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

Canada Gazette Notice No. DGSO-002-13

Reply of Quebecor Media Inc.,
on behalf of itself and Videotron G.P.

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I. INTRODUCTION AND OVERVIEW

1. Quebecor Media Inc. (Quebecor Media), on behalf of itself and its wholly-owned subsidiary Videotron G.P. (Videotron), is pleased to provide the following reply to the submissions of interested parties in response to *Consultation on Considerations Related to Transfers, Divisions and Subordinate Licensing of Spectrum Licences*, Canada Gazette Notice No. DGSO-002-13 (the Consultation Document).

2. In the Consultation Document, the Department expressed concern about the detrimental impact that a high concentration of ownership of spectrum licences could have on the market for the provision of wireless services. To alleviate this concern, the Department proposed to revise its existing Client Procedures Circular No. 2-1-23 entitled *Licensing Procedures for Spectrum Licences for Terrestrial Services* (CPC-2-1-23) in order to indicate the specific criteria considered and process used when spectrum licence transfer applications are reviewed. Among other things, the Department asked whether there is a threshold in the form of concentration or a measure of MHz-pop that it 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.

3. In our April 3, 2013 initial submission, Quebecor Media opposed as unnecessary the new procedures put forward by the Department. We argued that the most appropriate and the most effective time for the Department to evaluate the need for corrective measures to address the concentration of spectrum ownership is at the time of auction of new spectrum. Indeed, this is the approach the Department pursued with success for the 2008 Advanced Wireless Services (AWS) auction and is in the process of implementing for the upcoming 700 MHz and 2500 MHz auctions.

4. We further argued that auction-specific measures for addressing spectrum concentration (such as those established for the AWS, 700 MHz and 2500 MHz auctions), while both necessary and desirable, cannot be considered permanent. In a competitive environment as dynamic as that of the mobile wireless industry – characterized by evolving customer needs, shifting technology ecosystems and the ongoing availability of new spectrum resources – secondary markets must ultimately be allowed to function. Secondary market forces must be allowed to match spectrum resources with their best available use.

5. In their April 3, 2013 initial submissions, several interested parties to the current consultation have raised concerns similar to those of Quebecor Media. They have drawn particular attention to the unjust, retrospective nature of the Department's proposed changes as well as to the dramatic adverse impact these changes would have on the ability of new entrant wireless carriers to attract the necessary financing to build out their networks.

6. Other interested parties have chosen instead to put forward a variety of contradictory proposals for giving effect to a new spectrum transfer review process. Many of these proposals are quite simply contrived to achieve a specific business objective. All of these proposals suffer from a common failure to recognize the salutary role plaid by secondary markets in allocating spectrum resources.

7. In the remainder of this reply submission, we will the review the positions of parties both for and against the establishment of a new spectrum transfer review process. We will also address several operational aspects of spectrum reviews, as raised by the Department in the Consultation Document and by interested parties in their initial submissions.

II. REVIEW OF SPECTRUM LICENCE TRANSFER REQUESTS

a) Proponents of a New Review Process have Put Forward No Workable Trigger for Determining When a Review would be Required

8. One of the key questions posed in the Consultation Document is whether there exists a threshold in the form of concentration or a measure of MHz-pop that the Department should apply in deciding whether to conduct a detailed review.

9. Predictably, proposals were extremely varied in nature and generally reflected the specific business objectives and spectral position of the proposing party. SaskTel, for example, seeks a trigger that would effectively allow one provider to accumulate rural low frequency spectrum without limit.[1] TELUS, for its part, would prefer a trigger that advantages those operators with a large ratio of subscribers per MHz, a measure by which it currently holds a particularly strong position.[2] Meanwhile, Xplornet looks favourably on a single-band percentage trigger[3], whereas Eastlink insists that any trigger must cover all bands[4]. And so on.

