



November 3, 2017

ic.spectrumauctions-encheresduspectre.ic@canada.ca

Senior Director
Spectrum Licensing and Auction Operations
Innovation, Science, and Economic Development Canada
235 Queen Street
Ottawa, Ontario K1A 0H5

Dear Sir/Madam:

Re: *Canada Gazette, Part I, August 19, 2017, Notice No. SLPB-005-17 – Consultation on a Technical, Policy and Licensing Framework for Spectrum in the 600 MHz Band – Eastlink’s reply comments*

Please find attached the reply comments of Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), in response to Canada Gazette Notice SLPB-005-17 – *Consultation on a Technical, Policy and Licensing Framework for Spectrum in the 600 MHz Band* (Part I, August 19, 2017).

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

Sincerely,

A handwritten signature in blue ink, appearing to read "D Heckbert", is placed above the typed name.

Denise Heckbert
Director, Wireless Regulatory, Eastlink

Email: regulatory.matters@corp.eastlink.ca
6080 Young Street Halifax NS B3K 2A4

**INNOVATION, SCIENCE, AND ECONOMIC DEVELOPMENT CANADA
CONSULTATION ON A TECHNICAL, POLICY AND LICENSING FRAMEWORK
FOR SPECTRUM IN THE 600 MHz BAND
CANADA GAZETTE, PART I, AUGUST 19, 2017 (SLPB-005-17)**

**REPLY COMMENTS OF
BRAGG COMMUNICATIONS INC., OPERATING AS EASTLINK**



3 NOVEMBER 2017

1. Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), appreciates the opportunity to provide reply comments on the issues raised under SLPB-005-17 – *Consultation on a Technical, Policy and Licensing Framework for Spectrum in the 600 MHz Band* (the “Consultation”).
2. Under the Consultation, Innovation, Science and Economic Development Canada (the “Department”) seeks comments on its proposed auction and licensing framework for the 70 MHz of available spectrum in the 600 MHz band. Eastlink has reviewed the comments submitted by other parties to this Consultation and herein provides our reply comments. We note that our failure to comment on any particular claim or proposal filed by other parties to this Consultation should not be construed as agreement where such agreement would be contrary to our comments filed under the Consultation and/or our business interests.

Low-band spectrum critical to sustainable competition

3. Eastlink supports and shares the Department’s clear objectives for this 600 MHz policy and auction framework. Specifically, the Department stated:
 - (i) “ISED views the release of the 600 MHz band as an opportunity to encourage investment and improve services provided by both newer and established carriers.”¹
 - (ii) “...it presents a key opportunity to support competition.”²
4. Regional service providers have invested hundreds of millions of dollars in mobile wireless networks since 2008, largely relying on mid-band spectrum, and it is critical that these operating regional service providers have long-awaited access to meaningful low-band spectrum holdings in order to satisfy the Department’s above-noted objectives. Eastlink generally supports the Department’s proposed framework, with a few minor suggested updates detailed herein, as we believe the framework aims to ensure regional service providers are provided such reasonable access to 600 MHz spectrum.

¹ Consultation, Paragraph 7

² Consultation, Paragraph 7

5. Eastlink submits that this 600 MHz auction is the most important since the Department first enabled regional service providers to enter the mobile wireless market in 2008. The Department's decision to set aside spectrum in 2008 was instrumental to the entry of new regional competitors and has had a strong and positive impact on Canada's mobile wireless retail market, with per-use prices steadily declining, the most advanced networks in the world being widely deployed, and increasingly consumer-friendly policies and programs launching each year, driven largely by the competition from regional service providers.
6. For example, as noted in our 2 October 2017 comments, Eastlink has launched services in all four Atlantic Canadian provinces and northern Ontario and is working to continue expanding our network in these areas. In some places we are building the only competitive network, and in certain areas, we are the only wireless service provider filling key coverage gaps in rural areas. Eastlink's focus on rural areas is not just coverage expansion but also innovative technology launches – we launched Canada's first 100% VoLTE network (with no HSPA+ underlay) in Timmins, Ontario last year, putting Timmins at the leading edge of global network technology. (We have since expanded the VoLTE network to other parts of northern Ontario and throughout Atlantic Canada.)
7. We have also made available throughout our operating area innovative service plan options, such as separating the cost of the device from the cost of the plan so that customers pay only for what they want and their monthly costs decrease dramatically when their device is paid off. In addition, we are the first to offer Worry-Free Data service, which caps data use at the amount included in the monthly plan so that our customers do not incur any inadvertent overages, and so the account holder is in control of his/her monthly costs. At the same time, as the Department noted in the Consultation, "on average, new entrants offer prices up to 36% less than the national incumbents."³
8. Eastlink submits that advanced network technology competition and service plan innovation in rural areas is exactly in line with the Department's objectives for its spectrum licensing policy and auction frameworks. This competition, which encourages rapid deployment of advanced technology and customer-friendly service offerings is not likely to occur – and certainly not in rural areas – without meaningful and sustainable competition from regional wireless service providers. As a result, it is critical that the disparity between national service

³ Consultation, Paragraph 17

providers' and regional providers' low-band holdings not worsen under this auction, as doing so would weaken retail mobile wireless competition, which is not in the economic or social interest of Canadians.

9. This 600 MHz auction is the only opportunity for the foreseeable future to address the massive deficit in low-band spectrum regional service providers currently face as compared to the national incumbents, which were given most of their low-band spectrum at no cost. In the Consultation, the Department recognized that the 600 MHz band “presents a key opportunity to support competition and the provision of high quality and innovative wireless services to Canadians.”⁴ Eastlink supports the Department’s proposal to take advantage of this opportunity to “maximize the economic and social benefits that Canadians derive”⁵ from the 600 MHz band by implementing pro-competitive measures that will help regional service providers access much needed low-band spectrum.

