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

1. Public Mobile Inc. (Public Mobile) welcomes the opportunity to provide comments on the Consultation on Considerations Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences issued by the Department on March 7th, 2013 (the "Consultation Document").
2. The Department raises important issues in the Consultation Document, and Public Mobile believes that the wireless industry, and ultimately Canadian consumers, will benefit from increased clarity on issues respecting processes and policies related to transfers of spectrum licences.
3. Public Mobile believes that there are strong public policy reasons and competitive rationale for clarifying the conditions of licence related to spectrum licence transfers. Without such clarity, there is a real danger that the Department's efforts to nourish and sustain competition will not produce the sustainable competitive environment that is desired.

Context

4. We are at a critical juncture in the development of sustainable wireless competition in the Canadian wireless marketplace. The efforts by the Government over the past five years have generated benefits for Canadian consumers, but have not yet reached the point where there is the comfort of a sustainable competitive market. As Minister Paradis has made clear over the past few months, the key public policy goal is to ensure there is a sustainable environment in which there are at least four viable wireless competitors in every market.
5. If Government policy and circumstances were to allow the reconsolidation of Canada's wireless market back into the three national incumbent carriers (Rogers, Bell and TELUS), the recent

benefits of new entrant competition would be lost to Canadian consumers. The Minister, in his statement at the time the Consultation Document was released, acknowledged that the lifeblood of wireless carriers is access to sufficient spectrum and to sufficient affordable capital. The Government has taken steps to loosen foreign ownership restrictions and thereby expand the available sources of capital to support new competitors. However, availability of capital is only one part of the equation.

6. A wireless market with four competitors is important because it substantively changes the market's competitive structure. Unlike the three dominant incumbents, the 4th player always has a strong incentive to grow its market share through innovation and better pricing. These actions, in turn, discipline the pricing power of the incumbents, either by forcing a competitive response or, at a minimum, limiting their ability to secure monopoly profits. The value of competition to Canadian consumers has been amply demonstrated over the years in Canada. When there were four or more competitors in the market (both prior to the consolidation of Microcell, and since the launch of the current new entrants), pricing and ARPU have declined. When there are only three players, the oligopoly carriers are free to steadily push up prices paid by consumers and to limit their choices through 3-year contracts.
7. However, to achieve this competitive outcome the 4th player must have sufficient spectrum to build a competitive network and sufficient capital to build that network out broadly across Canada. While it can be an effective strategy, particularly when first entering the market, for a new entrant to compete with somewhat inferior network capabilities (whether measured in terms of coverage, broadband speed, or handset selection), such a strategy is naturally constrained. It may be effective to target market segments that are poorly served by the incumbents (in some cases, not really served at all). However, customers in such segments will always be a minority of the market. Such a niche competitor does not address the needs of the broad mainstream of the market, does not provide broad market discipline, and thereby effectively leaves the oligopoly carriers to price as they wish for most Canadians.
8. The Government's policy goal should not be merely to ensure that there is a 4th carrier that survives in each market, but to ensure that the 4th carrier has access to the resources necessary to bring effective and sustainable competition to all Canadians. To achieve that goal, two critical ingredients are required: spectrum and capital. The former is entirely under the control of Government policy and decision-making. The latter is the purview of private sector investors. However, the two issues are linked. Without Government support to ensure that there is sufficient spectrum available to support the 4th carrier, risk capital will be extremely difficult, if not impossible, to attract. Without a clear path to sufficient spectrum for a sustainable 4th carrier, the necessary investments will not be forthcoming – to the detriment of Canadian consumers.

Capital

9. The Government should be largely indifferent to the origins of capital for a sustainable 4th player in the market. The recent changes in the foreign ownership requirements for smaller telecommunications carriers reflects this view by removing a constraint on capital that only served to protect the incumbents by limiting investment for their competitors. However, the Government does need to care about whether it is creating an environment which will attract sufficient capital for a sustainable 4th carrier to operate, grow and survive.

