



Thursday October 2, 2014

Heather Hall
Senior Director,
Spectrum Licensing and Auction Operations,
Industry Canada,
235 Queen Street,
Ottawa, Ontario K1A 0H5

**Re: Reply Comments – Canada Gazette, Part 1, July 28, 2014, Notice 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)”**

Dear Heather;

Niagara Networks Incorporated is pleased to provide reply comments on Canada Gazette Notice SLPB-004-14 dated July 28, 2014. We appreciate this opportunity to respond and provide comments and recommendations on these important policy issues.

Please find the comments of Niagara Networks in regard to the above noted consultation document as attached below. Should you wish to discuss these comments, please contact the undersigned.

Sincerely,

Douglas Evashkow
President,
Niagara Networks Incorporated
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Summary

Niagara Networks fully supports the department in providing this opportunity to ensure development of a *truly competitive* and *sustainable* wireless industry.

In reviewing the comments submitted we note the following highlights;

1. In general, everyone is in favor of the vast majority of the proposed rules of licensing spectrum for AWS-3.
2. In particular, Tier 2 licensing, band plan, coordination with the U.S.A., a fast one bid, second price process etc. all appear to be fine with and acceptable to most who responded.
3. The only genuine concern comes from parties who are excluded from participating in the process as proposed and for good cause. The process as proposed does not guarantee it delivers enhanced competition and that is merely by way of how the proposed rules are structured. Also, there is a real possibility much of the spectrum licensed will for no otherwise valid reason lay fallow while it could have been put to immediate use and fostered competition.
4. We get the intent of the AWS-3 licensing process as proposed but we believe a simple expansion of the definition will serve all parties concerns and actually rapidly deliver the intended competition the department is attempting to foster and develop.
 - a. In accommodating this simple expansion to the definition for a qualified new entrant we can assure the department that;
 - i. The initial intent of the proposed rules is not lost, and
 - ii. All of the concerned but not as yet qualified respondents to this consultation who would ordinarily otherwise participate will be afforded an opportunity to do so, and
 - iii. All existing market competitors will be given an opportunity to move forward quickly with expansion of their business models, and
 - iv. Truly sustainable competition in the market will materialize quickly, and
 - v. Diversity and creativity of available products and services will be available to the vast majority of Canadians, and
 - vi. Fair wireless market competition will once and for all be established in Canada.

We support the departments desire to enhance and encourage development of a *competitive* wireless industry to the benefit of all Canadians and market competitors. We believe our recommendations if implemented, will aid in building a solid foundation for *true competition* in Canada. The department will extract the maximum return for the spectrum resource both economically and socially. We hereby respectfully submit our reply comments for consideration by the department as follows;



Competition and Competitive Process

Reviewing the responses to this AWS-3 consultation document, we note only the respondents whom;

1. Are operating services in a proposed service area where a spectrum license is to be auctioned, and/ or
2. Have 'something significant to gain' by the proposed definition of a 'new entrant bidder' being 'operating', or
3. Are an LWSP and thus they want to maintain artificially high barriers to entry simply to limit or suppress true competition and thereby sustain a substantial economic competitive advantage in the market (by forcing all new entrants into paying more for spectrum and trying to unnecessarily build multiple competing facilities based networks),

agreed with the definition of a 'qualified bidder' be 'operating' as proposed by the consultation document. We note that while these respondents agree on the definition to include 'operating', there is much controversy over the deployment criteria being proposed. Quite frankly, we see that much of the deployment criteria required as completely unnecessary if the definition of a 'qualified bidder' is simply expanded.

Obviously, as proposed, there is no competition for the licenses offered in this process other than for the most part, only one bidder for the majority of licenses to be auctioned. Hence the cost of the spectrum is basically the initial bid price set. It is completely understandable from the predictable winning bidders perspective they would agree with the definition of a qualified bidder as they do not want any competition for the licenses being offered. They are guaranteed a spectrum license post auction for the lowest price. There is no guarantee however the consumer wins anything in terms of more competition, lower pricing and more choice. In fact, the deployment criteria does not guarantee the spectrum will even be utilized. As many respondents pointed out, much of the spectrum already in the hands of these qualified bidders for AWS-3 spectrum is already laying fallow with no certainty of when it will be deployed.

TELUS goes to great lengths to prove the proposed 'competitive' process for set-aside AWS-3 spectrum licenses is 'not competitive' in their comments. Many other respondents excluded from bidding on AWS-3 spectrum voiced their displeasure with the lack of access to the process due to a lack of allowing truly competitive bidding for the resource. These comments were from those who may otherwise participate in the process and compete in the market if they had immediate access to the spectrum. These excluded respondents proposed various modifications to the AWS-3 licensing rules. The modifications would allow their inclusion in the process based on altering Tier sizes, a quick secondary auction etc. All of these proposed modifications demonstrate that there is interest in delivering to the department the competition it is seeking in this consultation. All that is being asked is reasonable. The department can deliver a tangible means of getting this diversity of competition on the playing field immediately



with a fair chance to compete. In our view, the department has that ability in this AWS-3 auction by simply expanding the definition of a 'qualified bidder'.