10. Eastlink submits that the proposal to set aside spectrum is consistent with the Department’s broader rural initiatives. The Department has repeatedly emphasized the importance of rural networks to ensure that all Canadians can participate equally in the digital economy, and is undertaking a program worth hundreds of millions of dollars to promote deployment of mobile wireless and other broadband services in rural areas in order to support these same policy objectives.⁶ Eastlink submits that ensuring regional service providers have a reasonable opportunity to acquire much needed low-band spectrum under this auction is an economically efficient means of supporting rural deployment, as service providers with sufficient low-band spectrum will make significant investments in rural areas, minimizing the need for reliance on Government funding for rural deployments or other funding initiatives.

11. In any case, under the 600 MHz auction, a set-aside is necessary to ensure regional providers have reasonable access to spectrum. Regional service providers simply cannot outbid the national service providers for low-band spectrum in their areas of interest. The Department has more than sufficient evidence in the AWS-1, 700 MHz, and 2500 MHz auctions to make clear that the national service providers will acquire as much spectrum as possible, at any cost, given the opportunity, regardless of whether they actually need the spectrum to serve

⁴ Consultation, Paragraph 7

⁵ Consultation, Paragraph 4

⁶ Connect to Innovate <https://www.canada.ca/en/innovation-science-economic-development/programs/computer-internet-access/connect-to-innovate.html>

their customers, as detailed below. In all recent auctions, regional service providers attempted to acquire spectrum above and beyond the set-aside or spectrum cap by bidding on open-market spectrum during the auction price discovery rounds. In all cases, with only a few minor exceptions in very remote areas, regional service providers were unable to acquire any spectrum other than those licences expressly protected by pro-competition measures under the auction framework.

12. As a result, Eastlink generally supports the Department's proposed auction framework. However, we submit that a few minor changes are necessary in order to ensure that the Department's stated objectives of promoting facilities-based development and supporting competition are met. In addition to expanding the set-aside to 40 MHz, Eastlink's two key recommended updates are:

- (i) Clarifying in the definition of set-aside-eligible bidders that such bidders will be "...those registered with the CRTC as facilities-based providers that are not national incumbent service providers, and that are actively providing commercial **mobile wireless** telecommunication services to the general public in the licence area of interest, effective as of the date of application to participate in the 600 MHz auction." [Edit emphasized], as detailed in our response to Question 1C below, and
- (ii) Creating two generic licences in each licence area; one set-aside generic licence containing the three or four set-aside blocks, and; one open market generic licence containing the three or four open-market blocks, with a bidding rule for set-aside bidders to prevent point parking in the open-market blocks when the set-aside blocks are lower in price, as detailed in Paragraphs 44-46 below. This update would remove the unnecessary complexity regarding price increments and price determination of set-aside licences, and would address certain concerns raised by the national incumbents.

13. Eastlink maintains our positions as set out in our 2 October 2017 comments, and provides additional detail on certain questions herein. We note that Bell⁷ and Rogers⁸ submitted comments on compensating the OTA providers currently using the 600 MHz spectrum. Eastlink submits that those comments are out-of-scope of this proceeding. In the event the

⁷ Bell comments, Paragraphs 6-7

⁸ Rogers comments, Paragraphs 24-25

Department is considering compensation of existing licence holders, it should hold a separate consultation on the issue with specific proposals upon which interested parties could submit comments.

Consultation questions

Q1A—ISED is seeking comments on its proposal to implement a set-aside as a pro-competitive measure in the auction process for the 600 MHz band.

14. Most parties to this Consultation supported the Department's proposed set-aside as a pro-competitive measure. Unsurprisingly, the three national incumbents did not. However, Eastlink submits that the incumbents did not provide any evidence to counter the Department's own extensive experience over the past ten years that the national incumbents can and do foreclose to the maximum extent possible regardless of whether they require the spectrum resources to serve their customers. As a result, we submit that the Department should adopt set-aside measures under this 600 MHz auction.
15. For example, Bell⁹ and Rogers¹⁰ claim that the new entrants – because they also have cable operations – should be assumed to not require set-asides. However, Eastlink submits that cable operations are irrelevant to the need for set-asides. The sole issues to be considered in determining whether set asides are required are: (i) that regional service providers require more than 10 MHz of low-band spectrum to operate sustainable wireless businesses and to expand their networks – and, therefore, competition – to rural areas and, (ii) the three national incumbents are likely and able to foreclose on this 600 MHz spectrum – the last of its kind available for the foreseeable future – simply to prevent meaningful competition from wireless new entrants.
16. Eastlink reiterates that wireless service providers cannot build a network with just 5 + 5 MHz of low-band spectrum. In order to build efficiently – particularly in rural areas – reasonable holdings of low-band spectrum are required to enable competitive data speeds and to ensure that there is offload capacity available. Most operating new entrants have access to only 10 MHz of low-band spectrum, compared to the average 53 MHz of low-band spectrum held by

⁹ Bell comments, Paragraph 15

¹⁰ Rogers comments, Paragraph 39

the incumbents. This 600 MHz auction is the last opportunity for the foreseeable future to ensure that the regional service providers have access to the low-band spectrum needed to build rural areas, provide competitive in-building coverage, and to expand their networks efficiently. As noted above, there are clear economic and social benefits to Canadian consumers in regional service providers competing with the incumbents, in terms of improved coverage, more rapid deployment of advanced networks, and dramatically reduced service prices. We submit that access to more comparable holdings of low-band spectrum will enable expansion of those benefits to new markets and throughout rural Canada.

