

Canada Gazette Notice No. DGSO-002-12

**Consultation on a Licensing Framework for Mobile
Broadband Services (MBS) – 700 MHz Band**

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**Reply Comments
of
Bell Mobility Inc.**

25 July 2012

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1.0 EXECUTIVE SUMMARY

1. In accordance with the procedure set out in Industry Canada (Industry Canada or the Department) Notice No. DGSO-002-12, Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band, as published in the *Canada Gazette, Part 1*, dated 5 May 2012 (the Notice), Bell Mobility Inc. (Bell Mobility or the Company) is pleased to provide the following reply comments in response to the Notice.

2. Regarding the Department's proposed flexible associated entity policies, Bell Mobility notes the strong and wide-ranging degree of support for the policy rationale underlying the Department's proposed new, more flexible, bidder participation rules. In framing these policy proposals, the Department has noted that these are in direct response to the growing and divergent forms of network and spectrum sharing arrangements that are being adopted spurred by investment and spectrum efficiencies and the benefits these arrangements can bring particularly to rural areas. The Department specifically mentions these arrangements and their consistency with its policy objectives of promoting competition, investment and timely deployment of networks to rural areas in light of spectrum scarcity, high demand for capacity and the cost of deployment. Notably, the Department indicates that the proposed changes are intended to provide all carriers with increased flexibility to enter into such network and spectrum sharing arrangements provided these do not adversely impact the integrity of the auction. Bell Mobility repeats and reaffirms its strong support for these forward-looking, progressive and symmetrical policy proposals and notes that numerous and divergent other stakeholders also expressed strong support for the rationale underlying the policy proposals. The Department should reject calls by some parties (Rogers) who have advocated that these rules be applied asymmetrically so as to find their competitors associated and ineligible to bid separately while construed differently to achieve advantageous outcomes for themselves. The Department can be confident that its proposed associated entity rules, including the criteria it proposes to apply (e.g., safeguarding the integrity of the auction and ensuring a sufficient commitment to competition) are entirely consistent with promoting the broadest possible public interest.

3. It is clear that under the Department's proposed associated entity definition that Bell Mobility and Telus are not, indeed they cannot be, associated entities for the purposes of the 700 MHz auction. In the words of the definition, there is no partnership, no joint venture, no agreement to merge, no consortium, nor any arrangement, agreement or understanding of any kind whatsoever between Bell Mobility and Telus relating in any way to the acquisition or use of any 700 MHz spectrum.

4. A number of comments recommended various changes to the auction rules to bias the outcomes toward either the supplementary round (Rogers), or in the other extreme, the clock rounds (regional providers). While Rogers devotes a significant amount of effort justifying these recommendations, it is important to note that they are all designed to do one thing – limit the importance of the clock rounds and increase the importance of the supplementary round. Adopting Rogers' recommendations would in effect create a *de facto* single round sealed-bid auction. Regional bidders take the opposite view of Rogers and want greater assurances that the final clock round will determine the final allocation of spectrum. By removing the supplementary round, bidders would no longer have the opportunity to use all of the information available to them in order to improve their bids or to submit bids for packages of licenses not expressed in the clock rounds. This undermines one of the benefits of the combinatorial clock auction and may lead to a less efficient allocation of spectrum. Recommendations that effectively bias the outcome towards results similar to either a single round sealed-bid auction or to a simultaneous multiple round auction are inappropriate. Bell Mobility continues to consider that the combinatorial clock auction that uses the Department's proposed combined eligibility point and revealed preference activity rules for the clock rounds and the revealed preference limit in the supplementary round strikes the appropriate balance between providing bidders with sufficient flexibility to place different bids, while still encouraging truthful bidding throughout the auction.

5. Bell Mobility remains of the view, as noted in its Comments, that the Department must be alert to unintended consequences arising from the interplay between the foreign ownership amendments to the *Telecommunications Act* (the *Act*) contained in Bill C-38, entitled *An Act to Implement Certain Provisions of the Budget Tabled in Parliament on 29 March 2012 and Other Measures* and the Notice's proposed spectrum aggregation limits and rural roll-out requirement provisions. As a result, the Conditions of Licence (COLs) applicable to spectrum caps and rural roll-out obligations should be changed to ensure, in the event any large non-Canadian wireless carrier enters the Canadian wireless market under the changes to Canada's foreign ownership restrictions (either as a greenfield or by way of acquisition of a pre-existing Canadian owned carrier) and applies to participate in the 700 MHz auction, that such carriers are made subject to precisely the same spectrum caps and the same rural roll-out obligations as are applicable to Canada's incumbent carriers. The current loophole in the COLs must be closed to ensure that all Canadians can benefit from the auction, regardless of whether the winning carrier is Canadian or non-Canadian owned and controlled. The Company notes that the proposal by

Telus to modify the proposed general deployment requirements, which Bell Mobility supports, also addresses this matter.

6. Bell Mobility also remains of the view that additional information disclosure will promote the efficient assignment of licences since bidders will be able to make more informed bids. The best information policies would reveal information that is useful for serious bidders trying to determine the right packages. At a minimum, it is appropriate to know what packages other bidders are bidding on at each round in order to help bidders identify combinations that enhance the overall value of the package and bid on the appropriate packages in the clock rounds as well as the supplementary round. Moreover, this information will assist bidders in assessing whether prices are being driven by real competition so that continued bidding is essential, or just gaming which may require a different bidding response.

7. Bell Mobility's Comments also noted its concern regarding the continuing potential for auction gaming and the need for the Department to insist upon daily financial guarantees from bidders. Given the proposed eligibility rules and the combinatorial clock auction (CCA) format, the most likely gaming opportunities that can arise will be bidders bidding for excessively large packages before switching to a package of real interest, in order to maintain their eligibility points. The Company recommends that over the course of the auction, prior to the commencement of each day's bidding, bidders be required to provide Industry Canada with a financial guarantee via a letter of credit equal to 100% of the value of their previous day's last package bid. By requiring bidders to provide a financial guarantee equal to 100% of the value of their previous day's last package bid, this measure will incent bidders to determine their overall budget in advance of the auction and to bid only on spectrum blocks they desire. If a bidder decides to inefficiently increase the price by bidding on spectrum blocks that they do not desire, it increases the probability that they will go over their pre-determined budget allotment. Having clear goals and a well-defined budget constraint facilitates more efficient bidding. This measure will also provide a strong market disincentive to discourage bidders from engaging in gamed bidding designed solely to drive up the price of spectrum that they have no meaningful interest in acquiring.

8. Bell Mobility notes that government policy has made the rural deployment of advanced wireless networks a corner stone of its 700 MHz licensing policy. Bell Mobility strongly supports this policy and indeed notes its support for proposals that would accelerate rural deployment beyond what was originally proposed in the Notice. Bell Mobility believes, by virtue of its long

standing, key role in Canada's telecommunications industry as well as its experience and capability, that it is uniquely positioned to execute this policy.

9. Regarding the Lawful Intercept COL, Bell Mobility notes that the unanimous view was that Industry Canada should not implement the proposed change in the COL wording at this time and instead retain that which currently exists in spectrum licences today.

10. Bell Mobility further recommended, in this regard, that a small portion of the auction proceeds could and should be used to fund Lawful Intercept requirements which are ultimately approved by Parliament and thus deemed to be in the broad public interest of Canadian society.

11. Regarding the proposed Research and Development (R&D) COL, Bell Mobility notes that there was unanimous and overwhelming support, in the comments of parties addressing the issue, not to apply this COL to the 700 MHz spectrum licences and further to immediately eliminate this antiquated and bureaucratic requirement, which has served its purpose and is no longer appropriate, from existing spectrum licences.

12. Bell Mobility agrees with Rogers' recommendation that, since it is proposed that both auctions use the CCA format, logic dictates that the Department not finalize or issue its forthcoming consultation regarding the 2500 MHz licensing framework until it has fully considered and decided upon the framework for the 700 MHz licensing framework.

13. Regarding the Mandated Roaming COL, Bell Mobility strongly disagrees with Rogers' recommendation, in the Department's concurrent consultation addressing the mandated roaming and site sharing COLs, and does not see an urgent need to implement any revised roaming policy before, at a minimum, the 700 MHz auction and licensing framework is finalized. Indeed, Bell Mobility does not believe that any revised COLs need be implemented prior to the conclusion of the 700 MHz auction. Rather than committing itself to a "locked-in" policy, as Rogers proposes, the Company's recommended approach would provide the Department with the flexibility to tweak its roaming policy in response to its evolving 700 MHz auction and licensing policy and vice-versa.

14. Finally, Bell Mobility concurs with the view expressed by Telus¹ to the effect that the licensing of the 700 MHz band affords Canada one irretrievable opportunity to ensure that Canadians have available to them sufficient spectrum in order to satisfy their rapidly increasing demand for mobile broadband services in the Digital Age. More to the point, the FCC in its National Broadband Plan, while noting the significant positive contribution of wireless services to gross domestic product, concluded that "Spectrum policy must be a key pillar of U.S. economic policy." The Radio Advisory Board of Canada (RABC) has suggested that if, as the U.S. believes, mobile broadband will be a key platform for innovation and economic growth over the next decade, then Industry Canada would be wise to adopt a similar policy premise for Canada going forward. Viewed in this context, as Telus notes, the consequences of error are profound for both consumers and the industry alike and, like Telus, Bell Mobility encourages the Department to consider carefully its determinations flowing from this consultation.

2.0 SECTION 3.1: SERVICE AREA FOR LLOYDMINSTER (ALBERTA / SASKATCHEWAN)

15. Bell Mobility has no comments with respect to this issue.

3.0 SECTION 4: AUCTION FORMAT AND RULES

Industry Canada is seeking comments on its proposal to use the CCA format, as well as the general attributes outlined above, including:

- *the categories of generic licences;*
- *the guarantee of contiguity across blocks A and B in the lower 700 MHz band in a specific service area;*
- *the combined eligibility point and revealed preference activity rule in the clock rounds, and the revealed preference limit in the supplementary round;*
- *the use of a second-price rule; and*
- *the information to be disclosed during, and post-auction.*

16. In the following sections Bell Mobility provides its views on the comments filed in relation to the each of the above attributes.

- *the categories of generic licences;*

17. Bell Mobility continues to support the Department's proposed categories of generic licences. This is consistent with the views of Globalive Wireless Management Corp. (WIND

¹ Telus, Comments, 25 June 2012, page 1.

Mobile)², Public Mobile Inc. (Public Mobile)³, and Xplornet Communications Inc. and Xplornet Broadband Inc. (Xplornet)⁴. While Rogers Communications Partnership (Rogers) supports the proposed structure of generic licences, they argue that the Lower D and E blocks should be combined into a single block since "there is no conceivable efficient demand for one of these blocks without the other."⁵ While it is true that there are technical benefits to having larger blocks of contiguous spectrum, there is also a benefit to having only one of the Lower D and E blocks. Currently, the use of the Lower D and E spectrum blocks – as supplemental downlink capacity for spectrum in other frequency bands – will be supported by the AT&T ecosystem. Since AT&T does not consistently have both Lower D and E blocks across the U.S., the ecosystem must be able to function with 5 MHz only. As a result, Rogers' proposal of combining the Lower D and E blocks would reduce the existing level of flexibility which enables two bidders to obtain supplemental downlink capacity. Moreover, if like Rogers, a bidder believes Lower D and E have significantly higher value when combined, then the existing rules allow bidders to bid on and obtain both blocks. Therefore, it is reasonable for a bidder to demand only 5 MHz of Lower D and E spectrum, and the recommendation put forth by Rogers will reduce the ability of bidders to obtain supplemental downlink capacity and should be rejected by the Department.

18. Furthermore, with respect to the unique nature of the Lower D and E blocks relative to the other blocks, SaskTel argued that the Lower D and E blocks "are indeed so unique that they not only deserve their own licence, they should not be in this auction," and that "their inclusion merely introduces more bidding uncertainty and gaming opportunities, similar to the strategic bidding seen in the AWS auction because of the inclusion of the G and, particularly, the I licences."⁶ Bell Mobility disagrees. While the Lower D and E blocks are different from the other spectrum blocks being auctioned, their use and value are far from speculative. Given the exponential growth in the demand for mobile data services referenced by the Department in the Consultation Document, wireless providers need access to as much spectrum as possible, as quickly as possible. The Lower D and E blocks provide valuable downlink capacity which can be used with existing spectrum holdings of wireless service providers. There are better ways to address SaskTel's concerns about gaming opportunities than removing valuable spectrum from the auction. Given the significant benefits that the Lower D and E blocks provide in adding

² Globalive Wireless Management Corp. (WIND Mobile), Comments, 25 June 2012, page 4.

³ Public Mobile, Comments, 25 June 2012, page 2.

⁴ Xplornet Communications Inc. and Xplornet Broadband Inc. (Xplornet), Comments, 25 June 2012, page 5.

⁵ Rogers Communications Partnership (Rogers), Comments, 25 June 2012, page 14.

⁶ SaskTel, Comments, 25 June 2012, page 11.

additional downlink capacity, Bell Mobility believes that the Lower D and E blocks should continue to be included in the 700 MHz auction.

19. MTS Allstream and TELUS Communications Company (Telus) both argue that the grouping of the generic licenses is too broad. MTS Allstream argues that the Lower B and C blocks "should not be treated as generic licences, since some bidders will value block B spectrum more than block C spectrum,"⁷ whereas Telus argues that there should be no generic licences which would allow for the removal of the assignment stage and result in a more simplified auction process.⁸ While the basis of these two arguments are significantly different, the impact of adopting either recommendation would be the same – reducing the number of generic blocks would significantly increase the “exposure problem” (i.e., bidders not winning contiguous spectrum across geographic areas). Moreover, to the extent that MTS Allstream is concerned about different valuations for the various generic licences, this is exactly the issue that the assignment round addresses. The assignment round is intended to allow bidders to express their preferences for specific frequencies. Therefore, Bell Mobility opposes recommendations to further separate the generic licences. Doing so would not improve price discovery, nor would it simplify the auction process. It would only reduce the benefit of the combinatorial clock auction (CCA) format by increasing the exposure risk faced by bidders since they would no longer be guaranteed the same spectrum block across geographic areas.

- ***the guarantee of contiguity across blocks A and B in the lower 700 MHz band in a specific service area;***

20. In its Comments, Bell Mobility supported the guarantee of contiguity across blocks A and B in Lower 700 MHz band in a specific service area since it will remove the exposure risk that can arise if a bidder wins both the Lower A and Lower B blocks. WIND Mobile⁹, Public Interest Advocacy Centre (PIAC)¹⁰, Rogers¹¹, SaskTel¹², SSi Group of Companies (SSi)¹³, Telus¹⁴, and Xplornet¹⁵ also supported this attribute. Only Public Mobile argued against the guarantee of contiguity across the Lower A and B blocks based on their concern related to the difficulty in determining the true value of the Lower A block due to the interference problems with

⁷ MTS Allstream, Comments, 25 June 2012, page 5.

⁸ TELUS Communications Company (Telus), Comments, 25 June 2012, page 10.

⁹ WIND Mobile, Comments, 25 June 2012, page 6.

¹⁰ Public Interest Advocacy Centre (PIAC), Comments, 25 June 2012, page 3.

¹¹ Rogers, Comments, 25 June 2012, page 14.

¹² SaskTel, Comments, 25 June 2012, page 12.

¹³ SSi Group of Companies (SSi), Comments, 25 June 2012, page 3.

¹⁴ Telus, Comments, 25 June 2012, page 11.

¹⁵ Xplornet, Comments, 25 June 2012, page 5.

