

Canada Gazette Notice No. DGSO-002-13

**Consultation on Considerations Relating to Transfers,
Divisions and Subordinate Licensing of Spectrum Licences**

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Reply Comments

of

Bell Mobility

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1.0 EXECUTIVE SUMMARY

E1. In accordance with the procedure set out in Industry Canada (Industry Canada or the Department) Notice No. DGSO-002-13, *Consultation on Considerations Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences*, as published in the *Canada Gazette, Part 1*, dated 16 March 2013 (the Notice or the Consultation), Bell Mobility Inc. (Bell Mobility or the Company) is pleased to provide the following reply comments in response to the Notice.

Licence Transfers

E2. Bell Mobility along with other incumbent and new entrant wireless operators are unsure why the change in spectrum transfer policy and resulting Consultation is necessary. Incumbent as well as new entrant comments have noted that the *Radiocommunication Act* (the *Act*) already requires Ministerial approval for each and every transfer and that the Competition Bureau also has jurisdiction to review such transactions. Several parties, including new entrants, have identified that adding additional layers of review, as proposed in the Notice, will only serve to increase investment uncertainty, and add delay to the efficient use of limited spectrum resources.

E3. A number of parties, including incumbents and new entrants, have noted that these proposals run counter to current best-practice in spectrum management, which seeks to facilitate, not discourage, the development of secondary spectrum markets enabling spectrum to migrate to its most efficient use. These same parties are also of the view that the proposals run counter to Industry Canada's *2007 Spectrum Policy Framework for Canada* (SPFC) which seeks to facilitate the development of secondary markets for spectrum as a legitimate part of Canada's spectrum management program. The proposals also directly conflict with the advice of domestic and international spectrum management experts who recommend that markets, not regulators, are the most efficient arbiter of the best uses of scarce spectrum.

E4. Canada is a world leader in wireless with advanced, high-speed networks that rival those of any other nation including those with significantly larger populations better able to support such investments. To ensure that Canada remains a leader in wireless it is critically important, as reflected in Industry Canada's own SPFC, that facilitating, not obstructing, secondary markets for spectrum has to be an integral part of Canada's spectrum management program. The record of the proceeding demonstrates that the existing Ministerial approval required for

spectrum transfers as well as the Competition Bureau's oversight of mergers and acquisitions provides Canada with more than sufficient powers to address any resulting concerns related to spectrum concentration and/or competition that might arise.

E5. Bell Mobility submits that the record of the proceeding is clear. The proposed changes to the Department's spectrum transfer policy, as outlined in the Notice, are not well founded. This concern, moreover, is not limited to established wireless operators but is also, as noted above, shared by recent entrants to Canada's wireless market. These entrants, along with incumbent wireless operators, fail to see the rationale behind the proposed changes and the majority of these parties note that the government has more than ample review tools at its disposal. In short, the record of the proceeding shows that the proposals in the Notice have the potential to damage parties, the Canadian wireless market generally, and also call into question the integrity of the Department's auction process. As a result, Bell Mobility respectfully requests that the government not proceed with the proposals.

Retroactive Nature of the Proposals

E6. A number of parties raised concerns with the retroactive nature of the Department's proposals particularly given that they would apply to spectrum previously obtained at auction. The concern is that having undertaken substantial public consultations to establish the 2008 AWS auction and licensing frameworks, frameworks upon which bidders relied in developing strategy and valuations for the auction, Industry Canada is once again stepping in, after the fact, to change the rules. Many parties, including incumbents and entrants, view this as inappropriate, unfair and potentially a matter for legal recourse.

E7. The fact that Industry Canada's *Framework for Spectrum Auctions in Canada* (Auction Framework) recognizes¹ that it is vitally important that bidders understand exactly and precisely what is being auctioned is significant and lends credence to the above concern. As the Auction Framework notes, this information is used to develop business plans, secure financing and develop a bidding strategy.

E8. Bell Mobility agrees with those parties who have raised concerns regarding the retroactive adjustment of licence terms, such as the enhanced transferability rights attached to

¹ Industry Canada, *Framework for Spectrum Auctions in Canada*, March 2011, page 2.

auctioned spectrum licences, during the term of the licence. As Rogers notes, the time to set terms and conditions is at the time of initial auction or during the public consultation at the time of renewal, not mid-stream in the course of the term. Modifying licence terms mid-stream only serves to undermine confidence in Industry Canada's auction process. Bell Mobility therefore respectfully recommends that, in the interest of maintaining confidence in the integrity of the Department's auction processes, the proposals contained in the Notice should not be implemented.

