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SENT BY EMAIL TO: Spectrum.Engineering@ic.gc.ca

Manager, Mobile Technology and Services  
Engineering, Planning and Standard Branch  
Industry Canada  
300 Slater Street  
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Dear Sirs:

**Subject: Canada Gazette, Part I, November 30, 2010, Notice No. SMSE-018-10: Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum**

1. Globalive Wireless Management Corp. (“WIND”) is pleased to provide this reply to comments from other parties in connection with Canada Gazette, Part I, November 30, 2010, Notice No. SMSE-018-10: Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum (the “Consultation”).

2. This Reply consists of two parts.

3. In the first part, WIND offers its perspective on a number of themes which emerge from the respective submissions made by Bell, Telus and Rogers (referred to collectively in this Reply as the “Big Three”). These themes generally ignore the competitive asymmetry that exists in the Canadian wireless marketplace and support the Big Three’s conclusion that no specific measures are required in the 700 MHz and 2500 MHz auctions to increase or sustain competition. WIND disagrees strongly with that

general conclusion and outlines below why it considers each of the specific themes developed in support of the general conclusion to be incorrect and in some cases misleading. In particular, WIND believes that if Canadian consumers are to continue to benefit from meaningful and sustained competition in the wireless industry, Industry Canada must take further steps to address the competitive asymmetry that exists in the sector.

4. In the second part of its Reply, WIND offers its views on some of the recommendations made by other parties and, in some cases, varies the submissions made in its own original Submission to Industry Canada. Among the recommendations made by other parties to the Consultation which WIND supports are the following: (i) splitting the Upper C band into two smaller blocks; (ii) maintaining Tier 2 and 3 service areas; (iii) introducing an aggregate spectrum cap of 105 MHz in any service area; (iv) introducing a 25 MHz cap on the amount of spectrum below 1 GHz any carrier could hold in any service area; (v) capping the amount of 700 MHz spectrum any incumbent party could acquire at one block per service area and the amount of 700 MHz spectrum any new entrant could acquire at 2 blocks; (vi) encouraging deployment in rural and remote regions through a variety of measures other than hard roll-out requirements; and (vii) providing for expedited relief and administrative monetary penalties for non-compliance with site sharing and roaming conditions of license.

**PART I – THE CASE FOR FURTHER MEASURES TO SUPPORT  
COMPETITION: A RESPONSE TO THE BIG THREE**

5. The Big Three have argued that no further measures are required to support competition in the Canadian wireless marketplace. WIND vehemently disagrees. The framework for the 700 MHz auction presents Industry Canada with an opportunity to address the competitive disadvantages currently faced by Canada's new entrants, including relatively weak spectral inventories (both in quality and quantity), access to fewer devices and relatively restricted access to capital (on reasonable terms).

Videotron in its submission has noted that “over the years, up to and including the 2008 AWS spectrum auction, Canada's three national wireless incumbents have benefited from extraordinarily favourable access to the country's spectrum resources.”<sup>1</sup> WIND agrees with this statement and submits that the time has come to address the competitive disadvantages that have resulted from years of favourable treatment of the Big Three. Policies which may affect carriers asymmetrically are not only appropriate but necessary given the unlevel playing field that currently exists between wireless new entrants and national incumbents.

6. In suggesting that no further measures are required to support competition in the Canadian wireless marketplace, the Big Three make a number of claims that are both self-serving and false. These are considered in turn below.

### **Myth #1: The Big Three Need More Spectrum**

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<sup>1</sup> Videotron Submission, Executive Summary.

7. Each of the Big Three has pointed to explosive growth of demand for data to support its contention that it will require 700 MHz spectrum to accommodate the anticipated future needs of its customers.

8. Bell, for example, has said “Bell Mobility submits that the above demonstrates that wireless data usage on its network is experiencing unprecedented and explosive growth...It is clear therefore that there is a general demand for the licensing of commercial mobile spectrum simply to keep up with this explosive growth”<sup>2</sup>. Telus has indicated that “[f]or Telus, access to additional spectrum to keep up with increased demand is of particular significance...Telus is undersupplied with spectrum relative to its customer base when compared to other operators in Canada.”<sup>3</sup> And Rogers has claimed that “Rogers requires additional mobile spectrum to satisfy our 9 million customers’ demand for faster mobile broadband services so that they can be more productive, access the information and content they want and stay in touch, anytime, anywhere, on any device.”<sup>4</sup>

9. WIND submits that all such assertions by the Big Three should be regarded with extreme skepticism. Each of them made similar claims in the context of the AWS auction and yet each have yet to deploy that spectrum, according to tests recently performed by the Seaboard Group<sup>5</sup>. Bell for example stated then that “It would not be an

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<sup>2</sup> Bell Submission, paragraph 22.

<sup>3</sup> Telus Submission, paragraph 84.

<sup>4</sup> Rogers Submission, paragraph 20.

<sup>5</sup> “Over the Rainbow: Thoughts on the Canadian 700 MHz Discussion”, February 2011, Seaboard Group. See Exhibit 8.

exaggeration to say that AWS spectrum is one of the most important building blocks in the future of wireless communication...if we were to buy more than we need, we would be doing a disservice to shareholders by stranding capital...”<sup>6</sup> Rogers stated then that it believed that “it has no option but to participate in the AWS auction in order to acquire sufficient spectrum to continue evolving its network to support new broadband services, to compete effectively in the Canadian wireless market...”<sup>7</sup> And Telus said “[i]n a competitive industry such as the Canadian wireless industry such behavior as spectrum hoarding will only result in increased cost to that party versus their competitors. In other words, it is not rational behavior and further would not be tolerated by that company’s investors, debt holders or shareholders. Simply put...there is no economic incentive for any of the incumbents to act in this manner and many clear disincentives to do so.”<sup>8</sup>

10. Then, as now, there is a substantial incentive for incumbent players to acquire spectrum that they do not intend to deploy: the introduction of competition into the wireless sector can result in substantially reduced profit margins and a loss of market share for incumbents. Those losses could easily outweigh the costs of acquiring and warehousing unneeded spectrum. This was tacitly acknowledged by the market when the Big Three collectively lost in excess of \$2 billion in market capitalization the day that Cabinet announced that it had varied the CRTC decision relating to WIND’s ownership and control, thereby allowing WIND to launch.<sup>9</sup> The market proved to be right: in the

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<sup>6</sup> Bell Submission in the AWS Auction Consultation, pages 10 and 13.

