

**CANADA GAZETTE NOTICE NO. SLPB-003-17**

**CONSULTATION ON A LICENSING FRAMEWORK FOR RESIDUAL  
SPECTRUM LICENCES IN THE 700 MHZ, 2500 MHZ, 2300 MHZ,  
PCS AND 1670-1675 MHZ BANDS**

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**REPLY COMMENTS  
OF  
BELL MOBILITY INC.**

**5 SEPTEMBER 2017**

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## **1.0 INTRODUCTION**

1. In accordance with the procedure set out in Innovation, Science and Economic Development Canada (ISED or the Department) Notice No. SLPB-003-17, *Consultation on a Licensing Framework for Residual Spectrum Licences in the 700 MHz, 2500 MHz, 2300 MHz, PCS and 1670-1675 MHz Bands*, as published in the Canada Gazette, dated 15 July 2017 (the Notice), Bell Mobility Inc. (Bell) is pleased to provide the following Reply Comments. Having reviewed the comments of the following parties which were posted to the Department's website: Airnet Wireless Inc. (Airnet), British Columbia Broadband Association (BCBA), Corridor Communications Inc. Wireless (CCI), Bragg Communications Inc. (Eastlink), ECOTEL, Inc. (Ecotel), Ice Wireless Inc. (IWI), Rogers Communications Canada Inc. (Rogers), Saskatchewan Telecommunications (SaskTel), Shaw Communications Inc. (Shaw), Telus Communications Company (Telus) and Xplornet Communications Inc. (Xplornet), we will address the issues raised in the order of their appearance in the Notice.

## **2.0 BAND PLAN AND AVAILABLE LICENCES**

**Q1. ISED is seeking comments on the choice of licences being made available through this licensing process:**

- a. are there other licences that should be made available in this licensing process; and**
- b. are there any of these licences that should not be included in this licensing process?**

2. There was general support for the licences the Department chose to make available through this process, although, there was a common view that the I Block (1670-1675 MHz) licences should be excluded. Ecotel<sup>1</sup>, Rogers<sup>2</sup>, SaskTel<sup>3</sup>, and Telus<sup>4</sup> agreed with our position that the I Block should not be auctioned at this time. As most interveners acknowledged, an equipment ecosystem for I Block has not yet developed and the band remains undefined by 3GPP. Therefore, we maintain that it is not appropriate for ISED to licence the I Block at this time.

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<sup>1</sup> Ecotel Comments, paragraph 13. Note that all references to "Comments" in this document refer to the 15 August 2017 submissions to ISED filed by the company in question in response to the Notice.

<sup>2</sup> Rogers Comments, paragraph 6.

<sup>3</sup> SaskTel Comments, paragraph 3.

<sup>4</sup> Telus Comments, paragraph 10.

3. BCBA<sup>5</sup>, supported by Airnet<sup>6</sup>, opposed the auction of all proposed spectrum in areas outside of metropolitan centres, arguing that these licences should be set aside for entities with annual revenue under \$10 million on a first-come-first-served (FCFS) basis. We do not support this recommendation. As noted by ISED in the *Framework for Spectrum Auctions in Canada*, "auctions are an efficient market-based means of assigning spectrum licences, through a fair and transparent process, to those that value them the most".<sup>7</sup> Moreover, wireless service providers require spectrum in both urban and rural areas in order to deploy networks and offer the latest wireless services to Canadians living and travelling throughout Canada.

4. Telus alone opposed the inclusion of the 2500 MHz band on the basis that it was an in-demand spectrum band and bids would be competitive enough that it warranted a separate auction with price discovery.<sup>8</sup> As a general rule, we support auction processes that provide price discovery. However, we understand the administrative burden that ISED is seeking to avoid in this particular situation. As noted by Rogers, "the reduction in complexity for both bidders and the Department is well suited to assigning the smaller number of residual licences remaining in bands that have been recently auctioned".<sup>9</sup> Therefore, for this particular auction process, the Department should use a sealed-bid auction format for the auction of residual licences in the 700 MHz, 2500 MHz, 2300 MHz and PCS bands and, if the Department decides to auction the I Block, for the 1670-1675 MHz band as well.

