



TELUS COMMUNICATIONS INC.

Comments for
CONSULTATION on a
STREAMLINED FRAMEWORK for
AUCTIONING RESIDUAL SPECTRUM LICENCES

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Executive Summary

1. TELUS appreciates the opportunity to submit comments on the *Consultation on a Streamlined Framework for Auctioning Residual Spectrum Licences* (“the Consultation”)¹. TELUS firmly believes that meaningful industry consultation is an important component to developing smart, evidence-based public policy for the betterment of Canadians and Canadian society.
2. TELUS commends ISED for taking this first step towards getting unsold spectrum quickly put to use for the benefit of all Canadians. TELUS supports the notion of a simplified auction framework that could eliminate the need for a consultation for residual spectrum auctions whilst consulting on certain licence characteristics only if deemed necessary. The proposal is a good start and a quick way to make the spectrum available as long as participants who value it the most (and are willing to put it to use) may participate.
3. However, TELUS suggests some key changes to ISED’s proposals are required to ensure that the benefits of competition, investment and innovation are delivered to Canadians, in all regions of Canada, urban and rural, in a timely manner. TELUS supports the proposed Residual Auction Framework with the following exceptions:
 - Remove any competitive measures and in particular any eligibility restrictions that resulted in the spectrum failing to sell despite preferential auction conditions for all but a select few operators.
 - Maintain opening bid levels as set through the initial licensing framework.
 - Maintain geographic tier size of the licence as set through the initial licensing framework.

¹ *Consultation on a Streamlined Framework for Auctioning Residual Spectrum Licences*, Canada Gazette SLPB-001-21, published March 2021. Link: <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11686.html>

- If ISED proposes to impose the same competitive measures for spectrum that went unsold under this same set of competitive measures, or to change the opening bid prices, or to alter the geographic tier size, then TELUS maintains that a public consultation is required.
4. The detail behind TELUS' recommendations and TELUS' comments in response to the various questions raised by ISED follows in the main body of this document.

TELUS' Comments on Specific Questions Posed by ISED

Q1: Tier sizes and opening bid prices

Q1. ISED is seeking comments on its proposals to not consult on the following as part of developing the streamlined framework for auctioning residual spectrum licences:

- a. potential changes to tier sizes when auctioning residual licences
- b. opening bid prices that are equal to or lower than the opening bid prices from the initial licensing framework(s) for those licences

Changes to tier sizes

5. ISED suggests that if demand is very low or non-existent in the previous licensing process, it may modify the tier size for residual licences. In an effort to find one or more buyers, ISED is proposing to break residual licences into smaller constituent service areas and to distribute opening bids on a population weighted basis to each smaller licence.
6. TELUS disagrees with ISED's proposal to not consult on the question of tier size for residual licences. Breaking up the licence areas will not ensure that all residual spectrum is sold when eligibility remains restricted. If an interested bidder is interested in only the urban area the rural areas will again not be sold; the opposite is true if eligible bidders are only interested in rural areas. Both situations demonstrate that a restricted number of eligible bidders will likely result in licences going further unsold regardless of tier size.
7. While smaller tier sizes may serve to achieve the sale of some components of an unsold licence, TELUS notes that the licence area size chosen will have a major impact on the quality of services and the use cases that can be supported. This is particularly important when considering the sale of low band spectrum such as 600 MHz. The use of smaller licence areas will introduce additional complexity to coordination and coexistence with adjacent service providers resulting in more stringent power limitations which could

reduce a licensee's ability to deploy, resulting in inefficient spectrum use directly contrary to the one of ISED's core goals. Introducing such inefficiencies would run counter to the principle of fostering demand by diminishing the economic value of the spectrum in the service area.

8. If ISED does consider altering a product by reducing the size of the licence area from that set out in the original licensing framework, then a consultation process is warranted to provide stakeholders an opportunity to comment on the potential operational implications. However, before jumping to the conclusion that the residual licences being sold require alteration to make them more appealing for a particular business case (e.g., via a reduction in service area size), TELUS strongly recommends that ISED should remove any eligibility restrictions on the licences that may have led to the limited demand.
9. Further, if there remains very little or no demand for a product which has already been offered under no eligibility restrictions (i.e., in an open residual auction), then a third auction may not be the best mechanism for licensing the spectrum. In such an instance ISED should consider making the licence available on a first come first served (FCFS) basis.

