



Teresa Griffin-Muir
Vice President, Regulatory Affairs
Vice-présidente des Affaires réglementaires
MTS Allstream Inc.

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by Email

Mr. Howard Chatterton
Manager, Spectrum Auctions
Spectrum Management Operations Branch
Industry Canada
300 Slater St.
Ottawa, ON K1A 0C8
E-mail: Spectrum.Auctions@ic.gc.ca

Dear Mr. Hill:

Subject: *Canada Gazette, Part I - Notice DGSO-002-12 – Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band – Comments of MTS Allstream*

MTS Inc. and Allstream Inc. (collectively, MTS Allstream) welcome the opportunity to submit the attached comments in connection with *Canada Gazette, Part I* (5 May 2012) entitled *Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band* (Notice DGSO-002-12).

Yours truly,

for Teresa Griffin-Muir

**Consultation on a Licensing Framework for Mobile
Broadband Services (MBS) – 700 MHz Band**

Comments of



25 June 2012

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I. INTRODUCTION

1. MTS Inc. and Allstream Inc. (collectively, MTS Allstream) are pleased to provide the following comments in response to the Department's *Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band*, Notice DGSO-002-12, Canada Gazette, Part 1, 5 May 2012.

II. ACTION FORMAT AND RULES

A. Regional Service Providers

2. The Department has stated that it is important for both national and regional service providers to have access to 700 MHz spectrum:

“The large national and regional service providers provide the majority of Canadian users, including in many rural and remote areas, with advanced state-of-the-art wireless services and are responsible for the largest proportion of investment and innovation taking place in the Canadian wireless industry. ***It is important that these service providers continue to increase the capacity of their networks and deploy the most advanced wireless services at both national and regional levels.***”¹

3. Despite this objective, it appears that the auction format and rules for the 700 MHz auction, as currently proposed, favour large, national bidders interested in winning large packages over smaller, regional bidders, including new entrants, interested in specific licences.
4. Under the Department's proposed rules for the 700 MHz auction, the clock rounds of the auction will be followed by a supplemental round, in which “[b]idders ... have the opportunity to guarantee that they win their final clock package by submitting a supplementary bid that increases the dollar amount of their final clock package by at

¹. Industry Canada, *Policy and Technical Framework for Mobile Broadband Services (MBS) – 700 MHz Band and Broadband Radio Service (BRS) – 2500 Band*, SMSE-002-12, March 2012, paragraph 125 (emphasis added).

least the value of the unallocated license as evaluated at the final clock prices ...”² At the same time, bidders are not limited to bidding on packages that they previously bid on in the clock rounds. Instead, “the supplementary round provides bidders with an opportunity to submit bids on multiple packages that they were willing and eligible to bid on in the clock rounds, but did not necessarily bid on.”³

5. The combination of these two characteristics of the supplementary round of the auction may mean that a regional bidder interested in a specific licence can lose its final clock round package, even when the per-MHz dollar value of the spectrum is more than that of a bidder with a large, national package. This is likely to happen if there are a significant number of unallocated licences. In such a case, a national bidder may end up with the particular regional licence or licences by simply tweaking its supplemental round bids to include a package that contains the regional bidder’s licence(s).
6. For example, assume the following:
 - MTS Allstream holds a single, paired block licence at the end of the final clock round at a price of four times the opening price – *i.e.*, \$12.8M (or \$1.06/MHz/pop).
 - A national wireless service provider is holding a national single paired block licence at the end of the final clock round, also at four times the opening price – *i.e.*, \$646.9M (or \$1.93/MHz/pop).
 - There is the equivalent of one national unpaired block licence left unallocated at the final clock round with no bids on it – its reserve price is \$44.4M.
 - Each bidder has the option of raising its final clock round bid by the value of the unallocated licences to guarantee that it wins its final clock package. In MTS Allstream’s case, this would mean increasing its bid by \$44.4M, which would raise the effective price of its paired block of spectrum to \$4.73/MHz/pop, a 347% increase. While under the second price rule, winning with this bid may not result

² *Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band*, DGSO-002-12, April 2012, Annex B, paragraph 42, as amended on 18 June 2012.

³ *Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band*, DGSO-002 12, April 2012, Annex B, paragraph 41.

in MTS Allstream paying a 347% increase, the amount paid could be up to \$4.73/MHz/pop.

