

**INDUSTRY CANADA GAZETTE NOTICE DGSO-002-13**

**CONSULTATION ON CONSIDERATIONS RELATING TO  
TRANSFERS, DIVISIONS, AND SUBORDINATE  
LICENSING OF SPECTRUM LICENCES**

**COMMENTS OF SHAW COMMUNICATIONS INC.**

**APRIL 3, 2013**

**Shaw)**

## I. Executive Summary

1. Shaw Communications Inc. (Shaw) is pleased to provide these comments on *Canada Gazette*, Part I, March 16, 2013, Notice No. DGSO-002-13 – *Consultation on Considerations Relating to Canada Gazette Notice Transfers, Divisions and Subordinate Licensing of Spectrum Licences* (“the Consultation Document”).
2. As noted in the Consultation Document, Industry Canada has initiated this consultation in order to provide more clarity around the process that is employed by the Department for the review of spectrum licence transfer requests. In particular, the Department is proposing to amend the publication entitled *Licensing Procedures for Spectrum Licences for Terrestrial Services*, CPC 2-1-23, Issue 2, September 2007 (“CPC 2-1-23”)<sup>1</sup> in order to “indicate the specific criteria considered and process used when spectrum licence transfer applications are reviewed.”<sup>2</sup>
3. Shaw is not opposed to this initiative if the intention is to provide additional guidance to the industry and the public on the procedural aspects of licence transfer applications. However, if the intention is to adopt new rules or procedures that would contradict or reverse existing rules for previously auctioned spectrum, Shaw would not support such an initiative. Any regulatory measures that fall into this latter category would create a significant amount of uncertainty regarding the existing framework, an unnecessary increase in the regulatory burden for both the Department and holders of radio spectrum licences, and an overall loss of confidence in the reliability of the Department’s rulemaking, all of which would undermine, rather than promote, the goals of this Consultation.
4. In past proceedings, Shaw has supported light-handed regulatory measures that are designed to ensure that competitors in the wireless market have equitable access to scarce spectrum resources. Shaw continues to support measures that are designed to

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<sup>1</sup> *Licensing Procedures for Spectrum Licences for Terrestrial Services*, CPC 2-1-23, Issue 2, DGRB-004-07, September 29, 2007.

<sup>2</sup> Consultation Document, at page 3.

encourage access to spectrum where they have been specifically considered in the context of a public consultation and have been deemed necessary as a consequence.

5. For example, the spectrum cap mechanism adopted for the upcoming 700 MHz spectrum auction allows at least one new entrant to be able to acquire a minimum of one paired block of premium spectrum in each serving area. The 700 MHz spectrum auction rules also allow a new entrant to acquire up to two paired blocks of premium spectrum in each serving area, while larger wireless carriers are limited to only one. Although Shaw's wireless strategy has changed since the time of the 700 MHz consultation, Shaw continues to agree with these measures to promote equitable access to spectrum, as well as the spectrum caps adopted by the Department for the 2500 MHz band and the five-year licence transfer restrictions that were established for both the 700 MHz and 2500 MHz bands.
6. These rules were adopted by the Department after taking into account the results of extensive public consultations in the 2010-2011 timeframe,<sup>3</sup> which included a thorough debate among all stakeholders, significant input from consumer groups and experts, and evidence relating to changes in consumer needs, technological advancements, evolving market conditions and international developments. The final policy framework for the 700 MHz and 2500 MHz bands was released in March 2012 after a lengthy deliberation period.<sup>4</sup>
7. The public consultation process for AWS spectrum was just as thorough and also involved extensive participation by numerous stakeholders. This process took place over the course of several years and numerous public proceedings, beginning in 2003<sup>5</sup>

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<sup>3</sup> See: *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, SMSE-018-10, November 30, 2010 and *Decisions on a Band Plan for Broadband Radio Service (BRS) and Consultation on a Policy and Technical Framework to License Spectrum in the Band 2500–2690 MHz*, SMSE-005-11, February 10, 2011 (referred to, respectively, herein as the “700 MHz Policy Framework Consultation” and the “2500 MHz Policy Framework Consultation”).

<sup>4</sup> *Policy and Technical Framework — Mobile Broadband Services (MBS) – 700 MHz Band — Broadband Radio Service (BRS) – 2500 MHz Band*, SMSE-002-12, March 12, 2012 [referred to herein as “SMSE-002-12”]

<sup>5</sup> *Consultation on Spectrum for Advanced Wireless Services and Review of the Mobile Spectrum Cap Policy*, DGTP-007-03, October 18, 2003 (referred to herein as the “Spectrum Cap Consultation”).

and culminating in the Department's announcement in November 2007 of its policy and licensing framework for AWS spectrum.<sup>6</sup> Although some parties had urged the Department in these consultations to maintain a cap on the overall amount of mobile spectrum that could be held by any one party,<sup>7</sup> the Department rejected that approach<sup>8</sup> and decided, instead, to establish a spectrum set-aside for new entrant bidders in the AWS auction and a five year restriction on the transfer of any new entrant spectrum.<sup>9</sup>

8. In Shaw's view, these rules were - and still are - clear, and every party that participated in the AWS auction made a decision to do so based on the auction framework and licensing rules that were established by the Department for this particular band of spectrum.
9. The purpose of this proceeding should not be to re-write rules that were previously created by the Department, based on significant public input, for specific bands of spectrum that have already been auctioned. It would be detrimental to consumers and unfair to the industry if the Department were to adopt rules as a result of this Consultation which would have the effect of retroactively changing the terms and conditions under which parties made a decision to participate in, and acquire licences through, a competitive auction process.
10. As the Department is aware, licences acquired through spectrum auctions carry with them enhanced transferability and divisibility privileges which means, among other things, that they are more fungible than other types of licences and "may be transferred in whole or in part... to a third party subject to the conditions stated on the licence and other applicable regulatory requirements."<sup>10</sup>

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<sup>6</sup> *Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range*, DGTP-007-07, December 8, 2007 (referred to herein as "DGTP-007-07").

