



April 3, 2013

spectrum.operations@ic.gc.ca

Director
Spectrum Management Operations
Industry Canada
300 Slater Street
Ottawa, Ontario K1A 0C8

Dear Sir/Madam:

Re: *Canada Gazette, Part I, March 16, 2013, Notice No. DGSO-002-13 – Consultation on Considerations Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences – Eastlink’s comments*

Please find attached the comments of Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), in response to Canada Gazette Notice DGSO-002-13, *Consultation on Considerations Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences* (Part I, 16 March 2013).

We appreciate the opportunity to comment on the matters discussed in the Consultation.

Sincerely,

A handwritten signature in blue ink, appearing to read "D Heckbert", is placed above the typed name.

Denise Heckbert
Manager, Wireless Regulatory, EastLink

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**INDUSTRY CANADA
CONSULTATION ON CONSIDERATIONS RELATING TO TRANSFERS,
DIVISIONS AND SUBORDINATE LICENSING
OF SPECTRUM LICENCES (DGSO-002-13)**

**COMMENTS OF
BRAGG COMMUNICATIONS INC., OPERATING AS EASTLINK**



3 APRIL 2013

1. Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), appreciates the opportunity to provide comments on the issues raised under DGSO-002-13 – *Consultation on Considerations Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences* (the “Consultation”).
2. Under the Consultation, Industry Canada (the “Department”) seeks comments on its proposed amendments to CPC-2-1-23 *Licensing Procedure for Spectrum Licences for Terrestrial Services* (“CPC-2-1-23”), and its proposed timelines and a new condition of licence for transfers of spectrum licences. Eastlink submits that our failure to address any part of the consultation document does not constitute agreement with a proposal where such agreement would be contrary to our business interests. Eastlink herein provides our comments.

Concentration of spectrum

3. As the Department noted in the Consultation, the three large, publicly-traded, incumbent wireless carriers hold more than 85% of currently useable mobile spectrum in Canada. Eastlink notes that rapid advancements in technology will soon enable previously undeployed spectrum held by the incumbents to be suitable for mobile wireless deployment as well. This represents a substantial concentration of Canadian wireless spectrum in the hands of just three service providers, two of which share spectrum and networks as if they were under common ownership and control.
4. Eastlink agrees with the Department’s comment in Paragraph 9 of the Consultation, “Access to sufficient spectrum is a precondition to the provision of wireless services. High concentration of spectrum licences among a small number of wireless service providers can be detrimental to competition. With the rapid shift to smart phones and the increasing use of data in the mobile market, the minimum amount of spectrum required to be a viable operator is increasing.” This concern is precisely why the Department set aside spectrum for new entrant service providers in the 2008 Advanced Wireless Services spectrum auction, and why the Department adopted a spectrum cap for the coming 700 MHz spectrum auction.

5. Specifically, the Department recognized that to achieve its policy objectives of promoting competition and encouraging deployment of advanced wireless service in rural areas for the 700 MHz and AWS spectrum bands, it was necessary to adopt measures that would ensure new market entrants could acquire spectrum.
6. The Department's measures in 2008 made it possible for established regional service providers like Eastlink, Videotron, MTS and SaskTel to acquire spectrum to launch or bolster wireless service offerings. This has led to the introduction of competition and advanced wireless services in rural areas. For example, Eastlink has built the largest LTE network in Atlantic Canada. However, the AWS spectrum is not sufficient to sustain such wireless operations in the long-term. Regional service providers have established customer bases in wireline phone, cable and Internet services and are likely to secure similar numbers of subscribers in the wireless market. As a result, these service providers will require additional spectrum to offer data speeds and capacity necessary to compete with the incumbents. Now that the auction rules for the 700 MHz auction so heavily favour the national incumbents, making it difficult for regional service providers to acquire new licences, it is critical that any spectrum set-aside or capped for use by new entrants remain available for new entrants.
7. The Department's 2008 set-aside also made it possible for entirely new market entrants to acquire spectrum. These entirely new, wireless-only service providers may ultimately consolidate and/or be acquired by large national incumbents but they currently hold spectrum set aside for new entrants. Regardless of the national new entrants' future, this spectrum should remain set-aside for new entrants, at the very least for the period covered by the spectrum aggregation condition of licence.
8. Eastlink submits that the Department's review of any transfer or deemed transfer arrangement should maintain the long-term integrity of set-aside and spectrum caps. Otherwise, the new wireless businesses made possible by the 2008 measures will not be sustainable, as they do not have access via other means to the spectrum required to provide competitive wireless services to new customers or to meet the future data needs of their existing customer bases. In the event that a lack of spectrum makes these new wireless businesses unsustainable, the operations would likely be aggregated under the national incumbents via acquisitions. Such an aggregation would result in reduced competition and all the related negative side effects, including a return to higher prices for

wireless services, and slower or non-existent deployment of advanced wireless services to rural areas. This result would be entirely inconsistent with the policy objectives for Canada's wireless spectrum and would be contrary to the interests of Canadian consumers.