17. Eastlink submits that the Department's framework correctly addresses the fact that without a set-aside the national incumbents will foreclose on the band. Eastlink agrees with the Department's determination that the "incumbent entities likely have the means and ability to prevent other service providers from acquiring spectrum licences in an open auction."¹¹ The Department has a considerable record of experience over the past 10 years upon which to base its determination that incumbent national service providers will always purchase as much spectrum as possible – regardless of whether the spectrum is required to serve their customers, as compared to their international counterparts – and will thereby prevent regional service players from acquiring any open market spectrum.
18. Regional service providers have consistently attempted to acquire open market spectrum in the Department's auctions – as evidenced by the price discovery round bidding – and, with just a few exceptions, have consistently been able to acquire only the set-aside or spectrum cap-protected licences. This was true in 2008 and continues to be true today, regardless of whether the regional service providers have cable operations, because the national incumbents continue to be far larger than the regional service providers with exponentially more resources available to them, and a track record of acquiring as much spectrum as the rules allow. As Rogers noted, certain national carriers' auction bidding records prove that they will not only bid to prevent regional service providers from obtaining needed spectrum but also to prevent "any network sharing" with other providers.¹²
19. Simply put, if the Department does not set aside spectrum in this auction, regional service providers will be unable to acquire spectrum in the 600 MHz band. Such a result would make

¹¹ Consultation, Paragraph 22

¹² Rogers comments, Paragraph 139

permanent the deep imbalance in low-band spectrum holdings between national incumbents and regional service providers, making it extremely difficult – if not impossible – for regional service providers to deploy networks throughout rural Canada due to the economic challenges inherent in building networks with only higher-band spectrum, which requires more towers per serving area. This would prevent rural Canadians from benefiting from the network-based competition, innovative customer service offerings, and dramatically lower prices offered by regional service providers. Eastlink submits that any policies that would effectively confine the benefits of competition to urban areas would be inconsistent with the policy objectives of the 600 MHz band, the *Act*, and the Department's stated goals of ensuring rural Canada can participate fully in the digital economy.

20. Eastlink further submits that Telus' complaints (that its own holdings in Eastern Canada are limited and should qualify it for a set-aside¹³) are absurd and should be disregarded completely. Eastlink submits that it is unclear why Telus would require any spectrum in Eastern Canada. Telus does not have a network or material infrastructure in Eastern Canada, and does not have any plans to build, based on its comments indicating it plans to subordinate its 600 MHz spectrum in Eastern Canada to Bell following the auction.¹⁴ In the event that Telus' individual holdings are to be considered, then the only conclusion is that Telus does not have a network and, therefore, does not need spectrum anywhere east of Manitoba. In the event Telus' use of Bell's network is to be considered, then its combined holdings with Bell must be factored into the comparison – making Bell/Telus the single largest holder of low-band spectrum. In either case, Telus has more than it requires to serve Eastern Canada.

21. Furthermore, Eastlink submits that proposals by Rogers¹⁵ and Telus¹⁶ for spectrum caps instead of set-asides should be disregarded. We reiterate that the national incumbents have more than enough low-band spectrum, as compared to their US-based counterparts, AT&T and Verizon, which serve 10 times the subscribers of Bell/Telus and Rogers using the same, or less, low-band spectrum. Table 1 compares low-band spectrum holdings in the biggest Canadian and US cities. We note that AT&T and Verizon were comfortable enough with their holdings that they did not participate actively (or at all, in the case of Verizon) in the 600 MHz

¹³ Telus comments, Paragraphs 53-57

¹⁴ Telus comments, Paragraph 100

¹⁵ Rogers comments, Paragraph 66

¹⁶ Telus comments, Paragraph 52

auction. Clearly, Canada’s national incumbents have sufficient low-band spectrum to serve their customers.

Table 1. Low-band Spectrum Holdings

US Top 5 Cities (by pop)	AT&T and Verizon - Average	Canada Top 5 Cities (by pop)	Rogers and Bell/Telus - Average	New Entrant - Average
New York	50 MHz	Toronto	53 MHz	10 MHz
Los Angeles	50 MHz	Montreal	53 MHz	10 MHz
Chicago	50 MHz	Calgary	53 MHz	10 MHz
Houston	50 MHz	Ottawa	53 MHz	10 MHz
Philadelphia	50 MHz	Edmonton	53 MHz	10 MHz

22. At the same time, the Canadian national incumbents hold far more spectrum than their regional competitors. To be clear, the imbalance made clear in Table 1 inhibits regional service providers’ ability to provide competitive quality of wireless service indoors and/or in rural areas, and/or to expand networks in rural areas where the additional sites required to build using only mid- or high-band spectrum make such builds economically impractical. A spectrum cap, as proposed by the national incumbents, would permanently entrench the disparity in low-band holdings as new entrants would be unlikely to acquire more than an additional 10 MHz under the auction. The resulting average spectrum held by the national incumbents would be more than 80 MHz – well over what their US counterparts require to serve much larger populations – while the new entrant average low-band spectrum holdings would be just 20 MHz. **It is clearly not sustainable for regional service providers to compete against the much larger national incumbents under the current disparity of low-band spectrum holdings or the much larger disparity that would result from an auction without a set-aside.**

23. As a result, we support the Department’s decision to set-aside spectrum for non-national incumbent wireless providers.

