

21 March 2022

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Re: Gazette Notice No. SLPB-006-21: Consultation on a Policy and Licensing Framework for Spectrum in the 3800 MHz Band - Reply Comments of Cogeco Communications Inc.

In accordance with the procedures set out in the above-noted consultation, please find attached the reply comments of Cogeco Communications Inc., on behalf of Cogeco Connexion Inc. ("Cogeco").

Cogeco thanks ISED for the opportunity to submit comments in this proceeding and remains available to answer any questions it may have regarding this submission.

Yours very truly,

[signed]

Leonard D. Eichel
Director, Regulatory Affairs, Telecommunications

c.c.: Paul Beaudry, VP Regulatory Affairs, Cogeco Inc.
Marie Ginette Lepage, VP, Wireless Services & Innovation, Cogeco Communications Inc.

Introduction

1. Cogeco Communications Inc. (“Cogeco”) submits these reply comments in response to Innovation, Science and Economic Development Canada’s (“ISED”) *Consultation on a Policy and Licensing Framework for Spectrum in the 3800 MHz Band*¹ (the “Consultation” or the “Consultation Document”), and to comments provided by other respondents in this Consultation.
2. In this submission, Cogeco will be focusing on the following five areas:
 - a. A combination of a set-aside and spectrum cap are essential to ensuring sustainable wireless competition;
 - b. Spectrum in the metropolitan areas of Montreal, Toronto and Vancouver should be licensed on a Tier 5 basis;
 - c. The auction format can be improved by allowing for “all-or-nothing” bids;
 - d. Pre-auction communications rules must be clarified; and
 - e. No additional measures from ISED are necessary to fulfill Canada’s Connectivity Strategy at this time.
3. In addition, Cogeco will also provide comments on some additional, specific issues or proposals that were raised by other respondents in this Consultation. Failure to address any specific issue raised by other parties should not be taken by ISED as acquiescence with the position.

Pro-Competitive Measures

4. After reviewing comments made by respondents, Cogeco remains of the view that a combination of a set-aside and a cross-band spectrum cap is critical to sustain wireless competition in Canada. The 3800 MHz band is a valuable resource that will be in high demand, especially for 5G services, and there is a high risk of foreclosure to small operators. The pro-competitive measures proposed by ISED will be helpful

¹ Consultation on a Policy Licensing Framework for Spectrum in the 3800 MHz Band, Canada Gazette Notice SLPB-006-21, December 2021.

to prevent large operators from monopolizing the access to the band, and thereby foreclosing access by smaller, regional competitors to this valuable spectrum.

5. Of the three options proposed by ISED, Cogeco supports Option 3 - consisting of a set-aside of 50 MHz, and a cross-band cap of 100 MHz - as being the best of the three options proposed. Option 3 constitutes a fairer approach as part of the auction dynamics in allocating spectrum between the incumbents and smaller wireless carriers.

6. Indeed, both a set-aside and a cap are of crucial importance in the 3800 MHz auction framework: on the one hand, a spectrum cap prevents excessive concentration of spectrum holdings in the hands of one player; on the other hand, a set-aside helps reduce the risk of foreclosure of regional carriers and new entrants by the NMNOs. Without one or the other, it will be difficult for regional carriers and new entrants to secure the necessary spectrum required to offer 5G services. This would deprive Canadian consumers of robust competition in the mobile wireless market, which would run counter to the Government's policy to increase competition, and decrease mobile wireless pricing.

7. Cogeco notes that there is broad support for a combination of a spectrum set-aside and a spectrum cap. In addition to Cogeco, Quebecor, Eastlink, Terrestar and Sogetel all support a modified version of Option 3, whereby ISED would expand the set-aside from 50 MHz to 100 MHz.

8. Quebecor provided the following justification for expanding the set-aside from 50 MHz to 100 MHz:

'(...) puisqu'une réserve de 100 MHz permet d'éliminer le risque que les trois grands bloquent l'accès des concurrents régionaux aux fréquences de la bande de 3 800 MHz lors de l'enchère à venir, tandis qu'un plafonnement de 100 MHz permet d'éviter la concrétisation d'un scénario de distribution de spectre complètement asymétrique'.²

² Consultation sur un cadre politique et de délivrance de licences concernant le spectre de la bande de 3 800 MHz, Observations de Québecor Média inc., déposées en son nom et en celui de Vidéotron ltée, 15 février 2022, para. 78.

9. In addition Eastlink, in their support for a larger amount of spectrum to be included in the set-aside amount, states:

A set-aside of 50 MHz would provide the NMSPs an even further advantage given their significant overall spectrum holdings compared to regional operators. Noting the disparity of total spectrum holdings that NMSPs possess compared to any other operators in the country, Eastlink submits that our proposed set-aside is appropriate and necessary.³

10. While Cogeco is supportive of Option 3 as a minimum, we would also support a higher set-aside amount, as proposed by Quebecor, Eastlink, Terrestar and Sogetel. However, Cogeco reiterates that, from its perspective, it is crucial that pro-competitive measures combine both a set-aside and a cross-band spectrum cap. A set-aside alone (as favoured by Xplornet) would not ensure the efficient allocation of spectrum among industry players, nor would a spectrum cap alone (as favoured by Telus and Rogers) allay concerns about the NMNOs' market power and their ability to foreclose access to spectrum to smaller, regional players.