5. Telus was also the only intervener to argue for the inclusion of additional spectrum, suggesting that ISED include residual PCS licences in the auction.<sup>10</sup> We do not support this recommendation. Since 2003,<sup>11</sup> PCS licences have been available on a FCFS basis to any qualified wireless carrier, including Telus, making it unnecessary to add these licences to this auction process. Moreover, PCS licences have been previously auctioned and leaving them as FCFS licences is consistent with Department policy regarding unassigned licences.<sup>12</sup>

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<sup>5</sup> BCBA Comments, paragraphs 6 to 9

<sup>6</sup> Airnet Comments, page 1

<sup>7</sup> ISED, *Framework for Spectrum Auctions in Canada*, Issue 3, March 2011, page 7.

<sup>8</sup> Telus Comments, paragraph 9.

<sup>9</sup> Rogers Comments, paragraph 25.

<sup>10</sup> Telus Comments, paragraph 6.

<sup>11</sup> See <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11195.html>.

<sup>12</sup> The Notice, paragraph 122.

### 3.0 COMPETITIVE MEASURES

#### Q2. ISED is seeking comments on its proposals to:

- a. maintain the spectrum aggregation limits on the 700 MHz licences;
- b. maintain the spectrum aggregation limits on the 2500 MHz licences including newly available 2585-2595 MHz licences; and
- c. not impose competitive measures on other licences issued through this licensing process.

6. BCBA<sup>13</sup>, CCI<sup>14</sup>, Eastlink<sup>15</sup>, Ecotel<sup>16</sup>, IWI<sup>17</sup>, and Xplornet<sup>18</sup> all proposed variations on the current spectrum aggregation limits as well as additional competitive measures. Telus did not generally support the application of spectrum aggregation limits or competitive measures, but argued specifically for a modified spectrum aggregation limit in the case of the 2500 MHz band that would increase the limit to 60 MHz for all parties except Bell, Rogers and SaskTel.<sup>19</sup>

7. We do not agree with the use of interventionist measures in spectrum auctions. With the conclusion of the 2500 MHz spectrum auction in 2015, ISED achieved its objective of licensing a substantial amount of commercial mobile spectrum to smaller carriers. This reinforces the need for ISED to return to a light-handed regulatory approach which places a greater reliance on market forces. Market forces will ensure that those willing and able to put the spectrum to its best use will bid for and acquire it. A market based approach to spectrum allocations will also ensure that the Government garners the highest possible value for the spectrum it administers on behalf of Canadians.

8. Wireless service providers such as Eastlink, Videotron, and Shaw, have now secured both low-band (700 MHz) and higher-band (AWS-1, AWS-3 and 2500 MHz) spectrum. These providers are all well established and well capitalized wireless service providers that are able to offer a bundle of services that include mobile, Internet, home phone and television services. They are no longer "new entrants" and they certainly do not require regulatory protection and spectrum subsidized by Canadian taxpayers. For example, Shaw and Videotron together have a combined market capitalization of approximately \$20 billion.<sup>20</sup> These companies do not need their businesses to be subsidized by Government.

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<sup>13</sup> BCBA Comments, paragraphs 15 to 17.

<sup>14</sup> CCI Comments, page 2.

<sup>15</sup> Eastlink Comments, paragraph 9.

<sup>16</sup> Ecotel Comments, paragraph 16.

<sup>17</sup> IWI Comments, paragraphs 3 and 4.

<sup>18</sup> Xplornet Comments, pages 2 and 3.

<sup>19</sup> Telus Comments, paragraph 17.

<sup>20</sup> Shaw's market capitalization is approximately \$13.8 billion and Quebecor's is approximately \$5.8 billion.

9. Moreover, demand and usage of incumbents' wireless networks continue to grow rapidly. Additional spectrum that is available through an open auction will ensure that all parties are able to acquire the spectrum they actually need to offer fast, high-quality wireless services to the 28 million Canadians who subscribe to incumbents' services.