24. Finally, Eastlink submits that Rogers¹⁷ and Telus¹⁸ comments that national incumbents are more likely to use 600 MHz spectrum in rural areas than regional service providers, and Telus’ proposal that rural areas should not be subject to the set-aside¹⁹ should be disregarded completely.

¹⁷ Rogers comments, Paragraph 80

¹⁸ Telus comments, Paragraph 77

¹⁹ Telus comments, Paragraph 11, 70, 77

25. Eastlink provides better coverage throughout much of the rural Maritimes than Rogers though we have only been operating for four years, and we continue to expand – efforts that would be made significantly more feasible with sufficient low-band spectrum. We reiterate that Telus does not have any infrastructure in Eastern Canada. Telus’ own table,²⁰ clearly illustrates that Eastlink has deployed hundreds of 700 MHz sites throughout rural Eastern Canada, proving that we will make quick use of whatever 600 MHz spectrum we are able to obtain to build a competitive network that serves rural Canadians.
26. Under Telus’ set-aside proposal, key regions of Eastlink’s serving areas would not be subject to the set-aside – including some areas where we have already launched services and where we require additional low-band spectrum to expand our network. To be clear, we have launched 4G LTE VoLTE service in some of the Tier 4 areas that would be impacted by Telus’ proposal and we are working to expand our leading-edge network into the other impacted areas; our efforts would be made economically more practical with additional low-band spectrum. As noted above, Telus does not have any infrastructure in Atlantic Canada and northern Ontario. It would be entirely inappropriate for Telus to be permitted to foreclose on the spectrum on these areas – only to hand it over to Bell – preventing Eastlink from acquiring the low-band spectrum we require to continue expanding our network in these rural areas.

Q1B—ISED is seeking comments on its proposal to set aside 30 MHz of spectrum in the 600 MHz band for eligible entities and to have open bidding (no pro-competitive measures) on the remaining 40 MHz in the band.

27. Eastlink reiterates that while the incumbent national providers have an average of 53 MHz of low-band spectrum, non-national incumbents such as Eastlink, Freedom and Videotron have only 10 MHz of low-band spectrum. Setting aside 30 MHz for operating non-national wireless service providers would not close the gap, as the result would be – at best - national service providers with an average 73 MHz and regional providers with an average 40 MHz. This difference will continue to represent a measurable difference in speeds and wireless network performance (especially when paired with the national providers’ larger mid-band holdings).

²⁰ Telus comments, Table 2

28. As the Department's stated objective for this auction is to ensure regional wireless providers have an opportunity to "effectively compete" with the incumbents, Eastlink submits that the set aside spectrum could be 40 MHz, instead of just 30 MHz. Eastlink further submits that in no case should the set aside be smaller than 30 MHz, as any smaller set-aside would serve to entrench the current imbalance in low-band spectrum holdings making it difficult for regional service providers to compete sustainably.
29. We further note that the national incumbents did not provide any reasonable evidence that the set-aside should not be 40 MHz, which would still provide each national incumbent an additional 10 MHz each, bringing them well above what their US counterparts require to serve much larger populations. For example, Telus claimed that Eastlink's 700 MHz deployment was small²¹ but in our operating areas Eastlink typically has as many, or more, 700 MHz sites than any of the national incumbents. Rogers' only justification for a 20 MHz cap was that it would make it easier for national incumbents to divvy up the remaining 50 MHz more evenly.²² However, these arguments ignore the fact that the national incumbents already have more than enough low-band spectrum to serve their customers, as seen in comparing their holdings with those of the US-based incumbents.
30. In addition, we submit that the Commission should disregard Telus' proposal that the set aside only take effect when the prices climb above \$1.25/MHz/pop.²³ Canada is a much larger country geographically than the United States with a much smaller population. It is unrealistic to expect that regional service providers – some of which operate solely in rural areas – would be able to afford the "average pricing in the top 40 US markets." Telus' proposal would price set-aside eligible bidders out of the auction before the set aside was ever triggered. As a result, Telus' proposal would directly prevent the Department from meeting its policy objectives, as stated in the Consultation, and should be disregarded.
31. Eastlink submits that the Department should set-aside 40 MHz of 600 MHz spectrum for non-national incumbents under this auction in order to close the gap in low-band holdings between regional providers and national incumbents. Eastlink submits that the Department's proposed 30 MHz set-aside is the bare minimum required to ensure Canadians benefit from the network deployments and reduced prices enabled by regional service provider competitors, though

²¹ Telus comments, Paragraph 63

²² Rogers comments, Paragraphs 66-68

²³ Telus comments, Paragraph 60 and 106

even the 30 MHz set-aside would not eliminate the sizable disparity in low-band holdings between the incumbents and the new entrants.

32. Eastlink further submits that proposals put forward by Cogeco²⁴ and Xplornet²⁵ that the set-aside should be paired with a 20 MHz spectrum cap on set-aside eligible bidders would not serve Canadians' interest and should not be adopted. The result in many areas would be to leave 10 MHz of spectrum unallocated (or 20 MHz if the set-aside is increased to 40 MHz), as there would be no other set-aside eligible bidder to acquire the licence. In areas where there is more than one set-aside eligible bidder, the 5 + 5 MHz blocks ensure that all eligible bidders will have a reasonable opportunity to obtain set-aside spectrum via competitive bidding. There is no evidence that regional wireless service providers cannot compete against each other for spectrum protected from the national incumbents by competitive measures (in fact, Xplornet and CCI's results in the 2500 MHz auction indicate that new entrants are perfectly capable of competing against other set-aside eligible parties). Therefore, there is no basis upon which to adopt spectrum caps for the set-aside spectrum.

