Canada Gazette Notice No. DGSO-002-12

Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band

Comments of

Data & Audio-Visual Enterprises Wireless Inc., dba Mobilicity

June 25, 2012
# Contents

Executive Summary ................................................................................................................................... 4

3. General.................................................................................................................................................. 11
   3.1 Service Area for Lloydminster (Alberta/Saskatchewan).......................................................... 11

4. Auction Format and Rules .................................................................................................................. 11
   4.2.5 Auction Format ......................................................................................................................... 11

5. Bidder Participation – Affiliated and Associated Entities ................................................................. 14
   A. Proposed Definition of Associated Entities ............................................................................. 17
   B. Disclosure and Production to Department of All Relevant Agreements .......................... 18
   C. Eligibility to Participate Separately in the Auction and to Have Caps Apply
to Associated Entities Separately ............................................................................................... 20
      (i) Competition in Canadian Mobile Wireless Market Not Fully Evolved ................. 22
      (ii) Incumbents Need Incentives to Make Efficient Use of the Massive
           Amounts of Mobile Wireless Spectrum They Already Control ................................. 22
      (iii) Spectrum Caps Must Be Strictly Enforced in Order to Meet Policy
           Objective of Competition and New Investment ......................................................... 23
      (iv) No Exemptions for Large Wireless Service Providers ......................................... 25
   D. Level of Public Disclosure and Public Process .................................................................... 25
   E. Proposed Definition of Affiliated Entities .......................................................................... 30

5.1 Prohibition of Collusion .................................................................................................................. 30

6. Conditions of Licence for Spectrum in the 700 MHz Band ............................................................. 36
   6.1 20 Years Licence Term ............................................................................................................ 36
   6.2 Aggregation Limits ................................................................................................................... 36
      A. Substitutability of the Non-Prime Blocks ........................................................................ 37
      B. The Realistic Outcome ........................................................................................................ 38
      C. High Risk of Spectrum Hoarding .................................................................................... 39
   6.3 Transferability and Divisibility................................................................................................. 40
   6.4 Foreign Ownership ................................................................................................................... 42
   6.5 Existing Spectrum Users ........................................................................................................ 42
   6.6 Radio Station Installations ...................................................................................................... 42
   6.7 Technical Information ............................................................................................................... 42
   6.8 Compliance with Legislation, Regulation and Other Obligations ............................................ 43
   6.9 Technical Considerations And International And Domestic Coordination ....................... 43
   6.10 Lawful Intercept Requirements ............................................................................................ 43
   6.11 Research and Development Requirement ............................................................................. 43
   6.12 Rural Deployment Requirements ............................................................................................ 43
   6.13 Mandatory Tower and Site Sharing ...................................................................................... 45
   6.14 Mandatory Roaming .............................................................................................................. 46
   6.15 Annual Reporting.................................................................................................................... 46

7. Auction Process .................................................................................................................................... 46
   7.2 Opening Bids ............................................................................................................................ 46
   7.3 Proposed Eligibility Points for Spectrum ............................................................................... 46
   7.4 Pre-Auction Deposits .............................................................................................................. 46
   7.5 Bid-Payments and Forfeiture Penalties.................................................................................... 47
10 Licence Renewal Process


EXECUTIVE SUMMARY

1. The 700 MHz auction will be an important event in the evolution of Canada’s wireless industry. It is the first time that significant amounts of sub-1,000 MHz spectrum is being auctioned in Canada and decades since sub-1,000 MHz spectrum has been made available to the wireless industry. A well designed auction will further promote competition in the market for wireless voice, text and data communications; a poorly designed auction will reinforce the dominance of the few large wireless service providers. To that end, in Policy and Technical Framework: Mobile Broadband Services (MBS) – 700 MHz Band, Broadband Radio Service (BRS) – 2500 MHz Band (hereinafter “700 MHz and 2500 MHz Policy and Technical Framework”)\(^1\) the principal policy measure established by the Department was the adoption of the “dual-cap” aggregation limits.

2. In Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band\(^2\) (hereinafter “700 MHz Licensing Consultation”), the Department seeks comments on the specific measures proposed to implement the policy and technical decisions announced in the preceding 700 MHz and 2500 MHz Policy and Technical Framework. The comments of Data & Audio-Visual Enterprises Wireless Inc., doing business as Mobilicity (hereinafter “Mobilicity”), herein are submitted with the express intention of making the 700 MHz auction even more successful in contributing towards the establishment of a more competitive wireless marketplace.

3. The highlights of Mobilicity’s comments on the 700 MHz Licensing Consultation may be summarized as follows:

Auction Format and Rules

(a) The Department should consider eliminating the Supplementary Round from the auction. A clock auction without a Supplementary Round has the properties of a Second-Price rule auction that incentivizes truthful bidding, so without the

---

\(^1\) Canada Gazette Notice No. SMSE-002-12 (March 2012).
\(^2\) Canada Gazette Notice No. DGSO-002-12 (April 2012)
Supplementary Round, there would be no need for the added complication of the express Second-Price Rule and Supplementary Round.

**Bidder Participation – Affiliated and Associated Entities**

**Definition of Associated Entities**

(b)  Strong definitions of Associated Entities and Affiliated Entities that are subject to transparent and timely public scrutiny are key to competitive auction results.

(i)  Without limiting the generality of the definition of Associated Entities, the Department ought to clarify that agreements etc. … relating to use of the 700 MHz spectrum include those that

A.  relate to the acquisition or options to acquire an ownership interest in any bidder in the auction of spectrum in the 700 MHz band or any licensee of spectrum in the 700 MHz band, whether via the auction itself or post-auction;

B.  relate to the sharing, acquisition of or options to share or acquire rights in the spectrum in the 700 MHz band, whether via the auction itself or post-auction;

C.  relate to the amounts to be bid, bidding strategies or the particular licence(s) on which the parties to the agreement will or will not bid;

D.  relate to access to or sharing or options to access or share a party’s network in relation to the 700 MHz spectrum, whether pre or post-auction; or

E.  relate to the branding and marketing of services using any spectrum in the 700 MHz band.
(ii) The Department should also clarify that applicants must file any and all agreements etc. that relate to the acquisition or use of 700 MHz spectrum, including any roaming and resale arrangements.

**Associated Entities Must Participate in Auction and Have Caps Applied Jointly**

(c) The requirement in previous auctions that Associated Entities and Affiliated Entities participate in auctions together was based on the need to preserve the integrity of the auction. There is no countervailing policy justification for Associated Entities to be permitted to participate in the auction separately or to have the spectrum aggregation limits applied separately, as proposed in the *700 MHz Licensing Consultation*.

(d) More importantly, it is destructive to the principal pro-competitive measure announced by the Government in the *700 MHz and 2500 MHz Policy and Technical Framework* to permit the likes of two national wireless providers, specifically Bell Canada and Telus Communications Company (“Telus”) to participate separately in the auction and to have the spectrum caps applied separately to them notwithstanding any Associations they may now or in the future create. Such exemptions from the application of the bidder participation and spectrum aggregation limits through the creation of Associations should not be allowed.

(e) If the Department believes that sharing a network is a worthwhile objective in the best interest of Canadians, then the Department should encourage Bell and Telus to bid as one entity, not two, because doing so would best serve to force them to share a network since they would own underlying spectrum effectively together. There is no policy rationale, nor any good reason to allow Bell and Telus to bid separately in this auction, especially given the already significant spectrum holdings of both companies that they utilize as one network. By allowing this “loophole” the Department risks embarking on a complicated series of scenario prevention exercises as entities attempt to game the system using these rules.
(f) With respect to timely and meaningful public scrutiny of applicants’ disclosure of agreements etc. giving rise to Associations or Affiliations, the Department should make express provisions for:

(i) a public comment period in relation to the public disclosure obligations set out at paragraphs 66-68, 70 and 73 of the 700 MHz Licensing Consultation;

(ii) adequate time (minimum of three months) between the deadline for receipt of applications to participate in the auction and the publication of the list of qualified bidders.

(g) If the Department intends to reserve to itself the discretion to exempt parties that are otherwise “Associated” from the requirement that a single member of the Associated Entities participate in the auction or have the spectrum aggregation limits applied to it, then, at a minimum, the Department should expressly provide that large wireless service providers and their Affiliates be precluded from applying for such exemptions.