10. As SaskTel highlights, spectrum aggregation limits will not serve their intended purpose for either the 2500 MHz or 700 MHz band and will diminish the potential value of the auction:

The 2500 MHz band is almost completely assigned. The distribution of any further 2500 MHz spectrum amongst the service providers will not significantly change with the auction of the residual spectrum blocks, so nothing would be gained by continuing the spectrum aggregation limits for the spectrum about to be auctioned. By allowing more entities to bid without restrictions on the unpaired 2500 MHz blocks included in this auction process, competition will be increased in the auction which generally results in higher auction revenues.

[...]

There is also no need to continue the spectrum aggregation limits on the 700 MHz blocks included in the residual auction. These 700 MHz licences cover the far North, and there is limited demand as shown by the results of the initial 700 MHz spectrum auction. The aggregation limits for the 700 MHz spectrum blocks in the far North should be lifted as a means to promote the utilization of the 700 MHz spectrum in this isolated area.<sup>21</sup>

11. In the event that the spectrum aggregation limits are not lifted, SaskTel proposed that the 2500 MHz spectrum acquired at this auction not count towards the overall spectrum aggregation limits.<sup>22</sup> If the Department decides not to remove the spectrum aggregation limits for all of the 700 MHz and 2500 MHz spectrum licences, then we support SaskTel's proposed alternative.

#### **4.0 CONDITIONS OF LICENCE**

**Q3. ISED is seeking comments on:**

- a. the likely timeframe for availability of equipment capable of providing access to licensed spectrum on an opportunistic basis;**
- b. licence terms;**
- c. the proposal to apply deployment levels to each of the licences as described in annex F; and**
- d. the proposed conditions of licence as outlined in annexes A through F.**

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<sup>21</sup> SaskTel Comments, paragraphs 30 and 33.

<sup>22</sup> SaskTel Comments, paragraph 8.

#### **4.1 Access to Licenced Spectrum on an Opportunistic Basis**

12. All interveners agreed that equipment capable of accessing spectrum on an opportunistic basis is not commercially available at this time. More importantly, interveners were unanimous in advising ISED to exercise significant caution when considering whether, and how, to deploy opportunistic access capabilities.

13. Similar to the comments on the *Consultation on a Licence Renewal Process for Advanced Wireless Services and other Spectrum*, many interveners urged ISED to not move forward without a full consultation where specific proposals could be considered.<sup>23</sup> As SaskTel observed, this kind of consultation should not take place until "a time when industry direction on such devices becomes more clear".<sup>24</sup>

14. Mandating opportunistic access to spectrum represents a fundamental shift in spectrum policy. As Eastlink noted, it would be particularly impactful to licensed spectrum "in which wireless services providers have made considerable investments in RAN equipment, mobile devices, and the spectrum licences themselves".<sup>25</sup> Thus, we do not recommend the implementation of opportunistic access to licensed spectrum.

15. However, if ISED decides to implement opportunistic access in the future, then we recommend that ISED first explore opportunistic access only for Greenfield spectrum. Even after a fulsome consultation, opportunistic access should only be used where it is clearly identified in the terms of the initial auction. It would also be patently unfair to add such a requirement in the middle of a licence term or at the time of licence renewal.

#### **4.2 Licence Terms**

16. Nearly all interveners supported the licence terms proposed by ISED. While generally supportive of the licence terms, Eastlink<sup>26</sup> echoed our suggestion<sup>27</sup> that I Block licences, if auctioned, be given 20-year terms in order to have adequate time to deploy. ISED could also impose a five-year checkpoint to review the status of the I Block ecosystem and adjust the

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<sup>23</sup> For example, see comments from Bell, Eastlink, Telus, Rogers, Xplornet and SaskTel.

<sup>24</sup> SaskTel Comments, paragraph 11.

<sup>25</sup> Eastlink Comments, paragraph 11.

<sup>26</sup> Eastlink Comments, paragraph 12.

<sup>27</sup> Bell Comments, paragraph 20.

deployment targets at that time if appropriate. This approach would provide certainty for the industry in the current situation where the technologies and standards are uncertain.

17. CCI, however, argued for all licences to be given five-year terms to encourage immediate deployment.<sup>28</sup> We agree with the Department that "licence terms in excess of 10 years [create a] greater incentive to invest in the telecommunications industry and for the industry itself to further invest in the development of network infrastructure, technologies and innovation".<sup>29</sup> We therefore maintain our support for the proposed 20-year licence terms.

