



April 6, 2011

Via email to: spectrum.engineering@ic.gc.ca

Manager, Mobile Technology and Services
Industry Canada
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Re: Canada Gazette Part I, December 4, 2010, Notice SMSE-018-10: Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum

1. Westman Communications Group (Westman) is pleased to submit the following reply comments concerning matters identified in "Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum".

INTRODUCTION AND BACKGROUND

2. Westman operates in Brandon Manitoba and in 35 smaller, rural communities outside of the city. Westman's telecommunications and broadcasting services equal or exceed those available in the rest of the province and Canada.
3. Westman offers digital cable TV including HDTV, video on demand, high-speed Internet¹, and local and long distance telephone services to residential customers. Business services include wide area networks, business telephone, high-speed Internet (including wireless Internet), web hosting and co-location. Westman also serves all of the community through its AM and FM radio stations, and many thousands of hours of community television. Westman does not simply serve customers, it is an integral part of the community. We are one of the largest employers in Brandon, and as a cooperative, Westman customers are also shareholders.

¹ Westman's most popular residential high speed Internet service provides speeds of 9 Mbps download and 1 Mbps upload. Residential customers can also choose service with download speeds up to 50 Mbps and 2 Mbps upload.

4. The only communications market not served by Westman is wireless and it is our hope that the policy framework adopted from this consultation will create an opportunity for Westman to correct this deficiency.
5. As a member of the Canadian Cable Systems Alliance (CCSA), Westman endorses the Association's position to create set-asides to encourage new entry and promote competition. Incumbent wireless carriers should not be permitted to bid on set-aside spectrum, including incumbent wireless carriers that are dominant in regional markets.
6. In these Reply Comments, Westman replies to MTS Allstream's request that it be exempted from the prohibition on set-aside bidding by incumbents.

MTS ALLSTREAM'S DOMINANCE

7. The CRTC's 2010 Communications Monitoring Report indicates that MTS Allstream has dominant market share with 55% of Manitoba's wireless subscribers.² In its Q1 2010 Financial Report, MTS Allstream reported that it had almost 484,000 wireless subscribers at December 31, 2010, up by 5.5% from the fourth quarter of 2009, with revenues up by 9.7%.³ As impressive as these numbers are, market dominance in Brandon is likely much greater. Unlike Winnipeg, where MTS Allstream faces wireless competition from Rogers and Telus, Rogers is the only wireless competitor in Brandon - a true duopoly.
8. Westman believes that Mr. Pierre Blouin, CEO, described MTS Allstream's strengths in the wireless market fairly accurately:

We will continue to have very clear competitive advantages in the Manitoba market over any competitor, including Rogers, and those advantages include the richest bundling capability, the best dealer and distribution channels, superior customer service and a huge brand recognition in the province.⁴

9. These advantages plus the advantages of incumbency and dominant market share gives MTS Allstream market power in the province of Manitoba. It also belies the need for any exemption of Industry Canada's policy to set-aside spectrum in Manitoba.

² CRTC Communications Monitoring Report 2010, Table 5.5.4; available at <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2010/cmr51.htm#t554>

³ MTS Allstream Fourth Quarter 2010 Report, Management Discussion and Analysis, page 6; available at http://www.mts.ca/file_source/mts.ca/Static_Files/Financial-Reports/2010/Q4/EN/MTS%20Allstream%20Q4%202010%20MDA.pdf

⁴ MTS Third Quarter 2009 Conference Call, page 2; found at http://www.mts.ca/file_source/mts.ca/About%20MTS%20Allstream/3.0%20Investors/Financial%20Reports/2009/Q3/Transcript%20Q3%2009%20results%20FINAL.pdf

10. In a move that will strengthen its dominance, MTS Allstream announced in July 2009 that it entered into a "strategic wireless arrangement" with Rogers.⁵ The arrangement is far-reaching. It provides for the sharing of the costs to deploy an HSPA network across Manitoba. More notable, for the purpose of Industry Canada's consultation, is MTS Allstream's "opportunity to launch a national wireless business offering under the Allstream brand through a competitive wholesale arrangement".⁶
11. The exclusive nature of the MTS Allstream and Rogers Wireless agreement⁷ and the absence of any other wireless carrier in Brandon effectively precludes Westman from entering into any form of wireless wholesale arrangement with the existing national wireless carriers.⁸ In any case, as noted by the CCSA in its February 28, 2011 submission, none of the national providers have been willing to partner with CCSA member companies to offer wireless service on a wholesale basis.⁹
12. The significant competitive advantages of the strategic alliance with Rogers and the absence of true wireless competition serve to strengthen MTS Allstream's dominance in Brandon. MTS Allstream does not need any regulatory concessions, least of all an exemption from the incumbents' prohibition on bidding on set-asides.