Opening bid prices

10. TELUS disagrees with ISED's proposal to not consult on a proposal to reduce the opening bid price for spectrum licences. ISED claims that where demand has been very low (or nil) for the licences, it may be appropriate to adjust the opening bid prices downwards to increase demand for the licences. TELUS argues that opening bids are set high enough to ensure that Canadians receive a fair return for the spectrum, but at a level that should not

discourage auction participation from operators who would want to put that spectrum to use.

11. Lowering opening bids on products shortly following an initial licence offering via auction is simply unfair to past auction winners who just paid at least the original opening bid price for the same product.
12. TELUS recommends that ISED maintain opening bids as set in the initial licensing framework and open up eligibility (through the removal of set-aside restrictions and/or aggregation limits) to enable a truly competitive process. Further, if ISED seeks to alter opening bids then a public consultation is warranted.

Q2: Competitive measures

Q2. ISED is seeking comments on its proposal to only consult on competitive measures for an auction of residual spectrum licences when it is considering competitive measures that differ significantly from the measures used in the initial licensing process for those licences.

13. Rural Canada remains un-served by regional providers following years of privileged access to spectrum. Commercial mobile spectrum licences that have remained unsold following an initial auction typically contain urban centres but are predominantly rural areas. In all cases unsold licences had limited eligibility as to who could bid for the licences.
14. Implementing residual auctions under the same privileged conditions will not result in a different outcome and would therefore be detrimental to the development of Canada's digital economy. ISED should be implementing policies that fundamentally rely on market

forces to promote Canadian investment and facilities-based competition to benefit all Canadians, particularly in rural and remote areas.

15. Evaluating the 600 MHz auction outcome, TELUS notes that eight licences went unsold and each of these had set-aside eligibility constraints. Such an outcome ends up hurting consumers due to the spectrum not being deployed for the foreseeable future. Conversely, now that it's clear that set-aside eligible bidders were not interested in these eight licences, allowing all interested parties to bid on them would maximise the likelihood of the licences being put to use.
16. The 600 MHz design made available set-aside licenses for a small number of hand-picked bidders at artificially low prices and yet licences still were not fully sold. Evidently, ISED set the eligibility restrictions too narrowly and in most regions, very few bidders were able to bid on set-aside licences. Stanford University Professor Michael Ostrovsky assessed the 600 MHz auction outcome² and found that the highly unusual restrictions for set-aside blocks in a given region was an anticompetitive auction feature:

Segmenting the markets, and not competing on each other's turf, is a canonical anticompetitive measure employed by oligopolists in many industries – but typically regulators try to prevent such behavior and find ways to disrupt it, instead of facilitating and encouraging it, as the 600 MHz auction inadvertently did. While the goals of the regulator were to foster competition, the actual implementation of the auction in many cases ended up with the opposite results.

² Michael Ostrovsky - *Comments on the Outcomes and Design Issues in the 2019 Canadian Auction of Spectrum Licenses in the 600 MHz Band*, Paragraph 49. Link: [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapi/SLPB-002-19-TELUS-Attachment3.pdf/\\$FILE/SLPB-002-19-TELUS-Attachment3.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapi/SLPB-002-19-TELUS-Attachment3.pdf/$FILE/SLPB-002-19-TELUS-Attachment3.pdf)

17. Due to the restrictive eligibility for set-aside licences, ISED would be erroneous to assess demand observed during the initial allocation process as the sole basis for determining if any change to the applicable competitive measures is warranted. Simply put, continuing with the same or similar restrictive set-aside rule makes no sense. TELUS is vehemently opposed to ISED's proposal that competitive measures used in the initial licensing processes, that failed to result in the sale of all spectrum, would be appropriate during a subsequent allocation process.
18. Therefore TELUS is opposed to ISED's proposal only to consult on competitive measures for residual licences when it is considering competitive measures that differ significantly from the measures used in the initial licensing process for those licences. TELUS recommends that through this process ISED establish that when eligibility restricted licences are left unsold following an initial auction process that such eligibility restrictions be removed in a residual auction as a matter of process and no consultation be required.
19. If the competitive measures in the original auction did not result in the licensing of the spectrum, ISED should remove any eligibility limitations on the spectrum licences. In summary, TELUS proposes that maintaining any competitive measures for unsold spectrum is neither required nor beneficial.

