



April 6, 2011

VIA E-MAIL: Spectrum.Engineering@ic.gc.ca

Manager, Mobile Technology and Services
Industry Canada
300 Slater Street
Ottawa, Ontario K1A 0C8

Dear Sir/Madam:

**Re: EastLink Reply Comments
Canada Gazette Notice SMSE-018-10**

Please find attached the reply comments of Bragg Communications Inc., carrying on business as EastLink ("EastLink"), 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* (Canada Gazette, Part I, Vol. 144, No. 49 — December 4, 2010).

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

Sincerely,

A handwritten signature in blue ink, appearing to read "N. MacDonald".

Natalie MacDonald
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**INDUSTRY CANADA
CONSULTATION ON A POLICY AND TECHNICAL
FRAMEWORK FOR THE 700 MHz BAND AND ASPECTS
RELATED TO COMMERCIAL MOBILE SPECTRUM**

CANADA GAZETTE, PART I, NOVEMBER 30, 2010 (SMSE-018-10)

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



6 APRIL 2011

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EXECUTIVE SUMMARY

Promoting competition - Contrary to the claims put forth by the Big Three, the Canadian wireless market is not competitive. Though some strides have been made since the AWS auction, the incumbents' competitive response has chiefly been reserved for the large, urban markets where the new entrants have launched to date. Similarly, the majority of the flanker brands and resellers that the incumbents rely on for their claims that the market is "hyper-competitive" have limited service offerings and, more importantly, are not available to rural customers in many areas, including Atlantic Canada.

Because consumers in rural areas currently benefit from little, if any, competition, the incumbents have not been forced to provide the same level of service to rural Canadians. For example, the vast majority of Atlantic Canada only has access to 2G service from Rogers (3G service is reserved for fewer than ten areas in the Atlantic Provinces). Accordingly, rural customers do not and will not have access to the same value, choice, flexibility and advanced telecommunications services as their urban counterparts unless the Department takes steps in the 700 MHz auction to bring vital and sustainable competition to the wireless market.

Against this background, EastLink has addressed the various myths advanced by the Big Three.

- (1) The Big Three do not need the 700 MHz spectrum for capacity purposes. Given the incumbents' failure to provide enhanced services, pricing or packages to rural areas, it is reasonable to conclude that the Big Three are not facing capacity challenges in such areas. Additionally, the AWS spectrum is better suited to addressing capacity issues in urban areas.

Finally, the incumbents' large 800 MHz holdings are sufficient to address capacity needs with efficient spectrum use.

(2) The Big Three are not the only companies capable of serving rural areas.

EastLink and several other new entrants have proven track records of bringing advanced communications services to small, rural communities across Canada. Moreover, the incumbents' track records demonstrate that, while they may have the ability to provide advanced services to rural areas, they have no intention of doing so unless they are forced into it by the presence of vital and sustainable competition from new entrants. EastLink submits that it is strong regional players such as EastLink that are better able and more likely to provide advanced services to rural areas.

(3) The incumbents do not need 700 MHz spectrum to launch LTE. The Big

Three already have the spectrum they need to launch LTE and, in fact, have already begun deploying their LTE networks. In urban areas, the Big Three have enough spectrum to deploy an LTE network in the AWS band. In rural areas, the incumbents' large 800 MHz holdings could be used to launch LTE.

(4) The incumbents do not need 700 MHz spectrum to transition from legacy

networks. It is possible, and more efficient, for the incumbents to use their large, existing spectrum holdings to make an incremental transition to LTE.

(5) New entrants cannot outbid the Big Three in an open auction. EastLink is

dwarfed by the Big Three, both in terms of subscriber numbers and revenues. Moreover, unlike the Big Three, EastLink and the other new entrants do not have the benefit of existing, ubiquitous wireless networks or high ARPUs from millions of wireless subscribers (many of whom are locked into multi-year contracts) to fund spectrum acquisitions.

(6) There are not too many new entrants and consolidation is not inevitable.

Though EastLink, Shaw and QMI cannot (as noted in the preceding paragraph) compete head-to-head with the incumbents in an open auction, we are, nonetheless, experienced communications companies with proven track records. Moreover, the majority of the new entrants and incumbents have competed successfully for years in other communications markets (e.g., the broadcasting distribution and Internet markets) on a regional basis. Finally, though the incumbents raise concerns with respect to whether the extremely low pricing currently being employed by certain of the new entrants is sustainable, EastLink notes that we and several other new entrants are multi-service communications companies that will have the ability to leverage bundling options (as opposed to extremely low pricing) as a means of providing greater value to consumers.

EastLink submits that it is the Big Three that present the greater risk of consolidation, whether as a result of the long-expected merger between Bell and TELUS, or the incumbents' growing control over the communications market.

(7) New entrants do not have less need for spectrum. The Department must reject the incumbents' claims that, because new entrants currently have fewer subscribers than the incumbents, or currently offer less data-intensive services, the new entrants do not need as much spectrum as the incumbents. If new entrants' service offerings are somewhat limited at present, it is because we do not have the spectrum depth and diversity to offer more advanced services and a wider array of devices and applications. As a result, limiting new entrants based on their current service offerings would permanently hobble competition.

In sum, it is undeniable that the Big Three currently hold almost all of the spectrum available in Canada, including large holdings of 800 MHz spectrum, which has similar propagation characteristics to the 700 MHz spectrum. American wireless providers currently serve significantly more subscribers with significantly less spectrum than the Canadian incumbents. Accordingly, the incumbents must be forced to use their spectrum more efficiently and will not be prejudiced should the Department decide that it is appropriate to employ a set-aside or spectrum cap in the 700 MHz auction.

The Department has successfully employed both spectrum set-asides and spectrum caps to promote competitive outcomes in the past and must continue on this path if new wireless companies are to survive. EastLink would prefer the use of a spectrum set-aside similar to that employed in the AWS auction but would not rule out the use of a spectrum cap (though we have significant concerns with respect to whether a cap would be as effective as a set-aside in allowing the Department to accomplish its objective of supporting competition, particularly in rural areas). EastLink provides more detailed comments on the use and design of appropriate set-asides and spectrum caps later herein.

Finally, EastLink wishes to highlight that we have proposed a band plan and set-aside that would allow the incumbents access to the upper 700 MHz band. Thus, EastLink is not proposing that the incumbents be completely denied access to the 700 MHz spectrum. Rather, EastLink is simply asking that the Department design an auction scheme that will allow new entrants to obtain the spectrum that they need to compete on a level playing field with the incumbents.

Tier size - EastLink proposes that the spectrum be auctioned using Tier 2 or 3 areas but that the roll-out requirement (coverage of 50% of the

population within 5 years) be based on Tier 4 areas. The use of Tier 4 based roll-out requirements will ensure that spectrum in rural areas is only purchased by companies that actually plan to deploy service in those areas.

Band plan – EastLink proposes that the Department adopt Option 1 (Harmonize with the U.S. band plan). However, EastLink agrees with those parties that have proposed that the upper C block be split into two paired blocks, creating an additional paired block of spectrum. The Department should not auction off the guardbands.

Auction timing - EastLink proposes that the 700 MHz auction be held first, with the 2500 MHz auction to follow at a later date. Rogers and Bell already have extremely large holdings of 2500 MHz spectrum and many carriers already have AWS spectrum, which is relatively interchangeable with the 2500 MHz spectrum. Auctioning the 2500 MHz spectrum first, or holding simultaneous auctions, would only benefit the incumbents as, unlike the new entrants, the incumbents: (a) have the resources to bid on both the 2500 MHz and 700 MHz spectrum simultaneously, and (b) already have large holdings of low frequency spectrum.

Public safety - While EastLink fully supports the important work performed by public safety agencies, the 700 MHz spectrum is a finite resource that is absolutely vital for new entrants. Accordingly, EastLink submits that any proposals relating to a set-aside of spectrum for use by public safety agencies should be considered very carefully and only after a detailed consideration of other commercial solutions.

INTRODUCTION

1. Bragg Communications Inc., operating as EastLink (“EastLink”), is pleased to provide its reply comments in relation to the issues raised by Industry Canada (the “Department”) in Gazette Notice SMSE-018-10 (the “Consultation Paper”).
2. EastLink is a prime example of the benefits that a competition-oriented framework has produced for consumers in the wireline telephony market. EastLink believes that its presence as a competitor has not only increased choice for residents and businesses in Atlantic Canada, but has also played a significant role in increasing the quality of the products and services available to consumers. EastLink wants to see the same value and innovation brought to the wireless telephony market. To that end, EastLink reiterates herein the key proposals set out in its comments of February 28, 2011. EastLink believes that adoption of those proposals is necessary to abolish the significant barriers that new entrants continue to face in their efforts to bring competition to the wireless market, and to ensure that the spectrum auction achieves the Department’s goals of increasing competition in the wireless market and of ensuring that rural customers are able to obtain the same services currently available to their urban counterparts.
3. EastLink also addresses some of the issues raised by Rogers Communications Partnership (“Rogers”), Bell Mobility Inc. (“Bell”) and TELUS Communications Company (“TELUS”) (collectively, the “Big Three”) in their submissions, each dated February 28, 2011, as well as a few of the submissions filed by other parties. We have focused our submissions on a few key issues and have not addressed every argument raised by each of these parties.

Accordingly, EastLink generally denies any allegations or arguments in the submissions of other parties that are contrary to EastLink's stated positions and failure to address any specific comment made by such a party should not be taken as agreement or concurrence with such comment, where such agreement or concurrence would be contrary to EastLink's interests.

PROMOTING COMPETITION

4. As discussed in detail in EastLink's earlier submissions, and those of the other new entrants, the changes in the wireless market since the AWS auction have clearly demonstrated that, until the new entrants introduced the first real competition into the Canadian wireless industry, the Big Three had been content to reap the benefits of their oligopoly. Even now, after the launch of several new competitors, it appears that the Big Three have largely reserved their competitive response for only those markets where new entrants have actually launched. As a result, areas like the Atlantic Provinces that are outside of the handful of larger urban centers where new entrants have launched to date continue to have limited access to the more affordable and new services available in the urban centers. In fact, residents in some rural areas currently do not have access to any wireless services at all.
5. The auction of the 700 MHz spectrum is the last chance that the Department will have to introduce competition to rural areas. Accordingly, the Department's commitment to bringing competitive wireless services to rural areas must be the primary consideration in all decisions made by the Department in the present consultation. If steps are not taken in the 700 MHz spectrum auction to ensure that new entrants such as EastLink, with a proven

track record of bringing advanced telecommunications services to rural consumers, are able to access sufficient 700 MHz spectrum to provide sustainable and vibrant competition in rural areas, Canadians in such areas will continue to be consigned to the outdated and high-priced services currently offered by the Big Three (or, in some cases, no services at all). As such, while the Big Three have put forward a variety of unconvincing arguments as to why they need access to the 700 MHz spectrum, 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 to provide vital and sustainable competition. Access to 700 MHz spectrum is crucial to allowing new entrants to compete on a level playing field with the Big Three.

6. The Big Three have generally taken two approaches in their attempts to dissuade the Department from implementing measures to promote competition.
 - They have claimed that the market is already competitive (and even go so far as to claim that the market is “hyper-competitive”). Below, EastLink explains why such claims are entirely without merit.
 - They have also advanced several claims to suggest that, if the Big Three do not get access to 700 MHz spectrum, they will have to drastically alter their business plans and Canadian consumers will suffer. EastLink addresses each of those claims below.

False claims that the market is already competitive

7. As described in EastLink's first round submissions, and those of all of the other new entrants, the market that existed prior to the AWS auction was characterized by high prices and little innovation. While the Big Three have claimed that there was fierce competition between them prior to the AWS auction, the events subsequent to the announcement of the AWS auction call into question the accuracy of such claims. Moreover, EastLink submits that any claims by the Big Three that competition between Rogers and the shared Bell/TELUS network is sufficient only demonstrates the monopoly mindset that characterizes the Canadian market, where the Big Three feel that even one competitor is too many.

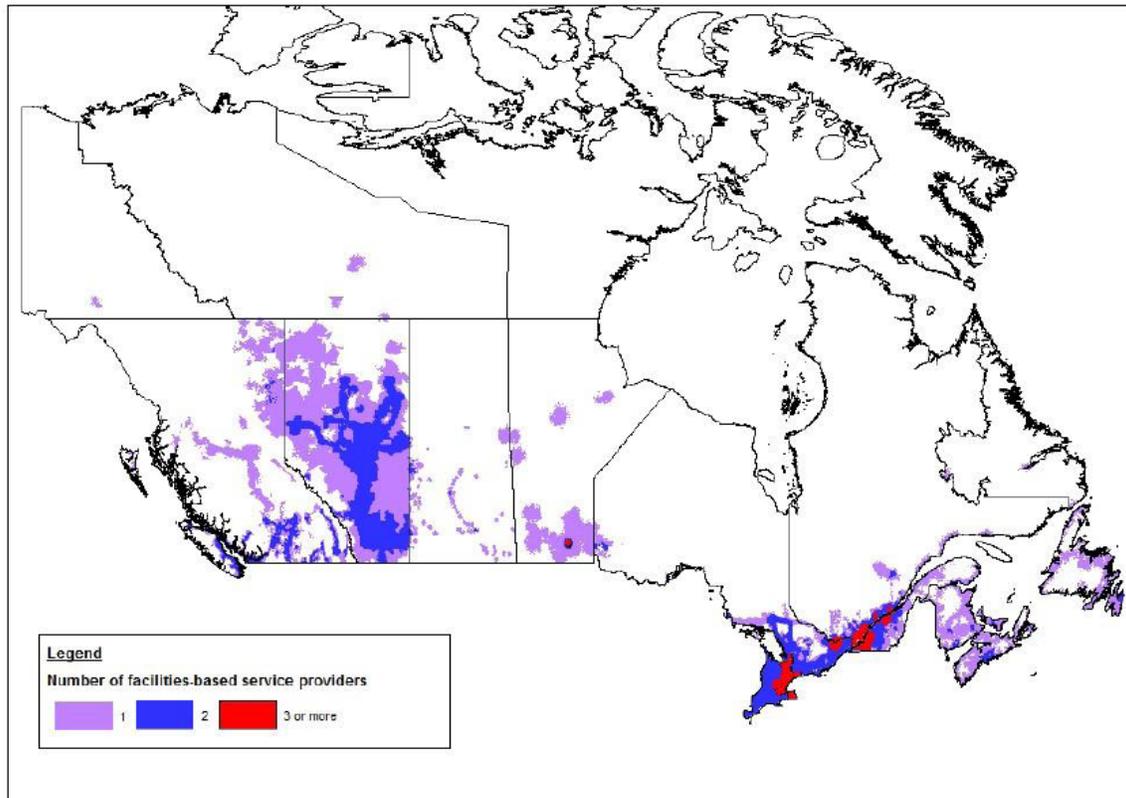
8. With the announcement of the AWS auction and, for the first time, the potential for real competition, the Big Three took some small steps towards creating at least the appearance of competition in certain segments of the Canadian wireless market. However, even now, after the launch of several new competitors, it appears that the incumbents have largely reserved their competitive response for only those markets where new entrants have actually launched. As a result, areas like the Atlantic Provinces that are outside of the handful of larger urban centers where new entrants have launched so far continue to have limited access to the more affordable and new, cutting edge services available in the urban centers.