Spectrum Screens or Caps

E9. Bell Mobility's Comments stated that it did not believe that a standing threshold in the form of concentration or a measure of MHz-pop or any other threshold, such as a screen or cap, is required in the Canadian wireless market. As Industry Canada noted when it removed the spectrum cap for mobile spectrum in 2004, at the time of licensing and auctioning new spectrum the Department can impose a limit on the amount of spectrum any one party can acquire. This is a more than sufficient safeguard. Bell Mobility notes that WIND, Quebecor and Shaw were also of the view that a standing threshold was not required in the Canadian wireless market.

Publication of Proposed Transactions

E10. Regarding whether Industry Canada should publicize such transactions for third-party comment, Bell Mobility noted that it strongly believed that the sensitive commercial nature of such transactions required that they, as well as all related filings and agreements submitted to the Department concerning a transaction, be kept strictly confidential. Bell Mobility notes that SaskTel, Telus, WIND, Mobilicity, Rogers and Shaw are of the same view.

Proposed Timelines

E11. Bell Mobility's Comments considered that the proposed timelines for reviewing transactions are reasonable if they are adhered to by all parties including the Department. The Company also noted the view of a number of spectrum management authorities, that there is an inherent slowness in administrative reviews, as proposed in the Notice, and these authorities come down on the side of a market-based process as a more efficient policy alternative. However, a number of parties were of the view that the proposed timeframes in general, and in particular the 16-week timeframe for a detailed review, was too long and should be shortened to something in the range of three to four weeks. Based upon its review of the comments of

parties Bell Mobility has changed its position, regarding this question and adopts the position of those parties who suggest that the proposed timelines should generally be reduced.

Proposed Condition of Licence (CoL) Regarding Proposed Spectrum Transfers

E12. Consistent with the views presented in its Comments, Bell Mobility does not believe that the proposed CoL concerning prospective transfers is necessary at this time. As discussed in these reply comments regarding the retroactive nature of the proposals, Bell Mobility is particularly opposed to its inclusion in existing spectrum licences since such authorizations, especially those acquired through competitive spectrum auctions, were valued based on the known CoLs attached to such authorizations. The Company considers that, in the spirit of the Department's Auction Framework and to maintain the integrity of the Department's auction process, such changes should only be made in cases when absolutely necessary.

Recommendation

E13. Bell Mobility believes, based on its review of the record of this proceeding, that the proposals in the Notice are not based on sound public policy and, as indicated in the comments of both new entrant and incumbent parties, have the potential to damage both individual wireless operators as well as to adversely affect the Canadian spectrum management program. Having reviewed the comments of parties, Bell Mobility is convinced that the proposals are not required and that the interests of Canadian wireless users would not be well-served and indeed may well be impaired if they were implemented. Along with a significant number of interested parties, both entrants and incumbents, Bell Mobility respectfully requests that Industry Canada not implement the proposals but instead take the necessary steps, as suggested in its own SPFC, to facilitate and remove the barriers to secondary spectrum markets in Canada.

2.0 INTRODUCTION

1. In its 3 April 2013 Comments, Bell Mobility provided its views on the appropriateness of the policy approach proposed by the Department in its Notice. Bell Mobility noted that the proposals represented a shift in policy direction from that previously pursued by the Department and that the proposals represented a significant departure from the recommendations of various government panels and spectrum management experts regarding the development of secondary markets for spectrum in Canada.

3.0 POLICY APPROACH

2. Bell Mobility's Comments noted that it was unsure why this Consultation was necessary. The current policy, essentially encouraging and facilitating spectrum licence transfers, was first introduced coincident with the adoption of spectrum auctioning in Canada in 1999. In light of the fact that the transferability and divisibility of spectrum licences is a privilege which was accorded to the industry as part of the adoption of spectrum auctions in Canada, Bell Mobility stated that it did not believe that it was now appropriate for the government to dilute that privilege by introducing significant bureaucratic obstacles to the movement of spectrum, in the secondary market, to those who value it most and who would put it to its most productive use. Further, the *Act* already requires Ministerial approval for each and every transfer and the Competition Bureau also has jurisdiction to review such transactions. Adding additional layers of review, as proposed in the Notice, will only serve to increase investment uncertainty and potentially contribute to the inefficient use of limited spectrum resources.

