

**Canada Gazette Notice No. DGSO-002-12**

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

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**Comments  
of  
Bell Mobility Inc.**

**25 June 2012**

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## 1.0 EXECUTIVE SUMMARY

1. In accordance with the procedure set out in Industry Canada (Industry Canada or the Department) Notice No. DGSO-002-12, *Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band*, as published in the *Canada Gazette, Part 1*, dated 5 May 2012 (the Notice), Bell Mobility Inc. (Bell Mobility or the Company) is pleased to provide the following comments in response to the Notice.

2. The Company has four key changes to propose in response to the Notice.

3. First, the Department must be alert to unintended consequences arising from the interplay between the foreign ownership amendments to the *Telecommunications Act* (the *Act*) contained in Bill C-38, entitled *An Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 29, 2012 and Other Measures*, (which received third reading in the House of Commons on 18 June 2012)<sup>1</sup> and the Notice's proposed spectrum aggregation limits and rural roll-out requirement provisions. As a result, the Conditions of Licence (COLs) applicable to spectrum caps and rural roll-out obligations should be changed to ensure, in the event any large non-Canadian wireless carrier enters the Canadian wireless market under the changes to Canada's foreign ownership restrictions (either as a greenfield or by way of acquisition of a pre-existing Canadian owned carrier) and applies to participate in the 700 MHz auction, that such carriers are made subject to precisely the same spectrum caps and the same rural roll-out obligations as are applicable to Canada's incumbent carriers. The current loophole in the COLs must be closed to ensure that all Canadians can benefit from the auction, regardless of whether the winning carrier is Canadian or non-Canadian owned and controlled. The second point relates to the fact that the efficient allocation of spectrum in auction requires that bidders have additional information regarding bids between rounds. Greater information disclosure will promote the efficient assignment of licences since bidders will be able to make more informed bids. It is appropriate for auction participants to know what packages other bidders are bidding on at each round in order to help bidders identify combinations that enhance the overall value and bid on the appropriate packages in the clock rounds as well as the supplementary round. The third point concerns the continuing potential for auction gaming and the need for the Department to insist upon daily financial guarantees from bidders. Given the proposed eligibility rules and the combinatorial clock auction (CCA) format, the most likely gaming opportunities that can arise will be bidders bidding for excessively large packages before switching to a

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<sup>1</sup> See: House of Commons Status of Bills website, at: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5514128>.

package of real interest, in order to maintain their eligibility points. The Company recommends that over the course of the auction, prior to the commencement of each day's bidding, bidders be required to provide Industry Canada with a financial guarantee via a letter of credit equal to 100% of the value of their previous day's last package bid. By requiring bidders to provide a financial guarantee equal to 100% of the value of their previous day's last package bid, this measure will incent bidders to determine their overall budget in advance of the auction and to bid only on spectrum blocks they desire. If a bidder decides to inefficiently increase the price by bidding on spectrum blocks that they do not desire, it increases the probability that they will go over their pre-determined budget allotment. Having clear goals and a well-defined budget constraint facilitates more efficient bidding. This measure will also provide a strong market disincentive to discourage bidders from engaging in gamed bidding designed solely to drive up the price of spectrum that they have no meaningful interest in acquiring. Fourth, the Department could foster greater regulatory and business certainty by signaling an intention to maintain the COLs and other policies adopted in this consultation over the longer term, provided there are no material technical or other changes in circumstances warranting changes. These points are briefly discussed in the following paragraphs.

**1.1 Unintended and harmful consequences flowing from the current two-to-one spectrum caps COL**

4. As the Department is aware, Bill C-38 would amend section 16(2) of the *Act*, creating an entire new class of "telecommunications common carriers", including wireless carriers, that would be eligible to operate in Canada, even if 100% foreign-owned and controlled, provided such a carrier has annual revenues from the provision of telecom services in Canada that are less than 10% of the total annual Canadian telecom revenues, as determined by the CRTC. Any such foreign-owned and controlled carrier would be able to increase its market share by way of merger or acquisition or asset purchase up to the 10% of annual Canadian telecom revenues threshold. Thereafter, any growth in market share by any one foreign-owned and controlled carrier would have to be "organic", meaning by way of competition and self-sustained growth rather than by way of corporate merger, acquisition or asset purchase.

5. In effect, the new rule allowing for 100% foreign ownership and control would apply to each of the existing Canadian wireless competitors, including recent domestic entrants like: Wind Mobile, Mobilicity, Public Mobile, Videotron, as well as to any new "greenfield" foreign-owned and controlled companies seeking to enter the Canadian market in next year's 700 MHz

spectrum auction, regardless of their size and market capitalization. Thus, a foreign-owned and controlled telecom giant, such as AT&T or Deutsche Telekom, would be eligible to bid in the 700 MHz auction and go on an acquisition spree taking them up to the allowable 10% annual telecommunications revenues threshold.

6. The possibility of a giant U.S. investor entering the Canadian telecom market is far from theoretical. The 17 June 2012 Globe and Mail reported that Manitoba Telecom Services Inc. (MTS) has hired U.S.-based investment firm, Morgan Stanley, with the specific intention of broadening its search beyond Canada in order to seek a foreign buyer for its MTS Allstream division.<sup>2</sup> A recent report in the Financial Post<sup>3</sup> cited MTS' chief executive, Pierre Blouin, who said there have already been talks between "senior level" executives at AT&T and MTS. Mr. Blouin is quoted as saying "They're clearly aware of the change in Canada" and "they are watching developments closely."

7. The problematic provision in the Notice relating to spectrum caps is the following proposed COL set out in paragraph 86 of the Notice:

The licensee must comply with the spectrum aggregation limits as follows:

- A limit of two paired frequency blocks in the 700 MHz band (blocks A, B, C, C1 and C2) is applicable to all licensees.
- A spectrum cap of one paired spectrum block within blocks B, C, C1 and C2 is applicable to all large wireless service providers. Large wireless service providers are defined as companies with 10% or more of the national wireless subscriber market share, or 20% or more of the wireless subscriber market share in the province of the relevant licence area.

8. In effect, as a result of the interplay between Bill C-38 and this COL, AT&T or any other large non-Canadian investor would be subject to a two paired block limit under the first bullet, whereas under the second bullet, Bell Mobility, Rogers and Telus would be subject to a single paired block limit. In other words, these proposed spectrum caps would clear the way for any large foreign telecommunications company to acquire two blocks of prime 700 MHz spectrum, while Canada's national carriers – those who invest billions of dollars in all areas of the country, urban and rural – are limited to just one block.

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<sup>2</sup> See: MTS widens search for Allstream suitor, Globe and Mail online, 17 June 2012 available at: <http://www.theglobeandmail.com/report-on-business/mts-widens-search-for-allstream-suitor/article4299460/?cmpid=rss1>.

<sup>3</sup> See: Bill C-38 changes to telecom ownership stir foreign takeout talks, Financial Post online, 15 June 2012 available at: <http://business.financialpost.com/2012/06/14/bill-c-38-changes-to-telecom-ownership-stir-foreign-takeout-talks/>.

9. This raises profound concerns from a trade reciprocity perspective, since to the Company's knowledge, Canada's telecommunications carriers have not received any corresponding equivalent reciprocal advantage in the forthcoming spectrum auctions of any of our trading partners.

10. Beyond the apparent lack of equivalent trade reciprocity for Canadian investors operating in foreign jurisdictions is the concern regarding the investment commitment that large non-Canadian wireless carriers would have for the Canadian market. In this regard, it is doubtful that executives in Texas or Germany would invest first in Edmonton, Canada's fifth largest market,<sup>4</sup> ahead of Phoenix, the fifth largest in the U.S.<sup>5</sup> with twice the population. The point applies with equal force to Hamilton, Canada's eighth largest market, or San Diego, the eighth largest market in the U.S. with more than twice the population as well as to Rimouski, Canada's 72nd largest market versus Buffalo, the 69th largest U.S. market with almost eight times the population. As a matter of common sense, there can be no economic rationale, let alone a public policy rationale, for restricting a Canadian carrier like the Company to the acquisition of one block of 700 MHz spectrum while allowing AT&T, for example, to claim two blocks when AT&T with a market capitalization of approximately US\$ 205.76 billion more than 6.5 times the market capitalization of BCE Inc.<sup>6</sup>

11. For all of these reasons, Canada's incumbent wireless carriers should not be placed at a marked disadvantage to large foreign carriers in terms of the application of the two-to-one spectrum caps.

## **1.2 Unintended and harmful consequences resulting from a gap in the current rural roll-out COL**

12. The Company's second major concern arises from the serious omission in the proposed rural roll-out COL, at paragraph 117 of the Notice:

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<sup>4</sup> See Statistics Canada census data, Population and dwelling counts, for census metropolitan areas and census agglomerations, 2011 and 2006 censuses available at: <http://www12.statcan.gc.ca/census-recensement/2011/dp-pd/hlt-fst/pd-pl/Table-Tableau.cfm?LANG=Eng&T=201&S=3&O=D&RPP=150>.

<sup>5</sup> United States Census Bureau, Incorporated Places with 100,000 or More Inhabitants in 2010--Population: 1970 to 2010, available at: [http://www.census.gov/compendia/statab/cats/population/estimates\\_and\\_projections--states\\_metropolitan\\_areas\\_cities.html](http://www.census.gov/compendia/statab/cats/population/estimates_and_projections--states_metropolitan_areas_cities.html).

<sup>6</sup> Based upon data appearing on Yahoo Finance on 22 June 2012. Available online at: <http://ca.finance.yahoo.com/q?s=T>.

