



May 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 reply comments*

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

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



3 MAY 2013

1. Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), appreciates the opportunity to provide reply comments on the issues raised under DGSO-002-13 – *Consultation on Considerations Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences* (the “Consultation”). Eastlink has obtained comments submitted by wireless service providers and other interveners under this consultation. Eastlink submits that our failure to address any part of the consultation document or to respond to any comments submitted by the other parties does not constitute agreement where such agreement would be contrary to our business interests. Eastlink herein provides our reply comments.
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.

Meeting the policy objectives

3. At the outset, we reiterate that the procedures and policies regarding spectrum licence transfers must be based on principles that would ensure the policy objectives for Canada’s spectrum are maintained. Specifically, the licence transfer rules must work to sustain meaningful facilities-based competition, and to ensure advanced wireless services are deployed to rural areas, not as an afterthought, but quickly and in-step with urban deployment.
4. Eastlink submits that, for the spectrum licence transfer rules to achieve these objectives, the Department must carefully consider its interpretation of references to “efficient use of spectrum” and “value spectrum the most.” The incumbents interpret these phrases to mean that spectrum is most “efficient” when it is concentrated in the hands of a very few spectrum holders – as is the case today – and that spectrum is “valued” the most when a particular deep-pocketed carrier is able to pay a large sum for it. Eastlink submits that these positions are short-sighted and serve only the incumbents’ desire to retain their near complete control

of Canada's spectrum. These positions do not consider the policy objectives and, in fact, pose considerable obstacles to meeting the Department's goals.

5. For example, providing 700 MHz spectrum primarily to publicly-traded companies which can afford to pay large sums for the licences, and which already hold large amounts of 850 MHz spectrum, does not ensure the spectrum goes to those who actually "value it the most." Within two years, these incumbents will have the ability to deploy LTE over their substantial 850 MHz spectrum holdings and will leave the 700 MHz to lie fallow. For the incumbents, it is worth the cost to purchase the spectrum as it ensures the new entrant service providers will not have the spectrum needed to sustain our businesses over the long-term. In this case, the primary "value" of the spectrum to the incumbents is the ability to stifle competition and preserve market dominance, which is contrary to the true economic and social value of competitive mobile wireless service in rural areas that the spectrum will bring in the hands of new entrants.
6. The regional service providers, that may not be able to pay as much for the spectrum, derive more value from the spectrum than the incumbents. Regional service providers would use the 700 MHz spectrum to deploy advanced wireless services throughout their service area, bringing advanced technology and meaningful competition to rural areas in-step with urban deployment. This can be seen in Nova Scotia where Eastlink invested in set-aside AWS spectrum. While the incumbents have used their AWS spectrum in Nova Scotia either not at all or to provide LTE coverage only in Halifax, Eastlink has used our AWS spectrum to deploy LTE throughout much of Nova Scotia and PEI and we are continually expanding our coverage. Clearly, Eastlink's spectrum is being better used and providing advanced wireless services to more people. The importance of this social and policy value cannot be underestimated in considering who "values spectrum the most."
7. In addition, Eastlink submits that the incumbents' practice of using an entire AWS spectrum licence to provide coverage only in urban areas is inherently inefficient. Regional service providers' use of their limited spectrum to deploy throughout the licence region is a far more efficient use of a single spectrum licence. As a result, Eastlink submits that the Department should consider that while regional service providers may not be able to pay as much upfront for their spectrum licences, their far greater rural deployment and infrastructure expenditures make more efficient use of their limited spectrum and provide a greater value for Canadians.