3. Bell Mobility notes considerable support for its views in the comments of interested parties.

4. Quebecor Media Inc. (Quebecor), echoing Bell Mobility's concern regarding the Department's policy rationale underlying the Notice, states:

Quebecor Media opposes as unnecessary the new procedures put forward by the Department.²

5. Quebecor's comments also mirror Bell Mobility's view that existing review mechanisms, available to the government, amply address any concerns that may arise regarding spectrum concentration and any resultant effect on competition. Quebecor notes, in this regard, that:

We do not deny that outright purchases of competitors as going concerns could potentially raise competition policy issues, however such transactions are already amply addressed by existing review mechanisms, most notably those of the Competition Bureau. Secondary market transactions, particularly those involving no going concern considerations, should carry the presumption that they are in the overall interest of the industry and of consumers.³ (Emphasis added)

6. For its part Rogers Communications (Rogers) considers that:

² Quebecor Comments, 3 April 2013, page 1.

³ Ibid., page 6.

Given the competitiveness of the Canadian wireless market, in terms of investment, innovation, pricing, usage and concentration, Rogers submits that there is no need for the competitive assessment and spectrum concentration analysis that the Department has proposed. These assessments are not necessary in a highly competitive market.

...

In any event, the competition assessment that the Department has proposed is already completed by the Competition Bureau in the normal course of responding to mandatory notifications regarding the proposed sale of spectrum licences. The Department's proposed duplication of the Competition Bureau's assessment is therefore unnecessary.⁴ (Emphasis added)

7. While Xplornet Communications Inc. (Xplornet) states that:

In regards to post licensing control of market behaviour, another agency of Industry Canada, the Competition Bureau, already has jurisdiction to review abuse of dominance, conspiracy and mergers and acquisitions involving wireless carriers. Xplornet does not believe these functions should be replicated by the Minister or the Department. The Competition Bureau has the expertise resident in its staff to conduct the appropriate types of competitive analysis and it is what they do on a daily basis. This expertise is not currently resident in the Department and there appears to be no reason to duplicate it. As a result, Xplornet urges Industry Canada to leverage this expertise and leave detailed reviews of market behaviour to the Competition Bureau . . .⁵

8. Bell Mobility's Comments also stated that the overall effect of the Department's Notice would be to create investment stifling uncertainty in the Canadian wireless market. Mobilicity's comments are unequivocal in highlighting this fact when it states:

. . . Mobilicity respectfully submits that the very announcement of this consultation with respect to license transferability a few weeks ago has already further impinged access to capital for new entrants. Ironically, this announcement has created a level of uncertainty and confusion in the minds of investors as to the liquidity of spectrum assets which in particular affects new entrants far more than incumbents and further hampers their ability to create a competitive marketplace – the very thing the Department has suggested it wants to enhance.⁶

9. Bell Mobility reiterates that Canada's extensive mobile demand and traffic growth is the result of Canada being a world leader with advanced, high-speed networks that rival those of any other nation including those with significantly larger populations better able to support such investments. As stated in the Company's Comments, these results have been facilitated by the

⁴ Rogers Comments, 3 April 2013, page 4.

⁵ Xplornet, Comments, 3 April 2013, page 5.

⁶ Mobilicity Comments, 3 April 2013, page 3.

government's commitment early on in the development of the wireless industry to its belief that the industry would develop most effectively if driven by market forces. As reflected in the comments of competitor's above, the Department needs to resist micromanaging the wireless industry in order to address the inaccurate claims by some that the industry is not competitive enough. The reality is that Canada has an intensely competitive market in which competitors gain and lose ground in each business cycle.

10. Bell Mobility's Comments noted that in order to meet consumers' growing demand for mobile services, spectrum regulators world-wide are finding it challenging to provide access to a sufficient amount of spectrum. In an environment characterized by this dramatic growth, mobile operators will require increasing amounts of spectrum to accommodate users' needs and to ensure national competitiveness in an increasingly global market place. Individual operators bore the responsibility to ensure that the spectrum which is already licensed is utilized to its maximum efficiency. Bell Mobility continues to believe that the marketplace, not government bureaucracy, is the most effective arbiter of the best uses of spectrum and the number of players in that market. Indeed, a return to the inflexible and time-consuming "command and control" spectrum management process of the past, as proposed in the Notice, could very well result in increasing spectrum inefficiency overall as the scarce resource is kept in less than optimal uses.