<sup>7</sup> Rogers Submission in the AWS Auction Consultation, page 38.

<sup>8</sup> Telus Submission in the AWS Auction Consultation, page 59.

<sup>9</sup> “Big Three wireless companies take \$2-billion drubbing”, David Milstead, The Globe and Mail, December 11, 2009.

months following WIND's launch, all carriers have been engaged in a price war that has forced the Big Three to bring down prices of their voice plans very dramatically.<sup>10</sup>

11. WIND submits that it would be wrong to conclude that explosive growth in demand for data generally means that each of the Big Three will need more spectrum to accommodate that growth. WIND is confident that the Department's carrier by carrier review of spectral inventory and demand will confirm that the Big Three do not require more spectrum or at least that they could accommodate their need for additional spectrum with spectrum in the 2500 MHz band.

12. Rogers has relied on the LemayYates report attached to its submission in asserting that "large carriers in other countries hold anywhere from 66 to 130 MHz of mobile spectrum and Rogers' mobile spectrum holdings fall into this range", compared to Rogers' maximum of 105 MHz in any city. This is apparently to support Rogers' submission that its spectral inventories are well within the range of reasonableness. In fact, looking at the Lemay Yates report itself (and the page upon which Rogers relies in making this assertion), the statistics provided for all carriers (domestic and foreign) exclude digital dividend spectrum (in the 700 and 800 MHz spectrum range) and BRS spectrum (in the 2500 MHz spectrum range). In addition, there is one aberrational

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<sup>10</sup> According to CIBC World Markets, Institutional Equity Research Industry Update, February 1, 2011, the entry of AWS new entrants has led to re-price in voice of about 17% in over two years.

carrier in the UK with 130 MHz: most other operators hold much less.<sup>11</sup> And there is no attempt to adjust the spectrum holdings for population.

13. More meaningful comparisons would take population into account. So, for example, Rogers' spectrum of 105 MHz in certain Canadian cities (Montreal, Vancouver, Ottawa-Gatineau, for example) should be considered in the context of spectral holdings such as the spectral holdings of the US players in much larger markets such as New York City (population 18,747,320), where, prior to the 700 MHz auction in the US, AT & T held 55 MHz of spectrum, Verizon held 85 MHz, Sprint held 43 MHz, T Mobile held 50 MHz, and Metro PCS held 20 MHz. During the 700 MHz auction in the US, AT & T acquired 12 MHz of spectrum in the New York market and Verizon acquired 34 MHz. Thus even taking into account the 700 MHz spectrum awarded to these players, Rogers had well in excess of the amounts of spectrum used by all but one US carrier to service a market in excess of three times the size of the largest Canadian market.

14. Another helpful point of comparison might be the spectral inventories of Rogers in the Montreal market versus those of the carriers operating in Seattle, which, with a population of 3,203,314, is roughly comparable in size to Montreal. Rogers' current holdings in that market (Montreal) are 105 MHz. Compare that to the spectral holdings of the US carriers in Seattle (**including** the recently awarded 700 MHz): AT & T at 87 MHz, Verizon at 67 MHz, Sprint/Nextel at 43 MHz and T Mobile at 60 MHz. In

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<sup>11</sup> See LeMay Yates Associates, Final Report, February 28, 2011 "The Impact of 700 MHz Spectrum on LTE Deployment and Broadband in Canada", page 9; attached to the Rogers Submission.

considering these numbers, it is important to remember that 20% less spectrum capacity has been licensed to date in Canada than in the US.<sup>12</sup>

15. The only conclusion to be drawn by comparisons to international carriers is that the Big Three, but especially Rogers, are extremely spectrum rich by comparison to their international counterparts. It defies logic that they would require substantially more spectrum per subscriber than their international counterparts to continue to offer high quality voice and data services, unless they have been inefficient in their use of that spectrum.

16. The Big Three further argue that they need access to 700 MHz spectrum to be able to offer their customers the ability to roam on LTE networks being developed by carriers in the US.<sup>13</sup> This argument ignores the fact that the incumbents currently enjoy spectrum in the 800 MHz range. This spectrum will support LTE deployment and there is no reason to believe that without 700 MHz spectrum, incumbent customers will be unable to roam on US LTE networks. According to the Seaboard Group, “Bell/Telus and Rogers share a similar wireless history with Verizon and AT & T. They use similar technologies and similar wireless frequencies: cellular, PCS and soon – at least according to their hopes – the 700 MHz band too. Note though that both Verizon and AT & T share the 800 MHz spectrum used by Canadian incumbents. Seaboard forecasts that

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<sup>12</sup> Ibid. page 37.

<sup>13</sup> “The Canadian wireless incumbents also need a fair opportunity to bid on 700 MHz spectrum as part of the effort to ensure that they can offer their millions of subscribers the ability to roam onto US LTE networks as they are deployed in the US and Canada.” See paragraph E13 of Bell Submission, as an example of this argument.

