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Spectrum Management and Telecommunications

Proposed Revisions to the Frameworks for Mandatory Roaming and Antenna Tower and Site Sharing

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1. Intent

1. In November 2010, the Minister of Industry announced a review of the roaming and tower sharing policy to ensure that it continues to advance the intended objectives. Tower sharing was introduced to reduce tower proliferation and facilitate competitive entry by expediting network deployment, and roaming was mandated to enable new entrants to offer national coverage to consumers while encouraging facilities-based competition. The initial phase of the review, involving the collection and analysis of preliminary data, has been completed. In the current phase of the review, Industry Canada is seeking stakeholders' views on proposed changes to the conditions of licence for mandatory roaming and antenna tower and site sharing, as well as to the arbitration rules and procedures.

2. Mandate

2. The Minister of Industry, through the *Department of Industry Act*, the *Radiocommunication Act* and the *Radiocommunication Regulations* (the Regulations), with due regard to the objectives of the *Telecommunications Act*, is responsible for spectrum management in Canada. As such, the Minister is responsible for developing policies and processes for the spectrum resource and ensuring effective management of the radio frequency spectrum resource. Subsection 5(1) of the *Radiocommunication Act* gives the Minister of Industry the power to fix and amend the terms and conditions of spectrum licences. The Minister may suspend or revoke a radio authorization if the licensee has contravened the *Radiocommunication Act*, the Regulations or the terms or conditions of the radio authorizations.

3. Background

3. In November 2008, conditions of licence mandating roaming and tower and site sharing were implemented as part of the Advanced Wireless Services (AWS) Policy Framework.¹ The requirements were put in place to advance the policy objectives of enabling AWS new entrants to offer national service coverage to their subscribers from the initial launch of services, reducing tower proliferation and facilitating competitive entry by expediting network deployment. Mandated tower and site sharing currently applies to radiocommunication carriers regardless of the band in which they operate, whereas the roaming requirement applies only to cellular, Personal Communications Services (PCS) and AWS licensees.

4. As stated in the AWS Policy Framework, Industry Canada determined that although the wireless market in Canada was competitive, market conditions were such that measures should be taken to sustain and enhance competition in Canada. The AWS Policy Framework also noted that in making this determination, Industry Canada considered “*whether the market, and in particular consumers, could benefit from further competition which would strengthen Canada’s ability to rely on market forces to the maximum extent feasible.*” The injection of new competition in the wireless market has since provided Canadians with greater choices of services and lower prices. Industry Canada wants to put in place a framework that supports the continuation of these benefits, particularly in anticipation of the upcoming 700 MHz and 2500 MHz auctions. Changes are therefore being proposed to amend the conditions of

¹ See [Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range](#).

licence to further facilitate roaming and tower sharing agreements in order to support competition and further encourage investment.

5. The tower sharing and roaming conditions of licence require that licensees negotiate in good faith and that they offer roaming and tower and site sharing on commercial terms. If issues regarding technical feasibility arise, or if timelines set out in the conditions of licence are not respected, parties can contact Industry Canada to intervene or to seek clarification at any time. Disagreements over commercial terms (e.g. rates) are to be dealt with through negotiation, with recourse to a binding arbitration process.

6. Detailed descriptions of the current arbitration and mandatory tower sharing and roaming frameworks can be found in the documents listed below:

- Client Procedures Circular CPC-2-0-17, *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*² (adopted the licence conditions as set out in DGRB-002-08, *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*);
- Guidelines GL-06, *Guidelines for Compliance with the Conditions of Licence Relating to Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*;³ and
- Client Procedures Circular CPC-2-0-18, *Industry Canada's Arbitration Rules and Procedures*⁴ (incorporated by reference into the conditions of licence).

Note: The provisions of these documents reflect the requirements of CPC-2-0-03, *Radiocommunication and Broadcasting Antenna Systems*,⁵ which directs owners/operators of antenna systems to respond in a timely fashion to requests to share their antenna towers and to negotiate in good faith.

7. Industry Canada proposes changes to the conditions of licence in CPC-2-0-17 and to the arbitration rules in CPC-2-0-18. In addition, GL-06 would no longer be required, as the text currently contained therein would be incorporated into CPC-2-0-17. Grouping all relevant information in one reference document would provide greater clarity and ease of use. A revised draft of the conditions of licence is attached to this document as Annex A (mandatory roaming) and Annex B (tower sharing).

8. Industry Canada has received comments from various licensees concerning the effectiveness of the requirements, and there is increased public interest in the sharing of towers to reduce tower proliferation. Upcoming auctions in the 700 MHz and 2500 MHz bands will place additional pressure on

² See CPC-2-0-17, [*Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*](#).

³ See GL-06, [*Guidelines for Compliance with the Conditions of Licence Relating to Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*](#).

⁴ See CPC-2-0-18, [*Industry Canada's Arbitration Rules and Procedures*](#).

⁵ See CPC-2-0-03, [*Radiocommunication and Broadcasting Antenna Systems*](#).

Industry Canada to ensure that the conditions are effective. It was therefore determined that this is an appropriate time to review the tower sharing and roaming frameworks to determine if the measures put in place at the time of the AWS auction are contributing to the advancement of the stated policy goals and whether they can continue to do so into the future.

9. As a first step, Industry Canada gathered preliminary information from a sample of licensees that had significant first-hand experience with the conditions of licence. Having reviewed the preliminary information, Industry Canada has found that although the roaming and tower sharing requirements have resulted in some advancement of the stated policy objectives, some adjustments to the requirements could improve their effectiveness. All the new entrants that have launched services now offer national roaming; however, agreements took a considerable amount of time to finalize. Tower sharing, on the other hand, has been somewhat less successful, considering the number of agreements negotiated and the time that it has taken to reach those agreements.

10. Stakeholders are invited to comment on all proposals in this paper and to provide any other suggestions to improve the effectiveness of the conditions of licence and the arbitration process. All comments should include a supporting rationale and identify potential impacts on competition and investment in the mobile wireless market.

11. After reviewing the comments and reply comments received, Industry Canada will release the revised conditions of licence for mandatory roaming and tower and site sharing, in addition to the revised versions of arbitration rules and procedures. It is expected that the applicable documents will be revised and released in advance of the 700 MHz and 2500 MHz auctions.

4. Mandatory Roaming

4.1 Application of the Conditions of Licence

12. Section 9.1 of the current conditions of licence for mandatory roaming states the following:

The Licensee must provide automatic digital roaming (roaming) by way of Roaming Agreements on its cellular, PCS and AWS networks to any of the parties defined below (“A Requesting Operator”):

- (a) To all cellular, PCS and AWS licensees outside of their licensed area, for at least the 10-year term of the AWS licences. For clarity, the licensed areas will be viewed as any area in which the Requesting Operator holds a licence for any of cellular, PCS or AWS spectrum;*
- (b) To all new entrants in their licensed areas, for a period of five years commencing with the date of issuance of their licence;*
- (c) To national new entrants⁶ who have substantially met the five-year rollout requirements outlined on their licence, as determined by Industry Canada, for an additional five years;*

⁶ Note that at the time of the release of this paper there was no national AWS new entrant.