11. Cogeco submits ISED has a clear mandate from the Canadian telecommunications industry in support of the continued use of pro-competitive measures. As many parties have pointed out, ISED has conducted 7 auctions using pro-competitive measures to date, and thus far, the incumbents have not been impacted significantly, particularly with respect to the amount of spectrum they continue to acquire, their financial ability to do so and their continued ability to maintain a high share of the total mobile wireless market in Canada.

12. If anything, the outcome of past auctions underscore the continued necessity for robust pro-competitive measures to ensure that spectrum can be accessible by regional carriers - including new entrants - to assist them in continuing to build their spectrum positions, and have the necessary spectrum resources to offer quality wireless services to Canadians.

13. Cogeco is also recommending that, with respect to deployment conditions for the 3800 MHz spectrum, that the clock on the start of the deployment milestones

³ Consultation on a Policy and Licensing Framework for the 3800 MHz Band, Comments of Bragg Communications Inc., Operating as Eastlink, para. 7, page 9 of 18.

should not begin until the licences are ready for use, i.e. have been cleared of their current licensees, this means either 31 March 2025 or 31 March 2027.

Rogers' comments on Spectrum Pooling

14. Rogers Communications Inc. ("Rogers") is arguing that the current cross-band cap proposed by ISED should not be adopted without first addressing the issue of spectrum pooling that could occur between Telus and Bell Mobility ("Bell").

15. As Telus and Bell share a common Radio Access Network ("RAN") nationwide, permitting Bell and Telus, as two separate entities, to each be eligible for a spectrum cap would translate into those two players having the ability to acquire twice as much spectrum (up to 200 MHz between the two of them) than all other single wireless network owners across the country, thereby putting all other wireless service providers who participate in the 3800 MHz auction at a competitive disadvantage.

16. Rogers states:

'If a network operator, including two service providers operating a single RAN together, can get access to a disproportionate amount of spectrum, either directly or indirectly through sharing agreements, it could deny other established networks' sufficient spectrum to compete effectively with high quality 5G services'.⁴

17. Rogers goes on to state:

'A network with much less spectrum across the 3500 MHz and 3800 MHz bands than its rivals, e.g., 100 MHz versus 200 MHz, cannot simply make up the shortfall with additional network infrastructure. It will have a speed and quality disadvantage relative to networks with more spectrum, and less flexibility to respond to customer and traffic growth. Additional cell sites and equipment will only partially mitigate its disadvantage, as numerous radios would be needed to replicate the capacity of a single radio able to deploy two 100 MHz channels. New spectrum in the mmWave bands, such as the 26 GHz, 28 GHz, and 38

⁴ Consultation on a Policy and Licensing Framework for the 3800 MHz Band, Comments of Rogers Communications Inc., para. 17.

GHz bands, cannot undo a shortfall of mid-band spectrum due to mmWave spectrum's much more limited propagation'.⁵

18. Remarkably, Rogers comments in an unequivocal way on the effects of Bell and Telus' ability to share spectrum across a single RAN:

'(...) [Multi-Operator Core Network] MOCN-type arrangements that pool spectrum have been be [sic] used to subvert ISED's competition measures, especially auction caps, and will continue to be used in such a way unless action is taken by the Department.'⁶

19. In order to address these concerns, Rogers proposes the following:

a. **Restricting spectrum pooling through licence conditions.** Pooling of spectrum on a single RAN network could be considered the same as a concentrative step in a merger process. ISED could prohibit such pooling through the spectrum subordination process by issuing guidelines that make it clear that pooling spectrum on a single RAN through the use of MOCN-type arrangements will not be allowed when subordination requests are made.

b. **Implement a cap of no less than 150 MHz.** ISED could implement a larger cap of no less than 150 MHz taking into account any pooling in the 3500 MHz band. Rogers states that: *'(...) for the purposes of applying the cap, existing spectrum at 3500 MHz would include both spectrum won by that bidder itself (i.e., primary licences) and also any spectrum at 3500 MHz held by other licensees that the bidder would be able access through a common RAN (i.e., any subordinated spectrum)'.⁷*

20. Cogeco has no notional objection to carriers combining their resources to build a mobile wireless network. Such partnerships may assist carriers in deploying capital more efficiently and ensuring that a wireless network can be deployed to the benefit of both carrier's customers.

21. However, Cogeco agrees with Rogers that, with respect to the particular arrangement in place between Bell and Telus, there are incentives in place for both

⁵ Ibid, para. 20.

⁶ Ibid, para. 32.

⁷ Ibid, para. 39.

carriers to direct their spectrum acquisition efforts to their collective benefit, and as a result, indirectly circumventing the limits imposed by ISED to counter spectrum consolidation.

22. Cogeco therefore recommends that ISED explore ways - either as suggested by Rogers, or by other means - to ensure that, in particular, the Bell-Telus network sharing arrangement not be used as a way of circumventing policies designed to ensure the fair distribution of scarce spectrum resources in this, and any other future spectrum allocation exercise.

23. However, Cogeco would caution ISED against embracing measures that could hurt smaller players in the market and their ability to combine forces with one another for purposes of deploying wireless infrastructure.

