December 17, 2012

Manager,
Emerging Networks, DGSO
Industry Canada
300 Slater Street
Ottawa, Ontario K1A 0C8

Dear Sir/Madam:

Re: Canada Gazette, Part I, October 20 2012, Notice No. DGSO-006-12 – Consultation on Renewal Process for 2300 MHz and 3500 MHz Licences – Eastlink’s comments

Please find attached the comments of Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), in response to Canada Gazette Notice DGSO-006-12 – Consultation on Renewal Process for 2300 MHz and 3500 MHz Licences (Part I, October 20 2012).

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

Sincerely,

Denise Heckbert
Regulatory Analyst, EastLink

Tel: (902) 406-4066
Email: regulatory.matters@corp.eastlink.ca
6080 Young Street Halifax NS B3K 2A4
INDUSTRY CANADA
CONSULTATION ON A RENEWAL PROCESS FOR
2300 MHz AND 3500 MHz LICENCES
CANADA GAZETTE, PART I, OCTOBER 20, 2012 (DGSO-006-12)

COMMENTS OF
BRAGG COMMUNICATIONS INC., OPERATING AS EASTLINK

17 DECEMBER 2012
Table of Contents

Policy objectives not being met ................................................................. 4
Incumbents dominate high capacity spectrum .............................................. 5
Questions asked under the Consultation ...................................................... 7
Conclusion .................................................................................................. 7
1. Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), appreciates the opportunity to provide comments on the issues raised under DGSO-006-12 – Consultation on Renewal Process for 2300 MHz and 3500 MHz Licences (the “Consultation”).

2. Under the Consultation, Industry Canada (the “Department”) seeks comments on its options for addressing licences in the 2300 MHz and 3500 MHz spectrum bands that are nearing the end of their term. Eastlink herein provides our comments.

Policy objectives not being met

3. The Department outlined its policy objectives for these two spectrum bands in the Policy and Licensing Procedures for the Auction of Spectrum Licences in the 2300 MHz and 3500 MHz Bands, revised in July 2004 (the “Policy”). These objectives included:

   - To enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
   - To render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
   - To foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and
   - To respond to the economic and social requirements of users of telecommunications services.

4. To this end, the Department auctioned unlicensed blocks in these spectrum bands in 2004 under an SMRA format. At the time, while comments were divided on the issue, the Department opted not to adopt a set-aside to support participation of smaller, new entrant wireless service providers. As a result, the bulk of the available spectrum was purchased by the three publically-traded wireless incumbents at a cost that is far lower than the Department saw in the 2008 AWS auction and far lower than it expects in the upcoming 700 MHz and 2500 MHz auctions.
5. As the Department noted in the Consultation, the three wireless incumbents largely purchased the spectrum for backhaul and to support fixed wireless services. However, in recent years, as mobile wireless data has become increasingly important in Canada, the incumbents have signaled their intention to use their vast spectrum holdings to support mobile LTE services. As a result, they have held onto the spectrum for nearly a decade waiting to deploy the spectrum in the lucrative wireless retail market. The Department noted in Section 5.4 of the Consultation that only 2.3% of the 2300 MHz licences have been used since 2004. The situation is similar in the 3500 MHz band where the Department noted, in Section 6.5 of the Consultation, only 25.9% of the spectrum licences have been used.

6. Furthermore, the incumbent wireless carriers have made clear they intend to first deploy mobile LTE over AWS, then 700 MHz and then 2500 MHz spectrum. As a result, Eastlink submits that incumbents are unlikely to begin deployment of mobile LTE over the 2300 MHz and 3500 MHz spectrum for quite some time, even in the event that the US and Asia band plans are determined in the coming months as expected.