#### **4.3 Deployment Requirements**

18. As noted above, we do not believe it is appropriate to auction the I Block at this time. However, if the Department decides to auction the I Block spectrum licences, then we concur with Shaw<sup>30</sup> that the I Block timeline should be reviewed or relaxed given the lack of equipment ecosystem for the spectrum band.

19. Shaw also argued for extended deployment timelines for the G Block and the unpaired 2500 MHz blocks due to the "uncertainty" of their device ecosystems.<sup>31</sup> Given the state of the ecosystem, we do not object to Shaw's proposal.

20. BCBA<sup>32</sup> and Ecotel<sup>33</sup> both argued that smaller licence areas would result in greater deployment in rural areas, and Ecotel requested that if the licence areas did not change, ISED should implement Tier-4 level deployment requirements.<sup>34</sup> In addition, Telus argued that the deployment requirement percentages should be increased somewhat.<sup>35</sup> We do not support these recommendations. At this time there is no exceptional circumstance that requires the licences being auctioned in this licensing process to have different deployment requirements than the licences previously auctioned. Rogers concurs and "supports the Department's proposal to apply deployment levels to each of the licences as described in annex F, consistent with licences for the same bands issued through previous auctions".<sup>36</sup>

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<sup>28</sup> CCI Comments, page 3.

<sup>29</sup> The Notice, paragraph 21.

<sup>30</sup> Shaw Comments, paragraph 17.

<sup>31</sup> Shaw Comments, paragraph 17.

<sup>32</sup> BCBA Comments, paragraph 18.

<sup>33</sup> Ecotel Comments, paragraph 20.

<sup>34</sup> Ecotel Comments, paragraph 27.

<sup>35</sup> Telus Comments, paragraph 32.

<sup>36</sup> Rogers Comments, paragraph 13.



21. We do not support Ecotel's recommendation that the Department mandate subordination.<sup>37</sup> There is no need for such an extreme Government intervention in the market. Market negotiated subordinations occur when it is beneficial to both parties, and over the years, the Department has approved many spectrum licence subordination applications. There is no market failure in this situation and no need for mandatory subordination.

#### **4.4 Conditions of Licence**

##### **4.4.1 Lawful Interception**

22. In our comments, we noted that the proposed conditions of licence (CoL) on lawful interception would likely become moot if Bill C-59, *An Act respecting national security matters*, were to be enacted by the Government. If this were to occur, the CoL should be removed.

23. In the event that the CoL remains in place, we and Rogers<sup>38</sup> requested that these obligations be limited to capabilities determined in industry standards and included in commercially available equipment.

##### **4.4.2 Research and Development**

24. As has been established in previous proceedings, wireless service providers broadly support the elimination of the CoL related to research and development (R&D) spending requirements for all spectrum licenses, including those in the 700 MHz, 2300 MHz, 2500 MHz, G Block and I Block spectrum bands. In this proceeding, Rogers<sup>39</sup>, Eastlink<sup>40</sup> and Telus<sup>41</sup> stated their opposition to this CoL, with Rogers arguing:

As the Department has noted elsewhere, this condition of licence was initially established to stimulate R&D in the telecommunications sector when the first mobile spectrum licences were issued in the mid-1980s. Since then, billions of dollars have been invested in R&D and the mobile industry in Canada is well established. This condition has therefore achieved its objective and is no longer required.<sup>42</sup>

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<sup>37</sup> Ecotel Comments, paragraph 27.

<sup>38</sup> Rogers Comments, paragraph 15.

<sup>39</sup> Rogers Comments, paragraph 18.

<sup>40</sup> Eastlink Comments, paragraph 14.

<sup>41</sup> Telus Comments, paragraph 36.

<sup>42</sup> Rogers Comments, paragraph 18.

25. Telus added:

Such removal would enhance competitiveness as all licensees would be treated equally. TELUS also reiterates that removal of the R&D COL would not cause any negative effects in terms of licensee investment in wireless technology.<sup>43</sup>

26. This legacy CoL was initiated more than 26 years ago, and is both unnecessary and out-of-step with today's modern wireless industry. We recommend that ISED eliminate the CoL from all spectrum licence conditions, including those for the spectrum licences being licenced as part of this residual auction process. By doing so, ISED will provide licensees with greater operating flexibility to address consumers' needs and will be regulating in a manner consistent with the Government's policy to rely on market forces to the maximum extent feasible.

