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Spectrum Management and Telecommunications

Consultation on Considerations Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences

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Canada 

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1. Intent

1. Approval by Industry Canada is required for all spectrum licence transfers. The intent of this consultation is to elaborate and seek views on the approach used by Industry Canada, which will be applied with respect to all spectrum licences, when considering licensees' requests to transfer or divide a spectrum licence, or enter into a subordinate licensing arrangement.

2. Mandate

2. The radio frequency spectrum is a valuable resource managed for the benefit of all Canadians.

3. The Minister of Industry, through the *Department of Industry Act*, the *Radiocommunication Act* and the *Radiocommunication Regulations*, with due regard to the Canadian telecommunications policy objectives set out in section 7 of the *Telecommunications Act*, is responsible for spectrum management in Canada. As such, the Minister is responsible for developing national policies for spectrum utilization and ensuring effective management of the radio frequency spectrum resource. Pursuant to the *Radiocommunication Act*, the Minister has the authority to plan the allocation and use of spectrum, to issue spectrum licences, to fix the terms and conditions of licences, and to amend the terms and conditions of any spectrum licence.

4. In developing spectrum licensing frameworks and policies, Industry Canada is guided by the objectives stated in section 7 of the *Telecommunications Act*. As stated in the *Spectrum Policy Framework for Canada (SPFC)*, Industry Canada's goal is to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum.

3. Policy

5. The Government of Canada is of the view that the interests of Canadians are best served by a competitive telecommunications market. Competition stimulates innovation and investment by the industry, which can lead to lower prices, better services and more choice for consumers and business users.

6. Industry Canada has reinforced its policy objectives in regards to spectrum and related policies through decisions including the *Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range*, and the *Policy and Technical Framework: Mobile Broadband Services (MBS) – 700 MHz Band, Broadband Radio Service (BRS) – 2500 MHz Band (SMSE-002-12)*. In the most recent of these, the policy objectives were:

- sustained competition in the wireless telecommunications services market so that consumers and businesses benefit from competitive pricing and choice in service offerings;
- robust investment and innovation by wireless telecommunications carriers so that Canadians benefit from world-class networks and the latest technologies; and
- availability of these benefits to Canadians across the country, including those in rural areas, in a timely fashion.

4. Background

7. The Government of Canada has taken action to increase and sustain competition in the provision of wireless telecommunications services. In 2008, measures were taken to facilitate the entry of new competitors into the wireless services market by setting aside 40 MHz of spectrum for new entrants in the auction for Advanced Wireless Services (AWS) spectrum. The set-aside spectrum was acquired mostly by new wireless-only competitors (WIND Mobile and Mobilicity) and regional cable companies (Shaw, Videotron and Eastlink). Many new entrants have subsequently launched services and Canadians have benefitted from a heightened level of competition. In 2008, the Government of Canada also introduced mandatory roaming requirements and tower sharing rules.

8. In 2012, the Government of Canada announced decisions to further support its policy objectives, including the relaxation of telecommunications foreign investment restrictions, and the imposition of spectrum caps that will provide to four or more service providers in each region of the country the opportunity to obtain access to spectrum in both the 700 MHz and the 2500 MHz bands.

5. Considerations

9. Access to sufficient spectrum is a precondition to the provision of wireless services. High concentration of spectrum licences among a small number of wireless service providers can be detrimental to competition. With the rapid shift to smart phones and the increasing use of data in the mobile market, the minimum amount of spectrum required to be a viable operator is increasing.

10. The three national incumbents, Rogers Communications, BCE and TELUS, hold licences for approximately 85% of all currently usable mobile spectrum in Canada, with the remaining 15% fragmented among new entrants. In 2012, three national incumbents dominated the provision of wireless services in the country, accounting for approximately 90% of wireless subscribers, whereas new entrants served approximately 5% of wireless subscribers, with the remainder served by regional incumbent operators.

11. Issues concerning spectrum aggregation and competition are not unique to Canada. Regulators worldwide have employed a wide range of measures to ensure that access to spectrum is not limited to only a small number of operators. Spectrum licence transfer requests are typically reviewed with respect to their impact on concentration and the potential impacts on competition in the provision of wireless services to the public.

