



MINISTRY OF SCIENCE, TECHNOLOGY, ENERGY AND MINING

DECISION TO IMPLEMENT AGGREGATE SPECTRUM CAP POLICY

INTENT

1. The intent of this Notice is to advise of the decision to implement an Aggregate Spectrum Cap Policy limiting the overall spectrum holdings of mobile operators with respect to the 700 MHz, 850 MHz, 900 MHz, 1800 MHz, and 1900 MHz bands. The decision takes into account the submissions received in the public consultation process initiated on August 12, 2013 with the issuance of the Position Paper on Mobile Spectrum Holdings Policy by the Spectrum Management Authority (SMA), the current Information Communication Technology (ICT) Policy and the policy objectives of the Telecommunications Act. The decision will take immediate effect.

BACKGROUND

2. The Government of Jamaica (GoJ), in keeping with global trends and consistent with its policy objectives to promote increased competition and also to provide all Jamaicans with access to ubiquitous communications connections sought to make additional spectrum available for licensing. In particular, the GoJ approved the licensing of the upper portion of the UHF TV band to accommodate mobile broadband wireless services, and sought comments from the industry in this regard.
3. In April 2013, the Information Memorandum – Licensing the 700 MHz Band was issued, which proposed the imposition of an aggregate spectrum cap. The proposed cap related to the maximum amount of spectrum that any operator would be allowed to hold, in aggregate, within the following bands: 700 MHz, 850 MHz, 900 MHz, 1800 MHz, and 1900 MHz. Based on initial queries/comments received, a second round of consultations was initiated with the issuance of the Position Paper on Mobile Spectrum Holdings Policy on August 12, 2013.

PUBLIC CONSULTATION

4. Comments were sought on the general policy considerations related to aggregate caps, the proposed spectrum cap of 80 MHz, and the duration of the proposed cap. Responses to the public consultation were received on August 30, 2013 both in support of and against imposition of the cap.

5. **Comments against** - It was opined that the imposition of an aggregate spectrum cap is likely to impede inward investments and accordingly reduce the innovation and development of enhanced competition within the ICT services sector. Further it was indicated that the proposed Spectrum Holdings Policy marks a clear divergence away from the current international best practice which advocates the removal of spectrum caps, in particular tight or rigid spectrum caps as put forward by the SMA, in favour of adopting more flexible or adaptable measures for dealing with competition concerns.

It is recommended that instead the SMA ought to adopt the approach undertaken by the FCC, whereby a spectrum screen is applied in the assessment of spectrum allocations and related transactions. In the alternative, it was proposed that if the SMA maintains its policy to introduce an aggregate spectrum cap, the SMA should revise the proposed threshold upward.

6. **Comments in support** – It was noted that the policy is urgently required due to the disparity of spectrum holdings. Further it was opined that the urgency to create an appropriate policy is amplified by the rapid change in technology and industry trends. It is the view that the current spectrum holding of low band spectrum is disproportionately assigned which is unfair and contrary to the public interest since it actively impedes competition in the mobile broadband market. This new policy, it is believed, should effectively address this dilemma.

It is recommended that the SMA consider revising the proposed threshold downward, in line with what obtains generally in Latin America, if it is to positively impact the market.

DISCUSSION

7. Spectrum is an essential component to the wireless industry and access to spectrum can be a significant barrier to entry. In addition, low band spectrum holdings confer particular competitive advantage. In light of this and the proposed licensing of the 700 MHz spectrum, the GoJ desires to ensure that sufficient spectrum is available for new operators to enter the market and for all operators to compete effectively. The GoJ is of the view, similar to that shared by the United Kingdom's Office of Communications (Ofcom), that competition would be at risk if mobile operators were free to acquire any amount of spectrum desired. It was also noted that scarcity and demand could create incentives for incumbents to strategically reduce the amount of spectrum available to a new entrant.
8. Internationally, the imposition of spectrum caps has helped to ensure the development of effective competition in mobile markets by providing new entrants access to sufficient spectrum resources, and to preclude spectrum hoarding. The effect is to prevent operators from gaining positions, through large holdings of spectrum, which they might then exploit anti-competitively.

