



June 27, 2007

Leonard St-Aubin
Director General, Telecommunications Policy Branch
Industry Canada
300 Slater Street
Ottawa, Ontario K1A 0C8

Dear Mr. St-Aubin:

RE: DGTP-002-07 - Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services

The Canadian Wireless Telecommunications Association (the "CWTA") is pleased to provide the attached reply comments to the above noted consultation.

CWTA is the authority on wireless issues, developments and trends in Canada. It represents cellular, PCS, messaging, mobile radio, fixed wireless and mobile satellite carriers as well as companies that develop and produce products and services for the industry.

MTS Allstream and SaskTel, CWTA members, are not party to these reply comments.

CWTA is pleased the Department is releasing spectrum for mobile services as it will contribute to continued growth of the industry and will help ensure that Canadians continue to benefit from access to superior telecommunications services.

Sincerely,

Filed electronically

J. David Farnes
Vice President,
Industry and Regulatory Affairs

RE: DGTP-002-07 - Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services

The Canadian Wireless Telecommunications Association (the "CWTA") is pleased to provide the following Reply Comments regarding the above noted consultation. CWTA submitted comments on May 25, 2007 and has reviewed the comments on Industry Canada's Spectrum Management and Telecommunications website. All references to "Comments" refer to comments filed in response to Gazette Notice DGTP-002-07

The failure of CWTA to reply to any particular argument put forward by other interested parties should not be construed as acceptance of, or agreement with, that argument.

Upon review of the submitted comments, CWTA remains of the view that that all spectrum in the auction should be made available to all eligible participants under the same circumstances. In CWTA's view, no party has presented a cogent rationale for the Department to do otherwise.

INTERVENTION TO PROMOTE ENTRY IS NOT APPROPRIATE

Government intervention, such as measures intended to induce entry of new players to the wireless market, will not benefit Canadian consumers but will distort the outcome of the auction and subsequently lead to distortions in the market. As the Montreal Economic Institute points out:

Favours to new entrants or designated entities not only complicate the auction process but it may also make the AWS industry less efficient.¹

For the Department to choose to intervene in the most competitive segment of Canada's telecommunications industry there must be a clear policy rationale. Otherwise, no intrusive and harmful steps should be taken. The Canadian Manufacturers and Exporters stated it succinctly:

To intervene in an established market in this way, the government must have a strong public policy rationale based on clear evidence of a problem. Neither the government, nor any other party, has presented compelling evidence of any problem in the wireless market.²

In CWTA's view, all of Canada's telecommunications and competition policies lead to the conclusion that the auction should be open to all eligible participants.

¹ Comments of Montreal Economic Institute, p. 30

² Comments of Canadian Manufacturers and Exporters, p. 3

Canada's telecommunications policy unequivocally places an emphasis on the reliance on market forces and, only where required, the use of minimally intrusive regulatory measures.

As highlighted in CWTA's comments, and those of several others³, the Policy Direction to the CRTC requires that market forces should be relied upon "to the maximum extent feasible as the means of achieving the telecommunications policy objectives"⁴.

This policy direction is echoed in the recently released Spectrum Policy Framework⁵. The enabling guidelines, which are intended to help the Department achieve the policy objective and direct the operation of the Spectrum Management Program include:

a) **Market forces should be relied upon to the maximum extent feasible.**

d) Regulatory measures, where required, should be **minimally intrusive**, efficient and effective.

f) Spectrum management practices, including licensing methods, should **minimize administrative burden** and be responsive to changing technology and market place demands.

h) Spectrum policy and management should support the **efficient functioning of markets** by:

- permitting the flexible use of spectrum to the extent possible;
- harmonizing spectrum use with international allocations and standards, except where Canadian interests warrant a different determination;
- making spectrum available for use in a timely fashion;
- facilitating secondary markets for spectrum authorizations;
- clearly defining the obligations and privileges conveyed in spectrum authorizations;
- ensuring that appropriate interference protection measures are in place;
- reallocating spectrum where appropriate, while taking into account the impact on existing services; and
- applying enforcement that is timely, effective and commensurate with the risks posed by non-compliance.