9. In most areas, Canadian consumers' only choice is between Rogers and the shared Bell/TELUS network. This virtual duopoly has led to higher prices for Canadians, which is reflected in the low penetration of wireless services in Canada as compared to other

developed nations. TELUS claims that Canada's penetration rate compares favourably on the international stage; however, EastLink notes that, despite the fact that the incumbents claim to cover 99% of Canadians, Canada's penetration rate is only 71% (a figure that is significantly smaller than the 95% penetration rate in the U.S.).

10. EastLink strongly opposes the incumbents' characterization of Canada's penetration rate as a success. As opposed to being an indicator of customer satisfaction, Canada's wireless penetration rate is merely a testament to the degree to which wireless services have become integrated into Canadians' daily lives (both personal and professional). Prior to the recent new entrant launches, the majority of Canadian consumers had no choice but to take service from the incumbents (even with the high prices and limited flexibility offered by the incumbents) because wireless service is a necessity in today's society. It is for this reason, that the framework for the 700 MHz spectrum auction is so important.
11. EastLink submits that the truly telling statistic is the subscriber losses that the Big Three are currently experiencing now that consumers finally have a choice and those numbers will only increase if new entrants are given a chance to acquire the spectrum they need to compete on a level playing field with the incumbents.
12. Moreover, while the incumbents tout their innovation, what they fail to mention is that such innovation appears to be reserved for the largest markets only. For example, as noted in EastLink's earlier submissions and again herein, Rogers' 3G service is available in fewer than ten areas across all four Atlantic Provinces. The vast majority of Atlantic Canada still has access to only 2G service from

Rogers or, in some areas, no service at all (see the maps included herein at paragraph 39). Similarly, the following map, taken from the 2010 CRTC Communications Monitoring Report, clearly demonstrates the majority of Canada does not benefit from competition in the provision of 3G services.



The map indicates the presence of 3G or 3G-equivalent wireless facilities-based service providers

13. The Big Three also tout the number of customers substituting wireless services for wireline services as proof of the competitiveness of the Canadian wireless market. Rogers claims that 8% of Canadian households are wireless only.¹ However, this figure lags far behind the comparable figure in the United States (25%).² Thus, it is evident that, whether for reasons of price, reliability or plain lack of access (e.g., in rural areas) Canadian

¹ See paragraph 135 of Rogers' submissions.

² Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2009, CDC (<http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.htm>)

consumers have not been willing, or in many cases able, to adopt wireless services at the same rate as their American counterparts.

14. The Big Three have also pointed to the presence of several flanker brands and resellers in the market as evidence that competition exists. They claim that the presence of these brands means that the Canadian market is “hyper-competitive”. However, there are a variety of reasons why such arguments clearly fall flat.

15. Firstly, when the table provided by Rogers at paragraph 105 of its submissions is examined closely, it is apparent that all of the brands referenced in that table (apart from those of the incumbents and the new entrants) are merely flanker brands or resellers of the Big Three’s wireless services. The following is a more illuminating depiction of the table presented in Rogers’ submissions, as it more clearly illustrates that the various flanker brands and resellers referenced by Rogers are simply the Big Three in a different form.

| Rogers | Bell | TELUS |
|------------------------|-------------|--------------|
| Fido | Solo | Koodo |
| Chatr | Virgin | |
| 7-Eleven | PC Mobile | |
| Petro Canada | | |
| Shell (good2go) | | |
| Primus | | |
| Kore Wireless | | |
| Cityfone | | |
| Sears | | |
| BMO | | |
| RBC | | |
| Quickie Convenience | | |

16. EastLink also notes that it is telling that Rogers’ table focuses on “the top 6 Canadian markets”, likely because these brands are not available in rural areas. For example, because the Big Three are currently the only wireless providers in the Atlantic Provinces, they

have seen no reason to expand many of their own flanker brands and competitive offers to this region. There are no “Chatr zones” east of Montreal and, thus, communities in the Atlantic Provinces are not able to access the unlimited plans available in the Chatr zones. In fact, the “Chatr zones” are limited to Calgary, Edmonton, Montreal, Ottawa, Toronto and Vancouver, which, coincidentally, are the same cities where new entrants have launched to date. Fido’s CityFido unlimited plans are similarly limited to the same markets (as well the nearby markets of Victoria, London and Québec). Nor do residents in the Atlantic provinces have access to Solo plans, which are only available in British Columbia, Alberta, Ontario and Quebec.

17. Consumers in rural areas of the Atlantic Provinces would also face challenges in accessing the products available from several of the resellers listed in Rogers’ table, as some of those products are available exclusively at retail stores and there are few, if any, retail stores associated with those chains in the Atlantic Provinces. For example, based on the store locator available on the website for the 7-Eleven mobile service³, there are no retail outlets in Eastern Canada. Similarly, according to the store locator on the Quickie Convenience website⁴, that chain is limited to Ontario and Quebec. Likewise, according to the store locator⁵ available on PC Mobile’s website, the PC Mobile service is available at only four locations in Prince Edward Island (two of which are located in Charlottetown), and only nine in Newfoundland. All in all, it is apparent that, for consumers in Atlantic Canada, access to these brands is limited or non-existent.

³ <http://www.speakout7eleven.ca/store-locator>

⁴ http://www.quickiestores.com/pg_StoreResults.php

⁵ http://mobile.presidentschoice.ca/pc_telecom/ctl3910/sitecontent/WhereToBuy/Where_To_Buy

18. EastLink also notes that the flanker brands and resellers referenced by the Big Three tend to have a much more limited selection of wireless plans and handsets, with several offering few or no smartphones, nor any significant data plans. Many of the resellers offer very basic, prepaid plans that do not lend themselves to the offering of more expensive handsets (as the devices used for prepaid plans tend not to be as heavily subsidized by the carrier, resulting in a higher upfront cost for the consumer). Thus, those brands do not offer significant competition with respect to more data-intensive plans or for consumers seeking advanced services and devices. That type of competition will only come if the Department designs an auction framework that will allow new entrants to compete on a level playing field with the incumbents.
19. All in all, EastLink submits that the presence of these so-called “competitors” in the market has done little to benefit many Canadian consumers outside of the six largest urban markets in Canada.
20. Similarly, while the incumbents focus on the new, lower prices that entrants have brought to the market, the new entrants that have launched to date have focused on only the largest urban centers. Thus, for example, the zone-based pricing available from Mobilicity and Wind is not available in Atlantic Canada. EastLink submits that this consultation is not just about bringing competition (which is important); it is also about making sure that competition reaches all Canadians, and not just those residing in the largest markets.
21. Finally, even if one were to accept the incumbents’ claims that their flanker brands provide competition, at least in the largest urban centers, the Department can be assured that, if the Department

does not take steps to ensure the long-term sustainability of the new entrants, there will be less incentive for the Big Three to offer the competitive rates that they may currently be providing through flanker brands. If new entrants are not able to compete on a level playing field with the Big Three, the incumbents will be able to eliminate or lessen their use of flanker brands and revert to the type of control they exercised over their customers prior to the AWS auction.

22. Thus, though the Big Three have filed page after page of studies and statistics in an attempt to create the impression that Canada's wireless market is already competitive, they cannot escape the fact that, presently, Canadian consumers in rural areas benefit from little, if any, competition. The Big Three have largely focused their competitive offers in urban areas, where the first competitors have launched service. Because there is still no competition in rural areas, consumers in those areas are still not able to benefit from the competitive plans now being offered by the Big Three in urban areas. Accordingly, EastLink exhorts the Department to introduce measures designed to fulfill the Department's objective of bringing vital and sustainable competition to all areas of Canada. The Big Three have highlighted in their submissions that they are losing customers. EastLink submits that this proves that Canadian consumers do not feel that they have been well-served by the high prices available from the incumbents and that they believe that new entrants provide better value, more flexibility and greater choice. The Big Three have not and will not bring real competition on their own.

Myths

23. In addition to exaggerated claims that the market is already competitive, the Big Three have filed submissions aimed at subtly suggesting to the Department that, if the Department does not maintain the incumbents' lock on the market, the Big Three will no longer invest in their networks and Canadian consumers will suffer. They make repeated references to the "thousands" of people they employ and the "millions" of subscribers they serve. For example, Rogers highlights the fact that it serves 9 million subscribers no fewer than five times in the first 20 pages of its submissions. The ongoing references to the large number of subscribers served by the Big Three are intended to send a strong signal to the Department that, if the Department does not give them what they want, Canadian consumers will suffer. For example, Rogers states the following at paragraph 5 of its submissions:

Interference with Rogers' ability to obtain one of the most important inputs – the spectrum resource – will hamper our ability to invest and innovate for our 9 million customers, and threaten the mobile broadband revolution in Canada.

EastLink submits that such claims are without merit. The fact is that, if new entrants are given a chance to compete on a level playing field with incumbents, the Big Three will keep innovating. They will have no other choice if they want to keep their customers. The incumbents themselves acknowledge in their submissions that competitive pressure can drive innovation. The Big Three claim in their submissions that it was the Bell/TELUS move to HSPA+ that caused Rogers to upgrade its network. Similarly, if new entrants are given a chance to obtain the spectrum they need to deploy

advanced networks and services, the Big Three will be required to innovate or lose customers.

24. Additionally, EastLink submits that, the basis of the incumbents' threats betrays the incumbent mentality. While their submissions assume that they will keep the millions of customers that they currently serve, as noted above, the Big Three admit that they are already losing customers to new entrants, who are providing consumers with flexibility and value that they cannot get from the Big Three.
25. Finally, EastLink wishes to highlight that, as discussed in greater detail later herein, EastLink has proposed a band plan and set-aside that would allow the incumbents access to the upper 700 MHz band. Thus, EastLink is not proposing that the incumbents be completely denied access to the 700 MHz spectrum. Rather, EastLink is simply asking that the Department design an auction scheme that will allow new entrants to obtain the spectrum that they need to compete on a level playing field with the incumbents.
26. Against this background, EastLink will address the various myths presented by the Big Three in their submissions.

Myth 1: The Big Three need the 700 MHz spectrum for capacity purposes

27. The Big Three have claimed that, despite their already large spectrum holdings, they need even more. The Big Three took the same approach in the consultation that preceded the 2008 AWS auction and yet, despite the claims they made in that proceeding regarding their need for additional spectrum, EastLink notes that Shaw Communications Inc. ("Shaw"), Quebecor Media Inc. ("QMI")

and other parties have filed evidence suggesting that neither the Big Three nor MTS Allstream Inc. (“MTS Allstream”) or SaskTel are currently making any use of the spectrum they acquired in the AWS auction. As such, EastLink submits that any claims made in the present proceeding by the incumbents with respect to their urgent need for additional spectrum must be taken lightly.

28. With respect to rural areas, as discussed in detail in EastLink’s earlier submissions and again herein, the incumbents have not provided enhanced services, pricing or packages to rural areas. For example, as the maps presented below at paragraph 39 indicate, Rogers provides 3G service to only a handful of communities in the Atlantic Provinces and does not even provide basic services to some communities. Accordingly, EastLink submits that it is reasonable to conclude that they are not facing capacity challenges in rural areas.
29. With respect to urban areas, even if one were to accept the incumbents’ claims that they face challenges in the largest urban centers in Canada, the 700 MHz spectrum is not the solution to any such capacity challenges. High frequency spectrum such as the AWS spectrum is better suited to address capacity issues in urban areas.
30. Because increased network capacity is generally achieved by increasing the number of sites and the quality of the signal, the smaller coverage area provided by high frequency spectrum (e.g., AWS) is ideal as it results in less interference between cell sites than would be the case if a lower frequency spectrum such as the 700 MHz spectrum were used. Each site deployed with a given technology, 3G or LTE, has roughly the same capacity regardless

of its frequency. Increasing the site count (or site density) with low frequency spectrum, such as 700 MHz or 800 MHz spectrum, degrades the quality of the signal because these frequencies propagate farther and are more difficult to contain. This increases the interference generated by surrounding sites, thus decreasing the signal quality across all cells and the overall capacity of the network. On the other hand, because the AWS and PCS signals are easier to contain, these bands reduce the overall network interference with a similar site count, thus offering more network capacity with the same infrastructure and representing the most spectrally efficient deployment strategy.

31. Because the 700 MHz spectrum is not well-suited to addressing capacity challenges in urban centers, EastLink submits that any claims by the Big Three that they need the spectrum for that purpose are disingenuous.
32. Rogers and the shared Bell/TELUS network both have enough spectrum to deploy an LTE network in the AWS band using 20 MHz in all markets, while Bell/TELUS is capable of serving all major urban areas with 30 MHz. Considering that Bell, TELUS and Rogers recently launched state-of-the-art 3G+ networks in the PCS and 800 MHz bands, EastLink submits that they have sufficient capacity to meet market demand with efficient spectrum use. As such, EastLink submits that the primary value that the Big Three will get from access to the 700 MHz spectrum is the benefit of reducing competitor access to that spectrum.
33. Moreover, even if one were to accept the incumbents' claimed need for additional capacity (which EastLink does not), the spectrum holdings of the new entrants amount to only a fraction of the total

holdings of the Big Three and, therefore, our need for additional spectrum would evidently be significantly higher than that of the Big Three. As discussed later herein, the incumbents must be incented to use their spectrum more efficiently.