11. Rogers, in its comments, expressed the same concern when it noted:

Furthermore, the competitive assessment process [proposed in the Notice] could inhibit the efficient transfer of spectrum. Mobile operators including Rogers require additional spectrum in order to deploy faster data speeds and meet surging demand in a timely manner. While the Department conducted a spectrum auction in 2008 and intends to conduct auctions in 2013 and 2014 to respond to this demand, Rogers must also rely on the secondary market for acquiring much needed additional spectrum capacity to remain competitive.⁷

12. Bell Mobility submits that the record of the proceeding is clear. The proposed changes to the Department's spectrum transfer policy, as outlined in the Notice, are not required and are particularly troublesome at a time when regulators are struggling to find sufficient spectrum to meet surging demand and logic dictates reliance on secondary markets as well as Departmental licensing processes. Moreover this concern, with the proposed changes is not limited to established wireless operators but is also, as noted above, shared by recent entrants to

⁷ Rogers, Op. Cit., page 4.

Canada's wireless market. These entrants, along with incumbent wireless operators, fail to see the rationale behind the proposed changes and the majority of these parties note that the government already has more than ample review tools at its disposal. In short, the proposals in the Notice do not represent sound public policy and, according to the record of the proceeding, have the potential to damage parties, the Canadian wireless market generally, and also call into question the integrity of the Department's auction process. As a result, Bell Mobility respectfully requests that the government not proceed with the proposals.

4.0 IMPORTANCE OF SECONDARY MARKETS

13. Bell Mobility's Comments noted that both domestic and international spectrum management experts strongly supported the development of secondary markets for spectrum in Canada and recommended that the Department implement policies that gave effect to that recommendation. For example, the 2005 Telecommunications Policy Review Panel identified the linkage between the development of secondary spectrum markets and the efficient use of spectrum, a critical national consideration at a time when mobile data usage is growing at unprecedented rates.

14. Similarly, the Company's Comments noted that, in a study prepared for the Department by a group which included Professor Martin Cave, an acknowledged international expert in spectrum regulation and economics, it was recommended that the Department should accelerate spectrum management reform by implementing policies ". . . which give greater force to the implementation of secondary markets namely by enabling spectrum trading . . ." ⁸

15. Indeed, the Enabling Guidelines of the Department's SPFC proposed to facilitate the development of secondary markets as one means of ensuring that Canadians derive maximum economic and social benefit from the spectrum resource. In this regard the SPFC noted that, "This includes aspects such as the removal of barriers to secondary markets for spectrum authorizations."⁹ Bell Mobility's Comments suggested that rather than removing barriers to secondary markets for spectrum, the proposals in the Notice are actually increasing those barriers. The Company notes considerable support for this view in the comments of other parties.

⁸ *Study of Market-based Exclusive Spectrum Rights-Final-Report*, McLean Foster & Co., 31 August 2007, page 5.
⁹ Industry Canada, *Spectrum Policy Framework for Canada*, June 2007, page 8.

16. Rogers, as previously quoted above, notes that the Department's proposals could inhibit the efficient transfer of spectrum to those who need it to meet surging demand from their customers. As Rogers states above, while it awaits Industry Canada auctions to acquire the needed spectrum, it must also rely on the secondary market to meet the needs of its customers. Like Bell Mobility, Rogers is clearly concerned that the proposals in the Notice will not facilitate spectrum moving to its most productive uses for the benefit of Canadians.

17. Shaw Communications Inc. (Shaw) raises the same concern when it states:

The secondary market for spectrum licences must also be taken into account. As the Department has previously recognized in its Spectrum Policy Framework for Canada, a secondary market for spectrum is in the best interest of Canadian consumers as it will "maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource." In order to serve customers in the best way they can, both new entrants and incumbents need access to a robust and properly functioning secondary market for spectrum licences. Indeed, without the assurance of a secondary market, firms would be less likely to invest in spectrum in the first instance.¹⁰

18. Mobilicity, like Shaw, also makes note of the fact that the Enabling Guidelines of the Department's SPFC calls for the facilitation of secondary markets for spectrum in Canada.¹¹

19. Quebecor, for its part, states that:

Quebecor Media firmly believes that secondary markets have a legitimate role to play in allocating spectrum resources and thereby enabling network operators to pursue their evolving business and technology strategies. Support for this position can be found in the Department's own Spectrum Policy Framework for Canada, which espouses both "the removal of barriers to secondary markets for spectrum authorizations" and "facilitating secondary markets for spectrum authorizations".¹²

20. As Quebecor notes in its comments, the policy proposed in the Notice, ". . . stands to do more harm than good."¹³ Bell Mobility shares Quebecor's concern that not only is the proposed policy regarding spectrum transfers inappropriate and misguided but that it actually has the potential to do harm by stranding spectrum in less than optimal uses. Bell Mobility does not

¹⁰ Shaw Comments, 3 April 2013, page 4.

