25 June 2012

Via Email: spectrum.auctions@ic.gc.ca

Manager
Spectrum Auctions
Industry Canada
300 Slater Street
Ottawa, Ontario K1A 0C8

Dear Sir;

Reference: Gazette Notice No. DGSO-002-12, 05 May 2012, Consultation on the Licensing Framework for Mobile Broadband Services (“MBS”) – 700 MHz Band – Tbaytel Comments

INTRODUCTION

1. In accordance with the procedure set out in Canada Gazette Part 1, 05 May 2012, Consultation on a Licensing Framework for Mobile Broadband Services (“MBS”) – 700 MHz Band, Notice No. DGSO-002-12, TBayTel (“Tbaytel”) is pleased to present its views on Industry Canada’s (“IC”) proposals on the licensing framework related to the licensing process, auction format and conditions of licence applicable to the 700 MHz band.

2. Tbaytel is a regional wireless carrier in Northern Ontario providing state of the art wireless services to its subscribers over a vast territory stretching from just west of Sault Ste. Marie to the east, the Manitoba/Ontario border to the west and the Canada/USA border.
3. Since the mid 1980’s Tbaytel first provided cellular service to subscribers in its wireline serving area TEL-24. In the 2001 Personal Communications Services ("PCS") auction, Tbaytel acquired a licence to provide advanced services in Tier -2 service area 2-09, Northern Ontario. In the fall of 2006, Tbaytel purchased the assets and spectrum of Superior Wireless, previously a new entrant in parts of Northern Ontario. In the 2008, Tbaytel participated in the Advanced Wireless Services ("AWS ") auction but was unsuccessful and similarly pulled-out. In 2010 Tbaytel acquired Roger’s Communications Inc subscribers living in the western portion of Northern Ontario.

4. Currently, Tbaytel provides both CDMA and 4G HSPA+ to its subscribers and roamers in Northern Ontario.

5. Tbaytel will only be commenting on those sections of the consultation which are of direct concern to Tbaytel as a regional and small wireless carrier.

TBAYTEL COMMENTS ON LICENSING PROCESS, AUCTION FORMAT AND CONDITIONS OF LICENCE

1. Industry Canada is seeking comments on its proposal to use the CCA format, as well as the general attributes outlined (in CCA Format document), including:

   - the categories of generic licences;
   - the guarantee of contiguity across blocks A and B in the lower 700 MHz band in a specific service area;
   - the combined eligibility point and revealed preference activity rule in the clock rounds, and the revealed preference limit in the supplementary round;
   - the use of a second-price rule; and
   - the information to be disclosed during, and post-auction.
6. With regards to the combined eligibility and revealed preference activity rule in the clock rounds of the auction, it would appear that the supplementary rounds revealed preference activity rule is the best starting point to open the discussion regarding the potential impact of large combinatorial bids ability to influence, or in more drastic occasions, block bids by smaller players, including regional service providers and new entrants. Further thinking and commentary will be addressed through the price weighting issue in the clock round later on during the discussion process of the CCA model Y place holder.

7. In terms of bid values, Tbaytel requests that a clear model be developed and provided in which the methodology for tying bid value (on an incremental basis) to demand is fully defined (i.e., lot A will be increased by a value of X based on a demand level of Y)

8. The ability to raise one’s bid on existing packages in order to bid larger sums on new packages in the supplementary round seems to work in favour of larger carriers, given that they will have the financial backing to support “topping off” final bids to secure the lots they desire. If not sufficiently explained, this rule could provide an opening for gaming strategies during the supplementary round, going against the desired outcomes of IC. As such, it is Tbaytel’s belief that testing the CCA auction model with the revealed preference rule in place during the supplementary round is imperative in order for prospective bidders to fully understand and quantify the implications and impact on the final allocation.

9. Given the general complexity of the bidding situations during the clock round, and especially during the supplementary round, a number of questions and concerns should be raised. In particular, there is concern that larger players’ bids would greatly exceed the value of both regional and new entrant’s bids in the supplementary round, regardless of the success of smaller players during the clock rounds. Further, a regional player like Tbaytel could be further disadvantaged by a larger player whose bid could be less for the same service area due to their package bid.
10. In order for bidders to participate fully in the auction, both small regional bidders and new entrants will be expected to commit themselves to extensive financial investment. Any lack of understanding amongst these smaller players with regards to the auction model and its related processes could result in poor financial decisions, and subsequently poor bidding strategies, which could gravely affect their ability to compete with larger incumbent bidders. A failure on part of smaller players and new entrants to secure adequate spectrum would, of course, undo much of the work done via the 2008 wireless spectrum auction, in which IC promoted the healthy integration of new players and heightened competition within the Canadian telecommunications ecosystem. It is Tbaytel's belief that IC is interested in continuing to promote competition and choice within this ecosystem.