Transfer rules recognizing reality

8. Eastlink submits that it is imperative that the spectrum licence transfer rules recognize the value that regional service providers place on licences, and the reality that these service providers are not any more able to outbid publicly-traded incumbents in the secondary spectrum market than they are in spectrum auctions. Eastlink has stated in several previous consultations, and the Department has recognized in its auction frameworks for the AWS, 700 MHz and 2500 MHz auctions, that new entrant service providers cannot outbid large publicly-traded incumbents for spectrum.
9. The Department established set-aside spectrum in the AWS auction and allowed several new entrants to begin offering service. The result has been lower prices for consumers, the first network in Canada that has LTE throughout the entire coverage area (Eastlink's), true choice to consumers in wireless service providers and the introduction of non-fixed term contracts for discounted devices in many regions of Canada. The Department has taken a major step back from its support for new entrants in the 700 MHz and 2500 MHz auction frameworks, as the auction format itself makes it difficult for regional service providers to acquire spectrum, but even these auction frameworks include spectrum caps to somewhat help new entrants acquire spectrum.
10. Eastlink submits that the factors that prompted the government to establish set-asides and spectrum caps in the auctions continue to affect service providers in the secondary spectrum market. Regional service providers are equally unable to outbid the incumbents in the secondary market for spectrum that we require to maintain our operations. As a result, the licence transfer rules and procedures are every bit as critical to ensuring sustainable facilities-based competition and rural deployment in Canada as the auction rules themselves.
11. Eastlink submits this is especially true considering the unanticipated success the incumbents have had in establishing post-auction barriers to wireless competition. Already one regional service provider decided the obstacles were insurmountable, has decided to abandon its wireless plans, and sold its set-aside AWS spectrum to a deep-pocketed incumbent. Furthermore, multiple wireless-only new entrants are looking to be acquired, possibly by the incumbents. Eastlink submits it is no surprise these carriers are having difficulties competing. The incumbents have taken every opportunity to increase operating

costs via roaming rates that are multiples of their retail rates and onerous roaming terms and conditions, to delay network builds via convoluted and expensive tower sharing processes, and to impose artificial service restrictions, such as refusing seamless roaming even though it is absolutely technically possible and even though they have already implemented such roaming with American carriers.

12. In light of these post-auction tactics from the incumbents, which have gone unchecked by the Department, it is critical that the Department maintain its commitment to the spectrum policy objectives, as shown in the auction rules, in its licence transfer rules. Eastlink further submits it is not sufficient for such protections to remain in place for just five years after the auction. As noted above, the incumbents have employed a number of tactics to delay network development and service launches and, therefore, the spectrum aggregation policies should remain in place for at least ten years.

13. Eastlink provides our responses to the Department's specific questions below.

Detailed review

14. Eastlink submitted in our April 3, 2013 comments under this consultation that we generally agreed with the Department's criteria for reviewing transfer requests, except that we submitted the Department should also consider total licence holdings of the proposed licensee and should consider any original restrictions such as set-asides or spectrum caps to which the licence may have been subject upon issuance.

15. We continue to support such an approach but submit that a simpler test may be for the Department to conduct a detailed review of any spectrum licence transfer where the proposed licensee is Bell Mobility, Rogers Wireless, Telus Mobility, or their affiliates.

16. The fact is that these three incumbent service providers control 85% of the spectrum in Canada and do not require additional spectrum. Any agreement that would see any of these three service providers acquire additional spectrum should, therefore, be subject to a detailed review. Eastlink supports the Department's proposal to consider the criteria in Paragraphs 16 and 17 of the Consultation as part of its detailed review, and submits that the Department should also maintain and preserve any restrictions from the spectrum's original conditions of licence as part of that review. Finally, we support this criteria and test being

applied to all spectrum licence transfers to incumbents, not just transfers related to spectrum not yet auctioned, as such a limitation would essentially negate the benefit of this policy considering the substantial spectrum already in the incumbents' control.

Deemed spectrum transfers

17. 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.

18. Eastlink disagrees with Rogers' proposed amendment in Paragraph 43 of its April 3, 2013 comments under this Consultation as it would allow incumbents to secure spectrum via options deals. In cases where Bell, Rogers, Telus or their affiliates are the proposed licensee, it is irrelevant whether the spectrum actually changes hands under the agreement as the incumbents have no intention of using the spectrum anyway. It makes no difference to the incumbent whether they acquire the spectrum in the present, or prevent others from purchasing it for the present and actually take control at a future date. The point is that either scenario makes the spectrum unavailable to the regional service providers who are most likely to deploy it. Eastlink strongly agrees with the Department's proposal to consider any agreement that has the "effect of transferring, dividing or creating an interest in a spectrum licence in that it provides for the acquisition or control of a licence..." as stated in Paragraph 14 of the Consultation.

