PIAC Rebuttal Backgrounder on Spectrum and Wireless Competition in Canada

August 2, 2013

1) Spectrum Rules - How They Were Established and How They Work

Myth	Source	Reality
Allowing foreign telecommunications companies into Canada is a "loop hole" in the rules.	Cope, An Open Letter and Globe ("BCE latest carrier…")	The Government of Canada extensively and publicly consulted on the investment framework for telecommunications in Canada, as did Industry Canada on the policy framework and licensing framework for the upcoming 700 MHz auction in 2011 and 2012. Out of this process came democratically made changes to the *Telecommunications Act* in 2012 that allowed limited foreign entry into Canada and rules that any company with less than 10% market share have a real chance to win spectrum. That is how Canada's spectrum policy is made, not with secret meetings and supposed assurances "at the highest level" that Bell Canada appears to expect should be their private policy loophole.
The policy to allow new entrants into the Canadian wireless market was supposed to be only for small companies, and not large ones.	Manley, Globe	The new entrant rules created as part of the 2008 AWS auction did not clearly favour or require entrants to be a certain size of company. This was exemplified as Quebecor, owner of Videotron, a company worth over $9 billion was deemed a new entrant and purchase set aside spectrum in 2008, because it was new to the wireless market. Ditto for Shaw Communications Inc., which won spectrum in the AWS auction, did not deploy it, and then made a deal to give Rogers its spectrum in exchange for television assets and $700 million. (This deal is still being reviewed by the Competition Bureau and Industry Canada.) The current rules for the 700MHz spectrum auction are equally neutral as to the size of company that is considered a new entrant or regional operator. What is required is that a new entrant have less than 10% wireless market share. This is a rule designed specifically to allow companies with small market shares to acquire sufficient public spectrum to realistically compete with incumbent wireless providers. Finally, the foreign ownership rules, as explained above, limit foreign-owned companies to operate in Canadian telecom markets only when they start with 10% market share or less, and they may not purchase large Canadian companies to take over the Canadian market.

The current rules do not allow Canadian companies to operate on equal footing when wireless companies are for sale.	Darren Entwistle, Star	The Government has clearly signaled that it considers any dealings with new entrants or spectrum they own during the 5 year moratorium after the last auction by incumbents to be off-side the original auction rules. It has also since stated a clear policy that it will review any such deals, no matter when, for their potential for anti-competitive effects such as shutting out competition and access to spectrum. This is a clear policy that is based on competition, not protection of Canadian companies for the sake of their Canadian-ness.
The federal government is actively seeking American investment through the rules it is creating, because the federal government is "fixated" on creating a fourth national wireless carrier.	Nadir Mohamed, Star	The federal government has stated that it wishes for a competitive marketplace for wireless services in Canada, and that this includes "at least four wireless providers in every region of the country" (Paradis, 4 June 2013). However, there has been no clear indication that a foreign player in particular is favoured. As the results of the 2008 AWS auction show, very few new entrants were able to sustain a wireless business model in light of the current market domination of the incumbents. This has meant taking more of an investment-neutral approach by the government where either domestic or foreign investment is encouraged. This policy was enshrined in the recent changes to foreign ownership in the *Telecommunications Act*, and should come as no surprise to any Canadian wireless company.
Better rules for the Canadian wireless market will emerge if the process is delayed.	Darren Entwistle, Star	In fact, delaying the auction would harm Canada's wireless industry and more importantly Canada's international reputation. Changes to the process may lead to delay and further uncertainty in the marketplace. Canada's 700 MHz auction is already several years behind the US (2008), and has been delayed once already. If Industry Canada is prepared to re-open the issues, it could face pressure to re-examine the CCA auction format. The Government often states that Canada is "open for business" (for example, oil sands development). Changing the pro-competition telecommunications framework this late in the process not only creates uncertainty, but suggests that Canada is not "open for business" but instead, beholden to lobbyists. Industry Canada's stated policy objectives for wireless are competition, consumers' best interests, rural deployment, and putting scarce public resource to highest economic use. If Verizon were to enter the marketplace as a small but well-financed carrier with a proven track record in rural deployment and access to leading-edge devices at favourable rates, it may yet satisfy these goals.