11. It should be noted that it is crucial that the auction authority distribute all relevant and necessary information required by potential bidders to adequately participate in the June 25th submission and subsequent July 25th commentary rounds in the consultative process for the upcoming auction. In providing this information, the auction authority will better equip prospective participants to make educated bids, thus ensuring maximum efficiency within the auction process. The end result of better-educated bidders being the achievement of desired goals such as heightened competition within the Canadian sector, and the delivering of higher quality services at a low cost to Canadian consumers.

12. It is Tbaytel's belief that all bidding participants will benefit from the use of a second-price rule in the auction, allowing the winning bidders to pay a final price that is less than the real value of their winning bid (i.e., the value of the next highest bid). With that said, the process of weighting in order to attain the second price, raises a number of questions and concerns. These concerns stem from moving to the core boundary from the Vickrey price (based on the relative value of the reserve prices).

13. To address this concern, it is recommended that the determination of the weighting in order to achieve the second price should be based on well-defined criteria. Other than the reserve prices, the weighting procedure should reflect auction flow. It is within this
context that Tbaytel proposes that bidding behavior during the auction be used to adjust the Vickrey price to the core boundary price. Thus, either bid price at the end of the clock rounds or a ratio of bid price at the end of the clock round to reserve price would be preferred instead rather than the reserve price set by the auction manager.

14. In total, there will be 56 products in this auction. This is 40 more than the biggest spectrum auction tested to date using the CCA model. Given that this is 3.5 times more products than previous spectrum auction, it should be noted that there is no guarantee that a CCA auction is the appropriate choice to generate the desired outcomes for Canadian bidders.

15. There is a possible advantage given to incumbents as a result of the chosen auction format. This advantage might mean that larger players will enter the auction knowing in advance that regional bidders have to bid their maximum price.

16. Generally speaking, the CCA format is biased towards the attainment of multiple lots, therefore providing larger incumbents with an opportunity to isolate new entrants and regional bidders by simply outbidding them. This is not to say that incumbents will necessarily target rivals in specific markets, but rather that through the submission of larger overall combinations of packages, which include regions contested by potentially one or more regional, local bidder, there is a risk of incumbent players winning prohibitive amounts of spectrum bands. As noted above, this outcome would work against the motives of IC’s previous 2008 auction, effectively reducing competition in the Canadian market.

17. Given the above concerns, Tbaytel would propose that Industry Canada allow participants to review the auction software in order to test its functionality. Instruction (i.e., training) on the CCA model given by the auction manager enough time in advance as well as a number of mock auction sessions are also highly advisable in the context of the above, and thusly, should be provided to those who are interested in attending. Tbaytel further believes that, given the complexity of the rules associated with the use of
the CCA format, the auction manager should publicize the results of the mock auction to the participants and other interested parties.

18. It should be noted that the auction consultant, Peter Cramton, confirmed that a “half-day of training” is sufficient time in order to fully understand the CCA model. Given this estimate, Tbaytel encourages IC and Mr. Cramton to hold a mock auction within a relatively short period of time, which could be led by Mr. Cramton or other international CCA experts.

2. Industry Canada is seeking comments on its proposed changes to the definition and rules related to associated entities. Specifically, comments are sought on:

- the types of agreements that should be captured under the definition of associated entities;
- the level of information to be disclosed to the public;
- the provision that typical roaming and tower sharing be specifically excluded from the revised definition of associated entities and whether other types of agreements such as the purchase of backhaul capacity should be deemed excluded;
- the proposal that entities that are deemed associated entities may apply to be treated as separate entities for participation in the auction;
- the proposal that associated entities may request to have the spectrum caps apply to them separately, based on an analysis of their association and of whether they intend to compete in the same licence service area;
- the criteria to be considered in determining whether the entities are competing; and
- the proposal that no changes be made to the affiliated entities rule.

