



March 21, 2022

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Chantal Davis
Senior Director
Spectrum Licensing Policy Branch
Innovation, Science, and Economic Development Canada
235 Queen Street (6th Floor, East Tower)
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Dear Sir/Madam:

Re: *Canada Gazette, Part I, December 25, 2021, Notice No. SLPB-006-21 – Consultation on a Policy and Licensing Framework for Spectrum in the 3800 MHz Band – Eastlink’s Reply*

Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), herein provides our Reply comments in response to Canada Gazette Notice SLPB-006-21 – *Consultation on a Policy and Licensing Framework for Spectrum in the 3800 MHz Band*.

We appreciate the opportunity to provide our views to the Department.

Sincerely,

A handwritten signature in blue ink that reads "Marielle Wilson". The signature is written in a cursive, flowing style.

Marielle Wilson
Vice President, Regulatory

**INNOVATION, SCIENCE, AND ECONOMIC DEVELOPMENT CANADA
CONSULTATION ON A POLICY AND LICENSING FRAMEWORK FOR SPECTRUM
IN THE 3800 MHZ BAND
CANADA GAZETTE, PART I, December 25, 2021 (SLPB-006-21)**

**REPLY COMMENTS OF
BRAGG COMMUNICATIONS INC., OPERATING AS EASTLINK**

eastlink

March 21, 2022

1. Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), herein provides our Reply comments in response to Canada Gazette Notice SLPB-006-21 – *Consultation on a Policy and Licensing Framework for Spectrum in the 3800 MHz Band*.
2. Through the release of the consultation document, Innovation, Science and Economic Development Canada (“ISED”) is initiating a consultation on a policy and licensing framework for the auction of spectrum licences in the band 3650-3900 MHz (referred to as the 3800 MHz band) as announced in Canada Gazette notice SLPB-006-21 (the “Consultation”).
3. As outlined in our initial comments, in order for ISED to achieve the policy objectives for the 3800 MHz band as outlined in its Consultation, it is critical that the licensing framework include pro-competitive measures. Eastlink submits that without reasonable access to the 3800 MHz band regional mobile service providers (RMSPs) will not be able to compete against the national mobile service providers (NMSPs) in the market for 5G services, putting the positive impact the RMSPs have had on the Canadian wireless market at risk.
4. Eastlink has reviewed the comments made by other parties to this proceeding, and we remain of the view that it is critical that a set-aside be established in the licensing framework for the 3800 MHz band so that RMSPs and other smaller wireless service providers, have the opportunity to obtain this important spectrum. If a set-aside is not established the NMSPs, who already have significant spectrum holdings will be both incentivized to and capable of, outbidding RMSPs like Eastlink. In addition, we support the use of a cross-band spectrum cap, which will help ensure a more equitable distribution of this spectrum. However, this cannot be used as a replacement for a set-aside as it will not prevent NMSPs from using their significant financial advantage to shut out other smaller wireless service providers.
5. Eastlink notes that there were concerns raised in the initial comments by a number of parties regarding ISED’s proposal to extend the mitigation measures described in SRSP-520 to protect radio altimeters from flexible use operations in the 3500 MHz band to flexible use operations in the 3800 MHz band until domestic and international studies are completed. In addition, there were also concerns raised about ISED’s proposed licence term and deployment requirements due to the delay in accessing this spectrum as a result of the transition time required for existing licence holders. Eastlink submits that given the uncertainty on how the altimeter restrictions may impact the deployment of 3800 MHz spectrum, along

with the known delay in deployment due to the transition period for existing licensees, ISED should consider whether a delay in the auction is appropriate until some of these issues are resolved. Given that this spectrum is not available for immediate use, it may be appropriate to resolve some of these outstanding issues prior to the start of the auction in order to provide bidders greater certainty over the use of this spectrum.

6. In our initial submission, Eastlink's position on some of the issues were as follows:

- Pro-competitive measures are critical so that RMSPs are able to have a reasonable chance of acquiring this important spectrum. Eastlink proposes a 100 MHz set-side along with a 100 MHz cross-band spectrum cap.
- Eastlink supports ISED's proposal to use Tier 4 service areas for the 3800 MHz licensing process. Licensing spectrum by Tier 4 service area ensures that smaller operators are able to participate in the auction without being precluded from bidding on areas of interest that would otherwise be too costly at a Tier 2 service area.
- Eastlink supports the general deployment requirements proposed by ISED in Annex B of the Consultation document. Existing licence holders who have made the significant investments necessary to deploy their LTE network should not be faced with more aggressive deployment timelines than those who have not. Furthermore, the deployment timelines should only begin once a licence holder has the ability to deploy this spectrum in a given service area.
- Similarly, the licence term should only start once providers are able to access the 3800 MHz spectrum. The final payment should also only be due once the spectrum is available for use.

