

**Canada Gazette Notice No. SLPB-004-14**

***Consultation on the Technical, Policy and Licensing  
Framework for Advanced Wireless Services in the Bands  
1755-1780 MHz and 2155-2180 MHz (AWS-3)***

**Published in the *Canada Gazette*, Part 1**

**Dated 2 August 2014**

**Reply Comments  
of**

**Bell Mobility Inc.**

**2 October 2014**

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## **1.0 EXECUTIVE SUMMARY**

E1. Industry Canada has stated that it is committed to ensuring that Canadian consumers, businesses and public institutions continue to benefit from advanced wireless telecommunications services. An undisputable fact emerging from the record of this consultation is that the vast majority of those Canadian consumers, businesses and public institutions are served today by the national and regional wireless incumbents. Similarly, the record of this consultation outlines the unprecedented and explosive growth in aggregate mobile data traffic. It will therefore be critical to ensure that those service providers who are serving over 90% of the Canadian market have adequate and fair access to sufficient spectrum to meet the needs of those consumers and businesses.

E2. Regarding the proposed band plan, we maintain our recommendation to change the set-aside band plan by combining blocks I and J for new entrants which still equals a 15X15 MHz set-aside. This proposal supports new entrants by enabling a 15X15 MHz block of contiguous spectrum. As noted in our comments, it also facilitates the efficient use of the AWS-3 non-set-aside spectrum in that it enables contiguity of the "open auction" spectrum to the AWS-1 band, and therefore also more closely mirrors the U.S. band plan and allows for two blocks to be auctioned in the open auction.

E3. Alternatively, if the above proposal is not acceptable, then we continue to recommend that Industry Canada divide proposed block J into two 5X5 MHz blocks. This approach would also encourage more potential auction winners, while still enabling a 15X15 MHz block of contiguous set-aside spectrum for the new entrants as contemplated by Industry Canada.

E4. With respect to the proposed licensing Tier sizes, we also continue to recommend that the set-aside spectrum be licensed on a Tier 3 basis, which more closely mirrors an urban/rural split. We also continue to propose that the set-aside only apply to the urban portion of the spectrum to be auctioned. The benefits of this proposal include providing new entrants with immediate access to the urban spectrum which, as the record shows, they have publically acknowledged is of primary interest to them. The proposal also maximizes potential revenue return to the Treasury while ensuring that Canadians in rural areas are able to benefit from advanced spectrum-based broadband services on the fastest possible timeline.

E5. Regarding the proposal to set-aside 30 MHz of spectrum in the band for new entrants, we do not agree in principle with the use of set-asides and continue to note the potential reduction in auction proceeds and the large implied subsidy that the new entrants will receive as a result of this measure. Further, the record of the consultation demonstrates that the size of the set-aside is unwarranted.

E6. Regarding the proposed criteria to be eligible to bid on set-aside spectrum, should a set-aside be maintained, we agree that this spectrum should only be available to those operating a wireless network and not available to spectrum speculators. We agree therefore with Industry Canada's proposal that eligibility to bid on set-aside spectrum should be limited to operating new entrants who are actively providing commercial mobile wireless services to the general public and operating a wireless network in the applicable service area and subject to appropriate minimum population coverage as proposed. We do not support proposals to weaken the operating carrier assessment criteria, to be eligible to bid on the set-aside block, by removing the requirement to report "subscribership in the service area" from the eligibility considerations proposed by Industry Canada in the Notice.

E7. We continue to support the proposed transfer condition of licence (CoL) for the purposes of the AWS-3 consultation. The record demonstrates that Industry Canada's current processes for considering spectrum transfers introduces considerable uncertainty and is not conducive to a healthy secondary market for spectrum. We believe that a healthy secondary market for spectrum is essential and in the public interest. Despite our support of the proposed CoL for the purposes of this consultation, we respectfully request that Industry Canada, in the application of its policy, seek to confer the maximum amount of certainty and predictability into its spectrum transfer review processes. We believe that such practice would be in the best interests of Canadian wireless subscribers and Canada as a whole.

E8. In our comments we had supported the proposed deployment criteria. Having reviewed the comments of parties, however, we now support the view of the numerous parties who have proposed a significant acceleration in the deployment criteria applied to the AWS-3 spectrum licences as being in the best interests of all Canadians, but particularly those Canadians living in rural and remote areas of the country.

E9. Regarding proposed opening bids, while we had supported the proposed level of opening bids, having reviewed the record, we agree with those parties who recommend that the opening bids should be increased and in any event should be set no lower than the opening bids for the equivalent 2008 AWS spectrum.

E10. In response to Rogers' unfounded allegations of cooperation between Bell and Telus we completely deny that any such coordination has ever taken place and unequivocally state that both Bell and Telus completely comply with the applicable Industry Canada rules in this regard. Not only are these allegations completely without merit, they have not been found by the Department to have any foundation in fact. An analysis of the round-by-round bidding in the recent 700 MHz auction demonstrates the competitive intensity existing between Bell and Telus with respect to their participation in that auction.