The intent to support greater competition in the market by merely offering more spectrum in each market to a single bidder does not guarantee increased competition will materialize. More spectrum alone is insufficient incentive to cooperate between winning licensees post auction. There are competitive advantages, economics, differing business models and logistics to consider which do not guarantee consolidation of spectrum resources and thereby more competition. Additional spectrum costs do not benefit any of the licensees business models. The AWS-3 auction process as proposed has no obvious means of ensuring near term successful consolidation of new entrant spectrum assets. As proposed, the process for issuing AWS-3 spectrum therefore does not guarantee an increase in market competitiveness.

Given the genuine concern expressed by many potential competitors in this consultation, we therefore respectfully urge the department consider the expansion of the definition for a qualified new entrant bidder. As we proposed, this definition should be expanded to include anyone willing to share the licensed spectrum with any other market competitor. This modification will most easily alleviate the vast majority of interested competitive respondents concerns and allow their immediate inclusion in the developing market post auction.

A Fourth Market Competitor

We empathize with the departments difficulties in fostering market competition given a seeming lack of interest to invest in recent past. The reasonable fallback position thereby appears to be one of at least acquiring 'one more' market competitor in each major market. The elusive fourth market competitor however has yet to prove sustainable.

Canada has had a fourth major market competitor going back to the mid 1990's. That competitor was Microcell. Over the next decade they went bankrupt twice finally being absorbed by Rogers. This particular example demonstrates that fostering merely a fourth market competitor still leaves the market vulnerable to anti-competitive market forces. There is no guarantee that 'one more' competitor will be economically viable and remain in the market long-term. Much more is required to ensure market sustainability and eventual truly competitive market conditions. The AWS-3 auction can lay the foundation for that very competitive sustainability by allowing an economically viable entry point for creative and diverse independent competitors.

Even if a fourth market competitor can survive, there is nothing to say that an 'oligopoly' doesn't just expand. TELUS we recall absorbed Clearnet in the late 1990's. A three way oligopoly quickly formed. The trio then used anticompetitive practices to squeeze Microcell out of the market. In any event, fostering the notion of 'just one more' market competitor as the path to truly competitive market development may be short sighted.



We believe, the market is on track to arriving at true competition when conditions are such that many new and existing competitors can grow within the market. The 'just one more' market competitor concept cannot achieve the same result. Instead of fostering a 'fourth competitor' in every major market, we propose that we should be promoting a 'third commercial competitive network'. This benefits everyone everywhere including major markets and rural communities alike. This AWS-3 spectrum auction if allowed to be truly competitive has the potential to deliver such a network. The network will in turn deliver the competitive market conditions that satisfy all of the parties concerns who responded to this consultation and beyond.

Again, we urge the department to consider expanding the definition of a qualified new entrant bidder to include anyone willing to share the licensed spectrum with other market competitors.

A Better Way - A Third Commercially Competitive Network

By simply expanding the definition of a qualified new entrant bidder to include anyone willing to share the spectrum, the spectrum process ensures the licensing is truly competitive. The economics and logistics of developing a 'third commercially competitive network' make the concept attractive for investment and stimulates diverse, creative competition. The licensing process becomes greatly simplified and will be embraced by market competitors and investors. The concept is remarkably simple for everyone to understand with deployment criteria greatly simplified and easily enforced.

The concept of a 'third competitive network' is more tangible in the near term for the department to deliver via a competitive licensing process. The department can easily monitor the networks development and better determine how to foster growth moving forward. The concept is less threatening and fair to LWSP's. Everyone is allowed ample time to adjust to a new market reality without having to consider the success or failure of any individual market competitor. Anti-competitive practices lose their teeth and fair competition prevails. Everyone has to adjust to a truly competitive environment. That means diversity and creativity in products and services delivery and more choice for the consumer. The consumer then is assured fair value in return for the AWS-3 spectrum resource.

Everyone gets what they want and the chance of spectrum laying fallow will become a thing of the past. Every market competitor has an opportunity to develop their market. No competitor has to worry about Tier sizes or being held back from offering the latest in services & technology due to geographic location, market size or other demographics.

Finally, the need for competitive measures in spectrum licensing has an eventual end in sight. We thereby most humbly urge the department to consider 'simply' expanding the definition of a qualified new entrant bidder in the AWS-3 licensing process to include anyone willing to share the licensed spectrum with other market competitors.



Conclusion

We would like to take this opportunity to thank the department for allowing us to provide our recommendations with respect to this very important spectrum licensing issue. On behalf of Niagara Networks, we wish the department all the best in making their final policy determinations and a very successful licensing process.