27. If ISED does not immediately eliminate the R&D spending condition, it should, at a minimum, eliminate the revenue exemption threshold and lower the 2% spending requirement significantly (e.g., to 1%). Rogers also called for the latter change in their comments.<sup>44</sup>

#### **4.4.3 Mandatory Roaming**

28. In our Comments, we recommended the removal of the CoL related to mandatory roaming in light of the Canadian Radio-television and Telecommunications Commission's (Commission's) decision to mandate the provision, and regulate the rates of GSM-based wholesale roaming services provided by Bell, Rogers and Telus to all other wireless carriers.<sup>45</sup> As the Commission concluded in TRP 2015-177<sup>46</sup>, after examining the competitiveness of the wireless market, the provision of wholesale roaming by Bell, Rogers, and Telus to each other is subject to a level of competition that is sufficient to protect the interests of users.<sup>47</sup> As such, the Commission continues to forbear from the regulation of these services.

29. In their comments Rogers stated that this CoL is not duplicative of Commission tariff regulation, arguing that the mandatory roaming requirement and roaming request process help to balance "the objective of encouraging the 'deployment of advanced networks that provide the greatest choice of basic and advanced services available at competitive prices to the greatest number of Canadians' with the fact that operators may require access to wholesale roaming

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<sup>43</sup> Telus Comments, paragraph 36.

<sup>44</sup> Rogers Comments, paragraph 21.

<sup>45</sup> TRP 2015-177, paragraph 128.

<sup>46</sup> Telecom Regulatory Policy CRTC 2015-177, *Regulatory framework for wholesale mobile wireless services*.

<sup>47</sup> TRP 2015-177, paragraph 127.

services on a reasonable basis as they continue to expand their networks in an orderly manner".<sup>48</sup>

30. We disagree with Rogers' assertion. In relation to roaming between Bell, Rogers and Telus, the Commission found that it is inconsistent with the objectives of the *Telecommunications Act*. The mandatory roaming CoL is not balanced as it puts carriers at risk of arbitrage, and distorts roaming rates. With respect to non-national carriers, the requirement is simply not required as the Commission now regulates in this area. Given that the condition of licence was put in place prior to the Commission decision, it should now be removed.

31. Telus agrees with our view that the mandatory roaming CoL is no longer needed, stating: "with the backdrop of CRTC tariff regulation, the new entrants, the licensees that purportedly needed mandatory roaming, no longer require the mandatory roaming condition of licence".<sup>49</sup>

32. More generally, a mandatory roaming CoL is at odds with the principles of facilities-based competition and creating incentives to invest in network infrastructure. As Telus describes in their comments, the mandatory roaming CoL leaves wireless carriers vulnerable to network arbitrage, despite attempts to mitigate this risk using deployment requirements:

The availability of roaming based on regulatory mandate, even for in-footprint regions, create adverse incentives to cause carriers to choose to obtain roaming rather than invest in infrastructure. In this scenario, deployment requirements (a blunt instrument) have typically been satisfied by the operator requesting roaming. As such, more stringent deployment requirements do not mitigate the arbitrage opportunity for in-footprint roaming. In TELUS' view, the only way to close this loophole is to eliminate the requirement for providing in-footprint roaming.<sup>50</sup>

33. The fact that wholesale roaming rates are commercially negotiated but subject to mandatory arbitration in the event of a dispute effectively means that the rates do not reflect true market value. The rates are, instead, subject to downward pressure because the provision of wholesale roaming services is mandatory.

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<sup>48</sup> Rogers Comments, paragraph 23, footnotes omitted.

<sup>49</sup> Telus Comments, paragraph 44.

<sup>50</sup> Telus Comments, paragraph 42.

34. To the extent that ISED's regulation of wholesale roaming services may result in different and/or conflicting commercial outcomes for wireless carriers than the Commission's wholesale roaming regulations, then ISED's proposed CoL on mandatory roaming introduces unnecessary regulatory uncertainty for all market participants. Therefore, in consideration of the above points, we recommend eliminating the mandatory roaming CoL for the licences in question, as well as for all other spectrum licences.