(h) Furthermore, if the rules for the 700 MHz provide for a discretion on the part of the Department to permit separate participation and separate application of the spectrum aggregation limits, the Department should consider:

(i) incorporating an opportunity for public comment on applications for separate participation and separate application of spectrum aggregation limits on Associated Entities;

(ii) requiring that such applications by Associated Entities be filed four months prior to the deadline for applications to participate in the auction;

(iii) requiring that such applications be accompanied by an Affidavit provided by an officer of the company stating that (i) there are no other express, implied or tacit agreements etc. with respect to the use of the spectrum to be auctioned, within the meaning of the Department’s decision on the 700 MHz
Licensing Framework that results from this *700 MHz Licensing Consultation* and (ii) the applicant will not cooperate, collaborate, discuss, negotiate or enter into agreements, arrangements or understandings with any parties other than its declared Affiliates and Associated Entities regarding the licences being auctioned, bids or bidding strategies in the auction, or the post-auction market structure, or signaling its bidding intentions, either publicly or privately, until the end of the bidding process;

(iv) providing that the Department’s determination of applications regarding the participation of Associated Entities must precede the deadline for applications to participate in the auction (and the making of the pre-auction financial deposits) by at least three months;

(v) providing that the Department’s determination of applications by Associated Entities must precede the deadline for making the pre-auction financial deposits by at least three months or in the alternative, the financial deposits should be refundable upon publication of the Department’s decision on Associated Entities that may participate separately and have the spectrum aggregation limits applied separately.

**Prohibition of Collusion**

(i) Regarding the proposed anti-collusion rules, Mobilicity supports the retention of such rules in order to preserve the integrity of the auction. Apart from the bidder participation and anti-collusion rules, the Department should consider:

(ii) establishing rules that permit it to disqualify applicants during the auction, strip Licensees of licences won or to impose meaningful monetary penalties should parties act in breach of the bidder participation and anti-collusion rules; and

(ii) establishing rules that subject Licensees’ ability to enter into any agreements *etc.* with respect to the acquisition or use of 700 MHz spectrum within five
(5) years of the conclusion of the auction to Departmental approval. In deciding such applications, the Department should give due consideration to the time elapsed between the close of the auction and conclusion of the agreement or arrangement pertaining to use of the 700 MHz spectrum, and the reasons, as applicable, justifying non-disclosure of the agreement or arrangement prior to the auction.

**Conditions of Licence for Spectrum in the 700 MHz Band**

**Spectrum Aggregation Limits**

(j) Absent a spectrum set aside for entrants, the spectrum aggregation limits established in the *700 MHz and 2500 MHz Policy and Technical Framework* take on added importance and should include all relevant spectrum and relationships. In particular:

(i) The paired 700 MHz A block should be included under both the general two-block limit and the large wireless service providers’ one-block limit, and

(ii) The unpaired 700 MHz D and E blocks should also be included under both the general two-block limit and the large wireless service providers’ one-block limit.

**Transferability and Divisibility**

(k) Mobilicity requests that any new rules pertaining to transfer or divisibility of the 700 MHz spectrum not impede the ability of the AWS new entrants to transfer or divide any 700 MHz spectrum at the same time that they are permitted to apply to transfer or divide their AWS spectrum.

**Existing Spectrum Users**

(l) Mobilicity does not support the change to the proposed wording of the condition of licence related to the treatment of existing spectrum users.

**Rural Deployment Requirements**
(m) Regarding the rural deployment requirements, Mobilicity requests that service providers that have failed to meet their deployment commitments or conditions of licence in relation to a given geographical area be barred from bidding on any 700 MHz spectrum in such area.

**Bid Payment and Forfeiture Penalties**

(n) Mobilicity requests that the Department consider allowing new entrants to make bid payments through installment payments.

4. Mobilicity’s detailed responses to the foregoing issues are set out below. For ease of reference, Mobilicity’s submissions are organised from Section 3 through to Section 7 with the same headings and sub-headings as used by the Department in the *700 Licensing Consultation*. In addition, Mobilicity’s specific proposals in relation to the licensing framework for the 700 MHz spectrum are shown in bold italic font in the body of the submissions below.
3. **GENERAL**

3.1 **SERVICE AREA FOR LLOYDMINSTER (ALBERTA/SASKATCHEWAN)**

*Industry Canada is seeking comments on whether or not the service area boundary for licences in the 700 MHz band should deviate from the provincial boundary around the City of Lloydminster, (Alberta/Saskatchewan).*

5. Mobilicity has no comment at this time.

4. **AUCTION FORMAT AND RULES**

4.2.5 **AUCTION FORMAT**

*Industry Canada is seeking comments on its proposal to use the CCA format, as well as the general attributes outlined above, including:*

...  

6. The CCA format is perhaps the most complicated spectrum auction format used to date. It is claimed that this complication would allow package bidding, thus (i) reduces the exposure problem some bidders may face, and (ii) to incentivize truthful bidding. The CCA format is appropriate if the costs of the more complicated auction form are outweighed by the benefits of reducing the exposure problem or parties are sufficiently motivated to bid truthfully.

7. It is unclear whether the exposure problem is significant enough to warrant the added costs of implementing this new auction format.

8. The main issue, in Mobilicity’s opinion, is whether this CCA format sufficiently motivates parties to bid truthfully. The factors that were claimed to motivates parties to bid truthfully include:

   (a) The Second-Price rule,

   (b) The combination of the eligibility points and revealed preferences rules, and
(c) Limiting the scope for strategic bidding increases the likelihood of sincere bidding.

9. On the other hand, the current CCA format appears to suffer the following drawbacks that could potentially lead to the Department’s goals not being achieved:

(a) Scope for strategic bidding, particularly in the supplemental round, creates the incentive for bidding that is not truthful:

(i) Some bidders may not have the incentive to reveal all preferences in supplementary bids so as not to reduce the likelihood of winning their preferred package, and

(ii) Other bidders may have an incentive to place insincere bids in the Supplementary Round so as to raise the ‘second-price’ others pay.

(b) The auction rules are significantly more complicated than in previous auctions:

(i) Assessing the validity of bids that satisfy the revealed preference rule is non-intuitive and greatly complicates the bid development process,

(ii) The potential bids in the Supplementary Round are near limitless, making even sincere bidding very cumbersome, and

(iii) The strategic possibilities are much more difficult to assess than in previous auctions.

10. Nevertheless, Mobilicity recognizes that Industry Canada’s evaluation concluded that the benefits of CCA auctions outweigh the costs they impose.

   • the categories of generic licences; ...

11. Mobilicity has no comment at this time.

   • the guarantee of contiguity across blocks A and B in the lower 700 MHz band in a specific service area;

12. Mobilicity has no comment at this time.
• the combined eligibility point and revealed preference activity rule in the clock rounds and the revealed preference limit in the supplementary round;

13. Mobilicity has no comments on eligibility points per se. The revealed preference rule adds complexity, but also allows bidders a greater freedom to reveal demand. This trade-off of complexity for flexibility appears to be sensible for the clock rounds. However, Mobilicity is concerned about the application of eligibility point and revealed preference activity rule as discussed below.

• the use of a second-price rule; and

14. The Second-Price rule in the Supplementary Round is cited as necessary to create incentives for bidders to bid up to their true valuations and in the context of a CCA format, is said to be a sensible component of the rules.

15. The Second-Price rule, however, is not benign. By definition, losing bids, most notably in the Supplementary Round, can have an impact on what second price is paid by winners. This adds a strategic element to placing bids that is most pronounced in the Supplementary Round. This strategic opportunity is amplified with the imposition of licence aggregation limits because a bidder that is constrained by the aggregation limits has additional scope to place losing bids that may have a direct impact on what their competitors pay. For example, assume Bidder X is a large wireless service provider and it has just won the B block in the clock round. Limited to only winning one block, Bidder X has an unconstrained incentive in the Supplementary Round to place bids in all other blocks in order to raise the “second price” other bidders must pay.

(ComCom) auction that ended in early 2012, Swisscom paid 25% less for its winning bid than did Sunrise, but received 20 MHz more paired 1800 MHz spectrum, 40 MHz more paired 2.1 GHz spectrum, an additional 45 MHz of unpaired 2.6 GHz spectrum, and only 10 MHz less paired 2.6 GHz spectrum.\footnote{Sunrise paid CHF 481,720,000; Swisscom paid CHF 359,846,000; and Orange paid CHF 154,702,000. See Federal Communications Commission ComCom, “Results of the auction of all mobile radio frequencies in Switzerland,” Media background material, 23.02.2012, available at: http://www.news.admin.ch/NSBSubscriber/message/attachments/26004.pdf (last visited June 22, 2012).}

Beyond issues of fairness, integrity and confidence in the auction process, significant disparities in final auction prices can put different bidders on an unequal footing.

17. Consequently, Mobilicity requests that the Department consider making the following modifications to the Supplementary Round and the Second-Price Rule:

   Eliminate the Supplementary Round from the auction. A clock auction without a Supplementary Round has the properties of a Second-Price rule auction that incentivizes truthful bidding, so without the Supplementary Round, there would be no need for the added complication of the express Second-Price rule and Supplementary Round.

   • the information to be disclosed during, and post-auction.

