

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, Canada Gazette Notice SMSE-005-11

Reply comments of Globalive Wireless Management Corp. (“WIND”)

1. WIND is pleased to provide the following reply to responses submitted in response to Industry Canada’s consultation paper, 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, Canada Gazette Notice SMSE-005-11 (the “2500 MHz Consultation”).
2. A critical issue in the Consultation is the issue of whether there is a need for measures to promote competition in the wireless services market and, if so, which mechanisms would be most appropriate in the 2500 MHz band.
3. WIND has provided extensive comments on those topics in response to the Department’s paper “Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum” (the “700 MHz Consultation”). More specifically, WIND outlined in its


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original and reply submissions in the 700 MHz Consultation why it believed that the frameworks for each of the upcoming spectrum auctions should include measures to promote competition and which specific measures it considered were necessary to sustain competition.

4. WIND stands by the views it expressed in those submissions and will not reiterate those views at length in this submission. Having now had an opportunity to review and consider the submissions made by others in response to the 2500 MHz Consultation, however, WIND wishes to offer these reply comments relating to certain topics not covered by its submission in the 700 MHz Consultation, including the topic of the appropriateness of specific spectrum caps in the 2500 MHz auction.

5. To briefly summarize WIND's submission in the 700 MHz Consultation, WIND believes that the Department must continue to promote competition in the wireless market to achieve the Department's stated objective of maximizing "the economic and social benefits that Canadians derive from the


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use of radio frequency spectrum.”¹ The introduction of competition through the set-aside in the 2008 auction of spectrum in the AWS bands was a significant public policy success. Since that auction, Canadian consumers have enjoyed substantially more affordable wireless service as well as new and innovative product offerings and terms of service.

6. In delivering these benefits to Canadians, new entrants such as WIND have overcome substantial competitive disadvantages relative to their incumbent competitors. For example, new entrants are spectrum poor relative to incumbents, taking into account both the quality and quantity of spectrum they hold. This has meant, among other things, that the selection of handsets which new entrants are able to offer is relatively limited, the cost of constructing networks is substantially higher for new entrants than incumbents and, as new entrant subscriber bases grow, it could become increasingly difficult for them, without additional spectrum, to offer the wide

¹ The 700 MHz Consultation, page 1.



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range of smartphones and services that Canadians will want, including the unlimited data plans Canadian consumers have embraced.

7. It is critical that in setting the auction frameworks for all upcoming spectrum auctions, including the auction of spectrum in the 2500 MHz band, the Department acknowledge this competitive asymmetry and that it take steps to address that asymmetry, including designing the frameworks for both upcoming spectrum auctions to ensure that most or all of the spectrum being auctioned is awarded to new entrants on reasonable terms.

8. A number of those who made submissions in the 2500 MHz Consultation observed that Canada faces a unique circumstance in considering how to approach licensing the 2500 MHz band: much of the band is currently and will continue to be jointly held by Bell and Rogers through the Inukshuk Wireless Partnership. Quebecor, for example, noted that “we are faced with a case of high concentration of holdings in a spectrum band that has been specifically designated on a global level for the deployment of high


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mobility services”.² Similarly, Shaw stated that “given the already sizeable holdings of the BRS Incumbents in the 2500 MHz band, there is no public policy rationale that could justify providing them with even more access to spectrum in the band.”³ MTS Allstream commented that “Bell and Rogers through their Inukshuk partnership have sizeable spectrum holdings in the 2500 MHz band in every single province and territory in Canada – holding *up to 120 MHz in some provinces.*”⁴

9. Those parties (and others) generally were of the view that as a result of their very sizeable holdings in the band, Bell and Rogers ideally should be prevented from acquiring any more 2500 MHz spectrum or at least that their ability to acquire spectrum in the 2500 MHz band should be limited to areas where they have relatively small holdings in the band. Even Telus, while acknowledging that it considers that “open auctions are generally the most

² Quebecor submission, paragraph 34.

³ Shaw submission, paragraph 58.

⁴ MTS Allstream submission, paragraph ES1.