Q1C—ISED is seeking comments on its proposal to limit the eligibility criteria to bid on set aside spectrum to those registered with the CRTC as facilities-based-providers, that are not national incumbent service providers, and that are actively providing commercial telecommunication services to the general public in the licence area of interest, effective as of the date of application to participate in the 600 MHz auction.

33. Eastlink submits that the phrase "mobile wireless" is missing from the Department's proposed eligibility criteria. Specifically, Eastlink submits the definition of "set-aside-eligible bidders" should be "**...those registered with the CRTC as facilities-based providers that are not national incumbent service providers, and that are actively providing commercial mobile wireless telecommunication services to the general public in the licence area of interest, effective as of the date of application to participate in the 600 MHz auction.**"

[Addition underlined]

²⁴ Cogeco comments, Paragraphs 17, 27, 57

²⁵ Xplornet response to Q1b

34. We note that almost all parties to this Consultation agreed with the above noted change, including Bell,²⁶ Rogers,²⁷ Quebecor,²⁸ SaskTel,²⁹ TBayTel,³⁰ and Xplornet.³¹ We note that this group includes national incumbents, operating new entrants, regional providers, and smaller, more recent new entrants. All such parties noted that the change is necessary in order to ensure the definition satisfies the Department's stated policy objectives.
35. The Department stated, "Service providers that have launched wireless services in recent years could benefit from an opportunity to acquire access to additional spectrum to support network improvements to meet the wireless traffic demands of their growing subscribership."³² The Department further stated that "the ability to bid on the proposed set-aside spectrum should be limited to a particular sub-set of regional service providers that are best positioned to compete in the commercial mobile services market."³³ It would therefore be inappropriate and inconsistent with the Department's objectives not to limit the set-aside-eligible bidders to operating regional mobile wireless service providers that have already invested hundreds of millions of dollars in their networks, already have a "growing subscribership" to support, and have made proven commitments to deployment of mobile wireless services.
36. It is critical that set-aside-eligible bidders be already providing mobile wireless services in the areas where they apply to bid on set-aside spectrum because to do otherwise would encourage speculative bidding from service providers that have not entered the wireless market yet and may never do so, and/or may never invest meaningfully in the licence area. In the event such a speculative bidder acquired mobile wireless spectrum, the spectrum may lay unused for years while the regional service provider actually investing in the area and offering service would not be able to expand its network into rural areas, improve its in-building coverage in urban areas, or diversify its network technology. This would be entirely inconsistent with the Department's overarching policy objectives for this spectrum auction (e.g., to promote competition, and to encourage investment from operating new and

²⁶ Bell Comments, Paragraph 36

²⁷ Rogers Comments, Paragraph 93

²⁸ Quebecor comments, Paragraphs 47-48

²⁹ SaskTel Comments, Paragraphs 7-8, 29

³⁰ TBayTel, Paragraph 28

³¹ Xplornet, response to question Q1c

³² Consultation, Paragraph 27

³³ Consultation, Paragraph 29

established service providers³⁴) and with its stated objectives for the set-aside (e.g., to provide additional spectrum to mobile wireless service providers that are already offering service³⁵).

37. Eastlink submits that the Department's approach in the AWS-3 auction of requiring that set-aside-eligible bidders already be offering mobile wireless spectrum in the areas where they applied to bid was the correct approach as it ensured that the spectrum would be used to improve Canadians' services and to further competition. Operating regional mobile wireless providers are best positioned to make immediate and efficient use of 600 MHz spectrum, which is in Canadians' best economic and social interest. For this reason, we submit that the Department should disregard Shaw's proposal that an entity simply need to be providing wireless services "somewhere" in Canada and have commercial telecommunications operations in the area where it applies to bid on the set-aside spectrum.³⁶ Shaw's approach could result in the regional wireless service provider that is already serving the area and has already made significant mobile wireless network investments being denied access to needed 600 MHz spectrum while other entities that do not provide wireless service in the area obtain access to 600 MHz spectrum, which – depending on the amount acquired under the auction – may not be sufficient to build a wireless network in the area following the auction. Shaw's proposal would lead to stranded investments and spectrum laying fallow, and is contrary to the Department's objectives for the 600 MHz band and for its proposed set-aside, and, therefore, should be disregarded.

38. As the social and economic benefits of facilities-based competition using this 600 MHz spectrum will only be realized where operating mobile wireless providers are able to acquire the spectrum to facilitate deployment in rural areas and to improve coverage within their existing networks, and as Canadians will receive a fair return on the asset during the auction and via subsequent network investments and competition from operating mobile wireless providers, Eastlink submits that the definition of set-aside-eligible bidder should be clarified to be only those "that are actively providing commercial **mobile wireless** telecommunication services to the general public in the licence area of interest, effective as of the date of application to participate in the 600 MHz auction."

³⁴ Consultation, Paragraph 7

³⁵ Consultation, Paragraph 27

³⁶ Shaw comments, Paragraph 68, 72-74

Q3—ISED is seeking comments on:

a) the proposal to use generic licences; and

b) the proposal to categorize all blocks won by set-aside-eligible bidders as set-aside blocks

39. We note that the national incumbents raised concerns about “gaming” under the auction because of the set-asides.³⁷ We further note the Department’s *Response to a Clarification Request Regarding the Consultation on a Technical, Policy and Licensing Framework for Spectrum in the 600 MHz Band*, in which it stated that all bids by a set-aside-eligible bidder will be considered bids for the three set-aside blocks, even where such bids exceed the number of available set-aside blocks.³⁸

40. Eastlink submits that the incumbents have exaggerated the risk of regional service providers “gaming” as compared to national incumbents given that they themselves have previously taken actions similar to those they describe, including bidding nearly 10 times their final price paid, placing bids that served only to increase each other’s final prices, and bidding to prevent regional service providers from spectrum sharing. Nevertheless, Eastlink submits that our proposal to modify the proposed generic licences, paired with our proposed bidding rule (below), would address the national incumbents’ concerns while also serving to significantly simplify the price escalation and final price determination.