18. Mobilicity has no comment at this time.

5. BIDDER PARTICIPATION – AFFILIATED AND ASSOCIATED ENTITIES

19. The Government has stated that the objective of the spectrum aggregation limits is to enable “four or more service providers in each region to obtain spectrum in both the 700 MHz and the 2500 MHz bands” and that in the 700 MHz spectrum band, the limit on prime spectrum on large wireless service providers is “like a set-aside” in that it is intended to “effectively reserve prime spectrum for new entrants and regional providers.”\footnote{News Release, “Harper Government Takes Action to Support Canadian Families,” March 14, 2012, Russell, Ontario and Backgrounder, “Spectrum caps in upcoming 700 MHz and 2500 MHz auctions” online: <http://www.ic.gc.ca/eic/site/ic1.nsf/eng/07089.html>}

20. In the 700 MHz and 2500 MHz Policy and Technical Framework (Notice No. SMSE-002-12), the sole measure that the Department has proposed to achieve the goal of furthering
competition in mobile wireless services markets in Canada is the imposition of dual spectrum aggregation limits in the 700 MHz band, as follows:

**Decision B3-1:** A spectrum cap of two paired frequency blocks in the 700 MHz band (blocks A, B, C, C1 and C2) is applicable to all licensees;

**Decision B3-2:** A spectrum cap of one paired spectrum block within blocks B, C, C1 and C2 is applicable to all large wireless service providers. Large wireless service providers are defined as companies with 10% or more of the national wireless subscriber market share, or 20% or more of the wireless subscriber market share in the province of the relevant licence area.

**Decision B3-3:** The spectrum caps put in place for the 700 MHz auction will continue to be in place for five years following licence issuance. Therefore, no transfer of licences or issuance of new licences will be authorized if it allows a licensee to exceed the spectrum cap during this period.

21. However, what the Department proposes to give with one hand, it appears to take away with the other. In particular, the Department proposes to provide for case-by-case exemptions from the foregoing spectrum aggregation limits by permitting Associated Entities to both participate in the auction as separate entities\(^6\) and to apply to have the spectrum aggregation limits apply separately to Associated Entities both prior to and post-auction.\(^7\)

22. As Mobilicity sees it, there are currently only two national wireless networks that are competing in Canada: (i) Rogers Wireless Partnership’s, in operation since 1982; and (ii) Bell Canada and Telus’ sharing arrangement, in use since approximately 2001. Rogers is by far and by every measure, the most spectrum-rich mobile wireless service provider in the country,\(^8\) having acquired its vast holdings at the least average cost over a 30 year period.\(^9\) The Bell/Telus network represents a collaborative and coordinated arrangement between the second and third-most spectrum-rich mobile wire carriers, with arguably the broadest shared geographic reach in the country, thereby echoing these carriers’ combined incumbent wireline networks.

---

\(^6\) 700 MHz Licensing Consultation, paragraph 69.

\(^7\) 700 MHz Licensing Consultation, paragraph 70.


\(^9\) Ibid.
23. As documented in great detail by national and international observers alike, while the AWS new entrants have offered some relief to consumers starved of truly vibrant competition for over two decades, against this harsh and ever-present reality, there is still a pressing need for the Government to act.

24. The Government has stated that the limit on prime spectrum on large wireless service providers (Decision B3-2) is “like a set-aside” with the added benefit that the “measures will not require Industry Canada to identify specific blocks of spectrum, allowing companies to bid according to their business plans.” Mobilicity concurs that Decision B3-2, along with a strict definition of Associated Entities and bidder participation rules, would represent positive action to sustain competition in the mobile wireless market.

25. However, the Department’s policy objective of competition will not be achieved if large wireless service providers, as defined by the Department in the 700 MHz and 2500 MHz Policy and Technical Framework, are permitted to do indirectly, through Association, what Decision B3-2 ostensibly states they cannot do directly, namely, bid on and win two paired blocks (20 MHz) of prime spectrum.

26. In effect, the Department is permitting spectrum sharing between the large wireless service providers by permitting them to bid separately as Associated Entities. However, this will not necessarily translate into shared networks and will exacerbate spectrum stockpiling by the large wireless service providers. Indeed, the best way to encourage efficient deployment through sharing arrangements, specifically by the spectrum-rich large wireless service providers, is to strictly enforce the Associated Entities bidder participation rules.

27. Curiously, whereas the Association rules have in previous auctions been put in place in order to maintain auction integrity and the integrity of the anti-collusion rules, the Department’s proposed power to exempt Associated Entities on the basis of the criterion that there is likely a present intention to compete in the retail market, is in effect a mechanism by which the large wireless service providers may circumvent the main pro-competitive measure deemed applicable to the auction of 700 MHz spectrum.
A. Proposed Definition of Associated Entities

Any entities that enter into any partnerships, joint ventures, agreements to merge, consortia or any arrangements, agreements or understandings of any kind, either explicit or implicit, relating to the acquisition or use of any spectrum in the 700 MHz band will be treated as Associated Entities. Typical roaming and tower sharing agreements would not cause entities to be deemed associated.  

[...]  

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 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;  

28. At paragraph 64 of the 700 MHz Licensing Consultation, the Department proposes to limit the definition of “Associated Entities” for purposes of the bidder participation rules for the 700 MHz auction to those entities that have arrangements etc. “relating to the acquisition or use of any spectrum in the 700 MHz band.”

29. Without limiting the generality of the foregoing, Mobilicity requests clarification that the foregoing encompasses agreements etc.,

   (a) relating to the acquisition or options to acquire an ownership interest in any bidder in the auction of spectrum in the 700 MHz band or any licensee of spectrum in the 700 MHz band, whether via the auction itself or post-auction;

   (b) relating to the sharing, acquisition of or options to share or acquire rights in the spectrum in the 700 MHz band, whether via the auction itself or post-auction;

---

10 700 MHz Licensing Consultation, paragraph 64.
11 700 MHz Licensing Consultation, text box at paragraph 75.
(c) relating to the amounts to be bid, bidding strategies or the particular licence(s) on which the parties to the agreement will or will not bid;

(d) relating to access or sharing or options to access or share a party’s network in relation to the 700 MHz spectrum, whether pre or post-auction; and

(e) relating to the branding and marketing of services using any spectrum in the 700 MHz band.

B. Disclosure and Production to Department of All Relevant Agreements

30. It is implicit but not made expressly clear in the 700 MHz Licensing Consultation that parties that have entered into agreements etc. “relating to the acquisition or use of any spectrum in the 700 MHz band” must file any such agreements with the Department (in addition to the public filing of the narrative referred to at paragraph 66 of the 700 MHz Licensing Consultation).

31. Second, in addition to the types of agreements particularized above as “relating to the acquisition or use of any spectrum in the 700 MHz band”, Mobilicity requests that the parties be required to disclose to Industry Canada any agreements relating to roaming and resale of the 700 MHz spectrum.

32. Mobilicity agrees that standard-form roaming agreements would not normally be caught by the definition of an association. However, for purposes of performing an assessment of association, roaming arrangements should be included in the types of agreements that would prima facie give rise to an association. Mobilicity is concerned about the possibility that parties may enter into arrangements that on their face innocuously appear to relate to roaming but in their terms present enhanced roaming and resale arrangements that are related to or provide future options in relation to use of the 700 MHz spectrum band or the licences to be acquired.
33. Mobilicity notes in this regard that in October 2001, when the wireless units of Bell Canada, Aliant and Telus signed a ten-year “enhanced reciprocal agreement”, their agreement was described as extending “current roaming and resale agreements” that would enhance the reach of each company’s services in areas where their respective networks did not then have geographic reach. The purpose of the arrangement was clearly to “avoid capital expenditures of more than $500 million [each]” that would have been required to build out “hundreds of new towers”, amongst other things.

34. Over time, this enhanced roaming and resale arrangement was increasingly referred to by Bell and Telus as their “national network-sharing agreement,” which Bell stated was being “leveraged” to make its 2009 investment in establishing a “combined EVDO and HSPA network path”, as a precursor to the ultimate goal of establishing a 4G wireless network. Indeed, a senior Bell Mobility executive stated, “We roam out west on Telus and for all intents and purposes you can’t tell if you’re on the Telus network because everything is routed back to our servers” Howe said.

