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**Reply Comments Re: Consultation on a Policy and Technical
Framework for the 700 MHz Band and Aspects Related to Commercial
Mobile Spectrum SMSE-018-10**

Dear Sir/Madam:

Cogeco Cable Inc. ("Cogeco") is pleased to submit the attached reply comments in response to Canada Gazette Notice, Part 1, SMSE-018-10.

We thank you for the opportunity to provide comments and remain available to answer any questions you may have regarding our submission.

Yours very truly,
Cogeco Cable Inc.

A handwritten signature in blue ink, appearing to read "A. Pay", with a horizontal line underneath.

Vice-President, Corporate Affairs

YM/lde
encl.

Canada Gazette Notice No. SMSE-018-10

***Consultation on a Policy and Technical Framework for
the 700 MHz Band and Aspects Related to Commercial
Mobile Spectrum***

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**Reply Comments
of
Cogeco Cable Inc.**

6 April 2011

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1 Introduction

1. As the second largest cable system operator respectively in the Provinces of Ontario and Québec, Cogeco Cable Inc. (“Cogeco”), a cable telecommunications company, owns and operates wireline broadband telecommunications facilities and provides a wide range of Internet, voice, data, video and related services to both residential and business customers.
2. Cogeco has approximately 2,300 full time equivalent employees in Canada, providing valuable jobs in both Ontario and Québec in the key area of information and communications technologies, and its activities contribute directly and significantly to Canada’s digital economy.
3. Cogeco’s subsidiary Cogeco Data Services provides to its commercial customers in the Greater Toronto Area data networking, e-business applications, video conferencing, hosting services, Ethernet, private line, VOIP, HSI access, data storage, data security, co-location services and other advanced communications solutions.
4. Cogeco reiterates that it does not hold a market share in any of the relevant markets and services which would allow it to exercise any market power.
5. Most significantly, Cogeco currently has no spectrum holdings relevant to the provision of consumer communications services.
6. With this context, Cogeco is pleased to provide the following reply comments in response to Canada Gazette Notice SMSE-018-10 *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*. Failure by Cogeco to address any assertions or arguments put forward by other parties should not be construed by the Department as acceptance or agreement on the part of Cogeco.

2 Reply Comments

7. Cogeco will provide specific reply comments related to several of the questions and/or issues posed by Industry Canada in the Gazette Notice. Cogeco has reproduced the exact wording of each question as it appears in the Gazette Notice in order to facilitate the analysis of its comments in relation to those filed by other parties.

2.1 Need of Additional Mobile Spectrum

Gazette Notice Section 4-1: What is the general need for additional commercial mobile spectrum at this time and what do you anticipate the future needs to be?

8. Virtually all parties agree with Cogeco's initial comments that there is a general need for additional Mobile Spectrum in Canada, driven largely by greater adoption rates of mobile broadband devices such as smartphones, USB data sticks and tablet computers.

2.1.1 Increased Mobile Data Usage

9. A number of commentators noted the significant increase in mobile data consumption by Canadian wireless customers, due in large part to the greater adoption of smartphones and tablet computers. For example, Bell Mobility noted in its comments¹,

“Deloitte Canada released its *Technology, Media & Telecommunications (TMT) Predictions* identifying the ten most significant developments that would impact on Canadian businesses in 2011. The number one development, identified by Deloitte, was that in 2011 Canadians would purchase more smartphones and tablets than [desktop] personal computers”.

¹ Comments of Bell Mobility Inc., February 28, 2011, *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, at Paragraph 17.

10. Bell and Telus also noted the rapid increase in the amount of data being consumed by its own mobile customers. Bell stated that, between 2008 and 2010, the average data usage for its smartphone users had climbed from 15 Mbs per month, to over 300 Mbs per month, an increase of 1900%.² Similarly, Telus stated that total mobile data usage by its customers grew by 449% during the same period.³ Furthermore, both carriers state that this data usage will only increase in the short term, as smartphone adoption rates increase in Canada, and Canadians migrate to more data-intensive devices, such as Tablet computers. Rogers went on further, citing statistics indicating that mobile data traffic is expected to grow by 95% between 2010 and 2015 on a compounded annual basis, driven by the introduction, and adoption by consumers, of smartphones, tablets and other devices, as well as the consumption by consumers of higher bandwidth applications, such as mobile video.⁴ Finally, with all three incumbent wireless carriers now offering services over a HSPA+ network, as well as new entrant wireless carriers providing services over similarly advanced networks, the demand for data-intensive applications and services will likely increase rapidly.

