Court File No. CV-13-10274-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMNT OF 8440522 CANADA INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., AND DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC.

Applicants

RESPONDING MOTION RECORD
OF CATALYST CAPITAL GROUP INC.
(Stay Extension Motion – November 27, 2014)

November 26, 2014

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Applicants

NOTICE OF MOTION
(STAY EXTENSION MOTION – NOVEMBER 27, 2014)

Catalyst Capital ("**Catalyst**") will make a motion to the Honourable Mr. Justice Newbould seeking directions with respect to the Stay Extension Order sought by the Applicants, upon the return of the Applicants' motion before His Honour Justice Newbould, on November 27, 2014, at 330 University Avenue, Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. The inclusion of the following directions in the proposed Stay Extension Order:

   (a) that the Monitor make reasonable efforts to arrange a business meeting or meetings within the next 10 days between Catalyst, Mobilicity and the Ad Hoc Committee of Noteholders, on such terms as the Monitor deems appropriate;

   (b) that the Monitor provide a brief report to the court, on or before December 10, 2014, regarding the progress made towards developing a consensual restructuring plan for Mobilicity and whether it would be appropriate to renew the mediation process to achieve such a plan; and,

   (c) that these directions are without prejudice to the right of Catalyst, if so advised, to seek further relief from this court, pursuant to its Notice of Motion herein dated October 27, 2014 (as amended), or by way of comeback motion, or otherwise.

2. Such further and other relief as counsel may request and this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

3. Over the past two months, Catalyst has proposed a term sheet, a detailed restructuring plan, and related materials to Mobilicity and certain of its key stakeholders.

4. The directions sought are in furtherance of the attempts made to date to arrive at a consensual restructuring plan to enable the Applicants to participate in the recently announced AWS-3 Spectrum Auction.

5. The assistance and involvement of the Monitor as reflected in the directions sought will increase the likelihood that a consensual restructuring plan can be arrived at.

6. It is just and convenient that the directions sought be granted.

7. Rules 2.03, 3.02, 16, and 37 of the *Rules* of *Civil Procedure,* R.R.O. 1990, Reg. 194, as amended; and

8. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

9. The Affidavit of James Riley, sworn November 26, 2014;

10. Such further and other material as counsel may advise and this Court may permit.

November 26, 2014

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Applicants

AFFIDAVIT OF JAMES RILEY
(Sworn November 26, 2014)

I, JAMES RILEY, of the City of Toronto in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Chief Operating Officer, Managing Director and Partner in The Catalyst Capital Group Inc. ("**Catalyst**") and have been directly involved in these proceedings, as well as in the oppression proceedings instituted by Catalyst and the proceedings initiated by the Mobilicity Group ("**Mobilicity**") under the *Canada Business Corporations Act*, R.S.C., 1985 c. C-44 ("**CBCA**"). As such, I have personal knowledge of the matters hereinafter deposed to, except when otherwise stated in which case I have identified the source of my information and belief.

2. This affidavit is sworn in response to the motion brought by the Applicants' (hereinafter "**Mobilicity**") for an extension of the Stay Order herein from December 1, 2014 to January 30, 2015.

3. Given the fact that Mobilicity's motion ("**Stay Extension Motion**") was only circulated late on Monday afternoon, it is impossible to fully detail all of the facts, circumstances

and developments relevant to the Stay Extension Motion or to conduct any cross-examination on the materials filed in support thereof.

4. In summary, unless a restructuring Plan for Mobilicity can be developed and approved prior to January 30, 2015, Mobilicity will lose the chance to participate in an auction for AWS-3 Spectrum. This is a unique, one-time, extremely valuable opportunity. The terms of the auction would be substantially more advantageous to Mobilicity if it is in a position to participate than the terms available to major cellular auction participants such as Bell, Telus and Rogers. If Mobilicity does not participate in the auction, the AWS-3 Spectrum will be sold to other auction participants and that will almost certainly lead to a permanent erosion in Mobilicity's competitiveness. In that event, Mobilicity's business, along with the interests of its senior creditors, who hold First Lien notes and who are owed in excess of $200,000,000, will be seriously prejudiced.

5. In these circumstances, Catalyst is seeking the following relief by way of directions in connection with the Stay Extension Motion:

(a) that the Monitor make reasonable efforts to arrange a business meeting or meetings within the next 10 days between Catalyst, Mobilicity and the Ad Hoc Committee of Noteholders, on such terms as the Monitor deems appropriate;

(b) that the Monitor provide a brief report to the court, on or before December 10, 2014, regarding the progress made towards developing a consensual restructuring plan for Mobilicity and whether it would be appropriate to renew the mediation process to achieve such a plan; and,

(c) that these directions are without prejudice to the right of Catalyst, if so advised, to seek further relief from this court, pursuant to its Notice of Motion herein dated October 27, 2014 (as amended), or by way of comeback motion, or otherwise.

6. On July 28, 2014, Industry Canada issued a lengthy consultation Notice which detailed its plans to conduct an auction for AWS-3 Spectrum in early 2015. Now shown to me and marked as **Exhibit A** is a true copy of this Notice. Its contents indicate that Industry Canada intends to "set aside" AWS-3 Spectrum for acquisition by non-incumbents who meet certain defined criteria. Part C of the Notice contains detailed rules and procedures for the auction, including the following:

(a) in order to participate non-incumbents will have to register in advance and establish that they are qualified bidders;

(b) at the time of such registration, any non-incumbent seeking to participate in the auction will have to file proof that it has sufficient financing to enable it to make an "opening bid";

(c) the projected "opening bid" amounts in the four geographic areas where Mobilicity operates total $62,000,000; and,

(d) a specific schedule which sets out the dates for the auction, as set out in paragraph 83 of the Notice:

> "To make this spectrum available in a timely manner and given the proposal for the simplified auction format, Industry Canada is proposing that the AWS-3 auction take place in March 2015, with the deadline for receipt of applications on January 30, 2015."

7. I have had an opportunity to briefly review the Affidavit of William Aziz, sworn and delivered on November 24, 2014. I note that paragraphs 27-29 of this affidavit refer to the AWS-3 Auction and include a statement that "to my knowledge, Industry Canada has not yet set a date for participants to register and provide a deposit in regard to the AWS-3 Auction"

8. Although the above-referenced Industry Canada Notice invited comments from interested parties, I am advised by Catalyst's regulatory counsel and verily believe that based upon informal inquiries with officials at Industry Canada, there has been no change in the dates referred to in paragraph 6(d) above, and that it is prudent for interested persons to proceed on the basis that these are <u>the dates applicable to the auction</u>.

9. I also note paragraph 24 of Mr. Aziz's November 24, 2014 affidavit, which states that since the last extension of the Stay Record, "...a number of parties have expressed interest in pursuing entirely different structures with the Applicants and/or their stakeholders." According to Mr. Aziz, "...discussions are in early stages and continuing with all interested parties...."

10. Catalyst has no idea what is being referred to because it has been left out of any consultation about these matters. Whatever these initiatives may be, they come after:

(a) a lengthy process whereby Mobilicity tried, unsuccessfully, to solicit buyers in late 2012;

(b) a Court-sanctioned sales process in late 2013/early 2014 which (other than the Telus offer which was subsequently withdrawn), did not produce any viable offers; and

(c) the recently announced Globactive-Wind transaction, the terms of which (barring a material change/improvement in Mobilicity's business), impute a value for Mobilicity well below the amount currently owing on the First Lien Notes.

11. The unspecified initiatives referred to in Mr. Aziz's Affidavit also follow the issuance of the Statement of Claim dated September 4, 2014, in which Mobilicity's history, business, and related matters are detailed at great length. A true copy of this Statement of Claim is attached as **Exhibit B** hereto.

12. It is noteworthy that one of the plaintiffs in this Statement of Claim is controlled by a current director of Mobilicity, who is presumably well informed about the facts alleged in the Statement of Claim and on whose instructions said facts where likely included therein.

13. Among other things, this pleading refers to and relies upon the precarious state of Mobilicity's business as currently constituted. It asserts that the value of the investments made in Mobilicity's holding company has been reduced to zero and that Mobilicity's current business is not viable.

14. This Statement of Claim also provides particulars of the reasons and circumstances behind the Federal Governments' steadfast and continuing refusal to approve any sale of Mobilicity to Telus, including the circumstances relating to Industry Canada's refusal to approve Telus transactions in May and October 2013 and in the Spring of 2014. The Statement of Claim also refers to threats which allegedly caused Telus to abandon its last offer to buy Mobility.

15. The circumstances relied upon in connection with the failure of the Telus transactions over the past 18 months are set out in paragraphs 118-135 of the Statement of Claim, and have nothing whatsoever to do with Catalyst. These paragraphs include the following:

> "131. After learning of a concluded transaction between Mobility and Telus for the transfer of Mobility's license Industry Canada threatened Telus that if it did not permanently abandon its efforts to acquire Mobilicity's license it would be barred from participation in future spectrum auctions.
>
> 132. In deliberate disregard of his official duty, the Minister of Industry phoned the Chief Executive Officer and/or senior management of Telus and communicated this threat to them directly. Specifically, the Minister of Industry informed Telus that unless it permanently stopped all efforts to acquire Mobilicity's spectrum it would be banned from any subsequent spectrum auctions. This threat was widely reported in the national media and had the desired effect of intimidating all potential buyers of Mobilicity's spectrum.
>
> 133. There was no lawful basis to exclude Telus from participating in future auctions, however the Minister's threats and intimidation had the

desired effect. Telus withdrew its offer and terminated all business relations with Mobilicity."
(Underlining added)

16. Telus' withdrawal of its last offer to buy Mobilicity is confirmed in paragraph 20 of the Affidavit of Mr. Aziz herein, sworn on June 23, 2014, and in paragraph 10 of Mr. Aziz' Affidavit dated November 24, 2014, albeit without any reference to the circumstances alleged in the above Statement of Claim.

17. Shortly after the issuance and public announcement of the above Statement of Claim, former Chief Justice Winkler terminated the Court ordered mediation.

18. In these circumstances, participation by Mobilicity in the upcoming AWS-3 auction can only serve to increase the value of the Company and benefit its position in whatever alternative transactions might be under consideration.

19. The attributes and importance of AWS-3 Spectrum, and the value of the opportunity that non incumbents have to participate in the aforementioned auction are reflected in the following documents—**Exhibit C**: Media reports dated July 7 and October 13, 2014 referring to the Industry Canada AWS-3 auction, **Exhibit D:** media reports relating to the auction in the United States for AWS-3 Spectrum, and **Exhibit E:** certain extracts from submissions filed with Industry Canada regarding the AWS-3 auction.

20. In light of the above, and in the aftermath of the decision by former Chief Justice Winkler to terminate the Court ordered mediation herein, Catalyst decided to renew unsuccessful efforts which it had made over the last 10 months to engage in a direct business dialogue with members of the "Ad Hoc Committee of Noteholders". As a result, a business meeting was set up on September 24, 2014, between representatives of Catalyst (Gabriel De Alba and myself) and another First lien Holder and its counsel.

21. In addition, because of the importance of the business opportunity presented by the AWS-3 Auction, and the fact that no one had done anything to develop a Plan B for the restructuring of Mobilicity in the event the mediation was unsuccessful, Catalyst also decided that it would make a specific business proposal to restructure Mobilicity. The intended purpose was to enable Mobilicity to participate in the AWS-3 auction, and, if successful therein, to provide further financing to grow and increase the value of its business with the benefit of the newly acquired AWS-3 Spectrum.

22. By letter dated September 24, 2014, Catalyst advised Mobilicity of the aforementioned meeting and of its intention to present a restructuring proposal. Attached hereto and marked as **Exhibit F**is a true copy of this letter.

23. I attended the meeting along with Mr. De Alba. We presented an outline of Catalyst's proposed Plan for a financing of up to $400,000,000 in two stages, of which Catalyst was willing to advance up to $300.000.000.

24. Thereafter, the following steps were taken:

(a) delivery of a term sheet on Friday, October 10, 2014, detailing the elements of the proposed restructuring which had been discussed conceptually on September 24, 2014. Attached hereto and marked as **Exhibit G** is a copy of this term sheet;

(b) delivery of a lengthy and detailed draft plan on October 24, 2014, which included provisions for a proposed "Dutch Auction" to provide an immediate exit option for First Lien Holders. The communication accompanying this material indicated that while Catalyst considered the proposed Plan to be fair and reasonable, Catalyst was "open to consider changes to the Plan that do not materially diminish its economics". Catalyst requested that a meeting be arranged as soon as possible. Attached hereto and marked as **Exhibit H** is a true copy of this communication and the detailed Draft Plan;

(c) delivery of a Notice of Motion on October 27, 2014, identifying various steps which needed to be completed and potential court directions that would likely be required in connection with catalyst's proposals. Attached hereto and marked as **Exhibit I** is a true copy of this Notice of Motion and the letter which accompanied it and an explanatory email to the Commercial List Office;

(d) delivery of revised materials in connection with the aforementioned proposals during the week of November 3rd, in which the transactions were staged into three parts. Once again, Catalyst requested a meeting to discuss the proposed Plan as soon as possible. Attached hereto and marked as **Exhibit J** are copies of these materials.

25. Despite the above, as of November 18, 2014, there had been no further meetings, the only responses received by Catalyst had been conceptual in nature, and had been conveyed to Catalyst through an intermediary, Barry Goldberg, a financial advisor to Mobilicity.

26. Given the urgency which it believed existed, Catalyst was concerned by the lack of any direct discussions, the absence of any specific responses regarding its proposals, and the time which had passed without any material progress. Accordingly on November 18 and 19, 2014, Catalyst wrote (through counsel) to Mobilicity and to the Ad Hoc Committee of Noteholders expressing its concerns. Attached hereto and marked as **Exhibits K, L, M and N** are true copies of these letters and the responses from counsel to the Ad Hoc Committee of Noteholders and Mobilicity.

27. Attached hereto and marked as **Exhibit O** is a true copy of a further letter which I wrote last Friday to the business counterparts who attended the September 24, 2014 meeting in which I expressed Catalyst's concerns about, among other things, the lack of progress.

28. Catalyst kept the Monitor apprised of these developments by providing the Monitor with copies of the aforementioned correspondence and by meeting informally with the Monitor and its counsel on Friday, November 21, 2014 to discuss next steps. At that meeting, Catalyst requested the Monitor to use its best efforts to arrange a business meeting of principals. In addition, Catalyst raised the possibility of renewing the mediation process to arrive at consensual restructuring plan.

29. Late on November 21, 2014 (last Friday evening), Catalyst received an email from Barry Goldberg attaching a without prejudice term sheet from the Ad Hoc Committee of Noteholders. Attached hereto and marked as **Exhibit P** is a true copy of this email, without the term sheet.

30. In light of the above, by letter dated November 25, 2014, Catalyst has confirmed with the Monitor its earlier request that efforts be made to arrange business meetings regarding the attempts to restructure Mobilicity. Attached hereto and marked as **Exhibit Q** is a true copy of this letter. I am advised by Counsel and verily believe that the Monitor's counsel has confirmed the Monitor's willingness to try to set up such meetings.

31. This affidavit is sworn in support of a request by Catalyst that the directions referred to in paragraphs 5(a)-(c) herein be included in any Stay Extension Order that this Court may make, and for no improper purpose or motive.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario this 26 day of November, 2014.	)	
David Moore	)	James D Riley
Commissioner for Taking Affidavits In and for the Province of Ontario	)	James Riley

This is **Exhibit "A"** to the
Affidavit of James Riley
sworn before me this 26th
day of November, 2014

____
A Commissioner, etc.

Government of Canada Gouvernement du Canada

Canada

Industry Canada

Spectrum Management and Telecommunications

Consultation on the Technical, Policy and Licensing Framework for Advanced Wireless Services in the Bands 1755-1780 MHz and 2155-2180 MHz (AWS-3)

Related Documents

Gazette Notice SLPB-004-14

Comments Received

Reply Comments **New**

Posted on Industry Canada website: July 28, 2014

Contents

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Introduction

1. Intent

1. Through the release of this document, Industry Canada is hereby initiating a consultation on a technical, policy and licensing framework for Advanced Wireless Services (AWS) in the bands 1755-1780 MHz and 2155-2180 MHz (hereinafter referred to as AWS-3). Comments are being sought on all aspects related to the licensing of this spectrum.

2. Mandate

2. The Minister of Industry, through the *Department of Industry Act*, the *Radiocommunication Act* and the *Radiocommunication Regulations*, with due regard to the objectives of the *Telecommunications Act*, is responsible for spectrum management in Canada. As such, the Minister is responsible for developing goals and national policies for spectrum resources use and for ensuring effective management of the radio frequency spectrum resource.

3. Legislation

3. The Minister of Industry is provided the general powers for spectrum management in Canada pursuant to section 5 of the *Radiocommunication Act* and sections 4 and 5 of the *Department of Industry Act*. The Governor in Council may make regulations with respect to spectrum management pursuant to section 6 of the *Radiocommunication Act*; these regulations have been prescribed under the *Radiocommunication Regulations*.

4. Policy Objectives

4. Industry Canada is committed to ensuring that Canadian consumers, businesses and public institutions continue to benefit from advanced wireless telecommunications services across the country. A robust wireless telecommunications industry drives the adoption and use of digital technologies and enhances the productivity of the Canadian economy and its international competitiveness. In pursuit of these objectives, the Department has promoted a competitive wireless telecommunications marketplace. Industry Canada considers that competition encourages innovation and investment, leading to lower prices, better services and more choice for consumers.

5. In developing a policy and licensing framework to make additional spectrum available, the Department has been guided by the policy objectives of the *Telecommunications Act*, the *Spectrum Policy Framework for Canada* (SPFC), which states that spectrum should be used in a way that maximizes the economic and social benefits for Canadians, and Industry Canada's policy objectives that are outlined in SMSE-002-12, *Policy and Technical Framework: Mobile Broadband Services (MBS) — 700 MHz Band, Broadband Radio Service (BRS) — 2500 MHz Band*, as follows:

- 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.

6. SMSE-002-12 also identified several trends that have emerged since 2008, which persist today. Canada has experienced continued growth in wireless subscribership and revenues, highlighting the increasing role of wireless services to Canadian telecommunications. [1] In addition, consumers have continued to increase their use of smart phones and tablets, driving demand for data services and increasing wireless network traffic. [2] Since taking steps to introduce new competitors to the wireless market in 2008, new entrants have undertaken the substantial investment required to deploy wireless networks in many markets across Canada and to provide wireless services to Canadians. Since new wireless competitors were introduced, competition has increased, bringing benefits to consumers. Average wireless prices are 22% lower than in 2008. [3]

7. Spectrum is a critical input for wireless carriers. Since the 2008 AWS auction, new entrants ha expanded networks and increased subscribership. More spectrum would allow such providers to increase network capacity in order to meet the traffic demands of a growing subscribership, and support the provision of next-generation wireless services, such as long-term evolution (LTE). Meanwhile, larger national and regional service providers would also benefit from an opportunity to access additional spectrum, allowing them to increase capacity to better serve their substantial subscriber base. Industry Canada views the licensing of AWS-3 spectrum as an opportunity to release wireless spectrum to support investment and improve services for both newer and established carriers. In particular, it presents a key opportunity to support competition and the provision of competitive advanced commercial mobile services to Canadians.

5. Executive Summary

8. This consultation contains interconnected proposals for all the elements required to licence the 50 MHz of AWS-3 spectrum. The consultation is set out in four parts: band plan considerations; conditions of licence; auction process and rules; and other considerations.

9. To support Industry Canada's telecommunications policy objectives for sustained competition, investment, and availability, the key elements being proposed are:

- two paired blocks are to be made available for licencing on a Tier 2 basis, one 30 MHz block at the lower end of the band and one 20 MHz block at the upper end of the band, to enable the delivery of services to more users at faster speeds;
- this spectrum is to be made available via an auction process with 30 MHz of spectrum set aside for operating new entrants in order to facilitate sustained competition and 20 MHz of spectrum open for all bidders to make more commercial mobile spectrum available;
- licences are to have a 20-year licence term with deployment requirements at year 5 and year 10, to provide for more timely deployment and provision of services to Canadians and to deter speculation; and
- a sealed-bid, second-price auction process is to be held in March 2015 to make the spectrum available in a timely manner.

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Part A – Band Plan Considerations

6. Background

6.1 AWS-3 Bands in Canada

10. In 2003, Industry Canada issued DGTP-007-03, *Consultation on the Spectrum for Advanced Wireless Services and Review of the Mobile Spectrum Cap Policy*, and the Department proposed that the bands 1710-1755 MHz and 2110-2155 MHz be designated for AWS (hereinafter referred to as AWS-1) for high mobility and fixed operations. Several respondents to this consultation suggested that the Department consider expanding the AWS bands to 1710-1770 MHz and 2110-2170 MHz in the longer term. They noted that such an expansion would add an extra 30 MHz (15 + 15 MHz) of wireless access spectrum and allow further harmonization worldwide. Furthermore, expansion of the band would enable manufacturers to provide handsets with a 60 + 60 MHz capability consistent with the usage of this band in Europe and Asia, thereby providing additional economies of scale.

11. In DGTP-002-07, *Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services* (hereinafter referred to as the 2007 AWS Consultation), the Department limited the designation for AWS to the bands 1710-1755 MHz and 2110-2155 MHz, in order to align the spectrum in North America, but indicated that the extension of these bands to 1710-1780 MHz and 2110-2180 MHz could be the subject of a future spectrum utilization policy. At that time, the

Department indicated that it was not ready to designate or license the bands 1755-1780 MHz and 2: 2180 MHz until there was more certainty concerning potential service applications, band pairing and technology.

12. As discussed in the *Commercial Mobile Spectrum Outlook*, the wireless industry in both Canada and the United States has indicated over the years that a paired identification of the two bands 1755-1780 MHz and 2155-2180 MHz would be very valuable in the delivery of mobile broadband services to consumers. Given that these bands are part of the North American wireless ecosystem, the Department indicated that it would wait for the usage of this spectrum to be clarified in the United States and stated that Canada would consider making this spectrum available for commercial mobile services as early as 2015.

13. Currently, the bands 1755-1780 MHz and 2155-2180 MHz are used for low-capacity fixed point-to-point microwave links, which are mostly legacy systems. In addition, the band 2150-2162 MHz has been used as a return band for multipoint communications system (MCS) and multipoint distribution system (MDS) to supplement spectrum in the 2500 MHz band.

14. In October 1999, Industry Canada issued SP 1-3 GHz, *Amendments to the Microwave Spectrum Utilization Policies in the 1-3 GHz Frequency Range*. Due to pending changes to accommodate new mobile services in the band 1710-1850 MHz following WRC-2000, the departmental spectrum utilization policy document discouraged any growth for fixed line-of-sight services in this band at that time, particularly for large-scale multi-hop networks or for systems deployed in urban areas and their vicinities.

15. In February 2007, as part of the 2007 AWS consultation, footnote C37 was added to the *Canadian Table of Frequency Allocations* (CTFA), indicating that the designation of the bands 1755-1850 MHz, 2020-2025 MHz and 2155-2180 MHz for AWS may be the subject of a future public consultation.

16. A moratorium on the further licensing of new fixed microwave stations in the bands 1990-2010 MHz and 2110-2200 MHz had previously been imposed in 1995 through SP 1-20 GHz — *Revisions to Microwave Spectrum Utilization Policies in the Range of 1-20 GHz*. A moratorium was placed on the licensing new fixed microwave stations in the band 1755-1780 MHz in June 2009, subsequent to the Department's 2008 consultation SMSE-008-08, *Proposed Revisions to the Technical Requirements for Fixed Service in the Bands 1700–1710 MHz and 1780–1850 MHz*.

17. As discussed in the 2007 AWS Consultation, licensees using the MCS/MDS return bands (2150-2162 MHz) were notified in 2004 that their licence would be subject to the transition policy applicable to the fixed service for the implementation of AWS. Since 2004, most MCS and MDS licences, with the exception of site-specific MCS licences in Manitoba, have transitioned to a new licence framework in preparation for the upcoming 2500 MHz auction. This led to the decision in the 2007 AWS Consultation that the transition provisions for the implementation of AWS will be applicable to all fixed services in the band 2110-2170 MHz, including MCS/MDS applications.

18. As a result of these moratoria, there are few licensees remaining in the AWS-3 bands.

6.2 AWS-3 Bands in the United States

19. In March 2014, in its AWS-3 Report and Order, FCC 14-31, *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*, the U.S. Federal Communications Commission (FCC) indicated that it will auction the bands 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz starting on November 13, 2014.

