NIAGARA NETWORKS

Tuesday, April 19, 2011

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

Re: Comments – Canada Gazette Notice No. SMSE – 005 - 11 — "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"

Dear Mr. Florea;

Niagara Networks is pleased to provide this comment submission with respect to Canada Gazette Notice No. SMSE - 005 - 11 dated February 12, 2011. We appreciate this opportunity to respond on this very important policy issue.

Attached are the comments of Niagara Networks in regard to the above noted consultation document. Should you wish to discuss these comments, please do not hesitate to contact us.

Sincerely,

Douglas Evashkow
CEO,
Niagara Networks Incorporated
Direct; 905 520 2857
devashkow@niagaranetworks.net

Executive Summary

E 1.0 Niagara Networks appreciates this opportunity to comment in reference to Notice No. SMSE-005-11, "Decisions on a Band Plan for a Broadband Radio Service (BRS) and Consultation on a Policy and Technical Framework to License Spectrum in the Band 2500-2690 MHz".

E 2.0 Niagara recommends the Department auction block sizes of 5 + 5 MHz paired spectrum and 5 MHz of unpaired spectrum blocks. Further we recommend the use of multiple Tier sizes for the purpose of auctioning various blocks. For blocks A9 – A14 / A9' – A14' we recommend the use of Tier 2 sizes in order to reduce coordination issues. For the remaining blocks we recommend the use of Tier 3 in larger to moderate population densities and Tier 4 for the remaining available spectrum.

E 3.0 With respect to spectrum caps, Niagara is not in favor of implementing such due to the needless uncertainty it poses and continuing need for the Department to intervene and modify caps once the spectrum asset is in play. In our opinion spectrum caps needlessly devalue the spectrum asset due to uncertainty surrounding future decision on caps. Rather, Niagara recommends the Department continue to use the spectrum set aside as the means of fostering competition in the market during a competitive process.

E 4.0 Niagara notes the existing and vast BRS spectrum already available to the Big 3. We also note the lack of exhaustive use this spectrum has undergone to date and even though this spectrum has been available to them for six years. We also note that all of the Big 3 has vast spectrum reserves both above and below 1.0 GHz. This is in sharp contrast to the total amount of spectrum available to new entrants collectively and does impact new entrants ability to compete effectively in the market. The Big 3 can and do use this disparity in spectrum assets to in effect control the market and pricing. Even TELUS has more spectrum reserves than all new entrants combined. Further, Niagara notes that Bell and TELUS share both spectrum and networks and we agree with all other industry participants including Rogers, that Bell and TELUS should be treated as affiliates for the purpose of this auction.

E 5.0 In Conclusion, Niagara cannot see any possible need for BRS spectrum with respect to the Big 3 and therefore no reason to include any of these market competitors in this spectrum auction. Niagara therefore recommends that all of the Big 3 be completely excluded from participating in this spectrum auction.

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Comments

3. Spectrum Packaging for Licensing

Block Sizes

1-1 Should the block sizes be uniform in size?

(a) If a uniform size is preferred, what size should be considered?

1.0 Niagara Networks is of the opinion that smaller block sizes provide the market with the most flexibility to meet the diverse needs of various bidders. We therefore recommend that the Department auction block sizes of 5 + 5 MHz paired and 5 MHz unpaired.

1-2 In the specific geographic regions discussed above and shown in Appendix A, which block size option(s) should be adopted and why is this option(s) preferred over the other options? Should the combinations and arrangements of block sizes be the same or different in different areas?

2.0 As noted in 1.0 above, Niagara believes that the greatest flexibility to meet the varying needs of bidders would best be met via a 5 + 5 MHz paired and 5 MHz unpaired block assignment. That would be our recommendation for all Regions A, B and C. As each of the regions are geographically dispersed with differing amounts of available bandwidth, it especially makes sense to provide the smallest block size that will work with available technology. Further, the business plans of the widest number of bidders can be accommodated by bidding on blocks in whatever size they wish to cobble together and in the region's most desirable to that bidder.

Tier Sizes

2-1 The Department seeks comments on whether the licensing of 2500 MHz spectrum should be based on uniform tier sizes across all spectrum blocks, or on a mixture of tier sizes.

3.0 Given the mix of Regions and available spectrum in each, Niagara is of the opinion that a mixture of Tier sizes would best serve the individual needs of the various bidders with differing business interests, models and plans.

2-2 Based on your answer above, if a uniform tier size is preferred, what tier size should be adopted? If a mixture of tiers is preferred, please indicate the proposed tier(s) for each spectrum block.

4.0 Where spectrum blocks are available across all Regions A, B and C, such as A9 – A14 / A9' – A14' paired, the Tier 2 size would be most appropriate. This spectrum is available nationally and thereby the tier size minimizes coordination issues leading to a more efficient and less costly rollout.

5.0 Where spectrum blocks are not available in all Regions the smaller Tier 3 sizes could be used in and around larger population densities which would be most appropriate. Again, this would lead to less coordination issues. For the majority of spectrum not available on a national basis, the Tier 4 sizing appears to be most appropriate as it allows the most flexibility for bidders with interests in these specific markets.

4. Promoting Competition

3-1 If the Department determines that there is a need for measures to promote competition in the wireless services market, which of the above mechanisms would be most appropriate in the 2500 MHz band and why should this mechanism be considered over the other? Comments should also indicate if further restrictions should apply.

