June 25, 2012

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

Dear Sir/Madam:

Re:  
Canada Gazette, Part I, May 5 2012, Notice No. DGSO-002-12 – Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band – Eastlink’s comments

Please find attached the comments of Bragg Communications Inc., carrying on business as Eastlink ("Eastlink"), in response to Canada Gazette Notice DGSO-002-12, Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band (Part I, 5 May 2012).

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

Sincerely,

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INDUSTRY CANADA
CONSULTATION ON A LICENSING FRAMEWORK FOR
MOBILE BROADBAND SERVICES (MBS) – 700 MHz BAND
CANADA GAZETTE, PART I, MAY 5, 2012 (DGSO-002-12)

COMMENTS OF
BRAGG COMMUNICATIONS INC., OPERATING AS EASTLINK

25 JUNE 2012
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1. Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), appreciates the opportunity to provide comments on the issues raised under DGSO-002-12 – Consultation on a Licensing Framework for Mobile Broadband (MBS) – 700 MHz Band (the “Consultation”).

2. Under the Consultation, Industry Canada (the “Department”) seeks comments on its proposed auction format, bidder participation, the conditions of licence and the auction process. Eastlink submits that our failure to address any part of the consultation document does not constitute agreement with a proposal where such agreement would be contrary to our business interests. Eastlink herein provides our comments.

**Policy objectives not reflected**

3. Eastlink submits that we cannot find a link between the policy objectives for this 700 MHz spectrum and the proposed auction framework. Specifically, the Department said in Paragraph 6 of SMSE-002-12 Policy and Technical Framework for the 700 MHz spectrum band that its “main objectives for the decisions” outlined in the technical framework were:

   - Sustained competition in the wireless telecommunications services market so that consumers and businesses benefit from competitive pricing and choice in service offerings;
   - Robust investment and innovation by wireless telecommunications carriers so that Canadians benefit from world-class networks and the latest technologies; and
   - Availability of these benefits to Canadians across the country, including those in rural areas, in a timely fashion.

Eastlink submits that this auction framework, as described in the Consultation and as subsequently described by the Department does not appear to support these policy objectives. Instead, new entrant and regional service providers will be participating in this auction at a considerable disadvantage to national incumbent providers, putting both sustainable competition and meaningful rural deployment at risk.
AWS – policy success

4. Under the 2008 Advanced Wireless Service spectrum auction, the Department recognized that to reduce retail prices paid for wireless service, it was necessary to encourage competition. In its Policy framework for the auction for spectrum licences for AWS and other Spectrum in the 2 GHz range the Department said it had considered the barriers to entry and the need for competition in all areas, and that it had decided a set-aside was the most appropriate approach as it provided all participants with the greatest flexibility in determining their needs. Most importantly, it did not require smaller new entrant and regional players to outbid the large incumbent service providers to access needed spectrum. The key driver of the AWS auction was to encourage competition in major centers, considering the poor propagation characteristics of the 2300 MHz spectrum band. The Department and Canada’s wireless service providers all knew at the time that rural competition would eventually be made economically feasible by allowing new entrants access to the 700 MHz spectrum band, which has far superior propagation characteristics, making it ideally suited to efficient rural deployment.

700 MHz is to rural what AWS was for urban

5. The 700 MHz band is the last spectrum so well suited to rural deployment that will be coming available. Professor Peter Cramton explained why this spectrum is so critical to rural competition in a February 20, 2012 declaration prepared for T-Mobile USA in which he stated, “With 800 MHz, 98% coverage is achieved with only 2,000 sites. With 1800 MHz, more than 10,000 sites are required to achieve 98% coverage. With 2.6 GHz, even 20,000 sites are not enough to achieve 98% coverage. The low-frequency spectrum allows a high level of coverage with a small fraction of the number of sites, and hence much less capital expense.”

6. As a result, encouraging competition in rural areas depends on ensuring regional service providers, with fewer resources available for network deployment expenditures, have access to the spectrum so that we can efficiently expand our network and compete in rural areas. This is especially true considering that the incumbents already own nearly all the comparable 800 MHz spectrum band. The 700 MHz spectrum presents the last opportunity
to replicate in rural areas the competition that is beginning to develop in Canadian urban areas.

