



September 20, 2019

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Innovation, Science, and Economic Development Canada
c/o Senior Director
Spectrum Licensing and Auction Operations
235 Queen Street (6th Floor, East Tower)
Ottawa, Ontario K1A 0H5

Dear Sir/Madam:

Re: *Canada Gazette, Part I, June 5, 2019, Notice No. SLPB-002-19 – Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band – Eastlink’s Reply comments*

1. Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), herein provides our Reply Comments in response to Canada Gazette Notice SLPB-002-19 – *Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band*, and Notice No. SLPB-004-19 – *Extension to the comment period* (“Consultation”).

2. In Eastlink’s initial comments, we addressed a number of elements regarding the proposed auction framework. After reviewing comments made by intervenors in this consultation, we remain of the view that it is critical that a set-aside be established so that regional facilities-based entrants have the opportunity to obtain this important spectrum. If a set-aside is not established, the national incumbent wireless operators who already have massive spectrum holdings will be both incentivized to, and capable of outbidding regional providers like Eastlink.

3. Eastlink takes great exception to the unfounded claims by the national wireless incumbents suggesting that Eastlink is able to compete in a bidding war against them. On average the three national incumbents are 16 times the size of Eastlink. The incumbents have attempted to paint a picture that they will be left out of the 5G market if a set aside is established in this auction, failing to acknowledge that they have benefited from decades of being the only

carriers serving Canadians with a large amount of spectrum acquired in beauty pageants or at minimal cost. Compared to regional operators like Eastlink, who are faced with increased access costs and delays due to the challenging environment for obtaining site approvals from municipalities, as well as ongoing issues in accessing incumbent-owned towers and other facilities. We make these comments at the outset in order to address the numerous exaggerated and incorrect allegations made by the national incumbents about the lack of need for set-aside for regional operators like Eastlink. Other than the national incumbents, other interveners have supported the need for a set aside of this important spectrum.

4. In our initial submission, Eastlink's position on some of the key issues were as follows:

- A set-aside of 100MHz is critical so that regional facilities-based providers are able to have any reasonable chance to acquire this important spectrum.
- An in-band cap of 100MHz (which includes any 3500 MHz spectrum already held by some bidders).
- That the Inukshuk holdings are owned by Bell and Rogers and should be treated as spectrum held by both companies and counted towards any spectrum cap. This view is held by a number of interveners, and it only makes sense given the history of the Inukshuk holdings and the questionable use being made of that spectrum at this time.
- Recognition that TELUS benefits from its spectrum sharing arrangement with Bell and already has more than enough spectrum holdings as compared to regional entrants and other potential set-aside bidders. As such, any claims by TELUS of unfairness should be disregarded.
- That the 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..."
- The deployment requirements for all licences should be as outlined in annex F. Existing licensees, who have made significant investments in deploying LTE to their network

footprint, should not be subject to (and prejudiced by) different deployment requirements than other licensees.

5. Below we address some additional comments or proposals made by other parties who filed submissions in this Consultation. Eastlink's failure to address all issues raised should not be interpreted as agreement with those submissions where they would be contrary to our interests.

Set-asides

6. As we noted in our initial submission, the benefit of Tier 4 spectrum license areas is lost if the auction does not also ensure that the very companies seeking access to the spectrum are reasonably able to acquire it. If a set-aside is not established, the only successful bidders will be the national incumbents. Given that there is only 200 MHz of spectrum to be auctioned in each Tier 4 license area, but that much of that spectrum is already encumbered, there will be some areas with as little as 30 MHz of spectrum remaining. To accept the incumbents' proposal that there be no set-aside would effectively deny Eastlink and other smaller operators from accessing any spectrum in many of these regions. The national providers would outbid each other, driving the price of the spectrum to the point where no regional provider would be able to acquire any, despite the fact that in most areas these providers all already have access to this spectrum via Inukshuk.