35. The significant point is that from the perspective of even a reasonably informed outside observer, it is oftentimes difficult to discern whether the service received by the retail customer is being provided in a given area:

---


13 BCE, “Bell announces strategic 3G wireless network investment, maximizing consumer choice in mobile data and confirming its path forward to 4G LTE wireless”, New Release (Montreal, Quebec: October 20, 2008), viz., “Bell will greatly reduce time to market for its network overlay by leveraging its existing national network-sharing agreement with TELUS Corporation. The agreement was originally established in 2001 to ensure the fast delivery of and increased competition in national mobile data services, especially in rural and remote areas.” online: <http://www.bce.ca/news-and-media/releases/show/bell-announces-strategic-3g-wireless-network-investment-maximizing-consumer-choice-in-mobile-data-and-confirming-its-path-forward-to-4g-lte-wireless?page=1&perpage=10&year=2008&month=10&keyword=>

14 Telus, “TELUS announces evolution to fourth generation wireless,” News Release (Vancouver: October 10, 2008), viz., “As part of its investment, TELUS has entered into a network sharing agreement with Bell, which builds on and enhances arrangements in place since 2001. The network sharing agreement allows TELUS to lower the cost, increase the speed of the build-out and gives TELUS the ability to offer the widest national coverage for HSPA, using existing 1900 MHz and 850 MHz spectrum, in the shortest time possible. The agreement facilitates the more rapid deployment of next generation wireless voice and data services on a national basis, optimizes cell-site utilization, and maximizes the potential for operating efficiencies. Canadians should benefit from enhanced choice for roaming both domestically and internationally and access to new generation data services and applications.” Online: <http://www.newswire.ca/fr/story/235669/telus-announces-evolution-to-fourth-generation-wireless>

(a) by the retail customer’s contracted retail WSP using that WSP’s licensed spectrum;

(b) by the retail customer’s contracted retail WSP operating transmitters/receivers operating on another WSP’s licensed spectrum (activities that arguably require subordinate licensing);

(c) by the retail WSP through resale of another WSP’s radiocommunication service;

(d) by the retail WSP through enhanced, seamless, digital roaming.

36. As a result, arrangements that relate in whole or in part to the provision of roaming and resale or options to obtain roaming and resale in relation to 700 MHz spectrum should be filed with the Department in advance of the 700 MHz auction (and if such arrangements are entered into after the auction, should be filed with the Department post-auction – see below re Licence Transferability and Divisibility).

C. **Eligibility to Participate Separately in the Auction and to Have Caps Apply to Associated Entities Separately**

<table>
<thead>
<tr>
<th>The licensee must comply with the spectrum aggregation limits as follows:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A limit of two paired frequency blocks in the 700 MHz band (blocks A, B, C, C1 and C2) is applicable to all licensees.</strong></td>
</tr>
<tr>
<td><strong>A spectrum cap of one paired spectrum block within blocks B, C, C1 and C2 is applicable to all large wireless service providers. Large wireless service providers are defined as companies with 10% or more of the national wireless subscriber market share, or 20% or more of the wireless subscriber market share in the province of the relevant licence area.</strong></td>
</tr>
<tr>
<td><strong>The spectrum caps put in place for the 700 MHz auction will continue to be in place for five years following licence issuance. Therefore, no transfer of licences or issuance of new licences will be authorized that allows a licensee to exceed the spectrum caps during this period. Any change in ownership or control granting a right or interest to another licensee in this band may be considered as licence transfer for the purpose of this condition of licence whether or not the licensee name is changed as a result. The licensee must request approval by the Minister of Industry for any change</strong></td>
</tr>
</tbody>
</table>
that would have a material effect on its compliance with these spectrum aggregation limits. Such a request must be made in advance for any proposed transactions within its knowledge.  

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

[...] 

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;  

37. At paragraphs 69-73 of the 700 MHz Licensing Consultation, the Department proposes that notwithstanding a determination that two entities are Associated Entities, they may apply to the Department at least 30 days in advance of the final application deadline to participate in the auction to participate in the auction separately.

38. At paragraph 87, the Department states that Associated Entities “requesting that the spectrum caps be applied individually rather than jointly must demonstrate … that they will be competing in the applicable service area.”

39. The requirement in previous auctions that Associated Entities participate in auctions together was based on the need to preserve the integrity of the auction. There is no countervailing policy justification for Associated Entities to be permitted to participate in the auction separately or to have the spectrum aggregation limits applied separately. More importantly, it is destructive to the principal specific pro-competitive measure announced by the Government in this auction to permit the two national wireless providers (Bell and Telus) to participate separately in the auction and to have the spectrum caps applied separately to each of Rogers, Bell, or Telus notwithstanding any Associations they may now or in the future create.

16 700 MHz Licensing Consultation, paragraph 86.
17 700 MHz Licensing Consultation. text box at paragraph 75.
(i) **Competition in Canadian Mobile Wireless Market Not Fully Evolved**

40. While inroads have been made by the AWS new entrants with the small amount of AWS spectrum they acquired in the AWS auction process, the state of competitive intensity is still fragile in Canada. For example, the *Globe and Mail* recently featured an article that headlined “Canada on track to pass 100-per-cent wireless penetration rate [emphasis added]”\(^{18}\). Many Canadian would likely agree that these issues are on track for improvements as a result of competition brought on by new entrants. However, these benefits would cease to exist practically “overnight” if competition from new entrants disappeared, as Rogers and Bell/Telus will slide back into their comfortable oligopolistic ways, or more accurately, the level of rivalry that obtains when there are only two (2) uncontested national networks.

41. The legacy of the large discrepancies in the amount of spectrum held by different participants in the Canadian wireless market remains the biggest barrier to fair competition. Given this historical legacy and the fact that Canada is lagging behind in almost all measures of competitive intensity, one must guard against copying the policy frameworks of jurisdictions such as the U.K. and the U.S., where pro-competitive measures were undertaken much earlier and vibrant competition has already taken root.

(ii) **Incumbents Need Incentives to Make Efficient Use of the Massive Amounts of Mobile Wireless Spectrum They Already Control**

42. Large mobile wireless carriers control massive amounts of mobile wireless spectrum by both domestic and international standards.\(^{19}\) Rogers, Bell and Telus, in that order, control between them 85 per cent of cellular PCS, AWS and BRS spectrum; Rogers alone, the most mobile wireless spectrum-rich provider in the country, has an average spectrum depth of 149 MHz.

---


43. In the AWS auction, the large wireless service providers clearly bid on spectrum not because they needed additional spectrum to provide better, more advanced services, but rather to foreclose competition by new entrants. In the Department’s 2003 Consultation on Spectrum for Advanced Wireless Services and Review of the Mobile Spectrum Cap Policy, Notice No. DGTP-007-03, October 2003 (the 2003 AWS Consultation) Bell Canada stated that “the new advanced wireless services, such as mobile data, high-speed Internet access and multimedia, are bandwidth intensive.” Bell Canada indicated that “by 2008 it would likely require additional spectrum to both provide advanced wireless services as well as to continue to expand and improve its existing network.”\(^{20}\) This has not been the case, and as of March 2011, Bell had still not indicated its plans to deploy on AWS spectrum.

44. 700 MHz spectrum is scarce – Decision B3-2 of the 700 MHz and 2500 MHz Policy and Technical Framework specifically targeted the large wireless service providers. It is difficult to understand what policy rationale informs the proposal in the 700 MHz Licensing Consultation to circumvent the large wireless service providers’ 10 MHz spectrum cap through Associations that they may now or in the future form. Feeding the already spectrum-rich Rogers and Bell/Telus with more spectrum will only further motivate them to use their existing stockpile of spectrum inefficiently, or in the case of the AWS spectrum, it may prevent their use in some regions altogether. Indeed, who would construct on land elsewhere when it already has access to beachfront land and constructing on the beachfront land will meet all consumers’ needs?

(iii) Spectrum Caps Must Be Strictly Enforced in Order to Meet Policy Objective of Competition and New Investment

45. In Mobilicity’s response to Notice No. SMSE-018-10, Mobilicity asked for a new entrant set aside and a 30 MHz cap for spectrum under 1GHz (1000 MHz).\(^{21}\) A number of other parties proposed a variety of different measures to promote fledgling competition in Canada’s mobile wireless markets.

---


\(^{21}\) Mobilicity, Comments dated 6 April 2011 in response to Notice No. SMSE-018-10.
46. In the *700 MHz and 2500 MHz Policy and Technical Framework* (Notice No. SMSE-002-12), the Department determined that the only measure that it would adopt to promote competition in the auction of 700 MHz spectrum was a dual spectrum cap of (i) Decision B3-1: 20 MHz of paired spectrum in the all MBS bands applicable to all Licensees and (ii) Decision B3-2: 10 MHz of paired spectrum in the prime MBS bands B, C, upper C1 and C2.

47. Instituting the spectrum aggregation limits on the one hand and providing Associated Entities with a mechanism to effectively circumvent these spectrum aggregation limits through their very association is counter-purposive to the central objective of ensuring that nascent competition in Canada’s mobile wireless market takes hold.

48. The proposed criterion of “competition in the retail market” for exemption from the bidder participation and spectrum cap rules is vague. Moreover, it will lead to the discretionary exemption of virtually all Associated Entities from policy decisions B3-1 and B3-2. In effect, short of two parties having entered into a joint marketing (branding) of their retail telecommunications services, it appears to be the Department’s intention to exempt parties from the application of the dual spectrum aggregation limits. Again, if this is the criterion that the Department intends to apply, it would be tantamount to having no rules in place to promote competition and investment by new entrant providers.

