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

## Comments of
## the Public Interest Advocacy Centre
## ("PIAC")

**September 4, 2014**

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# 1. Introduction

1) The Public Interest Advocacy Centre ("**PIAC**") makes the following comments in respect of Gazette Notice SLPB-004-14 (August 2, 2014) *Consultation on the Technical, Policy and Licensing Framework for Advanced Wireless Services in the Bands 1755-1780 MHz and 2155-2180 MHz (AWS-3)* (the "**AWS-3 Consultation Document**").

2) In these initial comments PIAC first puts the current consultation within the broader context of wireless policy in Canada, and highlights the tentative gains for consumers resulting from policy and licensing decisions taken for the "AWS-1"[1] spectrum, and the challenges facing consumers today. PIAC then responds to the Department's specific consultation questions.

3) The Department has stated that it 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."[2]

4) The Department has also stated that "Commercial mobile spectrum is an important resource to be managed for the economic and social benefit of Canadians." And that it "views the licensing of AWS-3 spectrum as a key opportunity to support competition and to enable new entrants to improve their wireless networks."[3]

5) PIAC agrees with these views.

6) The importance of mobile wireless services in meeting Canadian consumers' communications needs has grown substantially over the last several years and continues to do so. As well, for an increasing proportion of Canadian consumers, wireless telecommunications services have supplanted wireline services.

7) In successive editions of its annual *Communications Monitoring Report* the Canadian Radio-television and Telecommunications Commission (the "**CRTC**") has been reporting that mobile wireless services constitute the largest component of Canadians' spending on telecommunications services. Wireless substitution and wireless-only households have increased significantly in recent years.

8) Of perhaps even more significance for Canadian consumers, the consumption of wireless data has been growing at an even faster rate than voice traffic. The adoption by Canadians of ever more powerful smartphones and tablets means that Canadians are becoming

1 Industry Canada, Spectrum Management and Telecommunications, *Auction of Spectrum Licences for Advanced Wireless Services and Other Spectrum in the 2 GHz Range* (May 27, 2008 to July 21, 2008).
2 AWS-3 Consultation Document at para. 7.
3 AWS-3 Consultation Document at paras. 61-62.

increasingly reliant on mobile broadband services and on wireless service providers to participate in Canadian society and in the economy.

9) At the same time, the "Big Three" national incumbent wireless carriers, Bell Mobility Inc., ("**Bell**") Rogers Communications Partnership ("**Rogers**"), and TELUS Communications Company ("**TELUS**") continue to dominate the marketplace, as well as access to the commercial mobile wireless spectrum needed to operate a wireless business.

10) Accordingly, the AWS-3 spectrum is an important opportunity to continue to follow through on the objective of promoting sustainable wireless competition in furtherance of the policy objectives of the *Telecommunications Act* and the *Spectrum Policy Framework for Canada*.[4] These policy objectives form the critical basis of all recent spectrum licensing rules, including the licensing for the AWS-1 spectrum, 700 MHz spectrum, and the upcoming licensing of the 2500 MHz and AWS-4 spectrum.

## 2. The Broader Context

11) Before commenting on the Department's specific proposals, PIAC first provides its analysis of the broader market for wireless services in Canada. This is an opportune time to do so, given over 5 years have passed since the AWS-1 auction, and the lessons learned recently in the 700 MHz auction.

12) As PIAC said in its submission to the Department in respect of the recently concluded AWS-4 consultation,[5] Canadians deserve more competition and choice in wireless services, and access to high quality services wherever in Canada they may be located. This is not just the view of PIAC, but is stated in Canada's spectrum policy framework objectives and the policy objectives for the recent[6] and upcoming[7] spectrum auctions.

13) Canada's spectrum policy objective is "To maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource,"[8] and one of the "enabling guidelines" for this objective states that "spectrum should be made available for a range of services that are in the public interest."[9]

14) In developing licensing frameworks for commercial mobile spectrum, Industry Canada has generally stated that it will be guided by the objectives stated in section 7 of the

4 Notice No. DGTP -001-07 - Spectrum Policy Framework for Canada (2007).
5 Gazette Notice SMSE-011-14 (May 31, 2014) - Consultation on a Policy, Technical and Licensing Framework for Use of the Bands 2000-2020 MHz and 2180-2200 MHz, Comments of PIAC (June 23, 2014) at paras. 10-14.
6 AWS (2008), 700 MHz (2014).
7 2500 MHz.
8 Gazette Notice DGTP-001-07 (June 2007) *Spectrum Policy Framework for Canada.*
9 *Spectrum Policy Framework,* Enabling Guideline (b).

*Telecommunications Act*, [10] and the policy objective stated in the *Spectrum Policy Framework for Canada*. to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum.

15) The Department has consistently given this overarching spectrum policy objective expression in the band-specific (AWS, 700 MHz, 2500 MHz, AWS-3 and AWS-4[11]) policy, technical and licensing frameworks, as follows:

> (i) sustained competition in the wireless telecommunications services market so that consumers and businesses benefit from competitive pricing and choice in service offerings;
>
> (ii) robust investment and innovation by wireless telecommunications carriers so that Canadians benefit from world-class networks and the latest technologies; and,
>
> (iii) availability of these benefits to Canadians across the country, including those in rural areas, in a timely fashion.[12]

16) These policy objectives are also reflected in Industry's Canada's framework for terrestrial spectrum licence transfers (the "**Licence Transfer Framework**"), [13] as reflected in the *Licensing Procedure for Spectrum Licences for Terrestrial Services*.[14]

17) These policy objectives are not up for debate. No one appears to disagree with the proposition that all Canadians deserve affordable, high-quality wireless telecommunications services, regardless of where they live.

18) The wireless services market, however, continues to be dominated by the Big Three wireless carriers who collectively control at least 85%[15] (and likely more given the outcome of the 700 MHz auction) of available spectrum, 92% of subscriptions, and 93%[16] of revenue. Using the market share data from the CRTC's 2013 *Communications Monitoring Report*

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10 Telecommunications Act (S.C. 1993, c. 38)

11 Gazette Notice SMSE-011-14 (May 31, 2014) - *Consultation on a Policy, Technical and Licensing Framework for Use of the Bands 2000-2020 MHz and 2180-2200 MHz* (collectively the "**AWS-4**" band).

12 SMSE-002-12, *Policy and Technical Framework - Mobile Broadband Services (MBS) — 700 MHz Band and Broadband Radio Service (BRS) — 2500 MHz Band* (March 2012).

13 DGSO-003-13 (June 2013) *Framework Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences for Commercial Mobile Spectrum*, section 1.3.

14 CPC-2-1-23 — *Licensing Procedure for Spectrum Licences for Terrestrial Services* (August 2013).

15 Not including the 700 MHz spectrum, 85% of the available spectrum is in the hands of the incumbents. See: Industry Canada, *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum, SMSE-018-10* (30 November 2010), online: Industry Canada <https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/smse018e.pdf/$file/smse018e.pdf> at 10.

16 Canadian Radio-television and Telecommunications Commission, *Communications Monitoring Report* (2013), online: <http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2013/cmr2013.pdf> at 161.

