

Canada Gazette Notice No. DGSO-002-13

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

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**Comments
of
Bell Mobility**

3 April 2013

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1.0 **EXECUTIVE SUMMARY**

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

Licence Transfers

E2. Bell Mobility is unsure why this Consultation is necessary. The *Radiocommunication Act* (the *Act*) already requires Ministerial approval for each and every transfer and the Competition Bureau also has jurisdiction to review such transactions. Bell Mobility respectfully submits that adding additional layers of review, as proposed in the Notice, will only serve to increase investment uncertainty, and add delay to the efficient use of limited spectrum resources.

E3. Further, as addressed in the comments below, these proposals run counter to current best-practice in spectrum management, which seeks to facilitate, not discourage, the development of secondary spectrum markets enabling spectrum to migrate to its most efficient use. The proposals also run counter to Industry Canada's *2007 Spectrum Policy Framework for Canada* (SPFC) which seeks to facilitate the development of secondary markets for spectrum and states that regulatory measures, where required, should be minimally intrusive, effective and efficient. The proposals also directly conflict with the advice of domestic and international spectrum management experts who recommend that markets, not regulators, are the most efficient arbiter of the best uses of scarce spectrum.

E4. Bell Mobility notes that the proposals represent a shift in policy direction from that previously pursued by the Department. The Department's current policy, essentially encouraging and facilitating spectrum licence transfers, was first introduced coincident with the adoption of spectrum auctioning in Canada in 1999. Indeed, the ability to divide and transfer spectrum licences was positioned by Industry Canada as one of the enhanced "privileges" associated with obtaining spectrum licences through competitive auctions. Bell Mobility respectfully submits that Industry Canada should stay the course and maintain its existing policy. In this regard, it is particularly important to maximize spectral efficiency in today's environment where mobile data growth is exploding exponentially and, according to the

Department's own forecast, is expected to increase fifteen-fold in Canada between 2011 and 2017.

E5. Canada is a world leader in wireless with advanced, high-speed networks that rival those of any other nation including those with significantly larger populations better able to support such investments. To ensure that Canada remains a leader in wireless it is critically important, as reflected in Industry Canada's own SPFC, that facilitating, not obstructing, secondary markets for spectrum has to be an integral part of Canada's spectrum management program. Bell Mobility believes, in this regard, that the existing Ministerial approval required for spectrum transfers as well as the Competition Bureau's oversight of mergers and acquisitions provides Canada with more than sufficient powers to address any resulting concerns related to spectrum concentration and/or competition that might arise.

E6. Consequently both Canadian experts as well as academic authorities in spectrum management theory have all recommended facilitation of spectrum transfers and the development of secondary spectrum markets to enable spectrum to more easily migrate to its highest value use. Bell Mobility submits that this is the way to achieve the stated policy objective of ensuring that Canada maximizes the economic and social benefits of the radio spectrum resource, not by implementing out-of-style measures that ensure that spectrum remains in second-best uses.

E7. Bell Mobility has noted that any transfers already require the Minister's approval. In addition, Competition Bureau review will also occur in the event the spectrum transfer results from a merger or an acquisition. Bell Mobility submits that experience in the competitive Canadian wireless market has shown that the existing process is effective, efficient and functions well. What appears to be new, and driving this added process, is the Minister's stated new policy of wanting 4 carriers in every market. Bell Mobility notes a number of concerns with the new policy. First, we already have 4 carriers in every market in Canada. Second, as the Federal Communications Commission (FCC) noted in its March 2013 *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*:

High market concentration is not synonymous with a non-competitive market or with market power – the ability to charge prices above the competitive level for a sustained period of time. High market concentration may indicate that a firm or firms potentially may be able to exercise market power, but market concentration measures alone are insufficient to draw such a conclusion. Therefore, this Report

analyzes other indicators and measures of competition in the mobile wireless services market. These include mainly price and non-price rivalry by competitors and price and output data.¹

E8. Finally, the market will determine how many players are appropriate. Consequently, if the reason this policy and process is being initiated is to guarantee 4 players in every market, Bell Mobility considers that this is the wrong reason to insert a more intrusive policy into the market.

Spectrum Screens or Caps

E9. Regarding the issues posed in the Notice, Bell Mobility does not believe that a standing threshold in the form of concentration or a measure of MHz-pop or any other threshold, such as a screen or cap, is required in the Canadian wireless market. As Industry Canada noted when it removed the spectrum cap for mobile spectrum in 2004, at the time of licensing and auctioning new spectrum the Department can impose a limit on the amount of spectrum any one party can acquire. This is a more than sufficient safeguard.

Publication of Proposed Transactions

E10. Regarding whether Industry Canada should publicize such transactions for third-party comment, Bell Mobility strongly believes that the sensitive commercial nature of such transactions requires that they, as well as all related filings and agreements submitted to the Department concerning a transaction, must be kept strictly confidential. Bell Mobility also submits however that, subject to withholding all information filed in confidence, that the Minister's ultimate ruling regarding any specific transaction, with accompanying rationale, should be made public.

