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By email

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300 Slater Street
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Subject: SMSE-18-10 - Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum

1. Pursuant to the procedures established in *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum* (“the consultation document”), as modified by *Extension to the Reply Comment Period for the Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum - Gazette Notice No. SMSE-009-11*, dated 14 March 2011, the Ontario Telecommunications Association (“the OTA”) hereby submits its reply comments.

These comments are filed on the behalf of the OTA members listed in the Attachment to this letter.

2. These reply comments will address positions taken by parties on the following issues: appropriate tier sizes; the exclusion of “incumbents” that currently hold other spectrum; the RP-

019 process and/or the need for a “use it or lose it” rule; the existence of rural carriers; and a potential policing role by what have become to be referred to as “the big three.”

Appropriate Tier Sizes

3. At paragraph 56 of its submission, dated 28 February 2011, Bell Mobility states:

... that auction of 700 MHz commercial spectrum should be based on uniform tier sizes across all spectrum blocks. Bell Mobility believes that uniform tier sizes will contribute to the spectral efficiency of the Canadian 700 MHz band particularly if licensed uniformly on a minimum Tier 2 basis as recommended below.

4. The OTA submits that Industry Canada should reject the argument that tier sizes must be uniform across the country and that Tiers 1, 2 or 3 are the only appropriate sized tiers to use in the auction process. In its initial comments in this proceeding the OTA highlighted the problems for small rural carriers that are associated with these tier sizes.¹ Even at the Tier 4 level it is highly unlikely that a Small Incumbent Local Exchange Carrier (“SILEC”) would be able to afford the auction fees. If Industry Canada chooses to ignore these concerns, it will have the practical effect of excluding potential involvement by carriers that are intimately invested, interested and have an unsurpassed track record in providing advanced telecommunications services in rural Ontario.

5. Accordingly, the OTA reiterates its position that Industry Canada should create an additional tier of smaller rural areas outside the major population centres found in existing Tier 4 areas in order to permit smaller service providers the opportunity to bid on 700 MHz spectrum in their operating territories.

¹ Paragraphs 34 to 38.

Exclusion of “Incumbents”

6. At paragraph 113 of its submission, Barrett Xplore Inc. proposes the following:

One measure available to the Department is a rural set aside. To implement this measure, the Department would adopt the Tier 4 service area for two to four 700 MHz blocks and apply rural unbundling to these blocks. Barrett proposes that any entity (and its affiliates and associated entities) with spectrum holdings of 50 MHz or more in any *single* geographic service area across the Cellular, PCS, AWS and BRS bands should then be excluded from bidding on any of these unbundled Tier 4 spectrum blocks. (emphasis added)

7. While the OTA understands and appreciates the intended outcome of Barrett’s proposal, it needs to point out that any proposals to exclude companies from bidding based on existing spectrum holdings will have the unintended and unfair result of excluding small carriers such as OTA members. Most OTA members hold Cellular and PCS spectrum licences in Barrett’s proposed unbundled Tier 4 spectrum blocks. However, any comparison of OTA members with the size or market power of large wireless incumbents is nonsensical and should be rejected by Industry Canada.

8. In addition, the licensed spectrum held by some SILECs (i.e. Cellular and PCS) is more technically more suited to serving urban areas. As noted by many parties to this proceeding, 700 MHz spectrum is well suited deployment in rural areas such as the operating territories of the SILECs. Barrett’s proposal would have the paradoxical result of precluding a rural carrier from bidding on spectrum well suited to that carrier’s operating territory based on the fact that it already holds spectrum that is more suited to serving urban areas.

9. If Industry Canada wishes to pursue an approach such as that suggested by Barrett, the OTA requests that a carve-out be created that would permit SILECs to bid on spectrum blocks such as these.

The RP-019 Process

10. At paragraph 266 of its submission, Rogers states that:

The Department should rescind RP-019. Its success rate is far below subordinate licenses where parties work together. Instead it is used by some new parties to antagonizes [sic] the incumbent licensees. While calling for cooperation, RP-019 usually results in disputes. It is simply not the way to encourage creative solutions to providing wireless service to rural Canadians. (emphasis added)

11. The OTA submits that instead of rescinding the RP-019 process, it should take the opportunity to expand its applicability beyond just cellular spectrum into all other types of spectrum. Industry Canada should also improve the processes to make it a more effective and efficient tool for the deployment of spectrum in rural areas. As noted by the OTA and many other parties in their initial submissions, 700 MHz spectrum is highly sought after and will be very expensive. Processes such as RP-019 represent one tool through which carriers that are unable to afford auction prices for this spectrum may be able to acquire limited amounts of spectrum that ultimately goes unused by successful bidders. Rogers correctly identifies subordination as the only other tool through which a carrier can obtain spectrum from the licensed holder. It is unclear to the OTA why Industry Canada would rescind one of only two methods available to promote the deployment of unused spectrum.

12. As an alternative to major reform of the RP-019 process, the OTA has proposed that Industry Canada should establish a transparent process whereby companies could apply to

Industry Canada to reclaim licensed spectrum in any frequency, not just 700 MHz that is unused within a specified period of time after the licensing date. The OTA has suggested a period of five years. In this way all industry players would have a set period in which to deploy spectrum in rural areas. Failing this, the spectrum would be available on a first come, first served basis for service providers to use in those areas. The OTA has proposed that this mechanism be employed only in the rural areas of existing Tier 4 service areas. It would not be applicable to major national or regional population centres.

