BEFORE INDUSTRY CANADA

IN THE MATTER OF

CANADA GAZETTE, PART 1, NOTICE No. SLPB-003-14 – CONSULTATION ON A NEW LICENCING FRAMEWORK AND LICENCE RENEWAL PROCESS FOR THE 24, 28 AND 38 GHz BANDS

REPLY COMMENTS OF MOBILEXCHANGE SPECTRUM INC.

7 AUGUST 2014
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1.0 INTRODUCTION

1. Mobilexchange Spectrum Inc. (“Mobilexchange”) submitted comments dated July 7, 2014, in response to Industry Canada’s Consultation on a New Licensing Framework and Licence Renewal Process for the 24, 28 and 38 GHz Bands as set out in SLPB-003-14 (the “Consultation Notice”). Mobilexchange did so in its capacity as an owner of “A” block (200MHz + 200MHz) spectrum licences for certain geographic areas in the 24 GHz band that were auctioned in 1999.

2. This submission consists of Mobilexchange’s reply comments to the positions and arguments advanced in the interventions filed by other participants to the present consultation.

3. Mobilexchange has structured its reply comments as follows:
   • Section 2.0 summarizes Mobilexchange’s recommended approach to licence renewal for the auctioned 24 and 38 GHz bands.
   • Section 3.0 sets out general reply comments and observations with respect to all of the interventions filed in response to the Consultation Notice.
   • Section 4.0 sets out Mobilexchange’s reply comments with respect to certain individual interventions.
   • Section 5.0 sets out Mobilexchange’s conclusions

2.0 MOBILEXCHANGE’S POSITION ON 24 AND 38 GHZ LICENCE RENEWALS

4. In its initial comments in this proceeding, Mobilexchange submitted that spectrum implementation requirements (hereinafter referred to as “deployment requirements”) applicable to 24 and 38 GHz auctioned area spectrum licences should be deferred until the conclusion of an extended ten-year licence term, or at the very least, 5 years into an extended term, for licensees that are otherwise compliant with their conditions of licence by end of term.

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1 Consultation on a New Licensing Framework and Licence Renewal Process for the 24, 28 and 38GHz Bands, SLPB-003-14, June 2014.

2 A list of those holdings is available at http://sd.ic.gc.ca/pls/engdoc_anon/web_search.licensee_name_results?output_format=1&selected_columns=FR_EQ_STAT,TX_FREQ,RX_FREQ,LOCATION,COMPANY_NAME&col_in_fmt=COMMA_LIST&selected_column_group=NONE&extra_ascii=None&extra_xml=None&licensee_name=Mobilexchange%20Spectrum%20Inc.%20Attn%3A%20Michael%20Kedar,%20President&admin_do=7&company_cd=90903655.
5. Mobilexchange also urged Industry Canada (the “Department”) to adopt this approach so that licensees are able to overcome the deployment challenges that have, through no fault of their own, resulted from a market that has, until now, been characterized by: (1) progressively consolidated demand in the hands of firms which have ample fixed fibre, cable and copper backhaul and transport and generally deploy spectrum inefficient large cells that are better suited for lower band and microwave backhaul; (2) a longstanding lack of suitable and affordable equipment; and (3) a general abundance of spectrum supply that greatly exceeds demand for these bands.

6. Fortunately, recent developments support a positive outlook for the development of 24 and 38 GHz area spectrum demand. The regulatory measures arising out of the CRTC’s Telecom Notice of Consultation 2014-76, the emergence of small cells and the mobile wireless network deployments associated with the results of the recently held 700 MHz auction consist of three promising developments that must be given time to run their course and create demand for wireless backhaul and transport services enabled by 24 and 38 GHz area spectrum.

7. Granting the deferral that is requested by Mobilexchange will ensure that licensees are able to obtain the value that they anticipated from their considerable capital expenditures in 1999 which resulted in auction proceeds in excess of $170 million.