#### **4.4.4 Annual Reporting**

35. Several parties highlighted the regulatory burden associated with supplying annual reporting documents to ISED and suggested remedies to alleviate this burden.<sup>51</sup> For example, SaskTel offered this suggestion:

Consistent with the Canadian Government's "Red Tape Reduction Plan", SaskTel suggests that the information now required to be submitted annually by every licence holder should be only required to be provided at the request of the Department.<sup>52</sup>

36. We encourage ISED to reduce the regulatory burden related to annual reporting. We agree with other interveners that this can be accomplished by: reducing the frequency with which the data is collected; and/or streamlining the scope of information requested in the reports to only those data that are essential to ISED's monitoring activities; and/or modifying the CoL such that licensees are required to provide information on ISED's request, with appropriate notice.

## **5.0 AUCTION FORMAT AND RULES**

**Q4. ISED is seeking comments on its proposals:**

- a. to use the sealed-bid auction format for the auction of residual licences, and**
- b. on the timelines set out in the *Proposed Table of Key Dates*.**

37. Telus<sup>53</sup> and Xplornet<sup>54</sup> argued against using the sealed-bid auction format for the 2500 MHz spectrum licences on the basis of the large number of licences available and expected high level of bidding intensity for the spectrum. SaskTel alone argued against the

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<sup>51</sup> See Comments from Rogers, SaskTel, and Telus.

<sup>52</sup> SaskTel Comments, paragraph 13.

<sup>53</sup> Telus Comments, paragraph 48.

<sup>54</sup> Xplornet Comments, page 4.

proposed auction format in its entirety, recommending instead that ISED use a simultaneous multiple round auction (SMRA) format.<sup>55</sup> We, along with Rogers,<sup>56</sup> indicated that generally we have a strong preference for auction formats like the SMRA that include price discovery. However, we understand the administrative burden that ISED is seeking to avoid in this particular situation which only offers a limited number of licences in each spectrum band. Thus, along with Rogers, we believe that the sealed-bid format is appropriate for this particular licensing process.

**Q5. ISED is seeking comments on its proposal to include package bidding for 2500 MHz licences in the sealed bid auction format.**

38. The majority of interveners, including ourselves, supported ISED's proposal to include package bidding for 2500 MHz licences. However, BCBA<sup>57</sup>, CCI<sup>58</sup>, Xplornet<sup>59</sup> and Ecotel<sup>60</sup> argued that the proposed packages will put small regional operators at a disadvantage to larger operators.

39. We agree with the Department's assessment that "in the single round sealed-bid auction format, the exposure risk could be mitigated by including package bidding, specifically for the 2500 MHz licences".<sup>61</sup> Moreover, we agree with Rogers' conclusion that "the proposed package bid groupings of spectrum should still allow prospective bidders to secure spectrum for all eligible service areas where they are under the aggregation limit".<sup>62</sup> Thus, in this particular auction process, with respect to the 2500 MHz licences, we do not object to the proposal allowing for package bidding within the 15 pre-defined "Groups" of licences. We also do not object to ISED's proposal not to make package bidding available for any other spectrum bands offered in this auction.

**Q6. ISED is seeking comments on its proposal to use a second-price rule for this auction and the Vickrey price determination mechanism.**

40. Consistent with the other Comments on this proposal and as stated in our comments, we support the proposed use of the second-price rule for this particular auction process. In

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<sup>55</sup> SaskTel Comments, paragraph 14.

<sup>56</sup> Rogers Comments, paragraph 25.

<sup>57</sup> BCBA Comments, paragraph 23.

<sup>58</sup> CCI Comments, page 3.

<sup>59</sup> Xplornet Comments, page 4.

<sup>60</sup> Ecotel Comments, paragraphs 40 and 41.

<sup>61</sup> The Notice, paragraph 32.