10. In terms of share percentages, MTS Allstream would have a detailed review of any transfer that results in any one carrier holding more than 50% or any three carriers collectively holding more than 80% of usable mobile spectrum within a licence area.[5] This proposal would appear to be designed to accommodate at least some secondary market transfers involving incumbents. In contrast, Public Mobile would have a detailed review of any transfer that results in any one carrier holding more than 25% or any three carriers collectively holding

[1] SaskTel submission, paragraphs 9-18.
[2] TELUS submission, paragraph 27.
[3] Xplornet submission, paragraph 30.
[4] Eastlink submission, paragraph 11
[5] MTS Allstream submission, paragraphs 7-9.

more than 75% of currently available spectrum in a region[6], a proposal clearly designed to capture all transfers to incumbent carriers. TerreStar makes a similar proposal.[7]

11. Looking beyond the evident jockeying for position inherent in these threshold proposals, there lie several substantive issues that, in Quebecor Media's opinion, call attention to the ultimate futility of setting a predetermined trigger for initiating spectrum transfer reviews.

12. For example, no party has addressed in any meaningful way the complex issues of how to weight spectrum above and below 1 GHz, how to treat paired versus unpaired spectrum, how to deal with encumbered or partially encumbered spectrum, and when to recognize that a repurposed band is now "available" for mobile use.

13. Perhaps more significant are the irreconcilable positions taken with regard to joint network builds. TELUS, for example, in putting forward its proposals, portrays itself as spectrum poor and calls for a trigger that would, in effect, allow it to catch up to the leading spectrum holder in each region without Departmental review. Yet TELUS neglects to mention its joint build arrangements with Bell.[8] Rogers, in contrast, draws full attention to the Bell-TELUS arrangements, and in doing so brings forward its own need to catch up to its two largest competitors in network capacity and speed.[9]

14. Quebecor Media's point in raising this matter is not to ask which of these two irreconcilable positions is correct. Rather, our point is to ask whether it is at all necessary or appropriate to be discussing this matter now.

15. Let us recall that the Department has just released a licensing framework for the 700 MHz auction[10] that addresses the issue of associated entities and spectrum acquisition in a comprehensive manner. Let us recall as well that the Competition Bureau is fully equipped to consider the impact of joint builds on the competitive environment when reviewing any specific licence transfer. What purpose can possibly be served by the Department now developing a spectrum transfer review trigger that ties its hands in one direction or the other?

16. In short, Quebecor Media believes it is illusory to believe that an objective, pre-determined trigger can be set for the detailed review of spectrum transfers. Whatever trigger is set will almost certainly impede transactions that would otherwise contribute to competitive market dynamics.

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[6] Public Mobile submission, paragraphs 27-28.
[7] TerreStar submission, paragraph 15.
[8] TELUS submission, paragraph 23.
[9] Rogers submission, paragraph 35.
[10] See http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf10572.html.

b) Proponents of a New Review Process have Put Forward No Review Criteria Other Than Those Already Employed by the Competition Bureau

17. Beyond the issue of what the trigger might be for the Department to conduct a detailed review of a given spectrum transfer, there is also the issue of what criteria the Department might use to guide such review.

18. At paragraph 16 of the Consultation Document, the Department suggests three criteria, namely:

    (a) the efficiency and competitiveness of Canadian telecommunications market;

    (b) the availability, quality and affordability of services available to consumers; and/or

    (c) the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource.

19. Generally speaking, the parties who commented on these proposed criteria were of the view that they are too diffuse to be meaningful.

20. Rogers, for example, states that "if the Department does see fit to establish its own review process, it should consider including a competition impact test rather than simply referring to a number of factors that it will consider". Rogers goes on to suggest that "the Competition Bureau's test of whether a merger or acquisition prevents or lessens or is likely to prevent or lessen competition substantially is a well-understood test that is familiar to the industry and the courts".[11]

21. Xplornet makes a similar point when it states that "the lack of a proper test for when a transfer should be denied makes the proposed rules imprecise and open-ended. … As with the process under the MEGs [the Competition Bureau's Merger Enforcement Guidelines], spectrum transfers should only be denied when they are likely to result in a substantial lessening of competition in the relevant market."[12]

22. PIAC/CAC/COSCO, while expressing qualified support for the Department's proposed review criteria, and while calling for scepticism regarding arguments of market efficiency, also appear to view these criteria through the lens of the Competition Bureau's Merger Enforcement Guidelines.[13]

23. Shaw, for its part, refers to the Department's review criteria as broad and wide-ranging and suggests that "introducing these criteria would run the risk of

[11] Rogers submission, paragraph 33.
[12] Xplornet submission, paragraph 27.
[13] PIAC/CAC/COSCO submission, paragraphs 13-19.

unnecessarily confusing, rather than clarifying, Industry Canada's approach to transfers of spectrum licences"[14].