34. Finally, EastLink notes that any claims by the Big Three that they will need more and more spectrum to meet consumer demand presupposes that they will not lose any market share to EastLink and other competitors. However, as noted above, the Big Three admit that they are already losing customers to new entrants, who are providing consumers with flexibility and value that they cannot get from the Big Three. Thus, in designing the auction framework, the Department must not assume that the Big Three will continue to serve the majority of Canadians and, therefore, need more spectrum. Even with the limited service offerings currently available from the new entrants that have launched to date, the incumbents' market share is beginning to erode. As a new entrant in the wireline telephony business, EastLink was able to obtain a significant market share in the Maritimes. We see no reason why we cannot achieve similar success in the wireless industry if the Department designs an auction framework that allows new entrants to obtain the spectrum they need to compete on a level playing field with the incumbents.

Myth 2: Only the incumbents have the ability to serve rural areas

35. The Big Three claim that they are the only companies with the resources and knowledge necessary to build out wireless services to rural and remote areas. EastLink strongly disputes all such claims.

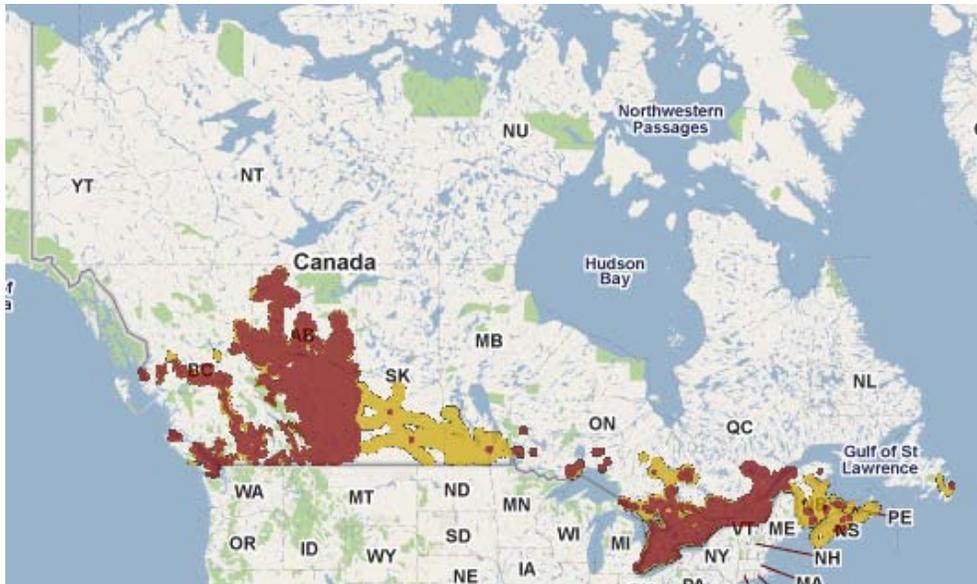
36. As discussed in greater detail in EastLink's earlier submissions, EastLink provides cable, High Speed Internet and wireline telephony services to residential, business and public sector customers across Canada, primarily in small, rural areas. EastLink got its start in rural Nova Scotia and, over the years, we have continued to expand to rural and remote areas throughout the Atlantic Provinces and across Canada. EastLink has a proven track record as a new entrant. We had one of the first cable licences in Canada and, building upon our success in that industry, we were the first cable company in Canada to enter the local telephony market. EastLink has consistently brought high quality, high value and innovative services to consumers in rural areas. Thus, while the Big Three might claim that Canada's population density, geography and climate are challenges that only they can overcome, EastLink submits that we are well aware of those challenges and that we have a history of conquering them.
37. EastLink's focus is on rural areas and we currently offer communications services in some locales that have fewer than 10 customers or that are so remote that our technical teams can only reach them by helicopter. As a partner in the Broadband for Rural Nova Scotia initiative, we have also invested \$25 million to bring wireless High Speed Internet services to rural and remote residents and businesses in Western Nova Scotia. Shaw and QMI are also familiar with the challenges of offering services in rural areas as they too currently offer an array of communications services in rural communities throughout central and western Canada. Accordingly, EastLink submits that new entrants are going into this with the knowledge and expertise necessary to deliver wireless services to rural and remote communities.

38. More significantly, while the incumbents may claim that they have the resources and expertise necessary to bring competition and improved services and packages to rural areas, their actions demonstrate that they have no desire to do so. As described both above and in the next few paragraphs, customers of the Big Three in rural areas do not have access to the same services as their urban counterparts. Rogers only offers 2G services to most of the Atlantic Provinces and, in fact, offers no service at all in several areas. Additionally, as described in the preceding section, in those rural areas where service is available in the Atlantic Provinces, consumers do not have access to the same pricing plans as their urban counterparts (i.e., unlimited plans) because there is no real competition (for example, as discussed above, many of the incumbents' flanker brands are not available in Atlantic Canada because they do not currently face any competitive pressure here). Thus, while the Big Three may tout their network reach, EastLink submits that their network reach has not yielded improved service packages, options and pricing for customers in areas where there are no new entrants to force them to compete.
39. As discussed in EastLink's earlier submissions, despite its large spectrum holdings (including large amounts of 800 MHz spectrum, which has similar propagation characteristics to 700 MHz spectrum), Rogers has failed to offer advanced services to consumers in rural areas. Despite the fact that Rogers owns more spectrum in the Atlantic Provinces than any other provider, as the following maps (taken from Rogers' website on March 18, 2011) demonstrate, Rogers provides 3G service to only a handful of communities in Atlantic Canada and, in fact, does not even provide 2G coverage to many communities.



[Red indicates current or future HSPA+ (3G voice and data) coverage. Yellow represents current or future availability of GSM/EDGE (2G Voice and Data) coverage.]

40. The same is true of the rest of Canada. As the following map (taken from Rogers' website on March 18, 2011) indicates, significant 3G coverage is reserved for Ontario, Quebec, Alberta and British Columbia, while other provinces must make do with 2G coverage (where available). Rogers provides 3G coverage in only the most densely populated areas of most provinces.



[Red indicates current or future HSPA+ (3G voice and data) coverage. Yellow represents current or future availability of GSM/EDGE (2G Voice and Data) coverage.]

41. Moreover, as discussed in greater detail in the next section, EastLink submits that the Department must ignore any claims made by Rogers that the lack of Rogers 3G coverage in rural areas is attributable to a lack of spectrum. Rogers owns more spectrum than any other company in Canada and could have used its extensive spectrum holdings to extend its HSPA+ network to rural areas. However, Rogers has chosen to focus on urban areas, leaving consumers in rural areas with no real competition (given that Bell and TELUS share a network and cannot, realistically, be expected to compete vigorously with each other).

42. Given that Rogers has chosen not to roll out HSPA+ in rural areas in the past, the Department should ignore any claims by Rogers to the effect that they need 700 MHz spectrum because they want to build out LTE to rural areas in the future. While EastLink agrees with the statements made in Rogers' submissions regarding the

benefits that wireless broadband will provide to rural communities⁶, we disagree with Rogers' claims that Rogers "has a proven track record for providing Canadians living outside urban centers with access to the most advanced mobile communications available in the world". We note that they have chosen their words carefully when they assert that "[t]he Rogers wireless network currently covers approximately 95% of the Canadian population." While their network may cover the majority of the population, they do not offer advanced services to customers outside of the most densely populated areas (as the Rogers coverage maps inserted above at paragraphs 39 and 40 demonstrate).

43. We also note that, in its submissions, Rogers speaks less about serving rural areas and more about serving "non-urban" areas. EastLink believes that this phrasing, when combined with the fact that Rogers has proposed a tier arrangement that enables Rogers to avoid serving rural areas, as well as Rogers' proposal that RP-019 be rescinded, may illustrate a lack of intent on Rogers' part to serve rural areas. EastLink also notes that Bell has similarly proposed that RP-019 be rescinded. For this reason, EastLink submits that the Department must not allow the incumbents to obtain all of the spectrum available in the 700 MHz auction, as they will simply hoard it.

44. EastLink believes that competition in every market is essential so that Canadians in rural and remote areas will have a choice and applauds the measures taken by the Department during the AWS auction. The evidence to date indicates that incumbent carriers have a poor record of serving these Canadians, but we believe that

⁶ See paragraphs 45-47.

choice of carriers will promote innovative developments to meet this demand.

45. Our track record clearly demonstrates that we are committed to serving rural Canadians. Roughly 85% of EastLink's cable systems have fewer than 1,000 subscribers and almost half of our cable systems have fewer than 100 subscribers. In fact, we continue to offer services in several communities where we have fewer than 10 subscribers or that are so remote that our technical teams can only access them by helicopter. We have a proven track record of bringing high quality, high value and innovative services to Canadians in rural areas and we would be willing to stack up our track record against those of the Big Three any day. While Rogers provides enhanced services to only a handful of larger communities in the Atlantic Provinces, EastLink has invested heavily in bringing advanced services to small, rural communities throughout Atlantic Canada. For example, over the past three years, EastLink has invested more than \$80 million in launching telephony, Internet and advanced cable services in more than 100 communities in rural Newfoundland that previously had access to only the most basic services, and we continue to add new communities each month.
46. Thus, while the Big Three have tried to suggest that consumers will not gain access to advanced services if the Big Three do not get all or most of the 700 MHz spectrum, EastLink submits that it is incumbents that have failed to provide advanced services or competitive service options to rural customers. EastLink has a history of making significant investments in rural areas to ensure that all Canadians have access to the advanced communications services that play such an important role in our daily lives and the Canadian economy. While, to date, some new entrants may have

focused on more basic voice and text services, competition is in its infancy and, as integrated companies such as EastLink and Shaw launch, and as all new entrants gain access to the spectrum depth that they need to expand their service offerings, new entrants will bring reliable, advanced services to consumers throughout Canada.

47. EastLink is a multi-service communications company. We offer cutting edge telephony, cable and High Speed Internet services, primarily in rural areas. EastLink's entry into the wireless market will provide significant benefits for consumers in Atlantic Canada and in rural areas across Canada, markets that are currently being underserved by the Big Three. EastLink will continue its tradition of bringing increased competition, more flexibility and more value for consumers. We are confident that EastLink will make a substantial contribution to the competitive landscape in the wireless market if we are given an opportunity to acquire the spectrum that we need.

Myth 3: The incumbents need 700 MHz spectrum to launch LTE

48. In an attempt to justify why they need the 700 MHz spectrum (despite their large holdings of 800 MHz spectrum), the incumbents claim that they will not be able to deploy LTE without 700 MHz spectrum. Again, their underlying message is that it is only the incumbents that can and will offer enhanced services and, therefore, if the incumbents do not get the 700 MHz spectrum, Canadian consumers will not get LTE. The following excerpt from Rogers' submissions is but one example of this type of underlying message laced throughout the incumbents' submissions:

Without 700 MHz spectrum Rogers will simply be unable to deploy LTE outside large urban areas. The

economics will force us to limit the service to only the top population centres in the country.⁷

49. EastLink strongly disputes all such claims. The Big Three already have the spectrum they need to launch LTE and, in fact, they have already begun deploying their LTE networks. The incumbents themselves have stated publicly that they will be able to launch LTE without 700 MHz spectrum. As noted in a recent Financial Post article, the Big Three are all currently trialing LTE. Furthermore, the article notes that Rogers is currently conducting a large scale trial and has stated that it can launch LTE without access to 700 MHz spectrum.⁸
50. In urban areas, Rogers and the shared Bell/TELUS network both have enough spectrum to deploy an LTE network in the AWS band using 20 MHz in all markets, while Bell/TELUS is capable of serving all major urban areas with 30 MHz. Rogers acknowledges in its submissions that LTE technology and consumer devices will, in the near term, be available in the 1700/2100 MHz AWS band, the 2500 MHz BRS band and, possibly, the 1900 MHz PCS band. They acknowledge that Rogers will be using this spectrum to deploy LTE in large urban centers.⁹
51. With respect to rural areas, the Big Three have sufficient 800 MHz holdings that they could use to launch LTE. The incumbents claim that there is a limited device ecosystem for LTE in the 800 MHz band that will prevent them from using that band for deploying LTE. For instance, Rogers claims in its submissions that LTE technology and consumer devices “will not be available for the 850 MHz band

⁷ See paragraph 259 of Rogers' submissions.

⁸ Rogers eyes network upgrade as first '4G' LTE smartphone arrives at Verizon, Financial Post, March 15, 2011: <http://business.financialpost.com/2011/03/15/rogers-eyes-network-upgrade-as-first-4g-lte-smartphone-arrives-at-verizon/>

⁹ See paragraph 38.

for many years to come.¹⁰ However, EastLink submits that such claims are in direct opposition to what Rogers has stated in other fora. For example, as noted in the Financial Post earlier this month¹¹, Rogers has acknowledged that the device ecosystem for LTE is developing more rapidly than anyone could have predicted:

The commercial release of the first 4G smartphone through Verizon is occurring in the midst of an accelerating network upgrade cycle moving far faster than many thought it would, including Bob Berner, chief technology officer of Rogers Communications Inc.

“It is surprising even to us how quickly the ecosystem for LTE is developing. In previous generations of technology, it took awhile to get momentum under devices. What we’re seeing now is deployments of LTE committed to simultaneously as ... devices,” he said in an interview last week. “It’s unprecedented in the development cycle.”

52. It is expected that the Big Three will very soon have access to LTE technology and a wider array of compatible handsets for their large holdings of 800 MHz spectrum. Chipsets supporting all North American LTE bands, including the 800MHz band, are currently available.¹² Moreover, because, as they have noted, the Big Three serve more than 20 million customers in Canada, they have the scale necessary to drive the creation of devices suited to their needs, unlike the new entrants (who are dependent on the device ecosystem being created for the U.S. market). It is EastLink’s understanding that MetroPCS, which had 7.6 million subscribers at the time of its LTE launch and is, therefore, similar in size to each of the Big Three, was able to have two LTE handsets customized

¹⁰ See paragraph 36 of Rogers’ submissions.