10. As mentioned above, a path to competitive spectrum allocation is the most important ingredient to creating the conditions to support sustainable competition. Continuing to improve the roaming and tower sharing rules is also important – to permit new carriers both to build their networks faster and to ensure they can offer an economically competitive service while those networks are built out (including in areas where spectrum propagation limitations do not permit an economic network build).
11. Beyond that, the Government should not take sides in considering the potential sources of capital which will build and sustain a 4th player. While there are obvious advantages to a large, foreign strategic investor (bringing deep pockets and operational expertise), there are signs that such an investment is unlikely. Without the benefit of a large telecom carrier as the primary owner, the 4th player is likely to have either large purely financial backers or a hybrid that combines a mix of minority partners (possibly financial and strategic). All of these outcomes should be seen as successful as long as there is sufficient capital to support a sustainable 4th carrier.

Spectrum

12. To successfully attract investment from any sources (whether Canadian or Non-Canadian), there has to be viable path to sustainable competition in the market. To build and sustain a competitive 4th carrier in the market, that carrier needs access to a range of spectrum options, including both low and high frequency spectrum, as well as blocks of sufficient bandwidth to support the transition to broadband LTE networks.
13. Consistent with the Government's recent decisions and consultations for the AWS, 700 MHz and 2500 MHz auctions, there is an on-going need to provide caps and/or set-asides to ensure that sufficient spectrum remains available – in every market – to sustain a long-term competitive alternative. This includes:
 - 700 MHz – The caps that ensure that a 4th player can purchase at least one paired block of prime spectrum is helpful, but a single block is not sufficient to produce a competitive stand-alone LTE network (which is sub-scale with a 5x5 MHz licence).
 - AWS – It remains critical to protect the set-aside spectrum in the AWS band. Again, 20 MHz should be the minimum requirement for a sustainable carrier, with 40 MHz providing room for additional capacity to support new, high-bandwidth devices and services.
 - PCS G/H-Blocks – This is the only segment of the PCS band that is not currently controlled by the incumbents, even though it was not part of the set-aside spectrum in the 2008 auction. So far, Public Mobile is the only Canadian spectrum holder to deploy this block. The spectrum transfer policy should not permit acquisition of unused licences as a blocking strategy to limit the ability of a competitive player from expanding geographically using this spectrum. Even more importantly, steps should be taken to licence the H-Block on the same time frame as the FCC in the United States (later this year or early 2014). However, given the need for larger spectrum blocks with the transition to LTE, the H-Block should similarly not be allocated or auctioned in a manner that it can be used as a blocking strategy against holders of the G-Block. Given that the only way to

obtain a 10x10 MHz licence including the H-Block is to combine it with the G-Block, this should be the Government's approach to allocation. Rather than auction it off, the H-Block should be licenced to the matching G-Block holder. (Without an effective auction mechanism, it should be licenced on the same terms as other PCS spectrum that was originally issued without an auction.) In conjunction with this decision, there should be rollout requirements for any holders of the G/H-Blocks, with existing holders who have not deployed the spectrum required to demonstrate a viable plan to deploy it before being granted any new licences.

- 2500 MHz – The current policy does ensure a minimum sized 10x10MHz block is available to a 4th carrier. The value of this band could be enhanced by imposing use it or lose it requirements on any incumbent holders to ensure the spectrum is being fully utilized.
- Future spectrum – Going forward, each new release of spectrum should be designed to continue to balance the spectrum advantage enjoyed by the incumbents. This is particularly important for any future releases of sub-1 GHz spectrum – spectrum critical to enabling competition for Canadians in smaller towns and rural areas.

14. The proposed framework to govern the transfer of spectrum licences is vital to the process of continuing to develop and enhance the competitive availability of spectrum. It ensures that there is a mechanism for the Department to review every proposal to transfer spectrum and to ensure – on an on-going basis – that spectrum is allocated in a manner that supports sustainable competition.

The Consultation Document

15. The Consultation Document highlights (at paragraph 10) that the incumbents hold over 85% of mobile wireless spectrum in Canada while the remaining 15% is fragmented among a number of disparate new entrant competitors and others. To permit the incumbents to further consolidate what little spectrum is available to support and sustain competitive entrants would be detrimental to competition. More importantly, at this critical point in the industry with considerations of consolidation among new entrants and leading up to the auctions for 700 MHz and 2500 MHz, there needs to be a clear signal that the Department – in reviewing proposed transfers and deemed transfers – will do so with an understanding of the need to continue to protect and enhance the limited spectrum available to new entrants. Without such a commitment, the ability of any new entrant to attract the necessary investment designed to bring competitive choices to Canadians will be impaired. Investors won't invest in a competitor that could get squeezed out of the market due to a lack of access to sufficient spectrum.
16. As such, the proposed changes to the Conditions of Licence and the procedures for reviewing the transfer of spectrum licences are both a welcome and necessary step towards achieving the Minister's stated objective of ensuring there are four sustainable competitors across all markets in Canada.
17. In the context described above, Public Mobile welcomes the Consultation Document and the changes in the framework related to licence transfers that must result from this consultation, as a very necessary tonic for an otherwise imperiled wireless industry.