<sup>7</sup> See, for example, the March 1, 2004 comments of Microcell Telecommunications Inc. and Wispra Inc. in the proceeding initiated by *Consultation on the Spectrum for Advanced Wireless Services and Review of the Mobile Spectrum Cap Policy*, DGTP-007-03, October 18, 2003.

<sup>8</sup> *Decision to Rescind the Mobile Spectrum Cap Policy*, DGTP-010-04, August 28, 2004.

<sup>9</sup> *Supra*, note 6.

<sup>10</sup> CPC 2-1-23, at page 4.

11. Changing the rules for these licences mid-stream and with retroactive effect would deter new investment and ultimately deny consumers the benefits of such new investments. Any desired changes to promote access by new entrants would be better accomplished by ensuring that the rules for spectrum that has yet to be auctioned are properly designed following a full and thorough public consultation process.
12. The secondary market for spectrum licences must also be taken into account. As the Department has previously recognized in its *Spectrum Policy Framework for Canada*, a secondary market for spectrum is in the best interest of Canadian consumers as it will “maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource.”<sup>11</sup> In order to serve customers in the best way they can, both new entrants and incumbents need access to a robust and properly functioning secondary market for spectrum licences. Indeed, without the assurance of a secondary market, firms would be less likely to invest in spectrum in the first instance.
13. In order to thrive, a secondary market requires a high level of certainty with respect to the transferability rights represented by a spectrum licence and the underlying regulatory framework. The competitive marketplace continues to change rapidly as a result of many factors, including the availability of new spectrum, technological advancements, developments in the device ecosystem, and changes in consumer demand. It is critical for consumers that Canadian service providers have sufficient flexibility to respond to these changes in a timely fashion without being undermined in these efforts by an unstable regulatory environment where fundamental rules that are purported to be final and definitive are unpredictably changed, notwithstanding the fact that they were developed on the basis of an extensive public consultation process.
14. The shift in Shaw’s wireless strategy from a conventional cellular network to a WiFi network provides an excellent example of the need for this flexibility to respond to evolving consumer needs and marketplace developments. As discussed below, Shaw Go WiFi was developed and designed in direct response to changing technologies and

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<sup>11</sup> *Spectrum Policy Framework for Canada*, DGTP-001-07, June 16, 2007, at page 8.

consumer demand for convenient and cost-effective wireless broadband service. It is already Canada's largest WiFi network and will bring incredible value, benefits and choice to Canadians living in Shaw's operating territory. In deploying Shaw Go WiFi, Shaw remains committed to providing a unique and significant contribution to the wireless market which responds to the needs of consumers.

15. The proceeds from Shaw's proposed transactions with Rogers that were announced in January will help Shaw continue to invest in Shaw Go WiFi. It is also important to note that, given the significant investments that Shaw made in developing and building an AWS network, it would be incorrect to assert that Shaw will gain a significant windfall from the possible eventual transfer of its AWS spectrum. Shaw spent \$190 million to acquire the AWS spectrum and then invested another roughly \$190 million to develop a conventional wireless network. Clearly, Shaw's intentions with respect to the spectrum were not speculative.
16. With respect to the purely procedural issues that are raised by the Consultation Document, such as those relating to confidentiality, transparency and timelines of the review process, Shaw agrees that the process set out in CPC 2-1-23 could be clarified and would support service standards for the review of licence transfer applications that are sensitive to commercial realities and give due recognition and protection to competitively sensitive confidential information. In particular, it would be helpful for the Department to adopt clear and relatively short timelines for the review of proposed license transfers as well as rules which respect and protect confidential information.
17. In the comments which follow, Shaw addresses each of the foregoing issues. For ease of reference, Shaw's comments are organized under the following headings: Background on Shaw Go WiFi (Section II), the Importance of Regulatory Certainty (Section III), Specific Responses to Consultation Document Questions (Section IV), and Conclusion (Section V).

## **II. Background on Shaw Go WiFi**

18. As many parties to this proceeding are aware, Shaw spent several hundred million dollars to acquire AWS spectrum licences in the 2008 auction and on the subsequent process to construct a conventional wireless network and develop a traditional wireless service offering.
19. Shaw spent a total of four years on this project and devoted numerous human, financial and strategic resources to the effort. Throughout this period, Shaw's goal was – and still remains – to make a unique and significant contribution to the development of wireless services for the benefit of consumers living in its operational footprint. This is why Shaw acquired spectrum licences in the AWS auction from Sault Ste. Marie all the way to Port Alberni.
20. However, after carrying out a detailed review of its approach to the provision of wireless services, Shaw concluded in September 2011 that, instead of completing its cellular network build, it would shift its focus to WiFi. This is where Shaw saw the greatest opportunities to most effectively serve, and be responsive to, the wireless needs of its customers.
21. In the short space of time since this change in strategy, Shaw has succeeded in building the largest WiFi network in Canada. The Shaw Go WiFi service provides Shaw customers with widespread availability to a premium broadband Internet service with unparalleled value. As was the case with its AWS network plans, Shaw intends to provide access points to this network throughout its service footprint – extending from Sault Ste. Marie to Port Alberni – so that Shaw's customers will be able to take the power of their home Internet service with them “on the go”.
22. Shaw's decision to move away from a traditional cellular network towards a WiFi service offering was not taken lightly, especially given the substantial investment that it had made in the process to develop a conventional mobile wireless network. While remaining committed to making a unique and significant contribution to the wireless services market for the benefit of its customers, Shaw concluded that greater value for

its customers could be achieved by developing a different wireless service platform. Indeed, Shaw's revised strategy was deliberately designed to respond to the evolving needs of the Canadian consumer. Now more than ever, Canadians need premium and cost-effective access to the Internet while on the go, and we believe that Shaw Go WiFi is the best way for Shaw to bring that valuable experience to its customers.