7. Regional service providers like Eastlink should not be precluded from the opportunity to secure a meaningful share of this important spectrum just because the national incumbents or other operators were able to secure it many years ago (and at a lower cost). Moreover, we should also not be penalized by low set-asides just because a substantial amount of the 3500 MHz spectrum is already held by other operators who would qualify as set-aside bidders. While TELUS opposes a set-aside, they recognize the significant windfall Rogers and Bell received through their Inukshuk holdings and the generous approach applied by ISED that allowed them to keep a large portion of this spectrum, as TELUS notes ISED's transition decision, "is more generous to the band incumbents than even the most generous proposal in the consultation". While TELUS appropriately acknowledges Bell and Rogers' significant holdings (also acquired at significantly lower prices than the current reserve prices proposed by ISED for the balance of the 3500 MHz spectrum), Eastlink maintains that TELUS is also a significant beneficiary to the Bell spectrum through its sharing arrangement, to complement its already significant spectrum holdings.

8. Contrary to TELUS' submission that set-asides are by nature asymmetrical, the very purpose of the set-aside is to address the obvious asymmetry between the large, national incumbents who already have massive spectrum holdings in Canada and the regional providers, who still require critical spectrum to advance their networks and services. They also recognize that the large national incumbents have the ability to outbid regional operators like Eastlink if there were no set-asides.

9. On a similar vein, Eastlink disagrees with Rogers' characterization that the circumstances will be so dire if they are unable to acquire sufficient spectrum in this auction or that they will be left behind in the race to 5G such that they will suffer permanent customer losses. Aside from the fact that these claims are exaggerated, it is also ironic, given that Rogers already have substantial spectrum holdings relative to other non-national operators, including existing 3500 MHz spectrum that they acquired through its Inukshuk holdings, and there will be other opportunities to acquire mid-band spectrum. This is not the only spectrum available to deploy 5G technology. Indeed Rogers' itself, in suggesting the Department not impose set-asides, seems to suggest that if regional players are denied access to spectrum in this auction, they will be able to access additional mid-band spectrum when the 3800 MHz band is auctioned in 2022. While Rogers seems to suggest that the regional providers can wait until the next auction, we note that this very statement reinforces that establishing a set-aside in favour of regional operators is in no way a dire situation for the large massive incumbents as Rogers' suggests. Moreover, regarding its suggestions that any head starts in 5G will be severely detrimental to Rogers, the national incumbents have had decades of head starts in customer acquisition and building customer loyalty as compared to regional entrants. However, in this case, Rogers' position seems to be more concerned with the Bell/TELUS shared network advantages, and in this regard, we submit that the Department could take steps to recognize those advantages and limit the spectrum that Bell/TELUS can acquire on the basis of their already beneficial network sharing arrangement. However, this in no way should deny the regional operators a reasonable opportunity to obtain this important spectrum. By its own admission, Rogers recognizes that head starts can be damaging, and given the significant subscriber advantage the national incumbents already have, it will be important that regional providers be able to access this spectrum.

10. Eastlink also disagrees with the characterization by the national incumbents that the objective of this auction is that there be only 4 players in the market, such that Rogers, TELUS and Bell automatically expect they should be entitled to this spectrum in combination with only

one other regional carrier. Their comments suggest an expectation that the Big 3 should be entitled to $\frac{3}{4}$ of all available spectrum as long as one other provider in each region has an opportunity to bid on $\frac{1}{4}$. For instance, Rogers' claim that if Xplornet already has spectrum then the 4th player objective is met completely disregards the fact that Xplornet as a WISP and Eastlink, as a regional operator may both require access to this spectrum to operate in competition with one another and with the incumbents. One need only review Xplornet's submission to recognize that they are also making use of this spectrum for the provision of broadband services, while Eastlink provides mobile wireless services. Indeed, Eastlink and Xplornet both bid on, and acquired, 600 MHz spectrum in the same license areas, illustrating the flaw in such arguments. We submit that Rogers' comments merely shed light on inappropriate expectations that as national incumbents with the largest amount of combined spectrum in the country, they should be entitled to obtain the largest proportion of future spectrum as well. This disregards the reality that regional operators are still in the process of investing, building our networks, growing our subscriber bases, and fully intend to aggressively compete against the national incumbents to expand our share of the market. We require spectrum to do this.