7. Eastlink addresses below some of the comments and proposals made by other parties who filed submissions in this Consultation. Any failure to comment on a specific issue should not be interpreted as support or opposition where doing so is inconsistent with Eastlink's interest.

Pro-competitive measures

8. As noted in our initial comments, the licensing of the 3800 MHz band is an opportunity to further support investment by telecommunication service providers and improve the quality, affordability and availability of wireless services for Canadians. In order to support sustainable competition by facilities-based providers, it is critical that ISED implement pro-competitive measures in the 3800 MHz licensing framework. Without access to this spectrum, which will be necessary for the deployment and growth of 5G services, the substantial investment by facilities-based competitors since 2008, along with the competition they bring to the market will be at risk.
9. Eastlink supports ISED's proposal to include both a set-aside and a spectrum cap, as this will allow smaller wireless providers to have a reasonable opportunity to obtain some of this spectrum, and will also allow for a more equitable distribution of mid-band spectrum. Aside from the NMSPs there was overwhelming support for including a set-aside in the licensing framework. However, we propose that the set-aside be increased from 50 MHz to 100 MHz. The current proposed set-aside only represents 20% of the total spectrum available in most Tier 4 service areas. Given the NMSPs' significant mid-band spectrum holdings, along with the amount of spectrum available in this auction, a set-aside that represents 20% of the total spectrum available will only further the spectrum divide. Eastlink submits that a set-aside of 100 MHz is more appropriate, and is consistent with the amount of spectrum set-aside in past spectrum auctions. An increase in the total set-aside amount to 100 MHz was also proposed by Québecor Media who noted that a set-aside of 50 MHz will mean that NMSPs will have the chance to get 200 MHz of open spectrum, while regional competitors collectively compete for 50 MHz¹.
10. As with past licensing framework consultations, the NMSPs continue to oppose a set-aside suggesting they harm Canadians by distorting the market and increasing spectrum costs. Eastlink submits that these claims ignore the significant positive impact that set-asides have had by allowing RMSPs to enter the Canadian wireless market and create a strong fourth regional player in most service areas. Since entering the wireless market, RMSPs have contributed to a steady decline in per-use-prices, the deployment of the most advanced

¹ Québecor Media, Initial Comments dated November 15, 2022, paragraph 53.

networks in the world, the introduction of innovative products and services, and consumer-friendly policies and practices.

11. As evidenced by past auctions, due to the significant differences in available resources, if a set-aside is not established the only successful bidders in the 3800 MHz auction will be the NMSPs. Without a set-aside the NMSPs would outbid each other, driving up the price of the spectrum to the point where no regional provider would be able to acquire any reasonable amount of this valuable spectrum.
12. TELUS argues that ISED's proposed set-aside of 50 MHz does nothing to mitigate the same anticompetitive incentives for bidders in the 3800 MHz auction as were seen in the 3500 MHz auction (i.e., for Bell and Rogers to maintain their mid-band TDD spectrum advantage)². While TELUS appropriately acknowledges Bell and Rogers' significant mid-band spectrum holdings (much of which was acquired prior to the 3500 MHz auction at a significantly lower price than the auction prices), TELUS fails to recognize that it remains a significant beneficiary to Bell's spectrum through its sharing arrangement. As compared to the RMSPs, Bell, Rogers and TELUS continue to maintain a significant advantage in all spectrum holdings. The purpose of the set-aside is to address the obvious asymmetry between the NMSPs who already have significant spectrum holdings and the RMSPs who still have a critical need to obtain additional spectrum to advance their networks and services. Furthermore, TELUS' suggestion that they were not able to outbid Bell and Rogers in the 3500 MHz is consistent with Eastlink's position that the NMSPs have the ability to outbid RMSPs like Eastlink if there is no set-aside. Although not supportive of set-asides in general, Rogers suggests that set-asides are less harmful to competition between the national networks than the proposed 100 MHz cross-band cap³.
13. While a set-aside is critical, Eastlink submits that it should be combined with a cross-band spectrum cap across the 3500 MHz and 3800 MHz band as proposed by ISED. A cross-band spectrum cap will allow other facilities-based competitors to access mid-band spectrum in areas where existing licence holders already hold a significant portion of the spectrum. This approach would allow for a more equitable distribution of spectrum in both the open and set-aside markets. Eastlink notes that there was broad support for including a cross-band

² TELUS, Initial Comments dated November 15, 2022, paragraph 50.