23. While Shaw recognizes that its decision to pursue a different wireless strategy may have come as a surprise, it firmly believes that its WiFi initiative promotes the Department's policy objectives, including competition, increased customer choice, greater service innovation and investment, and cost-effective and efficient deployment.<sup>12</sup> With its speed and bandwidth, Shaw Go WiFi offers a compelling alternative for wireless broadband services that customers can access without worrying about data charges, while allowing them to leverage increasingly sophisticated devices and applications. With Shaw Go WiFi, customers can bring any device they like to the network, whether a tablet, eReader, smartphone, laptop or portable gaming device or music player. Virtually all of these devices being sold in the market today are WiFi-enabled.
24. Shaw is investing many millions of dollars in Shaw Go WiFi and has engaged hundreds of employees to deploy and maintain the network and service. In fact, in less than one year, Shaw built out its WiFi network in all of the major metropolitan markets in its footprint – Vancouver, Calgary, Edmonton, Winnipeg and Victoria – as well as several smaller communities. Shaw's network of access points continues to expand rapidly, with approximate targeted growth of 100% over the next year. There is also continued strong growth in devices and customers on the network. By significantly increasing the connectivity of communities and consumers, Shaw Go WiFi will kick-start the development and engagement of the digital economy throughout Western Canada.
25. The Shaw GO WiFi initiative is part of a growing technological trend which sees an increase in WiFi's role and prominence in the global wireless market. In the Department's *Commercial Mobile Spectrum Outlook*, which was published the same day

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<sup>12</sup> These policy objectives were most recently articulated in the SMSE-002-12, *supra*, note 4, at page 2.

as the Consultation Document, the Department acknowledged these developments as well as Shaw's change in strategy.<sup>13</sup> The Department noted that WiFi supports the efficient use of spectrum by offloading data traffic from cellular networks to wired networks,<sup>14</sup> as well as the following growth and technology trends relating to WiFi:

- by 2015, Wi-Fi enabled devices are expected to carry forty-six percent of all Internet traffic, up from thirty-six percent today;<sup>15</sup>
- the number of WiFi hotspots is expected to increase by three-hundred-fifty percent over four years (2011-2015);<sup>16</sup>
- smart phones enabled with WiFi are set to overtake laptops as the most popular way to connect to hotspots;<sup>17</sup> and
- the industry is developing standards to allow seamless roaming between mobile networks and Wi-Fi hotspots.<sup>18</sup>

26. The *Commercial Mobile Spectrum Outlook* refers to the fact that AT&T supports approximately 45,000 hotspots.<sup>19</sup> In addition, several other large carriers around the world are investing significantly in WiFi. They include cable operators in the U.S., such as Comcast, Cablevision, Cox, TimeWarner and Brighthouse; Sky/O2 and British Telecom in the U.K.; Free.fr and Orange in France; and NTT DoCoMo, China Mobile, SK Telecom and True in Asia.

27. With the anticipated next evolution in WiFi standards, 802.11ac, WiFi networks being deployed around the world will be able to provide even higher speeds and better coverage. In addition, as the Department suggests, WiFi networks are moving towards greater interoperability, which will drive WiFi usage growth even higher. With its

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<sup>13</sup> *Commercial Mobile Spectrum Outlook*, March 2013, at page 19.

<sup>14</sup> *Ibid.*, at page 19.

<sup>15</sup> *Ibid.*, citing Cisco's 2012 document entitled *Cisco Service Provider Wi-Fi: Offload Mobile Data and Create New Services*, available online at [http://www.cisco.com/en/US/solutions/collateral/ns341/ns524/ns673/solution\\_overview\\_c22-642482.html](http://www.cisco.com/en/US/solutions/collateral/ns341/ns524/ns673/solution_overview_c22-642482.html).

<sup>16</sup> *Ibid.*, citing the Wireless Broadband Alliance's 2011 report entitled *Global developments in Public Wi-Fi*, available online at: [http://www.wballiance.com/wba/wp-content/uploads/downloads/2012/07/16\\_WBA-Industry-Report-2011-Global-Developments-in-Public-Wi-Fi-1.00.pdf](http://www.wballiance.com/wba/wp-content/uploads/downloads/2012/07/16_WBA-Industry-Report-2011-Global-Developments-in-Public-Wi-Fi-1.00.pdf)

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

extensive and growing network, Shaw Go WiFi is ideally positioned to bring all of these benefits to Canadian consumers.

28. However, in order for Shaw to realize the full potential of Shaw Go WiFi for its customers, it needs to continue investing. This was something that Shaw disclosed when its proposed transactions with Rogers were recently announced. At that time, Shaw made it clear that the expansion of its WiFi network was one of the key strategic investments that would be accelerated by using the proceeds from the proposed transactions.<sup>20</sup> It is also important to note that, given the significant investments that Shaw made in developing and building an AWS network, it would be incorrect to assert that Shaw will gain a significant windfall from the possible eventual transfer of its AWS spectrum. As noted above, Shaw spent \$190 million to acquire the AWS spectrum and then invested another roughly \$190 million to develop a conventional wireless network. Clearly, Shaw's intentions regarding its AWS spectrum were not speculative.

### **III. The Importance of Regulatory Certainty**

29. The foregoing discussion highlights some of the key considerations that led to Shaw's decision to change its wireless strategy. It also highlights how critical it is to bear in mind that even the best laid plans can, and do, change. The wireless industry is incredibly dynamic and susceptible to constant transformation driven by a variety of factors, including consumer needs, technology and market developments.
30. In that context, regulatory certainty is critical. Conversely, regulatory uncertainty can deter or delay initiatives that have been undertaken for the very purpose of keeping pace with such developments.
31. Each competitor in the wireless market, regardless of whether it is a new entrant or incumbent, must respond to market developments and changes in consumer demand and, if necessary, adjust its business plans accordingly. In some cases, in order to be

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<sup>20</sup> Shaw Press Release, January 14, 2013 available online at: <http://www.marketwire.com/press-release/shaw-announces-agreement-with-rogers-for-purchase-and-sale-of-assets-tsx-sjr.b-1745530.htm>.

fully responsive to consumer needs, a service provider may need to buy or sell spectrum licenses the value of which will also evolve over time to reflect changing conditions in the market and business plans.