LTE products will be available for both of the lower frequencies. Bell, Telus and Rogers will not need 700 MHz frequencies to take advantage of LTE products and their customers will still have access to the advanced services that LTE will offer.”<sup>14</sup>

17. Rogers asserts that effective spectrum management requires a certain amount of warehousing. While it is true that prudent network design and management practices require some forward planning with respect to spectrum deployment, it defies logic that if its network is dependent on additional spectrum, Rogers would not have deployed its AWS spectrum a full two years after having licensed it. Effective spectrum management requires speedy deployment of spectrum so that expensive resources are not allowed to lay fallow. Elsewhere in the world, carriers deploy spectrum as quickly as possible and consider measures to refarm spectrum when new technologies are released (as occurred in Europe with spectrum in the UMTS 900 MHz spectrum band).<sup>15</sup>

18. WIND further submits that in evaluating any carrier’s claims that it requires additional spectrum, the Department should consider contractually binding network sharing arrangements entered into by the applicable carrier. Telus and Bell are to be applauded for seeking to benefit from their respective spectral strengths in different markets and reduced infrastructure costs through their use of network sharing arrangements. WIND believes that these network sharing arrangements (and the number of subscribers supported by the shared networks) need to be taken into account in

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<sup>14</sup> Seaboard Group, “Over the Rainbow: Thoughts on the Canadian 700 MHz Discussion”, page 5-6.

<sup>15</sup> <http://www.telecomcircle.com/2009/12/spectrum-refarming/>

considering the demand for spectrum and how it will be met. The Department should also consider the extent to which carriers are using their existing holdings as efficiently as possible. That six-antennae tower arrays are common in the US but not in Canada suggests that this may not be the case.<sup>16</sup>

### **Myth #2 – The New Entrants Don’t Need Additional Spectrum**

19. The Big Three have suggested that given the new entrants’ relatively small subscriber bases and given their business models, new entrants do not need (and will not need) access to additional spectrum generally and to 700 MHz spectrum specifically. Rogers, for example, has asserted that “apart from the fact that they hold more mobile spectrum than they require to serve their customers, the new entrants have mainly pursued basic voice centric business models since the time that they launched their respective service offerings”.<sup>17</sup> It goes on to suggest that “voice centric operators with low data takeup and usage require significantly less spectrum than premium service operators such as Rogers...”<sup>18</sup> Bell has stated “The new entrants’ business model, focused on urban deployment and reliance on voice and text phones, does not use really as much spectrum.”<sup>19</sup>

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<sup>16</sup> Seaboard Group, “Over the Rainbow: Thoughts on the Canadian 700 MHz Discussion”, pages 14-15.

<sup>17</sup> Rogers Submission, Paragraph 60.

<sup>18</sup> Rogers Submission, Paragraph 60.

<sup>19</sup> Bell Submission, Paragraph E7.

20. Forgetting for the moment the substance of the argument, the suggestion that new entrants' business models are "voice centric" is simply incorrect, at least as it relates to WIND. Since it launched, WIND has offered several data plans, including very popular plans that provide its customers with unlimited data (subject only to WIND's fair usage policy). To be able to continue to offer these data plans, especially on an unlimited basis, new entrants will need access to additional spectrum.

21. Turning to the substance of the argument, the suggestion that new entrants do not require additional spectrum generally and 700 MHz spectrum specifically is also incorrect and ignores the fact that new entrant networks are highly dynamic. The new entrants have built networks from scratch and while it may be true that some new entrants, such as WIND, may have begun building in the urban areas with the greatest population density, going forward, there is no reason to believe that new entrants intend to confine their coverage to the areas they currently cover or indeed that their current customer bases will remain constant. In fact, the opposite has been the case.

22. Bell has correctly noted<sup>20</sup> that WIND stated in its Digital Economy Submission that "WIND's own business requirements are not such that it is immediately in need of spectrum beyond that already licensed to it". Bell quoted WIND's submission to support its assertion that "Carriers who operate on a regional or urban basis do not have the same dire need for this spectrum as do the national carriers who have millions of urban subscribers but also serve most every rural and remote corner of our country". Bell in its

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<sup>20</sup> Bell Submission, Paragraph 6.

submission neglected to mention the context of that statement. WIND was arguing, as it has done consistently, that auctioning off additional spectrum immediately would put the new entrants at a competitive disadvantage as they have not yet had an opportunity to build their businesses to the point that they have come close to recovering the costs of their AWS spectrum and networks and can point to a track record of earnings to support access to capital. It is at best misleading to suggest that WIND's representation in June, 2009 that it was not "immediately in need of spectrum" suggests that it will not require 700 MHz spectrum when that spectrum becomes available.

23. In any event, this argument misses the point. The new entrants do not currently require additional spectrum generally because they have just begun to build their networks and their subscriber bases. As their businesses grow, they will need additional spectrum to accommodate raw demand. But more importantly, they will need access to the particularly valuable 700 MHz spectrum as a complement to their existing AWS spectrum. The 700 MHz spectrum could address a substantial competitive disadvantage currently suffered by new entrants relative to the incumbents: it has propagation characteristics which are superior to the higher frequency spectrum bands (such as AWS) and could give new entrants the opportunity to benefit from improved access to devices and more cost effective deployment in rural and semi-urban areas.

24. Finally, without 700 MHz spectrum, new entrants could very well find themselves in the same position as T-Mobile, which, according to one commentator, "has no spectrum with which to build out...next-gen networks [such as LTE or Wimax]...Thus,

T-Mobile's realization that it would be unable to compete in this market may have been the single most important driving force behind [the AT & T/T-Mobile] merger."<sup>21</sup> While some consolidation among new entrants may be inevitable and, indeed, desirable, if new entrants are effectively forced to merge with incumbents when their licenses permit, the sector could be re-monopolized, something which WIND submits would not be in the interests of Canadian consumers. This could well happen if the rules for the 700 MHz auction are not structured so as to ensure that much of that spectrum is awarded to new entrants.

