Consultation on Renewal Process for 2300MHz and 3500MHz Licenses
DGSO-OO6-12

BLURR Wireless
Quoins Corporation
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An Introduction

1. I, Oliver Bush, continue to enjoy a 30+ year career in telecom.
2. I drafted and submitted the initial application for the first cellular licenses issued in Canada for a company that later became known as Cantel Cellular Radio Group Inc. (Cantel) in 1983 (today Rogers Wireless).
3. I served as Strategic Director of Call-Net Enterprises (Call-Net) and as the acting President of Lightel Inc., the fibre optic back bone servicing Call-Net’s long distance customers (now Rogers Home).
4. In 1989, I moved to Alexandria Virginia where I was founder and Chief Executive Officer of InVoice Systems Inc., a billing software and customer service provider for the Telecom industry.
5. I returned to Toronto in 1994 and launched a successful Venture Capital/Private Equity enterprise, Qolus Financial Corporation. It operated for more than a decade, investing in Telecom assets including controlling interests in Public Communications Corporation and Cardinal VoiceCard, among others.
6. I am currently Principal and Founder of Quoins Corporation (www.quoins.ca) and BLURR Wireless.
7. I offer consultation services on the renewal process for wireless communication services (WCS) - specifically on the 2300MHz licenses of NextWave Wireless Inc. (WAVE). My review and comments relate only to WAVE and do not address any other licensee in the 2300MHz or 3500MHz bands.

Discussion

8. A total of 172 licenses in the 2300 MHz band were awarded to 13 licensees including 4253311 Canada Inc., which won 88 discrete, non-contiguous licenses dispersed across Canada.
9. These licenses were subsequently sold to WAVE in March 2007.
10. These licenses were sold as ‘User’ rather than ‘Carrier’ to the controlling entities which are US-based, foreign, and not controlled by Canadians. The posture of the licenses being maintained as ‘User’ in an attempt to violate the essence of the law protecting spectrum from foreign control and/or investment speculation.
11. The Communications Act (S.C. 1993, c.38) section 16 clearly defines foreign ownership of ‘Carrier’ spectrum as, among other things: “(c) the entity is not otherwise controlled by persons that are not Canadians.”
12. Characterized in the popular press as a “spectrum squatter” WAVE has no clear intention of launching any of spectrum assets globally. WAVE has retained certain brokerage firms to value and sell the acquired spectrum for speculation and profit with no intention of developing its use. According to publically accessible documents, WAVE has no engineering expertise or network professionals either on staff or on hire who are mandated to launch Canadian spectrum.
13. Any licensee must be eligible to become a radiocommunication Carrier and must meet the Ownership and Control requirements as described in section 10(2) of the Radiocommunications Regulations. If the licensee does not comply with the
Canadian ownership and control requirements within 60 days after being notified by Industry Canada, then the licensee will forfeit the right to have issued any licenses offered at auction, and will be subject to penalties outlined in Section 9.3.

14. Written notification will be required of all proposed license transfers. A signed declaration must be obtained with a narrative explaining the company’s Canadian ownership and control structure, including: Incorporation documents, shareholdings, Directors, Officers, Financings, and Agreements which could affect whether the company or any related holding company in fact are or are not controlled in fact by Canadians.

15. Over the last 24 months, my e-mails, flights and phone records will show that every decision maker or relevant stakeholder with respect to the WAVE spectrum is located in the United States.

16. It is unclear if 4253311 Canada Inc. submitted the required documentation on acquisition from Columbia Capital subsequent to March 2007. WAVE is clearly a non-domestic, US-based enterprise and is not using its spectrum as a public resource or using it in ways that serve the public interest of Canadians.

17. Auctioned licenses include a requirement for the implementation of spectrum usage, whereby the licensees are required to demonstrate that the spectrum has been put to use at a level acceptable to Industry Canada.

18. WAVE has availed itself of the 2 extensions, citing “both the lack of affordable and mature equipment as well as the state of technical rules governing the band in the United States…” Specifically, if the 2300MHz band has not been put to use within five years of the receipt of license(s) Industry Canada may begin a suspension or revocation process.

19. The first extension of the deployment condition was until the end of year eight of their license term.

20. The second extension was blamed on “significant technological uncertainty because of circumstances in the United States” and extended the deadline to the end of each licenses 10-year term.

21. While these extensions were granted to each licensee or assigns, to date, of 172 licenses granted, 171 remain in the status outlined herein: a 98% “No Deployment” percentage which includes 4253311 Canada Inc. Industry Canada has noted Canadian and Worldwide Interoperability for Microwave Access (Wi-Max) equipment is currently deployed in a number of Canadian regions, including but not limited to: ABC Communications offering 3.5GHz Wi-Max service in the interior of British Columbia; Craig Wireless is offering commercial 2.5GHz Wi-Max services in Vancouver, British Columbia and Winnipeg Manitoba; EvoShift Communications operates a Wi-Max network in Victoria British Columbia and Primus Canada and MIPPS Inc. are conducting Wi-Max IEEE 802.16e-2005 (3.5GHz) in Hamilton Ontario, among others.

22. “It is expected that by 2014, several LTE networks with Time-Division Duplexing (LTE-TDD) using the 2300MHz spectrum will be launched in the form of new deployments and Wi-Max to LTE-TDD migration – predominantly in China, India, Malaysia, Australia and South Korea (Italized added). In particular, operators in China and India have been conducting field trials and demonstrations
of LTE-TDD technology through joint ventures with manufacturers and chipset vendors.”

