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

Reply Comments

of

Globalive Wireless Management Corp.



October 2, 2014

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INTRODUCTION

1. Globalive Wireless Management Corp. (doing business as WIND Mobile (“**WIND**”)) is pleased to provide these reply comments in connection with Industry Canada’s *Consultation on the Technical, Policy and Licensing Framework for Advanced Wireless Services in the Bands 1755-1780 MHz and 2155-2180 MHz (AWS-3)* (the “**Consultation**”) in accordance with the procedures set out in Notice No. SLPB-004-14, *Canada Gazette – Part I*, published on August 2, 2014.
2. WIND continues to support the core elements of Industry Canada’s (the “**Department**”)s proposed technical, policy and licensing framework for Advanced Wireless Services in the bands 1755-1780 MHz and 2155-2180 MHz (“**AWS-3**”). WIND is opposed to certain proposals of other participants in this process, which, if adopted, would fundamentally undermine the Department’s clear policy objectives as set forth in the Consultation and elsewhere. WIND will address these points in this reply. However, failure on WIND’s part to address any other party’s position or submission in this proceeding should not be construed as acquiescence where to do so would be contrary to WIND’s interests.

A. BAND PLAN CONSIDERATIONS

Q. A2 – Tier 2 Licence Areas

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.

3. WIND, along with most participants in this process, generally supports the Department’s proposal to licence the AWS-3 band on a Tier 2 basis, subject only to re-drawing of the boundaries of the Tier 2-06 and Tier 2-11 service areas along existing provincial boundaries. Aside from this important adjustment, WIND supports the Department’s

proposal to uniformly adopt Tier 2 licence areas and would be opposed to Bell Mobility Inc.'s ("**Bell**") suggestion that the set-aside be limited to urban areas and that such licences be auctioned on a Tier 3 basis.

Tier 2-06 Licence Area Boundaries Should Be Adjusted

4. As submitted in WIND's initial comments and consistent with SaskTel's position in relation to the provincial Alberta/Saskatchewan border running through the City of Lloydminster in the Tier 2-11 service area, WIND submits that the eastern boundary of the Tier 2-06 licence area should be re-drawn to align with the existing provincial border between Ontario and Quebec.
5. As the Department has previously recognized, the technological rationale for having licences straddle provincial borders in the Ottawa/Gatineau region and in the City of Lloydminster is simply no longer applicable. Furthermore, given that no new entrant carrier operates meaningfully on both sides of the provincial Ontario/Quebec border, allocating set-aside spectrum on the basis of the existing eastern boundary of the Tier 2-06 licence area will inevitably result in the inefficient allocation and use of spectrum resources. Moreover, maintaining the existing Tier 2-06 (and Tier 2-11 boundaries) could result in an auction outcome that conflicts with an important element of the Consultation (*i.e.*, the requirement that licences will be set-aside only for parties actively operating in a given licence area).
6. As a result, WIND considers it of the utmost importance that the eastern boundary of the Tier 2-06 service area be redrawn for purposes of the AWS-3 auction to conform to the existing provincial border between Ontario and Quebec.

Licence Areas Should Not Be Split Along Urban/Rural Lines

7. The only party that objected to the Department's Tier 2 services areas for licensing purposes was Bell. In particular, Bell proposed that the 15 + 15 MHz block of set-aside spectrum be licenced on a Tier 3 basis only in urban areas, such that there would be no set-aside spectrum available in rural areas.
8. Bell's proposal to restrict new entrants to urban areas alone should be rejected by the Department. The first premise underlying Bell's proposal, that new entrants only wish to serve urban areas, is patently false. Second, WIND notes that the minimum deployment requirements (five-year requirements on a Tier 2 basis¹ and 10-year requirements on a Tier 3 basis²), already take into account rural deployment and coverage issues.
9. Not only are the premises underlying Bell's Tier 3 proposal misplaced, they run counter to the Department's policy objectives for the AWS-3 band, which are to promote competition and to ensure that Canadians across Canada, including those in rural areas, benefit from next-generation wireless services, competitive pricing and choice in service offerings.³ Bell's proposal will effectively restrict new entrants like WIND to operating in urban markets. Bell's proposal will, and is presumably intended, to compromise the attractiveness of WIND's offerings.⁴ Additionally, carving licences into urban and rural areas will impede network roll-outs along major transportation corridors, thus permanently fragmenting and limiting the utility of the set-aside spectrum. But most importantly, from a

¹ Industry Canada, *Consultation on the Technical, Policy and Licensing Framework for Advanced Wireless Services in the Bands 1755-1780 MHz and 2155-2180 MHz (AWS-3)* ("Consultation"), paragraph 70 and Table 2.