7. At the same time, given that the Department has not agreed to regulate domestic wholesale roaming rates such that rates continue to be commercially unreasonable (as outlined in Eastlink’s comments under DGSO-001-12 Proposed revisions to the frameworks for mandatory roaming and antenna tower and site sharing), it is absolutely critical that new entrants and regional service providers are able to access 700 MHz spectrum. Its propagation characteristics as described above are critical to allowing new entrant and regional players to efficiently expand their network footprints to provide their customers with the ability roam outside of their local calling area at competitive rates, without relying over roaming on other carriers’ networks. Professor Cramton made a similar argument in his February 20, 2012 declaration, “Unfortunately, [Verizon’s] domination in the low-frequency spectrum is not healthy for competition. It means that Verizon can provide better depth of coverage (inside buildings) and better breadth of coverage (in less populated areas) at much lower cost than smaller rivals. Customers value the better coverage and many switch to Verizon. This puts Verizon in an even more dominant market position, enabling Verizon to take advantage of further scale economies in network infrastructure, backhaul, and equipment.”

Department’s decisions

8. Eastlink submits that, for this critical rural spectrum, all the same barriers to entry and resource constraints of the AWS auction continue to apply. Regional players can simply not outbid national incumbents for spectrum we need. In fact, the cost barriers are likely to be more pronounced in the 700 MHz spectrum auction as there is so little spectrum available and as this is the last spectrum of its kind that will be made available. Eastlink was unable to outbid the incumbents for prime spectrum in the AWS auction, as noted on Page 17 of our February 28, 2011 comments on SMSE-018-10, Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum, and, therefore, we find it unlikely that we would be able to outbid the incumbents for such scarce and valuable spectrum as the lower band of the 700 MHz spectrum band.

9. Indeed, Professor Cramton stated in his February 20, 2012 declaration that the coverage supported by the 700 MHz spectrum band “is an important competitive advantage, which
makes the low-frequency spectrum much more valuable than the high-frequency spectrum. Specifically, Professor Cramton stated, “Verizon’s strong position in the wireless market has to a large extent come from the better coverage it has been able to offer as a result of holding such a dominant position in the low-frequency spectrum. By 2000 Verizon held roughly one-half of the low-frequency spectrum, about 25 MHz of cellular spectrum. In 2008, this dominance was threatened with the 700 MHz spectrum auction. Verizon understood this potential threat and bid aggressively for and won 49% of the 700 MHz spectrum.” Eastlink submits that the Canadian wireless incumbents with similar dominance over the lower-frequency spectrum are likely to bid more aggressively in the 700 MHz auction than they did in the AWS auction, making it unlikely that regional players will be able to outbid them for the portion of the 700 MHz spectrum band that is supported by a device ecosystem.

10. Considering that all the same barriers to accessing spectrum for regional players apply, and considering the importance of the 700 MHz spectrum for the rural competition and sustaining existing competition policy objectives, Eastlink urged the Department, in our April 6, 2011 reply comments on SMSE-018-10 to employ the proven set-aside mechanism in the 700 MHz auction.

11. Despite acknowledging the successful introduction of competition supported under the AWS auction, the Department has opted to employ a spectrum cap mechanism for this auction that it stated, in its March 14, 2012 press release, would “effectively reserve prime spectrum for new entrants and regional providers.” In fact, this spectrum cap mechanism all but guarantees that new entrants and regional service providers will be unable to obtain spectrum in the more attractive lower band of the 700 MHz spectrum band, which is currently driving the device ecosystem in the United States. Instead, under the technical framework, regional service providers will likely only be able to purchase one block of paired spectrum in the upper band for which there is currently no device ecosystem.

12. As a result of the Department’s decisions to date, it is critical that this auction and licensing framework allows new entrants and regional service providers to access needed spectrum if the Department wishes to meet its policy objectives for the 700 MHz spectrum band. Unfortunately, the auction framework as currently laid out seems unlikely to do so.
13. Eastlink submits that the auction framework as proposed is extremely complex by world comparisons making it difficult to model possible outcomes and to determine whether prices paid will support a business case. It is significantly more complex than the Australian auction, which will be the first to use this methodology in an auction involving multiple regions. Eastlink further submits that the framework as currently structured would substantially favour the wireless incumbents making it extremely difficult for new entrants and regional service providers to obtain any reasonable package of spectrum under this auction.

14. Eastlink submits that the Department should:

- Provide significant clarification on how this auction, across multiple regions of very different values, will function; particularly the poorly defined supplementary round.
- Demonstrate how this auction format supports the policy objectives of sustaining urban competition and encouraging rural competition, ie. demonstrate how a regional service provider could possibly access the spectrum it requires.
- Not allow large, incumbent associated entities to bid separately under the cap.

Until these clarifications are provided Eastlink cannot endorse the proposed methodology proposed by the Department. Eastlink provides further detail and requests for clarification below.

