

Via email

20 September 2019

Innovation, Science and Economic Development Canada (ISED)
c/o Senior Director, Spectrum Licensing and Auction Operations
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Re: Gazette Notice No. SLPB-002-19 — Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band – Cogeco Reply Comments

In accordance with the procedures set out in the above-noted consultation, please find attached the reply comments of Cogeco Communications Inc. (“Cogeco”).

Cogeco thanks ISED for the opportunity to submit reply comments in this proceeding and remains available to answer any questions you may have regarding this submission.

Yours very truly,

Leonard D. Eichel

Senior Director, Regulatory Affairs, Telecommunications

c.c.: Nathalie Dorval, VP Regulatory Affairs and Copyright, Cogeco Inc.
Marie Ginette Lepage, Vice President, Wireless Solutions and Innovation, Cogeco Inc.
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**Innovation, Science and Economic Development Canada
Spectrum Management and Telecommunications**

**Consultation on a Policy and Licensing Framework for
Spectrum in the 3500 MHz Band**

**Canada Gazette: June 2019
Gazette Notice SLPB-002-19**

**Reply Comments of
Cogeco Communications Inc.**

20 September 2019

Introduction

1. Cogeco Communications Inc. (“Cogeco”) is pleased to submit the following reply comments in accordance with the procedures set out by Innovation, Science and Economic Development Canada (ISED) in *Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band*, published in June, 2019 (the “Consultation Document”).

2. Cogeco is a diversified communications company headquartered in Montréal, Québec, that provides video, broadband and telephony services through its affiliate Cogeco Connexion Inc. to residential and business customers as well as offering third party Internet access and transport services to Internet service providers on a wholesale basis in Ontario and Québec.

3. As a competitive communications service provider who continues to invest in infrastructure in Canada and who is making significant investments in mobile spectrum, Cogeco strongly supports a spectrum regulatory framework whose objectives are both to encourage investment in facilities and to promote competition among facilities-based carriers.

4. Cogeco also supports policies which maximize the use of scarce spectrum resources in all regions of Canada as well as policies and regulatory measures which reduce barriers to entry by facilities-based carriers. Such a regulatory framework and corresponding policies enable ISED to achieve the over-arching policy objective of the *Spectrum Policy Framework for Canada*:

“To maximise the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource”.

5. Cogeco has examined the comments filed concerning the proposed design of the 3500 MHz spectrum auction. Cogeco will respond to certain issues raised in some of the submissions filed on 2 August 2019. Any issue not addressed by Cogeco in these reply comments should not be interpreted as acceptance.

The Necessity for Competitive Measures

6. Cogeco submitted in its initial comments that ISED’s proposal to use competitive measures in the 3500 MHz auction was desirable. Further, Cogeco supported both proposals of ISED to use a spectrum cap and a set-aside. Cogeco

also recommended the use of a cap within the set-aside to ensure the maximum participation of at least two bidders in 171 out of 172 Tier 4 license areas, providing ISED with the greatest number of potential bidders for this valuable spectrum.

7. Cogeco would note that, of all the submissions received, nearly all parties supported the use of spectrum caps as a minimum pro-competitive measure; only Bell Mobility argued for the elimination of all auction-related pro-competitive measures. Further, there was also a broad consensus that the cap should be between 40 MHz and 60 MHz. Although there was some variations in the proposals for how to apply a cap (on total holdings, by single operator, or by network where two or more parties control a particular wireless network), the broad agreement on the necessity of imposing a cap for the 3500 MHz auction is a clear indication of the strong support this particular pro-competitive measure has within the industry.