24. It is striking to note that no other party, including those parties most strongly in favour of an expansive review of spectrum transfers, have proposed any specific criteria for review other than those already employed by the Competition Bureau.

25. This leads one to question the utility of the proposed review exercise as a whole. If all the Department stands to achieve is to duplicate the Competition Bureau's existing review process, then what value has been added, other than uncertainty and delay?

c) Proponents of a New Review Process have Sought to Actively Inhibit the Effective Functioning of a Secondary Market for Spectrum Resources

26. At paragraph 56 of its initial submission, Shaw expresses its concern that the Department's proposed criteria for evaluating spectrum transfers do not expressly give any weight to the importance of facilitating a secondary market for spectrum licences.

27. This oversight is surprising. As several parties pointed out in their initial submissions, promotion of an efficient secondary market for spectrum resources has been a core element of the Department's spectrum policy framework, as well as a recognized international best practice, since at least 2007.[15] A quote from the 2007 report of Professor Martin Cave (University of Warwick, UK) to the Department, found at paragraph 23 of Bell's initial submission, bears repeating in this regard:

> *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.*
> (Emphasis added by Bell)

28. It must be emphasized that the carrier and consumer benefits that flow from an efficient secondary market for spectrum resources are far from theoretical. As Shaw has illustrated in considerable detail in its initial submission[16], and as Quebecor Media stated in our initial submission[17], the mobile wireless industry

[14] Shaw submission, paragraph 51.
[15] Quebecor Media submission, paragraph 20; Shaw submission, paragraphs 56-60; Bell submission, paragraphs 15-30.
[16] Shaw submission, paragraphs 18-28.
[17] Quebecor Media submission, paragraphs 17-21.

is incredibly dynamic. In such a context, mobile network operators must make difficult investment choices, and they differentiate themselves based on the effectiveness of these choices.

29. Shaw's decision to shift wireless strategy from a conventional cellular network to a WiFi network, after having invested considerable sums in the acquisition of spectrum licences and the initial deployment of a conventional network, must be taken for what it is: powerful evidence that plans can and do change, for entirely valid reasons. Secondary markets are a legitimate mechanism by which parties adjust to changing circumstances and priorities, and therefore their development should be encouraged, not inhibited.

30. Unfortunately, the Department's failure to give adequate weight to the importance of secondary markets in the Consultation Document has opened the door to parties to propose measures that would distort and ultimately block the efficient functioning of such markets.

31. For example, in its initial submission, Wind proposes a licence transfer framework whereby non-incumbents would have a right of first purchase of all spectrum proposed to be transferred.[18] Similarly, Eastlink simply asks that the set-aside period for AWS licences be extended from five to ten years.[19] Mobilicity takes an even more extreme tangent and argues that spectrum that has not yet been deployed should be ineligible for transfer and should be returned to the Department immediately without compensation.

32. What all of these proposals have in common is an attempt to gain commercial advantage by artificially restricting the secondary market for spectrum resources. By impeding the quick and efficient re-allocation of spectrum to those best placed to put it to good use, these proposals run counter to the interests of carriers and consumers. They also constitute an unacceptable rewriting of the rules under which AWS auction participants acquired their spectrum licences in 2008.

d) The Introduction of a New Review Process Amounts to an Unacceptable Rewriting of the Rules for Existing Spectrum Licensees

33. In its April 3, 2013 initial submission, Shaw takes pains to underline the importance of stable and predictable rules for spectrum licence transferability and divisibility, particularly in relation to auctioned licences. For example, at paragraph 34 of its submission, Shaw states:

> *Parties that have acquired spectrum licences with enhanced transferability and divisibility privileges have a reasonable and legitimate expectation that the licensing framework applicable to their spectrum licences will not be subject to erratic changes. These parties made a decision to invest hundreds of millions of dollars in spectrum which was*

[18] Wind submission, paragraph 6(b).
[19] Eastlink submission, paragraph 16.

predicated on a stable set of rules and a predictable regulatory framework.

