26 November 2012

Dear Ms Davis:

RE: Canada Gazette, Part I, Vol. 146, No. 34 — August 25, 2012, Consultation on a Policy, Technical and Licensing Framework for Use of the Public Safety Broadband Spectrum in the Bands 758-763 MHz and 788-793 MHz (D Block) and 763-768 MHz and 793-798 MHz (PSBB Block), Reference No. SMSE-007-12

1. Data & Audio-Visual Enterprises Wireless Inc. dba Mobilicity (hereinafter “Mobilicity”) is pleased to provide its reply comments on the above-referenced consultation (“SMSE-007-12”) on a policy, technical and licensing framework for use of the public safety broadband spectrum in the Upper D Block (758-763 MHz and 788-793 MHz) and the PSBB Block (763-768 MHz and 793-798 MHz).

2. Mobilicity has reviewed parties’ comments on the policy and licensing questions set out in SMSE-007-12, and in particular, questions relating to the designation and use of Upper D Block (questions A1 to A3), commercial use of designated public safety spectrum in the 700 MHz Band (questions B4, B7 and B8), and the licensing methodology that should be used for designated public safety spectrum (questions C1 and C2).
I. DESIGNATION OF USE FOR D BLOCK (PART A.4)

A-1 Comments are being sought on Industry Canada’s proposal to designate the D block (758-763 MHz and 788-793 MHz) for public safety broadband use.

A-1 Answer: Mobilicity supports a public safety designation for the Upper D Block

A-2 Comments are being sought on Industry Canada’s assumptions concerning the commercial equipment availability for the D block (i.e. that consumer devices will not be readily available).

A-2 Answer: In Mobilicity’s opinion, the Department’s assumptions are correct in the current context.

A-3 As stated above, responses to the 700 MHz consultation indicated that there was no support for the option of designating spectrum for commercial use with obligations to serve public safety. Does this view still apply for the D block?

A-3 Answer: Yes.

3. As set out above in Mobilicity’s answers to Issues A-1, A-2 and A-3, Mobilicity supported a public safety designation in the Upper D Block. Along with all public safety entities that submitted comments in this proceeding, Bell, Rogers, MTS Allstream, SaskTel and Videotron agreed with the Department and Mobilicity.

4. Public Mobile, however, did not.¹ Public Mobile continues to favour commercial designation for the Upper D block, with provision for priority access for public safety agencies and purposes. Public Mobile’s argument in favour of a commercial designation is that this is the “most effective way to ensure the deployment of network resources on the D block and the utilization of this spectrum.”² Public Mobile further argues that the fact that a device ecosystem for commercial uses in the Upper D Block currently does not exist does not mean that one will

¹ Public Mobile, along with the British Columbia Broadband Association, was among the few parties to oppose a public safety designation for the Upper D block. BCBA, which represents rural British Columbia service providers, proposed that the spectrum in the D Block be allocated to public safety entities in Canada’s seven most populated Tier-4 service areas, but that in all other areas, the Upper D Block be designated for commercial use. BCBA stated that in rural areas, the PSBB block would provide enough spectrum for public safety purposes in such areas.

never develop. As rightly noted by Public Mobile, “[w]hen Public Mobile purchased its G-Block PCS spectrum in 2008 there were no existing devices available for it anywhere in the world. Public mobile led the world in the commercialization of the PCS G-Block spectrum. We now offer multiple devices on our 3G EVDO network, including advanced Android smartphones.”

5. Mobilicity concurs with Public Mobile that current unavailability of devices for commercial uses in the Upper D block does not mean that one will not develop were the Upper D block in fact designated for commercial use. Mobilicity is also fully ad item with Public Mobile that the 700 MHz spectrum band is intrinsically valuable spectrum due to its superior propagation characteristics and that maximising the amount of 700 MHz spectrum available for commercial use (along with a strictly enforced spectrum aggregation limit for large wireless service providers), will increase the probability that new entrants such as Mobilicity and Public Mobile will gain access to such spectrum. Services provided by competitors bring pricing discipline, innovation, and consumer choice to the retail market, thereby promoting competition and greater reliance on market forces. Indeed, given the choice between access to Upper D block spectrum or access to no spectrum at all, it is still by far preferable to have access to 700 MHz spectrum, albeit spectrum with a limited device ecosystem.

6. Notwithstanding Mobilicity’s concurrence with the foregoing considerations, on balance, Mobilicity acknowledges that the Upper D Block is probably more suited for public safety than for commercial uses. Hence, Mobilicity continues to support the Department’s proposal that the Upper D block be designated for commercial uses.