41. In addition, we submit that the Department’s clarification that all bids by a set-aside-eligible bidder would be considered bids on the set-aside product is reflective of the inadvertent and unnecessary confusion caused by the generic licence rules as proposed. For example, no rational bidder would ever place four bids on three products. There is no value in bidding four times for only three products, as the highest possible outcome would be winning three products. Clearly, if a set-aside-eligible bidder places four bids in its set-aside eligible areas, it intends to place three bids on the three blocks of set-aside spectrum and one bid on the four blocks of open-market spectrum. There is absolutely no reasonable rationale to interpret the bid any other way, and to do otherwise would artificially inflate the price of the set-aside spectrum, potentially pricing set-aside-eligible bidders out of the auction altogether, which

³⁷ Bell Paragraphs 21 and 33-34, Rogers Paragraph 48, 146-148, Telus Paragraph 39-41

³⁸ ISED, November 1, 2017, Paragraphs 4&5

would prevent the Department from meeting its policy objectives of promoting competition under this 600 MHz auction.

42. Eastlink submits that there is a simple way to address the incumbents' concerns while simplifying the price increment and final price determination processes for set-aside spectrum (and open-market spectrum). The Department should create two generic licences in each licence area – one set-aside generic licence and one open-market generic licence – and adopt a clear bidding rule for set-aside-eligible bidders, as detailed below.
43. As noted in our 2 October 2017 comments, we generally support the use of generic licences as a means of simplifying bidding during the clock rounds. However, the proposal to have a single generic licence in each area with two “products” is complicated and would create at least two contradictory ways of calculating the prices and discount of set-aside licences under the Consultation.³⁹ We further submit that a generic licence that contains two distinct “products” is not actually a generic licence at all, which is likely causing most of the unnecessary complexity. For example, under the Department’s proposal, there would be two distinct prices for a single generic licence – one for set-aside spectrum and one for open market spectrum⁴⁰ – during the clock rounds, which is unnecessarily complex for a generic licence. In addition, the proposed pricing approach to set-aside spectrum could result in prices for the set-aside licences climbing so high as to become unaffordable for set-aside-eligible bidders.
- 44. Eastlink submits that the auction and related winner and price determinations – under any of the three proposed models – would be far simpler if the Department established two generic licences in each licence area; one of four open market blocks and one generic licence of three set-aside blocks (under the current proposal, to be updated if the set-aside is expanded to 40 MHz).**
- 45. Under this proposal, it would not be necessary for the Department to predetermine which specific blocks were assigned to each category. The Department could simply state that there are seven blocks, three of which are contained in a set-aside generic licence and four of which are contained in an open market generic licence; the specific blocks to be assigned during the assignment phase.**

³⁹ Consultation, Annex C

⁴⁰ Consultation, Annex A

46. In order to ensure that set-aside-eligible bidders do not simply park points in the open-market generic licences in their eligible areas during the clock rounds, the Department could establish a bidding rule that set-aside-eligible bidders are only able to bid on open market spectrum in licence areas where they are set-aside-eligible, when:

- (i) The price of the open-market generic licence is lower than the price of the set-aside generic licence, or**
- (ii) The set-aside eligible bidder has bid on three set-aside blocks under the set-aside generic licence but would like to obtain additional spectrum in its operating area (i.e., if it wants to bid on four or five blocks within its set-aside eligible licence area, it could bid on two open-market licences once it has bid on three set-aside blocks).**

47. Under Eastlink's generic licences proposal, the practical rules are the same as under the Department's proposed framework. For example, set-aside-eligible bidders can bid on up to seven licences but their first three bids will be on set-aside spectrum. National incumbent bidders cannot bid on set-aside spectrum. And, regional service providers that are not set-aside-eligible in other areas can bid on up to four blocks (or three under our proposed change to the set-asides) of open market spectrum in those areas where they are ineligible.

48. The key difference is that the rules about winner determination, price determination, and discounts become much simpler to predict and become much more reliable for set-aside-eligible bidders (and for the open market bidders, for that matter). In addition, to address the national incumbents' concerns, set-aside eligible bidders would be prevented from bidding on open-market licences in their set-aside eligible areas solely to drive up open-market prices, as they would only be eligible to bid on open-market licences when they were less expensive or where they had already bid on the maximum available set-aside licences. Furthermore, the scenario described in the Department's Clarification Responses where set-aside bidders would be assumed to irrationally place four bids on three available blocks would be avoided, so that set-aside-eligible bidders' bids would be more reasonably interpreted and applied, again, simplifying final winner and price determination processes.

49. Eastlink's proposals would also remove the need to tie the set-aside pricing and demand to the open-market demand, from which it should be entirely separate. Eastlink submits that, as

there are actually two distinct types of licence in each licence area, it is logical and necessary to have two generic licences in each licence area; one set-aside generic licence containing set-aside blocks and one open-market generic licence containing open-market blocks.

50. We submit our proposed amendment to the rules would simplify the price determination process for the Department, would ensure that set-aside spectrum is not inadvertently increased in price by open-market activity so that set-aside eligible bidders are priced out of the set-aside, and would address the national incumbents' concerns. As a result, we submit that the Department should have two generic licences – one set-aside and one open-market – and should adopt the set-aside eligible bidding rules set out in Paragraphs 44-46 above.