### **Myth #3 – All is Well in Canada's Wireless Industry**

25. The Big Three have each argued at length that there is no need to take further steps to promote competition because all is well in the Canadian wireless market: if it ain't broke, the argument goes, don't fix it. They argue that the Canadian market is characterized by intense competition. Rogers, for example, says that "The Canadian markets have gone from being highly competitive to hypercompetitive."<sup>22</sup> Each of the incumbents have pointed to the number of HSPA+ networks which have been built in Canada to suggest that no specific additional measures are required to increase or sustain

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<sup>21</sup> <http://www.popularmechanics.com/technology/gadgets/news/7-implications-of-an-at-t-and-t-mobile-merger>

<sup>22</sup> Rogers Submission, Paragraph 4.

competition.<sup>23</sup> “Canada’s HSPA + networks provide more than 96% of Canadians with wireless broadband with speeds up to 21 Mbps and in some areas up to 42 Mbps.”<sup>24</sup>

Telus suggests that the real monopoly to be addressed was Rogers’ monopoly of GSM technology in Canada and that now that that monopoly has been overcome, to quote the second President Bush, “mission accomplished”. Bell says that “Canada is a world leader in wireless on all fronts”.<sup>25</sup>

26. There is some truth to these arguments: since the AWS auction in 2008, there have been substantial improvements in Canada’s wireless market. What the Big Three neglect to mention is that it took the added competition introduced following the launch of new entrants for Canadians to begin to enjoy lower prices, greater choice and more innovation in their wireless services. According to a recent report of the Convergence Consulting Group Ltd., for example, as of the date of the report (April, 2011) new entrant prices continued to be about 60% lower than those offered by incumbents and wireless penetration in Canada had improved from 60% in 2008 to 72.5% in 2011.<sup>26</sup> Since December 2009, when WIND, the first new entrant, launched, the incumbents have eliminated the highly unpopular system access fees, they have begun to unlock handsets and they have sought to match the improved terms of service offered by new entrants.

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<sup>23</sup> See for example Bell Submission, paragraph 75.

<sup>24</sup> Bell Submission, paragraph 75.

<sup>25</sup> Bell Submission, Paragraph E1.

<sup>26</sup> See “Canada’s new wireless entrants are on the attack”, Iain Marlow, Globe and Mail, April 4, 2011.

27. So, the Big Three are right: things have gotten better since the 2008 AWS auction and the Canadian consumer is finally enjoying the benefits of real competition. Then why intervene?

28. Competition in the Canadian wireless market is fragile and at risk. The AWS new entrants are still investing in their networks and, WIND believes, accumulating large losses.

29. WIND and the other new entrants have made the case for additional intervention at great length in their original submissions. In short, further intervention is required in the context of the 700 MHz auction because competition in the Canadian wireless industry will be jeopardized if Industry Canada does not seek to use the framework for the auction to redress a substantial competitive disadvantage faced by new entrants: they hold relatively small amounts of AWS spectrum and risk being unable to continue to develop their businesses unless they are given the means to offer their customers access to the LTE ecosystem likely to be developed by AT & T and Verizon for the US market.

#### **Myth #4 – Interventionist Measures are a Bad Thing**

30. Bell suggests that “Industry Canada has alarmingly become more and more interventionist in the wireless sector. This is a particularly worrisome and inappropriate trend.”<sup>27</sup> It goes on, “[t]his urge to micromanage the wireless market is being driven by

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<sup>27</sup> Bell Submission, paragraph 66.

inaccurate claims by some that the industry is not competitive enough. This misperception is being fuelled by reports featuring sensational titles and little evidence. These claims are being made by those who stand to benefit from government intervention.”<sup>28</sup>

31. This begs the question: who stands to benefit from government non-intervention? The answer is obvious. Experience in both the domestic and international context suggests that without further measures to support competition in this auction, much if not all of the very valuable 700 MHz spectrum will wind up in the hands of the Big Three. In the 2008 auction of 700 MHz spectrum in the US, for example, the FCC declined to impose spectrum caps, a decision for which it has attracted criticism.<sup>29</sup> The result was that Verizon and AT & T acquired most of that highly desirable spectrum and succeeded in shutting out their competitors. (Their combined bids accounted for 84% of final bid values). In the 2001 PCS auction in Canada, 99% of final bid values were from the Big Three.

32. Industry Canada’s decision to intervene and introduce competition through the AWS auction process has been a very significant public policy success. While it remains to be seen whether new entrant shareholders will ultimately benefit from the Department’s “interventionist” approach in that auction, there is no question that the real

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<sup>28</sup> Bell Submission, paragraph 69.

<sup>29</sup> See quotation of Congressman Ed Markey, for example, quoted at length in paragraph 84 of the Videotron submission. “The decision to eliminate spectrum caps by the FCC...is proving highly ill-considered. Spectrum caps had ensured that incumbents couldn’t gobble up all of the available spectrum and effectively box out would-be competitors from reaching the market...”

winners have been Canadian consumers. This was the outcome desired by the Department when it set the framework for the AWS auction and that policy objective was achieved in spades. Looking at it from this perspective, targeted intervention was a very good thing.

33. Canada has not been alone in using government policy to attempt to use measures to address competitive asymmetry. Paragraphs 102 to 107 of the Videotron submission describe a wide range of policy tools (“interventions” to use the Big Three nomenclature) to maintain and promote effective competition<sup>30</sup>. More recently, UK regulator, Ofcom, announced that in auctioning off spectrum in the 800 MHz and 2.6 GHz ranges, it will cap the amount of spectrum any one bidder could acquire.<sup>31</sup> No one player will be allowed to enjoy aggregate holdings of 2X105 MHz and sub 1GHz holdings in excess of 2X27.5 MHz. Regulators throughout the world do not hesitate to intervene to address competitive asymmetry in their respective markets. This is the right approach for Industry Canada.

**Myth #5 – Liberalized Foreign Ownership is Enough.**

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<sup>30</sup> Another example is that in several European markets, including the UK, Italy, Latvia, Lithuania and Romania, regulators have introduced the concept of differentiated termination fees as between incumbents and new entrants. This is to permit new entrants to overcome the obstacle of higher marginal costs in terminating calls.