Channel 51.¹⁶ Bell Mobility recognizes the uncertainty associated with the deployment of the Lower A block, but it is not clear how prohibiting contiguity will solve the valuation uncertainty. Moreover, as noted above, the purpose of the contiguity rule is to remove the exposure problem associated with the Lower A and B blocks. Bell Mobility's Comments noted that since the Lower A block is not in the same category as the Lower B block, the exposure problem can still arise because a bidder can win the Lower A block but lose the Lower B block in the assignment stage. By ensuring the contiguity of the Lower A and B blocks, this exposure risk is removed.

21. Rogers recommends that contiguity also be guaranteed between Lower C and the Lower D and E blocks when a bidder wins one of the Lower B and C blocks and one of the Lower D and E blocks.¹⁷ Bell Mobility opposes this recommendation. It is currently not possible to implement Lower D and E spectrum into either the Band 17 ecosystem (Lower B and C blocks), or the Band 13 ecosystem (Lower A, B and C blocks). This is because the Lower D and E blocks are within the necessary duplex gap required to use Lower A, B and C block spectrum.¹⁸ As a result, the Lower D and E blocks will not be used with the Lower B and C blocks, but instead will provide valuable downlink capacity which can be used with existing spectrum holdings of wireless service providers. Therefore, there is no technical or business justification for implementing the contiguity of the Lower C block with the Lower D and E blocks.

- ***the combined eligibility point and revealed preference activity rule in the clock rounds, and the revealed preference limit in the supplementary round;***

22. Bell Mobility continues to support the combined eligibility point and revealed preference activity rule for the clock rounds and the revealed preference limit in the supplementary round. WIND Mobile¹⁹, PIAC²⁰, and Telus²¹ also supported these proposals. Others recommended various changes to the rules to bias the outcomes from either the supplementary round (Rogers), or in the other extreme, the clock rounds (regional providers). As discussed further below, neither of these recommendations is appropriate, and both should be rejected by the Department.

¹⁶ Public Mobile, Comments, 25 June 2012, pages 2-3.

¹⁷ Rogers, Comments, 25 June 2012, page 15.

¹⁸ Due to limitations in RF filter technology, additional isolation is required so that transmitted data does not interfere with received data. The duplex gap for Band 17 consists of the Lower D and E blocks and the base station transmit sub-band of the Lower A block.

¹⁹ WIND Mobile, Comments, 25 June 2012, page 6.

²⁰ PIAC, Comments, 25 June 2012, page 3.

²¹ Telus, Comments, 25 June 2012, page 10.

Rogers' Recommendations – Bias Towards Supplementary Round

23. Rogers asserted that "Industry Canada needs to revisit the proposed activity rules in the light of the potential that they allow for vexatious bidding and impose undue limitations of the ability of bidders to update their valuations in the light of information gleaned over the course of the open round."²² To summarize, Rogers recommends:

- (i) the removal of the final price cap for packages that the bidder is not eligible to bid for in the final round and use a relative cap rule for supplementary bids²³;
- (ii) remove the constraint that supplementary round bids must satisfy revealed preference with respect to the final clock round, i.e. that final clock prices do not impose an absolute upper limit to the amount that can be bid for larger packages²⁴;
- (iii) in the supplementary round, revealed preference constraints should be applied to all packages, including the final clock package, the final clock package plus unallocated products and packages 'smaller' than the final clock package²⁵;
- (iv) during the clock rounds, bids on packages that exceed the bidder's current eligibility should be subject to revealed preference constraints with respect to the last round in which the bidder had sufficient eligibility to bid on the package (and to apply additional revealed preference constraints with regard to subsequent rounds in which eligibility was dropped)²⁶; and
- (v) supplementary bid for packages that exceed the eligibility of the bidder in the final clock round be constrained only on the basis of revealed preference in the last round in which the bidder had sufficient eligibility to bid on the package (and not to apply additional revealed preference constraints with regard to subsequent rounds in which eligibility was dropped)²⁷.

24. While Rogers devotes a significant amount of effort justifying these recommendations, it is important to note that they are all designed to do one thing – limit the importance of the clock rounds and increase the importance of the supplementary round. Adopting Rogers' recommendations would in effect create a *de facto* single round sealed-bid auction. For example, recommendations (i) and (ii) are designed to relax the constraint on the maximum amount bidders are allowed to bid in the supplementary round (i.e., remove the final price cap

²² Ibid., page 24.

²³ Ibid., page 23.

²⁴ Ibid., page 24.

²⁵ Ibid., page 24.

²⁶ Ibid., page 24.

²⁷ Ibid., page 24.

and implement a relative price cap, and remove the constraint that supplementary round bids must satisfy revealed preference with respect to the final clock round). Recommendations (iv) and (v) are designed to relax the constraints upon bids in both the clock rounds and in the supplementary round since they no longer need to satisfy the revealed preference constraints at all points where eligibility was reduced, it only needs to be satisfied at the last point that eligibility was reduced. Recommendation (iii) is designed to limit bidders' ability to alter their final round bid in the supplementary round – bidders will be required to move to the smallest package that they prefer as quickly as possible since they will not be able to do so in the supplementary round. This reduces the benefits of the clock rounds which are to allow for price discovery.

25. Moreover, Rogers' recommendation (i) which requests the implementation of a relative cap in the supplementary round also is similar to that proposed by Ofcom. However, Ausubel, L.M. and P. Cramton (2011) (Ausubel and Cramton) note that this rule prevents the bidder from expressing its true preferences until the supplementary round and makes it difficult for bidders to determine how to bid to guarantee winning the final clock package when items are unallocated in the final clock round. This is why Ausubel and Cramton designed the hybrid eligibility point and revealed preference rule which has been proposed for the Canadian 700 MHz auction:²⁸

While the relative cap is an important step in the direction of implementing revealed-preference considerations, there are at least two issues with the Ofcom (2011) approach:

1. The activity rule for the clock stage (Eligibility-Point Monotonicity) prevents a bidder from placing bids on her most preferred package whenever the most preferred package exceeds her eligibility. For example, the bidder may reduce her eligibility early in the auction but then need to expand her eligibility when the price in a category she is bidding on increases much more than the price of a substitute category requiring more eligibility points. This prevents the bidder from expressing her true preferences until the supplementary round.
2. The activity rule for the supplementary round (Relative Cap) fails to satisfy a desirable property that guarantees that the tentative allocation of the final clock round is unchanged as a result of the supplementary round when there are no unallocated items in the final clock round. Also, it is difficult for bidders to determine how to bid to guarantee winning the final clock package when items are unallocated in the final clock round.

²⁸ Ausubel, L.M. and P. Cramton, (2011), "Activity Rules for the Combinatorial Clock Auction," Mimeo. Available at <http://www.cramton.umd.edu/papers2010-2014/ausubel-cramton-activity-rules-for-cca.pdf>.

Regional Bidders' Recommendations – Bias Towards Clock Rounds

26. An auction design that significantly favours the supplementary round as advocated by Rogers' is exactly the outcome that regional bidders are concerned about. Eastlink²⁹, MTS Allstream³⁰, Quebecor Media Inc. and Videotron G.P. (Quebecor)³¹, SaskTel³², SSI³³, Tbaytel³⁴, and Xplornet³⁵, all raised concerns that a smaller regional bidder that is the high bidder at the end of the clock rounds can still not win spectrum because a large national bidder placed a bid for a larger package in the supplementary round.

27. Regional bidders take the opposite view of Rogers and want greater assurances that the final clock round will determine the final allocation of spectrum. Both Quebecor³⁶ and SaskTel³⁷ provide recommendations that restrict bidders to bidding on packages that include their final clock round package in the supplementary round in order to increase the probability that the final clock round determines the final allocation in the supplementary round. Quebecor³⁸, Mobilicity³⁹ and SaskTel⁴⁰ even go as far as to suggest that the auction should stop at the end of the clock round (Quebecor) or to use a simultaneous multiple-round auction (Mobilicity and SaskTel). Bell Mobility disagrees on the basis that adopting either of these recommendations would bias the results towards an outcome similar to a simultaneous multiple-round auction. By removing the supplementary round, bidders would no longer have the opportunity to use all of the information available to them in order to improve their bids or to submit bids for packages of licenses not expressed in the clock rounds. This undermines one of the benefits of the combinatorial clock auction and may lead to a less efficient allocation of spectrum.

28. Recommendations that effectively bias the outcome towards results similar to either a single round sealed-bid auction or to a simultaneous multiple round auction are inappropriate. Bell Mobility continues to consider that the combinatorial clock auction that uses the Department's proposed combined eligibility point and revealed preference activity rules for the clock rounds and the revealed preference limit in the supplementary round strikes the

²⁹ Eastlink, Comments, 25 June 2012, page 12.

³⁰ MTS Allstream, Comments, 25 June 2012, page 1.

³¹ Quebecor Media Inc. and Videotron G.P. (Quebecor), Comments, 25 June 2012, page 6.

³² SaskTel, Comments, 25 June 2012, page 9.

³³ SSI, Comments, 25 June 2012, page 13.

³⁴ Tbaytel, Comments, 25 June 2012, page 3.

³⁵ Xplornet, Comments, 25 June 2012, page 6.

³⁶ Quebecor, Comments, 25 June 2012, page 9.

³⁷ SaskTel, Comments, 25 June 2012, pages 10-11.

³⁸ Quebecor, Comments, 25 June 2012, page 9.

³⁹ Mobilicity, Comments, 25 June 2012, page 14.

⁴⁰ SaskTel, Comments, 25 June 2012, pages 10 and 11.

appropriate balance between providing bidders with sufficient flexibility to place different bids, while still encouraging truthful bidding throughout the auction.

29. In terms of restricting bidder behavior, both Rogers and SSI provided recommendations regarding what can be included in a package bid. Rogers argues that there is no need for a single operator to obtain spectrum split across both the upper and lower portions of the spectrum band, and thus, any bids on packages that include blocks in both the upper and lower band will likely be made for gaming reasons, i.e. with the aim of driving up prices for other bidders beyond the level that would result from looking at genuine opportunity cost only or to deny the blocks to other bidders.⁴¹ Rogers therefore recommends that "bidders should not be allowed to place: a) bids for packages that include upper block licences at the same time as the lower A block; and b) bids for packages that include both A and D/E blocks without also including a bid in the B/C block."⁴² Bell Mobility disagrees. There is a business justification for bidding on upper blocks at the same time as bidding on the Lower A, D and E blocks. As indicated above, the Lower D and E blocks will not be used with the Lower B and C blocks, but instead will provide valuable downlink capacity which can be used with existing spectrum holdings. Similarly, wireless service providers can use Lower A spectrum independently of Lower B and C. Therefore, in order to allow bidders to supplement their existing spectrum holdings with non-primary spectrum, the Department should reject Rogers' recommendations and allow bidders to bid on packages that include both upper and lower spectrum blocks.

30. While Bell Mobility does not believe there should be restrictions on bidding for non-prime blocks, there still remains a strong incentive for gaming behaviour among the "prime" blocks, especially given the asymmetrical spectrum cap limits which allow some bidders to bid for two "prime" spectrum blocks. Bidders that are able to bid on two "prime" spectrum blocks will be able to place bids that contain both lower and upper "prime" spectrum. Given the current state of handset development, such a split in spectrum will result in an inefficient implementation since both upper and lower "prime" blocks will not typically be implemented in the same device. In addition, the infrastructure required to support this "configuration" is not in any way efficient as it requires the implementation of 2 channels compared to a single wider 10 MHz channel that is central to design goals of 4th Generation LTE Networks. In order to deter this type of gaming strategy, the Department should not allow bidders to place bids on packages which contain both lower and upper "prime" spectrum in the same licence area. This will reduce

⁴¹ Rogers, Comments, 25 June 2012, page 12.

⁴² Ibid., page 13.

gaming behaviour and encourage truthful bidding without significantly changing the auction structure.

31. SSI's recommendation is inappropriately restrictive. SSI believes "that the licences for the North (service area 2-14) and Northern Quebec (service area 2-07) should be removed from any of the packages made possible in the CCA format," and that if there are unallocated licences at the end of the clock rounds "those licences should be subject to a new auction at a later date, with reduced opening bids."⁴³ Bell Mobility disagrees. Bell Mobility has launched LTE-based services in the North⁴⁴ and as a result has a need for 700 MHz spectrum in those service areas. Restricting the ability of bidders to bid on spectrum in the North unnecessarily reduces coverage and competition in those service areas.

32. With respect to auctioning unallocated spectrum in a separate auction, this too effectively removes the supplementary round of the auction and reduces the benefits of the combinatorial clock auction. As indicated above, by removing the supplementary round, bidders would no longer have the opportunity to use all of the information available to them in order to improve their bids or to submit bids for packages of licenses not expressed in the clock rounds, which will undermine one of the benefits of the combinatorial clock auction and may lead to a less efficient allocation of spectrum. Therefore, the Department should not adopt either of SSI's recommendations.

Increasing the Number of Supplementary Bids

33. Furthermore, Rogers recommends that the maximum number of supplementary bids that a bidder can make be increased from 500 to 2,000.⁴⁵ This would only serve to further complicate the supplementary round, and while it may be true that increasing the maximum number of bids to 2,000 would not create system or process issues, it is not clear that bidders really need access to this many supplementary bids. Based on the information from the final clock round and the restrictions from the activity rules, it is highly unlikely that bidders would require the flexibility to bid on every single possible combination of unallocated spectrum. Therefore, Bell Mobility recommends that the maximum number of supplementary bids remain unchanged at 500.

⁴³ SSI, Comments, 25 June 2012, pages 12 and 13.

⁴⁴ See http://www.bell.ca/Mobility/Coverage_map.

⁴⁵ Rogers, Comments, 25 June 2012, page 25.

- ***the use of a second-price rule;***

34. The majority of comments supported the use of a second-price rule and both WIND Mobile⁴⁶ and PIAC⁴⁷ supported the rule as currently proposed. Both Public Mobile and Xplornet recommended that the weights used should be based on package size determined in the auction rather than on opening round bids. Public Mobile "supports the proposal of 'nearest Vickery weighted by size,'" where the "package size be measured by the bidder's winning package evaluated at the final bid prices."⁴⁸ Similarly, Xplornet states that the weighting be "based on parameters within bidders' behavior e.g. ratio of final bid prices to reserve, final bid prices, etc."⁴⁹ Bell Mobility disagrees with these recommendations and supports Rogers' recommendation that the second-price rule be based on "a simple Nearest-Vickery approach rather than the weighted approach proposed by the Department."⁵⁰ As Rogers notes, not only has the unweighted approach been used in all European combinatorial clock auctions to date⁵¹, the weighted approach proposed by the Department distorts bidding incentives.⁵²

While this might have a superficial attraction in terms of 'fairness' between winners of larger and smaller packages, this benefit is illusory as the approach clearly creates distorted incentives for likely winners of large packages that ultimately harm winners of smaller packages, as we discuss below. Furthermore, as the proposed weights are based on the cost of the winners' packages at opening bids, this creates an arbitrary situation in which the relative size of opening bids can become critical in establishing the prices paid by successful bidders.

The proposed sharing rule needs to be considered in the context of bid shading incentives that exist for bidders who expect jointly to have to pay more than the sum of their individual Vickrey prices. As bidders for larger packages in such a winning coalition would expect to have to make a larger contribution, they face much stronger bid shading incentives than bidders for smaller packages. If larger bidders then lower their bids in response to these incentives, prices will rise disproportionately for smaller bidders. This is highly detrimental to smaller bidders and can have potentially substantial efficiency costs. In contrast, the simpler unweighted objective (i.e. a simple sum of squares of price differences) spreads these marginal bid shading incentives more evenly across all bidders, reducing their impact.

35. Therefore, Bell Mobility recommends that the Department adopt Rogers' recommendation and implement unweighted Nearest-Vickery prices.

⁴⁶ WIND Mobile, Comments, 25 June 2012, page 7.

⁴⁷ PIAC, Comments, 25 June 2012, pages 3 and 4.

⁴⁸ Public Mobile, Comments, 25 June 2012, page 14.