¹¹ Mobilicity Comments, 3 April 2013, page 2.

¹² Quebecor Op. Cit., page 4.

¹³ Ibid., page 4.

believe that this is consistent with the spirit of the SPFC to maximize the economic and social benefits that Canadians derive from the use of the spectrum.

21. WIND appears to share the concern that the industry could be damaged by the proposed policy when it states that:

. . . imposing blanket limits on spectrum transfer, not only will not increase competition in this country, but will have the opposite effect, by reducing the value of the spectrum held by non-Incumbents, and thereby hampering access to, and increasing the cost of, capital that is needed to invest in these operations.¹⁴

22. Bell Mobility submits that the record of the proceeding is clear. Domestic and international spectrum management authorities, Canada's own SPFC, as well as incumbent and new entrant wireless operators all view an active and flexible secondary market for spectrum as a legitimate and indeed essential component of a modern spectrum management program. Government should not hamper the development of secondary markets as proposed in the Notice but rather should facilitate their development as recommended in the SPFC.

5.0 RETROACTIVE NATURE OF THE PROPOSALS

23. A number of parties, who submitted comments in response to the Notice, raised concerns with the retroactive nature of the Department's proposals particularly given that they would apply to spectrum previously obtained at auction. In essence, the concern is that having undertaken substantial public consultations to establish the 2008 AWS auction and licensing frameworks, frameworks upon which bidders relied in developing strategy and valuations for the auction, Industry Canada was now stepping in, after the fact, to change the rules. Many parties view this as inappropriate, unfair and potentially a matter for legal recourse.

24. Rogers, for example, notes that:

Retroactive Application to Existing Spectrum Licences

In Rogers' respectful submission, the proposed new conditions of licence should only be applied to future auctions or to renewal of existing licences. To apply the new regime to spectrum licences that have already been issued is unfair and inconsistent with the principles underlying spectrum auctions.

¹⁴ WIND Op. Cit., page 7.

Historically the Department has treated auctioned spectrum in a contractual manner. It has made the terms of that contract clear prior to the bidding process by publishing consultation papers, receiving comments and reply comments, and publishing the final auction framework, including conditions of licence. It has then conducted a question and answer process to ensure that the final framework is fully understood by the parties.

...

Through this process, the Department ensures that bidders are fully aware of their rights and obligations as set forth in the policy documents and conditions of licence.

From the bidder's perspective, certainty of terms is essential to the process of valuing the spectrum and considering how much to bid in a particular market.¹⁵

25. Mobilicity raises the same concern when it states:

Mobilicity is concerned that the proposal entails a rewriting of the enhanced transferability and divisibility conditions of licence and framework decisions that apply to auctioned spectrum by making detailed review of requests for spectrum transfers the rule rather than the exception even in the case of auctioned spectrum.

...

Spectrum licences acquired through auction processes are subject to binding conditions of licence, and detailed licensing framework and policy framework decisions. In particular, the governing authorization and framework documents provide the holder of such authorization with the privilege of enhanced transferability and divisibility rights.¹⁶

26. While Shaw notes that in its view the AWS licensing and auction rules:

... were - and still are - clear, and every party that participated in the AWS auction made a decision to do so based on the auction framework and licensing rules that were established by the Department for this particular band of spectrum. . . . The purpose of this proceeding should not be to re-write rules that were previously created by the Department, based on significant public input, for specific bands of spectrum that have already been auctioned. It would be detrimental to consumers and unfair to the industry if the Department were to adopt rules as a result of this Consultation which would have the effect of retroactively changing the terms and conditions under which parties made a decision to participate in, and acquire licences through, a competitive auction process.¹⁷

27. Mobilicity further drives the point home when it states that:

¹⁵ Rogers Op. Cit., page 6.

¹⁶ Mobilicity Op. Cit., page 6.

¹⁷ Shaw Op. Cit., page 3.