15. Eastlink first and foremost has concerns regarding the inherent preference for the “highest value package” under the auction. The Department’s position, as put forward during the May 30th information session, that “the auction objective is to allocate [spectrum] to those that value it the most” is the result the rules as currently proposed will likely produce. Specifically, in the case of any overlapping bids or packages, when comparing a national package that includes licences across all 14 regions to a regional service provider’s package bid that includes only a few licences, the national bidder’s package would always win. As a result, it appears to be impossible that any regional bidder could ever win its desired licences if a national bidder was also interested in those licences. This is an inherent disadvantage for
regional participants who do not have resources or the intention to bid on licences across all regions. **Eastlink requests that the Department illustrate how a regional player could possibly be successful in this scenario using a simplified example of three regions and five bidders.**

*Supplementary round concerns*

16. Eastlink has serious concerns regarding the supplementary round of the allocation stage of the combinatorial clock auction (CCA) process. Specifically, Eastlink is not convinced that the outcomes of the clock rounds cannot be overturned by further bids made in the supplementary bids round. Eastlink submits that this uncertainty poses considerable risk for regional service providers.

17. The Department has stated in the Consultation and at its May 30, 2012 information session that the benefits of the CCA process are that it limits exposure risk and gaming opportunities, and that it encourages truthful bidding as every round could be the final clock round. Truthful bidding and barriers to gaming may provide certainty to an auction process, as bidders can expect that if they prepare sufficiently, and bid on the spectrum they want and realistically expect to win, they will leave the auction successful. For regional service providers, with limited resources available to prepare for the auction, this certainty is critical to obtaining a reasonable package of 700 MHz spectrum. Eastlink reiterates that access to the 700 MHz spectrum is necessary for new entrants and regional service providers to provide rural coverage and retail roaming services comparable to the incumbents, which already have use of the 800 MHz spectrum they entirely own (and in some cases do not use) to serve rural areas.

18. However, any certainty gained under the CCA process would be lost in the supplementary round as proposed in the Consultation in the event that clock round bids can be easily overturned in the supplementary round. Eastlink submits that there needs to be greater certainty that the allocation of spectrum, and the corresponding prices, resulting from the clock rounds would be unchanged as a result of the supplementary round.

19. In Paragraph 6 of Annex B of the Consultation, the Department stated, “The supplementary round provides bidders with the opportunity to improve bids that they place in the clock
rounds and / or to submit bids that they were willing to bid on but unable to submit in the clock round." As noted above, the Department has indicated that the purpose of the auction is to allocate spectrum to those who value it the most. Eastlink submits that the Department’s decision not to regulate domestic wholesale roaming rates and its decision not to use a set-aside mechanism for the 700 MHz spectrum auction together mean that this auction is the Department’s sole remaining tool to ensure the 700 MHz spectrum policy objectives of sustaining existing urban competition and encouraging rural competition are met. The potential dramatic price increases and package changes during the supplementary round must be considered in the context of the policy objectives.

20. Eastlink submits that the purpose of the supplementary rounds appears to be different (albeit unclearly so) depending on whether or not there is unallocated spectrum at the conclusion of the final clock round.

No supplementary round if all allocated

21. Paragraph 43 of Annex B appears to indicate that the allocation of spectrum does not change from the final clock round when there is no unallocated spectrum. In the event that all of the spectrum is allocated in the final clock round, Eastlink sees no incremental value in proceeding to a supplementary round of bidding. If the Department agrees with our interpretation of this case, Eastlink submits it would add greater certainty to the auction process if it were clearly stated that the results of the final clock round, from both a package allocation and price perspective, would be definitive in the event that all of the spectrum has been allocated.

22. If the Department does not agree and the results of the final clock round can indeed be changed, from either a package allocation or price perspective, in the supplementary round, even when there is no unallocated spectrum, then Eastlink submits this fact needs to be explained in much greater detail. Specifically, Eastlink submits that it is currently unclear under which circumstances the final clock round could be changed, or if there is any way bidders can ensure that they will receive their final clock round package.

23. For example, when unallocated spectrum remains at the conclusion of the final clock round, the Department stated:
“If there are still some unallocated licences, a bidder can guarantee that it will win its final clock package by submitting a supplementary bid that increases the dollar amount of its final clock package bid by at least the final clock price of the unallocated licenses…” (Paragraph 17 of Annex B)

*Incumbents’ points and spending advantage*

24. Eastlink attended the Department’s information session in Ottawa on May 30, 2012 in hopes of gaining further insight into the auction process generally, and the supplementary round specifically. During the presentation, slide 58 reiterated Paragraph 17 of Annex B referenced above, “Nonetheless, even in this case, the bidder can guarantee winning its final clock package by raising its bid by final clock price of unallocated licences.”