2) "Favouring" Foreign Providers

Myth	Source	Reality
Favouring a foreign competitor over Canadian companies sets a bad precedent	George Cope, Bell Canada, An Open Letter to Canadians Manley, Council of CEOS; AP/Gazette	The investment and licensing framework for the upcoming 700 MHz auction was designed to add much needed competition to the Canadian wireless market. Our wireless prices are high as Canadian consumers know and as confirmed by OECD data. The government has concluded that competition from "new entrants" in the Canadian market can help. The Government decided to liberalize foreign investment restrictions after extensive consultation by Industry Canada with the industry, consumer groups, and the public. "Through the Jobs, Growth and Long-term Prosperity Act, the Government of Canada introduced amendments to the Telecommunications Act that lift foreign investment restrictions for companies that hold less than a 10% share of the total Canadian telecommunications market. This will help telecom companies access the capital they need to grow and compete, resulting in greater choice of telecommunications services for Canadian consumers." (see: Canada's Economic Action Plan, "Fostering Foreign Investment"). Foreign investment is deliberately being allowed to catalyze more competition, but is carefully limited to those companies with less than 10% of the total telecommunications market. Any such company must compete to add subscribers and cannot simply buy up other Canadian wireless companies to grow beyond that 10% limit. This limit on investment does not represent the "favouring" of a foreign operator but is rather a careful and controlled process for adding much needed competition to the Canadian wireless market to benefit consumers.
The depth of finances a foreign entity can bring to the spectrum auction will leave Canadian companies shut out of the auction.	Manley, Gazette "Because of the depth of Verizon's pockets, they can easily buy up two of the four blocks"	The Government's policy framework is designed to allow for the financing of a viable fourth player – either in the form of a foreign company, or regional players – to challenge the market power of the big 3. Industry Canada, having extensively and publically consulted on the specific policy, technical and licensing frameworks, set three policy objectives for the 700 MHz auction. These are: (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. The policy objectives are focused on protecting Canadian consumers by enabling sustained competition in the marketplace – not protecting Canadian companies. Without rules that allow fourth players to challenge the market power of the Big 3, the Big 3 would easily wipe out the little competition that emerged as a result of policy decisions for the 2008 AWS auction. With the current rules, fourth players, be they regional players or foreign or domestic new entrants, have a chance to bring increased competition to the market. Also, the incumbents have a significant head start on any foreign new entrant, as the three major wireless operators hold approximately 93% of the Canadian subscriber market and nearly 90% of existing spectrum licenses.
Foreign companies are being granted "extraordinary advantages" or "special rights" to buy small wireless companies and wireless networks.	Cope, "An Open Letter" CEP President Dave Coles, Gazette	Foreign companies are not being provided with special rights to purchase Canadian wireless companies. Rather, there were rules in the last spectrum auction in 2008 that prevented incumbent providers from buying a new entrant or its spectrum for five years in order to ensure new entrants had a chance to get established as viable competitors and to prevent incumbents using new entrants as a "front" to acquire spectrum by the back door. The recent attempt by TELUS to purchase Mobilicity was found to be not in accordance with these rules by the Industry Minister as it was during the 5 year moratorium. Since that time, the Government has properly clarified in a recent Framework document that all such transfers will be carefully scrutinized on a case-by-case basis for anti-competitive effects, which is appropriate given the potential incentive for the incumbents to buy up all of their competition.
Foreign companies can qualify as "new entrants," even if they are	CBC, Amber Hildebrandt –	The *Telecommunications Act* was purposely amended to enable foreign investment in Canadian telecommunications providers with less than 10% of the

well established in their home country, in the spectrum auction. This affords foreign companies special status.	comments by players are aggregated in the article	total telecommunications market. To allow those companies to grow organically, *i.e.*, through gaining market share by building out its business and not simply by buying up other companies, the *Act* allows those companies to grow beyond 10%. Furthermore, strict equality as between the incumbents and new entrants is not one of the policy objectives. With the 700 MHz auction, scheduled now for February 2014, the Government has created auction rules that allow any qualifying "new entrants" and some regional wireless providers to have the chance to acquire adequate 700 MHz spectrum. Therefore the auction rules establish "caps" on spectrum that are intended to allow a fourth national ability to bid for prime spectrum. Incumbents can still bid, however, new entrant or regional players are permitted to win 2 "prime" 700 MHz blocks while incumbents are only allowed to win one. This, of course, presumes that the new entrant successfully outbids incumbents on 2 "prime" 700 MHz blocks.
Foreign companies do not have to invest in network infrastructure in the way the large Canadian wireless operators do.	Star	The Government's infrastructure and roaming policy deliberately allows the sharing of certain infrastructure and the entering into of roaming agreements on certain conditions, but any serious wireless carrier will need to invest in its own infrastructure rather than spend years in negotiations with incumbent wireless providers over such access and roaming agreements.