24. As noted above, Cogeco supports Option 3 set forth in the Consultation Document, which features a 50 MHz set-aside and a 100 MHz cross-band cap. However, should ISED wish to adopt Rogers' recommendation of a 150 MHz (or more) cap that considers any pooling in the 3500 MHz band, Cogeco submits that any pooling limitation ought to only apply to NMNOs (e.g., Bell and Telus' network sharing agreement). Indeed, any limitations on the ability of regional carriers to pool spectrum with one another post-auction would be deleterious to the competitive process and would undermine their ability to innovate and compete effectively in a market that remains dominated by three players with significant market power.

The Appropriate Licence Areas to be used in the 3800 MHz Auction

25. As stated in our initial comments, Cogeco supports the use of Tier 5 licence areas in a targeted manner for the 3800 MHz auction. Specifically, while Cogeco has no issue with the use of Tier 4 licence areas in most areas of the country, we submit that due to the sheer size and dense population of Canada's three largest metropolitan areas - Vancouver, Toronto and Montreal - spectrum be licenced in these areas on a Tier 5 basis.

26. To address potential concerns of interference relating to the use of Tier 5 licence areas, Cogeco, as part of its initial comments, provided summary results of an engineering study (the "Tier 5 Study") conducted by an external firm that demonstrated that the wireless services carriers in Canada have sufficient tools at their disposal to mitigate any interference issues that may arise.

27. As part of these reply comments, Cogeco is filing a copy of the Tier 5 Study in Annex A.

28. Cogeco is not alone in advocating for the use of Tier 5 licencing areas. Canwisp⁸ and Ecotel⁹ have supported the use of Tier 5 licence areas for the 3800 MHz auction.

29. As Cogeco also pointed out in its initial submission regarding the proposed auction framework for the 3800 MHz band, the use of Tier 5 licence areas in the upcoming spectrum auction could be considered to be another form of pro-competitive measure. By making spectrum available in smaller licence areas, it creates the opportunity for smaller, regional carriers to acquire licensed spectrum that is not only more affordable, but also, is better targeted to their communities of interest for the provision of wireless services.

30. Also, Cogeco notes that ISED is currently managing the transfer and transition of licences in the 3500 MHz band at a Tier 5 level. As this is done, carriers will have to make decisions on what services are deployed in what Tier 5 service area. As this becomes more commonplace, carriers will then have to implement interference management techniques between carriers at Tier 5 licence area boundaries as part of their regular network operations procedures. This process is likely to include many of the measures that Cogeco has highlighted in its comments. Cogeco submits, therefore, that such an exercise with respect to the spectrum to be auctioned in the upcoming 3800 MHz spectrum auction would be no different and as such, Cogeco submits that the use of Tier 5 licence areas for the 3800 MHz auction should not pose substantial operational issues for licencees.

31. Finally, Cogeco would also remind ISED that its original proposal was to restrict the use of Tier 5 licence areas in the upcoming 3800 MHz spectrum auction to the three large urban areas in Canada: Vancouver, Toronto and Montreal.¹⁰ Cogeco is not asking for an auction to use Tier 5 licence areas across the country, but rather, to focus on a subset of geographical areas where the cost of spectrum is

⁸ Consultation on a Policy and Licencing Framework for the 3800 MHz Band, Comments of Canwisp, paras. 26 and 106.

⁹ Consultation on a Policy and Licencing Framework for the 3800 MHz Band, Comments of Ecotel Inc., para. 30.

¹⁰ See Consultation on a Policy and Licensing Framework for Spectrum in the 3800 MHz Band, Comments by Cogeco Communications Inc., 15 February 2022.

at its highest and can prohibit smaller players to acquire needed spectrum to serve their communities and provide more competition. Cogeco submits that this proposal, if adopted, would not overly complicate the auction process as it does not expand greatly the total number of products available and, further, would allow smaller, regional carriers to better target their spectrum purchases and auction participation.

32. The benefits of implementing Tier 5 licence areas in Canada's large metropolitan areas are nowhere greater than in the Greater Toronto Area ("GTA"), which is the largest Tier 4 in the entire country in terms of population. In fact, Cogeco notes that the 4-077 Tier 4 licence area that covers the GTA is, in fact, identical in size to the Tier 3 licence area that covers the same area. In effect, ISED has decided to not further subdivide the GTA from a Tier 3 level, thereby managing the GTA as an exception to the rule. It is noteworthy that, if ISED were to further subdivide the GTA into Tier 5 licence areas, it would only add six additional licence areas, a small number considering the total number of licences to be auctioned.

33. Cogeco would note that ISED manages a number of exceptions to the rule when it comes to establishing the contours of licence areas. For example, the licence area that borders Washington State, south of Vancouver, is one, as are some licence areas in the Far North. Each one of these exceptions are managed uniquely for different reasons, but, overall, carriers and ISED are able to accommodate such exceptions relatively easily and Tier 5 in large urban areas should be no different.

34. By allowing Canada's three largest metropolitan areas to be licenced on a Tier 5 basis, ISED would greatly enhance the affordability and targeted use of spectrum by smaller carriers in Canada, thereby contributing to the continued ability of smaller, regional carriers to compete effectively with the larger MNOs by offering more competitive, more innovative and more affordable mobile wireless services.

Auction Format

35. Cogeco supports ISED's proposal to use the clock auction format, given its experience in using this format in the 3500 MHz auction. Furthermore, Cogeco supports ISED's proposals to use generic licences and to use anonymous bidding.