2.1.2 More Spectrum Required

11. Cogeco notes that many other parties⁵ have acknowledged the initiative in the United States to make available an additional 500 MHz of spectrum. Rogers stated in its comments that Industry Canada had engaged a third party to conduct research into Canada's spectrum needs, including mobile spectrum, for the next five years.⁶ Cogeco is encouraged by this effort on the part of Industry Canada, and further,

² Ibid, para. E7.

³ Comments of Telus Communications Inc., February 28, 2011, *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, para. 79.

⁴ Comments of Rogers Communications Inc., February 28, 2011, *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, para. 22.

⁵ For example, Bell Mobility at paragraph 24, Rogers at paragraph 24, TELUS at paragraph 82, Mobilicity at paragraph 45.

⁶ Ibid, para. 23.

endorses a program that would see Canada maintain parity with the US in allocating the majority of new spectrum for mobile broadband applications and accelerating the release of spectrum corresponding to the plans of our trading partners.

12. Canada must ensure that our citizens have access to the latest devices and applications; to provide opportunities for Canadian innovators to develop products and services that can be deployed in global markets; and, to ensure the interoperability of devices and services when visitors to Canada bring their devices into our country.

2.2 Tier Sizes

Gazette Notice Section 5-12 - The Department seeks comments on whether the auction of 700 MHz commercial spectrum should be based on uniform tier sizes across all spectrum blocks, or a mixture of tier sizes.

Gazette Notice Section 5-13 – Based on your answer above, what tier size(s) should be adopted?

Provide supporting arguments for your responses to the above questions.

13. Cogeco submitted in its comments that the 700 MHz commercial spectrum auction should be based on a tier size scheme which allows the maximum flexibility for regional players to bid on spectrum that would be used to serve customers in smaller, geographic regions outside of the major metropolitan centres.

2.2.1 High Cost of Spectrum

14. As Cogeco stated in its comments, it became clear during the last spectrum auction for Advanced Wireless Services that the final cost of spectrum for some of the smaller players was exorbitant, forcing some of those players to exit the auction altogether. We also noted that the overall auction result was considerably higher than predicted, diverting capital away from the construction of networks and putting to market advanced wireless services in favour of paying for the underlying spectrum asset. This conclusion was validated by the comments of a number of parties to this process.

15. For example, SaskTel stated:

“The goal of improving rural access should be placed well above those of generating new one time revenues for the

Federal government or promoting the expansion of new cellular service providers, who are unlikely to enter the rural environment”.⁷

16. Barrett Xplore observed:

“The historic licensing of spectrum blocks and the geographic tiers adopted for these licensing processes have not made it feasible for a new entrant to acquire spectrum to serve rural areas only. Typically, the service areas are dominated by the urban population, as they are far more numerous than rural Canadians”.⁸

2.2.2 Necessity for Smaller Tier Sizes

17. Given the outcome of the last spectrum auction, and in view of the completely rational focus on major urban markets by national players, Cogeco submits that carving out smaller areas from the most contentious urban markets would be in the interests of consumers that have traditionally been overlooked. The 700 MHz band must be made available in a manner that encourages regional players and industry participants that focus on secondary and rural markets, allowing them to afford the cost of acquiring spectrum with sufficient capital margin to deploy a network and exploit the spectrum resource in a timely basis.

18. Cogeco therefore submits that the license tier size regime for the 700 MHz spectrum auction be altered to allow for this flexibility for regional players. This could mean using Industry Canada’s Tier 4 license areas, but amending them to provide a carve-out of some of the larger urban areas (such as Toronto) to permit bidders to focus on regional centres (such as Hamilton). As Barrett Xplore stated:

“Adopting different tier sizes for different tier blocks will increase bidders’ opportunity to acquire the geographic coverage of spectrum that suits their business plans. By providing choice in geographic coverage the Department is

⁷ Comments of SaskTel, February 28, 2011, *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, para. 3.