20. Currently, the band 1755-1850 MHz is extensively used by U.S. government departments and agencies, including the Department of Defense. Although most U.S. incumbent licensees will be relocated to other spectrum, some U.S. government systems will remain in the lower AWS-3 band indefinitely. The FCC Report and Order provided general rules for coexistence of new AWS-3 systems with U.S. federal incumbents and identified the types and locations of grandfathered systems that will remain in the band. However, it is the responsibility of the U.S. National Telecommunications and Information Administration (NTIA) to develop the relocation plan for moving the remaining incumbent

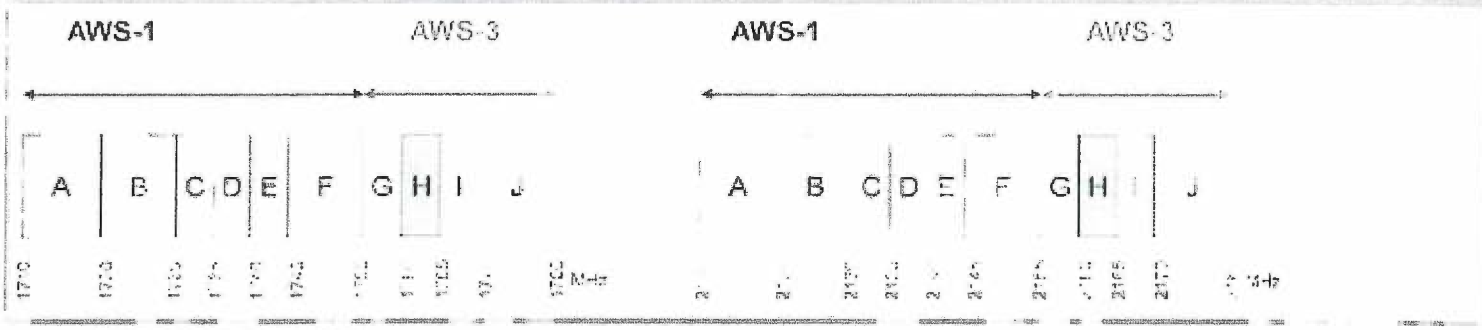
U.S. licensees.

21. On May 13, 2014, the NTIA published a *Notice of Estimated Relocation or Sharing Costs and Timelines for the 1695-1710 MHz and 1755-1780 MHz Bands*. This NTIA notice gave broad time frames for displacement of incumbent U.S. government licensees from the band 1755-1780 MHz, ranging from immediate to 120 months following the close of the AWS-3 auction. On July 16, 2014, the NTIA published detailed Federal Agency Spectrum Transition Plans for both the 1695-1710 MHz and 1755-1780 MHz bands. *The Transition Plans and Transition Data for the 1755 - 1780 MHz Band* provide detailed information on frequency bands, locations, type of use and timeframes to vacate the band for each U.S. federal agency that is currently using this spectrum. Between the close of the auction and the transition date, the NTIA will evaluate requests by U.S. AWS-3 licensees to operate near these U.S. government systems on a case-by-case basis.

22. In its Report and Order, the FCC paired the bands 1755-1780 MHz (uplink) and 2155-2180 MHz (downlink), making them an extension of the AWS-1 band. The U.S. band plan consists of three 5 + 5 MHz blocks and one 10 + 10 MHz block. The FCC also mandated that devices be interoperable across both the AWS-1 and AWS-3 bands. Interoperability ensures that devices can work across both bands, thus supporting the development of a large ecosystem. The U.S. band plan is shown in Figure 1.

23. Note that, in addition to the 1755-1780 MHz and 2155-2180 MHz bands, the FCC also considers the unpaired band 1695-1710 MHz as part of AWS-3 and will include this band in the FCC's November 2014 auction. However, this band is outside the scope of this consultation.

Figure 1: U.S. Band Plan

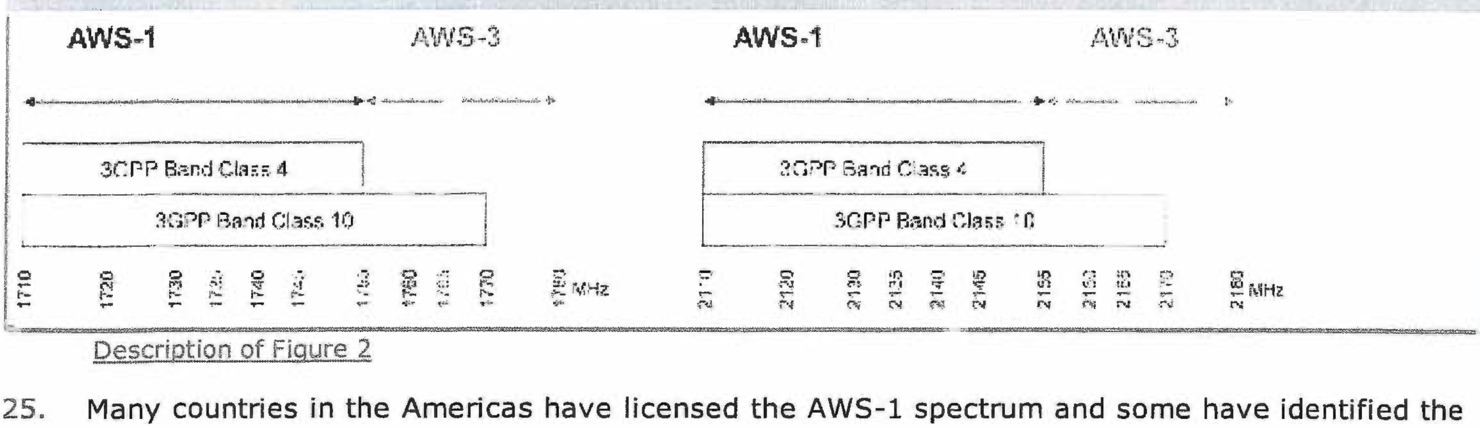


Description of Figure 1

6.3 AWS-3 Bands Internationally

24. The band pairings of 1710-1755 MHz paired with 2110-2155 MHz and 1710-1770 MHz paired with 2110-2170 MHz are standardized in the Third Generation Partnership Project (3GPP) [6] and in Recommendation ITU-R M.1036. [7] However, there is no existing 3GPP band class or standard that spans the full AWS-3 band. The current 3GPP band classes are shown in Figure 2 below.

Figure 2: 3GPP Band Classes



Description of Figure 2

25. Many countries in the Americas have licensed the AWS-1 spectrum and some have identified the

bands 1755-1770 MHz and 2155-2170 MHz for mobile broadband communications; however, no countries other than the United States have initiated licensing processes for these bands. In March 2014, the Inter-American Telecommunications Commission's Permanent Consultative Committee 2 (CITEL PCC.II) approved Recommendation PCC.II/REC.43 (XXIII-14) on the use of both AWS-1 and AWS-3 bands for mobile broadband services in the Americas.

7. Band Plan and Tier Sizes

7.1 Band Plan

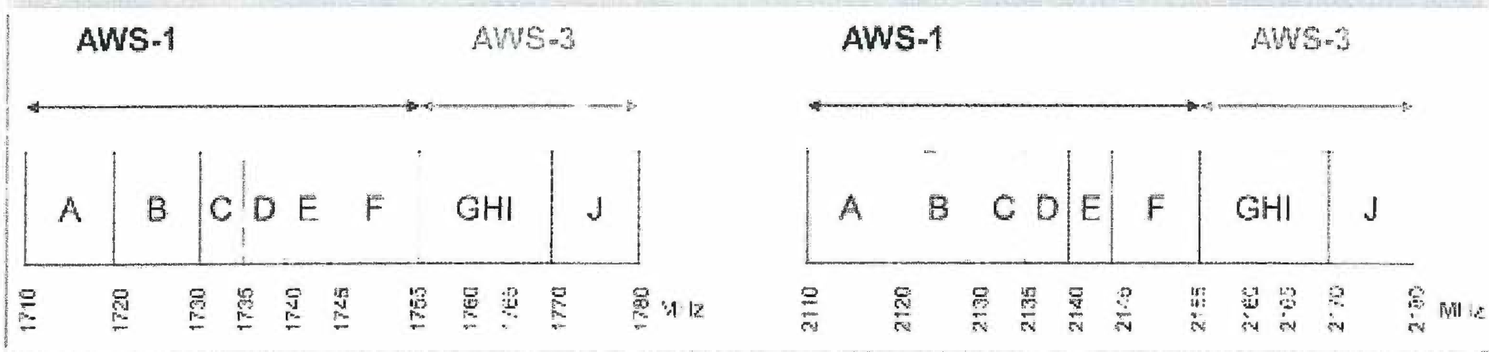
26. The AWS bands (AWS-1 and AWS-3) are expected to be key bands for the deployment of LTE technology for today's wireless networks. LTE supports block sizes of 1.4, 3, 5, 10, 15 and 20 MHz, and allows for the combining of adjacent blocks within the same band up to 20 MHz. Therefore, it is expected that the 3GPP standard for the AWS-3 spectrum will support 10 MHz and 15 MHz block sizes. Large block sizes will allow service providers to accommodate more customers and offer faster average user speeds.

27. As shown in Figure 1, the U.S. band plan is comprised of a mix of 5 MHz and 10 MHz blocks and follows the same uplink/downlink pairing as the AWS-1 band.

28. Industry Canada proposes to use the same band plan (uplink at 1755-1780 MHz and downlink at 2155-2180 MHz) as currently used in the United States. Harmonizing the Canadian and U.S. band plans would support a wide selection of low-cost equipment due to the size of the U.S. market, facilitate cross-border roaming as a result of interoperable equipment, and simplify cross-border frequency coordination due to harmonized frequency arrangements.

29. However, Industry Canada is proposing that the three 5 MHz blocks, (G, H and I) be combined as one 15 + 15 MHz block, in addition to the 10 + 10 MHz block J, as shown in Figure 3. Having 15 + 15 MHz as a single block would allow licensees to benefit from the throughput, capacity and network efficiencies of a large block. Large blocks will also allow service providers to aggregate more efficiently the AWS-3 blocks with their other spectrum holdings across the AWS-1 and other bands. Combining the U.S. G, H and I blocks into one Canadian block GHI will optimize alignment with the U.S. band plan, simplifying coordination and minimizing the risk of an incompatible ecosystem.

Figure 3: Proposed Canadian Band Plan



Description of Figure 3

A1 - Industry Canada is seeking comments on its proposed band plan shown in Figure 3.

7.2 Licence Areas

30. The *Service Areas for Competitive Licensing* document outlines the general service areas that are used by Industry Canada for the purposes of issuing spectrum licences. The defined geographic areas have been categorized under "service area tiers" that are based on Statistics Canada's Census Divisions

and Subdivisions.

31. As different wireless services and applications are best suited to different sizes of service areas, four tiers of service areas have been established. Tier 1 is a single national service area. Tier 2 consists of 14 large service areas covering all of Canada. There are eight Tier 2 service areas that have provincial/territorial boundaries, and six that are sub-provincial within Ontario and Quebec. Tier 3 contains 59 smaller regional service areas and Tier 4 comprises 172 localized service areas. The population associated with each service area is based on Statistics Canada census information.

32. Tiers 1 and 2 have typically been used for licensing mobile services, whereas Tier 3 and Tier 4 have typically been used for licensing fixed services. However, the 2008 AWS auction offered a mixture of Tier 2 and Tier 3 licences for different spectrum blocks in order to encourage regional companies to enter the wireless market. Licensing based on smaller tier sizes provides additional flexibility to bidders, which allows them to concentrate on the geographic markets of most interest, or to aggregate smaller service areas into larger regions that correspond to their business needs.

33. Licensing based on larger geographic areas results in less coordination being required between licensees and allows more effective use of radio spectrum.

34. Larger geographic service areas would also enable deployment of large-scale networks that can be more efficient due to economies of scale, which is critical to deployment of spectrum given that wireless mobile networks are capital-intensive.

35. For these reasons, the Department proposes to license the AWS-3 band on a Tier 2 basis (see Annex A).

A2 - Industry Canada is seeking comments on its proposal to use Tier 2 licence areas for both the 15 + 15 MHz and 10 + 10 MHz blocks.

E. Licensing Process and Pro-competitive Measures

36. Given that the AWS-3 spectrum is adjacent to, and has the same pairing as the AWS-1 spectrum, and that there will likely be a robust equipment ecosystem, which will be interoperable with the AWS-1 spectrum, Industry Canada anticipates that the AWS-3 spectrum will be highly desirable to all wireless service providers. As such, given that demand is likely to exceed supply for these licences, Industry Canada proposes to use an auction process to assign spectrum licences in the AWS-3 band. Auctions are a transparent, fair and efficient spectrum assignment mechanism.

37. As noted in the FSAC, there are various measures available in an auction to promote a competitive marketplace if required, notably set-asides and spectrum caps. These measures can address issues of market power and competition. The factors that Industry Canada may consider when deciding upon use of a competitive measure are set out in the FSAC.

38. A spectrum set-aside prohibits certain entities from bidding on specific blocks of spectrum. A set-aside was used in the 2008 AWS auction, whereby three blocks of spectrum were only available to some bidders.

39. New entrants would benefit from more spectrum, to support the provision of advanced wireless services, and to meet the traffic demands of growing subscribership. As noted in previous sections of this consultation some of the other characteristics of AWS-3 spectrum that make it particularly useful for the deployment of advanced mobile/broadband networks and services to meet growing consumer demands are:

- large, contiguous block sizes that are expected to allow for the provision of robust advanced wireless services; and
- an advanced ecosystem, including the 4G LTE standard that is expected to be compatible with the

AWS-1 band.

40. Due to the quantity and technical characteristics of this spectrum, as outlined above, Industry Canada is of the view that this spectrum has the strong potential to be used by new entrants to improve their networks, which will allow them to continue to contribute to a competitive wireless sector.

41. In addition, it is likely that large wireless service providers (LWSP) have the means and ability to prevent new entrants from acquiring spectrum licences in an open auction. [8] There is a risk that competition in the post auction marketplace could suffer without measures to facilitate new entrants' access to spectrum. Such risks have also been recognized by spectrum regulators in multiple international jurisdictions. In many cases, these regulators have elected to address this risk by adopting spectrum aggregation limits or other competitive auction measures.

42. Given the above market and technical considerations, and in light of the Department's policy objectives, Industry Canada proposes to adopt competitive measures in the form of a 30 MHz spectrum set-aside for the AWS-3 licensing process. [9]

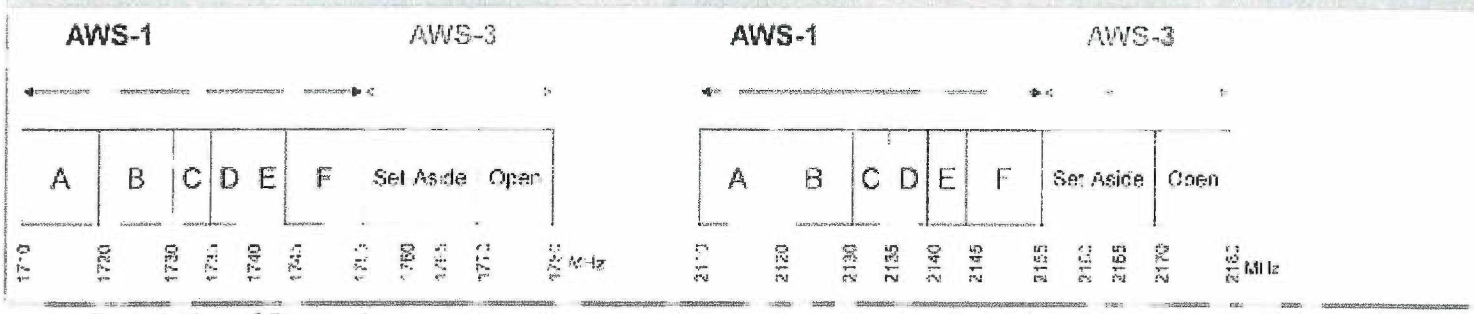
43. When applying competitive measures in the past, Industry Canada has used specific definitions to distinguish between established providers and new entrant providers for the purposes of determining bidding eligibility. LWSP have been defined as *"companies with 10% or more of national wireless subscriber market share, or 20% or more wireless subscriber market share in the province of the relevant licence area."* [10] For the purposes of this consultation, new entrants are defined as service providers that are not LWSP. Industry Canada is proposing that bidding for the spectrum set-aside be limited to new entrants.

44. Industry Canada recognizes that the technical characteristics of the AWS-3 spectrum would allow all existing wireless service providers to enhance their service offerings to Canadians. Therefore, Industry Canada proposes that the 20 MHz block of spectrum be available for open bidding.

45. Industry Canada proposes that the blocks of spectrum for the auction be available as follows (see Figure 4):

- **15 +15 MHz of paired spectrum (Block GHI) will be set aside for eligible entities (see Section 8.1 for the eligibility criteria) in every Tier 2 licence area; and**
- **10 + 10 MHz of paired spectrum (Block J) will be open to all bidders in every Tier 2 licence area.**

Figure 4: Spectrum Available for Auction



Description of Figure 4

A3 – Industry Canada is seeking comments on its proposal to use an auction mechanism and to implement a pro-competitive measure, namely:

a. to set aside 30 MHz in the AWS-3 band for new entrants by restricting the participation of LWSP in this block; and

b. to have open bidding (no pro-competitive measures) on the remaining 20 MHz block i the band.

8.1 Eligibility to Bid on Set-Aside Spectrum Licences in Each Tier

46. Industry Canada has pursued policies that have effectively reserved spectrum for new entrants over successive auction frameworks (AWS-1, 700 MHz and the upcoming 2500 MHz auction). Current new entrants that have launched services could especially benefit from additional spectrum, in order support the provision of the latest advanced wireless services and to meet the wireless traffic demands of their growing subscribership.

47. To further support the development of robust advanced wireless services, Industry Canada proposes that eligibility to bid on set-aside spectrum be limited to operating new entrants. Operating new entrants that are already offering wireless services benefit from an existing network and subscribers, and will be able to add set-aside spectrum to improve their mobile networks.

48. The proposed approach supports the orderly development and efficient operation of radiocommunication in Canada by establishing a licensing mechanism that allows for the development of more efficient and improved wireless services. Licensing AWS-3 spectrum to an operating new entrant that possesses a wireless network is more likely to result in the provision of robust advanced wireless services; allowing for more effective and sustained competition in the post-auction marketplace.

49. The proposed approach is also more likely to result in deployment and wireless services being offered over the spectrum in a timely manner, providing Canadians with the economic and social benefits of this spectrum sooner.

50. In addition to proposing a set-aside measure, Industry Canada proposes that bidding on set-aside spectrum licences in each Tier 2 region be restricted to new entrant bidders [11] that:

- **are actively providing commercial mobile wireless services [12] to the general public and operating a wireless network [13] in the Tier 2 service area, with the minimum population coverage levels shown in Table 1, effective as of the date of application to participate in the AWS-3 auction.**

Table 1: Minimum Population Coverage Levels to be Eligible to Bid on the Set-Aside Spectrum

Tier 2	Service Area Name	Minimum Population Coverage
2-01	Newfoundland & Labrador	15%
2-02	Nova Scotia & Prince Edward Island	15%
2-03	New Brunswick	20%
2-04	Eastern Quebec	25%
2-05	Southern Quebec	25%
2-06	Eastern Ontario & Outaouais	25%
2-07	Northern Quebec	15%
2-08	Southern Ontario	25%
2-09	Northern Ontario	25%
2-10	Manitoba	25%
2-11	Saskatchewan	20%
2-12	Alberta	25%
2-13	British Columbia	25%
2-14	Yukon, Northwest Territories & Nunavut	10%

51. The above values are proposed on the basis that they represent 50% of the AWS Licensing 10-year deployment targets in each Tier 2 Region. (See *Licensing Framework for the Auction for*

Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range Appendix C).

52. *Assessing minimum coverage:* Industry Canada would assess the deployment level of that service against the required coverage level for the tier. Therefore, potential bidders would be required to provide site data and detailed maps of their coverage areas.

53. In addition to reviewing the site data and coverage maps, Industry Canada may verify coverage, through testing, to confirm that wireless services can be accessed throughout the coverage area indicated by the applicant. Industry Canada could also request further documents or other information to verify this or any other information during the application process.

54. *Assessing the active provision of commercial wireless services*: Industry Canada would determine whether commercial wireless services are actively being provided to the general public in the coverage area. Potential bidders would demonstrate this by providing relevant documentation to Industry Canada. Such documentation would include, but not be limited to, details outlining:

- the services being offered in the licence area;
- the retail/distribution network;
- the devices that are offered to customers to provide the service; and
- how subscribers access services and the subscribership in the service area.

A4 – Industry Canada is seeking comments on the proposed eligibility criteria to bid on set-aside spectrum licences.

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Part B – Licensing Framework

9. Conditions of Licence

55. Industry Canada is seeking comments on the following proposed conditions of licence and the conditions of licence outlined in Annex B that would apply to licences issued through the proposed auction process for spectrum in the AWS-3 band. The proposed conditions of licence in Annex B are based on existing policies and procedures.

56. It should be noted that licences are subject to the relevant provisions in the *Radiocommunication Act* and the *Radiocommunication Regulations*. For example, the Minister of Industry continues to have the power to amend the terms and conditions of spectrum licences pursuant to paragraph 5(1)(b) of the *Radiocommunication Act*. The Minister may do so for a variety of reasons, including furtherance of the policy objectives related to the band. Such action would normally only be undertaken after consultation.

9.1 Licence Term

57. The Framework for Spectrum Auctions in Canada, published in March 2011, states that Industry Canada has adopted a flexible approach in determining licence terms (up to 20 years) based on the specific spectrum being offered and subject to a public consultation preceding the specific auction or renewal process.

58. This decision was based on the recognition that licence terms in excess of 10 years would create greater incentive for financial institutions to invest in the telecommunications industry and for the industry itself to further invest in the development of network infrastructure, technologies and innovation.

59. The AWS-3 band has the potential to facilitate the offering of high-capacity mobile broadband services to Canadians. Given that the use of this band for mobile services is globally harmonized, there is little risk that there will be any usage changes to this spectrum in the foreseeable future. It is also unlikely that any developments in technology would result in a change to another use that is incompatible with mobile services.

60. In light of the above, Industry Canada is proposing that auctioned spectrum licences in the AWS-3 band have a licence term of 20 years. The proposed condition of licence is as follows:

> **The term of this licence is 20 years. At the end of this term, the licensee will have a high expectation that a new licence will be issued for a subsequent term through a renewal process unless a breach of licence condition has occurred, a fundamental reallocation of spectrum to a new service is required, or an overriding policy need arises.**
>
> **The process for issuing licences after this term and any issues relating to renewal, including the terms and conditions of the new licence, will be determined by the Minister of Industry following a public consultation.**

B1 – Industry Canada is seeking comments on its proposal to issue spectrum licences in the AWS-3 band with a 20-year licence term and the proposed wording of the condition of licence above.

9.2 Licence Transferability and Divisibility

61. Commercial mobile spectrum is an important resource to be managed for the economic and social benefit of Canadians. In general, spectrum licences may be transferred in whole or in part (either in geographic area or in bandwidth) subject to the approval of the Minister. All commercial mobile spectrum licence transfer requests are subject to review under the Transfer Framework [14] as provided for in the proposed condition of licence below.

62. As the AWS-3 band is commercial mobile spectrum, the Transfer Framework will apply to these licences. As noted in the policy objectives described above, Industry Canada views the licensing of AWS-3 spectrum as a key opportunity to support competition and to enable new entrants to improve their wireless networks.

63. Industry Canada is proposing the following wording for the condition of licence on transferability and divisibility:

> **This licence is transferable in whole or in part (divisibility), in both bandwidth and geographic dimensions, subject to Industry Canada's approval. A Subordinate Licence may also be issued in regard to this licence. Industry Canada's approval is required for each proposed Subordinate Licence.**
>
> **The licensee must make the Transfer Request in writing to Industry Canada. The Transfer Request will be treated as set out in Client Procedures Circular CPC-2-1-23, *Licensing Procedure for Spectrum Licences for Terrestrial Services*, as amended from time to time.**
>
> **The licensee must apply in writing to Industry Canada for approval prior to implementing any Deemed Transfer, which will be treated as set out in CPC-2-1-23. The implementation of a Deemed Transfer without the prior approval of Industry Canada will be considered a breach of this condition of licence.**
>
> **Should the licensee enter into any Agreement that provides for a Prospective Transfer with another holder of a Licence for commercial mobile spectrum (including any Affiliate, agent or representative of the other licence holder), it must apply in writing to Industry Canada for review of the Prospective Transfer within 15 days of entering into the Agreement, which will be treated as set out in CPC-2-1-23. Should Industry Canada issue**

a decision indicating that the Prospective Transfer is not approved; it will be a breach (this condition of licence for a licensee to remain in an Agreement that provides for the Prospective Transfer for a period of more than 90 days from the date of the decision.

In all cases, the licensee must follow the procedures as outlined in CPC-2-1-23.

All capitalized terms have the meaning ascribed to them in CPC-2-1-23.

B2 – Industry Canada is seeking comments on the proposed condition of licence related to transferability and divisibility and the proposed wording above.

9.3 Deployment Requirements

64. The objective of a deployment requirement is to ensure that the AWS-3 spectrum is deployed in a timely manner. As well, such a condition will serve to deter the acquisition of spectrum licences by speculators and those whose intent is to prevent access to the spectrum by their competitors.