⁴⁹ Xplornet, Comments, 25 June 2012, page 6.

⁵⁰ Rogers, Comments, 25 June 2012, page 27.

⁵¹ *Ibid.*, page 27.

⁵² *Ibid.*, page 26.

Industry Canada Bidding on Unallocated Blocks

36. Public Mobile⁵³ and Rogers⁵⁴ recommend that the Department's proposal to include a series of bids at reserve prices be removed. Bell Mobility agrees. As noted by Rogers:⁵⁵

The effect of Industry Canada's proposed approach is that the incremental revenue from awarding each and every block must be at least the reserve price, which is a stricter condition than simply requiring that each package won reaches reserve price. The proposed approach is, therefore, far more likely to result in Industry Canada retaining unsold blocks that have no use whatsoever. It could be that Industry Canada could end up retaining unsold blocks where there is demand for those blocks, with winners in any case paying in excess of reserve prices for large packages of blocks.

- ***the information to be disclosed during, and post-auction.***

37. Bell Mobility continues to recommend that greater information disclosure will promote the efficient assignment of licences since bidders will be able to make more informed bids. At a minimum, it is appropriate to know what packages other bidders are bidding on at each round in order to help bidders identify combinations that enhance the overall value of the package and bid on the appropriate packages in the clock rounds as well as the supplementary round.

38. WIND Mobile⁵⁶ and PIAC⁵⁷ both supported the disclosure of limited information during the auction, whereas SaskTel supported anonymous bidding but also recommended that the Department release only the name of the registered auction participants and not details regarding the values of opening deposits and bid points.⁵⁸ As discussed in its Comments, Bell Mobility believes that information is even more important when there is combinatorial bidding. With combinatorial bidding and second-price rules, the main advantage of a multi-round auction over a single-round (sealed-bid) auction is that the information disclosure between rounds enables bidders to focus attention on packages that are most likely to become part of their value-maximizing combination, enabling them to focus on a small set of packages to make bidding decisions. The best information policies would reveal information that is useful for serious bidders trying to determine the right packages. After each round, bidders need to have

⁵³ Public Mobile, Comments, 25 June 2012, pages 12 and 13.

⁵⁴ Rogers, Comments, 25 June 2012, pages 26 and 27.

⁵⁵ Ibid., page 27.

⁵⁶ WIND Mobile, Comments, 25 June 2012, page 7.

⁵⁷ PIAC, Comments, 25 June 2012, page 4.

⁵⁸ SaskTel, Comments, 25 June 2012, page 17.

access to the packages other bidders are bidding on, as this will help them identify combinations that enhance the overall value and bid on the appropriate packages in the clock rounds and in the supplementary round. At a minimum, it is appropriate to know the winning packages at each round, since this information will assist bidders in assessing whether prices are being driven by real competition so that continued bidding is essential, or just gaming which may require a different bidding response.

39. This is consistent with the views of Rogers and Telus. Rogers recommends that after the conclusion of the supplementary round, "that Industry Canada release full information about all winning bids and bidders," since "this information may be relevant to bidders when considering their block preferences in the Assignment Round and, as a result, withholding this information could prevent efficient bidding."⁵⁹ However, if providing this level of information after the supplementary round can facilitate efficient bidding, it is even more so in the clock rounds and the supplementary rounds when bidders still have an opportunity to adjust their bids. As Telus notes, to do otherwise would be contrary to the Department's desire to support efficient use of spectrum by the industry through sharing:⁶⁰

It is interesting to note that the Department on one hand supports the efficient use of spectrum by the industry through sharing, yet on the other hand proposes an auction attribute that makes it extremely challenging for participants to achieve compatible spectrum, which is already difficult enough given that the Upper and Lower 700 bands are incompatible. This impacts operators both large and small who may be seeking capital efficiencies and may frustrate the objectives the Department has outlined to encourage competition, investment and innovation to the broadest number of Canadians, in a timely fashion.

40. Moreover, as noted in its Comments, Bell Mobility believes there should be no concern regarding anticompetitive collusion in the auction. The incentives for demand reduction by large bidders are already significantly limited by both the CCA rules and the tight spectrum caps. In a non-combinatorial second price auction, excess demand for a licence increases the price and the losing bidder sets the price for that licence. Therefore, gains from collusion and demand reduction are high – since it reduces the price for the licence – and it is important to limit information that would facilitate this behaviour. In a combinatorial second price auction, package bidding is allowed and excess demand does not increase the price of every licence (since the bid is for a package of licences and not a specific licence). Since the prices of the licences may not be directly affected, the incentives for collusion via demand reduction are

⁵⁹ Rogers, Comments, 25 June 2012, page 29.

⁶⁰ Telus, Comments, 25 June 2012, page 13.

highly reduced. Moreover, the tight spectrum cap means that bidders will not want to reduce their demand any further just to keep prices lower. Therefore, limiting information only damages bidders.

41. As a result, the usual arguments for limiting information are not applicable. Facilitating truthful bidding and increasing the pace of the auction decrease the potential of anticompetitive behaviour. The Department's focus should be on greater information disclosure to promote the most efficient assignment of licences. Therefore, Bell Mobility continues to recommend that the Department provide information on which packages other bidders are bidding on at each round and to not adopt anonymous bidding.

42. Public Mobile also supported limited information disclosure both during the auction and after the auction, with only the winning bidders, packages and prices being disclosed after the auction.⁶¹ Bell Mobility does not support this recommendation. As indicated in its Comments, Bell Mobility supports the full disclosure of all bidding information as indicated in the Notice. This is consistent with Rogers' recommendation that "Industry Canada should release full information about winners, allocations and prices, and all bids received in the auction," since "this will enable bidders to verify the outcome," and would assist bidders in determining whether the auction had failed due to gaming behavior.⁶²

4.0 SECTION 5: BIDDER PARTICIPATION – AFFILIATED AND ASSOCIATED ENTITIES

4.1 There is a broad and wide-ranging level of support for the Department's new flexible associated entity policies

43. The Company notes the strong and wide-ranging degree of support for the policy rationale underlying the Department's proposed new, more flexible, bidder participation rules.

44. At page 12 of the Notice, the Department notes that its policy change is in direct response to the growing and divergent forms of network and spectrum sharing arrangements that are being adopted spurred by investment and spectrum efficiencies and the benefits these arrangements can bring to rural areas. The Department specifically mentions these arrangements and their consistency with its policy objectives of promoting competition, investment and timely deployment of networks to rural areas in light of spectrum scarcity, high

⁶¹ Public Mobile, Comments, 25 June 2012, pages 6 to 8.

⁶² Rogers, Comments, 25 June 2012, page 29.

demand for capacity and the cost of deployment. Notably, the Department indicates that the proposed changes are intended to provide all carriers with increased flexibility to enter into such network and spectrum sharing arrangements provided these do not adversely impact the integrity of the auction and the intent of the spectrum caps.

45. The Company repeats and reaffirms its strong support for these forward-looking and progressive policy proposals and notes that numerous and divergent other stakeholders also expressed strong support for these underlying policies.

46. Among new entrant advanced wireless services (AWS) licensees, Quebecor and WIND Mobile both support these objectives. Quebecor specifically requests the Department to confirm that these proposed measures would enable regional carriers to coordinate activities relating to equipment acquisition, network deployment on the basis that "consumers stand to benefit when such entities have the flexibility to associate among themselves."⁶³ WIND Mobile too strongly supports these policy objectives, stating: "WIND generally supports changes to the spectrum sharing rules to encourage more spectrum sharing. ... Industry Canada's rules should be adjusted to encourage parties to propose for Industry Canada's consideration spectrum or network sharing arrangements that have yet to be solidified 30 days before the final deadline to file applications to participate in the auction."⁶⁴

47. Telus and SaskTel also support these proposals. The latter states: "SaskTel commends the Department for recognizing that companies can be fierce competitors and yet find it beneficial to negotiate certain wholesale agreements in order to provide service more efficiently. SaskTel agrees strongly that industry participants making such agreements should not be penalized with a lack of spectrum, especially where that spectrum would otherwise go unused."⁶⁵ The Company echoes that statement.

48. There is a similar degree and cross section of support in terms of the Department's proposed definition of the term "Associated Entities" and the related proposals to permit entities deemed associated to apply to bid separately in the auction and be subject to separate spectrum caps as well as the criteria on which such applications will be evaluated.

⁶³ Quebecor, Comments, 25 June 2012, paragraph 65.

⁶⁴ Wind, Comments, 25 June 2012, paragraphs 23 and 24.

⁶⁵ SaskTel, Comments, 25 June, paragraph 43.

49. Of the 23 entities whose comments appear on the Department's website⁶⁶, 15 entities did not object to these proposed rules. Moreover, the consensus in favour of these rules also cuts across a broad cross section of industry participants which includes national incumbent carriers Bell Mobility and Telus; regional carriers MTS Allstream and SaskTel; new entrants Quebecor and WIND Mobile.

4.2 The Department should disregard comments arguing against the Department's proposed changes to the Associated Entity policies

50. Those entities arguing against the Department's Associated Entity rules can generally be found to have argued variations of one or more of the following three claims: (i) Bell Mobility and Telus are associated; (ii) the associated entity rules should be designed to ensure that Bell Mobility and Telus are found to be associated; or (iii) in any event, the associated entity rules should be changed to reduce or eliminate as much competition as possible for spectrum to facilitate the acquisition of spectrum by fledgling new entrants. Each of these claims are inappropriate and should be rejected by the Department on the basis of the following points.

4.2.1 Requests that Bell Mobility and Telus are, or should be found to be, associated are out of process and are factually wrong in any event

51. Eastlink⁶⁷, Mobilicity,⁶⁸ PIAC,⁶⁹ Public Mobile,⁷⁰ Rogers⁷¹ and Xplornet⁷² have all asserted that Bell Mobility and Telus are associated, or should be treated as associated entities under the auction rules and be required to bid together and or subject to combined spectrum caps. Xplornet⁷³ went so far as to request a Department ruling on whether Bell Mobility and Telus are associated, though they subsequently answered their own question by concluding: "the parties should be considered associated entities." These are flawed arguments which should be rejected by the Department.

52. First, the question of whether Bell Mobility and Telus are associated entities is not raised in the Notice. Accordingly, claims about the alleged associated status of Bell Mobility and Telus

⁶⁶ <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf10427.html>.

⁶⁷ Eastlink, Comments, 25 June 2012, paragraphs 14 and 15.

⁶⁸ Mobilicity, Comments, 25 June 2012, paragraph 39.

⁶⁹ PIAC, Comments, 25 June 2012, paragraph 15.

⁷⁰ Public Mobile, Comments, 25 June 2012, paragraph 18.

⁷¹ Rogers, Comments, 25 June 2012, paragraph 115.

⁷² Xplornet, Comments, 25 June 2012, paragraph 35.

⁷³ Ibid., paragraph 32.

and requests for a Departmental ruling on that issue are outside the scope of this proceeding and should be rejected on that basis alone.

53. Second, these statements by Eastlink, Public Mobile and Rogers are factually wrong on the specific terms of the Bell Mobility-Telus arrangement.

54. These statements are based on factual mischaracterizations about the Bell Mobility and Telus network build and share arrangement. The arrangement specifically expresses the parties' intent that they will continue to compete vigorously against each other at the retail level.

55. It is clear under the Department's proposed associated entity definition that Bell Mobility and Telus are not, indeed they cannot be, associated entities for the purposes of the 700 MHz auction. In the words of the definition, there is no partnership, no joint venture, no agreement to merge, no consortium, nor any arrangement, agreement or understanding of any kind whatsoever between Bell Mobility and Telus relating in any way to the acquisition or use of any 700 MHz spectrum.

56. It is disingenuous for Rogers to assert that it (Rogers) "is uniquely constrained in its ability to compete for the 700 MHz spectrum and use it" due to the combined effect of the spectrum caps and the associated entity rules.⁷⁴ This statement implies that the associated entity rules somehow operate differently for Bell Mobility and Telus than they do for Rogers. This is incorrect. It can be seen that the associated entity definition, as stated at paragraph 64 of the Notice, has been expressly drafted generically so as to apply symmetrically to all potential bidders:

Any entities that enter into any partnerships, joint ventures, agreements to merge, consortia or any arrangements, agreements or understandings of any kind, either explicit or implicit, relating to the acquisition or use of any spectrum in the 700 MHz band will be treated as Associated Entities. Typical roaming and tower sharing agreements would not cause entities to be deemed associated. (Emphasis added)

57. The Department's proposals to permit entities deemed associated to apply to bid separately and subject to individual spectrum caps as well as the criteria against which such applications are to be assessed are similarly framed in generic language so as to apply symmetrically to all bidders. Rogers' allegations about the unique application of the associated

⁷⁴ Rogers June 25 Comments, paragraph E4.

entity rules are all the more troubling since, as noted below, Rogers itself implicitly acknowledges that it potentially may be associated with another entity and seeks to have these same rules applied to it in order to enable it to be able to bid separately and subject to spectrum caps separate and apart from that entity.

58. Rogers contradicts its stated opposition to the proposed affiliation rules, at least insofar as it believes these rules should be applied to Bell Mobility and Telus, by actually supporting these rules so that the Department will apply them to find that Rogers and Tbaytel should be accorded the privilege to bid separately and subject to separate spectrum caps despite their apparent association.

59. The Department should reject similar requests from interveners, like Eastlink,⁷⁵ PIAC⁷⁶ and Rogers,⁷⁷ that the associated entity rules should be designed specifically to capture Bell Mobility and Telus as associated entities and prevent them from bidding separately and free from a combined spectrum cap.

60. The Company is confident that with the benefit of a full factual record the Department can apply the eligibility rules and arrive at timely, fact-based conclusions regarding associated entities, as it has in prior auctions.

61. Suffice it to state that the Departmental auction rules should be based on the broadest possible public policy principles and policies intended to foster outcomes consistent with the broadest possible public interest, such as promoting competition, maximizing the efficient use of the spectrum resource, as well as the deployment of the largest and most efficient advanced wireless networks to as many areas of Canada as possible, and not, as these parties have proposed, with a view to favouring some bidders over others. It is particularly ironic that Rogers seeks associated entity rules intended to secure an adverse, predetermined outcome for its competitors when one of its main criticisms of the proposed associated entity rules is that they subject it alone to "unique constraints".

62. Moreover, it is inappropriate for Rogers and others to encourage the Department to conclude that Bell and Telus are associated entities in the absence of any evidence. Such

⁷⁵ Eastlink, Comments, 25 June 2012, paragraphs 46 and 48.

⁷⁶ PIAC, Comments, 25 June 2012, paragraph 15.

⁷⁷ Rogers, Comments, 25 June 2012, paragraphs 115 and 116.

recommendations only serve to place Industry Canada in a bind and open it to risk of judicial review.

4.2.2 Requests for Associated Entity Rules that favour entrants are tantamount to already-discredited spectrum set-asides and should also be rejected

63. Cogeco,⁷⁸ Eastlink⁷⁹ and Mobilicity⁸⁰ have also asserted that the associated entity and eligibility rules should be drafted so as to limit the ability of incumbent carriers to acquire too much or any 700 MHz spectrum for fear this will disrupt the "fragile" or "fledgling" state of competition.