3.0 GENERAL REPLY COMMENTS

8. Virtually all parties filing comments in response to the Consultation Notice agree that increased demand for backhaul capacity, including backhaul enabled by 24/38 GHz area spectrum, will materialize over the coming years. Indeed, since interventions were filed in this consultation, the Department formally launched its Consultation on the Technical, Policy and Licensing Framework for Advanced Wireless Services in the Bands 1755-1780 MHz and 2155-2180 MHz (AWS-3) as per SLPB-004-14. This is another significant development that will drive increased demand for the types of backhaul and transport services supported by 24/38 GHz area spectrum over the coming years.

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9. While the state of demand for the 24/38 GHz bands has never been as promising, some interveners misleadingly suggest that demand is already strong. Not surprisingly, these same interveners support strict enforcement of the proposed deployment requirements so that the majority of existing auctioned area spectrum licensees may be stripped of their holdings, thereby paving the way for other parties to poach valuable licences at little cost in anticipation that 24/38 GHz demand will reach full maturity in future years. This result would have dire consequences for owners of auctioned spectrum who invested millions on the belief that demand would materialize as presently forecasted, albeit more than 15 years later than expected. Such a result would also establish a poor policy precedent for future spectrum auctions, particularly from the perspective of smaller entrants who will necessarily become overly wary of the risks associated with long term demand growth and sustainability.

10. Mobilexchange agrees with many of the interveners that area licences are preferable over the site specific radio licences that are proposed by the Department. The auctioned 24/38 GHz licences are already structured as Tier 3 area licences, thereby providing an appropriate degree of flexibility and additional benefits, more fully described in the subsequent sections. Similarly, auctioned 200 + 200 MHz block licenses should not be converted into site specific radio licences in the manner proposed in the Consultation Notice because such fragmentation would compromise a licensee’s ability to leverage these blocks in response to demand for high speed and high capacity applications created by deployments of new wide area competitive cellular infrastructure.

4.0 REPLY COMMENTS WITH RESPECT TO INDIVIDUAL INTERVENTIONS

11. In this Part, Mobilexchange provides its reply comments to the submissions of individual interveners that are parties to the consultation.
4.1 Bell Mobility Inc.

12. Mobilexchange is in agreement with the statement by Bell Mobility Inc. (“Bell Mobility”) that “[t]he fixed bands being considered as part of this consultation, namely the 24, 28 and 38 GHz bands are expected to provide the much needed backhaul capacity and assist in meeting the current and future backhaul requirements in Canada.” On the other hand, Mobilexchange views Bell Mobility’s assertion that it is not an extensive user of fixed backhaul spectrum to be inaccurate. In fact, Bell Mobility makes extensive use of spectrum that Mobilexchange leased to Bell Mobility in Vancouver and additional spectrum that Mobilexchange transferred to Bell Mobility’s affiliate, Bell West, consisting of 3 channels (240 MHz) of licenced spectrum in Calgary and Edmonton. While Bell Mobility has not chosen to obtain any additional spectrum offered to it by Mobilexchange in recent years, demand for the backhaul services provided via spectrum licences in the 24 and 38 GHz range is expected to increase due to the factors already discussed.

13. In summary, Bell Mobility’s current and future demand for 24/38 GHz area spectrum is and should continue to be satisfied through commercial arrangements with licensees. Preserving this status quo will ensure that licensees are able to recover value from their considerable capital expenditures either through their own deployments or through sales/leasing arrangements that will lead to deployments by other entities. Conversely, strict enforcement of deployment requirements as proposed by the Department and supported by Bell Mobility would inflict extensive losses upon licensees and reward parties that have not incurred the cost or risk of holding the spectrum licences in question – with no resulting benefits in terms of increased deployments.

4.2 Globalive Wireless Management Corp., dba WIND Mobile

14. Paragraph 6 of Globalive Wireless Management Corp., dba WIND Mobile (“WIND”) supports the Department’s proposals on the basis that they are aimed at freeing up un-deployed spectrum on a timely basis and making such spectrum available in as administratively efficiency manner as possible. The suggestion that there is a supply constraint for 24/38 GHz spectrum is simply incorrect. As noted in the Consultation Notice, “…234 of the 260 licences have no deployment in the 15 years since they were auctioned. Furthermore, there has been little interest

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5 Bell Mobility Inc.’s intervention dated July 7, 2014 in SLPB-003-14.
in the 102 licences currently being held by Industry Canada.”6 In fact, WIND has not expressed any interest to date in any spectrum that could have been made available to it by Mobilexchange.

