



Canwisp's Comments on Submissions to

ISED's Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band

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Spectrum Management and Telecommunications

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Q1A—ISED is seeking comments on its proposal to implement pro-competitive measures in the 3500 MHz auction.

The three incumbents (Bell, Rogers, TELUS) expressed their opposition to the application of pro-competitive measures in the 3500 MHz auction. Rogers and TELUS proposed using spectrum caps rather than set-asides whereas Bell was opposed to both measures. Both Rogers and Telus claimed that regional service providers like Shaw, Xplornet, Eastlink, Videotron, etc. are ‘spectrum rich’ and do not need public support to obtain spectrum.

Most of other respondents (i.e. non-MNOs) agreed with pro-competitive measures. BCBA, Cogeco, Eastlink, ECOTEL, Iristel, SaskTel, Shaw, Teksavvy all proposed robust measures which combine both set-aside and spectrum cap.

1. Canwisp’s viewpoint, in line with most of the non-MNO respondents, is that a spectrum cap alone is not sufficient for most of the WISPs to compete with the incumbents. Without a set-aside, regional WISPs will not be able to compete with the incumbents, even for spectrum in under-served areas of the country. Canwisp also disagrees with Rogers’ and TELUS’ claim that regional service providers are ‘spectrum rich’ as they demonstrably have less spectrum than the national incumbents. Furthermore, the smaller players including the WISPs have little - if any, secure spectrum to develop their service packages and meet the needs of their subscribers.
2. In light of these arguments, Canwisp strongly urges the Department to apply robust pro-competitive measures in the 3500 MHz auction. As previously stated, these measures should include the following:
 - Use of smaller service areas – specifically the newly defined tier 5 licence areas announce by Minister Bains,
 - Significant quantum of set-aside spectrum
 - Application of spectrum caps on large incumbent operators
 - Ensure entities who operate assets using 3500 MHz spectrum without really serving customers see their application to transition to flexible use rejected, and;
 - Allow flexible Conditions of Licence (CoLs) for smaller operators in rural and remote areas, required for smaller operators in the face of rural investment

Q1B—ISED is seeking comments on the use of a set-aside, an in-band spectrum cap, or a combination of both, including the amount of spectrum that should be applied for the use of a set-aside, and/or the amount of spectrum that should be subject to an in-band spectrum cap. Provide supporting rationale for your responses.

Q1C—ISED is seeking comments on its proposal to limit the eligibility criteria to bid on set-aside spectrum licences to those registered with the CRTC as facilities-based providers* that are not National Mobile Service Providers, and that are actively providing commercial telecommunication services to the general public in the relevant Tier 2 service area of interest, effective as of the date of application to participate in the 3500 MHz auction.

Q1D—ISED is seeking comments on its proposal that any set-aside licences acquired by set-aside-eligible bidders would not be transferable to set-aside-ineligible entities for the first five years of the licence term.

Bell, Rogers, TELUS all disagreed with using the set-aside provision in the upcoming 3500 MHz auction. Bell and TELUS claimed that set-aside would distort the auction process to the significant benefit of the set-aside spectrum recipients. TELUS also submitted that the use of set-asides would escalate the prices of wireless services.

Xplornet, on the other side, claimed that a spectrum cap should not be applied.

3. Canwisp, as stated in paragraph 1 above, agrees with the proposals made by respondents including BCBA, Cogeco, ECOTEL, Iristel, SaskTel, Shaw, TekSavvy, regarding the use of a combination of the set-aside provision and a spectrum cap in the 3500 MHz auction.
4. As stated in Canwisp's original submission, the set-aside provision is a proper way to protect the new entrants and encourage the small players to obtain secure spectrum at a reasonable price, through the auction process. The application of the set-aside will enable the small players, especially Canwisp members to expand their service into the underserved areas.
5. Canwisp believes that a measured approach in the management of the transition process to flexible use would ensure that a significantly greater portion of the spectrum licensed to the national and regional carriers is actually put to use to provide innovative wireless services to Canadians. A flexible use regime would result in lower prices and more innovative services for Canadian households and businesses.

