



INDUSTRY CANADA GAZETTE NOTICE DGSO-002-12

**CONSULTATION ON A LICENSING FRAMEWORK FOR MOBILE BROADBAND SERVICES
(MBS) – 700 MHz BAND**

REPLY COMMENTS OF SHAW COMMUNICATIONS INC.

JULY 25, 2012

A. INTRODUCTION

1. Shaw Communications Inc. (“Shaw”) provides these reply comments in response to the submissions made to Industry Canada’s *Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band* (DGSO-002-12), dated April 25, 2012 (the “Consultation Document”).
2. Although Shaw did not submit comments in this proceeding, it has reviewed the Consultation Document and the comments of parties and provides this brief submission in reply. Any failure on the part of Shaw to address a specific issue or argument of another party should not be construed as agreement with or acceptance of such issue or argument.

B. AUCTION DESIGN

3. It is evident from the comments of many wireless new entrants and incumbents in this consultation that the specific form of combinatorial clock auction (CCA) design proposed by Industry Canada is not well understood or endorsed. Telus, Rogers, Quebecor, Eastlink, Xplornet, SaskTel, MTS Allstream and Mobilicity have all registered material concerns and/or proposed substantial changes to the design.
4. Shaw shares the concerns expressed by several parties with respect to the uncertainty for, and disadvantages to, regional bidders inherent in Industry Canada’s proposed design, particularly with regard to the supplementary round. The issue is expressed well by Quebecor in its submission:

Unfortunately, the new CCA format, as currently proposed, contains one important flaw that stands as a barrier to full and effective participation by regional carriers. Specifically, in those cases where licences remain unallocated at the end of the clock stage, the minimum incremental bid (the “minimum safety increment”) that a regional carrier must place in the supplementary round to guarantee its final clock package can be prohibitive. Because the minimum safety increment is constant across all bidders, it will tend to be far less constraining for large national bidders. The result is a structural deficiency in the proposed CCA format whereby large national bidders can easily confer upon themselves the certainty of winning their final clock package while small regional

bidders must risk placing potentially prohibitive end-of-auction jump bids to do the same. Such a result, where the benefits of price and allocation discovery in the clock stage accrue solely to large bidders, is neither efficient nor fair.¹

These concerns are echoed in the comments of SaskTel,² Eastlink,³ Xplornet⁴ and MTS Allstream.⁵

5. Shaw notes that possible solutions have been suggested for further investigation by the Department to address concerns with the supplementary round,⁶ and that some parties have suggested eliminating the supplementary round.⁷ In the absence of better information about the supplementary round and the implementation of measures to eliminate the disadvantages to regional bidders that arise under its current form, the Department should consider eliminating the supplementary round from the auction, with an additional process to auction off any unallocated licenses that remain at the final clock round.

C. ASSOCIATED ENTITIES

6. Some parties have pointed out that in the proposed rules relating to associated entities, it is unclear whether regional to national or regional to regional associations are disadvantaged.⁸ To the extent that the associated entity rules are relaxed, Shaw submits that they must provide equal flexibility to all carriers, regardless of whether they are national or regional players.

D. PROPOSED LICENCE CONDITIONS

7. Shaw fully endorses the comments submitted by the Canadian Wireless Telecommunications Association (CWTA) with respect to the proposed conditions of

¹ Quebecor Comments, June 25, 2012, page 1 of Executive Summary and paras. 35-51.

² SaskTel Comments, June 25, 2012, para. 26.

³ Eastlink Comments, June 25, 2012, paras. 16-32.

⁴ Xplornet Comments, June 25, 2012, para. 13.

⁵ MTS Allstream Comments, June 25, 2012, paras. 3-7.

⁶ See Quebecor Comments, June 25, 2012, which outline three suggestions for consideration on Page 1 of the Executive Summary and are described further at paras. 55-57.

⁷ See Quebecor Comments, June 25, 2012, pages 1-2 of Executive Summary; see also Mobilicity Comments, June 25, 2012, pages 4-5 of Executive Summary.

⁸ See Quebecor Comments, June 25, 2012, page 1 of Executive Summary and paras. 61-71; see also Rogers Comments, June 25, 2012, para. 118.

licence relating to (1) the requirement to invest 2 percent of revenues from operations in the spectrum (the R&D COL) and (2) changes to the lawful intercept requirements. Shaw agrees that the R&D COL is a “regulatory relic” that stifles innovation. For the reasons provided in the CWTA submission,⁹ the R&D COL must be immediately removed from all spectrum licenses, including those for Fixed-Satellite Services and Broadcasting-Satellite Services. Shaw also agrees that it would be inappropriate for the Department to expand the scope of the lawful intercept condition of licence, so that it includes Internet, cable and satellite, in the midst of a legislative process in which lawful access is being considered at a broader level.

8. Finally, Shaw disagrees with the following proposal made by Mobilicity in its Comments in the context of deployment requirements:

111. As a result, Mobilicity requests that service providers that have failed to meet their deployment commitments or conditions of licence in relation to a given geographical area, be barred from bidding on any 700 MHz spectrum in such area.

9. In the cap mechanism outlined in SMSE -002-12, Policy and Technical Framework for Mobile Broadband Services (MBS) – 700 MHz Band / Broadband Radio Service (BRS) – 2500 MHz Band, Industry Canada has already addressed the issue of who is eligible to bid on what amounts of 700 MHz spectrum, subject to finalizing possible revisions to the associated entity rules in this consultation. It is therefore inappropriate at this stage to propose that parties be barred from participating in the 700 MHz auction.
10. In addition, the Mobilicity proposal mischaracterizes the AWS deployment targets. It is incorrect to state that “the five-year build-out requirements for AWS spectrum will have passed for all intents and purpose prior to the start of this 700 MHz auction.” The “build-out requirements” Mobilicity refers to are “targets.” Industry Canada’s

⁹ Canadian Wireless Telecommunications Association Comments, June 22, 2012, paras. 3-17.

deployment policies for AWS spectrum are distinct from those proposed for 700 MHz spectrum.

11. For the reasons above, Mobilicity's proposal is irrelevant to the issues covered by this consultation and should be rejected.

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