



February 28, 2011

BY E-MAIL and REGULAR MAIL

Manager,
Mobile Technology and Services
DGEPS, Industry Canada
300 Slater Street
Ottawa, Ontario
K1A 0C8
e-mail: Spectrum.engineering@ic.gc.ca

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

Dear Sir/Madam:

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

As an interested observer and active participant in the Canadian telecommunications industry, Cogeco has a very real interest in future developments in the mobile wireless industry in Canada.

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

Yours very truly,
Cogeco Cable Inc.

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

Yves Mayrand
Vice-President, Corporate Affairs

YM/lde
encl.

Canada Gazette Notice No. SMSE-018-10

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

**Published in the *Canada Gazette*, Part 1
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**Comments
of
Cogeco Cable Inc.**

28 February 2011

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1 Introduction

1. Cogeco Cable Inc. (“Cogeco”), a cable telecommunications company, owns and operates wireline broadband telecommunications facilities and provides a wide range of Internet, voice, data, video and related services in the Provinces of Ontario and Québec in Canada, as well as in the Republic of Portugal. It is the second largest cable system operator respectively in the Provinces of Ontario and Québec, based on the number of basic cable customers served. Cogeco provides services to both residential and business customers.
2. Cogeco has approximately 2,300 full time equivalent employees in Canada, providing valuable jobs in both Ontario and Québec in the key area of information and communications technologies, and its activities contribute directly and significantly to Canada’s digital economy.
3. As at November 30, 2010, Cogeco served 881,543 basic cable, 575,929 high speed Internet (HSI), 588,332 digital television and 375,463 telephone customers in Canada. In addition to its hybrid fibre coaxial local (HFC) distribution plant in the various communities it serves, Cogeco owns and operates an extensive, state-of-the-art fibre optic broadband network in the Provinces of Ontario and Québec, extending from Windsor to the tip of the Gaspé Peninsula.
4. Cogeco’s subsidiary Cogeco Data Services provides to its commercial customers in the Greater Toronto Area data networking, e-business applications, video conferencing, hosting services, Ethernet, private line, VOIP, HSI access, data storage, data security, co-location services and other advanced communications solutions.
5. Cogeco does not hold a market share in any of the relevant markets and services which would allow it to exercise any market power. All of its business activities are intensely competitive, and the degree of

- competitive intensity is increasing very fast both in Canada and in Portugal.
6. Cogeco has no spectrum holdings relevant to the provision of consumer communications services.¹
 7. With this context, Cogeco is pleased to provide the following comments in response to Canada Gazette Notice SMSE-018-10 *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*.

2 Comments

8. Cogeco will provide specific comments on several of the questions and/or issues posed by Industry Canada in the Gazette Notice. Cogeco has reproduced the exact wording of each question as it appears in the Gazette Notice in order to facilitate the analysis of its comments in relation to those filed by other parties.
9. Cogeco wishes to reserve the ability to provide reply comments on any of the questions and/or issues posed by Industry Canada in the Gazette Notice, in accordance with the schedule associated with this Consultation.

¹ Cogeco Cable Canada Inc, and the affiliates of Cogeco Inc., do own spectrum in certain bands which are designated for point-to-point microwave (certain geographic regions in Ontario & Québec) and radio broadcasting (Québec).

2.1 Need of Additional Mobile Spectrum

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

10. Cogeco submits there is a general need for additional Mobile Spectrum in Canada. The demand for Mobile Broadband is expected to rise significantly over the next five years, driven largely by greater adoption rates of mobile broadband devices such as smartphones, USB data sticks and tablet computers.
11. Last summer, The Canadian Wireless Telecommunications Association (CWTA) released² “Wireless Communications: A Strong Signal for a Stronger Canada”, as its input to the Government of Canada’s Digital Economy Strategy consultation. In releasing its paper, the CWTA observed that globally, “mobile data traffic increased 160% between December 2008 and December 2009, and will double every year between 2010 and 2014”. The CWTA noted an “exponential increase in Canadians’ adoption and usage of advanced wireless devices in the next few years”. CWTA called for the Canadian Government “to identify 500 MHz of additional spectrum that should be made available for commercial wireless services”.
12. On February 10, 2011, US President Obama provided details³ of his Wireless Innovation and Infrastructure Initiative, which seeks to free up 500 MHz of spectrum. The majority of the spectrum would be licensed for mobile broadband applications. The White House considers access to high-speed wireless services as a key catalyst for economic growth “by

² Press release from CWTA dated July 15, 2010
http://www.cwta.ca/CWTASite/english/whatsnew_download/july15_10.html

³ *President Obama Details Plan to Win the Future through Expanded Wireless Access*, Press release from The White House dated February 10, 2011.