64. These claims are improper for several reasons. First, they ignore the Department's acknowledgement that the incumbent carriers also continue to require additional new spectrum because they each serve millions of customers who will want and deserve, as do all consumers, access to the latest technologies which use 700 MHz spectrum. In addition, requests that the associated entity rules function in order to constrain incumbents' spectrum acquisition in order to preserve more of it for the entrants are fundamentally at odds with Departmental policy. They completely ignore the Department's conclusions in the Policy and Technical Framework Mobile Broadband Services (MBS) – 700 MHz Band Broadband Radio Service (BRS) – 2500 MHz Band, issued a mere four months ago rejecting spectrum set asides in the 700 MHz auction.⁸¹

65. At paragraph 36 of that foundational policy document, the Department specifically indicated that spectrum caps are preferable to set-asides as a less intrusive measure to assure an appropriate allocation of scarce 700 MHz spectrum:

Spectrum caps are more appropriate than set-asides for the auctioning of 700 MHz and 2500 MHz spectrum because of the limited quantity of 700 MHz spectrum available; the different values that providers may place on the specific blocks of 700 MHz; and the fact that certain companies already hold licences for large amounts of 2500 MHz spectrum. The use of caps will not require Industry Canada to identify specific blocks of spectrum for a set-aside but will allow companies to chose blocks based on equipment ecosystem preferences and business plans. For these reasons, the use of caps will support the objective of sustained competition in a less intrusive manner than the use of a set-aside. [Emphasis added]

⁷⁸ Cogeco, Comments, 25 June 2012, paragraph 14.

⁷⁹ Eastlink, Comments, 25 June 2012, paragraphs 46 and 47.

⁸⁰ Mobilicity, Comments, 25 June 2012, paragraph 40.

⁸¹ Notice No. SMSE-002-12, March 2012.

66. The Department went on to explicitly reject a set-aside in the 700 MHz auction as follows:

Setting aside a large amount of spectrum could negatively affect the ability of the large national and regional service providers to provide advanced services to their customer base. Deployments of the most advanced services to smaller markets, including rural and remote areas, may be delayed counter to Industry Canada's objective that spectrum benefits be made available on a timely basis to these Canadians.

67. It is both surprising and disappointing to see parties advocate for eligibility rules that would function as a *de facto* new entrant set-aside given the Department's unequivocal rejection of spectrum set asides a mere four months ago. Industry Canada should reject calls for auction eligibility rules which serve as backdoor set-asides.

4.3 The Department has generally identified the appropriate criteria on which to permit associated entities to apply to bid separately and do so subject to separate spectrum caps

68. The Department can also be confident in the appropriateness of its proposals to allow associated entities to bid separately and to apply to be subjected to separate spectrum caps and the general criteria for allowing this based on the fact that these proposals received an even broader degree of support than the policy statements underlying these proposed associated entity changes.

69. Take, for example, the Department's proposal at paragraph 69 of the Notice to permit bidders found to be associated entities to apply to the Department to bid separately in the auction. The Notice proposed a well defined process, widely supported by parties in their comments, which would enable such entities to participate in the auction separately if approved by the Department.

70. Notwithstanding Rogers' concerns that these and other proposed rules would "uniquely constrain" it, Rogers⁸² actually endorses the Department's proposal to allow for separate bidding by associated entities. It is worth quoting Rogers' submission in its entirety on this point:

Some inter-carrier relationships may include exclusive territories that are a small subset of a licence tier. It would be prejudicial to force two carriers to bid as a

⁸² Rogers, Comments, 25 June 2012, paragraph 117.

single bidder under a single cap due to only a small portion of the licence area where they do not compete. It unduly harms both carriers' ability to deliver service and compete outside the exclusive area. This in turn will reduce competition. Under these circumstances, carriers should be entitled to bid as normal as long as the exclusive portion constitutes less than 50% of the population of the entire licence tier. [Emphasis added]

71. The Company has the following reply comments to the Rogers' quote.

72. First, it demonstrates that far from being opposed to the proposed associated entity rules that would enable certain associated entities to apply to bid separately and subject to individual spectrum caps, Rogers actually endorses such a measure, at least for itself. The above-quoted statement makes it crystal clear that Rogers is hedging its bets in the hopes the Department will not find Rogers to be associated with another entity. In the event it is found to be an associated entity, Rogers clearly wishes to be able to apply for Departmental permission to bid separately from that other entity and be subject to separate spectrum caps in order to, in its words, "bid as normal".

73. Rogers' own comments never mention the identity of the other entity with whom it considers itself at risk of being identified as an associated entity. That information emerges from a review of Tbaytel's comments, where the latter reveals its commercial relationship with Rogers whereby Tbaytel and Rogers have entered commercial agreements under which they have agreed that Tbaytel is to be the exclusive provider of wireless services in the north-western part of the Northern Ontario licence area, an area of exclusivity that is said to represent just 30% of the total population of this entire Northern Ontario licence area.⁸³ An 1 September 2010, a joint news release by Rogers and Tbaytel⁸⁴ states that as of November 2010 all then current Rogers wireless customers within the Thunder Bay and district area code '807' will be serviced by Tbaytel as of November of that year. The release also states that Rogers' customers will be able to take advantage of Tbaytel's product bundling opportunities and that all Rogers' customers travelling through northern Ontario will be able to access the new network from just west of Sault Ste. Marie right to the Manitoba border.

74. Second, Rogers' quoted statement is also revealing because it shows that Rogers implicitly supports the Department's proposed "sufficient intention to compete separately"

⁸³ Tbaytel, Comments, 25 June 2012, paragraphs 3 to 4 and 19.

⁸⁴ See: Media Release: "Rogers Customers in Northern Ontario transition to Tbaytel, at: <http://tbaytel.net/media/news/TBayTel%20News%20Release%20-%20Sept%201.pdf>.

criterion on which to assess whether associated entities could be subject to separate spectrum caps.

75. Third, the Company disagrees with Rogers' and Tbaytel's request that Industry Canada should make an exception for their particular exclusivity and non-compete arrangements in North-western Ontario. The Company disagrees with Rogers and Tbaytel's claim that two associated entities should be considered to have a sufficient intention to compete provided their arrangement not to compete affects an area whose population represents less than 50% of the overall licenced area.

76. In the context of the non-compete clause between Rogers and Tbaytel, this seems to suggest that the Department should somehow ignore or place less weight on the needs of wireless consumers in Thunder Bay and surrounding area than others in Northern Ontario. Accordingly, the Company considers that the Department has identified the appropriate mechanism and criteria for allowing bidders that are associated to bid separately and subject to separate caps and should not dilute the "competition criterion" to suite the non-compete requirements of Rogers and Tbaytel in Thunder Bay.

77. Xplornet, like Rogers and Tbaytel, also supports different associated entity rules when it comes to new entrants, including itself, than for national wireless carriers like Bell Mobility and Telus. On this point, the Company repeats and relies upon its first round comments on the importance of adhering to principles of symmetrical regulation in the design of the auction rules to the maximum extent possible. The Department has wisely determined that allowing associated entities to bid separately in the auction should be permitted provided this does not undermine the integrity of the auction and to do so subject to separate spectrum caps provided there is evidence of sufficient competition between the entities in question. These are the correct principles. Therefore, they should apply, regardless of whether the entities in question are incumbents, national carriers, regional carriers, 2008 new entrants or greenfield operators without prior operations in Canada.

4.4 Reply comments on miscellaneous other matters relating to the proposed associated entity rules

78. The Company has the following reply comments regarding other miscellaneous issues relating to the proposed associated entity rules.

4.4.1 There is a strong degree of consensus that commercially sensitive, confidential information should not be publicly disclosed but that a summary of the nature of the association and the Department's basis for finding an association should be publicly available

79. The Company continues to consider that there is no demonstrated need for public proceedings to determine whether two or more entities are associated. The Company notes WIND Mobile's proposal⁸⁵ that applications from entities seeking Departmental approval to bid separately or to be subject to separate caps should be confidential, but that the Department should publish public summaries of arrangements held to give rise to associations and the bases for Departmental rulings so that bidders are equipped with all the relevant information they require in advance of the auction to structure their affairs and their bidding strategies accordingly. The Company agrees that Wind's proposal strikes the appropriate balance between respect for confidential corporate agreements, while providing auction participants with the information they need to strategize and bid in an informed manner.

80. In this regard, the Company agrees with Telus' Comment⁸⁶ that no justification has been advanced for suspending the generally applicable laws of Canada for the purposes of the auction, including the provisions of section 20 of the *Access to Information Act*, which imposes a mandatory duty on government officials not to disclose confidential, commercially sensitive information supplied by bidder applicants where such the information consists of confidential commercial information that is consistently treated in confidence, or where the disclosure could reasonably be expected to result in material financial loss or gain.

81. Public Mobile's attempt to analogize the public nature and the public availability of amounts bid by parties on spectrum with bidders' private and confidential commercially sensitive arrangements⁸⁷ entirely misses this point. Spectrum is a public resource put up for auction by Industry Canada, the public body responsible under statute for ensuring that licences are

⁸⁵ Wind Mobile, Comments, 25 June 2012, paragraph (a) to (c).

⁸⁶ Telus, Comments, 25 June 2012, paragraph 46.

⁸⁷ Public Mobile, Comments, 25 June 2012, paragraphs 30 and 31

auctioned to the party that values the spectrum most. There is no reasonable expectation by bidders that the amounts they bid upon spectrum will be confidential. This is in sharp contrast with commercial arrangements between parties that may give rise to associations, where parties typically seek to maintain the confidentiality of the agreement by way of non-disclosure protections.

82. Redacted public summaries of Industry Canada's rulings on associated entities, their bidding status and the application of the spectrum caps strikes the appropriate balance.

83. The complete public disclosure advocated by certain parties would provide all industry stakeholders, including entities that are not even participating in the auction, with what would be tantamount to a fishing expedition in every associated entity determination. Doing so would blunt entities' incentives to innovate and enter into creative new and efficient associations, something which would ultimately be harmful to the overall competitiveness and efficiency of the Canadian wireless industry. These requests should be summarily rejected by the Department. The Department has demonstrated in past auctions that it has all the necessary resources and expertise to determine the associated status of companies without the need for a broad public consultation on the matter.

4.4.2 Consensus that typical roaming, tower sharing and backhaul agreements be specifically excluded from the definition of associated entities

84. The Company repeats its view that roaming, tower sharing and backhaul agreements should be expressly excluded from the definition of associated entities. In addition to the Company, WIND Mobile too shared this view.

4.4.3 Industry Canada should provide timely advance rulings on the association status of requesting parties

85. A number of parties⁸⁸, including Rogers and WIND Mobile, proposed a process whereby parties unsure of whether their existing and/or yet-to-be-finalized arrangements could be filed in confidence with the Department, prior to the auction, for a confidential advance ruling on the issue of their associated entity status.

⁸⁸ Rogers, Comments, 25 June 2012, paragraph 116(d); Wind Mobile, Comments, 25 June 2012, paragraph 25.

86. The Company believes there is merit to these suggestions. This type of process would provide added certainty to potential auction participants on matters which could have a material or adverse impact on their eligibility to bid separately or subject to separate spectrum caps. Bell Mobility's consistently held position is that the greater the advance certainty the Department can provide to prospective bidders, the more informed and efficient the auction outcome.

87. The Company also agrees with suggestions that the Department should provide such confidential rulings at least 60 to 90 days in advance of the deadline for the submission of applications to participate in the auction. This will provide auction applicants sufficient time to structure their affairs accordingly, including terminating any continuing arrangements found by the Department to give rise to associated status.

5.0 SECTION 5.1: PROHIBITION OF COLLUSION

88. The Company has the following reply to comments by Mobilicity pertaining to the proposed anti-collusion rules.

5.1 Bell Mobility replies to Mobilicity's concerns pertaining to the anti-collusion rules

89. Mobilicity has proposed an amendment to the anti-collusion rule that would subject winning licensees' ability to enter into agreements for a full five years from the conclusion of the auction relating to the acquisition or use of the 700 MHz spectrum to prior approval by the Department. The Company considers such an amendment is unnecessarily bureaucratic and is an example of regulatory overkill.

90. Bell Mobility disagrees with Mobilicity's view entirely. The prohibition of collusion rules are specifically designed to protect the integrity of the auction and, assuming compliance with all applicable conditions of licence, licensees appropriately are not subject to the prohibition of collusion rules **after** the auction has closed. As a result, Bell Mobility disagrees strongly with Mobilicity's recommendation that agreements, arrangements or acquisition of spectrum subsequent to the closed of the auction should be subject to any other Departmental approval than currently exist under the *Radiocommunication Act* or pursuant to the *Radiocommunication Regulations*.

91. As noted by the Department at page 15 of the Notice, the application form to be signed by bidder applicants as a precondition of their participation in the auction will include a declaration that the applicant must certify it has not entered into any agreements, arrangements or understandings of any kind with any competitor, other than those disclosed, regarding the spectrum licences up for auction or the post-auction market structure. The Company considers that this certification is sufficient to ensure that there will be no collusion. Agreements or arrangements that are entered into post-auction would not be collusive and would not impair the integrity of the auction.

92. Mobilicity has also questioned why the Department has structured the anti-collusion rules applying as between "competitors", which Mobilicity believes to be an undefined term. Mobilicity's concern is that by using the term "competitors", the anti-collusion rules would not apply to "Affiliates" and "Associated Entities"⁸⁹. By way of response, the Company notes that the Department's proposed definition of "competitor" at the bottom of page 15 of the Notice document means "any entity, other than the applicant and/or its affiliates, which could potentially be a bidder in this auction based on its qualifications, abilities or experience." [emphasis added] As a result, the Company considers that associated entities would be captured by the definition of "competitor" and the anti-collusion rules. On this basis, the Company considers that Mobilicity's criticism is unfounded. The Department may wish to confirm this interpretation in the finalized auction rules.

6.0 SECTION 6: CONDITIONS OF LICENCE FOR SPECTRUM IN THE 700 MHZ BAND

93. In Section 6 of its Notice, Industry Canada proposed and sought comment on the Conditions of Licence (COLs) that would apply to all licences issued through the auction process for spectrum in the 700 MHz band. Bell Mobility provided its views, on the proposed COLs, in its Comments. In the following sections the Company provides its reply comments regarding the submissions of other parties commenting on the proposed COLs.

⁸⁹ Mobilicity, Comments, 25 June 2012, paragraph 67.

Licence Term

Industry Canada is seeking comments on its proposal to issue spectrum licences in the 70 MHz band with a 20-year licence term.

Proposed COL:

The term of this licence is 20 years. At the end of this term, the licensee will have a high expectation that a new licence will be issued for a subsequent term through a renewal process unless a breach of licence condition has occurred, a fundamental reallocation of spectrum to a new service is required, or an overriding policy need arises.

94. In its Comments, Bell Mobility supported the proposed COL indicating that spectrum licences issued in the 700 MHz band come with a 20-year licence term and a high expectation of renewal. As is noted in the comments⁹⁰ of other parties, Bell Mobility has long been a proponent of indefinite licence terms believing that the technological nature and scale of the business now warrants such long term certainty to encourage and stimulate investment.

95. Bell Mobility notes that the vast majority of parties commenting on Industry Canada's proposed Licence Term COL agreed with the move to a 20-year term with a high expectation of renewal. Rogers, for example, noted in its comments:

We support the Department's proposal that the term of the licence will be 20 years.

This approach would provide licensees with a greater degree of certainty with respect to the ongoing viability of their operations, for corporate planning purposes and in order to secure additional funding for their substantial ongoing investments.

We believe that this relatively long term is appropriate given the considerable investments that must be made to implement services with this spectrum and in light of the fact that it could take several years for licensees to begin to earn a return on these investments.

We also support the Department's proposal that licensees will have a high expectation of renewal at the end of the initial licence term. It is essential that carriers that comply with their licence conditions have the certainty needed to make the multi-billion dollar investments required to deploy advanced wireless networks.⁹¹

⁹⁰ Taylor, Dr. Gregory and Middleton, Dr. Catherine (Ryerson University), Comments, 22 June 2012, pages 2 and 3.

⁹¹ Rogers, Comments, 25 June 2012, pages 46 and 47.