As CWTA submitted in comments, the use of an auction in itself requires an expectation that market forces will apply. As Bell Canada noted:

³ See comments of Bell Canada, MIPPS, MTS-Allstream, Rogers Communications Inc., TELUS

⁴ Order Under Section 8 Of The Telecommunications Act – Policy Direction To The Canadian Radio-Television And Telecommunications Commission

⁵ DGTP-001-07 Spectrum Policy Framework for Canada, June 2007 - emphasis added

...spectrum auctions were introduced specifically for those cases where reliance on market forces, to select licensees, was deemed to be in the public interest⁶

The Framework for Spectrum Auctions contains guidelines for when the Department would intervene in an auction by either restricting participation of some bidders, or applying a spectrum aggregation limit. These rules are more stringent than the “balance of probability” test contained in the Consultation and require that the Department determine that the incumbents hold market power and that market forces cannot be relied upon. The Competition Bureau expressed this principle very clearly:

In the Bureau’s view, the justification for intervention should be that market forces are insufficient to meet the Department’s stated objectives. Namely, it should be the case that market power exists and is unlikely to be disciplined by entry, such that competitiveness or innovation are adversely affected from the Department’s perspective. It must also be shown that potential entry would be effective and discipline the exercise of market power, rather than simply temporarily destabilize the market. In other words, a need for intervention must be demonstrated where reliance on market forces should be default. Indeed, where intervention is required, it should be designed to address the market failure while still harnessing market forces; that is, the intervention should make markets work better, rather than replace markets with an administrative process.⁷

Bell Canada filed a report that studied the question of market power in Canada’s wireless industry. This study concluded:

In summary, using the well-established analytical framework embodied in Canadian competition law, we find that no single wireless firm in Canada has significant market power. As well, we find that cooperative arrangements among the existing wireless providers to exercise significant market power jointly are highly unlikely. Thus, given the issues being examined in Industry Canada’s consultation process, we find no clear evidence for concerns regarding the state of competition in the Canadian wireless market.⁸

This conclusion is consistent with findings of other federal agencies. The Competition Bureau has submitted a detailed model for testing for the presence of market power, but as Rogers noted:

⁶ Comments of Bell Canada, Part 5, p. 2

⁷ Comments of the Commissioner of Competition, p. 5

⁸ Comments of Bell Canada, Appendix 1, p. 41

The Competition Bureau has already determined that the mobile wireless sector is subject to “vigorous and effective competition”; the CRTC has found that it is “robustly competitive”.⁹

The test established for the deregulation of the residential local exchange market presents yet another policy test for the Department to determine the appropriateness of intervening in the wireless market. This test provides that in markets where there are two other networks in a market, the ILEC qualifies for forbearance with respect to CRTC regulation for local exchange services. As TELUS noted:

Given that there are four national wireless networks in Canada controlled by at least three different parties, the Canadian mobile wireless industry, by the Minister’s own criteria, is competitive. The existence of a competitive MVNO industry merely reinforces this conclusion.¹⁰

CWTA has consistently supported the reliance on market forces for the development of the wireless industry. From the earliest days of cellular service, consumer demand and market forces – not regulatory fiat – have guided the decisions of the wireless operators. This was the result of deliberate “light touch” regulatory treatment by the government, and a reliance on market forces.

Based on the Department’s policies, the Governor in Council’s recent orders¹¹ and the June 2007 Spectrum Policy Framework for Canada, CWTA submits that the only possible conclusion is to rely on market forces to the greatest extent feasible. In the case of the spectrum auction this means that all spectrum in the auction should be made available to all eligible participants under the same circumstances. The Ontario Chamber of Commerce supports this position:

...an open marketplace for spectrum, with a leveling playing field for all bidders, will foster healthy competition and innovation among providers. New entrants should bid for the spectrum on the same terms as incumbents.¹²

Despite the above, many parties called on the Department to intervene in the market and impose spectrum set asides for new entrants¹³, or a spectrum cap