¹¹ Rogers eyes network upgrade as first ‘4G’ LTE smartphone arrives at Verizon, Financial Post, March 15, 2011: <http://business.financialpost.com/2011/03/15/rogers-eyes-network-upgrade-as-first-4g-lte-smartphone-arrives-at-verizon/>

¹² <http://www.altair-semi.com/altair-semiconductor-and-alcatel-lucent-jointly-deliver-lte-band-class-12-solution-north-america>

for its network (the Samsung Craft and the Samsung Galaxy Indulge). The MetroPCS experience clearly shows that the Big Three can have devices customized to them with a volume commitment of approximately 100,000 devices. Bell and TELUS each sell more than 2 million devices per year, while Rogers sells approximately 3 million. With annual volumes of more than 7 million devices, the Big Three can easily commit to volumes of 100,000 for a few devices to launch LTE.

53. Thus, the Big Three will soon have the ability to launch LTE in rural areas using their large 800 MHz spectrum holdings. EastLink also notes that, currently, LTE does not provide rural users with a customer experience that is significantly better than that provided by HSPA+. Though the theoretical peak throughputs may be higher with LTE, the real world experience of users on LTE versus HSPA+ is very similar and, thus, even if one were to accept the dire predictions of the incumbents with respect to the availability of devices for the 800 MHz band, EastLink submits that, in the near term, the Big Three can use their large 800 MHz spectrum holdings to provide a HSPA+ service that would provide rural customers with a user experience that would be virtually indistinguishable from that provided by LTE in rural areas.
54. Rogers has 25 MHz in the 800 MHz band coast to coast and has the ability to deploy an HSPA+ network using 20 MHz. Similarly, the shared Bell/TELUS network has 25 MHz in the 800 MHz band across Canada (except in Manitoba and Saskatchewan), which they have deployed to support an HSPA+ network using 20 MHz. Accordingly, until a device ecosystem develops for LTE in the 800 band, the incumbents can provide a similar user experience for their rural customers via a HSPA+ network.

55. LTE provides better interference management in heavy use circumstances, like urban centers. This translates into an average customer throughput approximately 60% higher than HSPA+ in urban and suburban environments; however, the gain in rural environments is minimal. Additionally, using a Multiple Input Multiple Output (“MIMO”) technique, both HSPA+ and LTE offer the same theoretical peak throughput of 82 Mbps in 20 MHz. While EastLink acknowledges that MIMO is an add-on to HSPA+ (it was built into LTE) and is, therefore, not always practical for HSPA+ because it degrades the performance of devices that do not support it, the additional throughput provided to LTE in theory is only apparent in very good radio conditions and in a strong multipath environment, conditions that are not generally present in rural areas. For example, multipath environments are created by large obstacles, such as dense construction and high rises, which occur mainly in urban and suburban environments. Thus, while the gain in average customer throughput of MIMO LTE is approximately 20% to 30% higher than with HSPA+ in urban and suburban environments, the gain in rural environments is minimal.¹³
56. In sum, HSPA+ and LTE provide similar customer experiences in most cases in a rural environment. Although, EastLink acknowledges that LTE will bring small gains in rural environments over HSPA+, these gains are not significant enough at present to justify Rogers’ failure to deploy a HSPA+ network in rural areas using its existing spectrum holdings.
57. Finally, EastLink notes that the Big Three claim that limited access to 700 MHz spectrum would affect their customers’ ability to roam

¹³ These figures are derived from field results performed on the LTE Telia Sonera Stockholm network in mid-2010 compared to the HSPA+ throughput.

in the United States. However, the band plan and set-aside proposed by EastLink herein would not deny the incumbents access to 700 MHz spectrum. Pursuant to EastLink's proposal, the upper portion of the band would be open for bidding by all auction participants, while the lower portion of the band would be set aside for new entrants. This division is consistent with the uses being made of the band in the United States in that, currently, there are no chipsets that support the entire U.S. 700 MHz band. Because AT&T operates in the lower portion of the band, while Verizon operates in the upper portion of the band, current devices operating in the 700MHz band in the U.S. reflect this division and operate in either the upper or lower portion, but not both. This means that all Canadian operators, both incumbents and new entrants, will only be able to roam in the U.S. on the same portion of the 700MHz band that they employ in Canada.

Myth 4: Even though the incumbents already have large spectrum holdings, they need more to manage the transition from legacy networks

58. The incumbents claim that they need access to 700 MHz spectrum because customers that use legacy technologies such as GSM and HSPA are using their 800 MHz spectrum and, thus, they do not have capacity to launch LTE on the same spectrum. EastLink disputes these claims.
59. Firstly, the transition to LTE will be incremental. The incumbents will not need to be able to serve 10 million LTE customers from day one. Rather, customers will migrate from the legacy platforms to the LTE platform. As this happens, less spectrum can be allocated to the legacy technology and more can be dedicated to LTE.

60. Using the same spectrum for both legacy customers and LTE is possible. For example, in most rural areas, Rogers offers only 2G service or, in some cases, no service at all. Rogers' rural GSM coverage is likely only using 5 MHz of the 25 MHz that Rogers has in these areas. Thus, Rogers could use 20MHz to deploy an HSPA+ and LTE network using 10 MHz for each. EastLink's understanding is that this will be possible with equipment that will be commercially available by the end of this year. Additionally, as voice over LTE will be supported in the next two to three years, Rogers could eventually phase out HSPA and use their entire spectrum for LTE. Since all major vendors' LTE equipment supports either LTE or HSPA, this scenario would not require massive investments. Rogers' 800MHz spectrum is not currently being fully utilized in rural areas due to the low traffic density and, therefore, Rogers can simultaneously support HSPA+, LTE and 2G technologies on their 25MHz of spectrum in this low traffic environment.
61. Conversely, under Rogers' proposal, they would be given enough spectrum to serve 9 million customers on both platforms simultaneously, even though those 9 million customers would, in reality, be split between the two platforms. Thus, after the transition is completed, Rogers would have double the spectrum it needs to serve its customer base. This is not an efficient use of a scarce resource and is not in the best interests of Canadian consumers.
62. EastLink acknowledges that the incumbents' 800 MHz spectrum might be heavily used in urban areas to support 3G (HSPA or EV-DO) and 2G (CDMA or GSM) technologies. However, as noted earlier herein, it appears that the incumbents are not currently using any of their AWS spectrum and, with the deployment of LTE in the

AWS band, they will be able to offload traffic from their 800MHz spectrum and they will be able to deploy LTE simultaneously with HSPA+, LTE and 2G technologies. Though the incumbents might argue that this approach is more complicated than simply acquiring more spectrum, EastLink submits that the 700 MHz spectrum is a scarce resource that is vital to new entrants' ability to compete on a level playing field with the incumbents. Therefore, the interests of Canadian consumers will be best served, not by allowing the incumbents to choose the easy path, but by ensuring that new entrants have a fair chance to obtain the spectrum that they need.

63. Rogers has filed a report prepared for Rogers by Lemay-Yates in support of its submission that a re-farming exercise would be too expensive. They claim that requiring the incumbents to use their large holdings of 800 MHz spectrum to deploy both LTE and older technologies would create significant costs for both the incumbents and their customers because legacy radio access systems would need to be replaced and existing customers would need to be provided with new handsets/devices that work on another band. EastLink submits that this is likely not an accurate depiction of how the transition would occur. Firstly, many handsets being manufactured today work in multiple bands. Moreover, most wireless consumers already replace their handsets every few years. Consumers are constantly seeking the latest technology. As a result, no matter what band is used, many consumers will voluntarily choose to purchase a new, LTE-compatible handset within the next few years. Similarly, regardless of which spectrum it uses, Rogers will incur significant equipment costs. Thus, many of the costs referenced by Rogers as support for its claims that re-farming would be too expensive are costs that will be required regardless.

64. Moreover, to be clear, EastLink is not proposing that Rogers and the other incumbents completely shut down their legacy systems so that they can use the spectrum to launch LTE. As noted above, we are suggesting that the spectrum be used to provide both LTE and legacy services simultaneously. The spectrum could be partitioned, with more spectrum being allotted to the LTE service as customers naturally migrate to LTE, which will likely occur quickly given the apparent consumer demand for better, faster technology. EastLink submits that this use of the spectrum for multiple purposes represents the most efficient use of a scarce resource as, unlike the incumbents' proposals, with such an approach, the incumbents will not end up with excess spectrum once the transition is complete. EastLink also notes that new entrants such as EastLink will be supporting both HSPA and LTE at launch and will, therefore, face similar issues with less spectrum. Accordingly, EastLink submits that the Department must not favour the incumbents.

Myth 5: The new entrants can outbid the Big Three in an open spectrum auction

65. The Big Three all claim that there is no need for a set-aside, spectrum cap or other similar measures because the new entrants can outbid the Big Three in an open spectrum auction. EastLink submits that such an assertion is absurd.

66. As Rogers notes repeatedly in its submissions, Rogers serves 9 million wireless customers alone. EastLink, on the other hand, has only 500,000 subscribers. While EastLink may be the incumbent cable provider in its territory, there is simply no comparison between EastLink and the Big Three in terms of scope and scale.

67. Moreover, the money from EastLink's existing wireline services is constantly reinvested in those services. As noted herein, EastLink has invested \$80 million in the past three years to support our wireline business in Newfoundland. We have also invested more than \$450 million over the past two years to upgrade our infrastructure to improve services. Overall, EastLink has invested \$1 billion since 2003 in upgrading and improving our infrastructure and services. We are consistently focused on bringing innovative and high quality services to our subscribers. Shaw and QMI are likely in a similar position. Thus, while EastLink continues to be an innovative and efficient operator, and we are prepared to make the investments required to launch our wireless network, our status as an incumbent cable provider in no way provides us with the resources necessary to outbid the Big Three.

68. EastLink also agrees with the following observations from Shaw's submissions:

The wireless incumbents have been operating in the market for over 25 years which provides them with several incumbency advantages, including: ubiquitous networks composed of hundreds of cell sites; millions of customers that are locked into long term contracts; sophisticated back office billing and operational support systems that can support high volumes of demand; and long standing roaming agreements with international carriers. In each of these regards, the new entrants have been starting from scratch.

69. Because the incumbents have large, existing wireless customer bases, they have access to monthly, high ARPUs that provide them with resources that EastLink and other new entrants could never hope to match. While EastLink has revenues from its existing wireline services, all of our cash flows are being reinvested in those

services (we have the highest investment, as a percentage of revenue, of any company in the industry with respect to enhancing and rebuilding our networks and infrastructure), meaning that they are not available for use in the spectrum auction. Conversely, because the incumbents, in addition to the same wireline revenues that EastLink has, also have significant revenues from their wireless services, they have an advantage as against new entrants, particularly given that their subscriber bases (which are in the millions for each of the Big Three) are so much larger than, for example, EastLink's subscriber base (which is roughly 500,000).

Myth 6: There are too many new entrants

70. The incumbents claim that the market can only sustain four national players (i.e., only one new entrant). As a result, they claim that many new entrants will either fail or consolidate and, therefore, special measures should not be taken to provide spectrum to entities that may not be around in a few years. The incumbents allude to the failure of some earlier new entrants in the wireless market as proof that today's new entrants will similarly fail. EastLink disputes their conclusion. Some of the earlier new entrants in the wireline telephony business also failed. However, where they failed, EastLink has succeeded, as have Shaw and Videotron. Thus, EastLink submits that, at least with respect to the cable companies, there is no risk of failure or consolidation. All of the cable companies have previously entered the wireline telephony and Internet markets. Thus, we are experienced in determining when there is an appropriate business case for entry and we would not be entering the wireless business if we did not believe that we would succeed (although, EastLink notes that our decision to enter was based on the Department's commitment to

supporting competitive entry with measures such as those employed in the AWS auction).

71. The incumbents also claim that the new entrants' current strategy of extremely low pricing cannot be sustained and is further proof that consolidation is sure to occur. However, EastLink notes that we are a multi-service company and, as a result, we will have the ability to leverage bundling options as a means to provide greater value to consumers. Thus, while pure wireless competitors may be using extremely low prices as their key market differentiator, EastLink disputes any notion that such concerns would apply in the context of the cable entrants.
72. However, EastLink wishes to be clear that none of the above should be interpreted as suggesting that EastLink could compete head-to-head with the Big Three in an open auction. Obviously, by any measure, EastLink is dwarfed by companies such as Rogers and Bell and, for all of the reasons discussed in the preceding section, EastLink could never outbid any of the Big Three in an open auction. EastLink merely wishes to make it clear to the Department that, while we do not have the cash flow, resources and incumbency advantages available to the Big Three, EastLink is a successful, experienced competitor and is in no way at risk of failure or consolidating with another company. If the Department establishes both an auction framework that gives EastLink a fair chance of acquiring 700 MHz spectrum, and, appropriate licence conditions (i.e., with respect to mandated roaming and tower sharing), EastLink will be an aggressive competitor to the incumbents and will offer Canadian consumers a true competitive alternative.