² Consultation, paragraph 72 and Table 3.

³ Consultation, paragraphs 4 and 5.

⁴ The Department acknowledges in the Consultation document that, "large wireless service providers (LWSP) have the means and ability to prevent new entrants from acquiring spectrum licenses in an open auction." See Consultation, paragraph 41.

policy perspective, Bell's proposal is guaranteed to deny to rural residents the full extent of the potential benefits of competition.

10. For these reasons, Bell's Tier 3 proposal and proposal to limit the set-side to urban areas should be rejected by the Department.

Q. A3 – Licensing Process and Pro-Competitive Measures

A3 – Industry Canada is seeking comments on its proposal 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.*

11. WIND supports the Department's proposal to set-aside 30 MHz in the AWS-3 band for new entrants at the lower end of the band (combined blocks G, H, and I) and to have open bidding on the remaining 20 MHz block at the upper end of the band (block J). This new entrant set-aside will ensure that new entrants have access to vital spectrum that will allow them to provide next generation wireless service to their customers, meet growing consumer demand, and introduce more sustained competition in the wireless market.
12. As discussed below, WIND strongly opposes proposals from certain other parties to reduce the size of the set-aside spectrum and reconfigure the 30 MHz of set-aside spectrum into smaller blocks.

Amount of Open Spectrum Should Not Be Increased

13. TELUS Communications Company ("**TELUS**") suggests that the amount of set-aside spectrum be reduced from 30 MHz to 20 MHz because leaving LWSPs with only 20 MHz

of AWS-3 spectrum would be insufficient.⁵ TELUS' suggestion leaves WIND incredulous, given the enormous swaths of spectrum already held by the LWSPs.⁶ In comparison, the availability of additional contiguous blocks of spectrum, is much more critical for new entrants. New entrants need access to additional spectrum resources beyond one 5 + 5 MHz or 10 + 10 MHz channel in order to be able to compete effectively with current long-term evolution ("LTE") offerings, not to mention anticipated offerings that will be coming on to the market based on carrier aggregation techniques across multiple spectrum bands.

No Compelling Reason to Reconfigure the Set-Aside Spectrum

14. WIND also opposes the various proposals of Bell, TELUS and the Public Interest Advocacy Centre ("PIAC") to reconfigure the 30 MHz of set-aside spectrum.
15. In its comments, PIAC questioned the appropriateness of the combined G, H, and I blocks of set-aside spectrum totalling 15 + 15 MHz. PIAC submitted that the combined block should be divided into three 5 + 5 MHz blocks in order to allow more than one operating new entrant per service area to acquire set-aside spectrum.⁷ Although well-intentioned, PIAC's suggestion would limit the effectiveness of the set-aside, which hinges on the availability of a large contiguous block of spectrum.⁸ As noted above, a single 5 + 5 MHz block (or even a 10 + 10 MHz block) of spectrum is insufficient to provide LTE data speeds currently available in the market.
16. WIND also opposes Bell's and TELUS' suggestions that the set-aside spectrum be moved to the upper end of the AWS-3 band (*i.e.*, blocks I and J)⁹ so that the unrestricted AWS-3

⁵ TELUS Communications Company ("TELUS") Comments, paragraph 48.

⁶ Public Interest Advocacy Centre ("PIAC") Comments, paragraph 54 and Figure 3.

⁷ PIAC Comments, paragraph 37.

⁸ Consultation, paragraph 29; Rogers Comments, paragraph 12.