Proposed Timelines

E11. Bell Mobility believes that the proposed timelines for reviewing transactions are reasonable if they are adhered to by all parties including the Department. We also note, as discussed below, the common view of a number of spectrum management authorities that there is an inherent slowness in administrative reviews, as proposed in the Notice, and these

¹ FCC, *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, 21 March 2013, paragraph 61.

authorities come down on the side of a market-based process as a more efficient policy alternative.

Proposed Condition of Licence Regarding Proposed Spectrum Transfers

E12. Bell Mobility considers that the proposed Condition of License (CoL), which Industry Canada suggests could be added to all existing and future spectrum licences, has the potential to confer considerable regulatory risk and business uncertainty on the Canadian wireless market. In this regard the Notice, stating that preliminary Departmental assessments of any proposed transactions would not bind Industry Canada at the time the request is made, does nothing to enhance business certainty and investment in a multi-billion dollar industry.

E13. Finally Bell Mobility notes that if Industry Canada decides to proceed with changes to the transfer process, any measures adopted must be based on objective as opposed to subjective criteria and they should be applied in a clear and transparent manner to all industry participants.

2.0 INTRODUCTION

1. In the following comments Bell Mobility first provides its views on the appropriateness of the policy approach being proposed by the Department in its Notice. In this regard Bell Mobility notes that the proposals represent a shift in policy direction from that previously pursued by the Department. As well, the proposals represent a significant departure from the recommendations of various government panels and spectrum management experts regarding the development of secondary markets for spectrum in Canada.

2. Bell Mobility's comments will then address, within the context of the preceding policy comments, the specific questions posed in the Notice. To facilitate the use of these comments, we use the numbering adopted by the Department in its Notice.

3.0 POLICY APPROACH

3.1 Current Transfer Policy

3. The Department's current policy, essentially encouraging and facilitating spectrum licence transfers, was first introduced coincident with the adoption of spectrum auctioning in Canada in 1999. Indeed, the ability to divide and transfer spectrum licences was positioned by Industry Canada as one of the enhanced "privileges" associated with obtaining spectrum

licences through competitive auctions. The Department's CPC-2-1-23, *Licensing Procedure for Spectrum Licences for Terrestrial Services*, Issue 2, September 2007 (CPC-2-1-23) acknowledges this when it states that:

To meet the policy goals of the Department, the spectrum licences assigned under the different licensing processes may not have the same privileges. One such privilege is that of enhanced transferability and divisibility rights accorded to spectrum licences assigned through an auction. These spectrum licences may be transferred in whole or in part (either in geographic area or in bandwidth) to a third party subject to the conditions stated on the licence and other applicable regulatory requirements.²

4. Viewed in light of the fact that the transferability and divisibility of spectrum licences is a privilege which was accorded to the industry as part of the adoption of spectrum auctions in Canada, Bell Mobility does not believe that it is now appropriate for government to dilute that privilege by introducing significant bureaucratic obstacles to the movement of spectrum, in the secondary market, to those who value it most. Since both parties to such a transfer have to be willing participants and since value is exchanged for the licences, clearly such market-based transactions represent the scarce resource moving to its most optimal use, an outcome which we believe is in the best interests of Canada and Canadians. Further, the Act already requires Ministerial approval for each and every transfer and the Competition Bureau also has jurisdiction to review such transactions. Adding additional layers of review, as proposed in the Notice, will only serve to increase investment uncertainty and potentially contribute to the inefficient use of limited spectrum resources.

5. Consequently, Bell Mobility believes that the Department got it right, in CPC-2-1-23, when it sought to not only permit but indeed to facilitate such transfers. Bell Mobility respectfully submits that Industry Canada should stay the course and maintain that policy and not veer off course because some in government feel we should have 4 carriers. Bell Mobility submits that experience in the competitive Canadian wireless market has shown that the existing process is effective, efficient and functions well. What appears to be new, and driving this added process, is the Minister's stated new policy of wanting 4 carriers in every market. Bell Mobility notes a number of concerns with the new policy. First, we already have 4 carriers in every market in Canada. Second, as the FCC noted in its March 2013 *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*:

² Industry Canada, *Licensing Procedures for Spectrum Licences for Terrestrial Services*, CPC-2-1-23, Issue 2, September 2007, page 5.

High market concentration is not synonymous with a non-competitive market or with market power – the ability to charge prices above the competitive level for a sustained period of time. High market concentration may indicate that a firm or firms potentially may be able to exercise market power, but market concentration measures alone are insufficient to draw such a conclusion. Therefore, this Report analyzes other indicators and measures of competition in the mobile wireless services market. These include mainly price and non-price rivalry by competitors and price and output data.³

6. Third, the market will determine how many players are appropriate. Consequently, if the reason this policy and process is being initiated is to guarantee 4 players in every market, Bell Mobility considers that this is the wrong reason to insert a more intrusive policy into the market.