ACCESS TO CAPITAL

13. In its February 28, 2011 Comments, MTS Allstream changed tack. Instead of arguing that the incumbents will acquire all or most of the spectrum, MTS Allstream now argues that "certain potential participants face significant barriers to acquiring capital".¹⁰
14. MTS Allstream argues that, because it is small in comparison to national wireless carriers, it deserves a special concession. In particular, MTS Allstream wants Industry Canada to implement set-asides everywhere in Canada except in provinces where the incumbents are relatively small. For example, MTS Allstream states:

⁵ MTS Allstream Third Quarter 2009 Report, Management Discussion and Analysis, page 3; available at http://www.mts.ca/file_source/mts.ca/Static_Files/Financial-Reports/2009/Q3/English/MTS%20Q3-09%20MDandA.pdf

⁶ *Ibid.*, page 3

⁷ MTS Third Quarter 2009 Conference Call, page 17; found at http://www.mts.ca/file_source/mts.ca/About%20MTS%20Allstream/3.0%20Investors/Financial%20Reports/2009/Q3/Transcript%20Q3%2009%20results%20FINAL.pdf

⁸ Although Shaw and Wind also have AWS licenses to serve Brandon, they have not announced when service will be turned up.

⁹ CCSA Letter dated February 28, 2011, Re: Canada Gazette Part 1, December 4, 2010, Notice SMSE-018-10: Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum., paragraph 5.

¹⁰ MTS Allstream Comments dated February 28, 2011, Re: Canada Gazette Part 1, December 4, 2010, Notice SMSE-018-10: Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum, paragraph 90.

While the capital expenditures of the smaller players are either proportionately in excess of, or at minimum proportional to, those made by the Big 3, the sheer size and national share of the Big 3 provides them with a greater advantage both in terms of cash flow to fund expenditures and economic access to capital overall.¹¹

15. MTS Allstream further elaborates as follows:

Relative access to capital remains as a relevant criterion for market entry and particularly for wireless markets for which market entry is dictated by performance in a public auction process. A spectrum set-aside recognizes the importance of this barrier to entry and effectively remedies against this. Given that this remains a relevant criterion and that the relative sizes and relative ability to garner capital remains unchanged, the new entrant set-aside and definition of new entrant to *include smaller regional players*, per the AWS spectrum auction rules, remain entirely appropriate.¹² (Emphasis added)

16. MTS Allstream implies that it also has difficulty accessing capital but does not provide any evidence that this is true.
17. While access to capital is certainly a concern for new entrants, Westman submits that it is not a problem for "regional" wireless carriers. MTS Allstream's capital requirements to operate in Manitoba are proportionately the same as any other wireless carrier's capital requirements to operate in Manitoba. In fact, under the cost sharing arrangement with Rogers, MTS Allstream incurred significantly less capital costs than it would otherwise have incurred.
18. According to its financial reports, MTS Allstream has none of the problems raising capital confronted by new entrants. As of the end of December 2010, it had \$1.2 billion in credit facilities, of which only \$340 million was utilized. In its financial reports MTS Allstream says that it has been "assigned solid investment grade credit ratings".¹³ Furthermore, as amply demonstrated in the AWS auction, MTS Allstream had no problem accessing all of the capital necessary to acquire the majority of spectrum available.

¹¹ MTS Allstream Comments dated February 28, 2011, Re: Canada Gazette Part 1, December 4, 2010, Notice SMSE-018-10: Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum, paragraph 77.

¹² MTS Allstream Comments dated February 28, 2011, Re: Canada Gazette Part 1, December 4, 2010, Notice SMSE-018-10: Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum, paragraph 94.

¹³ MTS Allstream Fourth Quarter 2010 Report, Management Discussion and Analysis, page 16; available at http://www.mts.ca/file_source/mts.ca/Static_Files/Financial-Reports/2010/Q4/EN/MTS%20Allstream%20Q4%202010%20MDA.pdf

19. Based on MTS Allstream's publicly reported financial statements, MTS Allstream is in an enviable position compared with any of the new entrants. It simply does not need Industry Canada to make concessions to the policy framework to assist MTS Allstream in accessing the capital markets.