E11. We have no objection to the proposal to use a second-price rule in this auction. We recommend a further rule, applicable to the set-aside spectrum, aimed at ensuring that the taxpayer receives a fair return for the use of their resource. This rule would stipulate that in the event there is only one bidder for set-aside spectrum in a particular service area, the amount paid for the licence would be equivalent to the present value of the foregone annual licence fees over the 20-year term of the licence. This approach mirrors exactly what national and regional incumbents pay for non-auctioned and post-initial term auctioned spectrum and ensures that Canadian taxpayers receive a fair return. We note in this regard that a key consideration for adopting spectrum auctioning was to ensure that the Canadian taxpayer receives a fair return for its use.

## **2.0 INTRODUCTION**

1. In accordance with the procedure set out in Industry Canada (Industry Canada or the Department) Notice No. SLPB-004-14, *Consultation on the Technical, Policy and Licensing Framework for Advanced Wireless Services in the Bands 1755-1780 MHz and 2155-2180 MHz (AWS-3)*, as published in the *Canada Gazette*, Part 1 dated 2 August 2014 (the Notice), Bell Mobility Inc. (Bell Mobility) is pleased to provide the following reply comments in response to the Notice.

2. Bell Mobility has reviewed the comments of the following parties which are posted to the Department's site: ABC Communications (ABC), Bragg Communications Inc. (Eastlink), Cogeco Cable Inc. (Cogeco), First Mile Connectivity Consortium (FMCC), Globalive Management Wireless Management Corp. (Wind), Independent Telecommunications Providers Association (ITPA), McNally/Taylor/Middleton (Ryerson et al), MTS Allstream Inc. (MTS), Niagara Networks Incorporated (Niagara Networks), Public Interest Advocacy Centre (PIAC), Quebecor Media Inc. (Quebecor), Rogers Communications Partnership (Rogers), Saskatchewan Telecommunications (SaskTel), SSi Group of Companies (SSi), TbayTel (Tbaytel), Telus Communications Company (Telus) and Xplornet Communications Inc. (Xplornet).

3. Industry Canada's Notice stated that it is committed to ensuring that Canadian consumers, businesses and public institutions continue to benefit from advanced wireless telecommunications services. In this regard, a number of facts have emerged from the record of this consultation. One is that the vast majority of those Canadian consumers, businesses and public institutions referred to by Industry Canada are served today by the national and regional wireless incumbents.<sup>1</sup> Importantly, it provides the contextual reference within which this consultation occurs. More to the point, as discussed in our comments,<sup>2</sup> given that other international regulators have determined that in today's world, spectrum policy is a key pillar of national economic policy, productivity and competitiveness, the above fact is one which is ignored at Canada's peril.

4. Another fact which emerges from the record is that Canadians' use of wireless services, and wireless data in particular, is, as characterized by one new entrant, increasing exponentially.<sup>3</sup> It is self-evident that if data use by Canadian consumers is increasing dramatically, and that national and regional incumbents serve over 90% of those Canadian consumers, then it is the networks of those incumbents which are experiencing this growth on their networks. The needs of those customers, and those networks, cannot be overlooked.

5. Parties other than regional and national incumbents have also noted the world class quality of Canada's wireless infrastructure. Niagara Networks for instance, notes the challenges presented in serving one of the largest geographic markets globally, coupled with a small

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<sup>1</sup> Telus, Comments., paragraph 4 and Bell Mobility, Comments, paragraph 9.

<sup>2</sup> Bell Mobility, Comments, paragraph 2.

<sup>3</sup> Eastlink, Comments, paragraph 9.

population base, and acknowledges the "world class industry we have today."<sup>4</sup> Like Niagara Networks, we continue to believe that Canada's wireless infrastructure is currently of world class stature. The record suggests that this will only remain the case however if the Department's spectrum management policies and practices acknowledge that the vast majority of the Canadian market, served by national and regional incumbents, warrants a fair share of the available national spectrum resource.<sup>5</sup>

6. As observed in our Comments, the Department noted that additional spectrum would allow new entrants to increase network capacity in order to meet the traffic demands of a growing subscribership, while supporting the provision of next-generation wireless services, such as long-term evolution (LTE). While acknowledging the Government's motivation in this regard, we also thought it important that the Notice similarly acknowledged that:

. . . larger national and regional service providers would also benefit from an opportunity to access additional spectrum, allowing them to increase capacity to better serve their substantial subscriber base. Industry Canada views the licensing of AWS-3 spectrum as an opportunity to release wireless spectrum to support investment and improve services for both newer and established carriers. In particular, it presents a key opportunity to support competition and the provision of competitive advanced commercial mobile services to Canadians.<sup>6</sup> (emphasis added)

7. Bell Mobility reiterates that it is pleased to see that, while Government pursues its competition agenda in the wireless sector, it also is cognizant of the need to ensure that spectrum policy adequately addresses the needs of the substantial customer base presently served by Canada's incumbent national and regional service providers.

8. In this regard, we believe that modest modifications to the proposed framework could result in one which meets the needs of all stakeholders.

9. With the previously discussed factual context and subsequent to our review of the comments of other parties in response to the consultation, Bell Mobility provides the following reply comments. As with our Comments, the Department's question numbering, as applied in its Notice, is used for ease of reference in the following reply comments. Prior to addressing the Department's specific proposals in our Comments, however, Bell Mobility proposed an

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<sup>4</sup> Niagara Networks, Comments, page 9.

<sup>5</sup> Telus, Comments, paragraph 4.