. . . to "rewrite the rules" risks jeopardising the rules of engagement and thereby violating the requirement for clear and defined obligations and privileges as articulated by the Department itself.¹⁸

28. As Mobilicity notes it is extremely important that potential auction participants precisely understand the nature of the licences that are being offered at auction. Business and auction strategies entailing billions of dollars hang in the balance. Indeed, Industry Canada's Auction Framework recognizes this when it states:

Licence Attributes

In order to develop business plans, secure financing and develop a bidding strategy, it is important that bidders understand exactly what is being auctioned. The Auction Framework outlines the general attributes of auctioned spectrum licences. The precise attributes related to specific spectrum licences will be included as part of the public consultation preceding a specific auction, as well as in the corresponding policy and licensing framework documents.¹⁹ (Emphasis added)

29. Bell Mobility agrees with those parties who have raised concerns regarding the retroactive adjustment of licence terms, such as the enhanced transferability rights attached to auctioned spectrum licences, during the term of the licence. As Rogers notes above, the time to set terms and conditions is at the time of initial auction or during the public consultation at the time of renewal not mid-stream in the course of the term. Industry Canada's Auction Framework recognizes the importance of this fact when it states that bidders must understand exactly what is being auctioned. Modifying licences mid-stream does not serve this purpose but it does serve, as the record demonstrates, to undermine confidence in Industry Canada's auction process.

30. Bell Mobility therefore respectfully recommends that, in the interest of maintaining vital confidence in the integrity of the Department's auction processes, that it not implement the proposals contained in the Notice.

¹⁸ Mobilicity Op. Cit. page 7.

¹⁹ Industry Canada, *Framework for Spectrum Auctions in Canada*, March 2011, page 2.

6.0 RESPONSES TO INDUSTRY CANADA ISSUES

31. As discussed below, Bell Mobility also finds considerable support, in the comments of interested parties, regarding the positions adopted in the Company's Comments in response to the Notice.

6-1 The criteria and considerations set out above

32. Bell Mobility's Comments noted that it did not support the criteria and considerations, proposed in the Notice, regarding future licence transfers, divisions and subordinate licensing arrangements. Canada is a world leader in wireless with advanced, high-speed networks that rival those of any other nation including those with significantly larger populations. To ensure that Canada remains a leader in wireless, the Company stated, it is critically important as reflected in Industry Canada's own SPFC, that facilitating secondary markets for spectrum is an integral part of Canada's spectrum policy program. In this regard, the existing Ministerial approval required for spectrum transfers as well as the Competition Bureau's oversight of mergers and acquisitions provides Canada with more than sufficient powers to address any resulting concerns related to spectrum concentration and/or competition.

33. Bell Mobility also noted however that if Industry Canada decides to proceed with the proposals outlined in its Notice, any measures adopted must be based on objective as opposed to subjective criteria and they should be applied in a clear and transparent manner to all industry participants.

34. Quebecor, expressing the view that the time to consider such measures is at the time of auction, states:

In contrast, an ongoing spectrum transfer review process of the sort proposed by the Department is certain to quickly devolve into a process that is complex, discretionary and opaque.²⁰

35. Quebecor sums up its position regarding the proposed review criteria by stating that:

Quebecor Media submits that the Department should be extremely wary of introducing a new spectrum transfer review process that risks placing a chill on the secondary market for spectrum resources in Canada. An open and efficient

²⁰ Quebecor Op. Cit., page 4.

secondary market is important for ensuring that spectrum resources are allocated to their best available uses, which increases carrier cost effectiveness and ultimately benefits Canadian wireless consumers.²¹

36. Echoing the Company's view that existing review powers are more than ample to address any arising issues, Rogers submits:

. . . that most of these factors come into play in a competitive analysis for a merger review conducted by the Competition Bureau. However, the Competition Bureau uses a more precise test of whether the merger or acquisition "prevents or lessens, or is likely to prevent or lessen, competition substantially." Rogers does not appreciate why the Department would wish to duplicate a review of factors that would be considered by the Competition Bureau when the merger or acquisition is subject to notification, and to use a less precise test.²²

37. Shaw shares Rogers' concern and uncertainty as to Industry Canada's proposals outlined in the Notice when it states:

In Shaw's view, introducing these criteria would run the risk of unnecessarily confusing, rather than clarifying, Industry Canada's approach to transfers of spectrum licences.²³

38. Mobilicity, noting that the terms and conditions of auctioned spectrum licences are the subject of extensive consultation prior to an auction, disagrees with applying the criteria to the review of transfers of auctioned spectrum. Instead Mobilicity proposes that:

Mobilicity submits that the threshold criteria and considerations for approval of requests for spectrum licence transfer should apply only to licences acquired through comparative selection or first-come, first-served processes. In the case of auctioned spectrum, assuming that the request for licence transfer is in compliance with the original conditions of licence (e.g., the five-year moratorium on transfer of new entrant spectrum to parties other than new entrants) and absent extenuating circumstances, these criteria and considerations should not apply.²⁴ (Emphasis added)

²¹ Ibid., page 5.