⁹ Comments of Rogers Communications

¹⁰ Comments of TELUS, p. 30

¹¹ Order Varying Telecom Decision CRTC 2005-28, P.C. 2006-1314, Order Varying Telecom Decision CRTC 2006-15 P.C. 2007- 0532, Order Under Section 8 Of The Telecommunications Act – Policy Direction To The Canadian Radio-Television And Telecommunications Commission, Canada Gazette Vol. 140, No. 24 — June 17, 2006

¹² Comments of Ontario Chamber of Commerce, p. 2

¹³ See comments of Assembly of First Nations, Boston Bar First Nation, Canadian Cable Systems Alliance Inc., Cogeco Cable Inc., Cybersurf Corp., Data & Audio-Visual Enterprises Inc., Eastlink, Eday

within the auction¹⁴. Of course each of these proposals is unique to the circumstances of the proponent to achieve maximum benefit for themselves. If the Department chooses to intervene with any of the individual proposals, or even another model, it is likely to lead to the inefficient allocation of spectrum. It was noted for example that:

With perfect information, Industry Canada could, in principle, be able to induce the type of market structure it considers to be appropriate. However, this requires that the government have perfect information concerning how each potential licensee is going to use the spectrum. If Industry Canada's information is imperfect and there are not enough licenses, then set-asides can result in an inefficient allocation of licenses because spectrum could be allocated from an efficient firm to an inefficient firm.¹⁵

Applying a spectrum aggregation limit (“cap”) in the auction can also cause difficulties for the Department and lead to inefficient outcomes.

If the spectrum cap is too low, then new and existing services may not be deployed in the most efficient manner. If the spectrum cap is too high, then it has no effect on the market and is not necessary.¹⁶

While CWTA supported the notion of auction specific caps in comments regarding the removal the Spectrum Aggregation Limit¹⁷ in 2004, the idea was to prevent a single firm from acquiring a dominant position in spectrum holdings. This objective is a far cry from the use of an aggregation limit to promote a new entrant. A similar objective was expressed by Mr. Robert Simmonds:

Without any spectrum aggregation limit at all, it would technically be possible for one single entity to acquire all of the spectrum in the auction. While the likelihood of such an outcome is extremely low from a practical perspective, in my view should it occur a significant imbalance in spectrum holdings would result.¹⁸

Some proponents of intervention have advocated that the Department should promote new entry at virtually any cost, ignoring inefficient outcomes or market

Corporation, Harmony Mobile Networks, L’Union des consommateurs, Look Communications Inc., MTS Allstream Inc., Primus Telecommunications Canada Inc., Public Interest Advocacy Centre, Quebecor Media Inc., Toronto Hydro Telecom Inc., Wispra Inc., WorldLynx Communications Corp.

¹⁴ See Comments of Cogeco Cable Inc., Cybersurf Corp., Eastlink, L’Union des consommateurs, Look Communications Inc., Mipps Inc., MobilExchange Ltd., MTS Allstream Inc., Primus Telecommunications Canada Inc., Quebecor Media Inc., SaskTel, Simmonds, Robert, Toronto Hydro Telecom Inc.

¹⁵ Comments of Bell Canada, Appendix 2, p. 19

¹⁶ Comments of Bell Canada, Appendix 2, p. 25

¹⁷ CWTA Comments on DGTP-007-03, p. 6

¹⁸ Comments of Robert Simmonds, p. 3

disruption. These proponents then seek to rely on market forces to correct inefficient outcomes. Examples of this include:

Furthermore, uneconomic entry will eventually be corrected through market forces.¹⁹

and

Concerns regarding uneconomic entry should not serve as a deterrent to the introduction of such measures since the market will ultimately determine which carriers succeed and which fail.²⁰

As CWTA addressed in Comments, this reasoning runs directly counter to government policy. The direction to the CRTC on the reliance on market forces specifically states:

economic regulation, when required, should neither deter efficient competitive entry nor promote inefficient entry.²¹

As noted above, this is also reflected in the new Spectrum Policy Framework. CWTA reiterates the view that an open auction provides the best opportunity for viable entry into the Canadian market. The decision as to whether or not the risk of entry is warranted should be left to the market and investors. CWTA agrees with the assessment of the Ontario Chamber of Commerce:

Market forces will continue to foster healthy competition and innovation. The wireless sector is competitive, mature and innovative. There is no evidence to suggest there is a rationale for the government to intervene with measures that would distort the market. If there continues to be a level playing field for all competitors, the sector will continue to operate in the best interests of its customers and thereby support the competitiveness of Ontario businesses.