<sup>6</sup> Bell Mobility, Comments, paragraph 10.

overarching recommendation regarding the timing of the non-set-aside portion of the AWS-3 auction. Specifically, we proposed that the Department postpone the non-set-aside portion of the AWS-3 auction for a period of one to two years. We noted the reasons for this proposal, from the perspective of regional and national incumbents, while noting that for the new entrants, the proposal to postpone only the non-set-aside portion of the auction would still accommodate their access to additional spectrum on a timely basis. Similarly for the Department, the proposal would simplify the AWS-3 set-aside auction process and would facilitate the timely licensing of this portion of the resource.

10. We note that a number of parties in their comments suggested various forms of postponement for similar reasons. Telus noted, for example, that the set-aside and the unrestricted auction were fundamentally different auctions and that, while the set-aside auction could proceed in March 2015, the unrestricted auction ". . . need not be held in March 2015."<sup>7</sup> SaskTel, for its part, stated that it:

. . . believes that the AWS-3 auction should be delayed in order for all participants to assess their individual business and investment strategies subsequent to the conclusion of the roaming proceeding. . . . To ensure the spectrum is assigned and utilized effectively, efficiently, and in the public interest, the rules for roaming must be definitively established. SaskTel fears that this rushed process [i.e. the AWS-3 consultation] will not result in an auction outcome that is in the best interests of the industry and the public.<sup>8</sup>

11. Similarly, Tbaytel suggested that the AWS-3 auction should be postponed to 2016, noting that, "This will allow small regional carriers[s] like Tbaytel to assess our individual business and investment strategies."<sup>9</sup>

### **3.0 PART A - BAND PLAN CONSIDERATIONS**

#### ***Band Plan and Tier Sizes***

#### **A1 Industry Canada is seeking comments on its proposed band plan shown in Figure 3.**

12. Industry Canada proposes the following band plan in its Notice:

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<sup>7</sup> Telus, Comments, paragraph 8.

<sup>8</sup> SaskTel, Comments, paragraph 4.

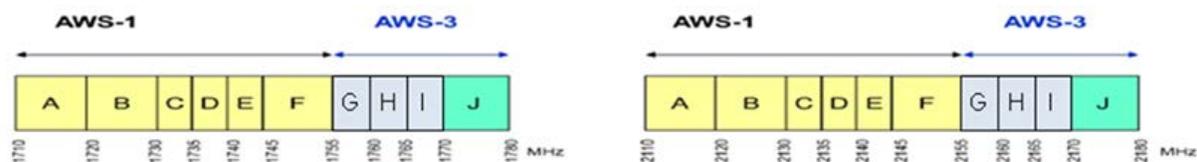
<sup>9</sup> Tbaytel, Comments, paragraph 30.

### Industry Canada's Proposed Band Plan



13. Having considered the Department's proposed band plan and for the reasons addressed in our Comments, Bell Mobility proposed the following band plan as an alternative:

### Bell Mobility's Proposed Band Plan



14. Our proposal changes the set-aside band plan by combining blocks I and J for new entrants, which still equals a 15X15 MHz set-aside. Our Comments noted that the proposal supported new entrants by enabling a 15X15 MHz block of contiguous spectrum. It facilitates the efficient use of the AWS-3 non-set-aside spectrum, by enabling contiguity of the "open auction" spectrum to the AWS-1 band and therefore also more closely mirrors the U.S. band plan. Moreover, this change will not harm the new entrants. The new band plan definition currently being considered will have all AWS-1 and AWS-3 frequencies included. As such, new devices available to new entrants will operate equally well if blocks I and J are combined. It also encourages more potential auction winners, by providing for two "open auction" blocks.

15. Alternatively, if the above proposal is not deemed acceptable, our Comments suggested that Industry Canada divide proposed block J into two 5X5 MHz blocks. This approach would also encourage more potential auction winners, while still enabling a 15X15 MHz block of contiguous set-aside spectrum for the new entrants, as contemplated by Industry Canada.

16. We note similar concerns expressed by other parties,<sup>10</sup> particularly with respect to band plan contiguity, and therefore continue to propose the above band plan modifications as being the optimum band plan for Canada.

**A2 Industry Canada is seeking comments on its proposal to use Tier 2 licence areas for both the 15 + 15 MHz and 10 + 10 MHz blocks.**

17. Our Comments proposed that the set-aside spectrum be licensed on a Tier 3 basis since this more closely mirrors an urban/rural split. We further proposed that the set-aside only apply to the urban portion of that spectrum. The benefits of this proposal, include providing new entrants with immediate access to the urban spectrum which they actually desire, and which they will likely deploy on a more timely basis than they would rural-based spectrum. A number of parties to the proceeding observed that considerable spectrum, not limited to but mostly in rural areas, licensed to new entrants in the 2008 AWS auction remains unused to this day.<sup>11</sup>

18. Conversely, our proposal establishes a framework that facilitates maximum use of rural spectrum by making it available to a larger group of potential bidders. Our proposal would also maximize potential revenue return to the Treasury while ensuring that Canadians in rural areas are able to benefit from advanced spectrum-based broadband services on the fastest possible timeline. We continue to recommend this proposal.

