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Gazette Notice DGSO-002-13, Consultation on Considerations Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licenses, 16 March 2013 – FCM Reply Comments

1. The Department has issued a consultation paper entitled **Consultation on Considerations Relating to Transfers, Divisions, and Subordinate Licensing of Spectrum Licences** (Gazette Notice DGSO-002-13), in which the Department has invited comments and reply comments on the issues raised in DGSO-002-13 (the "Consultation Paper").
2. The Federation of Canadian Municipalities ("FCM") appreciates the opportunity to provide reply comments on the above-noted Consultation Paper.
3. FCM has been the national voice of municipal government since 1901. With close to 2,000 member municipalities, FCM represents the interests of municipal governments on policy and program matters that fall within federal jurisdiction. Members include Canada's largest cities, small urban and rural communities, and 18 provincial and territorial municipal associations.
4. The reply comments contained herein focus on the impact of the Department's policies related to transfers, divisions and subordinate licensing of spectrum licenses on the deployment of high quality and affordable telecommunications networks in rural areas.
5. Broadband connectivity is a powerful socio-economic tool. The residents and communities in rural and northern areas have traditionally been under-served, if not un-served, by competitive, affordable telecommunications services. Rural Canadians have not benefitted from affordable, leading edge telecommunications services available, in many cases from multiple service providers, in urban areas where the distances are shorter and the pool of customers much larger.

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6. This situation exists despite Canadian telecommunications policy having as one of its objectives the rendering of "reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in *all regions* of Canada."¹
7. FCM's submission to the Department's consultation on the licensing framework for the 700 MHz spectrum band (DGSO-002-12) noted that consolidation and hoarding of spectrum licences can act as a barrier to rural deployments, and that "the long-standing gap in the availability of affordable telecommunications services between rural and urban areas is in large part driven by the inaccessibility of wireless spectrum."
8. FCM's reply comments to DGSO-002-12 called on the Department "to take all available measures to ensure that licence holders fulfill the condition of licence related to rural deployment requirements in a manner that is consistent with the stated policy objective."
9. Furthermore, FCM expressed its support for the adoption of a "use it or lose it" approach to rural areas and deployment, which could include segregating the spectrum allocation if licence holders fail to deploy in rural areas.
10. While the Department has chosen, at this time, not to adopt a "use it or lose it" approach, FCM recommends that the Department evaluate any spectrum licence transfer requests through the lens of net impact to all Canadians – urban and rural. In this regard, FCM would like to take this opportunity to make reply comments on specific issues raised by other parties in their initial comments, with particular emphasis on the comments of regional and rural carriers such as SaskTel, Xplornet, MTS Allstream and Eastlink.

Industry Canada is seeking comments on:

6-1 The criteria and considerations set out above.

11. FCM agrees with Xplornet's conclusion that any analysis of a licence transfer should begin with a proper market determination, and that it is problematic to consider the entire Canadian telecommunications market as per the criteria identified in paragraph 16(a) of the Consultation Paper.
12. To properly determine potential effects on rural service deployment, consistent with Section 7(b) of the *Telecommunications Act*, we agree that it is necessary to assess the market from product and geographic perspectives to ensure that, using the example provided by Xplornet, "a licence transfer does not foreclose broadband services in a Tier 4 area of Canada or cellular services in an Atlantic province."

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¹ *Telecommunications Act*, S.C. 1993, c. 38, S. 7(b) (emphasis added).

13. FCM also agrees with Xplornet's recommendation that the criteria in paragraph 16(c) "should be more focused on whether or not the transfer would result in the spectrum being put to the use intended by Industry Canada". FCM further recommends that the Department place additional and sufficient emphasis on meeting the objective of high quality rural deployment.
14. FCM also encourages the Department to consider SaskTel's recommendation 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 recommendation directly responds to the need to prevent the hoarding of spectrum and ensure spectrum is not allowed to remain fallow.
15. An alternative mechanism would be for the Department to apply an additional rural deployment requirement as a condition of the licence transfer to ensure that consolidation does not lead to hoarding or under-utilization of spectrum in rural areas. This additional rural deployment requirement, if applied, must be based on a measure of geographic coverage rather than on existing network footprints (i.e. HSPA footprints in the case of the rural deployment requirement in the conditions of licence for the 700 MHz band), which offer no guarantee of actual widespread rural deployment.

Industry Canada is seeking comments on:

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.

16. FCM agrees with the concentration thresholds proposed by MTS Allstream, including that the Department trigger a detailed review "if any transfer, division or subordinate licencing arrangement results in any one carrier holding more than 50% of usable mobile spectrum within a licence area."
17. This recommendation is consistent with Eastlink's comment that "it would be an inefficient use of spectrum to allow a licensee with large caches of spectrum in other bands to add to its stockpile when other carriers with far less spectrum may also require and be interested in purchasing the subject spectrum."
18. Xplornet makes a complimentary recommendation that "a transaction should be reviewed in detail, if, post-transaction, the three largest spectrum holders in the market would have 65% or more of all available spectrum in that market."
19. FCM agrees with SaskTel's conclusion that "the unique characteristics of each market and service area must be taken into consideration and in particular the uniqueness of rural versus urban areas."

20. Regardless of the concentration threshold that is applied, FCM urges the Department to ensure all reviews include a comprehensive assessment of the potential impacts on rural deployment in the given licence area.

21. FCM thanks the Department for the opportunity to provide reply comments to the issues raised in the Consultation Paper.

Sincerely,

A handwritten signature in blue ink that reads "Daniel Rubinstein". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Daniel Rubinstein
Policy Advisor
Policy & Research