2013, PIAC's analysis shows that Canadian wireless industry in 2012 had a Hirschman-Herfindahl Index (HHI) concentration score of 2724, which is considered "highly concentrated."[17]

19) PIAC therefore welcomes AWS-4, AWS-3 and other possible commercial mobile spectrum bands and unlicensed spectrum being made available to a broader range of service providers.

20) In a series of consultations culminating in the 2008 AWS-1 auction, the Department decided that measures were necessary to promote competition in the wireless market.

21) In the Department's current view, "Since new wireless competitors were introduced, competition has increased, bringing benefits to consumers."[18]

22) That view is based on research prepared for the CRTC.[19]

23) The new entrant competitors that emerged from the AWS-1 auction led to lower prices in the markets where the new entrants offered service.[20]

24) Yet despite this, the Big Three have been involved in a sustained campaign against on the Government and the Department's pursuit of the spectrum policy objectives, generally, and the pursuit of a fourth national wireless player. The campaign has had several fronts, including litigation (including challenging the Wireless Code's implementation date,[21] and the Industry Minister's authority in respect of spectrum licence eligibility,[22] and the Licence Transfer Framework;[23] and public relations, such as the "Fair for Canada"[24] campaign.

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17 See: PIAC, "Wireless Services in Canada: Why Canadians Deserve Better" (3 September 2014), online: <http://www.piac.ca/files/aws_3_backgrounder_1_canadians_deserve_better_final.pdf>.

18 AWS-3 Consultation Document at para. 6 (footnote omitted).

19 Wall Communications Inc., "Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions, 2014 Update" (31 March 2014), online: <http://www.crtc.gc.ca/eng/publications/reports/rp140714.htm> ("**Wall Report**").

20 *Ibid.*:

> for the Level 1 mobile wireless service basket, the mobile wireless prices offered by new entrants are between 8% and 39% lower than those of the incumbents and, on average, 28% lower for the three cities combined. The relative price discounts available from the new entrants are not as great in the case of the Level 2 service basket, where new entrants' prices are between 1% to 16% lower by city, and 10% lower on average. The differences are greater however in the case of the Level 3 service basket, where the price discounts offered by new entrants relative to the incumbents' services are 26% to 54% lower by city, and 44% lower on average. Similar results are found in the case of the new Level 4 service basket, where the new entrants' prices are 49% lower than the incumbents' on average.

21 *Bell Canada et al., v Amtelecom Limited Partnership et al.*, Court Number: A-337-13.

22 *Telus v. Canada (Attorney General)*, 2014 FC 1.

23 TELUS Communications Company v Attorney General of Canada et al. (29 July 2013), Ottawa T-1295-13 (FC).

Additionally, some investment analysts, academics, and think tank researchers, with different agendas, have issued a constant stream of reports impugning the Government's pursuit of the policy objectives. These all conclude to varying degrees, simply that more competition is not necessary, economically inefficient or "unfair." A major premise of much of the argumentation is that the financial struggles of the AWS-1 new entrants prove the point that more competition is unworkable.

25) PIAC responds to this by noting that a major reason that the AWS-1 new entrants struggled to be sustainable was due to the initial tower-sharing and roaming frameworks needing significant reform; reform which Industry Canada and the CRTC more recently undertook. With these reforms in place, and with ongoing initiatives to put spectrum into the hands of competitors, PIAC believes that the positive price effects brought by the new entrants will continue. Although access to spectrum is an essential component to wireless competition, wireless competition is a function of many other factors, including time, capital, and appropriate wholesale measures.

26) PIAC also notes the evidence that a fourth national wireless player would benefit Canadians. In a submission to the CRTC for the Competition Bureau, the Brattle Group estimated that consumers would see savings of $1 billion *per year* from a fourth national player.[25] The experience of other jurisdictions with four national players also suggests that such a structure may be beneficial to consumers.[26]

27) In the limited number of markets where there is a fourth regional or quasi-national player (*e.g.*, WIND Mobile, Mobilicity, Videotron) there have been significant benefits to consumers in Canada. This is especially true among high-use, high-end users. This can be seen in a recent report prepared for the CRTC:[27]

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24 See: online: <http://fairforcanada.ca>.

25 Brattle Group, "Canadian Wireless Market Performance and the Potential Effect of an Additional Nationwide Carrier" (12 May 2014), online: <https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=2131727> at 35.

26 See: PIAC "The State of the Wireless Market in Canada: The Case for a Fourth National Carrier" (22 August 2013), online: <http://www.piac.ca/files/piac_backgrounder_4th_player_investment_pricing.pdf>; Lemay-Yates Associates Inc., "Report: Implications of reserving spectrum for entrants" (27 June 2007), online: <https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/dgtp-002-07-rep-MTS-Allstream_Appendix-B_LYA.pdf/$FILE/dgtp-002-07-rep-MTS-Allstream_Appendix-B_LYA.pdf>.

27 Wall Communications Inc., *supra* note 19.

**Figure 1. Reduced Prices Offered by New Entrant Wireless Providers**

**2014 Canadian Mobile Wireless Service Rates**

***Incumbents versus New Entrants***

| Baskets | Vancouver | Toronto | Montreal | Average |
|---|---|---|---|---|
| **Level 1 Basket (150 min./month)** | | | | |
| Incumbents | $36.32 | $36.32 | $36.28 | **$36.30** |
| New Entrants | $22.09 | $22.72 | $33.33 | **$26.04** |
| *Percentage Differential* | *-39%* | *-37%* | *-8%* | *-28%* |
| **Level 2 Basket (450 min. and 300 text per month)** | | | | |
| Incumbents | $46.77 | $45.10 | $45.50 | **$45.79** |
| New Entrants | $39.15 | $39.43 | $45.18 | **$41.25** |
| *Percentage Differential* | *-16%* | *-13%* | *-1%* | *-10%* |
| **Level 3 Basket (1200 min., 300 text and 1 GB data per month)** | | | | |
| Incumbents | $87.04 | $83.71 | $74.90 | **$81.88** |
| New Entrants | $40.00 | $41.67 | $55.18 | **$45.61** |
| *Percentage Differential* | *-54%* | *-50%* | *-26%* | *-44%* |
| **Level 4 Basket (unlimited Canada-wide talk & text and 2 GB data per month)** | | | | |
| Incumbents | $95.00 | $95.00 | $95.40 | **$95.13** |
| New Entrants | $40.00 | $41.67 | $62.68 | **$48.11** |
| *Percentage Differential* | *-58%* | *-56%* | *-34%* | *-49%* |

*Unweighted averages used in all cases.*
*Wall Communications Inc. 2014*

28) Internationally, governments have recognized the importance of a fourth national carrier.

29) In submissions by the United States Department of Justice (the "**DOJ**") to a US District Court challenging the merger of T-Mobile and AT&T, the DOJ states unequivocally their support for a fourth national carrier in the US. For example, the DOJ considers the negative effects of the elimination of a fourth national player and the difficulty that regional players have in filling the gap:

> For a variety of reasons, there is little or no regional variation in the pricing plans offered by the Big Four nationwide carriers. Nationwide pricing simplifies customer service and billing, reduces consumer confusion that might otherwise result from regional pricing disparities, and allows the carriers to take advantage of nationwide advertising in promoting their services.
> ...
> Because competitive decisions affecting technology, plans, prices, and device offerings are typically made at a national, rather than a local, level, the rivals that affect those decisions generally are those with sufficient national scale and scope, i.e., the Big Four.
> ...
> The local and regional providers also do not have the scale advantages of the four nationwide carriers, resulting in difficulties obtaining the most popular handsets, among other things. […] Moreover, because each of the four nationwide firms typically offers prices, plans, and devices on a national basis, the regional and local providers—none of whom has a national share of more than 3 percent—exert little influence on these aspects of competition.[28]

[28] *United States and Plaintiff States v. AT&T Inc., T-Mobile USA, Inc. and Deutsche Telekom AG*, DOJ Amended Complaint, 16 September 2011, at paras 18, 19, 35.