In summary, the Ontario Chamber of Commerce urges the government to continue to implement a policy framework that is focused on benefiting customers, not specific providers. This approach is in the best interests of Ontario businesses and Canada itself in a global marketplace.²²

¹⁹ Comments of Eastlink, p. 3

²⁰ Comments of Cybersurf, p. 6

²¹ Order Under Section 8 Of The Telecommunications Act – Policy Direction To The Canadian Radio-Television And Telecommunications Commission

²² Comments of Ontario Chamber of Commerce, p. 3

AUCTION STRUCTURE

Band Plan

There is broad support²³ amongst parties for full harmonization of the AWS band plan with the United States. CWTA submits that the benefits of harmonization will not be realized if the licence blocks are not wholly aligned with those in the U.S. As Nortel submitted:

...exact harmonization is required with the United States (U.S.) for the blocks within the 1710-1755 / 2110-2155 MHz bands. Harmonization will be crucial for both ensuring the rapid availability of equipment and simplifying cross-border interference concerns. It will also eliminate the need for further dialog and action in multiple standards bodies who, without harmonization, would need to define new band classes and have them implemented in handsets and base stations.²⁴

If the band is not aligned with the U.S., it will delay the introduction of equipment and terminals into the market, it will cause problems for cross-border roamers, and it will increase the complexity for cross-border co-ordination. None of these outcomes would be in the public interest. CWTA therefore recommends that the Department fully harmonize the band plan with the United States.

Tier Sizes

CWTA recommended that the Department use, at a minimum, Tier 2 licensing areas for the AWS band. This view was shared by other parties, including TELUS:

Regional Tier 2 service areas provide the greatest degree of flexibility for those requiring spectrum for expansion or to meet capacity constraints in certain areas and licences can be aggregated by those wishing to provide national service.²⁵

Bell highlighted the fact that licensing mobile spectrum using Tier 2 areas would avoid an outcome where licensees are not able to acquire contiguous licence areas which are required to provide uninterrupted service over a wide area.

Since large contiguous service areas are more suitable for mobile service than small non-contiguous service areas, auctioning Tier 2 service areas

²³ See comments of Bell Canada, MTS Allstream, Nortel, RABC, Robert Simmonds, Rogers, SaskTel, Shaw Communications, TELUS, and WorldLynx

²⁴ Comments of Nortel, p. 2

²⁵ Comments of TELUS, p. 76

will eliminate the undesirable situation where a participant obtains the licence in a number of small non-contiguous service areas²⁶

Bell also said that the use of smaller Tiers “Will make the implementation of the spectrum cumbersome” and Bell recommended that “the number of licences around border areas be minimized to the greatest extent possible” in order to “maximize spectral efficiency”.²⁷

CWTA submitted that the Tier 3 and Tier 4 services areas are too granular and would make the implementation of the spectrum cumbersome. It would appear that at least some potential new entrants agree with this view.

Tier 2 service areas are most appropriate in respect of the AWS spectrum.²⁸

Shaw also supported the use of Tier 2 areas.²⁹ Similarly, MTS Allstream and Quebecor recommended the use of larger service areas for certain large spectrum blocks that they have proposed.

Parties advocating the use of Tier 3 or Tier 4 licence areas provided little justification or rationale and, typically, have no experience in deploying mobile networks. In some cases, a potential new entrant has recommended the use of Tier 2 areas for licences that they have an interest in, but have recommended the use of Tier 3 and Tier 4 for other potential licensees. For example, Quebecor asserted the following in this regard:

...Tier 3 license areas would be very beneficial to smaller entities wishing to acquire spectrum in more rural areas.³⁰

Since Quebecor has recommended the use of Tier 2 for the spectrum block that it intends to bid for, it is clear that Quebecor believes that the use of larger service areas is the most sensible and practical basis on which to license the AWS spectrum. The fact that Quebecor has recommended the use of smaller Tiers for other blocks should be disregarded. Clearly, Quebecor has little interest in acquiring Tier 3 or Tier 4 licences and, therefore, its recommendation fails to take account of the practical difficulties this would cause.

