

## **Canada Gazette Notice SLPB-005-17**

# **Consultation on a Technical, Policy and Licensing Framework for Spectrum in the 600 MHz Band**

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**Reply Comments of**

The logo for tbaytel, featuring the lowercase letters 'tbaytel' in a blue, sans-serif font.

**03 November 2017**



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## Executive Summary

1. Tbaytel is pleased to offer the following reply comments in connection with Canada Gazette Notice SLPB-005-17, *Consultation on a Technical, Policy and Licensing Framework for Spectrum in the 600 MHz Band* (“the Consultation”).
2. It remains the position of Tbaytel that supporting the long term viability of regional carriers is vital to competition of the national wireless market.
3. This position has been supported by the Government, Competition Bureau, regional carriers and other interested parties in the form of support for a “fourth carrier”. The benefits of this approach are no longer theoretical. The impact can be seen in the marketplace.
4. Tbaytel believes that regional carriers are integral to the achievement of the policy objectives that Innovation, Science and Economic Development Canada (“the Department” or “ISED”) has put forward. Specifically:
  - a. To foster innovation and investment
  - b. To support sustained competition, so that consumers and businesses benefit from greater choice and
  - c. To facilitate deployment and timely availability of services across the country, including rural areas
5. The Competition Bureau also acknowledged that the national incumbents hold market power.<sup>1</sup> This market power has been maintained through mergers and acquisitions since the introduction of new entrants with the 2008 AWS-1 auction. This is significant and must be considered in the development of the auction.
6. Tbaytel commends the Department for attempting to strengthen the auction format and rules to provide a fair platform for all those contending for spectrum.
7. While the proposed changes provide a marginal improvement to previous auction formats, there remains issues unique to the small regional carrier that have yet to be addressed. These issues include:
  - a. Pro-competitive rules that need to be strengthened.

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<sup>1</sup> Competition Bureau, Intervention in Wholesale mobile wireless roaming in Canada—Unjust discrimination/undue preference, Telecom Notice of Consultation CRTC 2013-685, 29 January 2014, paragraph 9.

- b. Licence boundaries that are not supportive of regional providers.
  - c. Aggressive deployment requirements that do not consider the reality of the market and technology ecosystem.
  - d. High opening bid prices that may preclude participation by smaller players.
8. Addressing these points will prevent further concentration of spectrum and market power by the national incumbents by allowing the various regional providers to succeed by competing on a level playing field.

### **Pro-competitive Measures**

9. It has become evident that encouragement of regional carriers has significant impact on the market place which benefits Canadian consumers.<sup>2</sup> Increased consumer choice and lower prices can be correlated to the use of pro-competitive measures in previous spectrum auctions.
10. Tbaytel would like to highlight the point that strong regional providers have been the most effective conduit for achieving the fourth carrier option. Where mobile-only new entrants have struggled in the face of an anticompetitive marketplace only to be acquired, regional providers have competed.
11. While fostering new entrants is an admirable goal, it has provided only temporary relief to the consumer until acquisitions result in spectrum being stock piled by the incumbents.
12. Tbaytel recommends two changes to better support regional providers.
13. First, Tbaytel put forth that the entity able to most efficiently deploy spectrum to the consumer are those defined in the AWS-3 pro-competitive measures. This measure has the added benefit of deterring speculation. As such, qualified bidders would be required to be operating a terrestrial wireless network in the Tier 2 service area.
14. This concept or similar has been supported by Xplornet, SaskTel and Eastlink.
15. However, this is where new entrants and regional providers diverge. New entrants stumbled because of a lack of infrastructure and an underestimation of the challenges of building and operating of a wireless network. Whereas, regional providers

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<sup>2</sup> Competition Bureau statement regarding Bell's acquisition of MTS (2017). Retrieved from <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04200.html>

succeeded because the underlying infrastructure was already in place. This crucial difference created efficiencies that translate to customer benefits.

16. Second, while the Department's support of regional providers has improved the overall marketplace, Tbaytel finds the current definition to lack recognition of the disparity of means.
17. The establishment of a set-aside is recognizing that "incumbent entities likely have the means and ability to prevent other service providers from acquiring spectrum licences in an open auction"<sup>3</sup>. Tbaytel points out that this is also true within the set-aside using the current definition of regional provider.
18. TELUS notes that Videotron, not even the biggest "regional", outbid Bell in the unrestricted spectrum.<sup>4</sup> Again demonstrating that the larger regionals have the means to compete in the auction unassisted by preferential rules.
19. The majority of respondents have pointed out that the set-aside is a means tested benefit. A threshold that is based on wireless market share fails to recognize the size and resources of the underlying entity.
20. TELUS<sup>5</sup> and Rogers<sup>6</sup> argue that a set-aside leaves only 40MHz of spectrum for 90% of the customers. These statements serve only to highlight why the set-aside is needed.
21. Incumbents argue against pro-competitive measures stating that market forces are a better driver of innovation. Tbaytel contends that it is competition that fosters innovation and that reasonable set-asides are a cornerstone to encouraging competition.
22. Tbaytel firmly supports the strengthening of the auction's pro-competitive measures via a means tested set-aside rule.