30) More recently, Federal Communications Commission chairman Tom Wheeler applauded Sprint's abandoning of a merger with fourth-largest carrier T-Mobile, stating that "Four national wireless providers are good for American consumers. Sprint now has an opportunity to focus their efforts on robust competition."[29]

31) In the United Kingdom, regulator Ofcom stated four nationwide carriers beneficial to consumers. In unveiling its plans for the UK 4G wireless auction:

> Ofcom has concluded that UK consumers are likely to benefit from better services at lower prices if there are at least four credible national wholesalers of 4G mobile services. Therefore, in the interests of competition, Ofcom has decided to reserve a minimum amount of spectrum in the auction for a fourth operator.[30]

32) The French government had similar concerns with only three national carriers, and therefore in 2009 ARCEP, France's telecommunications regulator, sold a fourth national 3G licence to Iliad-Free.[31] Iliad-Free launched their service in January 2012, and by the end of Q4 2013 they had captured a 12% share of the market through a 30-40% reduction in pricing, which has left the incumbent carriers scrambling to compete.[32] For example, they currently offer a no-contract plan with unlimited talk and text, and 20GB of data on its 4G network, for €19.99.[33]

# 3. Specific Comments

## Part A – Band Plan Considerations

### Band Plan

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

33) The Department is proposing to use the same band plan as currently used in the United States, but by combining the G, H and I blocks into one paired 15 + 15 MHz block.

34) As discussed in response to other Department proposals, the combined GHI block will be reserved exclusively for operating new entrants, and the J block will be open to all bidders.

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29 Federal Communications Commission, News Release, "Statement from FCC Chairman Tom Wheeler on Competition in the Mobile Marketplace" (6 August 2014), online: FCC <http://www.fcc.gov/document/chairman-wheeler-statement-competition-mobile-marketplace>.

30 Ofcom, "Ofcom unveils plans for 4G auction of the airwaves" (24 July 2012) online: <http://media.ofcom.org.uk/2012/07/24/ofcom-unveils-plans-for-4g-auction-of-the-airwaves>.

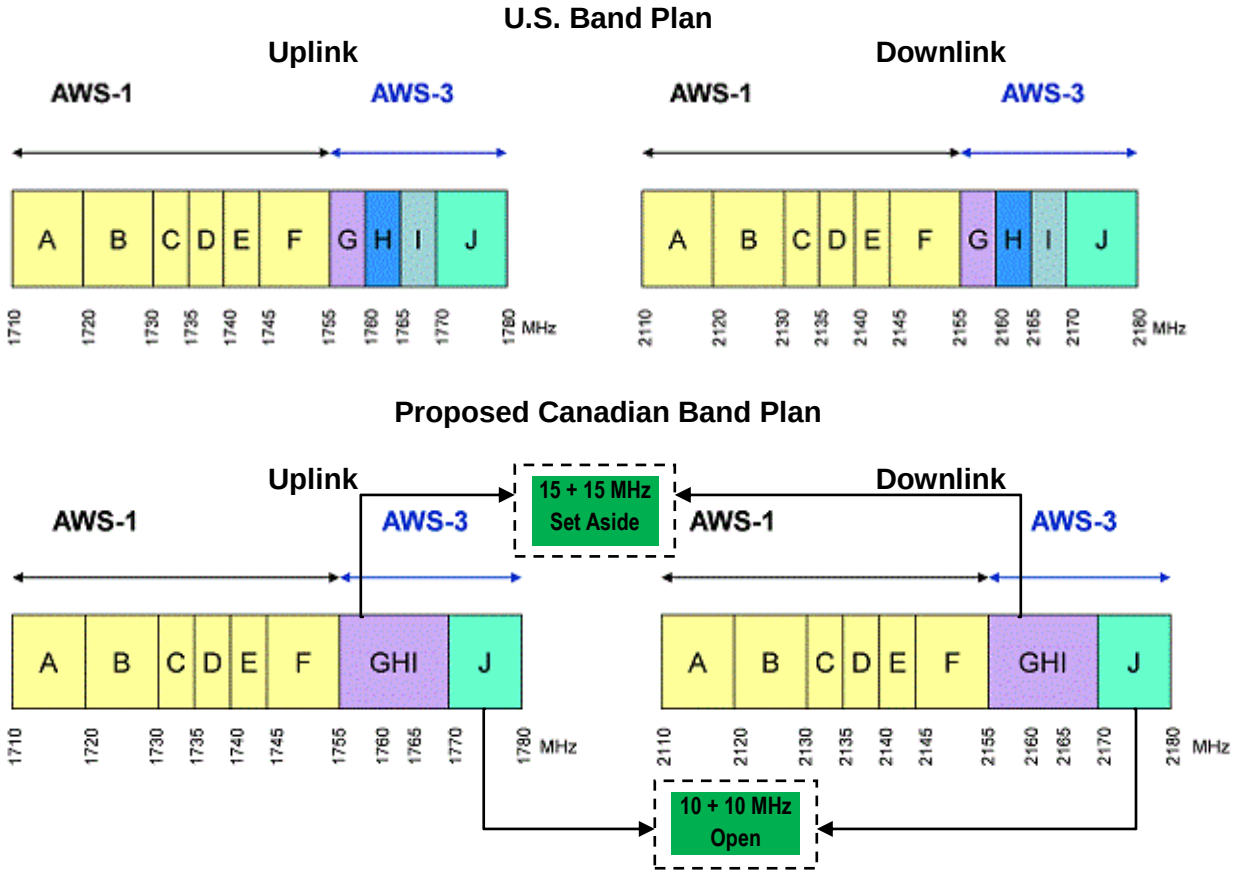
31 Alain Baritault, "Iliad-Free gets fourth mobile license in France, plans innovative pricing and services" (20 December 2009), online: <http://www.muniwireless.com/2009/12/20/iliad-free-gets-fourth-mobile-license-in-france>.

32 Adam Thompson, "France mobile price war extends to 4G" (8 January 2014), online: <http://www.ft.com/intl/cms/s/0/bb12537e-7786-11e3-807e-00144feabdc0.html>.

33 See online: <http://mobile.free.fr>.

35) The set-aside and open block are reflected in the overlay on the following figure.

**Figure 2. Proposed AWS-3 Band Plan**




36) PIAC supports using the same band plan as currently used in the United States, for the reasons articulated by the Department in respect of improving access to a broad-based, low-cost device ecosystem, and in terms of interoperability and harmonization.[34]

37) While PIAC supports following the U.S. band plan, and supports the proposal to set-aside blocks G, H and I (addressed later), PIAC questions whether the G, H and I blocks ought to be combined into one, and whether the policy objectives could be achieved by allowing more than one operating new entrant per service area into the set-aside.