36. Cogeco, however, recommends that ISED improve its proposed activity rule by allowing the use of the all-or-nothing bid type, which would help mitigate the potential for undesirable auction outcomes. Doing so would prevent situations where,

for example, a bidder exits the auction with only one block of 10 MHz spectrum, when the bidder's desired outcome would be to secure two blocks. The implementation of "all-or-nothing" bidding would allow a bidder, in such a situation, to exit the auction with no blocks if they cannot secure their desired two blocks. A bidder that submits an all-or-nothing bid that results in a processed demand of zero blocks and a return to excess supplies should no longer be eligible to increase demand for that product.

37. Cogeco notes that Bell also supports the addition of all-or-nothing bids, not only on a per-product basis, but generally. Bell notes that the use of all-or-nothing bids would eliminate the scenario of bidders being '*forced to bid on an undesired package of licences to ensure that it can increase its processed activity to avoid reduction in eligibility*'.¹¹ Bell also notes that an all-or-nothing bid by product would assist bidders avoid unrequested reductions in eligibility. Cogeco is in agreement with Bell's position. Further, as Bell notes, an all-or-nothing bid applied more broadly will help to ensure bidders are not forced to bid for an inefficient combination of licences.

38. Cogeco therefore continues to support the addition of the all-or-nothing bid type to the upcoming 3800 MHz auction for the reasons noted above.

Pre-Auction Communications Rules

39. Cogeco is in general agreement with ISED's rules with respect to the governance of communications between wireless service providers prior to the auction. Cogeco believes that clear rules, applied to all auction participants, are the best, fairest manner to prevent collusion during an auction.

40. However, Cogeco supports modification to the pre-auction communications rules to ensure that they do not lead to unforeseen consequences. To that end, Cogeco recommends the following:

- a. That it be made clear that discussions between wireless carriers, or between new entrant wireless carriers and existing wireless carriers, concerning spectrum transactions (transfers, subordinations, etc.) in all spectrum bands **other than the 3800 MHz spectrum band** be specifically permitted;
- b. Further, building on the exception in (a), that discussions between wireless carriers, or new entrant wireless carriers and existing wireless carriers,

¹¹ Ibid, para. 62

concerning network sharing, spectrum sharing and other business partnerships be permitted, so long as these discussions explicitly **exclude any discussions related to the 3800 MHz spectrum band**;

c. Cogeco also submits that ISED should clarify for all auction participants when the prohibition on communications is to be applied - the publication date of ISED's final spectrum licensing framework, or, the date applications are due to ISED by all potential auction participants, or some other date. Such clarity would go a long way in rectifying the tenor of existing discussions, and provide all parties with clear dates when such discussions are to cease; and

d. Finally, Cogeco submits that the rules associated with 'post-market structure' be further clarified so that parties are able to discuss forming a consortium for participation in the 3800 MHz auction. Since ISED first included rules prohibiting discussions about the 'post-market structure', no bidding consortia have participated in a Canadian spectrum auction. Cogeco submits that this is clear evidence that the current rules are too stringent, essentially choking off any discussions between potential partners before they can begin. Cogeco therefore recommends that the pre-auction communication rules be amended to permit parties to discuss **generic governance rules** of a potential consortium, how costs are to be allocated between parties and how the spectrum could be either shared or re-divided without giving specifics on the amounts to be bid, bid strategies, or areas of interest. Such information could be shared with ISED to ensure that the parties are remaining within other established communication rules and anti-collusion guard rails established by ISED. Parties could be required to notify ISED that generic discussions have taken place and that, if a binding agreement between the parties has been reached, the parties subject to that agreement would be participating in the auction as an associated entity. If the agreement is non-binding, or in a preliminary state, the parties subject to that agreement could continue to bid as separate entities.

41. Cogeco submits that the addition of these four modifications, and/or clarifications by ISED indicating that the actions listed above do not run counter to the proposed rules, would provide greater transparency to auction participants in helping them govern the pre-auction communications they could have with potential partners and help to drive greater adherence to ISED's stated policy goals without choking the development and expansion of wireless services and effective competition.

Canada's Connectivity Strategy

42. As part of the consultation process related to the proposed 3800 MHz spectrum auction, ISED made some proposals related to accelerating Canada's Connectivity Strategy, which included specific measures, or conditions of licence.

43. In response, Cogeco submitted that the goal of rural and unserved area network expansion investments should be complementary to the networks that already exist in these areas, rather than applying a blanket coverage requirement across all licence areas. Cogeco submitted that measures that result in complementary projects to existing networks is the better approach to accelerate the availability of services to more Canadians faster.

44. In its comments, Xplornet went further, noting that:

*'Market forces, including both private investments and investments supported by government funding programs, are effectively addressing Canada's connectivity gap and the adoption of specific measures in relation to 3800 MHz spectrum is not warranted.'*¹²

45. On this basis, Xplornet concluded that ISED should not proceed with any of the proposed additional measures regarding the advancement of Canada's Connectivity strategy.

46. In addition, Terrestar commented that ISED:

*'(...) needs to evaluate the success of the measures it is already implementing - listed at paragraph 185 of the Consultation. Following this evaluation, ISED should share results with industry stakeholders, adjust the policy framework and the funding levels for connectivity investments and finally, reset connectivity targets or specific deployment requirements.'*¹³

47. In its comments, Bell cites a series of options that are available for wireless service providers to better serve rural and underserved communities, such as the still-to-be decided proposed Access Licensing Framework, the availability of 6 GHz

¹² Consultation on a Policy and Licensing Framework for the 3800 MHz Band, Comments by Xplornet Communications Inc., para. 5.