**Licensing Process and Pro-competitive Measures**

**A3 Industry Canada is seeking comments on its proposals to use an auction mechanism and to implement a pro-competitive measure, namely:**

- (a) to set aside 30 MHz in the AWS-3 band for new entrants by restricting the participation of LWSP in this block; and**
- (b) to have open bidding (no pro-competitive measures) on the remaining 20 MHz block in the band.**

19. Regarding proposal (a) above, we do not agree in principle with the use of set-asides, and continue to note the potential reduction in auction proceeds and the large implied subsidy that the new entrants will receive as a result of this measure. In this regard, we along with

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<sup>10</sup> Telus, Comments, paragraphs 43 to 45.

<sup>11</sup> See for example SaskTel, Comments, paragraph 27 and Telus, Comments, paragraphs 21 and 24.

Rogers<sup>12</sup> and Telus<sup>13</sup> noted that the combination of the eligibility criteria to bid on set-aside spectrum licences and the second-price rule will likely lead to extraordinarily low prices paid for spectrum licences by the new entrants. In this regard, our Comments noted that in the likely scenario where set-aside licences are sold at the proposed opening bid price and the market value of those licences is equivalent to the average price paid by the incumbents in the recent 700 MHz auction (\$2.99 per MHz-pop), then the implied subsidy to the new entrants is approximately \$2.7 billion. We remain of the above view.

20. Also, in this regard, Bell Mobility notes that it agrees with Telus that a 10 MHz LWSP spectrum cap could achieve the same policy objectives as a 20 MHz set-aside. Alternatively, if a spectrum cap is not implemented, Telus recommends reducing the new entrant set-aside to 20 MHz. We share Telus' view with respect to both issues.

21. Finally, in this regard, we share the view of Telus, expressed in its comments,<sup>14</sup> as well as based on our introductory comments above, that establishing a set-aside of 60% of the available AWS-3 spectrum for operating new entrants who only serve 5% of the market does not seem warranted in the circumstances and is not in line with good spectrum management practice.

22. Regarding proposal (b) above, our Comments noted that we are in agreement with not imposing pro-competitive measures on this, or indeed, any block of spectrum awarded through competitive auction. In this regard we agree with Rogers, in its comments, when it notes:

Generally speaking, Rogers fully supports the use of open bidding for the licensing of mobile spectrum so that those companies that value the spectrum the most will be able to bid for it and put the spectrum to its highest use. This will ensure that Canadians will derive the maximum benefits from this scarce and valuable resource.<sup>15</sup>

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<sup>12</sup> Rogers, Comments, paragraph 16.

<sup>13</sup> Telus, Comments, paragraph 29.

<sup>14</sup> Telus, Comments, paragraph 4.

<sup>15</sup> Rogers, Comments, paragraph 15.

***Eligibility to Bid on Set-Aside Spectrum Licences in Each Tier***

**A4 Industry Canada is seeking comments on the proposed eligibility criteria to bid on set-aside spectrum licences.**

23. Our Comments noted that given the decision to employ a spectrum set-aside in the AWS-3 auction, we agreed that this spectrum should only be available to those operating a wireless network and not available to spectrum speculators. We therefore agreed with Industry Canada's proposal that eligibility to bid on set-aside spectrum be limited to operating new entrants who are actively providing commercial mobile wireless services to the general public and operating a wireless network in the applicable service area and subject to appropriate minimum population coverage levels effective as of the date of application to participate in the AWS-3 auction. Subsequent to our review of the comments of other parties, we continue to hold that position as do a number of parties.<sup>16</sup> As also discussed in our Comments and reiterated above however, we proposed in our Comments and reiterate in these Reply Comments that the set-aside spectrum be licensed on a Tier 3 basis and that only urban spectrum should be made subject to the set-aside provision.

24. We strongly oppose Eastlink's attempt to weaken Industry Canada's operating carrier assessment criteria by eliminating the phrase "... and the subscribership in the service area" from the eligibility considerations proposed by Industry Canada in its Notice.<sup>17</sup> In this regard, Eastlink seems to be suggesting that because a [cable-related] new entrant has made wireless investments in an area and "... may serve a cable subscriber base, demonstrating a clear commitment to the licence area" then the absence of "...a strong wireless subscriber base . . ." <sup>18</sup> should be overlooked. The flaw in Eastlink's proposal is demonstrated by the fact that, taking Shaw's WiFi investment into account, it could make an argument that it too qualifies for the set-aside. We therefore recommend that the eligibility assessment criteria remain as proposed in the Notice.

25. We also take exception to SaskTel's proposal that the set-aside eligibility assessment criteria also be applied to the open or unrestricted spectrum blocks. In the circumstances we do

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<sup>16</sup> See for example, Quebecor, Comments, paragraph 29, Rogers, Comments, paragraph 25 and Telus, Comments, paragraph 52.

<sup>17</sup> Eastlink, Comments, paragraph 13.

<sup>18</sup> Eastlink, Comments, paragraph 17.

not believe that any such eligibility criteria is either necessary or warranted in the case of the unrestricted spectrum blocks.