19. As noted earlier, Tbaytel has a commercial relationship with Roger’s Wireless for their subscribers in the westerly area of Tier – 2 service area 2-09 Northern Ontario. While the agreement is designed as a co-brand relationship, and handset and roaming access, Tbaytel believes that this unique relationship should not preclude Tbaytel from bidding on the upcoming 700 MHz MBS Auction as a single entity.
20. Tbaytel is of the view that since the Tier 2 service area 2-09 Northern Ontario which Industry Canada approved is so large and the population demographics so small, that our agreement be excluded from the proposed definition and rules related to associated entities.

21. In reality with the Rogers agreement, Tbaytel has access to a population of 234,833 according to 2001 Statistics Canada census covering 582,290 square kilometres. This population figure is dwarfed by the actual population size of the Tier 2 service area 2-09 Northern Ontario while at the same time the geographic area exceeds over the 50% of the total area.

22. With respect to Tier 2 service area 2-09 Northern Ontario, Tbaytel is limited to only 30% of its population, covering a substantial 67% of the service area.

23. This numerical analysis shows the uniqueness of Tbaytel in providing state-of-the-art wireless services to its subscribers.

24. Industry Canada should take into account Tbaytel’s wireless demographics and exclude Tbaytel from the proposed definition and rules related to associated entities.

6. **Industry Canada is seeking comments on the proposed wording of the condition of licence related to transferability and divisibility.**


26. Tbaytel has successfully used CPC-2-1-23 in the past with another carrier to provide wireless services.
27. However, Tbaytel is of the belief that in the case of Tier 2 Service Area 2-09, Northern Ontario, transferability and divisibility should happen as soon as possible after the auction when the 700 MHz licenses have been finalized and awarded.

28. Since Tier 2-09 Northern Ontario is such a large geographic area and has several select pockets of medium population density divided between an east and west sector, the remaining area is rural in nature and therefore would require advanced services as quickly as possible. In addition to meeting the requests of subscribers for advanced services this process would go hand-in-hand with the Canadian Radio-television and Telecommunications Commission’s (“CRTC”) policy of providing high speed Internet to all areas in Canada by 2015.

29. Any waiting period would jeopardize the proposed 50% wireless build-out period and risk the 2015 timeframe for rural subscribers.

13. Industry Canada is seeking comments on the proposed wording of the condition of licence related to lawful intercept requirements.

30. Tbaytel believes that any COL changes associated with lawful intercept requirements should be left in the hands of Public Safety Canada. The proposed Industry Canada change to the lawful intercept COL would impose substantial new obligations on carriers at a time when parallel legislation addressing similar areas of carrier’s operations are before Parliament.

31. Further, Tbaytel is of the opinion that the lawful intercept COL should reflect the legislative requirements that exist at the time licenses are issued and not be designed in a manner that anticipates legislative requirements that may or may not be in force at some point in the future.

32. Accordingly, Tbaytel recommends that the existing COL be retained in licenses until such time as the legislative requirements are finalized.
14. **Industry Canada is seeking comments on the proposed condition of licence related to the research and development requirement.**

33. Tbaytel has consistently stated in previous Industry Canada consultations (i.e. PCS renewal framework, initial 700 MHz framework) that the condition of licence ("COL") related to research and development has past its time.

34. The 2% Research and Development ("R&D") as a COL has long served its intended purpose and now research is not driven by carriers but rather as a matter of necessity by equipment manufacturers.

35. A regional or smaller carrier like Tbaytel does not have the same R&D capability as the larger national carriers and thus should be exempted from this COL.

36. Also, the 5 million dollar threshold in carrier revenues is an antiquated dollar figure relative to the growth of the wireless industry thereby penalizing smaller players. The threshold has not grown and kept par with the growth in industry from the time it was first introduced.

37. The same can be said of the 2% Adjusted Gross Revenues figure. In an industry with downward pressure on rates from competition, the 2% essentially represents a tax being paid on revenues that impacts an already shrinking wireless margin.

38. Further, the growth in this amount is overwhelming given the demand for wireless products and thus the dollars to be spent are not providing the necessary R&D originally hoped for at the early stages of the technology. R&D is forced to happen despite this programme since it only acts as a further complication and drain on cash flow that can otherwise be used toward network deployment in rural areas.

39. Tbaytel believes that the 2% of adjusted gross revenues currently being directed towards R&D would be more productive if spent by carriers, to deploy infrastructure and services in unserved or underserved areas especially in rural areas which is a priority for all Canadians.
40. It seems strange to Tbaytel that the R&D COL went unattended for almost a 10(ten) year period. This non-action seems to have downplayed the importance of R&D over the years.

