



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

Canada Gazette Notice No. DGSO-002-13

**Submission 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 submission 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 expresses 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 proposes 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 asks 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. Quebecor Media opposes as unnecessary the new procedures put forward by the Department.
4. In our view, 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.
5. 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. Licence transfer moratoriums of limited duration are then used to allow the anticipated market dynamics a reasonable opportunity to play out.
6. This approach makes sense, and the Department has shown considerable skill in performing the required market assessments. These assessments, however, 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.

7. Quebecor Media is concerned that the Department's proposal, if adopted, will result in a spectrum transfer review procedure that is complex, discretionary and opaque. Such a procedure will put a chill on the secondary market for spectrum resources in Canada, to the disadvantage of Canadian carriers and consumers. Instead, we call upon the Department to continue to exercise its policy discretion in a clear, focused and proactive manner at the time of auction of new spectrum resources.
8. In the remainder of this submission, we will elaborate upon these perspectives.

II. REVIEW OF SPECTRUM LICENCE TRANSFER REQUESTS

a) The Department's Policy Objectives are Well Served by Existing Measures

9. At section 3 of the Consultation Document, the Department provides an overview of its competitive market strategy for the Canadian wireless sector, culminating in the three policy objectives which formed the foundation for its 700 MHz and 2500 MHz auction policy framework, namely:
 - 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 those in rural areas, in a timely fashion.
10. We believe the Department has made substantial progress since 2008 in achieving these objectives. For example, by the end of 2012, new entrant carriers were estimated to be on target to reach 1.73 million subscribers, for a total Canadian market share of approximately 6.3%.¹ In the process, they have undercut incumbent voice pricing by 23-37% and incumbent data pricing by 33-35%, on average, depending on the usage basket.²
11. No wireless new entrant has acted with greater force and consistency in the attainment of these policy objectives than has Videotron. Total capital investment to date by Videotron, including licence acquisition costs, exceeds \$1.3 billion. More than 1200 cell sites have already been deployed throughout Quebec and Eastern Ontario, extending Videotron's wireless network coverage

¹ *Canadian Wireless: Assessing the Impact of New Entrants*, Convergence Consulting Group, September 2012, Commentary

(<http://www.convergenceonline.com/downloads/CanWirelessSept2012.pdf>).

² *Communications Monitoring Report*, Canadian Radio-Television and Telecommunications Commission (CRTC), September 2012, tables 5.5.9 and 5.5.10

(<http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2012/cmr.htm>).

to numerous secondary and tertiary population centres that incumbent networks sometimes took decades to reach.

12. Other wireless new entrants have also been persistent in the pursuit of their business objectives. Wind Mobile, for example, recently announced that it had approached the 600,000 customer plateau, little more than three years after service launch.³
13. There is certainly much more to be done, and no one should underestimate the capacity of the incumbent wireless carriers to extend their dominance. But the direction of change has been positive, and Canadian consumers are reaping the benefits.
14. By far and away, the most important contributor to the Government's policy success to date has been its decision to implement active pro-competitive measures at the time of auction of new spectrum resources.
15. Some of these measures have been in the nature of pro-competitive framework policies, such as policies to impose licence conditions mandating inter-carrier domestic roaming and antenna site/tower sharing under commercial terms, with recourse to independent arbitration in the case of an impasse. These policies have contributed somewhat to a levelling of the playing field between new entrant and incumbent carriers, although the Department will need to remain vigilant to ensure that incumbent carriers respect both the letter and the spirit of their obligations.
16. The greatest impact, however, has come from the Department's decision to impose direct in-band spectrum set-asides and/or caps at the time of auction. Simply put, without the 2008 AWS set-aside, Videotron would not be in the wireless business today. And without the 2013 700 MHz cap structure, Videotron would not have any meaningful opportunity to acquire the low frequency spectrum resources it seeks to extend its network reach and depth.

b) Secondary Markets have a Legitimate Role to Play in Allocating Spectrum Resources

17. However much Quebecor Media appreciates and supports the decisions the Department has taken to date regarding auction-specific set-asides and spectrum caps, we also recognize that the market assessments on which these decisions were based cannot be considered permanent.
18. The mobile wireless industry is incredibly dynamic. New consumer devices and consumption trends emerge very quickly (think of the mobile tablet sector). New equipment types are developed to help operators manage the stresses on their networks (think of WiFi offloading and femtocells). And technologies that were once cutting edge quickly become out-of-date or even an encumbrance.