9. In the licensing of wireless carriers by Industry Canada in 1995, the use of a mobile spectrum cap was recognized as having played a role in providing new entrants with the opportunity to become established in the Canadian market. It was not until August 2004 that a decision was taken to rescind the cap with the maturity and increased competitiveness of the market.
10. Similarly, spectrum caps were introduced in the United States at a time when the level of competition that existed, if any, was in the form of a duopoly. Subsequently, with the mobile market becoming more competitive, the Federal Communications Commission (FCC) eliminated its 'per se' limit on the aggregation of Commercial Mobile Radio Services (CMRS) spectrum effective January 2003.
11. It is the view of the GoJ that a spectrum cap is necessary at this time to foster a more robustly competitive market in order to maximize consumer benefits.
12. Similar to the Canadian and United States experience in the 1990's, the Jamaican telecommunications market requires the implementation of a mechanism to further increase competition in the provision of existing, and future services and to allow for the entry of a new operator(s).

It should be noted that the United States' utilisation of a spectrum screen was implemented subsequent to achieving the desired level of competition. Prior to this point, when it was felt that there was insufficient competition in the market, spectrum caps were utilised.

In general, spectrum screens prevent further acquisition once a company goes above an established level of the licensed airwaves in one market area. However, the screen is applied on a case-by-case basis, usually in the case of mergers and acquisitions, to ensure that one operator does not control a monopolistic portion of spectrum in a given market. Given that a spectrum screen as a mechanism seeks to maintain the status quo in the market at a point in time rather than promoting competition and having regard to the GoJ's goal, to promote competition, a spectrum cap is deemed to be the most appropriate mechanism at this time rather than a spectrum screen.

13. In summary, spectrum caps have been an effective tool in fostering a multi-carrier cellular industry resulting in more effective competition and stimulating innovation in the provision and choice of service and the efficient utilisation of spectrum by operators.

14. The proposed aggregate cap for mobile/broadband spectrum (i.e. 700 MHz, 850 MHz, 900 MHz, 1800 MHz, and 1900 MHz) is 80 MHz. Upon due consideration of the propagation characteristics of these bands, it is the GoJ's view that at the level of 80 MHz there is sufficient capacity for existing operators to rollout out voice and data services to customers without stifling the market. The proposed level will also ensure that spectrum, in particular low band spectrum with the release of the 700 MHz spectrum, will be available for acquisition by new entrants and existing operators in order to expand their networks.
15. It is acknowledged that there is increasing demand by operators for mobile spectrum to provide customers with emerging "fourth-generation" (4G) services, such as those offered through Long Term Evolution (LTE). It has been suggested that the aggregate cap will impede the provision of these services to the local market by limiting the ability of existing operators to acquire spectrum in the 700 MHz auction and by extension inward investment. However, these services may be rolled out in several bands which are not included in the aggregate cap calculation, e.g. 2.5/2.6 GHz, Advanced Wireless Services (AWS) – 1700/2100 MHz, etc, which bands are available for licensing. Therefore, imposition of the cap will not result in an operator being denied the opportunity to enhance their network service offering.

DECISION

16. In light of the above, the decision has been taken to implement the spectrum cap policy effective immediately at the level of 80 MHz. The bands to be included in the calculation of the cap are the 700 MHz, 850 MHz, 900 MHz, 1800 MHz, and 1900 MHz bands.
17. This decision will be reviewed every two (2) years or at such earlier time, in consultation with the SMA, as may be determined.
18. This decision is consistent with the objectives of the Telecommunications Act and the GoJ's current ICT policy to foster increased competition for the provision of wireless broadband and telecommunications services and in particular to ensure fair, efficient and effective management of the radio frequency spectrum.

Issued under the authority of the Telecommunications Act.



Phillip Paulwell, M.P
Minister of Science, Technology, Energy and Mining
September 16, 2013