[5]

4. We support the view that the lack of an equipment ecosystem, and the negative impact this has on reaching deployment targets, should be taken into account when deciding whether to renew the I Block licences. Our proposal in this regard is that the licences should be extended for a period of five years under the current CoLs.[6] This approach would be consistent with that taken previously by ISED in similar circumstances.[7] If, at the end of five years, ISED concludes that the ecosystem remains undeveloped, it could extend the licences in additional five-year increments until such time as the direction and schedule for technology and standards development are reasonably clear.

5. We would also support renewing the licences for 10-20 years[8], as proposed by other interveners,[9] as this would, in all likelihood, provide an opportunity for the I Block ecosystem to develop to the point where licensees could effectively deploy the spectrum. Again, ISED could establish a five-year checkpoint to review the status of the I Block ecosystem and adjust the deployment targets at that time if appropriate. This approach would provide certainty for the industry in the current situation where the technologies and standards are uncertain.

6. Extending the licences in five-year increments or renewing the licences for 10-20 years (with ISED checkpoints at five-year increments) both have the advantage that, should I Block-compatible equipment become available, licensees could rapidly deploy services to Canadians much more quickly than would otherwise be the case. For example, if the licences are not renewed but instead must be returned to ISED, there would inevitably be a minimum delay of two years after an equipment ecosystem has developed before spectrum deployment could begin. This time lag would be necessary for ISED to conduct an auction and issue licences to the winning bidders. Such a delay would be inconsistent with ISED's innovation agenda, which strives to enable companies to respond quickly to new developments and consumer demand. Moreover, given the rapid growth in consumer demand which drives the need for additional wireless bandwidth, it is critical that regulatory processes do not unnecessarily delay spectrum deployment.

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[5] Sasktel Comments, paragraph 23.
[6] See our Comments, paragraph 9.
[7] Gazette Notice No. DGRB-003-07 - *Extension of the Implementation of Spectrum Usage Deadline for 24 and 38 GHz Licences*, available at: http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08770.html.
[8] Incorporating the CoL changes recommended in our Comments.
[9] For example, Eastlink, Shaw, Telus and Xplornet.

7. In consideration of the above factors, we support the extension or renewal of I Block licences.

3.0 PROVIDING OPPORTUNISTIC ACCESS TO LICENSED SPECTRUM

8. All interveners agreed that equipment capable of accessing spectrum on an opportunistic basis is not commercially available at this time. More importantly, interveners were unanimous in advising ISED to exercise significant caution when considering whether, and how, to deploy opportunistic access capabilities.

9. For example, Eastlink noted that "…providing opportunistic access to spectrum in any band would represent a significant change from the way the Department has historically granted access to spectrum and, therefore, any proposals should be subject to a fulsome consultation with specific proposed approaches set out upon which parties could comment."[10] Similarly, the CWTA cautioned that "[m]oving towards an "opportunistic" model for accessing spectrum would represent a significant change to facilities-based service providers' business models, investment plans, and network deployments."[11] Shaw went further, noting that there are no concrete proposals on which to comment:

> It is not entirely clear, however, what specific proposals are being contemplated by the Department for opportunistic access to licensed spectrum in the AWS-1, G Block and I Block bands. Without further details on such a proposal, Shaw is not in a position to provide further comments on this issue.[12]

10. From a process perspective, mandating opportunistic access to spectrum represents a fundamental shift in spectrum policy and should, therefore, be considered on a stand-alone basis rather than as part of a licence renewal process. A fulsome, subject-specific consultation would be a more appropriate approach to consider the benefits and risks of this emerging capability.

11. If, after a full consultation on the issue, ISED decides to mandate opportunistic access, the capability should be thoroughly vetted in a Greenfield spectrum context. Clearly identifying opportunistic spectrum access as a CoL before spectrum is initially licensed is necessary to provide potential licensees with the opportunity to factor this condition into their business cases and set their auction participation strategies accordingly. It would be patently unfair for ISED to

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10 Eastlink Comments, paragraph 21.
11 CWTA Comments, paragraph 5.
12 Shaw Comments, paragraph 52.

impose an opportunistic access requirement on existing licensees, after an auction has occurred. Companies who invest millions or, in some cases, billions of dollars deploying spectrum must clearly understand all of their rights and obligations upfront.

4.0 DEPLOYMENT REQUIREMENTS

12. As we noted in our comments, it is very unusual for ISED to expand spectrum deployment requirements as part of the licence renewal process. In our view, an expansion of deployment targets should only be considered in exceptional circumstances.

13. For the AWS-1 spectrum in question, given the maturity of the ecosystem and current widespread deployment, we do not object to ISED's proposal to increase the deployment requirements to the Tier 4 population coverage level within eight years of the new licence term. Should ISED wish to accelerate deployment even further, we support a deadline of five years after the start of the new licence term. We believe this expansion would be consistent with the Government's longstanding support of facilities-based competition. We note that an expansion of the AWS-1 deployment requirements to Tier 4 centres was also supported by Ecotel[13], Sasktel[14] and Telus[15].