Where a licensee holds a licence for two or more paired blocks of 700 MHz spectrum in a licence area, or has access to two or more paired blocks of 700 MHz spectrum in a licence area either directly or indirectly, that licensee must deploy 700 MHz spectrum:

- (a) To cover 90% of the population of its HSPA network footprint as of March 2012, within five years of the issuance of the initial 700 MHz licence; and
- (b) To cover 97% of the population of its HSPA network footprint as of March 2012, within seven years of the issuance of the initial 700 MHz licence. [emphasis added]

13. The problem relates to the use of the phrase "its HSPA network footprint" in the event a "first time" foreign-owned and controlled new entrant, such as AT&T, were to win two paired blocks. Because such a "greenfield" non-Canadian wireless carrier would have no existing HSPA footprint as of March 2012, as drafted, this COL would impose absolutely no obligation on such a new entrant to serve rural areas of Canada after five years or seven years of the licence term. In other words, having no pre-existing HSPA footprint as of March 2012 against which to measure its 700 MHz spectrum network roll-out obligations, such a new entrant would effectively be exempt from this critical policy to ensure rural Canadians are not left behind in the digital divide. The same flaw would be no less apparent if a large non-Canadian wireless carrier acquired one of the 2008 AWS new entrants. In that case, because none of the AWS new entrants currently serves rural areas and therefore lacks an existing HSPA network, the foreign acquirer would similarly have no pre-existing HSPA network against which to measure its rural network roll-out.

14. While such a foreign carrier might be able to meet the requirement to deploy its networks to between 20% to 50% of the relevant population in a licensed area pursuant to the general deployment requirements (at paragraph 125 of the Notice) this would likely be satisfied by restricting the build out in less costly urban areas, reinforcing the Company's concern that rural and remote Canadian consumers would be the clear losers. In effect, the rural roll-out obligation as currently drafted grants an unfettered licence to new entrant foreign-owned wireless carrier to skim the cream from Canada's largest, most lucrative urban markets and to abandon Canadians in rural and remote areas of the country. This simply cannot be consistent with Canada's national interest and the attainment of long-standing Canadian telecommunications policies intended to ensure Canada has world class telecommunications networks in all areas of the country and that all Canadians, in both urban and rural areas alike, enjoy the benefits of these facilities. This loophole in the rural roll-out COL provides a further

reason why the Department should build a contingency into its COLs in the event a large non-Canadian bidder seeks to participate in the 700 MHz auction. One way that the Department could define such a large non-Canadian auction participant would be on the basis of market capitalization, such that a large non-Canadian carrier would be one with a market capitalization equal to or greater than that of any one of Canada's "large wireless service providers", as that term is defined in the Notice.

### **1.3 Necessary amendments to the spectrum cap and rural roll-out COLs**

15. The Company has two proposals to correct these flaws in the COLs as they are currently drafted. First, at a minimum, the government should build a contingency plan into its spectrum auction rules to reduce the risk of Bill C-38's unintended consequences. This can be achieved by amending the 700 MHz Auction Framework policy in the event one or more large, foreign-owned and controlled carriers indicates an intention to bid in the 700 MHz auction. In that event, it makes no sense to retain the current two-to-one spectrum cap limit for non-Canadians over Bell Mobility, Telus and Rogers. Instead, if at least one large foreign-owned and controlled carrier qualifies to participate in the auction, then all auction participants should be made subject to symmetrical spectrum caps.

16. In a similar vein, if at least one large foreign-owned and controlled carrier qualifies to participate in the auction, symmetrical rural roll-out obligations should also be applied to all spectrum licensees. In the case of a large foreign new entrant, this could be accomplished by adding a contingency to the proposed rural roll-out COL that would state, in the event such an entrant holds a licence for or has access to two or more paired blocks, the spectrum roll-out obligations for that new entrant are measured in respect to the largest HSPA network operational in the relevant licence area as of March 2012.

### **1.4 Greater information disclosure**

17. Additional information is even more important when there is combinatorial bidding. With combinatorial bidding and second-price rules, the main advantage of a multi-round auction over a single-round (sealed-bid) auction is that the information disclosure between rounds enables bidders to focus attention on packages that are most likely to become part of their value-maximizing combination, enabling them to focus on a small set of packages to make bidding decisions. However, the minimal information disclosure proposed for this auction

(i.e., disclosing only the aggregate demand at the current clock prices) does not provide bidders with sufficient information to identify the most relevant packages to bid on. Instead, this choice of information policy seems almost optimized to encourage strategic bidders to identify where it is safest to park eligibility during the clock phase (i.e. blocks with the largest aggregate demand) and to bid on licences that they are very unlikely to win.

18. Prices which are bid up inefficiently through bidders engaging in gaming strategies not only results in an inefficient allocation of spectrum, it also hurts the Canadian wireless industry by inefficiently increasing costs. As seen in the AWS auction, gaming can have impacts in the range of hundreds of millions of dollars. These are dollars that can be used on further, and accelerated, investments in wireless networks, applications and services in both urban and rural areas.

19. Traditionally, the main reason to limit disclosure in auctions is to prevent large bidders from engaging in implicit collusion through demand reduction (i.e., bidding for less than you desire in order to keep prices lower). However, there should be no concern regarding anticompetitive collusion in the auction. The incentives for demand reduction by large bidders is already significantly limited by both the CCA rules and the tight spectrum caps. In a non-combinatorial second price auction, excess demand for one type of lot increases the price of every single lot of that type: the losing bidder sets the price for every single lot. Therefore gains from collusion and demand reduction are high and it is important to limit information that would facilitate this behaviour. In a combinatorial second price auction, package bidding is allowed and excess demand does not increase the price of every unit (since the bid is for a package of units and not a specific unit). Therefore the incentives for collusion via demand reduction are highly reduced. Limiting information no longer solves a collusive problem, it only damages bidders. The tight spectrum cap means that bidders will not want to reduce their demand any further just to keep prices lower.

20. As a result, the usual arguments for limiting information are not applicable. Facilitating truthful bidding and increasing the pace of the auction decrease the potential of anticompetitive behaviour. As a result, the Department's focus should be on greater information disclosure to promote the most efficient assignment of licences. Therefore, Bell Mobility recommends that the Department provide information on which packages other bidders are bidding on at each round and to not adopt anonymous bidding.

## 1.5 Daily financial guarantees

21. Pre-auction deposits were also required in the 2008 AWS spectrum auction, yet clearly bidders were able to "park" points on spectrum that they did not desire in order to keep prices from increasing too quickly on spectrum they did desire. This led to an inefficient increase in the price of spectrum blocks. The "parking" of points was facilitated by the fact that bidders did not have to guarantee their bids and as a result were able to "spend money they did not have" and had no meaningful intention of actually spending.

22. Given the proposed eligibility rules and the CCA format, the most likely gaming opportunities that can arise will be bidders bidding for excessively large packages before switching to a package of real interest, in order to maintain their eligibility points. The incentive to engage in gaming behaviour by bidding on excessively large packages is facilitated by the fact that different bidders have different spectrum caps. As a result, some bidders will be allowed to maintain large package bids without fear of retaliation since other bidders will not be able to match the larger package size due to the cap that limits them to one "prime" spectrum block rather than two. That is, for bidders that are allowed to bid for two "prime" spectrum blocks, they can bid on one block which they desire and bid on another block in order to increase prices. A bidder that is only allowed to bid on one block cannot retaliate since moving off their desired block may result in not winning it.

23. Therefore, the Company recommends that over the course of the auction, prior to the commencement of each day's bidding, bidders be required to provide Industry Canada with a financial guarantee via a letter of credit equal to 100% of the value of their previous day's last package bid. This measure will provide a strong market disincentive to discourage bidders from engaging in gamed bidding designed solely to drive up the price of spectrum that they have no meaningful interest in acquiring.

24. By requiring bidders to provide a financial guarantee equal to 100% of the value of their previous day's last package bid, this measure will incent bidders to determine their overall budget in advance of the auction and to bid only on spectrum blocks they desire. If a bidder decides to inefficiently increase the price by bidding on spectrum blocks that they do not desire, it increases the probability that they will go over their pre-determined budget allotment. As a result, the bidder will have to renegotiate its budget allotment which increases the cost of engaging in inefficient bidding behaviour. Significant deposits that make engaging in gaming

strategies expensive can be expected to lead to more straightforward bidding and will promote more efficient outcomes. In the event a bidder bids irresponsibly and was unable to negotiate the required next-day increase to its credit facility from its financial institution, the Company would expect, at a minimum, that this would result in the application of the Department's penalty provisions and, conceivably, other sanctions as deemed appropriate by the Department.

#### **1.6 The need for regulatory and business certainty**

25. The Company's final concern is to request that the Department make an express commitment to respect the policies and COLs adopted at the culmination of this consultation process over the longer term provided there are no technical or other considerations justifying changes.

26. In this regard, it cannot be over-emphasized that all stakeholders collectively invest billions of dollars in spectrum in full reliance on auction rules established by the Department.

27. The Company alone spent more than \$740.9 million on AWS licences in the most recent spectrum auction. Reliance upon market forces, one of the foundational policy underpinnings on which the Department conducts spectrum auctions, must mean more than idle words. The Company made much the same point in its recent comments and reply comments in response to the Department's parallel consultation relating to possible changes to the COLs pertaining to mandated tower sharing and roaming, this after barely four years of the 10-year term of the AWS spectrum licences had elapsed. Bidders value and bid upon licences based on the COLs which are the culmination of a transparent, multi-staged consultation process. Changing these rules in mid-stream before the licence term has expired serves only to undermine certainty and confidence in the Department's processes.

28. The Company next turns to providing its comments on the specific questions raised in the Notice. For convenience and ease of reference Bell Mobility will address the issues raised by the Department for comment in the order of their appearance in the Notice.