18. The Department clearly states in paragraph 3 of the Consultation Document that its three policy objectives for this consultation regarding the Canadian wireless market are:
- Sustained competition in the wireless telecommunications services market so that consumers and businesses benefit from competitive pricing and choice in service offerings;
 - Robust investment and innovation by wireless telecommunications carriers so that Canadians benefit from world-class networks and the latest technologies; and
 - Availability of these benefits to Canadians across the country, including in rural areas, in a timely fashion.
19. Public Mobile believes these three policy objectives are interrelated, and the Department can -- and should -- encourage sustainable competition and rural deployment through policy statements and decisions that encourage robust investment in Canadian wireless carriers.
20. As noted above, at the heart of sustainable competition are two key requirements: access to spectrum and access to sufficient capital to effectively exploit that spectrum. A clearly defined licence transfer review process will strengthen both of these, by protecting spectrum set-aside for new entrants and reassuring potential investors that the Government will support the new entrant carriers' drive to bring lower prices and innovation to all Canadians.
21. Public Mobile was born out of the above-noted policy objectives, and we are the embodiment of feisty competition in the Canadian wireless market. Public Mobile was founded on the basis of putting the customer first. Public Mobile is extremely competitive on price and customer service, and we boast a seamless wireless network with 3G speeds on PCS G-Block spectrum. Our customers are often those that the large incumbent carriers have chosen not to serve or have neglected (including the almost 30% of Canadians who thought they could not afford a wireless device). Our customers include new immigrants, students and other Canadians who either cannot afford service from an incumbent, or who choose to not pay incumbent prices, but who still have the need to keep in touch with family, friends and work.
22. There is an unmistakable competitive rationale to implement a clear and strict regime on spectrum licence transfers.
23. Public Mobile will now address Industry Canada's specific questions in the Consultation Document.

6-1 The criteria and considerations set out above.

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.

24. Public Mobile believes that the Department has been quite thorough in setting out the criteria and considerations for reviews of spectrum licence transfer requests.

25. Public Mobile submits that the most important thresholds to conduct a detailed review should be the type and quantum of spectrum that is being transferred. The Department should consider that any spectrum that is considered “set-aside,” “capped,” or otherwise restricted should be automatically denied – whether the proposal is for an actual transfer or a deemed transfer – and not even subject to a review until such time as those restrictions have expired.
26. However, even after the expiration of any period during which spectrum is set-aside or subject to a specific cap, it is important that any transfer of spectrum which would exacerbate the spectrum imbalance in the market should be subject to a detailed review. This review should focus both on the amount of spectrum to be held by the acquiring carrier and the total amount of spectrum that remains in the relevant market to support a competitive 4th player.
27. In terms of a more quantitative review threshold, the longer-term objective (both through this review process and through the licencing of future spectrum) should be to bring competitive parity to the spectrum holdings of at least four competitors. Therefore, any entity that is acquiring spectrum in a region where it already holds more than 25% of currently available spectrum licences should be automatically subject to a detailed review. We believe that if the Department’s intention is to encourage a fourth wireless player in every region, Government policies should encourage the fair distribution of spectrum among four entities, at a minimum. Any entity that holds more than a quarter of the spectrum in any specific region should not be able to acquire additional spectrum via a transfer without a detailed review of that transfer in order to prevent wireless market reconsolidation and encourage sustainable competition.
28. Similarly, as long as the large incumbent carriers, collectively, continue to hold more than 75% of the available spectrum, any proposed transfer of spectrum from a non-incumbent spectrum holder to one of the incumbents should be subject to a detailed review. Again, the long-term objective is to ensure there is sufficient spectrum available to grow and sustain at least four competitors in each region.
29. Public Mobile believes that the thresholds that trigger a detailed review of a spectrum licence transfer should be clear, simple and non-negotiable. Basing this threshold on the whether a block of spectrum is, or has been, set-aside (or restricted in any way) or is going to a player with more than 25% of available spectrum licences in the region in question are straightforward and leave little room for interpretation.