- (d) *To a party who is a provisional licence winner following the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range and who will meet one of the criteria set out in subsection (a) or (b) above.*

13. Auctions are planned for Mobile Broadband Services (MBS) licences in the 700 MHz band and Broadband Radio Service (BRS) licences in the 2500 MHz band. (See *Canada Gazette* notice SMSE-002-12, *Policy and Technical Framework: Mobile Broadband Services - 700 MHz Band, Broadband Radio Service - 2500 MHz Band*,⁷ for specific details regarding upcoming auctions in these bands.) As services offered by these licensees are expected to be similar to those currently provided by cellular, PCS and AWS licensees, Industry Canada proposes that mandatory roaming apply to MBS and BRS licensees. Stakeholders interested in the 700 MHz licensing process are encouraged to participate in that consultation process and should refer to the soon to be published consultation document, DGSO-002-12, *Consultation on a Licensing Framework to Auction Spectrum in the 700 MHz Band*, for general licensing considerations related to auction format, rules and processes, and conditions of licence for spectrum in the 700 MHz band. The 700 MHz consultation will seek comments on the proposed wording for the applicable mandatory roaming and tower sharing conditions of licence; however, input regarding specific details of those requirements is being sought through this document (DGSO-001-12).

14. The existing conditions of licence for mandatory roaming require cellular, PCS and AWS licensees to provide automatic digital roaming to “*all new entrants in their licensed areas, for a period of five years commencing with the date of issuance of their licence.*” This provision is referred to as in-territory roaming, and it allows AWS new entrant customers to roam on incumbent networks within the AWS new entrants’ licence area where the AWS new entrant does not have coverage. In conjunction with the out-of-territory roaming provision, having in-territory roaming also provided new entrants the opportunity to offer national service as soon as they began operation of their networks. The in-territory roaming provision begins to expire in 2013.

15. Out-of-territory roaming provisions, which were mandated for all licensees for at least the duration of the licence term, allow a carrier’s customers to roam on another network while outside the carrier’s licensed area.

16. Currently, the level of deployment achieved varies among the AWS new entrants; however, the coverage footprint for most of these new entrants is limited to major urban areas within their licensed areas. When originally introduced, in-territory roaming was mandated for a period of only five years in order to enable new entrants to offer service to consumers while encouraging facilities-based competition. Extending the in-territory roaming provisions would provide new entrants additional time to build out their own networks while maintaining service where they have not yet deployed within their licensed areas. An extension would also minimize the potential impact on their customers and increase the new entrants’ ability to remain competitive. Market forces and the high costs associated with the reliance on roaming to provide service could provide sufficient incentive for new entrants to continue to build out their own infrastructure where a viable and sustainable business case can be made.

17. Applying the requirement to all licensees would also benefit all parties where they lack adequate coverage. Extending the current provisions indefinitely would recognize the importance of ongoing national coverage and would rely on market forces to ensure that parties continue to build out where

⁷ See *Canada Gazette* notice SMSE-002-12, *Policy and Technical Framework: Mobile Broadband Services (MBS) - 700 MHz Band, Broadband Radio Service (BRS) - 2500 MHz Band*.

economically feasible to reduce roaming charges. Extending roaming provisions indefinitely would also result in greater certainty for licensees.

18. Internationally, the United States and New Zealand mandate roaming without distinguishing between in-territory and out-of-territory roaming. In 2010, the United States eliminated the “Home Territory Exclusion” provision, thereby mandating what Industry Canada refers to as in-territory and out-of-territory roaming for all carriers in perpetuity.⁸ In New Zealand, regulators mandate roaming indefinitely for all carriers without distinguishing between in-territory and out-of-territory requirements.⁹

19. Given the above rationale, Industry Canada no longer sees a need to distinguish between the two types of roaming or the need to limit the requirement to cellular, PCS and AWS licensees. Therefore, it is proposed that mandatory roaming apply to cellular, PCS, AWS, MBS and BRS licensees, both within and outside their licensed areas.

4-1: Industry Canada is seeking comments on the proposed revisions to Section 9.1 of the current Conditions of Licence for Mandatory Roaming as follows (new text is in bold):

*The Licensee must provide automatic digital roaming (roaming) **indefinitely** by way of Roaming Agreement(s) on its cellular, PCS, AWS, **MBS and BRS networks to any other licensee in these bands** (A Requesting Operator).*

- ***Where technically feasible, the Licensee shall offer roaming in all its licensed service areas in the aforementioned bands.***
- ***A Requesting Operator includes provisional licence winners.***

4.2 Seamless Communications Hand-off¹⁰

20. Section 9.2 of the mandatory roaming condition of licence currently reads as follows:

For greater certainty, the roaming which must be offered in accordance with this licence condition is defined by the following characteristics:

- *Roaming must enable a subscriber (a Roamer) already served by the Requesting Operator’s network (Home Network) to originate or terminate communications on the Licensee’s network when out of range of the Home Network, wherever technically feasible;*

⁸ See FCC 10-59, [Order On Reconsideration And Second Further Notice Of Proposed Rulemaking](#).

⁹ Refer to New Zealand’s [Telecommunications \(National Roaming\) Order 2008](#).

¹⁰ Various terms are used in other jurisdictions to describe the ability to provide seamless communications hand-off.

- *The roaming offered must provide connectivity for digital voice and data services, including access to the public-switched network and the Internet, regardless of the spectrum band or underlying network technology used, provided that the Roamer's device is capable of accessing the Licensee's network. Roaming should provide a Roamer with the ability to access voice and data services offered by the Requesting Operator's network at a level of quality comparable to that offered for similar services by the Licensee's Home Network. For greater certainty, this condition does not require the Licensee to provide to a Roamer a service which the Licensee does not itself provide on its own Home Network, nor to provide to a Roamer a service or level of service which the Requesting Operator will not or does not itself provide;*
- *Roaming as provided for in this condition does not include resale;*
- *Roaming can commence as soon as the Requesting Operator is offering service on its own radio access network and a Roaming Agreement is in place;*
- *Roaming does not require communications hand-off between home and host networks such that there is no interruption of communications in progress;*
- *Roaming should function without the need for any special facilitating action by the customer.*

21. The current requirement clearly notes that “*roaming does not require communications hand-off between home and host networks such that there is no interruption of communications in progress*” (seamless communications hand-off). Although not mandated, seamless communications hand-off may be technically feasible in certain circumstances, and the conditions of licence do not prevent licensees from negotiating this capability into their roaming agreements. As noted in the response for clarification of the AWS Policy, “*Recognizing the related costs and technical issues, the policy does not require seamless communications hand-off between home and host networks (i.e. which ensures no interruption of communications in progress). Industry Canada notes, however, that this service is clearly in the interest of consumers where it can be made readily available.*”¹¹

22. The issue of seamless communications hand-off prompted a filing of an application with the CRTC in October 2010, when Globalive considered that Rogers had conferred upon itself an undue preference. Having reviewed both parties' submissions, the CRTC dismissed the application, as it determined that there was insufficient evidence to make a finding of preference under subsection 27(2) of the *Telecommunications Act*. Telecom Decision CRTC 2011-360 also addressed the issue of whether the CRTC should mandate seamless roaming: “*The Commission considers that, in view of the fact that there is insufficient evidence on the record to make a finding of preference under subsection 27(2) of the Act, it would be inappropriate to deal with the issue of mandating seamless roaming. The Commission notes, however, that the parties are free to negotiate any seamless roaming arrangement in good faith.*”¹²

23. An application was filed by Globalive asking the CRTC to review and vary its decision. A response to the application was filed on September 15, 2011, and a decision is expected in the coming months.