73. Currently, the Big Three compete with Shaw, Videotron, MTS Allstream, SaskTel and EastLink in the wireline telephony, cable and Internet business and there is no suggestion that any of these companies are going to fold. Thus, EastLink submits that there is no reason to believe that these companies cannot also compete in the wireless market. While EastLink acknowledges that there is speculation concerning a potential consolidation between Public Mobile and Wind Mobile, there is no apparent speculation nor any basis for the same with respect to the other new entrants. The majority of the new entrants are strong, multi-service companies with a history of successful entry into wireline markets.
74. EastLink also notes that many of these companies compete on a regional level. Thus, while the incumbents state that many countries can only support a certain number of national players, Canada's size and geography is unique, and regional players may be necessary to fulfill competitive needs. Canada has benefitted from regional competition in other communications markets and there is no reason to believe that the same will not be true of wireless. As noted earlier herein, Rogers does not provide service throughout all rural areas in the Atlantic Provinces. Conversely, EastLink got its start in the rural areas of Atlantic Canada. The current state of the market, and the lack of service (or at least advanced services) in most rural areas make it clear that the Canadian wireless industry could benefit from strong, regional players that have a history of serving rural customers.
75. EastLink submits that the greater risk of consolidation would actually occur in a case where the incumbents are able to get all or most of the 700 MHz spectrum. Bell has just received CRTC approval of its takeover of CTVglobemedia and is the largest

communications company in Canada.¹⁴ Rogers similarly has a vast media empire that includes holdings in television broadcasting, radio, publishing, sports teams, and other industries. Concerns are already being raised in the broadcasting industry about the possibility that these integrated companies will use their ownership in both the wireless and broadcasting industries to offer exclusive content on their wireless networks. This raises concerns that consumers may be denied access to certain content depending on the wireless provider they choose. In fact, the CRTC is holding a hearing in June to address the increasing vertical integration in the broadcasting industry and is so concerned about this issue that it has put in place a temporary moratorium on the negotiation of exclusive content deals, including on wireless platforms.¹⁵ In EastLink's view there is no question that the market power possessed by these entities can be leveraged to create exclusive deals and other arrangements that would weaken competition and/or deny Canadian consumers access to content. For that reason, EastLink submits that the Department must act now to ensure that there is sufficient competition in the wireless industry to ensure that the Big Three cannot further consolidate their market power to the detriment of Canadian consumers.

76. EastLink also notes that there has been speculation within the industry for several years with respect to a potential merger between Bell and TELUS. In fact, the two companies were on the verge of a merger in 2007 before TELUS backed away at the last

¹⁴ <http://www.bce.ca/en/aboutbce/bellicanada/index.php>

¹⁵ See Broadcasting Decision CRTC 2011-163, wherein the CRTC stated: "...the Commission acknowledges the concerns of certain interveners that issues related to program exclusivity may arise from the acquisition of Canada's largest broadcaster by BCE.... In the Commission's view, BCE's public statements placing emphasis on the provision of exclusive content to its subscribers and especially to its wireless subscribers reinforce such concerns. In light of the above, the Commission imposes the following moratorium. Until the Commission implements its determinations in the vertical integration proceeding, BCE is prohibited from entering into new exclusive programming agreements that would prevent it from making available to its competitors, on commercial terms, mobile and broadband rights to television programming from its conventional and specialty services. The Commission also expects other vertically integrated entities to abide by this moratorium and not to enter into such agreements until it publishes its determinations on the vertical integration issue."

minute. Today, industry analysts continue to speculate that these companies will eventually merge. An article that appeared in *The Globe and Mail* last week speculated as follows:¹⁶

Asked about Mr. Entwistle's future at Telus, industry observers always raise the topic of Bell. Ever since BCE was in play four years ago, the question has lingered: When will Bell and Telus get together? It only makes sense, industry insiders say.

Mr. Entwistle agrees a merger may be right for the long term. He calls it "a possible eventuality" as the Canadian industry becomes more mature. "It is critically important that you realize economies of scale and these are typically achieved through size." Then he adds: "But it's decidedly out of fashion now under the strategy professed by the Canadian government."

The industry agrees. It would create a wireless giant with roughly two-third of the country's subscribers and force rivals to seek similar scale, crimping the industry's competitiveness. But if, as some expect, the government eases foreign ownership for all players – instead of just smaller ones – expect either Telus or Bell to play the "national champion" card, arguing that a massive Canadian merger is required to maintain strong head office presence in this country.

Given that many analysts believe the question of a Bell / TELUS merger is a foregone conclusion, EastLink submits that support for competition and new entry is even more vital because, as noted by *The Globe and Mail*, such a merger would significantly lessen competition.

77. Finally, EastLink notes that, at the same time that the Big Three are claiming that there is no need for a set-aside or similar measures because the new entrants have the resources necessary to outbid

¹⁶ TELUS CEO Put to a Leadership Test, *The Globe and Mail*, April 1, 2011
(<http://www.theglobeandmail.com/report-on-business/telus-ceo-put-to-a-leadership-test/article1967864/>)

the Big Three, they are simultaneously arguing that new entrants are at risk of failing or consolidating. They cannot have it both ways. EastLink submits that the truth lies in the middle. While the majority of new entrants are not going to fail or consolidate, they do not have the resources necessary to compete head-to-head with the Big Three in an open auction. That is why the Department must design an auction framework that will allow new entrants to obtain the spectrum that they need to compete.

Myth 7: New entrants do not need as much spectrum

78. The Big Three claim that, because new entrants have fewer subscribers than the incumbents and most of the new entrants that have launched to date have tended to focus on voice and less data-intensive services, new entrants require less spectrum than the incumbents. However, such reasoning ignores the obvious realities that competition in the Canadian market is nascent and new entrants' services are limited right now because we do not have enough spectrum. If anything, the incumbents have merely highlighted why new entrants need more spectrum and that we cannot compete on a level playing field without it. Limiting new entrants based on their current service offerings would prevent new entrants from expanding their services to include more data-intensive services, and a wider array of devices and applications. This would effectively hobble the new entrants.
79. EastLink notes that claims such as Rogers' claim that new entrants already have too much spectrum considering the number of subscribers new entrants currently serve once again expose the incumbent mentality. They are suggesting that new entrants will

not gain any more market share. They firmly believe that they will keep all of their customers. However, as noted above, customers are leaving the incumbents and migrating to new entrants, who provide more flexibility and value. If Rogers is suggesting that new entrants should only be given enough spectrum to serve their existing customers, they are in essence suggesting that the Department constrain new entrants to the status of second class service providers. This is entirely unreasonable. New entrants must be permitted to compete on a level playing field with the incumbents and that includes achieving the spectrum depth necessary to achieve the capacity needed to expand both our subscriber bases and our service offerings. As described above, EastLink will not be focussing on voice and less data-intensive services. We offer our current cable and Internet customers cutting edge services such as video-on-demand and multi-room DVR, including in rural areas. We plan to bring the same innovation and full-service offerings to our wireless customers.

80. Similarly, the Big Three claim that new entrants are focusing on urban areas and are not building out to rural areas. However, once again, if new entrants have focused on urban areas to date, that is because, unlike the incumbents, new entrants do not currently own any spectrum that would support a cost-effective roll-out in rural areas. Again, the incumbents are making our case for us. EastLink intends to use the 700 MHz spectrum to achieve cost-effective and high quality coverage with its network. This is consistent with the strategy employed by the Big Three, who currently use their considerable 800 MHz holdings to achieve coverage. While new entrants were successful in purchasing some of the AWS spectrum in 2008, none of the new entrants has significant holdings in the 800 MHz band and the AWS spectrum

does not provide the same advantages. Accordingly, EastLink submits that it is beyond contention that new entrants will not be able to provide sustainable and vital competition to the Big Three without access to sufficient 700 MHz spectrum.

81. EastLink further notes that, if new entrants have faced challenges in deployment, they are at least partially attributable to the behaviour of the incumbents. If new entrants' service offerings are somewhat limited right now, it is due, at least in part, to the incumbents' behaviour with respect to negotiations for site-sharing and roaming. That is why EastLink and the other new entrants have proposed that the Department modify and enforce the existing regime. Further details of EastLink's proposal are included later herein beginning at paragraph 151.

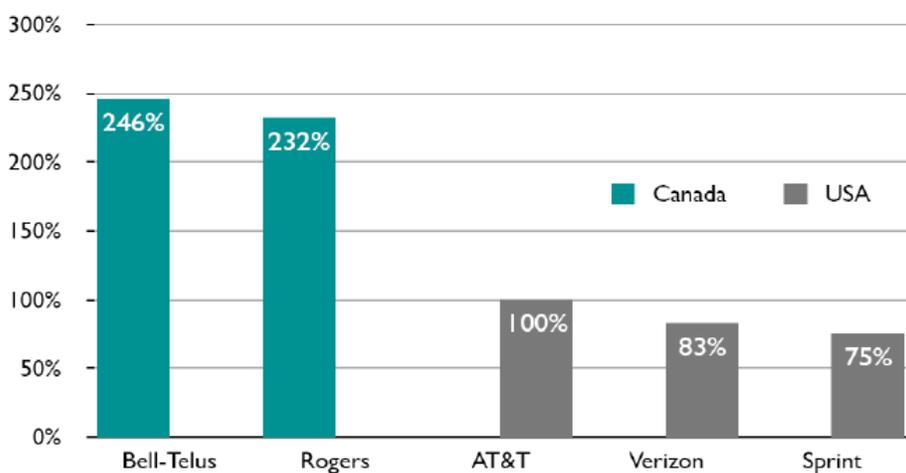
82. Finally, EastLink notes that it is hypocritical for the incumbents to argue that new entrants' spectrum holdings should be capped based on *current* operations, whilst they simultaneously file page after page of comments and expert reports in an attempt to justify that they need more spectrum based on their *future* operational expectations. Moreover, EastLink notes that this only serves to highlight that new entrants do not require the spectrum for theoretical future needs; we have a pressing need for this spectrum now.

Conclusion

83. In conclusion, EastLink submits that the Department must push aside these exaggerated claims by the incumbents and stay focused on the objectives of bringing more competition to the Canadian wireless market and incenting roll-out to rural areas. It is

undeniable that the Big Three currently hold almost all of the spectrum available in Canada. Because they own such large amounts of spectrum, they have not been incented to use it efficiently and, in fact, they benefit from not using the spectrum efficiently because it allows them to continue to make claims of the type they are making in the present consultation, where, despite their large spectrum holdings, they are attempting to convince the Department that they should be permitted to acquire more. As noted by EastLink in its earlier submissions, the incumbents currently have significantly more spectrum than their American counterparts who use less spectrum to serve significantly more customers. EastLink notes that Shaw has included in its submissions a chart that aptly illustrates the imbalance between the Big Three and their American counterparts.¹⁷ EastLink has copied that chart below for ease of reference.

Canadian Incumbent Spectral Allocation v. US Incumbent Allocation (expressed as % of AT&T)



As indicated in the above chart, each of Rogers and the Bell/Telus alliance has more than twice the amount of spectrum that AT&T

¹⁷ See paragraphs 30 and 31 of Shaw's submissions.

owns in the U.S., while the wireless new entrants in Canada hold a very small amount of spectrum, as clearly shown in the Consultation Document.

84. There are three main ways that a carrier can deal with capacity issues: add more sites, utilize more spectrum or increase network efficiency. American wireless providers have clearly found ways to use their spectrum more efficiently. Canadian incumbents will not be incented to do the same if the Department continues to give them more and more spectrum.

Set-aside / Spectrum caps

85. The Department's *Framework for Spectrum Auctions in Canada* (the "*Framework*") clearly acknowledges that spectrum caps, set-asides and similar measures are justified where necessary to ensure a competitive post-auction marketplace:

In an effort to ensure that social and economic benefits are maximized from the use of the radio frequency spectrum, it will be important that licensees operate in a competitive marketplace post-auction. Measures available to the government to promote a competitive post-auction marketplace include restricting the participation of certain entities in an auction and/or placing limits on the amount of spectrum that any one entity may hold by using spectrum set-asides or spectrum aggregation limits.

86. The *Framework* goes on to recognize that set-asides are entirely appropriate where a party, or several parties, exercise market power that could be used to diminish competition within the wireless industry and the use of pro-competitive measures would allow new entrants to provide competitive services. The *Framework* also recognizes that spectrum caps are appropriate

where certain parties already possess spectrum that is substitutable for the spectrum available in the auction (as is the case with the incumbents' large 800 MHz spectrum holdings in the present auction) and allowing those parties to accumulate further spectrum would prevent effective competition, which is clearly the case in the present auction.

87. EastLink submits that employing either a set-aside or a spectrum cap is the most efficient means of ensuring a competitive post-auction marketplace. The inability to acquire spectrum represents one of the most significant barriers to entry for new entrants to the wireless market and, in the absence of measures to ensure the availability of spectrum for new entrants in the upcoming auction, there exists a real potential for the incumbents to preclude market entry by either buying all available spectrum (or all spectrum licences for strategic locations), or by ensuring potential new entrants pay a sufficiently high premium for spectrum to seriously compromise their ability to succeed.
88. This is a crucial time for the wireless industry in Canada. As noted by the Department in the Consultation Document, spectrum is a finite resource that can only be accessed periodically. Accordingly, the upcoming spectrum auction is, in many respects, the last meaningful opportunity to further competition in the wireless market, and particularly in rural areas. For that reason, EastLink submits that, on a balance of probabilities, the benefits of establishing measures to enhance opportunities for new entrants far outweigh any risks posed by such measures.
89. As described in greater detail below, EastLink strongly favours the use of a set-aside. The set-aside employed in the AWS auction

permitted at least two new entrants to obtain spectrum in every province in Canada, with the exception of Quebec. As such, the set-aside mechanism used in the AWS auction was a success and EastLink submits that the Department should seriously consider building upon that success by employing the same, proven mechanism again. However, while EastLink favours the use of a set-aside, we are not opposed to the use of a spectrum cap if an appropriate cap is carefully established. Though, as discussed in greater detail below, EastLink continues to have concerns with respect to whether a spectrum cap would be as effective as a set-aside in ensuring that at least two new entrants obtain sufficient amounts of 700 MHz spectrum to compete on a level playing field with the Big Three. EastLink believes that, if the wrong cap is chosen, a spectrum cap presents a greater risk that, for example, the Big Three would obtain the majority of the spectrum or drive up spectrum costs to weaken new entrants. Overall, EastLink submits that a spectrum cap would not be as effective as a set-aside in supporting the Department's efforts to incent sustainable competition and roll-out in rural areas.