⁹ Bell Mobility Inc. ("Bell") Comments, paragraph 17.

spectrum resides at the lower end of the band adjacent to Block F, which is currently held by LWSPs.¹⁰

17. Bell's and TELUS' proposal to move the set-aside spectrum to the upper end of the AWS-3 band, if implemented, would significantly disadvantage new entrants given the uncertainty surrounding the timely development of a North American device ecosystem for the upper end of the AWS-3 band.
18. Currently, there is no existing Third Generation Partnership Project ("**3GPP**") standard that spans the full AWS-3 band. Block J at the upper end of the band resides outside of the existing 3GPP Band 10, which includes the AWS-1 band and 30 MHz at the lower end of the AWS-3 band. While the Federal Communications Commission ("**FCC**") in the United States has mandated that devices be interoperable across both the AWS-1 and AWS-3 bands, the 3GPP standards body is in the preliminary stages of defining a new 3GPP band specification for the entire AWS-1/AWS-3 band for North America.
19. Given that Block F in the AWS-1 band in the United States is held exclusively by Verizon Wireless and T-Mobile and that these large wireless carriers will, like TELUS and Bell, likely seek to obtain spectrum at the lower end of the AWS-3 band, WIND is concerned that there may be considerably less incentive for equipment manufacturers to develop a strong device ecosystem for the entire AWS-3 band, including Block J. The greater uncertainty surrounding the development of the device ecosystem for the upper end of the AWS-3 band, combined with the inability to leverage the existing Band 10 definition, means that Bell and TELUS' proposal, if adopted, would materially increase the risk that new entrants may not be able to quickly deploy LTE. Such delay and uncertainty could

¹⁰ TELUS Comments, paragraphs 45 to 47.

potentially be devastating to new entrants and to the emergence of robust competitive forces in Canadian wireless services markets.

20. The suggestion that new entrants be relegated to the upper portion of the AWS-3 band is clearly aimed at placing new entrants at a competitive disadvantage. As a result, it should be rejected by the Department as counter-purposive to the Department's policy objectives with this band.

Q. A4 – 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:

50. In addition to proposing a set-aside measure, Industry Canada proposes that bidding on set-aside spectrum licences in each Tier 2 region be restricted to new entrant bidders that:

- **are actively providing commercial mobile wireless services to the general public and operating a wireless network in the Tier 2 service area, with the minimum population coverage levels shown in Table 1, effective as of the date of application to participate in the AWS-3 auction.”**

21. WIND supports the Department's policy position that eligibility to bid on set-aside spectrum should be limited to parties that have demonstrated their viability and their commitment and capacity to invest meaningfully in wireless infrastructure. Robust eligibility criteria must be put into place in order to ensure the achievement of the competitive benefits of the set-aside and to ensure that speculators and opportunists with no ability, intent, or viable business plan to build and compete long-term are not able to acquire these licences.

22. Thus, WIND has strongly recommended that the Department, when applying the proposed test for active provision of commercial wireless services in the coverage area, insist on a

high and meaningful threshold.¹¹ This includes the requirement that eligible parties have an existing meaningful number of subscribers in the relevant licence area of at least 1 per cent of the total population of the licence service area.

23. Furthermore, WIND supports the request of Rogers Communications Partnership (“**Rogers**”) that the Department clarify the extent to which associations between LWSPs and non-LWSPs should adversely affect non-LWSPs’ eligibility to bid on set-aside spectrum.¹² Specifically, WIND recommends that the Department prohibit a new entrant bidder from satisfying the “active provision” eligibility criteria, particularly the Table 1 minimum population coverage levels, through a network sharing arrangement(s) with a LWSP.¹³ Clearly, partnerships between LWSPs and non-LWSPs as a backdoor by the LWSP to gain access to set-aside spectrum would run completely counter to the policy objectives for a set-aside.

B. LICENSING FRAMEWORK

Q. B3 – Deployment Requirements

B3 – Industry Canada is seeking comments on the proposed deployment condition of licence as stated above:

- **5-year deployment requirements for Tier 2 service areas.**
- **10-year deployment requirements for Tier 3 service areas contained in the AWS-3 Tier 2 service areas.**

24. WIND supports the Department’s proposed five-year deployment requirements on a Tier 2 basis and ten-year deployment requirements on a Tier 3 basis, as outlined in Table 2 and Table 3 of the Consultation. These are strong, serious, but realistic deployment requirements.