34. Shaw's statements are supported by references to the Department's Spectrum Policy Framework, which "requires that the obligations and privileges of spectrum authorizations be clearly defined"[20], as well as CPC 2-1-23, which places emphasis on the enhanced transferability and divisibility rights specifically accorded to auctioned licences[21].

35. Rogers brings a similar perspective, stating that "historically, the Department has treated auctioned spectrum in a contractual manner. It has made the terms of that contract clear prior to the bidding process by publishing consultation papers, receiving comments and reply comments, and publishing the final auction framework, including conditions of licence".[22] Rogers then asserts that changing the enhanced transferability rights of AWS spectrum "involves changing the rights of bidders in that auction after the fact – a change that flies in the face of the principles of contractual certainty that the Department strives to attain in its spectrum auctions".[23]

36. Quebecor Media agrees fully with the arguments put forward by both Shaw and Rogers. Our subsidiary Videotron was the largest new entrant participant in the 2008 AWS auction, investing a total of $555 million to acquire 17 licences covering the entirety of the province of Quebec and parts of Eastern and Southern Ontario. Since then, we have invested an even larger amount deploying an advanced 4G wireless network across the majority of these territories – a network which now encompasses more than 1200 cell sites and covers more than 7 million pops.[24] As a result, we have an extremely large stake in ensuring that our conditions of licence are stable and predictable, and that the secondary market opportunities made available to us in these conditions of licence are not degraded.

37. Modifications to conditions of licence which block or otherwise degrade secondary market opportunities have a direct impact on the market value of spectrum licences. and hence on the ability of licence holders to finance their operations. To rewrite the rules under which licences were acquired at auction is simply unacceptable.

e) The Introduction of a New Review Process would have a Dramatic Effect on the Ability of New Entrants to Attract Financing

38. Once again, we must emphasize that the negative financial impact that would flow from the introduction of a new spectrum transfer review process is far from theoretical.

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[20] Shaw submission, paragraph 58.
[21] Shaw submission, paragraph 33.
[22] Rogers submission, paragraph 18.
[23] Rogers submission, paragraph 29.
[24] As stated at paragraph 11 of our initial submission, total wireless capital investments to date by Videotron, including licence acquisition costs, exceed $1.3 billion.

39. Mobilicity, for example, at paragraph 7 of its initial submission, makes the following statement:

> *An asset is simply not valuable unless it has liquidity – ie can be bought and sold as easily as possible to the widest market possible. Investors need to know liquidity is possible, whether or not it is actually utilized.*

40. Mobilicity then goes on to argue that:

> *… the very announcement of this consultation with respect to licence transferability a few weeks ago has already further impinged access to capital for new entrants. Ironically, this announcement has created a level of uncertainty and confusion in the minds of investors as to the liquidity of spectrum assets which in particular affects new entrants far more than incumbents and further hampers their ability to create a competitive marketplace – the very thing the Department has suggested it wants to enhance.*[25]

41. In a similar vein, Wind, at paragraph 19 of its initial submission, asserts that the Department's proposal would eliminate a potential way for a new entrant to recoup its investment and thereby:

> *(a) cause less investment by new entrants as the return on further investment would be unclear and/or insufficient to justify the investment;*
>
> *(b) lower the availability of funding for further expansion by new entrants due to the absence of clarity about return on investment by new entrants (and thus causing less investment as in first point); and*
>
> *(c) cause higher costs of financing to obtain funding given the risk associated with the absence of clarity (thereby diminishing the returns available for new entrants, and probably causing less investment as in first point).*
>
> (emphasis in original)

42. Incumbent players, including Rogers[26] and Bell[27], also point to the real world impacts of the Department's spectrum transfer review proposal on new entrants, including the devaluation of AWS spectrum and increased investor uncertainty.