⁸ Comments of Barrett Xplore Inc., February 28, 2011, *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, para. 7.

more likely to achieve an economically efficient outcome, whereby spectrum is allocated most efficiently to the bidders that will put it to the best economic use”.⁹

2.2.3 Ensuring Entry for New, Regional Players

19. Cogeco identified an alternative for Industry Canada to ensure that it imposed conditions of license on larger spectrum holders, regardless of the size of the license area, which would permit smaller players to resell, purchase, or operate on a long term basis, spectrum in smaller geographic areas.
20. The inability of a party to utilize all the spectrum resources they have acquired is a phenomenon that can be observed among all carriers, large and small. Rogers observed “Despite Rogers’ size and resources, Rogers simply can not deploy in every location.”¹⁰ If Canada’s largest mobile services provider has recognized such limitations, then it can be concluded that there will be under utilized spectrum in the hands of all licensees.
21. Barrett Xplore commented on a possible modified RP-19 to encourage more complete deployment within a license area.¹¹ The regime described by Barrett Xplore could provide incentives for licensees to find partners who can assist in a more complete roll-out of service across the geography. This would serve to assist Cogeco’s objective of seeking the ability to purchase or operate - on a long term basis - spectrum in smaller geographic areas.
22. Cogeco reiterates that license conditions for spectrum awarded in the 700 MHz commercial spectrum auction should, at a minimum, be the same as those imposed on holders of Advanced Wireless Spectrum.

⁹ Comments of Barrett Xplore Inc., February 28, 2011, *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, para. 54.

¹⁰ Comments of Rogers Communications Partnership, February 28, 2011, *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, para. 261.

¹¹ Comments of Barrett Xplore Inc., February 28, 2011, *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, para. 122.

2.3 State of Competition

Gazette Notice Section 7-1. The Department seeks comments on the current state of competition and its anticipated evolution, including the impact on consumers in the Canadian wireless services market:

(a) in general;

(b) in terms of its contributions and interaction to the broader Canadian telecommunications service market;

(c) in comparison with the wireless markets of other jurisdictions.

Gazette Notice Section 7-2. Provide views, and any supporting evidence, on the impacts of government measures adopted in the AWS auctions, including the impacts on consumers and on the state of competition. In particular, what has been the impact, if any, of such measures on industry concentration, barriers to entry or expansion of services, and the availability of new or improved service offerings and pricing plans?

Gazette Notice Section 7-3. In light of the current conditions in the Canadian wireless service market(s), is there a need for specific measures in the 700 MHz and/or 2500 MHz auction to increase or sustain competition?

Gazette Notice Section 7-4. The Government of Canada has undertaken a consultation on potential changes to the foreign investment restrictions that apply to the telecommunications sector. How would the adoption of any of these proposed changes impact your responses to the questions above?

Provide supporting evidence and rationale for all responses.

23. Cogeco submitted in its comments that, since the AWS spectrum auction, there has been a marked improvement in the competitive landscape for wireless services in Canada. There are now six wireless networks serving the markets of Toronto, Calgary, Edmonton and Vancouver and five serving the market of Montreal. According to media reports and announcements to investors, additional regional networks in Western Canada and Atlantic Canada are expected to begin offering services to the public in the next year.

2.3.1 Effective Measures to Stimulate Competitive Entry

24. While this level of competitive entry is impressive, Cogeco submits that it is leading to an unbalanced approach to the deployment of new networks and, by extension, mobile broadband. New entrants from the AWS spectrum auction have not yet expanded outside of core urban centres. Bell Canada highlighted this in its comments, quoting¹² Mobilicity's Dave Dobbin saying "We're not pretending to be a national network." Cogeco submits that, absent clear incentives to invest in secondary and rural markets, it is clear that most new entrants will focus on the larger markets, as one would expect. Cogeco has provided its perspectives on this in the section above, dealing with Tier Sizes.
25. As Globalive observed in its comments, the measures set out by Industry Canada for mandatory roaming and site sharing have only partially assisted to overcome competitive barriers to entry.

