

SaskTel Comments:

Gazette Notice DGSO-002-13

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

April 3, 2013

EXECUTIVE SUMMARY

1. The following represents a summary of SaskTel's Comments in response to DGSO-002-13, *Consultation on Considerations Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences*.
2. SaskTel continues to urge Industry Canada to consider the spectrum needs of rural areas when examining spectrum transfers. With the recent decision of mandatory roaming carriage requirements rest with the few, and in most cases, the sole facilities-based carrier in rural areas upon which all cellular providers ride.
3. The creation of rules with the underlying principle that multiple companies should in all instances have access to spectrum does not consider the needs of rural areas. Rural areas have competition in services through roaming agreements; they seldom can support multiple service providers. SaskTel strongly suggests that Industry Canada create spectrum rules which recognize the difference between urban and rural markets in meeting Canada's competition objectives.
4. SaskTel's position on the issues raised in the consultation is:
 - Unused spectrum licences should be returned to Industry Canada so that they can be assigned, presumably through an auction, to parties that are willing to deploy in these areas. This includes the sub-division of current spectrum licences into used and unused portions so that the unused sub-divided portions of the spectrum can be returned to Industry Canada;
 - Full reviews of various transfers should be restricted to those which impact the national marketplace. SaskTel suggests transfers in areas of less than 500,000 be exempted from formal reviews;
 - The use of a universal MHz-pop measurement or some such screen cannot be fairly and uniformly applied to spectrum licence transfer requests in both rural and urban service areas given the basic differential in market mechanisms; and

- Finally, SaskTel believes that the transfer of different types of spectrum (such as those bands under 1 GHz) should be treated differently than other, higher frequency spectrum in order to recognize the importance of these bands in serving rural Canada.
5. SaskTel believes that as the result of many of the broad blanket rules developed by Industry Canada there is a growing portion of unused spectrum in rural areas. This would seem contrary to the Department's stated goals of promoting broadband access to rural customers. It is our belief that rules regarding transfers or subordinate licensing of spectrum should also consider rural impacts.
 6. Overall the transfer and subordinate licensing rules adopted by Industry Canada must account for the unique variances in markets across Canada. The drive for a competitive marketplace will take various forms in various areas. We urge Industry Canada to approach this issue with the flexibility it requires.

INTRODUCTION

7. The following represent Saskatchewan Telecommunications' (SaskTel's) Comments in response to DGSO-002-13, *Consultation on Considerations Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences*.
8. The section numbering of the remainder of this document corresponds to the numbering of the consultation paper released by the Department. Failure to address any particular issue or item, or the Comments made by any other party, should not be construed as agreement with those Comments where such agreement is not in the interests of SaskTel.

SASKTEL RESPONSE TO THE CONSULTATION

6. Review of Spectrum Licence Transfer Requests

Industry Canada is seeking comments on:

6-1 The criteria and considerations set out above.

9. In general, SaskTel agrees with the criteria and considerations as set out in the consultation. SaskTel notes Industry Canada's objectives of maintaining a competitive market while at the same time ensuring that all Canadians benefit from the use of the spectrum. SaskTel would like to take the opportunity however, to provide comments on some of the criteria and considerations.
10. The Department is proposing in the consultation to assess the need for a detailed review of a spectrum transfer based on the amount of spectrum involved and/or changes in the level of spectrum concentration and distribution. SaskTel believes that these may be valid criteria when looking at transfers which may impact the overall national market. We also foresee that there will be more transfers with more administrative or operational goals to meet local circumstances. With that in mind, SaskTel would suggest that a threshold pertaining to the total population involved in the spectrum licence transfer be additional criteria to determine the need for a detailed review. In the interests of reducing administrative workloads, SaskTel suggests that there would not be a need for a detailed review for spectrum licence

transfers involving a small population base, for example for transfers involving populations less than 500,000. SaskTel anticipates that there will be more and more spectrum transfers in the future as the amount of available spectrum becomes scarcer, and a minimum population limit on detailed reviews would avoid processing backlogs and delays.

11. In addition when looking at the spectrum holdings of a given company, there should be a distinction between the type and purpose of spectrum holdings. It is well established that the propagation characteristics of spectrum below 1 GHz is much better suited for rural deployments and offers improved building penetration compared to higher frequency spectrum. Because spectrum below 1 GHz is not comparable to spectrum above 1 GHz, it is particularly important that the Department consider spectrum holdings below and above 1 GHz separately when reviewing spectrum holdings and approval of licence transfers. For example, an operator deploying in rural areas should not be restricted from acquiring additional spectrum below 1 GHz that is critical for rural deployments based entirely on the amount of their spectrum holdings above 1 GHz. The choice of spectrum bands for operators in urban areas is not nearly as critical as it is in rural areas, with huge infrastructure cost savings for rural deployments using spectrum below 1 GHz versus above 1 GHz.
12. Each detailed review of proposed spectrum licence transfers must consider the unique characteristics of the market and service areas involved. For rural areas, consideration must be given to geographical challenges, population density and the number of facilities-based carriers that have actually deployed infrastructure in the rural area. Due to the higher costs, lower population densities and therefore, the marginality of the business case for network deployments in many rural areas of Canada, there is no incentive for network operators to expand network facilities into rural areas. In many rural areas of Canada, there is only one service provider that has actually deployed network infrastructure, and this situation needs to be considered by the Department when reviewing spectrum licence transfers.
13. In light of the recent decision by the Department to extend mandatory roaming to all service providers, the incentives for any operator to deploy network infrastructure in any rural areas serviced by a competitor's network have effectively disappeared. No

operator will extend their network into any rural area if they are allowed to benefit from mandatory roaming in the rural area.