¹¹ Refer to [Responses to Questions for Clarification on the AWS Policy and Licensing Frameworks](#), See Response 2.1.

¹² See [Telecom Decision CRTC 2011-360](#).

24. Some of the AWS new entrants consider that Industry Canada should reverse its decision and mandate seamless communications hand-off. Other parties have noted that it is technically complex and costly to implement, because it would require continuous modifications as carriers continue to expand their networks.

25. Industry Canada is not aware of any other country that currently mandates seamless communications hand-off.

26. Although Industry Canada has received requests that it mandate seamless communications hand-off, it is noted that dropped calls can occur on all networks for various reasons, including loss of signal or network congestion.

27. In addition to the above reasons, mandating seamless communications hand-off is not considered necessary to advance Industry Canada's stated policy objectives. No changes are proposed to the conditions of licence with respect to this issue.

4-2: Industry Canada is not proposing any changes to the current Section 9.2 of the Conditions of Licence for Mandatory Roaming.

4.3 Responding to Requests for Information

28. Section 9.3 of the mandatory roaming conditions of licence currently states the following:

In order to satisfy the condition of roaming in accordance with this licence, the Licensee must respond to a request for information by a Requesting Operator in a timely manner by providing preliminary technical information to the Requesting Operator, such as technical data, engineering information, network requirements, and other information relevant to formulating a Roaming Proposal.

29. After the implementation of the conditions of licence, Industry Canada received feedback regarding issues that had been encountered during negotiations. In February 2009, a consultation letter was published to seek comments on these issues, and Industry Canada subsequently published GL-06 in April 2009.

30. Among other points, GL-06 clarified Industry Canada's intended meaning of the phrase "in a timely manner" with respect to tower and site sharing, stating that the licensee is required to respond to a request for preliminary information within two weeks. In order to provide the same level of clarity with respect to roaming, Industry Canada proposes that "in a timely manner" be changed to "within two weeks of receiving the request" in Section 9.3 of the conditions of licence.

4-3: Industry Canada is seeking comments on the proposed revised text to replace the current wording of Section 9.3 of the Conditions of Licence for Mandatory Roaming (new text is in bold):

*In order to satisfy the condition of roaming in accordance with this licence, the Licensee must respond to a request for information by a Requesting Operator **within two weeks of receiving the request** by providing to the Requesting Operator, preliminary technical information, such as technical data, engineering information, network requirements, and other information relevant to formulating a Roaming Proposal.*

4.4 Roaming Rates and Technical Feasibility

31. Sections 9.4 and 9.5 of the current conditions of licence read as follows:

9.4 The Licensee must respond to a Roaming Proposal from a Requesting Operator within 30 days as follows:

- (a) The Licensee must provide the Requesting Operator with a response in writing and an offer to enter into a Roaming Agreement. Industry Canada expects that Roaming Agreements will be offered at commercial rates that are reasonably comparable to rates currently charged to others for similar roaming services;*
- (b) In the event that the Licensee believes that the Roaming Proposal is not technically feasible, the Licensee must provide the Requesting Operator with a response detailing the reasons why it considers that roaming is not feasible (accompanied by any applicable technical information) and submit that evidence to Industry Canada as directed if the Requesting Operator requests that Industry Canada review the reasons provided by the Licensee in accordance with this condition.*

9.5 Notwithstanding the Licensee's initial response, if Industry Canada reviews the matter of technical feasibility under 9.4(b) above and finds that Roaming is technically feasible, then the Licensee will respond to the Roaming Proposal with an offer to enter into a Roaming Agreement.

32. When Industry Canada mandated roaming, it balanced the need for intervention to achieve certain policy objectives with a reliance on market forces where possible. As such, although there is a requirement to provide roaming, the conditions of licence do not dictate rates or the contents of agreements. As stated in Section 9.4(a) above, “*Industry Canada expects that Roaming Agreements will be offered at commercial rates that are reasonably comparable to rates currently charged to others for similar roaming services.*”

33. Based on the review of the preliminary data collected, there is insufficient evidence to suggest that rates being charged are unreasonable. Furthermore, agreements have been signed, and parties have recourse to arbitration if disagreements arise regarding rates or terms.

34. Rate regulation would be highly interventionist, and specific rate setting generally falls within the jurisdiction of the CRTC under the *Telecommunications Act*. Therefore, the Minister of Industry is not proposing a condition of licence under the *Radiocommunication Act* to deal with a specific rate setting regime.

35. Noting that roaming agreements have been reached and there are mechanisms currently in place to settle commercial disputes, no changes are being proposed to the process. Industry Canada expects continued reliance on commercial negotiations, and arbitration if needed, to establish rates in commercial agreements. It is also expected that roaming agreements will be offered at commercial rates that are reasonably comparable to rates currently charged to others for similar roaming services.

4-4: Industry Canada is not proposing any changes to the current text of Sections 9.4 or 9.5. It is expected that roaming agreements will be offered at commercial rates that are reasonably comparable to rates currently charged to others for similar roaming services.

4.5 Good Faith Negotiations

36. Section 9.6 of the current conditions of licence reads as follows:

9.6 Licensees must negotiate with a Requesting Operator in good faith, with a view to concluding a Roaming Agreement in a timely manner.

37. Additional clarity with respect to timelines to reach roaming agreements has been proposed in Box 4-3 to ensure that the intent of this Section 9.6 is upheld. No changes are proposed to the current text in this section.

4-5: Industry Canada is not proposing any changes to the current text of Section 9.6.

4.6 Timelines for Roaming Negotiations

38. Section 9.7 of the current conditions of licence reads as follows:

9.7 If after 90 days from the date that the Licensee receives the Roaming Proposal, the Licensee and the Requesting Operator have not entered into a Roaming Agreement or have not agreed to any interim arrangement, the Licensee must submit or agree to submit the matter to arbitration in accordance with Industry Canada's Arbitration Rules and Procedures, as amended from time to time. The Licensee shall agree that the arbitral tribunal shall have all necessary powers to determine all of the questions in dispute (including those relating to determining the appropriate terms of the Roaming Agreement and those relating to procedural matters under the arbitration) and that any arbitral award or results under this condition of licence shall be final and binding with no right of appeal subject to applicable provincial or territorial legislation. The Licensee

*must participate fully in such arbitration and follow all directions of the arbitral tribunal in accordance with Industry Canada's Arbitration Rules and Procedures and any arbitration procedures established by the arbitral tribunal.*¹³

39. In practice, it has often taken longer than 90 days to finalize roaming agreements. However, given the experience that many stakeholders have with the negotiation process, it is proposed that 60 days be considered sufficient to determine whether a negotiated settlement is possible or whether arbitration will be required. Industry Canada is therefore proposing to modify the timelines to allow arbitration to be initiated after 60 days instead of the currently specified 90 days. Parties will continue to have the option of mutually agreeing to continue negotiations. Shortening the time frame to trigger arbitration may encourage parties to reach agreements expeditiously while providing the opportunity to pursue arbitration more quickly when it is clear that a negotiated agreement is not possible.