7. This is especially so in an environment where mobile data growth is exploding exponentially globally as well as in Canada. In this regard, Industry Canada's *Commercial Mobile Spectrum Outlook*, released on 6 March 2013, highlights this growth phenomena when it states that:

. . . traffic over Canada's commercial mobile networks is expected to increase fifteen-fold between 2011 and 2017, from eight petabytes per month in 2011 to 122 petabytes per month in 2017 . . . To provide perspective, it is estimated that all of the information in every university research library in the United States would amount to just 2 petabytes of information.⁴ (Emphasis added)

8. Canada's extensive mobile demand growth is the result of Canada being a world leader with advanced, high-speed networks that rival those of any other nation including those with significantly larger populations better able to support such investments. These results have been facilitated by the Government's commitment early on in the development of the wireless market to its belief that the wireless industry would develop most effectively if driven by market forces. The Department needs to resist micromanaging the wireless industry in order to address the inaccurate claims by some that the industry is not competitive enough. The reality is that Canada has an intensely competitive market in which competitors gain and lose ground in each business cycle.

9. Competition among providers has led to billions of dollars of investment in new technologies and services. Industry Canada's *Commercial Mobile Spectrum Outlook*,

³ FCC, *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, 21 March 2013, paragraph 61.

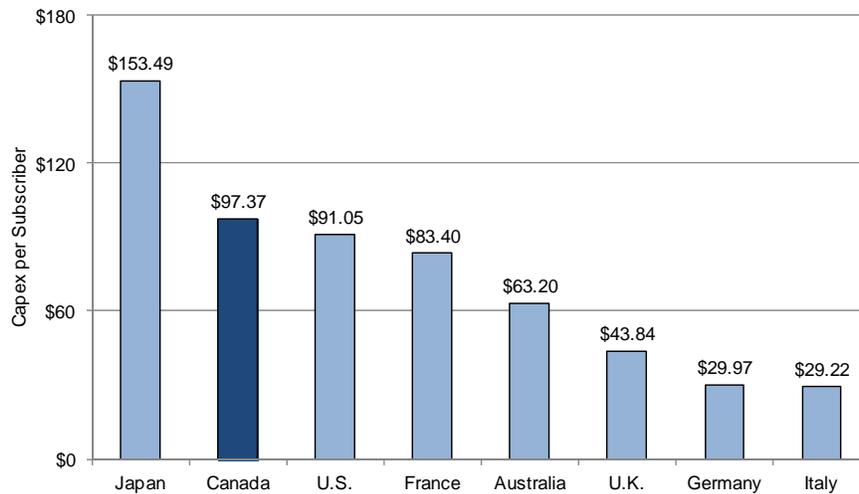
⁴ Industry Canada, *Commercial Mobile Spectrum Outlook*, March 2013, page 8.

acknowledges the significant investments made by the Canadian wireless industry – over \$17 billion was invested in network infrastructure and spectrum acquisition between 2003 and 2010:

Canadian commercial mobile service providers have improved spectrum use efficiency by investing over \$13 billion in their wireless networks between 2003 and 2010 . . . This amount does not include the \$4.25 billion spent to acquire new commercial mobile spectrum in the 2008 AWS auction, nor investments that were made to expand wireline infrastructure. Instead, these investments have gone toward expanding network coverage and density (for example, by adding additional cell sites) as well as toward upgrading technology and network applications (for example, the deployment of 4G technologies). As well, major gains in spectral efficiency have been achieved as providers move from older technologies, such as Global System for Mobile Communications (GSM), to newer ones, such as High Speed Packet Access (HSPA) and Long Term Evolution (LTE) . . .⁵

10. Significant investment continues. Figure 1 shows that in 2012 Canada's capital expenditure per subscriber by the top three providers (in terms of subscribers) was \$US 97.37 and exceeded that of the U.S., France, Australia, U.K., Germany and Italy.⁶

Figure 1: Capex per Subscriber – Top 3 Providers (2012 in \$US)



11. This continual investment has resulted in HSPA+ wireless networks that reach 99% of Canadians with broadband download speeds of up to 21 Mbps (and in some areas up to

⁵ Industry Canada, *Commercial Mobile Spectrum Outlook*, March 2013, page 5.

⁶ Capital expenditure per subscriber is total capital expenditure of the top three firms in terms of subscribers divided by the total number of subscribers for those firms. Data available from Bank of America Merrill Lynch *Global Wireless Matrix 4Q12*, 03 January 2013.

42 Mbps).⁷ Moreover, Bell Mobility now covers over 67% of Canadians⁸ with long-term evolution (LTE) wireless data networks which can provide download speeds of up to 75 Mbps and now in some areas up to 150 Mbps.⁹ The benefits of these investments were also noted by Industry Canada in its recent decision regarding the policy framework for Mobile Broadband Services (700 MHz Band) and Broadband Radio Services (2500 MHz Band):

This growth reflects the real benefits accruing to Canadian consumers and businesses. Today, 99% of Canadians have access to wireless services, and more than 98% have access to high-speed wireless networks. Providing newer, innovative services to more people would not have been possible without significant investments in infrastructure by the private sector. The continual need for significant investments in infrastructure is a key characteristic of the telecommunications sector.¹⁰

12. Canadian wireless service prices also compare favourably to similar countries. An analysis conducted for the CRTC by Wall Communications Inc. examined prices for wireless services across six countries – Australia, Canada, France, Japan, United Kingdom and United States.¹¹ Figures 2 to 4 show prices for wireless services.¹² Note that for the medium (Level 2) and high (Level 3) usage baskets, the prices in Canada are 30% cheaper than those in the United States. The relative affordability of wireless services can be seen in Figure 5 which shows that Canada's wireless service revenues as a percentage of GDP is the third lowest in the G20, and Figure 6 shows that Canada's mobile data spending as a percentage of GDP is seventh lowest.¹³

⁷ CRTC *Communications Monitoring Report*, September 2012, page 165.