8. However, there was more disagreement by parties on the issue of a set-aside. In particular, the national Mobile Network Operators (“national MNOs”, consisting of Bell, Rogers and Telus) all argued against any set-aside. Rogers stated that:

“[...] the Department’s policy objectives for the 3500 MHz band does not require creating opportunities for 5th players or pursuing outcomes in which regional competitors are strongly advantaged and heavily subsidised at the taxpayers’ expense”.¹

Similarly, Telus stated that:

“[...] the use of a set-aside has unreasonable impacts against Telus and damages the objective of 5G competition”.²

Lastly, Bell Mobility stated:

“Not only are spectrum set-asides and/or spectrum caps not required to protect competition, they will hinder the achievement of the full benefits of 5G technologies. Peak efficiency for 5G technologies occur with 100 MHz of spectrum. As a result, the 200 MHz of spectrum in the 3500 MHz band is already sub-optimal and the adoption of spectrum set-asides and/or spectrum caps only makes the issue worse”.³

¹ Comments of Rogers Communications Canada Inc., para. 12.

² Comments of Telus Communications Inc., para. 12.

³ Comments of Bell Mobility Inc., para. 10.

9. Bell also argues that the imposition over 11 years of pro-competitive measures for various spectrum auctions adds up to over \$5 billion in what it calls “*financial subsidies*” and, as a result, imposing another round of pro-competitive measures on the 3500 MHz auction would be “*gratuitous*” and an “*unnecessary intervention*”⁴.

10. Cogeco couldn’t disagree more with this short-sighted assessment. There is considerable evidence filed in the 2 August 2019 comments for this consultation that points to the great success of ISED’s pro-competitive measures in facilitating increased competition and lowering prices for mobile services throughout Canada. For example, Freedom Mobile and Vidéotron now have more than 2.6 million subscribers on their wireless networks, combined. Further, the two companies generated – in fiscal 2018 – \$1.5 billion in annual revenue from wireless services⁵. This is a significant contribution to the Canadian economy and shows the attractiveness and competitiveness of those two players in the Canadian wireless market, despite their Annual Revenue per User being, on average, 23% lower than the national MNOs⁶. In effect, this translates into savings for consumers of around \$480 million for that year alone⁷. And this does not even factor in the positive effects that Eastlink and SaskTel had in their respective markets in offering wireless services while competing with the national MNOs. While more remains to be done to increase wireless competition in all regions of Canada, ISED pro-competitive measures have had positive effects on entry into the market, prices, and innovation.

11. Cogeco thus submits that all Canadian consumers are benefiting from the presence of regional mobile network operators, which have brought new product offerings into the market, and stimulated economic growth by investing in network facilities. This demonstrates that ISED’s use of pro-competitive measures in various auctions over the past decade is paying off through the emergence of robust competition, increasing pressure on the national MNOs and their flanker brands, providing hundreds of million dollars’ worth of savings for Canadian wireless consumers, and generating positive ripple effects throughout other sectors of the economy.

⁴ *Ibid*, para. ES 11.

⁵ *Ibid*, para. 27.

⁶ National and Regional MNO ARPU taken from Comments of Québecor Media Inc., para. 15, as reported in the CRTC’s Communications Monitoring Report, 2018, page 191.

⁷ Calculated using data from Figure 6.20 in the Communications Monitoring Report 2018, and the number of wireless subscribers for Shaw and Vidéotron (from Comments of Bell Mobility Inc., 2 August 2019, para. 27).

12. Rogers also makes a number of statements regarding the potential destructive effects of a set-aside, citing the recent example of the 600 MHz auction:

*“Anything that creates strategic opportunities for set-aside-eligible bidders to drive up the prices paid for non-set-aside spectrum will only increase wireless prices. The most recent set-aside in the 600 MHz auction resulted in Rogers and Telus having to pay, respectively, 211% and 290% higher prices on a MHzPop basis than the average price paid by the regional carriers”.*⁸

13. Essentially, Rogers is blaming regional carriers such as Vidéotron and Freedom for its higher spectrum cost in the 600 MHz auction. Rogers continues by stating that such prices paid for spectrum had the deleterious effect of driving up wireless service pricing for consumers, as the higher costs of spectrum are passed along as higher prices to permit the wireless carriers to recoup their investment. Rogers then concluded that, as the regional carriers are sufficiently capitalized, ISED should simply discontinue the use of set-asides altogether.