Q3: Conditions of licence

Q3. ISED is seeking comments on its proposal to not consult on the following as part of the process for auctioning residual spectrum licences:

- a. the applicable conditions of licence when they are the same as the conditions established in the initial licensing process offering those licences or have been amended as a result of another consultation
- b. the term of licence for residual licences when the term is modified to align their expiration date to the same approximate expiration date of licences awarded through the initial licensing process for that same band
- c. amended deployment requirements when they are modified to respond to observed demand or to correspond to changes in the characteristics or conditions of the licence

Deployment requirements

20. TELUS has recommended that deployment timelines be accelerated in its response to multiple past licensing framework consultations³. Given that TELUS' recommendations to accelerate the deployment timelines for multiple bands were not adopted, TELUS vehemently disagrees with ISED's assumption that it may be appropriate to consider amendments to deployment requirements without public consultation. (TELUS assumes the amendments ISED envisions would be the lessening of coverage requirement and/or extending the timeline). TELUS further considers that ISED's assumption that a lack of demand is a result of onerous deployment conditions would be an erroneous conclusion in the case of restricted-eligibility spectrum (such as the 600 MHz set-aside). As stated in response to Question 2 above, the lack of historical demand for nearly all auctioned spectrum has been a direct result of the limited bidder eligibility.

³ Two examples include TELUS' reply to the 3500 MHz consultation (SLPB-002-19), Question 14. Link: [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-19-Reply-TELUS.pdf/\\$FILE/SLPB-002-19-Reply-TELUS.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-19-Reply-TELUS.pdf/$FILE/SLPB-002-19-Reply-TELUS.pdf) and TELUS reply to the 600 MHz consultation (SLPB-005-17), Question 12. Link: [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-005-17-reply-comments-Telus.pdf/\\$file/SLPB-005-17-reply-comments-Telus.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-005-17-reply-comments-Telus.pdf/$file/SLPB-005-17-reply-comments-Telus.pdf)

21. TELUS strongly advocates that ISED must maintain deployment requirements and institute a use-it-or-lose-it policy for all spectrum licences. TELUS notes that upholding spectrum deployment regulations has become all the more important considering the newly introduced concern of parties obtaining spectrum for the primary purpose of being able to resell wireless services as a result of the CRTC's recent decision in Telecom Regulatory Policy 2021-130⁴. This is because under the CRTC's mandated facilities-based wholesale MVNO access framework, eligibility for regional wireless carriers to access national service providers' networks is largely based on being a mobile spectrum licensee at the tier 4 level or higher in a given tier 4 area. No specific deployment requirements were set out by the CRTC. Therefore, a regional wireless service provider could exploit its position as a spectrum licensee to resell the wireless services of Bell, Rogers or TELUS for seven years without the CRTC enforcing any wireless network deployment.
22. As a result, only stringent ISED deployment conditions will ensure that companies that obtain mandated MVNO access via the TRP 2021-130 framework will actually build facilities in their licence areas. In short, the TRP 2021-130 decision increases the potential for spectrum speculation, underscoring the need for ISED to act by instituting stringent deployment conditions of licence. Moreover, the application of stringent deployment requirements helps mitigate, though not eliminate, the risk of network arbitrage (whereby a carrier may find preferable economics in having their customers access another carrier's network rather than building out an expansion of their own network) that is enabled by mandated MVNO access and mandatory roaming.

⁴ CRTC *Wireless Regulatory Framework Review* TRP 2021-130. Link: <https://crtc.gc.ca/eng/archive/2021/2021-130.htm>

23. There is a relationship between deployment requirements, mandatory roaming and facilities based MVNO access. The presence of strict deployment requirements helps in mitigating opportunities for network arbitrage. Specifically, when deployment requirements are imposed, a spectrum licensee must provide some form of economic contribution towards facilities-based competition, either through direct investment in infrastructure that provides network facilities for expansion into previously unserved markets, or through the indirect support (via spectrum subordination) to a provider making the infrastructure investment in a surrogate role. While imposing deployment requirements does not completely eliminate arbitrage, in TELUS' view, the economic incentive to either build or subordinate helps in balancing an otherwise asymmetric position arising from the combination of MVNO access and mandatory roaming.
24. TELUS contends that the availability of MVNO access creates adverse incentives to cause regional carriers to choose to obtain MVNO access rather than invest in infrastructure. As such, more stringent deployment requirements may help to mitigate the arbitrage opportunity because the spectrum deployment requirements effectively set the minimum infrastructure investment past the maximum MVNO access of 7 years. Beyond this regulatory backstop it's conceivable that regional operators will choose to rely solely on resale and mandatory roaming to satisfy their customers versus deploying spectrum any further.
25. As a final point, TELUS recognises that residual licences should be subject to the existing mandatory roaming condition of licence to ensure consistency with already issued licences in the same spectrum band. However, TELUS points out that it is time for ISED to review the mandatory roaming condition of licence as part of a new consultation. ISED's