7. There is all the more reason, therefore, for the Department to consider other mechanisms to promote greater competition and in particular the provision of competitive services by new entrant providers. In particular, the relative paucity of 700 MHz spectrum, along with the relatively vast amounts of spectrum held by the large wireless providers offer a compelling case

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for inclusion of a condition of licence for the 700 MHz prime blocks mandating the provision of wholesale access to all licensees with an HSPA network. 4

II. COMMERCIAL USES OF SPECTRUM IN THE 700 MHZ BAND DESIGNATED FOR PUBLIC SAFETY

<table>
<thead>
<tr>
<th>B-4</th>
<th>Should Industry Canada permit any commercial use of unused capacity in the 700 MHz spectrum designated for public safety broadband?</th>
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<tbody>
<tr>
<td>B-4 Answer: Yes, but only on a mandatory non-discriminatory wholesale basis, at reasonable and non-discriminatory rates.</td>
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<table>
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<tr>
<th>B-7</th>
<th>Should the licensee or licensees be permitted to provide commercial services directly to the public?</th>
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<td>B-7 Answer: No.</td>
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<tr>
<th>B-8</th>
<th>Should the licensee or licensees be permitted to wholesale unused capacity to a commercial operator?</th>
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<tr>
<td>B-8 Answer: Yes on a mandatory non-discriminatory basis, at reasonable and non-discriminatory rates.</td>
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8. Mobilicity’s answers to Issues B-4, B-7 and B-8 are reproduced above with only one change, namely to clarify Mobilicity’s answer to Issue B-4 to state that mandated wholesale access must be made available on a non-discriminatory basis. To be clear, if commercial uses of unused capacity in the public safety blocks are permitted, such unused capacity should only be made available on a non-discriminatory rates, terms and conditions.

9. Of the other mobile wireless carriers, not surprisingly, Bell is fundamentally opposed to measures, such as mandated wholesale access, to promote maximum, efficient use of spectrum. However, Mobilicity notes that Videotron and SaskTel supported the notion of mandatory non-discriminatory wholesale access to the Upper D Block. Mandating non-discriminatory wholesale access for all prime blocks, for example, as proposed by Mobilicity in response to DGSO-002-12, Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band,

will render this intrinsically valuable, high-quality spectrum more accessible to interested parties, especially new entrants. Mandated wholesale access would promote the establishment of competition while at the same time, mitigating the effects of inefficient allocation of the 700 MHz spectrum via the CCA auction to providers that already hold overabundant quantities of mobile wireless spectrum, including sub-1000 MHz spectrum.

III. LICENSING OF 700 MHZ SPECTRUM DESIGNATED FOR PUBLIC SAFETY BROADBAND USE

<table>
<thead>
<tr>
<th>C-1</th>
<th>Comments are being sought on Industry Canada’s proposal to assign the 700 MHz broadband public safety licences (the PSBB block and potentially the D block) directly to one or more PSNEs, rather than via an auction with obligation to serve public safety.</th>
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<td>C-1 Answer:</td>
<td>Mobilicity supports the Department’s proposal to assign designated public safety spectrum directly.</td>
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<tr>
<th>C-2</th>
<th>If capacity for commercial use were allowed, would this change the response to Question C-1?</th>
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<td>C-2 Answer:</td>
<td>No.</td>
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10. Mobilicity notes that there was a divergence of views as between the mobile wireless carriers that responded to the foregoing issues.

11. Rogers had no comments, as was the case for BCBA, except that BCBA underlined its support for commercial assignments in rural areas.

12. Public Mobile supported Tier 2 licensing of the Upper D block and proposed that an auction mechanism be used to allocate the spectrum, with addition measures to promote auction demand, such as credits on licence fees, credits against spectrum cost for rural build out and payments by public safety agencies for network access.

13. Of the remainder, all agreed that the public safety and Upper D-blocks should be granted by direct assignment rather than by auction. However, Bell, MTS Allstream, SaskTel, and Videotron differed as to geographic scope of such direct assignments:

   (a) Bell advocated allocation by assignment to one NATIONAL public safety agency.
(b) MTS Allstream and SaskTel recommended assignment to Provinces; and

(c) Videotron submitted that while it did not have a view as to the most appropriate geographic scope for the PSBB and Upper D block licences, the matter should perhaps be left up to the choice of the public safety licensee(s) to consult upon and determine.

14. Mobilicity supports Videotron’s suggestion that the geographic scope of the PSBB and Upper D block should be left up for consultation among public safety agencies.

Yours very truly,

Gary Wong
Director, Legal Affairs

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