³ Rogers, Initial Comments dated November 15, 2022, paragraph 149.

spectrum cap along with a set-aside from a diverse range of service providers, including Cogeco, Québecor Media, the BC Broadband Association, CanWISP, ECOTEL, Sogetel, Iristel and TerreStar. Although there were some differences in the amount of spectrum cap and set-aside proposed, the parties agreed that without pro-competitive measures the NMSPs would take advantage of their significant financial resources to prevent smaller providers from gaining access to this spectrum. Not surprisingly, the parties who opposed including a cross-band spectrum cap in the 3800 MHz licensing framework, are those who already have a significant amount of mid-band spectrum that includes 3500 MHz spectrum that was obtained prior to the auction.

14. TELUS also supports a cross-band cap, as they state it is essential to maintain a competitive post auction 5G market structure given Canada's mid-band TDD spectrum landscape after the 3500 MHz auction⁴. However, they do so while also strongly opposing a set-aside. TELUS' proposal to include a cross-band spectrum cap of 110 MHz with no set-aside would merely guarantee that TELUS would have the ability to acquire the full spectrum cap, while smaller providers who are unable to compete in a bidding war with the NMSPs would be shut out.
15. Rogers opposes the use of spectrum caps, claiming that the allocation outcome would be inefficient and anti-competitive⁵. Eastlink disagrees with Rogers' characterization that their competitive position would be significantly harmed by their inability to obtain an even greater share of the overall mid-band spectrum holdings. Rogers' submission focuses on what they perceive as an imbalance of spectrum holdings between themselves and the joint Bell/Telus network, while ignoring completely the significant spectrum advantages they have over all of the RMSPs. That said, Eastlink shares Rogers' concerns about the amount of spectrum the Bell/TELUS network will be able to obtain due to their network sharing arrangement. To that end, we would be supportive of limitations placed on the amount of spectrum that could be used between them in any given service area for the length of time any spectrum caps remain in place. However, concerns around the concentration of spectrum available to Bell and TELUS should in no way lead to a licensing framework that would deny RMSPs a reasonable opportunity to obtain this spectrum. By its own admission, Rogers recognizes the competitive advantage that comes from allowing a high concentration of

⁴ TELUS, Initial Comments dated November 15, 2022, paragraph 40.

⁵ Rogers, Initial Comments dated November 15, 2022, paragraph 123.

spectrum to remain in the hands of only a few providers. We also disagree with Rogers' statements that the NMSPs should continue to have an expectation that they are entitled to obtain the largest proportion of spectrum on an ongoing basis because the RMSPs have a smaller customer base. Eastlink submits that this argument completely disregards the reality that RMSPs are still in the process of investing and building our networks, growing our subscriber base, and fully intend to aggressively compete against the NMSPs to expand our market share. We will not be able to remain competitive, especially in the market for 5G services, as we grow our networks without obtaining an equitable share of this spectrum.

Licence Term

16. In the Consultation, ISED proposes a 20-year licence term. Eastlink and a number of parties to this proceeding have expressed concern that although ISED is proposing a 20-year licence term, the effective licence term is less than 20 years due to the transition time required to clear the band of existing licensees. As a result of the transition period, most of the spectrum will be available no earlier than 2025 in urban areas, and 2027 in rural and remote areas. If the auction is held in early 2023, as scheduled, this spectrum will only be available for use 2-4 years after the final payments are made.
17. As noted earlier, the discrepancy between when this auction is scheduled and when the spectrum is available for use raises questions about the timing of this auction in general. If the auction proceeds as scheduled, the 20-year licence term should only begin once the spectrum is available to be deployed, as advocated by a number of wireless service providers, including Québecor Media, Cogeco, Xplornet, Bell, TELUS and Rogers. Furthermore, licensees should not be required to make final payments for spectrum they will not be able to use for 2-4 years. As noted by Xplornet, "Requiring service providers to expend resources on spectrum that they cannot deploy and monetize imposes significant carrying costs on licensees, particularly smaller participants, and harms the ability for service providers to execute on their planned capital investments. It also places unnecessary administrative burden on parties. Ultimately, impairing the ability for service providers to invest in their networks by tying up significant capital resources holds back the ability for service providers

to meet the needs of Canadians, frustrating the overall objective of the Spectrum Policy Framework”⁶.