<sup>31</sup> <http://www.telecoms.com/25715/ofcom-to-limit-uk-4g-spectrum-auction/>

34. The Big Three have all argued that because the federal government may be about to liberalize the rules relating to foreign ownership of telecommunications companies, any further measures to promote competition are unnecessary and, indeed, undesirable. For example, Rogers has stated that “[i]t is hard to imagine how any of the huge foreign operators such as AT & T, Verizon, Orange, Orascom, Vodafone or VimpelCom would require any special advantages in a Canadian spectrum auction when their market capitalization towers over all of the largest incumbent Canadian operators.”<sup>32</sup>

35. WIND disagrees with this assertion.

36. First, it is uncertain whether Canada’s foreign ownership laws will be liberalized at all. Although the federal government has indicated a willingness to do this, it has yet to introduce legislation implementing its stated intention or indeed to indicate which of the three liberalization options it prefers. As a result, the fate of foreign ownership liberalization may well depend on the outcome of the federal election on May 2, 2011 and could be in question well beyond that date.

37. But more importantly, even if the foreign ownership rules are liberalized, there is no guarantee that new entrants will succeed in attracting capital on more favourable terms than they currently enjoy. Any financier, whether foreign or domestic, will base its terms on the business plan and past financial performance of the applicable carrier. For this reason, there is no basis upon which to conclude that without the substantial

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<sup>32</sup> Rogers Submission, paragraph 210

competitive benefits enjoyed by the incumbents being addressed, foreign ownership liberalization alone will be sufficient to promote competition. As EastLink has noted, “Foreign companies cannot and will not outbid the Big Three in the 700 MHz auction.”<sup>33</sup> WIND also agrees with the suggestion by Mobilicity that “[a]ny foreign investor, like a Canadian investor, will look at the merits of the business case for investment. Incumbent operators, with their 25 year head start in the telecom market with infrastructure, strong brands and strong subscriber bases to protect, can justify in their business models paying substantially higher rates to reduce competitive threats by buying and warehousing spectrum. Thus, without a set aside, the Big Three operators could justify a budget to prevent foreign investor entry as well.”<sup>34</sup>

### **Myth #6 – Big Shareholders Don’t Need Help**

38. Each of the Big Three have argued that no further competitive measures are required because each of the new entrants has shareholders with the financial strength to participate in the auction for 700 MHz. As a result, the argument goes, the new entrants ought to be able to continue to build their businesses without any further measures to support competition. For example, Bell points to the enterprise values of shareholders of Quebecor and WIND (“\$8 billion without Vimpelcom and \$33 billion with Vimpelcom”) and suggests that given their heft, any further interventionist measures would amount to being a “transfer of wealth from the shareholders of one large corporation to the

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<sup>33</sup> EastLink Submission, page 35.

<sup>34</sup> Mobilicity Submission, paragraph 245.

shareholders of another large company.<sup>35</sup> Telus dubs Shaw and Videotron “cable monopolists” and says that “it seems counterproductive to support dominant carriers in other industries like cable TV and broadband”.<sup>36</sup> It further states that WIND does not need support given the size of its principal shareholder.<sup>37</sup>

39. These arguments ignore a critical fact: no rational shareholder, no matter how deep its pockets, will choose to make an investment that it considers to be unsound. Given the very substantial competitive advantages enjoyed by the incumbents, no rational shareholder (whether domestic or foreign) will make an investment in the Canadian wireless market without some measures to level the playing field for new entrants. As a result, if the federal government truly wishes to promote competition in the sector, it will need to provide new entrants with additional support, even if those new entrants have large and well capitalized shareholders.

#### **Myth #7 – Big Three are Most Likely to Build Out Rural Canada**

40. Industry Canada has sought views on how to promote deployment in rural, remote and low density areas both within the context of the auction rules and within a broader policy context. Each of the Big Three responded to this invitation by arguing that the auction framework for the 700 MHz band ought to be designed with a view to supporting

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<sup>35</sup> Bell Submission, paragraph 101.

<sup>36</sup> Telus Submission, paragraph 29.

<sup>37</sup> Telus Submission, paragraph 72.

competition in rural and remote regions of Canada and, not surprisingly, each argues that it is better positioned than new entrants to offer this competition.<sup>38</sup>

41. WIND submits that there is no basis to conclude that any commercial incumbents, including the Big Three, would be more likely to use 700 MHz spectrum to deploy their networks in rural and remote regions than new entrants such as WIND. Each faces similar economic and commercial challenges: given the relatively low population density of remote and rural regions, it is more expensive (per subscriber) to deploy in these regions than it is in urban areas. EastLink points out, for example, that “[despite the fact that Rogers owns more spectrum in the Maritime Provinces than any other provider...Rogers provides 3G service (HSPA or HSPA+) to only a handful of communities in the Maritime Provinces.”<sup>39</sup> It also points out that “while the maps presented on the incumbents’ websites suggest that they provide basic (eg 2G) coverage to many parts of Nova Scotia... the real world experience is that there is no, or at least no reliable, incumbent coverage in a number of areas.”<sup>40</sup> And, as Sasktel points out in its submission that Rogers has held spectrum in the 800 MHz bank since 1985 but has yet to extend its network there beyond the two major markets (Regina and Saskatoon) and three highways.

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<sup>38</sup> Telus, for example, in paragraph 46 of its submission argues that “The primary issue today is how to add massive amounts of capacity to support mobile broadband not only in urban locations, where new entrant competition has exclusively focused, but in non urban locations as well.”

<sup>39</sup> EastLink Submission, page 6.

<sup>40</sup> EastLink Submission, page 7.