"The mandatory roaming condition of license did require that the domestic roaming partner provide roaming services on commercially reasonable terms, but WIND's experience was that the arbitration process was impractical as a means of enforcing that requirement."¹³

...

In theory, mandatory tower sharing should have enabled WIND and other new entrants to build fewer towers and therefore to reduce their speed to market and costs (while also minimizing the negative impact to Canadians of tower proliferation). In practice, the anticipated benefits of the policy were not fully realized".¹⁴

¹² Bell Mobility submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at paragraph 80. Quotation is cited from the newspaper article: *DAVE Wireless to launch as Mobilicity*, Tuesday 2 February 2010, The Globe and Mail.

¹³ Globalive Wireless Management submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at paragraph 28.

¹⁴ Globalive Wireless Management submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at paragraph 29.

26. Further, Globalive has observed that the failure to mandate seamless handoff as a condition of license associated with the AWS auction has been an inhibitor to competitors.

“The Department’s decision not to mandate seamless handoff as part of the AWS auction has resulted in no new entrant being able to provide this service to its customers (to WIND’s knowledge) and has meant that seamless handoff has become a competitive issue”.¹⁵

Similarly, Mobilicity indicated in its comments the difficulties in obtaining a roaming arrangement in Canada, noting that, because of the nature of the AWS frequencies, there was effectively only one national wireless operator in Canada from which to acquire a roaming arrangement, and further, that this roaming arrangement, in addition to being expensive, did not support a soft handoff for voice calls.¹⁶

27. Cogeco continues to believe that Industry Canada must include tower sharing and mandated voice and data roaming - with soft handoff - as conditions of license and as we discuss below, must take all reasonable steps to enforce these conditions. Cogeco believes that the experiences shared by Globalive and Mobilicity in its comments¹⁷ serve as a cautionary warning to Industry Canada on the need for clear rules to give force to its intentions for roaming and tower sharing.

2.3.2 Foreign Ownership in Canadian Telecommunications

28. Cogeco’s remarks in respect of foreign ownership have consistently emphasized that Canadians have been successful in developing world-class enterprises with state-of-the-art facilities in the telecommunications sector extending throughout Canada.

¹⁵ Globalive Wireless Management submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at paragraph 40.

¹⁶ Comments by Mobilicity, February 28, 2011, *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, paras. 188-191.

¹⁷ Globalive Wireless Management submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at paragraph 38-47.

29. We observe that Shaw Communications echoed our concern for competitive and technological neutrality.

“We refer to Shaw’s submissions dated July 30, 2010 in the consultation re: Opening Canada’s Doors to Foreign Investment in Telecommunications: Options for Reform (the “foreign ownership consultation”). In those submissions, we express support for competitively neutral foreign ownership rules. In particular, for reasons set out in our submissions, Shaw supports Option 1 (increase cap on direct foreign investment in telecommunications and broadcasting operating entities from 20% to 49%). This option would allow all players to benefit from increased foreign capital”.¹⁸

30. Cogeco continues to submit that it is critically important for Canadians to be involved in the ownership and operation of their own telecommunications sector in a meaningful way while benefiting from increased competition and innovation.

31. Cogeco endorses a cautious, phased approach that allows the government to evaluate the actual flow of foreign capital and the behaviour of foreign investors and the Canadian entities in which they invest. Nothing filed in this proceeding to date changes our views in this regard. Canada should not unilaterally send a signal to the rest of the world that its domestic telecommunications sector is unconditionally up for sale.

32. Cogeco continues to strongly object to any liberalisation measure that would apply only to “pure” telecommunications carriers, as contrasted with “hybrid” telecommunications carriers that also distribute broadcasting services on their common facilities and networks. It would be inappropriate and contrary to the public interest for Canada to modify its foreign investment restrictions in a manner that is inconsistent with technological and competitive neutrality.

¹⁸ Shaw Communications submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at paragraph 84.