49. It also belies the Government’s statement that Decision B3-2 (the 10 MHz paired block cap on large wireless service providers) is intended to function “like a set-aside.”

50. Given the fragility of competition in the mobile wireless market, the stockpiling of mobile wireless spectrum by the incumbents, and the reality that the spectrum aggregation limits are the only tool in the regulatory toolkit that the Department has adopted to promote competition in the 700 MHz auction, Mobilicity is strongly opposed to the proposed ability of the Department to exempt Associated Entities from the bidder participation and spectrum cap rules.

---

(iv) No Exemptions for Large Wireless Service Providers

51. *If the Department intends to reserve to itself discretion to exempt parties that are otherwise “Associated” from the spectrum aggregation rules, then Mobilicity requests that at a minimum, the Department expressly provide that large wireless service providers and their Affiliates will be precluded from applying for such exemptions.*

52. Furthermore, as submitted below, the integrity of the Department’s spectrum aggregation limits must be protected not only pre-auction but also post-auction.

D. Level of Public Disclosure and Public Process

66. *Auction integrity and transparency:* In order to ensure auction integrity and transparency, all entities wishing to participate in the auction process will be required to disclose in writing, as part of their applications the names of affiliated and associated entities. It is proposed that a narrative also be submitted, describing all key elements and the nature of the affiliation or association in relation to the acquisition of the spectrum licences being auctioned and, the post-auction relationships of the said entities. It is proposed that this would include arrangements with another potential bidder that relate in any way to the future use of the 700 MHz spectrum directly or indirectly.

…

68. The submitted narrative would be made available to other bidders and to the public on Industry Canada’s website prior to the auction in order to ensure transparency of the licensing process.

…

69. *Eligibility to participate separately in the auction:* … It is now proposed that associated entities could be permitted to apply to Industry Canada to participate in the auction separately. The submitted narrative would be assessed to determine whether permitting both entities to participate separately would negatively impact the integrity of the auction process. The auction integrity would be best assured by the transparent disclosure of the relationships between bidders participating in the auction. Industry Canada may request additional documents. Any information considered by the application to be confidential should be properly marked as such. If Industry Canada deems it necessary to disclose any information marked as confidential, the applicant would be consulted prior to release.
70. **Eligibility to have caps apply to associated entities separately:** It is proposed that in addition to the above, associated entities could request that the spectrum caps apply individually. … In making this determination, Industry Canada would consider all relevant factors. Depending on the nature of the agreement, documentation may be required that sets out the details of the association, including copies of all arrangements or agreements, for example agreements related to network architecture and spectrum use and documents related to corporation decision marking, marketing and customer information, sales and financing. Assessment criteria may include, but would not be limited to, consideration of the degree to which the entities would offer branded services pricing and device selection that are unique from the other.

…

73. Associated entities wishing to participate in the auction separately would be required to submit their application at least 30 days in advance of the final application deadline to participate in the auction. This would provide Industry Canada the additional time required to make an assessment of the association and provide a decision on the associated entities’ ability to participate in the auction separately, and have the cap apply individually, if so requested. Should the request be denied, the associated entities would be required to select which member entity will apply to participate in the auction.

[…]

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

- the level of information to be disclosed to the public;  

53. Mobilicity supports the Department's proposal (at paragraphs 66-68 of the 700 MHz Licensing Consultation) that applicants to bid in the auction must publicly disclose current agreements *etc.* with respect to “future use of the 700 MHz spectrum directly or indirectly” in writing by way of a “narrative [to] be submitted, describing all key elements and the nature of the affiliation or association in relation to the acquisition of the spectrum licences being auctioned.” The Department further proposes that the “narratives” would be made publicly available on the Industry Canada website prior to the auction.

54. In order to make this right of public access to information relating to applicants to become qualified bidders in the 700 MHz auction meaningful, Mobilicity assumes that a public

---

23 *700 MHz Licensing Consultation*, paragraphs 66-68, 69 and 70 (in part), and 73.
comment process will be incorporated. This is particularly important given that although the identities of qualified bidders will be disclosed, it is unclear whether other information regarding the bidders and their activity in the auction will be disclosed.

55. In this regard, the 700 MHz Licensing Consultation did not provide details regarding the presumed public process that will accompany applicants’ public disclosure obligations regarding agreements etc. that give rise to or could potentially give rise to an Association.

56. Mobilicity further notes that in the last mobile wireless spectrum auction conducted by the Department, barely three weeks was provided for between the deadline for receipt of applications to participate in the AWS auction and the Department’s decision on qualified bidders. The timelines associated with the AWS auction were extremely tight. As tight as they were, they were arguably manageable given that in that prior auction, the Department implemented a new-entrant set-aside as well as spectrum aggregation limits, whereas in the upcoming 700 MHz auction, the only measure adopted is a dual-cap. It is fairly arguable that more time must be incorporated into the process for participants (and new entrants specifically) to finalise their capitalisation and financing arrangements.

57. Therefore, Mobilicity requests:

(a) Express provision of a public comment period in relation to the public disclosure obligations set out at paragraphs 66-68, 70 and 73 of the 700 MHz Licensing Consultation;

(b) Adequate time (minimum of three months) between the deadline for receipt of application to participate in the auction and the publication of the list of qualified bidders.

58. Furthermore, should the Department overrule Mobilicity’s (and presumably) others’ deep-seated concerns regarding the discretion to exempt Associated Entities from the bidder participation and spectrum aggregation limits, there are ancillary concerns with respect to timing of the applications to participate, the payment of pre-auction financial deposits and
the Department’s determinations with respect to the participation of Associated Entities in the 700 MHz auction.

59. At a minimum and while Mobilicity does not support the Department’s proposal to permit Associated Entities to apply to participate separately in the auction and for separate application of the spectrum aggregation limits, to the extent that this is permitted, the Department should make these applications for exemption from the rules public and should make such applications subject to a public comment period.

60. Moreover, careful consideration must be given to the timing of the Department’s consideration of applications by Associated Entities for permission to participate separately in order to make this right of public participation meaningful. In the period leading up to the auction, applicants must finalise their financing and capital plans in order to bid in the auction. It would be extremely difficult to finalise such plans if the Department maintains its stated intention to exempt Associated Entities from the application of the bidder participation and spectrum aggregation limits. While probably most harshly felt by new entrants, all parties, including large wireless service providers, would share these uncertainties. Living with these contingencies in the period leading up to and during an auction is a reality that bidders are aware of.

61. However, this hardship would be exacerbated and could potentially completely disrupt new entrant capitalization and financing plans were the Department to (i) require applicants to make significant pre-auction financial deposits prior to knowing which entities are Associated and which Associated Entities will be permitted to participate separately notwithstanding their Association; and (ii) leave until the last moment its decision on which Associated Entities will be permitted to participate separately in the auction and have the spectrum aggregation limits applied separately.

62. Mobilicity notes in this regard that the 700 MHz Licensing Consultation merely provides that Associated Entities may apply to the Department “at least 30 days in advance of the
final application deadline to participate in the auction”

63. Furthermore, if the rules for the 700 MHz provide for a discretion on the part of the Department to permit separate participation and separate application of the spectrum aggregation limits, the Department should consider:

(a) incorporating an opportunity for public comment on applications for separate participation and separate application of spectrum aggregation limits on Associated Entities;

(b) requiring that such applications by Associated Entities be filed four months prior to the deadline for applications to participate in the auction;

(c) requiring that such applications be accompanied by an Affidavit provided by an officer of the company stating that (i) there are no other express, implied or tacit agreements etc. with respect to the use of the spectrum to be auctioned, within the meaning of the Department’s decision on the 700 MHz Licensing Framework that results from this Consultation and (ii) the applicant will not cooperate, collaborate, discuss, negotiate or enter into agreements, arrangements or understandings with any parties other than its declared Affiliates and Associated Entities regarding the licences being auctioned, bids or bidding strategies in the auction, or the post-auction market structure, or signaling its bidding intentions, either publicly or privately, until the end of the bidding process;

(d) providing that the Department’s determination of applications regarding the participation of Associated Entities must precede the deadline for applications to participate in the auction (and the making of the pre-auction financial deposits) by at least three months;

(e) providing that the Department’s determination of applications by Associated Entities must precede the deadline for making the pre-auction financial deposits

---

24 700 MHz Licensing Consultation, paragraph 73.
by at least three months or in the alternative, the financial deposits should be refundable upon publication of the Department’s decision on Associated Entities that may participate separately and have the spectrum aggregation limits applied separately.

E. Proposed Definition of Affiliated Entities

<table>
<thead>
<tr>
<th>Definition of Affiliated Entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>An affiliated entity is defined as a person who controls the entity, or who is controlled by the entity or by any person who controls the entity. “Control” means control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, agreement or arrangement, the ownership of a body corporate or otherwise. Control in fact is the ongoing power or ability, whether exercised or not, to determine or decide the strategic decision-making activities of an enterprise, or to manage or run the day-to-day operations of an enterprise.25</td>
</tr>
</tbody>
</table>

[...]