38) PIAC notes the Department's comments in respect of large block sizes allowing service providers to accommodate more customers and offer faster average user speeds, but also notes that carrier aggregation technology may be able to achieve that same result with less spectrum, *i.e.*, smaller spectrum blocks, combined with other spectrum. At the same time,

[34] AWS-3 Consultation Document at paras. 28-29.

PIAC notes that this technology does not appear to be widely deployed in the marketplace due to its early stage of development.

39) PIAC also notes that the Department is also proposing that the AWS-3 licences be divisible and transferable, and as such that may be one mechanism, albeit an indirect one, to facilitate the usage of the spectrum by more than one service provider.

## License Areas

***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.***

40) The Department is proposing to licence the AWS-3 spectrum at the Tier 2 licence area, which consists of 8 provincial/territorial areas and 6 sub-provincial areas (in Quebec and Ontario).

41) PIAC supports this proposal as it is consistent with the licence areas for the similar AWS-1 spectrum.

42) At the same time, and subject to PIAC's comments below about deployment, and eligibility to participate in the operating new entrant set aside, PIAC believes that Tier 2 licensing, while appropriate for the reasons stated by the Department, should come with more ambitious, and therefore higher, deployment obligations.

## Licensing Process and Pro-competitive Measures

43) In 2008, Industry Canada recognized that a bid process alone would not promote competition, as it would not allow new entrants into the market. As such, the auction was structured to include a set-aside for competitive bids by new entrants only. The same was true in respect of the 700 MHz auction, and the same is true today: creating and maintaining a competitive wireless sector cannot be achieved by an auction process in which only the highest bidders can compete; at least, not until the market is workably competitive, with a number of national and strong regional providers and more equitable market shares. A set-aside must be structured into the auction process for competitive bids by new entrants and smaller players only.[35]

44) In the AWS-3 Consultation Document the Department notes that

[35] See Comments of PIAC (February 28, 2011), Notice No. SMSE-018-10 – *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum* (November 30, 2010) at 4 (footnote omitted).

> …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. 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.[36]

45) This assessment is well-supported by the record of the CRTC's examination of unjust discrimination for wholesale wireless roaming rates, and the developing record in the wholesale wireless proceeding, as well as evidence filed by the Competition Bureau in those proceedings.

46) The Department has also taken note of the Competition Bureau's statement in the CRTC's 2013-685[37] review of wholesale wireless roaming rates that "incumbent service providers do have market power in the provision of retail mobile wireless services."[38] More recently, the Competition Bureau filed a report in the CRTC's ongoing 2014-76[39] review of wholesale wireless issues, concluding that "There is strong evidence that incumbents may not be offering competitive terms for wholesale wireless arrangements to new entrants."[40]

47) This was certainly the finding of the CRTC in its decision on the Roaming Discrimination Proceeding where the Commission found there were "clear instances" of unjust discrimination and undue preference, contrary to the *Telecommunications Act*, by Rogers (the only possible company that AWS-1 new entrants could roam with, due to network technology reasons).[41] The Commission found that Rogers had been charging new entrants "significantly higher" rates and using its stronger bargaining position to impose exclusivity clauses on new entrants, to the detriment of their ability to negotiate more favourable roaming rates, terms and conditions.[42]

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36 AWS Consultation Document at para. 41.

37 *Wholesale mobile wireless roaming in Canada — Unjust discrimination/undue preference* (12 December 2013), CRTC 2013-685, online: CRTC <http://www.crtc.gc.ca/eng/archive/2013/2013-685.htm> (the "**Roaming Discrimination Proceeding**").

38 Competition Bureau, "Submission by the Commissioner of Competition Before the Canadian Radio-television and Telecommunications Commission — Telecom Notice of Consultation CRTC 2013-685" (29 January 2014), online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03648.html>.

39 *Review of wholesale mobile wireless services* (20 February 2014), CRTC 2014-76, online: CRTC <http://www.crtc.gc.ca/eng/archive/2014/2014-76.htm> ("**TNC 2014-76**").

40 Competition Bureau, "Submission by the Commissioner of Competition Before the Canadian Radio-television and Telecommunications Commission — Telecom Notice of Consultation CRTC 2014-76" (15 May 2014), online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03725.html> at para. 3.

41 *Wholesale mobile wireless roaming in Canada – Unjust discrimination/undue preference* (31 July 2014), CRTC 2014-398, online: <http://www.crtc.gc.ca/eng/archive/2014/2014-398.htm> (the **"Wholesale Roaming Decision**").

42 Wholesale Roaming Decision at paras. 27-31.

***A3 – Industry Canada is seeking comments on its proposals 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 in the band.***

48) In light of the need for ongoing measures to promote competition in the Canadian wireless industry, PIAC supports a set-aside in the AWS-3 band for the combined GHI block, and open bidding for the J block.

49) Some commentators have claimed Industry Canada's proposal will lead to decreased auction revenues and therefore significant "lost" dollars for taxpayers. This argument is based on a highly questionable premise. As one spectrum consultancy has noted:

> it is worth keeping in mind that it is not the intent of an auction process to maximize revenues, but to reach as a reasonably efficient outcome while accomplishing key policy objectives. The effects of any discount, if they occur, for an entrant license however would be offset by development of competitive alternatives, growth in subscriber penetration, greater social benefit from development of new services – which also come with consumption taxes – and increased industry investment.[43]

50) Revenues for spectrum auctions are not budgeted, nor earmarked for a specific purpose. Auction revenues are a one-time influx of money for general government use. In PIAC's view, wireless customers' savings on cellphone bills from the potential entry of a fourth national wireless carrier, and the resulting reaction by the entrenched Big Three service providers, could easily outweigh any one-time reduction in auction revenues.[44]

51) There is also research on the 2008 AWS auction, and the more recent 700 MHz auction, suggesting that the different measures put in place in those auctions to limit the ability of the dominant players to push out smaller bidders actually worked. These measures allowed smaller players to access vital spectrum and injected competition into the market, while at the same time pulling in significant auction revenues from the dominant players bidding on the remaining spectrum; all in the best interests of consumers.[45] Notably, that conclusion

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[43] Lemay-Yates Associates Inc., "Report: Implications of reserving spectrum for entrants" **(**MTS Allstream Reply Comments, June 27, 2007, DGTP-002-07, Appendix B) at 7-8.

[44] PIAC Backgrounder, "The 'AWS-3' Spectrum Auction – What is the Best Deal for Consumers?", (09 July 2014), online: <http://www.piac.ca/files/piac_backgrounder_aws_3_auction_final.pdf>.

[45] Kyle Hyndmany, and Christopher F. Parmeter, *Efficiency or Competition? A Structural Econometric Analysis of Canada's AWS Auction and the Set-Aside Provision* (June 27, 2014) at 29 (emphasis added):

> Our results suggest that auction revenue may have increased by as much as $1.28 billion under alternative scenarios, though a more likely scenario, in the absence of the set-aside, the likely outcome was a "status quo" with no new entry and similar market shares. In this case, our results suggest an efficiency

was also observed by Peter Cramton, the architect of the most recent, 700 MHz, spectrum auction.[46] At the same time, there were also a number of questions about the 700 MHz auction's design, posed by at least two consultancies.[47] Both consultancies observed some surprising results. Most relevant to the discussion about AWS-3, however, is the observation that the Big Three were able to "dominate" the 700 MHz auction: "Rogers, TELUS and Bell accounted for 95% of the auction revenues, the bulk of which was paid on the Lower ecosystem. The Big3 domination of the auction result was much higher than the 62% represented by Bell, Rogers and TELUS in the 2008 auction."[48]

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> loss on the order of $400 - 500 million. As we have argued, while this is a non-negligible amount of money, to the extent that enhanced competition is sustainable, it is plausible that consumers could benefit by more than this amount. However, recent events have made clear that, in their current state, the most prominent new entrants' long term financial viability is in question.