⁸ *BCE Investor Conference 2013 Presentation*, page 32 available at http://www.bce.ca/assets/investors/Q4-2012/2013BCEInvestorConference_FinalConsolidated2.pdf.

⁹ <http://network.bell.ca/en/lte/?what>.

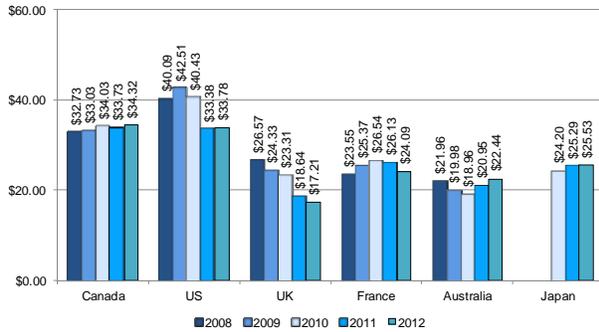
¹⁰ Industry Canada, *SMSE-002-12 Policy and Technical Framework Mobile Broadband Services (MBS) – 700 MHz Band, Broadband Radio Service (BRS) – 2500 MHz Band*, March 2012, p. 3.

¹¹ Wall Communications Inc., *Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions: 2012 Update*, 6 April 2012, (Wall Report).

¹² Wall Report, Table A3.2. Level 1 service consists of 150 minutes of use per month, 10% of outgoing minutes long distance, no additional features, no SMS and no data service. Level 2 service consists of 450 minutes of use per month, 10% of outgoing minutes long distance, Voicemail and caller ID, 250 SMS and no data service. Level 3 service consists of 1,200 minutes of use per month, 15% of outgoing minutes long distance, full set of optional features, 250 SMS and 1 GB data service.

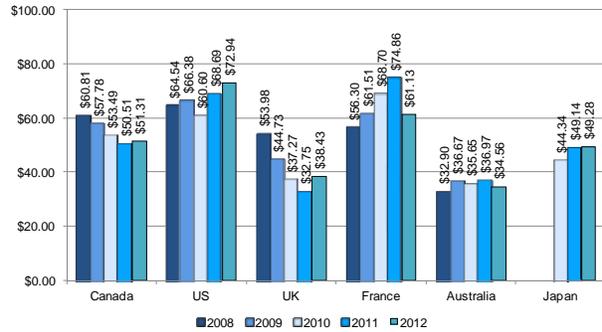
¹³ Mobile revenue as a percentage of GDP is equal to total service revenue divided by total GDP. Service revenues include monthly service charges and usage fees, roaming, long-distance, and subscriptions to mobile data services. Bank of America Merrill Lynch *Global Wireless Matrix 4Q12*, 03 January 2013. Note that this is not the complete G20 since the *Global Wireless Matrix* does not track Saudi Arabia, and that mobile data spending as a percentage of GDP in Chart 42 does not provide information for Korea.

Figure 2: International Mobile Wireless Prices – Wireless Level 1 (PPP-adjusted CDN\$ per Month)



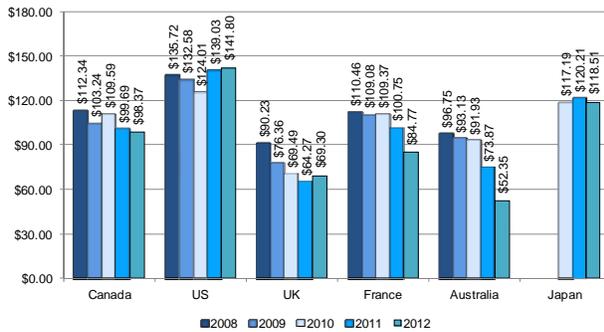
Source: Wall Communications Inc.

Figure 3: International Mobile Wireless Prices – Wireless Level 2 (PPP-adjusted CDN\$ per Month)



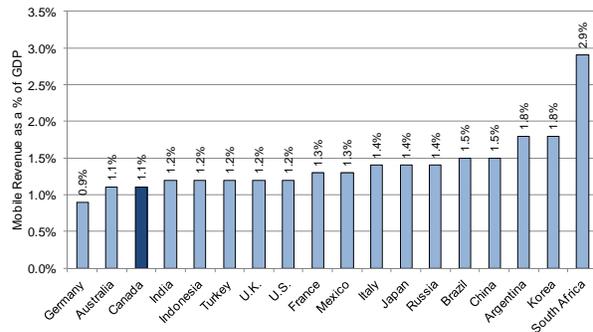
Source: Wall Communications Inc.