6. Review of Spectrum Licence Transfer Requests

12. The departmental publication, *Licensing Procedures for Spectrum Licences for Terrestrial Services* (CPC-2-1-23) sets out the procedures related to requests involving the transfer, division or subordinate licensing of all spectrum licences. Under these procedures, upon receipt of an application, Industry Canada reviews the information provided by the existing licensee and proposed licensee or subordinate licensee to determine if the request meets the conditions and guidelines set out in CPC-2-1-23, including assessments relating to eligibility, and compliance with licence conditions and applicable policies.

13. Industry Canada proposes to revise CPC 2-1-23, which applies to all spectrum licences, in order to indicate the specific criteria considered and process used when spectrum licence transfer applications are reviewed.

14. For purposes of this proposal:

“licence” includes a subordinate licence;

“licensee” means a spectrum licensee, including any affiliates of that licensee;

“spectrum licence transfer request,” means an application to transfer or divide a spectrum licence, or to enter into a subordinate licensing arrangement, as described in CPC-2-1-23, where the licensee has submitted to Industry Canada a Notification of Spectrum Licence Transfer or Division, or Application for a Subordinate Licence, as applicable, in order to obtain a new licence or subordinate licence; and

“deemed spectrum licence transfer” means any agreement or transfer that has the effect of transferring, dividing or creating an interest in a spectrum licence in that it provides for the acquisition or control of a licence through a change in ownership and control of a licensee; or otherwise has the intent to determine who controls use of the spectrum other than the original licensee.

15. Industry Canada proposes, upon receipt of a spectrum licence transfer request, to determine whether a detailed review is required. It is noted that some transfers do not have material impacts in terms of telecommunications policy objectives. For example, a detailed review would not generally be required of transfers made as part of an internal reorganization, transfers that will serve to fill gaps in network coverage for the proposed

licensee or subordinate licensee that does not already hold licences for similar spectrum in the region, or transfers involving only small amounts of spectrum. Accordingly, in assessing whether a detailed review is required, thresholds will be examined, taking into account the following factors:

- (a) the amount of spectrum involved in the transfer; and/or
- (b) changes in levels of spectrum concentration and distribution among licensees in the region that would result from the transfer.

In all cases, Industry Canada will assess the application forms based on the material provided and its own licensing information as against any band specific criteria or eligibility criteria. In the cases noted above, Industry Canada will not typically require further information to complete its review and can approve the application in a summary fashion. Where a detailed review is required, Industry Canada proposes to advise the licensee and will likely require further information to complete the review.

16. Where required, a detailed review will determine whether approval of the spectrum licence transfer request will impact:

- (a) the efficiency and competitiveness of Canadian telecommunications market;
- (b) the availability, quality or affordability of services available to consumers; and/or
- (c) the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource.

17. In making this determination, Industry Canada may examine the following factors:

- (a) current licence holdings of the proposed licensee or subordinate licensee in the subject spectrum band and region;
- (b) overall distribution of licences in the subject spectrum band and/or related bands in the region;
- (c) the current and/or prospective services provided using the subject spectrum; and/or
- (d) the existence and availability of alternative spectrum with similar properties as that subject to the transaction.

18. Information provided by the parties in the course of reviews is treated confidentially. Certain international administrations, such as the United Kingdom publicize *proforma* information in respect of transfer requests. Industry Canada could consider a similar approach.

19. Industry Canada also proposes to treat any deemed spectrum licence transfer as an actual licence transfer, division, or subordinate licensing arrangement. Given that current conditions of licence require that Industry Canada approve all spectrum licence transfers, it is proposed that licensees will be required to notify Industry Canada prior to finalizing a deemed spectrum licence transfer. Such notification would be treated as a spectrum licence transfer request, which will be reviewed by the Department as set out in this document. It is further proposed that, where Industry Canada indicates that it would refuse the approval, a licensee would be in breach of its conditions of licence if it finalizes the agreement related deemed spectrum licence transfer.

20. At any time, licensees may informally approach the Department with questions as to how these criteria and considerations might be applied to a particular request.

Industry Canada is seeking comments on:

6-1 The criteria and considerations set out above.

6-2 Whether there is a threshold in the form of concentration or a measure of MHz-pop that Industry Canada should apply in deciding whether to conduct a detailed review, or some other type of threshold, screen, or cap that should be used to decide if a detailed review is required.