Competition is not sustainable without such measures

90. Rogers claims that it does not understand how a set-aside, cap or other measures would help sustain competition.¹⁸ However, as EastLink explains in its earlier submissions and again herein, the competition introduced with the AWS auction will simply not be sustainable without new entrant access to 700 MHz spectrum. Relative to the incumbents, new entrants have significantly less spectrum and the spectrum we do have is spread across fewer bands. This lack of spectrum depth and diversity increases new

¹⁸ See paragraph 196 of Rogers' submissions.

entrant deployment costs and limits new entrants' flexibility because we do not have the same opportunity as the incumbents to take advantage of the characteristics of different frequency bands to optimize the user experience of our customers. Without access to 700 MHz spectrum, new entrants: (a) cannot achieve efficient coverage of rural or deep indoor areas, (b) will not have sufficient capacity to offer the data-intensive services that consumers are seeking, and (c) will not be able to benefit from the economies of scale inherent in access to the device ecosystem being generated for the U.S. market.

91. While the AWS auction permitted several new entrants to enter the Canadian wireless market, the 700 MHz auction is the process that will determine whether or not that entry will be sustainable. It is only through the 700 MHz auction that new entrants can hope to access spectrum that they need to compete on a level playing field with the Big Three. Most of the new entrants have only 10 to 30 MHz of spectrum, in contrast to the Big Three, who generally hold between 70 and 135 MHz of spectrum each. While it is possible for a new entrant to launch a basic, voice-based service with as little as 10 MHz of spectrum, in the near future, the growth of data-based services such as video calling, mobile video and cloud computing will mean that many multiples of 10 MHz will be the minimum amount of spectrum needed to offer the same services as the incumbents at competitive rates.
92. Once again, EastLink rejects any suggestion by the Big Three that new entrants need less spectrum because they currently have fewer subscribers than the incumbents, or because certain of the new entrants are currently focussing on less data-intensive voice and text plans. As described earlier herein, EastLink plans to

launch a full-service wireless product and therefore needs access to sufficient spectrum to support the data-intensive services and applications that today's consumers are seeking. Even those new entrants that currently focus on voice/text plans likely have plans to expand but are simply new and limited by current spectrum holdings. Rogers assumes those companies have chosen that route; however, the more likely scenario is that their current lack of spectrum is restraining them. If anything, Rogers' claims only prove that new entrants currently do not have enough spectrum to compete on a level playing field with the Big Three.

93. Additionally, with their significant spectral diversity in both the lower and upper frequency commercial mobile bands, the incumbents have a device ecosystem advantage over new entrants. The number of devices that operate in the AWS band is limited by comparison to those that are available in the cellular and PCS bands.
94. The behaviour of the Big Three and the high prices that they were willing to pay in the AWS auction demonstrate that, despite the fact that they already own the vast majority of spectrum in Canada, if given free reign, they will go to any lengths to make sure that new entrants are shut out of the 700 MHz spectrum auction. The Big Three won almost all of the non-set-aside spectrum in the AWS auction. Moreover, the prices paid in the Canadian AWS auction (\$1.55/MHz/POP) relative to those paid in Auction 66 in the United States (\$0.54/MHz/POP) demonstrate that, even though the Big Three already own large holdings of spectrum that they are not fully utilizing (particularly in rural areas), they are willing to pay any price in order to shut new entrants out of the market. EastLink was

interested in acquiring spectrum in the open block, but was consistently outbid by the incumbents.

95. For all of these reasons, EastLink submits that a framework needs to be established for the 700 MHz auction that allows new entrants to increase and diversify their spectrum holdings. If new entrants are not able to acquire more spectrum, including low-frequency spectrum, the wireless incumbents will have insurmountable cost and technical advantages.

Competitive measures do not distort the marketplace

96. In addition to ignoring the fact that spectral depth and diversity are necessary for the new entrants to meet both capacity and coverage challenges, the incumbents also attempt to dissuade the Department from taking steps to level the playing field by characterizing set-asides and caps as subsidies. They believe that such a characterization carries with it a connotation that the Department would be improperly distorting the competitive marketplace. However, EastLink submits that this is not the case. All that EastLink and the other new entrants are seeking is a chance to compete on a level playing field with the incumbents. The Big Three have large spectrum holdings, while the new entrants are generally limited to 10 to 30 MHz of AWS spectrum and, in some cases, minor PCS or Cellular holdings. Moreover, EastLink agrees with Mobilicity that new entrants are not advocating that the spectrum simply be given to new entrants. None of the new entrants is seeking guaranteed access to spectrum. We are simply seeking an auction framework that permits new entrants a fair chance at competing for the spectrum,

something that will not occur if the incumbents are free to outbid the new entrants for all of the spectrum.

97. As QMI notes, the final prices paid in the 2008 AWS spectrum auction prove that competition was fierce for the set-aside spectrum:

In the end, the average winning bid was \$1.26/MHz/pop for set-aside spectrum and \$1.41/MHz/pop for non-set-aside spectrum, far exceeding expectations and well in excess of the average winning bid of US\$0.54/MHz/pop recorded in the 2006 US AWS auction. In the Canadian AWS auction, nobody got a free ride.¹⁹

98. Moreover, new entrants have and will continue to incur significant costs associated with the build-out of their networks. Rogers' submissions note that billions of dollars are required to fund the build-out and expansion of wireless networks. On top of this, new entrants have invested significant resources in the challenging process of gaining access to incumbent towers and sites, and are also faced with the high roaming rates currently being charged or proposed by the Big Three to new entrants.
99. EastLink also notes that, prior to the first mobile spectrum auction in 2001, the incumbents benefitted from extremely favourable access to spectrum, which was often awarded on the basis of a comparative selection process (otherwise known as a "beauty contest") and other similar methods. As a result, the incumbents currently benefit from substantial spectrum holdings below 1 GHz that they obtained by way of beauty contests more than twenty years ago.

¹⁹ See paragraph 47 of QMI's submissions.

100. Moreover, EastLink submits that it is disingenuous for the Big Three to claim to challenge the use of what they characterize as “subsidies” when they themselves both seek and benefit from subsidies and other preferential treatment in a variety of ways. Both Bell and TELUS are currently benefitting from subsidies (in the form of drawdowns from their deferral accounts) to support roll-out of broadband to rural areas in their territories. In fact, Bell is using that money to roll-out HSPA wireless technology.²⁰ Even Rogers is potentially going to benefit from those monies as Rogers recently filed a petition to the Governor in Council asking that the Governor in Council vary the CRTC’s decision approving of Bell’s use of the deferral account funds and, instead, allow Rogers to bid for access to those same funds to build-out Rogers’ wireless HSPA network.²¹ In its application, Rogers states that “[p]ublic funds for broadband expansion are a limited and very important resource in Canada and should be used prudently and in a cost effective manner.”²² Thus, while TELUS argues that new entrants should not receive what it characterizes as a “subsidy”, simultaneously, TELUS, Bell and Rogers will all potentially be using deferral account funds and other government funding to compete with EastLink and other new entrants in both the Internet and wireless markets.
101. EastLink also finds TELUS’ position to be particularly inconsistent. On the broadcasting side, TELUS has appeared before the CRTC and the Heritage Committee on multiple occasions over the past few years to request restrictions on the ability of Rogers and Bell to leverage their integrated broadcasting holdings as a competitive differentiator. As noted above, the CRTC has recently

²⁰ In Telecom Decision CRTC 2010-805, the CRTC approved a proposal by Bell Canada and Bell Aliant Regional Communications, Limited Partnership to use \$306.3 million in deferral account revenues to extend broadband service to 112 approved locations using HSPA wireless technology.

²¹ See Gazette Notice No. DGTP-002-11.

²² See paragraph 12 of Rogers’ petition to the Governor in Council, dated January 26, 2011.

implemented a temporary moratorium on exclusive content and TELUS was one of, if not *the* most vocal advocate for such a ban. Thus, while they pretend to reject any notion that the Department should take measures to ensure that new entrants can compete on a level playing field with the Big Three, on the cable-side, where TELUS is a new entrant, they have spent the past few years tirelessly advocating for measures to ensure that new cable entrants are able to compete on a level playing field with incumbent distributors and broadcasting ownership groups. TELUS denies that new entrants will bring anything to the wireless market whilst simultaneously extolling the virtues of competition in the broadcasting market. Bell is no stranger to such arguments either. As a new entrant on the cable-side, Bell has also made numerous submissions to the CRTC requesting that new entrant broadcasting distribution undertakings (“BDUs”) such as Bell’s IPTV service be given preferential treatment as against incumbent BDUs. Overall, it is clear that the Big Three do support measures designed to increase competition, but only when it will benefit them.

Set-aside

102. With respect to the specific mechanism the Department should employ to support and enhance the nascent competition that is developing in the Canadian wireless market, EastLink submits that the Department must ensure that it does not choose a mechanism that will result in the Big Three getting the majority of the spectrum while only one new entrant in each area is able to obtain spectrum. To ensure strong competition in all regions and, in particular, in rural areas, the Department must prioritize developing an auction framework that ensures that at least two new entrants will be able

- to acquire 700 MHz spectrum, enabling them to launch and sustain their business in each market.
103. Given the incumbents' large 800 MHz holdings, a scheme that ensures that at least two new entrants will be able to obtain 700 MHz spectrum would not be unduly prejudicial to the Big Three and, at any rate, the benefits that would accrue to consumers from strong competition would outweigh any such concerns. Thus, while the Big Three have attempted to distract the Department with exaggerated claims regarding their need for additional spectrum, EastLink has clearly demonstrated that their claims are without merit and the Department must not be swayed from focusing on its key objective of bringing vital and sustainable competition to all Canadian consumers.
104. The set-aside employed in the AWS auction permitted at least two new entrants to obtain spectrum in every province in Canada, with the exception of Quebec. As such, the set-aside mechanism used in the AWS auction was a success and EastLink submits that the Department should seriously consider building upon that success by employing the same, proven mechanism again.
105. EastLink also wishes to address Rogers' suggestion that the AWS set-aside artificially prevented Bell and TELUS from separately acquiring enough spectrum to make it viable for them to offer LTE over separate networks, allegedly forcing them into building a joint network.²³ EastLink strongly disputes such claims. Public Mobile Inc. has aptly described the long-standing and beneficial relationship that has existed between Bell and TELUS since 2001, seven years before the AWS auction:

²³ See paragraphs 180-181 of Rogers' submissions.

16. Bell and TELUS have operated under a network sharing agreement since 2001, enabling them to combine their complementary network assets to maximize coverage and conserve capital. This agreement amounts to a spectrum sharing agreement, effectively enabling them to warehouse complementary spectrum by piggy-backing on each other's networks.

17. This benefit is particularly important with the shared use of the 800 MHz spectrum that was granted to the two carriers in 1984. The network sharing agreement has enabled each of them to gain the benefits of the other's low frequency spectrum by avoiding the need to build rural areas using 1.9GHzPCS spectrum. A competitive advantage which would only be compounded by giving them unfettered access to 700 MHz spectrum.

Rogers' own submissions acknowledge that it is possible that Bell and TELUS would have engaged in their current joint venture regardless of whether a set-aside had been employed in the AWS auction. EastLink submits that, rather than possible, it is probable that Bell and TELUS would have continued their longstanding and beneficial partnership.

106. With all of the foregoing in mind, EastLink has proposed that the spectrum in the lower portion of the 700 MHz band be set aside for new entrants. Given that the 700 MHz and the 800 MHz spectrum have similar propagation characteristics, EastLink proposed that "new entrants" be defined as operators with less than 3% of the total 800 MHz holdings weighted by population. EastLink's proposal results in 36 MHz of paired spectrum being reserved in the lower band for new entrants, while 32 MHz of paired spectrum in the upper band would be available for open bidding. This approach effectively provides new entrants with access to the

spectrum they require to compete with the Big Three and to build a sustainable competitive wireless business, while granting an opportunity for the Big Three to bid on an equivalent amount of open spectrum.

107. New entrants were able to obtain spectrum in the AWS band in 2008 and are hoping to gain access to 700 MHz spectrum in the upcoming auction. Thus, new entrants hoping to launch LTE must be able to obtain devices that seamlessly support LTE on both AWS and 700 MHz, with a fall back to HSPA+ technology in areas where no LTE coverage is available. Because new entrants are not big enough to drive device ecosystems on their own; they must follow in the steps of larger carriers that have large subscriber bases that allow them to influence and direct device manufacturers. Currently, AT&T is the only carrier in the world deploying devices that support LTE on both AWS and 700 MHz spectrum; thus, new entrants must be able to access the devices created for AT&T. Because the devices operating on AT&T's networks will only operate in the lower 700 MHz band (AT&T has no spectrum in the upper 700 MHz band), this means that it is critical that new entrants have access to spectrum in the lower 700 MHz band. If new entrants are not able to obtain spectrum in the lower 700 MHz band, they will not be able to access devices being manufactured for AT&T and, because new entrants are not large enough to drive the manufacture of custom devices suited to their own networks, they will be severely disadvantaged as compared to the Big Three. New entrants that do not have access to lower 700 MHz spectrum will have access to an extremely limited number of devices and, additionally, will not be able to benefit from economies of scales generated by using the same devices as AT&T, which will increase the device cost substantially. Conversely, because the Big Three

are large enough to generate an ecosystem for devices operating in the upper 700MHz band, they will not be prejudiced by not having access to the lower 700 MHz spectrum.

108. Rogers has filed statistics designed to demonstrate the importance of smartphones and other advanced technologies.²⁴ EastLink agrees with this assessment. As these devices become more integrated into our lives, it becomes vitally important that competition is sufficient to ensure that all Canadians (including those in rural areas) are able to access these devices and services at affordable rates. Thus, it is imperative that new entrants have access to spectrum in the lower portion of the 700 MHz band so that we can access the device ecosystem currently being generated for AT&T.
109. EastLink further submits that the upper C and D blocks must be open to all bidders. EastLink strongly opposes the incumbents' suggestion that, if a set-aside is employed, new entrants permitted to bid on set-aside spectrum should not be permitted to bid on open spectrum. EastLink has addressed below (beginning at paragraph 119) the allegations from the incumbents that new entrants "gamed" the system during the AWS auction. Moreover, despite incumbent claims to the contrary, the average winning bid for set-aside spectrum (\$1.26/MHz/pop) was not significantly lower than the figure for the open spectrum (\$1.41/MHz/pop) when both are compared with the average winning bid (US\$0.54/MHz/pop) recorded in the 2006 US AWS auction.² It is clear that there was fierce competition for all spectrum in the AWS auction. In any case, EastLink submits that, if the Department determines that legitimate concerns remain, mechanisms can be put in place to address these

²⁴ See paragraphs 137-139 of Rogers' submissions.

concerns. The solution should not be to exclude new entrants from bidding on this spectrum.