11. Xplornet's submission addresses why it is necessary for rural providers to have access to this important spectrum, and as such Xplornet submits that a set-aside is necessary. It also appropriately recognizes that the national incumbents are more likely to focus their business and technology advancements in the largest urban centers first, making expansion into rural areas all the more relevant for non-national operators. While we agree with these aspects of Xplornet's position we do not agree with Xplornet's proposed two tier set-aside, which is that a range of 40-60 MHz be set aside, unless there is only 30-40 MHz of unencumbered spectrum (in which case it proposes only 10 – 20 MHz be set aside). Eastlink disagrees with this proposal as it would leave very little spectrum available to non-national incumbents, particularly when – as noted by Xplornet, it is the regional operators or those operating in smaller or more rural areas who will need to make use of it. Eastlink submits that Xplornet's position is likely based on the fact that Xplornet already holds substantial 3500 MHz spectrum in most regions, such that having access to the proposed set-aside would suffice for Xplornet. However, in this case it would leave far more spectrum available to the incumbents who already possess more spectrum than they need, and it will deprive regional operators of having more reasonable access to this spectrum. We note that in the Consultation document, ISED even acknowledged the concept that where there is less spectrum available, all of it would go to the set-aside.

12. As noted above, Eastlink strongly opposes the national incumbents' position that there be no set-aside as this would essentially foreclose regional providers like Eastlink from acquiring this important spectrum. Eastlink's initial submission already addressed the necessity of a set-aside so we will not re-state those arguments here; moreover, all but the national incumbents support a set-aside for the obvious reason of its necessity. However, it is worth noting that in TELUS' claim that no set-aside is necessary they attempt to argue that the effect of their spectrum cap proposal is that it would be an "effective set-aside of 50Mhz" to the regional operators and other non-national operators. While Eastlink disagrees with TELUS' characterization of its cap as a set-aside, we find it compelling that TELUS would advocate the position that it provides an effective set-aside, thereby validating the importance of a set-aside.

13. We note that TELUS has had no apparent difficulty in garnering a large share of wireless spectrum nationally, nor has it had any difficulty obtaining spectrum in recent auctions. TELUS' proposal to cap the spectrum at 50 MHz (with no set-aside) would merely guaranty TELUS the ability to acquire the full 50 MHz in areas where regional providers like Eastlink or WISPs are unable to compete on bidding against TELUS who is well positioned to consistently outbid in such areas, particularly in areas where there is insufficient spectrum available for multiple providers to acquire spectrum. Moreover, the fact that TELUS benefits from a network sharing arrangement with Bell means that both Bell and TELUS will have more buying power through their ability to divide the cost of acquiring national spectrum between them.

14. Eastlink takes significant issue with the incumbents' general approach to suggesting that they need more spectrum because they have more subscribers. Regional operators like Eastlink are still building our subscriber bases and we will continue to do so, and we expect other competitors to the national incumbents to do the same. TELUS' approach ignores that national incumbents will not maintain the same market shares going forward as competition in wireless markets continues to grow.

Spectrum caps

15. Eastlink submits that it is critical that ISED establish set-asides for this auction as set-asides are the only means by which to ensure smaller regional operators like Eastlink can acquire such spectrum. Eastlink's proposal that the spectrum caps be set at 100MHz were not intended to apply in the absence of set-asides. Any 3500 MHz already owed by any party bidding in the

auction would count towards this spectrum cap. This includes Rogers and Bell's Inuksuk holdings.