25. It was clear from the information session that other potential auction participants had concerns regarding the supplementary round, particularly in the case where the clock rounds end with unallocated licences. Eastlink submits that the rule noted above represents considerable uncertainty to the auction process as the national incumbents, with access to more eligibility points than the new entrants and regional players, would have considerably more bidding options available to them in the supplementary round. These national players could significantly alter the results of the final clock round based on the flexibility their eligibility points grant them. **Eastlink requests that the Department provide an example of how the incumbent national service providers would not be able to do this.**

26. At the same time, it will not be known until after the final clock round how many unallocated licences there will be and at what price. Under this framework, the prices winners will ultimately pay will vary – possibly significantly - from the price of their winning package in the final clock round. As a result, Eastlink submits that the potential exists for well-resourced incumbent wireless carriers to materially alter the outcome of the final clock round through activity in the supplementary round. Specifically, larger national wireless bidders have far greater financial resources than regional bidders to bid aggressively on the unallocated licences in the supplementary round to secure their final clock package and to possibly acquire additional licences they had not bid on in the final clock round.
27. Professor Cramton described this very scenario while answering a question at the conclusion of the May 30th information session. To paraphrase, Professor Cramton provided an example whereby a large nationwide bidder had a final clock package of $2 billion and there were unallocated packages in the Northwest Territories. He explained that the national bidder could bid $2 million on the unallocated lots and “…for an extra $2 million, you can guarantee that you win your final clock package.” While an incremental $2 million is immaterial to a large nationwide bidder, such an increment would be prohibitive to a smaller regional bidder.

28. While Eastlink acknowledges that this is an example, it nevertheless serves to highlight the fact that, the more financial resources available to spend on unallocated licence in the supplementary round, the greater the chances of winning your final clock package. While smaller regional bidders like Eastlink will be constrained by relatively smaller budgets and expressions of full value for these unallocated licences, larger publically-traded bidders are far less constrained. In this context, it appears to Eastlink that the supplementary round of the CCA is unjustly biased against smaller regional participants.

29. At the same time, new entrants and regional providers cannot effectively plan for even this outcome as the Departments’ recent update has created additional uncertainty. Specifically, the Department’s June 18th update stated that, even where a bidder is able to raise its bid by the difference in cost between the starting bid and closing bid of the unallocated licenses, “…This guarantee may be compromised if any other supplementary bid does not include, at a minimum, all of the licences contained in the bidder’s final clock package.” (Paragraph 17 of Annex B)

30. Eastlink submits that a “guarantee” that can be “compromised” is clearly not a guarantee.

31. Finally, Eastlink submits that the CCA algorithms are overly complex such that bidders cannot understand them and therefore cannot make informed bidding strategies, and the auction results cannot be predicted or guaranteed through algorithmic optimization. As such, the very nature of the auction design makes it difficult for bidders to determine how to bid to guarantee winning the final clock package when unallocated spectrum remains at the conclusion of the final clock round.
32. As a result, the supplementary round has a disproportionately high and understated importance and influence in the CCA process. Eastlink cannot endorse the combinatorial clock auction format and rules at this time, particularly as they related to the supplementary bid round of the allocation stage. Eastlink submits that better information is required to fully explain the impact of the supplementary round in general, and particularly when unallocated spectrum remains at the conclusion of the final clock round.

Assignment process

33. Eastlink also submits that, given the 14 regions in Canada with very different values, it is unclear how the assignment round will be conducted. The Department should clarify this assignment process.

Bidder participation – affiliated and associated entities

34. Eastlink submits that the Department’s proposed policies regarding affiliated and associated entities do not sufficiently limit bidder participation. While these policies may adequately address the traditional legal concepts of affiliates controlled by a larger entity and associated companies, Eastlink submits that the policies do not address the most significant concern of the new entrants: the fact that Bell and TELUS may be permitted to participate in the auction process individually rather than as a single bidder.

35. The Department has stated that associated entities requesting that the spectrum cap be applied individually rather than jointly must demonstrate to their satisfaction that the entities will be competing in the applicable service area. In Paragraph 144 of the Consultation the Department stated:

“For example, if licensees are competitors and intend to remain so, and have an existing or enter into a new joint network or spectrum sharing agreement such that they are associated, they may still be eligible to participate in the auction as separate entities and continue to be treated as separate entities for the purposes of the spectrum cap if certain conditions are met.”

36. The description above appears to be written specifically to accommodate Bell and TELUS. In their capacity as two of the largest publically traded companies in Canada, Bell and
TELUS’ will likely be able to demonstrate that they market their wireless service in several overlapping geographies. This, however, does not constitute true open-market competition. Eastlink raised this concern in our February 28, 2011 comments on SMSE-018-10, *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*. Specifically, Eastlink stated on Page 8:

“Moreover, while the shared Bell/TELUS network provides more significant 3G coverage, EastLink would question whether true competition can be expected to occur between two incumbents that share ownership of the same network.”