- enabling consumers and businesses living in those areas to participate in the 21st century economy.”
13. On February 11, 2011, ITU Secretary-General Dr Hamadoun Touré cited⁴ soon-to-be-released data that “Smartphone users already consume on average five times more data capacity than users of ordinary mobile phones”. He called for “Robust National Broadband Plans that promote extra spectrum” calling them “vital to support the growing number of data-intensive applications”.
 14. Canada must accelerate the release of spectrum corresponding to the plans of our trading partners in order to ensure that our citizens have access to the latest devices and applications; to provide opportunities for Canadian innovators to develop products and services that can be deployed in global markets; and, to ensure the interoperability of devices and services when visitors to Canada bring their devices into our country.

⁴ *Network congestion set to worsen, ITU calls for international broadband commitment.* Press release dated February 11, 2011 from ITU. http://www.itu.int/net/pressoffice/press_releases/2011/01.aspx

2.2 Tier Sizes

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

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

Provide supporting arguments for your responses to the above questions.

15. Cogeco submits that the 700 MHz commercial spectrum auction should be based on a tier size scheme which allows the maximum flexibility for regional players to bid on spectrum that would be used to serve customers in smaller, geographic regions outside of the major metropolitan centres.
16. It became clear during the last spectrum auction for Advanced Wireless Services that the final cost of spectrum for some of the smaller players was exorbitant, forcing them to exit the auction altogether. Most industry observers had pegged the final auction result to be around \$1.5 billion but the final tally was considerably higher at \$4.2 billion. While the cost for the new entrants of the set-aside spectrum was lower than the non set-aside spectrum, the unexpectedly high auction result had the perverse effect of diverting capital away from the construction of networks in favour of paying for the underlying spectrum asset.
17. The auction results for the 700 MHz mobile spectrum is expected to yield similar results. Given that the 700 MHz spectrum is considered to be 'prime land' compared to other spectrum bands, and based on the US 700 MHz spectrum auction results on a \$/MHz/Pop as applied to the

- Canadian market with 84 MHz to be auctioned, the result for the Canadian 700 MHz auction could be around \$5 billion.
18. Given this possible outcome, Cogeco submits that carving out smaller areas from the most contentious urban markets would make more economic sense for regional players, allowing them to afford the cost of acquiring spectrum with sufficient capital margin to deploy a network and exploit the spectrum resource in a timely basis.
 19. Cogeco therefore submits that the license tier size regime for the 700 MHz spectrum auction be altered to allow for this flexibility for regional players. This could mean using Industry Canada's Tier 4 license areas, but amending the larger urban agglomerations (such as the Greater Toronto Area license) to provide a carve-out permitting bidders to focus on acquiring spectrum in regional centres (such as Hamilton).
 20. Alternatively, Industry Canada could ensure that, regardless of the size of the license area, it imposed conditions of license on larger spectrum holders which would permit smaller players to lease, purchase, or operate on a long term basis, spectrum in smaller geographic areas. While industry practice in Canada has demonstrated that this option is rarely, if ever, used to date, Cogeco submits that Industry Canada must be consistent in its licensing approach for the 700 MHz spectrum in permitting the maximum flexibility for spectrum holders to develop innovative business arrangements to fully exploit mobile broadband spectrum in Canada. If necessary, Industry Canada must be prepared to enforce its conditions of licence upon the receipt of a legitimate demand for the sharing of spectrum through the methods noted above.
 21. At a minimum, Cogeco submits that any license conditions for spectrum awarded in the 700 MHz commercial spectrum auction should be the same as those imposed on holders of Advanced Wireless Spectrum.

2.3 State of Competition

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

(a) in general;

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

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

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

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

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

Provide supporting evidence and rationale for all responses.