4-6: Industry Canada is seeking comments on the proposed revised text to replace Section 9.7 of the Conditions of Licence for Mandatory Roaming (new text in bold).

*If **after 60 days** from the date that the Licensee receives the Roaming Proposal, the Licensee and the Requesting Operator have not entered into a Roaming Agreement or have not agreed to any interim arrangement, the Licensee must submit or agree to submit the matter to arbitration in accordance with Industry Canada's Arbitration Rules and Procedures, as amended from time to time. The Licensee shall agree that the arbitral tribunal shall have all necessary powers to determine all of the questions in dispute (including those relating to determining the appropriate terms of the Roaming Agreement and those relating to procedural matters under the arbitration) and that any arbitral award or results under this condition of licence shall be final and binding with no right of appeal subject to applicable provincial or territorial legislation. The Licensee must participate fully in such arbitration and follow all directions of the arbitral tribunal in accordance with Industry Canada's Arbitration Rules and Procedures and any arbitration procedures established by the arbitral tribunal.*

4.7 Other Issues Relating to the Mandatory Roaming Process

40. The previous sections discuss issues most often raised as areas of concern: extending in-territory and out-of-territory roaming and reducing the current timelines for negotiations before arbitration can be triggered. Although no other changes are being proposed at this time, stakeholders may submit recommendations for further changes, along with supporting rationale.

4-7: Industry Canada invites suggestions from stakeholders on additional measures (other than those discussed above) to further increase the effectiveness of mandatory roaming.

¹³ For additional information, see DGRB-005-08, [Release of Industry Canada's Arbitration Rules and Procedures for Mandatory Roaming and Antenna Tower and Site Sharing](#).

5. Mandatory Tower and Site Sharing

41. Based on the preliminary data collected as part of the initial phase of the review, Industry Canada has determined that although agreements have been signed and time frames are generally improving, changes could be made to the framework to expedite the process and increase the success rate and overall effectiveness of the policy. Tower sharing agreements are being negotiated; however, many are taking a considerable amount of time to finalize, and timelines set out in the conditions of licence are often exceeded.

42. In light of the above, Industry Canada is proposing changes to some of the existing conditions of licence for tower and site sharing, as well as introducing some new requirements. These modifications are described in greater detail below.

A. Proposals Regarding Existing Conditions of Licence for Tower and Site Sharing

5.1 Application of the Conditions of Licence

43. Sections 8.1 and 8.2 of the current conditions of licence for mandatory tower and site sharing state the following:

These conditions of licence will apply to all licensees in all bands who are radiocommunication carriers under the Radiocommunication Act.

8.1 The Licensee must facilitate sharing of antenna towers and sites, including rooftops, supporting structures and access to ancillary equipment and services (“Sites”) and not cause or contribute to the exclusion of other radiocommunication carriers from gaining access to Sites. Without limiting the generality of the foregoing,

- where the Licensee is party to an agreement that includes a provision excluding other operators from the use of a Site, then, in order to facilitate the sharing of Sites, the Licensee must consent to waiving that portion of the agreement to facilitate a Request to Share;*
- as applicable, the Licensee must consent to or, in a commercially reasonable manner, seek the consent of third parties to the assignment, sublease or other rights of access to Sites pursuant to any agreement or arrangement to which the Licensee is a party; and*
- the Licensee must not enter into or renew agreements that exclude other operators from using a Site.*

8.2 The Licensee must share its Sites containing antenna-supporting structures, where technically feasible, when requested to do so by any other radiocommunication carrier authorized under the Radiocommunication Act or by a party who is a provisional licence winner following the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range (“A Requesting Operator”).

44. In the *Responses to Questions for Clarification on the AWS Policy*, it was explained that “Industry Canada is of the view that in the vast majority of cases, sharing will be technically feasible.”

45. Given that many service providers that do not operate as radiocommunication carriers have towers that are appropriate for sharing, it is proposed that the text be changed to apply to all radiocommunication service providers, so that the requirements continue to reflect the intent of the conditions of licence. Note that these conditions of licence, both as written and with the proposed changes, would apply to licensees in the 700 MHz and 2500 MHz bands.

5-1: Industry Canada is seeking comments on the proposed text to replace sections 8.1 and 8.2 of the Conditions of Licence for Mandatory Tower and Site Sharing (new text is in bold).

*The mandatory tower and site sharing conditions of licence will apply to all **radiocommunication service providers**¹⁴ in all bands.*

*8.1 The Licensee must facilitate sharing of antenna towers and sites, including rooftops, supporting structures and access to ancillary equipment and services (“Sites”) and not cause or contribute to the exclusion of other **radiocommunication service providers** from gaining access to Sites. Without limiting the generality of the foregoing,*

- where the Licensee is party to an agreement that includes a provision excluding other operators from the use of a Site, then, in order to facilitate the sharing of Sites, the Licensee must consent to waiving that portion of the agreement to facilitate a Request to Share;*
- as applicable, the Licensee must consent to or, in a commercially reasonable manner, seek the consent of third parties to the assignment, sublease or other rights of access to Sites pursuant to any agreement or arrangement to which the Licensee is a party; and*
- the Licensee must not enter into or renew agreements that exclude other operators from using a Site.*

*8.2 The Licensee must share its Sites containing antenna-supporting structures, where technically feasible, when requested to do so by any other **radiocommunication service providers** authorized under the Radiocommunication Act or by a party who is a provisional licence winner **in accordance with a licensing process** (“A Requesting Operator”).*

5.2 Responding to Requests for Information

46. Section 8.3 of the current conditions of licence for mandatory tower and site sharing states the following:

8.3 In order to satisfy the condition of Site sharing in accordance with this licence, the Licensee must respond, in a timely manner, to an initial request for information by a Requesting Operator as follows:

¹⁴ The [Radiocommunication Regulations](#) defines a “radiocommunication service provider” as “a person, including a radiocommunication carrier, who operates radio apparatus used by that person or another person to provide radiocommunication services for compensation.”

- *the Licensee shall provide to the Requesting Operator any preliminary technical information for each Site, such as drawings, surveys, technical data, engineering information, future requirements, lease provisions and other information relating to the site relevant to formulating a Proposal to Share that it has in its possession or control; and*
- *upon reasonable notice by the Requesting Operator, the Licensee shall facilitate access to the site so that a formal Proposal to Share can be formulated.*

47. To avoid unnecessary delays in negotiations, Industry Canada clarified in GL-06 that “a preliminary request for technical information will be considered complete if it contains, at a minimum, two of the following: (1) the licensee’s site reference number (2) the site address (3) geographical coordinates.” GL-06 also provided clarification on the phrase “in a timely manner” and stated that the licensee was expected to produce a response “within two weeks of receiving a complete request for preliminary technical information.” It is proposed that this text be incorporated into the conditions of licence.