CONSEQUENCES OF AN MTS ALLSTREAM SET-ASIDE EXEMPTION

20. In the consultation leading to the AWS auction, MTS Allstream predicted that "an auction process that does not designate certain blocks for new entrants will preclude entry".¹⁴ Industry Canada conceded to MTS Allstream's request in the AWS auction to implement set-asides but permitted MTS Allstream to bid on them. In Brandon, results were close to what MTS Allstream predicted:
- MTS Allstream purchased three of the five blocks that were set aside for new entrant bidding in other provinces;
 - the incumbent wireless carriers acquired five of the eight blocks for auction;
 - MTS Allstream represented approximately 67% of the approximately \$61 million in total winning bids;
 - the incumbent wireless carriers represented approximately 74% of the approximately \$61 million in total winning bids;
 - no new entrants, other than Shaw and Wind, were successful in obtaining any of the AWS spectrum; and,
 - the incumbent wireless carriers acquired 75% of the total spectrum available.
21. The MTS Allstream prediction that the incumbent wireless carriers would control the spectrum available for auction became self-fulfilling in Brandon. Given that MTS Allstream has greater dominance and no impediment to access required capital, there is every reason to believe that entry will be impeded if MTS Allstream is permitted to bid on the set-asides in Manitoba.
22. Westman concurs with the second of MTS Allstream's "overarching policy objectives", which is to ensure that "Canadians in all regions, particularly in the largely rural Province of Manitoba have access to affordable, good-quality broadband telecommunications services".¹⁵ The best way to do this is to ensure that potential new entrants, like Westman, are not effectively precluded from participating in the 700 MHz auction, by prohibiting MTS Allstream from bidding on the set-aside spectrum.

¹⁴ MTS Allstream, Consultation on a Framework to Auction Spectrum in the 2 GHz Range Including Advanced Wireless Services, February 24, 2007, paragraph 23.

¹⁵ MTS Allstream Comments dated February 28, 2011, Re: Canada Gazette Part 1, December 4, 2010, Notice SMSE-018-10: Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum, paragraph 2.

CONCLUSION

23. The purpose of these reply comments is to address MTS Allstream's proposal that it be exempted from any prohibition on incumbent wireless carriers from bidding on set-aside spectrum. There is now a need for a 700 MHz set-aside in Manitoba, as existed in the rest of the country during the AWS auction, to ensure that Manitoba, and Brandon in particular, benefits from the new entry and competition that set-asides can bring.
24. Westman agrees that set-asides are necessary for new entrants but does not agree that there should be any exemption for MTS Allstream. It is well financed, has bundling opportunities not available to other competitors, has or soon will have turned up a new HSPA network¹⁶, has a rare opportunity to become a national MVNO of Rogers, has captured the majority of AWS spectrum in Manitoba (including spectrum that was set aside in other provinces), and shares a duopoly with a "strategic" partner in Brandon.
25. Westman does not believe that it was ever appropriate to waive the set-asides for MTS Allstream. However there can no longer be any doubt that MTS Allstream is a very strong incumbent that that does not need special concessions from Industry Canada. As noted above, the absence of set-asides for new entrants in Manitoba resulted in MTS Allstream obtaining a disproportionate share of the AWS spectrum, to the detriment of competition.
26. Westman submits that Industry Canada should prohibit MTS Allstream from bidding on set-asides to give new entrants the benefits that were available in other provinces. Furthermore, even if Industry Canada decides not to use set-asides in the upcoming 700 MHz auction, Westman submits that set-asides should be available in Manitoba to partially make up for the unfair advantages that occurred during the AWS auction.
27. Brandon currently has only two wireless providers and to make matters worse, they have entered into a "strategic arrangement", which Westman believes will only serve to lessen competition. In any case, the exclusive nature of the arrangement has effectively prevented Westman from partnering with Rogers.

¹⁶ MTS News Release, February 2, 2011, MTS's new wireless high-speed HSPA+ network goes live on March 31; available at <http://www.mts.ca/portal/site/mts/menuitem.0290497802902f369e5e921031248a0c/?vgnextoid=7fe3c24b994ed210VgnVCM1000002a040f0aRCRD&vgnnextchannel=65dd8dca20041110VgnVCM1000001342a8c0RCRD>

28. There is no reason why Manitobans should be treated less favorably than other Canadians. Indeed, given the absence of true wireless competition in Brandon, there is ample reason to ensure that the set-asides are used in Manitoba, even if Industry Canada decides not to adopt them in the rest of the country. Westman respectfully requests Industry Canada to set aside spectrum that is available for bidding by new entrants but not to any of the incumbents, including MTS Allstream.

Yours truly,

A handwritten signature in black ink that reads "David Baxter". The signature is written in a cursive, flowing style.

David Baxter
President & CEO

DB/nlh