2.0 **SECTION 3.1: SERVICE AREA FOR LLOYDMINSTER (ALBERTA / SASKATCHEWAN)**

*Industry Canada is seeking comments on whether or not the service area boundary for licences in the 700 MHz band should deviate from the provincial boundary around the City of Lloydminster, (Alberta/Saskatchewan).*

29. Bell Mobility has no comments with respect to this issue.

3.0 **SECTION 4: AUCTION FORMAT AND RULES**

*Industry Canada is seeking comments on its proposal to use the CCA format, as well as the general attributes outlined above, including:*

- *the categories of generic licences;*
- *the guarantee of contiguity across blocks A and B in the lower 700 MHz band in a specific service area;*
- *the combined eligibility point and revealed preference activity rule in the clock rounds, and the revealed preference limit in the supplementary round;*
- *the use of a second-price rule; and*
- *the information to be disclosed during, and post-auction.*

30. In the following sections Bell Mobility provides its views on each of the above attributes.

- *the categories of generic licences;*

31. Bell Mobility supports the proposed categories of generic licences. As noted in the Notice, "generic licences are blocks of spectrum that are similar enough and of comparable value such that they can be offered in a single category," in order to increase the possibility of substitution and to simplify the initial bidding process by reducing the number of possible combination of products that bidders can bid on.<sup>7</sup> In the 700 MHz auction, blocks B and C in the Lower 700 MHz band are paired spectrum which are supported in the U.S. by the AT&T ecosystem, whereas blocks C1 and C2 in the Upper 700 MHz band are paired spectrum which are supported by the Verizon ecosystem. Given the current technology differences between these two competing ecosystems, blocks B and C are simply not similar enough to blocks C1 and C2 to warrant grouping all four blocks together into one generic license.

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<sup>7</sup> Notice, paragraph 25.

32. With respect to block A, there are currently two issues that make it less substitutable with spectrum in the Lower B and C blocks: (i) there continues to be uncertainty about the extent of interference issues with channel 51, thus limiting the ability to use the full allocation of spectrum in the block; and (ii) ecosystem support for block A has yet to be settled. Bell Mobility agrees that the current value of block A is not comparable to the other blocks in the spectrum band and thus, should remain in its own category.

33. Unlike the other blocks in the spectrum band, blocks D and E are unpaired. Moreover, due to interference issues, blocks D and E will not be able to be used in combination with blocks B and C. Thus, Bell Mobility agrees that blocks D and E should remain as part of their own category of generic licences, given the significant differences in substitutability and value relative to the other blocks in the spectrum band.

- ***the guarantee of contiguity across blocks A and B in the lower 700 MHz band in a specific service area;***

34. Bell Mobility supports the guarantee of contiguity across blocks A and B in the Lower 700 MHz band in a specific service area. One of the key benefits of the CCA format is that it removes the exposure problem such that winning bidders will only win contiguous spectrum. Given that block A is not in the same category as block B, the exposure problem can still arise since it is possible in the assignment stage that a bidder can win block B but lose block A. Therefore, in order to remove the exposure problem and ensure contiguous spectrum holdings, it is appropriate to automatically assign the A and B licences to the same bidder once that bidder has won both the A license and one of the B and C licences in a service area.

- ***the combined eligibility point and revealed preference activity rule in the clock rounds, and the revealed preference limit in the supplementary round;***

35. Bell Mobility supports the combined eligibility point and revealed preference activity rule for the clock rounds and the revealed preference limit in the supplementary round. The Company agrees with the Department that this proposed structure regarding bidding activity does provide bidders greater flexibility while still encouraging truthful bidding throughout the auction. By allowing bidders to alter their package bid back to one that requires greater eligibility points in response to a significant enough reduction in the relative prices, bidders will still be able to bid on their most preferred package but the additional structure reduces the

ability to bid on packages that are not the bidder's most preferred just to increase the prices paid by other others.

- ***the use of a second-price rule;***

36. Bell Mobility supports the proposed second-price rule. In general, in second-price auctions it is a dominant strategy to bid truthfully and as a result, the allocations will be efficient.<sup>8</sup> This result is noted in the Notice: "a second-price rule requires each winning bidder to pay an amount that is sufficient to ensure that no other bidder, or group of bidders, was prepared to pay more than the winning bidder for the licence(s) in question," and that as a result, it "promotes a more efficient outcome by increasing the incentive for bidders to bid their true value."<sup>9</sup>

- ***the information to be disclosed during, and post-auction.***

37. Bell Mobility believes that greater information disclosure will promote the efficient assignment of licences since bidders will be able to make more informed bids. At a minimum, it is appropriate to know what packages other bidders are bidding on at each round in order to help bidders identify combinations that enhance the overall value and bid on the appropriate packages in the clock rounds as well as the supplementary round. As well, Bell Mobility does not support the use of anonymous bidding.

38. Cramton (1997) notes that additional information promotes the efficient assignment of licences:<sup>10</sup>

An essential advantage of open bidding is that the bidding process reveals information about valuations. This information promotes the efficient assignment of licences, since bidders can condition their bids on more information. Moreover, to the extent that bidder values are affiliated, it raises auction revenues ..., since the winner's curse is reduced. Bidders are able to bid more aggressively in an open auction, since they have better information about the item's value.

39. Additional information is even more important when there is combinatorial bidding. With combinatorial bidding and second-price rules, the main advantage of a multi-round auction over

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<sup>8</sup> Krishna, V., (2010) Auction Theory, 2nd Edition, Academic Press, pages 188 and 189.

<sup>9</sup> Notice, paragraphs 46 and 47.

<sup>10</sup> Cramton, P., (1997) "The FCC Spectrum Auctions: An Early Assessment," Journal of Economics and Management Strategy, 6(3): 431-495, page 432.

a single-round (sealed-bid) auction is that the information disclosure between rounds enables bidders to focus attention on packages that are most likely to become part of their value-maximizing combination, enabling them to focus on a small set of packages to make bidding decisions. This focus is important because the number of packages a bidder can bid on is limited by a finite budget and the substantial costs of evaluating alternative packages. However, the minimal information disclosure proposed for this auction (i.e. disclosing only the aggregate demand at the current clock prices) does not provide bidders with sufficient information to identify the most relevant packages to bid on. Instead, this choice of information policy seems almost optimized to encourage strategic bidders to identify where it is safest to park eligibility during the clock phase (i.e. blocks with the largest aggregate demand) and to bid on licences that they are very unlikely to win.

40. Prices which are bid up inefficiently through bidders engaging in gaming strategies not only results in an inefficient allocation of spectrum, it also hurts the Canadian wireless industry by inefficiently increasing costs. As seen in the AWS auction, gaming can have impacts in the range of hundreds of millions of dollars. These are dollars that can be used on further, and accelerated, investments in wireless networks, applications and services in both urban and rural areas.

41. The best information policies would reveal information that is useful for serious bidders trying to determine the right packages. After each round, bidders need to have access to the packages other bidders are bidding on, as this will help them identify combinations that enhance the overall value and bid on the appropriate packages in the clock rounds and in the supplementary round. At a minimum, it would be appropriate to know the winning packages at each round, since this information will assist bidders in assessing whether prices are being driven by real competition so that continued bidding is essential, or just gaming which may require a different bidding response.

42. Traditionally, the main reason to limit disclosure in auctions is to prevent large bidders from engaging in implicit collusion through demand reduction (i.e. bidding for less than you desire in order to keep prices lower). However, there should be no concern regarding anti-competitive collusion in the auction. The incentives for demand reduction by large bidders is already significantly limited by both the CCA rules and the tight spectrum caps. In a non-combinatorial second price auction, excess demand for one type of lot increases the price of every single lot of that type: the losing bidder sets the price for every single lot. Therefore gains

from collusion and demand reduction are high and it is important to limit information that would facilitate this behaviour. In a combinatorial second price auction, package bidding is allowed and excess demand does not increase the price of every unit (since the bid is for a package of units and not a specific unit). Therefore the incentives for collusion via demand reduction are highly reduced. Limiting information no longer solves a collusive problem, it only damages bidders. The tight spectrum cap means that bidders will not want to reduce their demand any further just to keep prices lower.

43. As a result, the usual arguments for limiting information are not applicable. Facilitating truthful bidding and increasing the pace of the auction decrease the potential of anti-competitive behaviour. As a result, the Department's focus should be on greater information disclosure to promote the most efficient assignment of licences. Therefore, Bell Mobility recommends that the Department provide information on which packages other bidders are bidding on at each round and to not adopt anonymous bidding.

44. In terms of information disclosure at the conclusion of the auction, Bell Mobility supports the full disclosure of all bidding information as indicated in the Notice: (i) the list of winning bidders, licences won and prices to be paid; (ii) the bids submitted by each bidder in every clock round, including bidder identity; (iii) the supplementary bids submitted by each bidder, including their identity; and (iv) the assignment bids submitted by each bidder, including their identity.

45. Finally, Bell Mobility considers that it is critical that the Department continue its past practice of making available to the public prior to the auction the identity of applicants and qualified bidders. This information is required in advance of the beginning of the auction to provide bidders with sufficient time to incorporate this information into their valuations and bidding strategies. Again, this additional information enhances the transparency of the process by increasing the information available to participants and serves to enhance the efficient allocation of licences.

#### **4.0 SECTION 5: BIDDER PARTICIPATION - AFFILIATED AND ASSOCIATED ENTITIES**

46. The Company has structured its comments on the questions relating to associated and affiliated entities by first providing some general policy comments, followed by responses to the specific issues raised by the Department in the order raised in the consultation paper.

#### 4.1 Policy issues

47. At a general level, the Company supports the Department's objective of constructing new associated entity rules that give bidders the greatest possible flexibility to enter into efficiency and competition enhancing arrangements while allowing them to bid independently of each other based on the Department's acknowledgment of the following important considerations: (i) the scarcity of 700 MHz band spectrum; (ii) ever-increasing demands for spectrum by consumers, particularly in light of the surging popularity of smart phones and tablets; (iii) the high costs associated with network deployment especially in rural areas; and (iv) the spectrum and network efficiencies that can be attained through spectrum sharing.

48. In *Policy and Technical Framework Mobile Broadband Services (MBS) – 700 MHz Band and Broadband Radio Service (BRS) – 2500 MHz Band*<sup>11</sup> the Department recognizes that a number of Canadian service providers have adopted different kinds of network sharing arrangements driven by investment and spectrum efficiencies.