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

30. The treatment of deemed spectrum licence transfers as actual transfers, divisions or subordinate licensing arrangements is essential to the policy objectives of the proposed rules. Without including deemed transfers as actual transfers, the Department would be allowing for a glaring loophole in its transfer rules.
31. Public Mobile submits that it would be a useful clarification to the definition of “deemed spectrum licence transfer” (at paragraph 14 of the Consultation Document) to specifically include the words “including an option or similar agreement” after the word “transfer” in the first line of the definition. However, it remains important to keep the overall definition broad enough to capture other types of transactions that may not yet have been contemplated, but would have the same effect.

32. It is essential for the Department to include “deemed spectrum licence transfers” as “actual transfers” for purposes of the framework. Otherwise, parties will seek to use loopholes to flaunt the Department’s policy and will lead to the lessening of competition in the wireless marketplace.
33. Further, Public Mobile fully supports the enforcement mechanism proposed by the Department, and which is described at paragraph 19 of the Consultation Document, such that “... where Industry Canada indicates that it would refuse the approval, a licensee would be in breach of its conditions of licence if it finalizes the agreement related deemed spectrum 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.

34. Public Mobile believes that it is in the public interest that any spectrum licence transfer request that requires a “detailed” review based on clear criteria, preferably triggered by the criteria set out in paragraphs 24-29 above, should be subject to third party review, consultation and input.
35. The Department describes in paragraph 15 of the Consultation Document that there may be transfers that occur that do not have material impacts in terms of telecommunications policy objectives. Public Mobile agrees that such transfers with no or immaterial impacts should not be subject to a detailed review or to a review with third party involvement. However, if a transaction, as described above, warrants a detailed review, then that review is of critical importance to other competitors in the market and to Canadian consumers whose choices might be affected.
36. Public Mobile submits that even if a transfer does not receive the scrutiny of a detailed review, the publication of *pro forma* information in respect of such transfer request (as mention in paragraph 18 of the Consultation Document) should be made by the Department, or by the transferring parties under the authority of the Department.

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

37. Public Mobile does not have any additional comments at this time regarding changes to the applicable conditions of licence related to licence transfer or to section 5.6 of CPC 2-1-23.

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

38. Public Mobile considers the timelines that the Department has put forward in section 7 of the Consultation Document to be reasonable.

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.

39. Public Mobile fully supports the proposed Condition of Licence set out in section 8 of the Consultation Document.
40. Referring to our comments above concerning the proposed review process, Public Mobile submits that it would be a useful and meaningful amendment to the language in the Consultation Document for the Condition of Licence language to specifically state that if a proposed transfer is *prima facie* off-side, in breach of, or has the appearance of being in contravention of any telecommunications policy or telecommunications policy objective in place at the relevant time, there would be a presumption that Industry Canada's preliminary assessment will be to deny the transfer or deemed transfer.
41. The Department must be cognizant of, and very concerned with, the timelines set out in DGSA-001-13 Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band, and the way in which they may relate to the adoption of Conditions of Licence as a result of this consultation.
42. In DGSA-001-13 the Department set 11 June 2013 as the application date for participation in the 700 MHz auction. Public Mobile reminds the Department that the decision on this Consultation (and presumably by implication, in the matter of the Roger/Shaw spectrum transaction) will directly impact market dynamics and certainty, and by extension the ability to raise the funds necessary to participate in the spectrum auction.
43. Even if the Department releases a final decision on the questions posed in the Consultation Document within 30 days of receipt of final reply comments (i.e., 30 days after 3 May 2013), there will be little time for anyone to assess the implications for the market and to secure support for the spectrum auction. This is particularly critical for smaller new entrants, such as Public Mobile, that cannot simply rely on a deep-pocketed parent company for financing and support. It would be much better, both to bring certainty to all auction participants and to ensure sufficient time for all parties to consider the implications of the new spectrum transfer rules, to delay the application date and ensure there is sufficient time for all parties to consider their options.
44. As with previous auctions, the simplest solution would be to have a single application deadline date when the full deposit is required; most logically this would be on 10 September 2013. This would provide all parties more time to prepare for the auction and still leave sufficient time for the Department to review applications and ensure all bidders are compliant.
45. Public Mobile thanks the Department for the opportunity to comment on these important matters, and welcomes any questions the Department may have.

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