42. One thing is clear: it is currently much more difficult, commercially speaking, for new entrants to expand their services to rural and remote regions than it is for incumbent carriers. “As we have seen, the costs to the new wireless companies to deploy services in non-urban areas can be as much as four times the costs incurred by the incumbents to achieve similar coverage patterns. A 4 X advantage is hard to overcome, especially when the aim of the newcomers is to offer an alternative service that is a fraction of the price charged by incumbents and yet offers more”.<sup>41</sup>

**Myth #8 – Any consolidation in the market means a failure of the pro-competition policy of the federal government.**

43. Each of the Big Three have argued that consolidation is likely to occur in Canada as it has elsewhere, apparently to support the argument that “the Department’s objective must be an efficient and competitive wireless market and not artificially maintaining a large number of new entrants”.<sup>42</sup> Rogers has noted that “[a]rtificially bringing more players into the wireless market with set asides or auction caps will not increase or sustain competition. In any event...it is doubtful that the current number of competitors is sustainable.”<sup>43</sup> Telus has argued that WIND, Mobilicity and Public, “arguably do not need support. All three have openly signaled a need to consolidate or flip licenses.” Elsewhere in its submission, it argued that “[t]he problem facing the Canadian market is

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<sup>41</sup> See Seaboard Group, “Over the Rainbow: Thoughts on the Canadian 700 MHz Discussion”, page 20.

<sup>42</sup> Bell Submission, paragraph 82.

<sup>43</sup> Rogers Submission, paragraph 188.

that it is not large enough to sustain the number of wireless competitors it already has...that means the market will inevitably consolidate to scale...”<sup>44</sup>

44. These arguments are misplaced. First, it is impossible to determine how much competition is sustainable competition. Second, some consolidation among new entrants would not signal the demise of Industry Canada’s pro-competition policy. In fact, to the extent that it makes the resulting players stronger, it could enhance that policy. To suggest otherwise is simply disingenuous.

45. Telus has suggested that “cable incumbents and regional carriers are in an optimal position to acquire distressed competitor assets” and has described this as a “regulated advantage” of the new cable and regional new entrants.<sup>45</sup> Whether this is true is debatable, but in any event, it overlooks the fact that these cable and regional carriers operate at a substantial disadvantage to the Big Three in the wireless market. If they do consolidate with other new entrants, they will still find themselves competing with highly dominant incumbents with substantial competitive advantages in all of the markets in which they operate.

## **PART II – OTHER OBSERVATIONS**

### **(a) Band Plans and Tiers**

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<sup>44</sup> Telus Submission, paragraph 74.

<sup>45</sup> Telus Submission, paragraph 74.

46. WIND continues to believe that Band Plan Option 1 should be adopted in Canada for the reasons outlined in its original submission. WIND notes that a number of parties in their submissions (including the Big Three, Shaw and Videotron) recommended splitting the Upper C band into two paired blocks of 5+5 MHz and 6+6 MHz respectively. WIND supports this recommendation as it would enable more players to secure access to this very valuable spectrum without sacrificing the objective of enabling Canadian carriers to benefit from harmonization with the US band plan.

47. Some carriers have suggested that a Tier 1 service area makes sense for this auction. For example, Bell has argued in favour of Tier 2 services areas “at a minimum”<sup>46</sup> and Telus has argued in favour of a Tier 1 service area, or, “at a minimum”, Tier 2.<sup>47</sup> WIND has no objection to Tier 2 service areas, but objects to the suggestion that Tier 1 service areas would also be acceptable. Defining the service areas on a Tier 1 basis would effectively preclude at least the regional new entrants, if not all new entrants, from participating effectively in the auction, an outcome that WIND submits is not consistent with the objective of promoting competition in the sector. WIND submits that Tier 2 service areas would achieve the objective of spectral efficiency without compromising the more critical issue, in WIND’s view, of ensuring that AWS new entrants have access to the spectrum that they will need to offer and extend sustained competition in the sector.

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<sup>46</sup> See paragraph 59 of Bell Submission.

<sup>47</sup> See paragraph 12 of Telus Submission.

48. EastLink has suggested that the 700 MHz spectrum be auctioned using only Tier 4 areas.<sup>48</sup> In WIND's view, this would go too far in one direction and would result in substantial and unwarranted losses of spectral efficiency.

**(b) Specific Measures Required to Support Competition**

49. WIND has now had an opportunity to consider the positions advanced by other players on the topic of what specific measures would be required to support competition and wishes now to supplement its original submission. WIND's original submission included the proposal that any parties holding 800 MHz spectrum in any given service area should be precluded from participating in the auction for 700 MHz spectrum in that area. WIND stands by that submission.

50. WIND continues to believe that given the substantial competitive advantages enjoyed by incumbent carriers, strongly asymmetrical measures are warranted, including this one. In addition, WIND is mindful of the recent announcement by Ofcom in the UK relating to the upcoming auction of 800 MHz spectrum. In the context of that auction, Ofcom has set aggregate and spectrum specific caps.<sup>49</sup> Of course, these caps are what Ofcom assesses are required to service the UK market, a much larger market than Canada, measured by population and Ofcom set the caps in the context of an auction of a much wider swath of spectrum. Nonetheless, the Ofcom example suggests that Industry

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<sup>48</sup> EastLink Submission, page 13.

<sup>49</sup> <http://www.telecoms.com/25715/ofcom-to-limit-uk-4g-spectrum-auction/>

Canada would not be acting in a manner inconsistent with international precedents if it were to seek to promote competition in the sector through the framework for the 700 MHz auction.

51. WIND recognizes that effectively precluding all of the Big Three from participating in the auction for 700 MHz spectrum, no matter how defensible on public policy grounds, may not be a politically viable alternative for the Department.

52. If the Department determines that it is not prepared to go as far as this, WIND suggests various measures below as alternatives to its earlier proposal.