37. The degree to which Bell and TELUS “compete” with each other by virtue of its network sharing arrangement is more akin to the way Bell “competes” with its affiliates Solo and Virgin or how TELUS “competes” with its affiliate “Koodo.” At the very least, it is clear Bell and TELUS do not compete with each other on the same terms that they compete with other carriers, such as Rogers Wireless or new entrants.

38. As Rogers referenced in Paragraph 11 of its May 14, 2012 comments under DGSO-001-12 *Proposed revisions to the frameworks for mandatory roaming and tower and site sharing*, Bell and TELUS have enjoyed significant cost advantages over other wireless service providers since 2001 through their network sharing arrangement, avoiding more than $500m in capital expenditures by 2011.

39. A decision on whether to apply the spectrum cap separately for associated entities should not rely only on whether those entities both offer phone service in an area but should also consider whether those entities grant each other significant preferences regarding roaming terms, infrastructure usage and/or spectrum sharing. Such substantial preferences, not made available to other carriers, enable Bell and TELUS alone to offer lower rates or to redirect the capital they would otherwise have spent on infrastructure into services and products. They may “compete” with each other but they also provide substantial financial relief to each other, making it easier for both to compete against all other wireless service providers. The competitive imbalance created by the Bell-TELUS arrangement must be considered in applying the spectrum cap, regardless of whether they both offer phone service in any particular market.
40. Any application of the spectrum cap must also acknowledge that, through their joint network sharing arrangement, Bell and TELUS have the opportunity and incentive to share the other’s spectrum. In the event that the spectrum cap is applied separately, Bell and TELUS could have twice as much spectrum available to them by virtue of this arrangement as they would otherwise. The Department has stated in several documents over the previous five years that its ultimate goal is development of facilities-based competition. As a result, Bell and TELUS should only be permitted to participate in the 700 MHz auction process through a single bidder.

41. Eastlink has raised this concern before, when we stated on Page 24 of our comments under SMSE-018-10:

“The cap must take into account the fact that some companies operate a shared network. For example, Bell and TELUS operate a shared network and, therefore, TELUS should not be able to bid in areas where Bell exceeds the spectrum cap (or the combined Bell/TELUS holdings would exceed the cap), and vice versa. The Department must recognize the value that a shared network and spectrum holdings provide to such companies. To do otherwise would allow such companies to “game” any cap established by the Department.”

42. Eastlink is not the only AWS entrant that has expressed serious concern with Bell and TELUS’ nation-wide network being able to “doubling up” on its spectrum through the 700 MHz auction process. In fact, all of the AWS new entrants had similar concerns. For example, Globalive stated in Paragraph 58 of its February 28, 2011 comments on SMSE-018-10, Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum:

“As the Department is aware, since 2001, Bell and TELUS have operated under a network sharing agreement. That agreement has enabled them to combine their network assets (including each benefiting from spectrum licensed to the other) and to maximize coverage. As a result of this network sharing agreement, WIND submits that to gain a true understanding of each carrier’s spectral inventory and to determine how much each will require in the future, it is more appropriate in thinking about how much spectrum is enjoyed by each of Bell and Telus to consider the amounts of spectrum
awarded to both of them combined (as well as the aggregate number of subscribers they service) than to consider them separately.”

43. At the same time, Mobilicity stated in Paragraph 7(d) of its February 28, 2011 comments on SMSE-018-10, Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum, “Bidders and affiliates as demonstrated by current practice should be treated as one with respect to the spectrum cap. Bell and TELUS should be treated as one entity for spectrum caps given the shared nature of their national network.”

44. In Paragraph 16 of its comments under the same consultation, Public Mobile stated:

“For the purposes of the 700MHz auction design, rules and policies, fairness and expediency requires that Bell and TELUS be treated as one entity given the contractual arrangement that exists between the parties. Bell and TELUS have operated under a network sharing agreement since 2001, enabling them to combine their complementary network assets to maximize coverage and conserve capital. This agreement amounts to a spectrum sharing agreement, effectively enabling them to warehouse complementary spectrum by piggy-backing on each other’s networks.”

45. Finally, Shaw Communications stated, on page iii of its February 28, 2011 comments on SMSE-018-10, Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum, “Bell and Telus should be treated as “associated entities,” and therefore as one bidder, for purposes of these caps.”

46. Given the proposed design of the 700 MHz auction, it is easy to see why AWS entrants consistently believe that Bell and TELUS should be treated as a single bidder. Specifically, the Department currently proposes a spectrum cap of one paired spectrum block from within blocks B, C, C1 and C2 for all large wireless service providers. If Bell and TELUS were able to bid separately, they would be able to bid for two of the four spectrum blocks in any given geographic location. Rogers has the incentive, opportunity and resources to bid for the third of four spectrum blocks. This leaves one remaining spectrum block for all of the remaining auction participants. Under this scenario, it is unlikely that another national wireless network
would be developed in Canada, and it will be extremely difficult for regional service providers to access the 700 MHz spectrum they need to efficiently expand into rural areas. Furthermore, the ability of the three incumbent wireless companies to monopolize three of four spectrum blocks in desirable and lucrative markets in Canada stifles wireless competition.