14. In response, Cogeco would first submit that, it is not just current participants in the wireless market that may wish to acquire 3500 MHz spectrum. Other smaller, regional facilities-based carriers may wish to reap the benefits of acquiring spectrum to grow their businesses. As such, having a set-aside is important for these other players, as it evens the playing field against the national MNOs who have considerable technical and financial advantages in the market with their current spectrum holdings.

15. Second, with respect to Rogers’ specific point concerning that set-asides would ‘drive up’ spectrum costs for other players, Cogeco submits that it has a different analysis of how the spectrum costs for the 600 MHz auction were arrived at, in respect to at least one participant. If one looks solely at Telus’ results during the 600 MHz auction, the two auction participants that contributed the most to the increase from a \$254 million opening bid to a final price of \$931 million was Rogers (\$524 million) and Bell (\$139 million), for a total of 98% of the total price inflation for Telus’ spectrum. The contribution to the price increase by set-aside bidders was minimal in comparison (Vidéotron at \$33 million and Freedom at \$16 million), or

⁸ Comments of Rogers Communications Canada Inc., para. 68.

about 5%⁹. Therefore, Rogers is incorrect in laying the blame on the set-aside eligible bidders for high spectrum costs, when its own choices and bid strategy during the 600 MHz auction contributed to its problem.

16. As a result of this analysis, Cogeco considers that ISED is therefore correct in continuing to impose pro-competitive measures, such as an in-band spectrum cap as well as a set-aside (and, as Cogeco recommended, a cap within the set-aside), to ensure that predatory auction behaviours are, to some extent, mitigated. Cogeco submits that Rogers was clearly aiming for 100% of the available spectrum in many key markets, leading it to bid overly aggressively to obtain the spectrum. While this practice provided a financial benefit to the Canadian Government, it was in no way helpful to the wireless industry, given the overinflated prices that were finally paid for spectrum.

17. As such, Cogeco continues to recommend that ISED implement pro-competitive measures, including an in-band spectrum cap, a set-aside and a cap within the set-aside. Cogeco would also be prepared to forgo its recommendation of a cap within the set-aside if its recommendation regarding encumbered spectrum is implemented. This will effectively free up considerably more spectrum for auction purposes, and, in that case, Cogeco would be prepared to support Eastlink's recommendation of a 100 MHz set-aside. With more spectrum available within the set-aside, it significantly increases the chances of multiple smaller, regional providers of being successful in acquiring some spectrum blocks.

Eligibility for Set-Aside Spectrum

18. In its 2 August 2019 comments, Cogeco submitted that, with respect to eligibility, it agreed with ISED's first two criteria, namely the requirement that a potential participant must be a facilities-based carrier registered with the CRTC and that it must not be a national MNO.

19. With respect to ISED's third criterion, Cogeco proposed a slight amendment, whereby the proposed entity would be providing commercial telecommunications services within a Tier 4 service area, rather than a Tier 2 service area as proposed by ISED.

⁹ Cogeco's own estimations, based on recalculated second prices wherein bidders were removed from the auction result one by one.

20. Cogeco would note that Bell Mobility, Shaw and Eastlink have all proposed modifications to ISED's proposed eligibility criteria that would, essentially seek to restrain the participation of otherwise eligible set-aside entities across Canada.