46 Peter Cramton, Lessons from the Canadian 700 MHz Auction (April 2014) at 9 and 10 (emphasis added):

> The Canadian restrictions did impact bidding, but in a way that was entirely consistent with the objective to foster competition for mobile services. The regional operators were able to win valuable spectrum, strengthening their competitive position. Overall they acquired 15% of the spectrum, the less desirable C1 block in the upper 700 MHz band. Regarding revenues, it is far from clear that the spectrum limits reduced revenues. The limits did enable the regional operators to win more and at lower prices, but at the same time the Big 3 paid more for the AB combination. Prices in Canada were highest for the most sought after spectrum, the lower band paired blocks. In the Canadian auction no bidder was excluded from bidding on any particular license.
> Auction designs that encourage greater rivalry and competition during the auction among those with the greatest capacity to bid will tend to generate substantially more revenue than auction designs that allow for greater segmentation and differentiation to occur. Industry Canada's auction rules both stimulated competition during the auction and gave non-dominant carriers greater access to critical input resources they need to compete once the auction ended. Far from diminishing revenue, the Canadian auction design promoted competition among dominant incumbents to ensure bids accurately reflected the value of the licenses offered.

47 Lemay-Yates Inc. observed that "the cap, the band plan and the CCA format conspired to lead to an outcome mixing up the industry where, particularly over the past decade, alliances between carriers within the same ecosystem have become the rule." Lemay-Yates Associates Inc., *Canadian 700 MHz Spectrum License Auction* (February 2014), online: <http://www.lya.com/en/spotlight/form_c-Ahead.php>.

Nordicity questioned whether "the final prices paid [were] reflective of the value placed on this spectrum, or was there some gaming that led to these results?" Nordicity also observed the highest bid mark-up in a Northern Ontario, a service area not prone to attracting vigorous competition. Nordicity speculated also that "the final lots awarded to bidders are unlikely to be the true lots they had hoped to secure in the course of this auction." Nordicity, Stephan Meyer, "The Untold Story Behind the Canadian 700 MHz Auction", *Infotelecom* (June 2014), online: <http://www.neotelis.com/client_file/upload/pdf/info-telecom/InfoTelecom_10.pdf>.

48 Lemay-Yates Associates Inc., *Canadian 700 MHz Spectrum License Auction* (February 2014), online: <http://www.lya.com/en/spotlight/form_c-Ahead.php>.

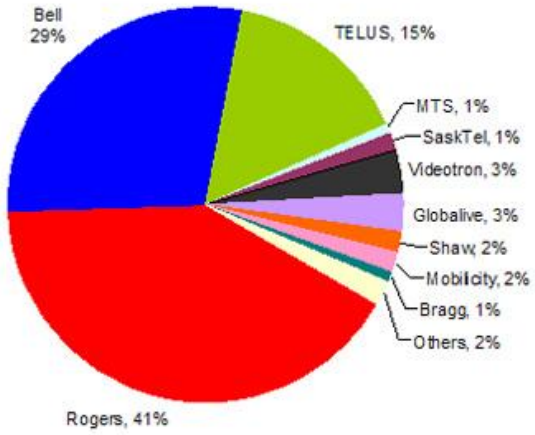
52) In light of the foregoing, PIAC therefore strongly supports a set-aside of spectrum in the AWS-3 auction, generally, and specifically the setting aside of the combined 15 + 15 MHz GHI bock for new entrants, and leaving the 10 + 10 MHz J block open to all bidders. PIAC notes that unlike the AWS-1 auction design, where the simultaneous multiple round ascending ("**SMRA**") auction format and availability of multiple blocks allowed new entrants to make "fake bids" outside of the set-aside to drive up the prices paid by incumbents, and to deflect demand away from the set-aside,[49] in the AWS-3 auction structure there is limited incentive, or opportunity, to "game" the system.

53) Additionally, and as discussed below, PIAC supports the simple (sealed bid) auction format proposed by the Department, as previous auction formats to allow for package bidding appear to have had unpredictable, negative pricing effects.

54) In addition to giving new entrants a vital opportunity to continue to offer competitive alternatives to incumbents, the setting-aside of a larger amount of the AWS-3 spectrum for new entrants recognizes that incumbents continue to hold the overwhelming majority of the licensed spectrum in Canada, and recognizes that the incumbents have had a considerable lead out in terms of being able to build their businesses.

55) This is reflected by the following figures showing overall commercial mobile spectrum holdings, prior to the 700 MHz auction, and the timeline of wireless industry development in Canada.