Figure 4: International Mobile Wireless Prices – Wireless Level 3 (PPP-adjusted CDN\$ per Month)



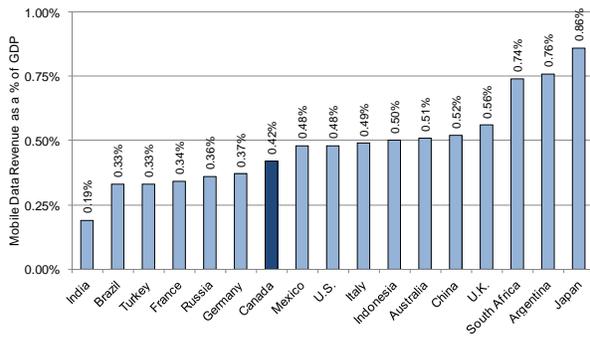
Source: Wall Communications Inc.

Figure 5: Mobile Service Revenue as a % of GDP (3Q 2012) for the G20



Source: Bank of America Merrill Lynch

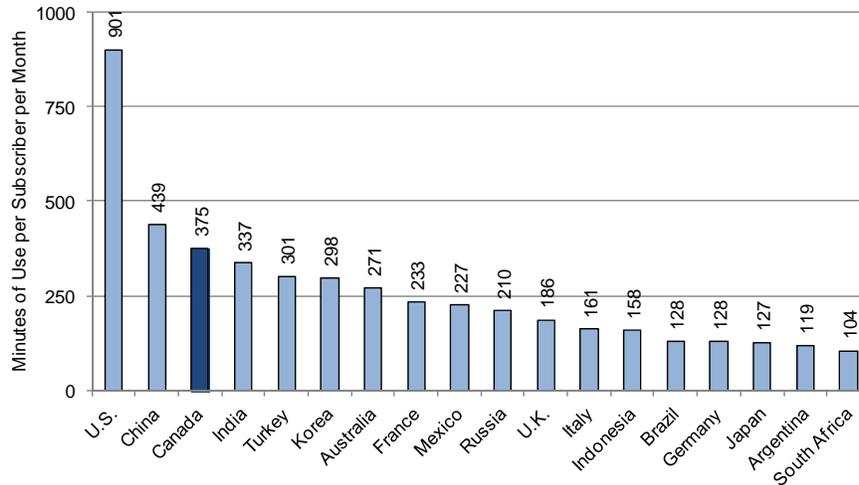
Figure 6: Mobile Data Service Revenue as a % of GDP (3Q 2012) for the G20



Source: Bank of America Merrill Lynch

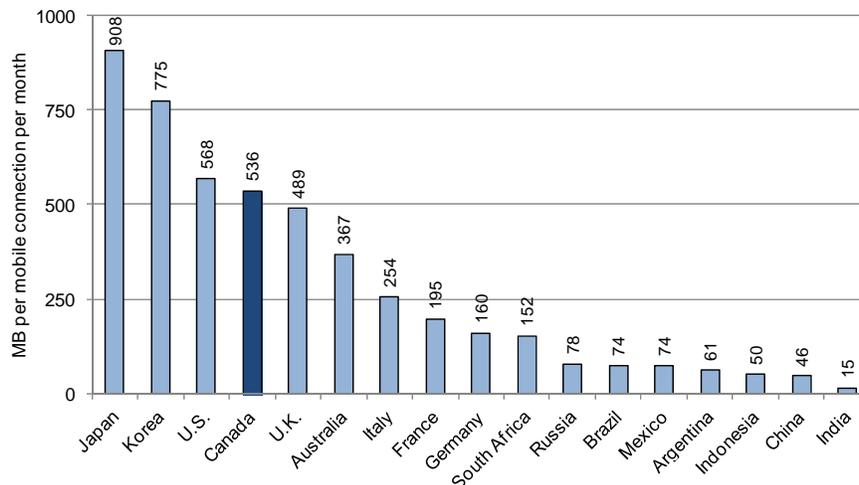
13. As a result of affordable prices and high quality service, Canadians continue to be heavy users of wireless services. As shown in Figure 7, Canadians use more voice minutes on average per month than all other G20 countries except the U.S. and China.¹⁴ With respect to mobile data, Figure 8 shows that Canada has the fourth highest average data generated by a mobile connection in the G20.¹⁵

Figure 7: Voice minutes of use per month for G20 – 3Q 2012



Source: Bank of America Merrill Lynch.

Figure 8: Mobile data use per month for G20 – 2012



Source: Cisco.

¹⁴ Bank of America Merrill Lynch *Global Wireless Matrix 4Q12*, 03 January 2012, Table 1.

¹⁵ Cisco, *VNI Mobile Forecast Highlights, 2012-2017*, available at http://www.cisco.com/web/solutions/sp/vni/vni_mobile_forecast_highlight/index.html#~Country. Cisco does not provide data for either Saudi Arabia or Turkey.