¹¹ Globalive Wireless Management Corp. (“WIND”) Comments, paragraph 15.

¹² Rogers Communications Partnership (“Rogers”) Comments, paragraph 57.

¹³ WIND Comments, paragraph 14.

25. WIND noted with concern proposals by PIAC, SaskTel and Rogers, who advocated for more stringent deployment requirements:
- a. SaskTel argued that the Department should impose a three-year deadline to achieve the deployment requirements on a Tier 2 basis;¹⁴
 - b. Rogers submitted that set-aside spectrum should be subject to the Tier 3-level deployment requirements within five years rather than ten years, purportedly to ensure that licensees have an added incentive to put the spectrum to use in a timely manner;¹⁵ and
 - c. PIAC recommended that the ten-year Tier 3 deployment requirements be adjusted upward, by 2.0 times in urban areas and at least 1.5 times in non-urban areas.¹⁶
26. While these proposals may be well-intentioned, they are commercially unrealistic and overlook the uncertain timing and scope of the AWS-3 device ecosystem.¹⁷ In fact, Quebecor Media Inc. (“**Videotron**”) submitted that the proposed five-year deployment requirements on a Tier 2 basis and the ten-year deployment requirements on a Tier 3 basis should be extended by two years to seven and twelve years respectively in order to account for the time that it will take for a vibrant AWS-3 device ecosystem to develop.¹⁸
27. WIND submits that the Department struck the right balance in establishing the deployment requirements set out in the Consultation. As a result, the Department should reject the

¹⁴ SaskTel Comments, paragraph 55.

¹⁵ Rogers Comments, paragraph 39.

¹⁶ PIAC Comments, paragraph 86.

¹⁷ Consultation, paragraph 109.

¹⁸ Quebecor Media Inc. (“Videotron”) Comments, paragraphs 40 and 41.

proposals of parties such as PIAC, Rogers and SaskTel seeking to modify these requirements.

C. AUCTION PROCESS AND RULES

Q. C1 and Q. C2 – 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.

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

28. WIND supports the Department's proposal to use a sealed-bid auction format with a second price rule. A majority of the other parties in this process also supported the Department's proposed auction process.¹⁹ It is generally agreed that the process outlined by the Department is administratively simple, time-efficient,²⁰ and will encourage bidders to bid the true value of the spectrum.²¹

29. WIND also supports the Department's proposal to hold the AWS-3 auction in March 2015. While there is debate among some parties as to whether or not to postpone the auction for the non-set-aside portion of the AWS-3 band, almost all of the parties agree that the auction for the set-aside spectrum should proceed in the March 2015 timeframe.²²

New Entrants Have Critical Need for New Spectrum—Auction Should Not Be Delayed

30. SaskTel is the only party that recommended delaying the entire AWS-3 auction. SaskTel submitted that the entire auction should be postponed pending the outcome of the

¹⁹ See Bell Comments, Videotron Comments, SaskTel Comments, MTS Comments, PIAC Comments, and Eastlink Comments.

²⁰ PIAC Comments, paragraph para. 88

²¹ Videotron Comments, paragraphs 45-47; Bell Comments, paragraph 28.

²² Bell Comments, paragraph E4.

Canadian Radio-television and Telecommunications Commission (the “**Commission**”) proceeding to review wholesale mobile wireless services.²³ According to SaskTel, pending the outcome of this proceeding, it would be impossible for new entrants and incumbents to accurately assess their business strategies, thereby magnifying the risk of inefficient allocation of spectrum in the AWS-3 auction.²⁴ In particular, SaskTel argues that potential new roaming rules may reduce new entrants’ need to access AWS-3 spectrum.²⁵

31. SaskTel’s claim that potential new wholesale roaming rules may reduce new entrants’ need to access AWS-3 spectrum is absurd. Regardless of the outcome of the Commission’s review of wholesale wireless services, the fact remains that new entrants require additional spectrum to provide next generation wireless services, such as LTE, to their customers. Access to roaming is not a substitute for spectrum and network builds. WIND reiterates its position that the AWS-3 auction should proceed in March 2015 as contemplated in the Consultation, so that new entrants such as WIND may execute on plans to deploy LTE networks as soon as possible.