96. Indeed there was unanimous support among licensees for the proposed Licence Term COL as is evidenced in the comments of Mobilicity:

Mobilicity fully supports Industry Canada's proposal to issue 700 MHz band licences for 20-year terms. Wireless networks require significant investments in long-lived assets. If the owner of such investments believes it may lose the right to the frequencies needed to make the long-lived capital investment profitable, then it will have diminishing incentives to make productive investments as the end of the licence term approaches. Consequently, to provide the incentives for productive investments, licensees should feel secure in their rights to the spectrum. This is facilitated by longer licence terms and by the policy of a high expectancy of renewal. . . .⁹²

97. Bell Mobility submits that, as Rogers and Mobilicity note in their respective comments, the proposed Licence Term COL is appropriate given the multi-billion dollar investments in regional and national advanced wireless networks which will result from the auction of wireless spectrum in the 700 MHz band.

Spectrum Aggregation Limits

Industry Canada is seeking comments on the proposed wording of the condition of licence related to the spectrum aggregation limits.

Proposed COL:

The licensee must comply with the spectrum aggregation limits as follows:

- ***A limit of two paired frequency blocks in the 700 MHz band (blocks A, B, C, C1 and C2) is applicable to all licensees.***
- ***A spectrum cap of one paired spectrum block within blocks B, C, C1 and C2 is applicable to all large wireless service providers. Large wireless service providers are defined as companies with 10% or more of the national wireless subscriber market share, or 20% or more of the wireless subscriber market share in the province of the relevant licence area.***

The spectrum caps put in place for the 700 MHz auction will continue to be in place for five years following licence issuance. Therefore, no transfer of licences or issuance of new licences will be authorized that allows a licensee to exceed the spectrum caps during this period. Any change in ownership or control granting a right or interest to another licensee in this band may be considered as licence transfer for the purpose of this condition of licence whether or not the licensee name is changed as a result. The licensee must request approval by the Minister of Industry for any change that would have a material effect on its compliance with these spectrum aggregation limits. Such a request must be made in advance for any proposed transactions within its knowledge.

⁹² Mobilicity, Comments, 25 June 2012, page 36.

98. The Company's Comments noted its concern that, as a result of the interplay between Bill C-38 and the proposed COL pertaining to spectrum aggregation limits, AT&T or any other large non-Canadian investor would be subject to a two paired block limit under the first bullet of the paragraph 86 COL, whereas under the second bullet, Canada's national carriers Bell Mobility, Rogers and Telus would be subject to a single paired block limit. In other words, these proposed spectrum caps would clear the way for any foreign telecommunications giant to acquire two blocks of prime 700 MHz spectrum, while Canada's national carriers – those who invest billions of dollars in all areas of the country, urban and rural and employ thousands of Canadians – are limited to just one block.

99. As a result, Bell Mobility's Comments recommended that the COL applicable to spectrum caps should be changed to ensure that, in the event any large non-Canadian wireless carrier enters the Canadian wireless market under the changes to Canada's foreign ownership restrictions (either as a greenfield or by way of acquisition of an existing Canadian owned carrier) and applies to participate in the 700 MHz auction, that such foreign carriers are made subject to precisely the same spectrum caps as are applicable to Canada's incumbent carriers. The current loophole in the COLs must, Bell Mobility noted, be closed to ensure that all Canadians can benefit from the auction, regardless of whether the winning carrier is Canadian or non-Canadian owned and controlled.

100. Bell Mobility continues to strongly hold that view.

101. Further, Telus has proposed some minor but nonetheless clarifying wording changes to the proposed COL. Bell Mobility agrees with the minor clarification wording proposed by Telus regarding the spectrum cap COL.

102. The Company also notes, by way of clarification, that while we jointly addressed the issue of the asymmetric application of spectrum caps and rural deployment in our Comments, in these reply comments the issue of asymmetric deployment requirements is dealt with separately below.

Licence Transferability and Divisibility

Industry Canada is seeking comments on the proposed wording of the condition of licence related to transferability and divisibility.

Proposed COL:

The licensee may apply, in writing, to transfer its licence in whole or in part (divisibility), in both the bandwidth and geographic dimensions in accordance with Client Procedures Circular CPC-2-1-23, Licensing Procedure for Spectrum Licences for Terrestrial Services, as amended from time to time. Licensees may apply to use a subordinate licensing process.

Industry Canada's approval is required for each proposed subordinate licence or transfer, whether the transfer is in whole or in part. Industry Canada may define a minimum bandwidth and/or geographic dimension (such as the grid cell) for the proposed transfer.

The transferor(s) must provide an attestation and other supporting documentation demonstrating that all conditions, technical or otherwise, of the licence have been met. The transferee(s) must provide an attestation and other supporting documentation demonstrating that it meets the eligibility criteria, including documentation related to associates and affiliates demonstrating that the transfer is in accordance with any spectrum aggregation limits.

Subordinate licences may not count towards the licensee's aggregation limit if the subordinate licensee demonstrates to the satisfaction of Industry Canada that the relevant licensees meet the criteria with respect to competing in the post-auction market (see condition of licence regarding Spectrum Aggregation Limits).

The transferee must satisfy all applicable conditions of licence including, rural deployment and general deployment requirements.

103. In its Comments, Bell Mobility noted that it supported the proposed COL addressing licence transferability and divisibility as proposed by the Department. Bell Mobility also considered, however, that activity under this condition may increase if the Department allowed licensees to affect transfers without Departmental approval. In this regard, Bell Mobility recommended that a self-reporting regime could be established, for eligible licensees, along with the development of an appropriate database on the Department's website which could track and list current licensees and their spectrum holdings.

104. The Company's Comments further noted that indeed, the 2007 Cave Study, *Study of Market-based Exclusive Spectrum Rights*, commissioned by Industry Canada recommended, at page 6, that Ministerial approval for every trade should not be required and should instead be

replaced by a self-certification process under which those involved in the spectrum trades / transfers self-certify that they have met all of the government's requirements.

105. On a separate issue, generally subordinate licences count towards the spectrum aggregation limit, when such is in effect, in a service area in addition to licences held directly and those held by associates or affiliates. In its Notice, however, Industry Canada proposed that a transferee may apply to have the subordinate licence(s) excluded from the calculation of their holdings for the purposes of the spectrum caps, if it can demonstrate that it will compete with any associated entities in the service area in question. Bell Mobility supported this proposal and proposes that the Department apply the same criteria, as proposed in Section 4.7 of its Comments, to assess whether entities are competing with one another.

106. Bell Mobility continues to hold these views and therefore supports the proposed Licence Transferability and Divisibility COL.

107. Bell Mobility notes that a number of parties, including Rogers⁹³ and Mobilicity⁹⁴, supported the proposed COL, while others, such as Quebecor⁹⁵, did not comment one-way or the other on the proposed COL.

108. Bell Mobility notes the comments of Telus regarding the Transferability and Divisibility COL. In this regard, Telus states that it:

. . . believes that the title of the COL should be expanded to more accurately reflect the fact that the COL addresses subordinate licensing. TELUS recommends a COL title of "Licence Transferability, Divisibility and Subordinate Licensing".⁹⁶ (Emphasis added)

109. Telus also proposes modifications to the wording of the COL.

110. Bell Mobility does not agree with Telus' proposal to change the COL title in order to ". . . more accurately reflect the fact that the COL addresses subordinate licensing." Bell Mobility notes that Licence Transferability and Divisibility is an enhanced spectrum right introduced coincident with Industry Canada's adoption of spectrum auctions as a method of assigning licences, in the late 1990's, for those instances where demand for spectrum exceeded

⁹³ Rogers, Comments, 25 June 2012, page 48.

⁹⁴ Mobilicity, Comments, 25 June 2012, page 41.

⁹⁵ Quebecor, Comments, 25 June 2012, Annex, page 3.

⁹⁶ Telus, Comments, 25 June 2012, page 19.

supply. Subordinate licensing, while certainly related, is a separate and distinct process under the Department's spectrum management regime and indeed provides one, but not the only, means to affect the transferability right attached to spectrum licences. As a result, while it is certainly related, this COL is not about Subordinate Licensing per se. Bell Mobility therefore recommends retaining the title of the COL, proposed in the Notice, which would also maintain its consistency with the Transferability and Divisibility COL contained in numerous existing spectrum licences.

111. Regarding Telus' proposed rewording of the text of the COL, while Bell Mobility agrees with the text proposed in the Notice as is, we would nonetheless have no objection to use of the reworded text as proposed by Telus.

112. Mobilicity, at section 5.1 of its comments, regarding Prohibition of Collusion, makes a number of allegations concerning the outcome of the AWS auction. Bell Mobility rejects Mobilicity's unwarranted speculation, in this regard, and urges the Department to do the same. In the same section, however, Mobilicity raises an issue having to do with the transferability and divisibility COL. Observing that the AWS and proposed 700 MHz prohibition of collusion rules only contemplate being in force regarding spectrum arrangements or agreements entered into **prior** to the auction, in its comments regarding the transferability COL, Mobilicity cross-references its proposal, contained in section 5.1 of its comments, that:

Mobilicity therefore requests that Licensees' ability to enter into any agreement etc. with respect to the acquisition or use of the 700 MHz spectrum within five (5) years of the conclusion of the auction be subject to Departmental approval. In deciding such applications, the Department should give due consideration to the time elapsed between the close of the auction and conclusion of the agreement or arrangement pertaining to use of the 700 MHz spectrum, and reasons, as applicable justifying non-disclosure of the agreement or arrangement prior to the auction.⁹⁷ (Emphasis added)

113. Further, at section 6.3 in addressing the Transferability and Divisibility COL, Mobilicity states that:

As discussed above in Mobilicity's comments on the anti-collusion rule, parties should be required to apply to the Department where they enter into any agreement or arrangement with respect to the acquisition or use of the 700 MHz spectrum within five years from the close of the auction.⁹⁸

⁹⁷ Mobilicity, Comments, 25 June 2012, pages 35 to 36.

⁹⁸ Ibid., page 46.

114. Mobilicity continues on to proposes that where such applications would have the effect of putting one or more parties over their spectrum aggregation limits, that such applications should not be approved by the Department, contrary to what is proposed by Industry Canada in its Notice.

115. Bell Mobility disagrees with Mobilicity's view entirely. The prohibition of collusion rules are specifically designed to protect the integrity of the auction and, assuming compliance with all applicable conditions of licence, licensees appropriately are not subject to the prohibition of collusion rules **after** the auction has closed. As a result, Bell Mobility disagrees strongly with Mobilicity's recommendation that agreements, arrangements or acquisition of spectrum subsequent to the closed of the auction should be subject to any other Departmental approval than currently exist under the *Radiocommunication Act* or pursuant to the *Radiocommunication Regulations*.

Eligibility

Industry Canada is seeking comments on the proposed wording of the condition of licence related to eligibility criteria.

Proposed COL:

A licensee operating as a radiocommunication carrier must comply on an ongoing basis with the applicable eligibility criteria in subsection 10(2) of the Radiocommunication Regulations. The licensee must notify the Minister of Industry of any change that would have a material effect on its eligibility. Such notification must be made in advance for any proposed transactions within its knowledge.

For further information, refer to Client Procedures Circular CPC-2-0-15, Canadian Ownership and Control, as amended from time to time.

116. Bell Mobility's Comments concurred with the proposed wording of the COL related to eligibility criteria.

117. Bell Mobility notes that parties either agreed with the proposed wording of the COL or offered no comment.

118. Bell Mobility therefore continues to concur with the proposed wording of the COL related to eligibility criteria.

Treatment of Existing Spectrum Users

Industry Canada is seeking comments on the proposed wording of the condition of licence related to the treatment of existing spectrum users.

Proposed COL:

The licensee must comply with the displacement policies set out in SMSE-002-12, Policy and Technical Framework: Mobile Broadband Services (MBS) – 700 MHz Band, Broadband Radio Service (BRS) – 2500 MHz Band.

119. Bell Mobility's Comments supported the proposed wording of the COL regarding treatment of existing spectrum users as outlined in the Notice.

120. Bell Mobility notes that other than Mobilicity⁹⁹, who may be miss-interpreting the purpose and intent of this standard COL employed whenever an existing spectrum user in the band could be subject to displacement by a newly authorized licensee, all other parties either agreed with or offered no comment with respect to the proposed COL.

121. Having reviewed the comments of all parties, Bell Mobility continues to support the proposed wording of the COL regarding treatment of existing spectrum users as outlined in the Notice.

Radio Station Installations

Industry Canada is seeking comments on the proposed wording of the condition of licence related to radio station installations.

Proposed COL:

The licensee must comply with Client Procedures Circular CPC-2-0-03, Radiocommunication and Broadcasting Antenna Systems, as amended from time to time.

122. In its Comments, Bell Mobility noted that it supported the proposed wording of the COL regarding radio station installations as outlined in the Notice.

123. Bell Mobility's review of the comments of other parties indicates wide spread support for the Department's proposed COL regarding radio station installations as outlined in the Notice.

⁹⁹ Mobilicity, Comments, 25 June 2012, page 42.

Provision of Technical Information

Industry Canada is seeking comments on the proposed wording of the condition of licence related to the provision of technical information.

Proposed COL:

When Industry Canada requests technical information on a particular station or network, the licensee must provide the information in accordance with the definitions, criteria, frequency and timelines specified. For further information, refer to Client Procedures Circular CPC-2-1-23, Licensing Procedure for Spectrum Licences for Terrestrial Services, as amended from time to time.

124. In its Comments, Bell Mobility also supported the proposed wording of the COL regarding provision of technical information as outlined in the Notice.

125. Again, Bell Mobility's review of the comments of other parties indicates wide spread support for the Department's proposed COL regarding provision of technical information as contained in the Notice.

Compliance with Legislation, Regulation and Other Obligations

Industry Canada is seeking comments on its proposed condition of licence related to compliance with legislation, regulation and other obligations.

Proposed COL:

The licensee is subject to, and must comply with, the Radiocommunication Act, the Radiocommunication Regulations and the International Telecommunication Union's Radio Regulations pertaining to its licensed radio frequency bands. The licence is issued on condition that the certifications made in relation to this licence are all true and complete in every respect. The licensee must use the assigned spectrum in accordance with the Canadian Table of Frequency Allocations and the spectrum policies applicable to these bands, as amended from time to time.

126. In its Comments, Bell Mobility supported the proposed COL related to compliance with legislation, regulation and other obligations as outlined in the Department's Notice.

127. Bell Mobility's review of the comments of other parties also indicates general support for the Department's proposed COL relating to compliance with legislation, regulation and other obligations as outlined in the Department's Notice.

Technical Considerations, and International and Domestic Coordination

Industry Canada is seeking comments on the proposed condition of licence related to technical considerations, and international and domestic coordination.

Proposed COL:

The licensee must comply on an ongoing basis with the technical aspects of the appropriate Radio Standards Specifications and Standard Radio System Plans, as amended from time to time. Where applicable, the licensee must use its best efforts to enter into mutually acceptable sharing agreements that will facilitate the reasonable and timely development of their respective systems, and to coordinate with other licensed users in Canada and internationally.

The licensee must comply with the obligations arising from current and future frequency coordination agreements established with other countries and shall be required to provide information or take actions to implement these obligations as indicated in the applicable SRSP. Although frequency assignments are not subject to site licensing, the licensee may be required to furnish all necessary technical data for each relevant site.

128. In its Comments, Bell Mobility supported the proposed COL related to technical considerations, and international and domestic coordination as outlined in the Notice.

129. Bell Mobility notes that this is a non-contentious COL and that parties either supported the COL or offered no comment on the proposed wording.

130. Bell Mobility, therefore, recommends adoption of the COL as proposed in the Department's Notice.

Lawful Intercept

Industry Canada is seeking comments on the proposed wording of the condition of licence related to lawful intercept requirements.

Proposed COL:

A licensee operating as a service provider using an interconnected radio-based transmission facility for compensation must provide for and maintain lawful interception capabilities as authorized by law and in accordance with the Solicitor General's Enforcement Standards for Lawful Interception of Telecommunications, as amended from time to time.