Review of licence transfer requests

9. Eastlink generally agrees with the Department's proposed definitions for "licence," "licensee," "spectrum licence transfer request" and "deemed spectrum licence transfer." Eastlink agrees that the conditions of licence are better maintained and the Department's policy objectives for wireless spectrum in Canada are better protected if any agreement that has the effect of transferring, dividing or creating an interest in a spectrum licence is considered to be an actual transfer of that licence. This will prevent licensees from circumventing the Department's aggregation limits to consolidate spectrum in the hands of a few large incumbent carriers.
10. Eastlink further agrees with the Department's criteria for reviewing transfer requests with two exceptions; first, the Department should also consider the current total licence holdings of the proposed licensee, and; second, the Department should consider any original restrictions on the subject spectrum and whether the policy objectives those restrictions were meant to serve would be jeopardized by the transfer.
11. Specifically, Eastlink submits a proposed licensee's entire spectrum holdings – not just its holdings in the subject spectrum band – must be considered because it would be an inefficient use of spectrum to allow a licensee with large caches of spectrum in other bands to add to its stockpile when other carriers with far less spectrum may also require and be interested in purchasing the subject spectrum. As the Department noted in the Consultation, the minimum amount of spectrum each carrier requires is increasing as wireless data usage grows. Therefore, a licensee's total spectrum holdings, including spectrum the licensee has access to via an agreement but may not own directly, is a relevant factor to consider when reviewing a transfer request.
12. Most importantly, the Department must consider original restrictions on the subject spectrum in its review of a transfer request. Set-asides and spectrum caps have been put in place to ensure sustainable competition and deployment of advanced wireless service to urban and rural areas. Any transfer or deemed transfer that would violate these rules would inherently

put those policy objectives at risk. As a result, it is critical that the Department adopt, as a criterion for review a consideration of any original set-aside, spectrum cap or other restriction on the spectrum under the licensing framework. Simply put, spectrum must retain identical conditions of licence and restrictions both before and after a transfer.

13. Finally, Eastlink supports the Department's intention, noted in Paragraph 19 of the Consultation, "to treat any deemed spectrum licence transfer as an actual licence transfer, division, or subordinate licensing arrangement" and to require that notice be provided to the Department before such arrangements are concluded. We also agree that any such arrangements currently in place should be immediately subject to Department review.
14. The Department should adopt its policy on deemed transfers as proposed to ensure that the integrity of the spectrum aggregation condition of licence is maintained. Currently, the spectrum aggregation rules provide a five-year waiting period in which transfers that would violate the rules are prohibited. During this five year period, new entrants are required to secure necessary network equipment, sign tower colocation and roaming agreements, and put in place substantial network and systems infrastructure. Furthermore, in order to secure market share, these new entrants must do so in a manner that equals or improves upon the systems and infrastructure of the large national incumbents, which have had decades to build their systems. The large national incumbents are incentivized to make such work difficult for new entrants and have taken measures to do so, including offering roaming agreements with unreasonable terms and with rates that are multiples of retail rates, and delaying by many months colocation on their existing towers. During this five-year spectrum aggregation limit period, new entrants must make considerable outlays of capital that the incumbents are not required to make, and provide substantial amounts directly to the incumbents.
15. As a result, in the event that one of the new market entrants decides to enter an arrangement with the effect of transferring its spectrum, the incumbents would most likely be those in a financial position to take advantage of such an offering. At the same time, the incumbents would be able to take ownership of spectrum deliberately reserved by the Department for new entrants just a couple of years prior. Such a result would be as if the Department had not adopted a set-aside during the auction. This is clearly inconsistent with the policy objectives for Canada's wireless spectrum and with the conditions of licence. As a result, Eastlink submits it is absolutely necessary that the Department adopt its proposal and

consider any arrangement having the effect of granting an interest in spectrum as an actual licence transfer.

16. In addition, considering the difficulties in starting a wireless business and considering the incumbents' active efforts to impede the new entrants' progress, Eastlink submits the spectrum aggregation rules under the condition of licence should be extended from five years to ten years. This would provide new entrants additional time to establish their businesses so that they would have a fair opportunity to bid on any licences that become available, and would further discourage speculative bidding in the auction from companies only interested in selling the licences at a profit without actually building a wireless business.

Condition of licence

17. Eastlink agrees with the Department's proposed condition of licence regarding transfers, and further agrees that it should apply to any arrangements already in place as of the effective date of the condition of licence.

Conclusion

18. Regional new entrants have substantial existing customer bases in other telecommunications markets and have built what will be sustainable wireless operations. However, viable wireless operations depend entirely on access to spectrum. The Department noted in the Consultation that wireless data usage has increased the minimum amount of spectrum that a wireless service provider requires to offer competitive services. Eastlink submits that the regional new entrants have minimal AWS spectrum holdings and are severely disadvantaged by the package-based format of the 700 MHz auction.
19. As a result, it is critical that any spectrum transfers and any arrangement that would have the effect of granting an interest in a licence, particularly any such transfers from new entrants to national incumbents, be reviewed by the Department. Reviews should consider the criteria the Department outlined in the Consultation as well as the proposed licensee's total spectrum holdings and the original conditions of licence, including set-aside or spectrum cap limitations initially placed on the subject licence.

20. Above all, and given that spectrum is an increasingly scarce resource and new market entrants are unlikely to acquire necessary spectrum via other means, the Department must consider whether the proposed transfer would further concentrate spectrum in the hands of the three national incumbents, and whether the transfer would contradict the original conditions of licence. Any such transfer would put at risk the policy objectives of promoting competition and deploying advanced wireless services to rural areas of Canada by limiting new entrants' ability to compete.

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