33. To be clear, technological and competitive neutrality requires that any liberalization of foreign direct investment in the telecommunications sector must extend to cable broadcasting distribution undertakings (“BDUs”), such as Cogeco, that use a common broadband infrastructure for both telecommunications and broadcasting distribution services and that are also licensed as BDUs under the Broadcasting Act. Should the foreign ownership threshold be raised, or eventually eliminated, under the Telecommunications Act, it must apply uniformly to those companies that are captured under the Broadcasting Act as cable BDUs.

2.3.3 Liberalization of Foreign Ownership Restrictions Not Sufficient

34. Cogeco continues to believe that, regardless of any liberalization of restrictions on foreign ownership in the Canadian market, this fact alone will not change the requirement for specific measures that promote competition, as described in Section 2.4 below. As Shaw observed¹⁹:

“If any of the changes proposed in the foreign ownership consultation are implemented, that would not obviate the need to implement an auction spectrum cap and/or other suitable measures to promote competition, innovation and consumer choice in the Canadian wireless market. New entrants continue to confront significant barriers to market entry in developing their networks and launching their operations”.

35. Cogeco concurs with the view that liberalizing the foreign direct investment restrictions will not be sufficient to overcome the spectrum advantages of the incumbent carriers.

36. In its comments, Barrett Xplore stated²⁰:

“Changes in the foreign investment restrictions can greatly affect Canadian companies’ ability to raise foreign capital to fund their acquisition of spectrum. Barrett believes that if the federal government plans to announce changes to

¹⁹ Shaw Communications submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at paragraph 85.

²⁰ Barrett Xplore submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at paragraph 74.

foreign investment restrictions, it should do so at least six months prior to start of any auction, so that all Canadian companies - small and large - will have sufficient time to actually raise foreign financing in advance of the auction”.

37. Cogeco agrees that a six month period would be appropriate.

2.4 Measures to Promote Competition

Gazette Notice Section 7-5. If the Department determines that there is a need for measures to promote competition, which of the above mechanisms would be most appropriate and why should this mechanism be considered over the other? Comments should also indicate if further restrictions should apply so that policy objectives are met, for example, over a given time period?

In light of your response above, and recognizing that pending decisions on the specific band plan, spectrum for public safety system, tier sizes and open access requirements could influence your response:

7-6. (a) If the Department were to implement spectrum aggregation limits (caps):

- (i) Should the cap apply to the 700 MHz band only or be broader?*
- (ii) What should the size of the cap be?*
- (iii) Should bidders and their affiliates or associates share the cap?*
- (iv) How long should the cap remain in effect?*

(b) If the Department were to implement a set-aside in the 700 MHz auction:

- (i) Who should be entitled to bid in the set-aside block(s) and should the entitled bidders be restricted to bidding on the set-aside only?*
- (ii) How much spectrum should be set-aside and which block(s) should be set-aside?*
- (iii) If the set-aside were to include multiple blocks of spectrum, should they be contiguous?*
- (iv) What restrictions should be put in place to ensure that policy objectives are met (for example, should trading of the set-aside spectrum be restricted for a given time period)?*

7-7. Are there other mechanisms that should be considered and, if so, how should these be applied?

38. Cogeco submitted in its comments that the results of the AWS spectrum auction and licensing process has proven that a set-aside is an effective means to promote additional competition and stimulate investment in mobile services. Despite the gains that have been made, new entrants

represent barely more than 2% of the total Canadian market, based on total wireless subscribers.

2.4.1 Spectrum Holdings in Canada

39. As we observed in our initial comments, section 4.1 of the Consultation paper indicates that Canada's 3 largest incumbent mobile service operators hold 95% of the spectrum for cellular service, 91% of the PCS spectrum and 55% of the AWS spectrum. The summary in Figure 4.5 shows that Rogers, Bell and TELUS control 85% of the relevant spectrum.