CWTA reiterates its view that spectrum efficiency and ease of systems deployment are more apt criteria for choosing the appropriate spectrum licensing areas. Accordingly, CWTA recommends the use of Tier 2 areas for the licensing of AWS spectrum.

²⁶ Comments of Bell Canada, p. 27.

²⁷ Comments of Bell Canada, p. 25

²⁸ Comments of Shaw Communications

²⁹ Comments of Shaw Communications, p. 19.

³⁰ Comments of QMI, p. 46

POST AUCTION CONDITIONS

Roaming/Resale

CWTA emphasizes its support for a market-driven approach in the implementation of AWS services in Canada. CWTA notes that this is supported by the newly released Spectrum Policy Framework for Canada. CWTA submits that mandating incumbent mobile wireless operators to offer roaming services is an unwarranted intrusion into this market, and is hostile to the objective of facilities-based competition. It would also distort a highly competitive and dynamic market.

A number of parties submitted comments calling on the Department to mandate roaming³¹. None of these parties demonstrated that the lack of mandated roaming was a barrier to entry. They provided little justification for mandated roaming, and they failed to demonstrate how it would be consistent with the objective of facilities-based competition. Further, the notion that any mandated roaming should be temporary was implicit in virtually all of these requests.

For example, Look has asserted the following:

Without mandated roaming a new service provider will only be able to offer limited coverage to customers while the network is being deployed.³²

Paradoxically, some have claimed that roaming will encourage deployment of networks:

Mandated roaming would encourage the build-out of new networks.³³

CWTA disagrees entirely with this claim and notes that this fallacy was contradicted by the Competition Bureau:

...Mandated roaming can also undermine the incentives for investment in the facilities needed to become a national facilities based wireless network. Specifically, it may create an incentive for new entrants to make infrastructure investments only in lower cost areas while relying on mandated roaming in high cost areas.³⁴

³¹ See Comments of Canadian Cable Systems Alliance Inc., Craig Wireless Systems Inc., Cybersurf Corp., Data & Audio-Visual Enterprises Inc., Eastlink, Harmony Mobile Networks, L'Union des consommateurs, Look Communications Inc., Mipps Inc., MobilExchange Ltd., MTS Allstream Inc., Primus, QMI, Shaw, Toronto Hydro Telecom Inc., WorldLynx Communications Corp.

³² Comments of Look, p. 6

³³ Comments of THTI, p. 23

³⁴ Comments of Commissioner of Competition, p. 19

The Competition Bureau also provided a test for determining when denial of roaming **may** be anticompetitive.

...a denial of access to roaming **could** raise an issue under the Competition Act if the following conditions are present³⁵:

- A vertically integrated firm is dominant in two markets. The first relevant market is the upstream market (i.e., the market for wholesale roaming services). The second relevant market is the downstream retail market (i.e. the market for retail wireless service).
- A denial of wholesale roaming services is for the purpose of excluding competitors from entering or expanding in the downstream market or otherwise negatively affecting their ability to compete.
- The denial has had, is having, or is likely to have the effect of substantially lessening or preventing competition in the downstream (i.e. retail) market

Clearly, the absence of roaming, in and of itself, is not anti-competitive, nor is it a barrier to entry. The market for roaming has not failed and there is no need for the Department to impose an unnecessary and artificial measure to address this service.

Further, given that there is no downstream market power in the Canadian wireless market, following the Competition Bureau's test, the Department should not impose mandated roaming.

If that firm does not have downstream market power, the denial of roaming cannot amount to an abuse of dominance and access should not be mandated.³⁶

Some proponents of mandated roaming indicate that such a mandate is essential for a new entrant to compete to ensure the ability to offer customers coverage.