²² Rogers Op. Cit., page 9.

²³ Shaw Op. Cit., page 14.

²⁴ Mobilicity Op. Cit., pages 6 and 7.

6-2 Whether there is a threshold in the form of concentration or a measure of MHz-pop that Industry Canada should apply in deciding whether to conduct a detailed review, or some other type of threshold, screen, or cap that should be used to decide if a detailed review is required

39. Bell Mobility's Comments stated that it did not believe that a standing threshold in the form of concentration or a measure of MHz-pop or any other threshold, such as a screen or cap is required in the Canadian wireless market. The Company notes support for this view in the comments of a number of parties.

40. In its comments, for example, WIND:

. . . submits that it does not make sense to apply spectrum caps on spectrum license transfers and not to overall spectrum holdings already in the hands of mobile operators. Since no overall spectrum cap limits apply, there should not be any such limits on spectrum transfers.²⁵

41. Quebecor, consistent with its general opposition to the proposed new transfer regime, cites the complexity surrounding the very development of an appropriate threshold as one of its reasons for advocating against the proposals outlined in the Notice.²⁶

42. Shaw, agreeing with Quebecor's concern regarding complexity, also disagrees with the establishment of a concentration threshold stating:

Given the differences in the characteristics of various types of spectrum, rapidly changing technology and consumer demands, and other factors that need to be assessed on a case-by-case basis, Shaw recommends against adopting a specific concentration threshold that would apply in a detailed review of a proposed licence transfer or to determine whether a detailed review is required. Each proposed transfer should be reviewed by the Department on its own merits and in light of the particular parties, transaction and circumstances, applying previously established licensing rules. . . . In any event, defining a suitable overall screen or cap would be a complex process, even for the limited purpose proposed by Industry Canada of determining whether a detailed review of a particular proposed transfer is required.²⁷ (Emphasis added)

43. Bell Mobility agrees with these parties and consequently continues to believe that the adoption of a standing threshold is unnecessary and, as these parties have suggested, would be so complex as to be impractical in any event.

²⁵ WIND Op. Cit., page 10.

²⁶ Quebecor Op. Cit., page 5.

²⁷ Shaw Op. Cit. pages 19 and 20.

6-3 The treatment of deemed spectrum licence transfers as actual transfers, divisions or subordinate licensing arrangements

44. Bell Mobility's Comments noted that, consistent with its views presented therein, the Company did not believe that anything further, beyond the reviews currently performed by the Minister and the Competition Bureau, in the event of such a transaction being proposed, are required in the event of a deemed licence transfer. Bell Mobility continues to hold that view.

6-4 The current review model, which is confidential, and whether it should be modified such that Industry Canada would publicize a spectrum licence transfer request and provide an opportunity for third party input

45. Bell Mobility noted that it strongly believed that the sensitive commercial nature of such transactions, especially given the highly competitive state of the Canadian wireless market, requires that such transactions, as well as all related filings and agreements submitted to the Department concerning the transaction, must be kept strictly confidential. The Company stated that the potential for financial and business harm and damage to the parties involved in such licence transfers is both real and significant, in the event of disclosure of confidential information, and is the very reason why such transactions are treated in confidence today.

46. Bell Mobility notes that, of the parties addressing the question, SaskTel²⁸, Telus²⁹, WIND³⁰, Mobilicity³¹, Rogers³² and Shaw³³ either agreed with Bell Mobility's view that such transactions should be kept confidential or that, at a minimum, the confidentiality of all information filed in confidence as part of a review should be so maintained.

47. Bell Mobility, as do the above parties, therefore strongly recommends that the sensitive commercial nature of such transactions requires that they, as well as all related filings and agreements submitted to the Department in confidence concerning the transaction, should be kept strictly confidential.

²⁸ SaskTel Comments, 3 April 2013, page 9.

²⁹ Telus Comments, 3 April 2013, page 11.

³⁰ WIND Op. Cit., page 11.

³¹ Mobilicity Op. Cit., page 10.

³² Rogers Op. Cit., page 13.

³³ Shaw Op. Cit., page 23.

6-5 In addition, Industry Canada welcomes comments on any other suggested changes to the applicable conditions of licence related to licence transfers, and to section 5.6 of CPC 2-1-23 and to the relevant application forms or other requirements

48. Bell Mobility, as with the majority of parties, did not propose that any further changes were necessary to section 5.6 of CPC 2-1-23.