40. Eastlink observed²¹:

“While the incumbents may argue that they need access to the 700 MHz spectrum to provide additional capacity (most likely in urban areas as that seems to be the main focus of the Big Three), EastLink submits that, if consumers in rural areas are to have any hope of having access to the same value, choice, flexibility and advanced telecommunications services to which urban consumers currently have access, the Department must act now to ensure that new entrants have access to sufficient 700 MHz spectrum to deploy their networks in a cost-effective manner since the ability to deploy infrastructure with reduced capital and operational costs will enable new entrants to provide more affordable services to consumers. An opportunity like the one presented by the 700 MHz spectrum will not come around again”.

41. In respect of the incumbent telephone companies in Manitoba and Saskatchewan, TELUS wrote²²:

“It is hard to understand the justification for classifying dominant regional carriers like government controlled SaskTel and or MTS Allstream, as new entrants and providing them with asymmetric opportunities relative to TELUS. In the case of these two “new entrant” carriers, each holds a dominant share of the market in their home territory and the current rules have only buttressed their

²¹ Eastlink submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at page 10.

²² TELUS submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at paragraph 56.

dominant position by allowing them to acquire additional spectrum in the set aside”.

42. As Rogers observed²³:

“While regional carriers such as SaskTel and MTS are depicted as each holding a mere 2% of the cellular band when their respective holdings are weighted by population, the fact is that they hold no less than 50% of the band within their operating territories”.

2.4.2 Measures to Mitigate Spectrum Consolidation

43. Clearly, there is considerable concentration of ownership of Canadian radio spectrum resources. Cogeco submits that, as a starting point, MTS and SaskTel should not be considered New Entrant bidders. This definitional anomaly in the AWS spectrum auction rules that defined these companies as “New Entrants” cannot be allowed to deny the benefits from the introduction of increased competition to the residents of Manitoba and Saskatchewan. Quite simply, it makes no sense for MTS and SaskTel to be given the new entrant benefits when these companies operate from a position of dominance in their home markets.

44. With regards to a spectrum cap, Public Mobile suggested an in-auction cap of 25 MHz²⁴:

“An in-auction cap should be adopted and enforced for each participant in every licensed territory. The in-auction cap would prevent any one auction participant from owning more than 25 MHz of sub-1 GHz spectrum in any particular licensed territory”.

45. Cogeco submits that there is public policy merit to ensuring that no single company dominates the auction or aggregate spectrum holdings. To that end, Cogeco supports the imposition of a sub-1 GHz spectrum cap on incumbent wireless operators. Further, Cogeco would suggest

²³ Rogers submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at paragraph 55.

²⁴ Public Mobile submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at paragraph 76.

that Industry Canada go further and seriously consider measures, such as capping or other measures, for the spectrum held by incumbents at the sub-1 GHz band, in the 1 to 2.1 GHz band and the above 2.1 GHz band. As wireless technology continues to evolve, techniques will allow spectrum to be used across different bands simultaneously through such initiatives as channel bonding or spectrum sharing. As the incumbents are the only wireless carriers in Canada with spectrum held broadly across all wireless bands from 800 MHz to 2.6 GHz, they are the only carriers that could exploit such technological advantages by offering voice and data services far superior to what New Entrants will be able to offer with their current, limited spectrum holdings in one part of the band. As a result, it is critical that Industry Canada consider measures that would see New Entrants and other, regional players be permitted to access 700 MHz spectrum in a cost-effective manner.

46. Cogeco therefore submits that set-aside spectrum should be made available in the 700 MHz mobile spectrum auction exclusively for new wireless entrants and any other entity that currently does not offer wireless services at this time in Canada.

47. Cogeco notes that Globalive²⁵ and Public Mobile²⁶ are among parties that have suggested that the set-aside should be the entire spectrum block. Both companies characterized their proposals as precluding participation in the 700 MHz spectrum auction to those parties that are licensees in the 800 MHz band. Cogeco reiterates its proposal that a set-aside block of spectrum should be at least 30 MHz and contiguous to permit the greatest possible benefit to bidders who wish to deploy advanced wireless network technologies, such as LTE.

²⁵ Globalive Wireless Management submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at paragraph 35.

²⁶ Public Mobile submission *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*, February 28, 2011, at paragraph 74.