**Figure 3. Summary of Spectrum Holdings for Cellular, PCS, AWS and BRS Spectrum[50]**



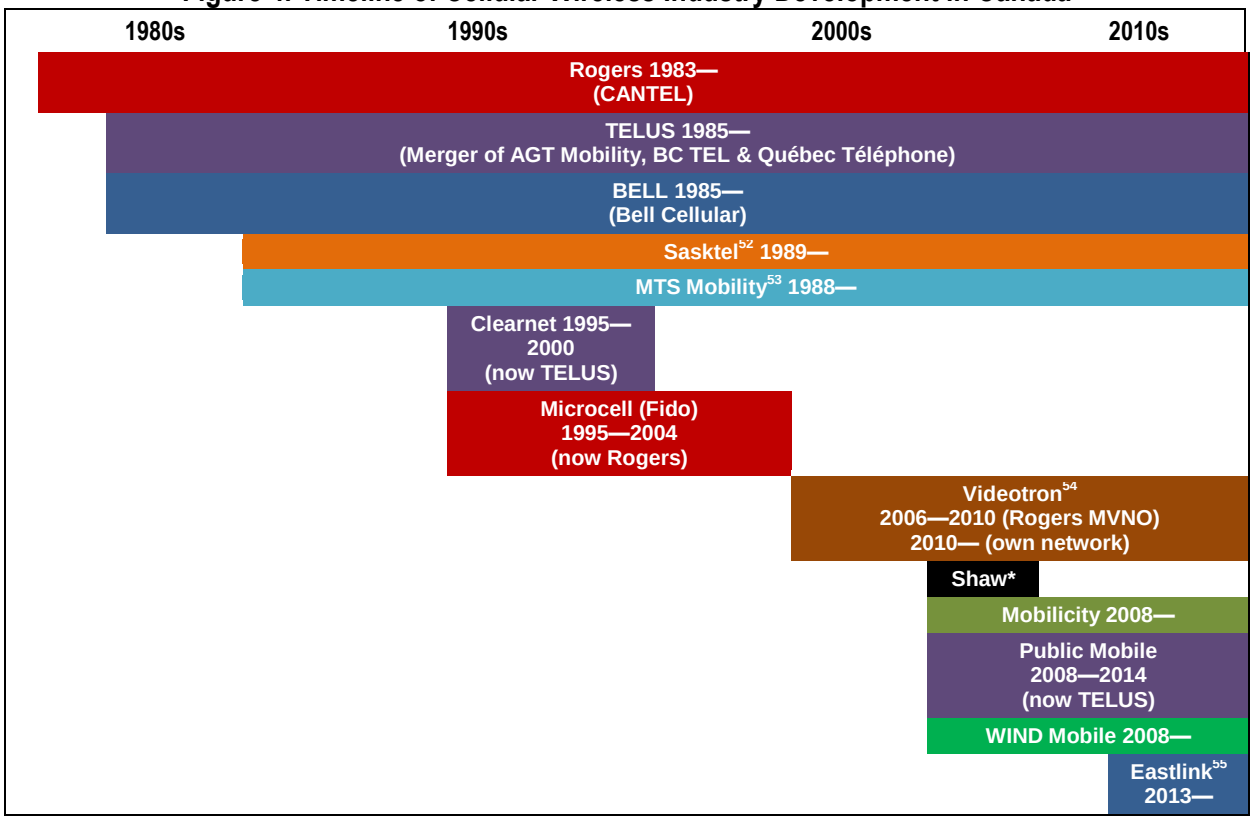

[49] Nera Economic Consulting, *Regulatory Policy Goals and Spectrum Auction Design - Lessons from the Canadian AWS Auction* (14 July 2009) at 39.

[50] Industry Canada, "Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum" (30 November 2010), online: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09949.html>, Figure 4.5.

56) Given the domination[51] of the 700 MHz auction by the Big Three, the lack of AWS-1 new entrant participation in the 700 MHz auction due to financial challenges, and the acquisition of Public Mobile by TELUS, this distribution remains largely unchanged.

57) There have been efforts by the Government of Canada over the years to set conditions for a more competitive mobile wireless marketplace. Figure 4 lists in a timeline format the mobile wireless service providers in Canada that have received authority to offer services.

**Figure 4. Timeline of Cellular Wireless Industry Development in Canada**




*** Shaw purchased AWS-1 spectrum in 2008 but did not deploy a wireless service, and has stated its intentions to not deploy.[56]**

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51 See also, Industry Canada, Backgrounder, "700 MHz Spectrum Auction-Process and Results" (February 2014), online: <http://news.gc.ca/web/article-en.do?nid=816869>.

52 SaskTel, "SaskTel celebrates 25 years of cellular in Saskatchewan!" (8 August 2014), online: <http://www.sasktel.com/wps/wcm/connect/content/home/about-sasktel/news/2014-news-releases/sasktel-celebrates-25-years-of-cellular>.

53 MTS Allstream, "MTS Mobility Celebrates 20 Years in Manitoba" (7 May 2008), online: <http://www.mts.ca/mts/about+mts+allstream/news+room/news+releases/mts+mobility+celebrates+20+years+in+manitoba>.

54 Videotron, "Videotron enters wireless market" (10 August 2006), online: <http://corpo.videotron.com/site/press-room/press-release/192> and Videotron, "Videotron launches new mobile service on the fastest network and introduces unprecedented offerings" (9 September 2010), online: <http://corpo.videotron.com/site/press-room/press-release/440>.

55 Eastlink, “Eastlink puts the customer first with new Wireless service” (14 February 20), online: <http://www.eastlink.ca/about/mediacentre.aspx?NewsId=364>.

58) As Figure 4 illustrates, while a number of competitors to what are now the Big Three wireless carriers were authorized to enter the marketplace since mobile wireless telephony became available to Canadians in the mid-1980s, competitors who are not incumbents (or their affiliates) have faced significant challenges. Most competitors to the incumbents have been absorbed by one of the incumbent or have otherwise been driven out of the marketplace.

59) Virtually all of the competitors that have emerged as a result of the attempts to introduce more wireless competition have either been absorbed by one of the Big Three or have otherwise been (or are being) driven out of the marketplace. That fate, ironically, is often used by the Big Three as proof that the policy has failed or is unworkable.

60) Given the initial success of the AWS-1 new entrants, and the ongoing reform to the vital wholesale frameworks necessary for those smaller competitors to establish sustainable competitive alternatives to the incumbents, PIAC believes that the AWS-3 measures to promote competition are necessary and appropriate.

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

61) The Department has proposed to restrict eligibility to bid on the AWS-3 set-aside to "new entrants."

62) The Department has proposed to define "new entrants" as service providers that are *not* a large wireless service provider ("**LWSP**"). LWSPs are 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."*[57]

63) In addition, the Department is proposing that bidding on the AWS-3 set-aside be restricted to "new entrants" that are providing, at the time of application to participate in the AWS-3 auction, a certain level of terrestrial wireless service using the cellular, PCS, AWS-1, BRS (2500 MHz), MBS (700 MHz) or WCS bands.[58] The minimum population coverage levels proposed represent 50% of the AWS Licensing 10-year deployment targets in each Tier 2 service area – ranging from 10% in the Yukon, Northwest Territories & Nunavut service area, to 25% in most other service areas. As part of the proposed eligibility requirement, the Department has stated that it will assess the active provision of commercial wireless services.[59]

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56 Rita Trichur, "Shaw hangs up on its cellular plans" (14 January 2013), online: The Globe and Mail <http://www.theglobeandmail.com/globe-investor/shaw-hangs-up-on-its-cellular-plans/article7340045>.

57 AWS-3 Consultation Document at para. 43 (footnotes omitted, emphasis original).

58 AWS-3 Consultation Document at para. 50.

59 AWS-3 Consultation Document at para. 55.

64) PIAC notes that one possible consequence of the operating requirement is that potential bidders who may help further the policy objectives may be excluded from entry. In one sense, the term "new entrant" is no longer appropriate, given 2008 was six years ago, and given that the AWS-3 Consultation Document does not seem to contemplate "new" entry.

65) This begs the question, why would the Department not, again, allow greenfield wireless entry in Canada, unless the answer is that the Department wishes to elicit a potential consolidation, either from amongst the AWS-1 new entrants, or from outside, through the incentive of the set-aside. It may very well be unlikely that a "new" (in the literal sense of the term) entrant could be interested in a pure play spectrum acquisition and network build. Unless there is an implicit design to the Department's proposals, then PIAC questions whether requiring an "outsider" interested in competing in Canada now to purchase one of more of the original new entrants, is a suitable policy decision.

66) As PIAC noted in respect of the AWS-4 consultation, where the Department proposed essentially issuing expanded licences to the current incumbents, PIAC generally considers opening up the AWS-4 licensing process to other interested competitors to be reasonable.[60]

67) Thus, PIAC suggests that the Department also may consider disaggregating the combined AWS-3 set aside block into its constituent G, H and I blocks of paired 5 + 5 MHz spectrum, and auctioning either one block of paired 10 MHz spectrum and 1 block of paired 5 MHz spectrum or three blocks of 5 MHz spectrum.[61]

68) PIAC also notes that by disaggregating the GHI block, the Department could also consider reserving one of the blocks for public use.[62]

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

69) PIAC generally supports the proposed eligibility criteria to bid on the AWS-3 set-aside. PIAC believes that new entrants should have the opportunity to gain further spectrum in light of

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60 Reply Comments of PIAC, Gazette Notice SMSE-011-14 (May 31, 2014) - *Consultation on a Policy, Technical and Licensing Framework for Use of the Bands 2000-2020 MHz and 2180-2200 MHz* (22 July 2014) at para. 9-12.