Some respondents also suggested to narrow the set-aside criterion. In addition to the ISED proposal - set out in Q 1-C above, Bell suggested the set-aside eligible participants should have spectrum licenses and provide wireless services to the general public in the Tier 4 area of interest. Both Bell and TELUS opposed to use Tier 2 service areas as a criterion for set-aside.

6. Canwisp disagrees with Bell's proposal that set-aside should be limited to those who have spectrum licenses and provide wireless services to the general public in the Tier 4 area of interest. This proposal would prevent smaller service providers and new entrants from participating the auction, thereby, reduce the competition in the telecoms' market – especially in rural areas.

Bell disagreed with preventing the transfer of set-aside spectrum for a period of five years, while Rogers suggested the moratorium should be extended on the transfer of set-aside spectrum to all entities, including set-aside-eligible ones.

7. Canwisp supports ISED's original proposal of requiring licensees which holding set-aside licences, not to transfer them to set-aside-ineligible entities for the first five years of the licence term. This measure will enable smaller competitors to focus on building their wireless business and developing innovative services for their subscribers. It will also dissuade non-set aside eligible entities from using their considerable financial resources for predatory acquisition of licences in the post auction period.
8. In addition, Canwisp also disagrees with Rogers' suggestion that there be no transfer to set-aside-eligible ones for the first five years of the licence term.

Q2—ISED is seeking comments on its proposal to use Tier 4 service areas for the 3500 MHz licensing process.

Both Rogers and TELUS strongly opposed the use of service areas smaller than Tier 4 in the 3500 MHz auction.

BCBA, Canwisp, Cogeco, ECOTEL proposed to use smaller service areas, like Tier 5, in the upcoming auctions.

9. Canwisp agrees with the proposals made by BCBA, Canwisp, Cogeco, ECOTEL. Canwisp believes that the smaller (Tier 5) service areas are critically needed to encourage participation by smaller operators in the 3500 MHz and future spectrum auctions and consequently, enable them to provide affordable broadband services to subscribers in rural and remote areas.

Q3B—ISED is seeking comments on its proposal to consider all spectrum acquired through the auction and only Tier 4 licences that will be issued through the transition process, simultaneously in the assignment round of the auction, in order to determine the specific frequency assignments of all licences in the 3500 MHz band.

The BCBA proposed that existing licensees that are set-aside eligible be assigned contiguous blocks at the upper end of the band prior to the assignment round, so that these small companies are not required to compete against national carriers in the assignment round.

Rogers' proposed that ISED take the upcoming 3800 MHz auction into account.

10. Canwisp agrees with BCBA's proposal that existing licensees that are set-aside eligible be assigned contiguous blocks at the upper end of the 3500MHz band prior to the assignment round.
11. Canwisp agrees with Rogers' proposal of taking the upcoming 3800 MHz auction into account. However, as the 3800MHz auction will include the 3.65MHz band which is critical for the continuity of WISPs' operations, Canwisp suggests the Department make special provision to set aside this band for the smaller rural service providers - including WISPs.
12. Canwisp fully agrees with BCBA's proposal that set-aside eligible bidders should be assigned contiguous blocks at upper end of the band prior to the assignment round. Canwisp also submits that ISED should exclude the transitioned spectrum from the assignment round.

Q4B—ISED is seeking comments on its proposal to categorize all blocks won by set-aside-eligible bidders as set-aside blocks.