¹³ Consultation on a Policy and Licensing Framework for the 3800 MHz Band, Comments by Terrestar Solutions Inc., para. 69.

spectrum and white space spectrum and the various programs at the federal and provincial levels which are targeting funding for the deployment of wireline and wireless broadband services in unserved areas in Canada.

48. Cogeco agrees with Xplornet, Terrestar and Bell, and submits that there are sufficient programs and initiatives, both at the Federal and Provincial levels, to address the issue of connectivity in the near term.

49. For example, ISED has moved ahead in proposing a new Access Licensing Framework, and in modifying the licence conditions of PCS and AWS licences, both policy changes for which ISED has yet to render a decision. ISED should assess the effectiveness of these initiatives before taking further measures.

50. Xplornet rightly points out that in addition to the two initiatives noted above, ISED has also consulted the industry with respect to the wider availability of unlicensed spectrum in the 6GHz band, and modified the licence fees for point-to-point radio systems.

51. Cogeco submits that, thanks to Federal and Provincial programs to expand wireline broadband, significant progress is being made to connect unserved or underserved communities across the country. In Quebec, most service providers are on track to meet provincially-imposed deadlines to complete the connection of over 180,000 homes by September of this year. For Cogeco, the various projects we have undertaken to complete are proceeding well. In a recent project update, Cogeco noted that it was on track to roll out network in various parts of the province, including Saguenay-Lac St-Jean, the Laurentians, the Mauricie region, Iles-de-la-Madeleine, Drummondville, the Memphremagog region and the Outaouais.¹⁴

52. Cogeco also wishes to point out that, as noted by Xplornet, ISED's own broadband service coverage map may be out of date and does not necessarily reflect the rollout of its services to over 500,000 homes, nor does it reflect the progress made in the last two years to deploy wireline broadband network extensions by various service providers.¹⁵

53. Given both the current efforts of ISED and of many industry players in the process of extending wireline broadband coverage, Cogeco reiterates that additional

¹⁴<https://corpo.cogeco.com/cca/fr/salle-de-presse/communiqués/cogeco-accelere-ses-travaux-de-loperation-haute-vitesse/>

¹⁵ Ibid., paras. 45-47.

measures designed to promote connectivity would be premature and are, at this stage, unnecessary.

Other Issues

54. In addition to the main issues noted above, and in reading the comments submitted by other respondents, Cogeco has taken note of some additional issues it wishes to comment on.

3800 MHz Licence Availability

55. In its comments, Xplornet notes that, while the 3800 MHz auction is expected to take place in the first quarter of 2023, the licences themselves will not be available for use by the successful bidders post-auction until such time as the current licensees have withdrawn from that part of the band.

56. In particular, Fixed Satellite Service operators can continue to operate in the band until 31 March 2025, while Wireless Broadband Service providers can continue to operate until either the same date, or two years later, until 31 March 2027.

57. Xplornet proposes two solutions for this: either ISED delays the spectrum auction, or ISED allows successful bidders to delay final payment for the licences until such time as the spectrum becomes available. Cogeco notes that Bell Mobility also supports the notion of delaying the final payment for spectrum acquired in the 3800 MHz auction until the licences are available for use.

58. Cogeco agrees with Xplornet's characterization of the issue. The gap between the proposed auction date and the availability of the licences for use by successful bidders is a concern from a number of angles, including the licence term, the deployment conditions and the perceived value of the licences themselves.

59. Cogeco submits that the best solution to this gap in usability is to delay the auction. While Cogeco appreciates that overall spectrum is limited to accommodate the deployment of 5G, the public interest and integrity of the upcoming auction are paramount concerns that overshadow driving spectrum to market before it can be fully commercialized. Without delaying the auction, ISED will have to deal with how to accommodate the dates on which the licence term is to commence, when deployment conditions are to start and end, and the issue of successful bidders

having to make payments for the spectrum they have acquired to, in the end, have an asset sitting on their books that is unused.

60. Barring a delay in the auction, Cogeco agrees with Xplornet and Bell that ISED should, at a minimum, delay the final payment by successful bidders of the spectrum they have acquired in the auction. Cogeco submits that this would provide a suitable balance between the desire of ISED to make available the 3800 MHz spectrum as soon as possible, and the interests of successful bidders, who could then better plan on their deployments in conjunction with their 3500 MHz holdings in a rational manner.

61. Further, if ISED decides to proceed with a temporary suspension of the final auction payment by successful bidders, it still will need to pronounce clearly on the issue of when the licence term starts, and when deployment conditions are to commence. Cogeco submits that, in both cases, the start dates of both the term and the deployment conditions should coincide with when the spectrum is available to successful bidders, once the spectrum has been cleared of existing licensees.

Accelerated Deployment Requirements

62. In its comments, Telus proposes that, if ISED wishes to ensure that spectrum is developed in rural and unserved areas of the country, that it consider implementing its proposed Access Licensing Framework ("ALF"), rather than accelerating deployment conditions in existing or future spectrum licences.

63. In their comments filed as part of the ALF consultation, Telus stated that:

'TELUS considers the investment certainty of holding spectrum licences for the long term as a cornerstone to enabling infrastructure development and as such, ISED should not alter licence conditions in their initial term'.¹⁶

64. In Telus' reply comments in the ALF consultation, Telus proposed that, for licenced spectrum that is in its first renewal term, that a condition of 'use it or lose it' be applied to incent wireless services providers to deploy their spectrum resources. Further, Telus also proposed that licences that are within their first licence term, but

¹⁶ Ibid, para. 142.

have gone past their first deployment milestone, be subject to a ‘use it or share it’ condition.