49. In the case of the Radio Access Network (RAN) joint build arrangement between Bell and Telus, this shared building approach enabled Bell to bring its own HSPA network to market, including to rural and remote areas, approximately one year before it would otherwise have been able to do so, and at a savings of hundreds of millions of dollars.

50. The benefits to the Canadian public resulting from such an arrangement cannot be over-emphasized. This arrangement meant that the Company was able to ratchet up the benefits of competition by providing Canadian consumers with its competing offers in markets where there might otherwise have been only a single service provider.

51. These types of benefits have also been recognized in respect of joint network builds outside of Canada. For example, a recent New York Times report noted the announcement by Telefonica and Vodafone to combine their wireless telephone grids in Britain and jointly build an LTE network to keep up with the UK's market leader, Everything Everywhere, a joint venture of T-Mobile and France Telecom.<sup>12</sup>

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<sup>11</sup> Spectrum Management and Telecommunications, SMSE-002-12, 14 March 2012 at paragraphs 138 and 139 (700 and 2500 MHz Policy and Technical Framework).

<sup>12</sup> See: "Two Carriers to Combine Mobile Forces in Britain", New York Times online, 7 June 2012 available at: <http://www.nytimes.com/2012/06/08/technology/telefonica-and-vodafone-to-combine-mobile-forces-in-britain.html?src=un&feedurl=http%3A%2F%2Fjson8.nytimes.com%2Fpages%2Ftechnology%2Findex.jsonp>

52. The New York Times report indicates that the CEOs of Vodafone UK and Telefonica UK had both indicated that the carriers would continue to operate competing services and would bid against each other in Britain's coming 4G spectrum auction. Telefonica CEO Ronan Dunne described the competitive benefits flowing from the joint build as follows:

One physical grid running independent networks will mean greater efficiency, fewer site builds, broader coverage and, crucially, investment in innovation and better competition for the customer.<sup>13</sup>

53. Interestingly, the New York Times report also notes that Telefonica and Vodafone already have a network sharing arrangement in Spain and that Telefonica and T-Mobile have a network sharing arrangement in the Czech Republic.

54. The Company supports the Department's objective of attempting to encourage these types of joint network arrangements in the future in order to encourage more rapid deployment of next generation services, investment and service innovations while maintaining vigorous competition between providers at the retail level. These are forward-looking and enlightened policies that should enable service providers to spend capital wisely, build out their networks in the most efficient and cost-effective manner and bring the benefits of intense retail competition and service differentiation to their customers in both urban and rural areas of the country sooner, with Canadians the true beneficiaries.

55. As the Minister of Industry, the Hon. Christian Paradis stated in his recent testimony before the House of Commons Standing Committee on Industry, Science and Technology:<sup>14</sup>

The idea here was to make sure we would have four players everywhere in the country. In the cities you can have a good business case, but when you go into the rural areas; there is a possibility that companies could get two blocks, or they can go with partnerships, as is the case with Bell Mobility and Telus, for example.

56. The Company wholeheartedly agrees with the Minister's assessment.

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<sup>13</sup> Ibid. New York Times.

<sup>14</sup> House of Commons Standing Committee on Industry, Science and Technology, Evidence, 15 March 2012.

**4.2 Types of agreements that should be captured by the definition of associated entities**

57. The Department's proposed definition for the term associated entities is set out as follows at paragraph 64 of the 700 MHz Consultation document:

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.

58. The Company has a number of comments on this proposed definition.

59. First, the Company considers that the proposed definition could be tightened to reduce its continuing uncertainty. For example, the phrase: "any arrangements, agreements or understandings of any kind relating to acquisition or use of any spectrum in the 700 MHz band will be treated as Associated Entities" continues to be unacceptably vague and therefore difficult to interpret.

60. The Company believes that all stakeholders would benefit from a bright-line test in terms of providing for more consistent and predictable interpretation. Therefore, rather than referencing "any arrangements or understandings of any kind", which are often neither legally binding nor enforceable, the Department should adopt a standard of legal enforceability in terms of the types of legally binding arrangements that would give rise to an association. In other words, unless parties have entered into a legally binding and enforceable relationship of the sort that would give rise to legal redress before the Canadian courts in the event of a breach, such relationships should not be considered as falling within the definition of the types of relationships that make two or more parties associated.

61. Second, the Company supports the Department's attempt in paragraph 67 of the Notice to bring greater clarity and transparency to the auction rules by providing examples of those types of relationships that would and would not, respectively, result in parties being considered to be associated entities. In this regard, the Company agrees that typical roaming and tower sharing agreements and other agreements, such as the purchase of backhaul capacity, would not cause entities to be deemed associated entities. This is because none of these types of

agreements would necessarily relate either to the use or acquisition of the spectrum to be auctioned in the forthcoming auction.

62. The Company disagrees, however, with the Department's suggestion in paragraph 67 that a "significant joint equipment purchase" should necessarily be disclosed as being indicative of association. If such an equipment purchase (for example, a bulk arrangement to purchase the materials used to construct cell phone towers) does not relate in any way to the acquisition or use of spectrum in the 700 MHz auction, the Company submits that this would not give rise to an association between the parties and therefore should not be required to be disclosed to the Department in the auction qualification phase of the auction. In a similar vein, joint backhaul networks should also not have to be disclosed, as these types of arrangements would not necessarily have anything, whatsoever, to do with the auctioned spectrum.

#### **4.3 The level of information to be disclosed to the public**

63. The Notice proposes that parties who do fall within the ambit of the definition of associated entities would be required to disclose a list of associated entities with whom they are associated, together with a narrative describing "all key elements and the nature of the affiliation or association in relation to the spectrum licences up for auction and the post-auction relationship." At paragraph 68, the Department proposes that this narrative would be publicly available to other bidders in the auction. The Company strongly opposes this proposal for the following reasons.

64. First, the determination as to associated entity status is the Department's alone to make based on the applicable associated entity definition and any related indicators and evidence. It serves no public purpose whatsoever to disclose what may very well constitute confidential or sensitive commercial information belonging to one or both of these entities on the public record.

65. Second, it is harmful to a carrier's business interests and thus negatively impacts competition to require the carrier to publicly disclose its confidential business agreements to its competitors. Stakeholders should not be able to use regulatory proceedings, particularly a competitive auction process, as a backdoor method to gather commercially and competitively sensitive information that they would otherwise not be entitled to in a market which the Department has itself acknowledged to be intensely competitive.

66. Lastly, to the extent the Department is considering moving toward some form of public disclosure, the Company would recommend the adoption of a confidentiality model comparable to that set out in sections 38 and 39 of the *Act*. Section 38 creates a presumption that all information filed with the Commission in the course of its regulatory proceedings be made public via filing on the public record. However, section 39 overrides section 38 and prescribes that the following classes of information may be designated as and filed in confidence:

- Trade secrets;
- Financial, commercial, scientific or technical information that is confidential and that is treated consistently in a confidential manner by the person who submitted it; or
- Information the disclosure of which could reasonably result in material financial loss or gain to any person, prejudice the competitive position of any person, or which would affect contractual or other negotiations.

67. The Company considers, and the Commission's extensive jurisprudence on this point confirms this, that the evidence which the Department would have bidders publicly disclose as part of their narrative would almost certainly fall within the confidential parameters of the exceptions to public disclosure listed in section 39 of the *Act*. For all of these reasons, the confidentiality of commercially sensitive information included within a prospective bidder's narrative should be maintained and this information should not be publicly disclosed by the Department.

#### **4.4 Exclusion of typical tower sharing and roaming agreements from the definition of associated entities**

68. For the reasons stated above, the Company supports the Department's proposal to exclude typical roaming and tower sharing agreements that make no reference to 700 MHz spectrum from the types of agreements or arrangements giving rise to associated entity status, as well as backhaul capacity agreements. Consistent with our earlier comment, joint backhaul networks should also generally be excluded from the associated entity definition. There are two bases for this view. First, none of these types of agreements on their face necessarily relates in any way to the acquisition or use of 700 MHz spectrum available in the auction. Second, and as stated above, the greater up front clarity that can be provided to potential bidders and to all stakeholders, the more informed, efficient and effective the auction.

#### **4.5 The ability of entities deemed to be associated to apply to be treated as separate in the auction**

69. The Company agrees with and supports the Department's proposal to allow entities that have been deemed to be associated entities to apply to bid separately in the auction. The proposal provides flexibility and is more likely to foster rural roll-outs, which is one of the Department's core objectives underlying this auction policy.

70. Providing entities with an opportunity to bid separately if there is no harm to the integrity of the auction is entirely consistent with regulating to the minimum extent necessary to achieve the underlying policy objective and fostering competition to the greatest extent possible. Seeking to maximize the number of truly independent participants in the auction to the greatest extent possible is likely to facilitate the greatest possible extent of competition, both for the auction and in the downstream market in the post-auction period.

71. Entities that have demonstrated a clear intention to compete against each other in the downstream consumer wireless retail market have an inherent interest in seeking to independently source and control their respective underlying critical network inputs and must therefore have access to their own spectrum in order to meet their own subscribers' needs. The Company consistently pursues its independent interests in this manner and for this reason. Notably, for example, notwithstanding the Company's RAN co-building agreement with Telus, the Company pursued its independent needs separate and apart from Telus in sourcing additional spectrum through a separate joint venture relationship in Inukshuk. Moreover, notwithstanding the RAN co-build with Telus, the Company worked diligently to ensure that it was the first Canadian carrier to roll-out its HSPA network. The Company had initially forecast that its HSPA network would go live to coincide with Bell Canada's sponsorship of the Vancouver-Whistler 2010 Winter Olympics in February 2010. Instead, the Company launched its HSPA service before Telus on 4 November 2009. Other areas where the Company continues to pursue its own interest separate and apart from Telus include: the sourcing of our own handsets and software and retailing our products and services through our own multiple, independent retail outlets, such as Bell World stores and The Source.