14. Eastlink does not support an expansion of the AWS-1 deployment requirements to Tier 4 population centres, claiming that "unreasonable" wholesale roaming and tower sharing rates have prevented it from achieving the current deployment targets. No data or specifics are provided by Eastlink to support its claims. In fact, the Commission recently investigated the competitiveness of tower sharing markets in Canada and found no evidence that regulatory intervention was required.

> The Commission considers that its existing powers and processes permit it to intervene with respect to a broad range of issues related to specific towers and sites, including instances where tower- and site-sharing rates would be unjustly discriminatory. Also, the Commission's existing powers and processes enable parties to settle disputes in a cost-effective manner, and provide an incentive for parties to negotiate reasonable rates, terms, and conditions, because parties would be able to request Commission intervention should negotiations fail.[16]

15. With respect to wholesale roaming services, the Commission established tariffs in 2015

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13 Ecotel Comments, paragraph 12.
14 Sasktel Comments, paragraph 34.
15 Telus Comments, paragraph 29.
16 Telecom Regulatory Policy CRTC 2015-177, *Regulatory framework for wholesale mobile wireless services* (TRP 2015-177), paragraph 181.

which have already addressed any pricing concerns that Eastlink would have in this regard.[17]

16. To our knowledge, Eastlink has not availed itself of either ISED's binding arbitration process or the Commission's dispute resolution processes with respect to wholesale roaming and tower sharing. For Bell's part, there is evidence that we provide Eastlink with more timely access to our support structures than we receive from Eastlink in return. Specifically, in the last year we processed Eastlink's requests for co-location in one-third the time, on average, that Eastlink processed our co-location requests.[18] In consideration of the above facts, Eastlink's comments on these issues should be rejected.

17. The situation with G Block differs from that of AWS-1 because the equipment ecosystem is not as mature and deployment has not progressed as quickly. It would, therefore, not be appropriate to expand the coverage requirement beyond the current levels when the G Block licences are renewed. We, therefore, disagree with interveners such as Telus[19] and Sasktel[20] who suggest that an expansion of the deployment targets in the next licence term is appropriate. The state of the G Block ecosystem simply does not support such an exceptional change. We note that Quebecor[21] also supports this position.

18. As discussed above, the lack of an equipment ecosystem for I Block has prevented this spectrum from achieving the current deployment targets. As a result, we have recommended that ISED extend or renew the current licences. In consideration of these circumstances, broadening the deployment target for I Block to Tier 3 or Tier 4 population centres at this time would be premature and is not supported. Most interveners agreed with this position.[22]

5.0 RESEARCH AND DEVELOPMENT SPENDING

19. There is widespread support for eliminating the CoL related to research and development (R&D) spending requirements for all spectrum licenses, including those for AWS-1, G Block and I Block.[23] For example, the CWTA states:

> CWTA proposes, therefore, that the 2% R&D requirement be removed from the conditions of license in order to provide licensees with the needed flexibility to

17 Eastlink Comments, paragraph 6.
18 For the period 1 June 2016 to 5 August 2017.
19 Telus Comments, paragraph 30.
20 Sasktel Comments, paragraph 40.
21 Quebecor Comments, paragraph 27.
22 For example, see Eastlink Comments, paragraph 32 and Rogers, paragraph 34.
23 For example, see the Comments of: Bell, CWTA, Eastlink, Quebecor, Rogers, Shaw and Telus.

> invest as dictated by market conditions and in response to the exponentially increasing demand from consumers for new wireless and digital services.[24]

20. Telus expressed a similar position, noting that there may be better uses for licensees' investment dollars:

> Thus, removal of the R&D COL would be beneficial in that licensees would make their investments based on the best means to serve customers in the competitive marketplace across the country, rather than forcing a portion of their capital investment to fall within the strict parameters of the R&D COL.[25]

21. No intervener offered any public policy rationale for retaining the R&D CoL. As we stated in our comments, the R&D spending CoL was initiated more than 26 years ago and is both unnecessary and out-of-step with today's modern wireless industry.[26] We recommend that ISED eliminate the CoL from all spectrum licence conditions, including those for AWS-1, G Block and I Block. By doing so, ISED will provide licensees with greater operating flexibility to address consumers' needs and will be regulating in a manner consistent with the Government's policy to rely on market forces to the maximum extent feasible.[27]

6.0 MANDATORY ROAMING

22. In our Comments, we recommended the removal of the CoL related to mandatory roaming as it is duplicative in light of the Commission's decision to mandate the provision, and regulate the rates, of GSM-based wholesale roaming services provided by Bell, Rogers and Telus to all other wireless carriers.[28]

23. Telus agreed with our view that the mandatory roaming CoL is no longer required:

> In particular, the provision of roaming by TELUS, Bell and Rogers to other wireless carriers is now subject to tariff as regulated by the CRTC, by way of Telecom Regulatory Policy 2015-177. The tariffs set out mandated terms and

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24 CWTA Comments, paragraph 8.
25 Telus Comments, paragraph 43.
26 See section 7.2 of our Comments.
27 The "Enabling Guidelines" in ISED's *Spectrum Policy Framework for Canada* notes that "Market forces should be relied upon to the maximum extent feasible" (see: http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08776.html#s44). In addition, the Government's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, SOR/2006-355,* states that "the Commission should (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives".
28 TRP 2015-177, paragraph 128.