5-2: Industry Canada is seeking comments on the proposed revised text to Section 8.3 of the Conditions of Licence for Mandatory Tower and Site Sharing (new text is in bold).

*8.3 In order to satisfy the condition of Site sharing in accordance with this licence, the Licensee must respond **within two weeks of receiving a complete* request for preliminary technical information** from a Requesting Operator as follows:*

- *the Licensee shall provide to the Requesting Operator any preliminary technical information for each Site, such as drawings, surveys, technical data, engineering information, future requirements, lease provisions and other information relating to the site relevant to formulating a Proposal to Share that it has in its possession or control; and*
- *upon reasonable notice by the Requesting Operator, the Licensee shall facilitate access to the site so that a formal Proposal to Share can be formulated.*

**** a preliminary request for technical information will be considered complete if it contains, at a minimum, two of the following: (1) the licensee’s site reference number (2) the site address (3) geographical coordinates.***

5.3 Tower Sharing Rates and Technical Feasibility

48. The current conditions of licence include the following text regarding the response to a proposal to share and technical feasibility:

8.4 The Licensee must respond to a Proposal to Share from a Requesting Operator within 30 days as follows:

- (a) *The Licensee must provide the Requesting Operator with a response in writing and an offer to enter into a Site Sharing Agreement. Industry Canada expects that Site Sharing Agreements,*

including access to ancillary equipment and services, will be offered at commercial rates that are reasonably comparable to rates currently charged to others for similar access;

(b) In the event that the Licensee believes that the Proposal to Share is not technically feasible, the Licensee must provide the Requesting Operator with a response detailing the reasons why it considers that site sharing is not feasible (accompanied by any applicable technical information) and submit that evidence to Industry Canada as directed if the Requesting Operator requests that Industry Canada review the reasons provided by the Licensee in accordance with this condition.

8.5 Notwithstanding the Licensee's initial response, if Industry Canada reviews the matter of technical feasibility under 8.4(b) above and finds that sharing is technically feasible, then the Licensee will respond to the Proposal to Share with an offer to enter into a Site Sharing Agreement in a timely manner.

49. Industry Canada expects tower sharing rates to be “reasonably comparable to rates currently charged to others for similar access.” Requesting Operators currently have recourse to arbitration if they are not satisfied with the rates being offered and also have the option to build their own towers, providing a natural cap on rates.

50. Based on the review of the preliminary data collected, there is insufficient evidence to suggest that rates being charged are unreasonable. Furthermore, when parties cannot agree on rates or terms contained in agreements, they have recourse to arbitration.

51. Rate regulation would be highly interventionist, and specific rate setting relating to the use of a facility would generally fall within the jurisdiction of the CRTC under the *Telecommunications Act*. No changes are being proposed to the conditions of licence with respect to commercial negotiations. Instead, Industry Canada recommends continued reliance on commercial negotiations, and arbitration if needed, to establish rates and terms of commercial agreements. If those requesting space on towers consider rates unreasonably high, it is expected that some of those licensees will pursue arbitration.

5-3: Industry Canada is not proposing any changes to the current text of Sections 8.4 or 8.5. It is expected that Site Sharing Agreements, including access to ancillary equipment and services, will be offered at commercial rates that are reasonably comparable to rates currently charged to others for similar access.

5.4 Good Faith Negotiations

52. Section 8.6 of the conditions of licence for mandatory tower and site sharing reads as follows: “Licensees must negotiate with a Requesting Operator in good faith, with a view to concluding a Site Sharing Agreement in a timely manner.”

53. Section 1.2 of CPC-2-0-17 clarifies the term “good faith” as follows: “In order to be considered to be negotiating in good faith, Responding Licensees must offer access to ancillary equipment and services at reasonable commercial rates.”

5-4: Industry Canada proposes that the text from Section 1.2 of CPC-2-0-17 be moved to Section 8.6 of the conditions of licence for mandatory tower and site sharing as follows (new text is in bold):

*Licensees must negotiate with a Requesting Operator in good faith, with a view to concluding a Site Sharing Agreement in a timely manner. **In order to be considered to be negotiating in good faith, Responding Licensees must offer access to ancillary equipment and services at reasonable commercial rates.***

5.5 Timelines for Tower Sharing Negotiations

54. Section 8.7 of the current conditions of licence states the following:

8.7 If after 90 days from the date that the Licensee receives a Proposal to Share, the Licensee and the Requesting Operator have not entered into a Site Sharing Agreement or have not agreed to any interim arrangement, the Licensee must submit or agree to submit the matter to arbitration in accordance with Industry Canada's Arbitration Rules and Procedures, as amended from time to time. The Licensee shall agree that the arbitral tribunal shall have all necessary powers to determine all of the questions in dispute (including those relating to determining the appropriate terms of the Site Sharing Agreement and those relating to procedural matters under the arbitration) and that any arbitral award or results under this condition of licence shall be final and binding with no right of appeal, subject to applicable provincial or territorial legislation. The Licensee must participate fully in such arbitration and follow all directions of the arbitral tribunal in accordance with Industry Canada's Arbitration Rules and Procedures and any arbitration procedures established by the arbitral tribunal.

55. Industry Canada considers that reducing the above-noted timelines may further expedite tower sharing agreements without negatively affecting negotiations. Given that parties have now gained experience with the process, it is expected that 60 days is sufficient to determine whether a negotiated agreement is possible. Industry Canada is therefore proposing to modify the timelines to allow arbitration to be initiated after 60 days rather than the current 90 days. The proposal does not preclude parties from agreeing to extend their negotiations.

5-5: Industry Canada proposes that the text in Section 8.7 of the conditions of licence for mandatory tower and site sharing be modified to indicate that arbitration may be initiated as follows (modified text is in bold):

*8.7 If after **60 days** from the date that the Licensee receives a Proposal to Share, the Licensee and the Requesting Operator have not entered into a Site Sharing Agreement or have not agreed to any interim arrangement, the Licensee must submit or agree to submit the matter to arbitration in accordance with Industry Canada's Arbitration Rules and Procedures, as amended from time to time. The Licensee shall agree that the arbitral tribunal shall have all necessary powers to determine all of the questions in dispute (including those relating to determining the appropriate terms of the Site Sharing Agreement and those relating to procedural matters under the arbitration) and that any arbitral award or results under this condition of licence shall be final and binding with no right of appeal, subject to applicable provincial or territorial legislation. The Licensee must participate fully in such arbitration and follow all directions of the arbitral tribunal in accordance with Industry Canada's Arbitration Rules and Procedures and any arbitration procedures established by the arbitral tribunal.*

B. Proposed New Requirements for Tower and Site Sharing

56. Three new requirements are being proposed in order to streamline the tower sharing process and facilitate concluding agreements. These requirements relate to: licensees making information on their towers available to improve transparency; addressing the issue of outstanding offers to share; and increasing the ability of Industry Canada to monitor tower sharing negotiations. Each of these new proposals is discussed in greater detail below.