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

[...]

The proposal that no changes be made to the affiliated entities rule.]

64. Mobilicity has no comment on the proposed definition of an Affiliate at this time.

5.1 Prohibition of Collusion

<table>
<thead>
<tr>
<th>Prohibition of Collusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>From the date of application until the deadline for the final payment on winning bids, each applicant is prohibited from cooperating, collaborating, discussing, negotiating or entering into agreements, arrangements or understandings with any competitors regarding the licences being auctioned, bids or bidding strategies in the auction, or the post-auction market structure. Each</td>
</tr>
</tbody>
</table>

25 700 MHz Licensing Consultation, paragraph 74.
applicant is also prohibited from signaling its bidding intentions, either publicly or privately, from the application deadline until the end of the bidding process.

The application form to participate in the auction will include a declaration that the applicant will be required to sign certifying that the applicant has not entered into any agreements, arrangements or understandings of any kind with any competitor, other than those disclosed to Industry Canada, regarding the spectrum licences being auctioned or the post-auction market structure. The applicant must also certify that it will not discuss during the auction, any agreements, arrangements or understandings of any kind with any competitor, including its disclosed associated entities, regarding the spectrum licences being auctioned or the post-auction market structure. For the purposes of this certification, “competitor” means any entity, other than the applicant and/or its affiliates, which could potentially be a bidder in this auction based on its qualifications, abilities or experience.

Should a bidder fail to comply with this prohibition, it may be subject to disqualification from the auction and/or forfeiture penalties.  

65. At paragraphs 76 to 79, the Department proposes to prohibit discussions etc. of any kind “from the date of application until the deadline for final payment on winning bids … with any competitors regarding the licences being auctioned, bids, or bidding strategies in the auction, or the post-auction market structure” (i.e., the “anti-collusion rules”).

66. Mobilicity supports the Department’s proposed policy of prohibiting discussions between competitors during the auction period. However, it has two significant concerns about the effectiveness of the anti-collusion rules.

67. The anti-collusion rules apply only as amongst “competitors.” “Competitors” are not defined but in prior Industry Canada auctions, was defined as “any entity, other than the applicant, its Affiliates or Associated Entities, which could potentially be a bidder in this auction based on its qualification, abilities or experience.” By definition, then, “competitors” do not include Affiliates and Associated Entities; and this is so, presumably, even if they are successful in applying to the Department to bid separately in the auction or be exempt from the spectrum aggregation limits. As a consequence, one is forced to conclude that the anti-collusion rules do not apply to Affiliates and Associated Entities

26 700 MHz Licensing Consultation, paragraph 79.
68. However, the Department proposes to exempt Associated Entities from the requirement that only one member of an association may participate in the auction on the basis of whether they “intend to compete in a given service area.” In other words, Associated Entities must prove to the Department that they are “competitors” in order to gain an exemption from the bidder participation rule that only one member of an association may participate in the auction.

69. This begs a number of questions:

   (a) If two Associated Entities are exempted from the bidder participation rule such that they are permitted to participate separately in the auction on the basis that they have satisfied the Department that they intend to compete, then do the anti-collusion rules, which apply to “competitors” in a given service area therefore apply?

   (b) If two national wireless carriers are Associated Entities, they may intend to compete in certain regions and not in others. Historically, under the Department’s definition of “competitors” the assessment of whether two entities are “competitors” is done on a service area by service area basis. Given that the proposed anti-collusion rules apply as between an applicant and competitors, does this mean that in theory, two Associated Entities may collude with respect to the service areas in which they are deemed not to be competitors and not in respect of service areas in which they are deemed to be competitors? If so, how would the application of the anti-collusion rules be enforced under the CCA format, practically speaking?

70. The enforceability of the anti-collusion rules is the second main concern. The AWS Policy Framework had similar rules in place for both bidder participation and anti-collusion. These rules notwithstanding, the result of the AWS spectrum auction provides troubling evidence that Bell and Telus were able to circumvent the rules with impunity.

71. To illustrate, depicted below are two figures. Figure 1 depicts Bell’s AWS licensed areas. Figure 2 depicts Telus’ AWS licensed areas.
72. The blue-coloured areas in Figure 1 represent the areas where Bell was successful in winning 20 MHz of paired 10 + 10 MHz blocks of spectrum. The red-coloured areas in Figure 1 represent the areas where Bell was successful in winning 10 MHz of paired 5 + 5 MHz blocks of spectrum.

FIGURE 1 – BELL AWS LICENCES

73. Figure 2 below depicts Telus’ AWS licensed areas. Miraculously, Telus’ AWS acquisitions perfectly mirror, with very few exceptions, Bell’s AWS acquisitions. In particular, Telus acquired 20 MHz of paired 10 + 10 MHz blocks of spectrum in the three areas (i) Ottawa-Hull and Eastern Quebec, (ii) London-Chatham-Windsor and (iii) and the provinces west of Ontario (except the northern territories), where Bell only obtained 10 MHz of paired spectrum (or less). Conversely, Telus acquired 10 MHz of paired 5 + 5 MHz blocks of spectrum in the four areas (iv) Atlantic provinces, (v) western Quebec, (vi) Ontario outside of the Ottawa-Hull region and London-Chatham-Windsor corridor; and (vii) the northern territories where Bell acquired 20 MHz of paired 10 + 10 MHz blocks of spectrum.
74. The results of the AWS auction speak for themselves and can hardly be a coincidence. Whether through express, implied or tacit arrangements, discussions or signaling, and the strict rules of the AWS auction notwithstanding, Bell and Telus were permitted to participate in the auction separately, have the spectrum aggregation limits apply to them separately and were allowed to keep their AWS licences, despite clear evidence that the rules were flaunted or ignored.

75. Let there be no mistake – parties are permitted to coordinate their bidding strategies and to agree on rules and responsibilities in terms of network deployment and the utilisation of spectrum post-auction in the interests of efficiency or otherwise. However, they must do so transparently such that the spectrum aggregation limits are respected and the integrity of the auction is preserved.
76. Apart from the bidder participation and anti-collusion rules, the results of the AWS auction provide convincing evidence that the Department should consider establishing additional rules to deter breaches of the established principles.

77. *For example, the Department may wish to consider establishing rules that permit it to disqualify applicants during the auction, strip applicants of licences won or to impose meaningful monetary penalties should parties act in breach of the bidder participation and anti-collusion rules.*

78. However, in Mobilicity’s view, a more effective mechanism to deter implied or tacit arrangements prior to the auction and during the course of the auction is to make it clear that in the post-auction period, all arrangements with respect to use of the 700 MHz spectrum (as defined in relation to the definition of Associated Entities) will have to be submitted to the Department for approval.

79. The rules in the AWS auction and the proposed rules in the 700 MHz auction only contemplate agreements or arrangements entered into prior to the auction. As currently formulated, they motivate the parties that generally do not act in good faith to conceal the existence or discussions to enter into these kinds of agreements or arrangements prior to the auction. For the parties that generally act in good faith, the rules in place would at minimum motivate them to delay the solidification of such agreements or arrangements until after the auction has concluded. If it is against the policy or cap to enter into an agreement or arrangement prior to the auction, allowing parties to enter into similar agreements or arrangements with respect to the 700 MHz spectrum in the post-auction period appears to be a significant “loophole” to the policy.

80. *Mobilicity therefore requests that Licensees’ ability to enter into any agreement etc. with respect to the acquisition or use of the 700 MHz spectrum within five (5) years of the conclusion of the auction be subject to Departmental approval. In deciding such applications, the Department should give due consideration to the time elapsed between the close of the auction and conclusion of the agreement or arrangement pertaining to*
6. CONDITIONS OF LICENCE FOR SPECTRUM IN THE 700 MHz BAND

6.1 20 YEARS LICENCE TERM

Industry Canada is seeking comments on its proposal to issue spectrum licences in the 700 MHz band with a 20-year licence term.

81. Mobilicity fully supports Industry Canada’s proposal to issue 700 MHz band licences for 20-year terms. Wireless networks require significant investments in long-lived assets. If the owner of such investments believes it may lose the right to the frequencies needed to make the long-lived capital investment profitable, then it will have diminishing incentives to make productive investments as the end of the licence term approaches. Consequently, to provide the incentives for productive investments, licensees should feel secure in their rights to the spectrum. This is facilitated by longer licence terms and by the policy of a high expectancy of renewal. Longer licence terms and a high expectancy of renewal will also increase auction revenues.

6.2 AGGREGATION LIMITS

Industry Canada is seeking comments on the proposed wording of the condition of licence related to the spectrum aggregation limits.