Bell’s Suggestions in Relation to the Second-Price Rule Should Be Rejected

32. Bell proposed that the Department adopt a rule stipulating that if there is only one bidder for a licence in a particular service area, the licence fee payable should equal the present value of the foregone annual licence fees (*i.e.* \$0.035 per 1 MHz of assigned spectrum per person over the 20-year term of the licence).²⁶
33. Bell’s recommendation will effectively defeat the Department’s careful consideration of the appropriate minimum opening bid prices for each service area and for each set-aside

²³ SaskTel Comments, paragraph 2.

²⁴ SaskTel Comments, paragraph 85.

²⁵ SaskTel Comments, paragraph 3.

²⁶ Bell Comments, paragraph 29.

block. This will lead to uncertainty for bidders and unnecessarily complicate the auction process. More importantly, Bell's proposal seeks to undermine the effectiveness of the pro-competitive measures contemplated in the Consultation and as such, it should be rejected.

Q. C6 – Opening Bids

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

34. WIND, like the majority of parties participating in this consultation, supports the Department's proposed opening bid prices for all the spectrum blocks. WIND notes, however, that Rogers does not support the use of the proposed opening bids, purportedly because they are "too low considering the significant value of this spectrum generally and the set-aside spectrum in particular."²⁷
35. Rogers utilizes a number of different benchmarks to support its view that minimum bid prices should be increased, particularly for the set-aside spectrum. Rogers' proposed benchmarks include total US minimum bid prices for its upcoming AWS-3 auction, AWS-1 minimum bid prices from the 2008 auction, opening bid prices in the upcoming 2500 MHz auction, and the aggregate average of \$1.55/MHz/Pop that was paid by successful bidders in the 2008 AWS spectrum auction.
36. In WIND's opinion, the Department's proposed minimum bid amounts reflects a reasonable and fair assessment of the value of the AWS-3 spectrum and the projected development of the band. Comparisons with the total US minimum bid price are inappropriate given the different markets and significantly larger US population. Initial

²⁷ Rogers Comments, paragraph 60.

AWS-1 minimum bid prices from 2008 are also inappropriate as they reflected speculative interest in the spectrum from that time. Spectrum valuations, particularly when isolated from LWSPs' market foreclosure valuations, are different today. In addition, the aggregate average price paid by successful bidders in the 2008 AWS spectrum auction was a final price, not an initial bid price and the average final price reflected a different auction structure.

37. WIND also notes that the prices for the AWS-3 spectrum are comparable to the opening bid prices for the upcoming 2500 MHz auction despite uncertainty surrounding the availability and timing of an AWS-3 device ecosystem. Unlike 2500 MHz spectrum, which winning bidders are able to use immediately, the AWS-3 device ecosystem will still be in its infancy immediately after the auction in March 2015. While it can be said that an AWS-3 device system will emerge at some point, given the auction of AWS-3 licences in the United States, scheduled for November 13, 2014, AWS-3 compatible devices are not expected to be widely available for distribution until 2016. Additionally, the propagation characteristics of the AWS-3 spectrum are not materially better than the 2500 MHz spectrum; neither band is considered beachfront property from a propagation perspective compared to the 700 MHz spectrum recently auctioned off or the 850 MHz cellular spectrum handed to the LWSPs over 30 years ago.
38. Rogers' proposal to increase opening bid prices for set-aside spectrum, like other proposals from Bell and TELUS in this process, seeks to undermine the effectiveness of the pro-competitive measures contemplated in the Consultation and as such, should be rejected.

CONCLUSION

39. WIND wholeheartedly supports the core elements of the Department's proposed licensing framework for the AWS-3 bands. Consistent with the proposed framework set out in the Consultation, WIND's reply comments herein are submitted with a view to ensuring that the policy objectives identified by the Department are achieved through the auction and licensing of AWS-3 spectrum.

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