#### **4.0 PART B – LICENSING FRAMEWORK**

##### **Proposed Conditions of Licence (CoLs)**

###### ***Licence Term***

**B1 Industry Canada is seeking comments on its proposal to issue spectrum licences in the AWS-3 band with a 20-year licence term and the proposed wording of the condition of licence above.**

26. In our Comments we supported the proposal to issue AWS-3 licences with a 20-year licence term in light of the investment certainty that it conferred. We also supported the proposed wording of the CoL as outlined in the Notice. We note that the vast majority of parties who commented on the proposed Licence Term CoL also supported the proposal for the same or very similar reasons. These parties included, among others, Wind, Telus, Eastlink, Rogers and Quebecor. We continue to support Industry Canada's proposal to issue AWS-3 licences with 20-year terms and a high expectation of renewal as proposed in the CoL wording.

###### ***Licence Transferability and Divisibility***

**B2 Industry Canada is seeking comments on the proposed condition of licence related to transferability and divisibility and the proposed wording above.**

27. Our Comments noted that, in principle, we believe that an unfettered secondary market for spectrum is the more appropriate public policy. Subject to our review of the comments of other parties we strongly maintain this view. For the purposes of this consultation, however, our Comments noted that we concurred with the proposed transferability CoL including the associated wording proposed in the Notice.

28. We note, in this regard, the comments of Rogers to the effect that:

Canadians will be better served by the unrestricted transfer of mobile spectrum in the secondary market than through the restrictions that have been imposed through the existing mobile spectrum licence transfer policy. At this time, for example, some valuable AWS spectrum remains unused, while other AWS spectrum is held by insolvent or financially distressed new entrants. Under the

current transfer policy, the proposed transfer of this unused or underutilized AWS spectrum to those companies that can make more efficient use of it might not be permitted by the Department.<sup>19</sup> (emphasis added)

29. Acquiring spectrum and building networks to deploy it is a multi-billion dollar business especially in a country as large as Canada. Investment and business certainty, in such a business context, is critical given the scale of the capital investments involved across the industry. Rogers' comment above highlights a concern with the current licence transfer regime, i.e. the degree of uncertainty due to the fact that any transfer "might not be permitted". As a result, we would respectfully request that Industry Canada, in the application of its policy, seek to confer the maximum amount of certainty and predictability into its review processes. This would be in the best interests of Canadian wireless subscribers and Canada as a whole.

### ***Deployment Requirements***

#### **B3 Industry Canada is seeking comments on the proposed deployment condition of licence as stated above.**

30. In our Comments we supported the proposed deployment CoL as outlined in the Notice. Of all the proposed CoLs associated with the AWS-3 consultation, the deployment CoL is the one which drew the majority of recommendations for change. Most of the recommendations proposed significant acceleration of the proposed deployment criteria.

31. PIAC, for example, recommends:

. . . that the 10-year, Tier 3 deployment requirements be adjusted upward significantly, by 2.0 times in "urban" areas, and at least 1.5 times in non-urban areas. This increased deployment obligation (up to 100% in urban areas) reflects the fact that the deployment economics improve with population density, while at the same time placing an important requirement on licensees to deploy deeper into their service areas to serve more Canadians than just 1 or 2 out of 10.<sup>20</sup>

32. For its part Rogers states that:

Rogers notes that the proposed 10-year deployment requirements are identical to the existing minimum 5-year deployment targets for Tier 3 AWS licences. Successful bidders that acquire set-aside spectrum below its true market value will have little incentive to deploy services in a timely manner since the amount

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<sup>19</sup> Rogers, Comments, paragraph 35.

<sup>20</sup> PIAC, Comments, paragraph 7.

paid for the spectrum will be relatively insignificant and can be easily absorbed by well-funded companies such as Quebecor and Vimpelcom. In addition, since the set-aside spectrum will be available to eligible bidders far below its true market value, the likelihood is much greater that it will be acquired by speculators. In order to deter the acquisition of set-aside spectrum by speculators and to ensure that it is put to use in a timely manner, Rogers submits that the proposed 10-year Tier 3 deployment requirements should be applied to set-aside spectrum and be satisfied by set-aside licensees within a period of 5 years rather than 10 years.<sup>21</sup>

33. Xplornet similarly takes the position that, "In light of Industry Canada's position that more mobile spectrum is urgently needed, it is submitted that the proposed deployment conditions are woefully inadequate."<sup>22</sup> As a result Xplornet submits that:

. . . Industry Canada should (a) increase the first deployment requirements at the 4 year mark to be at least 60% of the population, (b) significantly increase the second deployment requirements at the 7 year mark to 90% or more, . . .<sup>23</sup>

34. Along with these parties, SaskTel and Ryerson also recommended significant acceleration of the deployment requirement in rural and remote areas, as well in urban population centres.

35. Having reviewed the comments of parties, we support the view of the numerous parties who have proposed a significant acceleration in the deployment criteria applied to the AWS-3 spectrum licences as being in the best interests of all Canadians but particularly those Canadians living in rural and remote areas of the country.

36. Despite the near consensus view that the AWS-3 deployment requirements need to be significantly accelerated, Quebecor to the contrary states that:

. . . it is our view that the proposed timelines for meeting the two deployment requirement levels are too hasty, and that it would therefore be appropriate for the Department to extend them.<sup>24</sup>

37. We disagree with Quebecor, which it should be noted has undeployed spectrum licences in Toronto remaining from the 2008 AWS auction some six years ago. As noted above, we concur with the view of the majority who consider that the proposed deployment requirements

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<sup>21</sup> Rogers, Comments, paragraph 39.

