

***Canada Gazette* Notice Reference No. DGSO-002-13**

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

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Reply Comments

of

Globalive Wireless Management Corp.

(“WIND”)

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(A) **INTRODUCTION**

1. Globalive Wireless Management Corp. (“**WIND**”) hereby submits its reply comments in response to *Canada Gazette*, Part 1, 16 March 2013, Notice Reference No. DGSO-002-13: *Consultation on Considerations Relating to Transfers, Divisions, and Subordinate Licensing of Spectrum Licences* (the “**Consultation**”).

(B) **WIND’S RECOMMENDATIONS**

2. WIND recognizes that the Government’s primary policy objective is to create, enhance, and sustain competition in the wireless telecommunications market in Canada. In this context, WIND submitted that if the Minister is proposing to deny a category or class of spectrum licence transfers, or to deny a specific proposed transfer, this Government must do much more than it has to date to ensure that operating a business using such artificially-constrained licences is a viable commercial proposition. Absent such conditions, transfers should be unfettered by policy considerations, and should be subject only to existing processes and law (e.g., the *Competition Act* and the *Investment Canada Act*) where appropriate.
3. WIND’s initial comments in this Consultation included a specific proposal for transfer review criteria.
4. Specifically, WIND proposed that the Minister develop a “grace period” framework with respect to licence transfer criteria such that transfers of existing spectrum owned by operators should not be restricted but for:
 - i) first, checking the presence of a fourth competing operator (including MVNOs) in any relevant area; and
 - ii) second, presuming satisfaction of the first criteria, requiring that the transferor of the spectrum must first give non-incumbents a right to purchase such spectrum, provided such right of offer be limited in time and subject to evidence of *bone fide* credentials of the bidding transferee; and
 - iii) third, only upon the government implementing new and effective regulatory approaches that promote a sustainable and competitive market for non-incumbent operators, would a revision of spectrum license transfer limits be appropriate.
5. This “grace period” where spectrum transfers are not limited would remain in place until the regulatory environment for new entrants evolves to ensure truly competitive conditions necessary to avoid further undermining the already weakened position of new entrants.

(C) **A BALANCED APPROACH IS REQUIRED**

6. In reply, WIND notes that its proposal for a “grace period” before imposing licence transfer limitations as contemplated in the Consultation is a compromise position between the positions of most new entrants (such as Quebecor Media and Mobilicity) that categorically oppose transfer restrictions in the Consultation because such measures harm new entrants’ ability to raise capital. It is similarly a compromise position when considered against the position taken by the consumer groups such as the Public Interest Advocacy Centre, the Consumers’ Association of Canada and the Senior Citizens’ Organization of British Columbia (collectively “PIAC”), who favours the transfer criteria set out in the Consultation because they want to see a forth strong national wireless provider (or more) with sufficient spectrum such that consumers can benefit from more competition. Moreover, the WIND position addresses the need to promote competition by addressing the spectrum deficit faced by the new entrants – an important issue ignored by Bell Mobility and Rogers Communications in their comments.

7. As noted by Quebecor Media, the proposal in the Consultation, if adopted, “will result in a spectrum transfer review procedure that is complex, discretionary and opaque.”¹ Mobilicity goes on to note the very announcement in the Consultation of potentially new restrictions for spectrum transfers “has already further impinged access to capital for new entrants” and “has created a level of uncertainty and confusion in the minds of investors as to the liquidity of spectrum assets which in particular affects new entrants far more than incumbents and further hampers their ability to create a competitive marketplace.”²

8. WIND submits that its proposals as outlined in its initial comments are simple, quantitative and clear, thereby avoiding the harmful effects of the transfer approval criteria set out in the Consultation. At the same time, WIND’s proposals will ensure that new entrants have a fair chance to acquire spectrum at a market price without unduly harming the ability of new entrants to raise capital based in part on the value of the acquired spectrum. This will promote competition by giving new entrants an opportunity to consolidate unused set-aside spectrum originally reserved for new entrants – a goal shared by PIAC and WIND.

All of which is respectfully submitted this 3rd day of May, 2013.

WIND Mobile

¹ Comments of Quebecor Media in response to DGSO-002-13, April 3, 2013 at paragraph 7

² Comments of Mobilicity in response to DGSO-002-13, April 3, 2013 at paragraph 8