43. Simply put, the new entrants cannot fully compete against the three established incumbents unless all of their assets are recognized at their full value by the financial markets. And it goes without saying that maximisation of the value of spectrum assets requires a robust and viable secondary market, where

[25] Mobilicity submission, paragraph 8.
[26] Rogers submission, paragraph 30(i).
[27] Bell submission, paragraph 4.

potential buyers can have confidence that the rules initially established by the Department are being respected.

f) The Time for a Reasoned Assessment of Spectrum Concentration is at the Time of Auction of New Spectrum

44. In light of all of the above, Quebecor Media reiterates our strong belief that the Department must refocus its wireless policy prescriptions on the framework for the auction of new spectrum and on the overall competitive environment within which new entrant wireless carriers operate, not on introducing new and counter-productive restrictions on licence transfers.

45. As we stated in our April 3, 2013 initial submission, the most appropriate and the most effective time for the Department to evaluate the need for corrective measures to address the concentration of spectrum ownership is at the time of auction of new spectrum. Indeed, this is the approach the Department pursued with success for the 2008 AWS auction and is in the process of implementing for the upcoming 700 MHz and 2500 MHz auctions.

46. In all three cases, the Department has chosen to adopt specific measures (intra-band set-asides or caps) at a specific moment in time based on its detailed assessment of market conditions at that time. This approach makes sense, and the Department has shown considerable skill is performing the required market assessments.

47. Several parties to the current consultation have expressed similar views in this regard. Shaw, for example, has stated that:

> *To the extent market conditions or concentrations of spectrum holdings require the Department to take action to ensure equitable access to spectrum, the appropriate time to address these issues is **in advance** of a spectrum auction or competitive licensing process, not after the fact. This has been a key feature of Industry Canada's approach to spectrum licensing for years.* (emphasis in original)[28]

48. In fact, both Shaw[29] and Bell[30] have pointed out that the Department's 2004 decision to rescind the mobile spectrum cap was predicated on the clear recognition that the appropriate time for ensuring a fair distribution of spectrum resources is at the time of licensing of new spectrum.

49. Public Mobile has also written that "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."[31]

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[28] Shaw submission, paragraph 35.
[29] Shaw submission, paragraphs 37 and 65.
[30] Bell submission, paragraph 35.
[31] Public Mobile submission, paragraph 13, final bullet.

50. We note that within approximately the next eighteen months, the Department will be proceeding with the auction of 68 MHz of new mobile spectrum in the 700 MHz band and 60-120 MHz of new mobile spectrum in the 2500 MHz band. In both cases, a tailored spectrum cap arrangement has been adopted in order to ensure that a minimum of four carriers will hold prime spectrum in each region of Canada.

51. In its recent *Commercial Mobile Spectrum Outlook*[32], the Department has further announced that it expects to follow up the above two auctions with the allocation of an anticipated 300-415 MHz of additional mobile spectrum by 2017. Of particular interest is the low frequency 600 MHz band, which the United States will soon be partially reallocating by way of an incentive auction process, and which holds great potential as a mobile expansion band in Canada as well.

52. Quebecor Media has every confidence that the Department will continue its tradition of performing comprehensive market assessments prior to each new spectrum allocation and will adopt whatever targeted, auction-specific measures are required to ensure that each allocation best serves the Department's competition policy objectives.

53. Given this context, we strongly urge the Department to reject its proposal for a new spectrum transfer review process, and to focus instead on ensuring that the secondary market for spectrum resources functions efficiently, to the benefit of Canadian carriers and consumers.

III. DEEMED SPECTRUM LICENCE TRANSFERS: A CONCEPT THAT NEEDS TO BE BETTER DEFINED

54. Rogers, in its initial submission, took issue with the manner by which the Department defined the concept of "deemed spectrum licence transfers" at paragraph 14 of the Consultation Document.

55. Specifically, at paragraph 42 of its initial submission, Rogers states that it is "concerned about use of the words 'intent' and 'effect' in the proposed definition. They are unnecessary and make the definition subjective and vague. Either an agreement transfers, divides or creates an interest in a licence in that it provides for the acquisition or control of a licence through a change in the ownership and control of a licensee - or it does not."

56. Quebecor Media shares these concerns. The definition of the concept of deemed spectrum licence transfers, particularly in its English version, opens the door to subjectivity, while also being fairly obtuse.

[32] http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09444.html.