19. Eastlink submits that this test is quite clear, despite the incumbents' claims otherwise. For example, there would be no reason for an incumbent to sign an option agreement regarding a spectrum licence if it did not create an interest in the licence or otherwise provide for the control of that licence. Eastlink supports the Department's proposed language and rule for deemed transfers.

Confidentiality

20. Eastlink notes the disagreement among the service providers commenting under this Consultation on what, if any, details should be disclosed regarding prospective, deemed and

final transfers of licences, and whether such transfers should be subject to a public consultation. Eastlink understands the desire to keep specifics of a transfer agreement confidential but submits that it is important that other service providers and spectrum holders have a chance to comment and provide information to the Department for consideration as part of its decision on licences. Just as bidder names, licences won, prices paid, and detailed bid submissions have been, and will be, disclosed through the spectrum auction process, so too should this information be disclosed publically for spectrum licence transfers. Wireless spectrum is a scarce resource managed judiciously by the Department on behalf of all Canadians. The public has the right to provide input on and to understand the terms under which spectrum is transferred and to whom.

21. As a result, Eastlink submits that the Department should adopt a rule whereby it would disclose on the public record, for any prospective, deemed or actual licence transfer request, the name of the current licensee, the name of the proposed licensee, and the details of the subject licence(s), i.e., spectrum band, region, licence number. The other details of the agreement may remain confidential.
22. Once this information is disclosed, should any other party eligible to hold spectrum in Canada express an interest in acquiring the subject licence(s) within 14 days of the Department's notice, Eastlink submits the transfer should be subject to a public consultation as part of the Department's review, which would be a detailed review in the event that the proposed licensee is an incumbent. Where no other spectrum holder expresses an interest in acquiring the subject licence(s), the Department could proceed with its review without a public consultation.
23. We submit this proposed rule would ensure that the Department has all the necessary information to consider a transfer where the spectrum could potentially be put to more efficient use by a regional service provider without delaying uncontested transfer applications.

Condition of licence

24. 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. Eastlink submits it is critical for the Canadian public

and new entrants to have a chance to raise concerns and express interest in licences that may be transferred to an incumbent that already holds a massive amount of spectrum. Eastlink submits that the detailed review test and the confidentiality rules we've proposed herein should apply to prospective licence transfers just as they apply to deemed transfers and actual transfers.

Conclusion

25. Eastlink submits it would be shortsighted and contrary to the policy objectives to consider the "value" of the spectrum to be solely the upfront purchase price, and the Department should not allow the incumbents' self-serving comments to shape its opinion. Clearly, as each spectrum licence will be valid for upwards of 20 years, the value of that spectrum licence and its efficient use must reflect how it will be deployed, the number of Canadians who will benefit from its use, and the extent to which that particular licence supports the policy objectives. Incumbents with vast spectrum holdings, which deploy advanced technology only in a small area of the licence region, inherently do not make efficient use of the spectrum and their large upfront payments do not reflect true economic and social values to Canadians. Regional service providers, which use their few licences to provide advanced wireless services throughout the licence region, make efficient use of limited spectrum and provide considerable value in terms of actual infrastructure spending and in terms of the social value of bringing facility-based competition and advanced services to rural areas.
26. The Department has recognized this value in its frameworks for the AWS, 700 MHz and 2500 MHz auctions. It is critical that the Department not let the secondary spectrum markets negate the benefit of its auction policies.
27. Eastlink submits that conducting detailed reviews in every case where the prospective licensee is Bell, Rogers, Telus or their affiliates will ensure that any agreement or arrangement that would see a further consolidation of spectrum in their hands is subjected to an appropriate level of scrutiny from the Department to ensure the deal is in Canada's interests. Eastlink's proposals herein are reasonable, considering the vast holdings of the incumbents, and would not prevent or delay any arrangement that is in the interest of the policy objectives and Canadian consumers. We support the Department's proposals to

apply the rules to prospective agreements, deemed transfers and actual licence transfers as set out in the Consultation and as described herein. Finally, we agree that such rules should apply to all existing spectrum licences that are currently, or soon will be, used for mobile wireless services.

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