15. Consequently, there are no impediments to WIND obtaining access to 24/38 GHz spectrum should it require it. If WIND does develop a need for these bands, that demand should rightfully translate into value for current licensees.

4.3 Rogers Communications and TELUS Communications Company

16. Mobilexchange’s has similar reply comments to the interventions of Rogers Communications ("Rogers") and TELUS Communications Company ("TELUS") based on the preceding arguments set out above. For these reasons, Mobilexchange has elected to address both Rogers and TELUS jointly.

17. Mobilexchange does strongly agree with TELUS that the key characteristics of the licensing framework for 24 and 38 GHz bands must be:

   a. Clear and flexible exclusive area-based licensing mechanisms to encourage rapid development and deployment of new technologies;
   b. Few or no restrictions on topology; and
   c. A low fee structure to enable a variety of service models7.

18. TELUS, Rogers and Mobilexchange are also in agreement that area-based licensing mechanisms are preferable to link-by-link arrangements. The current framework relies upon Tier 3 licensed areas, coupled with exclusive use, which affords the benefits of: (1) technological operational certainty8; (2) low operational overhead associated with coordination relative to a non-exclusive framework9; (3) more reasonable licence fees10; (4) less of an administrative burden to the Department11; and (5) overall greater flexibility in terms of band use12. For all of these reasons,  

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6  SLPB-003-14, para 60.
7  TELUS submission dated July 7, 2014 in SLPB-003-14.
8  Supported in TELUS submission dated July 7, 2014 in SLPB-003-14, para 5.
9  Ibid.
10  Supported by TeraGo submission dated July 7, 2014, in SLPB-003-14, para 12.
11  Id. at para 11.
12  Supported by Rogers submission dated July 7, 2014, in SLPB-003-14, p. 2.
the area licensing structure that was established at the time of the 1999 auction should continue to apply.

19. Aside from the area licensing point, Rogers and TELUS ultimately support the Department’s proposals with a seemingly similar motive as Bell Mobility and WIND. In other words, Rogers and TELUS aim to gain access to the auctioned spectrum without having to pay the auction prices. Accordingly, Mobilexchange incorporates by reference the comments set out in paragraph 13 above in response to the comments of both Rogers and TELUS.

4.4 Quebecor Media on behalf of its affiliate Videotron G.P.

20. The crux of Videotron’s position is that the Department should renew licences, including those owned by licensees who have not met the deployment requirements, so long as licensees can demonstrate a serious intention and capacity to deploy. Mobilexchange supports this position with the caveat that efforts to transfer licences or convey subordinate licences also constitute an alternative condition of renewal to a demonstrable intention to deploy. Satisfying this proposed alternative condition will also result in additional deployments while preserving an important channel for licensees to generate value from their auctioned spectrum. In fact, the Department has already recognized that deployments from subordinate licensees count towards meeting the primary licensee’s responsibilities and should be reported accordingly to Industry Canada.13 The policy grounds for such a determination also apply in the present licence renewal context.

4.5 I-NetLink Incorporated

21. I-NetLink Incorporated (“I-NetLink”) focused its comments on the 38 GHz band. Mobilexchange only wishes to comment in response to I-NetLink’s point that 50 MHz paired blocks are not large enough to function as a viable fibre alternative.14 With respect to the 24 GHz band, Mobilexchange considers this concern a compelling reason to preserve the 200 + 200 MHz blocks that were originally auctioned. These blocks provide licensees the flexibility to respond to demand for high speed and high capacity applications.

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4.6 MTS Allstream

22. Mobilexchange strongly supports MTS Allstream’s position that the Department should adopt a new mechanism to allocate unauctioned, unallocated bands, but give existing licensees more time to make economic use of the 24/38 GHz spectrum.\footnote{MTS Allstream intervention dated July 7, 2014, in SLPB-003-14, paras 3-5.} Fundamentally, paragraphs 5 to 11 of the MTS Allstream submission (which represents the bulk of the intervention) mirror most of the major points expressed in Mobilexchange’s own submission.