57. The solution Rogers proposes to the Department is to modify the definition of deemed spectrum licence transfer to read as follows:

> *"deemed spectrum licence transfer" means any agreement that results in the ownership or control of a spectrum licence through a change in ownership and control of a licensee; or otherwise results in a person other than the licensee controlling use of the spectrum.*[33]

58. Quebecor Media supports this modified definition, which has the merit of clarifying and rendering less subjective the concept of a deemed spectrum licence transfer, while also specifying in a more concrete manner the consequences that flow from an agreement between two parties to transfer ownership or control of a spectrum licence. We recommend it be adopted by the Department.

59. At paragraph 46 of its initial submission, Rogers also criticizes paragraph 19 of the Consultation Document, wherein the Department proposes to i) require licensees to notify it prior to finalizing a deemed spectrum licence transfer, and ii) where the Department indicates it would refuse approval, treat any licensee who finalizes such a transfer as being in breach of its conditions of licence.

60. Rogers call into question the need to put into place specific rules relating to deemed spectrum licence transfers, as the Department has already proposed, at the beginning of the same paragraph 19, to treat such transfers as constituting actual licence transfers.

61. We share Rogers' opinion when it states that "once it is determined to treat them as actual transfers, the Department needs only to have a set of rules for treatment of actual transfers".[34] Indeed, in such a context, to put in place a set of specific rules to cover deemed spectrum licence transfers seems to us to be an unnecessary and superfluous duplication of rules.

IV. PROSPECTIVE TRANSFERS: PRELIMINARY ASSESSMENTS, BUT AT THE DISCRETION OF THE PARTIES

62. In Quebecor Media's initial submission, we expressed the view that there is no need for a new condition of licence related to prospective licence transfers. We recall that this new condition of licence would have the effect of requiring parties to notify the Department, prior to entering into a binding agreement, of any transaction involving the propsective transfer of a licence, so that the Department may provide a preliminary yet non binding assessment of the transaction.

[33] Rogers submission, paragraph 43.
[34] Rogers submission, paragraph 46.

63. We note that several other interested parties addressed the issue of prospective transfers in their submissions and indicated their disagreement with the Department's proposal.[35]

64. Shaw, as an example, identified in its initial submission two problematic aspects to this proposal:

> *83. One problem with a mandatory preliminary assessment is that it could be misleading and therefore unduly prejudicial to the transaction. This is because of its preliminary nature and the fact that the review could take place well in advance of the proposed transfer date. Circumstances could change significantly in the interim period given the dynamic nature of the wireless market and the fact that the Department could be making additional spectrum available for licensing.*
>
> *84. A mandatory preliminary assessment could also add significant and unnecessary delays to the overall review process. This is because Industry Canada proposes in the Consultation Document to use the same timelines for preliminary assessments as it would for licence transfer reviews. This could mean that parties to a prospective transaction would have to wait up to four months to obtain a preliminary assessment prior to signing an agreement, and then wait an additional four months for a review of the transaction prior to closing. Four months is a long time in the context of transaction negotiations, where parties need to manage a myriad number of variables that change on a daily basis, including deal and operational financing, prospective acquisitions, dispositions and other strategic initiatives, and senior management and employee retention matters. In the context of the wireless industry, these variables are extremely difficult to manage given constant changes in technology and consumer needs.*[36]

65. Quebecor Media agrees fully with Shaw's views, and has serious doubts about the usefulness of a mandatory preliminary review process, as well as concerns about the negative impact that the imposition of such a process would have on the effective functioning of the secondary market for spectrum authorizations.

66. It is for this reason that we believe (as do many other interested parties[37]) that it would be preferable for the Department to leave to the parties involved in a transaction to transfer or split a spectrum licence the choice of whether or not to submit the transaction to a preliminary review process.

[35] Rogers submission, paragraphs 57-64; TELUS submission, paragraphs 42-47; Xplornet submission, paragraphs 51-54; Shaw submission, paragraphs 81-86.
[36] Shaw submission, paragraphs 83-84.
[37] See footnote 35.