14. As the Department is aware, in order to meet consumers growing demand for mobile services, spectrum regulators world-wide are finding it challenging to provide access to a sufficient amount of spectrum. Bell Mobility submits that, in an environment characterized by this dramatic growth, mobile operators will require increasing amounts of spectrum to accommodate users' needs and to ensure national competitiveness in an increasingly global market place. Operators, for their part, bear the responsibility to ensure that the spectrum which is already licensed is utilized to its maximum efficiency. As addressed below, Bell Mobility believes that the marketplace, not government bureaucracy, is the most effective arbiter of the best uses of spectrum and the number of players in that market. Indeed, a return to the inflexible and time-consuming "command and control" spectrum management process of the past, as proposed in the Notice, could very well result in increasing spectrum inefficiency overall as the scarce resource is kept in less than optimal uses. Bell Mobility, as do a number of experts as addressed below, does not believe that such an outcome is in the best interests of Canadians.

3.2 Contravenes Recommendations of Telecommunications Policy Review Panel

15. In 2005 the Telecommunications Policy Review (TPR) Panel was appointed by the Minister of Industry to review Canada's telecommunications policy framework and make recommendations on how to modernize it to ensure that Canada has a strong, internationally competitive telecommunications industry that delivers world-class services for the economic and social benefit of all Canadians.¹⁶

16. Regarding spectrum policy specifically the TPR Panel noted that:

Internationally, there has been a trend among spectrum managers to move away from the traditional prescriptive models of spectrum assignment toward more flexible and market-oriented approaches. This has been done in order to promote innovation, competition and the efficient use of spectrum. The United Kingdom, the United States and Australia are among the countries that have adopted more market-based approaches to spectrum regulation. These countries use auctions as a tool to assign spectrum to users when demand exceeds supply. They are also liberalizing spectrum use and promoting the development of "secondary markets" for spectrum by allowing spectrum trading and lease arrangements.¹⁷

17. The TPR *Final Report* identified the linkage between the development of secondary spectrum markets and the efficient use of spectrum, a critical national consideration at a time

¹⁶ Telecommunications Policy Review Panel, *Final Report*, Letter of Transmittal, page iii, March 2006.

¹⁷ Telecommunications Policy Review Panel, *Final Report*, pages 5 to 17.

when mobile data usage is growing at the unprecedented rates discussed above. In fulfilling its mandate the TPR Panel reviewed and summarized developments and current trends in spectrum management best-practices internationally. Focusing on developments in the United States, the United Kingdom (UK) and Australia, the TPR *Final Report* noted that:

The consultation[s] recognized that the traditional "command and control" method of spectrum regulation, in which spectrum is centrally managed by the regulator, has become problematic. As demand for spectrum has started to exceed supply, centralized administration has resulted in an inefficient system that has limited innovation and the development of higher-value services.

...

It should be simple and transparent for licence holders to change the ownership and use of spectrum.¹⁸

18. The TPR Panel's analysis resulted in a number of spectrum policy related recommendations being made to the Minister. Among these were two, included in Recommendation 5-9, that directly related to the issue of spectrum transfers among licensees and development of secondary spectrum markets in Canada. These are:

(c) reliance on market-based approaches to spectrum management as much as possible,

(d) establishment of market-based exclusive spectrum rights (i.e. ability to buy, sell and lease spectrum holdings) and elimination of barriers to the development of secondary markets in spectrum,¹⁹

19. Bell Mobility notes that at the time of the TPR Panel's work, the extent of mobile data growth, as we see it today, had not even been identified at that stage. Consequently, the TPR Panel's observations regarding the demand for spectrum exceeding supply and thus the need to facilitate secondary spectrum markets is even more relevant in a time when mobile data traffic is forecasted to grow fifteen-fold between 2011 and 2017. Bell Mobility notes, in this regard, that the proposals in the Notice are in direct conflict with this situation as well as with the recommendations of the Minister's TPR Panel.

3.3 Conflicts with Recommendations of International Spectrum Experts

20. In support of the TPR Panel's recommendations regarding spectrum management policy and secondary markets, in June 2007 the Minister of Industry announced that he had

¹⁸ Ibid., pages 5 to 18.

¹⁹ Ibid., pages 5 to 21.

commissioned a study of market-based exclusive spectrum rights. The study group included Professor Martin Cave, then of the University of Warwick, UK. An acknowledged international expert in spectrum regulation and economics, Professor Cave has consulted with numerous international jurisdictions regarding spectrum management policy, including producing the 2002 "*Review of Radio Spectrum Management*" report addressing the reform of UK spectrum policy for the UK government.

21. Professor Cave's group submitted its report to Industry Canada, *Study of Market-based Exclusive Spectrum Rights*, in August 2007 (the Report).