The licensee may request the Minister of Industry to forbear from enforcing certain assistance capability requirements for a limited period. The Minister, following consultation with Public Safety Canada, may exercise the power to forbear from enforcing a requirement or requirements where, in the opinion of the Minister, the requirement is not reasonably achievable. Requests for forbearance must include

specific details and dates indicating when compliance to the requirement can be expected.

131. Industry Canada's Notice stated that it is proposing changes to the lawful intercept COL in order to bring the wording of the COL in line with current technologies. To this end, the Department proposed to remove the text "circuit-switched voice telephony" and to replace it with "interconnected radio-based transmission facility for compensation". For the reasons addressed in its Comments, Bell Mobility noted that it did not support the proposed change in the COL wording at this time.

132. The Company's Comment's noted that any lawful interception obligations imposed should be limited to circumstances where commercially available, standards-based network technology is available. In the event that commercially available off-the-shelf solutions are not available, any requirement for licensees to deploy non-standards-based solutions should, Bell Mobility's Comments considered, be funded by the government. Bell Mobility believes that such funding would be both appropriate and warranted given the public interest considerations driving the provision of such capability.

133. Bell Mobility notes Rogers' comment, in this regard, when it unequivocally states that:

Licensees should not be required to fund intercept capabilities that are not provided for in industry standards and commercially available equipment.¹⁰⁰

134. Regarding funding, Bell Mobility notes that the auction of the 700 MHz band is likely to produce substantial revenues, likely in the billions of dollars, for the Federal Treasury. Bell Mobility strongly believes that a portion of those revenues, likely a small portion of the overall auction proceeds, could and should be used to fund lawful intercept requirements. In this regard, Bell Mobility notes that such auction revenues are coming directly from the industry and, while a substantial balance would still be available for deposit into the Federal Treasury, it seems, to Bell Mobility, such use for a small portion of the auction proceeds would be both an appropriate and very reasonable use of the funds. Bell Mobility notes, in this regard, that a precedent exists in the United States, regarding its Incentive Auction proposal, which would see the diversion of at least a portion of auction proceeds in order to achieve desired public policy objectives. If similarly applied in Industry Canada's 700 MHz auction, a small portion of overall

¹⁰⁰ Rogers, Comments, 25 June 2012, page 50.

auction proceeds could be used to help achieve a desirable public policy outcome, i.e., implementation of lawful intercept capability, which broadly benefits all Canadians.

135. Bell Mobility's Comments further considered, for the reasons addressed therein, that the existing COL rightly limited the current requirement to "circuit-switched voice telephony systems" and that in proposing to replace "circuit-switched voice telephony systems" with "interconnected radio-based transmission facility for compensation," Industry Canada was, intentionally or by accident, opening up additional services to interception requirements including, but not limited to, Internet and broadcasting services.

136. The Company's Comments noted that the proposed revision to the COL would also introduce new and significant obligations on licensees and that such obligations would be introduced just as concurrent legislation, considering related areas of licensees' operations, is before Parliament. Bell Mobility noted its belief that changes, such as those contemplated in the proposed COL, would be more appropriately enacted through federal legislation or, as stated in the Notice, through the pending revision to the Solicitor General's standards that Public Safety Canada is proposing.

137. In this regard, Bell Mobility's Comments stated, that while it appreciated the technological rationale behind the proposed changes to the COL it considered that the more appropriate approach would be for Industry Canada to retain the existing COL as is until the applicable legislative requirements are established thus enabling any revisions to the COL to be made in the light of approved legislation rather than in anticipation of it.

138. Bell Mobility's Comments also considered that revisions to the Solicitor General standards should be subject to prior consultation with the industry. Development of the Solicitor General standards through an accredited industry standards body would, Bell Mobility noted, facilitate the use of commercially available off-the-shelf equipment for lawful intercept.

139. Bell Mobility notes that, where parties did comment on the proposed Lawful Intercept COL, there was unanimous agreement with Bell Mobility's position that the COL remain unchanged for now.

140. The Canadian Wireless Telecommunications Association (CWTA) in its comments, for example, states that:

The Department's proposed change to the lawful intercept COL would impose substantial new obligations on licensees, at a time when parallel legislation addressing similar areas of licensees' operations is before Parliament. CWTA submits that such new changes would be more appropriately made via federal legislation, or the pending revision to the Solicitor General's standards that Public Safety Canada is proposing.¹⁰¹

141. The CWTA goes on to conclude, as did Bell Mobility, that:

Given the ongoing legislative process CWTA recommends that the existing COL be retained in licences, until such time as the legislative requirements are finalized, and the COL can be amended accordingly to bring it into line with the legislation that exists at that time.¹⁰²

142. As indicated above, among licensees who commented on the proposed COL, there was unanimous support for the positions adopted by Bell Mobility and the CWTA.

143. Quebecor, for example, in its comments noted that:

Quebecor Media refers the Department to the submission of the Canadian Wireless Telecommunications Association (CWTA) on this matter. We fully support the views expressed by the CWTA.¹⁰³

144. For its part, Rogers notes that:

. . . Rogers believes that it would be inappropriate to impose substantial new lawful access requirements on licensees at a time when Parliament is considering whether to approve any such new requirements and in what form. The new lawful access requirement should only be imposed on licensees as a condition of licence after Parliament enacts enabling legislation that brings the new lawful access requirements into force. In the meantime, the Department should retain the existing condition of licence regarding lawful access.¹⁰⁴

145. As a result, Bell Mobility continues to recommend that, for the reasons addressed in its Comments as well as in the comments of numerous other parties, that Industry Canada not implement the proposed change in the COL wording at this time and instead retain that which currently exists in spectrum licences today.

¹⁰¹ Canadian Wireless Telecommunications Association (CWTA), Comments, 25 June 2012, page 4.

¹⁰² Ibid., page 5.

¹⁰³ Quebecor, Comments, 25 June 2012, Annex, page 4.

¹⁰⁴ Rogers, Comments, 25 June 2012, page 50.

Research and Development

Industry Canada is seeking comments on the proposed condition of licence related to the research and development requirement.

Proposed COL:

The licensee must invest, as a minimum, 2 percent of its adjusted gross revenues resulting from its operations in this spectrum, averaged over the term of the licence, in eligible research and development activities related to telecommunications. Eligible research and development activities are those which meet the definition of scientific research and experimental development adopted in the Income Tax Act. Adjusted gross revenues are defined as total service revenues, less inter-carrier payments, bad debts, third party commissions, and provincial and goods and services taxes collected. Businesses with less than \$5 million in annual gross operating revenues are exempt from research and development expenditure requirements, except where they have affiliations with licensees that hold other licences with the research and development condition of licence and where the total annual gross revenues of the affiliated licensees are greater than \$5 million.

To facilitate compliance with this condition of licence, the licensee should consult Industry Canada's Guidelines for Compliance with the Radio Authorization Condition of Licence Relating to Research and Development (GL-03).

146. In its Comments, Bell Mobility stated its view that the Research and Development (R&D) COL is no longer appropriate in today's wireless industry and recommended that it be immediately discontinued. Bell Mobility's Comments noted that it had long been of this view, initially raising concerns with the appropriateness of the COL as long ago as the pre-auction consultations leading to the 2001 PCS Auction. The concerns were again raised, the Company's Comments noted, in our submissions in response to the Department's Harmonization Consultation (2003) and the AWS Licensing Consultation (2007).

147. Simply put, Bell Mobility's Comments noted, the Canadian wireless industry does not need "taxes" such as this to encourage investment in R&D. Wireless is such a fast moving, technologically-based, innovative industry that we have no choice but to innovate through R&D. Forcing this additional tax through non-market means simply takes away from infrastructure builds. Bell Mobility respectfully recommended that, as the Department proposed in 2009, the R&D COL be removed.

148. Bell Mobility notes that there was unanimous and overwhelming support, in the comments of parties, to immediately eliminate this antiquated and bureaucratic requirement which has served its purposes and is no longer appropriate.

149. MTS Allstream, in this regard, notes that:

Since the intended goal of the R&D condition of licence has been met, the R&D condition of licence is no longer efficient and proportionate to its purpose. The administrative burden of reporting R&D expenditures on an annual basis far exceeds the original purpose and intent of this condition of licence. . . . MTS Allstream therefore urges the Department to eliminate this outdated condition of licence.¹⁰⁵ (Emphasis added)

150. The CWTA, for its part, makes the case forcefully when it states:

The R&D condition is an artifact from a previous era that is no longer appropriate or required. It produces more red tape than research.

This COL may have made sense when the wireless industry was in its infancy, and there was little or no wireless R&D infrastructure in Canada – a situation far from reality today, with numerous wireless innovation clusters across the country.

. . .

This is also an obligation that is unique to wireless spectrum licences. To the best of CWTA's knowledge, no other industry in Canada, and no other segment of the telecommunications industry, faces a similar obligation. CWTA has not been able to identify any other jurisdiction internationally that imposes this type of condition on spectrum licensees. It has been effectively phased out for satellite orbital slot licensees. The effect of this unique situation is to put Canada's wireless industry at a competitive disadvantage both domestically and internationally. It raises industry's regulatory compliance costs, to no discernible advantage. It adds to the Government's regulatory monitoring costs, to no discernible advantage. The COL produces more red tape than marketable R&D.¹⁰⁶ (Emphasis in original)

151. In a very similar vein Rogers, stating that it does support the proposed R&D COL submits, that:

[Rogers] note[s] that the U.S., U.K. and Australia do not impose an R&D condition of licence and Rogers is not aware of any other jurisdiction that imposes such a condition of licence. In any event, market forces will ensure that

¹⁰⁵ MTS Allstream, Comments, 25 June 2012, page 10.

¹⁰⁶ CWTA, Comments, 25 June 2012, page 2.

wireless equipment manufacturers and licensees will continue to invest heavily in R&D to enhance their competitive position.¹⁰⁷

152. For its part WIND MOBILE notes in this regard that:

WIND MOBILE has reviewed the draft submission of CWTA and adopts CWTA's position that the proposed Condition of Licence be eliminated.¹⁰⁸

153. Bell Mobility notes the Department's statement, in 2009, that:

Initially, this condition of licence was established to stimulate R&D in the telecommunications sector. Today, the wireless industry is thriving and is a strong performer in terms of R&D spending, with more than a billion dollars invested since the first licences were issued. Furthermore, it is noted that R&D expenditures are more often undertaken by manufacturers and, as a result, many service providers partner with manufacturers to fulfill their R&D commitments. . . . The Department notes that wireless companies generally undertake these R&D activities on an ongoing basis in order to be competitive in the marketplace and many continue to exceed the required level of R&D spending.¹⁰⁹

154. As the CWTA notes, the Department has had this issue before it since 2009 and it is now time to make a decision in conjunction with the establishment of the 700 MHz auction framework. Bell Mobility therefore again respectfully requests that Industry Canada immediately discontinue this outdated and bureaucratic COL.

155. Bell Mobility also notes the proposal by Rogers to the effect that:

In the event that the Department elects to maintain this condition of licence, we recommend the Department modify the wording of the condition such that licensees will be provided with the option of investing an equivalent amount in the expansion of their networks in non-urban areas, in lieu of R&D.¹¹⁰

156. While Bell Mobility's strong belief is that this COL should be discontinued immediately, in the event that the Department elected to maintain such an R&D related COL, the Company supports Rogers' proposal that the wording of the condition be modified such that licensees will be provided with the option of investing an equivalent amount in the expansion of their networks in non-urban areas, in lieu of R&D.

¹⁰⁷ Rogers, Comments, 25 June 2012, page 51.

¹⁰⁸ WIND Mobile, Comments, 25 June 2012, page 14.

¹⁰⁹ *Canada Gazette* Notice DGRB-001-09 – *Consultation on Revisions to the Framework for Spectrum Auctions in Canada*, 2 April 2009, page 9.

¹¹⁰ Rogers, Comments, 25 June 2012, page 51.

Rural Deployment Requirements

Industry Canada is seeking comments on the application of the proposed wording of the licence condition related to rural deployment requirements. Specifically, comments are sought on the assessment of "access to two or more paired blocks of spectrum" for the purposes of this condition of licence.

Proposed COL:

Where a licensee holds a licence for two or more paired blocks of 700 MHz spectrum in a licence area, or has access to two or more paired blocks of 700 MHz spectrum in a licence area either directly or indirectly, that licensee must deploy 700 MHz spectrum:

- (a) to cover 90% of the population of its HSPA network footprint as of March 2012, within five years of the issuance of the initial 700 MHz licence; and***
- (b) to cover 97% of the population of its HSPA network footprint as of March 2012, within seven years of the issuance of the initial 700 MHz licence.***

157. Bell Mobility's Comments noted that the problem with this COL related to the use of the phrase "its HSPA network footprint" in the COL in the event a "first time" large foreign-owned and controlled new entrant, such as AT&T, were to win two paired blocks, or were to acquire a 2008 AWS new entrant which has no existing rural HSPA footprint and subsequently win spectrum in the auction. In either circumstance, such a non-Canadian wireless carrier would have no existing HSPA footprint as of March 2012. In effect, the COL would impose absolutely no obligation on such a new entrant to serve rural areas of Canada after five years or seven years of the licence term. Such a new entrant would effectively be exempt from this critical policy to ensure rural Canadians are not left behind in the digital divide.

158. Telus, in its comments, noted the very same fundamental concern with the proposed COL stating its view that the construction of the COL, the effect of which is to excuse many mobile operators other than the established incumbents from any meaningful build requirement, must either be an oversight or unintended.¹¹¹

159. The Company's Comments recommended that to guard against this unintended result, it proposed that symmetrical rural roll-out obligations should be applied to all spectrum licensees. In the case of a large foreign new entrant, this could be accomplished by adding a contingency to the proposed rural roll-out COL that would state, in the event such a greenfield new entrant holds a licence for two or more paired blocks, the spectrum roll-out obligations for that new

¹¹¹ Telus, Comments, 25 June 2012, page 26.

entrant are measured in respect to the largest HSPA network operational in the relevant licence area as of March 2012.

160. Bell Mobility continues to consider the above modification to be a viable solution to the shortcomings, identified by it and others, in the proposed COL.

161. Bell Mobility also notes, however, Telus' proposed solution regarding its concerns with this COL which centres around modifications to the Department's general deployment COL proposed by Telus. Bell Mobility supports Telus proposed modifications to the general deployment COL as addressed in the following section.

General Deployment Requirement

Industry Canada is seeking comments on the application of the general deployment condition of licence as stated above. Specifically, comments are sought on:

- ***the population coverage, as specified in Table 3, for each licence service area; and***
- ***the time frame proposed whereby the requirement must be met.***

Proposed COL:

Licensees will be required to demonstrate to the Minister of Industry that their spectrum has been put to use, as specified in the table below, within 10 years of the initial issuance of the licence.