V. TIMELINES: SIXTEEN WEEKS TO COMPLETE A DETAILED REVIEW IS FAR TOO LONG

67. In the Consultation Document, the Department proposes that requests to transfer spectrum licences be processed within the following timelines : i) four weeks from receipt, for requests that do not require a detailed review, and ii) sixteen weeks from receipt of all required information, for requests that require a detailed review.[38]

68. Given our overall opposition to the new review procedure proposed by the Department, Quebecor Media limited itself in its initial submission to recommending that the timeline for a detailed review should begin instead at the moment the Department is informed of a pending transaction (experience having taught us that the time required by the Department to request all of the information it considers pertinent can be unduly long).

69. Quebecor Media maintains this recommendation. At the same time, we take note of the fact that numerous interested parties to the current consultation who addressed the matter of processing timelines in their initial submissions also expressed concerns about the duration of these timelines.

70. Rogers, for example, requests that the Department shorten its processing timelines for the following reasons:

> (…) *One of the drawbacks of the proposed new regime is the potential for delaying transactions between carriers that are trying to make new investments in infrastructure to respond to consumer demand or the need to upgrade networks to accommodate new technology. Prolonged regulatory processes such as the one proposed have to impede the ability of carriers to respond dynamically to market conditions and to meet customer expectations.*[39]

71. Xplornet[40] and TELUS[41] are of the view that the Department should align its proposed processing timelines with those put in place by the Competition Bureau regarding corporate mergers, most notably as a way to encourage an efficient market for commercial transactions. What are these timelines? Fourteen days in the case of non-complex mergers and 45 days in the case of complex mergers.[42]

72. In light of the example set by the Competition Bureau, Quebecor Media has difficulty understanding what could justify a processing timeline of sixteen weeks (or more) in the context of a detailed review of a spectrum licence

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[38] Consultation document, page 6.
[39] Rogers submission, paragraph 54.
[40] Xplornet submission, paragraph 49.
[41] TELUS submission, paragraph 39.
[42] Competition Bureau Fee and Service Standards Handbook for Written Opinions, page 10 (http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-fees-service-handbook-written-opinions-2013-e.pdf/$file/cb-fees-service-handbook-written-opinions-2013-e.pdf).

transfer request. Such an unduly long delay cannot but increase uncertainty for the industry players involved, as well as impede the effective operation of secondary markets for spectrum authorizations.

73. It is for this reason that we are in full agreement with Shaw when it states, at paragraph 79 of its initial submission, that "in order to encourage certainty and timeliness for buyers and sellers in the secondary market, any timelines adopted by the Department in relation to licence transfer reviews should be streamlined as much as possible. In Shaw's view, the four-month review period should be shorter, and in any event no longer than the Competition Bureau's timelines."

IV. CONCLUSION

74. Quebecor Media remains opposed to the new spectrum transfer review process put forward by the Department. In our view, the proposed process is unnecessary and would in fact be counter-productive.

75. Proponents of the new process have failed to put forward any workable trigger for determining when a detailed review would be required or any workable criteria for conducting a review, other than those criteria already employed by the Competition Bureau. Instead, specific proposals have generally been motivated by a desire to gain commercial advantage by artificially restricting the secondary market for spectrum resources in Canada.

76. To rewrite the rules under which licences were acquired at auction is unacceptable. Simply put, the new entrants cannot fully compete against the three established incumbents unless all of their assets are recognized at their full value by the financial markets. And it goes without saying that maximisation of the value of spectrum assets requires a robust and viable secondary market, where potential buyers can have confidence that the rules initially established by the Department are being respected.

77. The Department's proposed review process also suffers from: a subjective and vague definition of "deemed spectrum licence transfers"; a preliminary review process for prospective licence transfers that, if retained, should be at the discretion of licence holders; and review timelines that are unduly long, particularly when compared to those of the Competition Bureau.

78. We reiterate our strongly held view that the most appropriate and effective time for the Department to evaluate the need for corrective measures to address the concentration of spectrum ownership is at the time of auction of new spectrum. We have every confidence that the Department will continue its tradition of performing comprehensive market assessments prior to each new spectrum allocation and will adopt whatever targeted, auction-specific measures are required to ensure that each allocation best serves the Department's competition policy objectives.

79. Given this context, we urge the Department to reject its proposal for a new spectrum transfer review process, and to focus instead on ensuring that the secondary market for spectrum resources functions efficiently, to the benefit of Canadian carriers and consumers.

All of which is respectfully submitted.