21. For example, Bell stated:

"We recommend that ISED narrow the criterion for set-aside eligible bidders to those entities who are: (i) registered with the CRTC as mobile wireless carriers or can demonstrate that they have deployed a fixed-wireless network; and (ii) already have spectrum licences and are actively providing commercial wireless services to the general public in the Tier 4 licence area of interest".¹⁰

Shaw stated:

"However, Shaw believes that the proposed eligibility requirements should be further clarified to ensure [...] [that] only applicants that already provide commercial mobile wireless services should be permitted to bid on set-aside spectrum".¹¹

Finally, Eastlink stated:

*"[...] Eastlink submits that ISED's proposed eligibility criteria should be modified so that eligibility to bid on the set-aside spectrum be limited to those registered with the CRTC as facilities-based providers that are not National Mobile Service Providers, and that are actively providing commercial [**mobile or fixed wireless**] telecommunication services to the general public in the relevant Tier 2 service area of interest..." [phrase added].¹²*

22. In response, Cogeco submits that any of these arguments, if accepted, would have the same negative impact on entry into the wireless market in Canada. Essentially, these three parties are arguing that access to spectrum in Canada should be kept to a select club of relatively large service providers where there would be no room for any other new entrant to enter the market in the foreseeable future. Cogeco is of the view that new entrants are essential to ensure that set-aside spectrum is obtained at a fair and reasonable price. In addition, new entrants will

¹⁰ Comments of Bell Mobility Inc., para. 35.

¹¹ Comments of Shaw Communications Inc., para. 88.

¹² Comments of Bragg Communications Inc., operating as Eastlink, para. 19.

propel the market to evolve in accordance with government policy, i.e., to utilize spectrum to its fullest extent, to ensure that competition in the wireless market is robust and active and that, ultimately, consumers throughout all regions of Canada benefit from lower prices and innovative services. In the latter case, only a combination of set-aside spectrum and new entrants can lead to a more timely and affordable offering of mobile wireless services in smaller regions and rural areas where larger MNOs have no interest in deploying services. Furthermore, Cogeco is of the view that, in particular, Shaw's concern with regard to speculative bidders entering the market only to 'flip' an asset is already addressed by ISED's proposed eligibility criteria, namely the one concerning facilities-based carriers.

23. Cogeco would note that other submissions offer some helpful advice for ISED to consider when it comes to eligibility criteria. While Bell Mobility, for example, was generally unhelpful by wanting to restrain the criteria to mobile wireless providers (see argument above), it did however suggest that the eligibility criteria be applied to carriers providing commercial wireless services in Tier 4 license areas. Xplornet also argues for this point¹³. Cogeco disagrees with the applicability of the criteria to mobile-only wireless carriers, but agrees that the criteria should be modified to permit carriers offering commercial telecommunications services in Tier 4 areas.

24. While this may have the effect of restricting the total number of set-aside eligible bidders, it will have the positive effect of encouraging entry by entities that have operational networks, broadband customers, and a continued willingness to invest in smaller license areas. This, in turn, will assist those participants – if successful in obtaining spectrum – to deploy wireless networks in areas that otherwise would not see any investment, thereby fulfilling one of ISED's policy objectives.

25. Further, Cogeco has noted that some other submissions are advocating for far stricter restrictions on who should be eligible for set-aside spectrum. Iristel argues that the regional MNOs (Vidéotron, Freedom and SaskTel) are now of sufficient size to have considerable sway in the acquisition of set-aside spectrum and consequently 'shut-out' smaller operators from acquiring any¹⁴. The British Columbia Broadband Association (BCBA) argues that set-aside spectrum in rural areas should be limited

¹³ Comments of Xplornet Communications Inc., para 80.

¹⁴ Comments of Iris Technologies Inc., para. 6.

to operators with less than \$25 million in annual revenue¹⁵, while Canwisp¹⁶ and TekSavvy¹⁷ argue that regional MNOs should simply be declared ineligible for any set-aside spectrum at all.

26. In response, Cogeco would submit that these measures can be considered extreme. Rather, Cogeco considers that its proposal of a cap within the set-aside, and the addition of one extended round of bidding, represents a more balanced solution that will mitigate, in large part, many of the concerns of the BCBA, TekSavvy and Canwisp. First, it would ensure that multiple bidders would be in a better position to acquire set-aside spectrum, rather than risking that the entire set-aside spectrum in certain markets ends up in the hands of one single bidder, to the detriment of all others. Second, the additional round of bidding ensures that no spectrum remains unsold and is fairly allocated between bidders.