82. Absent spectrum caps, spectrum aggregation limits are essential to ensuring new entry. Mobilicity supports the idea of a two (2) block cap for all licensees and a one (1) block cap for large licensees. To be effective, however, a spectrum cap must cover all relevant spectrum bands. As proposed, the unpaired D and E blocks are exempt from the aggregation limits and the A block is not included in the large entity aggregation limit. To create the conditions for the most competition in the auction, the D and E and the A blocks (the “Non-Prime Blocks”) should be included in all aggregation limits. Mobilicity submits three (3) arguments to support this:
(a) The Non-Prime Blocks are substitutable for the paired spectrum;

(b) The high risks of hoarding over the Non-Prime Blocks spectrum; and

(c) The likely outcome given the current regime.

A. Substitutability of the Non-Prime Blocks

83. D and E Blocks. Historically, when mobile networks predominantly carried voice traffic, they were designed around paired spectrum with equal capacity for the uplinks and downlinks. As more and more data are transmitted over wireless networks, asymmetric architectures are likely to predominate in the future. This parallels the developments of wired data networks that were originally symmetrically designed when they were narrowband and now are asymmetrically designed in the broadband age.

84. While unpaired spectrum licences were traditionally used for one-way transmissions, such as broadcasting, newer technologies allow for the use of unpaired spectrum for two-way communications. For instance, WiMax and future releases of LTE can use unpaired spectrum for stand-alone two-way communications systems or, more importantly, for one-way communications in conjunction with paired bands—the so-called asymmetric network architecture. In most relevant cases, the value of unpaired spectrum is not as high as paired spectrum, but the value of unpaired licences is increasing relative to paired spectrum. During the 2008 U.S. 700 MHz auction, the average nationwide price of unpaired spectrum was discounted by around 46% off of the average nationwide paired spectrum price. Since then, market trades of unpaired spectrum suggest that the discount for unpaired bands dropped to around 40% as of the end of 2010.\(^{28}\) This trend of decreasing discounts for unpaired spectrum is expected to continue as carriers start to deploy asymmetric architectures in coming years and as technologies advance. As it is very likely that the D and E blocks will be deployed in an asymmetric architecture, they provide a substitute for additional paired spectrum as carriers expand capacity.\(^{29}\)

\(^{28}\) For more detailed explanation, see Coleman Bazelon, “The Economic Basis of Spectrum Value: Pairing AWS-3 with the 1755 MHz Band is More Valuable than Pairing it with Frequencies from the 1690 MHz Band,” April 11, 2011.

\(^{29}\) The use of an unpaired band in an asymmetric network configuration is not limited to deployment with similar spectrum. For example, AT&T’s purchase of Qualcomm’s unpaired 700 MHz spectrum was initially intended to be used asymmetrically with...
85. **A Block.** The paired A block is said to be distinguishable to the other paired blocks for several reasons, including interference constraints associated with the adjacent broadcast television stations on channel 51 in some markets\(^{30}\) and the equipment ecosystem. These differences are significant enough that, as the Department recognized, the A block is not a generic substitute for the B or C blocks (for licences to be generic substitutes, bidders should be completely indifferent to one block or the other). But the differences are not sufficiently large that the A block does not substitute for these and other bands.

86. These differences may also be transitory – further reallocation of broadcast spectrum through the U.S. incentive auctions will likely eliminate the channel 51 issues.

87. The Department appears to recognize the potential substitutability of the A block by including the A block in the set of licences subject to the two-block cap applicable to all licensees. For the same reasons, that it should be included in the two-block limit applicable to all licensees, it should also be included in the one-block cap applicable to large wireless service providers. That is, if the A block is sufficiently substitutable with the B, C, C1 and C2 blocks that it should be under the same two-block aggregation limit, it is also sufficiently substitutable with those same blocks that it should be under the one block limit applicable to large wireless service providers.\(^{31}\)

**B. The Realistic Outcome**

88. Given the dual-cap limits, it is conceivable and obvious, based on the current parties’ financial positions and assuming the CCA and all associated entities rules work flawlessly, that the Rogers, Bell and Telus will each end up with one of the four (4) prime blocks. As to the remaining Non-Prime Blocks, it is also conceivable that the Big 3 will be winners of these unless all three of them do not want them. Thus, all new entrants and all regional incumbents will be brawling for the last remaining prime block after the Big 3 have made

---

\(^{30}\) The same issue of interference with channel 51 occurred during the U.S. 700 MHz auction. For further details see Coleman Bazelon, “Too Many Goals: Problems with the 700 MHz Auction,” Information Economics and Policy, June, 2009.

\(^{31}\) The substitutability is driven by two factors: equipment availability and cost and by the TV channel 51 problem. The equipment issue is less applicable to large entities than to smaller ones, so that cannot be a sufficient reason to apply it in one case and not the other. The TV channel 51 problem is very uneven—it is significant in the presence of a broadcaster on TV channel 51 and not relevant in other markets and does not provide a reason to distinguish between large and other bidders.
their preferential picks, optimistically revealed through the revealed preference activity rule. In all likelihood, regional incumbents will use everything in their power to bid and win the spectrum within their region (assuming they are not interested in expanding outside their existing region). Therefore, what new entrants like Mobilicity can expect are geographically isolated prime blocks that they will need to bid aggressively against each other for.

89. Needless to say, the end result would be much different if the dual-cap limits apply to all blocks, including the Non-Prime Blocks. In this case, new entrants have a chance at both greater geographic coverage and spectrum depth.

C. High Risk of Spectrum Hoarding

90. If the Non-Prime Blocks falls into the hands of the already spectrum rich incumbents, there may be high probabilities and risks that the incumbents would simply hoard the Non-Prime Blocks and will not utilize them. It is indisputable that the Non-Prime Blocks are less desirable than the prime blocks, or that future ecosystem supports for any of the Non-Prime Blocks (if any) would be secondary in nature to those for the prime blocks of paired spectrum. Given the lesser desirability, one would question what priorities Rogers, Bell and Telus would place in deploying or finding uses for the Non-Prime Blocks if they ultimately acquire these Non-Prime Blocks. If the Big 3 also win one prime block each, would one be surprised if the Big 3 did nothing with the Non-Prime Blocks?

91. The story is much different however if the Non-Prime Blocks fell into the hands of one or more new entrants. The lack of sub 1,000 MHz spectrum and capacity issues will motivate new entrants to make full use of the Non-Prime Blocks. Indeed, it might even drive new entrants to initiate processes that would find uses for the Non-Prime Blocks. Even if one new entrant ends up winning a prime block, it will mean that all the other new entrants are still without sub-1,000 MHz spectrum.

92. By including the Non-Prime Blocks as part of the dual-cap limits, the Department would significantly increase the probability that one of these disenfranchised new entrants will acquire at least some sub-1,000 MHz spectrum and thus support increased competition. At
the same time, the Department will also have a higher chance of meeting the objective to have the Non-Prime Blocks spectrum utilized to their potential, and not hoard, sit idle or underutilized.

93. To conclude, **absent a spectrum set aside for new entrants, the spectrum aggregation limits established in the 700 MHz and 2500 MHz Policy and Technical Framework take on added importance and should include all relevant spectrum and relationships. In particular:**

   (a) The 700 MHz A block should be included under both the general two-block limit and the large wireless service providers’ one-block limit, and

   (b) The unpaired 700 MHz D and E blocks should be included under both the general two-block limit and the large wireless service providers’ one-block limit.

### 6.3 Transferability and Divisibility

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

94. At paragraph 88, the Department states that “[w]here licensees establish an agreement to share spectrum such that another entity has control over the use of the spectrum, a subordinate licence is required.” However, “[s]ubordinate licences may not count towards the licensee’s aggregation limit if the licensees demonstrate to the satisfaction of Industry Canada that they meet the criteria with respect to competing in the applicable service area.”

95. At paragraphs 90 to 94, the Department proposes that licensee may apply in writing for transfer of its licence on condition that all conditions of licence have been met, subject to the right of a transferee to have the subordinate licence excluded from the calculating of the transferee’s holdings for the purposes of spectrum cap, again if it can demonstrate as part of its application that it will compete with any associated entities in the serving area.

96. As discussed above in Mobilicity’s comments on the anti-collusion rule, parties should be required to apply to the Department where they enter into any agreement or arrangement
with respect to the acquisition or use of the 700 MHz spectrum within five years from the
close of the auction.

97. Where such applications would have the effect of putting one or more parties over their
spectrum aggregation limits, consistent with Mobilicity’s submissions above, Mobilicity
submits that such applications should not be approved by the Department, contrary to what
is proposed at paragraphs 88 and 90-94 of the 700 MHz Licensing Consultation.

