

Executive Summary

Public Mobile Inc.'s Response to:

Canada Gazette, Part I, SMSE-018-10, November 30, 2010 - Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum

28 February 2011

1. The pending auction of 700 MHz spectrum will be critical to the evolution of the wireless industry in Canada. Industry Canada should extend the benefits generated since the 2008 AWS auction and adopt a plan that continues to support the development of sustainable wireless competition in Canada. The lifeblood of wireless carriers is access to capital and access to spectrum. The private sector plays a critical role in providing needed capital, but only the Government can ensure that there is adequate access to spectrum to grow and sustain a competitive market.
2. Public Mobile and other new entrants are bringing choice to Canadians. Prices are lower and wireless penetration is increasing as many new consumers are joining the world of wireless conversation. However, access to additional spectrum (and in particular, 700 MHz spectrum) is vital for new entrant competitors because without it, no new entrant will have a viable path to LTE. While the set aside policy in the AWS auction enabled as many as three new entrants in many of the major markets in Canada to bring better prices and innovative service to Canadians, with the incumbents still holding 85% of licensed spectrum, it is critically important to establish the necessary auction framework to ensure competition is sustainable.
3. Every new entrant requires more spectrum to grow and sustain its business over the longer term, including for purposes of capacity, evolving networks to new technologies like LTE, launching new services, and expanding geographically.
4. It is especially important that 700 MHz spectrum be available for new entrants because PCS and AWS spectrum has inferior propagation and penetration characteristics. PCS and AWS are less efficient, both for deploying services to rural Canadians and for providing optimal coverage and penetration within buildings in urban areas. Rogers, Bell and TELUS already have substantial competitive advantages from having been gifted similar 800 MHz spectrum more than 25 years ago. This gifted 800 MHz spectrum which is similar in almost every way to 700 MHz spectrum, has been strategically vacated by the Incumbents so that they may launch LTE services on it. Incumbents have announced that they are currently testing LTE across various spectrum bands with the intention of

launching in the near future. This shows that incumbent carriers, despite their assertions, do not need additional spectrum in order to launch LTE/4G service. Contrast this with the new entrants who will be unable to launch a comparable LTE service without acquiring 700 MHz spectrum at auction. If the Incumbents are given unfettered access to 700 MHz spectrum their advantages will be compounded and new entrants will be relegated to a niche position within the Canadian wireless industry. Put another way, incumbents will do anything to kill off competition. The most efficient way to do this is to stop Public Mobile and other new entrants from being able to launch LTE-based services which is exactly what will happen if we are unable to acquire 700 MHz spectrum.

Why competition matters:

5. Increased competition generates multiple benefits for Canadians and the Canadian economy as a whole. Competition drives lower prices and creates new alternatives for consumers, encourages innovation, and drives investment and job creation as companies build new infrastructure to bring new technologies and services to market.

6. The Government's policy objective of encouraging competition in the Canadian wireless industry is the correct one, but these are early days. Public Mobile and most new entrants have been operational for less than a year. Despite the positive impact of the new entrants, we still only account for an estimated 1.2% market-share (compared with a combined 94% market-share for Rogers, Bell and TELUS). The new entrants have not yet delivered "healthy and robust competition", and a level playing field simply does not yet exist.

7. Not only does a level competitive playing field not yet exist, but incumbent carriers are actively engaged in competitive measures to try to make sure that it never does. The most egregious example is Rogers' launch of Chatr, whose advertising, unabashedly targeted at new entrants, was so misleading and subversive that the Competition Bureau felt it had no choice but to take the unprecedented step of taking legal action against Rogers.

8. In order for Canadians to continue to benefit from more competition in wireless, the Government of Canada should continue to adopt and promote policies that encourage sustainable competition. In particular, it is critical that the 700 MHz auction is designed to make 700 MHz spectrum available to new entrant competitors.

9. New entrants need fair and reasonable access to spectrum to remain competitive, and in setting the framework for the 700MHz auction, Industry Canada has an opportunity to solidify the foundation for sustainable competition.