72. It is for these reasons that the Company also agrees with the Department's proposal to base its determination of whether to allow separate participation by entities on the functional determinations of whether separate participation would negatively impact the integrity of the

auction process or whether the entities will otherwise compete separately in the applicable licence areas and continue to function as competitors. Ultimately this policy will foster more retail competition and more retail service differentiation because every provider wants and requires its own spectrum to ensure it is adequately serving its own subscribers. Joint builds are consistent with these public policy objectives because they enhance efficiency and accelerate rural build outs.

#### **4.6 Analysis of association and whether parties intend to compete in the same licensed service area**

73. As indicated above, the Company agrees with the Department's proposal to provide entities that technically fit within the ambit of the definition of associated entities to file a narrative statement in confidence with the Department where they are provided with an opportunity to demonstrate why the spectrum caps should be applied separately (and why they should be permitted to bid separate from each other). The Company also agrees that whether the entities in question intend to compete against each other in the same licensed service area is the correct test. The Company provides the following supporting rationale.

74. First, from a procedural standpoint, such a process is simple and straight forward administratively for the Department to manage. Entities who are party to agreements or other arrangements that are legally binding and enforceable that place them within the scope of the associated entities definition are required to disclose the relevant information to the Department in confidence. These entities are provided with an opportunity, through the confidential narrative filed prior to the final auction application deadline, to demonstrate why, notwithstanding the legally binding relationship in question, they should be permitted to bid separately from and have the spectrum caps applied to them separately from the other party. The Department will need to provide all auction participants with a definitive ruling on associated or non-associated entity status with sufficient lead time in advance of the commencement of the auction so that all participants can structure their affairs accordingly.

75. Second, from a substantive perspective, the proposed test makes sense. As a matter of common sense, entities that compete against each other in the relevant retail market within the licensed areas do not have a common business interest. To the contrary, the economic interest of each is to differentiate their networks, products and services from each other, compete for customers, market share and investors. As indicated above, Bell Mobility has continually strived

to do this, including by differentiating itself from Telus notwithstanding the RAN co-build arrangement. Therefore, it stimulates the competitive intensity of the auction and ultimately the marketplace by allowing entities to bid separately and have the spectrum caps apply individually rather than collectively.

76. Third, this proposed process will ensure that the Department has all of the relevant legal, commercial and other market information that it requires to make an assessment as to whether entities that are competitors should be allowed to participate in the auction separately.

#### **4.7 Criteria for assessing whether entities are competing**

77. The Company considers that the following types of evidence should be included amongst the criteria assessed in confidence by the Department in determining whether associated entities seeking to participate separately in the auction and to be subject to individual rather than collective spectrum caps are true retail competitors in any given licensed area:

- Marketing and advertising materials;
- Information regarding existing (and planned) retail outlets in the relevant area;
- Evidence of differentiation between the entities in question, including differentiation in respect of:
  - The array of handsets and other devices being sold respectively by them;
  - Their prices and service plans;
  - Value-added services (e.g., mobile content) each may offer;
  - Independent user interfaces available on their phones; and
  - New service launches.

#### **4.8 Unchanged definition of affiliated entities**

78. The Company notes that the proposed affiliated entities definition and control in fact definition is largely unchanged from those applicable in the 2008 AWS auction and largely reflects the widely understood understanding of both of these terms. Accordingly, the Company supports the proposal to leave these definitions largely unchanged.

## **5.0 SECTION 5.1: PROHIBITION OF COLLUSION**

***Industry Canada is seeking comments on the rules prohibiting collusion that would apply to bidders in the 700 MHz auction.***

79. The Company has reviewed the prohibition against collusion rules set out in paragraph 79 of the Notice. The Company considers these proposed rules to be substantially similar to those applicable in prior auctions. Moreover, the Company considers that these proposed rules establish a clear and comprehensive set of behavioral norms that apply from the date of application to participate in the auction until the payment of final bids which should once again effectively prohibit parties from inappropriately engaging in collusive conduct during the relevant period. Accordingly, the Company supports the proposed anti-collusion rules.

## **6.0 SECTION 6: CONDITIONS OF LICENCE FOR SPECTRUM IN THE 700 MHZ BAND**

80. In Section 6 of its Notice, Industry Canada proposes and seeks comment on the COLs that will apply to all licences issued through the auction process for spectrum in the 700 MHz band. In the following sections Bell Mobility provides its views on the proposed COLs.

### **Licence Term**

***Industry Canada is seeking comments on its proposal to issue spectrum licences in the 700 MHz band with a 20-year licence term.***

### ***Proposed COL:***

***The term of this licence is 20 years. At the end of this term, the licensee will have a high expectation that a new licence will be issued for a subsequent term through a renewal process unless a breach of licence condition has occurred, a fundamental reallocation of spectrum to a new service is required, or an overriding policy need arises.***

81. Bell Mobility supports the proposed COL indicating that spectrum licences issued in the 700 MHz band come with a 20-year licence term and a high expectation of renewal.

### **Spectrum Aggregation Limits**

***Industry Canada is seeking comments on the proposed wording of the condition of licence related to the spectrum aggregation limits.***

***Proposed COL:***

***The licensee must comply with the spectrum aggregation limits as follows:***

- ***A limit of two paired frequency blocks in the 700 MHz band (blocks A, B, C, C1 and C2) is applicable to all licensees.***
- ***A spectrum cap of one paired spectrum block within blocks B, C, C1 and C2 is applicable to all large wireless service providers. Large wireless service providers are defined as companies with 10% or more of the national wireless subscriber market share, or 20% or more of the wireless subscriber market share in the province of the relevant licence area.***

***The spectrum caps put in place for the 700 MHz auction will continue to be in place for five years following licence issuance. Therefore, no transfer of licences or issuance of new licences will be authorized that allows a licensee to exceed the spectrum caps during this period. Any change in ownership or control granting a right or interest to another licensee in this band may be considered as licence transfer for the purpose of this condition of licence whether or not the licensee name is changed as a result. The licensee must request approval by the Minister of Industry for any change that would have a material effect on its compliance with these spectrum aggregation limits. Such a request must be made in advance for any proposed transactions within its knowledge.***

82. Consistent with the Company's comments above, the Company is concerned that as a result of the interplay between Bill C-38 and the proposed COL pertaining to spectrum aggregation limits, AT&T or any other large non-Canadian investor would be subject to a two paired block limit under the first bullet of the paragraph 86 COL, whereas under the second bullet, Bell Mobility, Rogers and Telus would be subject to a single paired block limit. In other words, these proposed spectrum caps would clear the way for any foreign telecommunications giant to acquire two blocks of prime 700 MHz spectrum, while Canada's national carriers – those who invest billions of dollars in all areas of the country, urban and rural – are limited to just one block.

83. To guard against this unintended result, the Department should build a contingency plan into its spectrum auction rules to reduce the risk of Bill C-38's unintended consequences. This can be achieved by amending the 700 MHz Auction Framework policy in the event one or more large, foreign-owned and controlled carriers indicate an intention to bid in or qualify to participate in the 700 MHz auction. In that event, it makes no sense to retain the current two-to-

one spectrum cap limit for non-Canadians over Bell Mobility, Telus and Rogers. Instead, all auction participants should be made subject to symmetrical spectrum caps.

### **Licence Transferability and Divisibility**

***Industry Canada is seeking comments on the proposed wording of the condition of licence related to transferability and divisibility.***

***Proposed COL:***

***The licensee may apply, in writing, to transfer its licence in whole or in part (divisibility), in both the bandwidth and geographic dimensions in accordance with Client Procedures Circular CPC-2-1-23, Licensing Procedure for Spectrum Licences for Terrestrial Services, as amended from time to time. Licensees may apply to use a subordinate licensing process.***

***Industry Canada's approval is required for each proposed subordinate licence or transfer, whether the transfer is in whole or in part. Industry Canada may define a minimum bandwidth and/or geographic dimension (such as the grid cell) for the proposed transfer.***

***The transferor(s) must provide an attestation and other supporting documentation demonstrating that all conditions, technical or otherwise, of the licence have been met. The transferee(s) must provide an attestation and other supporting documentation demonstrating that it meets the eligibility criteria, including documentation related to associates and affiliates demonstrating that the transfer is in accordance with any spectrum aggregation limits.***

***Subordinate licences may not count towards the licensee's aggregation limit if the subordinate licensee demonstrates to the satisfaction of Industry Canada that the relevant licensees meet the criteria with respect to competing in the post-auction market (see condition of licence regarding Spectrum Aggregation Limits).***

***The transferee must satisfy all applicable conditions of licence including, rural deployment and general deployment requirements.***

84. Bell Mobility supports the proposed COL addressing licence transferability and divisibility as proposed by the Department. However, Bell Mobility also considers that activity under this condition may increase if the Department allowed licensees to effect transfers without Departmental approval. A self-reporting regime could be established, for eligible licensees, along with the development of an appropriate database on the Department's website which could track and list current licensees and their spectrum holdings.

85. Indeed the Cave Study, commissioned by Industry Canada, noted, at page 6, as one of its key recommendations:

Tradable licences, where they apply, should become fully transferable (primary users may replace each other), and sub-leasing/sub-division should be possible. Ministerial approval for every trade should not be required and should be replaced by a self-certification process under which those involved in the trades self-certify that they have met all of the government requirements (which could be enumerated as a check list).<sup>15</sup> (emphasis added)

86. Further, as stated in the Notice, generally a subordinate licence will count towards the spectrum aggregation limit in a service area in addition to licences held directly and those held by associates or affiliates. In its Notice, however, Industry Canada states that a proposed transferee may apply to have the subordinate licence(s) excluded from the calculation of their holdings for the purposes of the spectrum caps, if it can demonstrate that it will compete with any associated entities in the service area in question. Bell Mobility supports this proposal and proposes that the Department apply the same criteria as proposed in Section 4.7 above to assess whether entities are competing with one another.