53. WIND agrees with Telus that “a spectrum cap is generally a more benign and appropriate form of intervention than a set aside.”<sup>50</sup> (WIND does not consider setting aside all 700 MHz spectrum for players with no 800 MHz spectrum to be a set aside for these purposes as it does not create two pools of spectrum with different qualified bidders.) For that reason, if Industry Canada determines that it does not wish to adopt WIND’s first proposal, WIND submits that the Department should consider capping the aggregate amount of spectrum to be held by any one player in a manner similar to the caps introduced recently by Ofcom in relation to the upcoming 800 MHz auction in the UK. WIND submits that in setting such caps, the Department should take into account both the BRS spectrum held through Inukshuk and Telus’ ESMR band spectrum. In addition, the Department should take into account contractual network sharing

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<sup>50</sup> Telus submission, paragraph 177.

agreements, such as that currently in place between Telus and Bell so that Bell and Telus would be treated as associated companies for the purposes of any cap. The specific aggregate caps proposed by Ofcom do not take into account the relatively small subscriber bases of the Canadian carriers (relative to their UK counterparts) and so would be inappropriate in the Canadian context. Nonetheless, directionally, the UK approach could be useful in the Canadian marketplace.

54. WIND believes that for the 700 MHz auction, if Industry Canada does not exclude incumbents from bidding for the 700 MHz spectrum, it should implement three measures to ensure that broadband wireless competition is sustained and enhanced in the sector.

55. First, all Canadian carriers should be made subject to an aggregate spectrum cap of 105 MHz in any service area. The cap should include all holdings in the cellular, PCS, AWS and ESMR bands (as well as the 700 MHz and 2.5 GHz spectrum, when licensed).

56. Second, as part of the auction framework for the 700 MHz spectrum, the Department should impose an in auction cap of 25 MHz of spectrum below 1 GHz in any licensed territory. Telus has suggested that the appropriate cap for this spectrum would be 49 MHz “such that an ILEC can purchase two 6 + 6 blocks in territory”. (Bell, Telus and Rogers hold 16.5 MHz, 6 MHz and 25 MHz of 800 MHz spectrum respectively on a population adjusted basis.)<sup>51</sup> With respect, imposing any cap intended to permit the Big

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<sup>51</sup> Seaboard Report, page 7.

Three to each acquire two blocks of 700 MHz spectrum would be tantamount to imposing no cap at all.

57. And third, given the extremely limited amount of 700 MHz spectrum available, the Department should limit the amount that any one incumbent could acquire in any service area to one block and the amount that any new entrant could acquire in any service area to two blocks.

58. In considering the spectral holdings of all players for the purposes of administering a cap, WIND submits that there is no logical basis upon which to exclude Telus' ESMR spectrum as the ESMR spectrum has all of the characteristics of high mobility networks as the cellular, PCS and AWS bands. WIND agrees with the Rogers' argument that "the ESMR band that is used by Telus to operate its iDEN network and to market its successful Mike brand has been excluded [from the Industry Canada survey of spectrum holdings], without justification."<sup>52</sup> WIND further submits that bidders and their affiliates should share any caps. To do otherwise would be to invite regulatory gamesmanship.

59. Telus has argued that roaming partners and network sharing partners should not be considered "associated entities" for these purposes.<sup>53</sup> Binding network sharing agreements, WIND submits, are very different than roaming agreements both commercially and from a public policy perspective. Network sharing agreements permit

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<sup>52</sup> Rogers Submission, paragraph 57.

<sup>53</sup> Telus Submission, paragraph 175.

carriers to build out their networks more efficiently and therefore encourage carriers to deploy in areas in which network construction would otherwise be uneconomic.

Roaming agreements, by contrast, enable carriers to offer services to their customers in areas where they have not invested in their own networks. The resulting costs to customers are higher than is the case where carriers offer services on their own networks (including those shared with partners). Provided that the limits are sufficient to accommodate two carriers' needs, limiting the amount of spectrum awarded to carriers encourages them to seek network sharing arrangements, a desirable public policy outcome, both because it results in fewer towers being built and because it makes deployment in rural areas more efficient.

60. Telus' first position was that no further measures are required to promote competition. In the alternative, it argued in favour of caps (rather than set asides) and suggested that a cap at 170 MHz or higher would be needed "given that some incumbents hold that much spectrum".<sup>54</sup> WIND suggests that taking into account the populations serviced by Canada's wireless carriers and the amounts of spectrum awarded to other international carriers servicing markets of comparable sizes, 170 MHz is well in excess of what any Canadian carrier should require. In Atlanta, a city with a population of approximately 5 million people, for example, the carrier with the most spectrum (AT & T) holds 99 MHz of spectrum **including** 700 MHz spectrum.

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<sup>54</sup> Telus Submission, paragraph 172.

61. Shaw and Videotron have each argued in favour of capping the amount of 700 MHz spectrum that could be acquired by any player. They have suggested that incumbents should be capped at 1 block each of 700 MHz spectrum and that all others should be capped at 2 blocks. WIND is unable to support this proposal without further measures, for example, to ensure that new entrants other than Videotron are able to secure access to the Quebec market. Without further steps, the Videotron proposal could result in all markets in a duopoly of the telecom and cable companies. While Videotron's launch has contributed to very healthy and vigorous competition in the province (and has therefore been very good for Quebec consumers), Videotron does not operate nationally. If the federal government's objective is to support the creation of a fourth national carrier to compete nationally with the Big Three, as WIND believes is the case based on the conditions of license relating to mandatory roaming, then this proposal alone will be ineffective in advancing the desired outcome.

62. MTS has proposed one set aside block for smaller players, including MTS. WIND agrees with Bell's argument that there is simply not enough 700 MHz spectrum to support a set aside and submits that, given the number of new entrants vying for 700 MHz spectrum and given the likelihood that the Big Three are incentivized to outbid any competitors for any spectrum available to them, the MTS proposal does not go far enough in ensuring that new entrants have access to the spectrum they will need to offer sustained competition to the incumbents.