<sup>22</sup> Xplornet, Comments, paragraph 7.

<sup>23</sup> Xplornet, Comments, paragraph 44.

<sup>24</sup> Quebecor, Comments, paragraph 36.

are too lenient in the circumstances. Indeed, given the position of Industry Canada and the industry generally that more mobile spectrum is urgently needed, we question the fact that significant AWS spectrum from the 2008 auction is permitted to continue to lie fallow in the hands of Quebecor and Shaw, among others. We recommend that Industry Canada immediately initiate a consultation aimed at recovering the unused spectrum and making it available at auction to those who value it and who would put it to use.

## **5.0 PART C – AUCTION PROCESS AND RULES**

### ***Auction Format and Timing***

#### **C1 Industry Canada is seeking comments on the proposal to use the sealed-bid auction format for the AWS-3 auction.**

38. In our Comments we agreed with the proposed sealed-bid auction format for the purposes of the AWS-3 auction. We note that Rogers recommended<sup>25</sup> the use of a simultaneous multiple round ascending (SMRA) format with open bidding for all AWS-3 spectrum at auction while Telus recommended a combinatorial clock auction (CCA) for the unrestricted AWS-3 spectrum. Given Industry Canada's objectives behind the AWS-3 auction, we continue to support the sealed-bid format for this auction.

#### **C2 Industry Canada is seeking comments on its proposal to use a second-price rule for the AWS-3 auction.**

39. Our Comments noted that a key objective of spectrum auctioning is to ensure that the Canadian taxpayer receives a fair return for the use of valuable spectrum. For the reasons addressed in the Department's Notice as well as in our Comments, we continue to support a second-price rule.

40. In its Comments Rogers raised the concern that:

The proposed set-aside, combined with the proposed use of a sealed-bid format, relatively low opening bids, eligibility limits and second price rule will virtually guarantee that there will be very limited bidding on set-aside spectrum in every geographic area. This will result in new entrants successfully acquiring this valuable resource at a significant discount to its true market value and will thereby deny Canadian taxpayers the considerable revenues that would

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<sup>25</sup> Rogers, Comments, paragraph E4.

otherwise have accrued to them by the licensing of this spectrum using an open bidding format.<sup>26</sup>

41. In this regard, our Comments recommended a further rule, applicable to set-aside spectrum, aimed at ensuring that the taxpayer receives a fair return for the use of their resource. The proposed rule would stipulate that in the event there is only one bidder in a particular service area, the amount paid for the licence should be equivalent to the present value of the foregone annual licence fees (i.e. the current mobile fee of \$0.035 per 1 MHz of assigned spectrum per person in a defined geographic area) over the 20-year term of the licence.

42. We noted that this approach mirrors exactly what national and regional incumbents pay for non-auctioned and post-initial term auctioned spectrum and ensures that Canadian taxpayers receive a fair return equivalent to at least what Canadian carriers have historically paid for non-auctioned and/or post-initial term spectrum.

**C4 Industry Canada is seeking comments on the proposed Affiliated and Associated Entities rules that would apply to bidders in the AWS-3 auction.**

43. We have no comment on the proposed Affiliated and Associated Entities rules that would apply to bidders in the AWS-3 auction.

**C5 Industry Canada is seeking comments on the proposed rules prohibiting collusion that would apply to bidders in the AWS-3 auction.**

44. Regarding the proposed rules prohibiting collusion that would apply to bidders in the AWS-3 auction as proposed in the Notice, we had no comment.

45. Rogers, for its part, stated concerns alleging a coordination between Bell and Telus. No such coordination between Bell and Telus has ever taken place. Bell has always complied with the applicable Industry Canada rules in this regard. Indeed an analysis of the round-by-round bidding in the 700 MHz auction demonstrates the competitive intensity existing between Bell and Telus with respect to their participation in that auction.

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<sup>26</sup> Rogers, Comments, paragraph 16.

46. We are surprised by Rogers' persistent allegations in this regard particularly given the industry experience of its new CEO. In this regard, a June 2012 New York Times article, reporting a network sharing deal between Vodafone UK and Telefonica, noted that:

At a news conference in London, the chief executive of Vodafone U.K., Guy Laurence, and the chief executive of Telefónica U.K., Ronan Dunne, said the carriers would continue to operate competing services and would even bid against each other in Britain's coming 4G spectrum auction. But the combination will let both save on operating and equipment costs.<sup>27</sup>

47. Finally, and despite its protestations, we note that Rogers itself has entered into network sharing arrangements with Tbaytel, MTS Allstream and Videotron.

**C6 Industry Canada is seeking comments on the proposed opening bids as presented in Table 4.**

48. In our Comments we made no comment on the proposed opening bids as presented in Table 4 of the Notice. Other parties did comment on the proposed opening bids. Rogers, for example, states that:

Rogers does not support the use of the proposed opening bids. The level of the proposed opening bids is too low considering the significant value of this spectrum generally and the set-aside spectrum in particular.

. . .