Ineligibility of Satellite Relay Distribution and Direct-to-Home Services

27. Cogeco considers that providers of satellite relay distribution (“SRD”) and direct-to-home services (“DTH”) should not qualify as bidders for the set-aside spectrum. Like stated by Bell, SRD and DTH “*have nothing to do with wireless network improvement or wireless traffic demand*”¹⁸.

28. Indeed, and as specified by Québecor, SRD and DTH are not telecommunications services but are in fact broadcasting services which cannot by any means confer eligibility for the set-aside spectrum¹⁹. Section 4 of the *Telecommunications Act* clearly states that it does not apply to the broadcasting activities of broadcasting undertakings. Since SRD and DTH are broadcasting services, and are not related in any way to mobile wireless services, they should not qualify for the set-aside.

29. Considering the present wireless market context, the nature of the upcoming auction and ISED’s pro-competitive view that “*Regional [telecommunications] service providers and [Wireless Internet service providers (WISPs)] could benefit from an opportunity to acquire access to additional spectrum to support network*

¹⁵ Comments of BCBA, para. 5.

¹⁶ Comments of Canwisp, para. 25.

¹⁷ Comments of TekSavvy Solutions Inc., para. 26.

¹⁸ Comments of Bell Mobility Inc., para. 36.

¹⁹ Comments of Québecor Média Inc., para. 31-32.

improvements to meet the wireless traffic demands of their growing subscribership”, the set-aside spectrum should only be open to new, smaller facilities-based telecommunications service providers that aim at improving mobile wireless services in various regions of Canada, especially where consumers are currently underserved and left with a poor choice of mobile wireless service offerings.

30. In light of the above, Cogeco would submit that SRD and DTH should not qualify as being set-aside eligible.

Smaller Tier Size

31. Cogeco fully supports ISED’s adoption of Tier 5 license areas for the allocation of spectrum in Canada²⁰. Long requested, this recent decision takes a bold step to revolutionize the allocation of spectrum in Canada so that smaller, regional network operators have a chance to obtain spectrum they have long been seeking. Such a bold policy move will promote the entry of new players into the Canadian mobile services market as it makes spectrum more affordable for many more players than it would otherwise be the case. In addition, this decision ensures that spectrum is used to the greatest extent possible, and begins to address the unacceptable situation of spectrum lying dormant in many areas of the country.

32. As such, Cogeco, while somewhat disappointed to see ISED proposing the use of Tier 4 license service areas for the 3500 MHz spectrum auction, acknowledges that this proposal is an improvement over the use of larger license service areas. That said, Cogeco submits that the 3500 MHz spectrum auction provides ISED with a golden opportunity to ‘test drive’ their recent decision regarding Tier 5 license service areas, and thereby accelerate the attainment of the benefits that this decision is expected to deliver.

33. A number of parties, including Xplornet²¹, continue to raise the issue of interference and propagation characteristics to argue against smaller licensing areas. Cogeco submits that, at the distances indicated in Xplornet’s comments, the speed of the connection is extremely low, offering less than 1 Mbps data rates, using 3500 MHz spectrum. It would be an inefficient use of the spectrum to design and deploy it in this way for 5G. Designing networks to achieve high 5G data speeds with

²⁰ See Decision on a *New Set of Service Areas for Spectrum Licensing*, DGSO-006-19, July, 2019.

²¹ Comments of Xplornet Communications Inc., para 92.

nominal bandwidth requires excellent signal to noise ratios and limiting the extent to which one site interferes with the next. To achieve very high data speeds for most end-users via network densification, standard network design and interference mitigation practices must be used, such as tilting downwards antennas to limit propagation.