mandatory roaming condition of licence is no longer necessary given that there is an existing roaming tariff framework via the CRTC and its decision in Telecom Regulatory Policy 2015-177⁵. Regional wireless carriers are eligible to obtain roaming from TELUS, Bell or Rogers at tariffed rates, meaning that none of these carriers need to rely on mandatory roaming under ISED's condition of licence. For TELUS, Bell and Rogers, if they desire domestic roaming from another carrier, they should negotiate such access, without recourse to arbitration. This sends the requisite "build versus buy" signals to the marketplace and is consistent with ISED's policy to ensure deployment of spectrum for the benefit of Canadians and to further facilities-based competition. In short, the mandatory roaming condition of licence merits review, in that it is entirely unnecessary and disincentivizes the deployment of competing network facilities.

Eligibility requirements

26. TELUS recommends changes to the eligibility requirements as proposed in TELUS' response to Question 2 above.

Licence term

27. TELUS generally supports the proposed amendment to the residual licence terms and the rationale for a shorter term. Aligning the residual licences' end of term with the end of term of the licences issued in the original auction for that band will result in a more uniform treatment of licences in the band.

⁵ CRTC *Regulatory framework for wholesale mobile wireless services*, TRP 2015-177 Link: <https://crtc.gc.ca/eng/archive/2015/2015-177.htm>

Q4: Auction design

Q4. ISED is seeking comments on its proposal to use a sealed-bid auction format with a second-price rule to auction residual licences, and to retain the option to allow combinatorial (package) bidding when ISED deems it appropriate.

Price discovery

28. TELUS notes that a sealed-bid auction format has been used in past residual auctions and due to the one shot nature of the format the net result tends to be higher spectrum costs as a bidder's maximum willingness to pay is elicited. If ISED selects the sealed-bid format as the default for residual auctions, TELUS supports the proposal to use a second-price rule for this auction and the Vickrey price determination mechanism.
29. TELUS recommends that as an outcome of this consultation, ISED should establish a specific criteria that determines when the use of a sealed-bid auction format is appropriate versus when an auction format that includes price discovery is appropriate. A sealed-bid auction format is not appropriate if a significant period of time has elapsed since the original auction or if a product has been altered from the initial auction such that the past price discovery is not relevant (e.g., changes in bidder eligibility requirements or any other conditions of licence). In such cases, TELUS proposes that ISED hold an auction using a format that supports price discovery.

Combinatorial bidding

30. TELUS commends the Department for proposing a form of package bidding to attempt to limit the exposure risk in bidding if there are many smaller (Tier 3, Tier 4 or Tier 5) licences to be made available. TELUS contends that the purpose of package bidding is to

allow bidders to self-manage their exposure risk across the entirety of their target licence sets. For this reason, TELUS recommends that if the criteria for a sealed bid auction is met, as defined above, that a package bidding feature should be included.

Unallocated licences

31. Should licences remain unassigned following an auction of residual licences, ISED should make them available through an alternative process such as on a first come first served (FCFS) basis. Following two failed attempts at a competitive process (and assuming eligibility restrictions were lifted in the second process so as to determine actual market demand), there would be clear evidence of a lack of demand.
32. TELUS notes that fees have not been set for most flexible use bands. Despite the absence of an applicable fee, ISED should not be deterred from using a FCFS licensing regime.

Q5/Q6: Auction process

Q5. ISED is seeking comments on the amount of time potential bidders require to prepare for an auction of residual licences and the timelines outlined in the proposed Table of Key Dates.

Q6. ISED is seeking comments on its proposal to not consult on elements of the auction process and the rules for bidder participation prior to an auction for residual licences.

Auction timelines

33. Given that a residual auction is a second attempt at selling the same spectrum, TELUS concurs with ISED’s assessment that auction participants require only a brief amount of time to evaluate the licences being offered, to prepare their business plans and valuations, and to seek funding to participate in the auction. TELUS agrees with the proposed table of key dates, whether applied to a sealed bid auction or to an auction with price discovery as well. TELUS notes that if significant changes are made to the residual licence products or to their conditions of licence, additional preparation time may be required. However, in such cases, participants would have sufficient time (due to the application of a necessary consultation process). As such, the proposed table of key dates remains appropriate for the auction of residual licences that fall under the streamlined framework.

Auction process consultation

34. TELUS supports ISED’s proposal to not consult on elements of the auction process and the rules for bidder participation where there is no change to the initial auction licensing framework for the available licences.

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