5.6 Improving Transparency

57. Currently, a Requesting Operator seeking to share a tower can determine the potential availability of space on a particular tower by submitting a preliminary information request to the tower owner. This step consumes time and resources for both licensees and is particularly ineffective if there are numerous towers where sharing is not feasible.

58. Industry Canada currently requires licensees to upload site data which is made available to the public through Industry Canada's Spectrum Direct website. This requirement, however, predates mandated tower sharing and therefore does not capture information which would allow those seeking to share to determine whether there is space available on a particular tower. Making additional tower information available to all licensees on an ongoing basis would improve the efficiency of the tower sharing framework by providing immediate information to those looking to share towers. Once implemented, this change could help to streamline the process for licensees by reducing the number of preliminary information package (PIP) requests made, and over the longer term, it could lead to removing the PIP request stage from the process altogether, as those looking to share a tower could obtain this information on their own. Readily available tower information would also allow Industry Canada to monitor tower siting in Canada and to verify future use reservations.

59. GL-06 lists the data elements that the tower owner must provide when responding to a preliminary technical information request. These data elements include a tower loading profile that specifies imminent future use and provides the summary of existing leases, contracted third party lease arrangement contacts, compound layout, and tower foundations design; Transport Canada and/or NAV CANADA form(s); and site access information, such as contacts, procedures and any specific restrictions related to a site visit. It is therefore proposed that these data elements be considered the minimum amount of information to be made available. Based on the experience thus far, establishing a unique site identifier is critical to the integrity of the information.

60. It is noted that licensees currently use various tools to manage their own site data and that there are commercial solutions available that licensees could consider adopting. For example, for the past several years, the mobile industry in the United Kingdom has been using commercial software to help track and report on site sharing.¹⁵ Several third party tower companies in the United States and Canada also use interactive tools to allow those interested in leasing space to quickly determine whether a suitable tower is available.

61. In New Zealand, regulators require carriers to develop a “*Common Format Site Database*” to contain key data elements that facilitate the tower sharing process. The carriers providing the tower access are required to populate the database and update it monthly, ensuring that the data is current on the last business day of the month. They must also ensure that the information is available to all tower “access seekers,” as well as to the Commerce Commission 24 hours a day, 7 days a week.¹⁶ A list of data elements required by New Zealand’s Commerce Commission is included in the Commission’s Operations Manual.¹⁷

5-6: Industry Canada is seeking comments on the proposed new text to be inserted into the Conditions of Licence for Mandatory Antenna Tower and Site Sharing.

For each site where the licensee operates an antenna mounted on an antenna-supporting structure (the tower), the licensee must make the tower information listed below available to all parties that may be interested in seeking a sharing agreement, in addition to Industry Canada. Licensees must provide any updates on a monthly basis.

- (1) unique site identifier (standardized to include identification of tower owner)*
- (2) site location details (latitude/longitude and civic address)*
- (3) tower height and type (monopole, self-support, etc.)*
- (4) a tower loading profile, including all antennas on the tower, spaces reserved for imminent future use and the summary of existing leases*
- (5) for space reserved for imminent future use, the date on which the space was identified as such*
- (6) contracted third party lease arrangement contacts*
- (7) compound layout*

¹⁵ Site-Share.com Software, [An Overview](#).

¹⁶ See [Schedule 3, Mobile Co-Location Operations Manual, Public Version](#); 11 December 2008.

¹⁷ See [Schedule 3, Mobile Co-Location Operations Manual, Public Version](#); 11 December 2008; see Appendix S Common Format Site Database.

- (8) *tower foundations design*
- (9) *Transport Canada and/or NAV CANADA form(s)*
- (10) *site access information, such as contacts, procedures and specific restrictions related to a site visit*

In addition to the new wording proposed above, comments are also being sought on the following:

- (a) How should tower information be made available?
 - Individual licensee responsibility to post information on their own websites;
 - An industry-led initiative to develop and manage a database accessible to parties;
 - Expansion of the site upload data currently collected by Industry Canada.
- (b) Are there additional data elements that are required to further facilitate the PIP stage of the tower sharing process?

5.7 Addressing the Issue of Outstanding Offers to Share

62. One of the recurring issues raised by tower owners is the large number of offers that remain outstanding for an extended period of time. The data received from licensees in the initial phase of the review supports these claims, as a large percentage of all outstanding offers have been pending for more than six months.

63. Outstanding offers may delay negotiations with other parties, as tower owners sometimes hold space on the tower unnecessarily. This practice prevents others from gaining access and may be limiting the effectiveness of the framework. As such, allowing outstanding offers to be cancelled by the tower owner could improve the effectiveness of the framework and limit the number of outstanding offers.

5-7: Industry Canada is seeking comments on the proposed new text to be inserted into the Conditions of Licence for Mandatory Antenna Tower and Site Sharing.

If within 60 days, the Licensee has not received a response from the Requesting Operator to an Offer to Share, the Licensee may treat the Offer to Share as withdrawn with no further obligations.

5.8 Increased Monitoring of the Tower Sharing Progress

64. Licensees are not currently required to provide regular updates on the progress of tower sharing negotiations. Industry Canada can request data from licensees at any time; however, such requests tend to be made only when concerns are raised. There is no established process for the ongoing monitoring of the effectiveness of the conditions of licence.

65. Periodically, Industry Canada has received roaming and tower sharing data from licensees. It appears from the information received that the information captured and the methods of reporting it are not standardized. These inconsistencies affect Industry Canada's ability to accurately monitor the effectiveness of the tower sharing framework and can also affect the time that it takes to negotiate agreements.

66. Standardized reporting on tower sharing agreements would add accountability to the process, as parties would be required to accurately track the progress of requests. Standardized reporting would also allow Industry Canada to ensure ongoing compliance of the conditions of licence while balancing the need to minimize the administrative burden placed on licensees. Many licensees are already tracking data internally; therefore, introducing standardized reporting should require only adjustments to existing processes and should not add a significant burden over the long term. Collecting information on negotiations undertaken, even if not concluded, can provide insights into the overall resources being expended in regard to tower sharing and can help to indicate the overall success rates.

67. Given the above, Industry Canada proposes the establishment of semi-annual reporting on the progress of tower sharing negotiations. The report submitted to Industry Canada would initially include all tower sharing requests sent, specifying to whom they were sent, as well as all requests received, noting from whom they were received. Subsequent reports would provide details of any new requests that were sent or received since the previous reporting period. Details would include sent or received dates and indicate which requests are still outstanding, how many have led to agreements, and how many were withdrawn by the requestor or denied by licensee and the reasons for those actions. To ensure consistency, Industry Canada would provide licensees with a standardized format that will be developed based on the comments received.

5-8: Industry Canada is seeking comments on the proposed new text to be inserted into the Conditions of Licence for Mandatory Antenna Tower and Site Sharing. Specifically, should licensees be required to report on additional information? If so, what other information should be included?