3) "Discriminating" Against Domestic Companies

Myth	[Source]	Reality
The auction rules discriminate against Canadian wireless companies.	Council of CEOs (letter) – reported in Globe and Mail article ("CEOs assail…")	The rules of the spectrum auction in terms of the spectrum caps established do not discriminate against Canadian companies. Any company that has less than 10% national market share (or 20% of a regional market share, for regional companies) can bid on 2 prime blocks of the spectrum up for auction. In addition, unlike setting aside a block of spectrum for a new entrant, this further advantages large and small wireless companies as they are able to bid on <u>any</u> block of spectrum that meets their network planning needs.

The three large Canadian wireless mobile companies (Rogers, TELUS, Bell) aren't able to be foreign owned which gives a foreign entrant advantages in the spectrum auction.	CBC Amber Hildebrandt – comments by players are aggregated in the article	In fact, the three large providers are <u>protected</u> from foreign takeovers due to Canadian telecom law and have done very well by this protection. The bidding rules that allow "new entrants" to bid on 2 prime spectrum blocks are not designed for foreign entrants, they are designed for any new company, "foreign" or "Canadian" that meets the threshold of less than 10% market share, in an effort to give new companies the spectrum they need to compete with incumbent companies that have huge spectrum holdings.
The Canadian market, like most major international markets, are well served by having 3 large wireless companies.	Nadir Mohamed, Star	The US Department of Justice in blocking AT&T from acquiring T-Mobile (which would have reduced the U.S. national wireless providers from 4 to 3), noted that it is noticeably harder to tacitly collude to raise prices with 4 companies than 3 and that a fourth player is often a market "disrupter" that will introduce innovations in the wireless market that lower prices and benefit consumers. Since the denial of that merger, both AT&T and T-Mobile have introduced more pricing and service innovations. We believe the same benefits can flow from a Canadian fourth national provider and that the market is sufficiently large to allow a fourth provider to flourish. We note the high revenue per user and prices for wireless generally in Canada as compared to other OECD countries as well as the extremely positive financial results of Canada's three incumbent wireless providers.
The big three Canadian wireless providers have not had privileges granted to them by the government except early when the wireless mobile industry was just beginning. And that was not an advantage, it was necessary to start the industry.	Cope, Globe "Wind CEO…" "I think if you study the financials from 1985 to 2000, you'll find that no one who owned a wireless company in Canada made any money," said BCE chief executive George Cope. Although BCE played a pivotal role in building Canada's early telecom infrastructure, "since 1985 when the industry became competitive in wireless, we had to compete like everyone else. We've had no special privileges granted."	Spectrum was given away (that's right, given away not auctioned) to wireless carriers until 2000. While they had to "compete" against other wireless carriers for business they had free spectrum as an input. That's an advantage that lasts right through to today as much of Rogers', TELUS' and Bell's networks even today run on spectrum that was free.

4) Rural Wireless Deployment

Myth	Source	Reality
Foreign companies are not subject to the same infrastructure build-out requirements that apply to incumbent Canadian firms.	Council of CEOs (letter) - Globe	Any company with a lower speed "HSPA" 3G wireless footprint that also acquires (or has access to) two blocks of "paired" spectrum in the upcoming 700 MHz auction will also have rural build out obligations in rural areas. However, if Verizon or another foreign entrant buys the previous new entrants (WIND, Mobilicity, Public) and their 3G networks, which are largely urban, they will have only minimal build-out requirements where those networks are in rural areas. However, the actual policy was not intended to hamstring incumbent wireless providers.
Rural areas will suffer losses of services, and higher prices, if new entrants are allowed to buy into the Canadian wireless market.	Cope, Globe	Under the upcoming 700 MHz auction rules, any operator with an HSPA footprint as of March 2012 and with access (either purchased or shared) to 2 or more blocks of paired spectrum in the 700 MHz band will be required to cover 90% of the population in their coverage area within 5 years of licensing, and 97% of the population within 7 years. If Verizon buys Wind and Mobilicity, and it bids for and wins 2 blocks of paired spectrum, it will have to build out rural access in the 3G network areas that those companies cover. While those areas are minimal, Verizon for example has had extensive rural roll-out experience of 4G LTE (technology that will likely ride on the 700 MHz spectrum) in the U.S. – experience that they may use in rural Canada if they choose to try to serve there. Incumbents that win 2 paired spectrum blocks in rural areas will have to build out in those rural areas. Any threatened price increases should not be borne solely by rural customers and it is difficult to see how rural access by incumbents will be reduced, as there would a requirement to improve it to serve 97% of customers in these areas.