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

23. In response to this change in the number of network players, there has been significant activity in the area of offers and pricing. The incumbents have responded with competitive offerings - even introducing new brands into the market such as Rogers Wireless did with its Chatr brand - noting that improved price plans are “due to the recent competitive activity.”⁵
24. Industry Canada measures of mandatory roaming and site sharing have helped new entrants build out their networks in a considered manner, thereby allowing for a more disciplined dispersal of capital funds, while at the same time, permitting them to offer a ‘national’ service that is not only comparable with the incumbent wireless carriers in terms of coverage, but distinctive enough to attract subscribers in the market.
25. Such measures have been substantial enablers of wireless competition, reducing the barriers to entry and facilitating the expansion of services to Canadians. These measures have also contributed to reductions in the number of towers required, easing community impact and concerns from local neighbourhoods.
26. Cogeco submits that Industry Canada must adopt similar measures in the 700 MHz commercial spectrum auction in order to further strengthen the AWS new entrants, as well as assist further entry into the Canadian wireless market. Specifically, the Department must continue to include tower sharing and mandated roaming in spectrum licenses and as we discuss below, must take all reasonable steps to enforce these conditions.
27. In response to the recent consultation in respect of foreign investment in the Canadian telecommunications industry⁶, Cogeco’s remarks

⁵ For example, thecellularguru.com published an article on December 3, 2010 citing an internal Rogers memo: <http://thecellularguru.com/2010/12/03/rogers-implements-select-device-price-drops-and-no-charge-6pm-calling/>

⁶ See “*Opening Canada's Doors to Foreign Investment in Telecommunications: Options for Reform*”, Industry Canada Consultation at <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09919.html>

emphasized that Canadians have been successful in developing world-class enterprises with state-of-the-art facilities in the telecommunications sector extending throughout Canada, a vast landmass with low population densities compared to most other countries in the world. This was achieved at considerable effort and expense over more than a century. Cogeco submits that it is critically important for Canadians to continue to be involved in the ownership and operation of their own telecommunications sector in a meaningful way while benefiting from increased competition and innovation.

28. In our comments, Cogeco cautioned the Government of Canada against a wholesale and sudden repeal of all limitations on foreign ownership currently applying to this sector of our economy, without any possibility of government review or oversight. Cogeco observed that there is considerable merit in a more cautious, phased approach that would allow the government to evaluate the actual flow of foreign capital and the behaviour of foreign investors and the Canadian entities in which they invest. In our view, Canada should not unilaterally send a signal to the rest of the world that its domestic telecommunications sector is unconditionally up for sale.

29. Cogeco continues to strongly object to any liberalisation measure that would apply only to “pure” telecommunications carriers, as contrasted with “hybrid” telecommunications carriers that also distribute broadcasting services on their common facilities and networks. Cable telecommunications service providers such as Cogeco Cable use common broadband plant to compete head to head with traditional telcos and other providers not necessarily licensed as broadcasting distribution undertakings under the Broadcasting Act. In today’s domestic telecommunications marketplace, so-called broadcasting distribution services are bundled with high-speed Internet access, voice and data services. Furthermore an ever growing part of overall broadband traffic is on account of video distribution over-the-top through highspeed

- Internet connections, which is not licensed under the Broadcasting Act. It would be inappropriate and contrary to the public interest for Canada to modify its foreign investment restrictions in a manner that is inconsistent with technological and competitive neutrality.
30. To be clear, technological and competitive neutrality requires that any liberalization of foreign direct investment in the telecommunications sector must extend to cable broadcasting distribution undertakings (“BDUs”), such as Cogeco, that use a common broadband infrastructure for both telecommunications and broadcasting distribution services and that are also licensed as BDUs under the Broadcasting Act. Should the foreign ownership threshold be raised, or eventually eliminated, under the Telecommunications Act, it must apply uniformly to those companies that are captured under the Broadcasting Act as cable BDUs.
31. Cogeco would like to be clear in stating that, despite the company’s position on the issue of the liberation of foreign ownership restrictions in Canada, Cogeco submits that the wireless industry in Canada requires that Industry Canada implement a spectrum set-aside and a modified Tier size license structure to assist new entrant wireless carriers in Canada. Cogeco submits that increased access to foreign capital is no substitute for specific measures designed to promote competition in the wireless market in Canada.