63. Each of the new entrants have proposed a slightly different approach to achieving the same outcome: limiting the amount of spectrum available to the Big Three. WIND agrees with its new entrant competitors that this is a critically important objective for the Department to embrace, whichever measure it adopts to achieve it. Unless there are severe limitations on the spectrum available to the Big Three, very little of the 700 MHz spectrum so direly needed by new entrants will be licensed to them. This would be very detrimental from a public policy perspective as it would leave the new entrants with an even more debilitating competitive disadvantage than those they have already overcome.

**(c) Roll-out Obligations**

64. A number of players have argued that 700 MHz spectrum should come with strict roll-out requirements. Telus, for example, “proposes that all 700 MHz spectrum whether set aside or open, be subject to a build out requirement stipulating that service be provided to 50% of the population in each Tier 3 service area within three years of license issue. Should the build-out requirement not be fulfilled, the license would be automatically forfeited by its owner.”<sup>55</sup> Videotron, for example, argues that “serious consideration should be given to converting the five year roll-out targets for AWS spectrum to hard five year requirements for 700 MHz spectrum.”<sup>56</sup> It has also argued that “serious consideration should be given to imposing Tier 3-based roll-out requirements, even when licenses have been awarded on a Tier 2 basis.”<sup>57</sup> Shaw has argued that “the

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<sup>55</sup> Telus Submission, paragraph 53.

<sup>56</sup> Videotron submission, paragraph 116.

<sup>57</sup> Videotron submission, paragraph 117.

Department should also impose roll-out obligations on 700 MHz licensees in line with the five year targets that were established for AWS spectrum.”<sup>58</sup> And MTS has argued for “the imposition of a rural broadband deployment commitment by way of a condition of license on winners of spectrum in the lower B and C blocks.”<sup>59</sup>

65. While these proposals sound intuitively attractive, WIND submits that they would be difficult to administer practically. In WIND’s view, roll-out obligations are appropriate only in relation to “gifted” spectrum and not in circumstances where a carrier has paid a substantial up front license fee for its spectrum.

66. Given the amounts paid by AWS licensees for their spectrum (including new entrants) and the relatively attractive propagation characteristics of the 700 MHz spectrum, it stands to reason that licensees of 700 MHz spectrum will have paid substantial license fees. The smaller players will be highly incentivized to deploy or authorize the deployment of that spectrum wherever possible. For this reason, WIND supports encouraging rural deployment through a variety of measures other than strict rollout requirements including applying the policy outlined in RP-19 to the 700 MHz spectrum and strictly enforcing mandatory tower sharing conditions of license (more on which below). According to Industry Canada, the “policy allows for new parties who propose service in areas that are unserved or underserved to apply for a license for spectrum already licensed to a cellular incumbent. Where mutually agreeable

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<sup>58</sup> Shaw submission, page iv.

<sup>59</sup> MTS submission, paragraph ES16(d).

arrangements cannot be established between the two parties, new parties may apply through the RP-19 process for consideration.”<sup>60</sup>

**(d) More on the rural and remote regions question.**

67. SaskTel has argued that “The goal of improving rural access should be placed well above those of generating new one time revenues for the Federal government or promoting the expansion of new cellular service providers, who are unlikely to enter the rural environment.”<sup>61</sup> WIND agrees with the suggestion that public policy objectives should not be sacrificed in the interest of maximizing revenues to federal coffers. The objectives of the Telecommunications Act do not include the objective of maximizing proceeds to the federal government. Having said that, WIND disagrees both with the argument that new entrants are “unlikely to enter the rural environment” and with the notion that the rules for the 700 MHz auction should be structured to promote wireless service deployment in rural areas. As Industry Canada points out, the federal government has undertaken several other initiatives to promote broadband deployment in rural and remote regions, including the Broadband Canada: Connecting Rural Canadians program.<sup>62</sup> Videotron has already taken advantage of this program to support its deployment in areas such as Lac-St.-Jean-Est, Antoine-Labelle and La Haute Cote-Nord, Quebec.<sup>63</sup> There is no reason to believe that other wireless carriers will not follow suit.

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<sup>60</sup> Industry Canada Consultation Document, pages 41-42.

<sup>61</sup> Sasktel Submission, paragraph \*

<sup>62</sup> Industry Canada, Consultation Document, page 40.

<sup>63</sup> See Videotron Submission, paragraph 111.

In WIND's view, the objective of deployment of wireless broadband networks is best addressed through a combination of balancing spectral asymmetry (by ensuring that 700 MHz spectrum is awarded to new entrants) and direct subsidies rather than through spectrum policy alone. In addition, measures to support network and tower sharing could reduce the cost of rural deployment.

(e) **Payment terms.**

68. Mobilicity has suggested that Industry Canada consider permitting licensees to pay license fees over 10 years.<sup>64</sup> WIND agrees with this suggestion, but proposes extending the benefit of these payment terms to new entrants which are already at a substantial competitive disadvantage in raising capital. Payment terms such as this one would serve to reduce the amount of capital immediately required by new entrants and so could offset, in part, the substantially higher borrowing costs currently being imposed on new entrants as compared to incumbents.

(f) **Administrative Monetary Penalties.**

69. Mobilicity has suggested that the framework and all conditions of license attached to licensed spectrum provide for administrative and punitive penalties.<sup>65</sup> WIND supports this recommendation, but would extend it to include all licensees which breach their

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<sup>64</sup> Mobilicity Submission, paragraph 22.

<sup>65</sup> Mobilicity Submission, paragraph 21.

terms of license. Mobilicity also argues for expedited timelines for decision making.<sup>66</sup>  
Again, WIND supports this proposal.

70. Except as specifically outlined above, WIND stands behind the submissions in its original submission and thanks Industry Canada for its consideration. WIND looks forward to continuing to participate meaningfully in offering Canadian consumers better value and more choice in their wireless services.

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<sup>66</sup> Mobilicity Submission, paragraph 171.