61 In making this suggestion, PIAC notes, but does not rely on, the developing potential for "carrier aggregation" – the pairing of contiguous and non-contiguous spectrum, intra-band and inter-band spectrum to vastly enhance the spectral efficiency of a given channel, *i.e.*, to deliver high data volume using less spectrum than previously required.[61] At the same time, carrier aggregation will not likely be helpful for new entrants in the near future because they would need to replace or upgrade their network equipment and transition to LTE, and wait for a suitable (and cost-effective) device ecosystem to emerge before then having to wait for subscribers to migrate to the new devices.

62 See Comments of PIAC (February 28, 2011), Notice No. SMSE-018-10 – *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum* (30 November 2010) at 9-10.

new and improved wholesale rules (roaming, towers/sites) that have been revised to support competition.

70) At the same time, PIAC questions whether other wireless service providers that do not meet the definition of LWSPs should not be able to also bid in the AWS-3 set-aside.

71) As currently proposed, for a truly "new" entity to have that opportunity, they must first acquire an AWS-1 new entrant first, and not be in violation of the rules for associated or affiliated entities. It may be that other bidders may wish, in the improved regulatory environment since 2008, to enter.

72) PIAC also notes that the definition of LWSP, although consistent with past definitions of the term, would preclude large regional service providers from bidding on the AWS-3 set-aside, and require these relatively smaller entities to bid against the far better-funded Big Three for only one block of "open" spectrum.

73) If the Department does not accepts PIAC's proposal to disaggregate the GHI block into three 5 + 5 MHz blocks, with one reserved for public use, then the Department should consider the possibility of making one of the disaggregated GHI blocks of paired 5 + 5 MHz available to large regional service providers. Another option is to amend the proposed definition of LWSP such that large regional service providers which are not national in scope are no longer captured by the definition and thus eligible to bid on the AWS-3 set-aside.

## Part B – Licensing Framework

### Conditions of Licence

***Licence TermB1 – 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.***

74) PIAC supports the Department's proposal to issue the AWS-3 licences for 20-year terms.

75) A 20-year licence term would be consistent with licence terms for similar spectrum, and consistent with the Department's general approach of long-term licensing to allow sufficient time to deploy and capitalize off of spectrum investments.

## Licence Transferability and Divisibility

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

76) PIAC supports the Department's proposal to allow AWS-3 licences to be transferred and divided, subject all licence transfers and divisions to the Spectrum Transfer Policy.

## Deployment Requirements

***B3 – Industry Canada is seeking comments on the proposed deployment condition of licence as stated [below].***

77) The Department is proposing a 5-year deployment requirement based on the Tier 2 service area, and a 10-year deployment requirement based on the Tier 3 service area.

78) The 5-year deployment requirement for the AWS-3 spectrum is the same as it was for the AWS-1 spectrum. The 5-year deployment requirement for the AWS-3 spectrum is also the same as it is for the 10-year deployment requirement for the 700 MHz spectrum. This is illustrated in the following table.

**Figure 5. Minimum Population Coverage, AWS-1, AWS-3, 700 MHz**

| Tier 2 | Service Area Name | Population | AWS-1 (5 years) | AWS-3 (5 years) | 700 MHz (10 years) |
|---|---|---|---|---|---|
| 2-01 | Newfoundland & Labrador | 514,641 | 30% | 30% | 30% |
| 2-02 | Nova Scotia & Prince Edward Island | 1,061,846 | 30% | 30% | 30% |
| 2-03 | New Brunswick | 749,942 | 40% | 40% | 40% |
| 2-04 | Eastern Quebec | 1,668,394 | 50% | 50% | 50% |
| 2-05 | Southern Quebec | 5,683,036 | 50% | 50% | 50% |
| 2-06 | Eastern Ontario & Outaouais | 2,347,808 | 50% | 50% | 50% |
| 2-07 | Northern Quebec | 190,605 | 30% | 30% | 30% |
| 2-08 | Southern Ontario | 10,090,766 | 50% | 50% | 50% |
| 2-09 | Northern Ontario | 774,775 | 50% | 50% | 50% |
| 2-10 | Manitoba | 1,206,968 | 50% | 50% | 50% |
| 2-11 | Saskatchewan | 1,029,812 | 40% | 40% | 40% |
| 2-12 | Alberta | 3,650,167 | 50% | 50% | 50% |
| 2-13 | British Columbia | 4,399,939 | 50% | 50% | 50% |
| 2-14 | Yukon, Northwest Territories & Nunavut | 107,215 | 20% | 20% | 20% |

79) The 10-year deployment requirement at the Tier 3 level ranges from lows of 10% in areas such as Upper Outaouais and 15% in areas such as Listowel/Goderich/Stratford, to a maximum of 50% in Canada's biggest cities. The 10-year, Tier 3 deployment requirements appear to match the 5-year, Tier 3 general roll out targets set for the AWS-1 spectrum.[63]

80) The Department's rationale for structuring these requirements as such, is that "[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."[64] PIAC views these requirements as too low to result in the availability of service for the benefit of all Canadians in a timely manner.

81) PIAC notes that in recognition of the unique position a holder of paired 700 MHz spectrum would be in, the Department imposed higher deployment requirements, representing 90% population coverage of the licensee's current HSPA network footprint within 5 years, and 97 percent within 7 years.

82) PIAC believes that in furtherance of the policy objectives, licensees of AWS-3 spectrum should be required to deploy service for the benefit of all Canadians, not just those living in more populated areas.

83) As structured, the 5-year deployment obligations still effectively allow compliance through urban deployment. While this would be to the benefit of urban residents, it does not benefit Canadians who live in rural areas. A 10% deployment obligation for a population of 100,000 Canadians leaves 90,000 Canadians unable to use services provided by the spectrum; a substantial imbalance between those who can be connected and those who cannot.

84) There is no question that offering one block per service area to new entrants may afford the successful bidder a remarkable opportunity, at the same time, this remarkable opportunity must come with stringent deployment requirements to ensure the spectrum policy objectives are realized in a timely fashion.

85) PIAC notes that the spectrum policy objectives explicitly include making the social and economic benefits from wireless competition, investment and innovation, to be available to all Canadians, including those in rural areas, in a timely fashion. While PIAC recognizes that population-density has a bearing on the economics of terrestrial deployment, and that network deployment using 2 GHz spectrum can be relatively more costly than other bands, PIAC does not believe that referring to urban and suburban areas as "key markets," nor requiring minimalist Tier 3 deployment obligations, is consistent with that policy objective.

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63 Industry Canada, *Licensing Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range* (December 2007), online: <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08856.html> at Appendix C — Roll-Out Targets.

64 AWS-3 Consultation Document at para. 66 (emphasis added).

86) PIAC therefore recommends that the 10-year, Tier 3 deployment requirements be adjusted upward significantly, by 2.0 times in "urban"[65] areas, and at least 1.5 times in non-urban areas. This increased deployment obligation (up to 100% in urban areas) reflects the fact that the deployment economics improve with population density, while at the same time placing an important requirement on licensees to deploy deeper into their service areas to serve more Canadians than just 1 or 2 out of 10.