34. Cogeco would note that – in addition to itself – a number of other parties argued for the use of Tier 5 license service areas for the 3500 MHz spectrum auction, such as BCBA, Canwisp, Ecotel, and TekSavvy. Furthermore, Cogeco would note the submission of the Eastern Ontario Wardens’ Caucus and the Eastern Ontario Regional Network (EORN) where they state:

“As mentioned in our response to the consultation on the new set of service areas EORN is concerned about proposals that group a rural population in a spectrum service area, with a large or midsize urban area. Of the 14 Tier 4 service areas in our region, 2 include large urban population centers (Cities of Ottawa and Kingston), 3 others include cities with populations over 30,000. These service areas that include a population center of greater than 30,000 represent 54% of the area of the total region or approximately 47% of the households.

“Of particular concern in our region is the Ottawa/Outaouais 4-055 service area, that not only includes the City of Ottawa (~1M population), but parts of the United Counties of Prescott Russell, Unites Counties of Stormont, Dundas and Glengarry, United Counties of Leeds and Grenville, as well as the entire county of Lanark, and a large area north of Ottawa in Quebec. This is a mixture of a reasonably well served urban area, and a large rural geography.

“The existing spectrum in this license service area is generally not utilised by its NMSP owners, but is in demand by smaller WISPs. With the current proposal, anything not protected by a set-aside will be purchased by the NMSPs, the set aside amounts will be purchased by the regional carriers for use only in the urban Ottawa area, while the remaining rural spectrum will continue to be under –utilised”.²²

²² Comments of EORN, paras. 19-21.

35. EORN's observation on the unwanted impact of even using Tier 4 license areas helps to support the recommendations of Cogeco and others for the use of Tier 5 license areas, either for targeted zones in the country, or applied generally for all license areas, for the 3500 MHz spectrum auction.

36. Cogeco outlines that there is clear support for the use of smaller license service areas in the upcoming 3500 MHz spectrum auction. Smaller license areas would be of great benefit for smaller operators who either wish to expand their existing spectrum holdings, or who wish to acquire spectrum to better manage wireless service rollout in their particular region of operation.

37. Cogeco would also note that EORN's is very similar to Cogeco's own proposal of using Tier 5 license service areas in Canada's three large metropolitan areas as a way of addressing the problem raised by EORN, i.e., that large license areas that contain both a large urban market and a large rural area end up having the rural area developed last, if at all, as it is generally of no interest for larger wireless service providers. Auctioning spectrum in Tier 5 license areas would address this public interest issue, and bring about the benefits of increased competition for consumers in smaller, rural regions.

Opening Price

38. In its consultation document, ISED is proposing to use the same prices, in \$/MHz/pop, that were used for the opening bids in the 2500 MHz auction for all other service areas²³. In doing so, ISED has proposed the following opening bid ratios:

- a. Service areas with population over 2 million: \$0.232/MHz/pop;
- b. Service areas with population over 1 million but less than 2 million: \$0.1/MHz/pop;
- c. Service areas with population under 1 million that contain one or more CMA: \$0.065/MHz/pop;
- d. All other service areas: \$0.051/MHz/pop.

²³ ISED, *Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band*, para. 191.

39. Cogeco would note that Québecor – while agreeing with ISED to use the same starting point, i.e., the 2500 MHz auction – disagrees with ISED regarding the increase in \$/MHz/pop in larger population centres for three reasons:

- a. ISED has not provided any rationale for increasing the price ratio for the larger urban centres;
- b. The price in other jurisdictions in the world are considerably less than what is proposed by ISED, wherein they submitted final bid pricing for the 3500 MHz band in several European countries that were lower than what ISED is proposing for an opening bid; and
- c. Such an opening bid for the larger urban centres will have a negative effect on the rollout of 5G services as the spectrum cost will be high, which will have an impact on the business case for the rollout of advanced wireless services²⁴.

40. Iristel also makes the case that the opening bid price should be halved, as a way of encouraging entry by smaller participants and reducing the amount of unsold spectrum in rural markets²⁵.