16. Eastlink opposes Cogeco's proposal that there be a 60 MHz set-aside but within the set-aside, each eligible bidder would be subject to a spectrum cap of 30 MHz. Such a proposal negates the purpose of a set aside, which is to permit set-aside bidders a reasonable opportunity to secure the spectrum. Cogeco acknowledges that the 30 MHz cap could result in some areas where there may be insufficient set-aside bidders interested in acquiring spectrum, leaving set-aside spectrum unsold. To address this concern, Cogeco suggests that any unsold set-aside spectrum could be treated as open market spectrum available to all bidders. Such an outcome is not efficient or practical, nor is it fair to regional operators, as this would mean that a regional operator who was subject to a 30 MHz cap in the set-aside would have to compete with the national incumbents for the remaining set-aside spectrum (which, per Cogeco's proposals we understand would be converted to open spectrum). This approach would not only complicate the auction process, but importantly, it would deny regional operators the ability to effectively compete for the spectrum. Moreover, it may artificially inflate the cost of spectrum, since without the 30 MHz cap, that the bidder otherwise could have acquired the full set-aside amount without competing further against the national incumbents at escalating prices. The very purpose of establishing a set-aside, that is to avoid acquisition of all such spectrum by incumbents and to give regional operators a meaningful and fair opportunity to acquire it, would be compromised. Given the substantial spectrum holdings of the national incumbents, a fact also duly noted by Cogeco, it would have the effect of denying a smaller regional operator access to any more than 30 MHz while ensuring an incumbent can acquire the balance of this spectrum in addition to their significant existing holdings.

All or Nothing Bids

17. Eastlink agrees with the proposals that the CA format of the auction also include the right to place "all or nothing" bids. Under the current proposed auction format, it is our understanding that since bids are considered on an individual Tier 4 area basis, if a bidder wishes to decrease demand in one area and increase in another in attempts to get a block of bids, that round's bids may not be processed in full if it would result in demand falling below supply in an area. This may present concerns in a case where a bidder has no use for the combination of blocks that ends up being permitted at that round.

18. We do not, however, agree with the proposal that if ISED decides not to include an all-or-nothing bid in the CA auction format, that it should relax the conditions of license on transferability and divisibility for set-aside licensees. While we understand the intent here, we have concerns that this could be a loophole that results in additional gaming during the auction.

Activity Rules and Waivers

19. Cogeco also proposed changes to the activity rules which would allow a bidder to sit out of the auction for up to three rounds without losing eligibility. Eastlink has concerns with this proposal which would allow a bidder to selectively bow out of the auction for a number of rounds, and then re-enter without any impact on eligibility, thereby altering other bidders' ability to assess bidding strategy and price discovery. It would seem that allowing Cogeco's proposal would introduce another opportunity for gaming into the auction which would be unfair to the process and to other bidders, in addition to unnecessarily prolonging the auction.

Extended round

20. To provide bidders with the opportunity of acquiring licences which remain unsold at the end of the clock rounds, Cogeco recommends that ISED provide for an Extended Round. It suggests that this would be one additional round during which bidders could bid to add unsold licences to their final clock package, at the price of the last clock round where there was over-demand. Cogeco notes that the Extended Round could, for example, allow for non-set-aside eligible bidders to acquire any unsold set-aside blocks. All unsold blocks would be considered to be "open" blocks for the Extended Round. While it is our understanding that the proposed CA auction format was intended to avoid a situation where there are unsold blocks, Eastlink submits that this may be an appropriate, or efficient, means by which to afford opportunities to bid on blocks that, at the conclusion of the auction would be unsold but for the Extended Round.

License Term and Deployment Requirements

21. The fact that some of this spectrum is subject to a transition period, whereby existing licensees will need to transition off the spectrum adds complications to using the spectrum that may otherwise not exist. Eastlink generally supports fair and reasonable approaches to adjusting

the rules to recognize these practical realities, provided however that adjustments to the rules do not inappropriately advantage some licensees. We also submit that where adjustments sought may unduly complicate the management of spectrum licenses it may not be appropriate. As such, subject to the qualifications we just mentioned, Eastlink agrees with applying a reasonable approach to ensure fairness among licensees as it relates to payment for spectrum and deployment requirements.