110. If new entrants are not permitted to bid on open spectrum (particularly in rural areas), there is a real risk that incumbents will purchase the spectrum, not because they plan to use it or build-out to those rural areas, but simply because the spectrum will be cheap as there will be less competition for the spectrum if only the incumbents are permitted to bid on the spectrum. New entrants must be permitted to bid on all of the 700 MHz spectrum to ensure that this vital spectrum is only purchased by companies that actually plan to use it to roll-out wireless services, particularly in rural areas. Moreover, because there is a limited amount of 700 MHz spectrum, EastLink notes that, even with a set-aside, there may be some new entrants that are not successful in purchasing spectrum in the set-aside blocks. As a result, new entrants must also have an opportunity to purchase spectrum in the open blocks.

111. Finally, EastLink has made the following additional proposals:

- If the Department determines that it is appropriate to auction off the 10 MHz of spectrum dedicated to public safety in the U.S. Band Plan, that spectrum should be open to all bidders, thereby adding 10 MHz of LTE spectrum to the spectrum available to all bidders.
- Restrictions should be imposed to ensure that the set-aside spectrum cannot be transferred to companies that do not meet the 3% criterion for a period of five (5) years from the date the licence is issued.

Spectrum Caps

112. While EastLink strongly favours the use of a set-aside, EastLink is not opposed to the use of a spectrum cap if an appropriate cap is carefully established. EastLink has concerns with respect to whether a spectrum cap would be as effective as a set-aside in ensuring that at least two new entrants obtain sufficient amounts of 700 MHz spectrum to compete on a level playing field with the Big Three. EastLink believes that, if the wrong cap is chosen, a spectrum cap presents a greater risk that the Big Three would obtain the majority of the spectrum and, at most, only one new entrant in each area would be successful in obtaining spectrum. This outcome places more spectrum in the hands of the Big Three with little certainty that it will fulfill the Department's objectives of bringing sustainable competition to rural Canada. EastLink also notes that a spectrum cap alone would not guarantee that new entrants would gain access to the specific spectrum they need (the lower portion of the 700 MHz band) in order to access the device ecosystem created for AT&T. For all of these reasons, EastLink submits that a spectrum cap would not be as effective as a set-aside in supporting the Department's efforts to support and encourage sustainable competition and roll-out in rural areas. However, in the event that the Department determines that it is appropriate to employ a spectrum cap in the 700 MHz auction, EastLink offers the following thoughts.
113. EastLink notes that any spectrum cap employed in the 700 MHz auction must be based on a recognition that companies with 800 MHz spectrum holdings already have the benefit of spectrum with propagation characteristics similar to those of the 700 MHz spectrum. Given their similar propagation characteristics, both

bands serve the same purposes (e.g., cost-effective coverage of rural areas and certain deep indoor coverage issues in urban areas) and, as noted above, the Department's *Framework for Spectrum Auctions in Canada* provides that one of the factors to be considered in determining whether a spectrum cap is appropriate is whether certain parties already possess spectrum that is substitutable for the spectrum available in the auction and whether allowing those parties to accumulate further spectrum would prevent effective competition. Both of these considerations are clearly relevant in the present auction.

114. A spectrum cap would also need to take into account whether the 800 MHz spectrum is used on behalf of, or in conjunction with, another entity, such as the shared radio network operated by Bell and TELUS. The series of arrangements between those companies has resulted in a completely integrated national wireless network and, based on their bidding behaviour in the AWS auction, an apparent agreement as to the post-auction market structure. EastLink notes that Rogers agrees with this assessment:

243. If a cap is imposed, it should be shared by affiliates and associated entities. If two (or more) carriers are cooperating in building their network or marketing their service, they should be treated as one entity. Failing to do so undermines the cap and the auction as a whole. Two carriers acting in concert would be able to obtain twice the spectrum a competing carrier would be able to obtain. That would provide the associated entities with a superior performing network with far faster speeds. ... An even playing field requires that entities working together during or even after the auction should share the cap.

Accordingly, EastLink submits that TELUS should not be able to bid in areas where Bell exceeds the spectrum cap (or the combined Bell/TELUS holdings would exceed the cap), and vice versa.

115. In the event that the Department is inclined to employ a spectrum cap, in light of all of the foregoing, EastLink offers the following proposal:

- On a tier basis, carriers that have access to 800 MHz spectrum at the auction date (directly or indirectly through network sharing) covering more than 50% of the population should be limited to one block of paired spectrum (for a total of 12MHz) in the upper 700MHz or two blocks of unpaired spectrum (for a total of 12MHz) in the lower 700MHz.
- On a tier basis, carriers that, at the auction date, either (a) do not have access (directly or indirectly through network sharing) to spectrum holdings in the 800 MHz band, or, (b) have access (directly or indirectly through network sharing) to spectrum holdings in the 800 MHz band that cover less than 50% of the population, should be limited to acquiring two blocks of paired spectrum (24MHz) or one block of paired spectrum (12MHz) and two blocks of unpaired spectrum (12MHz).

116. Finally, EastLink submits that the cap should remain in effect for 10 years.

EastLink opposes Rogers' proposal for an auction cap

117. EastLink notes that Rogers opposes the use of any caps or set-asides but suggests that an auction cap would be preferable to a

general spectrum cap or set-aside because it would allow all participants to bid on all spectrum in the auction. However, EastLink notes that an auction cap is not appropriate in the current circumstances given the large 800 MHz spectrum holdings of the incumbents. Given that new entrants do not have any significant holdings of spectrum with similar propagation characteristics, EastLink submits that, should the Department determine that a cap mechanism is appropriate, the cap should take into account existing holdings of similar spectrum outside the 700 MHz band, including the 800 MHz spectrum. As noted above, this approach is consistent with the Department's *Framework for Spectrum Auctions in Canada*.

118. Additionally, EastLink reiterates that the set-aside that we have proposed would not completely deprive the Big Three of the opportunity to bid on the 700 MHz spectrum. Almost half of the 700 MHz spectrum would be open for bidding by all parties under EastLink's proposal. EastLink's set-aside is merely designed to ensure that at least two new entrants in each area are able to obtain the 700 MHz spectrum that they need to compete on a level playing field and that new entrants have access to the lower portion of the 700 MHz band so that we can access the device ecosystem currently being developed for AT&T in the United States.

New entrants did not "game" the system

119. Finally, EastLink wishes to address the meritless claims made by the incumbents to the effect that the AWS auction created inefficient spectrum use and was fraught with "gaming" by new entrants. They appear to suggest that new entrants such as EastLink had no right to bid on spectrum in the open block,

spectrum that they viewed as theirs. However, EastLink submits that we were legitimately interested in the spectrum in the open block and simply could not outbid the incumbents.

Conclusion

120. EastLink has a proven track record of providing high quality, high value and innovative services to Canadians in rural areas across Canada and we believe that, if the Department establishes an auction framework that allows new entrants such as EastLink to obtain sufficient 700 MHz spectrum to provide sustainable competition, we can provide much needed competition in the wireless market in the Atlantic Provinces, and particularly to rural and remote areas. The Big Three already have large spectrum holdings and would in no way be prejudiced by any steps that the Department might take to ensure that consumers in rural areas are finally able to access the same wireless services and applications as are already available to their urban counterparts.

121. The auction of the 700 MHz spectrum is the last opportunity that the Department will have to support the roll-out of wireless services to rural areas. The incumbents have been known to refer to spectrum as “beach-front property”, recognizing that, as a finite resource, it has significant value, even if left undeveloped. As such, there is clearly a high incentive for incumbents to acquire as much of this “beach-front” property as possible, perhaps at any cost. New entrants like EastLink, on the other hand, have a current and relevant need for this spectrum and have every intention of utilizing it in order to build our wireless business. EastLink’s proposals herein relate to an objective of establishing an auction process that results in maximum utilization of the spectrum

consistent with the government objectives of rural service and sustainable competition, rather than an outcome that will result in “beach-front” hoarding by incumbents.

122. Finally, EastLink wishes to reiterate that it is not proposing that the incumbents be locked out. EastLink is proposing a set-aside of the lower portion of the 700 MHz band only. Under EastLink’s proposal, the upper portion of the band would be open for bidding from all parties.

BAND PLAN

123. As noted by the Department, harmonization with the U.S. band plan generally has many benefits, including international roaming, easier cross-border frequency coordination and the economies of scale inherent in access to equipment, services and applications available for the U.S. market. Accordingly, like most parties, EastLink has proposed that the U.S. band plan (Option 1) be adopted in Canada.
124. Although harmonizing the Canadian 700 MHz band plan with that of the United States may not appear to be the most efficient route at first glance (as compared to Options 2a and 2b), EastLink submitted that, in light of the recent modifications of the LTE device specifications in the lower 700 MHz band (the 3GPP band 12 specifications), the U.S. band plan provides a greater amount of usable spectrum, while also promoting access to a large, low-cost equipment ecosystem and easier cross-border roaming and coordination.

125. While EastLink initially proposed that the U.S. band plan be adopted without modification²⁵, we have had the opportunity to review the submissions filed by Shaw, Rogers, QMI and several other parties, all of whom have proposed that the upper C block be split into two paired blocks. EastLink agrees that such a modification would create several advantages. For example, EastLink has proposed that the lower portion of the 700 MHz band be set aside for new entrants and that the upper portion of the band be open to all bidders. Splitting the upper C block will create an additional block of spectrum for open bidding, increasing the amount of spectrum potentially available to each of the incumbents under EastLink's set-aside proposal.
126. Finally, EastLink has submitted that the guardbands should not be auctioned and we note that most parties are in agreement with this position. We also note that, in its recent decision on the band plan for Broadband Radio Service, the Department noted that guardbands are an effective tool for ensuring minimum interference between operators, as well as promoting the efficient use of the frequency spectrum.²⁶

TIER SIZE

127. EastLink would strongly oppose the use of a Tier 1 service area (encompassing the whole country). An auction based on Tier 1 would essentially exclude regional players, which companies are likely the best hope of providing competition in rural areas. The Department should encourage regional players such as EastLink

²⁵ With the exception of EastLink's proposal that the public safety requirements attached to the D-block in the United States not be applied in Canada.

²⁶ Decisions on a Band Plan for Broadband Radio Service (BRS) and Consultation on a Policy and Technical Framework to License Spectrum in the Band 2500-2690 MHz, page 16.

who have a proven track record of providing much needed competition to rural areas across Canada.

128. In our initial submissions, EastLink proposed that the 700 MHz spectrum be auctioned using Tier 4 areas. However, EastLink notes that some parties have suggested that the use of Tier 4 areas would complicate the auction. EastLink also notes that QMI has proposed that the spectrum be auctioned using larger areas but that the roll-out requirements be based on smaller areas so as to ensure that the roll-out requirements cannot be satisfied by offering service in urban areas, while ignoring rural areas. EastLink believes that such an approach may be an appropriate compromise between the efficiencies of auctioning the spectrum using larger tiers and the need to ensure that the valuable 700 MHz spectrum is not hoarded or wasted. Accordingly, EastLink proposes that the spectrum be auctioned using Tier 2 or 3 areas but that the roll-out requirements be based on Tier 4 areas. EastLink continues to believe that the Department will only achieve its goal of ensuring service to rural areas if Tier 4 areas are the basis of the roll-out requirement.

129. The use of Tier 4 areas as the basis for the roll-out requirement will ensure that spectrum in rural areas is only purchased by companies that actually plan to deploy service in those areas. When Tier 2 and 3 areas are auctioned, many companies bid on an area with the intention of serving only the most densely-populated parts, while ignoring the rural areas. Thus, if Tier 4 areas are not used as the basis for the roll-out requirement, companies will purchase the larger Tier 2 and 3 areas with no intention of serving the rural areas and consumers in those rural areas will be permanently stranded and cut off from the digital revolution as there

will never again be an opportunity like the one that presents itself in the 700 MHz spectrum auction.

130. EastLink submits that a roll-out requirement is essential. As noted by Rogers:

[i]n light of the fact that 700 MHz spectrum will be a critical enabler of mobile broadband services, especially outside urban centers, Canada's 700 MHz policy must discourage hoarding of this vital resource. ... To prevent spectrum hoarding, successful bidders must be subject to rollout requirements. This will ensure that the use of 700 MHz spectrum is not limited to major markets and it will guarantee that Canadians living and working outside urban areas will be able to benefit from the mobile broadband revolution and the Digital Economy.²⁷

Accordingly, to ensure that the only companies bidding on spectrum are those companies that are truly interested in building out and providing services in rural areas, EastLink submits that the Department must include a condition of licence requiring licensees to provide, on a Tier 4 basis, coverage to a minimum of 50% of the population within five years.

131. EastLink notes that many parties agree that a roll-out requirement should be imposed on purchasers of 700 MHz spectrum. However, the key will be in choosing the correct time period. While some companies have proposed relatively short timeframes (e.g., TELUS' proposal for a 3 year roll-out requirement), EastLink submits that such timeframes are unrealistic for a variety of reasons, particularly in rural areas. For example, as referenced at several places herein, new entrants are facing significant challenges with

²⁷ See paragraph 6 of Rogers' submissions.

deployment as a result of behaviour engaged in by the incumbents. Thus, for TELUS to propose an extremely aggressive roll-out schedule is largely self-serving because, for example, the incumbents can prevent new entrants from meeting those timelines by continuing to drag out the processes associated with acquiring access to incumbent sites and towers. At paragraphs 40-45 of its submissions, Rogers highlights the increasing challenges that Rogers is facing in getting access to tower sites. EastLink submits that this is compounded for new entrants. It is commonly known that all carriers are facing problems with wireless site acquisition due to municipal and/public concerns. As a result, it is simply not reasonable to expect smaller carriers to roll-out within a three year timeframe. However, if, consistent with the requests made by several new entrants in this consultation, the Department implements new procedures and enforcement mechanisms designed to improve new entrant access to incumbent sites/towers and mandatory roaming, EastLink would support a roll-out timeframe of five years.