The licensee must provide to Industry Canada a standardized report containing all tower sharing requests initiated and received, including:

- *the unique site identifier*
- *site location details (latitude/longitude and civic address)*
- *name of tower owner or licensee requesting to share*
- *the date that the preliminary information package (PIP) request was sent or received*
- *the date that a Proposal to Share was sent or received*
- *the date that an Offer to Share was sent or received*
- *the date that an agreement was reached or the date and reason why the request was withdrawn/denied*

The report is to be submitted to Industry Canada semi-annually (end of March and September) every year.

5.9 Other Issues Relating to the Mandatory Tower and Site Sharing Process

68. Industry Canada received many comments from licensees during the preliminary phase of the review regarding issues encountered while negotiating tower sharing agreements. Many of the concerns have been addressed in this paper; however, there may be additional suggestions that stakeholders have to further facilitate tower and site sharing.

5-9: Industry Canada invites suggestions from stakeholders on additional measures (other than those discussed above) to further increase the effectiveness of mandatory tower and site sharing.

6. Arbitration

6.1 Overview

69. Section 6 of CPC-2-0-17 directs licensees to initiate the arbitration process, as follows, if they are unable to reach a tower sharing or roaming agreement:

“Within the process outlined above, the Requesting Operator and Responding Licensees may choose to negotiate or use any agreed upon arbitration or mediation process in order to finalize the negotiation process within the timelines set out in the conditions below. Note that, by agreement, the parties may choose to extend their own negotiation process. However, should the timelines outlined in the conditions below expire, then, in the absence of any final or interim agreement, either party may initiate the arbitration process and both parties will be compelled to follow that process and the arbitration rules that will be established by Industry Canada as set out below.”

70. Although Industry Canada sets out the process and rules to be followed in the event of arbitration, it is not directly involved in the process other than when it relates to the enforcement of the conditions of licence, as stated in Section 6.2(c) of the Arbitration Rules:

6.2 No information concerning the existence of the arbitration or anything which occurs or is disclosed within the arbitration shall be disclosed or used outside of the arbitration proceedings or for any other purpose by a Party except:

- (a) for the purpose of conducting the arbitration itself including, where necessary and appropriate, interviewing and preparing witnesses, obtaining document and other support services and the administration of the arbitration;*
- (b) in connection with an application to a court for interim relief or to set aside, recognize or enforce an award;*
- (c) to Industry Canada in relation to a proceeding to enforce Conditions of Licence under the Radiocommunication Act;*
- (d) where a Party is required to do so by law or by a court or competent regulatory body;*
- (e) to assist future Arbitral Tribunals as set out in Rule 6.5 below;*

(f) to an independent expert for the sole purpose of assisting the tribunal in its understanding of the issues under its jurisdiction.

71. Although Industry Canada is not directly involved in the arbitration process, it should be noted that licensees can request clarification of the conditions of licence at any time during negotiations (including during an arbitration proceeding), when issues arise regarding technical feasibility or when the conditions of licence are not being respected (e.g. timelines being exceeded).

6.2 Arbitration Timelines and Rules

72. When the conditions of licence were introduced, it was anticipated that most disputes could be resolved between the parties through negotiation. However, where a negotiated agreement is not possible, parties have recourse to arbitration. The arbitration rules suggest a default process to follow, but also provide for flexibility in certain areas. As per Rule 2.5, *“any procedures or time period under these rules may be modified by the written consent of both Parties or by the Arbitral Tribunal or Appointing Committee in their respective sole discretion.”*¹⁸ To ensure that arbitration did not unnecessarily delay negotiations, Industry Canada included approximate timelines for each step of the hearing. In total, up to 98 days was allotted to complete an oral hearing, and up to 80 days was allotted for a written hearing.

73. Licensees can select an arbitrator from an available roster at ADR Chambers Inc. or, as stated in Section 6.0 of CPC-2-0-17, licensees may choose *“any agreed upon arbitration or mediation process in order to finalize the negotiation process within the timelines set out in the conditions.”*

6.2.1 Arbitration Timelines

74. Analysis of the preliminary information collected by Industry Canada showed that even though negotiations stalled on several occasions regarding commercial terms, the arbitration process has not been widely used. In their comments, some licensees stated that arbitration was not a viable option for them, as the timelines set out were too long and would not allow them to meet their deployment targets.

75. Upon further review, Industry Canada believes that the current arbitration timelines can be reduced while allowing sufficient time for the arbitrator to make a ruling and is therefore proposing the changes described in the table below.

¹⁸ [*Industry Canada’s Arbitration Rules and Procedures.*](#)

Table 1: Proposed revised arbitration timelines		
	Timelines	
	Current	Proposed
1. Notice served to party		
2. Appointment of tribunal where no agreement (includes obtaining list, selecting arbitrator and tribunal)	Up to 20 days	Up to 10 days
3. Procedural hearing	Up to 15 days	Up to 15 days
4.(a) In the case of an oral hearing:	Up to 48 days	Up to 45 days
4.(b) In the case of a written hearing:	Up to 30 days	Up to 25 days
5. Award rendered	Up to 15 days	Up to 15 days
Approximate total time if oral hearing	Up to 98 days	Up to 85 days
Approximate total time if written hearing	Up to 80 days	Up to 65 days

See Annex A of CPC-2-0-18 for the full version of the current timelines.¹⁹

76. As illustrated above, Industry Canada is hereby proposing to reduce the total time required to complete both types of hearings (oral and written). In the event that licensees choose an oral hearing, Industry Canada is proposing that it could be completed in up to 85 days rather than the current 98 days. For those who opt for a written hearing, it is proposed that 65 days would be sufficient for a ruling rather than the current 80 days.

6-2-1: Industry Canada is seeking comments on the proposed revised arbitration timelines noted in Table 1.

6.2.2 Arbitration Rules

77. With respect to arbitration, comments received from licensees during the preliminary phase of the review reveal that the arbitration process may not be completely understood and that certain sections of the Rules should be clarified. Some stakeholders indicated that initiating arbitration for each tower dispute is not practical. Industry Canada notes that nothing in the conditions of licence or rules prevents the consolidation of multiple towers under a single arbitration. Text will be added to Rule 2.1 to clarify this point. In addition, clarification will be made to Rule 11.8 to indicate that the rules allow the arbitrator to request, from parties, pertinent information such as comparable commercial terms and rates. Lastly, a new rule will be added (Rule 12.5) to explain that arbitration decisions do not create precedents in the same way that court decisions do. For instance, information on past arbitrations under Rule 6.5 does not have a binding effect on future arbitrations. The above-noted issues will be clarified in the arbitration rules.

¹⁹ See Annex A of [Industry Canada's Arbitration Rules and Procedures](#).

6-2-2: Industry Canada is seeking comments on the proposed new text below to be incorporated into the arbitration rules. Industry Canada also invites suggestions from stakeholders on any other clarifications which would further increase the effectiveness of *Industry Canada's Arbitration Rules and Procedures*.

Text to be added to the Arbitration Rules in CPC-2-0-18 (new text is in bold):

Rule 2.1:

*The Rules apply to disputes (other than disputes regarding technical feasibility) between Parties preventing them from agreeing upon the final terms and conditions of a Site Sharing Agreement or Roaming Agreement. **The Arbitration Tribunal may hear together and consolidate disputes relating to more than one Site Sharing Agreement or Roaming Agreement.***

Rule 11.8:

*At any time during the arbitration process, the Arbitral Tribunal may require any Party to provide further evidence or submissions, **including information on comparable terms and rates**, in such a manner as it determines.*

Rule 12.5: (new rule)

An award under these rules does not create a binding precedent in relation to other disputes.