Q5—ISED is seeking comments on:

a) The advantages and disadvantages of the three auction formats being considered for the 600 MHz auction: i. Combinatorial clock auction, using the WARP-based activity rule (annex A); ii. Combinatorial clock auction, using the GARP-based activity rule (annex B); iii. Enhanced combinatorial clock auction (annex C), and
b) Where there is a preference for one of the options, respondents are asked to provide a rationale and explanation.

51. Eastlink reiterates our comments under previous auctions that the CCA format generally discriminates against smaller, regional service providers as the package bidding and winner determination features inherently favour larger national service providers. We submit that the SMRA format is more appropriate for Canada where regional service providers are critical to sustainable competition, particularly in rural areas, and where such providers may value regional licences more than large national service providers. CCA allows large national providers to include regional licences they may not need or particularly value in their larger bids at a fraction of the cost that a regional provider would pay for the licence, due to the CCA's predisposition to favour larger packages rather than maximizing the value for each licence included in the package. In fact, the CCA format encourages national bidders to do so in order to increase the size of their package to ensure they secure the licences they actually value.

52. Eastlink reiterates that the Department, insofar as it determines to use the CCA format, should maintain the WARP format used in the 700 MHz and 2500 MHz auctions. We note that several parties to this Consultation favoured the WARP format due to the untested nature of the ECCA format, and the likelihood that it would deter bidding up to each participants' true value due to the risk that the ECCA format would artificially inflate final prices.⁴¹
53. Eastlink submits that this 600 MHz auction is critical to competition and rural deployment in Canada, and that the Department should not adopt experimental auction models that offer only theoretical benefits under very specific and unrealistic bidding activity models. As a result, Eastlink maintains that the Department should adopt the WARP format for this auction.

Q7—ISED is seeking comments on the proposed methodology for incrementing prices during the clock rounds, as described in annex A.

54. Eastlink generally supports the proposed approach to price increments as set out in Paragraph 84 of the Consultation, but we reiterate that the approach set out in Appendix A is unnecessarily complicated and could result in the price for set-aside licences being artificially inflated. We reiterate that the Department's policy objectives for the set-aside under this auction risk being completely undermined if the price for those licences can be inadvertently increased to the point they become unaffordable due to bidding activity on the open market generic licences.
55. As noted above, Eastlink submits that the simplest approach would be to create two generic licences in each licence area; one set-aside generic licence with three blocks and one open-market generic licence with four blocks (under the current rules, to be adjusted if the set-aside is increased to 40 MHz). The price for each generic licence could then be increased in price based on demand for that particular generic licence and there would be no risk of activity in the open market generic licence inadvertently increasing the value of the set-aside generic licence to the point that no regional service provider could afford it.

⁴¹ Bell Paragraphs 49-63, Rogers Paragraphs 18-19, 133-134, Telus Paragraphs 87, 91-95, SaskTel Paragraphs 10-15, 46-50

Q8—ISED is seeking comments on the proposed Affiliated and Associated Entities rules that would apply to bidders in the 600 MHz auction.

56. Eastlink submits that Bell and Telus should be required to bid as a single Associated Entity under these auction rules. Eastlink supports carriers' ability to secure commercially reasonable agreements in the secondary spectrum markets. However, we note that Bell and Telus' unrestricted ability to acquire spectrum up to allowable individual caps and then invariably combine assets in the post-auction market is an obvious circumvention of the Department's Associated and Affiliated Entities rules under this auction and all of the auctions over the past 10 years, and has created a significant imbalance in spectrum holdings by one network provider – Bell/Telus – as compared to all other network providers. Eastlink submits that this result ultimately undermines the Department's objectives of sustainable facilities-based competition in the retail wireless market. Eastlink notes that Telus already indicated its intention to subordinate its 600 MHz spectrum licences to Bell Mobility following the 600 MHz auction,⁴² meaning that the post-auction spectrum outlook will very likely follow the model Bell and Telus have established in each of the previous auctions over the past 10 years.

Q11—ISED is seeking comments on the proposals on the condition of licence related to transferability and divisibility, and the proposed wording above.

57. Eastlink reiterates that the proposed generic licence approach is unnecessarily complicated with respect to the set-aside, leading to at least two contradictory ways of calculating set-aside licence prices and discounts, and creating rules whereby set-aside eligible bidders would be unfairly punished simply for being regional new entrants.

58. As a result, Eastlink submits that the Department should create two generic licences in each licence area; one set-aside generic licence with three blocks and one open-market generic licence with four blocks (under the proposed rules, to be updated if the set-aside is increased to 40 MHz). This would dramatically simplify the process of determining set-aside licence prices and discounts. Eastlink's proposed approach would also ensure that prices for set-aside spectrum are not inadvertently increased by activity in the open market licence to the point that regional new entrants cannot afford the set aside spectrum.

⁴² Telus comments, Paragraph 100

59. At the same time, it would clarify the transfer and divisibility rules; only spectrum licences won in the set-aside generic licence would be subject to the five-year moratorium. In the event a regional service provider is somehow able to outbid a national incumbent for an open-market licence, it would be inappropriate to subject that winning bidder to additional rules and restrictions as compared to the other open-market licence winners simply because they are a regional provider. Instead, any open-market licence won should be exempt from the five-year moratorium regardless of the eligibility status of the winning bidder.

Q12—ISED is seeking comments on the proposed deployment condition of licence as stated above.

