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September 20, 2019

**RE:** TekSavvy's reply comments in **Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band**, Canada Gazette, Part I, June 5, 2019 (SLPB-002-19)

Please find below reply comments from TekSavvy Solutions Inc ("TekSavvy") following initial submissions in response to ISED's Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band.

Yours truly,

[transmitted electronically]

Andy Kaplan-Myrth  
VP, Regulatory and Carrier Affairs

cc: Marc Gaudrault, CEO  
Charlie Burns, CTO



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***TekSavvy's Reply Comments on  
Submissions to***

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

SLPB-002-19

June 2019

Spectrum Management and Telecommunications

**September 20<sup>th</sup>, 2019**

**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.*

1. TekSavvy believes the robust pro-competitive measures proposed in our original submission are essential for the upcoming 3500 MHz auction, in order to enable small operators' access to affordable, secure spectrum and correspondingly, allow ISED to meet its rural policy and competitive market objectives.

**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 set-aside 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 up the prices of wireless services. Xplornet, on the other side, claimed that a spectrum cap should not be applied.*

2. TekSavvy notes that many respondents - other than MNOs, generally agreed with TekSavvy's position in favour of using a combination of set-aside and a spectrum cap in the 3500 MHz auction. These respondents include Canwisp, Cogeco, ECOTEL, Iristel, SaskTel, Shaw, and BCBA. Thus, TekSavvy urges the Department to apply the robust pro-competitive measure stated in TekSavvy's original submission. By encouraging participation by smaller players in the auction, these measures will enable smaller players to obtain secure spectrum at a reasonable price.

*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. Shaw proposed to add an additional criterion: only applicants that already provide commercial mobile wireless services should be permitted to bid on set-aside spectrum.*

3. TekSavvy opposes Bell's proposal of limiting the set-aside eligible participants to those who have spectrum licenses and provide wireless services to the general public in the Tier 4 area of interest. Bell's proposal would in effect, restrict participation in the 3500MHz auction to the "spectrum-rich" regional MNOs, thus, preventing new wireless players, like TekSavvy, from bidding on the set-aside spectrum.
4. Similar to its objections to the Bell proposal, TekSavvy disagrees with Shaw's proposal. In effect, it would limit participation to MNOs which currently *provide commercial* mobile wireless services and thus impede new competition in wireless services to the detriment of subscribers.
5. TekSavvy opposes Shaw's proposal to restrict qualified bidders those that already provide commercial mobile wireless services for similar reasons it opposed Bells' proposal – this measure would restrict the 3500MHz auction to the "spectrum-rich" regional MNOs, thus, preventing new wireless players, from bidding on the set-aside spectrum. Additionally, as stated in Paragraph 10 of our initial submission, the eligibility criteria for the set-aside requiring that the applicant be a mobile service provider in area of interest would result in a virtual spectrum grant to regional MNOs such as Shaw: In the 2015 AWS-3 auction where such an eligibility criteria for the set-aside was used, the price paid by incumbents was in the range of \$3.00/MHz/Pop while set aside eligible bidders paid on average \$0.11/MHz/Pop; TekSavvy therefore submits that Shaw's argument is merely self serving and should be rejected. Finally, as stated in its original response, TekSavvy believes the Regional Mobile Service Providers (RMSRs) such as Shaw should also be restricted from bidding as set-aside eligible bidders.

*Bell disagreed with ISED's proposal that would prevent 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.*

6. TekSavvy supports ISED's original proposal of requiring licensees which hold set-aside licences, not to transfer them to set-aside-ineligible entities for the first five years of the licence term. TekSavvy thus disagrees with Bell's position in favour of spectrum transfers within the 5 year period.
7. TekSavvy also opposes Rogers' suggestion that the 5-year moratorium on spectrum license transfers be extended to set-aside-eligible players, *i.e.* transfers amongst themselves. By allowing spectrum transfers among smaller players, ISED would enable more efficient spectrum use and the creation of larger entities among

the smaller players better able to compete with the dominant MNOs. The intensive utilization of the lightly-licensed 3.65MHz band – the workhorse band for Independent wireless ISPs, demonstrates smaller players both use the limited spectrum they have intensively and effectively. It therefore makes sense not to artificially limit their ability to use spectrum acquired through the use of pro-competitive measures such as a set aside.