Table 3 – Proposed General Deployment Requirements

Tier 2	Service Area	Pop. Coverage
2-01	Newfoundland and Labrador	30%
2-02	Nova Scotia and P.E.I.	30%
2-03	New Brunswick	40%
2-04	Eastern Quebec	50%
2-05	Southern Quebec	50%
2-06	Eastern Ontario and Outaouais	50%
2-07	Northern Quebec	30%
2-08	Southern Ontario	50%
2-09	Northern Ontario	50%
2-10	Manitoba	50%
2-11	Saskatchewan	40%
2-12	Alberta	50%
2-13	British Columbia	50%
2-14	Yukon, NWT and Nunavut	20%

162. In its Comments, Bell Mobility stated that it concurred with the general deployment COL as proposed in the Notice.

163. Telus, to the contrary, did not support the proposed general deployment requirements. Among the reasons that Telus put forth for not supporting the general deployment requirements, was its concern, as addressed above, with the proposed rural deployment COL. In this regard Telus noted:

TELUS does not support Decision B4-2 of SMSE-002-12 as it pertains to mobile operators without extensive existing HSPA network footprints or in fact, no HSPA footprint as of March 2012. The effect of this construction of the Condition of Licence, which TELUS considers must be an oversight or unintended, would excuse many mobile operators, other than the established ones from any meaningful build requirement. TELUS does not believe that this unintended result accords with the Department's objectives for this valuable and scarce spectrum. TELUS' proposed solution to this is detailed in TELUS' proposals for general deployment requirements in the upcoming paragraphs. TELUS outlines a simple deployment requirement framework that TELUS believes is better for Canadian mobile broadband users, fairer amongst mobile operators and better equipped to discourage speculative investment in spectrum.¹¹² (Emphasis added)

164. Telus, in its comments, indicates that it could nevertheless accept the proposed rural deployment requirement if certain modifications were made to the general deployment COL. In this regard, Telus proposes a new general deployment requirement, which would be applicable to all licensees who hold, or have access to, prime MBS spectrum to meet the population coverage based deployment requirements within five years, as opposed to the ten years proposed by the Department. Telus further proposes "increased population coverage level requirements at seven years to reflect that this is prime coverage spectrum facilitating economic footprint expansion."¹¹³

165. Telus also proposes, as part of its general deployment proposal, two new breach of deployment COLs as follows:

TELUS proposes two clauses that would be invoked if an MBS licensee did not adhere to the deployment requirements. Firstly, if an MBS licensee breached the deployment requirements via insufficient investment (i.e., it had built out but had not built out extensively enough to meet the conditions), it would be mandated to sublicense its MBS spectrum on commercial terms anywhere where it sought an in-territory roaming agreement. Secondly, if an MBS licensee breached the deployment requirements via no investment (i.e., it had not built out and

¹¹² Telus, Comments, 25 June 2012, page 26.

¹¹³ Ibid., page 32

marketed their service at all), it would be forced to sell their MBS spectrum on the secondary market within a given timeframe (e.g., one year) or return it to the Department for reallocation.¹¹⁴

166. Telus' proposed general deployment requirements, including the proposed breach of deployment COLs, are outlined in Table 1 of its comments.

167. Bell Mobility supports Telus' proposal, noting that the motivation behind it is to ensure that the scarce 700 MHz spectrum resource is fully utilized and to ensure that all licensee's who acquire prime 700 MHz spectrum in the auction are subject to the same general deployment requirement.

Mandatory Antenna Tower and Site Sharing

Industry Canada is seeking comments on the proposed wording of the condition of licence related to mandatory antenna tower and site sharing. Comments on the specifics of the requirements should be submitted through the process announced through Canada Gazette notice DGSO-001-12.

Proposed COL:

Licensees must comply with the mandatory antenna tower and site sharing requirements set out in Client Procedures Circular CPC-2-0-17, Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements, as amended from time to time.

168. Regarding this COL, the Company's Comments noted that, given the government's decision, in the early days of the Canadian wireless industry, to allow market forces rather than regulation to govern and drive the development of the new sector, Bell Mobility continued to consider that those same market forces are the most appropriate and efficient arbiter of antenna tower and site sharing arrangements between licensees. Bell Mobility also noted that it has serious concerns, which are elaborated on in the Company's response to Canada Gazette Notice DGSO-001-12, regarding the altering of COLs less than halfway through the initial licence term of auctioned spectrum licences. Consequently, the Comments noted, while Bell Mobility concurs with the proposed wording of the COL, if the policy is implemented as proposed, we nevertheless continue to believe that mandatory tower and site sharing is not appropriate in the highly competitive wireless industry.

¹¹⁴ Telus, Comments, 25 June 2012, page 33.

169. Bell Mobility notes that it continues to hold the views expressed in its Comments regarding this issue.

Mandatory Roaming

Industry Canada is seeking comments on the proposed wording of the condition of licence related to mandatory roaming. Comments on the specifics of the requirements should be submitted through the process announced in Canada Gazette Notice DGSO 001-12.

Proposed COL:

The licensee must comply with the mandatory roaming requirements set out in Client Procedures Circular CPC-2-0-17, Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements, as amended from time to time.

170. Regarding this COL, the Company's Comments noted that given the government's decision in the early days of the Canadian wireless industry, to allow market forces rather than regulation to govern and drive the development of the new sector, Bell Mobility continued to consider that those same market forces are the most appropriate and efficient arbiter of roaming arrangements between licensees. Bell Mobility also has serious concerns, which are elaborated on in the Company's response to Canada Gazette Notice DGSO-001-12, regarding the altering of COLs less than halfway through the initial licence term of auctioned spectrum licences. Consequently, while Bell Mobility concurs with the proposed wording of the COL, if the policy is implemented as proposed, we nevertheless continue to believe that mandatory roaming is not appropriate in the highly competitive wireless industry.

171. Bell Mobility notes that it continues to hold the views expressed in its Comments regarding this issue.

172. Regarding linkages between Industry Canada's proposed mandated roaming policy and the development of its proposed 700 MHz auction and licensing policy, Bell Mobility notes the comments of SaskTel to the effect that:

In an effort to find compromise, Industry Canada has linked spectrum caps with mandated roaming for all players regardless of size or capability with all players riding on the limited spectrum allowed to a predominantly rural service provider like SaskTel.¹¹⁵ (Emphasis added)

¹¹⁵ SaskTel, Comments, 25 June 2012, page 16.

173. Correspondingly Rogers, in its comments in response to *Proposed Revisions to the Frameworks for Mandatory Roaming and Antenna Tower and Site Sharing, Canada Gazette* Notice DGSO-001-12, 13 May 2012, submitted that:

In light of the significant benefits associated with the Department's proposed changes to the mandatory roaming policy and conditions of licence, and given that mandatory roaming will be available to all existing and future licensees for all mobile spectrum bands, Rogers strongly recommends that the Department give effect to its revised policy and conditions of licence for roaming as soon as it issues its decision at the conclusion of this consultation. This would ensure that the significant benefits of a more broadly applied roaming requirement will be available to Canadian consumers and businesses at the earliest possible date. Deferring the implementation of the proposed changes until, for example, the conclusion of the upcoming 700 MHz auction would unnecessarily delay the introduction of these important benefits.¹¹⁶ (Emphasis added)

174. Bell Mobility strongly disagrees with Rogers' recommendation in this regard. Clearly there are linkages, as SaskTel notes, between the Department's evolving policy governing mandated roaming and the development of Industry Canada's 700 MHz auction and licensing framework. Unlike Rogers however, Bell Mobility does not see an urgent need to implement any revised roaming policy that might result from Industry Canada's concurrent consultation before, at a minimum, the 700 MHz auction and licensing framework is finalized. Rather than committing itself to a "locked-in" policy, as Rogers proposes, the Company's recommended approach would enable the Department to tweak its roaming policy in response to its evolving 700 MHz auction and licensing policy and vice-versa. Indeed, Bell Mobility, noting that nothing in the current mandated roaming policy is adverse to the near term build-out activities of the AWS new entrants, strongly recommends that any changes to the mandated roaming policy, if adopted, are not implemented until the conclusion of the 700 MHz auction and the subsequent licences have been issued.

Annual Report

Industry Canada is seeking comments on the proposed condition of licence related to the requirement for annual reporting.

Proposed COL:

The licensee must submit an annual report for each year of the licence term, which includes the following information:

¹¹⁶ Rogers, Comments - Proposed Revisions to the Frameworks for Mandatory Roaming and Antenna Tower and Site Sharing, *Canada Gazette* Notice No. DGSO-001-12, 13 May 2012, page 18.

- ***a statement indicating continued compliance with all conditions of licence;***
- ***an update on the implementation and spectrum usage within the area covered by the licence;***
- ***existing audited financial statements with an accompanying auditor's report;***
- ***a report of the research and development expenditures for licensees operating as radiocommunication carriers as set out in these conditions of licence. Industry Canada reserves the right to request an audited statement of research and development expenditures with an accompanying auditor's report;***
- ***supporting financial statements where licensees are claiming an exemption based on an annual gross revenue of less than \$5 million; and***
- ***a copy of any existing corporate annual report for the licensee's fiscal year with respect to the authorization.***

175. Bell Mobility's Comments considered that the Annual Reporting process should be streamlined and noted that the Company had a number of concerns with the proposed condition. Bell Mobility noted that a key objective of Industry Canada's 2003 Harmonization Consultation, as noted by the Department at page 7 – Proposed Framework – of that consultation was that, "This approach has the added benefit of reducing the administrative burden on licensees as well as the Department." In this regard, Bell Mobility noted, in 2003 the Department was in step with spectrum regulators in a number of other countries who were proactively reducing the administrative burden which governments placed on licensees and businesses in general. The Company felt that philosophy should be maintained. The 2007 SPF is also mindful of the administrative burden placed on licensees by the Department. The Company noted however, that the general thrust of the proposed annual reporting requirement is to increase, not decrease, the administrative burden on Canadian licensees. In this regard, Bell Mobility noted the proposed new requirement that the annual reports now be certified by an officer of the company.

176. Regarding the R&D requirement, as previously noted above, Bell Mobility believes that the COL itself is no longer appropriate and should not be applied to the licences awarded as a result of the 700 MHz auction and should be immediately eliminated from existing spectrum licences.

177. Regarding the annual reporting process, Bell Mobility noted that the Notice states, at paragraph 13, that:

All reports and statements are to be certified by an officer of the company and submitted, in writing, within 120 days of the licensee's fiscal year-end.

178. Bell Mobility's Comments noted that, with Departmental approval and in order to facilitate the filing process, for over a decade it has filed its annual report within 180 days, as opposed to 120 days, following the Company's fiscal year-end. Bell Mobility respectfully requests that this long-standing practice be continued.

179. Bell Mobility further noted that Industry Canada is also proposing a new requirement, also at paragraph 130 of the Notice, again increasing the administrative burden on licensees, which would require that:

Where a licensee holds multiple licences, the reports should be broken down by service area.

180. Bell Mobility's Comments considered that this requirement will significantly increase the volume of work associated with the compilation of the annual reporting process and does not believe that such increased detail would serve any useful purpose. Bell Mobility therefore recommends that the Annual Report, as it does today, address the licensee's total operating area.

181. With respect to this latter point, Bell Mobility notes support for the Company's position the comments of Telus when it states:

. . . it is TELUS' position that this annual reporting requirement can be streamlined even further. . . . regarding spectrum usage, requiring licensees to give a report on implementation and usage "within the area covered by the licence" is an onerous requirement for licensees with overlapping licences issued at varying tier levels because it requires the licensee to produce significant statistics on usage. Moreover, reporting at the licensed area level is often not meaningful because it is the overall usage by the licensee across a larger geographical area that demonstrates a more complete picture as to how the spectrum is being used to date. As such, TELUS requests that annual reporting for all spectrum licences, including spectrum in the 700 MHz band, be made at the most rolled up tier level that an operator holds contiguous in with additional disclosure detail made available to the Department on an as required basis.

7.0 SECTION 7: AUCTION PROCESS

Opening Bids

Industry Canada is seeking comments on the proposed opening bids as presented in Table 4 [of the Notice].

182. Along with WIND Mobile¹¹⁷, and SaskTel¹¹⁸, Bell Mobility supports the Department's proposed opening bids. However, Eastlink, Public Mobile, Rogers, SSi and Telus all indicate that some of the values are over stated. Eastlink believes that the proposed opening bid amounts for service areas in Atlantic Canada and other primarily rural regions are disproportionately high and must be reduced to encourage rural wireless deployment and promote sustainable wireless competition."¹¹⁹ Public Mobile states that "at a minimum, opening prices should be no higher than those assigned to the AWS spectrum auction in 2008."¹²⁰ Rogers argues that "the Department should reduce the \$/MHz/pop for paired blocks in Southern Ontario and Southern Québec to \$0.327."¹²¹ SSi "is very concerned that the Department has proposed extremely elevated opening bids for smaller licence areas, in particular Service Area 2-14, Canada's Northern Territories, as presented in Table 4 of the Consultation."¹²² Finally, Telus "wonders if better price discovery would be facilitated if the opening bids were reduced from these reserve prices by say one half (while the proposed reserve prices themselves were not reduced)."¹²³

183. It should not be surprising that the recommended changes focus on reducing the opening bids only in the commenter's primary service area in the hopes that they would be able to get their preferred spectrum cheaper than other bidders. However, the value of spectrum to bidders is independent of the opening bid values. Unless the opening bid prices are set so high that no bidder bids on the licences, the only thing lower opening bid prices will do is extend the length of the auction and increases the opportunity for gaming behavior.

184. Moreover, the higher opening bid prices will decrease the difference between the final clock price of the unallocated licences and the opening bid price of the unallocated, and based

¹¹⁷ WIND Mobile, Comments, 25 June 2012, page 16.

¹¹⁸ SaskTel, Comments, 25 June 2012, page 16.

¹¹⁹ Eastlink, Comments, 25 June 2012, page 19.

¹²⁰ Public Mobile, , 25 June 2012, page 9. It should also be noted that the examples provided by Public Mobile in paragraph 41 of their comments consisted of auctions where substantially more spectrum was being auctioned. Given the greater supply of spectrum, it should be expected that the opening bid prices would be lower.

¹²¹ Rogers, Comments, 25 June 2012, page 55.

¹²² SSi, Comments, 25 June 2012, page 9.

¹²³ Telus, Comments, 25 June 2012, page 38.

on the revised text of the Notice issued 18 June 2012, this will make it easier for a bidder to guarantee that it will win its final clock package.

185. Rogers and SaskTel also made recommendations regarding bid increments. Rogers proposed that "regardless of the formula used to determine increments in any round, all increments be set within a specified range of 5-10%," and that "all increments be capped at \$10M."¹²⁴ The intent of Rogers' recommendation is to ensure that lower value licences reach their equilibrium value before the higher value licences. This will reduce the extent of gaming behavior of the type witnessed in the AWS auction. However, the existing rules of the combinatorial clock auction should mitigate the extent of gaming behavior. As a result, all Rogers' recommendation will do is extend the length of the auction. Therefore, Bell Mobility does not support Rogers' recommendation.

186. SaskTel had a different concern than Rogers. SaskTel "suggest that the Department could further shorten the length by using large bid increments in earlier clock rounds, especially in areas where excess demand is significant," but "in later rounds, as demand begins to drop and bids are refined more finely, increments could then be decreased."¹²⁵ However, it is not clear how this proposal would actually shorten the length of the auction. The extended length of the AWS auction occurred when bidders were in the process of refining their bids more finely. As a result, SaskTel's recommendation would have the reverse effect and would likely extend the length of the auction. Therefore, at this time, Bell Mobility does not support SaskTel's recommendation and it will wait until the Department releases its proposed bid increment formula before providing additional comments.

Proposed Eligibility Points for the 700 MHz Spectrum Auction

Industry Canada is seeking comments on the proposed eligibility points for spectrum licences in the 700 MHz band, as outlined in Table 5 [of the Notice].

187. Public Mobile¹²⁶, Rogers¹²⁷ and Telus¹²⁸ argue that the allocation of eligibility points is too complicated and should be simplified. Public Mobile argues that "this simplification will increase flexibility and increase shifting between regions in the primary rounds."¹²⁹ This does

¹²⁴ Rogers, Comments, 25 June 2012, page 30.

¹²⁵ SaskTel, Comments, 25 June 2012, page 16.

¹²⁶ Public Mobile, Comments, 25 June 2012, page 12.

¹²⁷ Rogers, Comments, 25 June 2012, pages 56 and 57.

¹²⁸ Telus, Comments, 25 June 2012, pages 38 and 39.

¹²⁹ Public Mobile, Comments, 25 June 2012, page 12.

not make sense. Spectrum in Southern Ontario is not substitutable for spectrum in Saskatchewan and as a result there is no need to shift between those two regions unless a bidder is trying to engage in a gaming strategy.