65. Cogeco agrees with Telus’ ALF proposal, as indicated to ISED in our reply comments in the ALF proceeding, and believes “use it or lose it” conditions would constitute a valuable additional tool for ISED to assist in their policy of extending broadband communications in rural and unserved areas of Canada.

66. While Telus has suggested a reasonable path forward for holders of spectrum in the ALF proceeding, they are proposing to expand it as part of this Consultation by suggesting that deployment conditions for licences awarded in the upcoming 3800 MHz auction be accelerated significantly from what ISED is proposing.

67. In particular, Telus is proposing to pull forward all of the major deployment milestones such that the majority of the population within a Tier 4 licence area would be served within 12 years, rather than 20 years. Further, Telus is also proposing to eliminate the asymmetric deployment conditions of LTE mobile network operators.

68. Cogeco disagrees with Telus’ proposal. Not only are proposals to accelerate the deployment of 3800 MHz unnecessary, but they could also be detrimental to licensees given the variety of unresolved issues and delayed availability of the 3800 MHz spectrum. Cogeco agrees with Terrestar, Sogetel and Rogers, each of which has cautioned ISED against implementing such measures.

69. In particular, Cogeco agrees with Rogers, whose submission stresses that several unresolved issues outside the control of operators will impact and delay the usability of 3800 MHz spectrum and that, if anything, a “no-head start” rule should be imposed:

‘Accelerated deployment requirements in the 3800 MHz band should not be imposed. Rather, given the array of issues outside the control of operators that can be expected to delay usability of spectrum, the Department should instead embrace a “no-head start” rule for 3800 MHz spectrum of 31 March 2025 (or 31 March 2027 in rural and remote locations where additional deployment constraints apply).’

...

‘(...) the practical reality is that operators face significant uncertainty regarding what if any 3650-3800 MHz spectrum will be usable before March 2025. This makes it impossible to accurately value any frequency ranges in particular locations that hypothetically may be available for use before this date.’

. . .

‘Rather than having mobile operators devote significant resources (time, capital, engineering, etc.) to try and accelerate 3800 MHz deployment timelines, as well as the potential anti-competitive risks, the Department should ensure a “no head start” policy, as was done in the 3500 MHz band. This will allow operators to focus their resources on deployments in other bands where the spectrum is already useable.’¹⁷

70. In light of the above, Cogeco continues to recommend that ISED, at a minimum, maintain the deployment conditions proposed in Annex B of the Consultation Document and, further, that it take into account the unresolved timing issues regarding the usability of 3800 MHz spectrum when establishing deployment conditions.

Bell Mobility’s Proposal to Narrow the definition of a ‘Set-aside eligible’ Entities

71. In their comments, Bell has proposed a number of changes to ISED’s set-aside eligibility conditions, which, in their terms, would make the definitions more targeted to achieve ISED’s goals:

- a. The set-aside eligibility criterion with regards based on offering services be changed to services being offered in relevant Tier 4 serving areas, instead of Tier 2 serving areas;
- b. The criterion on who qualifies as an eligible set-aside bidder be changed to those service providers who i) are registered with the CRTC as a mobile wireless services carrier, and ii) already have spectrum licences and are actively providing commercial mobile wireless services to the general public in relevant Tier 4 serving areas;

¹⁷ Ibid, paras. 272-286.

- c. The definition of 'actively providing telecommunications services' be changed to include an active sales and distribution capability in that market, and is actively marketing services to customers;
- d. The definition of 'actively providing services' should be amended to exclude business that only offer services via resale or over-the-top methods;
- e. The definition of 'general public' needs to be reconsidered to include only residential and business customers, and exclude wholesale customers;
- f. The identity of set-aside eligible entities by serving region should be published prior to the start of the auction.

72. Cogeco also notes that Eastlink has also proposed to narrow the definition of what entity would be eligible to bid on set-aside spectrum, by changing the definition of a set-aside eligible entities to those '*facilities-based competitors who are actively providing commercial mobile or fixed wireless services in the relevant Tier 2 service area*'.¹⁸

73. Cogeco is strenuously opposed to Bell and Eastlink's proposals in this regard.

74. Both of these proposals are anticompetitive and would prevent additional wireless entry - including that of Cogeco - in the market. Essentially, these parties are arguing that access to spectrum in Canada should be kept to a select club of relatively large service providers where there would be no room for any other new entrant to enter the market in the foreseeable future.

75. Cogeco is of the view that new entrants are essential to the Canadian mobile wireless services market as they will help propel the market to evolve in accordance with government policy, i.e., to utilize spectrum to its fullest extent, to ensure that competition in the wireless market is robust and active and that, ultimately, consumers throughout all regions of Canada benefit from lower prices and innovative services.

¹⁸ Ibid, para. 9.

76. In the latter case, only a combination of set-aside spectrum and new entrants can lead to a more timely and affordable offering of mobile wireless services in smaller regions and rural areas where larger MNOs have no interest in deploying services.

77. The proposed measures proposed by both Bell and Eastlink taken as a whole would have the effect of essentially restraining further the participants to ISED's spectrum allocation initiatives to such a small number that it would undercut ISED's stated policies of enhancing the competitiveness of the Canadian wireless sector.