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appropriate course to follow”⁵, suggested measures that would preclude Bell and Rogers from participating in the auction for 2500 MHz spectrum, including a prohibition on incumbent fixed service license holders bidding on clawed back spectrum.⁶

10. Bell and Rogers, not surprisingly, both argued generally that there is no need for measures such a spectrum set-asides or caps to promote competition in the Canadian wireless market. Each had made very similar general arguments in the context of 700 MHz Consultation. WIND addressed those general arguments extensively in its reply comments as part of the 700 MHz Consultation and does not propose to do so again here. Suffice it to say that WIND disagrees strenuously with that line of argument.

11. In addition to that general line of argument, both Bell and Rogers suggested that their past willingness to take risks associated with deploying 2500 MHz spectrum should be rewarded through policies permitting them to

⁵ Telus Submission, paragraph 25.

⁶ Telus Submission, paragraph 38 a.


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acquire more spectrum within that band. For example, Bell asserted that “over the past five years, there have been ample opportunities to purchase BRS spectrum...However it was Bell Mobility’s and Rogers’ willingness to take a risk...that will enable the use of BRS spectrum for advanced wireless services. It should not be up to the Department to punish Bell Mobility and Rogers simply because others did not determine that it was worthwhile to purchase BRS spectrum when they had the opportunity.”⁷ For its part, Rogers argued that “[a]s a proven leader in the provision of mobile broadband services in Canada, Rogers must be permitted to bid for and acquire 2500 MHz in the upcoming auction. Through its 50% ownership stake in Inukshuk Wireless Partnership (Inukshuk) Rogers has taken significant risks and made substantial investments in developing the 2500 MHz band so that the benefits of fixed wireless broadband services can be extended across Canada.”⁸

⁷ Bell Submission, paragraph 47.

⁸ Rogers Submission, paragraph 3.


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12. WIND was incorporated to participate in the AWS auction and therefore it cannot accurately be said of WIND that it has ever had the opportunity to purchase BRS spectrum. And while Bell and Rogers have taken minimal risks in licensing and deploying 2500 MHz spectrum in the past, presumably they took those risks not as a public service but because they believed that doing so was necessary to maintain their licenses and enjoy profits when the spectrum was converted to mobile use. Their success in convincing the Department to claw back only one third of their BRS holding relieves them from having to acquire spectrum in this band at what are likely to be high spectrum prices.

13. In considering the arguments made by Bell and Rogers, one must also recall that Inukshuk's licenses of spectrum in the band were granted on extremely advantageous terms with very low license fees to enable it to provide fixed broadband services to the communities in question. When this spectrum was converted to mobile use, the Department could have insisted on clawing back all spectrum within the band. Instead, after initially having


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considered clawing back 2/3 of the spectrum, it ultimately limited the clawback to 1/3 of the relevant spectrum. This represented a very substantial windfall for the Inukshuk partners.

14. In any event, who had what opportunities in the past is irrelevant to the issue of what measures make sense going forward. The issue before Industry Canada is not which of its licensees' shareholders is most deserving of additional spectrum given their appetite for risk, but how spectrum should be deployed to maximize the benefits enjoyed by Canadians from a limited supply of spectrum. WIND submits that given their very substantial holdings of 2500 MHz spectrum and given their relatively large and varied holdings of spectrum in other bands, Rogers and Bell do not require access to 2500 MHz spectrum. To permit them to participate in the 2500 MHz auction would be to miss an opportunity to redeploy that spectrum in a manner that would deliver greater benefit to Canadians. In other words, WIND agrees with the submissions made by Shaw, MTS Allstream, Telus, Public, Quebecor and others on that topic. As noted by MTS Allstream, "[t]o allow the incumbents,


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particularly Rogers and Bell, who already hold more spectrum in the band than is available for auction, to purchase even more spectrum in the band, would severely limit if not deny new competitors' access to this important spectrum resource."⁹

15. Another issue raised by a number of parties in the 2500 MHz Consultation is whether the Department should introduce in band spectrum caps. Most parties, with the exception of Bell, Rogers and SaskTel, argued that in band spectrum caps were desirable. Barrett Xplore Inc. and Barrett Broadcast Networks Inc. proposed an in-auction 30 MHz spectrum cap.¹⁰ MTS Allstream, Quebecor, Shaw proposed an in band cap of 40 MHz of paired or unpaired spectrum in any given license area.¹¹ Public proposed a similar in auction cap of 50 MHz.