- The national wireless service provider, on the other hand, could increase its bid on its final clock round package by the same amount (\$44.4M) and only increase its effective spectrum price to \$2.06/MHz/pop – a 7% increase.
 - Subject to the pricing constraints, the national wireless service provider could also bid on a new package that contains both its final clock round package and the licence held by MTS Allstream at the end of the clock rounds, as well as the “guarantee” amount of \$44.4M, for a bid of \$704.1M - an increase of less than 9% over the bid it made on its final clock round package.
7. Consequently, even though MTS Allstream increased its bid for its final clock round package in the supplementary round, the national wireless service provider could still pick up the licence that MTS Allstream had at the end of the clock rounds for less than MTS Allstream is willing to pay for it.

B. No Guarantee of Rural Roll-Out

8. The Department has indicated that its main objectives for the 700 MHz band are:
- “sustained competition in the wireless telecommunications services market so that consumers and businesses benefit from competitive pricing and choice in service offerings;
 - robust investment and innovation by wireless telecommunications carriers so that Canadians benefit from world-class networks and the latest technologies; and
 - availability of these benefits to Canadians across the country, including those in rural areas, in a timely fashion.”⁴
9. MTS Allstream supports these objectives, however, it is not clear that the third objective would be met under the framework proposed by the Department. The only licensees that

⁴ Industry Canada, *Policy and Technical Framework for Mobile Broadband Services (MBS) - 700 MHz Band and Broadband Radio Service (BRS) – 2500 Band*, SMSE-002-12, March 2012, paragraph 6.

would have a rural roll-out requirement would be those who already have a rural high-speed packet access (HSPA) broadband footprint, and only if these carriers hold or have access to two or more paired blocks of 700 MHz spectrum. The proposed framework places a greater rural roll-out obligation on the incumbent local exchange carriers (ILECs) because:

- i. The ILECs have a significant rural HSPA footprint and would therefore be obliged to roll-out 700 MHz based services over the greatest rural coverage area should they obtain 20 MHz of paired spectrum; and
 - ii. The Department's proposal is that the rural roll-out obligations will apply to licensees that "have ... access to two or more paired blocks of 700 MHz spectrum...either directly or indirectly". Therefore, to the extent that an ILEC attempts to defray spectrum costs by either obtaining less spectrum or by jointly building network – the rural obligation continues to apply.
10. In addition to limiting the obligation for meaningful rural roll-out deployment to the ILECs, the auction and licensing framework makes the already difficult economic case for rural deployment more difficult by:
- i. Limiting the ILECs to one block of prime spectrum; and
 - ii. Precluding a reasonable return on the ILECs' larger rural coverage by mandating immediate, indefinite in-territory roaming.
11. Despite the more onerous obligations that the Department intends to impose on ILECs within their respective territories, the proposed framework does not provide any offsetting consideration.
12. Absent changes, the combination of these limits and handicaps could well undermine the Department's objective for greater rural deployment and enhanced rural broadband, particularly if some or all of the regional ILECs fail to obtain two paired blocks of spectrum in the 700 MHz band in-territory.

C. Categories of Generic Licences/Contiguity Across Blocks A and B

13. MTS Allstream submits that blocks B and C in the Lower 700 MHz band should not be treated as generic licences, since some bidders will value block B spectrum more than block C spectrum. Placing blocks B and C into a single category for bidding purposes will therefore, unnecessarily increase the bidding price of block C. The reason the Department gives for its proposal is that blocks B and C in the Lower 700 MHz band are similar enough and of comparable value such that they can be offered in a single category.
14. However, given the fact that the Department is also proposing that the winner of the A licence and one of the B and C licences in a service area will automatically be assigned the A and B licences in that service area, to “guarantee contiguity across these two categories in a service area”, the value will not be the same, nor can it be considered the same from the outset.⁵ The proposed contiguity guarantee is based on the recognition that some bidders will value the B licence more than the C licence – *i.e.*, bidders who are limited to a spectrum cap of one paired spectrum block from within blocks B, C, C1 and C2 and who are seeking to acquire 2x12 MHz of contiguous spectrum. There is more value to obtaining two contiguous paired blocks (blocks A and B) than there is to acquiring separated paired blocks (for example, blocks A and C).
15. The result of treating the B and C licences as generic while also offering the guarantee would be that those bidders who value the B licence more than the C licence (on the basis that it is contiguous with the A licence) will not be differentiating between B and C in the allocation stage and, therefore, those effectively bidding on C will have to keep up with the bidding of those seeking a licence for the B block (in conjunction with a licence in the A block). In addition, those bidders going after a B licence will not have to reserve budget for the assignment round and will therefore be able to include the amount they would otherwise have reserved for the assignment round in the allocation stage. This means that bidders seeking a C licence will have to bid a premium over what they would otherwise have to bid if the B and C licences were treated as separate categories.

⁵. Industry Canada, *Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band*, DGSO-002-12, April 2012, paragraph 28.