2.4.3 Other Measures to Promote Competition

48. Cogeco submits that restrictions regarding the resale of set-aside spectrum should be similar to that outlined in the AWS spectrum auction, i.e., five years. However, given the difficulties expressed by some parties in their comments, Cogeco continues to believe there should be no limitations placed on leasing or sub-ordinating such licenses. It would be in the public interest to permit spectrum holders to develop creative business arrangements that encourage a more rapid deployment and utilization of the spectrum. Restrictions serve to limit the degrees of freedom for sharing of network infrastructure which would otherwise provide options for increased choice of service providers for Canadians.
49. All companies participating in the upcoming spectrum auction will be expending considerable financial resources in acquiring spectrum. For new entrants, the capital is not supported by an existing revenue stream. Further, due to the geographic coverage of many of the licenses, winning spectrum holders may have to acquire more territory than they wish to target in their business plan.
50. Cogeco submits that permitting considerable latitude in subordinating and leasing the spectrum will serve to increase the value of licenses by enabling new entrants to develop partnerships to maximize the reach and value of their networks, increasing the velocity to market of greater levels of competitive choice for consumers. Cogeco would note the comments of Barrett Explore on this issue, when they stated that, “While we have tried to negotiate with the incumbents for rural spectrum, we have not been able to complete any transaction to date - even where the incumbent has not deployed service to rural areas.”²⁷ It is for this reason that Cogeco re-iterates its request that Industry Canada take a more active role in assuring prospective spectrum acquirers that

²⁷ Ibid, para. 5.

options exist to deploy un-used spectrum of any spectrum owner in Canada, including the rapid re-deployment of such spectrum through the license revocation process.

51. In respect of additional mechanisms, Cogeco reiterates the concerns that it expressed in the AWS Consultation regarding the sharing of antenna sites. Despite the strengthening of tower sharing rules introduced by condition of license, Cogeco believes that the Department must enforce the rules and should demonstrate its willingness to rescind licenses of companies failing to comply. Cogeco notes, and supports, Industry Canada's intent to review its own policies in this regard, and urges Industry Canada to consider the comments filed by a number of parties in this proceeding testifying to the difficulties experienced to date in Canada in this regard.
52. Further, Cogeco notes that Industry Canada has had a long standing tradition of encouraging mobile wireless service providers to offer roaming services to either their competitors or non competitors. The issue of roaming with hard hand-offs (forced restart of calls) has been used by some incumbents in their advertising to disparage the quality and capabilities of new entrants. This practice and such advertising borders on contempt for the regulations imposed by Industry Canada as a condition of license.
53. Industry Canada should take a strong stand and enforce even stronger roaming requirements on the incumbents in order to demonstrate that such anti-competitive behaviours will not be tolerated. Roaming must be mandated in a manner, and at a price and technical capability, that are no less favourable than with any other non-affiliated carrier.

3 Conclusion

54. The 700 MHz band represents an opportunity for Industry Canada to continue its leadership in increasing the level of competition and choice for Canadians in the wireless telecommunications market. In announcing the intention of the Government to appeal the Federal Court Ruling on Globalive, Minister Clement stated, “The policy of our government is to encourage choice and competition in wireless and Internet markets.” The 700 MHz band is ideal for providing mobile broadband services.
55. The auction policy for this band must continue to keep a consumer focus and actively promote increased competitive choice.
56. Cogeco encourages Industry Canada to set rules for the auction that would encourage regional players to participate in this auction. Cogeco submits that, at a minimum, Industry Canada set aside 30 Mhz of spectrum specifically for new entrants; enforce the sharing of towers and support structures; provides for mandatory voice and data roaming for new competitors; and caps incumbent wireless spectrum holdings broadly across all current mobile service bands.
57. Foreign ownership liberalization must take place with a view to preserving technological and competitive neutrality in order to ensure that companies that are licensed as broadcasting distribution undertakings are not disadvantaged in delivery of integrated communications services to the public.
58. Cogeco submits that such actions will ensure that the Canadian telecommunications industry has more choice in the services it supplies and that Canadian consumers reap the benefits of a more dynamically competitive market.