65. Similar conditions of licence have been applied to previously auctioned spectrum licences. In the 2008 AWS auction, levels of deployment were set for each licence area based on the population of the major urban centres for that particular licence area for Tier 2 and Tier 3 service areas. These levels were also set out for the general deployment requirements for the 700 MHz and 2500 MHz auctions.

66. It is proposed that the deployment levels established for the AWS-1 band be used as a basis for the deployment requirements for the AWS-3 licences. It is further proposed that these levels be required within 5 years and 10 years of the licence issuance. A 5-year deployment requirement will encourage use of the spectrum in key markets in a timely manner, whereas a 10-year deployment requirement will encourage deployment into additional communities.

67. Accordingly, the Department is proposing a 5-year deployment requirement based on the Tier 2 service area using the population coverage levels shown in Table 2. These population coverage levels are the same as the AWS-1 Tier 2 service area levels. This will encourage use of the spectrum in a timely manner.

68. The Department is also proposing a 10-year deployment requirement based on Tier 3 service area population shown in Table 3. These population coverage levels are the same as the AWS-1 Tier 3 service area levels. This will encourage deployment with Tier 2 service areas to cover additional communities.

69. Where a licence is transferred during the initial 10 years, the requirement for the new licensee to deploy will continue to be based on the initial licence issuance date.

70. Industry Canada proposes the following wording for this condition of licence:

Licensees will be required to demonstrate to the Minister of Industry that this spectrum has been put to use as specified in Table 2 within 5 years of the initial issuance of the licence, and as specified in Table 3 within 10 years of the initial issuance of the licence. When the spectrum is put to use, it shall be used to provide services predominately to Canadians within the service area.

Where a licence is transferred during the initial 10 years, the requirement for the new licensee to deploy to will continue to be based on the initial licence issuance date.

71. The following table lists the minimum 5-year deployment requirements for Tier 2 service areas.

Table 2: Proposed 5 Year Deployment Requirements for Tier 2 Service Areas

Tier 2	Service Area Name	Population	Minimum Population Coverage
2-01	Newfoundland & Labrador	514,641	30%

2-02	Nova Scotia & Prince Edward Island	1,061,846	30%
2-03	New Brunswick	749,942	40%
2-04	Eastern Quebec	1,668,394	50%
2-05	Southern Quebec	5,683,036	50%
2-06	Eastern Ontario & Outaouais	2,347,808	50%
2-07	Northern Quebec	190,605	30%
2-08	Southern Ontario	10,090,766	50%
2-09	Northern Ontario	774,775	50%
2-10	Manitoba	1,206,968	50%
2-11	Saskatchewan	1,029,812	40%
2-12	Alberta	3,650,167	50%
2-13	British Columbia	4,399,939	50%
2-14	Yukon, Northwest Territories & Nunavut	107,215	20%

72. The following table lists the minimum 10-year deployment requirements for Tier 3 service areas contained in the AWS-3 Tier 2 service areas.

Table 3: Proposed 10-Year Deployment Requirements for Tier 3 Service Areas Within Each Tier 2

Tier 2	Tier 3	Service Area Name	Population	Minimum Population Coverage
2-01 Newfoundland & Labrador	3-01	Newfoundland & Labrador	514,641	30%
2-02 Nova Scotia & Prince Edward Island	3-02	Prince Edward Island	140,204	30%
	3-03	Mainland Nova Scotia	786,567	40%
	3-04	Cape Breton	135,057	30%
2-03 New Brunswick	3-05	Southern New Brunswick	172,374	50%
	3-06	Western New Brunswick	217,152	30%
	3-07	Eastern New Brunswick	360,416	30%
2-04 Eastern Quebec	3-08	Bas du fleuve/Gaspésie	295,519	15%
	3-09	Québec	1,004,614	50%
	3-10	Chicoutimi-Jonquière	368,261	40%
2-05 Southern Quebec	3-11	Eastern Townships	543,762	30%
	3-12	Trois-Rivières	810,609	30%
	3-13	Montréal	4,204,654	50%
	3-14	Upper Outaouais	124,011	10%
2-06 Eastern Ontario & Outaouais	3-15	Ottawa/Outaouais	1,441,718	50%
	3-16	Pembroke	114,135	15%
	3-18	Cornwall	67,207	50%
	3-19	Brockville	84,068	40%
	3-20	Kingston	175,801	50%
	3-21	Belleville	196,021	40%
	3-22	Cobourg	62,610	30%
	3-23	Peterborough	206,250	50%
2-07 Northern Quebec	3-17	Abitibi	190,605	30%
2-08 Southern Ontario	3-24	Huntsville	78,790	30%
	3-25	Toronto	6,645,088	50%
	3-26	Barrie	673,898	30%
	3-27	Guelph/Kitchener	696,136	50%
	3-28	Listowel/Goderich/Stratford	134,384	15%
	3-29	Niagara-St. Catharines	368,119	50%
	3-30	London/Woodstock/St. Thomas	832,870	50%
	3-31	Chatham	100,951	50%
	3-32	Windsor/Leamington	389,729	50%
	3-33	Strathroy	170,801	50%
2-09 Northern Ontario	3-34	North Bay	126,711	40%

	3-35	Sault Ste. Marie	132,309	50%
	3-36	Sudbury	177,004	50%
	3-37	Kirkland Lake	114,942	30%
	3-38	Thunder Bay	223,809	40%
2-10 Manitoba	3-39	Winnipeg	1,032,187	50%
	3-40	Brandon	174,781	20%
2-11 Saskatchewan	3-41	Regina	366,413	40%
	3-42	Moose Jaw	100,292	25%
	3-43	Saskatoon	563,107	40%
2-12 Alberta	3-44	Edmonton	1,465,386	50%
	3-45	Medicine Hat/Brooks	190,930	30%
	3-46	Lethbridge	177,303	40%
	3-47	Calgary	1,390,206	50%
	3-48	Red Deer	240,343	25%
	3-49	Grande Prairie	185,998	25%
2-13 British Columbia	3-50	Kootenays	134,351	15%
	3-51	Okanagan/Columbia	415,214	40%
	3-52	Vancouver	2,684,495	50%
	3-53	Victoria	431,520	50%
	3-54	Nanaimo	186,369	40%
	3-55	Courtenay	114,658	50%
	3-56	Thompson/Cariboo	179,949	40%
	3-57	Prince George	187,802	40%
	3-58	Dawson Creek	65,553	30%
2-14 Yukon, Northwest Territories & Nunavut	3-59	Yukon, Northwest Territories & Nunavut	106,945	20%

B3 – Industry Canada is seeking comments on the proposed deployment condition of licence as stated above.

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Part C – Auction Process and Rules

73. This section provides the proposed auction process and rules based on the proposals discussed in parts A and B.

10. Auction Format and Timing

10.1 Sealed-Bid Auction

74. The auction format should be simple, fair and transparent for bidders and lead to an efficient assignment of spectrum. In the selection of an auction format and related rules, consideration is given to the characteristics of the spectrum being auctioned, for example, the quantity and size of the blocks, as well as the similarities and complementarities that may exist among the blocks.

75. Industry Canada used the simultaneous multiple round ascending (SMRA) auction format in its first auction in 1999 and in four of its six subsequent spectrum auctions. [15] The SMRA auction format has been used in spectrum auctions in many countries for more than 15 years. Countries that have used this format in recent spectrum auctions include Italy, Germany, Mexico, Spain, the United States, as well as the Special Administrative Region of Hong Kong.

76. In the recent 700 MHz auction and the upcoming 2500 MHz auction, Industry Canada chose the combinatory clock auction (CCA) format, which is a variation of the SMRA format in that all licences are

auctioned at the same time over multiple rounds. Similar to the SMRA format, the CCA format provi(a simple bidding process for participants, including a price discovery stage; however, instead of biddiny on individual licences, bidders express their demand for a package of licences at the prevailing prices.

77. Both the SMRA and CCA formats have been used in auctions were there are multiple blocks, multiple licence areas available and stakeholders' need to consider different combinations of each when bidding.

78. Industry Canada has also used sealed-bid auctions [16] to make spectrum available when there are few blocks available in a limited number of geographic areas.

79. A sealed-bid auction requires applicants to submit their bid to the Department in a sealed envelope prior to the receipt deadline for bids in order to apply for each licence. Following the receipt deadline for bids, departmental officials will open the bids, rank them and provisionally award a licence or licences to the highest bidder(s).

80. If the highest bidder for a particular licence is found eligible to be the licensee, that bidder would be awarded the licence.

81. In the event of a tie, tied bidders will be requested to enter a second sealed bid in an attempt to break the tie. Should there be a third tie, bidders will be requested to enter a third sealed bid in an attempt to break the tie, and so on until there is no tie.

82. When proposing an auction format, Industry Canada must consider the benefits of an auction format versus the complexity of and time required to run the auction. The proposed band plan and limited number of blocks means that there are no generic blocks available, so there is little benefit to running a CCA for this spectrum. Although both CCA and SMRA formats provide stakeholders with the benefit of price discovery through the multiple rounds, these formats are more complex and time consuming for stakeholders. Given the proposal in Part A to make two blocks of unequal sizes available on a Tier 2 basis, Industry Canada is proposing to use a sealed-bid auction format for the AWS-3 auction. The use of a sealed-bid format allows the auction to take place in the spring of 2015 and the results to be known prior to the 2500 MHz auction.

83. To make this spectrum available in a timely manner and given the proposal for the simplified auction format, Industry Canada is proposing that the AWS-3 auction take place in March 2015, with the deadline for receipt of applications on January 30, 2015.

C1 – Industry Canada is seeking comments on the proposal to use the sealed-bid auction format for the AWS-3 auction.

10.2 Pricing Rules

84. Two common pricing rule options to calculate the prices to be paid by winning bidders are a first-price rule and a second-price rule. A first-price rule requires winning bidders to pay the full amount of their winning bid. Conversely, a second-price rule requires each winning bidder to pay an amount that is sufficient to ensure that no other bidder, or group of bidders, was prepared to pay more than the winning bidder for the licence(s) in question. With a second-price rule, the highest bidder is awarded the licence, but is required to pay an amount equal to the second highest bid on the licence or should there only be one bidder for a particular licence, the open bid amount.

85. Under a first-price rule, the bidder has a strong incentive to bid less than its true value, which can lead to inefficient outcomes. A second-price rule promotes a more efficient outcome by increasing the incentive for bidders to bid their true value. Bidders, knowing that they will only be required to pay the minimum amount necessary to win their package, will have the incentive to bid truthfully during the entire auction. As such, Industry Canada is proposing that the second-price rule be used for the AWS-3 auction.

C2 – Industry Canada is seeking comments on its proposal to use a second-price rule for the AWS-3 auction.

11. Bidder Participation

11.1 Affiliated and Associated Entities

86. In order to maintain auction integrity, as in past auctions, Industry Canada proposes that there be rules relating to the participation of affiliated and associated entities in order to ensure that each bidder is an independent bidder. As was the case in the 700 MHz auction and as in the rules for the upcoming 2500 MHz auction, it is proposed that affiliated entities not be allowed to participate separately in the auction. It is also proposed that associated entities only be allowed to participate separately if following a review of their application, Industry Canada is satisfied that their participation would not have an adverse impact on auction integrity. As in previous auctions, applicants will be required to disclose information about their company(ies), including affiliations and associations.

87. **Definition of Affiliated Entities:** It is proposed that the definition of affiliated entities remain essentially as it was for previous auctions, as follows:

> **An entity will be deemed to be affiliated with a bidder if it controls the bidder, is controlled by the bidder, or is controlled by any other entity that controls the bidder. "Control" means the ongoing power or ability, whether exercised or not, to determine or decide the strategic decision-making activities of an entity, or to manage or run its day-to-day operations.**

88. **Presumption of Affiliate Status:** If a person owns, directly or indirectly, at least 20% of the entity's voting shares (or where the entity is not a corporation, at least 20% of the beneficial ownership in such entity), Industry Canada will generally presume that the person can exercise a degree of control over the entity to establish a relation of affiliation. The ability to exercise control may also be demonstrated by other evidence. Under this rule, Industry Canada may, at any time, ask a prospective bidder for information in order to satisfy any question of affiliation.

89. Applicants may provide information to Industry Canada to rebut the presumption of affiliate status. Applicants must notify the Department in writing if they are rebutting the presumption and must file material that will enable Industry Canada to review the question and make that determination. It is the responsibility of the applicant to file the appropriate material. Such material may include copies of the relevant corporate documentation relating to both entities; a description of their relationship; copies of any agreements and arrangements between the entities and affidavits or declarations, signed by officers from the two entities, dealing with the control as outlined in the definition of "affiliate" above.

90. Upon receipt of this material, Industry Canada will either make a ruling based on the materials submitted or ask the applicant for further information (and provide a timeline within which to do so).

91. Should the entities fail to provide the relevant information in a timely fashion in order to allow Industry Canada to complete its determination, the Department may make a ruling on eligibility, based on the above, that the entities in question are affiliated.

92. **Eligibility:** It is proposed that only one member of an affiliate relationship be permitted to become a qualified bidder in the auction or the affiliated entities may apply to participate jointly as a single bidder. Affiliated entities must decide prior to the application deadline which entity will apply to participate in the auction. All affiliations must be disclosed at the time of the application.

93. **Proposed Definition of Associated Entities:** As a basis for participating in the AWS-3 auction, Industry Canada proposes that associated entities be defined as follows:

> **Any entities that enter into any partnerships, joint ventures, agreements to merge,**

consortia or any arrangements, agreements or understandings of any kind, either expl or implicit, relating to the acquisition or use of any spectrum in the AWS-3 band will be treated as Associated Entities. Typical roaming and tower sharing agreements would not cause entities to be deemed associated.

94. As in past auctions, the proposed rules would allow carriers to form a bidding consortium and to participate in the auction as a single bidder if they wish to coordinate their bids through a single bidder. In such a case, the eligibility rules would apply jointly in each licence area. In the cases where the entities participating jointly include an LWSP, the LWSP eligibility to bid on set-aside spectrum would apply to all of the entities.

95. In support of the stated policy objectives of competition and investment, and in light of the high demand for capacity by customers (driven by the use of smart phones and tablets), the high cost of network deployment, particularly in rural areas, as well as the spectrum and network efficiencies that can be achieved through such arrangements, Industry Canada recognizes the need to provide increased flexibility in the treatment of a certain subset of associated entities, as long as this would not have an adverse impact on the integrity of the auction.

96. Depending on the nature of the association, it may not preclude the ability of the entities to participate separately in the auction. It should be noted that under the proposed definition, entities are only deemed to be associated with respect to arrangements that relate to the acquisition or use of spectrum in the AWS-3 band. For example, significant joint equipment purchase agreements and joint backhaul networks would not be captured under the definition unless they relate to the AWS-3 spectrum.

97. **Eligibility to participate separately in the auction:** The Department proposes that associated entities may apply to participate separately in the AWS-3 auction. Industry Canada is of the view that allowing associated entities that are competitors in the market to bid separately would not have an adverse impact on the integrity of the auction provided that auction participants comply with the information disclosure and anti-collusion rules as proposed below (Section 11.2 – Auction Integrity and Transparency and Section 11.3 – Prohibition of Collusion).

98. To obtain approval to participate separately in the auction, entities will be required to demonstrate to Industry Canada's satisfaction that they intend to separately and actively provide services in the applicable licence area. Associated entities wishing to participate in the auction separately would be required to submit their application at least two weeks in advance of the final application deadline. This requirement would provide Industry Canada with the additional time necessary to assess the nature of the association between the entities. Should the request be denied, only one of the associated entities will be eligible to apply to participate in the auction.

99. Bidders are reminded that the provisions of the *Competition Act* apply independently of, and in addition to, the proposed policy.

100. Please note that all entities participating in the auction will be subject to the same prohibition of collusion rules, as stated below in Section 11.2.

C4 – Industry Canada is seeking comments on the proposed Affiliated and Associated Entities rules that would apply to bidders in the AWS-3 auction.

11.2 Auction Integrity and Transparency

101. In order to ensure auction integrity and transparency, all entities wishing to participate in the auction process will be required to disclose in writing, as part of their application, the names of affiliated and associated entities. It is proposed that a narrative also be submitted, describing all key elements and the nature of the affiliation or association in relation to the acquisition of the spectrum licences being auctioned and the post-auction relationships of the said entities. It is proposed that this

narrative include arrangements with another potential bidder that relate in any way to the future use the AWS-3 spectrum directly or indirectly.

102. Some examples of arrangements that would require disclosure include, but are not limited to, agreements to establish a joint network using spectrum licences acquired by each of the entities and agreements with respect to a joint backhaul network. It is also proposed that agreements, such as significant joint equipment purchases, be disclosed. Typical roaming and tower sharing agreements and other agreements, such as the purchase of backhaul capacity, would not cause entities to be deemed associated entities and hence need not be disclosed.

103. The submitted narrative would be made available to other bidders and to the public on Industry Canada's website prior to the auction in order to ensure transparency of the licensing process.

11.3 Prohibition of Collusion

104. As in previous auctions, in order to ensure the integrity of the bidding process, all applicants will be prohibited from cooperating, collaborating, discussing or negotiating agreements with other bidders regarding the licences being auctioned or the post-auction market structure. Any such discussions occurring at any time prior to the public announcement of provisional licence winners by Industry Canada are prohibited.

105. In order to maintain the integrity of the auction, bidders are prohibited from signalling either publicly or privately, their bidding intentions or post-auction market structure related to spectrum in the AWS-3 band, while the auction is ongoing. This would include comments or any communication with or via the media. An example would be making a public announcement regarding which licences the company intends to bid on or its rollout intentions.

106. Given that Industry Canada is proposing to allow the participation of some associated entities as separate bidders in this auction process, the proposed prohibition of collusion rules are as follows:

> **All applicants, including affiliated and associated entities, are prohibited from cooperating, collaborating, discussing or negotiating agreements with competitors, relating to the licences being auctioned or relating to the post-auction market structure, including frequency selection, bidding strategy and post-auction market strategy, until after the public announcement of provisional licence winners by Industry Canada.**
>
> **Prospective bidders will note that the auction application forms contain a declaration that the applicant will be required to sign certifying that the applicant has not entered into and will not enter into any agreements or arrangements of any kind with any competitor regarding the amount to be bid, bidding strategies or the particular licence(s) on which the applicant or competitors will or will not bid. For the purposes of this certification, "competitor" means any entity, other than the applicant or its affiliates, which could potentially be a bidder in this auction based on its qualifications, abilities or experience.**
>
> **Prospective bidders should note that the definition of "affiliate" for the purposes of this licensing process (defined by reference to "control in fact") differs from "affiliate" for the purposes of the *Competition Act*. The provisions of the Competition Act apply independently of, and in addition to, the policies contained in this Framework.**

107. It is proposed that the rules regarding communications between entities during the auction process be the same as those described in the *Licensing Framework for Broadband Radio Service (BRS) - 2500 MHz Band*.

C5 – Industry Canada is seeking comments on the proposed rules prohibiting collusion that would apply to bidders in the AWS-3 auction.

12. Opening Bids

108. Opening bids are the prices for the spectrum licences at the start of the auction, and the minir amount that will be accepted for each licence. The proposed opening bid prices are for spectrum blocks of 10 + 10 MHz (open block) and 15 + 15 MHz (set-aside block). The proposed opening bid prices can be found in Table 4 below.

109. The opening bid prices for the 700 MHz, 2008 AWS and upcoming 2500 MHz auctions were taken into consideration when developing the proposed opening bid prices for the AWS-3 auction. Given the current uncertainty with respect to the timing of an available equipment ecosystem, the cross-border interference issues and the propagation characteristics of this spectrum band, the proposed opening bid prices for the AWS-3 spectrum auction are comparable to the opening bid prices for the upcoming 2500 MHz auction.

110. The total amount of the proposed opening bids for all spectrum blocks is $162,450,000.

Table 4: Proposed Opening Bids by Service Area

Service Area #	Service Area Name	Population	$/MHz/pop	Open Block Opening bid ($)	Set-aside Block Opening bid ($)
2-01	Newfoundland and Labrador	514,641	0.06	$600,000	$900,000
2-02	Nova Scotia and P.E.I.	1,061,846	0.06	1,300,000	1,900,000
2-03	New Brunswick	749,942	0.06	900,000	1,300,000
2-04	Eastern Quebec	1,668,394	0.08	2,700,000	4,000,000
2-05	Southern Quebec	5,683,036	0.12	13,600,000	20,500,000
2-06	Eastern Ontario & Outaouais	2,347,808	0.08	3,800,000	5,600,000
2-07	Northern Quebec	190,605	0.05	200,000	300,000
2-08	Southern Ontario	10,090,766	0.11	22,200,000	33,300,000
2-09	Northern Ontario	774,775	0.05	800,000	1,200,000
2-10	Manitoba	1,206,968	0.09	2,200,000	3,300,000
2-11	Saskatchewan	1,029,812	0.06	1,200,000	1,900,000
2-12	Alberta	3,650,167	0.09	6,600,000	9,900,000
2-13	British Columbia	4,399,939	0.1	8,800,000	13,200,000
2-14	Yukon, NWT and Nunavut	107,215	0.05	100,000	150,000
Total per block				**$ 65,000,000**	**$ 97,450,000**
Total all blocks					**$ 162,450,000**

C6 – Industry Canada is seeking comments on the proposed opening bids as presented in Table 4.

13. Auction Process

111. Based on the proposals in the previous sections, the following section outlines the proposed general process for submitting an application to participate in the AWS-3 auction, as well as the proposed general requirements and rules that apply prior to, during and post-auction.

13.1 Application to Participate

112. To participate in the auction, all applicants must submit the completed application forms, along with the financial deposit, details of the applicant's beneficial ownership, information on any affiliations and associations as discussed in Section 11 of this document, and other documentation as required, by the date specified. Industry Canada will publish the list of applicants on its website soon thereafter.

13.2 Submissions

113. In the interest of providing Industry Canada and other bidders with adequate information on the

identity of all bidders, applicants are required to fully disclose the beneficial ownership for every en that owns, directly or indirectly, 10% or more of the applicant's voting shares, non-voting shares, partnership interests, or any other beneficial interests, as the case may be. Associated entities wishing to participate separately in the AWS-3 auction are required to disclose the names of their associated entities within their application, and to provide narratives describing all key elements and the nature of the association in relation to the acquisition of the spectrum licences being auctioned and the post-auction relationships of the said entities. A list of applicants, their beneficial ownership information and the narrative on any associated entity relationships will be made available on Industry Canada's Spectrum Management and Telecommunications website, prior to the auction, so that all bidders have knowledge of the identity of the other bidders. Applicants are not permitted to change their beneficial ownership within 10 days preceding the start of the auction.

114. Entities are encouraged to approach Industry Canada at least two weeks prior to the application date if seeking guidance or a predetermination as to whether their arrangement or proposed arrangement would be considered to give rise to a finding of association.

115. Where an applicant intends to bid on the set-aside licences, the applicant will be required to submit documentation demonstrating that it meets the eligibility criteria proposed in Section 8.1.

13.3 Pre-Auction Financial Deposit

116. In order to enhance the integrity of the auction, the Department will require that all bidders submit a pre-auction financial deposit with their application to participate in the auction.

117. Each participating bidder will be required to submit a financial deposit equal to the opening bid of the licence(s) on which it intends to bid. These amounts will be kept confidential.

118. Financial deposit(s) will be returned to any applicant not found to be a qualified bidder, any applicant that provides written notification to the Department of its withdrawal from the process prior to the auction's commencement, and any bidder that fails to win a licence during the auction.

13.4 Process to Submit Applications and Financial Deposit

119. The application forms, the associated documents (as per the instructions on the application forms) and the total pre-auction financial deposit are to be physically delivered to the Manager, Auction Operations, by the date specified. Industry Canada, under exceptional circumstances, may decide to accept additional documentation after the deadline, but prior to publication of the list of applicants, on request of the proposed applicant. Applications that are received without a deposit will be rejected.

120. Upon receipt of the application and the associated documentation, Industry Canada will send a notification to the applicant, advising that the application materials have been received and confirming the amount of the deposit that has been submitted. This notice will in no way mean that the application materials or the deposit have been approved.

121. The financial deposit must be in the form of a certified cheque, bank draft, money order, wire transfer, or an irrevocable standby letter of credit, payable to the Receiver General for Canada, drawn on a financial institution that is a member of the Canadian Payments Association. The elements required in a letter of credit, as well as a sample letter of credit acceptable to Industry Canada, will be provided as part of the application forms. Multiple letters of credit (or other forms of payment) from one or more financial institutions will be permitted within reason. Industry Canada will treat the financial deposit for an applicant as being the sum of the amounts of each accepted letter of credit. Each letter of credit must comply with the conditions laid out herein concerning letters of credit. No letter of credit shall have any conditions requiring Industry Canada to draw on the letters in any particular order of priority, or requiring any letter to be drawn upon completely before drawing upon any other letter. In the event that a qualified bidder does not become a provisional licence winner, the financial deposits that were submitted in the form of a letter of credit will be returned. Refunds to deposits submitted in the form of a certified cheque, bank draft, money order or wire transfer will likely take longer (perhaps several weeks longer) than a refund submitted by way of a letter of credit, as a

cheque from the Receiver General for Canada will need to be processed.