5) Other Concerns (Canadian Jobs and Auction Proceeds for the Government)

Myth	**Source**	**Reality**
Foreign companies in the Canadian market could upset the current Canadian wireless mobile market which may result in job losses and a slowdown in efforts to expand advanced wireless services to rural Canada.	Cope, An Open Letter, and reported in the Gazette "Bell's open letter…" CBC Amber Hildebrandt – comments by players are aggregated in the article	Any new entrant like Verizon would actually have to employ a Canadian-based workforce to service its customers. Secondly, any new entrant, whether Verizon or another, to grow beyond a certain size would have to increase its customer base organically by adding customers, not by acquiring other companies and laying off their staff. As this organic growth would take some time, any possible job losses at incumbents and regional providers would be gradual and perhaps even short-lived, as the incumbents and regional providers would have to provide competition with a competent workforce. Even if some job losses occur, the reduction in wireless prices due to competition will boost the Canadian economy by far more than job losses slows it down. Finally, since the incumbents have made very little effort to provide service to rural Canada so far, and they will have to do so regardless of competition if they bid on rural spectrum, tying job losses to rural deployment is disingenuous.
Ottawa may generate more income from the sale of spectrum if all bidders have equal footing in the auction.	Council of CEOs (letter) - Globe	Auction economics are notoriously difficult to predict. In fact, with a deep-pocketed but strategic fourth bidder, there is a real prospect that the government will make <u>more</u> from the auction than if only the incumbents bid. Finally, the consumer welfare benefit of having lower prices from a successful fourth national player and strong regional players could equal an amount that dwarfs the government's auction revenues. That's money in consumers' pockets, not the government's.

Links

George Cope, CEO, Bell Canada and BCE, “An Open Letter to Canadians”

http://www.bell.ca/an-open-letter-to-all-canadians

Montreal Gazette/AP “Union, CEO group oppose Verizon competition”
http://www.montrealgazette.com/business/Union+group+line+oppose+special+treatment+carrier+Verizon/8724881/story.html

CBC, “Is Verizon really the 'bogeyman' Canada's telecom giants claim? “
http://www.cbc.ca/news/canada/story/2013/07/26/f-verizon-wireless-spectrum-canada.html

Globe, “CEOs assail wireless rules that give edge to Verizon” http://www.theglobeandmail.com/news/politics/top-ceos-call-on-harper-to-level-wireless-playing-field/article13475552/

The Globe and Mail (which is 15% owned by BCE Inc.), “BCE the latest carrier to say Ottawa is misguided in its wireless policy”
http://www.theglobeandmail.com/report-on-business/bce-says-feds-dismissed-concerns-that-foreign-telecoms-would-exploit-loopholes/article13426715/

The Toronto Star, “ Ottawa courting US wireless giant Verizon, Rogers says “
http://www.thestar.com/business/2013/07/26/rogers_accuses_ottawa_of_courting_us_wireless_giant_verizon.html → Lind (VP) claims federal government officers went to NY to offer favourable conditions/favours for a bid by VZN.

The Globe and Mail (which is 15% owned by BCE Inc.), “ WIND CEO denies the rules hurt the big three “
http://www.theglobeandmail.com/report-on-business/wind-ceo-denies-wireless-rules-hurt-big-three/article13468645/?cmpid=rss1

The Montreal Gazette, “ Bell’s Open Letter threatens job cuts, but asks for sympathy “ http://blogs.montrealgazette.com/2013/07/25/bells-open-letter-threatens-job-cuts-but-asks-for-sympathy/

The Toronto Star, “Canada doesn’t need fourth wireless carrier, says Rogers CEO Nadir Mohamed”
http://www.thestar.com/business/2013/07/24/canada_doesnt_need_fourth_wireless_carrier_rogers_ceo_nadir_mohamed.html