41. In response, Cogeco would agree with Québecor that opening bid pricing should be based on either the results of previous auctions in Canada or the results for similar auctions of identical spectrum in other jurisdictions. Cogeco agrees with the evidence filed by Québecor in this matter and recommends that the opening bid pricing be adjusted accordingly.

Auction Rules

42. Cogeco is encouraged to see that the vast majority of submissions are supporting ISED's proposal for a clock auction format for the 3500 MHz spectrum auction. As Cogeco submitted, other auction formats – in particular, a combinatorial clock auction – raise significant issues, particularly related to the exclusion of smaller and/or regional bidders. A clock auction helps to resolve this issue, but raises additional issues related to increased exposure risk to bidders.

²⁴ Comments of Québecor Média Inc., paras. 85-88.

²⁵ Comments of Iris Technologies Inc., para. 46.

43. Cogeco proposed several amendments to the clock auction format to address this, namely: (i) changes to the bid types (ii) changes to the activity rules, and (iii) the addition of an extended round of bidding. Based on the comments filed, Cogeco is still of the view that its proposed changes provide ISED with a balanced approach that will ensure the greatest equity amongst bidders as well as significantly increase the prospects for the sale of all available blocks of spectrum.

44. Cogeco will focus additional comments related to auction rules on the proposals made by Bell Mobility and Rogers Communications.

45. While Bell Mobility has suggested changes to the auction rules to address a valid issue – that of unrequested eligibility point reduction – Cogeco disagrees with the way in which Bell proposes to address this issue. Bell's first proposed rule states: "*a bidder's activity should be set equal to the eligibility points associated with its processed demand or the eligibility points associated with its requested demand, whichever is larger*"²⁶.

46. In response, Cogeco respectfully submits that ISED should dismiss Bell's first rule as ISED has already proposed an activity requirement of between 90% and 100% and that, at the start of the auction, it will effectively be lower than 100%. From Cogeco's perspective, this safeguard appears to be adequate to mitigate any unrequested eligibility reduction. In addition, Cogeco's own proposal of including activity-rule waivers also addresses exposure risk, and provides ISED with a much more flexible adjustment to the proposed auction rules than what Bell is proposing with their first proposed rule. As such, Cogeco submits that Bell's first rule should not be considered for the 3500 MHz auction at all.

47. Bell's second proposed rule is to "*allow optional "all-or-nothing" bids by individual product*" and the third proposed rule is to "*allow optional overall "all-or-nothing" bids*"²⁷.

48. Cogeco submits that the proposed second rule is actually contrary to the basic principle of a clock auction, i.e., to provide participants the opportunity to address exposure risk and, further, to reduce the exposure risk overall as compared with other auction formats. Cogeco considers that Bell's second rule actually increases

²⁶ Comments of Bell Mobility Inc., page 33.

²⁷ *Ibid*, pages 34 and 35.

exposure risk. For example, Bell states: "*If a bid for some product is specified as "all-or-nothing," it would only be processed if it could be satisfied fully; otherwise the bid would not be processed and bid processing during the round would proceed as if the bidder had submitted a bid at the current round's clock price equal to its processed demand in the previous round for that product*"²⁸.

49. Cogeco submits that the use by Bell of the word "otherwise" in the above-mentioned quote is what is at fault. Under Bell's proposed rule, a possible bidding scenario could unfold as follows: Bidder A is bidding on 4 blocks and is looking to diminish its demand to 2 blocks because prices have risen too high. However, Bidder A needs 2 blocks as the minimum acceptable quantity and if it won a single block, its business plan would not work. Assuming a total bid quantity of 3, the aggregate demand is equal to supply and thus the "all-or-nothing" bid for 2 blocks gets rejected. In this case, Bidder A is stuck with a larger bid for 4 blocks at the new price. This has effectively increased the price to pay above what Bidder A is willing to pay and Bidder A cannot walk away from the round as prices rise.