32. In such instances, the transaction must comply with the applicable conditions of licence, including any transfer restrictions that were designed to ensure that spectrum caps or set-asides would be maintained for a specified period of time.
33. For this reason, restrictions relating to licence transferability must remain stable throughout the term of the licence. The Department has confirmed in CPC 2-1-23 that licences that are acquired in a competitive auction process have enhanced transferability and divisibility privileges:

*To meet the policy goals of the Department, the spectrum licences assigned under the different licensing processes may not have the same privileges. One such privilege is that of enhanced transferability and divisibility rights accorded to spectrum licences assigned through an auction. These spectrum licences may be transferred in whole or in part (either in geographic area or in bandwidth) to a third party subject to the conditions stated on the licence and other applicable regulatory requirements.<sup>21</sup>*

34. 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 predicated on a stable set of rules and a predictable regulatory framework.
35. To the extent that 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 several years.

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<sup>21</sup> CPC 2-1-23, at page 4.

36. For example, the consultation process that was initiated in relation to the AWS band can be traced back almost 10 years to October 18, 2003 when Industry Canada issued a *Consultation on Spectrum for Advanced Wireless Services and Review of the Mobile Spectrum Cap Policy*, DGTP-007-03 (the “Spectrum Cap Consultation”).<sup>22</sup> As part of this consultation, Industry Canada invited interested parties to respond to the following questions regarding the Department’s existing spectrum cap policy:

*The Department invites comments on the following issues with a view to establish the public interest:*

- *Would the retention of a mobile spectrum cap continue to play an important role in fostering competition and choice of services to Canadians? Provide the rationale for your position.*
  - *Would the removal of the mobile spectrum cap enable the wireless carriers to offer greater choice of services to consumers and foster competition? Provide the rationale for your position.*
  - *Could concern regarding significant dominance in spectrum holdings be addressed through other mechanisms? Please specify what these mechanisms could be and indicate related conditions - for example limiting the amount of spectrum which could be acquired in the licensing process or relying solely on the provisions of the Competition Act.*
  - *If the Department was to determine that the retention of a mobile spectrum cap is in the public interest, at what limit should it be set? Please provide a rationale for the limit you propose.*
  - *When should the decision on the spectrum cap become effective?*
  - *What other information could assist the Department in determining the public interest in considering changes to the mobile spectrum cap?*<sup>23</sup>
37. After considering the submissions of several interested parties on these questions, the Department issued *Decision to Rescind the Mobile Spectrum Cap Policy* (DGTP-010-04) on August 28, 2004 in which it decided to rescind the overall cap.<sup>24</sup> In arriving at this decision, the Department noted, among other things, that the wireless industry would

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<sup>22</sup> Spectrum Cap Consultation, *supra*, note 5.

<sup>23</sup> *Ibid*, at page 22.

<sup>24</sup> *Decision to Rescind the Mobile Spectrum Cap Policy*, *supra*, note 8.

soon have access to significantly more spectrum and that at the time of licensing this new spectrum, the Department could impose limits on the amount of spectrum than any individual applicant could acquire:

*In the near future, the wireless industry is going to have access to significantly more spectrum. The Department has proposed allocating and designating at least 100 MHz of new spectrum for the expansion and evolution of the cellular services such as advanced wireless services (AWS). As more spectrum becomes available, a spectrum cap policy to oversee spectrum concentration becomes less relevant.*

***At the time of licensing new spectrum, to ensure that the spectrum resources are fairly distributed among interested parties, the Department can impose a limit on the amount of spectrum an applicant can acquire. This limit would be subject to public consultation prior to the specific band being licensed.***<sup>25</sup>

38. Before considering the rules that were adopted by the Department in relation to AWS spectrum, it is important to make a couple of observations. First, the Department has previously considered the need for an overall spectrum cap or screen and decided to reject the need for such mechanisms. In fact, the Department made a conscious decision to eliminate a cap that had been previously in place.
39. Second, the Department concluded that the appropriate time to consider whether these types of mechanisms should be adopted is prior to the licensing of new spectrum, not after the fact. And this is precisely what the Department did in the case of AWS spectrum. On February 24, 2007, the Department launched its *Consultation on a Framework to Auction Spectrum in the 2GHz Range including Advanced Wireless Services*, DGTP-002-07,<sup>26</sup> which, among other things, sought comments on the need for, and the means to implement, a range of potential measures that could be used to promote additional entry in the market, including spectrum set-asides and caps, as well as restrictions on licence transfers:

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<sup>25</sup> *Ibid*, emphasis added.

<sup>26</sup> *Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services*, DGTP-002-07, February 2007.

*Comments are sought on the implementation of the set-aside post auction and the duration of any conditions of licence specific to the set-aside that may affect the licence such as divisibility and transferability.*<sup>27</sup>

40. After an extensive consultation process which included submissions and proposals from a wide variety of interested parties, Industry Canada decided to adopt a band-specific set-aside for new entrant AWS spectrum, along with restrictions on licence transfers that would expire five years after the issuance of new entrant AWS licences.<sup>28</sup> In particular, the Department made a deliberate decision not to restrict the transferability of the spectrum indefinitely or to impose an unreasonable duration for the transfer restriction. In Shaw's view, this was the correct decision for the Department to make. Indeed, to do otherwise would have deterred new investments and undermined another Departmental goal, namely the goal of creating a secondary market for spectrum licences and an efficient allocation of spectrum that maximizes consumer benefit.<sup>29</sup>
41. As the Department has recognized, the AWS auction, including the set-aside mechanism, successfully opened the market to several new entrants which, in turn, has "resulted in lower prices and more options in wireless packages for consumers and businesses."<sup>30</sup>
42. The Department's more recent consultations relating to spectrum in the 700 MHz and 2500 MHz bands also sought input from interested parties on the issue of spectrum caps, spectrum set-asides and transfer restrictions.<sup>31</sup> Importantly, each of these consultations addressed the unique issues that arise in relation to these two spectrum bands. For example, many parties to the 700 MHz Policy Framework Consultation, including Shaw, other new entrants and incumbents, emphasized the importance of the higher value of spectrum below 1 GHz given its propagation and penetration

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<sup>27</sup> *Ibid*, at page 22.

<sup>28</sup> *Supra*, note 6.