## License Areas

23. Tbaytel agrees with Ecotel that "the proposed tier-2 license areas will only allow existing carriers to increase their current spectrum portfolio and will prevent smaller

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<sup>3</sup> Consultation, para 22

<sup>4</sup> TELUS, comments on SLPB-005-17, 2 October 2017, para. 42

<sup>5</sup> TELUS, comments on SLPB-005-17, 2 October 2017, para. 8

<sup>6</sup> Rogers, comments on SLPB-005-17, 2 October 2017, para. E5

carriers, whose business plans specifically target rural and remote areas, to bid in the upcoming spectrum auctions.”<sup>7</sup>

24. Tbaytel also agrees with Ecotel that the Tier 2 license areas do not align with the business plans of non-national carriers. This misalignment creates for inefficiencies in the allocation of spectrum.

25. Cogeco points out the need to balance the reduction of interference coordination against the following policy objective.

“To maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource.”

26. Tbaytel believes that this tradeoff should be weighted toward the policy objective and not the need for reduced interference coordination. Unlike 700MHz, the products in 600MHz will be uniformly interchangeable. This means that the allocation stage of the auction will likely result in most carriers having contiguous spectrum from licence area to licence area.

27. Reducing the size of the licence areas would align with the desire to support regional carriers and serve rural low density areas without sacrificing operational efficiency.

28. In addition to the above, ITPA, SSi, Eastlink, and others have also noted that the size of the licence areas prohibit effective participation of small regional carriers.

29. Tbaytel also understands that there are some benefits to using a Tier 2 Service Area. However, Tbaytel strongly encourages the Department to consider the division of Tier 2-09 Northern Ontario into two smaller areas that align with natural market boundaries.

### **Auction Format**

30. In the past, the structure of the Combinatorial Clock Auction (“CCA”) auction has been heavily criticized for discriminating against smaller and regional providers.

31. Tbaytel agrees with Cogeco that the Enhanced Combinatorial Clock Auction (“ECCA”) format has a number of features that are desirable to the regional carrier including the

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<sup>7</sup> Ecotel, comments on SLPB-005-17, 2 October 2017, para. 10

discount estimate, reduction to “strategic bidding” and increased certainty around the final clock package.<sup>8</sup>

32. In general, ECCA is also supported by other regional carriers such as Xplornet, Shaw and Quebecor.

### **Deployment Requirements**

33. Tbaytel supports the concept of deployment targets but finds the currently proposed deployment requirements burdensome considering the size of the proposed licence areas.
34. Currently, the deployment targets are developed with the understanding that the more remote parts of the licence area can be difficult to reach. As such, the deployment targets in most licence areas can be achieved by overlaying the urban centers.
35. If the carrier cannot reach all of the urban centers in the extremely large Tier 2 licence area, the deployment targets become very difficult to achieve. This makes the deployment targets disproportionately burdensome to the small regional carriers.
36. The issue of deployment targets is alleviated when the licence areas are better aligned to natural market boundaries.

### **Opening Bids**

37. Tbaytel must reinforce its position that the opening bid for Tier 2-09 Northern Ontario is too high. Even though \$0.36/MHz/population is the second lowest rate, this is a significant increase from the other auctions (AWS-3, 700 MHz, AWS-1, and BRS).
38. Tbaytel is in agreement with Quebecor<sup>9</sup> that basing the opening bids on the 700MHz auction results is problematic. The 700MHz auction was a different product. While it is the only other low band spectrum, the bands were not generic and interchangeable like 2500MHz and 600MHz. There were fewer desirable blocks and each had a very different value based on the device ecosystem, US carrier alignment and the possibility of acquiring the adjoining A block. The supply and demand of 700MHz are not comparable to 600MHz and as such should not be the basis for calculating opening bids.

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<sup>8</sup> Cogeco, comments on SLPB-005-17, 2 October 2017, para. 104

<sup>9</sup> Quebecor, comments on SLPB-005-17, 2 October 2017, para. 100

39. In addition, overly aggressive opening bid prices has the side effect of prohibiting smaller regional carriers from participating in the auction as noted by SSi.<sup>10</sup>
40. The Department has stated in the policy objective section of the consultation that this is an “opportunity to encourage investment and improve services provided”. However, the high opening bid price shifts capital away from infrastructure investment and towards the purchase of spectrum.
41. Though the population density of Tier 2-09, Northern Ontario is similar to those in group 4, there are a number of ways to make the opening bid more reasonable.
42. Tbaytel recommends reconsideration of the licence areas to something that aligns more closely with support of regional carriers and their natural market boundaries.

## Conclusion

43. After considerable consolidation of the wireless market in recent years, the choices made by the Department become crucial to the future of the Canadian wireless market.
44. In many regions, it would be in the interest of the consumer to support regional providers that are uniquely positioned to readily deploy 600MHz and compete as the fourth carrier option.
45. It is the position of Tbaytel that the Department can best support the progress of Canada’s regional providers by:
  - a. Strengthening the pro-competitive measures by making the threshold to bid means tested. Combined with the use of the AWS-3 rule, this will create the most efficient allocation of spectrum to those who are readily able to deploy it.
  - b. Re-evaluating the implications of the Tier 2 licence area on a case by case basis. The selection of appropriate licence areas will have significant impact on the regionals and little impact on the nationals. Specifically, Tbaytel recommends dividing Tier 2-09 Northern Ontario to align with natural market boundaries.
46. Tbaytel believes that the suggestions outlined above will remove the remaining barriers to a more effective auction outcome and sustainable competition.

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<sup>10</sup> SSi, comments on SLPB-005-17, 2 October 2017, para. 26