Given the use of generic licences and the ability of set-aside eligible bidders to bid on all available blocks in a service area, there is a possibility that set-aside-eligible bidders —individually or collectively—would be able to bid on and win more than the number of blocks available for the set-aside in a service area. In the case where one or more set-aside-eligible bidders collectively win more than the amount of spectrum available for the set-aside in a given service area, ISED is proposing that all of these blocks be considered set-aside blocks, and effectively be subject to the same conditions of licence set out in section 11.2 (Licence transferability, divisibility and subordinate licensing). Although this rule would restrict the transferability of these licences for the first five years, it is noted that set-aside spectrum serves to provide a significant advantage to set-aside-eligible bidders by effectively protecting them from competition by NMSPs.

TELUS strongly opposed the dedication of unencumbered spectrum first to set-aside-eligible bidders in the event of a set-aside and provided three reasons for rejecting the measure: 1) would be contrary to and inconsistent with the historical deployment and investment patterns of NMSPs vs. regional operators. 2) setting aside unencumbered spectrum would be an issue in Tier 4 markets containing large population centers. 3) The rural nature of WISPs' fixed network deployments combines with the predominantly urban footprint of regional operators' LTE networks in a manner that is highly complementary.

13. Canwisp agrees with ISED's proposal to categorize all blocks won by set-aside-eligible bidders as set-aside blocks and assign unencumbered blocks to set-aside eligible bidders first. Canwisp therefore rejects Telus' argument. Canwisp sees no validity in Telus's claim that set-aside entities would not put the spectrum to use for 10 years if the measure was applied as proposed by ISED. The measure, as proposed by ISED, would enable WISPs to acquire unencumbered set aside spectrum and thus, allow

these and other smaller new entrants to initiate the long process of acquiring secure spectrum and correspondingly, overcome the barrier to entry to wireless services provision. Canwisp agrees with the transferability restriction as this would provide partial protection against competition by national and regional incumbents.

Q8—ISED is seeking comments on the proposed range of percentage increments.

Rogers' proposed that the Department commit to not using increments larger than 10% in the most valuable service areas and establish a maximum absolute increment, expressed in \$/MHz/Pop terms that it will not exceed for any product.

14. Canwisp disagrees with Rogers' proposal that the Department commit to not using increments larger than 10% in the most valuable service areas and establish a maximum absolute increment, expressed in \$/MHz/Pop terms that it will not exceed for any product.
15. Rather, Canwisp submits that the Department commit to not using increments larger than 10% in all service areas and establish a maximum absolute increment, expressed in \$/MHz/Pop terms that it will not exceed for any product.
16. This measure will enable WISPs and other smaller bidders to bid more effectively in the set aside spectrum.

Q9A—ISED is seeking comments on the proposed structure of the assignment stage, including the order of the assignment rounds, treatment of existing holdings, the combination of service areas into a single assignment area and parallel bidding.

TekSavvy submitted that open bidders should not be included with set aside bidders in the Assignment round.

TELUS proposed that only licensees eligible to be issued full Tier 4 service area licences issued through the transition process be given the option to apply to participate only in the assignment stage with an appropriate deposit. Bell supported the Department's proposal except to create assignment sessions for six areas at one time after the completion of the first eight assignment rounds.

17. Canwisp agrees with TekSavvy's proposal that open bidders should not be included with set aside bidders in the Assignment round.
18. As stated in Canwisp's original submission, the Association strongly objects to the inclusion of set aside and non-set aside bidders in the Assignment round as this would

allow non set-aside bidders to use their considerable financial capabilities to prevent smaller players to acquire frequencies close to the WBS band.

Q14—ISED is seeking comments on the proposed deployment condition of licence as stated above as well as on the proposed levels of deployment.

Rogers suggested the Department should require network operators to provide coverage to 90% of the population within their mobile LTE network footprint as provided by their PCS, AWS, and BRS spectrum bands within 10 years of the initial licence issuance date and 13 years to cover 97% of the population.