23. In June 2012 AT&T and SiriusXM submitted a joint proposal that reflects a compromise between Wireless Communication Services (WCS) and the operation of Satellite Digital Audio Radio Service (S-DARS). This proposal is designed to enable the deployment of LTE systems in the WCS bands while protecting the S-DARS operations through guard bands. Subsequently unanimously adopted by The Federal Communications Commission (FCC), these changes will lead to modifications in the WCS band plan and spectrum policy in the United States and will likely influence the Canadian band plan and equipment ecosystem.

24. A significant ecosystem for LTE devices is expected to emerge in Canada in the 2300MHz band, given current consumer and commercial trends in Canada. Global interest is also growing – especially in Asia-Pacific countries – to deploy broadband systems in this band.

25. Industry Canada is incorrect in assuming, “...additional deployment over the next two years is expected to be minimal.”

Proposed Options

Option 1: Extend Initial License Term

26. The first variation would extend the current term by three years for all licensees, or a second variation that would extend all license terms to the same fixed date, i.e. December 2017.

27. This option recognizes there may be a lack of available equipment in this band, which is incorrect.

Option 2: Issue Licenses for a New Term

28. Under this option Industry Canada proposes another 10 years and advises licensees that the license terms and conditions, including authorized frequencies, may change during that term. This is assuming that the licensee is in compliance with the conditions of license - at the end of the initial term. WAVE is non-compliant.

29. Importantly, as noted in paragraph 66, “For instances in which deployment is nil, licensees would not be eligible for a new license under the renewal process.” Further, it will allow Industry Canada to reassign unused licenses through a licensing process and new licenses will be subject to an annual fee after a separate consultation.

Current Status

30. On August 1, 2012, WAVE entered into an Agreement and Plan of Merger (the “Merger Agreement”) with AT&T and Rodeo Acquisition Sub Inc., a Delaware-based subsidiary. This agreement contemplates a $600 Million payment, with
contingencies. The transaction is subject to review by the FCC, and subject to the Hart-Scott-Rodino Act by the Federal Trade Commission and the Department of Justice. Additionally, this transaction is subject to legal proceedings from multiple parties.

31. As of the date of the Merger Agreement, WAVE had a current portion of long-term obligations of $1,148,434,000.00 and an accumulated deficit of $1,703,127,000.00. They said, “Our current cash reserves are not sufficient to meet our payment obligations under our secured notes at their current maturity dates. These conditions raise substantial doubt about our ability to continue as a going concern…and could cause us to seek relief through a filing in the United States Bankruptcy Court.” (SEC Form 10-Q filing for NextWave Wireless Inc.).

32. WAVE stock is traded ‘Over-The-Counter’ priced at $1.18 as of December 12, 2012 based on AT&T’s proposal. The shares were suspended from trading on July 23, 2010, and were de-listed on September 17, 2010 from NASDAQ despite a 7 to 1 reverse split.

33. WAVE intends to transfer ownership of the Canadian spectrum licenses to the Holders of the Lien Notes including Avenue Capital Group and its affiliates, Solus Core Opportunities Master Fund Ltd., Navation Inc. (Allen Salmasi) and Doug Manchester. All of which are currently in control of the licenses, and all of whom are maintaining foreign control of the licenses.

An Update

34. In correspondence exchanged with Frank Cassou, Executive Vice President, Corporate Development and Chief Legal Counsel and Secretary of WAVE, I learned that WAVE has, “recently entered into exclusivity with another party” based on the ‘comparable’ offer by AT&T. I am uncertain if Industry Canada is aware an ‘exclusive arrangement’ has been made between the US-based controller of the licenses, and is being based on AT&T’s comparable offering.

35. WAVE has stated, “In order for us to operate our Canadian spectrum under current Canadian ownership rules, we need a Canadian-controlled partner.” And, “Failure to make the in-use demonstrations for each of these licenses, in absence of a further extension by Industry Canada, could result in forfeiture of the applicable licenses” (SEC 10-Q filing).

36. In my capacity as Principal of Quoins and BLURR, I am ready and capable to provide “…a business plan and attracting appropriate financing.”

37. My strategy involves identification of hyper local markets in second tier locations where there are high concentrations of students in the 7 to 29 year-old demographic attending educational institutions. I will market LTE services directly, through Tuition contributions, and to Aboriginal populations at preferred rates. Markets include London, Kitchener/Waterloo/Guelph, Kingston and potentially Ottawa.

38. Our primary target market have grown up with computers, the Internet, and cellular telephony. They are unique in their dependence on and comprehension of technology and its applications. Based on market research, they appear to be
under-served by the more cost-effective AWS carriers and over-charged by the incumbent LTE providers.

Direct Responses to Comments on the Options for renewal in the 2300MHz (and 3500MHz) bands

39. “Licensees must demonstrate coverage at the level indicated on Industry Canada’s Spectrum Management and Telecommunications website: Tier 4 Deployment Requirements for 2300 MHz and 3500MHz Licenses.”

40. Neither of the two options for 4253311 Canada Inc. and WAVE are preferred. WAVE has availed themselves of two extensions merely to exact a profit from Canadian spectrum assets granted by the Government of Canada. This is an abuse of the letter of the law, not to mention being devoid of morals and business ethics.

41. Based on our assessment, 2300MHz band will be well serviced long before the deployment requirements by December 2017.

42. WAVE has used its agents and advisors to block formal and good-faith approaches for the licenses by the undersigned over a three year period. Canadian spectrum assets are finite and perishable. I think that “use it or lose it” best sums up our position.

43. These licenses have remained fallow since inception in 2004/5. This is not in the public interest, is an abuse of and disadvantages Canadians.

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