Rural Carriers Must Not Be Ignored

13. At paragraph E15 of its submission, Bell Mobility states:

... it is undeniable that recent wireless entrants, reflecting their business model, do not target rural and remote areas in bringing their services to market. As of February 2011, even a cursory review of the service rollouts of the three wireless new entrants shows none has plans to serve rural and remote Canadians. Wind Mobile's network is operational solely in the Greater Toronto Area, Hamilton, Ottawa, Calgary, Edmonton, and Vancouver. Mobilicity's network is operational solely within the Greater Toronto Area, Ottawa, Edmonton and Vancouver. Finally, Public Mobile Inc.'s home network currently covers Greater Montréal and Toronto.

14. Bell Mobility goes on to use this line of reasoning to argue that only those carriers whose plans include serving rural Canada should be eligible for 700 MHz spectrum and that there should be no set-asides as a result. Bell Mobility's focus on the large new entrants - the basis from which it argues against a set-aside - completely ignores the existence of rural carriers such as the SILECs who already provide advanced telecommunications services to rural customers. Failure to employ set-asides or smaller tier areas in rural areas simply because the large new entrants have no plans to serve rural areas will effectively shut out small rural carriers. Industry

Canada should reject Bell Mobility's narrow focus only on the large new entrants and acknowledge the fact that there are many small rural carriers offering services in rural Ontario.

The “Big Three” as the Police

15. In arguing against the expansion of the RP-019 process, Rogers states the following at paragraphs 261&262 of its initial comments:

As a result, the subordinate licence system provides Rogers with an opportunity to extend wireless service across the country where it could not by itself. Despite Rogers' size and resources, Rogers simply cannot deploy in every location. However, some carriers, mostly with local connections and access to government funding, have put together exciting business plans that can cost effectively deploy and deliver wireless services in some rural parts of Canada.

Working voluntarily with these entrepreneurs results in feasible projects with a high likelihood of success. Rogers can screen out the speculators and the incompetent, focusing its attention, and its spectrum, on the best business plans. Everyone wins in this situation. A new community receives wireless service. A new carrier is formed, creating jobs and other economic activity. Rogers extends its footprint to a new location. And a valuable but unused resource, spectrum, is put to good use. (emphasis added)

16. The OTA would like to respond to two points raised by Rogers in these paragraphs. First, in arguing for the use of spectrum subordination vs. a revised or expanded RP-019 process, Rogers appears to be proposing that it replace the regulator (i.e. in this case Industry Canada) and assume the role of judging which companies merit spectrum licences in Canada. It is perfectly clear that Rogers does not like the RP-019 process and the OTA agrees that its elimination would be a “win” for Rogers. It would not, however, be a “win” for would-be competitors or the deployment of services based on unused spectrum. The OTA submits that Industry Canada should retain the one tool it does have in an RP-019-type process (i.e. direct regulation) to ensure that the Policy Objectives found in the *Telecommunications Act* are met in the event that

spectrum is not being used in rural areas. As noted earlier in this submission, it is unclear to the OTA why Industry Canada would eliminate one of only two options that competitors have to ensure that unused spectrum employed by competitive carriers.

17. Second, the OTA notes Rogers' admission that despite its size and resources, it cannot deploy in every location. The OTA submits that when "push comes to shove" Bell Mobility and TELUS would agree with that statement re: their own operations. This telling admission by Rogers should be very instructive for Industry Canada. In light of the fact that companies the size of Rogers cannot deploy in every situation, and the OTA submits that this is especially the case in rural Canada, Industry Canada should ask itself how the following Canadian Telecommunications Policy Objectives can be met:

7.(b) to render reliable and affordable telecommunications services of high quality assessable to Canadians in both urban and rural areas in all regions of Canada;

7.(h) to respond to the economic and social requirements of users of telecommunications services.

18. The OTA submits that one option available to Industry Canada is the collection of SILECs operating in rural Ontario. As noted in this and its previous submission, these carriers have been providing advanced telecommunications services in their operating territories in Ontario in many cases for over 100 years. They should not be disqualified from participating in this auction simply because of their small size. Moreover, they should not be precluded from possessing their own 700 MHz spectrum licences simply because subordination is the preferred option of the "big three" carriers.

Conclusion

19. In conclusion, OTA members have been key players in the telecommunications industry in Ontario for as long as the large ILECs, in many cases for over 100 years. They are fully engaged experts in providing state-of-the-art communications services in rural and northern Ontario. Industry Canada must take the opportunity provided by the up-coming auction process to ensure that SILECs have the opportunity to acquire licences for this spectrum and use it in their operating territories to continue to serve their customers.

Yours truly,

A handwritten signature in black ink that reads "Jonathan Holmes". The signature is written in a cursive style with a large initial "J" and "H".

Jonathan Holmes

Attachment

ATTACHMENT

Members of the Ontario Telecommunications Association Represented By These Comments

Brooke Telecom Co-operative Limited
Bruce Telecom
Cochrane Telecom Services
Dryden Municipal Telephone System
Execulink Telecom Inc.
Gosfield North Communications Co-operative Limited
Hay Communications Co-operative Limited
Huron Telecommunications Co-operative Limited
The Lansdowne Rural Telephone Company Limited
Mornington Communications Co-operative Limited
Nexicom Telecommunications Inc.
Nexicom Telephones Inc.
North Frontenac Telephone Corporation Limited
North Renfrew Telephone Company Limited
Ontera
Quadro Communications Co-operative Inc.
Roxborough Telephone Company Limited
Tuckersmith Communications Co-operative Limited
Westport Telephone Company Limited
Wightman Telecom Limited