14. Unfortunately this places a heavy burden on the network operator that has deployed facilities in rural areas. In the majority of Saskatchewan, SaskTel is the only wireless service provider with network infrastructure and under the new mandatory roaming rules, we are now obligated to provide capacity for not only SaskTel customers but also for the traffic generated by roaming customers from every other wireless service provider.
15. In these situations, the sole network infrastructure provider must be allowed access to sufficient spectrum to meet the capacity demands created by all of the wireless customers being supported by the network. The quality of service and consumer experience for rural populations could be severely impacted if the sole network provider is restricted in access to suitable spectrum as well as having mandatory roaming imposed upon them. Any restrictions on spectrum for the sole network operator imposed to encourage national competition become meaningless if the licensee is also the sole facilities-based provider in the service area. In most of the areas where SaskTel is providing wireless service, it is not realistic to believe any other facilities-based carrier will ever deploy their own infrastructure under the current policies of the Department. SaskTel recommends that the Department consider the number of wireless service providers with actual network deployments in rural areas when conducting detailed licence transfer reviews.
16. Industry Canada's current policies on spectrum caps, mandatory roaming and now potentially limits on spectrum licence transfers, are clearly intended to promote competition in urban areas of Canada. Unfortunately these policies have the unintended consequence of allowing multiple service providers to acquire and keep spectrum in rural areas without any strong measures in place to ensure the spectrum is used, or easily made available to the sole service provider that has deployed network in rural areas. SaskTel recommends that, as a minimum, wireless service providers who are taking advantage of mandatory roaming to avoid deployment of infrastructure in rural areas be obligated to provide their unused spectrum resources,

at reasonable rates, to the service provider that has been obligated to carry their roaming traffic.

17. It is not realistic to place spectrum acquisition restrictions on operators, particularly in rural areas, who are the sole network facilities-based provider in a rural area and at the same time impose obligations on these sole network providers to carry the traffic of all other wireless service providers and competitors. The mandatory roaming obligations could place a large burden on network capacity, and in these cases spectrum acquisition restrictions on the operator will unfairly result in decreased levels of service for rural populations compared to their urban counterparts. This is contrary to the goals of the Department in promoting and improving service to rural Canadians.
18. There are also many cases where spectrum has been allowed to remain fallow, even in urban areas. SaskTel recommends to the Department that a criteria be established where a spectrum licensee is not allowed to acquire additional spectrum in any given band where they are actively using less than 50% of their existing spectrum licence holdings in that same band. This will avoid service operators warehousing or hoarding spectrum.

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.

19. It is extremely difficult to apply any sort of measure of MHz-pop or concentration threshold that will apply in most situations. Each market or service area is different, with many unique factors such as the number and identity of licence holders, the market share and amount of deployed infrastructure (or lack of) for each licensee in each area, as well as the state of the wireless market in that service area. The Federal Communications Commission (FCC) has attempted to apply MHz-pop screens to evaluate the amount of market concentration in a number of cases, but the FCC has found out that it is very difficult to apply a MHz-pop screen in all cases, and the result has been complaints that these MHz-pop screens have been unfairly and not uniformly applied in different situations.
20. SaskTel recognizes that any measure applied must be both transparent to the public and be flexible enough to cover all potential markets and areas impacted by proposed

spectrum licence transfers. This includes both large areas covering multiple service areas to small service areas, and in particular, covering not only urban areas with multiple facilities-based service providers but also rural areas where there is only a sole network service provider that has invested the large amounts of capital to deploy network in rural areas with sparse population density. The threshold measurement must also consider the impacts of mandated roaming on the rural network service provider to ensure rural populations enjoy the same level of service as their urban counterparts.

21. Another issue that needs to be considered when examining MHz-pop thresholds is whether to apply the MHz-pop threshold screen on a national, regional or on a per service area basis. Each proposed licence transfer is unique and the choice of the MHz-pop threshold basis (i.e. national, regional, or per service area) would depend on the number of licensees involved, the extent of their network deployments and the extent of their existing spectrum holdings. It will be extremely difficult to find one MHz-pop screen that fits all of the sub-market sizes inherent in the Canadian industry.
22. Any threshold measurement applied to determine the need for a detailed review must also consider the type of spectrum holdings. As indicated in Section 6-1, there is a need to distinguish between the types of spectrum holdings being transferred. Accordingly, SaskTel continues to recommend that any decisions on detailed reviews based on MHz-pop thresholds consider spectrum holdings above and below 1 GHz separately.
23. As mentioned previously, SaskTel is also recommending a minimum population limit of 500,000 to determine if a detailed review is required. This would apply in any MHz per pop analysis.