³ <http://www.marketnews.ca/LatestNewsHeadlines/WINDMobileReportsStrongQ42012Results.html>

19. In such a context, mobile network operators must make difficult investment choices, and they differentiate themselves based on the effectiveness of these choices. One operator may be committed to a specific equipment ecosystem. Another may be motivated by spectral contiguity. Another may want to hedge its bets. Spectrum transfers are a part of this calculus.
20. Quebecor Media firmly believes that secondary markets have a legitimate role to play in allocating spectrum resources and thereby enabling network operators to pursue their evolving business and technology strategies. Support for this position can be found in the Department's own *Spectrum Policy Framework for Canada*, which espouses both "the removal of barriers to secondary markets for spectrum authorizations" and "facilitating secondary markets for spectrum authorizations".⁴
21. In our view, a distinction must be made between a pro-competitive policy that seeks to equitably distribute new spectrum resources based on a comprehensive market assessment at the time of auction, and an ongoing spectrum transfer review policy that risks impeding the future reallocation of spectrum resources to their most efficient uses. The first policy has proven its worth. The second policy stands to do more harm than good.

c) The Department's Proposal, if Adopted, would Result in a Procedure that is Complex, Discretionary and Opaque

22. Pro-competitive policy measures that seek to equitably distribute new spectrum resources at the time of auction, including in-band set-asides and/or spectrum caps, have the merits of being transparent, certain and efficient.
23. Such measures are transparent in that they are always preceded by an open public consultation in which all interested parties have the full opportunity to make their views known and to assemble whatever evidence they consider to be relevant.
24. Such measures are certain in that they apply unambiguously to a specific spectrum band and a specific auction process, and remain in place only for a specified length of time post-auction.
25. Such measures are efficient in that they are always based on the latest and most comprehensive analysis of market conditions, technology trends and spectrum requirements of different carrier classes. Furthermore, they are relatively infrequent, occurring only at discrete times when new spectrum resources are being allocated.
26. In contrast, an ongoing spectrum transfer review process of the sort proposed by the Department is certain to quickly devolve into a process that is complex, discretionary and opaque.

⁴ <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08776.html>, Section 4.4 – Discussion and Enabling Guidelines.

27. Complexity will come from the need to devise a screen or other mechanism that accommodates all of the variations among spectrum bands and is capable of being amended as new technologies are developed or bands are put to new uses. To get a sense of the potential complexity, one need only refer to ongoing debate in the United States on this same subject.⁵ Among the issues being considered south of the border are: 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.
28. With all of this complexity will inevitably come discretion, which risks creating an environment of uncertainty for mobile operators and their investors. Generally speaking, a mobile operator will be unable to know in advance whether a given spectrum transfer will be approved or not.
29. Furthermore, because each decision will be transaction specific, it will be more reliant on confidential information provided by one or the other transacting parties. This means that competitors, as well as the general public, will have less insight into the factors that motivated the decision.
30. Quebecor Media submits that the Department should be extremely wary of introducing a new spectrum transfer review process that risks placing a chill on the secondary market for spectrum resources in Canada. An open and efficient secondary market is important for ensuring that spectrum resources are allocated to their best available uses, which increases carrier cost effectiveness and ultimately benefits Canadian wireless consumers.

d) A Focus on Existing Spectrum Holdings is Particularly Dubious in a Context of New Spectrum Releases

31. 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.
32. In its recent *Commercial Mobile Spectrum Outlook*⁶, the Department has 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.

⁵ *In the Matter of Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, WT Docket No.12-269, FCC 12-119 , Sept. 28, 2012 (http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-119A1.pdf).

⁶ <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09444.html>

33. 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. This is the Department's most effective policy lever.
34. However, in this context of substantial ongoing spectrum releases, we have serious doubts as to whether it is at all relevant for the Department to perform a detailed case-by-case analysis of existing spectrum holdings whenever two parties wish to engage in a secondary market spectrum transaction.
35. We do not deny that outright purchases of competitors as going concerns could potentially raise competition policy issues, however such transactions are already amply addressed by existing review mechanisms, most notably those of the Competition Bureau. Secondary market transactions, particularly those involving no going concern considerations, should carry the presumption that they are in the overall interest of the industry and of consumers.

III. TIMELINES

36. Given our overall opposition to the new review procedure proposed by the Department, Quebecor Media has little comment to offer on the timeframes under which review would occur.
37. This being said, we do note that the sixteen week timeframe for completing a full review commences at the time of receipt of all requested information.⁷
38. Unfortunately, experience with the Department's review procedures for matters such as the validation of a licensee's Canadian ownership and control reveals that the time required for the Department to request all of the information it considers to be pertinent can be unduly long.
39. In light of this fact, to the extent any new timelines are required, we recommend they be based on a set number of weeks from the moment the Department is informed of a pending transaction.

IV. PROSPECTIVE TRANSFERS

40. Consistent with Quebecor Media's view that the new spectrum transfer review procedures proposed by the Department are not required, we are also of the view that there is no need for a new condition of licence related to prospective spectrum transfers.

⁷ Consultation Document, paragraph 23.

All of which is respectfully submitted.