Incumbents dominate high capacity spectrum

7. As Eastlink noted in our comments under DGSO-004-12, Consultation on a Licensing Framework for Broadband Radio Service (BRS) – 2500 MHz Band the wireless incumbents hold the vast majority of high capacity spectrum in Canada, including the licences to be renewed under this consultation, the AWS spectrum auctioned in 2008, and the 2500 MHz spectrum. This reality is unlikely to change significantly, and may even be worsened if the Department’s proposed rules for the 2500 MHz auction that would allow associated entities to bid under separate spectrum caps are adopted as the incumbents would be able to add to their stock of 2500 MHz spectrum.

8. Wireless data is becoming increasingly important to Canadian consumers, who are among the heaviest data users in the world. Regional service providers, like Eastlink, with significant market share of other telecommunications services, are likely to replicate those results in wireless services. As a result, it is critical that these regional service providers have access to the spectrum needed to support the wireless data services our customers demand.
9. Eastlink submits that the Department initially auctioned this 2300 MHz and 3500 MHz spectrum at a time before the full import of wireless data was understood by Canadians, the government or industry, and before the Department had taken the important steps it did in the 2008 AWS auction to encourage competition into the Canadian wireless market. We submit that, to meet the policy objective of relying on market forces as much as possible for the provision of wireless services, it is critical to have a highly competitive market. As a result, Eastlink submits that the Department should consider taking steps similar to those taken for the 2500 MHz spectrum band to allow regional new entrants an opportunity to acquire much needed spectrum in the 2300 MHz and 3500 MHz spectrum bands. Specifically, Eastlink submits the Department should consider:

- Requiring band incumbents to return a portion of their spectrum if they plan to use it for anything other than the fixed wireless services for which the spectrum was originally licensed and intended
- Refarming the spectrum bands to be in line with international band plans so that Canadian service providers can more easily access soon to be available LTE ecosystems
- Revisiting the conditions of licence and tier levels under which these spectrum bands are licensed so they are more in line with similar bands soon to be, and recently, auctioned in Canada

10. Eastlink submits that such measures are in keeping with the Department’s powers, and are consistent with steps undertaken in the past. In addition, the Department noted in the licences to be renewed under this consultation that “licensees have an expectation of renewal unless a breach of licence has occurred, a fundamental reallocation of spectrum to a new service is required, or an overriding policy need arises.” [emphasis added] Such a policy need exists in this case now that the importance of this spectrum for mobile LTE deployment has become clear. It is critical that regional service providers that have proven their commitment to rural deployment have an opportunity to access this valuable spectrum if the Department is committed to meeting the policy objectives of these bands. Finally, Eastlink submits that, as very little of the spectrum is actually being used, changes to the band plan and reclaiming a portion of the spectrum would have essentially no impact to the band incumbents and/or Canadian consumers.
Questions asked under the Consultation

11. Eastlink submits that we generally favour options that would involve extensions rather than renewals of the licences in these spectrum bands. However, in light of the issues noted above, Eastlink submits that the Department’s priority should be to reclaim spectrum, refarm the bands and move toward an auction for these valuable LTE spectrum licences as quickly as possible. Such an approach is in the interest of an efficient allocation of the very limited spectrum resources, and is further in the interest of Canadian consumers and a competitive wireless market in all regions and areas of Canada.

Conclusion

12. The vast majority of high capacity wireless spectrum suitable and/or soon to be suitable for mobile wireless services is concentrated in the hands of the three incumbent wireless service providers. Eastlink submits that, given the incumbent’s clearly stated intention of deviating from the spectrum’s initial intended application of fixed wireless deployment towards the more profitable mobile wireless deployment, the Department must take the opportunity created by the near total lack of deployment in these bands to reclaim a portion of the spectrum. This coveted spectrum resource could then be auctioned, and will allow regional new entrant service providers, who are committed to deploying this spectrum, the opportunity to provide advanced wireless services to consumers throughout our region. These actions clearly meet the policy objectives for the 2300 MHz and 3500 MHz spectrum bands and are consistent with recent decisions and actions by the Department and will ensure that all Canadians – including those in rural areas – benefit from the competition first supported in the 2008 AWS auction.

**END OF DOCUMENT**