18. If the auction proceeds as scheduled, licensees should not be required to pay for spectrum they are not able to deploy. Bell proposes that the due date for the remaining 80% of the final payment should be made on the date on which the spectrum is available to put into service by licensees⁷. Eastlink agrees that given the transition period associated with this licence, and the uncertainties around the altimeter issues, the final payments should not be due until the spectrum is available to put into service.

Deployment requirements

19. Eastlink supports the general deployment requirements proposed by ISED in Annex B of the Consultation document. We do not support a licensing framework that creates inequity between service providers by having different deployment requirements based on a carrier's existing wireless network. Existing licence holders who have made the significant investment necessary to deploy their LTE network should not be faced with more aggressive timelines than those who have not. This includes Eastlink, who is the first company in Canada to fully sunset older, 3G technology to make way for the most advanced network capabilities of 5G. Eastlink notes that many parties to this proceeding who operate LTE networks share Eastlink's opposition to this requirement. For example, Québecor Media, SaskTel, Bell and Rogers all expressed concern with the punitive nature of these additional requirements for operators who have made significant investment in their LTE networks.
20. We strongly disagree with any proposal to accelerate the deployment timelines, especially in light of the aggressive deployment requirements already in place for the 3500 MHz spectrum. Eastlink has invested millions of dollars to acquire 3500 MHz spectrum and will need to invest millions more in order to meet ISED's accelerated deployment requirements. This includes investments associated with new towers, antennas, equipment, as well as new stores to expand into new areas. This will require significant capital investment in a short period of

⁶ Xplornet, Initial Comments dated November 15, 2022, paragraph 51.

⁷ Bell, Initial Comments dated November 15, 2022, paragraph 10.

time. As noted in our initial comments, because of the requirement to deploy our 3500 MHz spectrum into many low-density areas over a short period of time, these areas will likely be adequately covered with 5G service in the short term, and requiring us to reinvest in these areas under the proposed timelines will divert network investment from other areas, or new service areas where customers would be better served. SaskTel expressed similar concerns with the deployment requirements in rural areas, stating that “not only will rural customers be served with high quality LTE service, but the licence conditions imposed on 3500 MHz require its deployment for delivery of 5G over the same footprint as mid-band LTE (but only for those carriers who offer mid-band LTE). Rural Saskatchewan customers, outside of major centres, will be well served with both LTE and 5 blocks of unencumbered 3500 MHz. There is simply no rational network need for 3800 MHz be deployed in rural areas until such time as it is required to serve capacity demands⁸”.

21. Eastlink maintains our view that competitive pressures, along with customer’s demands for increased capacity will motivate providers with LTE networks to deploy the spectrum as quickly as needed or risk losing customers to their competitors. No additional measures are needed by ISED to encourage faster deployment.
22. Further, most carriers agree that any deployment timelines should only begin once a licence holder has the ability to actually deploy this spectrum in a given area. Given that the spectrum will be acquired in 2023, but not eligible to be deployed until 2-4 years later, there is concern that licence holders will not have sufficient time to meet the current deployment timelines. Eastlink submits that it is not reasonable for the timelines for deployment to begin before the spectrum is useable.

All-or-nothing Bids

23. Bell recommends that the activity rule be improved by implementing “all-or-nothing” bids. Under its proposal, an “all-or-nothing” bid would only be processed if it could be satisfied fully, otherwise the bid would not be processed and bid processing during the round would proceed as if the bidder had submitted a bid at the current round’s clock price equal to its processed

⁸ SaskTel, Initial Comments dated November 15, 2022, paragraph 115.

demand in the previous round for that product⁹. Cogeco also proposed the use of “all-or-nothing” bids, but under their proposal a bidder could specify that it would bid on a quantity of licences at a certain price point and, if that could not be satisfied, that it would take zero quantity¹⁰.

24. Eastlink agrees with the proposals that the format of the auction include the right to place “all-or-nothing” bids by individual product. Under the current auction format, since bids are considered on an individual Tier 4 service area basis, if a bidder wishes to decrease demand in one area and increase in another in attempts to get a block of bids, that round’s bids may not be processed in full if it would result in demand falling below supply in an area. Under this proposed format, bidders may end up with an undesirable quantity of blocks that will make deploying this spectrum challenging.
25. If the Department decides not to implement “all-or-nothing” bids, we do not support any changes to the rules limiting the transferability of any set-aside licences acquired by set-aside-eligible bidders for the first five years of the licence term. Although we understand that it may be undesirable for bidders to hold one block of spectrum in a licence area, we are concerned that relaxing the rules could encourage speculative bidding and additional gaming during the auction, contrary to the overall intent of the auction framework which is to ensure the timely deployment of spectrum resources.

