

Industry Canada Active Files

1. Policy Framework Consultation for an AWS-3 Spectrum Auction

Based on press materials and public statements by the Minister of Industry on July 7, 2014, WIND is expecting the imminent release of an AWS-3 policy consultation document. The overall auction is expected to have the following attributes:

- The Government will set aside one 30 MHz block of AWS-3 spectrum for operating new entrants in each region of the country. Wireless carriers with less than 10 percent national and 20 percent provincial/territorial wireless subscriber market share will be eligible to bid on the set-aside in licence areas where they are providing services to Canadians;
- The AWS auction will take place before the 2500 MHz auction, which is scheduled to start in April 2015;
- There will be strict provisions on the transfer of AWS-3 spectrum so that Canadian consumers benefit from increased competition in wireless services; and
- There will be a simpler, shorter auction process that will provide operating new entrants with a visible path to high-quality spectrum.

The Government has also indicated that the AWS-3 policy framework consultation will deal with a number of issues including the following which were called out in the government announcement:

- Whether licences for AWS-3 should include deployment requirements in both the short term (for example, five years after the licences are issued) and the long term (ten years after); and
- Whether a simplified and accelerated auction process, using a sealed-bid format, would be the best approach to encourage participation.

Issues of specific concern to WIND include:

- (a) The minimum bid amount;
- (b) Licence payment terms (i.e. the ability to pay for the licences over time) in light of anticipated delays in the radio and handset eco-systems which will support this spectrum block;
- (c) The definition of "operating new entrants" eligible to bid;
- (d) Whether it is possible to partition the 2-06 license block "Eastern Ontario & Outaouais" along provincial boundaries.

2. Auction of Spectrum Licences for Broadband Radio Service (“BRS”) in the Band 2500-2690 MHz

The rules for BRS spectrum auction have been established as set out in the *Licensing Framework for Broadband Radio Service (BRS) — 2500 MHz Band* which can be found at the following link: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf10726.html>

Bell Mobility (“**Bell**”) and Rogers Communications Partnership (“**Rogers**”) will be unable to bid in many areas of the country due to their existing spectrum holdings in this band and a band specific spectrum cap limit of 40 MHz. This will leave three 10 + 10 MHz blocks available for other bidders in these areas including TELUS Communications Company (“**TELUS**”). Under the rules, TELUS can acquire two of the three blocks leaving new entrants with one 10 + 10 MHz block.

Areas where there will only be three paired spectrum blocks available and where Bell and Rogers cannot bid are shown below.

Region B

Frequency blocks available for auction
(indicated by "X")

Tier No.	Region	Name	Paired spectrum (10+10 MHz)						Unpaired spectrum (25 MHz)		
			A/A'	B/B'	C/C'	D/D'	E/E'	F/F'	G/G'	H	I
3-08	B	Bas du fleuve / Gaspésie					X	X	X		
3-09	B	Québec					X	X	X		
3-12	B	Trois-Rivières					X	X	X		
3-13	B	Montréal					X	X	X		
3-15	B	Ottawa / Outaouais					X	X	X		
3-25	B	Toronto					X	X	X		
3-26	B	Barrie					X	X	X		
3-27	B	Guelph / Kitchener					X	X	X		
3-29	B	Niagara-St. Catharines					X	X	X		

Region B
Frequency blocks available for auction
 (indicated by "X")

Tier No.	Region	Name	Paired spectrum (10+10 MHz)							Unpaired spectrum (25 MHz)	
			A/A'	B/B'	C/C'	D/D'	E/E'	F/F'	G/G'	H	I
3-30	B	London / Woodstock / St. Thomas					X	X	X		
3-41	B	Regina					X	X	X		
3-42	B	Moose Jaw					X	X	X		
3-43	B	Saskatoon					X	X	X		
3-51	B	Okanagan / Columbia					X	X	X		
3-52	B	Vancouver					X	X	X		
3-53	B	Victoria					X	X	X		

In other areas (e.g., Calgary, Edmonton) there will be five spectrum blocks available for bidding but Bell and Rogers will not be fully constrained from participating – new entrants will still have a chance to acquire one 10 + 10 MHz block after Bell, Rogers and TELUS have acquired the maximum allowable amount of spectrum under the cap in these regions as well.

Remaining key dates are set out below:

Events	Time Frames
Publication of responses to clarification questions	August 18, 2014
Deadline for receipt of applications to participate in the auction and 5% of the pre-auction financial deposits	By 12:00 noon on November 27, 2014
Publication of the list of applicants, beneficial ownership and associated entities information	Within four business days following the application deadline
Publication of the list of provisionally qualified bidders	January 21, 2015