60. Eastlink generally supports the proposed deployment condition of licence. Eastlink submits that Telus' proposals that would see the Department take back spectrum licences – or subdivide those licences and take back a portion – if the deployment targets are not met⁴³ are unnecessary. Similarly, Rogers' proposal that the Department renew licences in partial licence areas where the deployment requirements have been met but not on others, and not smaller than Tier 3 levels,⁴⁴ are unnecessary. The Department retains the right to take back or renew spectrum, or impose other requirements, under the *Act* and there is no reason why, for the 600 MHz band only, the Department would have to limit its options for addressing any party that may not have met all the deployment conditions of licence. As Rogers and Telus didn't offer any justification for their proposals, the Department should disregard the related comments.

Q13—ISED is seeking comments on proposed conditions of licence outlined in annex G that would apply to licences issued through the proposed auction process for spectrum in the 600 MHz band.

61. Eastlink notes that Bell and Telus submitted comments requesting changes to the wholesale roaming conditions of licence. As with all the other consultations into which Bell and Telus have recently shoehorned their opposition to the Department's clear and still very necessary mandatory roaming conditions of licence, neither Bell nor Telus provided any evidence

⁴³ Telus Paragraph 119-120

⁴⁴ Rogers, Paragraph 167 and 169

whatsoever that the roaming conditions of licence should be removed or modified. As a result, the Department should disregard Bell and Telus' requests.

62. Bell suggested that, as the CRTC has regulated rates, the Department should remove Mandatory Roaming requirements from the Conditions of Licence altogether.⁴⁵ Telus suggested that roaming on 5G networks be limited only to out-of-territory licence areas and that all roaming be limited to out-of-footprint areas, also requesting an overall review of the framework.⁴⁶ Eastlink strongly opposes such proposals.
63. There is no conflict between the CRTC roaming framework and the Department's conditions of licence. The Department stated in its revised Mandatory Roaming framework, "The CRTC has the authority to set rates and conditions for the provision of telecommunications services within the jurisdiction of the *Telecommunications Act*."⁴⁷ The Department did not state anywhere in that decision that, in the event the CRTC exercised such a right that it would void the Condition of Licence or otherwise diminish the Department's oversight or authority. Clearly, the Department envisioned a regulatory environment where the Department could continue to mandate wholesale roaming be provided as a Condition of Licence, whether or not the CRTC decided to regulate wholesale rates.
64. Furthermore, the CRTC's framework does not require that the Department relinquish any oversight or authority on wholesale roaming. The CRTC's framework is established in keeping with the Department's Mandatory Roaming framework, in that it sets the rates and terms for a service mandated by the Department. The incumbents made arguments during the CRTC's wholesale roaming proceeding along the lines of Bell and Telus' comments under this Consultation, but the Commission did not find there was a conflict between the two regimes. Eastlink submits that Bell and Telus have not provided any evidence whatsoever in their comments to this Consultation that there is a conflict or any jurisdictional problem.
65. In addition, Telus already attempted to have the CRTC carve out specific technologies and/or specific areas of mandated roaming, as it has requested the Department do in the past. In all cases, the Department and the CRTC have found that roaming may occasionally occur for legitimate reasons in-footprint, and that Canadians' interests are best served when they can

⁴⁵ Bell comments, Paragraphs 79-86

⁴⁶ Telus comments, Paragraphs 127-139

⁴⁷ Revised Frameworks for Mandatory Roaming and Tower and Site Sharing, DGSO-001-13, Decision C-3

obtain the same quality of service from their wireless provider whether inside or outside the Department's licence area boundaries (which, in any case, consumers are not familiar with and wouldn't reasonably be able to interpret).

66. As these issues have been reviewed several times by both the Department and the CRTC, Eastlink submits there is no basis upon which to modify the mandatory roaming framework and that the Department should disregard Bell and Telus' comments. We further note that Rogers continues to support the mandatory roaming framework as it is today.⁴⁸

Conclusion

67. The Department's set aside in the 2008 auction allowed Eastlink and other new entrants to acquire the spectrum necessary to build advanced, competitive wireless networks, including in underserved and unserved areas, and to offer innovative and consumer-friendly service packages. Eastlink has used this spectrum to build one of the fastest and most reliable network in our operating areas, and to launch innovative plans and consumer services, including separating the cost of the device from the plan and our unique data fee management tools. Eastlink already serves many rural communities as an Internet and video service provider, and now as a wireless service provider, including some smaller Tier 4 areas. We have several new market launches, in primarily rural areas, planned for this year and next, with additional network expansions in planning for the coming years, but we require reasonable access to low-band spectrum if we are to continue expanding into rural Canada.

68. We share the Department's intention of allowing rural Canadians to benefit from advanced wireless services, of encouraging continued network investment from operating new and established mobile wireless service providers, and of supporting sustainable facilities-based competition. We generally support the Department's proposed auction and policy framework as set out in the Consultation. However, we submit that the Department must ensure that the definition of "set-aside-eligible" meets its objectives for the set-aside, and that the Department should ensure that its use of generic licences does not inadvertently impact set-aside pricing such that operating regional service providers are unable to acquire much needed low-band spectrum. We submit that the few minor adjustments suggested herein – particularly inserting "mobile wireless" into the definition of "set-aside-eligible" and the creation of two generic

⁴⁸ Rogers comments, Paragraph 181

licences in each licence area for set-aside and open-market spectrum – will help ensure the Department's policy and framework objectives are met, which in turn will maximize the social and economic benefits of this 600 MHz spectrum band for all Canadians, including those in rural areas.

****END OF DOCUMENT****