<sup>29</sup> *Spectrum Policy Framework*, *supra*, note 11, at page 9.

<sup>30</sup> SMSE-002-12, *supra*, note 4, para. 13.

<sup>31</sup> 700 MHz Policy Framework Consultation, *supra*, note 3, at page 38 and 2500 MHz Policy Framework Consultation, *supra*, note 3, at page 37.

characteristics and relative scarcity. This issue was fundamental to the policies that the Department adopted for the 700 MHz band, including the roll-out obligations and the cap mechanism.<sup>32</sup>

43. In the 700 MHz and 2500 MHz policy consultations, several parties, including Shaw, argued for further light-handed regulatory measures to ensure that new entrants could access spectrum in these bands. The spectrum cap mechanisms ultimately adopted for both the 700 MHz and 2500 MHz bands are very similar to the proposals submitted by Shaw in both consultations. Although Shaw's wireless strategy has changed since the time of those consultations, Shaw continues to believe that these caps are in the public interest. The conditions of licence will also include transfer restrictions to ensure that caps remain in place for a period of five years from the issuance of the licenses. Shaw supported these transfer restrictions, including their five-year duration, in the policy consultations and continues to believe they are appropriate and sufficient.
44. In Shaw's view, Industry Canada's current practice of adopting band-specific measures, such as spectrum caps, set-asides and transfer restrictions, prior to an auction is the most effective and efficient form of dealing with issues relating to spectrum aggregation or consolidation. This approach takes into account an entire range of considerations, including: the technical properties of the relevant spectrum frequencies; the amount of spectrum available in the band (as well as substitutable bands) both in the present and in the future; market conditions; international developments; device ecosystems; and technical coordination issues.
45. In order to ensure an optimal level of regulatory certainty, this Consultation should not re-open fundamental policy issues for spectrum that has already been auctioned, especially when those issues were expressly and thoroughly canvassed in the context of a public consultation.

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<sup>32</sup> SMSE-002-12, *supra*, note 4.

46. The Department has already decided what measures are needed in relation to previously auctioned spectrum in order to ensure that competitors have access to sufficient and suitable spectrum, and it was on the basis of these measures that investments and strategic decisions involving billions of dollars were made.
47. The wireless market is extremely dynamic, and this is good for consumers. However, it would not be beneficial for consumers to have an unstable regulatory environment that undermines the ability of market participants to make strategic shifts in their business strategies – not to mention critical investments – in order to remain responsive to consumer needs.
48. In the view of Shaw, rather than adopting industry-wide concentration thresholds or other, wide-ranging criteria for spectrum that has already been auctioned (and which is already subject to comprehensive licensing rules), the Department should continue to review licence transfer requests on a case-by-case basis, using the same criteria that it does now which, among other things, requires that the proposed licence transfer comply with all conditions applicable to the licences in question.<sup>33</sup>

#### **IV. Specific Responses to Consultation Document Questions**

##### ***Question 6-1 - Industry Canada is seeking comments on the Criteria and Considerations in Section 6 of the Consultation Document***

49. Shaw understands that any proposals adopted as a result of this Consultation would be reflected in revisions to CPC 2-1-23. With that being said, the Consultation Document does not specifically propose to make any changes to the license transferability provisions of CPC 2-1-23. Instead, the Consultation Document proposes criteria for determining whether a detailed review of a particular licence transfer request is required, noting that “thresholds will be examined”<sup>34</sup> which take into account the following factors:

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<sup>33</sup> CPC 2-1-23, at page 4.

<sup>34</sup> Consultation Document, at page 4.

- a) *the amount of spectrum involved in the transfer; and/or*
- b) *changes in levels of spectrum concentration and distribution among licensees in the region that would result from the transfer.*<sup>35</sup>

50. In the case of a detailed review, the Department also proposes to take into account “whether approval of the spectrum licence transfer request will impact” the following:

- a) *the efficiency and competitiveness of Canadian telecommunications market;*
- b) *the availability, quality or 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.*<sup>36</sup>

51. In Shaw’s view, introducing these criteria would run the risk of unnecessarily confusing, rather than clarifying, Industry Canada’s approach to transfers of spectrum licences. Although it would not be appropriate, parties may urge the Department to use these criteria to carry out a wide-ranging review of past policy and licensing decisions in the context of specific proposed transfers, notwithstanding the fact that these decisions were rendered by the Department after an extensive public consultation process.

52. As noted above, the Department has made a conscious decision to deal with spectrum aggregation and consolidation concerns relating to certain bands of spectrum by using various measures, such as spectrum caps, spectrum set-asides and licence transfer restrictions of a specific duration.<sup>37</sup> Given these previous determinations, there is no need to adopt the broad criteria contemplated in the Consultation Document for licence transfer requests involving these spectrum bands because the Department already took these factors into account when it designed the policy and licensing frameworks for these bands.

53. It should also be noted that the Department has already established tests that it would apply in order to determine whether and when it is appropriate to restrict participation

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<sup>35</sup> *Ibid*, at page 4.

<sup>36</sup> *Ibid*.

<sup>37</sup> See, for example, the spectrum cap measures and transfer restrictions adopted by the Department in SMSE-002-12, *supra*, note 4 as well as the spectrum set-aside and transfer restrictions adopted by the Department in DGTP-007-07, *supra*, note 6.

in spectrum auctions and whether spectrum caps should be implemented. For example, in its *Framework for Spectrum Auctions in Canada* (the “Auction Framework”),<sup>38</sup> the Department established the following test to determine when it will restrict participation in an auction:

*Industry Canada may decide that an entity that currently provides telecommunications services should be restricted from holding certain licences if:*

*(a) the entity possesses market power in the supply of one or more telecommunications services in a region covered by the licence to be auctioned;*

*(b) a new entrant is likely to use the licence to provide services in competition with the entity’s existing services; and*

*(c) the anti-competitive effects of the entity acquiring a licence are not outweighed by the potential economies of scope arising from the integration of the spectrum in question into the entity’s existing network.<sup>39</sup>*

54. The Department’s Auction Framework also establishes that caps would be appropriate where:

*(a) a bidder that acquires an amount of spectrum beyond a certain level would not face effective competition from providers of closely substitutable services; and*

*(b) the anti-competitive effects arising from the acquisition of an amount of spectrum beyond a certain level by a single bidder would not be offset by lower prices or higher valued services resulting from a single entity holding this amount of spectrum.<sup>40</sup>*

55. All of these tests are intended to apply on a prospective basis, i.e., at the time when the Department is developing auction policies and licensing rules for specific bands. It is difficult to understand how potentially conflicting criteria developed in this Consultation could be layered on top of these existing tests and any pre-existing licensing rules for specific bands, especially given the Department’s determination that the appropriate

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<sup>38</sup> See *Framework for Spectrum Auctions in Canada* (“Auction Framework”), Issue 3, March 26, 2011.