2.4 Measures to Promote Competition

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

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

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

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

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

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

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

32. Cogeco submits that the results of the AWS spectrum auction and licensing process has proven that a set-aside is an effective means to promote additional competition and stimulate investment in mobile

- services. Despite the gains that have been made, new entrants represent barely more than 1% of the total Canadian market.
33. The figures in section 4.1 of the Consultation paper indicate that Canada's 3 largest incumbent mobile service operators hold 95% of the spectrum for cellular service, 91% of the PCS spectrum and 55% of the AWS spectrum. The summary in Figure 4.5 shows that Rogers, Bell and TELUS control 85% of the relevant spectrum.
 34. As a result, Cogeco submits that the new wireless entrants that have entered the market, or soon will enter the market, should continue to be considered as a new entrant for the purposes of awarding any spectrum on a set-aside basis in the 700 MHz mobile spectrum auction. In addition, set-aside spectrum should be open to any other entity that does not offer wireless services at this time in Canada.
 35. In their home territories, MTS and SaskTel should not be considered New Entrant bidders. The definitional anomaly in the AWS spectrum auction rules defined these companies as "New Entrants" despite their overwhelming market dominance in their home markets. Surely the residents of Manitoba and Saskatchewan should benefit from the introduction of increased competition as much as Canadians in the rest of the country.
 36. Cogeco submits that 30 MHz is the minimum amount of spectrum that should be set aside in order for a new entrant to effectively offer broadband services in the market. Cogeco therefore proposes that the Set-aside block of spectrum should be at least 30 MHz and contiguous to permit the greatest possible benefit to bidders who wish to deploy advanced wireless network technologies, such as LTE.
 37. Restrictions regarding the resale of set-aside spectrum should be similar to that outlined in the AWS spectrum auction, i.e., five years. However, there should be no limitations placed on leasing or sub-ordinating such licenses. It would be in the public interest to permit spectrum holders to develop creative business arrangements that encourage a more rapid

- deployment and utilization of the spectrum. Restrictions serve to limit the degrees of freedom for sharing of network infrastructure which would otherwise provide options for increased choice of service providers for Canadians.
38. All companies participating in the upcoming spectrum auction will be expending considerable financial resources in acquiring spectrum. For new entrants, the capital is not supported by an existing revenue stream. Further, due to the geographic coverage of many of the licenses, winning spectrum holders may have to acquire more territory than they wish to target in their business plan.
 39. Cogeco submits that permitting considerable latitude in subordinating and leasing the spectrum will serve to increase the value of licenses by enabling new entrants to develop partnerships to maximize the reach and value of their networks, increasing the velocity to market of greater levels of competitive choice for consumers.
 40. In respect of other mechanisms, Cogeco reiterates the concerns that it expressed in the AWS Consultation regarding the sharing of antenna sites. Despite the strengthening of tower sharing rules introduced by condition of license, Cogeco believes that the Department must enforce the rules and should demonstrate its willingness to rescind licenses of companies failing to comply.
 41. Further, Cogeco notes that Industry Canada has had a long standing tradition of encouraging mobile wireless service providers to offer roaming services to either their competitors or non competitors. The issue of roaming with hard hand-offs (forced restart of calls) has been used by some incumbents in their advertising to disparage the quality and capabilities of new entrants. This practice and such advertising borders on contempt for the regulations demanded by Industry Canada as a condition of license.
 42. Industry Canada should take a strong stand and enforce even stronger roaming requirements on the incumbents in order to demonstrate that

such anti-competitive behaviours will not be tolerated. Roaming must be mandated in a manner where price and technical capability is no less favourable than with any other non-affiliated carrier.

3 Conclusion

43. The 700 MHz band represents an opportunity for Industry Canada to continue its leadership in increasing the level of competition and choice for Canadians in the wireless telecommunications market. In announcing the intention of the Government to appeal the Federal Court Ruling on Globalive, Minister Clement stated, “The policy of our government is to encourage choice and competition in wireless and Internet markets.” The 700 MHz spectrum auction is therefore a unique window of opportunity for greater competition and innovation in the Canadian Mobile Broadband space.
44. The auction policy for this band must continue to keep a consumer focus and actively promote increased competitive choice.
45. Cogeco encourages Industry Canada to set rules for the auction that sets aside at least 30 MHz of spectrum specifically for new entrants; that modifies the Tier sizes to facilitate entry by regional new entrants by permitting them to bid on spectrum without being forced to bid also for major urban markets such as Toronto or Montréal; that enforces the sharing of towers and support structures; and, that provides for mandatory roaming for new competitors.
46. Foreign ownership liberalization must be introduced carefully in a phased process with a view to preserving technological and competitive neutrality in order to ensure that companies that are also licensed as broadcast distribution undertakings are not disadvantaged in the delivery of integrated communications services to the public.
47. Such actions will ensure that the Canadian telecommunications industry continues to have the ability and opportunity to innovate, to offer choice in the services it supplies and that Canadian consumers reap the benefits of a more dynamically competitive market.