122. If, prior to the application deadline, an applicant wishes for any reason to amend any of the forms that it has submitted and/or its financial deposit, it may submit one or more amended forms and/or financial deposit with an accompanying letter explaining that the enclosed form(s) and/or financial deposit are to replace the one(s) previously submitted. Any such amendments are to be physically delivered to the Manager, Auction Operations, by the receipt deadline for applications to participate in the auction.

123. Upon receipt of an amended form(s) and/or financial deposit, Industry Canada will send a notification to the applicant that the amended form(s) and/or deposit have been received. The notification will state the amount of the new deposit that has been submitted. Where the financial deposit is in the form of an irrevocable standby letter of credit, the initial irrevocable standby letter of credit will also be returned to the applicant where applicable. Where the financial deposit is in a form other than an irrevocable standby letter of credit, any partial reimbursement of the financial deposit may take several weeks.

124. A list of all applicants will be made public via Industry Canada's Spectrum Management and Telecommunications website. The publication of this list in no way means that these applicants have been approved as qualified bidders.

13.5 Bidder Qualification

125. Industry Canada will review the application forms (and any associated documents) and the accompanying financial deposit after the closing date for the submission of applications. In this initial review, the Department will identify any errors in the application forms or financial deposit. It will also determine whether any additional information related to any affiliate or associated entity of the applicant and to the applicant's deployment levels, is required. Applications that are received without a deposit by the application deadline will be rejected.

126. Following the initial review period, Industry Canada will provide applicants with an opportunity to correct any errors or inconsistencies in their application or financial deposit, and will request any additional information related to affiliated or associated entities if required. A copy of the original applications may be returned to the applicant with a brief statement outlining any discrepancies and/or omissions, or requesting additional information. The applicant will be invited, in writing, to resubmit the corrected form and/or the additional information and to physically deliver this to the Manager, Auction Operations, by the date specified in the written statement.

127. Applicants that do not comply with this request will have their application to participate in the auction rejected. Applications that are rejected, including those for which an opportunity has been provided to correct errors or inconsistencies identified by Industry Canada but are still found to be deficient, may be returned to the applicant, outlining the deficiencies, along with the applicant's deposit.

128. Those applicants that have submitted acceptable application materials, including the accompanying financial deposit, will receive a confirmation letter confirming that they are considered a qualified bidder. If requested, applicants will be advised as to whether they are eligible to bid on the set-aside spectrum.

129. A list of all qualified bidders, along with information related to their beneficial ownership, affiliates and associated entities, will be made public via Industry Canada's website.

13.6 Withdrawal of Application Forms

130. Applicants wishing to withdraw their application materials and have their financial deposits returned may do so, without prejudice, by sending a written request to the Manager, Auction Operations, on or before the business day preceding the opening of the auction.

13.7 Change of Information

131. Only the Auction Authorized Representative of the bidding company may notify the Manager, Auction Operations, of any material changes in the information submitted in the application documents. Written notification must be sent by the Auction Authorized Representative within five business days of such changes.

132. The Auction Authorized Representative is the individual that is nominated by the applicant to receive all documentation pertaining to the licensing process for spectrum licences of the AWS-3 band.

13.8 Submission of Auction Bids

133. A completed auction bid form, which includes the bid amount for each licence, must be placed in a separate, sealed, opaque envelope, with only the bidder's name, complete mailing address, email address, and the name of this licensing process clearly identified on the front of the envelope, and physically delivered to the Manager, Auction Operations, by the receipt deadline for sealed bids. The amount of each bid must reflect the amount that the bidder is willing to pay for the associated licence(s). No bids will be accepted after 12:00 p.m., noon, EDT, on the receipt deadline for sealed bids. Following the auction, the Department will publish, on its website, a list of all bids received.

13.9 Determination of Provisional Licence Winners

134. The sealed envelopes will be opened and examined by departmental officials following the receipt deadline for sealed bids. To be considered valid, a bid must be equal to or greater than the opening bid price; the previously submitted deposit must be equal to or greater than the amount of the opening bid price of the licence being bid upon; the bid form must be completed correctly and legibly; and the bid must be submitted by a qualified bidder. Note that, in all instances where there is no second bid, the opening bid prices noted in Section 12 will be considered the second highest bid (see Annex C for bidding examples).

135. Where a bid is placed on a licence on which the bidder is not eligible to bid, that bid will be ignored.

136. Bids will be made per licence; the winning bid will be the highest for each licence, and valid bids will be used to determine the provisional winning bid(s), using the rule that winners pay the bid of the second highest bidder(s).

137. In the event of a tie, bidders involved in the tie will be requested to enter a second sealed bid in an attempt to break the tie. If required, the Department will provide to those bidders the details of the procedure to submit further bids to break the tie. Should there be a third tie, bidders will be requested to enter a third sealed bid in an attempt to break the tie, and so on until there is no tie.

138. Following the determination of the provisional licence winners, the Department will publish, on its website, a list of all bids received, the name of the provisional licence winner(s) and the licence(s), if any, that did not receive bids. The Department will also notify the provisional winning bidder(s) and inform them of payment requirements.

139. The auction will be considered closed upon publication of the provisional winning bidder(s).

13.10 Bidder Payment

140. Within 10 business days following the publication of provisional licence winners, each provisional licence winner will be required to submit the outstanding balance of its winning bids. Failure by the winning bidder to make these final payments in a timely fashion or failure to come into compliance with the eligibility requirements of the *Radiocommunication Regulations* will result in the licence not being issued and the bidder will be subject to the applicable forfeiture penalty (see Section 13.11, Forfeiture Penalties).

141. All payments must be made by certified cheque, bank draft, or wire transfer, payable to the Receiver General for Canada, drawn on a financial institution that is a member of the Canadian Payments Association.

142. It is important to note that these bid payments for the initial 20-year term are in lieu of any fe fixed for the radio authorization under the *Radiocommunication Act* or any other Act.

13.11 Forfeiture Penalties

143. Following the conclusion of the auction, winning bidders that have submitted the highest bid on a licence but fail to comply with the specified payment schedule as outlined in Section 13.9, or fail to come into compliance with the eligibility requirements of the *Radiocommunication Regulations* will forfeit their bids and will no longer be deemed to be a provisional licence holder.

144. In such an event, the provisional licence will be offered to the next highest bidder, which will be able to acquire it at the bid price of the third highest bidder or, if there is no third highest bidder, at the opening bid price for the licence in question.

145. The forfeiture penalty will be the difference between the price that the first bidder would have paid and the ultimate selling price of the licence, and must be paid by the first bidder. Should this licence not sell, the ultimate selling price will be deemed to be zero.

146. In the event of licence forfeiture, the bidder's irrevocable standby letter of credit will be drawn upon for the full amount of the interim proxy forfeiture penalty. If the interim proxy forfeiture penalty is greater than the full amount of the bidder's irrevocable standby letter of credit, combined with any partial payment, or if the letter of credit has been returned or has expired, then the difference will be owing and payable to the Receiver General for Canada.

147. A bidder that forfeits on a licence (or any of that bidder's affiliated and associated entities), may not be eligible to bid on any subsequent licensing process for this band.

13.12 Issuance of Licences

148. Industry Canada will issue spectrum licences to provisional winners upon completion of payment of the sum of their bids and the sum of their penalties, if any.

C7 - Industry Canada is seeking comments on the proposed auction process for the AWS-3 auction.

14. Post-Auction Licensing Process for Unassigned Licences

149. Industry Canada will consider making unassigned licences available for licensing through an alternative process, which could include a subsequent auction at a later date following the close of the initial auction. The timing and form of such a process will depend on the demand for the available licences. Industry Canada will conduct a public consultation should it consider it necessary.

15. Licence Renewal Process

150. It is proposed that, following the end of the initial licence term, the licensee will have a high expectation that a new licence will be issued for a subsequent term through a renewal process unless a breach of licence condition has occurred, a fundamental reallocation of spectrum to a new service is required, or an overriding policy need arises.

151. Even where there is an expectation of renewal, the Minister of Industry may fix and amend the terms and conditions of spectrum licences for new licences after a renewal that differ from the terms and conditions of the licences as issued through this process (and as amended through the initial term). As noted in the FSAC, licence fees that reflect some measure of market value will apply to licences issued through a renewal process. Accordingly, the renewal process will serve to determine whether new licences will be issued, the terms and conditions that will apply to the new licences and the applicable licence fees.

152. Generally, approximately two years prior to the end of the licence term, Industry Canada will review whether there is a need for a fundamental reallocation of the spectrum to a new service, or whether an overriding policy need has arisen. A review of the licensee's continued compliance with the conditions of licence will also begin. Industry Canada will launch a public consultation to discuss whether or not, in light of the above-noted issues, new licences should be issued for a subsequent term. The consultation paper will also propose, and invite comments on, licence conditions and fees that would apply during the subsequent licence term.

153. It is proposed that the renewal process include a public consultation process that would commence approximately two years prior to the end of the licence term.

C8 – Industry Canada is seeking comments on the proposed renewal process for spectrum licences in the AWS-3 band.

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Part D – Other Considerations

16. Revisions to the Canadian Table of Frequency Allocations

154. Frequency allocations are an important first step in developing spectrum utilization policies that foster the implementation of new radiocommunication services. Modifications to the CTFA are intended to reflect the public interest in introducing new wireless services that benefit Canadians and respond to marketplace demands. As a result, the Department is proposing several modifications to the CTFA to allow for the implementation of new mobile services in the AWS-3 band, including commercial mobile radio services.

155. Currently, the CTFA includes a primary allocation to the fixed service and a secondary allocation to the mobile service in the band 1755-1780 MHz. The mobile service includes domestic footnote C5, which limits the mobile use to the Government of Canada.

156. The CTFA also includes domestic footnote C37 to indicate the possible designation of the bands 1755-1780 MHz, 2020-2025 MHz and 2155-2180 MHz to AWS, subject to future consultation.

157. The Department proposes to make the following changes to the CTFA for the AWS-3 band:

- split the band 1755-1850 MHz into two bands 1755-1780 MHz and 1780-1850 MHz;
- upgrade the mobile allocation in the band 1755-1780 MHz to primary;
- remove footnote C5 from the band 1755-1780 MHz; and
- modify footnote C37 (CAN-06) to remove the bands 1755-1780 MHz and 2155-2180 MHz.

MHz	
1 710 - 1 755	FIXED MOBILE 5.384A 5.149 5.341 5.385 5.386
1 755 - 1 780~~1 850~~	FIXED MOBILE 5.384A ~~C5~~ 5.386 ~~C37~~
1 780 - 1 850	FIXED Mobile 5.384A C5 5.386 ~~C37~~
1 850 - 2 000	FIXED MOBILE 5.384A 5.388A

	5.388 5.389B C35
2 000 - 2 020	FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389C 5.389E C36
2 020 - 2 025	FIXED MOBILE 5.388 MOD C37
2 025 - 2 110	EARTH EXPLORATION-SATELLITE (Earth-to-space)(space-to-space) FIXED SPACE OPERATION (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) Mobile 5.391 C5 5.392
2 110 - 2 120	FIXED MOBILE 5.388A SPACE RESEARCH (deep space) (Earth-to-space) 5.388
2 120 - 2 180	FIXED MOBILE 5.388A 5.388 ~~C37~~

C5 For the exclusive use of the Government of Canada.

MOD C37 The designation of the band~~s 1 755-1 780 MHz,~~ 2 020-2 025 MHz ~~and 2 155-2 180 MHz~~ for Advanced Wireless Services may be the subject of a future public consultation.

D1 – Industry Canada is seeking comments on the proposed changes to the *Canadian Table of Frequency Allocations* for the AWS-3 band.

[illegible] Incumbent Transition Plan

158. As discussed in Section 6.1, the band 1755-1780 MHz is licensed to some legacy fixed point-to-point microwave links and the band 2155-2180 MHz is licenced to some fixed MCS/MDS systems. Both bands are subject to moratoriums on new fixed licensing and in the case of the band 2155-2170 MHz, a transition policy for fixed systems has been in place since 2007.

159. Similar to the transition plans for the PCS and AWS-1 bands, Industry Canada is proposing that these incumbent fixed licensees be afforded a reasonable notification period before displacement following the AWS-3 licensing process. The Department proposes that the transition policy be based on the displacement of incumbents on a "where necessary" basis. The continued operation of existing microwave systems would be permitted if it does not prevent the timely deployment of planned AWS-3 systems.

160. Industry Canada proposes a process whereby fixed licensees that are preventing the deployment of AWS-3 systems are subject to displacement after receiving notification from the Department. Industry Canada would send such notifications in cases where an AWS-3 licensee demonstrates that the incumbent is preventing deployment. Note that this proposal would not prevent the parties in question from reaching arrangements between themselves whereby both operations can be accommodated.

161. After the close of the auction and licensing, the AWS-3 operator would be responsible for (a) identifying the specific fixed station frequency assignments that may prevent deployment of AWS-3 systems, (b) informing Industry Canada of the areas, the spectrum required and the time frames and (c) requesting Industry Canada to provide a displacement notice to the incumbent licensee. Industry Canada would assess the request and provide a displacement notice to the incumbent licensee, providing a minimum notification period as follows:

i. one year for AWS-3 implementation in urban areas having a population of 30,000 or more, and those along major highway corridors;
ii. two years for AWS-3 implementation in other markets; or
iii. another time frame that is mutually acceptable between the new licensee and the incumbent.

D2 – Industry Canada is seeking comments on the proposed transition plan for the existing licensees in the bands 1755-1780 MHz and 2155-2180 MHz.

18. International Coordination

162. Licensees operating along the Canada-United States border, including Canadian and U.S. licensees in the AWS-3 band, are subject to cross-border spectrum sharing arrangements and treaties. In particular, under the terms of Treaty Series 1962 No. 15 — Coordination and Use of Radio Frequencies — Exchange of Notes between Canada and the United States of America, each country has a legal obligation to protect the other country's previously coordinated stations from potential interference from – and accept any interference that these stations may cause to – new users of this spectrum.

163. The Treaty includes incumbent U.S. government licensees in the band 1755-1850 MHz, many of which operate in the vicinity of the Canada-United States border (see Section 6.2). Although most of these operations will be transitioned to other spectrum over the next few years, some systems will remain in the AWS-3 band indefinitely. As these U.S. government incumbents have been coordinated with Canada, the Department will require Canadian AWS-3 licensees to protect these stations from interference and to accept any interference that they may cause as long as they continue to operate in this band.

164. More detailed information on U.S. incumbent use of the 1755-1780 MHz band and the transition plan for these systems can be found on the NTIA's website. [17]

165. Specific coordination rules and procedures for the sharing of the bands 1755-1780 MHz and 2155-2180 MHz between Canadian and U.S. licensees will be among the subjects of the ongoing negotiations between Industry Canada, and the FCC and the NTIA. The Department anticipates that the resulting coordination procedures will include transitional measures for protection of U.S. government incumbents, as well as licensee-to-licensee coordination between AWS-3 licensees in either country, similar to how coordination in the AWS-1 band is already carried out. [18]

166. Through their conditions of licence, AWS-3 licensees will be required to abide by certain technical requirements and to coordinate with U.S. licensees in accordance with the conditions of any international arrangements or agreements into which Canada enters.

19. Other Technical Considerations

167. The Department proposes to harmonize its technical rules with those of the United States to the extent feasible. Doing so will ensure that Canadians have access to equipment that can be used throughout Canada and the United States. This will allow for economies of scale, which may lead to lower cost equipment for Canadian consumers, facilitate cross-border coordination and support the efficient use of the radio spectrum. This approach is also consistent with enabling guideline h) of the SPFC, which states that "spectrum policy and management should support the efficient functioning of markets by...harmonizing spectrum use with international allocations and standards, except where Canadian interests warrant a different determination."

168. Detailed technical requirements will be identified in an applicable Standard Radio System Plan (SRSP) and Radio Standards Specification (RSS). Both will be developed in consultation with stakeholders, including the Radio Advisory Board of Canada. A summary of the proposed technical rules can be found in Annex D.

D3 – Industry Canada is seeking comments on its proposal to harmonize its technical rules for AWS-3, to the extent feasible, with the U.S. technical rules.

D4 – Industry Canada is seeking comments on the proposed technical rules in Annex D.

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Additional Information

20. Next Steps

169. Industry Canada intends to review the comments received and publish its decision outlining a technical, policy and licensing framework in advance of the proposed auction timeline of March 2015.

21. Submitting Comments

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

171. In addition, respondents are asked to specify question numbers for ease of referencing and to provide supporting rationale for each response.

172. Written submissions should be addressed to the Senior Director, Spectrum Licensing and Auction Operations, Industry Canada, 235 Queen Street, Ottawa, Ontario K1A OH5. All submissions should cite the Canada Gazette, Part I, the publication date, the title and the notice reference number (SLPB-004-14). Parties should submit their comments no later than September 4, 2014, 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.

173. Industry Canada will also provide interested parties with the opportunity to reply to comments from other parties. Reply comments will be accepted until October 2, 2014.

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

175. After the initial comment period, Industry Canada may, at its discretion, request additional information if needed to clarify significant positions or new proposals. Should additional information be requested, the reply comment deadline may be extended.

22. Obtaining Copies

176. All spectrum-related documents referred to in this paper are available on Industry Canada's Spectrum Management and Telecommunications website at http://www.ic.gc.ca/spectrum.

177. For further information concerning the process outlined in this consultation or related matters, contact:

Industry Canada
c/o Senior Director, Spectrum Licensing and Auction Operations
235 Queen Street
Ottawa, Ontario K1A OH5
Telephone: 613-990-4411
Fax: 613-957-4067
Email: spectrum.auctions@ic.gc.ca

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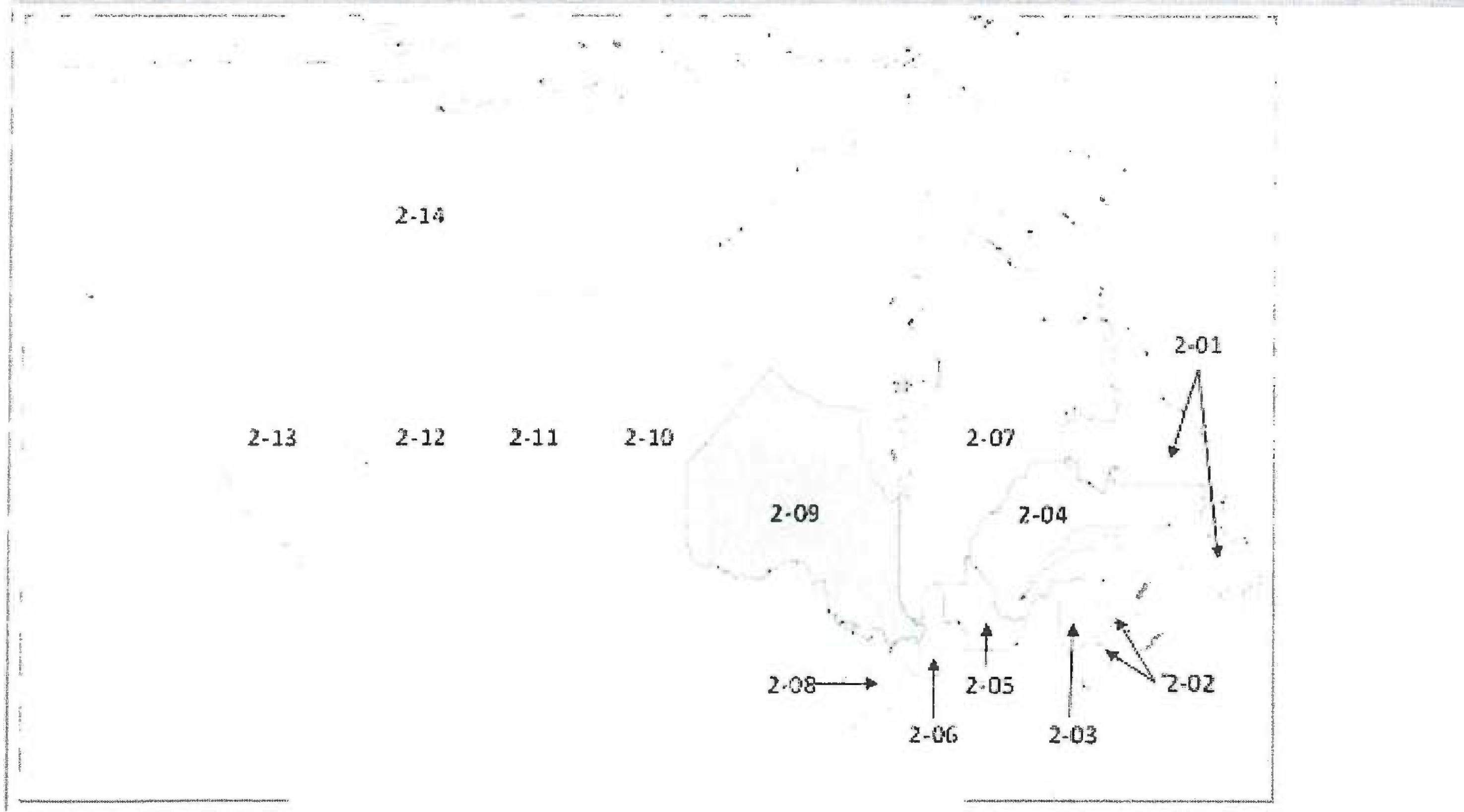
Annex A — Tier 2 Service Areas

Table A1 – Tier 2 Service Areas and Population

Tier 2	Service Area Name	Population
2-01	Newfoundland & Labrador	514,641
2-02	Nova Scotia & Prince Edward Island	1,061,846
2-03	New Brunswick	749,942
2-04	Eastern Quebec	1,668,394
2-05	Southern Quebec	5,683,036
2-06	Eastern Ontario & Outaouais	2,347,808
2-07	Northern Quebec	190,605
2-08	Southern Ontario	10,090,766
2-09	Northern Ontario	774,775
2-10	Manitoba	1,206,968
2-11	Saskatchewan	1,029,812
2-12	Alberta	3,650,167
2-13	British Columbia	4,399,939
2-14	Yukon, Northwest Territories & Nunavut	107,215

Figure A1 – Map of Tier 2 Service Areas in Canada



Description of Figure A1

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Annex B — Proposed Conditions of Licence

178. In addition to the proposed conditions of licence in Section 9, it is proposed that the following apply to AWS-3 licences.

179. ***Eligibility***: The licensee must comply on an ongoing basis with the applicable eligibility criteria subsection 9(1) of the *Radiocommunication Regulations*. The licensee must notify the Minister of Industry of any change that would have a material effect on its eligibility. Such notification must be made in advance for any proposed transactions within its knowledge.

180. ***Radio Station Installations***: The licensee must comply with Client Procedures Circular CPC-2-0-03, *Radiocommunication and Broadcasting Antenna Systems*, as amended from time to time.

181. ***Provision of Technical Information***: The licensee must provide, and maintain, up-to-date technical information on a particular station or network in accordance with the definitions, criteria, frequency and timelines specified in Client Procedures Circular CPC-2-1-23, *Licensing Procedure for Spectrum Licences for Terrestrial Services*, as amended from time to time.

182. ***Compliance with Legislation, Regulation and Other Obligations***: The licensee is subject to, and must comply with, the *Radiocommunication Act* and the *Radiocommunication Regulations*, as amended from time to time. The licensee must use the assigned spectrum in accordance with the *Canadian Table of Frequency Allocations* and the spectrum policies applicable to this band, as amended from time to time. The licence is issued on condition that all representations made in relation to obtaining this licence are all true and complete in every respect.

183. ***Technical Considerations, and International and Domestic Coordination***: The licensee must comply on an ongoing basis with the technical aspects of the appropriate Radio Standards Specifications (RSS) and Standard Radio System Plans (SRSP), as amended from time to time. Where applicable, the licensee must use its best efforts to enter into mutually acceptable agreements with other parties for facilitating the reasonable and timely development of their respective systems, and to coordinate with other licensed users in Canada and internationally.

184. The licensee must comply with the obligations arising from current and future frequency coordination agreements established between Canada and other countries and shall be required to provide information or take actions to implement these obligations as indicated in the applicable SRSP. Although frequency assignments are not subject to site licensing, the licensee may be required through the appropriate SRSP to furnish all necessary technical data for each relevant site.

185. ***Lawful Interception***: The licensee operating as a telecommunication common carrier using the spectrum for voice telephony systems must, from the inception of service, provide for and maintain lawful interception capabilities as authorized by law. The requirements for lawful interception capabilities are provided in the *Solicitor General's Enforcement Standards for Lawful Interception of Telecommunications* (Rev. Nov. 95). These standards may be amended from time to time.