...without mandated automatic seamless roaming, there cannot be regional mobile facilities-based carriers...³⁷

In the wireless market, coverage is a significant competitive differentiator. If a competitor chooses to enter the market to serve a particular geographic area, that is clearly a business decision. The government should not then, intervene to support this particular business decision by mandating carriers with more expansive networks to offer roaming.

³⁵ Comments of Commissioner of Competition, p. 19 - emphasis added

³⁶ Comments of Commissioner of Competition, p. 19

³⁷ Comments of QMI, p. 15

If new entrants believe coverage is important, then they should acquire sufficient spectrum licences and build a network to provide wide area coverage.

Some parties have requested that the Department go beyond roaming, and they have specifically requested mandated resale, network unbundling, the establishment of a wholesale regime, the regulation and pricing of wireless infrastructure as “essential facilities”, mandated interoperability, and applying “common carrier” obligations on licensees. For example, MobilExchange, as the foundation of its proposals claimed:

The Canadian market will be best served by introduction of “Equal Access Interconnection” to the networks of the cellular, PCS, ESMR and future AWS carriers and that their products and services should be “Unbundled” in a way similar to that in which the wireline infrastructure has developed through “Equal Access” over the last 12-15 years.³⁸

Similarly, Quebecor proposed:

All Canadian mobile carriers be subject to common carrier obligations as part of the terms of their spectrum licenses, in cellular, PCS, AWS or other spectrum bands.³⁹

These requests are diametrically opposed to the policy guidelines of the new Spectrum Policy Framework to rely on market forces to the maximum extent, to impose minimally intrusive measures where required, to minimize administrative burden and to rely on measures that are efficient and proportionate to their purpose.

With respect to mandated resale, establishing a wholesale regime or treating wireless networks as “essential facilities”, CWTA noted in Comments that the CRTC has twice found that it would not be in the public interest to intervene in the market by imposing resale requirements or treating wireless networks as essential facilities. The Commission specifically found that, unlike the wireline market:

...the cellular and PCS markets are sufficiently competitive such that it cannot be said that facilities are monopoly controlled or cannot be economically or technically duplicated. As a result, none of the wireless providers can be said to have dominant market power or to control bottleneck or essential facilities. Accordingly,

³⁸ Comments of MobilExchange, p. 8

³⁹ Comments of QMI, p. 56

the Commission considers that wireless networks are not essential facilities⁴⁰

CWTA submits that this assessment remains valid. CWTA further submits that the establishment of a wholesale regime or applying “common carrier” obligations would require a full review of the regulatory framework for Wireless Service Providers – including the interconnection regime. A market based approach, through commercial agreements is the appropriate way to address roaming, and is consistent with the government’s approach to competitive markets.

Tower Sharing

Although not specifically raised in the Consultation, a number of parties requested the Department to mandate antenna tower/site sharing⁴¹. Some parties have attempted to equate antenna tower sharing with the regulation of monopoly developed wireline infrastructure:

Tower sharing is similar to sharing telephone and utility poles, which has been normal practice in wireline communications for many years.⁴²

The CRTC intervened in the wireline market to provide competitors with access to the essential facilities of the former monopoly telephone companies. These incumbent networks were built in a monopoly environment with a guaranteed rate of return on investment.

Canada’s competing wireless networks have been built in a competitive environment, where the risk of investment was borne by each of the carriers. As noted above, the CRTC has found that there are no essential facilities within the wireless networks. As a result, it is wholly inappropriate to apply elements of the wireline facilities regulatory regime to the wireless market.

In 2003, CWTA examined the number of antenna sites and found that of the approximately 8,000 antenna sites in Canada:

about 40% are located on structures other than purpose-built cellular/PCS towers (e.g. building rooftops, water towers, and other radio towers). Approximately 30% of all sites, including towers, are shared either with another cellular/PCS operator or another radio service.⁴³

⁴⁰ Telecom Order CRTC 98-1092

⁴¹ See comments of Canadian Cable Systems Alliance Inc., Cogeco Cable Inc., Craig Wireless Systems Inc., Data & Audio-Visual Enterprises Inc., Eastlink, L’Union des consommateurs, Mipps Inc., MTS Allstream Inc., Public Interest Advocacy Centre, Quebecor Media Inc., Shaw, Toronto Hydro Telecom Inc.