The proposed opening bids are also significantly lower than the opening bids used for similar mobile spectrum. For example, the opening bids for 10+10 MHz of national AWS-3 spectrum have been set at \$65,000,000 whereas the opening bids for the same amount of AWS spectrum were set at \$117,094,328 in the 2008 auction. There is no justification for setting the opening bids at a level that is only 55% of the level of the opening bids in the 2008 AWS auction. The propagation characteristics of the AWS and AWS-3 spectrum will be virtually identical. . . . At the very least, the opening bids for AWS-3 spectrum should be set no lower than the opening bids for AWS spectrum.<sup>28</sup>

49. We support the comments of those who recommend that the opening bids should be increased and in any event should be set no lower than were the opening bids for the equivalent 2008 AWS spectrum. Having said that, we continue to propose the new rule proposed in paragraph 41 above, that would stipulate that in the event there is only one bidder in a particular service area the amount paid for the licence should be equivalent to the present value of the

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<sup>27</sup> The New York Times, *Two Carriers to Combine Mobile Forces in Britain*, 7 June 2012.

<sup>28</sup> Rogers, Comments, paragraphs 60 and 65.

foregone annual licence fees (i.e. the current mobile fee of \$0.035 per 1 MHz of assigned spectrum per person in a defined geographic area) over the 20-year term of the licence.

**C7 Industry Canada is seeking comments on the proposed auction process for the AWS-3 auction.**

50. In our Comments we supported the proposed auction process for the AWS-3 spectrum licences. We continue to support the auction process as outlined in the Notice. Rogers, however, noted that certain significant events and milestones have been omitted and should be included in the process. These included: a question and answer [clarification] phase; a date by which the Department will publish the final auction policy; and a date by which the Department will publish the final results of the auction. Rogers notes its position that publication of the final results will be required 30 days, or no less than two weeks, in advance of the 2500 MHz auction so that prospective bidders in the 2500 MHz auction will be able to finalize their valuations and bidding strategies. In this regard, Rogers also further notes that the timing of the release of the final results is all the more important given the compressed timeframe between the conclusion of the AWS-3 auction and the start of the 2500 MHz auction.<sup>29</sup>

51. We support Rogers' comments above and recommend that the omitted processes and milestones be included in the AWS-3 auction process as they have been for all previous Industry Canada auction processes.

52. For its part, in addressing this question, Telus notes that its:

. . . primary recommendation is to abandon a set aside but achieve the same policy objectives of a 20 MHz set aside by implementing a 10 MHz LWSP cap and a CCA (or other auction involving price discovery and package bidding).<sup>30</sup>

**C8 Industry Canada is seeking comments on the proposed renewal process for spectrum licences in the AWS-3 band.**

53. In our Comments we made no comment on the proposed renewal process for spectrum licences in the AWS-3 band. We continue to have no comment in that regard.

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<sup>29</sup> Rogers, Comments, paragraphs 65 to 68.

<sup>30</sup> Telus, Comments, paragraph 81.

## 6.0 PART D – OTHER CONSIDERATIONS

54. The Notice identified several item under Part D, for which the Department invited comments, including: (i) *D1 - Revisions to the Canadian Table of Frequency Allocations*; (ii) *D2 - Incumbent Transition Plan*; (iii) *D3 - Industry Canada's proposal to harmonize its technical rules for AWS-3, to the extent feasible, with the U.S. technical rules*; and (iv) *D4 - Industry Canada's proposed technical rules contained in Annex D of the Notice*.

55. Our Comments supported Industry Canada's proposals under these headings. We note that the record of the consultation indicates that these proposals were generally non-controversial and consequently the comments of other parties substantially took the same supportive stance.

## 7.0 COMMENTS OF PIAC

56. In its comments, in response to the consultation, PIAC makes certain statements, claims and allegations regarding the competitiveness of the Canadian wireless industry. The following is our response to PIAC comments.

57. PIAC indicates that Canada's Hirschman Herfindahl Index (HHI) is considered "highly concentrated" based on the U.S. Department of Justice classification.<sup>31</sup> However, HHI is not a definitive measure of the state of competition. As noted in the U.S. Department of Justice Horizontal Merger Guidelines:

The purpose of these thresholds is not to provide a rigid screen to separate competitively benign mergers from anticompetitive ones, although high levels of concentration do raise concerns. Rather, they provide one way to identify some mergers unlikely to raise competitive concerns and some others for which it is particularly important to examine whether other competitive factors confirm, reinforce, or counteract the potentially harmful effects of increased concentration. The higher the post-merger HHI and the increase in the HHI, the greater are the Agencies' potential competitive concerns and the greater is the likelihood that the Agencies will request additional information to conduct their analysis.<sup>32</sup>

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<sup>31</sup> PIAC, Comments, paragraph 18 and PIAC, *Wireless Services in Canada: Why Canadians Deserve Better*, 3 September 2014, pages 4 to 6.

<sup>32</sup> U.S. Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines*, 19 August 2010, page 19.