<sup>62</sup> Rogers Comments, paragraph 26.

general, second-price auctions encourage truthful bidding, and as a result, the allocations tend to be more efficient.<sup>63</sup>

**Q7. ISED is seeking comments on the proposed opening bids as presented in tables 7, 8, 9 and 10.**

41. IWI recommended reducing the 700 MHz opening bid further.<sup>64</sup> We disagree with this proposal as it would further diminish the value Canadians derive from spectrum resources. Instead, removing spectrum aggregation limits will ensure both that Canadians get a reasonable return and the available spectrum will be licensed to those willing and able to put it to its best use. Telus echoed our preference for removing the 700 MHz spectrum aggregation limits and maintaining the previous opening bid price instead of the reduced price proposed in this auction.<sup>65</sup> As there are bidding restrictions, lowering the opening bids creates another subsidy unfairly benefiting only a small number of parties.

42. SaskTel requested the alteration of opening bid rates for the Regina and Saskatoon 2500 MHz spectrum licences, arguing that they should be allocated the rural rate of \$0.051 per MHz-pop.<sup>66</sup> ISED should not adopt this recommendation. In fact, we believe that the proposed opening bids for the 2500 MHz band should be increased 1.5 to 2 times to minimize the price distortions of restricting competition on this band through spectrum aggregation limits. However, we do not object to Telus' proposed alternate prices.<sup>67</sup>

43. Telus also recommended increasing the opening bids for the 2300 MHz spectrum.<sup>68</sup> However, given that there are no restrictions on competition for these licences, there is no reason to increase the opening bid amounts. Competitive bidding with a second price rule will ensure that these licences reflect market value and are allocated efficiently.

44. Finally, we disagree with the proposal to reduce the opening bid prices for the I Block by half due to the uncertainty of the equipment ecosystem and to account for the 10-year licence term. We believe that postponing the auction for these licences is a preferable approach to dealing with the uncertainty.

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<sup>63</sup> Krishna, V. (2010). *Auction Theory*, 2<sup>nd</sup> Edition, Academic Press, pages 188 and 189.

<sup>64</sup> IWI Comments, paragraphs 13 and 14.

<sup>65</sup> Telus Comments, paragraph 55.

<sup>66</sup> SaskTel Comments, paragraph 56.

<sup>67</sup> Telus Comments, paragraphs 57 to 59.

<sup>68</sup> Telus Comments, paragraphs 60 and 61.

## 6.0 **BIDDER PARTICIPATION**

### **Q8. ISED is seeking comments on its proposed rules regarding Affiliated and Associated Entities, which would apply to applicants and bidders in the upcoming auction of residual spectrum licences.**

45. In their comments, IWI objected to Associated Entities having caps apply separately as well as being allowed to bid separately.<sup>69</sup> In addition, Rogers recommended "that the Department should carefully evaluate and take all the necessary steps to ensure the proposed affiliated and associated entities rules promote a fair and efficient outcome in both the current residual auction and, importantly, all future spectrum licence auctions".<sup>70</sup> However, the Department has reviewed the Affiliated and Associated Entities rules on numerous occasions and every time has concluded that they are sufficient to maintain auction integrity. We agree.

46. Providing entities with an opportunity to bid separately if there is no harm to the integrity of the auction is entirely consistent with regulating to the minimum extent necessary to achieve the underlying policy objective and fostering competition to the greatest extent possible.<sup>71</sup> Seeking to maximize the number of independent participants in the auction is likely to facilitate the greatest possible extent of competition for the auction and in the downstream market post-auction. Entities that have demonstrated a clear intention to compete against each other in the downstream retail market are motivated to independently source and control their critical network inputs. This leads them to seek access to their own spectrum in order to meet their own subscribers' needs.

47. The Department has minimized the risk related to associated or affiliated entities by requiring an extensive review of a number of factors before applying spectrum caps to associated entities. The Department states:

To obtain this approval, entities would be required to demonstrate that they intend to compete separately in the applicable licence area and continue to function as competitors to a level satisfactory to ISED. In making this

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<sup>69</sup> IWI Comments, paragraph 16.

<sup>70</sup> Rogers Comments, paragraph 29.