49. Bell Mobility does not support Mobilicity's suggestion to the effect that section 5.6 should be modified to indicate that any spectrum which is part of a set-aside, but which has had no meaningful build-out, may not be transferred to a large wireless carrier as defined by the Department. Provided that such transfers respect the original licensing policy and conditions of licence for the spectrum in question, as established by the Department through public consultation, Bell Mobility believes that to restrict the transfer of such spectrum to smaller carriers would only serve to ensure that, in the best case, the spectrum remains in less than optimal use for Canadians or, in the worst case, the spectrum lies fallow. Bell Mobility submits that given the growth in Canadian mobile data traffic, as evidenced in the record of the proceeding, such a result is not in the public interest.

7-1 Industry Canada is seeking comments regarding the proposed timelines

50. Bell Mobility's Comments noted that while it did not believe that the changes proposed in the Notice are in fact appropriate in the circumstances of today's Canadian wireless market, the Company did consider that the proposed timelines are reasonable provided that they are adhered to by all parties to any such transaction including the Department.

51. A number of parties however, including Mobilicity³⁴, WIND³⁵, Shaw³⁶, Telus³⁷ and Xplornet³⁸ expressed concern primarily with the 16-week timeframe proposed for a detailed review suggesting that this be reduced to a three-to-four week timeframe. For its part Rogers, without specifying alternate timeframes, proposed that the Department generally reduce the timelines, both those for a preliminary as well as those for a detailed review, proposed in the Notice.³⁹

³⁴ Mobilicity Op. Cit., page 13.

³⁵ WIND Op. Cit., page 11.

³⁶ Shaw Op. Cit., page 25.

³⁷ Telus Op. Cit., page 14

³⁸ Xplornet Op. Cit., page 17.

³⁹ Rogers Op. Cit., page 14.

52. Based upon its review of the comments of parties Bell Mobility has changed its position, regarding this question, and adopts the position of the above parties who suggest that the proposed timelines should generally be reduced.

8-1 Industry Canada is seeking comments on the proposed Condition of Licence concerning prospective transfers, including the criteria, considerations and timelines set out above

53. Consistent with the views presented in its Comments, Bell Mobility does not believe that the proposed CoL concerning prospective transfers is necessary at this time. As discussed above regarding the retroactive nature of the proposals, Bell Mobility is particularly opposed to its inclusion in existing spectrum licences since such authorizations, especially those acquired through competitive spectrum auctions, were valued based on the known CoL attached to such authorizations. The Company considers that, in the spirit of the Department's Auction Framework and to maintain the integrity of the Department's auction process, such changes should only be made in cases when absolutely necessary, e.g. as a result of a fundamental reallocation.

54. Bell Mobility's Comments noted that, should the Department proceed with the proposed CoL, clarification is required between what is proposed in the CoL and the discussion immediately following it in the Notice. Specifically, if the proposed CoL were implemented, clarification is required regarding these questions: (1) Do parties have to await the preliminary assessment before entering into such arrangements or is notification to the Department sufficient?; and (2) How do the timelines proposed in the Notice apply, i.e. is it four or 16 weeks dependent on the complexity of the arrangement being contemplated? Bell Mobility continues to believe that such clarification is still required were the CoL to be implemented.

55. Subsequent to its review of the record of this proceeding, Bell Mobility continues to believe that the proposed CoL has the potential to add considerable regulatory risk and uncertainty to the Canadian wireless market. Taken at its face-value for example, stating that preliminary Departmental assessments of the proposed transaction would not bind Industry Canada at the time the request is made, does nothing to enhance business certainty and investment in a multi-billion dollar industry.

7.0 CONCLUSION

56. As discussed in these Reply Comments, Bell Mobility believes that the proposals in the Notice are not based on sound public policy and, as indicated in the comments of both new entrant and incumbent parties, have the potential to damage both individual wireless operators as well as the Canadian spectrum management program.

57. Having reviewed the comments of parties, Bell Mobility is convinced that the proposals are not required and that the interests of Canadian wireless users would not be well served if they were implemented.

58. Along with a significant number of interested parties, both entrants and incumbents, Bell Mobility respectfully requests that Industry Canada not implement the proposals but instead take the necessary steps, as suggested in its SPFC, to facilitate and remove the barriers to secondary spectrum markets in Canada.

59. Bell Mobility appreciates the opportunity to provide its views on this significant matter affecting the future of the Canadian wireless market and the quality of the services made available to the vast majority of Canadian wireless subscribers.

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