*TELUS proposed eliminating the asymmetric requirements altogether and replacing them by using higher and more timely general requirements. Basically, TELUS proposed advancing the Year-10 requirement to Year-5 and the Year-20 requirement to Year-7. More specifically, TELUS proposed a new Year-12 requirement that is comparable to the “timely 5G” requirement but adds 25% (absolute) to ISED’s proposed Year-20 requirement and would be applied equally to **all licences**. A new deployment requirement was proposed requiring all licensees holding spectrum in Tier 4 markets containing a large urban population centre to cover 90% of the population inside LPCs within 3 years of licence issuance. In addition, TELUS proposed that the timeline for the “5G in rural areas” requirement (covering the 95% of the remaining population outside the LPC in the Tier 4 licence areas that contain large urban population centres) should be advanced to Year 5 to ensure 5G coverage for Canadians outside the large population centres.*

Iristel recommended that ISED modify the deployment conditions such that remote communities are excluded from the requirements listed in paragraph 171 of The Consultation, or in the alternative that ISED modify the conditions listed in paragraph 171 for remote communities to 25% for five-year deployment conditions, and 50% for seven-year deployment conditions.

TekSavvy submitted that deployment conditions should be paired with a real service obligation to ensure that service providers with strong financial capabilities were not tempted to light up a few towers per service area to be deemed having meet their deployment conditions as it has been the case in recent history.

19. Canwisp agrees with the principle contained in Iristel’s proposal that difficult-to-serve areas require asymmetrical deployment conditions and strongly suggests that ISED apply the same principle when setting deployment conditions in rural areas.
20. Canwisp agrees with TekSavvy’s proposal that deployment conditions for MNOs should be paired with a real service obligation to avoid problems of partial service and warehousing of spectrum by incumbents – as encountered in the past. Canwisp submits that the Department should apply asymmetrical licence conditions to urban and non-urban areas.

21. Canwisp strongly opposes to TELUS' and Rogers' proposals for licensing conditions related to deployment requirements to be applied to set aside eligible service providers that win spectrum. These service providers typically serve high cost rural and remote areas which are more costly to serve and have lower revenues per subscriber.
22. It follows that service providers in those areas and in particular, the set aside eligible service providers, should have asymmetrical conditions of licence that properly reflect the economics of service in rural and remote areas.

Q17—ISED is seeking comments on the proposed opening bids as presented in annex D.

Bell proposed that if it does not impose a spectrum set-aside, the Department should lower the opening bid prices for service areas with a population over 2 million. If the Department does impose a spectrum set-aside, then the opening bid prices should remain at their proposed level.

TELUS recommended that ISED retract the proposal to increase the opening bids in the top 3 markets by 66% and revert to the ratios used in the 2500 MHz auction. Further, TELUS recommends that the 2500 MHz opening bid levels be scaled down to be more in line with the OECD benchmarks for opening bids.

Shaw proposed that ISED should reduce the opening bid price of \$0.232 per MHz-pop in service areas with populations over 2 million to the range of \$0.17.

Iristel recommended that the opening bid prices be reduced by half in order to allow greater participation in the auction by smaller mobile providers and WISPs.

23. Canwisp submits the Department should reduce the opening bid prices for bidders in the set aside spectrum, to enable the participation of smaller service providers such as the WISPs, especially those players which service rural and remote areas.
24. Canwisp disagrees with Bell's proposal to lower opening bid prices for higher population lots in the absence of a set aside provision - as this would only serve incumbent operators.
25. In the case that the Department does not lower the opening price for set-aside bidders, Canwisp urges the Department to consider 'bidding credits' in the 3500 MHz auction similar to what the FCC did in their Auction 101 at the beginning of the year.

Q18—ISED is seeking comments on the proposed eligibility points for spectrum licences in the 3500 MHz as outlined in annex D, and pre-auction deposits as outlined above.



Bell proposed that the due date for the remaining 80% of the final payment should be 30 days after the spectrum is put into service.

26. Canwisp agrees with Bell's proposal only as it applies to set aside spectrum licences. This measure would reflect the challenging economics of servicing rural areas.