16. To address the fact that the lower B and C licences are not truly substitutable and are likely to be valued differently, MTS Allstream proposes that these licences be offered in separate categories. By placing blocks B and C in the Lower 700 MHz band in separate categories, bidders will be able to bid on the licences they are truly seeking in the clock rounds and supplementary round. If a single bidder is intent on obtaining both block A and block B, then that bidder can bid its true value for those licences in the allocation stage. There would no longer be an assignment stage for blocks B and C. While this solution would add to the number of licence categories in the auction, it would greatly simplify bidding for many bidders and improve the efficiency of the auction.

III. BIDDER PARTICIPATION – AFFILIATED AND ASSOCIATED ENTITIES

A. Definitions of Associated and Affiliated Entities

17. The Department is proposing to change the rules relating to “associated entities” in order to allow a certain subset of these entities to participate separately in the auction and have the spectrum caps apply separately to them, provided that they demonstrate an intention to compete in the licence areas where they both intend to bid and to continue to function as competitors in the auction.
18. The Department proposes to revise the definition of associated entities as follows:
- Any entities that enter into any partnerships, joint ventures, agreements to merge, consortia or any arrangements, agreements or understandings of any kind, either explicit or implicit, relating to the acquisition or use of any spectrum in the 700 MHz band will be treated as Associated Entities. Typical roaming and tower sharing agreements would not cause entities to be deemed associated.⁶
19. MTS Allstream supports this definition and the need to establish rules to ensure that there are sufficient safeguards during the lead up to, as well as during the auction itself, to prevent collusion on bidding strategy.

⁶. Industry Canada, *Consultation on a Licensing Framework for Mobile Broadcasting Services (MBS) – 700 MHz Band*, DGSO-002-12, April 2012, paragraph 64.

B. Other Matters

20. MTS Allstream notes that there are other users of spectrum in the 700 MHz band, including public safety users. Since the spectrum that is used by these entities is also referred to as 700 MHz spectrum, the definition of “associated entities” should be clarified in order to exclude 700 MHz spectrum that will not be included in the upcoming auction as follows (changes noted in bold):

Any entities that enter into any partnerships, joint ventures, agreements, to merge, consortia or any arrangements, agreements or understandings of any kind, either explicit or implicit, relating to the acquisition or use of any spectrum **that is auctioned** in the 700 MHz band will be treated as Associated Entities. Typical roaming and tower sharing agreements would not cause entities to be deemed associated.

IV. CONDITIONS OF LICENCE FOR SPECTRUM IN THE 700 MHZ BAND

A. Licence Term

21. MTS Allstream supports the Department’s proposal to issue spectrum licences in the 700 MHz band with a 20-year licence term.

B. Spectrum Aggregation Limits

22. The Department has indicated that all bidders will be subject to a five-year spectrum cap of two paired frequency blocks and that large wireless service providers will be subject to an additional five-year spectrum cap of one paired spectrum block within blocks B, C, C1 and C2.
23. MTS Allstream notes that the fact that these spectrum caps will be lifted five years following licence issuance, combined with the fact that the Department is not imposing any roll-out obligation within that time-frame on licensees who do not already have an HSPA footprint, means that the 700 MHz spectrum, particularly the prime spectrum, is vulnerable to speculative bidding by bidders whose only intent is to flip the spectrum at a higher price to a large wireless service provider once five years has passed. In order to prevent speculative bidding, MTS Allstream recommends that the Department adopt a

minimum time frame of 2.5 years, for the prime blocks, within which licensees must commence deployment .

C. Licence Transferability and Divisibility

24. MTS Allstream opposes the Department's proposal that "[s]ubordinate licences may not count towards the licensee's aggregation limit if the licensees demonstrate to the satisfaction of Industry Canada that they meet the criteria with respect to competing in the applicable service area".⁷ Spectrum caps should apply consistently to all licensees and spectrum that is acquired in the first five years via a subordinate licence should count equally towards those caps.

D. Eligibility

25. MTS Allstream does not have any comments on the proposed wording of the condition of licence related to eligibility criteria at the present time.

E. Treatment of Existing Spectrum Users

26. MTS Allstream does not have any comments on the proposed wording of the condition of licence related to the treatment of existing spectrum users at the present time.

F. Radio Station Installations

27. MTS Allstream does not have any comments on the proposed wording of the condition of licence related to radio station installations at the present time.

G. Provision of Technical Information

28. MTS Allstream does not have any comments on the proposed wording of the condition of licence related to the provision of technical information at the present time.

⁷. Industry Canada, *Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz*, DGSO-002-12, April 2012, paragraph 88.

H. Compliance with Legislation, Regulation and Other Obligations

29. MTS Allstream does not have any comments on the proposed wording of the condition of licence related to compliance with legislation, regulation and other obligations at the present time.