<sup>39</sup> *Ibid*, at pages 4-5.

<sup>40</sup> *Ibid*, at page 5.

time to establish caps or screens is prior to the licensing of new bands.<sup>41</sup> The only workable approach would be to apply the rules on a prospective basis to spectrum that has not yet been auctioned. Even then, Shaw believes that the new criteria will result in more confusion than clarity.

56. Shaw is also concerned that the criteria proposed in the Consultation Document do not expressly give any weight to the importance of facilitating a secondary market for spectrum licences. In its *Spectrum Policy Framework for Canada* (“Spectrum Policy Framework”), the Department highlights the “the importance of relying on market forces in spectrum management, to the maximum extent feasible,” which “includes aspects such as the removal of barriers to secondary markets for spectrum authorizations.”<sup>42</sup>
57. As Shaw has argued elsewhere in this submission, revising the fundamental rules of the game in the midst of play would raise a major barrier for the development of a secondary market and for future investments because of the considerable regulatory uncertainty that would arise from such an action.
58. It should also be noted that the Spectrum Policy Framework states that the Department’s “decision to rely to a greater extent on market forces must be tempered by the continued need for the management of the resources”<sup>43</sup> but that “regulation, where required, should be minimally intrusive, transparent, efficient and effective.”<sup>44</sup> In fact, in this latter regard, the Spectrum Policy Framework indicates that this “also requires that the obligations and privileges of spectrum authorizations be clearly defined.”<sup>45</sup>
59. These principles, which guide Industry Canada’s overall approach to regulation, must be considered in this Consultation. Parties that hold existing spectrum authorizations have

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<sup>41</sup> *Decision to Rescind the Mobile Spectrum Cap Policy*, *supra*, note 8.

<sup>42</sup> *Spectrum Policy Framework*, *supra*, note 11, at page 8.

<sup>43</sup> *Ibid.* See also the Enabling Guidelines summarized on page 9 of the *Spectrum Policy Framework*.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

a reasonable expectation that the obligations and privileges contained in their authorizations have been fully and clearly defined and that the Department will not withdraw any privileges that attach to those licences in a capricious manner.

60. In summary, Shaw respectfully submits that, while the goal of this Consultation is laudable, the specific substantive proposals made in the Consultation Document, including the proposed review criteria, are unnecessary and invite confusion rather than clarity. Adopting the potentially wide-ranging review process contemplated in the Consultation Document would be inconsistent with the regulatory approach that the Department has adopted and advocated as a means of addressing spectrum aggregation concerns as well as the Department's objective of promoting a secondary market for spectrum transactions. It would also be inconsistent with the Government's overall objective of reducing the regulatory burden for businesses operating in Canada, as manifested in initiatives such as the Red Tape Reduction Action Plan.<sup>46</sup>

***Question 6-2: Industry Canada is seeking comments on 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***

61. Given the differences in the characteristics of various types of spectrum, rapidly changing technology and consumer demands, and other factors that need to be assessed on a case-by-case basis, Shaw recommends against adopting a specific concentration threshold that would apply in a detailed review of a proposed licence transfer or to determine whether a detailed review is required. Each proposed transfer should be reviewed by the Department on its own merits and in light of the particular parties, transaction and circumstances, applying previously established licensing rules. Adopting generally applicable concentration thresholds could limit the Minister's flexibility to adapt to and recognize particular conditions in a regional market, or other

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<sup>46</sup> Treasury Board of Canada, *Red Tape Action Plan Report*, October 1, 2012, available online at: <http://www.tbs-sct.gc.ca/rtrap-parfa/rtrapr-rparfa-eng.asp>.

factors that may lead to a conclusion that a transaction is in the public interest and enhances competition, even if it exceeds a particular threshold.

62. In any event, defining a suitable overall screen or cap would be a complex process, even for the limited purpose proposed by Industry Canada of determining whether a detailed review of a particular proposed transfer is required. Even if an overall threshold were determined to be appropriate (which Shaw does not support), defining the threshold would require substantial and careful review of many factors that have not been raised for comment, consideration or debate in the Consultation Document, including the following:

- Defining the relevant product market, which is constantly evolving in the case of wireless services;
- Defining the relevant geographic market, which is made more complicated by the fact that the Department licenses spectrum in tiers that vary in size across, and within, spectrum bands;
- Determining which types of spectrum should be included in the threshold, which requires analysis of spectrum use, as well as current and anticipated availability of spectrum; and
- Deciding whether different spectrum bands should have different values for purposes of a threshold and whether spectrum value should play a different role in the threshold than the quantum of spectrum holdings.

63. Proper consideration of these issues by stakeholders and the Department on the broad scale required may not be achievable prior to the planned 700 MHz spectrum auction in November 2013. In any event, in Shaw's view this would be an unnecessary endeavour, since spectrum concentration issues were at the core of the debates throughout the AWS, 700 MHz and 2500 MHz policy consultations.