> conditions and are subject to rate regulation. Moreover, off-tariff arrangements for roaming are permitted by way of Telecom Decision CRTC 2017-56.
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> Given these recent CRTC decisions, the mandatory roaming COL as set out the Department's CPC-2-0-17 should be reconsidered.[29]

24. In fact, a mandatory roaming CoL, which requires national wireless carriers to provide roaming to other national wireless carriers, is unnecessary. As the Commission concluded in TRP 2015-177 after examining the competitiveness of the wireless market, the provision of wholesale roaming by Bell, Rogers, and Telus to each other is subject to a level of competition that is sufficient to protect the interests of users.[30] As such, the Commission continues to forbear from the regulation of these services.

25. More generally, a mandatory roaming CoL is at odds with the principles of facilities-based competition and creating incentives to invest in network infrastructure. Specifically, as explained in our Comments[31], the mandatory roaming CoL creates an opportunity for network arbitrage whereby one carrier can make the strategic decision not to invest in or upgrade its own network in favour of roaming on one or more of its competitors' networks.

26. In consideration of the above points, we recommend eliminating the mandatory roaming CoL.

7.0 ANNUAL REPORTING

27. Several parties highlighted the regulatory burden associated with supplying annual reporting documents to ISED and suggested remedies to alleviate this burden. For example, Sasktel noted:

> For those operators currently required to adhere to the research and development (R&D) investment requirements, the annual report also requires submission of audited financial statements and a detailed R&D expenditure report. As wireless networks grow and evolve, and the number of licences held by operators increases, the administrative burdens to create and manage these reports multiplies as well.[32]

28. The CWTA recommended the following:

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[29] Telus Comments, paragraphs 46 and 47.
[30] TRP 2015-177, paragraph 127.
[31] See section 7.3 of our Comments.
[32] Sasktel Comments, paragraph 54.

- ISED could lengthen the intervals between the provision of certain reports; or
- Reporting could become an "as-requested" model where companies are obligated to provide only those documents which are specifically requested by ISED each year, i.e., deployment levels are not likely required annually and could be requested only every three years.[33]

29. We encourage ISED to reduce the regulatory burden related to annual reporting. We agree with other interveners that this can be accomplished by: reducing the frequency with which the data is collected; and/or streamlining the scope of information requested in the reports to only those data that are essential to ISED's monitoring activities; and/or modifying the CoL such that licensees are required to provide information on ISED's request, with appropriate notice.

8.0 OTHER ISSUES RAISED BY INTERVENERS

30. Eastlink makes several statements in the preamble of its Comments which allege that its network deployment has been hampered by a variety of factors, including: the rural nature of its operating territory; the wholesale prices negotiated with certain competitors; and ISED's policies and reluctance to intervene in Eastlink's stakeholder negotiations.[34] These claims should be rejected by ISED for several reasons.

31. First, as noted in section 4, Eastlink provides no data or specific information to support its claims.

32. Second, to our knowledge, Eastlink has not availed itself of the existing arbitration and dispute resolution mechanisms at ISED or the Commission, indicating that its alleged grievances may not be as serious as suggested.

33. Third, Eastlink's description of the success that its wireless business has enjoyed contradicts the notion that it has been significantly disadvantaged:

> We have been ranked the fastest and most reliable network in our serving area every year since we launched service in 2013, we were the only service provider to launch a 100% 4G LTE network and the first to launch a pure VoLTE service in Canada (launched in Timmins, Ontario last year and now available in five provinces). Eastlink has also made available uniquely consumer friendly offers, including no term contracts, separating the cost of the device from the cost of the plan, and innovative data fees management tools that provide customers unprecedented flexibility and control over their monthly costs. We have expanded

33 CWTA Comments, paragraph 10.
34 Eastlink Comments, paragraphs 3 to 11.

> our network as quickly as possible, launching service in several new markets each year, and deploying infrastructure in primarily rural areas across six provinces. And, Eastlink continues to make significant infrastructure investments throughout our licence area, including rural areas.[35]

34. Fourth, Eastlink had full knowledge of the tower sharing and siting processes before participating in the 2008 AWS-1 auction. In fact, tower sharing processes have improved since 2008 as all licensees learned how to implement them on a more efficient and mutually beneficial basis.

35. Finally, several of Eastlink's challenges are shared by all wireless carriers, and therefore, do not uniquely disadvantage Eastlink. All carriers share towers and must negotiate commercial agreements to do so. All carriers must follow the same tower siting and approval processes. We and other wireless carriers have built out networks to rural and remote communities and incurred the high costs and operational challenges associated with doing so. In fact, it is inconsistent for Eastlink to complain about the significant costs and challenges of building a wireless network in rural areas and then also complain that incumbents' roaming rates in rural areas are too high.

36. We appreciate the opportunity to provide these reply comments.

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35 Eastlink Comments, paragraph 4.