⁴² Comments of QMI, p. 18

⁴³ CWTA Response to National Antenna Tower Policy Review

CWTA also found that 58% of antenna sites were located either on shared towers or existing structures meaning a separate tower was not required⁴⁴.

Sharing antenna sites can certainly have benefits for all parties — carriers, Land Use Authorities, and residents — but sharing does not always represent the best solution.

If the Department makes a determination on antenna tower sharing, it should do so as part of its revision of Client Procedures Circular 2-0-03. Making such a change would be more appropriate than a condition of licence as proposed by some parties because it would then apply to all radio users. Certainly any new sharing requirement should be applied on a reciprocal basis.

As noted in comments, CWTA expects that the Department will fully consult on whatever updated antenna procedures it proposes prior to releasing the final policy.

Lawful Access

Few parties commented on the condition related to Lawful Interception, but those parties that did generally supported CWTA's submission that any new lawful-interception requirements must be based on standards and should also address the significant operational costs of providing such access.

CWTA supports the proposal by Bell Canada that would divert some of the auction proceeds to

...help underwrite the significant costs incurred by telecommunications service providers in building lawful access capability into telecommunications networks and in responding to lawful access requests by law enforcement and national security agencies.⁴⁵

Research and & Development

With respect to the licence condition on Research and Development, all parties that provided substantive comments supported the CWTA view that the condition should be removed or modified. As Rogers noted:

Since competition is driving innovation, the regulatory requirement for spending 2% of adjusted gross revenues on R&D is an unnecessary added cost that consumers have to bear.⁴⁶

⁴⁴ Compared to 66% in the UK

⁴⁵ Comments of Bell Canada, Part 5, p. 43.

⁴⁶ Comments of Rogers Communications, p. 69

Roll-out requirements

CWTA generally supports the Department's proposal not to impose implementation requirements, but submitted that, should the Department encourage a new entrant through a set aside or other intervention, there should be additional roll-out or demonstration of use requirements for those licences. This view was shared by a number of potential new entrants, including Quebecor that recommended that:

all new entrants be imposed a 3-year implementation period to provide services to 50% of the population covered in any set aside Tier 2 spectrum licences acquired during the auction⁴⁷

While CWTA agrees generally with the idea expressed by Quebecor, CWTA believes the specific measure recommended is inadequate. Building out in Montreal, for example would represent nearly 75% of the population of licence 2-05 (Southern Quebec), but only about 10% of the licence area. Similarly, building out in Quebec City would cover about 50% of the population of licence 2-04 (Eastern Quebec) but only about 5% of the area. CWTA believes that a more meaningful degree of implementation is required to ensure that new entrants will build out their networks and provide services in both urban and rural areas. For example, Rogers has proposed that:

new entrants be required to roll out their AWS services to 75% of the population of their service territory within 5 years of the issuance of the licence.⁴⁸

POST AUCTION LICENSING

Licence Term

With respect to the licence term, 9 parties⁴⁹ supported a term longer than that proposed by the Department and 6 parties⁵⁰ supported the Department's proposal. Those supporting longer licence terms generally agreed with CWTA's view that longer terms help bolster operator and investor confidence and encourage investment in the industry. For example:

Investing in new services and infrastructure is costly and requires a long time horizon for financial returns and payback.⁵¹

⁴⁷ Comments of QMI, p. 69

⁴⁸ Comments of Rogers, p. 68

⁴⁹ Bell Canada, Data & Audio-Visual Enterprises, Eastlink, MTS Allstream, QMI, RABC, Rogers Communications, TELUS, THTI

⁵⁰ Competition Bureau, Cybersurf, Harmony Mobile Networks, Look Communications, SaskTel, WorldLynx Communications

⁵¹ Comments of MTS Allstream, p. 56

The major rationale for the extension of the licence term from 10 years to 20 years is the time required to recover investments in 3G network deployment.⁵²

This would de-risk the investment required for both license payments and capital expenditures required to build out.⁵³

Given the widespread support for longer terms, CWTA recommends the Department apply a term longer than the 10 years proposed in the Consultation.