64. It is important to note that, on the same day that the Department launched this Consultation, it also released its *Commercial Mobile Spectrum Outlook*, which indicates

Industry Canada's intention to release an additional 300-415 MHz of spectrum prior to 2017, including 100 MHz of additional AWS spectrum.<sup>47</sup>

65. Given this release of additional spectrum in the market and the certainty of a November 2013 spectrum auction for extremely valuable 700 MHz spectrum, it is not clear what policy purpose would be served by implementing an overall spectrum screen or cap, even for the limited purpose of determining the need for a detailed review of a proposed spectrum transfer. As the Department noted in 2004 when it decided to rescind the overall cap, "as more spectrum becomes available, a spectrum cap policy to oversee spectrum concentration becomes less relevant."<sup>48</sup> Any new screen/cap would need to be reviewed and updated very soon, to take into account additional spectrum and any specific caps or set-asides implemented in the licensing framework for any given band. The regulatory landscape would be in a constant state of flux, which would significantly undermine certainty for prospective buyers and sellers of spectrum, and impede the development of a robust secondary market for spectrum licenses that would otherwise promote efficient spectrum use for the benefit of Canadian consumers.
66. The complexity of determining and applying an overall spectrum screen or cap is exacerbated by the fact that there are several cases of spectrum sharing agreements and/or associations between carriers with respect to the use and deployment of spectrum. At this point in time, there is no transparency regarding those arrangements so it is difficult for parties to this proceeding to develop a fully informed view. These types of associations are more appropriately considered in the context of applications to participate in the next spectrum auction, including the issue of whether the associated entities will bid separately and/or share caps.<sup>49</sup>
67. Finally, Shaw notes that in the case of the 700 MHz, 2500 MHz and AWS bands, the Department has already considered and made determinations on the appropriate

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<sup>47</sup> *Commercial Mobile Spectrum Outlook*, *supra*, note 13, at page v.

<sup>48</sup> *Decision to Rescind the Mobile Spectrum Cap Policy*, *supra*, note 8.

<sup>49</sup> *Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band*, DGSA-001-13, March 7, 2013, at page 33.

spectrum aggregation measures to be applied to these bands and has incorporated them into the rules of the auction and the conditions of licence. In fact, in the case of AWS spectrum, the licences have already been auctioned and issued and, for the reasons discussed above, there is no pressing policy objective to justify any substantial revision at this point.

***Question 6-3: Industry Canada is seeking comments on the treatment of deemed spectrum licence transfers as actual transfers, divisions or subordinate licensing arrangements***

68. Apart from its comments elsewhere in this submission, Shaw has no further comments to add in response to this question at this stage in the proceeding.

***Question 6-4: Industry Canada is seeking comments on 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***

69. Shaw agrees that, from a purely procedural perspective, the process that is applied by the Department for the review of licence transfer applications could be further clarified. In particular, Shaw would support the adoption of service standards for the licence transfer review process that are sensitive to commercial realities and give due recognition and protection to competitively sensitive confidential information.
70. It is instructive to note in this regard that the Competition Bureau, in the context of its merger reviews, has stated that “confidentiality means we will minimize the communication of confidential information in order to protect the integrity of the investigative process and commercially sensitive information provided to us by others.”<sup>50</sup>
71. As with the review of a transaction by the Competition Bureau, a proposed spectrum licence transfer may require the Department to seek out commercially sensitive information from the proposed transferee and transferor, as well as other market

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<sup>50</sup> Competition Bureau, Operating Principles, available online at: [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h\\_00126.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00126.html)

participants. Shaw believes that all such information should be maintained in confidence and the extent of any disclosure of information by the Department should be consistent with the approach of the Bureau.

72. Of course, the public interest is also served by a degree of transparency. Here again, the Competition Bureau's approach could be used as the basis for the Department's process. In particular, transparency for the Bureau means that "we are going to be as open in our dealings as the law permits, develop appropriate service standards, develop performance standards, and be prepared to be judged according to these standards."<sup>51</sup>
73. In practical terms, what this means is that the Bureau will consult with third party market participants as appropriate and receive submissions from stakeholders. In addition, following a decision not to challenge a proposed transaction, the Bureau may issue a summary of the basis for its decision and the key factors involved, but without disclosing any confidential information.
74. Shaw notes that all wireless market participants and other stakeholders, including consumer groups, governments and industry associations, have had the opportunity to participate in proceedings that were initiated by the Department for the express purpose of developing rules that facilitate access to spectrum. As described in detail above, set-asides, caps and transfer restrictions were all vigorously debated in the various consultations for the AWS, 700 MHz and 2500 MHz spectrum bands. In the interest of regulatory certainty and the proper functioning of a secondary market in licences, spectrum transfer reviews would not be an appropriate venue in which to revisit and revise conditions of licence after the fact. That would be inconsistent with the reasonable expectations of the parties who participated in the spectrum auctions and invested significant amounts of money towards the deployment of the spectrum.

***Question 6-5: In addition, Industry Canada welcomes comments on any other suggested changes to the applicable conditions of licence related to licence transfers,***

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<sup>51</sup> *ibid.*

**and to section 5.6 of CPC 2-1-23 and to the relevant application forms or other requirements**

75. Apart from its comments elsewhere in this submission, Shaw has no further comments to add in response to this question at this stage in the proceeding.

**Question 7-1: Industry Canada is seeking comments regarding the proposed timeline**

76. The Consultation Document proposes a one-month period for ordinary reviews and a four-month period for detailed reviews.
77. Shaw notes that the Competition Bureau has adopted shorter timelines that apply to Bureau reviews of transactions in any industry, including industries with which the Bureau may have no prior familiarity. The Competition Bureau's operating principle is the following:

*By timeliness we mean that we will strive to deal with issues quickly. If we realize that our inability to come to a decision quickly may start to become costly, decisions as to whether to proceed or discontinue a matter will be made as quickly as possible.*

78. The Competition Bureau's service standards for merger reviews are as follows:

*For non-complex mergers, the service standard is 14 calendar days, commencing the day a complete notification or ARC request is received by the Commissioner, assuming sufficient information is provided to assign complexity.*

*For complex mergers, the service standard is 45 calendar days, commencing the day a complete notification or ARC request is received by the Commissioner, assuming sufficient information is provided to assign complexity. However, where a Supplementary Information Request (SIR) is issued, the service standard is 30 calendar days and commences the day on which the Commissioner has received a complete response to the SIR from all SIR recipients.<sup>52</sup>*

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<sup>52</sup> Competition Bureau Fees and Service Standards Handbook for Mergers and Merger-Related Matters, November 10, 2010, as amended, at page 10.