Set-aside eligibility

26. In our initial comments, Eastlink proposed that ISED provide a more detailed overview of the criteria used to determine whether an applicant qualifies as a set-aside eligible bidder. This additional detail will assist RMSPs to better understand areas where they may qualify to bid on set-aside spectrum, as well as better assist all applicants in developing their strategy and preparing for the auction. In addition to providing clarification on who qualifies as a set-aside eligible bidder, parties to this proceeding have proposed that ISED publish a bidder’s set-aside eligibility in each Tier 2 service area prior to the start of the auction¹¹. Eastlink agrees

⁹ Bell, Initial Comments dated November 15, 2022, paragraph 63.

¹⁰ Cogeco, Initial Comments dated November 15, 2022, paragraph 59.

¹¹ Xplornet Initial Comments dated November 15, 2022, paragraph 85 and Rogers Initial Comments dated November 15, 2022, paragraph 151.

with these proposals. It is important that potential bidders have all relevant information about a service area in order to properly assess the potential market before making significant investment decisions.

27. Bell and Cogeco both propose that set-aside eligibility be based on a bidder actively providing service in the relevant Tier 4 service area, and not the relevant Tier 2 service area as proposed by ISED¹². Eastlink disagrees with these proposals and submits that narrowing the eligibility criteria will reduce the competition for spectrum set-aside, and directly impact the ability for carriers to expand their network into new areas, and impact the competitive market.

Tier size

28. The majority of parties to this proceeding supported ISED's proposal to use Tier 4 service areas for the 3800 MHz licensing process. Even those parties who typically support larger tier sizes or smaller tier sizes recognize that given the similarities between the 3500 MHz and 3800 MHz band, there is a benefit to employing the same tier size as it would allow for consistency between the two bands and better facilitate coexistence and coordination among licensees.

29. Eastlink maintains our position that licensing spectrum by Tier 4 service area ensures that smaller operators are able to participate in the auction without being precluded from bidding on areas that would otherwise be too costly at a Tier 2 level.

Roaming Conditions of Licence remains essential

30. Eastlink strongly disagrees with Bell's proposal that there should not be a mandatory roaming Condition of Licence (CoL) applicable to 3800 MHz spectrum licences¹³, nor do we support TELUS' request for a reconsideration of mandatory roaming by ISED¹⁴. We share Rogers'

¹² Bell, Initial Comments dated November 15, 2022, paragraph 53, and Cogeco, Initial Comments dated November 15, paragraph 43.

¹³ Bell, Initial Comments dated November 15, 2022, paragraph 92.

¹⁴ Telus, Initial Comments dated November 15, 2022, paragraph 128.

view that the mandatory roaming requirements remain essential¹⁵. Eastlink maintains that these CoLs are critical to ensuring that the NMSPs are required to provide access to wholesale roaming services, and to support the Department's policy of promoting and supporting facilities-based competition. It is critical for Eastlink to maintain access to roaming services in order to build and expand our network.

31. Bell's claim that it is redundant and inefficient for two Government entities to regulate the same activities performed by the same companies¹⁶ is unfounded. Both the CoLs established by ISED and CRTC's rate regulation are complimentary and necessary aspects of ensuring that wholesale roaming is provided. It is only the NMSPs who have the network capable of providing nationwide coverage, and it is clear based on the submissions made in this proceeding that they are not willing to provide roaming on any commercially reasonable basis without a CoL.
32. Bell's claim that mandatory roaming discourages network investment or is at odds with promoting facilities-based competition is ridiculous when considering the roaming rates regional operators pay for access to roaming services, which even at regulated rates are higher than the NMSP's own retail data rates. RMSPs are fully incented to build and improve their own networks rather than rely on the roaming services of the NMSPs. Furthermore, the deployment requirements associated with our spectrum licences further support that licensees will continue to build their own networks.

Research and Development Requirements

33. Eastlink does not see a need for a mandated research and development requirement. Given the significant investments required to obtain spectrum and build a network, as well as competitive pressures which require us to continue providing advanced networks, operators are already incentivized to invest heavily in new technologies. We agree with comments made by other parties that the research and development requirement is no longer relevant.

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¹⁵ Rogers, Initial Comments dated November 15, 2022, paragraph 256.

¹⁶ Bell, Initial Comments dated November 15, 2022, paragraph 92.