132. EastLink specifically opposes Rogers' proposal that the Department use Tier 3 areas and rely on operator subleasing to roll out services to rural areas. We also oppose Rogers' proposal that RP-019 be rescinded. EastLink submits that both of these proposals would be consistent with an intention to ignore rural areas. While EastLink is not opposed to subleasing where appropriate, we do not believe that subleasing is the best solution to the problem of encouraging roll-out in rural areas. Instead, EastLink believes that it is fundamentally necessary that the auction be designed such that only those parties actually intending to use the spectrum in rural areas will purchase the spectrum. EastLink sees no merit in proposals that suggest that companies that are not planning to use

the spectrum in rural areas would purchase it and then sublease the less desirable areas. This could lead to large portions of valuable 700 MHz spectrum laying fallow. Moreover, EastLink and other companies seeking to offer a full-service wireless product could never make a business case on the basis of subordinating a few pockets of unused spectrum here and there. All in all, EastLink submits that Rogers' proposal would be too cumbersome and would limit opportunities for those companies actually intending to serve rural areas. It would also delay implementation in rural areas as the spectrum would first go to the incumbent and, only if the incumbent does not use it after a certain period of time, would the spectrum go to a carrier that is actually interested in serving rural areas. Instead, by requiring roll-out on a Tier 4 basis, the Department would send a clear and unambiguous message that it is committed to its objective of bringing competition to all areas of Canada. EastLink also submits that RP-019 should not be rescinded as it provides additional incentive for companies to use the spectrum that they purchase. In sum, EastLink opposes Rogers' proposal as it would put the control and decision making with the incumbent, who would scoop up spectrum with no intention of using it. It is far better to have an auction format that allows those who intend to use the spectrum to acquire it.

133. Finally, EastLink again submits that uniform tier size should be enforced across all spectrum blocks. This will simplify the auction process and will result in a more uniform average tier cost covering the same geographical area.

AUCTION TIMING

134. EastLink has proposed that the 700 MHz auction be held first, with the 2500 MHz auction following at a later date. The device ecosystem for the 700 MHz spectrum is already growing, whereas devices for the 2500 MHz spectrum are lacking. Moreover, several incumbents already have extremely large holdings of 2500 MHz spectrum, and most parties already have AWS spectrum, which is relatively interchangeable with the 2500 MHz spectrum. Accordingly, EastLink submits that there is no need to rush the auction of the 2500 MHz spectrum and, accordingly, the Department should wait until there is a demonstrated need for the spectrum before auctioning it off.

135. EastLink also agrees with Shaw that separate auctions are appropriate in recognition of the fact that each auction should have its own set of rules and mechanisms to take into account the different commercial, propagation and other technical distinctions between the bands and the degree of concentration of 2500 MHz holdings.²⁸

136. Mobilicity sums up the relevant considerations as follows in its submissions:

258. Mobilicity views the 700 MHz and 2500 MHz bands as complementary and not interchangeable. They have very different propagation characteristics and therefore meet different needs. The 2500 MHz spectrum is more interchangeable with the AWS spectrum based on propagation characteristics. The 700 MHz spectrum is ideal for more widely dispersed coverage areas and where spectrum needs are driven by coverage area. The 2500 MHz spectrum is more

²⁸ See paragraph 124 of Shaw's submissions dated February 28, 2011.

appropriate where spectrum demands are driven by population coverage, or the need for smaller cell sites to maximize bandwidth utilization. With new entrants that have significant capacity within their AWS bands such as Videotron, Mobilicity does not see a need for any imminent need for the auctioning of 2500 MHz spectrum. Per comments earlier in this submission, the GSM Association has stated the complementary nature of the 700 MHz and 2500/2600 MHz spectrum. Given that 2500 MHz is more interchangeable with AWS, and 700 MHz is complementary, it stands to reason that the complementary 700 MHz should be the first spectrum auctioned.

137. If the 2500 MHz spectrum were to be auctioned at the same time as the 700 MHz spectrum, it would impact the ability of some new entrants to secure the spectrum they need, while providing strategic advantages to the Big Three, who are well positioned to acquire all of the spectrum that is made available to them through the auction. As a result of the significant costs associated with deploying their infrastructure, arranging tower access and roaming, and purchasing spectrum in the AWS band, some new entrants will not have sufficient resources to purchase both 700 MHz and 2500 MHz spectrum at the same time. Thus, the Big Three will be better positioned to acquire the 2500 MHz spectrum at lower costs, to the prejudice of new entrants. Accordingly, proceeding with simultaneous auctions would permit spectrum hoarding by the Big Three.

138. EastLink notes that certain of the new entrants have proposed simultaneous auctions on the basis that simultaneous auctions will ease strategic planning. However, rather than holding simultaneous auctions (a situation that would only benefit the incumbents, as noted above), EastLink agrees with Mobilicity that it is only necessary for the ground rules for both the 700 MHz and the

2500 MHz auctions to be established prior to the 700 MHz auction. If the rules for both auctions have been established prior to the 700 MHz auction, there will be no need to hold the auctions at the same time since concluding the consultations in advance of two distinct auctions provides the certainty sought by those parties requesting simultaneous auctions.²⁹

139. Additionally, EastLink agrees with Mobilicity that parties need a chance to assess the outcome of the 700 MHz auction before committing to a strategy for the 2500 MHz auction. Depending on the outcome of the 700 MHz auction, participants may wish to reassess their business plans or auction strategies.
140. Similarly, EastLink agrees with Mobilicity that separate auctions would also provide the Department with a valuable opportunity to assess the outcome of the first auction and determine whether any adjustments need to be made before the second auction takes place to ensure that the Department's policy objectives are achieved.
141. Additionally, as noted by Mobilicity, holding simultaneous auctions would require bidders to commit more capital upfront than may be required if the auctions were held separately. Given the limited resources of the new entrants, and the fact that incumbents and new entrants alike already possess higher frequency spectrum and the need for the 2500 MHz spectrum is not as immediate, it would be a more efficient use of capital for new entrants to dedicate their resources to raising capital for the 700 MHz auction, and subsequent network deployments, rather than tying up capital by

²⁹ See pages 75 and 76 of Mobilicity's submissions date February 28, 2011.

purchasing 2500 MHz spectrum for which there is expected to be limited demonstrable need in the near term. This approach would better ensure roll-out to rural areas, consistent with the Department's objectives for the auction.

142. EastLink notes that those new entrants that have proposed simultaneous auctions are in agreement that, if there are separate auctions, the 700 should be held first.

143. EastLink also notes that TELUS has proposed that the 2500 MHz auction be held first. TELUS claims that, otherwise, because Bell and Rogers own virtually all of the 2500 MHz spectrum, giving them the 700 MHz spectrum first would give Bell and Rogers a head start in launching mobile in the 2500 band. Firstly, EastLink notes that TELUS has access to AWS spectrum that has similar characteristics to the 2500 MHz spectrum. Additionally, EastLink submits that TELUS' case is unique in that, like Bell and Rogers, TELUS already owns significant amounts of 800 MHz spectrum and, therefore, has no current need for the 700 MHz spectrum. New entrants, on the other hand, have not benefitted from the special access to large amounts of 800 MHz spectrum that the Big Three have been granted. Accordingly, adopting TELUS' proposal, while helping TELUS, would disadvantage all of the new entrants, who desperately need 700 MHz spectrum in order to compete on a level playing field with the incumbents. TELUS' proposal would simply buy more time for the incumbents so they can continue to use their 800 MHz and other spectrum while new entrants must build their networks on AWS only, not knowing the potential outcome of a 700 MHz auction.

144. Finally, should the Department determine that it is appropriate to auction the 700 MHz and 2500 MHz spectrum simultaneously, EastLink submits that, consistent with our proposals herein with respect to the necessity for a spectrum set-aside or cap to prevent the incumbents from purchasing all of the 700 MHz spectrum, similar mechanisms must be employed with respect to the 2500 MHz spectrum. EastLink will be making detailed submissions in the Department's *Consultation on a Policy and Technical Framework to License Spectrum in the Band 2500-2690 MHz* on this point.

PUBLIC SAFETY

145. As noted in EastLink's earlier comments, EastLink fully supports the important work performed by Canada's public safety agencies. However, though the work performed by public safety agencies is important, EastLink has proposed that there are likely commercial alternatives or other ways that public safety issues could be addressed without setting aside a large portion of spectrum for this purpose. The spectrum that will be made available during the 700 MHz spectrum auction is a finite resource that is vital for new entrants to the wireless industry. Given the important role that the 700 MHz spectrum will play in supporting the introduction of true competition in the wireless industry, particularly in rural areas, EastLink submits that any decision to set aside portions of the spectrum for public safety purposes must be carefully considered and based on both a demonstrated need for the spectrum as well as a concrete and feasible plan for use of the spectrum by public safety agencies.

146. EastLink also continues to believe that, while it may be prudent to wait until the U.S. has fully developed its plans, Canada should not

simply blindly follow the U.S. on this issue as there are several relevant differences between Canada and the United States.

MISCELLANEOUS

Foreign Ownership

147. EastLink has not provided significant comments on the issue of liberalizing foreign ownership rules. EastLink has limited its submissions on this point to highlighting the fact that, whether or not the Department decides to liberalize foreign ownership laws, a decision on that issue should not affect the Department's decision to employ a set-aside or spectrum caps. This is a position shared by all of the new entrants as it is clear that the Big Three would outbid any foreign participants in the 700 MHz auction.

148. While Rogers claims that foreign investors could outbid the Big Three, EastLink notes that Orascom, which is a large, multinational wireless provider, was not successful in outbidding the Big Three in Quebec. Additionally, an examination of the price that the Big Three paid in Quebec as compared to Orascom makes it clear that foreign companies do not possess either the incentive or the resources to provide substantial competition in the bidding process as compared to the incumbents. The Big Three have far more to gain from solidifying their lock on the Canadian market than any foreign new entrant would have to gain from simply entering the market. For this reason, liberalization of the foreign ownership rules should not in any way be viewed as a reason to forego implementing a set-aside or spectrum cap.

Pre-qualification of Bidders

149. EastLink has proposed that companies bidding in the auction be pre-qualified and their eligibility to both participate in the auction and operate as a wireless service provider in Canada should be determined prior to the auction. This will ensure that the industry does not face any further uncertainty of the type that is now being experienced as a result of the uncertain legal status of Globalive Communications.

150. We note that many parties agree with EastLink on this issue.

Tower Sharing and Roaming

151. EastLink disputes claims by incumbents that the roaming and tower sharing provisions set out in the AWS conditions of licence have “operated as intended” and “been highly beneficial to the new entrants”.³⁰ EastLink submits that this claim is simply not borne out by new entrants’ experiences, as highlighted herein and in the submissions filed by the other new entrants.

152. The Department is presently reviewing data provided by licensees to assess the current state of affairs in relation to tower sharing and roaming, after which time the Department may develop recommendations for change and will issue a consultation. While EastLink notes that these issues are being addressed separately from this consultation, we believe it is important to highlight the importance of mandated tower sharing and roaming on reasonable terms in the context of this consultation.

³⁰ See paragraph 182 of Rogers’ submissions.

153. EastLink submits that, while the current conditions of licence have been established to assist new entrants with acquiring reasonable access to towers and roaming arrangements (in addition to fulfilling the Government's objectives of limiting the proliferation of towers and facilitating increased competition by expediting network deployment), these conditions alone are not sufficient to fulfill the Government's objectives. EastLink looks forward to the opportunity to address these issues in more detail during the subsequent consultation. In the meantime, EastLink wishes to highlight its primary concerns, which are as follows.

- The term of tower sharing agreements should be long enough to provide licensees with some certainty of long-term access given that their investment in accessing one tower extends also to the surrounding tower sites on which the network has been built. Short terms create a significant risk that could severely impact a licensee's business case.

- Rates for tower access and roaming should not be based solely on commercial negotiations, which enable licensors to inflate those rates. Where government policy objectives are to limit the proliferation of towers, and towers are necessary for new entrants to build a wireless business, it is appropriate to establish cost-based rates rather than leave the matter to commercial negotiations between incumbents and new entrants. New entrants have very little negotiating power since incumbents do not want to share towers (as tower sharing increases competition). Also, the wholesale roaming rates offered are many times more expensive than those the incumbents are charging their own retail customers.

- When a licensee is required to pay the costs to reinforce a tower or to move its equipment, the term should be extended to permit that licensee to recover its capital investment in this regard.
- Seamless roaming should be mandated. Hot handoffs are important if new entrants are to have any hope of acquiring a reasonable customer base to sustain a business. Given that some incumbents have been using hot handoffs as a competitive differentiator, EastLink submits that it is clear that, if hot handoffs are not mandated, new entrants will be severely disadvantaged from a competitive perspective.
- Liability provisions should be commercially reasonable. While licensees should bear responsibility for damages caused by negligence or willful acts, they should not be open to risk for unlimited liability for indirect damages, particularly when the licensor includes terms specifying that it is not liable for any indirect damages or negligence causing damage.

CONCLUSION

154. EastLink and other new entrants are making substantial investments towards building their wireless networks and delivering new, innovative wireless services, as well as greater value and flexibility, to Canadian consumers. The AWS auction was successful in introducing competition to the Canadian wireless market; however, that competition will only be sustainable if the Department builds on that success in the 700 MHz auction. Accordingly, EastLink submits that, in every determination made by the Department during the present consultation (and thereafter), the

Department must remain focused on attaining its primary objectives of promoting sustainable and vibrant competition and supporting the roll-out of wireless service in rural areas. It is clear that the Big Three already have large holdings of 800 MHz spectrum that provide them with advantages that the new entrants cannot hope to match if they are not able to access sufficient amounts of 700 MHz spectrum. Accordingly, if the Department is serious about its commitment to bringing competition and affordable services to the Canadian wireless market and, in particular, rural consumers, it must ensure that new entrants are able to obtain sufficient 700 MHz spectrum to support cost-effective roll-outs, effective coverage, sufficient spectrum depth to provide competitive data offerings, and access to next generation handsets and applications. Competition will only be permanent and sustainable if there is an equitable distribution of spectrum going forward.

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