I. Technical Considerations, and International and Domestic Coordination

30. MTS Allstream does not have any comments on the proposed wording of the condition of licence related to technical considerations, and international and domestic coordination at the present time.

J. Lawful Intercept

31. MTS Allstream opposes the Department's proposed change to the lawful intercept condition of licence, namely, the proposal that a licensee maintain lawful interception capabilities in accordance with the Solicitor General's Enforcement Standards for Lawful Interception of Telecommunications (the Solicitor General's Standards) when "using an interconnected radio-based transmission facility".
32. Replacing "circuit-switched voice telephony systems" with "interconnected radio-based transmission facility for compensation" would substantially broaden the scope of the lawful intercept requirements by potentially extending them to applications that are based solely on the public Internet and are beyond a licensee's control. Indeed, since there is a legislative process under way in respect of the Government of Canada's proposed changes to the lawful intercept requirements⁸, it may be that the Solicitor General's rules will soon be unnecessary.

⁸ Bill C-30, *An Act to enact the Investigating and Preventing Criminal Electronic Communications Act and to amend the Criminal Code and other Acts*.

K. Research and Development

33. The research and development (R&D) condition of licence was originally established to stimulate R&D in the telecommunications sector, with the hopes of spurring innovation and encouraging competitive growth in the industry. MTS Allstream submits that this policy objective has now been achieved. As the Department has itself observed, the wireless industry is a “strong performer in terms of R&D spending, with more than a billion dollars invested since the first licences were issued” and with many wireless carriers exceeding the required level of R&D.⁹
34. Since the intended goal of the R&D condition of licence has been met, the R&D condition of licence is no longer efficient and proportionate to its purpose. The administrative burden of reporting R&D expenditures on an annual basis far exceeds the original purpose and intent of this condition of licence. Furthermore, it is clear that the objective of the R&D condition of licence can be achieved through reliance on market forces. MTS Allstream therefore urges the Department to eliminate this outdated condition of licence.

L. Mandatory Antenna Tower and Site Sharing

35. MTS Allstream has submitted both comments and reply comments on the condition of licence related to mandatory antenna tower and site sharing in the proceeding initiated by DGSO-001-12.

M. Mandatory Roaming

36. MTS Allstream has submitted both comments and reply comments on the condition of licence related to mandatory roaming in the proceeding initiated by Gazette Notice DGSO-001-12.

⁹ *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*, Canada Gazette, Part 1, 11 April 2009, Section 6.1.

N. Annual Report

37. MTS Allstream supports the Department's proposed condition of licence related to the requirement for annual reporting. With respect to the specific requirement to submit R&D reports, as noted above, the R&D condition of licence has outlived its original purpose and should be eliminated. However, until Industry Canada renders a formal determination on this matter, the Department's proposal to allow licensees to submit an account of their R&D expenditures without having to attach a costly auditor's report (unless requested to do so by Industry Canada) strikes an appropriate balance in the intervening period before a determination is rendered.

V. AUCTION PROCESS

38. The Department has stated that "Qualified bidders will receive the necessary information to participate in the auction several weeks prior to the start of the auction", and that a "mock auction will be held, likely during the week prior to the start of the auction, in order to allow qualified bidders to better familiarize themselves with the auction system."¹⁰
39. MTS Allstream believes that given the complexity of the auction and the considerable resources that will be required for bidders to prepare, this information, including all relevant formulae, should be made available as far in advance of the auction as possible.
40. MTS Allstream also recommends that the Department release, as soon as possible, a precise schedule so that potential bidders can begin what is expected to be a lengthy and costly preparation process.
41. Finally, and based on the positive experience of Industry Canada's Auction Design Information Session on 30 May 2012, MTS Allstream recommends that Industry Canada establish, as soon as possible and well in advance of the auction, a procedure by which potential bidders can obtain timely responses to questions in respect of the auction process and rules.

¹⁰. *Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band*, DGSO-002-12, April 2012, paragraphs 147-148.

VI. LICENCE RENEWAL PROCESS

42. MTS Allstream believes that the Department should begin the renewal process for the 700 MHz licences, including a public consultation process, at least five years prior to the end of the licence term, given the Department's proposal to issue spectrum licences in the 700 MHz band with a 20-year licence term. This will give the Department more time to review the items discussed in the consultation paper, *i.e.*, licensees' compliance with the conditions of licence, a scan of the general environment, and a review of the demand for spectrum from other parties.
43. In addition to giving the Department more time for review and consultation, initiating the review 15 years into the licence term rather than 18, as proposed, would provide licensees with more business certainty and greater predictability at an earlier time.

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