4.7 TeraGo Networks Inc.

23. Mobilexchange agrees with TeraGo Networks Inc. (“TeraGo”)\footnote{TeraGo intervention dated July 7, 2014, in SLPB-003-14, paras 9-10.}, for the aforementioned reasons, that area-based licensing is preferable over site specific radio licensing.

24. Mobilexchange also strongly supports TeraGo’s position that the Department make available “… any unassigned licences in the auctioned 24 and 38 GHz spectrum for licensing on an FCFS basis…”\footnote{Id. at para 9.}

25. While Mobilexchange’s intervention requested a ten-year extension and deferral of deployment requirements\footnote{Id. at para 8.}, Mobilexchange would also support TeraGo’s request to have licence terms extended to 15 years. In Mobilexchange’s view, a 15 year extension would very likely constitute a sufficient time period for demand for 24/38 GHz bands to fully mature.

26. TeraGo has already demonstrated its commitment to the use of area spectrum by obtaining transfers of 1 Channel in Vancouver, 1 channel in Edmonton, 1 channel in Calgary and 3 channels in Toronto, Ottawa and Montreal from Mobilexchange.

4.8 Javelin Connections Inc.

27. Mobilexchange strongly supports the intervention of Javelin Connections Inc. (“Javelin”).
28. In particular, Mobilexchange wishes to direct the Department’s attention to the bullet list on pages 3-5 of that submission which outlines the many compelling reasons that justify waiving the deployment requirements of auctioned licensees. As one of these reasons, Javelin cites that only six licence areas out of 208 meet the deployment requirement – which represents less than 3% of licence areas and confirms that deployment of 8 links per million is not currently a reasonable measure. Mobilexchange would add that the fact that 97% of licence areas do not meet deployment requirements is also indicative that: (1) Supply of 24/38 GHz spectrum is abundant; (2) Demand for these bands is not strong at present; (3) Barriers to deployment (beyond low demand levels) may still be present; and (4) there are abundant opportunities for interested parties to seek out licensees for the purpose of obtaining a transferred or subordinate licence to begin a deployment.

5.0 CONCLUSION

29. In conclusion, Mobilexchange stands firmly by its initial comments in this proceeding.

30. Deployment requirements should be deferred until the conclusion of an extended ten-year term, or at the very least, five years into the extended term, for licensees that are otherwise compliant with their conditions of licence by end of term. However, the Department may want to consider a 15 year extension, as recommended by TeraGo, to ensure the greatest likelihood that demand for area 24/38 GHz spectrum will fully mature by end of the licence term. This approach will ensure that licensees are able to generate value from the massive capital investments that they made in 1999.

31. Strict enforcement of the deployment requirements at the end of the current licence terms would deprive competitors of valuable assets that are only just beginning to show signs of the demand that was originally projected over 15 years ago – while simultaneously opening the door to eager opportunists who already have means to access the spectrum on inexpensive commercial terms that avoid the risks undertaken by those parties that originally bid successfully for the spectrum in question. Another concern raised by the Department’s proposed enforcement of the

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deployment requirement as a condition of licence renewal, is that the policy is unlikely to result in any additional deployment that would not otherwise occur when demand conditions develop sufficiently for current licensees.

32. The Department has already recognized that deployments from subordinate licensees count towards meeting the primary licensee’s responsibilities and should be reported accordingly to Industry Canada.\textsuperscript{20} The policy grounds for such a determination also apply in the present licence renewal context.

33. Like most of the participants to the consultation, Mobilexchange strongly recommends continued use of Tier 3 area-based licensing due to the many advantages that this framework presents when compared to site-specific radio licensing. Mobilexchange also recommends that “A” block licences continue to operate as 200 + 200 MHz licences given the flexibility that these blocks provide to licensees.

34. Finally, notwithstanding any other comments in either these reply comments or its intervention, Mobilexchange also maintains the view, expressed in its earlier comments in this proceeding, that it is compliant with the deployment requirement for all of the “A” block spectrum licences it acquired, on the basis that the requirement applies to the entire 200 + 200 MHz block and not a narrower subset of channels.

\textsuperscript{20} Licencing Procedure for Spectrum Licenses for Terrestrial Service, CPC-2-1-23, section 5.6.3.