50. The conclusions from this scenario are that some spectrum is sold at too high a price for certain auction participants, some spectrum is left unsold, and some bidders are saddled with spectrum that they cannot use.

51. Further, Cogeco submits that Bell's proposals concerning "all-or-nothing" bids are actually contrary in effect to what Cogeco has proposed. Bell's proposals would have the perverse effect of leaving a bidder, who chooses the option as constructed by Bell, stuck with its previous demand and further, manacled to escalating prices for blocks of spectrum that, in the end, it may not be able to use. This essentially increases the exposure risk for smaller, regional bidders, rather than reducing it, as ISED is attempting to do by using a clock auction format.

52. By contrast, the proposal of Cogeco for "all-or-nothing" bids is based on actual clock auctions used and run in other jurisdictions, namely the United States. Cogeco's proposal is designed to ensure that bidders only bid on what they truly want, and, if necessary, pass up a bid if it's too high for them financially, thereby reducing their exposure risk. Cogeco's "all-or-nothing" bid proposal is intended to safeguard a partial reduction in demand to ensure all eligibility points are regained (and thus not lost) before increasing demand elsewhere. This essentially reduces the

²⁸ *Ibid*, para. 69.

possibility of undesirable auction outcomes, such as a bidder holding partial blocks that it cannot use, or worse, paying a substantial amount of capital for spectrum that it cannot use.

53. Cogeco also notes that Rogers has proposed a rule change concerning the release of certain bidder information on a public basis prior to the commencement of the auction. In particular, Rogers states that it recommends that ISED make public the identity of bidders, the licenses on which they are qualified to bid on and, most damning of all, each bidder's eligibility points. Rogers justifies this recommendation on the basis that all this information will assist in price discovery, "[...] *making it easier for bidders to interpret competitive dynamics and refine valuations in each service area, and promoting a level playing field across participants*"²⁹.

54. In response, Cogeco recognizes Rogers underlying intent as generally favourable in terms of generating more transparency and allowing bidders to better gauge what certain bidding strategies may play out during the course of the auction. However, Cogeco generally disagrees with this proposal by Rogers as, in Cogeco's opinion, this will provide an undue advantage to larger bidders compared to smaller or regional bidders and, further, will bias the auction as larger MNOs will know exactly where to place eligibility points or sustain a high demand over a period of time in order to push smaller bidders out of the auction.

Conclusions & Recommendations

55. Cogeco supports ISED in its effort to consult with interested parties on the future of this valuable piece of spectrum. Based on the comments submitted, and on the strength of Cogeco's comments herein, Cogeco makes the following recommendations to ISED:

- a. Include a series of pro-competitive measures as part of the 3500 MHz auction rules, composed of an in-band spectrum cap, a set-aside and, as recommended by Cogeco, a cap on the set-aside;
- b. Not narrow the definition of set-aside eligibility, as proposed by Bell, Shaw and Eastlink, and continue with the current definition of eligibility, i.e., that eligible entities be limited to those that are registered with the CRTC as a

²⁹ Comments of Rogers Communications Canada Inc., para. 219.

facilities-based carrier, that are not a national MNO, and – subject to ISED’s acceptance – that those entities must be offering commercial telecommunications services in a Tier 4 area of interest;

- c. Declare ineligible providers of SRD and DTH, which are in fact broadcasting services, for the set-aside spectrum;
- d. Introduce Tier 5 licensing areas in some elements of the 3500 MHz spectrum, either along the lines of what Cogeco has proposed (major urban markets of Vancouver, Toronto and Montréal) or along the lines of what EORN has proposed, or a blend of the two proposals;
- e. Reconsider the opening bid prices as proposed by Québecor; and
- f. Reject the auction rules’ changes as proposed by Bell and Rogers as both propositions would have the negative effect of increasing the exposure risk for smaller bidders as well as potentially leading to the early exit from the auction of those smaller bidders.

56. Cogeco thanks ISED for the opportunity to provide reply comments in this consultation.

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