### **Eligibility**

***Industry Canada is seeking comments on the proposed wording of the condition of licence related to eligibility criteria.***

#### ***Proposed COL:***

***A licensee operating as a radiocommunication carrier must comply on an ongoing basis with the applicable eligibility criteria in subsection 10(2) of the Radiocommunication Regulations. The licensee must notify the Minister of Industry of any change that would have a material effect on its eligibility. Such notification must be made in advance for any proposed transactions within its knowledge.***

***For further information, refer to Client Procedures Circular CPC-2-0-15, Canadian Ownership and Control, as amended from time to time.***

87. Bell Mobility concurs with the proposed wording of the COL related to eligibility criteria.

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<sup>15</sup> Cave, M., R.W. Jones and W. Lehr, (2007) Study of Market-based Exclusive Spectrum Rights, available at [http://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/market\\_based\\_rights-droits\\_axes\\_sur\\_le\\_marche-eng.pdf/\\$FILE/market\\_based\\_rights-droits\\_axes\\_sur\\_le\\_marche-eng.pdf](http://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/market_based_rights-droits_axes_sur_le_marche-eng.pdf/$FILE/market_based_rights-droits_axes_sur_le_marche-eng.pdf), page 6.

### **Treatment of Existing Spectrum Users**

***Industry Canada is seeking comments on the proposed wording of the condition of licence related to the treatment of existing spectrum users.***

#### ***Proposed COL:***

***The licensee must comply with the displacement policies set out in SMSE-002-12, Policy and Technical Framework: Mobile Broadband Services (MBS) – 700 MHz Band, Broadband Radio Service (BRS) – 2500 MHz Band.***

88. Bell Mobility supports the proposed wording of the COL regarding treatment of existing spectrum users as outlined in the Notice.

### **Radio Station Installations**

***Industry Canada is seeking comments on the proposed wording of the condition of licence related to radio station installations.***

#### ***Proposed COL:***

***The licensee must comply with Client Procedures Circular CPC-2-0-03, Radiocommunication and Broadcasting Antenna Systems, as amended from time to time.***

89. Bell Mobility supports the proposed wording of the COL regarding radio station installations as outlined in the Notice.

### **Provision of Technical Information**

***Industry Canada is seeking comments on the proposed wording of the condition of licence related to the provision of technical information.***

#### ***Proposed COL:***

***When Industry Canada requests technical information on a particular station or network, the licensee must provide the information in accordance with the definitions, criteria, frequency and timelines specified. For further information, refer to Client Procedures Circular CPC-2-1-23, Licensing Procedure for Spectrum Licences for Terrestrial Services, as amended from time to time.***

90. Bell Mobility supports the proposed wording of the COL regarding provision of technical information as outlined in the Notice.

### **Compliance with Legislation, Regulation and Other Obligations**

**Industry Canada is seeking comments on its proposed condition of licence related to compliance with legislation, regulation and other obligations.**

#### **Proposed COL:**

**The licensee is subject to, and must comply with, the Radiocommunication Act, the Radiocommunication Regulations and the International Telecommunication Union's Radio Regulations pertaining to its licensed radio frequency bands. The licence is issued on condition that the certifications made in relation to this licence are all true and complete in every respect. The licensee must use the assigned spectrum in accordance with the Canadian Table of Frequency Allocations and the spectrum policies applicable to these bands, as amended from time to time.**

91. Bell Mobility supports the proposed COL related to compliance with legislation, regulation and other obligations as outlined in the Department's Notice.

### **Technical Considerations, and International and Domestic Coordination**

**Industry Canada is seeking comments on the proposed condition of licence related to technical considerations, and international and domestic coordination.**

#### **Proposed COL:**

**The licensee must comply on an ongoing basis with the technical aspects of the appropriate Radio Standards Specifications and Standard Radio System Plans, as amended from time to time. Where applicable, the licensee must use its best efforts to enter into mutually acceptable sharing agreements that will facilitate the reasonable and timely development of their respective systems, and to coordinate with other licensed users in Canada and internationally.**

**The licensee must comply with the obligations arising from current and future frequency coordination agreements established with other countries and shall be required to provide information or take actions to implement these obligations as indicated in the applicable SRSP. Although frequency assignments are not subject to site licensing, the licensee may be required to furnish all necessary technical data for each relevant site.**

92. Bell Mobility supports the proposed COL related to technical considerations, and international and domestic coordination as outlined in the Notice.

### **Lawful Intercept**

**Industry Canada is seeking comments on the proposed wording of the condition of licence related to lawful intercept requirements.**

**Proposed COL:**

***A licensee operating as a service provider using an interconnected radio-based transmission facility for compensation must provide for and maintain lawful interception capabilities as authorized by law and in accordance with the Solicitor General's Enforcement Standards for Lawful Interception of Telecommunications, as amended from time to time.***

***The licensee may request the Minister of Industry to forbear from enforcing certain assistance capability requirements for a limited period. The Minister, following consultation with Public Safety Canada, may exercise the power to forbear from enforcing a requirement or requirements where, in the opinion of the Minister, the requirement is not reasonably achievable. Requests for forbearance must include specific details and dates indicating when compliance to the requirement can be expected.***

93. The Notice states that Industry Canada is proposing changes to the lawful intercept COL in order to bring the wording of the COL in line with current technologies. To this end the Department proposes to remove the text "circuit-switched voice telephony" and to replace it with "interconnected radio-based transmission facility for compensation". For the reasons addressed below, Bell Mobility does not support the proposed change in the COL wording at this time.

94. At the outset Bell Mobility notes that any lawful interception obligations imposed as a COL should be limited to circumstances where commercially available, standards-based network technology is available. In the event that commercially available off-the-shelf solutions are not available, any requirement for licensees to deploy non-standards-based solutions should, in Bell Mobility's view, be funded by the government. Bell Mobility believes that such funding would be both appropriate and warranted given the public interest considerations driving the provision of such capability.

95. Bell Mobility further considers that the current Solicitor General's standards require access to the entire telecommunication transmitted, or caused to be transmitted, and all associated call data. In Bell Mobility's view, the existing COL rightly limits this requirement to "circuit-switched voice telephony systems." Taken together these requirements clearly capture voice communications, SMS messages and faxes within the ambit of lawful intercept. Bell Mobility notes, however, that in proposing to replace "circuit-switched voice telephony systems" with "interconnected radio-based transmission facility for compensation," Industry Canada is opening up additional services to interception requirements including, but not limited to, Internet and broadcasting services.

96. As a result, the proposed revision to the COL would also introduce new and significant obligations on licensees. Further, such obligations would be introduced just as concurrent legislation, considering related areas of licensees' operations, is before Parliament. Indeed, Bell Mobility believes that changes, such as those contemplated in the revised COL, would be more appropriately enacted through federal legislation or, as stated in the Notice, through the pending revision to the Solicitor General's standards that Public Safety Canada is proposing.

97. While Bell Mobility appreciates the technological rationale behind the proposed changes to the COL we believe that the more appropriate approach would be for Industry Canada to retain the existing COL as is until the applicable legislative requirements are established thus enabling any revisions to the COL to be made in the light of approved legislation rather than in anticipation of it.

98. Finally, Bell Mobility also considers that revisions to the Solicitor General standards should be subject to prior consultation with the industry. In this regard, development of the Solicitor General standards through an accredited industry standards body would, Bell Mobility notes, facilitate the use of commercially available off-the-shelf equipment for lawful intercept.

### **Research and Development**

***Industry Canada is seeking comments on the proposed condition of licence related to the research and development requirement.***

#### ***Proposed COL:***

***The licensee must invest, as a minimum, 2 percent of its adjusted gross revenues resulting from its operations in this spectrum, averaged over the term of the licence, in eligible research and development activities related to telecommunications. Eligible research and development activities are those which meet the definition of scientific research and experimental development adopted in the Income Tax Act. Adjusted gross revenues are defined as total service revenues, less inter-carrier payments, bad debts, third party commissions, and provincial and goods and services taxes collected. Businesses with less than \$5 million in annual gross operating revenues are exempt from research and development expenditure requirements, except where they have affiliations with licensees that hold other licences with the research and development condition of licence and where the total annual gross revenues of the affiliated licensees are greater than \$5 million.***

***To facilitate compliance with this condition of licence, the licensee should consult Industry Canada's Guidelines for Compliance with the Radio Authorization Condition of Licence Relating to Research and Development (GL-03).***

99. Bell Mobility considers that this COL is no longer appropriate in today's wireless industry and recommends that it be immediately discontinued.

100. The Company notes that in Industry Canada's 2009 Auction Framework Consultation the Department sought comments on the continued suitability of this condition. In the Auction Framework Consultation the Department stated that:

Industry Canada continues to recognize the need for the government "to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services." The Department notes, however, that two recent reports, the Telecommunications Policy Review Panel Final Report and the OECD Telecommunication Regulatory Institutional Structures and Responsibilities, cautioned against the mix of regulation and industrial development strategy. Other areas of Industry Canada are recognized as being well placed to further this policy objective.<sup>16</sup>

101. Bell Mobility raised similar concerns in its comments in response to the pre-auction consultations leading to the 2001 PCS Auction. The concerns were raised again in our comments in response to the Department's Harmonization Consultation (2003) and the AWS Licensing Consultation (2007).

102. Bell Mobility does not agree with its inclusion as a condition applicable to the spectrum licences to be awarded through the 700 MHz auction but instead supports the Department's proposal, in its 2009 Auction Framework Consultation, to eliminate the condition entirely. While Bell Mobility believes that the condition should be discontinued effective immediately, at the very least it should not be included as a condition associated with the 700 MHz band spectrum licences.

103. Bell Mobility notes that in the 2003 Harmonization Consultation it and other carriers identified that the cumulative effect of uncoordinated government fees, taxes and financial obligations related to licensing, originating from several distinct Federal departments and agencies, has placed a significant and onerous financial burden on all licensees. This burden is, however, particularly onerous in a time of significant economic uncertainty such as is currently being experienced in global economies including Canada. Reduction of this burden

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<sup>16</sup> *Canada Gazette* Notice DGRB-001-09, *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*, 11 April 2009, page 10.

would, in our view, provide a significant positive economic stimulus by making such funds available for infrastructure investment.