47. As the Department is keenly aware, and as noted above, the 700 MHz spectrum is highly coveted because of its superior propagation characteristics. Simply put, this spectrum is the last of its kind that will be made available and it is the Department’s best tool for encouraging competition in rural areas. Fostering rural competition should be paramount in the Department’s decision regarding the terms on which regional service providers will have an opportunity to access the spectrum. The blocks available under this auction are too small to serve any capacity purpose for wireless service providers in urban areas; this spectrum is critical for rural competition and all decisions should be made with this context in mind.

48. The only other sub-1 GHz spectrum with characteristics similar to 700 MHz and available for commercial use in Canada is in the 800 MHz (cellular) band, over 95% of which is held by Rogers, Bell and TELUS. Given Bell and TELUS already have ample 800 MHz spectrum, coupled with the fact that they are able to share spectrum through their shared network arrangement, measures must be established by the Department to limit or prevent Bell and TELUS from unjustly acquiring additional spectrum below 1GHz in this auction process. Consistent with this sentiment, the Department has stated in Paragraph 124 of SMSE-002-12, “Access to the 700 MHz spectrum by service providers other than the large national service providers would help to support competition, offering customers additional choices for competitive MBS in both the metropolitan and smaller markets.” [emphasis added]

49. As a result, the Department’s policies and framework related to the 700 MHz auction cannot be constrained by the legal form of the arrangement between Bell and TELUS, but rather must recognize the economic substance of the relationship. Permitting Bell and TELUS to participate separately will negatively impact the integrity of the auction process and suppress facilities-based wireless competition in Canada.
Conditions of licence

50. Eastlink generally supports the Department’s proposed conditions of licence with a few exceptions as described below.

51. Eastlink does not have any particular comments on the requirement to comply with the roaming and tower siting CPC documents referenced in the Consultation, except to reiterate our May 14, 2012 comments submitted in response to the Department’s consultation on the mandatory roaming and tower sharing requirements, DGSO-001-12, that new entrants and regional service providers continue to operate at a significant disadvantage in the retail market due to the Department’s decision not to regulate commercially reasonable domestic wholesale roaming rates. Eastlink further reiterates that retail roaming prices will not decline without either the CRTC’s or the Department’s regulation of wholesale domestic roaming rates and without a standard agreement based on the GSMA model agreement. For further details please see Eastlink’s May 14th comments and June 13th reply comments under DGSO-001-12.

Lawful intercept

52. The Department’s proposed change to the lawful intercept COL would impose substantial new obligations on licensees, at a time when parallel legislation addressing similar areas of licensees’ operations is before Parliament. Eastlink submits that such new changes would be more appropriately made via federal legislation, or the pending revision to the Solicitor General’s standards that Public Safety Canada is proposing. Eastlink agrees with the comments submitted by the Canadian Wireless Telecommunications Association on this issue and we further agree with the CWTA’s suggestion that the current condition of licence remain in place until the legislative work currently underway is completed.

Rural and general deployment

53. Eastlink submits that that rural deployment condition of licence as proposed by the Department is unlikely to encourage rural deployment. New entrants still in the early phases of network development will easily meet the requirement based on the proposed language because many operate primarily in urban areas. At the same time, large incumbent wireless
service providers will also meet the rural deployment requirements easily as their HSPA networks are built primarily in urban centers and the corridors between them. Considering the propagation characteristics of the 700 MHz spectrum band, these large incumbents will likely cover 90% of the population within their existing HSPA footprint simply by building in urban centers.

54. Eastlink submits that true rural deployment will only be required by relying on smaller tier roll-out requirements. The Department has determined that Tier 2 levels should be used for licences considering the 700 MHz band’s propagation characteristics. However, deployment based on covering a percentage of the population at these Tier 2 levels will allow spectrum holders to focus on urban centers and the immediately surrounding area, rather than requiring development in rural areas.

55. Instead, Eastlink submits that all licensees in the 700 MHz band should be required to cover 50% of the population in each Tier 4 area included within the licence area within 10 years. Such a requirement would ensure that all areas within a spectrum licence area benefit from the coverage and products available on the 700 MHz band. At the same time, the propagation characteristics of the band will allow licensees to meet this obligation with a limited infrastructure build out, so that this would not be an economically unreasonable requirement.