58. Similarly, the Canadian Competition Bureau in the *Merger Enforcement Guidelines* states that "while the change in HHIs may provide useful information about changes in the market structure, the Bureau does not use HHI levels to delineate any safe harbour threshold."<sup>33</sup> As noted in study by the University of Calgary's School of Public Policy, using seller concentration measures to identify market power are only appropriate if high market shares and concentration reflect market power, which is not the case when there are significant economies of scale and scope and sunk costs.<sup>34</sup> In such cases, greater seller concentration and prices above marginal cost will be required in order for firms to remain viable. Therefore, the larger the fixed costs, the less applicable HHI thresholds become as a screen for determining the state of competition. This is supported by a recent report prepared by Dr. Jeffrey Eisenach where he determined that "the regressions find *no* statistically significant relationship between concentration and either prices (revenues per minute) or revenues (ARPU [average revenue per user] or ARPC [average revenue per connection])."<sup>35</sup>

59. Figure 2 shows that Canada has a lower HHI score, and is therefore less concentrated, than many of its peers.<sup>36</sup> With the recent merger between Telefónica and E-Plus in Germany<sup>37</sup> which was approved earlier this summer, the HHI for Germany will likely be higher than that of Canada.

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<sup>33</sup> Competition Bureau Canada, *Merger Enforcement Guidelines*, 6 October 2011, page 19.

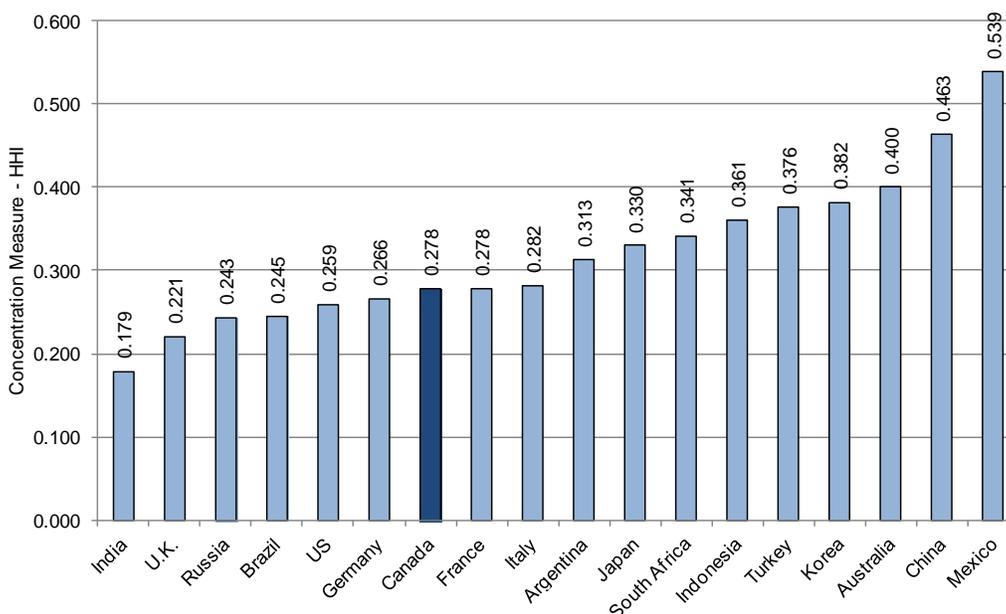
<sup>34</sup> Church, Jeffrey and Wilkins, Andrew, *Wireless Competition in Canada: An assessment*, University of Calgary School of Public Policy, Volume 6, Issue 27, September 2013, page 23.

<sup>35</sup> *Expert Report of Jeffrey A. Eisenach, Ph.D. On Behalf of TELUS Communications Company*, submitted in Telecom Notice of Consultation CRTC 2014-76 *Review of wholesale mobile wireless services*, 15 May 2014, pages 33 and 34. Emphasis in original.

<sup>36</sup> Bank of America Merrill Lynch, *Global Wireless Matrix 2Q14: Consolidation: The art of the possible*, 21 July 2014, page 159.

<sup>37</sup> See [http://europa.eu/rapid/press-release\\_IP-14-771\\_en.htm](http://europa.eu/rapid/press-release_IP-14-771_en.htm).

Figure 2: HHI Across G20 – 1Q 2014



Source: Bank of America/Merrill Lynch Global Wireless Matrix 2Q14.

60. PIAC also indicates that the Brattle Group in a report prepared for the Competition Bureau "estimated that consumers would see savings of \$1 billion per year from a fourth national player."<sup>38</sup> This is a misinterpretation of the Brattle Group's results. The \$1 billion is not related to consumer savings. Of the predicted \$1 billion in consumer surplus to be generated by this additional wireless carrier, \$800 million comes from "additional brand value" and not from lower prices to consumers.<sup>39</sup> That is, the model estimates that consumers attribute \$800 million in "value" to having additional "brand diversity" in the market even though the hypothesized additional national carrier is offering services that are very similar to the incumbents' services.

61. In response to PIAC's claims, and in order to be helpful, we have also attached to these reply comments an excerpt from our evidence filed in the current CRTC wholesale wireless proceeding which attests to the competitiveness of the Canadian wireless retail marketplace which also serves to demonstrate that PIAC's allegations are unfounded.

<sup>38</sup> PIAC, Comments, 4 September 2014, paragraph 26.

<sup>39</sup> Competition Bureau response to Rogers Interrogatory Bureau(Rogers)9Jun14-26 submitted in Telecom Notice of Consultation CRTC 2014-76 *Review of wholesale mobile wireless services*, 15 May 2014.

## **8.0 CONCLUSION**

62. We appreciate the opportunity to provide our views on the technical, policy and licensing framework proposed for the AWS-3 band in Canada.

\*\*\* End of Document \*\*\*