104. Simply put, the Canadian wireless industry does not need "taxes" such as this to encourage investment in research and development. Wireless is such a fast moving, innovative industry that we have no choice but to innovate through research and development. Forcing this additional tax through non-market means simply takes away from infrastructure builds. Bell Mobility respectfully recommends that, as the Department proposed in 2009, this COL be removed.

### **Rural Deployment Requirements**

***Industry Canada is seeking comments on the application of the proposed wording of the licence condition related to rural deployment requirements. Specifically, comments are sought on the assessment of "access to two or more paired blocks of spectrum" for the purposes of this condition of licence.***

#### ***Proposed COL:***

***Where a licensee holds a licence for two or more paired blocks of 700 MHz spectrum in a licence area, or has access to two or more paired blocks of 700 MHz spectrum in a licence area either directly or indirectly, that licensee must deploy 700 MHz spectrum:***

- (a) to cover 90% of the population of its HSPA network footprint as of March 2012, within five years of the issuance of the initial 700 MHz licence; and***
- (b) to cover 97% of the population of its HSPA network footprint as of March 2012, within seven years of the issuance of the initial 700 MHz licence.***

105. As noted above, the problem in this COL relates to the use of the phrase "its HSPA network footprint" in the COL in the event a "first time" large foreign-owned and controlled new entrant, such as AT&T, were to win two paired blocks, or were to acquire a 2008 AWS new entrant which has no existing rural HSPA footprint and subsequently win spectrum in the auction. In either circumstance, such a non-Canadian wireless carrier would have no existing HSPA footprint as of March 2012. In effect the COL would impose absolutely no obligation on such a new entrant to serve rural areas of Canada after five years or seven years of the licence term. Such a new entrant would effectively be exempt from this critical policy to ensure rural Canadians are not left behind in the digital divide.

106. To guard against this unintended result, the Company proposes that symmetrical rural roll-out obligations should be applied to all spectrum licensees. In the case of a large foreign new entrant, this could be accomplished by adding a contingency to the proposed rural roll-out COL that would state, in the event such a greenfield new entrant holds a licence for two or more paired blocks, the spectrum roll-out obligations for that new entrant are measured in respect to the largest HSPA network operational in the relevant licence area as of March 2012.

**General Deployment Requirement**

***Industry Canada is seeking comments on the application of the general deployment condition of licence as stated above. Specifically, comments are sought on:***

- ***the population coverage, as specified in Table 3, for each licence service area; and***
- ***the time frame proposed whereby the requirement must be met.***

***Proposed COL:***

***Licensees will be required to demonstrate to the Minister of Industry that their spectrum has been put to use, as specified in the table below, within 10 years of the initial issuance of the licence.***

***Table 3 – Proposed General Deployment Requirements***

<b><i>Tier 2</i></b>	<b><i>Service Area</i></b>	<b><i>Pop. Coverage</i></b>
<b><i>2-01</i></b>	<b><i>Newfoundland and Labrador</i></b>	<b><i>30%</i></b>
<b><i>2-02</i></b>	<b><i>Nova Scotia and P.E.I.</i></b>	<b><i>30%</i></b>
<b><i>2-03</i></b>	<b><i>New Brunswick</i></b>	<b><i>40%</i></b>
<b><i>2-04</i></b>	<b><i>Eastern Quebec</i></b>	<b><i>50%</i></b>
<b><i>2-05</i></b>	<b><i>Southern Quebec</i></b>	<b><i>50%</i></b>
<b><i>2-06</i></b>	<b><i>Eastern Ontario and Outaouais</i></b>	<b><i>50%</i></b>
<b><i>2-07</i></b>	<b><i>Northern Quebec</i></b>	<b><i>30%</i></b>
<b><i>2-08</i></b>	<b><i>Southern Ontario</i></b>	<b><i>50%</i></b>
<b><i>2-09</i></b>	<b><i>Northern Ontario</i></b>	<b><i>50%</i></b>
<b><i>2-10</i></b>	<b><i>Manitoba</i></b>	<b><i>50%</i></b>
<b><i>2-11</i></b>	<b><i>Saskatchewan</i></b>	<b><i>40%</i></b>
<b><i>2-12</i></b>	<b><i>Alberta</i></b>	<b><i>50%</i></b>
<b><i>2-13</i></b>	<b><i>British Columbia</i></b>	<b><i>50%</i></b>
<b><i>2-14</i></b>	<b><i>Yukon, NWT and Nunavut</i></b>	<b><i>20%</i></b>

107. Bell Mobility concurs with the general deployment COL as proposed in the Notice.

### **Mandatory Antenna Tower and Site Sharing**

***Industry Canada is seeking comments on the proposed wording of the condition of licence related to mandatory antenna tower and site sharing. Comments on the specifics of the requirements should be submitted through the process announced through Canada Gazette notice DGSO-001-12.***

#### ***Proposed COL:***

***Licensees must comply with the mandatory antenna tower and site sharing requirements set out in Client Procedures Circular CPC-2-0-17, Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements, as amended from time to time.***

108. Given the government's decision, in the early days of the Canadian wireless industry, to allow market forces rather than regulation to govern and drive the development of the new sector, Bell Mobility continues to consider that those same market forces are the most appropriate and efficient arbiter of antenna tower and site sharing arrangements between licensees. Bell Mobility also has serious concerns, which are elaborated on in the Company's response to *Canada Gazette* Notice DGSO-001-12, regarding the altering of COLs less than halfway through the initial licence term of auctioned spectrum licences. Consequently, while Bell Mobility concurs with the proposed wording of the COL, if the policy is implemented as proposed, we nevertheless continue to believe that mandatory tower and site sharing is not appropriate in the highly competitive wireless industry.

### **Mandatory Roaming**

***Industry Canada is seeking comments on the proposed wording of the condition of licence related to mandatory roaming. Comments on the specifics of the requirements should be submitted through the process announced in Canada Gazette Notice DGSO-001-12.***

#### ***Proposed COL:***

***The licensee must comply with the mandatory roaming requirements set out in Client Procedures Circular CPC-2-0-17, Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements, as amended from time to time.***

109. Given the government's decision in the early days of the Canadian wireless industry, to allow market forces rather than regulation to govern and drive the development of the new sector, Bell Mobility continues consider that those same market forces are the most appropriate and efficient arbiter of roaming arrangements between licensees. Bell Mobility also has serious

concerns, which are elaborated on in the Company's response to Canada Gazette Notice DGSO-001-12, regarding the altering of COLs less than halfway through the initial licence term of auctioned spectrum licences. Consequently, while Bell Mobility concurs with the proposed wording of the COL, if the policy is implemented as proposed, we nevertheless continue to believe that mandatory roaming is not appropriate in the highly competitive wireless industry.

### **Annual Report**

***Industry Canada is seeking comments on the proposed condition of licence related to the requirement for annual reporting.***

#### ***Proposed COL:***

***The licensee must submit an annual report for each year of the licence term, which includes the following information:***

- ***a statement indicating continued compliance with all conditions of licence;***
- ***an update on the implementation and spectrum usage within the area covered by the licence;***
- ***existing audited financial statements with an accompanying auditor's report;***
- ***a report of the research and development expenditures for licensees operating as radiocommunication carriers as set out in these conditions of licence. Industry Canada reserves the right to request an audited statement of research and development expenditures with an accompanying auditor's report;***
- ***supporting financial statements where licensees are claiming an exemption based on an annual gross revenue of less than \$5 million; and***
- ***a copy of any existing corporate annual report for the licensee's fiscal year with respect to the authorization.***

110. Bell Mobility considers that the Annual Reporting process should be streamlined and we have a number of concerns with the proposed condition. First, a key objective of Industry Canada's 2003 Harmonization Consultation, as noted by the Department at page 7 – Proposed Framework – of that consultation was that, "This approach has the added benefit of reducing the administrative burden on licensees as well as the Department." In this regard, in 2003 the Department was in step with spectrum regulators in a number of other countries who were proactively reducing the administrative burden which governments placed on licensees and businesses in general. This philosophy should be maintained. The 2007 SPF is also mindful of the administrative burden placed on licensees by the Department. We note however that the general thrust of the proposed annual reporting requirement is to increase, not decrease, the administrative burden on Canadian licensees. In this regard, Bell Mobility notes the proposed new requirement that the annual reports now be certified by an officer of the company.

111. Regarding the research and development requirement, as noted above, Bell Mobility believes that the COL itself is no longer appropriate and should be immediately discontinued consistent with the Department's proposal in the 2009 Auction Framework Consultation.

112. Regarding the annual reporting process, the Notice states, at paragraph 13, that:

All reports and statements are to be certified by an officer of the company and submitted, in writing, within 120 days of the licensee's fiscal year-end.

113. Bell Mobility notes that, with Departmental approval and in order to facilitate the filing process, for over a decade it has filed its annual report within 180 days, as opposed to 120 days, following the Company's fiscal year-end. Bell Mobility respectfully requests that this long-standing practice be continued.

114. Bell Mobility further notes that Industry Canada is also proposing a new requirement, also at paragraph 130 of the Notice, again increasing the administrative burden on licensees, which would require that:

Where a licensee holds multiple licences, the reports should be broken down by service area.

115. Bell Mobility considers that this requirement will significantly increase the volume of work associated with the compilation of the annual reporting process and does not believe that such increased detail would serve any useful purpose. Bell Mobility therefore recommends that the Annual Report, as it does today, address the licensee's total operating area.

## **7.0 SECTION 7: AUCTION PROCESS**

### **Opening Bids**

***Industry Canada is seeking comments on the proposed opening bids as presented in Table 4 [of the Notice].***

116. Bell Mobility supports the Department's proposed opening bids. As noted in the Notice, the opening bids for the 700 MHz auction are based on the existing Cellular and PCS annual fees which are then adjusted to account for the 20-year licence term using a 14% discount rate and to account for the higher expected value of the spectrum in certain service areas.<sup>17</sup>

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<sup>17</sup> Notice, paragraph 134.