⁹ MTS Allstream Submission, paragraph 18.

¹⁰ Barrett Submission, paragraph 16 a.

¹¹ MTS Allstream Submission, paragraph 19; Quebecor Submission, paragraph 4; Shaw Submission, Paragraph 13,.


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16. WIND agrees with the suggestion of these parties that an in band spectrum cap is necessary and desirable. In WIND's view, in setting such a cap, the Department should seek to strike the right balance between distributing 2500 MHz spectrum among as many carriers as possible, on the one hand, and ensuring that limited spectral assets are not so widely distributed that no one carrier has sufficient amounts of spectrum, on the other.

17. WIND has carefully considered all of the caps proposed, taking into account the players' current spectral inventories and the amounts of spectrum available. WIND's view is that given the disparity of spectrum available in Region A and B, a more restrictive in-auction cap for Region B and a more liberal cap for Region A would be advisable. In Region B, where there is 60 MHz of 2500 MHz spectrum available, we would propose that the cap be 30 MHz. In Region A, where there is 120 MHz of spectrum available, we would propose a cap of 40 MHz. This, in WIND's view, would give a reasonable number of carriers the ability to secure (in some cases,


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additional) 2500 MHz spectrum while also providing each carrier acquiring the spectrum to acquire a meaningful amount.

18. Telus' position on necessary competitive measures was brazenly self-interested. After having made suggestions designed to prevent its two largest national competitors, Bell and Rogers, from participating in the 2500 MHz auction, Telus argued that it should be able to acquire as much spectrum as the Inukshuk partners and that "the Department need not take any specific measures to over ride market forces in the allocation of spectrum amongst band entrants – that is, all mobile operators in Canada other than Rogers, Bell and SaskTel."¹² WIND disagrees strongly with this assertion. In fact, if Rogers, Bell and SaskTel are precluded from participating in the 2500 MHz auction, it is even more important that measures be introduced to ensure that Telus is not able to acquire large amounts of spectrum solely to ensure that it is not awarded to its competitors. Telus' argument that it is relatively spectrum poor on a per

¹² Telus Submission, paragraph 60.


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subscriber basis ignores two critical facts. One is that through its network sharing arrangement with Bell, it benefits from spectrum licensed to Bell. The second is that while new entrants currently have relatively few subscribers, they are new and growing businesses and, one could argue, are gaining subscribers at the expense of incumbents such as Telus. WIND notes, for example, that based on publicly reported subscriber numbers, in the first quarter of 2011, WIND alone gained more net subscribers than each of Telus, Bell and Rogers. As a result, spectrum per subscriber numbers based on current subscriber levels or even current projections of future subscriber numbers based on past assumptions regarding growth could be misleading and should be regarded with skepticism. WIND believes that Telus should be subject to the caps described above and suggests that not introducing measures to override market forces (other than eliminating Bell, Rogers and SaskTel from the auction) would result in Telus dominating the auction and acquiring more spectrum than it requires.


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19. In closing, WIND appreciates the opportunity to provide these reply comments and to reiterate its conviction that the auction framework for the 2500 MHz band must include specific measures to increase and sustain competition in the wireless industry. WIND supports the view expressed by a majority of contributors to the 2500 MHz Consultation that an appropriately designed in band cap will strike the right balance between distributing 2500 MHz spectrum among as many carriers as possible, on the one hand, and ensuring that limited spectral assets are not so widely distributed that no one carrier has sufficient amounts of spectrum, on the other. This cap, as a result, would enable the Department to achieve its stated objective of maximizing the economic and social benefits that Canadians derive from the use of the scarce resource that is radio frequency spectrum.


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