22. In this regard, Eastlink agrees that it may be reasonable to consider extending license terms where licensees are unable to make use of the spectrum within the initial years of the license due to the transition period. We would have concerns where transition off spectrum was delayed inappropriately as a means to impede competitors from deploying their networks.

23. As to deployment, Eastlink maintains that the aggressive and asymmetrical deployment requirements for companies who have made the significant investments in building out LTE networks are inappropriate and all bidders should be subject to the same requirements. We also note that in cases where licensees are not able to use the spectrum for up to three years as a result of the transition of existing licensees off the spectrum, the deployment requirement should only begin once the licensee is able to access the spectrum.

24. At this juncture, we are not entirely clear on whether the transition period will have the potential to affect all bidders. We would have concerns, for instance, in cases where existing licensees who are expected to transition off the spectrum are able to advance the transition in cases where the spectrum would be needed for their use, while delaying the transition in cases where it would be used by their competitors.

Roaming Conditions of License (COLs)

25. Eastlink strongly opposes attempts by Bell and TELUS to remove the important COLs related to roaming. We note that Rogers also supports the need to maintain COLs for roaming service. These COLs are critical to ensuring that the national incumbents are required, as a COL, to provide access to roaming. Bell claims this is a redundant policy are unfounded. Eastlink disagrees with Bell's claim that ISED's wholesale roaming regulations are inconsistent with the CRTC's wholesale roaming regulations. ISED's role in establishing the COLs for roaming is critical to ensuring that regional operators have access to roaming. It is only the national

incumbents who have a national network to provide roaming, and they are clearly not willing to provide roaming on any commercially reasonable basis without a COL – as illustrated by Bell and TELUS' current attempts to claim 5G should not be subject to roaming. Both the COLs and the CRTC rate regulation are complimentary and necessary aspects of ensuring that this critical element of service be provided. Furthermore Bell's suggestion that it creates an incentive for one carrier to not invest or upgrade its own network is outrageous given that even at regulated rates, the roaming fees we pay are still higher than the incumbents' own retail data rates. Regional operators are fully incented to build and improve their own networks. Moreover, the deployment requirements for spectrum further support that licensees will continue to build their networks.

26. Eastlink strongly opposes any suggestion that COLs for roaming do not apply to 5G services. Roaming requirements apply to the provision of wireless services including future generations of service (i.e. 3G, 4G) and clearly should also apply to 5G. Otherwise, the national incumbents would deny access to their regional competitors. As noted above, the very fact that Bell and TELUS are attempting to exclude 5G from roaming highlights that COLS for roaming are absolutely necessary.

27. Eastlink also strongly opposes TELUS' suggestion that mandatory in-territory roaming for existing technologies should only be for out-of-footprint areas. Again, contrary to TELUS' claims, this does not result in a case where regional providers will not invest because of their ability to rely on roaming in territory. Eastlink certainly prefers that our customers use our network as switching to roaming not only results in poor customer experience due to dropped calls, but the cost of roaming is so high that there is every incentive to continue improving our service to reduce reliance in roaming.

Research and Development requirements

28. Eastlink does not see a need for a mandated research and development requirement. Given the significant investments required to obtain spectrum and build out networks, as well as the increased desire for all facilities-based providers to provide advanced networks in competition with one another, operators are already investing heavily into new technologies. We agree that operators should retain full flexibility to determine how to spend its scarce capital and operational expenditures to build our networks, enhance services and provide the best experience for our customers.

We appreciate the opportunity to provide our views to the Department.

Sincerely,

A handwritten signature in blue ink, appearing to read "N. MacDonald", followed by a vertical line.

Natalie MacDonald
VP Regulatory

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