41. Also, Tbaytel believes the Scientific Research and Experimental Development ("SR&ED") conditions seem likely to change in the future as the federal government tightens the rules. This will lead to more stringent requirements that small parties like Tbaytel may not be able to comply with.

42. From past auctions and the PCS renewal process, Tbaytel believes that the administrative burden associated with R&D adds to the high cost of spectrum in Canada on a $/MHz/Population basis. Also, this COL is not part of the licensing conditions in other developed countries.

15. Industry Canada is seeking comments on the application of the proposed wording of the licence condition related to rural deployment requirements. Specifically, comments are sought on the assessment of "access to two or more blocks of paired spectrum" for the purposes of this condition of licence.

43. At the outset, the proposed wording of the condition of licence (COL") related to rural deployment requirements for 700 MHz services looks great at first for HSPA network footprints to cover 90% of the population within five years and 97% of the population with seven years. Associated with these proposed deployments are two other Industry Canada documents; Mandatory Roaming and Antenna Tower and Site Sharing which further provides for wireless deployment.

44. Looking further into the current and proposed regulations on Mandatory Roaming and Antenna Tower and Site Sharing for existing cellular, PCS and AWS services and the new 700 MHz services, it is clear that the wording punishes those carriers who have infrastructure already in place. Those carriers who have not deployed or built in areas where they have held licenses for years are in a sense benefiting from the work of others.
This existing situation to Tbaytel is counter intuitive. Those carriers sitting on AWS and/or PCS licenses for years without building networks are now rewarded by the mandatory in-territory roaming regulations.

45. When coupled with the prospect of mandatory roaming for 700 MHz services, small regional carriers like Tbaytel who have exhibited a rural commitment will see other carriers wait for our HSPA network to be built then apply to use it themselves. Accordingly, Tbaytel will be penalized for its build-out as the volume of activity from other carriers will overwhelm our network. It is highly unlikely that a commercial rate can be negotiated that will adequately reflect the anticipated data growth expected to inundate carrier networks.

46. Also, without this new 700 MHz spectrum, a regional carrier would therefore have no obligation to serve their mostly rural customers. Along with Tbaytel, other regional carriers like SaskTel and MTS Allstream would be in the same position.

16. Industry Canada is seeking comments on the application of the general deployment condition of licence as stated above. Specifically, comments are sought on:

- the population coverage, as specified in Table 3, for each licence service area; and
- the time frame proposed whereby the requirement must be met

Table 3 — Proposed General Deployment Requirements

<table>
<thead>
<tr>
<th>Tier 2</th>
<th>Service Area Name</th>
<th>Minimum Population Coverage*</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-01</td>
<td>Newfoundland and Labrador</td>
<td>30%</td>
</tr>
<tr>
<td>2-02</td>
<td>Nova Scotia and P.E.I</td>
<td>30%</td>
</tr>
<tr>
<td>2-03</td>
<td>New Brunswick</td>
<td>40%</td>
</tr>
<tr>
<td>2-04</td>
<td>Eastern Quebec</td>
<td>50%</td>
</tr>
<tr>
<td>2-05</td>
<td>Southern Quebec</td>
<td>50%</td>
</tr>
<tr>
<td>2-06</td>
<td>Eastern Ontario and Outaouais</td>
<td>50%</td>
</tr>
<tr>
<td>2-07</td>
<td>Northern Quebec</td>
<td>30%</td>
</tr>
</tbody>
</table>

* Based on most recent census information available at the time of assessment.
Table 3 — Proposed General Deployment Requirements

<table>
<thead>
<tr>
<th>Tier 2</th>
<th>Service Area Name</th>
<th>Minimum Population Coverage*</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-08</td>
<td>Southern Ontario</td>
<td>50%</td>
</tr>
<tr>
<td>2-09</td>
<td>Northern Ontario</td>
<td>50%</td>
</tr>
<tr>
<td>2-10</td>
<td>Manitoba</td>
<td>50%</td>
</tr>
<tr>
<td>2-11</td>
<td>Saskatchewan</td>
<td>40%</td>
</tr>
<tr>
<td>2-12</td>
<td>Alberta</td>
<td>50%</td>
</tr>
<tr>
<td>2-13</td>
<td>British Columbia</td>
<td>50%</td>
</tr>
<tr>
<td>2-14</td>
<td>Yukon, NWT and Nunavut</td>
<td>20%</td>
</tr>
</tbody>
</table>

* Based on most recent census information available at the time of assessment.