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

*Rogers, TELUS and Xplornet opposed the use of service areas smaller than Tier 4 in the 3500 MHz auction. Quebecor proposed to use Tier 2 in the auction.*

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

8. TekSavvy agrees with the submissions of other smaller players that smaller service areas - and specifically Tier 5 licence areas, are necessary to encourage smaller operators to participate in the 3500 MHz and future spectrum auctions. In particular, The use of Tier 5 licence areas would make available affordable, secure spectrum to the smaller players and consequently, foster investment in facilities and enable 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.*

9. TekSavvy agrees with BCBA's proposal that set-aside eligible bidders should be assigned contiguous blocks at the upper end of the band prior to the assignment round.
10. TekSavvy submits that the open bidders and set-aside bidders should be treated separately in the Assignment round.
11. While TekSavvy agrees with Rogers' proposal that ISED take into account the upcoming 3800 MHz auction in the assignment of 3500 MHz band, Teksavvy submits that ISED should focus on the needs of the smaller service providers and

new entrants in the wireless market and specifically, that the upper portion of the 3500 MHz band should be reserved for smaller operators that utilize the WBS bands as the sole basis for their current operations. TekSavvy notes that most of the smaller service providers already operate in the WBS band and thus face significant costs in their RAN equipment if they cannot acquire licenses in the upper rages of the 3500 MHz band.

**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.*

12. TekSavvy submits that the Department should commit to not using increments larger than 10% in all service areas (i.e. not only the most valuable service areas) and correspondingly, establish a maximum absolute increment, expressed in \$/MHz/Pop terms that it will not exceed for any product. TekSavvy submits that capping of bid increments to 10% will enable orderly price discovery by the ISED auction manager and lessen the likelihood that a number of smaller players drop out simultaneously in a single round because the bid increment exceeds 10%.

**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.**

*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.*

13. TekSavvy, in agreement with Canwisp's position that open bidders should not be included with set aside bidders in the Assignment round as open bidders have the financial resources to outbid the set aside eligible bidders or use a denial strategy to force smaller operators to invest additional capex in order to use the spectrum. This would negate the overall objective of set aside spectrum in the CA auction which is to enable the smaller "spectrum poor" service providers to acquire spectrum at an affordable price.

**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.*

14. TekSavvy is strongly opposed to TELUS’ and Rogers’ proposals whereby licensing conditions for service providers winning open spectrum be applied to set aside eligible service providers that win spectrum. Asymmetrical licencing requirements reflect the fact that rural markets are more costly to serve, have lower ARPUs and often present more technical challenges due to difficult and sparsely-populated terrain. Thus, the roll out requirements for 3500MHz services in rural areas should be differentiated from those in urban and suburban areas.
15. TekSavvy submits that deployment conditions should be paired with a real service obligation to ensure that service providers such as MNOs with strong financial capabilities, are not tempted to light up a few towers per service area to be deemed having meet their deployment conditions has it has been the case in recent history.

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| <b>Q15—ISED is seeking comments on the proposed conditions of licence outlined in annex H that would apply to flexible use licences.</b> |
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*ECOTEL strongly recommended that ISED should start contemplating additional license conditions to facilitate or force subordination agreements in locations where licensed spectrum was not put to use.*

16. Teksavvy agrees with ECOTEL’s proposal of facilitating or forcing subordination agreements in locations where licensed spectrum has not been put to use. TekSavvy also believes that real service obligations should be included in the licence conditions along with corresponding information on key service parameters, in order to ensure licence owners are actively using the spectrum to provide service to subscribers – especially those in rural 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 recommends 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.*

17. TekSavvy generally agrees that reserve prices should be reduced regardless of the use of set aside. Generally, in previous auctions the reserve prices in Tier 4 licence areas have proven to be a barrier to participation i.e. typically too expensive for bidding by smaller operators even when a set aside was applied.
18. TekSavvy 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.
19. TekSavvy agrees with Iristel's position that the opening bid prices be reduced by half in order to allow greater participation in the auction by smaller wireless service providers.