Events	Time Frames
Deadline for receipt of the remaining 95% of pre-auction financial deposits	By 12:00 noon on January 28, 2015
Publication of final list of qualified bidders	February 11, 2015
Mail-out packages sent to qualified bidders	February 11-17, 2015
Information session for qualified bidders	February 26, 2015
Qualified bidders are given access to a stand-alone winner and price determination tool	February 26, 2015
Mock auctions for qualified bidders (up to three separate sessions)	Start March 3, 2015
Auction start – opening of bidding	April 14, 2015
Cessation of bidding	Unknown
Announcement and publication of provisional licence winners	Within five days following cessation of bidding
Submission of ownership and control documentation (where applicable)	10 business days following the publication of provisional licence winners
Initial payment (20% of total final payment)	10 business days following the publication of provisional licence winners
Final payment (80% of total final payment)	30 business days following the publication of provisional licence winners

3. Consultation on a New Licensing Framework and Licence Renewal Process for the 24, 28 and 38 GHz Bands

New wireless networks have caused an increase in demand for wireless backhaul spectrum. The point-to-point spectrum bands in this proceeding (24, 28 and 38 GHz) are needed by WIND for its network expansion, but these are not the only bands that WIND uses for its radio backhaul needs.

WIND has provided public comments supporting Industry Canada's proposals to not renew the exclusive area spectrum licences previously auctioned in these bands where the licensee has not met the conditions of licence (including roll-out conditions). We are supported by Bell and are in direct opposition to Mobilexchange Spectrum Inc. (Mike Kedar). Other parties have varying positions that differ by licence type.

WIND has also indicated that it supports Industry Canada's proposal to convert First Come First Serve ("FCFS") spectrum licenses (of which WIND has 10 such FCFS 38 GHz licences on three year terms) to one year term licences upon expiration and to require that future radio links be licensed on a point to point basis. A net benefit review by WIND's network group indicates that we would likely be better off with link based radio licenses as opposed to 38 GHz spectrum licences and in any event, such an approach would free up more radio back-haul options.

WIND has also asked Industry Canada to revisit the way it calculates radio licence fees as part of the conversion process from spectrum licences to radio licences.

Final reply comments are due August 7, 2014.

Canadian Radio-television and Telecommunications Commission (the "Commission") Active Files

4. Telecom Notice of Consultation CRTC 2013-68, Wholesale mobile wireless roaming in Canada – Unjust discrimination/undue preference, 12 December 2013

Following a fact-finding exercise to assess the impact of wholesale mobile wireless roaming arrangements on the competitiveness of the Canadian wireless industry, the Commission initiated a proceeding to consider whether or not, as a question of fact, there is a situation of unjust discrimination or undue preference with respect to domestic roaming arrangements in Canada.

Final reply comments were filed in February 2014 and a further set of Commission questions was issued and completed in early March 2014. Based on the Commission's own statement that it expects to publish a decision on the issues raised in this notice within four months of the close of record, a decision is now overdue and expected shortly.

In this proceeding, WIND argued that the rates it was paying for domestic roaming were unjustly discriminatory based on (1) the rates that the incumbents

were charging US carriers for roaming; and (2) the average retail rates charged by the incumbents to their own retail customers.

WIND also argued that domestic roaming caps were the appropriate remedy and that such costs should be based on an incremental cost plus reasonable mark-up approach (like essential facilities), or based on average retail prices less an adjustment for costs not incurred when providing roaming such as hand-set subsidies, retail stores, advertising, individual customer billing and support etc.

While a remedy in this proceeding may be somewhat moot because of recent amendments to the *Telecommunications Act* (the "**Act**") which cap domestic roaming rates, as well as the TNC 2014-76 proceeding discussed below, which is examining increasing (or re-instating) the Commission's rate setting powers for mobile wireless services provided at the wholesale level.

However, a declaration of unjust discrimination would provide a significant moral and public victory for new entrants. We continue to push for a ruling notwithstanding the ongoing other proceedings.

5. Telecom Notice of Consultation CRTC 2014-76 ("**TNC 2014-76**"), Review of wholesale mobile wireless services, 20 February 2014

The Commission has initiated a proceeding to determine whether the wholesale mobile wireless services market is sufficiently competitive and, if not, what regulatory measures are required. It will hold a public hearing, beginning on 29 September 2014. Among other things, the Commission has specifically asked for comments on the following:

- (a) Whether the market for wholesale roaming services is sufficiently competitive. Where one considers that the market is not sufficiently competitive, interveners were asked to identify, with supporting rationale, the regulatory measures, if any, that should be put in place either through the Commission's existing powers or through the reassertion of the Commission's jurisdiction to apply other provisions of the Act; and
- (b) Whether the market for wholesale tower and site sharing services is sufficiently competitive. Where one considers that the market is not sufficiently competitive, interveners were asked to identify, with supporting rationale, the regulatory measures, if any, that should be put in place either through the Commission's existing powers or through the reassertion of the Commission's jurisdiction to apply other provisions of the Act.

To date, there has been one round of evidence and several rounds of interrogatories in this proceeding.