Opening bids

56. The proposed opening bid amounts for service areas in Atlantic Canada and other primarily rural regions are disproportionally high and must be reduced to encourage rural wireless deployment and promote sustainable wireless competition.

57. As a regional player, it is important for Eastlink to have fair and reasonable spectrum prices, the starting point of which is the opening bid amounts. Unlike the publically-traded incumbents, Eastlink has limited financial resources to buy spectrum and deploy wireless capital. The more that regional players, like Eastlink, are required to pay for spectrum, the longer and more difficult it is to deploy technology in their license areas. Compounding the resource constraint is the fact that Atlantic Canada is predominantly made up of rural markets. As such, relatively more capital is required to deploy wireless technology than in
urban areas. At the same time, there are fewer consumers in these markets from which to generate revenue and recover the capital expenditures. To support the Department’s policy objective of encouraging rural wireless deployment, Eastlink believes that wireless spectrum should be relatively less expensive in predominantly rural service areas (such as Atlantic Canada) to compensate for the more onerous capital requirements related to deploying the technology.

58. Whether intentional or not, Eastlink acknowledges that the Department’s proposal regarding opening bid amounts appears to make some effort in bridging the gap between urban and rural deployment. Specifically, Eastlink notes that nine of the 14 service areas share the same $/MHz/pop opening bid amount, while three of the 14 more populous service areas (Eastern Ontario and Outaouais, Alberta and British Columbia) are 1.2 times this price level. Southern Ontario and Southern Quebec are 2.6 times the minimum price level. Despite the effort, Eastlink submits that this $/MHz/pop price gap is insufficient. For example, Southern Ontario’s population is over four times the population of Atlantic Canada. Yet the $/MHz/pop is indexed only 2.6 times.

59. A potential solution to the disparity lies within the methodology by which the opening bids are calculated. Specifically, the Department stated in Paragraph 134 of Annex B to the Consultation:

“The determination of the proposed 700 MHz opening bid prices takes into account the results of past Canadian auctions and reflects the relative value of the licences in the different service areas. As a minimum accepted price, the existing Cellular and PCS annual fees, adjusted to account for a licence term of 20 years using a 14% discount rate is used. The opening bid prices are rounded to the nearest thousand dollars.”

60. Discounting the annual fees for Cellular and PCS spectrum does not serve as a fair proxy for the market value of the opening bids for the 700 MHz spectrum. The auctions for Cellular and PCS were completed a long time ago through a very different process, and therefore have diminished relevance to the current auction.

61. A more appropriate proxy for market values of the opening bid prices is the recent Canadian AWS auction. In general, the market places a premium on 700 MHz spectrum versus AWS
in an auction process. Using the United States as an example, the auction price of 700 MHz spectrum was $1.29 / MHz / Pop., 2.4 times the AWS price of $0.54 / MHz / Pop. If we were to use the Canadian AWS opening bid amounts for 10 MHz of spectrum and multiply it by the market premium placed on 700 MHz spectrum, relevant opening bid amounts for 700 MHz would be as outlined below for each of the service areas.

62. Eastlink recommends the following opening bid proposal:

<table>
<thead>
<tr>
<th>Service Area #</th>
<th>Service Area Name</th>
<th>Paired Blocks Opening Bid</th>
<th>Unpaired Blocks Opening Bid</th>
<th>Unpaired Blocks Opening Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Newfoundland &amp; Labrador</td>
<td>$1,364,000</td>
<td>$682,000</td>
<td>$300,000</td>
</tr>
<tr>
<td>2</td>
<td>Nova Scotia &amp; PEI</td>
<td>$2,814,000</td>
<td>$1,407,000</td>
<td>$1,152,500</td>
</tr>
<tr>
<td>3</td>
<td>New Brunswick</td>
<td>$1,987,000</td>
<td>$994,000</td>
<td>$625,000</td>
</tr>
<tr>
<td>4</td>
<td>Eastern Quebec</td>
<td>$4,421,000</td>
<td>$2,211,000</td>
<td>$900,000</td>
</tr>
<tr>
<td>5</td>
<td>Southern Quebec</td>
<td>$39,042,000</td>
<td>$7,530,000</td>
<td>$14,659,587</td>
</tr>
<tr>
<td>6</td>
<td>Eastern Ontario &amp; Outaouais</td>
<td>$7,677,000</td>
<td>$3,111,000</td>
<td>$2,587,500</td>
</tr>
<tr>
<td>7</td>
<td>Northern Quebec</td>
<td>$505,000</td>
<td>$253,000</td>
<td>$40,000</td>
</tr>
<tr>
<td>8</td>
<td>Southern Ontario</td>
<td>$69,324,000</td>
<td>$13,370,000</td>
<td>$25,075,077</td>
</tr>
<tr>
<td>9</td>
<td>Northern Ontario</td>
<td>$2,053,000</td>
<td>$1,027,000</td>
<td>$600,000</td>
</tr>
<tr>
<td>10</td>
<td>Manitoba</td>
<td>$3,198,000</td>
<td>$1,599,000</td>
<td>$1,182,500</td>
</tr>
<tr>
<td>11</td>
<td>Saskatchewan</td>
<td>$2,729,000</td>
<td>$1,365,000</td>
<td>$600,000</td>
</tr>
<tr>
<td>12</td>
<td>Alberta</td>
<td>$11,936,000</td>
<td>$4,836,000</td>
<td>$3,975,000</td>
</tr>
<tr>
<td>13</td>
<td>British Columbia</td>
<td>$14,388,000</td>
<td>$5,830,000</td>
<td>$6,830,000</td>
</tr>
<tr>
<td>14</td>
<td>Yukon, NWT &amp; Nunavut</td>
<td>$284,000</td>
<td>$142,000</td>
<td>$20,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>$161,722,000</td>
<td>$44,357,000</td>
<td>$58,547,164</td>
</tr>
</tbody>
</table>