<sup>71</sup> The "Enabling Guidelines" in ISED's *Spectrum Policy Framework for Canada* notes that "Market forces should be relied upon to the maximum extent feasible" (see: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08776.html#s44>). In addition, the Government's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, SOR/2006-355*, states that "the Commission should (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives".

determination, ISED would consider all relevant factors. Depending on the nature of the agreement, documentation may be required that sets out the details of the association, including copies of all arrangements or agreements, for example agreements related to network architecture and spectrum use and documents related to corporate decision making, marketing and customer information, sales and financing. Assessment criteria may include, but would not be limited to, consideration of the degree to which the entities would offer branded services, pricing and device selection that are unique from the other.<sup>72</sup>

48. Therefore, the Department should reject proposals that request changes to the proposed rules regarding Affiliated and Associated Entities.

**Q9. ISED is seeking comments on the rules prohibiting collusion and other communication rules, which would apply to bidders in the upcoming auction of residual spectrum licences.**

49. Rogers asserted "that the Department must integrate its policies and auction rules regarding collusion and affiliated and associated entities within a single framework to ensure that unintended consequences do not benefit one or more bidders".<sup>73</sup> However, the current collusion and Affiliated and Associated Entities policies and rules already work together to maintain the integrity of the auction process. The policies and rules establish a clear and comprehensive set of behavioural norms that prohibit parties from inappropriately engaging in collusive conduct. Therefore, the Department should reject proposals that request changes to the proposed rules prohibiting collusion.

## **7.0 AUCTION PROCESS**

**Q10. ISED is seeking comments on:**

- a. the proposed auction process for the auction of residual licences;**
- b. the proposed use of Canada Post's ePost Connect services for auction applications, associated documentation and bid forms; and**
- c. section 8.12, the proposal to auction some or all of the frequency bands separately. Please include any preferences on the order of the bands.**

50. We agree with the many interveners who supported the proposed auction process and the proposed use of Canada Post's ePost Connect services. We reiterate our request that ISED provide training and/or a preliminary test of the ePost services before using it for this auction proceeding. We also support SaskTel's request to establish a back-up document

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<sup>72</sup> The Notice, paragraph 63.

<sup>73</sup> Rogers Comments, paragraph 30.



submission system in the event that a bidder is unable to use the ePost system.<sup>74</sup>

51. BCBA requested a 50% reduction in pre-auction deposits for entities with annual revenue less than \$10 million.<sup>75</sup> We agree with the Department that pre-auction financial deposits equal to the opening bid of the licence(s) on which the bidder intends to bid enhances the integrity of the auction.<sup>76</sup> Requiring auction participants to have access to funds that at least cover the opening bid amounts will reduce the probability that bidders will overextend their financial resources in the auction. This reduces the possibility of incurring the significant administrative burden and inefficiencies that would arise in the auction process and the delayed deployment of the spectrum if a bidder were to default on their payment.

52. Despite concerns from Ecotel,<sup>77</sup> we believe that there is not significant overlap of geographic areas across the spectrum licences being auctioned as part of this process, and therefore, the benefit of conducting multiple rounds is likely small. We recommend that the frequency bands proposed in this licensing process should be auctioned in a single round and not separately. This will enhance the efficiency of the overall auction process.

## **8.0 POST-AUCTION LICENSING PROCESS**

### **Q11. ISED is seeking comments on the proposed renewal process.**

53. No interveners objected to the proposed renewal process, although BCBA,<sup>78</sup> Ecotel,<sup>79</sup> and IWI<sup>80</sup> all indicated their preference that unassigned licences be made available on an FCFS basis. We do not object to this recommendation as it is consistent with Department policy. However, licences that become available on FCFS basis should not be subject to spectrum aggregation limits. Licences being made available on a FCFS basis would have been subject to at least two auction processes. As a result, all potential licensees should have an opportunity to apply for these spectrum licences in order to put this public resource to use for Canadians.

54. We appreciate the opportunity to provide these reply comments.

\*\*\* End of Document \*\*\*

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<sup>74</sup> SaskTel Comments, paragraph 62.

<sup>75</sup> BCBA Comments, paragraph 30.

<sup>76</sup> The Notice, paragraph 81.

<sup>77</sup> Ecotel Comments, paragraph 52.

<sup>78</sup> BCBA Comments, paragraph 31.

<sup>79</sup> Ecotel Comments, paragraph 56.

<sup>80</sup> IWI Comments, paragraph 20.