WIND has taken the following positions:

- The Canadian wholesale wireless services market is dominated by an oligopoly, which provides insufficient competition in the wholesale wireless services markets across Canada to stem abuses of the incumbent wireless service providers which in turn negatively impacts the downstream retail markets for retail mobile services in Canada;
- There is a need for intervention in the wholesale wireless services markets including re-instatement of the Commission's jurisdiction to apply other provisions of the Act including section 25 of the Act in respect of tariffs for roaming and tower sharing. These services are essential inputs required by new entrants in order to provide downstream retail wireless services; and
- The Act and related Commission decisions must be seen to be complementary to other legislation, such as the *Radiocommunication Act* and the conditions of licence imposed thereunder including Client Procedures Circular CPC-2-0-17, *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*, as amended from time to time (the "**Conditions of Licence**").

Specifically, for roaming WIND has taken the following positions in respect of domestic roaming:

- The interim roaming rate caps in the Act (at average retail rates) are greatly in excess of what is reasonable given that the cost of providing wholesale roaming services are substantially less than the provision of similar services at the retail services. For example, wholesale services do not require the recovery of handset subsidies, they do not require retail stores and a website for customer fulfilment, they do not require the provision of individual customer bills and separate collections on a per customer basis, they do not require a marketing budget and other sales related expense, and they do not require first level customer facing support when there are customer issues. Thus WIND is continuing to push for incremental cost plus or average retail minus pricing;

- Additional aspects of roaming must be regulated because certain roaming rates are not covered by Act and some incumbents are taking the position that it is okay to gouge WIND and its customers for these services. For example, WIND has received offers for non-Canadian long distance call terminations when WIND's customers are roaming at rates more than 100 times the wholesale cost of such wholesale terminations. Therefore, WIND requires the right to terminate the non-domestic portion of calls made by WIND's customers when they are roaming (referred to as "call hand-back") through the implementation of call hand-back mechanisms;
- Direct interconnection arrangements for the exchange of traffic generated by WIND's roamers is required to reduce the cost of roaming (rather than being forced to use more expensive roaming hubs);
- Soft hand-off of calls between wireless networks when WIND's customers transition from WIND's wireless footprint to that of an Incumbent roaming partner is required; and
- The removal of restrictions in roaming agreements that prevent WIND from offering services to Mobile Virtual Network Operators ("MVNO's") that wish to offer mobile services to their customers on the WIND network and incidentally roam on the Incumbents' networks is required.

WIND has taken the following positions in respect of tower and site sharing:

- WIND requires access to tower sharing at reasonable rates, in order to continue to expand its network footprint. Tower sharing is particularly important in non-core urban areas where there is a lack of suitable elevation rooftops. This is because most municipalities will not allow the construction of new towers if there is space on existing towers; and
- WIND requires certain protections to ensure that the Incumbents do not make deals with building owners (e.g., shopping malls, sports stadiums and other places where large amounts of people pass through such that WIND is precluded from placement of its equipment in the same buildings for the provision of services to its customers. While the Conditions of License explicitly prohibit exclusive site licenses, the Incumbents have found ways to work around these prohibitions by incenting landlords to move exclusively to indoor shared antennae systems without the participation of WIND, or to otherwise convince certain major landlords not to allow WIND similar indoor access.

Additionally, WIND has not endorsed proposals for an expanded mandated wireless resale regime sought by the likes of CNOC, Orange and others – our position is that it is better to give facilities based competition a chance before instituting a more interventionist mandatory resale regime.

A decision in this proceeding is not expected until late 2014 or early 2015. Such a decision, if favourable in its outcome, will require a follow-up rate setting proceeding.

6. Review of domestic roaming rates mandated by the interim roaming caps mandated by section 27.1 of the Act

All of the incumbents have performed their own calculations of the interim domestic roaming rate caps required by the Act. They are now charging (or proposing to charge these rates) until the Commission establishes an alternative approach.

During contract negotiations for domestic roaming with Bell, Rogers and TELUS, little insight was provided on how the rates were calculated. Given the variability in the calculated average retail prices, and the fact that in-market retail prices are very similar across the board (among the incumbents), it is not surprising that there is likely manipulation of the calculations to push up roaming prices.

The Commission staff has indicated that it is going to initiate a proceeding to review compliance with the Act's current requirements for domestic roaming rates. WIND has a Part 1 application ready to the Commission if such a proceeding is not initiated shortly. In the mean-time, WIND has asked for public disclosure of the capped roaming rates in response to a Commission interrogatory directed at the incumbents as part of TNC 2014-76 – this will allow consumer groups to understand how high roaming rates will remain if further action is not taken by the Commission. Quebecor took a different tact and asked for disclosure of the methodology disclosed in the interrogatory responses – however the descriptions are extremely brief and not likely to be helpful.

7. Miscellaneous Commission Matters

The following is a list of miscellaneous regulatory matters that WIND is involved in:

- (a) A customer complaint concerning WIND's Data Fair Usage Policy and related disclosure to the customer. This is the fourth such complaint forwarded to WIND by the Commission. The previous three complaints were resolved with

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no further action by WIND (i.e., a determination of compliance with the rules by WIND); and

- (b) A Commission review of paper billing charges. There will be an industry persuasion session with the Commission at the end of August to convince carriers (including WIND) to reduce paper bill fees and create broader exemptions.