22. In addressing the prior work of the TPR Panel, the Report noted the TPR Panel's recommendation that Canada should adopt a new spectrum policy characterized by increased reliance on market-based approaches to spectrum management as much as possible, the establishment of market-based exclusive spectrum rights, and the elimination of barriers to the development of secondary markets in spectrum. The Report noted, in this regard, that:

The [TPR] Panel's recommendations are consistent with a sizeable body of economic, legal and technical analysis appearing in the literature that considers that market-based approaches to spectrum management would bring significant improvements in economic efficiency, competition and innovation.²⁰

23. For its part, and in stark contrast with the proposals contained in the Notice, Professor Cave's Report recommended that:

Industry Canada should accelerate the pace of reform of spectrum management in Canada by specifically adopting policy directives which give greater force to the implementation of secondary markets namely by enabling spectrum trading along with defined, flexible user rights. 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.²¹ (Emphasis added)

24. Rather than increasing the extent of Ministerial oversight as proposed in the Notice, something which the Report concluded actually detracted from the efficient use of spectrum, Professor Cave proposed to facilitate the development of secondary spectrum markets by reducing the bureaucratic involvement in such transactions. In this regard, as stated in the Report:

²⁰ *Study of Market-based Exclusive Spectrum Rights-Final-Report*, McLean Foster & Co., 31 August 2007, page 9.

²¹ *Ibid.*, page 5.

Administrative methods of spectrum management have performed adequately in the past, but many countries, including Canada, have moved along a continuum towards greater reliance on market mechanisms. Often, administrative methods and their informational requirements, slowness, inflexibility . . ., tip the balance in favour of spectrum markets as a means of enhancing static and dynamic efficiency in the provision of services to end users.²²

25. Bell Mobility agrees, as Professor Cave elaborated in his Report, that the slowness and inflexibility of command and control spectrum management methods are not well suited to the dynamic needs of a spectrum market which is struggling to come to grips with such dramatic growth in mobile data user traffic. As the Report noted, the "... administrative methods and their informational requirements, ..." are not well suited to Canada's needs in this fast evolving market. In Bell Mobility's view such issues are only further exacerbated by the informational and subjective nature of the criteria with which Industry Canada is proposing to assess such transfer requests.

3.4 Conflicts with Industry Canada's Spectrum Policy Framework for Canada

26. Subsequent to a public consultation, in June 2007 Industry Canada released its revised *Spectrum Policy Framework for Canada* (the SPFC or the Framework). Acknowledging the related work of the TPR Panel, the SPFC states that the renewed Framework represents the policy foundation for the Canadian Spectrum Management Program (the Program).²³

27. The SPFC states that the Policy Objective of the Program is:

To maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource.²⁴

28. The SPFC also adopted a number of Enabling Guidelines which included the following:

(a) Market forces should be relied upon to the maximum extent feasible.

...

(d) Regulatory measures, where required, should be minimally intrusive, efficient and effective.

...

(f) Spectrum management practices, including licensing methods, should minimize administrative burden and be responsive to changing technology and market place demands.

²² *Ibid.*, page 77.

²³ SPFC, June 2007, page 1.

²⁴ *Ibid.*, page 8.

...
(h) Spectrum policy and management should support the efficient functioning of markets by:

- ...
• facilitating secondary markets for spectrum authorizations,²⁵

29. The preamble to the Enabling Guidelines contained in the SPFC is also noteworthy in the context of this Notice. In that regard, the preamble states that:

In developing these revised guidelines, the Department recognizes, as do many other administrations, the importance of relying on market forces in spectrum management, to the maximum extent feasible. This includes aspects such as the removal of barriers to secondary markets for spectrum authorizations.²⁶
(Emphasis added)

30. Bell Mobility believes that the proposals in the Notice, for the reasons outlined above, are in direct conflict with the above Enabling Guidelines of the SPFC and do not facilitate the achievement of the SPFC's policy objective to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource. Bell Mobility submits that Industry Canada should facilitate spectrum transfers to enable Canada's radio spectrum to move to its most productive use. If not, the Department should maintain its existing model for spectrum licence transfers which has more than sufficient safeguards, in the form of Ministerial and Competition Bureau review, already incorporated into it. Bell Mobility respectfully submits that the Department should not, however, adopt more bureaucracy in the form of the proposals included in the Notice.

4.0 RESPONSES TO INDUSTRY CANADA ISSUES

31. With the preceding policy discussion used as a backdrop, in this section Bell Mobility responds to the specific issues raised by Industry Canada for comment in its Notice. To facilitate the use of these comments, Industry Canada's numbering, as used in the Notice, is also used herein.

6-1 The criteria and considerations set out above

32. Bell Mobility does not support the criteria and considerations, proposed in the Notice, regarding future licence transfers, divisions and subordinate licensing arrangements. As noted above, the SPFC as well as the views of both domestic and international spectrum management

²⁵ Ibid., page 9.

²⁶ Ibid., page 8.

experts indicate that the traditional "command and control" approach to spectrum management, as proposed in the Notice, runs counter to ensuring that the scarce spectrum resource is used efficiently, thus maximizing the economic and social benefits that Canadians derive from the use of the radio frequency spectrum. Rather, the SPFC and leading spectrum policy experts recommend reliance on market forces, to the maximum extent possible, to enable spectrum to find its best and most productive uses for Canadians.