186. The licensee may request the Minister of Industry to forbear from enforcing certain assistance capability requirements for a limited period of time. The Minister, following consultation with Public Safety Canada, may exercise the power to forbear from enforcing a requirement or requirements where, in the opinion of the Minister, the requirement is not reasonably achievable. Requests for forbearance must include specific details and dates indicating when compliance to the requirement can be expected.

187. ***Research and Development***: The licensee must invest, as a minimum, 2 percent of its adjusted gross revenues resulting from the use of this licence, averaged over the term of the licence, in eligible research and development (R&D) activities related to telecommunications. Eligible R&D activities are those which meet the definition of scientific research and experimental development adopted in the *Income Tax Act*, as amended from time to time. Adjusted gross revenues are defined as total service revenues, less inter-carrier payments, bad debts, third party commissions, and provincial goods and services taxes collected. The licensee is exempt from R&D expenditure requirements if it, together with all affiliated licensees that are subject to the R&D condition of licence, has less than $1 billion in annual gross operating revenues from the provision of wireless services in Canada, averaged over the term of the licence. For this condition of licence, an affiliate is defined as a person who controls the carrier, or who is controlled by the carrier or by any person who controls the carrier, as per subsection 35(3) of the *Telecommunications Act*.

188. ***Mandatory Antenna Tower and Site Sharing***: The licensee must comply with the mandatory

antenna tower and site sharing requirements set out in 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.

189. ***Mandatory Roaming***: The licensee must comply with the roaming requirements set out in 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.

190. ***Annual Report***: The licensee must submit an annual report for each year of the licence term, which includes the following information:

- a statement indicating continued compliance with all conditions of licence;
- an update on the implementation and spectrum usage within the area covered by the licence;
- existing audited financial statements with an accompanying auditor's report;
- a statement indicating the annual gross operating revenues from the provision of wireless services in Canada and, where applicable, the annual adjusted gross revenues resulting from the use of this licence, as defined in these conditions of licence;
- a report of the R&D expenditures as set out in these conditions of licence (Industry Canada may request an audited statement of R&D expenditures with an accompanying auditor's report at its discretion);
- supporting financial statements where a licensee is claiming an exemption based on, together with all affiliated licensees that are subject to the R&D condition of licence, it having less than $1 billion in annual gross operating revenues from the provision of wireless services in Canada, averaged over the term of the licence;
- a copy of any existing corporate annual report for the licensee's fiscal year with respect to the authorization; and
- other information related to the licence as specified in any notice updating the reporting requirements as issued by Industry Canada.

191. All reports and statements are to be certified by an officer of the company and submitted, in writing, within 120 days of the licensee's fiscal year-end. Confidential information provided will be treated in accordance with subsection 20(1) of the *Access to Information Act*.

192. Reports are to be submitted to Industry Canada at the following address:

Industry Canada
Spectrum Management Operations Branch
Manager, Emerging Networks
235 Queen Street (JETN, 15th floor)
Ottawa, Ontario
K1A 0H5

193. Where a licensee holds multiple licences, spectrum implementation reports should be broken down by service area. This information, including the extent of implementation and spectrum usage, is important for analyzing each licensee's individual performance against its conditions of licence. In addition, it allows Industry Canada to monitor the effectiveness of these conditions in meeting the policy objectives regarding the band and the Department's intent that the spectrum be deployed in a timely manner for the benefit of Canadians.

194. ***Amendments***: The Minister of Industry retains the discretion to amend these terms and conditions of licence at any time.

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Annex C — Bidding Examples

195. The following examples illustrate different bidding scenarios and the provisional winning bid for each.

Example 1:

Tier	Block Size	Opening Bid ($)	Bidder 1's Bid ($)	Bidder 2's Bid ($)	Bidder 3's Bid ($)
2-05	30 MHz	20,500,000	22,000,000	20,600,000	24,500,000

196. Let us assume that there are three bidders interested in a licence for the set-aside block (30 MHz) in Tier 2-05. Bidder 1 places a bid of $22,000,000, Bidder 2 places a bid of $20,600,000 and Bidder 3 places a bid of $24,500,000. Bidder 3 would be declared the provisional winner and would be required to pay the second highest bid value of $22,000,000.

Example 2:

Tier	Block Size	Opening Bid ($)	Bidder 1's Bid ($)	Bidder 2's Bid ($)	Bidder 3's Bid ($)
2-03	20 MHz	900,000	917,000	1,000,000	1,000,000

197. Let us assume that there are three bidders interested in a licence for the open block (20 MHz) in Tier 2-03. Bidder 1 places a bid of $917,000, Bidder 2 places a bid of $1,000,000 and Bidder 3 places a bid of $1,000,000. Bidders 2 and 3 have tied with a bid of $1,000,000 and are asked to re-bid.

Example 3:

Tier	Block Size	Opening Bid ($)	Bidder 1's Bid ($)
2-12	30 MHz	9,900,000	10,700,000

198. Let us assume that there is only one bidder interested in the licence for the set-aside block in Tier 2-12. Bidder 1 places a bid of $10,700,000. Bidder 1 would be declared the provisional winner. Since there no other bids on the licence, Bidder 1 would pay the opening bid price of $9,990,000.

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Annex D — Proposed Technical Rules

199. Industry Canada proposes to adopt an out-of-band (OOB) emission limit of $43 + 10 \log_{10}(P)$ dB at the band edges, 1755 MHz, 1780 MHz, 2155 MHz and 2180 MHz.

200. Industry Canada proposes that fixed and base stations may operate up to a maximum 1640 watts/MHz equivalent isotropically radiated power (e.i.r.p.) (i.e. no more than 1640 watts in any 1 MHz band segment). Fixed and base stations located outside of large or medium population centres. [10] may increase e.i.r.p. to a maximum of 3280 watts/MHz (i.e. no more than 3280 watts in any 1 MHz band segment).

201. Industry Canada proposes to limit the power of fixed, mobile and portable (hand-held) stations to maximum e.i.r.p. of 1 watt. Mobile and portable stations shall limit their power to the minimum necessary for successful communications.

202. To protect stations operating in adjacent service areas from co-channel interference, Industry Canada proposes that base stations not be permitted to generate a power flux density that exceeds -106 dBW/m^2 in any 1 MHz outside the operator's service area unless agreed otherwise by the affected operator.

203. As discussed in Section 18, licensees will be required to abide by the conditions of any international arrangements or agreements into which Canada enters.

1 Section 5.5, CRTC's 2013 Communications Monitoring Report http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2013/cmr5.htm.

2 Section 5.5.9, CRTC's 2013 Communications Monitoring Report http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2013/cmr5.htm.

3 Based on data from the *Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions, 2014 Update* (http://www.crtc.gc.ca/eng/publications/reports/rp140714.htm).

4 See http://www.ntia.doc.gov/category/aws-3-transition and http://www.ntia.doc.gov/category/500-mhz-initiative for more information.

5 In Canada, the band 1695-1710 MHz is extensively used by government and non-governmental meteorological satellite operations (earth stations and weather balloons) and low-capacity point-to-point microwave systems. As underlined in the *Commercial Mobile Spectrum Outlook*, repurposing the 1695-1710 MHz sub-band would need to take into account compatibility with existing meteorological systems operating in the band. Also, there is not an obvious band with which to pair this spectrum in a manner that would be consistent with other bands used for commercial services. As a result, the Department will not consult on mobile use of the band 1695-1710 MHz at this point in time.

6 The Third Generation Partnership Project (3GPP) is an industry association that develops standards for interoperability of mobile devices.

7 Work is under way in the ITU-R to update Recommendation ITU-R M.1036, including a proposal by Canada to include the full AWS-3 band.

8 The Competition Bureau has previously stated "incumbent service providers do have market power in the provision of retail mobile wireless services" in its *Submission by the Commissioner of Competition Before the Canadian Radio-television and Telecommunications Commission — Telecom Notice of Consultation CRTC 2013-685 — Wholesale mobile wireless roaming in Canada — Unjust discrimination/undue preference* (http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03648.html).

9 Principles and considerations available under Section 4 of the *Framework for Spectrum Auctions in Canada* (http://www.ic.gc.ca/eic/site/smt-gst.nsf/en/sf01626.html).

10 The subscriber market share for Ontario will apply for the licence area 2-06, Eastern Ontario and Outaouais. For the Tier 2-14 licence area (Yukon, Northwest Territories and Nunavut), only the national market share criteria will apply. Definition from 700/2500 MHz Policy Framework Decision B3-2 (http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf10121.html). The reference data for the evaluations will rely on the most recently available CRTC *Communications Monitoring Report*.

11 Term "new entrant" as defined in Section 8.

12 Using licensed commercial mobile broadband spectrum, which currently includes spectrum in the Cellular, PCS, AWS, BRS, MBS and WCS bands.

13 Refers to terrestrial wireless networks. Coverage areas for the purposes of verifying coverage are those areas where devices being offered to support service can successfully connect to the bidder's existing network.

14 Transfers of commercial mobile spectrum are subject to review in accordance with CPC-2-1-23, *Licensing Procedures for Spectrum Licences for Terrestrial Services*, and takes

into consideration decisions released in the *Framework Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences for Commercial Mobile Spectrum*.

15 Industry Canada used the SMRA format for the 24 and 38 GHz auction in 1999, the Personal Communications Services (PCS) auction in 2001, the 2300/3500 MHz auction in 2004, the two-phased residual auction for 2300/3500 MHz in 2004 (Phase 1) and 2005 (Phase 2), and the Advanced Wireless Services (AWS) auction in 2008.

16 Industry Canada used a sealed-bid, second-price auction design for two auctions held in 2009 (air-ground and the residual spectrum licences in the 2300/3500 MHz bands).

17 See http://www.ntia.doc.gov/category/500-mhz-initiative and http://www.ntia.doc.gov/category/aws-3-transition.

18 See *Arrangement I*, http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08961.html.

19 Population centres are defined in Statistics Canada Census Dictionary. A large urban population centre is defined as an area with a population of 100,000 or more and a population density of 400 persons or more per square kilometre. A medium population centre is defined as an area with a population between 30,000 and 99,999, and a population density of 400 persons or more per square kilometre.

Statistics Canada 2011 Census Dictionary, *Statistics Canada Catalogue no. 98-301-XWE*, February 8 (http://www12.statcan.gc.ca/census-recensement/2011/ref/dict/geo049a-eng.cfm).

MapInfo files describing boundaries of these centres are available at http://spectrumgeo.ic.gc.ca/txt/download-eng.html.

This is **Exhibit "B"** to the
Affidavit of James Riley
sworn before me this 26th
day of November, 2014

David Moore

A Commissioner, etc.

Court File No. CV-14-511539

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

QUADRANGLE GROUP LLC, QCP CW S.A.R.L., and DATA & AUDIO-VISUAL ENTERPRISES INVESTMENTS INC.

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the MINISTER OF INDUSTRY

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date Sept. 04, 2014 Issued by ______________________
Local Registrar Christina Irwin
Registrar, Superior Court of Justice

Address of court office: 393 University Avenue, 10th Floor
Toronto ON M5G 1E6

TO: The Attorney General of Canada
c/o Industry Canada
151 Yonge Street
4th Floor
Toronto, Ontario
M5C 2W7

-or-

c/o Industry Canada
235 Queen Street
Ottawa, Ontario
K1A 0H5

CLAIM

1. The Plaintiffs claim:

(a) damages for negligence, negligent and/or reckless misrepresentation, breach of contract, intentional interference with economic relations, abuse of public office, unjust enrichment and loss of reputation and goodwill in the amount of $1,204,415,703;

(b) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(c) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(d) the costs of this proceeding, plus all applicable taxes; and

(e) Such further and other Relief as this Honourable Court may deem just.

OVERVIEW

2. In the fall of 2006, a representative of Industry Canada solicited Mr. John Bitove. Mr. Bitove agreed to meet the representative in Toronto. Mr. Bitove was known to Industry Canada as a result of his successful development of Canadian Satellite Radio and Sirius XM. The representative informed Mr. Bitove that Industry Canada wanted to encourage new entrants into the Canadian wireless communications industry. In particular, the representative said that Industry Canada wanted to create viable competitors to the Big 3 Incumbent companies – Rogers Wireless, Bell Mobility, and Telus Mobility. The representative told Mr. Bitove that Industry Canada intended to hold an auction for spectrum and to set aside spectrum specifically for new entrants. The Incumbents would be barred from bidding on this set aside spectrum. The Industry Canada representative and Mr. Bitove discussed the need to find investors to partner with in capitalising a new entrant that would bid for wireless spectrum in the auction in 2008.

3. To the knowledge of Industry Canada, Mr. Bitove did not have any experience in the wireless industry. He expressed concern about capitalizing a new entrant and competing in an industry dominated by the Incumbents and which was capital intensive with very high barriers to entry. The Industry Canada representative acknowledged that it would be very difficult for a new company to compete against the Incumbents given their significant resources, aggressive posture towards competition, and well-developed infrastructure. The Industry Canada representative told Mr. Bitove that the Government was committed to the introduction and long-term sustainability of new entrants into the wireless market and assured Mr. Bitove that if he and his partners invested in a new company, purchased spectrum, and built out a new network, it would prevent unfair competition from the Incumbents and create market conditions in which new entrants could establish themselves and compete effectively.

4. Over the course of the next few months, throughout several meetings and phone calls, Industry Canada representatives specifically assured Mr. Bitove, in order to induce him to invest, that the investment would not be lost as any spectrum licenses acquired could be transferred to an Incumbent after five years. The Industry Canada representatives referred to the history of the Department in allowing such transfers and confirmed that Ministerial approval was always granted and would be granted provided that conditions of the license had been satisfied.

5. The representative specifically assured Mr. Bitove that Industry Canada would:

(a) Enforce foreign ownership rules in the manner it always had;

(b) Require the Incumbents to provide roaming at commercial rates and on reasonable terms;

(c) Require the Incumbents to provide access to cell towers and other infrastructure at reasonable rates and on reasonable terms;

(d) Prevent the Incumbents from engaging in unfair and anti-competitive practices;

(e) Allow spectrum to be transferred to Incumbents after five years;

6. Industry Canada understood and acknowledged that the barriers to entry into the wireless market are very high and competition from the Incumbents extremely aggressive, such that any new entrant would be highly vulnerable and would not survive unless these assurances were honoured. When Industry Canada made these representations, it did so negligently or recklessly and/or with indifference to, without regard to, or without belief in their truth. Industry Canada represented it had developed plans to implement these assurances when it in fact had not.

7. On the strength of these assurances, Mr. Bitove and his partners did exactly what Industry Canada asked them to do. They invested hundreds of millions of dollars in a new company branded as Mobilicity in order to compete with the Incumbents. They gave up other opportunities. They participated in Industry Canada's spectrum auction, increasing the auction revenues received from the $650 million dollars projected to a total of more than $4 billion dollars. And they built out their network, bringing competition to the Canadian wireless market, creating thousands of jobs, and benefitting Canadian consumers. DAVE and Quadrangle were not spectrum speculators, but committed investors in a new Canadian wireless provider.

8. In return, Industry Canada ignored all of its promises. It disregarded its own foreign ownership rules, refused to require roaming and tower-sharing at commercial rates, and allowed Incumbents to engage in anti-competitive practices, including loss-making "flanker" brands to undercut the new entrants.

9. Industry Canada's conduct was irrational and capricious. It applied different ownership and control requirements to Wind, another wireless provider, than it did to Mobilicity, and it failed to implement changes to the Incumbents' licence conditions that it knew were essential to the assurances and representations it had given.

10. Industry Canada's breach of its promises rendered Mobilicity unable to compete in exactly the way that the Plaintiffs were assured would not happen. Having caused the Plaintiffs to lose substantially all of their investment, Industry Canada broke its final promise by refusing to allow a sale of the business after five years. Its refusal was a breach of its assurance made for the irrational and unlawful purpose of punishing the Plaintiffs for trying to sell Mobilicity to Telus and for the wrongful purpose of intimidating and retaliating against Telus for speaking out against Industry

Canada's conduct. Its refusal had nothing to do with *bona fide* policy considerations or the interests of Canadian consumers.

11. Industry Canada's actions throughout, from 2006 to 2014, have been taken in bad faith and are in breach of its assurances and duties to the Plaintiffs. As a result, the Plaintiffs have been deprived of the entire benefit of their investment, lost the opportunity to invest in other profitable ventures, and suffered harm to their reputations and goodwill. Industry Canada has been enriched by its conduct and by the Plaintiffs' investments while the Plaintiffs have suffered a corresponding deprivation. There is no juristic reason for this enrichment and corresponding deprivation.

FACTS

The Parties

12. The Plaintiff Data & Audio-Visual Enterprises Investments Inc. ("DAVE") is one of two principal shareholders in Data & Audio-Visual Enterprises Holdings Inc. ("DAVE Holdings"). DAVE Holdings wholly owns Data & Audio-Visual Enterprises Wireless Inc. ("Mobilicity"), a Canadian-controlled telecommunications company incorporated in Ontario on March 6, 2008. DAVE Wireless has operated under the business name "Mobilicity" since February 2, 2010, and provides quality, affordable wireless service to Canadians.

13. The principal and ultimate majority owner of DAVE is John Bitove, a prominent Canadian businessman. Mr. Bitove is the founder, Chairman and CEO of Canadian Satellite Radio Holdings Inc. ("Canadian Satellite Radio"), which offers the XM satellite radio service in Canada. Since 2008, DAVE has invested a total of $44 million in Mobilicity.

14. The Plaintiff QCP CW S.a.r.l. is the second principal shareholder in DAVE Holdings. The Plaintiff Quadrangle Group LLC is a private investment firm based in New York City. It was founded in 2000 and is focused on the information and communications technology and services sectors. Quadrangle Group LLC, through QCP CW S.a.r.l (collectively, "Quadrangle") invested $217 million dollars of equity and $95 million dollars of debt in Mobilicity.

15. The Defendant, Industry Canada, is responsible for and has complete control over the Canadian wireless telecommunications market. It owns Canada's radio frequency spectrum and it determines who may use that spectrum, for what purposes, and on what conditions. Industry Canada acts through its agents in the public service and elected representatives and is responsible for their acts, omissions, representations, and other conduct.

Canadian Wireless Market Dominated By Incumbents

16. By 2005, the Canadian wireless market had become dominated by three large national carriers – Rogers Wireless, Bell Mobility, and Telus Mobility (collectively, the "Incumbents") – who together controlled 94% of the market. Compared with other industrialized countries, the Canadian wireless market was less competitive and less innovative, and Canadian consumers of wireless services faced higher prices, lower quality, and inconsistent coverage. Only half of all Canadians regularly used cellular telephones.

17. When Canada first began developing its wireless infrastructure, Industry Canada granted spectrum to the Incumbents free of charge and continued to do so for many years. This approach conferred a very significant advantage to the Incumbents as it allowed them to devote their capital to building infrastructure. This led to an oligopoly that effectively excluded all other carriers from the Canadian wireless market. It was impossible for new companies to enter and compete in the

market because of the high fixed infrastructure costs, and because of the threat of overwhelming competition from the Incumbents.

18. Industry Canada not only allowed, but actively encouraged the Incumbents to enter into anti-competitive agreements amongst themselves to share infrastructure and provide other assistance to one another. An example of this is the agreement between Bell and Telus to provide roaming on each other's networks on highly favourable rates and terms and to share infrastructure across the country. This agreement was encouraged by Industry Canada at the time it was entered into and continues to be supported by Industry Canada to this day, despite the stifling of competition and the steep barriers to entry it creates.

19. Industry Canada has, through its intervention in the wireless market and its close association with the Incumbents, dictated the state of the wireless market in Canada. Industry Canada has frequently used its power to effect changes, resulting in a market singularly shaped by its actions and policies. It is a market in which a new entrant cannot compete without significant assistance from Industry Canada.

20. In 2005, Industry Canada initiated a review of Canada's wireless industry. The review was completed in March 2006 and concluded, among other things, that "... the fact that all three national wireless service providers are ... owned by large telecommunications service providers ... may mean that there is less competition in the Canadian wireless market than in the U.S. market, which consequently has resulted in higher prices, less innovation, lower uptake and lower rates of usage."

21. Recognising that its actions had created a market dominated by the Incumbents, with high prices and low penetration, Industry Canada decided in 2006 to overhaul its approach to the sector.

It wanted to encourage new entrants in order to break the oligopoly of the Incumbents and bring greater choice to Canadian consumers. Rather than allocating spectrum among the Incumbents free of charge, Industry Canada said it would hold an auction to sell the spectrum, would set aside spectrum to be bid on only by new entrants, and would require the Incumbents to share access to their infrastructure with new entrants.

Industry Canada Induces Mr. Bitove to Seek Partners and Invest

22. In the fall of 2006, then Assistant Deputy Minister of Industry in charge of spectrum, Michael Binder, approached Mr. Bitove about investing in the Canadian wireless industry. Mr. Bitove knew Mr. Binder through his work with Canadian Satellite Radio but had never before discussed with him the wireless industry. Mr. Binder knew that Mr. Bitove had no experience in the wireless industry, but knew him to be a skilled and dedicated businessman who had the ability to raise funds and to build new ventures.

23. At Mr. Binder's request, Mr. Bitove and Mr. Binder met at the Toronto offices of Canadian Satellite Radio. Stewart Lyons, then Executive Vice-President of Canadian Satellite Radio, attended the meeting as well.

24. Before meeting with Mr. Binder in the fall of 2006, Mr. Bitove had never contemplated entering the Canadian wireless industry. Mr. Bitove recognised, as did Industry Canada, that the oligopoly in the wireless industry created significant barriers to entry and posed long-term operational challenges to any new carrier.

25. Mr. Binder spoke on behalf of Industry Canada and the Federal Government and had authority to bind them, and Mr. Bitove and Mr. Lyons reasonably understood this to be the case. Mr. Binder informed Mr. Bitove and Mr. Lyons that Industry Canada was planning to auction

advanced wireless spectrum services in 2008 (the "Spectrum Auction"). This was the first time that either Mr. Bitove or Mr. Lyons had heard of the Spectrum Auction.

26. Mr. Binder told Mr. Bitove and Mr. Lyons that Industry Canada was dissatisfied with the wireless market and wanted to entice new companies to create national or multi-province networks to compete with the Incumbents. In recognition of the high barriers to entry and the market dominance of the Incumbents, Mr. Binder was emphatic that Industry Canada would take aggressive steps to ensure new entrants could compete effectively at a national level and be sustainable in the long-term.

27. When Mr. Bitove and Mr. Lyons shared their concerns about the ability of a new entrant to compete with the Incumbents, and therefore the security or viability of any investment in such a venture, Mr. Binder assured them that Industry Canada understood such concerns and was committed to implementing a well-developed plan to ensure the ability of a newly capitalised entrant to create and operate a competitive and viable national network.

28. Mr. Binder set out the important parameters of Industry Canada's plans, including that certain spectrum would be set aside for new entrants to bid on, that Industry Canada would require the Incumbents to enter into roaming agreements with new entrants at commercially reasonable rates and on reasonable terms, and that Industry Canada would require the Incumbents to give new entrants access to their physical infrastructure, such as cellular antenna towers and rooftop sites, and would establish an efficient and cost-effective enforcement mechanism if the parties did not reach roaming or site-sharing agreements.

29. Mr. Binder also explained that new entrants would not be allowed to transfer or sell "set aside" spectrum to the Incumbents for five years, but thereafter were free to do so, provided the

purchaser complied with the conditions of licence. The initial moratorium was designed to ensure that new entrants actively participated in the market and built out their networks across the country, but Industry Canada recognised that new entrants needed an exit strategy should their investment fail. Mr. Binder assured Mr. Bitove and Mr. Lyons that Industry Canada remained committed to its long standing approach of providing Ministerial approval for transfers to Incumbents if license conditions were complied with.

30. Industry Canada intended Mr. Bitove to relay these assurances to potential strategic partners and Industry Canada knew and intended that anyone with whom Mr. Bitove partnered would rely on Industry Canada's representations when making the decision to invest in the Canadian market. The Defendant was aware that neither the Plaintiffs nor anyone else would run the risk of capitalising a new entrant, bidding in the auction and then competing in a mature market dominated by the Incumbents without an assurance of an exit mechanism in the form of the ability to transfer the license.

31. The Plaintiffs reasonably understood Mr. Binder to speak on behalf of and have authority to bind Industry Canada and the Federal Government, and reasonably relied on his ability to do so. The assurances described above were made to DAVE and Quadrangle in order to induce them to compete against the Incumbents in the face of the very high barriers to entry and to assure them they would not be subject to unfair competition, either from the Incumbents or from large, foreign corporations.

32. Mr. Binder, Mr. Bitove, and Mr. Lyons discussed the need to secure a private equity partner to help capitalise a new entrant that would be able to create a national or multi-province network. Mr. Binder encouraged them to do so and to tell potential investors about the measures

Industry Canada was going to take to allow new entrants to compete effectively, but also noted that any new entrant would have to comply with the Canadian ownership and control requirements.

