

SaskTel Reply Comments:

Gazette Notice DGSO-002-13

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

May 3, 2013

INTRODUCTION

1. The following represent Saskatchewan Telecommunications' (SaskTel's) Reply Comments in response to DGSO-002-13, *Consultation on Considerations Relating to Transfers, Divisions, and Subordinate Licensing of Spectrum Licences*.
2. In reviewing the initial Comments to this Consultation, SaskTel is disappointed in the overall lack of focus on rural spectrum and the impact transfer rules could have on these areas. SaskTel in its reply will again focus on rural areas and urges Industry Canada to consider the unique attributes of rural and urban deployment as it makes spectrum rules.
3. The section numbering of the remainder of this document corresponds to the numbering of the consultation paper released by the Department. Failure to address any particular issue or item, or the Comments made by any other party, should not be construed as agreement with those Comments where such agreement is not in the interests of SaskTel.

SASKTEL REPLY COMMENTS

6. Review of Spectrum Licence Transfer Requests

Industry Canada is seeking comments on:

6-1 The criteria and considerations set out above.

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.

4. SaskTel continues to agree, in general, with the criteria and considerations set out in the Consultation but to suggest that certain additional criteria also be used to determine whether a detailed review is required.

5. SaskTel has concerns with developing any measure of MHz-pop or concentration threshold that can be applied uniformly. The Federal Communications Commission (FCC) has found it very difficult to apply a MHz-pop screen in all cases, and the result has been complaints that these screens have been unfairly applied.
6. Any measure applied must be both transparent and flexible enough to cover all potential markets and areas impacted by proposed spectrum licence transfers. This includes both large areas covering multiple service areas and small service areas, and in particular, includes not only urban areas with multiple facilities-based service providers but also rural areas where there is a sole facilities owner.
7. In SaskTel's opinion, it will be extremely difficult to find one MHz-pop screen that fits all of the sub-market sizes in the Canadian industry.
8. SaskTel repeats its suggestion that there should not be a need for a detailed review for spectrum licence transfers involving a small population base, for example for transfers involving populations less than 500,000.
9. SaskTel also believes that any analysis of spectrum holdings must distinguish between of spectrum below 1 GHz and spectrum with frequencies above this level. As SaskTel stated in its Comments, an operator deploying in rural areas should not be restricted from acquiring additional spectrum below 1 GHz that is critical for rural deployments based on the amount of that operator's spectrum holdings above 1 GHz.
10. The ability to obtain sufficient spectrum in the sub-1 GHz bands could easily be the key requirement for companies wishing to provide rural Canadians with leading edge data services, thus reducing the digital divide in Canada. Possession of higher frequency spectrum will not be a factor in this decision. The infrastructure costs associated with deploying additional towers to serve rural areas using high bandwidth spectrum are simply cost-prohibitive.
11. Consideration should also be given to the number of facilities-based carriers that have actually deployed infrastructure, or are reasonably expected to do so, in the area covered by the spectrum being transferred. Due to much higher costs per subscriber, and now, to the ability to require facilities owners to provide mandatory roaming, there

is no incentive for network operators to expand network facilities into rural areas, especially as the second facilities owner. Mandatory roaming has also eliminated the coverage advantage which previously accrued to the first operator to deploy facilities. Therefore, in areas where it is determined that only one facilities operator is likely to deploy infrastructure to make use of a block of spectrum (with all other competitors making use of that operator's spectrum, through agreements mandated or freely agreed to), the amount of spectrum used by that operator should not be a consideration.

12. As SaskTel stated in its Comments, the Department's policies on spectrum caps, mandatory roaming and now, potentially, limits on spectrum licence transfers, are clearly intended to promote competition in urban areas of Canada but have the unfortunate consequence of allowing other service providers to acquire spectrum in rural areas without any strong measures in place to ensure the spectrum is used.
13. SaskTel repeats its call for wireless service providers who are taking advantage of mandatory roaming to be required to provide their unused spectrum resources, at reasonable rates, to the service provider that has been forced to carry their roaming traffic. In this we are in whole hearted agreement with the Federation of Canadian Municipalities (FCM) who also recommended that Industry Canada needed to include measures to ensure unused rural spectrum is used in a timely fashion¹.
14. There are also many cases where spectrum has been allowed to remain fallow, even in urban areas. SaskTel recommends that a criteria be established where a spectrum licensee is not allowed to acquire additional spectrum in any given band while they are actively using less than 50% of their existing spectrum licence holdings in that same band.

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

15. SaskTel agrees with the Department's proposal to treat "deemed spectrum licence transfers" as actual licence transfers or divisions.

¹ FCM before the Standing Committee on Industry, Science and Technology March 19, 2013

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.

16. SaskTel continues to believe that it is in the best interests of the industry and therefore Canadians that reviews of spectrum licence transfers remain confidential.

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.

17. SaskTel has no additional input beyond that mentioned in our Comments.

7. Timelines

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

18. SaskTel believes that the proposed timelines are reasonable.

8. Prospective Transfers

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.

19. SaskTel agrees with the proposed Condition of Licence.

CONCLUSION

20. SaskTel is in general agreement with the criteria and considerations proposed for reviewing and approving spectrum licence transfers. However, SaskTel recommends that additional criteria be considered when determining the requirements for a detailed review, and for transfer approval:

- Spectrum holdings below and above 1 GHz must be considered separately because of their unique propagation characteristics and the fact that spectrum above and below 1 GHz is not inter-changeable.

- In order to reduce workload and backlogs, a minimum population of 500,000 should be covered by the proposed licence transfer in order to trigger a detailed review.
- Restrictions related to spectrum holdings should not be imposed in areas where only one operator is expected to deploy facilities to make use of that spectrum (with other competitors making use of the same facilities).
- The use of a universal MHz-pop measurement, or some other form of screen, is not realistic considering that it cannot be fairly and uniformly applied to spectrum licence transfer requests in different service areas. The basis for a MHz-pop measurement screen is also problematic in that it is difficult to fairly determine in all cases if the MHz-pop screen should be considered nationally, regionally, or per licence service area.

21. SaskTel agrees that deemed spectrum licence transfers should be treated as actual licence transfer requests.
22. SaskTel believes that the spectrum licence transfer approval process should continue to be a confidential process.
23. SaskTel urges the Department to publish licence transfer review criteria and considerations that are clear, objective, and can be fairly applied in all situations.
24. SaskTel agrees with the proposed timelines for licence transfer request approvals.
25. SaskTel also agrees with the proposed condition of licence and approval processes regarding prospective transfers.
26. SaskTel thanks the Department for the opportunity to provide input into these crucial matters.