78. In ISED's Consultation Document, it is stated that one of the guiding policy objectives is to '*support sustained competition in the provision of wireless services so that all consumers and businesses benefit from greater choice and competitive prices*'.¹⁹

79. Further, ISED stated:

*'There is a risk that competition in the post auction marketplace could be affected without measures to facilitate access to spectrum for service providers other than the three NMSPs [National Mobile Service Providers]. ISED is of the view that larger service providers likely have the means and incentive to prevent other service providers, in particular smaller ones, from acquiring spectrum licences in an open auction. Furthermore, the Competition Bureau has asserted that the NMSPs have market power in the provision of retail mobile wireless services (...).'*²⁰

80. As a result of these concerns, ISED has again proposed pro-competitive measures to enable smaller, regional carriers and potential new entrants to access this scarce spectrum resource.

81. Bell and Eastlink's proposals, if enacted by ISED, would essentially restrict the auction to existing wireless service providers, allowing for no new entry into the market at all. Such an effect is clearly contrary to ISED's policy objectives and, therefore, these proposals should be rejected.

82. Cogeco continues to support ISED's proposals in this regard that eligibility to bid on set-aside spectrum should be reserved for those entities who: 1) are registered

¹⁹ ISED Consultation Document, para. 13.

²⁰ Ibid, para. 43.

with the CRTC as a facilities-based carrier; 2) not a national MNO; and 3) are actively providing commercial telecommunications services to the general public in the relevant Tier 2 area of interest.

83. As submitted in past proceedings, Cogeco still recommends that changing the last of the 3 conditions noted above from 'relevant Tier 2 area of interest' to 'relevant Tier 4 area of interest' is in the public interest. Tier 2 service areas are simply too large, and having facilities and actively providing services somewhere in a Tier 2 service area cannot be a reliable indicator of the ability to compete in a specific Tier 4 service area elsewhere in that Tier 2 area.

Bell Mobility's proposal to remove the Mandatory Roaming Condition of Licence

84. Bell has proposed that ISED consider the removal of the current mandatory condition of licence to provide roaming services.

85. Bell indicates in support of this request that there should only be one regulatory regime that governs the availability of roaming services to other carriers. In Bell's submission, having two government entities regulate the same activities of the same companies is redundant and inefficient. Bell also notes that ISED's wholesale roaming regulations are inconsistent with the CRTC's wholesale roaming regulations.

86. Bell states:

*'It is clear from the above that eliminating duplicative wholesale roaming regulations between ISED and the CRTC is completely consistent with, and supportive of, successive Governments' policy objectives and priorities. There is simply no rationale for the Department to maintain the status quo. Therefore, there should not be a mandatory roaming CoL [Condition of Licence] applicable to 3800 MHz spectrum licences.'*²¹

87. Further, Bell goes on to state that:

'A mandatory roaming CoL is at odds with promoting facilities-based competition and network infrastructure investments. Specifically, the mandatory roaming CoL creates an incentive for one carrier to make the strategic decision not to invest in or upgrade its own network in favour of roaming on one or more of its

²¹ Consultation on a Policy and Licensing Framework for the 3800 MHz Band, Comments of Bell Mobility, para. 98.

*competitors' networks. This is a particularly attractive strategy in non-urban markets where smaller populations and low population densities mean that the business incentive to invest in new or improved network capabilities is diminished or simply non-existent.*²²

88. In response, Cogeco submits that, while it is in favour in principle to eliminating regulatory duplication, in this instance, Cogeco is of the opinion that Bell is misguided in its approach.

89. While both regulatory bodies - ISED and the CRTC - do mandate wholesale roaming, the two bodies are complementary in their approach, rather than duplicative. ISED has in place a procedure to be followed for applicants of wholesale roaming in Canada, backstopped by an arbitration process and precise timelines. ISED also provides the process for resolution of disagreements on any technical feasibility issues between licensees. The CRTC, on the other hand, has chosen to put in place a mandatory roaming requirement on the NMNOs that is captured in tariffed terms, conditions and rates. Further, the CRTC is in charge of setting the wholesale rates for the mandated wholesale wireless roaming service.

90. If one regulator is to be removed from the governance of mandated wholesale wireless roaming in Canada, considerable work needs to be done to combine the scope of each agency into one holistic set of requirements that would include the conditions of licence for spectrum acquired by NMNOs, the process for customers of the wholesale wireless roaming service to apply for the service, the terms and conditions and finally, the setting of rates. Nowhere in Bell's proposal have they proposed a roadmap in this regard, nor have they identified which regulator should ultimately have full responsibility for wholesale roaming.

91. As a result, Cogeco submits that Bell's proposal is premature, not sufficiently developed and unnecessary and, as a result, should be rejected.

92. That said, Cogeco does believe that roaming conditions in 3800 MHz licences should be modified to reflect the seamless roaming obligation established by the CRTC as part of its MVNO access framework.

93. Finally, Cogeco also recommends that ISED make clear that the roaming condition of licence should be applied equally to all NMNOs, regardless of location in

²² Ibid, para. 100.

the country. This would prevent Bell and Telus playing off each other in stating, for example, that they can only offer roaming where they actually own and operate a RAN network. As noted above, because of the particular technical arrangements in place between them, Bell and Telus each have the ability to offer roaming nationwide, and should be encouraged to do so as a means of stimulating competition in the wholesale market for roaming services.