47. From the Table 3 above, Industry Canada is proposing that for the Tier 2 serving area 2-09, Northern Ontario, that the Minimum Population Coverage be 50% coverage in 10 years. Tbaytel requests that the minimum population coverage be 30%.

48. Tbaytel believes that the 30% seems to fit the rural and low density nature of our area and that of similar low density/rural areas of Canada. As Tier 2 service areas, Newfoundland and Labrador, Nova Scotia and P.E.I., and Northern Quebec are 30% for the minimum population coverage, Tbaytel looks at Northern Ontario as the same as those three areas.

49. In the alternative, Tbaytel also believes that even other Tier 2 service areas like Saskatchewan and New Brunswick which are proposed at 40% minimum population coverage, closely resembles Tbaytel geographic serving area and could be considered for Northern Ontario.

50. Since Newfoundland and Labrador, Nova Scotia and P.E.I. and Northern Quebec are mostly rural areas, Northern Ontario fits into that category also. It is fair to assume that a need for consistency is needed for similar areas which have low density.

51. In Table 4 further in the Industry Canada 700 MHz consultation paper, Industry Canada has proposed 700 MHz opening bids. In that table, the lowest bid at 0.265($/MHz/Population) is for Tier 2 service areas of Newfoundland and Labrador, Nova
Scotia and P.E.I., New Brunswick, Eastern Quebec, Northern Quebec, Northern Ontario, Manitoba, Saskatchewan and Yukon, NWT and Nunavut. For further consistency, one would expect that the lowest minimum population coverage would be associated with the lowest bid rates also. If Northern Ontario fits into one category with the lowest bid rate then isn’t there an expectation it should also be have the lowest category for minimum population coverage.

52. In looking further at Table #3, Northern Ontario has the same minimum population coverage percentage of 50% as Southern Ontario. Tbaytel believes that to be treated the same as Southern Ontario with obvious population and density differences is nonsensical.

CONCLUSION

53. As a regional wireless carrier, Tbaytel looks forward in providing its subscribers with the most advanced services available. The 700 MHz auction will enhance our efforts and provide us the opportunity to keep pace with the latest wireless technology.

54. However, Tbaytel believes that the 700 MHz auction posses many challenges for Tbaytel with respect to some of Industry Canada’s proposals on the licensing framework related to the licensing process, auction format and conditions of licence.

55. Tbaytel believes that the CCA generally is a disadvantage to small regional carriers like Tbaytel. Specifically, Tbaytel is of the opinion that the potential impact of large combinatorial bids may block the bids of smaller players. Further, Tbaytel proposes that the bidding behaviour during the auction be used to adjust the Vickrey price to the core boundary price. Given the concerns noted above and the complexity of the rules associated with the use of the CCA format, Tbaytel further believes that besides reviewing the auction software well before the auction, several mock auctions should be held.
56. Also, Tbaytel believes that transferability and divisibility of 700 MHz spectrum should be able to happen right after the auction to the betterment of subscribers.

57. At this time, Tbaytel recommends that the current COL for lawful intercept be retained for carriers rather than adopting the proposed wording of Industry Canada.

58. Further, Tbaytel has stated since 2004 in other Industry Canada consultations that the R&D as a condition of licence has past. The dollars associated with this specific COL could be better spent by a small carrier like Tbaytel in providing up-to-date telecommunications product to the inhabitants of Northern Ontario and other rural markets.

59. Tbaytel further believes that even though the rural deployment requirements look good for HSPA network footprint coverage, Industry Canada’s Mandatory Roaming and Antenna Tower and Site Sharing documents hinder those carriers that are first builders and threaten to put a strain on their networks, especially small regional carriers like Tbaytel.

60. Lastly, Tbaytel is of the opinion that being a small carrier that provides service in a more rural and remote area of the province that the proposed general deployment requirements should be 30% as a minimum population coverage which is similar to Northern Quebec, Nova Scotia and P.E.I., and Newfoundland and Labrador.

61. Tbaytel again appreciates the opportunity to comment on the consultation document initiated by Industry Canada on the Licensing Framework for Mobile Broadband Services – 700 MHz band.

62. All the above is respectfully submitted this 25th day of June 2012.

Yours truly

David A Wilkie
Regulatory Analyst

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