## Part C – Auction Process and Rules

### Auction Format and Timing

### Sealed-Bid Auction

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

87) PIAC supports the use of a sealed-bid auction format for the AWS-3 auction.

88) The auction, as proposed, is administratively simple and time-efficient. The possibility of, or necessity for "packages" seen in the 700 MHz auction, does not exist given there are no generic blocks of spectrum.

89) In the 700 MHz auction there was unusual unanimity in the widespread confusion in the industry about the mechanism and possible unintended consequences. Concerns ranged from the impact on smaller and regional players, to concerns from large incumbents.

90) In the AWS-1 auction, a simultaneous multiple round ascending ("**SMRA**") auction format was used.

91) The use of a sealed-bid auction format dispenses with the need for eligibility points, activity rules, and complicated winner determination models, and simply asks that each bidder put their best bid forward immediately. This simplicity is appropriate, as is the proposal for a second-price rule, in light of the availability of only one block of set-aside spectrum, and only one block of "open" spectrum. Were the Department to consider disaggregating the GHI block into two or three distinct set-aside blocks, then the Department should consult on an

[65] Defined in reference to the Department's proposed Tier 4 classification for 3500 MHz licences in Gazette Notice No. DGSO-003-14 — *Consultation on Policy Changes in the 3500 MHz Band (3475-3650 MHz) and a New Licensing Process in Rural Areas* (6 September 2014).

appropriate auction format in light of concerns with both the SMRA format and the complex, and uncertain combinatorial clock auction ("**CCA**") format.[66]

## Pricing Rules

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

92) The Department is proposing to use a second-price rule where the winning bidder pays not the price that they bid, but the second highest bid. If there is only one bidder then the Department has proposed that the minimum opening bid price will stand as the second highest bid.[67]

93) PIAC supports the use of a second-price rule, for the reasons articulated by the Department, namely, that "A second-price rule promotes a more efficient outcome by increasing the incentive for bidders to bid their true value."[68]

94) The use of a sealed-bid auction format dispenses with the need for eligibility points, activity rules, and complicated winner determination models, and simply asks that each bidder put their best bid forward immediately. This simplicity is appropriate, as is the proposal for a second-price rule.

## Bidder Participation

### Affiliated and Associated Entities

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

95) The Department is proposing definitions of affiliated entities and associated entities that is consistent with the 700 MHz auction definitions, and is proposing to nevertheless allow associated entities to participate in the auction separately if the associated entities comply with proposed information disclosure and anti-collusion rules.

96) PIAC supports the rules as proposed, which are consistent with previous licensing policy, subject to PIAC's ongoing concern about the nature of Bell and TELUS's extensive network

[66] See *e.g.*, Comments of PIAC (June 25, 2012) *Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band* at 2-3.
[67] AWS-3 Consultation Document at para. 134.
[68] AWS-3 Consultation Document at para. 85.

sharing relationship,[69] and spectrum sub-licensing arrangements that appear to result in Bell and TELUS sticking to their traditional home serving territories and transferring unwanted spectrum to the other.[70] At the same time, given the proposed 2 block structure of the AWS-3 auction, the concern is somewhat moot because only one incumbent can purchase the "open" block. Similarly, it would not make sense for one associated incumbent to bid up the one block of "open" spectrum to the detriment of their associated incumbent.

**Auction Integrity and Transparency**

97) PIAC supports the rules as proposed, which are consistent with previous licensing policy. PIAC notes that the public disclosure of bidder narratives describing all key elements and the nature of all affiliations and associations provides the public with an important opportunity to review and, if necessary, comment on potential bidders' compliance with rules designed to further the policy objectives.

**Prohibition of Collusion**

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

98) PIAC supports the Department's continuance of its prohibition on cooperation, collaboration, discussion and negotiation in respect of the licenses being auctioned or the post-auction structure.

**Opening Bids**

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

99) The Department is proposing opening bids ranging from $0.05/MHz/pop in less populated service areas (Northern Ontario, Quebec, Yukon, NWT and Nunavut) to $0.11-$0.12/MHz/pop in the most populated service areas (Southern Quebec, and Southern Ontario, respectively).

100) The Department has also proposed that to be valid a bid must be equal to or greater than the opening bid price.

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69 See Comments of PIAC (June 25, 2012) *Consultation on a Licensing Framework for Mobile Broadband Services (MBS) – 700 MHz Band* at paras. 15-16.

70 Industry Canada Decision Regarding Subordinate Licences, Subordinate Licensing Application for Spectrum Licences Held by Bell Mobility Inc. (Bell) and TELUS Communications Company (TELUS) (31 July 2014).

101) PIAC supports the opening bids prices which reflect, through their population weighting, the fact that the new entrant block is larger than the open block. PIAC also notes that the simplified auction structure, while still requiring bidders to bid their true value, may not result in excessively bidding up the prices due to gaming distortions, which will ultimately result in bidders paying closer to their true value than otherwise.

## Auction Process

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

102) PIAC makes no comments on the proposals in respect of applications to participate, submission of ownership information, pre-auction financial deposits, process to submit applications and financial deposit, bidder qualification, withdrawal of application form, change of information, submission of auction bids, determination of provisional licence winners, tie-breaking, bidder payment, forfeiture penalties, and issuance of licence.

## Post-Auction Licensing Process for Unassigned Licences

103) The Department proposed that in the event there are unassigned licences left over, it will consider making unassigned licences available through an alternative licensing process, and that a public consultation would be held should Industry Canada consider it necessary.[71]

104) PIAC supports maximizing the amount of spectrum that is available for use, subject to the Department's spectrum policy objectives, and the principles espoused in the Spectrum Transfer Framework that are reflective of a broader concern with undue spectrum concentration.

105) Thus, PIAC requests that the Department clearly commit itself to publicly consulting on what to do about unsubscribed spectrum.

## Licence Renewal Process

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

106) The Department is proposing that there will be a high expectation of renewal for AWS-3 licensees at the end of the 20-year licence term unless a breach of licence condition has occurred. The Department also notes the Minister's authority to fix and amend the terms and

[71] AWS-3 Consultation Document at para. 149.

conditions of spectrum licences that differ from the terms and conditions of the licenses as initially issued.

107) PIAC notes that the Department need not wait 20 years to assess licence compliance, and that the Minister need not allow licence terms to expire before making amendments to licence conditions as appropriate. Although this is the subject of a judicial proceeding, the *Radiocommunication Act* clearly states that the Minister may amend spectrum licences.[72]

## Part D – Other Considerations

108) PIAC make no comment at this time on the other, largely technical considerations raised by the Department.

## 4. Conclusion

109) PIAC concludes these initial comments by reiterating its overall support for ongoing measures to promote competition in the Canadian wireless market, for recognizing that the incumbents have the power, and motivation, to unfairly suppress competitors from offering affordable, innovative choice to Canadians.

110) The AWS-1 experience is evidence of the positive impact competitive entry has on achieving the wireless policy objectives.

111) The AWS-3 spectrum is an important opportunity to follow through on the objective of promoting sustainable wireless competition.

***End of document***

[72] *Radiocommunication Act*, R.S.C., 1985, c. R-2, s. 5(1)(b).