98. The AWS Conditions of Licence (amended as of November 2008) currently provide that

2. Licence Transferability and Divisibility

Licences acquired through the set-aside of spectrum (as defined in Policy
Framework for the Auction for Spectrum Licences for Advanced
Wireless Services and other Spectrum in the 2 GHz Range) may not be
transferred or leased to, acquired by means of a change in ownership or
control of the licensee, divided among, or exchanged with companies
that do not meet the criteria of a new entrant, for a period of 5 years
from the date of issuance. Industry Canada will consider requests from
licensees, whether new entrants or incumbents, to exchange spectrum
blocks in the same geographic territory, provided that the amount of
non-set-aside spectrum is equal to or greater than the set-aside spectrum
and the Department may grant such requests based on the merits of the
proposal and conformity with the policy objectives.

99. Mobilicity understands that subject to the spectrum aggregation limits for the 700 MHz
spectrum band and to ongoing compliance with the Conditions of Licence, there would be
no restrictions on requests by new entrants or other parties from applying for transfer or
division of any 700 MHz spectrum licences that they hold and that as currently proposed,
there would be no impediment to the AWS new entrants from transferring or dividing their
700 MHz spectrum holdings at the same time as their AWS spectrum. Specifically,
Mobilicity requests that any new rules pertaining to transfer or divisibility of the 700 MHz
spectrum not impede the ability of the AWS new entrants to transfer or divide any 700
MHz spectrum at the same time as they transfer their AWS spectrum, should such
transfer be part of a single transaction.
6.4 FOREIGN OWNERSHIP

Industry Canada is seeking comments on the proposed wording of the condition of licence related to eligibility criteria.

100. Mobilicity supports the revisions to the Telecommunications Act that lift the restrictions on foreign ownership and investment in Canadian telecommunications companies. Telecommunications networks generally, and mobile telecommunications networks specifically, require significant capital expenditures combined with technological and market expertise. Artificially limiting capital and know-how will unnecessarily limit the competitive forces deployed in the Canadian wireless marketplace and is likely to reduce auction receipts.

6.5 EXISTING SPECTRUM USERS

Industry Canada is seeking comments on the proposed wording of the condition of licence related to the treatment of existing spectrum users.

101. The existing spectrum users in the 700 MHz band are television broadcasters who relocate out of the 700 MHz band as part of the natural transition to digital television. This is not a sale of spectrum from the television broadcasters to carriers. Consequently, Mobilicity does not support the change to the proposed wording of the condition of licence related to the treatment of existing spectrum users.

6.6 RADIO STATION INSTALLATIONS

Industry Canada is seeking comments on the proposed wording of the condition of licence related to radio station installations.

102. Mobilicity has no comment at this time.

6.7 TECHNICAL INFORMATION

Industry Canada is seeking comments on the proposed wording of the condition of licence related to the provision of technical information.
103. Mobilicity has no comment at this time.

6.8 **COMPLIANCE WITH LEGISLATION, REGULATION AND OTHER OBLIGATIONS**

*Industry Canada is seeking comments on its proposed condition of licence related to compliance with legislation, regulation and other obligations.*

104. Mobilicity has no comment at this time.

6.9 **TECHNICAL CONSIDERATIONS AND INTERNATIONAL AND DOMESTIC COORDINATION**

*Industry Canada is seeking comments on the proposed condition of licence related to technical considerations and international and domestic coordination.*

105. Mobilicity has no comment at this time.

6.10 **LAWFUL INTERCEPT REQUIREMENTS**

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

106. Mobilicity has no comment at this time.

6.11 **RESEARCH AND DEVELOPMENT REQUIREMENT**

*Industry Canada is seeking comments on the proposed condition of licence related to the research and development requirement.*

107. Mobilicity has no comment at this time.

6.12 **RURAL DEPLOYMENT REQUIREMENTS**

*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 paired blocks of spectrum” for the purposes of this condition of licence.*
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.

108. For new entrants, rural builds will only be feasible if a new entrant can acquire significant national coverage of prime paired blocks of spectrum across Tier 2 areas in the auction. This contrasts with the large wireless service providers that were handed their sub-1,000 MHz cellular spectrum for free (and in the case of Rogers, subject to the protection of a no-head-start rule). Even without the proposed power to exempt Associated Entities, it will be very difficult for a new entrant to acquire a prime paired block of spectrum. However, if the Department exempts large wireless service providers from the application of the bidder participation and spectrum aggregation limits by virtue of Associations that they may form, in all likelihood, the Department will be further and completely closing the door to any possibility of a national new entrant. Consequently, competition on a national scale would be left up to Rogers on the one hand, and Bell/Telus on the other. Canadians are all too familiar and have expressed their dissatisfaction with this variety of “competition”, if one can call it that.

109. The proposed rural deployment requirements are a sensible way to ensure licence build-out in rural areas without putting undue economic burdens on licensees. This balance is achieved by tying the build-out requirements to where existing high speed networks have been deployed and limiting the requirements to carriers with access to at least two paired bands of (prime or unprime) spectrum. Deployment of HSPA networks in rural areas is strongly influenced by economic factors. Existing deployment of HSPA networks therefore serves as a proxy for where high-speed network deployments make economic sense. Requiring that this service area is largely served by 700 MHz network deployments allows these build-out requirements to be determined by licensees’ prior revealed choices.

110. It goes without saying that the delicate balance struck by the proposed rural deployment rule is premised on the assumption that bidders are in full compliance with commitments made
and binding conditions of licence with respect to prior mobile wireless spectrum acquisitions. Otherwise, the proposed rural deployment requirement makes no sense. It follows, therefore, that a licensee that has not deployed or has failed to meet its commitments and conditions of licence on its existing mobile wireless licenses should not gain advantage through a less burdensome build-out requirement for its 700 MHz licenses, at least in the geographical areas where the licensee has failed to meet its commitments and conditions of licence.

111. As a result, Mobilicity requests that service providers that have failed to meet their deployment commitments or conditions of licence in relation to a given geographical area, be barred from bidding on any 700 MHz spectrum in such area. For example, if Carrier X failed to satisfy its AWS deployment requirements in Region A, Carrier X should be barred from bidding in the 700 MHz auction in Region A. This is justified by the fact that the five-year build-out requirements for AWS spectrum will have passed for all intents and purpose prior to the start of this 700 MHz auction. This will serve to prevent parties from “gaming the system” by forming an Association with a large wireless service provider for purpose of circumventing the prime spectrum block acquisition limits.

112. Similarly, when a licensee is required at a future time to return its AWS spectrum holdings in a particular geographic area because it failed to satisfy the deployment commitments, the licensee should also be required to return any 700 MHz spectrum it acquired in that geographic area.

6.13 Mandatory Tower and Site Sharing

Industry Canada is seeking comments on the proposed wording of the condition of licence related to mandatory antenna tower and site sharing. Comments on the specifics of the requirements should be submitted through the process announced through Canada Gazette notice DGSO-001-12.

113. Subject to submissions in DGSO-001-12, Mobilicity has no further comments at this time.
6.14 MANDATORY RoAMING

Industry Canada is seeking comments on the proposed wording of the condition of licence related to mandatory roaming. Comments on the specifics of the requirements should be submitted through the process announced in Canada Gazette notice DGSO-001-12.

114. Subject to submissions in DGSO-001-12, Mobilicity has no further comments at this time.

6.15 ANNUAL REPORTING

Industry Canada is seeking comments on the proposed condition of licence related to the requirement for annual reporting.

115. Mobilicity has no comment at this time.

7. AUCTION PROCESS

7.2 OPENING BIDS

Industry Canada is seeking comments on the proposed opening bids as presented in Table 4.

116. Mobilicity has no comment at this time.

7.3 PROPOSED ELIGIBILITY POINTS FOR SPECTRUM

Industry Canada is seeking comments on the proposed eligibility points for spectrum licences in the 700 MHz band, as outlined in Table 5 above.

117. Mobilicity has no comment at this time.

7.4 PRE-AUCTION DEPOSITS

Industry Canada is seeking comments on the proposed pre-auction deposits as outlined above.

118. Apart from the concern addressed above with respect to ensuring adequate lag time between the Department’s determinations of applications by Associated Entities to participate in the
auction separately (assuming that this exemption power is maintained in the Licensing Framework decision), Mobilicity has no comment at this time.

7.5 Bid-Payments and Forfeiture Penalties

119. The Department had, in the past, cited benefits of allowing winning bidders to pay the bid-payments via installment payments. This includes relieves of the heavy financial burdens of smaller bidders that are also required to make large investments on network infrastructure and competition. However, the Department had also stated that a “potentially serious drawback with an instalment payment system is that a smaller up-front payment encourages speculators to enter the bidding process”.

120. Mobilicity notes that the eligible bidders are likely also existing service providers with HSPA+ networks. As such, the potential drawback for speculations given a smaller up-front payment should be minimal, if not completely eliminated.

121. Therefore, Mobilicity requests that the Department consider allowing new entrants to make bid payments through installment payments.

10 Licence Renewal Process

Industry Canada is seeking comments on the proposed renewal process for spectrum licences in the 700 MHz band.

122. Mobilicity has no comment at this time.