Licence Renewal

CWTA was one of a number of parties⁵⁴ to call on the Department to apply the “high expectation of renewal” to the licences awarded through this auction. As noted by TELUS, this expectation of renewal will provide bidders greater certainty and:

and allow them to confidently bid in the auction knowing that after the initial licence period there was a high expectation of renewal and thus they could invest in infrastructure and network build-out in the initial licence term knowing that they were not in danger of losing all such investment.⁵⁵

Bid Payment

Some parties have requested the Department allow new entrant bidders to avoid making payment upon completion of the auction, citing comparisons to the licencing processes for cellular and PCS spectrum. In some ways, these comments seek to reverse the Department’s policies and return to the use of comparative reviews for the licencing of mobile spectrum.

In an effort to ease the capital requirements placed upon the new entrant we are also recommending that the Department permit new entrants to amortize their auction payments over a period four or more years....This would reduce the requirement for raising substantive risk capital prior to be beginning of operations.⁵⁶

⁵² Comments of QMI, p. 68

⁵³ Comments of THTI, p. 24

⁵⁴ See Comments of Bell Canada, RABC, Rogers Communications, TELUS

⁵⁵ Comments of TELUS, p. 81

⁵⁶ Comments of THTI, p. 23

Up front payment encourages network deployment as licensees seek to receive a return on investment. Furthermore, auction payments will represent only a fraction of total investment required to build a wireless network:

Although significant, the cost of spectrum can be expected to be dwarfed by the investment necessary in the actual wireless network required...⁵⁷

Although comments contain considerable discussion of fees paid for non-auction cellular/PCS spectrum, such discussion fails to account for the considerable risk by the incumbents at the time of licencing, or the significant requirements imposed by the Department in terms of R&D, jobs, roll-out, investment.

Furthermore, Canadian licensees paid (and continue to pay) significantly more than carriers in other countries for comparable spectrum. Canadian non-auction cellular/PCS fees are currently roughly 36 times greater than comparable U.S. fees. In 2002, CWTA estimated these fees were roughly 50 times higher than in the U.S. According to the OECD Communication Outlook 2005, Canadian wireless service providers paid more in spectrum fees between 99 and 2004 than all but 4 of the 30 OECD countries.

Displacement of Incumbents

Four⁵⁸ of the five parties that commented on the displacement of fixed service incumbent licensees, including CWTA, agreed with the Department's proposed minimum 1-year notification period for displacement of fixed station frequency assignments along major highway corridors or in urban areas with populations of 25,000 or more and the 2-year notification period for displacement for all other fixed station frequency assignments.

Quebecor has recommended⁵⁹ that the Department establish maximum notification periods for the displacement of incumbent fixed licensees. CWTA supports a transition policy based on "releasing spectrum on a "where necessary" basis"⁶⁰ and recommends the Department not adopt this approach.

⁵⁷ Comments of Shaw Communications

⁵⁸ See comments of Bell Canada, CWTA, Nortel, RABC

⁵⁹ Comments of QMI, p. 67

⁶⁰ DGTP-007-03, Consultation on Spectrum for Advanced Wireless Services and Review of the Mobile Spectrum Cap Policy, p. 24

CONCLUSION

Government intervention, such as measures intended to induce entry of new players to the wireless market, will not benefit Canadian consumers. From the earliest days of cellular service, consumer demand and market forces have guided the development of the wireless market.

The wireless products and services that are available in Canada are highly advanced and they continue to evolve rapidly. The consumption of these services continues to grow at a dramatic pace. Clearly, consumers have benefited from the deliberate “light touch” regulatory approach that has been used until now and from the government’s reliance on market forces. This successful approach should not be abandoned, as some have proposed. It should continue to guide this important market.

The Government’s telecommunications and spectrum management policies: to rely on market forces to the maximum extent; to impose - where required - minimally intrusive measures; to minimize administrative burden and rely on measures that are efficient and proportionate to their purpose; all require that the government should not intervene in the most competitive segment of Canada’s telecommunications industry. All eligible participants must be able to bid on and acquire spectrum under the same circumstances.