On the need for 700 MHz spectrum for new entrants:

10. As described above, the 700 MHz spectrum band is particularly important because of its propagation characteristics. It is also important for all new entrants as a pre-condition to deploying the next generation of broadband services through LTE. The incumbent carriers hold 25 MHz of spectrum in the 800 MHz cellular bands. If the Incumbents are allowed to buy up even more of this especially valuable spectrum, it will further consolidate holdings among a small group of carriers.

11. The incumbent carriers have shown time and again that they will pay what it takes to purchase any and all available spectrum at any price to keep it out of the hands of challenger companies. **The Incumbents acquired virtually every licence in the AWS auction that was not set aside for new entrants, yet have not made use of any of that spectrum.**

On how to treat Bell and TELUS:

12. For the purposes of the 700MHz auction design, rules and policies, fairness and expediency requires that Bell and TELUS be treated as one entity given the contractual arrangement that exists between the parties. Bell and TELUS have operated under a network sharing agreement since 2001, enabling them to combine their complementary network assets to maximize coverage and conserve capital.

On foreign investment and the 700 MHz spectrum auction process:

13. Public Mobile submits that foreign investment restrictions should be liberalized or eliminated. We believe that changes to the current ownership and control restrictions in Canada would be positive for the Canadian wireless industry, Canadian consumers and businesses and the Canadian economy as a whole. However, we submit that any changes to foreign investment restrictions should have no impact or bearing on the auction design for the 700 MHz spectrum licences.

On what Industry Canada should consider:

14. In evaluating options for the 700 MHz auction, Industry Canada should consider the following factors:

- The current spectrum assets of existing wireless companies (Incumbents have a lot; new entrants have very little)
- The use of current spectrum assets (Incumbents have hoarded spectrum, deploying relatively little of their respective stashes)
- How spectrum has been distributed in the past (i.e. auction, allocation, etc.)
- Commercial relationships between carriers (i.e. Bell and TELUS' use of an integrated network means they must be treated as a single entity)
- The relative value and importance of different types of spectrum (i.e. the disproportionately high value of sub-1 GHz versus AWS and 2500 MHz spectrum)

On what Industry Canada should do, specifically:

14. Public Mobile submits that any carrier (or consortium, i.e., Bell and TELUS) that holds 800 MHz spectrum should be precluded from bidding on 700 MHz spectrum.

15. An in-auction cap should be enforced to prevent any auction participant (or consortium) from owning more than 25 MHz of sub-1 GHz spectrum in any licensed territory.

On timing:

17. Holding the auction in mid-2012 (or preferably later) will allow parties sufficient time to procure adequate financing to participate in what will be a very expensive auction. The timing aligns with the

expected handset technology ecosystem needed to launch LTE service on 700 MHz. Holding the auction any sooner would create an unfair bias favouring the Incumbents because of their inherent financial advantages.

On other auction questions:

18. Public Mobile submits that Option 1 (harmonize with the U.S. band plan) is the band plan that should be adopted in Canada because of these reasons:

- a) Handset economics derived from compatibility with US carrier specifications
- b) Simplification of cross-border use
- c) Public safety compatibility

19. Public Mobile submits that a mix of Tier II and Tier III licenses should be offered to optimize between bid flexibility and spectrum fragmentation.

Conclusion: Sustainable Competition

20. Competition exists in the wireless market today thanks to the emergence of new entrant wireless challengers. But there is a difference between competition that is fleeting and fragmented and competition that is sustainable in the long-term. Without a path to evolving our network to LTE, Public Mobile and the other new entrants will become marginalized with service offerings that simply will be uncompetitive compared to future incumbent offerings. The only way Public Mobile and other new entrants will be able to launch LTE is by acquiring 700 MHz spectrum – without it, we will be relegated to niche carriers with inferior offerings.

21. By implementing the recommendations described above and as set forth in Public Mobile's response to Industry Canada's consultation on the 700 MHz auction, Industry Canada has the opportunity to solidify the foundation of real, lasting, sustainable competition in the Canadian wireless services market.