33. A few months later, on or around January 19, 2007, Mr. Binder again approached Mr. Bitove to discuss the Spectrum Auction.

34. He told Mr. Bitove that Industry Canada would be releasing the policy and licensing framework for the Spectrum Auction shortly and encouraged him to review the framework and submit comments for Industry Canada's consideration. Mr. Binder repeated that Industry Canada was committed to supporting new entrants and that the rules of the Spectrum Auction would be favourable to new entrants.

35. On the faith of Mr. Binder's and other staff's assurances that Industry Canada had committed to enact and enforce the measures described above, Mr. Bitove put together a business case for a new Canadian wireless company with a national network. Mr. Bitove relied upon Mr. Binder's representations that Industry Canada had committed to establishing market conditions that would enable new entrants to compete effectively and that a transfer of the licence would be permitted after five years.

36. In fact, contrary to its representations and assurances, Industry Canada had no set plan regarding the enforcement of Canadian ownership and control requirements, mandatory roaming and site-sharing, the prevention of anti-competitive practices, or the transferability of spectrum. Industry Canada did not intend to implement the steps and requirements it assured the Plaintiffs of, but rather to make decisions regarding those issues on an *ad hoc* basis. In making the representations to DAVE and Quadrangle described above, Industry Canada was either negligent

or reckless as to the truth and accuracy of those representations and/or made them with indifference to, without regard to, or without belief in their truth.

37. Despite representing that it had determined and set its plans and priorities regarding the wireless market, and new entrants in particular, Industry Canada had not in fact done so and always intended to make decisions based on what it considered to be expedient at the time. Industry Canada knew that if the Plaintiffs were aware that the assurances it had given were not in fact firm commitments and no decision had been taken to assure their implementation neither they, nor anyone else would have invested in the Spectrum Auction or capitalised a new entrant to try to compete on a national level.

Industry Canada Releases Proposed Rules Supporting New Entrants

38. On or around February 16, 2007, less than a month after Mr. Bitove's second meeting with Mr. Binder, Industry Canada released a paper entitled *Consultation on a Framework to Auction Spectrum in the 2GHz Range Including Advanced Wireless Services* (the "*Consultation Paper*").

39. The *Consultation Paper* confirmed what Mr. Binder had told Mr. Bitove: that Industry Canada was adopting an auction process and implementing auction rules designed to "promote a competitive post-auction marketplace." It sought comments on the measures designed to encourage new entrants, such as how much spectrum should be set aside for new entrants.

40. While Industry Canada asked for input from interested parties on the mechanics of the auction rules, one rule that was never in dispute was the long-standing requirement that wireless companies be Canadian-owned and controlled. Mr. Binder had made this clear to Mr. Bitove and Mr. Lyons when he emphasised that they would have to comply with these requirements in structuring their investment with Quadrangle. Shortly after the *Consultation Paper* was published,

Minister of Industry Maxime Bernier stated: "There is regulation on foreign acquisitions and investments in telecommunications... The regulation will be enforced. I have no intention of changing it or introducing a bill on the matter any time soon." This statement was made with the intention of inducing new entrants and the intention that potential new entrants would rely on it.

41. This statement reinforced to Mr. Bitove Industry Canada's prior assurance that Canadian ownership and control requirements would continue to be applied in the manner they always had been. Industry Canada knew that the ownership and control rules were an important part of any investor's strategy and approach to the Canadian market, as they were to the Plaintiffs.

42. These rules guaranteed that large foreign corporations could not simply create a "puppet" Canadian company and use their vast resources to undercut other new entrants. This was a particularly important feature of the market for Mr. Bitove, and would be for Quadrangle, too. Mr. Bitove and Quadrangle relied on Industry Canada's representations in this regard and would not have invested in a new entrant to build out a national network if they had believed that the Canadian ownership and control rules might change or be applied differently in the future.

43. At Mr. Binder's urging, Mr. Bitove reviewed the *Consultation Paper* and submitted comments. In accordance with the discussions he had previously had with Mr. Binder and the assurances received, on or around May 25, 2007, DAVE submitted that "the [Incumbents] are so dominant today that a new entrant needs to be protected during its formative years and given the same financial incentives so that they can focus on going after customers. This will allow new entrants to build on the success of the [Incumbents] and enhance the Canadian customer experience."

44. DAVE also addressed the issue of a new entrant's ability to roam on the Incumbents' existing national networks. Also in accordance with the discussions he had with Mr. Binder and other Industry Canada staff and the assurances received, DAVE noted that "in order to create a level playing field for all market participants … fixed, per minute roaming costs should be established for mandated roaming spectrum." Without roaming rights at reasonable rates and terms, a new entrant could not hope to compete with the Incumbents and their vastly superior infrastructure and resources.

45. Industry Canada published the feedback received and asked for a second round of submissions. DAVE reviewed the positions of the Incumbents and other potential new entrants and submitted reply comments on June 27, 2007. DAVE outlined three "critical" rules that Industry Canada had assured him it had committed to enact to ensure the viability of a new entrant: (i) spectrum must be set aside for new entrants; (ii) roaming must be mandated, and if parties cannot reach a roaming agreement within a fixed and short period of time, arbitration must be mandatory; and (iii) antenna tower- and site-sharing must be mandated, with the same requirement that parties submit to binding arbitration if a sharing agreement cannot be reached.

46. DAVE also pointed out that many respondents commented on the issue of the divisibility or transferability of set aside spectrum. Quebecor Media, for instance, suggested that any moratorium on selling set-aside spectrum expire after 5 years. As Mr. Binder had represented to Mr. Bitove that Industry Canada had decided to continue its past practice of allowing the sale of set aside spectrum after five years in order to give new entrants an "exit strategy", DAVE agreed with Quebecor's position.

Industry Canada Finalises Wireless Framework and Licence Conditions

47. In response to the submissions of DAVE and others, on or around November 28, 2007, Industry Canada released the final framework pertaining to the Spectrum Auction (the "Framework"). Consistent with its prior assurances and representations, Industry Canada confirmed its intention was to:

(a) reduce barriers to entry and encourage new entrants in the wireless industry;

(b) promote multiple viable providers of wireless services;

(c) prevent Incumbents from undermining new entrants and abusing their market dominance;

(d) establish and enforce measures to sustain and enhance competition in the wireless industry; and

(e) develop an efficient, innovative and vibrant wireless industry for the benefit of Canadian consumers.

48. The Framework set out how Industry Canada would achieve these objectives. Consistent with its prior assurances and representations, Industry Canada confirmed that it would:

(a) set aside spectrum for new entrants;

(b) mandate roaming at commercial rates, and should negotiations between parties fail, require the parties to undertake binding arbitration within a commercially reasonable period of time; and

(c) mandate antenna tower and site sharing and prohibit exclusive site arrangements for all licensees. As with mandated roaming, parties were required to submit to binding arbitration if they could not reach a tower and site sharing agreement within a certain period of time.

49. Industry Canada also codified Mr. Binder's representation that the restriction on the transfer of set aside spectrum to Incumbents would last for a period of five years. Ministerial approval would be given provided that the transferee met the conditions of licence, consistent with Industry Canada's past practice.

50. Nothing in the Framework suggested that the Minister would depart from Industry Canada's prior assurances and representations that it had decided that its established practice governing spectrum transfer criteria and its long-standing rules limiting foreign ownership would remain in place.

51. In December 2007, shortly after releasing the Framework, Industry Canada published the final Licensing Framework – a companion document to the Framework. Since implementing mandatory roaming and mandatory antenna tower and site sharing would require changes to the existing licence conditions, Industry Canada included in the Licensing Framework its proposed new conditions of license. Consistent with its prior assurances and representations to Mr. Bitove and Mr. Lyons, Industry Canada represented that it would impose licence conditions requiring the Incumbents to respond to a request to enter into a roaming agreement or request to share an antenna site within 30 days, and require parties to enter into binding arbitration if no agreements were reached after 90 days of good faith negotiations.

52. DAVE reasonably relied on Industry Canada's representations that it intended to, and would in fact, enact and enforce these conditions. As described below, Industry Canada refused to take any steps to implement its promises and wrongfully refused to finalize conditions of license with respect to mandatory roaming and antenna tower and site sharing until March 2013, five years after the auction.

Industry Canada Reinforces Earlier Representations to DAVE and Quadrangle

53. Industry Canada gave interested parties until February 7, 2008 to seek clarification of any objectives outlined in the Framework or on the operation of the rules set out in the Licensing Framework. It was the first time Canada had ever conducted an auction with set aside spectrum and with rules designed to limit the market dominance of the Incumbents, and the first time that DAVE had ever competed in a wireless spectrum auction. As a result, Mr. Bitove and Mr. Lyons were in regular contact with senior officials at Industry Canada, including Mr. Binder and Peter Hill, who was in charge of the Spectrum Auction.

54. In the spring of 2008, Mr. Bitove told Mr Hill and Mr. Binder that Quadrangle Group LLC, through the investment vehicle of QCP CW S.a.r.l., would partner with DAVE. Mr. Bitove told Mr. Hill and Mr. Binder that DAVE and Quadrangle would incorporate a new entity that subsequently became Mobilicity in order to compete in the Spectrum Auction. They were pleased to learn that DAVE had sought out a strategic equity partner as suggested and that it would be participating in the Spectrum Auction.

55. In the numerous subsequent conversations between DAVE, Mr. Hill and Mr. Binder, Industry Canada knew that DAVE was working with Quadrangle as a partner, and knew and

intended that Quadrangle would rely on the representations and assurances made by Industry Canada beginning in the fall of 2006.

56. During their conversations, Mr. Hill and Mr. Binder assured DAVE and Quadrangle that Industry Canada remained committed to ensuring the long-term viability of new entrants through the measures described above. Industry Canada made these representations in order to induce DAVE and Quadrangle to participate in the Spectrum Auction and capitalise a new entrant that would build out a national or multi-province network.

57. Whenever DAVE or Quadrangle expressed reservations about competing against the Incumbents – or the possibility of competing against foreign owned companies – especially on a national scale, Mr. Binder, Mr. Hill, and Howard Chatterton, the manager of the auction process, reiterated Industry Canada's commitment to the measures described above in order to ensure new entrants a real opportunity to compete meaningfully on a national scale against the Incumbents. They repeated the assurance of the ability to sell the set aside spectrum to the Incumbents after five years so that new entrants' downside risk was limited. They also assured DAVE and Quadrangle that Industry Canada had resolved to maintain its restrictions on foreign ownership.

58. They also reiterated the representations and assurances Industry Canada had made in the fall of 2006 that it had a fixed intention to require Incumbents to enter into mandatory roaming agreements at commercially reasonable rates and on commercially reasonable terms, to provide new entrants with access to Incumbents' antenna towers and sites, and to ensure new entrants did not face unfair or anti-competitive practices by Incumbents or others.

59. Mr. Binder and Mr. Hill also confirmed to DAVE and Quadrangle that Industry Canada had developed enforcement mechanisms that would be quick, efficient, and cost-effective, in order

to ensure compliance with the requirements. All of these representations were made before DAVE and Quadrangle incorporated Mobilicity and before they had invested in it, with the intention that they would be relied on, and were material to their decision to incorporate and invest in Mobilicity.

60. Industry Canada's representations were made negligently or recklessly as to the truth of their contents and/or were made with indifference to, without regard to, or without belief in their truth. Industry Canada had no specific plans regarding the protection of new entrants into the Canadian wireless market or plans to implement the steps and features described above, which were necessary for success in the Canadian wireless market. It represented to DAVE and Quadrangle that it intended to take certain steps and enforce particular policies, but it in fact had not decided to do so and always intended to make decisions regarding the wireless industry on an *ad hoc* basis.

61. Industry Canada knew that this would be a high profile investment and venture for DAVE and Quadrangle and that the failure of this investment would be detrimental to their reputations and goodwill. At Industry Canada's behest, and in reliance on its assurances and representations, DAVE and Quadrangle were deploying capital that could have been invested elsewhere.

62. DAVE and Quadrangle reasonably relied on Industry Canada's representations and assurances that it intended to and would in fact implement the measures described above in order to promote new national wireless carriers. They did so by capitalising a new entrant, purchasing spectrum in different regions across the country, and building out a national network.

63. As a result of the solicitation of the Plaintiffs, the assurances and representations made by the Defendant to the Plaintiffs, the Plaintiffs' reasonable reliance on them, and their vulnerability to Industry Canada (which exercised complete control over the factors necessary for the success of

their investments), their vulnerability in the unique situation of a set-aside wireless auction that would create a new entrant to compete against highly entrenched and dominant Incumbents, their lack of prior experience in the Canadian wireless industry, and their commitment of significant capital to building a national carrier, a relationship of proximity was established between the Plaintiffs and the Defendant. This relationship gave rise to a duty of care.

64. The Defendant intended the Plaintiffs to rely on its assurances, knew that they did, and knew that if these assurances were breached the Plaintiffs would suffer harm in the loss of their investment and harm to their reputation and goodwill. Specifically, Industry Canada was aware that both Mr. Bitove was behind DAVE, and that both Mr. Bitove and Quadrangle had reputations as successful business owners, operators and investors and that the loss of their investment would cause them reputational harm and impair their goodwill.

Contract Entered into Between Industry Canada and DAVE and Quadrangle

65. In addition to the relationship of proximity that arose between the Plaintiffs and the Defendant, as a result of the specific representations and assurances made by Industry Canada, a contractual relationship arose between the parties. The Federal Government of Canada acts through its agents, including the Ministry of Industry, which in turn acts through the Minister, Deputy Ministers, Assistant Deputy Ministers, and other senior officials. These officials have authority to bind the Federal Government and it was reasonable for DAVE and Quadrangle to rely upon them.

66. Industry Canada and DAVE and Quadrangle entered into a contractual agreement when Industry Canada offered to establish and enforce rules to support a new entrant into the Canadian

wireless industry and DAVE and Quadrangle accepted the offer by purchasing spectrum and establishing a new Canadian wireless provider. The material terms of the contract were:

(a) DAVE and Quadrangle would incorporate and capitalise a corporation to bid for spectrum in different parts of the country;

(b) If successful Industry Canada would grant a license;

(c) DAVE and Quadrangle would substantially build out their network on a national level;

(d) Industry Canada would continue to enforce its foreign ownership rules as it had in the past;

(e) Industry Canada would implement the measures necessary to ensure new entrants would have the opportunity to meaningfully compete at the national level, thereby creating more competition in the industry, including:

(i) Require the Incumbents to provide roaming at commercial rates and on reasonable terms;

(ii) Require the Incumbents to provide access to cell towers and other infrastructure at reasonable rates and on reasonable terms; and

(iii) Prevent the Incumbents from engaging in unfair and anti-competitive practices;

(f) Industry Canada would allow the transfer of the spectrum license to an Incumbent so long as the conditions of licence were complied with, just as it always had in the past.

Spectrum Auction Nets Billions of Dollars for Industry Canada

67. The Spectrum Auction was held in May 2008. The Plaintiffs, through Mobilicity, bid on and ultimately purchased numerous blocks of spectrum in multiple provinces for a total of $243,159,000.

68. As a result of the participation of new entrants, including Mobilicity, Industry Canada raised approximately $4.1 billion dollars in the Spectrum Auction, far surpassing the $615 million forecast.

69. On or around July 22, 2008, Industry Canada informed the Plaintiffs that Mobilicity was a successful bidder in the auction. Mobilicity acquired spectrum licences in several regions across the country including:

(a) Vancouver and Victoria, BC;

(b) Edmonton, Calgary, and Red Deer, AB;

(c) Southern Ontario (including Toronto); and

(d) Eastern Ontario (including Ottawa and Gatineau).

70. Mobilicity subsequently built out network infrastructure in nearly all these regions. Between May and November 2010 Mobilicity launched services in Vancouver, Edmonton, Toronto, Ottawa, and Gatineau. The company continued to grow its subscriber base and launched

services in Calgary in April of 2011. By the end of 2011, Mobilicity was providing wireless services to over 200,000 Canadians in four different provinces and at its peak it was providing services to nearly 300,000 Canadians. Mobilicity deployed an advanced HSPA network that provided 4G service to underserved and largely lower-income and new immigrant communities. It offered new and unique options to Canadian consumers, including unlimited roaming packages, no contracts, and no credit checks.

71. Other new entrants also acquired licences in the Spectrum Auction:

(a) Shaw acquired spectrum in BC, Alberta, Saskatchewan, Manitoba, and Ontario, paying $189,000,000;

(b) Wind acquired spectrum in every province and territory, paying $440,000,000;

(c) Public Mobile acquired spectrum in Ontario and Quebec, paying $52,000,000; and

(d) Videotron acquired spectrum in Ontario and Quebec, paying $550,000,000.

Irrational and Capricious Application of Canadian Ownership and Control Rules

72. Beginning in or around December 2008, DAVE and Quadrangle began discussions with Industry Canada concerning Mobilicity's ownership, share structure, and shareholders' agreement with respect to Industry Canada's procedures concerning Canadian ownership and control. These discussions were detailed and protracted, taking more than two months. Industry Canada's primary contact for these matters was Pamela King at Industry Canada.

73. Throughout these discussions, Industry Canada followed and enforced with DAVE and Quadrangle its long-standing policies and procedures concerning foreign ownership, and in

particular the "control-in-fact" test that ensures that a company is not de facto controlled by a foreign entity. Industry Canada directed DAVE and Quadrangle to make numerous changes to Mobilicity's shareholders' agreement. Industry Canada required that:

(a) the CEO be a Canadian with no prior affiliation to Quadrangle;

(b) there be a majority of Canadian Directors;

(c) the Nominating Committee consist of a majority of Canadian Directors with no affiliation to Quadrangle;

(d) Mr. Bitove be given a tie-breaking vote as Chairman;

(e) Quadrangle not be given veto power to remove any independent directors;

(f) Quadrangle not be given a veto over the hiring of bankers or any other key advisors; and

(g) Industry Canada be notified upon engagement of bankers regarding a liquidity event.

74. Industry Canada's ability to dictate the specific contents of Mobilicity's shareholders' agreement and demand detailed changes to the agreement demonstrates Industry Canada's absolute control over the market and DAVE and Quadrangle's vulnerability to the Department. It also reinforced to DAVE and Quadrangle Industry Canada's representations regarding Canadian ownership and its ability and intention to control the market.

75. DAVE and Quadrangle finally received confirmation that Mobilicity met Industry Canada's requirements on February 11, 2009.

76. Approximately one month later, on March 16, 2009, Industry Canada gave approval to Globalive Communications Corporation ("Wind") to operate in Canada. Wind manifestly did not meet the Canadian ownership and control requirements, and in particular the control-in-fact test. As described below, Wind was financed by its foreign parent company Orascom, key technical decisions were dictated by Orascom, and Wind did not have an independent Canadian CEO. The company was effectively managed and controlled by Orascom.

77. Industry Canada subsequently recognised Orascom's ineligibility to control Wind when it refused permission for essentially the same group to purchase Allstream, a Canadian communications and internet company, on that basis that the Canadian ownership and control requirements would not be met.

78. In giving Wind permission to operate in Canada, Industry Canada:

(a) Ignored its own long-standing control-in-fact test – the test it had applied to Mobilicity;

(b) Did not require Wind to comply with any of the conditions it had placed on Mobilicity, including those referenced above; and

(c) Acted irrationally, capriciously, and in bad faith by intentionally breaching its representations to DAVE and Quadrangle and applying different rules to Wind than those it had applied to Mobilicity, without justification.

79. The CRTC, the independent regulatory agency charged with enforcing the rules regarding foreign ownership and control, was not convinced that Wind's ownership and structure were compliant. The CRTC began public hearings to "consider the compliance of [Wind] with the

ownership and control regime" in September of 2009. After extensive consultation and consideration, the CRTC concluded that Wind did not satisfy the Canadian ownership and control requirements and revoked Wind's licences. The CRTC considered a number of factors in arriving at this conclusion, including:

(a) Wind's shareholders' agreement gave Orascom significant influence and control over the company's Board of Directors through the appointment of directors and the exercise of vetoes;

(b) Orascom had a significant equity stake in Wind and had provided 99% of Wind's more than $500 million in debt, representing the vast majority of the company's financing;

(c) Certain consulting agreements between Wind and Orascom gave Orascom the ability to influence a wide range of strategic and operational decisions;

(d) Wind was obliged to seek key technical services and advice from Orascom regarding:

  (i) the design of Wind's network architecture and its network capability;

  (ii) vendor selection and the purchasing of network equipment;

  (iii) the negotiation of purchase agreements with international and local vendors; and

  (iv) the introduction of new products and services;

(e) Wind was using a brand name controlled by Orascom; and

(f) Wind's CEO had prior relationships with various Orascom entities and was not independent.

80. Despite these findings, in an unprecedented and irrational move, Cabinet overruled the CRTC. On December 10, 2009, the Governor in Council set aside the CRTC decision and allowed Wind to operate in Canada. It did so without engaging in public consultation as was its long-standing practice because it knew that there was no reasonable justification for its decision and that the decision was completely at odds with its prior practice and the commitments it had made.

81. Cabinet's four-page decision blatantly disregarded its own policies concerning Canadian ownership and control and the long-standing manner in which they had been applied. Despite these significant changes, Industry Canada did not allow Mobilicity to modify its ownership and control structure in a manner similar to Wind and instead strictly held it to the prior policies. This capricious approach to the Canadian ownership rules caused significant harm to DAVE and Quadrangle because it gave Wind an immediate and substantial market advantage, while at the same time denying these benefits to Mobilicity. Specifically:

(a) Wind was able to seek debt and equity financing in markets around the world, where capital could be raised more quickly, in greater amounts, and at lower rates, while DAVE and Quadrangle were limited to seeking out investors and partners in the Canadian capital markets; and

(b) Wind's foreign backers were able to secure effective control of the company, while Quadrangle was limited to a minority interest with much less influence;

82. Industry Canada's decision to provide favourable treatment to Wind while at the same time strictly applying the Canadian ownership and control rules to Mobilicity was capricious, irrational, and made in bad faith. It was also a breach of its assurances and representations, the duty of care it owed the Plaintiffs, and the terms of the contract.

83. Industry Canada gave no justification for applying different rules to Wind than to Mobilicity and this approach contradicted its stated objectives of establishing multiple new entrants that would be viable competitors in the Canadian wireless market. By granting Wind favourable treatment, Industry Canada handed it a significant market advantage that, contrary to its assurances and representations, served only to undermine other new entrants and reduce competition in the wireless market.

Harm Caused by Wind's Entry into the Market

84. Wind's entry into the market, with the significant foreign-controlled resources supporting it, seriously disrupted the wireless industry in Canada. Wind was willing and able to pour its vast resources into the market and operate at a loss in order to acquire a large subscriber base. This was particularly damaging to the Plaintiffs' investment in Mobilicity, as it did not have the resources available to the Incumbents to withstand this sort of predatory competition. Specifically, Wind:

(a) Offered voice and data services, together with handsets, at or below cost in order to drive Mobilicity out of the market;

(b) Used its vast resources to saturate the market with stand-alone retail locations; and

(c) Spent vastly disproportionate sums on advertising and brand promotion.

85. Wind used the tremendous resources provided by its foreign backers and available to it in international capital markets to dramatically skew the marketplace and secure a dominant position *vis-a-vis* Mobilicity. Wind outspent Mobilicity by a factor of four-to-one on a per customer basis and to a much greater extent in absolute terms.

86. To the knowledge of Industry Canada, the Canadian ownership and control requirements were one of the most important considerations for DAVE and Quadrangle when investing, as they ensured a stable, predictable and disciplined financial capital market in which to launch their business. Industry Canada knew that suddenly changing its long-standing rules and ignoring its representations would cause significant harm to DAVE and Quadrangle. Industry Canada's decision to allow Wind to operate in Canada materially contributed to the destruction of the DAVE and Quadrangle's investment and the failure of Mobilicity.

Industry Canada Introduces Wholly Inadequate Licence Conditions

87. In November 2008, Industry Canada issued new conditions of licence in a document entitled "*Conditions of License for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Sire Arrangements*" (the "2008 Licence Conditions"). This document set out key principles, including:

(a) Incumbents would be required to facilitate new entrants' access to their cell towers and other sites;

(b) Incumbents would be required to respond "in a timely manner" to technical information and site access requests from new entrants;

(c) Incumbents must negotiate in good faith with new entrants; and

(d) Should the parties not reach agreement within 90 days, the dispute would be subject to binding arbitration.

88. The 2008 Licence Conditions were wholly inadequate and ineffective and breached the assurances and representations as well as the term of the contract with the Plaintiffs:

(a) They failed to set clear timelines for Incumbents to enter into roaming and tower-sharing agreements with new entrants;

(b) They contained numerous ambiguities and loopholes that allowed the Incumbents to cause delay and otherwise frustrate new entrants' attempts to establish their networks;

(c) They did not prohibit the Incumbents from engaging in anti-competitive behaviour, such as requiring new entrants to accept exclusivity clauses in roaming agreements;

(d) The Enforcement mechanism – an arbitration procedure – was costly, time consuming, and ineffective; and

(e) They did not reflect market roaming practices regarding price setting or requiring a "soft hand off" so a customer's cellular experience is not interrupted when roaming onto a new network.