6-3 The treatment of deemed spectrum licence transfers as actual transfers, divisions or subordinate licensing arrangements.

6-4 The current review model, which is confidential, and whether it should be modified such that Industry Canada would publicize a spectrum licence transfer request and provide an opportunity for third party input.

6-5 In addition, Industry Canada welcomes comments on any other suggested changes to the applicable conditions of licence related to licence transfers, and to section 5.6 of CPC 2-1-23 and to the relevant application forms or other requirements.

7. Timelines

21. It is proposed that, under normal circumstances, within four (4) weeks of receipt of a spectrum licence transfer request, Industry Canada will:

- approve the issuance of a new licence or subordinate licence, as applicable, based on the information supplied, provided that the request meets the applicable requirements set out in CPC-2-1-23; or
- advise the parties to the spectrum licence transfer request that a detailed review will be required.

22. In the latter case, the Department may seek additional information and documentation from the parties.

23. Based on the information provided, the Department will review the transaction as set out above, and within sixteen (16) weeks of receipt of all required information, will:

- approve the issuance of a new licence or subordinate licence, as applicable, provided that the request meets the applicable requirements set out in CPC-2-1-23; or
- communicate the factors leading to a refusal to approve the spectrum licence transfer request, and the reasons for same.

24. In some circumstances, timelines for decisions may vary from those proposed in this paper. For example, these timelines may be impacted by:

- requests from the Department for further information from the parties; or
- time required by the parties to respond to specific concerns raised by the Department in its review;

7-1 Industry Canada is seeking comments regarding the proposed timelines.
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8. Prospective Transfers

25. Industry Canada proposes to introduce a notification requirement related to agreements that provide for the future transfer or division of a spectrum licence, or a subordinate licensing arrangement. This requirement would be incorporated into a condition of licence to be applied to all existing and subsequently issued spectrum licences.

26. Industry Canada proposes to add the following as a condition of licence to all spectrum licences for terrestrial services, as part of the existing conditions of licence related to transfer:

Prior to entering into any binding agreement, including an option or similar agreement, which provides for a transfer or division of a spectrum licence or a subordinate licensing arrangement to be made at a later date, licensees will notify Industry Canada in writing and provide the relevant details of the agreement. Licensees must also notify Industry Canada in writing of any such agreement already in place as of the effective date of this condition of licence.

27. Upon receipt of such notice, Industry Canada proposes to review the information provided by the parties with the intent of providing a preliminary assessment of the transaction. A preliminary assessment in this case represents the Department's opinion of the transaction at the time of writing, but does not bind Industry Canada in respect of the approval or denial of any eventual spectrum licence transfer request at the time that the request is made.

28. In preparing its preliminary assessment, Industry Canada will apply the criteria set out in Section 6 above, within the timelines indicated in Section 7 above.

8-1 Industry Canada is seeking comments on the proposed Condition of Licence concerning prospective transfers, including the criteria, considerations and timelines set out above.

9. Timing Considerations and Impacts on Upcoming Auctions

29. A decision on this proposed policy based on input received through this consultation will be made well in advance of the 700 MHz auction. It is anticipated that any changes to CPC-2-1-23 and to the applicable conditions of licence will be effected at the time that the decision is released.

10. Submitting Comments

30. Respondents are requested to provide their comments in electronic format (Microsoft Word or Adobe PDF) to the following email address: spectrum.operations@ic.gc.ca.

31. Written submissions should be addressed to the Director, Spectrum Management Operations, Industry Canada, 300 Slater Street, Ottawa, Ontario K1A 0C8. All submissions should cite the *Canada Gazette*, Part I, the publication date, the title and the notice reference number (DGSO-002-13). Parties should submit their comments no

later than **April 3, 2013**, to ensure consideration. Soon after the close of the comment period, all comments received will be posted on Industry Canada's Spectrum Management and Telecommunications website at <http://www.ic.gc.ca/spectrum>.

32. The Department will also provide interested parties with the opportunity to reply to comments from other parties. Reply comments will be accepted until **May 3, 2013**.

33. All comments and reply comments will be published, so those making submissions are asked not to provide confidential information in their submissions.