Harmonizing Conditions of Licence with CRTC MVNO Mandate

94. Between the time that ISED consulted parties on the appropriate manner in which to make available spectrum in the 3800 MHz band and when ISED released its Consultation Document on the auction framework, the CRTC released Telecom Regulatory Policy 2021-130.

95. There are three elements to that decision which impact the timing of spectrum availability as a result of this consultation and what can be discussed between parties prior to the auction: 1) the mandating by the CRTC of seamless roaming, 2) the mandated MVNO regime itself, and 3) the mandated period by which NMNOs are required to make available a wholesale MVNO access service.

96. With respect to the first issue of seamless roaming, Cogeco has already touched on this subject above in our comments related to Bell Mobility's concerns around the issue of the duplication of regulatory governance of mandated roaming in Canada.

97. With respect to the second issue, the ability of parties to discuss with potential partners aspects of the MVNO regime (including roaming agreements) should be permitted in the pre-auction period. Cogeco submits that this aspect can be covered in its proposals noted above with regard to changes in pre-auction communications rules, which, if implemented, would permit parties to continue discussions with partners on the MVNO regime.

98. However, with respect to the third issue of the timing of the CRTC's wholesale mandate, when it starts is still unknown and is subject to a final determination by the CRTC on the disposition of the NMNO's proposed wholesale MVNO access service tariffs. That said, given that the public record has been closed as of last month, the industry can expect the CRTC to issue its decision in late Spring or Summer, 2022.

99. The issue of timing is important in the context of the anticipated award of additional spectrum via the upcoming 3800 MHz spectrum auction. Quebecor pointed out this issue in their comments:

‘Il est à prévoir que les soumissionnaires gagnants de l’enchère 3 800 MHz recevront leurs licences au cours du second semestre de 2023. Cela signifie que le premier jalon (soit celui de 5 ans) de la condition de déploiement qui sera imposée à ces entités prendra effet au cours du second semestre de 2028.’²³

100. Furthermore, Quebecor proposes a solution to this timing mismatch:

Idéalement, le premier jalon de déploiement pour les licences 3 800 MHz et la fenêtre fixée par le CRTC dans le cadre du service d’accès ERMV devraient être alignés autant que possible. Après tout, le régime d’accès ERMV a été explicitement créé afin de faciliter le déploiement des réseaux des concurrents régionaux, dont beaucoup consacreront des ressources financières substantielles à l’acquisition de licences 3 800 MHz.’²⁴

101. Terrestar also makes similar comments in this regard:

‘TerreStar also strongly believes that ISED should align its deployment requirements with CRTC TRP 2021-130 for the nascent MVNO regime and that the deployment conditions ISED imposes on the 3800 MHz band be coordinated. The MVNO regime’s intent is that regional carriers would have a 7-year window to deploy their own RAN infrastructure. TerreStar submits that the time to deploy granted by the CRTC should not be circumvented by more aggressive deployment conditions on the 3800 MHz band, forcing accelerated capital spending for competitors.’²⁵

102. Cogeco agrees with both Quebecor and Terrestar. Cogeco recommends that ISED be conscientious of the new MVNO regime and the perspective to timing for those potential auction participants who may take part in the 3800 MHz auction with the intent of augmenting the amount of spectrum they possess and how that will dovetail with the requirements of the new mandated MVNO regime. This means, in Cogeco’s opinion, ensuring that the term and deployment milestones of the 3800 MHz

²³ Ibid, para. 122.

²⁴ Ibid, para. 124.

²⁵ Ibid, para. 66.

spectrum only begin when the licences are available for use, i.e., at the earliest, in March 2025, thereby aligning closely with the wholesale mandate period determined by the CRTC.

Conclusion

103. Cogeco welcomes ISED's proposals to make more spectrum available to wireless carriers in Canada. The 3800 MHz band is key to the provision of advanced 5G services in Canada.

104. Cogeco has noted the considerable support for pro-competitive measures, in one form or another and retains its recommendation that ISED move forward with its Option 3 in this regard. Further, Cogeco reiterates its recommendation that ISED consider the use of Tier 5 licence areas for this auction in Canada's three largest metropolitan areas.

105. Cogeco has made constructive comments around clarifying the pre-auction communications rules to ensure that discussions around a variety of issues between wireless carriers can continue. In addition, Cogeco recommends that ISED consider first the effects of a number of initiatives designed to advance the timeliness of connecting Canadians to essential broadband services in rural and underserved areas of the country.

106. Cogeco considers it important to underline the importance of ensuring that the spectrum to be made available as part of the 3800 MHz auction be provided to winning bidders in a fair manner that considers when this spectrum is available, its future value and that deployment conditions and milestones only begin when the licences are available for use.

107. Cogeco strenuously opposes Bell Mobility and Eastlink's attempt to redefine what type of carrier would be eligible for bidding on set-aside spectrum as these proposed redefinitions would have a negative effect on the state of mobile wireless competition in the Canadian market.

108. Finally, Cogeco agrees with Quebecor and Terrestar that ISED be cognizant of the CRTC's MVNO regime in deciding on the final timing of the availability and timing of deployment milestones for the 3800 MHz band.

109. Cogeco thanks ISED for the opportunity to participate in this Consultation.

Annex A - Interference Mitigation Study

[Filed under separate cover]

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