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

24. SaskTel agrees with the Department's proposal to treat "deemed spectrum licence transfers" as actual licence transfers or divisions. This provides Industry Canada better mechanisms to more fairly apply their policies, and provide the parties involved more opportunities to comply with the Department's decisions on spectrum licence transfers.

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.

25. SaskTel believes that it is in the best interests of the industry and therefore Canadians that reviews of spectrum licence transfers remain confidential. Most of the information that needs to be provided to the Department for the review is based on competitive market information and therefore confidential in nature and release of this information would be detrimental to the parties involved. SaskTel sees no benefit of making these reviews public, and recommends they remain confidential.
26. SaskTel suggests that in order to provide some public transparency the guidelines and criteria to be followed in the detailed review process be clear, objective, and the process to be used be well established and clearly defined, and the proposed process should be published prior to beginning detailed reviews of spectrum licence transfers. In that way all interested parties, including third parties, can be assured the policies of the Department are being applied fairly.

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

27. SaskTel has reviewed the current issue of CPC-2-1-23, in particular section 5.6 and has no comments on the document or the current spectrum licence transfer process. We understand that the Department will be updating CPC-2-1-23 with the specific criteria considered and process used when spectrum licence transfer applications are reviewed. SaskTel urges the Department as much as possible to publish criteria that are clear, objective and can be fairly applied to all regions, markets and service areas to the benefit of both urban and rural populations.

7. Timelines

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

28. SaskTel believes that the proposed timeline of 4 weeks for a normal spectrum transfer, i.e. a transfer request where a detailed review is not required, is a reasonable timeframe.

29. Considering the potential complexity of a detailed review of larger proposed spectrum licence transfers, SaskTel believes the proposed timeline of 16 weeks for completion of the review is reasonable.
30. SaskTel understands that it is the intent of the Department to adhere to these same timelines for “deemed spectrum licence transfer” requests.

8. Prospective Transfers

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.

31. SaskTel agrees with Industry Canada’s proposed Condition of Licence covering prospective spectrum licence transfers becoming effective at a future date.
32. SaskTel also agrees with the proposed process whereby the Department will provide a preliminary assessment of the proposed prospective licence transfer using the same criteria, considerations and timelines as proposed for current spectrum licence transfers. We understand this preliminary assessment is non-binding on Industry Canada in respect of the approval or denial of any eventual licence transfer request at the time that the request is made.

CONCLUSION

33. SaskTel is in general agreement with the criteria and considerations proposed for reviewing and approving spectrum licence transfers. SaskTel however would like to recommend additional criteria and issues that must be considered when determining the requirements for a detailed review, and for transfer approval:
 - Spectrum holdings below and above 1 GHz must be considered separately because of their unique propagation characteristics and the fact that spectrum above and below 1 GHz is not inter-changeable.
 - In order to reduce workload and backlogs, a minimum population of 500,000 impacted by the proposed licence transfer should be a limit in the decision for a detailed review. Department resources are better spent on larger transfers affecting a larger portion of the Canadian population.

- The unique characteristics of each market and service area must be taken into consideration, and in particular the uniqueness of rural versus urban areas. Measures taken to ensure healthy competition in urban areas are clearly not appropriate in rural areas, particularly where only one service provider has made capital investments to deploy network infrastructure. Competitive measures are not applicable where only one operator has deployed, and where no other operators will ever deploy given the ease of access now provided through mandatory roaming. Consideration must be given to the network capacity burdens imposed by mandatory roaming. It is not realistic to impose restrictions on spectrum acquisitions for the sole operator in the area and at the same time impose obligations to provide mandatory roaming for all other service providers. These double edged restrictions can only be a detriment to rural customers, and run counter to the Department's goals of promoting broadband access to rural Canadians.
- The use of a universal MHz-pop measurement, or some other form of screen, is not realistic considering that it cannot be fairly and uniformly applied to spectrum licence transfer requests in different service areas. Each area is unique, with differing markets, spectrum holdings, geography, and different levels of network deployments by each licensee. The basis for a MHz-pop measurement screen is also problematic in that it is difficult to fairly determine in all cases if the MHz-pop screen should be considered nationally, regionally, or apply per licence service area.

34. SaskTel agrees that deemed spectrum licence transfers should be treated as actual licence transfer requests.
35. SaskTel believes that the spectrum licence transfer approval process should continue to be a confidential process.
36. SaskTel urges the Department to publish licence transfer review criteria and considerations that are clear, objective, and can be fairly applied in all situations.
37. SaskTel agrees with the proposed timelines for licence transfer request approvals.

38. SaskTel also agrees with the proposed condition of licence and approval processes regarding prospective transfers.
39. SaskTel thanks the Department for the opportunity to provide input into these crucial matters.