Moreover, the implementation of opening bids reduces the potential for collusion. As noted by Cramton (2002):<sup>18</sup>

Early FCC auctions did not use minimum opening bids; any opening bid greater than zero was acceptable. The FCC now sets substantial minimum opening bids. These bid limits both increase the pace and reduce the potential for collusion. By starting at a reasonably high level, the bidders have fewer rounds to resolve their conflicts at low prices. The benefits of collusive strategies is reduced.

### **Proposed Eligibility Points for the 700 MHz Spectrum Auction**

***Industry Canada is seeking comments on the proposed eligibility points for spectrum licences in the 700 MHz band, as outlined in Table 5 [of the Notice].***

117. The Notice states that the eligibility points for the unpaired blocks D and E are approximately half the eligibility points assigned to the paired blocks A, B, C, C1 and C2. However, as indicated above, with respect to block A, there are currently two issues that make it less substitutable with spectrum in the lower B and C blocks: (i) there continues to be uncertainty about the extent of interference issues with channel 51, thus limiting the ability to use the full allocation of spectrum in the block; and (ii) ecosystem support for block A has yet to be settled. Therefore, Bell Mobility agrees that the eligibility points remain as stated in the Notice for blocks B, C, D, E, C1, and C2, but recommends that the eligibility points for block A be reduced to the same levels as blocks D and E to reflect the significant differences between it and the other paired spectrum blocks.

### **Pre-auction Deposits**

***Industry Canada is seeking comments on the proposed pre-auction deposits as outlined [in the Notice].***

118. The Notice states that "in order to enhance the integrity of the auction, Industry Canada requires that all bidders submit a pre-auction financial deposit with the auction application," implying that "an individual bidder requesting to be eligible to bid on the equivalent of one national paired block would have to submit a deposit covering 1,220 points, which would equate to \$158,600,000 (i.e. \$130,000 x 1,220)."<sup>19</sup> Bell Mobility does not consider that this requirement

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<sup>18</sup> Cramton, P., (2002), "Spectrum Auctions" Handbook of Telecommunications Economics, Vol. 2, Cave, Majumdar and Vogelsang, (eds.), Elsevier, 605-639, page 623.

<sup>19</sup> Notice, paragraphs 142 and 144.

alone sufficiently enhances the integrity of the auction. Consistent with our proposal above, the Company instead recommends that over the course of the auction, prior to the commencement of each day's bidding, bidders be required to provide Industry Canada with a financial guarantee via a letter of credit equal to 100% of the value of their previous day's last package bid. This measure will provide a strong market disincentive to discourage bidders from engaging in gamed bidding designed solely to drive up the price of spectrum that they have no meaningful interest in acquiring.

119. Pre-auction deposits were also required in the 2008 AWS spectrum auction, yet clearly bidders were able to "park" points on spectrum that they did not desire in order to keep prices from increasing too quickly on spectrum they did desire. This led to an inefficient increase in the price of spectrum blocks. The "parking" of points was facilitated by the fact that bidders did not have to guarantee their bids and as a result were able to "spend money they did not have" and had no meaningful intention of actually spending.

120. Given the proposed eligibility rules and the CCA format, the most likely gaming opportunities that can arise will involve bidders bidding for excessively large packages before switching to a package of real interest, in order to maintain their eligibility points. The incentive to engage in gaming behaviour by bidding on excessively large packages is facilitated by the fact that different bidders have different spectrum caps. As a result, some bidders will be allowed to maintain large package bids without fear of retaliation since other bidders will not be able to match the larger package size due to the cap that limits them to one "prime" spectrum block rather than two.

121. By requiring bidders to provide a financial guarantee equal to 100% of the value of their previous day's last package bid, this measure will incent bidders to determine their overall budget in advance of the auction and to bid only on spectrum blocks they desire. If a bidder decides to inefficiently increase the price by bidding on spectrum blocks that they do not desire, it increases the probability that they will go over their pre-determined budget allotment. Having clear goals and a well-defined budget constraint facilitates more efficient bidding. As a result, the bidder will have to renegotiate its budget allotment which increases the cost of engaging in inefficient bidding behaviour. Significant deposits that make engaging in gaming strategies expensive can be expected to lead to more straight forward bidding and will promote more efficient outcomes.

122. This type of financial guarantee requirement is not novel. For example, in Ofcom's 10-40 GHz auction, bidders were required to increase their deposits if their bids increased above the bidder's bid deposit. This was done to help ensure an efficient outcome to the auction.<sup>20</sup>

Where a bidder submits a Primary Bid for an amount in excess of that Bidder's Bid Deposit, Regulation 32 of the Regulations entitles Ofcom, having regard to the desirability of securing an efficient outcome to the Principal Stage, to give notice requiring the Bidder to increase its Bid Deposit by a specified deadline so that the Bid Deposit is not less than the highest Valid Primary Bid made by that Bidder before Ofcom issued the notice.

If Ofcom issues a notice to a Bidder pursuant to paragraph 4.76 before 2pm on a Business Day, the deadline by when that Bidder must increase its Bid Deposit by paying an additional amount into Ofcom's bank account will be no earlier than midnight on the following Business Day (e.g. if a Bidder receives a notice from Ofcom at 1pm on Tuesday, the deadline for increasing its Bid Deposit will be no earlier than midnight on Wednesday). If Ofcom issues a notice to a Bidder after 2pm on a Business Day, the deadline by when that Bidder must increase its Bid Deposit by paying an additional amount into Ofcom's bank account will be no earlier than midnight on the next Business Day after the following Business Day (e.g. if a Bidder receives a notice from Ofcom at 3pm on Thursday, the deadline for increasing its Bid Deposit will be no earlier than midnight on Monday).

123. Likewise, bid deposits had to be increased in the supplementary bids round as well as the assignment stage.<sup>21</sup>

By the deadline notified to Bidders by Ofcom in accordance with paragraph 4.85, each Bidder must pay into Ofcom's bank account, an additional sum which, when added to the Bidder's Bid Deposit (less any sum forfeited) is no less than the greater of:

- the highest Valid Primary Bid made by that Bidder; and
- the highest Valid Supplementary Bid made by that Bidder.

...

Each Winning Bidder that is able to make an Assignment Stage Bid must, by the deadline specified by Ofcom, increase its Bid Deposit. The additional amount must, when added to that Winning Bidder's existing Bid Deposit (less any sum forfeited) be not less than the amount calculated in accordance with the formula set out in Regulation 48(2) of the Regulations.

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<sup>20</sup> Cite.

<sup>21</sup> Ibid., paragraphs 4.87 and 4.125.

124. For all of these reasons, Bell Mobility considers that the imposition of a continuing financial guarantee obligation that applies throughout the auction process rather than just an upfront guarantee will enhance meaningful bidding, discourage gaming and promote the overall integrity of the auction.

## **8.0 SECTION 8: BIDDER TRAINING AND SUPPORT**

125. The Notice states that a mock auction will likely be held during the week prior to the start of the auction. However, given that the CCA format has not been used in Canada, and given the additional complexities the CCA format presents, Bell Mobility recommends that the mock auction occur at least three weeks in advance of the start of the auction. Moreover, in order to allow bidders the opportunity to ensure that smooth operation of their bidding analysis tools, the Department should provide screen shots of the bidding software and sample output files that will be released after each round as soon as possible. This will allow bidders sufficient time to implement any changes that may be required to their bidding processes (i.e. logistics, bidding room, etc.).

## **9.0 SECTION 10: LICENCE RENEWAL PROCESS**

### **Industry Canada is seeking comments on the proposed renewal process for spectrum licences in the 700 MHz band.**

126. The Notice states that "following the end of the initial licence term, licensees will have a high expectation of renewal." Bell Mobility submits that not only should licensees anticipate a high expectation of renewal at the end of the initial term, they should also reasonably anticipate a high expectation of renewal at the end of each and every subsequent term, assuming compliance with COLs as well as the absence of a fundamental reallocation of spectrum to a new service or the absence of an overriding policy need. Indicating to all stakeholders well in advance of the auction that there is a high expectation of renewal at the end of the initial term and at the end of each and every subsequent term, sends the appropriate signals of stability and certainty to both licensees as well as to the investment markets while at the same time not fettering the Minister's authority or ability to take the appropriate actions in exceptional circumstances.

127. The Notice also indicates that "licence fees that reflect some measure of market value will apply to licences issued through a renewal process."<sup>22</sup> Bell Mobility disagrees that the establishment of fees is required in order to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource. The implementation of such fees is not regulation in a manner that interferes with market forces to the minimum extent necessary. Auctions have long been acknowledged to be the best way to promote the efficient assignment of spectrum and to earn a fair return for the Canadian public for the privilege of access to this scarce and valuable national resource. As indicated by Cramton (2002):<sup>23</sup>

There is substantial agreement among economists that auctions are the best way to assign scarce spectrum resources ... auctions ask an answer to the basic question "who should get the licenses and at what prices?"

128. It is critical that the COLs are not changed during the term of the licence to include or add new licence fees. Doing so would significantly reduce incentives to invest and undermine confidence in, and thus the overall integrity of, this and future auction processes. The proceeds of the auction already reasonably compensate Canadian taxpayers for the use of the public resource and there is no justification to implement additional usage fees at a later date. In fact, such fees actually serve to undermine this policy objective by acting as a drag on further, and accelerated, investments in wireless networks, applications and services.

## **10.0 CONCLUSION**

129. Bell Mobility appreciates the opportunity to provide its views on these crucial matters which will greatly influence Canada's role in the digital age and looks forward to the Department's subsequent determinations.

All of which is respectfully submitted.

\*\*\* End of Document \*\*\*

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<sup>22</sup> Notice, paragraph 153.

<sup>23</sup> Cramton, P., (2002), "Spectrum Auctions" Handbook of Telecommunications Economics, Vol. 2, Cave, Majumdar and Vogelsang, (eds.), Elsevier, 605-639, page 607.