33. Canada is a world leader in wireless with advanced, high-speed networks that rival those of any other nation including those with significantly larger populations. To ensure that Canada remains a leader in wireless it is critically important as reflected in Industry Canada's own SPFC, that facilitating secondary markets for spectrum is an integral part of Canada's spectrum policy program. Bell Mobility believes that the existing Ministerial approval required for spectrum transfers as well as the Competition Bureau's oversight of mergers and acquisitions provides Canada with more than sufficient powers to address any resulting concerns related to spectrum concentration and/or competition.

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

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

35. Bell Mobility does not believe that a standing threshold in the form of concentration or a measure of MHz-pop or any other threshold, such as a screen or cap, is required in the Canadian wireless market. Industry Canada employed a spectrum aggregation limit or cap for mobile spectrum from 1995 to 2004, after which it was removed by the Minister who noted that:

At the time of licensing new spectrum, to ensure that the spectrum resources are fairly distributed among interested parties, the Department can impose a limit on the amount of spectrum an applicant can acquire. This limit would be subject to public consultation prior to the specific band being licensed.²⁷

²⁷ Industry Canada, Decision to Rescind the Mobile Spectrum Cap, *Canada Gazette*, Notice No. DGTP-010-04, 27 August 2004, paragraph 11.

36. Bell Mobility notes that this approach is being used in the upcoming auction for the 700 MHz band. As stated above, Bell Mobility believes that to impose a standing spectrum limit or threshold of any form would constitute highly invasive regulation where such is not warranted. Further, the Notice makes note of the fact that the three national incumbents currently hold approximately 85% of all mobile wireless spectrum available in Canada. Bell Mobility notes that all such spectrum was acquired pursuant to Industry Canada approved licensing and/or transfer and subordination processes or, in the case of certain PCS spectrum licence acquisitions, subsequent to thorough Ministerial and Competition Bureau reviews. Finally, in this regard, as also stated in the Notice, while the three national incumbents may have access to 85% of the available spectrum, they are also serving approximately 90% of Canadian subscribers. In light of the traffic growth rate discussed above clearly the national carriers have a requirement for not only the spectrum they currently hold but considerably more in the future if these subscribers' needs are to be satisfied. Bell Mobility believes that auctions, combined with a flexible secondary spectrum market, is the most effective way to achieve that result in the dynamic wireless industry.

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

37. Consistent with our views above, Bell Mobility does not believe that anything further, beyond the reviews currently performed by the Minister and the Competition Bureau, in the event of such a transaction being proposed, are required in the event of a deemed licence transfer.

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

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

39. Having said that, Bell Mobility does believe that, subject to withholding all information filed in confidence with the Department, the Minister's ultimate ruling regarding any specific transaction, with accompanying rationale, should be made public. Making the decision and more importantly the rationale for the decision public will enable all to see the factors and analysis used to arrive at any particular determination and provide useful guidance. The availability of such information will add to business certainty if parties can see the underlying analysis used to arrive at a decision.

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

40. Consistent with our views above, Bell Mobility does not believe that any changes are necessary to section 5.6 of CPC 2-1-23.

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

41. While Bell Mobility does not believe, as addressed above, that the changes proposed in the Notice are in fact appropriate in the circumstances of today's Canadian wireless market, the Company does consider that the proposed timelines are reasonable provided that they are adhered to by all parties to any such transaction including the Department. Bell Mobility notes, in this regard, that seemingly innocuous informational requests, by the Department, could result in significant delays to the proposed timelines. Bell Mobility does acknowledge, of course, that parties to a transaction need to provide the Department with a complete file in order for the Department to meet the proposed timelines.

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

42. Consistent with our views above, Bell Mobility does not believe that the proposed CoL concerning prospective transfers is necessary at this time. Bell Mobility is particularly opposed to its inclusion in existing spectrum licences since such authorizations, especially those acquired through competitive spectrum auctions, were valued based on the known CoL attached to such authorizations. While Bell Mobility realizes that the Minister has the right to effect such changes we also believe that such changes should only be made in cases when absolutely necessary.

43. If the Department proceeds with the CoL, Bell Mobility notes that clarification is required between what is proposed in the CoL and the discussion immediately following it in the Notice. It is clear, in this regard, that prior notification to the Department is required before parties can enter into such arrangements. Then the Notice states however that:

Upon receipt of such notice, Industry Canada proposes to review the information provided by the parties with the intent of providing a preliminary assessment of the transaction. A preliminary assessment in this case represents the Department's opinion of the transaction at the time of writing, but does not bind Industry Canada in respect of the approval or denial of any eventual spectrum licence transfer request at the time that the request is made.²⁸ (Emphasis added)

44. Bell Mobility believes that, if the above CoL were implemented, clarification is required regarding these questions: (1) Do parties have to await the preliminary assessment before entering into such arrangements or is notification to the Department sufficient?; and (2) How do the timelines proposed in the Notice apply, i.e. is it 4 or 16 weeks dependent on the complexity of the arrangement being contemplated?

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

5.0 CONCLUSION

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

*** End of Document ***

²⁸ Industry Canada, Consultation on Considerations relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences, *Canada Gazette* Notice No. DGSO-002-13, 16 March 2013, page 7.