188. Rogers and Telus believe that all unpaired blocks should be exactly half the eligibility points of the paired blocks regardless of the population. Bell Mobility does not support these recommendations. The value of spectrum depends on population coverage, and as noted above, the unpaired blocks are fundamentally different than the paired blocks. Therefore, Bell Mobility continues to support the Department's proposal and reiterates its view that the eligibility points allocated to the Lower A block be reduced by half due to its lower value as a result of the interference problems associated with that spectrum frequency.

Pre-auction Deposits

Industry Canada is seeking comments on the proposed pre-auction deposits as outlined [in the Notice].

189. Bell Mobility, WIND Mobile¹³⁰, Public Mobile¹³¹, Rogers¹³², SaskTel¹³³ and Telus¹³⁴ all support the proposed pre-auction deposit process and level. However, SSi "believes the amount for pre-auction deposits is far too high for the smaller licence areas, in particular the Northern Territories (service area 2-14) and Northern Québec (service area 2-07)."¹³⁵ The problem with the SSi recommendation is that it will allow bidders to bid on packages larger than they may be able to afford. This is the reason that Bell Mobility recommended, that over the course of the auction, prior to the commencement of each day's bidding, bidders be required to provide Industry Canada with a financial guarantee via a letter of credit equal to 100% of the value of their previous day's last package bid. This measure will provide a strong market disincentive to discourage bidders from engaging in gamed bidding designed solely to drive up the price of spectrum that they have no meaningful interest in acquiring.

190. As Bell Mobility noted in its Comments, given the proposed eligibility rules and the CCA format, the most likely gaming opportunities that can arise will involve bidders bidding for excessively large packages before switching to a package of real interest, in order to maintain

¹³⁰ WIND Mobile, Comments, 25 June 2012, page 16.

¹³¹ Public Mobile, Comments, 25 June 2012, page 15.

¹³² Rogers, Comments, 25 June 2012, page 57.

¹³³ SaskTel, Comments, 25 June 2012, page 17.

¹³⁴ Telus, Comments, 25 June 2012, page 40.

¹³⁵ SSi, Comments, 25 June 2012, page 11.

their eligibility points. The incentive to engage in gaming behaviour by bidding on excessively large packages is facilitated by the fact that different bidders have different spectrum caps. As a result, some bidders will be allowed to maintain large package bids without fear of retaliation since other bidders will not be able to match the larger package size due to the cap that limits them to one "prime" spectrum block rather than two.

191. By requiring bidders to provide a financial guarantee equal to 100% of the value of their previous day's last package bid, this measure will incent bidders to determine their overall budget in advance of the auction and to bid only on spectrum blocks they desire. If a bidder decides to inefficiently increase the price by bidding on spectrum blocks that they do not desire, it increases the probability that they will go over their pre-determined budget allotment. Having clear goals and a well-defined budget constraint facilitates more efficient bidding. As a result, the bidder will have to renegotiate its budget allotment which increases the cost of engaging in inefficient bidding behaviour. Significant deposits that make engaging in gaming strategies expensive can be expected to lead to more straight forward bidding and will promote more efficient outcomes.

192. Therefore, Bell Mobility considers that the imposition of a continuing financial guarantee obligation that applies throughout the auction process rather than just an upfront guarantee will enhance meaningful bidding, discourage gaming and promote the overall integrity of the auction.

8.0 SECTION 8: BIDDER TRAINING AND SUPPORT

193. As stated in its Comments, Bell Mobility recommends that the mock auction occur at least three weeks in advance of the start of the auction, and that in order to allow bidders the opportunity to ensure that smooth operation of their bidding analysis tools, the Department should provide screen shots of the bidding software and sample output files that will be released after each round as soon as possible. Moreover, Bell Mobility supports the comments of MTS Allstream¹³⁶, Rogers¹³⁷, Tbaytel¹³⁸, Telus¹³⁹, and Xplornet¹⁴⁰ that the Department issue a detailed schedule of upcoming events and earlier access to the auction software and training

¹³⁶ MTS Allstream, Comments, 25 June 2012, page 11.

¹³⁷ Rogers, Comments, 25 June 2012, pages 34, 35, 38 to 40.

¹³⁸ Tbaytel, Comments, 25 June 2012, page 5.

¹³⁹ Telus, Comments, 25 June 2012, page 12.

¹⁴⁰ Xplornet, Comments, 25 June 2012, pages 6, 8 and 9.

sessions. This will allow bidders sufficient time to implement any changes that may be required to their bidding processes (i.e., logistics, bidding room, etc.).

9.0 SECTION 10: LICENCE RENEWAL PROCESS

Industry Canada is seeking comments on the proposed renewal process for spectrum licences in the 700 MHz band.

194. WIND Mobile¹⁴¹ and SSi¹⁴² support the Department's proposed renewal process. However, MTS Allstream "believes that the Department should begin the renewal process for the 700 MHz licences, including a public consultation process, at least five years prior to the end of the licence term, given the Department's proposal to issue spectrum licences in the 700 MHz band with a 20-year licence term."¹⁴³ Bell Mobility does not support this recommendation. It is not clear that there is a significant benefit to starting the renewal process three years sooner than that recommended by the Department. As the recent evolution of the Canadian wireless Industry has demonstrated, there can be significant changes in Industry dynamics over a three-year period. As a result, analysis and discussion that occurs at the beginning of the renewal process can – and likely would be – significantly different than that, three years further along. Therefore, Bell Mobility recommends that the renewal process begin two-years prior to the end of the licence term, as proposed by the Department.

195. Rogers supports Bell Mobility's recommendation that not only should licensees anticipate a high expectation of renewal at the end of the initial term, they should also reasonably anticipate a high expectation of renewal at the end of each and every subsequent term, assuming compliance with COLs as well as the absence of a fundamental reallocation of spectrum to a new service or the absence of an overriding policy need.¹⁴⁴ As noted by Rogers, this "will provide licensees with a suitable degree of certainty upon which to make the considerable investments that will be required to implement services using their licensed spectrum."¹⁴⁵

196. Rogers also argues that "if licence fees will be imposed for renewed licences, they should be set at a nominal level to only recover the Department's administrative costs, as is the

¹⁴¹ WIND Mobile, Comments, 25 June 2012, page 16.

¹⁴² SSi, Comments, 25 June 2012, page 11.

¹⁴³ MTS Allstream, Comments, 25 June 2012, page 12.

¹⁴⁴ Rogers, Comments, 25 June 2012, page 57.

¹⁴⁵ Ibid.

case in the U.S.," since "to do otherwise would place Canadian wireless carriers at a significant disadvantage relative to their peers in other jurisdictions."¹⁴⁶ Bell Mobility agrees. The establishment of fees is required in order to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource. The implementation of such fees is not regulation in a manner that interferes with market forces to the minimum extent necessary. Auctions have long been acknowledged to be the best way to promote the efficient assignment of spectrum and to earn a fair return for the Canadian public for the privilege of access to this scarce and valuable national resource. In fact, such fees actually serve to undermine this policy objective by acting as a drag on further, and accelerated, investments in wireless networks, applications and services.

197. As noted in its Comments, Bell Mobility believes that it is critical that the COLs are not changed during the term of the licence to include or add new licence fees. This is consistent with the comments of Telus which argued that "there must be a separate and thorough consultation conducted with respect to the determination of annual licences fees on mobile spectrum as well as how to apply and the level at which annual spectrum fees should apply to auctioned spectrum licences at renewal."¹⁴⁷ Implementing licence fees without a thorough consultation – especially during the licence term – would significantly reduce incentives to invest and undermine confidence in, and thus the overall integrity of, this and future auction processes. The proceeds of the auction already reasonably compensate Canadian taxpayers for the use of the public resource and there is no justification to implement additional usage fees at a later date.

10.0 ISSUES AND PROPOSALS RAISED BY PARTIES

198. Bell Mobility notes that there were a number of issues and proposals that were neither included in the Department's Notice nor addressed in the sections above, which were raised by parties in their comments in response to the Notice. While Bell Mobility does not intend to deal with all such issues and proposals, the Company does respond to a number of those which we feel warrant a reply. For convenience, Bell Mobility will deal with such issues in this section.

¹⁴⁶ Ibid., pages 57 and 58.

¹⁴⁷ Telus, Comments, 25 June 2012, page 41.

Linkage Between 700 MHz and 2500 MHz Auctions

199. Rogers, in its comments, submits that:

Given the serious issues that Rogers has identified with the proposed rules, we strongly recommend that the Department not finalize or issue its forthcoming consultation regarding the 2500 MHz licensing framework until it has fully considered and decided upon the modifications we have proposed for the 700 MHz licensing framework. Since the Department has indicated that both auctions will utilize a CCA format, many of the comments it receives in the 700 MHz consultation will be highly relevant to the 2500 MHz auction. Therefore, there would be little value in the Department issuing proposals for the 2500 MHz auction without first considering the important feedback that it has received in connection with the 700 MHz auction.¹⁴⁸

200. For its part, Bell Mobility sees merit in Rogers' proposal, given the undeniable linkages between the 700 MHz and 2500 MHz CCA auctions and frameworks, and therefore supports Rogers' recommendation that the Department not finalize or issue its forthcoming consultation regarding the 2500 MHz licensing framework until it has fully considered and decided upon the licensing framework for the 700 MHz auction. Bell Mobility submits that this is a common sense proposal that holds considerable merit on its face.

"Use It or Share It" Condition of Licence

201. SaskTel proposes that Industry Canada attached a "use it or share it" condition to spectrum licences. In this regard SaskTel submits that:

In addition, as we expressed in our input to Gazette Notice DGSO-001-12, *Proposed Revisions to the Frameworks for Mandatory Roaming and Antenna Tower and Site Sharing*, SaskTel urges the Department to incorporate a "use it or share it" condition to spectrum licenses. This condition would apply to cases where licence holders have indeed deployed network and are using a portion of their spectrum, but appear to have no immediate plans to use the remainder of the (typically rural) geographic coverage.

...

Under such conditions, the licensee's spectrum holdings in areas outside the range of that licensee's home network should be made available at no charge to facilities owners with home networks that are capable of using the spectrum.¹⁴⁹

¹⁴⁸ Rogers, Comments, 25 June 2012, page 40.

¹⁴⁹ SaskTel, Comments, 25 June 2012, page 16.

202. Bell Mobility does not believe that such a condition would be either appropriate or practical given the circumstances surrounding the awarding of spectrum licences in Canada today. In particular, given that many spectrum licences are awarded through competitive spectrum auctions where winning bids are paid in their entirety within 30 days of the close of the auction, the Company believes that the Department and licensees would stepping into a legal quagmire if it attempted to implement and enforce such a condition.

203. Bell Mobility also foresees difficulties, with SaskTel's proposal, regarding licences which are subject to annual licence fees. Bell Mobility notes, in this regard, that subsequent to the Department's 2003 Harmonization Consultation, licensees pay annual fees for all spectrum held by it as opposed to paying only for spectrum in use, which was previously the case. Is SaskTel proposing, when it says that any such spectrum be made available to others "at no charge" that Industry Canada forgo the applicable fees or is it suggesting that the original licensee continue to pay the annual fee?

204. In any event, Bell Mobility is strongly of the view that Industry Canada, once it has adopted deployment requirements for a given band, has both the processes and the capability of enforcing those requirements or taking appropriate remedial action, should such action be required. As a result, Bell Mobility does not support SaskTel's recommendation that Industry Canada implement a "use it or share it" condition of licence for spectrum licences.

Allow New Entrants to Pay Winning Bids by Installment

205. Mobilicity, in its comments, requests that the Department consider allowing new entrants to make bid payments through installment payments. In this regard, Mobilicity notes that:

The Department had, in the past, cited benefits of allowing winning bidders to pay the bid-payments via installment payments. This [could relieve some] of the heavy financial burdens of smaller bidders that are also required to make large investments on network infrastructure and competition. However, the Department had also stated that a "potentially serious drawback with an instal[l]ment payment system is that a smaller up-front payment encourages speculators to enter the bidding process".¹⁵⁰

206. Bell Mobility notes that the option of allowing payment by installment was thoroughly canvassed during the course of the Department's 1997 consultation concerning the adoption of spectrum auctions in Canada. Bell Mobility notes that for a variety of reasons, including but not

¹⁵⁰ Mobilicity, Comments, 25 June 2012, page 47.

limited to concerns regarding facilitating or encouraging spectrum speculators, Industry Canada decided not to incorporate this feature into its auction framework.

207. Also of concern to Bell Mobility would be the inherent unfairness of applying different payment rules and/or requirements to different bidders. Moreover, where and how would the Department draw the line with respect to who would qualify for installment payments and who would not – Canadian new entrants – regional licensees – SILECS - foreign new entrants - incumbents? Bell Mobility considers that Industry Canada made the correct decision, in its auction framework, in deciding to subject all bidders to the same payment parameters and the Company recommends that the Department stay the course in that regard and not implement Mobilicity's recommendation.

Portion of Auction Proceeds to Fund Digital Connectivity in Rural Areas

208. In its comments the Province of Ontario, Ministry of Agriculture, Food and Rural Affairs - Economic Development Policy Branch submits that:

The upcoming 700 MHz spectrum auction is expected to generate significant revenues for the Federal treasury. IC should consider setting aside a portion of the proceeds to support new programs to fund broadband infrastructure deployment for increasing digital connectivity in rural areas.¹⁵¹

209. When spectrum auctions were introduced into Canada, to less than unanimous approval in the late 1990's, a common response from Industry Canada to the concerns of many industry participants and others regarding the huge costs involved was "It's not about the money." While that may have been true, as Ontario points out, auctions do indeed generate significant revenues for the Federal Treasury. Moreover, these revenues have been growing with each auction. The proceeds from the initial Canadian MCS wireless auctions amounted to hundreds of thousands of dollars, while the 2001 PCS auction amounted to \$1.5B and the proceeds from the 2008 AWS auction amounted to \$4.2B. With such sums, clearly there is an opportunity to address current industry challenges and issues by using the auction proceeds, even just a portion of them, wisely to reinvest in the sector. Bell Mobility notes that the United States is now moving in this direction with its Incentive Auctions proposal to address the spectrum crunch in that country. With these thoughts in mind, Bell Mobility supports Ontario's proposal that government should consider setting aside a portion of the auction proceeds to

¹⁵¹ Province of Ontario, Ministry of Agriculture, Food and Rural Affairs - Economic Development Policy Branch, Comments, 25 June 2012, page 3.

support new programs to fund broadband infrastructure deployment for increasing digital connectivity in rural areas through Canada as well as other potential worthy projects such as public safety initiatives including lawful intercept.

Extension Rights and Exceptional Circumstances

210. In its comments, Rogers recommends the implementation of extension rights and explicit rules for exceptional circumstances.¹⁵² Bell Mobility fully supports Rogers' recommendations.

Assignment Round Bid Submissions

211. Rogers recommends a detailed framework describing how to allocate spectrum after the supplementary round in an attempt to alleviate the need for an allocation round.¹⁵³ Bell Mobility opposes this recommendation. Rogers proposed framework increases the priority of ensuring continuity of Lower B and C blocks with the Lower D and E blocks. As indicated above, it does not make sense from either business or a technological perspective to have Lower B and C blocks contiguous with the Lower D and E blocks. Moreover, by not allowing bidders to indicate their preferences for spectrum frequencies – which may significantly differ from Rogers preferences – it would fundamentally change the attributes of the combinatorial clock auction which allows bidders to express their preferences for particular frequencies. Therefore, Bell Mobility recommends that the Department continue with the allocation round as proposed.

11.0 CONCLUSION

212. Bell Mobility appreciates the opportunity to provide its views on these crucial matters which will greatly influence Canada's role in the digital age and looks forward to the Department's subsequent determinations.

All of which is respectfully submitted.

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¹⁵² Rogers, Comments, 25 June 2012, pages 30 to 33.

¹⁵³ Ibid., pages 36 to 38.