89. The 2008 Licence Conditions failed to have any meaningful effect on the Incumbents' behaviour and failed to foster market conditions in which new entrants could compete. They allowed the Incumbents to deny new entrants access to roaming and tower-sharing at reasonable commercial rates and on reasonable commercial terms.

90. Industry Canada's 2008 Licence Conditions were directly at odds with its prior representations to DAVE and Quadrangle and demonstrates that it had never had an intention to implement the steps necessary to honour its assurances. The 2008 Licence Conditions were also irrational because they contradicted Industry Canada's stated objectives regarding the wireless market. They failed to encourage new entrants, failed to foster competition, and failed to create market conditions that would benefit Canadian consumers.

Industry Canada Recognises Inadequacy of the 2008 Licence Conditions

91. Industry Canada recognised the deficiencies of the 2008 Licence Conditions, that they did not provide new entrants with any meaningful prospect of competition, would not create the market conditions Industry Canada had promised would exist, and would cause significant harm to new entrants, including DAVE and Quadrangle. Industry Canada therefore sought advice on changes that could be made to the 2008 Licence Conditions. In February 2009 Industry Canada specifically invited DAVE and Quadrangle to provide it with comments.

92. DAVE and Quadrangle submitted a response in March of 2009 highlighting the need for stricter conditions in light of the Incumbents' unwillingness to enter into reasonable roaming and tower-sharing agreements. Specifically DAVE and Quadrangle noted that:

(a) Incumbents were intent on frustrating new entrants' access to cell towers and other sites;

(b) Incumbents were taking advantage of ambiguities in the 2008 Licence Conditions in order to delay or avoid concluding agreements with new entrants;

(c) Incumbents were engaging in anti-competitive and predatory practices by requiring new entrants to accept exclusivity provisions in roaming and tower and site sharing agreements; and

(d) The only way for Industry Canada to address these and other issues was to "prevent licensees from forcing such provisions upon new entrants who require roaming as an essential part of the consumer proposition".

93. Wind also wrote to Industry Canada in March 2009 regarding the 2008 Licence Conditions and set out the difficulty new entrants were experiencing and the steps Incumbents were taking to frustrate their efforts. Wind told Industry Canada that only way to address these issues was to "establish compliance guidelines around the conditions of license as soon as possible and without further drawn-out processes" and to follow this up with proper enforcement mechanisms.

94. Industry Canada knew by the spring of 2009 that in order to comply with its assurances and address the deficiencies it had recognised with its 2008 Licence Conditions, and in order to avoid causing significant harm to new entrants, it needed to:

(a) Impose clear and objective conditions on Incumbents' licences;

(b) Prescribe the terms and rates for roaming agreements between new entrants and Incumbents;

(c) Prescribe objective and well-defined criteria regarding tower and site-sharing; and

(d) Establish a quick, efficient, and cost-effective enforcement procedure, as it had promised it would do.

95. Throughout this period – from the autumn of 2008 through the autumn of 2009 – DAVE and Quadrangle did exactly what Industry Canada wanted them to do: they spent hundreds of millions of dollars to rapidly establish the business, build out the network, and prepare to launch wireless services.

96. Industry Canada knew this and knew that if it did not revise the 2008 Licence Conditions, new entrants, including Mobilicity, would fail. It also knew that failing to act would:

(a) Reduce competition in the wireless industry;

(b) Undermine new entrants and prevent them from competing effectively against the Incumbents;

(c) Reduce the breadth and quality of wireless services available to Canadians; and

(d) Allow the Incumbents to abuse their dominant positions in the market and undermine competition in the short- and long-term.

97. Industry Canada repeatedly acknowledged the need to revise the conditions and represented that it would do revise the conditions to bring them into conformity with the assurances given and with the terms of the Contract between the Plaintiffs and the Defendant. Industry Canada's failure to revise the 2008 License Conditions was not based on a reasoned conclusion that the 2008 Licence Conditions served the department's objectives – Industry Canada recognised that they did not. Industry Canada's failure to act resulted from a bad faith refusal to honour assurances and representations and from neglect of its contractual and common law duties owed to the Plaintiffs and to Mobilicity. Industry Canada induced new entrants into the market with specific assurances and then abandoned those new entrants.

Industry Canada Allows Anti-Competitive Practices by Incumbents

98. While Industry Canada abandoned the new entrants, the Incumbents abused their dominance to undercut new entrants and frustrate competition. Mobilicity was forced to sign a roaming agreement with Rogers in October 2009 on highly disadvantageous and anti-competitive terms. Industry Canada refused to intervene to ensure a fair agreement as it had represented it would. Specifically:

(a) Rogers imposed an exclusivity clause preventing Mobilicity from entering into roaming agreements or any type of network sharing agreements with any other company, including other new entrants;

(b) Rogers imposed roaming rates that were well above commercially reasonable rates for such services; and

(c) Rogers refused to allow seamless call transfers, requiring instead that consumers end their call and start a new one every time they transferred to Rogers' roaming area.

99. These anti-competitive and commercially unreasonable terms applied to the network across the country – in BC, Alberta, and Ontario – and made it impossible to compete with the incumbents in any of these regions. They made it impossible for Mobilicity to offer customers a national or even multi-province network. Because of the excessive cost and unreasonable terms, Mobilicity's subscribers were prevented from having access to nation-wide services.

100. At all material times Industry Canada was aware that the roaming agreements being imposed by the Incumbents were anti-competitive and the arbitration procedures ineffective.

These facts were specifically and continually brought to its attention and specific requests were made of Industry Canada to fulfill its promises and mandate reasonable commercial rates for roaming. Industry Canada ignored these requests and did nothing to address these issues, despite its prior assurances.

101. Industry Canada never had a fixed intention to, nor did it enforce mandatory roaming at commercial rates and on commercial terms, as it had represented. Its failure to do so harmed DAVE and Quadrangle by seriously undermining Mobilicity's long-term viability. This also put Mobilicity at a significant disadvantage relative to Bell and Telus, which had a very favourable roaming and infrastructure-sharing agreement that was supported and encouraged by Industry Canada, as described above.

102. Industry Canada knew or ought to have known that breaching its representations and assurances to DAVE and Quadrangle regarding mandatory roaming on commercial rates and terms would harm them, especially in light of the anti-competitive arrangement between Bell and Telus that Industry Canada had encouraged and allowed to continue.

103. In the summer of 2010, Rogers launched its "Chatr" branded service, which it used to undercut Mobilicity by offering services at a loss, while promising consumers a national network based on Rogers' extensive infrastructure. This brand was launched in every market in which Mobilicity held spectrum licences *and no others*. Industry Canada allowed this service to continue knowing that it was designed to harm and was harming Mobilicity and that doing so was a breach of the assurances made to the Plaintiffs and the duties owed to them.

Industry Canada Announces Review of 2008 Licence Conditions

104. In September 2010, Mobilicity implored Industry Canada to address the increasingly anti-competitive and predatory practices of the Incumbents. In a letter addressed to then Minister of industry Tony Clement, Mobilicity detailed the market failures in the wireless industry and the ways in which new entrants were being prevented from competing effectively, as described above.

105. Industry Canada was urged to revise the 2008 Licence Conditions, as it had long continued to promise it would do given their acknowledged flaws. Specifically, Industry Canada was asked that:

(a) Incumbents be prohibited from imposing exclusivity provisions in roaming agreements;

(b) Incumbents be prohibited from threatening to cancel roaming agreements except under specific circumstances;

(c) Incumbents be prohibited from imposing set durations on roaming agreements;

(d) The reasonableness of roaming rates be considered in light of the amounts charged for similar services across North America and in light of the incremental cost of providing such services; and

(e) Incumbents be required to allow seamless call transfers when customers move into a roaming area.

106. In response, Industry Canada provided assurances that it would review the licence conditions and the Plaintiffs relied on these assurances. It was not until two and a half years later –

in March 2013 – that Industry Canada actually implemented new licence conditions (the "2013 Licence Conditions"). Industry Canada's failure to act was not the result of a conscious decision that the 2008 Licence Conditions were appropriate or served the Department's policy objectives. Industry Canada knew that failing to implement license conditions and other measures it had assured the Plaintiffs it was planning would not only harm the Plaintiffs but would frustrate its stated objectives for the wireless industry. Its failure to act was wrongful, irrational and in bad faith

107. When finally released, the 2013 Licence Conditions adopted many of the features that Industry Canada had assured DAVE and Quadrangle in 2008 it would implement and that Industry Canada recognised were essential to serving its objectives and fostering market conditions in which new entrants could compete effectively. Specifically, the 2013 Licence Conditions:

(a) Set out short and concrete timelines within which Incumbents are required to respond to requests for tower-sharing, exchange information, and grant access to sites;

(b) Require Incumbents to provide access to equipment and services at "commercial rates that are reasonably comparable to rates charged to others for similar access";

(c) Prohibit Incumbents from imposing exclusivity provisions in tower-sharing and require "regular reports to Industry Canada" on the status of negotiations regarding such agreements.

108. For the first time, these conditions of license also explicitly noted that the Minister has the authority to suspend or revoke a licensee's radio or spectrum licence if a licensee is found to be

non-compliant with a condition of licence. Had the 2013 Licence been enacted in 2008 they would have allowed Mobilicity to compete effectively in the wireless market. The most important condition not imposed by Industry Canada in the 2013 Licence Conditions was a prohibition on exclusivity arrangements in roaming agreements.

109. In July of 2014 the CRTC issued a decision declaring such exclusivity provisions illegal and preventing their use. The CRTC found "clear instances of unjust discrimination."

110. Unfortunately, the 2013 Licence Conditions and the 2014 CRTC decision came too late for DAVE and Quadrangle. Industry Canada's bad faith refusal to honour its assurances over the course of five years had destroyed the Plaintiffs' investment in Mobilicity and Mobilicity as a viable business. Mobilicity submitted a plan of arrangement in April 2013 and began the process of winding down its operations.

111. Industry Canada's actions described above have devastated all of the new entrants that participated in the Spectrum Auction: Mobilicity has sought *CCAA* protection; Public Mobile foundered and was ultimately sold to Telus for less than the value invested in it; Shaw never built out its network and has all but abandoned the hundreds of millions of dollars it spent in the Spectrum Auction; Wind has written off its investment; and Videotron has grown its wireless business only in the regions where it already had fixed assets and an established business. None of the new entrants has been able to seriously compete with the Incumbents, except where Videotron had existing infrastructure and subscribers.

Industry Canada Breaks Promise to Allow Spectrum Transfers

112. As a result of Industry Canada's conduct described above, Mobilicity was unable to continue as a viable independent business. By the summer of 2012 the company had begun

looking for purchasers among other new entrants and large foreign companies, particularly in the United States.

113. No one was willing to invest in a market that had been subject to arbitrary and capricious Government intervention as well as bad faith neglect. Industry Canada's irrational and unpredictable actions were a strong disincentive to every potential purchaser. Industry Canada's actions had stifled any hope of competition in the wireless industry.

114. Five years of broken promises and neglect of new entrants had destroyed any hope of Mobilicity's being able to compete against the Incumbents and a foreign controlled new entity, offer greater choice to Canadian consumers, or make a profit. The company was granted protection under the *Companies' Creditors Arrangement Act* in September 2013.

Industry Canada Wrongfully Denies Spectrum Transfer

115. Shaw was the first of the new entrants to seek a purchaser for its spectrum. In January 2013 Rogers paid $50 million for an option to buy Shaw's spectrum licences after expiry of the five-year moratorium. Unlike Mobilicity, Shaw never made any attempt to create its own wireless network and never had any subscribers – it abandoned its planned expansion into wireless services.

116. This deal angered Industry Canada because it demonstrated its failure to establish new entrants to compete with the Incumbents. In April 2013 then Minister of Industry Christian Paradis publicly stated that Industry Canada had never intended to "have this set aside spectrum to end [up] in the hands of Incumbents." This marked the beginning of what would become an intense public and regulatory battle between Industry Canada on the one hand and the Incumbents on the other.

117. Having been unable to sell to other new entrants or to a foreign company, Mobilicity, in accordance with the assurances made by the Defendant, turned to the Incumbents. In May 2013 Mobilicity was able to conclude an agreement with Telus to purchase the business for $380 million.

118. Industry Canada rejected Mobilicity's application to transfer its spectrum licences to Telus. Minister of Industry Paridis publicly stated that Industry Canada would not allow the transfer because the five-year moratorium on transfers of set aside spectrum to Incumbents had not yet expired. In fact, Industry Canada disallowed the transfer because it wanted to punish the Incumbents and block their efforts to acquire spectrum. Industry Canada was engaged in a public relations battle with the Incumbents and it was intent on depriving them of any benefit or advantage it could. Industry Canada's refusal to approve the sale was an abuse of its regulatory powers and was made in bad faith for the ulterior purpose of denying the Incumbents a benefit.

119. The simmering dispute between the Incumbents and Industry Canada became a high profile and intensely acrimonious dispute in the summer of 2013. In June, Verizon, a large American telecommunications company, announced its interest in entering the Canadian wireless market. Industry Canada made it clear that it intended to confer special benefits in order to entice Verizon to enter the Canadian wireless market, including setting aside spectrum for it and placing greater restrictions on the Incumbents.

120. In response, the Incumbents launched a marketing campaign against Industry Canada. The Incumbents took out full-page ads in national newspapers and aired commercials on national television and radio stations accusing Industry Canada of wrongfully giving precious Canadian resources to American companies and betraying Canadian consumers in breach of its regulatory

obligations. In September 2013 Verizon announced that it was no longer interested in entering the Canadian market.

121. These events angered Industry Canada to such an extent that it decided to retaliate against the Incumbents. Industry Canada was not interested in its stated policy objectives, fostering competition in the wireless market, or benefitting Canadian consumers. It wanted to punish the Incumbents for openly waging a public relations campaign against it. The animosity between Industry Canada and the Incumbents was widely reported in the national media.

122. In October 2013 Mobilicity was able to conclude a second agreement with Telus. This second deal was structured so as not to take effect, and not to involve the transfer of any of Mobilicity's spectrum, until after the expiry of the five-year moratorium in February 2014.

123. Industry Canada, in breach of its promises, refused to permit the proposed spectrum transfer. The Minister of Industry stated that set aside spectrum "was not intended to be transferred to Incumbents." He added that "going forward, proposed spectrum transfers that result in undue concentration" will not be permitted.

124. At the time Industry Canada rejected the second sale to Telus, Telus had approximately 7.9 million subscribers. Mobilicity had approximately 175,000. Telus's concentration would therefore have increased 2.2% had it acquired all of Mobilicity's customers, a factor immaterial to any measure of concentration.

125. Industry Canada's decision was demonstrably not in accordance with its new "rules." It was motivated by a desire to retaliate against the Incumbents and was irrational, capricious and made in bad faith. Industry Canada claimed the transfer would result in "over-concentration" of

spectrum in the hands of Telus, yet the very next month it approved Telus's acquisition of Public Mobile's spectrum, which resulted in far greater concentrations than the transfer proposed by Mobilicity.

126. Industry Canada's decision was solely motivated by its desire to cause harm to the Incumbents and to thwart their business plans in any way possible. Industry Canada gave no consideration to any *bona fide* public policy considerations, to the wireless industry in Canada, or to Canadian consumers. It acted irrationally and for an improper purpose, and in so doing caused significant harm to DAVE and Quadrangle.

Industry Canada Causes Harm by Unlawful Means

127. The Plaintiffs have a beneficial interest in the licences acquired by Mobilicity in the Spectrum Auction, and a right pursuant to the licence terms to sell those licences to others, including to the Incumbents. To the knowledge of Industry Canada, the ability to transfer the license was a fundamental term of the agreement between the Plaintiffs and the Defendant to capitalise a company to bid for spectrum and compete with the Incumbents and a material inducement for the Plaintiffs to invest in Mobilicity.

128. In April, 2014, in an attempt to preserve what little remained of their investments, DAVE and Quadrangle restructured the transaction with Telus and concluded a deal with a price of $350 million.

129. By this point, the relationship between Industry Canada and the Incumbents was very hostile and Industry Canada did not want any of them to benefit from acquiring Mobilicity's spectrum licences.

130. Industry Canada knew, however, that Mobilicity had an enforceable right to sell the licences as a result of its assurances and the licence conditions. It was intent on nullifying Mobilicity's right to sell for the ulterior purpose of harming and/or denying a benefit to the Incumbents. It knew it could not do this directly, so instead it did so indirectly – by committing the tort of intimidation against Telus and other Incumbents who had an interest in acquiring the licence. It was also intent on injuring the Plaintiffs for their persistence in trying to transfer Mobilicity's licences to an Incumbent.

131. After learning of a concluded transaction between Mobilicity and Telus for the transfer of Mobilicity's license Industry Canada threatened Telus that if it did not permanently abandon its efforts to acquire Mobilicity's license it would be barred from participation in future spectrum auctions.

132. In deliberate disregard of his official duty, the Minister of Industry phoned the Chief Executive Officer and/or senior management of Telus and communicated this threat to them directly. Specifically, the Minister of Industry informed Telus that unless it permanently stopped all efforts to acquire Mobilicity's spectrum it would be banned from any subsequent spectrum auctions. This threat was widely reported in the national media and had the desired effect of intimidating all potential buyers of Mobilicity's spectrum.

133. There was no lawful basis to exclude Telus from participating in future auctions, however the Minister's threats and intimidation had the desired effect. Telus withdrew its offer and terminated all business relations with Mobilicity.

134. Industry Canada intentionally and unlawfully interfered with DAVE and Quadrangle's economic relations by coercing and intimidating Telus into withdrawing its offer to purchase

Mobilicity's spectrum licences. Industry Canada knew that its intimidation of Telus and the other Incumbents would harm DAVE and Quadrangle and it intended to cause this harm as a means to undermine the Incumbents and deny them any economic benefits and to punish Quadrangle and Dave for persisting in their efforts to effect a transfer of the license to an incumbent contrary to government wishes. Industry Canada also took these actions in service of its ulterior motive of punishing the Incumbents for the public relations campaign they had waged against Industry Canada.

135. In threatening Telus with exclusion from future auctions, Industry Canada knowingly acted outside its lawful authority and/or exercised its power for an improper and unlawful purpose, namely causing harm to the Plaintiffs and to Telus. It abused its public authority in doing so.

Industry Canada's Representations to DAVE and Quadrangle

136. In the meetings and phone calls between officials at Industry Canada and Mr. Bitove and Mr Lyons, described above, Industry Canada represented to DAVE and Quadrangle that:

(a) Industry Canada had committed to:

(i) encouraging new entrants to invest in the wireless industry;

(ii) fostering a fair and competitive wireless industry in Canada;

(iii) supporting new entrants and ensuring that they were able to compete effectively;

(iv) preventing Incumbents from abusing their market dominance and driving new entrants out of the market;

(b) Industry Canada had committed to set aside wireless spectrum to be bid on by new entrants;

(c) Industry Canada had committed to continue to apply its foreign ownership rules consistently and in accordance with its past practice;

(d) Industry Canada had committed to enforce mandatory roaming on Incumbents' networks at reasonable commercial rates and on reasonable commercial terms;

(e) Industry Canada had committed to enforce mandatory cell tower and site sharing by Incumbents on reasonable terms and conditions;

(f) Industry Canada had committed to immediately establish a quick, efficient, and cost-effective mandatory dispute resolution process regarding roaming and site-sharing by Incumbents;

(g) Industry Canada had committed to establish market conditions that would enable new entrants to compete effectively against the Incumbents and that would prevent the Incumbents from abusing their market dominance;

(h) Industry Canada had committed to prevent Incumbents from engaging in predatory and anti-competitive behaviour;

(i) Industry Canada had committed to allow new entrants that purchased spectrum in the Spectrum Auction to transfer or sell their spectrum to other companies, including Incumbents, after five years, consistent with past practice.

Proximate Relationship Between Industry Canada and DAVE and Quadrangle

137. A proximate relationship arose between Industry Canada, on the one hand, and DAVE and Quadrangle on the other, giving rise to a duty of care. This relationship of proximity arose out of the following circumstances:

(a) Industry Canada had committed to encourage new companies to enter the Canadian wireless market and to bid in the Spectrum Auction;

(b) Industry Canada sought out DAVE and Quadrangle and encouraged them to invest in the Canadian wireless market when they otherwise would not have;

(c) Industry Canada made specific representations to DAVE and Quadrangle, as described above, in order to induce them to invest in the Canadian wireless market;

(d) Industry Canada knew DAVE and Quadrangle would invest hundreds of millions of dollars on the faith of its representations;

(e) Industry Canada had repeated and direct contact with DAVE and Quadrangle, providing information and advice in response to specific enquiries from DAVE and Quadrangle, including with respect to foreign ownership requirements, mandatory roaming and tower-sharing, prevention of anti-competitive practices, and the ability to transfer spectrum to Incumbents after five years;

(f) Industry Canada had complete control over the Canadian wireless market and actively used that control to set the market conditions;

(g) Industry Canada exercised direct control over DAVE and Quadrangle and used that control to dictate how DAVE and Quadrangle would structure their investment in Mobilicity and how Mobilicity would operate;

(h) Industry Canada exercised control over discrete details of Mobilicity's shareholders' agreement;

(i) Industry Canada knew the dominance of the Incumbents in the marketplace made it impossible for new entrants to compete under the existing market conditions;

(j) Industry Canada knew that DAVE and Quadrangle were relying on Industry Canada's knowledge, experience, and expertise regarding the Canadian wireless market and that they had no such knowledge, experience, or expertise themselves;

(k) Industry Canada knew that DAVE and Quadrangle were vulnerable to Industry Canada and could be harmed by its actions; and

(l) Industry Canada knew that DAVE and Quadrangle would suffer significant harm if it did not honour its representations and assurances, or acted in irrationally or in bad faith in its approach to the industry.

138. Industry Canada made representations to DAVE and Quadrangle intending that they rely upon them. DAVE and Quadrangle did in fact rely on Industry Canada's representations and on the faith of them they invested in Mobilicity, bought spectrum in various provinces, and built a national network to compete with the Incumbents and improve services for Canadians. DAVE's and Quadrangle's reliance on Industry Canada's representations was reasonable in the circumstances, given that:

(a) Industry Canada, and the officials who represent and act for it, have the authority to bind the Federal Government;

(b) Industry Canada had extensive knowledge, experience, and expertise with respect to the Canadian wireless market;

(c) Industry Canada had absolute control over the Canadian wireless market;

(d) The representations were made directly to DAVE and Quadrangle in response to specific enquiries from them;

(e) Industry Canada had the ability and authority to act on each of the representations it made to DAVE and Quadrangle; and

(f) Industry Canada's actions would have a direct impact on the success or failure of DAVE's and Quadrangle's investments.

Industry Canada's Representations Were Negligent and/or Reckless

139. With the exception of the set aside for new entrants, each of Industry Canada's representations set out above was inaccurate, misleading, and/or false and was made negligently or recklessly with regard to its truth and/or made with indifference to, without regard to, or without belief in its truth. These representations were not *bona fide* and were not made in good faith. Industry Canada represented that it had a commitment to fostering the success of new entrants and a set plan to implement that objective, when in fact it had neither. In representing otherwise, Industry Canada acted recklessly and/or in bad faith towards DAVE and Quadrangle.

140. Industry Canada never had the fixed intentions or commitment it represented to DAVE and Quadrangle that it had and never in fact did any of the things it assured them it would do. Specifically, Industry Canada:

(a) Had not committed to the application of its Canadian ownership and control rules and ultimately applied those rules in an arbitrary, irrational, and capricious manner, as described above;

(b) Failed, through neglect and bad faith refusal, to enforce mandatory roaming and tower-sharing by Incumbents at reasonable rates and on reasonable terms, despite promising to do so and knowing that doing so was essential to ensuring the viability of new entrants;

(c) Failed, through neglect and bad faith refusal, to establish the promised quick, efficient, and cost-effective dispute resolution process for disputes between new entrants and Incumbents regarding roaming and tower-sharing;

(d) Failed to make any serious effort to create market conditions that would enable new entrants to compete effectively against the Incumbents and prevent the Incumbents from abusing their market dominance and engaging in anti-competitive practices, despite acknowledging that this was essential to ensuring the viability of new entrants; and

(e) Refused to allow the transfer of Mobilicity's spectrum to Incumbents after the five year moratorium had expired, for the ulterior purpose of causing harm to the Incumbents.

Industry Canada's Misrepresentations Caused Harm to DAVE and Quadrangle

141. But for Industry Canada's representations, DAVE and Quadrangle would never have invested in the Canadian wireless market. They knew that unless Industry Canada established favourable market conditions, as it represented it would, a new entrant could not possibly compete against the Incumbents with their well-developed infrastructure and deep pockets.