6.0 If the Department determines it will take measures promoting competition, a spectrum “set aside” would be the most effective means to precipitate that goal. Spectrum caps have been tried in the past with mixed results and were eventually removed as this consultation document notes. In order to modify or remove the caps, yet another layer of consultations need to take place which is costly and time consuming. Our view is that a spectrum cap presents a set of conditions that produce needless uncertainty. Once a cap is in place, there will come a point where the cap either has to be increased, decreased or removed due to changing market conditions which may or may not coincide with a competitive process. This uncertainty in our opinion needlessly devalues the spectrum especially when there are other means to accomplish the same ends. The main advantage of the set aside is that it is straightforward; everyone knows what is at stake and can plan better for the future. Once the auction is completed, the spectrum asset enters the market as a known quantity and market forces prevail. There is no uncertainty, no need for the Department to intervene and revisit the decision and secondary markets apply. A hold period of 5 years on transferability to a non-qualified industry competitor should apply as in the case of the AWS spectrum auction. However, trading and other business mechanisms should be encouraged as long as the license is not transferred for simple monetary gain by the licensee.

In light of your response above, and recognizing that pending decisions on block sizes and tier sizes could influence your response:

3-2 (a) If the Department were to implement spectrum aggregation limits (caps), should a cap apply to the 2500 MHz band? If a cap is necessary:

(ii) Should bidders and their affiliates or associates share the cap?

7.0 As noted above Niagara Networks does not favour the use of spectrum caps. However, if caps are to be applied, bidders and their affiliates should share the cap. Currently, the Big 3 have 85% of the total available spectrum. Even TELUS has more spectrum than all new entrants combined. Having such an advantage does not promote a healthy competitive market and will only lead to further industry consolidation. Maintaining or worse increasing the disparity of spectrum assets between industry competitors just feeds the existing plutocracy that has plagued the industry for almost a decade. The Big 3 already have access to sufficient spectrum reserves such that they should be capped where they are. This should continue until a time that new entrants have ostensibly closed the gap on available spectrum resources. At that point the market will truly become sustainably competitive.

8.0 Also, as noted by many submissions in the 700 MHz consultation; Bell and TELUS share network and spectrum assets. TELUS and Bell should therefore be considered affiliates for the purpose of this spectrum auction. By virtue of their close relationship with Bell, TELUS can access the BRS spectrum and should therefore be considered to have sufficient access to this spectrum to meet their needs. Further, there is only 30 MHz of paired spectrum available in the 2500 MHz range on a national basis. TELUS also has access to PCS and AWS spectrum. New entrants on the other hand have access to less overall spectrum than TELUS currently holds even without sharing with Bell.

(iii) How long should the cap remain in effect?

9.0 The cap should remain in effect at least until market forces demonstrate that the available spectrum resources have somewhat equalized between market competitors. Furthermore, there should be no anti-competitive practices taking place in the market as evidenced by no industry competitor having access to sufficient spectrum resources such that they can dictate and thereby control market pricing. The cap could be reviewed possibly every five or ten years or as part of any future competitive licensing process.

(b) If the Department were to implement a set-aside in the 2500 MHz auction:

(i) Who should be entitled to bid in the set-aside block(s), and should the entitled bidders be restricted to bidding on the set-aside only?

10.0 As noted from the 700 MHz consultation, the Big 3 already holds 85% of all available spectrum resources both above and below 1.0 GHz. In particular, Bell and Rogers hold an enormous amount of 2500 MHz spectrum already. TELUS shares spectrum and networks with Bell and for all intents and purposes they should be considered affiliates. Therefore the Big 3 and their affiliates should not be allowed to participate in this auction in order to provide new entrant competition an opportunity to develop sustainable competition. That competition should be free from the anticompetitive practices the Big 3 has been employing via leveraging their vast spectrum holdings. The Big 3 use their vast spectrum reserves in order to control the market. By controlling which services can be competitive, in effect, they dictate market pricing. Therefore all of the Big 3 should be restricted from bidding on the BRS spectrum. New Entrants should be allowed to bid on all available spectrum in order to close the disparity in spectrum resources between market competitors and thereby create a sustainable competitive market.

(ii) How much spectrum should be set-aside and which block(s) should be set-aside?

11.0 Niagara Networks is of the opinion that given the Big 3's vast spectrum holdings all available BRS spectrum should be set aside for new entrants only. Certainly Rogers and Bell have sufficient reserves as they are not using the BRS spectrum they have exhaustively. In the event the Department decides to allow TELUS to participate for any reason, the spectrum in bands A9 – A14 / A9' – A14' paired should be set aside for new entrants only.

(iv) What restrictions should be put in place to ensure that policy objectives are met (for example, should trading of the set-aside be restricted for a given time period)?

12.0 The outright sale of spectrum should be prohibited for a minimum period of 5 years following the auction. However, the trading of spectrum should be encouraged as long as it does not represent an outright sale of the spectrum.

3-3 Are there other mechanisms that should be considered in the 2500 MHz band to promote competition? If so, how should such mechanisms be applied in this band?

13.0 Mandated roaming and site sharing issues along with handoff issues need to be resolved. These issues should be clearly resolved and dealt with well in advance of the spectrum auction for 700 MHz and BRS spectrum.

3-4 The Government of Canada has undertaken a consultation on potential changes to the foreign investment restrictions that apply to the telecommunications sector. How would the adoption of any of the proposed changes affect your responses to the questions above?

14.0 Changes to foreign investment restrictions would not affect our responses to the above questions.

3-5 The Department is seeking specific spectrum usage information from current commercial mobile licensees and entities interested in acquiring commercial mobile spectrum:

15.0 Please see our Confidential Comments.