79. 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. In addition, any revisions to CPC 2-1-23 should include commitments by the Department to complete its reviews as quickly as reasonably possible following receipt of a spectrum license transfer request.

***Question 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***

80. In its Consultation Document, Industry Canada is proposing that licensees be required to notify the Department "prior to entering into any binding agreement, including an option or similar agreement, which provides for a transfer or division of a spectrum licence or a subordinate licensing arrangement to be made at later date."
81. This language is broad and would apparently require prior notification to the Department before entering into any agreement with respect to a proposed licence transfer. This is because there is almost always a delay between the signing and closing of acquisition agreements. Such delays can often stretch over several months and are often due, in large part, to the need to secure regulatory and shareholder approvals. Shaw is not aware of any other circumstances where parties are required to provide prior notification to a regulator of a proposed transaction that is not yet subject to some sort of binding agreement. In Shaw's view, this is an unusual requirement which could add significant delays to a proposed transaction.
82. While Shaw does not object to the proposed prior notification requirement by itself, in order to be suitable to the circumstances, this requirement should be modified to allow parties to elect to receive a preliminary assessment, rather than impose a mandatory preliminary assessment that would then be followed by a full assessment. As noted in the Consultation Document, the preliminary assessment would not bind the

Department so it would be of limited value. However, the parties to the transaction would be in the best position to make that value determination. Therefore, it should be left to their discretion as to whether or not they need, or would like, the Department to carry out a preliminary assessment.

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.
85. In sum, the delays and misleading indications that could result from a mandatory preliminary assessment would add significant deal uncertainty in the context of complex, multifaceted commercial negotiations that require regulatory stability and clarity, not confusion and red-tape. Shaw submits that the proposed mandatory assessment requirement would therefore be inconsistent with the goals of this Consultation. It would also contradict Industry Canada's goals of facilitating secondary

markets for spectrum licences and of relying on market forces to the maximum extent feasible. Ultimately, and most importantly, it would also hinder the objective of maximizing the economic and social benefits that Canadians derive from spectrum.

86. Although not explicit in the Consultation Document, Shaw assumes that all instances of prior notifications to the Department, and any preliminary assessments that may result, would be kept entirely confidential. Any requirement that would contemplate disclosure of this information would be extremely prejudicial to the proper functioning of a secondary market for spectrum licences. The facts surrounding these proposed transactions and any preliminary assessments would constitute highly sensitive information which, if disclosed, could materially impact commercial negotiations. In addition, it would be impractical to require public disclosure of transaction negotiations that have not resulted in definitive agreements. In recognition of the prejudice of premature disclosure, securities laws generally do not require public disclosure of a proposed agreement until the agreement is actually entered into by the parties.

## **V. Conclusion**

87. As noted above, the Consultation Document seeks “views on the approach used by Industry Canada, which will be applied with respect to all spectrum licences, when considering licensees’ requests to transfer or divide a spectrum licence, or enter into a subordinate licensing arrangement.”<sup>53</sup>
88. Industry Canada’s current approach to spectrum licence transfers already provides the Department with all the necessary tools it needs to review proposals for spectrum licence transfers. Shaw supports clear and relatively short timelines for the review of licence transfer requests and the critical need for any review process to respect and protect confidential commercial information. Apart from these minor clarifications to CPC 2-1-23, Shaw does not support additional review criteria or processes.

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<sup>53</sup> Consultation Document, at page 1.

89. In Shaw's view, spectrum licence transfers should be reviewed on a case-by-case basis with due regard to the specific facts of the proposed transfer and taking into account any applicable eligibility criteria, spectrum caps, set-asides, transfer restrictions or other rules established through band-specific consultations.
90. As noted above, Industry Canada's approach to the treatment of spectrum consolidation and aggregation concerns has been to consult publicly on the rules that should be relied upon to address these concerns and then to apply these rules on a prospective, band-specific basis. Shaw supports this approach, as manifested in the measures taken with respect to the AWS, 700 MHz and 2500 MHz bands. Shaw also encourages the Department to adhere to this practice when developing rules for spectrum auctions that are anticipated for the future as contemplated in the *Commercial Mobile Spectrum Outlook*. This approach allows the Department to effectively tailor rules to take account of an entire range of factors, including technological advancements, device ecosystems, spectrum holdings in comparable bands, international developments, market conditions and, most importantly, consumer demands.
91. By contrast, any licence transfer review process that could be perceived as a mandate to revisit fundamental rights and obligations of licensees or re-write spectrum aggregation and transfer rules developed through public consultation would create tremendous regulatory uncertainty and seriously undermine confidence in the Canadian wireless market. It would also discourage investment from both domestic and international sources and force carriers to second-guess strategic initiatives that drive competition and innovation and bring greater choices to Canadian consumers, such as Shaw's shift in focus from a conventional mobile wireless build to the deployment of Shaw Go WiFi.
92. As noted above, Shaw Go WiFi will leverage ongoing global advancements in WiFi technology and the already robust WiFi device ecosystem in order to provide customers with the wireless broadband access they need and want. As the Minister of Industry notes in his message which prefaces the *Commercial Mobile Spectrum Outlook*:

*With uncertainty continuing to weigh on the global economy, Canada has an opportunity to lead in creating a world-class, competitive digital economy that attracts investment, creates jobs and builds a sustainable and prosperous society.*<sup>54</sup>

93. Shaw shares the Minister's vision for Canada's digital economy and, to make this a reality, Shaw has made, and continues to make, billions of dollars in broadband investments, including the Shaw Go WiFi network. Shaw Go WiFi enhances competition, consumer choice, innovation, and promotes the efficient use and deployment of spectrum, all of which are fundamental policy goals of the Department. A stable regulatory environment is critical to providing all market players with the confidence they need to similarly respond to technological and market developments and make investment decisions that will drive competition, innovation and consumer choice.

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<sup>54</sup> *Commercial Mobile Spectrum Outlook, supra*, note 13, at page iv.