142. On the faith of Industry Canada's representations, DAVE invested $40 million of equity in Mobilicity, while Quadrangle invested $217 million dollars of equity and $95 million dollars of debt, for a total of $352 million dollars. Mobilicity is now in the midst of CCAA proceedings and DAVE's and Quadrangle's investments have been lost. In addition, DAVE and Quadrangle have lost the return on capital they would have earned had the money they invested in Mobilicity been invested elsewhere.

143. DAVE and Quadrangle have suffered damage to their reputations and loss of goodwill as a result of Industry Canada's wrongdoing. DAVE has lost the confidence of potential strategic investors and Quadrangle has lost the confidence of existing investors, has been forced to postpone investments, and has lost several of its key investors.

Industry Canada Owed Duties of Care to DAVE and Quadrangle

144. Industry Canada's duty of care required it, among other things, to take DAVE's and Quadrangle's interests into account and to act in good faith towards them. Specifically, Industry Canada had a duty:

(a) To take reasonable care and act in good faith when making representations to DAVE and Quadrangle;

(b) To immediately communicate to DAVE and Quadrangle any change in circumstances that rendered its prior representations untrue, inaccurate, or misleading;

(c) To in good faith consider DAVE's and Quadrangle's interests before making changes to its long-standing procedures that it had represented to DAVE and Quadrangle would continue, including with respect to the application of Canadian ownership and control rules and the approval process for spectrum licence transfers;

(d) To give reasonable notice to DAVE and Quadrangle of any changes to market conditions or Government procedures regarding which Industry Canada had made representations to DAVE and Quadrangle and which Industry Canada knew or ought to have known were of significant importance to DAVE and Quadrangle;

(e) To delay any changes so as to provide DAVE and Quadrangle with a reasonable period of time in which to adjust their investment and business strategy, in order to protect themselves against any changes to market conditions or Government procedures regarding which Industry Canada had made representations; and

(f) If Industry Canada did decide to renege on its assurances, to take reasonable steps to allow DAVE and Quadrangle to recover their investments, including by permitting a sale of spectrum licences to any Incumbent before the expiry of the 5-year moratorium.

145. Industry Canada breached its duty of care by failing to do any of the things required of it. Specifically, Industry Canada:

(a) Did not act in good faith when it made representations to DAVE and Quadrangle that were made negligently, recklessly, in bad faith, and/or with indifference to, without regard to, or without belief in their truth;

(b) Did not immediately alert DAVE and Quadrangle when its prior representations became untrue or misleading;

(c) Completely disregarded DAVE's and Quadrangle's interests when it:

(i) changed the long-standing application of its Canadian ownership and control rules without any notice;

(ii) failed to enforce mandatory roaming and tower-sharing by Incumbents at reasonable rates and on reasonable terms;

(iii) failed to establish a quick, efficient, and cost-effective procedure to enforce roaming and tower-sharing by Incumbents;

(iv) allowed Incumbents to engage in predatory and anti-competitive practices, including the use of "flanker brands", to undercut new entrants;

(v) refused to approve a sale of Mobilicity's spectrum licences to Telus, either before or after the expiry of the 5-year moratorium; and

(vi) deliberately interfered with DAVE and Quadrangle's economic relations when it intimidated Telus into withdrawing its offer to purchase Mobilicity;

(d) Did not give DAVE and Quadrangle reasonable, or any, notice of changes to the market conditions and procedures that had been the subject of Industry Canada's representations, nor delay those changes for a reasonable period, or at all, so as to give DAVE and Quadrangle time to protect their investments.

146. Industry Canada's negligent conduct and breaches of the duty of care it owed to DAVE and Quadrangle, as described above, caused DAVE and Quadrangle significant losses. But for that conduct, DAVE and Quadrangle would have realized a positive return on their investments in Mobilicity.

Industry Canada, DAVE and Quadrangle in Contractual Relationship

147 Industry Canada, as described above, made clear that in exchange for entering the Canadian wireless market and building out a network, it would take a number of steps to ensure the existence of market conditions that would enable a new entrant to compete effectively with the Incumbents. Specifically, Industry Canada promised it would:

(a) Strictly enforce its foreign ownership rules, in accordance with its past practise, so that the competitive environment would be stable and predictable;

(b) Enforce mandatory roaming and tower-sharing by Incumbents at reasonable rates and on reasonable terms;

(c) Establish a quick, efficient, and cost-effective method for enforcing the mandatory roaming and tower-sharing requirements;

(d) Prevent the Incumbents from engaging in anti-competitive and predatory practices, such as using "flanker brands", to undercut new entrants; and

(e) Approve the transfer of spectrum from new entrants to Incumbents after the expiry of the five-year moratorium.

148. In making these promises, Industry Canada intended to and did offer to enter into a contractual relationship with DAVE and Quadrangle should they invest in the Canadian wireless industry and build out their network. The offer was accepted by DAVE and Quadrangle when they invested in Mobilicity, established a new entrant in the Canadian wireless market, purchased spectrum, and built out a network.

Industry Canada Breaches Contract with Dave and Quadrangle

149 Industry Canada breached its contract with DAVE and Quadrangle by failing to ensure the market conditions allowed new entrants to compete effectively with the Incumbents. Specifically, Industry Canada:

(a) Ignored its foreign ownership rules and departed from its past practice by allowing Wind to enter the Canadian wireless market;

(b) Failed to enforce mandatory roaming and tower-sharing by Incumbents at reasonable rates and on reasonable terms;

(c) Failed to establish a quick, efficient, and cost-effective method for enforcing the mandatory roaming and tower-sharing requirements;

(d) Allowed the Incumbents to engage in anti-competitive and predatory practices, including using "flanker brands", to undercut new entrants; and

(e) Refused to allow the transfer of spectrum from Mobilicity to Telus, either before or after the expiry of the five-year moratorium.

150. Industry Canada's breaches of contract have caused significant losses to DAVE and Quadrangle. Industry Canada's breaches directly caused their investment in Mobilicity to fail by making it impossible for Mobilicity to compete effectively against the Incumbents.

151. If Industry Canada had performed its obligations pursuant to its contract with DAVE and Quadrangle, they would have realised a positive return on their investment in Mobilicity.

Industry Canada Unjustly Enriched at the Expense of DAVE and Quadrangle

152. Industry Canada was unjustly enriched by DAVE's and Quadrangle's participation in the Spectrum Auction. The Plaintiffs spent $243,159,000 in the Spectrum Auction and Industry Canada was enriched by a corresponding amount. There was no juristic reason for this enrichment as Industry Canada utterly failed to provide any of the benefits on the basis of which DAVE and Quadrangle spent the money. DAVE and Quadrangle suffered a corresponding deprivation for which there is no juristic reason.

153. The Plaintiffs ask that this action be tried in Toronto.

September 4, 2014

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QUADRANGLE GROUP LLC, et al.

Plaintiffs

-and-

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA as represented by the MINISTER OF INDUSTRY
Defendant

Court File No. ?-4-511539

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SUPERIOR COURT OF JUSTICE

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STATEMENT OF CLAIM

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This is **Exhibit "C"** to the
Affidavit of James Riley
sworn before me this 26th
day of November, 2014

A Commissioner, etc.

FINANCIAL POST

July 7, 2014

Ottawa's spectrum set-asides put pressure on BCE, Rogers, Telus shares

By John Greenwood

Shares of the of the three largest wireless providers took a hit on Monday after the federal government announced plans to auction valuable wavelength

Shares of the of the three largest wireless providers took a hit on Monday after the federal government announced plans to auction valuable wavelength rights with more than half set aside for new entrants.

As Ottawa aims to boost smaller carriers, Quebecor's game plan hinges on roaming rules[1]

Spectrum auction to smaller carriers may strengthen Quebecor's resolve to become Canada's fourth national player, but it's waiting for a crucial regulatory change

The move basically enables newcomers, many of which are struggling, to grow their networks at a much lower cost since they won't have to bid against the three dominant players who currently account for the lion's share of the market.

But critics charge it's an attempt to artificially adjust the market to promote government policy and a favoured group of wireless providers.

"We welcome competition, but all competitors new or old should follow the same rules. Spectrum is a valuable national resource and shouldn't be given to selected companies at a bargain. It's a cost to taxpayers," said Bell Canada spokesman Mark Langton.

Spectrum is a valuable national resource and shouldn't be given to selected companies at a bargain

Bank of America Merrill Lynch analyst Glen Campbell swapped cut his recommendations on Rogers Communications Inc. and Telus Corp. from "Buy" to "Sell" because of greater competition from upstarts seen as beneficiaries of the government's announcement.

In total, a 30 MHz block of so-called Advanced Wireless Services wavelengths will be earmarked for new entrants in each region of the country. To ensure that the spectrum stays in the hands of the upstart carriers, the government plans to include tough provisions against any future sale or transfer.

Canada's federal government controls the rights to the nation's airwaves, leasing or selling chunks to users such as broadcasters and wireless companies as a way to generate revenue. Thus, spectrum rights are among the most important assets for companies in this sector.

Shares in Rogers Communications fell 1.53% $48.21. BCE Inc. shares slumped 0.64% to close at $48.21, and Telus declined 1.63% to end the session at $39.33

"The rules for this auction will encourage more competition in the wireless market while ensuring the interests of consumers come first," James Moore, the Industry Minister, told reporters at a press conference in Toronto.

Stephen Harper's government has been pushing to increase the number of wireless companies in Canada in the hopes of pushing down costs for consumers, though so far with limited success. Much hope was put on the arrival of Wind Mobile and Mobilicity, with both spending billions in capital investments since 2008 but today Mobilicity is in bankruptcy protection and Wind is struggling to find a new investor to help shoulder the cost of badly needed network expansion after its Netherlands-based owner VimpelCom Ltd. revealed plans to sell its equity stake.

News of the spectrum auction comes less than three weeks after Quebecor Inc. announced it is ready to become Canada's fourth wireless player, even buying Mobilicity and Wind to build out its network - but only if Ottawa is willing to meet conditions, including forcing the major players to reduce the cost of access to their networks.

RBC analyst Andrew Calder said the terms of the new spectrum auction provide motivation to Quebecor to join the fray and acquire Wind and Mobilicity because otherwise it won't be able to bid for spectrum outside of Quebec. "There may be an incentive to begin consolidating new entrants," Mr. Calder said in a note to clients.

"I think [Mr. Moore's announcement on spectrum] is a very good move for the industry," said Tony Lacavera, chief executive of Wind. It's "a positive development that brings more clarity on spectrum and I think the market desperately needed that."

> Head's up Robellus! Govt action today on spectrum is great for competition, ensures we will have access to the spectrum we need for LTE
>
> - Tony Lacavera (@TonyLacavera) July 7, 2014[2]

Ottawa's strategy has been enormously controversial, even among new entrants. Earlier this year government officials reportedly warned Telus to drop its efforts to buy Mobilicity, sparking frustration across the industry. The explanation was that Mobilicity held valuable spectrum that had been set aside specifically for new entrants and Ottawa didn't want that falling into the hands of an incumbent such as Telus, even after the expiry of a five-year moratorium on any sale.

But without a sale, Mobilicity will be on its back, financially: its subscriber base is shrinking and the company's owners worry that they will have no way to recoup their investment. Quebecor is putting itself out as a potential saviour, but it is unlikely to provide a purchase offer anywhere near as high as was Telus's.

RBC Dominion Securities

Click here to see full-sized chart[3]

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CABLE & TELECOM

October 13, 2014 1 month 1 week ago

AWS-3 SPECTRUM: Big Three pan auction proposals as unfair subsidy; new entrants laud government approach

PERRY HOFFMAN CABLE & TELECOM

OTTAWA - Spectrum set asides, eligibility to purchase set-aside spectrum, and the band plan remain the primary sticking points for Canada's wireless service providers in reply comments to Industry Canada's consultation on the AWS-3 spectrum auction framework.

The country's large wireless operators have panned many aspects of the department's proposed approach to the AWS-3 auction. A 30 MHz set-aside that includes spectrum contiguous to previously auctioned AWS-1 spectrum gives new entrants a considerable leg up, they argue. Not only do they believe that the set aside is the wrong approach, they think if the department does indeed set aside a portion of the band, it should be the upper part, not the lower as is currently contemplated.

Telus Corp. **described** the set aside as a gift of 60% of the AWS-3 spectrum and that when factored in with all the other commercial mobile radio service (CMRS) spectrum it amounts to a total of 26% of all spectrum. In other words, wireless operators which have 5% of Canada's mobile customers control, or will soon control, more than a quarter of all mobile spectrum.

Bell Canada, Rogers Communications and Telus all agree that the set aside is simply the federal government conferring a subsidy, and a very large one at that, on the new entrants.

"In this regard, our comments noted that in the likely scenario where set-aside licences are sold at the proposed opening bid price and the market value of those licences is equivalent to the average price paid by the incumbents in the recent 700 MHz auction ($2.99 per MHz-pop), then the implied subsidy to the new entrants is approximately $2.7 billion," Bell wrote in its **October 2 reply comments**.

"The implied subsidy to the new entrants is approximately $2.7 billion." – Bell Canada

The Big Three also argued that setting aside such a large portion of the airwaves up for sale will harm them since they, too, need more spectrum because they have much bigger customers bases.

"Incumbents require more spectrum than new entrants because they have many more customers and their customers are heavier users of capacity-hungry mobile broadband services compared to the new entrants' customers," **said Rogers**.

Not surprisingly, new entrants firmly believe that set asides work and will provide them the opportunity to sustainably operate their business. **Wind Mobile said** the spectrum set aside "will ensure that new entrants have access to vital spectrum that will allow them to provide next generation wireless service to their customers, meet growing consumer demand, and introduce more sustained competition in the wireless market."

Moving the set aside spectrum to upper part of the AWS 3 band would also serve to harm new entrants, argued Wind. The company said doing so would limit new entrants' ability to launch LTE services because a handset market is still developing for that upper portion of the band whereas the lower parts of the band already have a well developed device ecosystem.

The concept of separating rural and urban spectrum into separate licences in the set-aside bands was also raised in comments and replies. Bell suggested this would be a good approach, noting however that only the urban spectrum be in the set aside because this is what new entrants are most interested in.

Wind responded that Bell's approach would run counter to key policy objectives for the auction which are to bring affordable, next-generation services to rural Canadians.

"Carving licences into urban and rural areas will impede network roll-outs along major transportation corridors, thus permanently fragmenting and limiting the utility of the set-aside spectrum." – Wind Mobile

"Carving licences into urban and rural areas will impede network roll-outs along major transportation corridors, thus permanently fragmenting and limiting the utility of the set-aside spectrum," added Wind. "But most importantly, from a policy perspective, Bell's proposal is guaranteed to deny to rural residents the full extent of the potential benefits of competition."

Eligibility to bid on set aside spectrum was a point of contention among regional and new entrant companies. EastLink, Niagara Networks and the Public Interest Advocacy Centre want changes to the eligibility criteria while MTS and SaskTel agree with Industry Canada's proposed approach.

MTS told the department that it needs to make sure spectrum purchased becomes spectrum used.

"Allowing participants without existing facilities to participate within the set-aside would lead to more speculative activity rather than allocate spectrum to those that are serious about providing competition in the wireless market," the company said.

Niagara Networks, on the other hand, argued that Industry Canada may be missing an opportunity to promote more competition in the wireless sector by limiting bidder eligibility to those that are already operating. The proposed auction format only serves to allocate licences to bidders at the lowest price not enhance competition at the retail level, it added.

SaskTel took eligibility a little further by arguing that it should be extended to non-set aside spectrum as well. It pointed to Shaw Communications and Wind, who own spectrum in Saskatchewan but have yet to deploy it.

"By expanding the requirement to all AWS-3 spectrum, the problem of spectrum hoarding by operators without networks in the licence area can be eliminated," said the provincial Crown corp.

Industry Canada has proposed to hold a sealed-bid, second-price auction in March 2015.

Canada We acknowledge the financial support of the Government of Canada through the Canada Periodical Fund of the Department of Canadian Heritage.

This is **Exhibit "D"** to the
Affidavit of James Riley
sworn before me this 26th
day of November, 2014

David Moon

A Commissioner, etc.

Topics: Regulatory News Service Provider Strategies Spectrum News

Analysts: As AWS-3 auction climbs past $34B, Dish's bidding raises questions about its strategy

November 24, 2014 | By Phil Goldstein

Now that the FCC's AWS-3 spectrum auction has raised more than $34 billion in provisional winning bids, a great deal of attention is turning to the role Dish Network (NASDAQ: DISH) may be playing in the bidding--and what the company might do with any spectrum it winds up with once the auction ends.

Since the auction started Nov. 13, many financial and industry analysts have speculated that Dish and its allied bidding partners have been bidding up the prices on the paired spectrum in the auction, 1755-1780 MHz for uplink operations and 2155-2180 MHz for downlink, to force Verizon Wireless (NYSE: VZ) and AT&T Mobility (NYSE: T) to pay more for the spectrum. As the bids have kept climbing--totaling $34.08 billion after 27 rounds--the conventional wisdom has been that Dish will not actually walk away with the largest spectrum licenses in the biggest markets. However, there is increasing speculation that Dish may actually win some key licenses after all, raising further questions about Dish's long-term spectrum strategy.

In a research note, Jefferies analysts Mike McCormack, Scott Goldman and Tudor Mustata wrote that "we wouldn't be surprised if the company (Dish) also acquired some synergistic spectrum (J-Block and unpaired) at auction."

Given Dish's material cash position ($17 billion in cash and marketable securities), the Jefferies analysts wrote they are not concerned about Dish's liquidity, but rather have questions about the company's long-term strategy. "The larger Dish's individual spectrum position becomes, the more complicated it is to monetize the

Reprint

spectrum," they added. "Assuming Dish meaningfully participates at the AWS-3 auction, its spectrum position would rival T-Mobile's during the AT&T acquisition attempt, which could raise concerns from regulators should a full disposition occur."

BTIG analyst Walter Piecyk wrote that there are many potential outcomes in the auction. "What if Verizon spends $40 billion to buy all 50 MHz of the paired AWS-3 spectrum?" he wrote. "Not only would it add a turn of leverage on the balance sheet of Verizon, but Verizon might more aggressively argue that it does not need Dish's spectrum for the foreseeable future. We expect these statements from Verizon regardless of how much spectrum it buys and at any price."

Piecyk wrote that Dish Chairman Charlie Ergen might wind up paying $3 per MHz/POP for a chunk of spectrum in large urban markets. "Does the high price offset the increased strategic positioning of his asset position?"

At the same time, T-Mobile US (NYSE:TMUS) might pay more for spectrum in markets like Chicago and other markets where it needs spectrum, Piecyk wrote, "stretching its balance sheet at a time when it needs flexibility to buy low-band spectrum." He noted that paired spectrum in Chicago is bidding at $5 per MHz/POP with one license at $5.50.

"What if AT&T and Verizon pay up but still split the spectrum, revealing what they value spectrum at but not satisfying their intermediate, let alone long-term needs for spectrum?" Piecyk also asked.

TMF Associates analyst Tim Farrar wrote in a blog post that Ergen may have directed two allied designated entities, Northstar Wireless and SNR Wireless, to bid only a certain price per MHz-POP for a single license or bid an overall total dollar amount. However, he wrote that does not seem to be affecting bidding thus far.

Farrar wrote that a plausible bidding strategy could be for Northstar and SNR to bid in every round until they see high activity in the unpaired 1695-1710 MHz spectrum (which would be a sign that Dish had switched away from the paired spectrum), and then defend what they held, no matter the price of each license. Then, when they reached the overall dollar cap, they would drop the G block licenses first, then the H and I Blocks, but keep the J Blocks. Only the J Block is a 10x10 MHz paired spectrum block, while the others are 5x5 MHz blocks.

"So now the question is whether, with a weekend to think about it, AT&T and Verizon decide to leave Ergen holding the J-Block licenses in major cities," Farrar wrote. "Is there a point at which Dish becomes so financially stressed by the burden of spending perhaps $15B on spectrum, that it is in a weaker position after the auction than it was before (e.g. with insufficient resources to bid for T-Mobile or build out its spectrum)?"

"Does it matter if AT&T and Verizon are unable to deploy as much AWS-3 spectrum in major cities as they wanted? How much leverage can they exert at the FCC if Dish fails to build out these licenses? And should AT&T or Verizon force up the price of the unpaired spectrum to a level which puts the Ergen-led LightSquared reorganization plan in jeopardy?" Farrar added. "We'll see in the next few days whether AT&T or Verizon are able to play Ergen at his own game."

Ergen has suggested Dish is thinking about putting its spectrum into a new unit or venture. Farrar wrote that if Dish does acquire a large amount of spectrum in the AWS-3 auction, it could put all of spectrum holdings into the new entity, and then raise debt against the combined spectrum portfolio. Dish then might be able to spin off that entity, or it could lease its spectrum holdings to other carriers.

For more:
- see this FCC page
- see this TMF Associates blog post
- see this BTIG blog post (reg. req.)
- see this *NYT* article

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COMMENTS

18 Comments

Antoine M.

Could it be possible Dish already has a merger plan in place with someone like Tmobile and is just waiting until after the auction to announce it?

I don't know how legal that would be. 2 publicly traded companies colluding to inflate the cost of spectrum and not filing deals w/ the SEC...I think that would get closely scrutinized.

DirkDigg1er

I hope Dish realized that inflating the spectrum prices affects all carriers. Good luck trying to undercut acquisition targets now.

GatorDrew

I thought there were rules in place that required leased spectrum to be put to use?! I don't want to hear about a spectrum crunch when Dish network owns enough to run their own cell company.

Nunyur_Biznezz

There is a crunch Dish is hogging spectrum others would actually use. As far as build out rules

FCC said licensees would need to cover 40% of a license's potential customer base within six years of receiving the license and 75% coverage by the end of 12-year initial license term

vrm

Dish will sell some spectrum after the auction, which could be worth 10s of billions. With that cash, they will buy t-mobile and still retain enough AWS to build wideband in most markets.

Nunyur_Biznezz

Who are they going to sell it to? Verizon and At&t had to pay too much for the spectrum they got from this auction thanks to Dish's con job here. Both are going to want to save cash for the 600 MHz auction. Dish should have stayed out of this auction

[illegible]

At $36B, now it is slowing down. Might hit $40billion.

With these winnings the government should have firstnet in the bag.
If FCC brings up firstnet and needing money ever again, I think we need to start lining up officials guilty or not and shooting them. Start making examples.

RRockstar

AT&T and Verizon should bid the spectrum up and drop it on Dish. Dish would then have to invest additional billions to build it all out.

wonshikee

It's unlikely Dish is still participating in the auction. This insane bidding war is all T/VZ.

Dish was likely only involved early just to prevent lowballing but now that it's soaring beyond anyone's dream/nightmare, they are only risking getting burned if they stay involved.

[illegible]

T and VZ are going to stay out of each others way. They need to play nice until they push back TMUS price war. Threat is still Dish or TMUS. If either wins, they won't be able to afford a merger.

[illegible]

WTF is Dish doing!?
Are they partnering? They merging? Is a vast nationwide network about to get turned on??? What is it Dish????

I hope they have secretly been building a fat naitonwide network.

DirkDigg1er

There is no way to keep wireless deployment of this magnitude under radar when media outlets aggressively comb everything from towers to vendor contracts.

Using sprint's network buildout as a reference, if dish doesn't start building next year they won't make 2016 40% (and possibly 2017 70% deadline), they risk losing their spectrum.

S. Ali

I wonder if ATT/VZW are happy they fought so hard against spectrum rules that would have been in their favor. Everyone could walk away with spectrum at a reasonable price if it was allocated properly.

Lou

Which rules did they fight? I think if they had it their way there would have been 2 10 x 10 blocks divided into large blocks like the 700 MHZ upper C block.

wonshikee

I would think T/VZ would be happier to pay more and stifle competition than giving TMUS spectrum.

Nunyur_Biznezz

T-Mobile isn't getting spectrum because of Dish's upping the bids.

[illegible]

Dish owns AWS-4 Spectrum - the implied valuation of Dish for that spectrum being driven by the AWS-3 $/MHz Pop allows them a huge number of options. They would for example have a balance sheet that would support a T-Mobile merger without any cash. .Which could make the combined Dish - T-Mobile a very big player with 60 MHz of very clean new spectrum.

[illegible]

AWS-3 auction tops $31B in bids as activity starts to slow down

— I think the point they are making is that these values are so high, they couldn't go much higher unless

T-Mobile agrees to disclose more info about actual speeds when ...

— Hmm, Sprint was not mentioned even once in the article but we can al rely on FierceWireless' resident

Madden: Why would AT&T and Verizon spend $34B on spectrum?

— Verizon and AT&T are monopolizing the spectrum and trying to intimidate other ..

Sprint's Claure appeals directly to Hispanic market in new ad, touting ...

— Obviously you can't read Spanish very well. I simply said you are very negative towards

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