63. Reducing the opening bids for wireless spectrum in services areas predominantly comprised of rural markets, such as Atlantic Canada, Northern Quebec and the Territories, is consistent with the Department’s policy objectives to enhance wireless telecommunications services in rural areas while promoting sustainable wireless competition.

Proposed eligibility points

64. To the extent that the Department accepts Eastlink’s position regarding opening bids, the proposed eligibility points will have to be adjusted proportionately.

Conclusion

65. The Department has indicated in several consultation documents and framework decisions in recent years that its priorities for spectrum auctions are to encourage facilities-based
competition and to ensure that Canadians living in rural areas have the same access to competitive wireless services as those living in urban areas. The Department’s position as put forward during the May 30th information session that, “Certainly rural deployment is an important objective but the auction objective is to allocate [spectrum] to those that value it the most,” and to rely on the conditions of licence alone to encourage rural deployment, is inconsistent with its previously stated objectives.

66. Eastlink further submits that such a view is not practical. The three incumbents have had access to 800 MHz spectrum for years and, still, in most rural markets there are only one, or two wireless service providers that share a network, from which consumers can obtain service. **Regional players are critical to ensuring that rural deployment is not just an obligation to be satisfied and abandoned, but a meaningful undertaking with real intention to provide quality services and competitive options to rural customers.** As a result, and as new entrants and regional players will already be participating in this auction at a considerable disadvantage to the wireless incumbents, it is critical that the auction format itself also recognize the reality that regional players and new entrants have fewer resources to draw on under this auction. The auction format should aim not only to allocate spectrum to those that value it the most but also to those that will make the most of the spectrum.

67. As a result, Eastlink submits that the Department must improve the certainty regarding the supplementary round. Specifically, the Department should clarify that, in the event that all spectrum licences are allocated in the final clock round, that there will not be a supplementary round. Eastlink further submits it is absolutely critical that the Department clarify the circumstances under which the results, in terms of packages and/or prices, can be altered from the final clock round results under the supplementary round. Finally, the Department should clarify the process to ensure that new entrants are not at risk of having far better capitalized incumbents materially alter the results of the final clock round simply because they have the resources to increase their bids under the supplementary round.

68. Eastlink also submits that, in the interest of accurately reflecting the significant preferences that Bell and TELUS make available only to each other, allowing them to “compete” on better terms than any other wireless service provider has available. In the interest of ensuring the spectrum is used and that new entrants have an opportunity to win a reasonable package of spectrum – considering the massive holdings of 800 MHz spectrum
the incumbents already hold – Bell and TELUS must be required to bid as a single bidder under this auction.

69. Finally, to ensure that meaningful rural deployment occurs, the Department should require all licensees to serve 50% of the population of all Tier 4 areas within their licence area within 10 years. Rural deployment would also be encouraged if the Department accepts Eastlink’s proposed opening bid prices, which are based on actual commercial results rather than an arbitrary model.

70. Eastlink is an established telecommunications service provider. We were the first cable company to offer competitive phone service in Canada in 2001 and we continue to be the first competitive wireline phone service provider in rural markets throughout Canada. We are committed to building on our success with our wireless service that we will be launching later this year. We aim to offer competitive retail rates and to support coverage in areas that may not necessarily be priorities for other wireless carriers. The ability to acquire spectrum in the 700 MHz band is necessary for us to meet these objectives. Eastlink submits that our proposals herein will ensure that all new entrants, while still considerably disadvantaged under this auction compared to incumbents, will have a chance to buy reasonable spectrum packages.

**END OF DOCUMENT**