6.3 Other Issues Relating to the Arbitration Process

78. Industry Canada received many comments from licensees during the preliminary phase of the review regarding issues or perceptions of the arbitration process. Many of their concerns have been addressed in this paper; however, there may be additional suggestions that stakeholders have to further facilitate this process.

6-3: Industry Canada invites suggestions from stakeholders on measures (in addition to those discussed above) to further increase the effectiveness of the arbitration process for mandatory tower/site sharing and roaming.

7. Submitting Comments

79. Interested parties are invited to submit comments on the proposals outlined in this document no later than within 60 days of the publication date of this paper on the Industry Canada web site, in electronic format (Wordperfect, Microsoft Word or Adobe PDF) to the following e-mail address: spectrum.operations@ic.gc.ca.

80. Written submissions should be addressed to the Senior Director, Spectrum Management Operations, Spectrum Management Operations Branch, Industry Canada, 300 Slater Street, Ottawa, Ontario K1A 0C8.
81. All submissions should cite the *Canada Gazette*, Part I, the publication date, the title and notice reference number DGSO-001-12.
82. Industry Canada will also provide interested parties with the opportunity to reply to comments from other parties. Reply comments will be accepted within 90 days of the publication date of this paper on the Industry Canada web site.

Annex A – Conditions of Licence for Mandatory Roaming

Proposed revised text is in **bold**.

The conditions of licence **for mandatory roaming** apply to all licensees in the cellular, PCS, AWS, **MBS and BRS bands**.

1. The Licensee must provide automatic digital roaming (roaming) **indefinitely** by way of Roaming Agreement(s) on its cellular, PCS, AWS, **MBS and BRS networks to any other licensee in these bands** (A Requesting Operator).
 - **Where technically feasible, the Licensee shall offer roaming in all its licensed service areas in the aforementioned bands.**
 - **A Requesting Operator includes provisional licence winners.**
2. For greater certainty, the roaming which must be offered in accordance with this licence condition is defined by the following characteristics:
 - Roaming must enable a subscriber (a Roamer) already served by the Requesting Operator's network (Home Network) to originate or terminate communications on the Licensee's network when out of range of the Home Network, wherever technically feasible;
 - The roaming offered must provide connectivity for digital voice and data services, including access to the public-switched network and the Internet, regardless of the spectrum band or underlying network technology used, provided that the Roamer's device is capable of accessing the Licensee's network. Roaming should provide a Roamer with the ability to access voice and data services offered by the Requesting Operator's network at a level of quality comparable to that offered for similar services by the Licensee's Home Network. For greater certainty, this condition does not require the Licensee to provide to a Roamer a service which the Licensee does not itself provide on its own Home Network, nor to provide to a Roamer a service or level of service which the Requesting Operator will not or does not itself provide;
 - Roaming as provided for in this condition does not include resale;
 - Roaming can commence as soon as the Requesting Operator is offering service on its own radio access network and a Roaming Agreement is in place;
 - Roaming does not require communications hand-off between home and host networks such that there is no interruption of communications in progress;
 - Roaming should function without the need for any special facilitating action by the customer.
3. In order to satisfy the condition of roaming in accordance with this licence, the Licensee must respond to a request for information by a Requesting Operator **within two weeks of receiving the request** by providing, to the Requesting Operator, preliminary technical information such as technical data, engineering information, network requirements, and other information relevant to formulating a Roaming Proposal.

4. The Licensee must respond to a Roaming Proposal from a Requesting Operator within 30 days as follows:
 - (a) The Licensee must provide the Requesting Operator with a response in writing and an offer to enter into a Roaming Agreement. Industry Canada expects that Roaming Agreements will be offered at commercial rates that are reasonably comparable to rates currently charged to others for similar roaming services;
 - (b) In the event that the Licensee believes that the Roaming Proposal is not technically feasible, the Licensee must provide the Requesting Operator with a response detailing the reasons why it considers that roaming is not feasible (accompanied by any applicable technical information) and submit that evidence to Industry Canada as directed if the Requesting Operator requests that Industry Canada review the reasons provided by the Licensee in accordance with this condition.
5. Notwithstanding the Licensee's initial response, if Industry Canada reviews the matter of technical feasibility under 4(b) above and finds that Roaming is technically feasible, then the Licensee will respond to the Roaming Proposal with an offer to enter into a Roaming Agreement.
6. Licensees must negotiate with a Requesting Operator in good faith, with a view to concluding a Roaming Agreement in a timely manner.
7. If **after 60 days** from the date that the Licensee receives the Roaming Proposal, the Licensee and the Requesting Operator have not entered into a Roaming Agreement or have not agreed to any interim arrangement, the Licensee must submit or agree to submit the matter to arbitration in accordance with Industry Canada's Arbitration Rules and Procedures, as amended from time to time. The Licensee shall agree that the arbitral tribunal shall have all necessary powers to determine all of the questions in dispute (including those relating to determining the appropriate terms of the Roaming Agreement and those relating to procedural matters under the arbitration) and that any arbitral award or results under this condition of licence shall be final and binding with no right of appeal subject to applicable provincial or territorial legislation. The Licensee must participate fully in such arbitration and follow all directions of the arbitral tribunal in accordance with Industry Canada's Arbitration Rules and Procedures and any arbitration procedures established by the arbitral tribunal.

Annex B – Conditions of Licence for Mandatory Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements

Proposed revised text is in **bold**.

The mandatory tower and site sharing conditions of licence will apply to all radiocommunication service providers²⁰ in all bands.

1. The Licensee must facilitate sharing of antenna towers and sites, including rooftops, supporting structures and access to ancillary equipment and services (“Sites”) and not cause or contribute to the exclusion of other **radiocommunication service providers** from gaining access to Sites. Without limiting the generality of the foregoing,
 - where the Licensee is party to an agreement that includes a provision excluding other operators from the use of a Site, then, in order to facilitate the sharing of Sites, the Licensee must consent to waiving that portion of the agreement to facilitate a Request to Share;
 - as applicable, the Licensee must consent to or, in a commercially reasonable manner, seek the consent of third parties to the assignment, sublease or other rights of access to Sites pursuant to any agreement or arrangement to which the Licensee is a party; and
 - the Licensee must not enter into or renew agreements that exclude other operators from using a Site.
2. The Licensee must share its Sites containing antenna-supporting structures, where technically feasible, when requested to do so by any other **radiocommunication service provider** authorized under the *Radiocommunication Act* or by a party who is a provisional licence winner **in accordance with a licensing process** (“A Requesting Operator”).
3. In order to satisfy the condition of Site sharing in accordance with this licence, the Licensee must respond **within two weeks of receiving a complete* request for preliminary technical information** from a Requesting Operator as follows:
 - the Licensee shall provide to the Requesting Operator any preliminary technical information for each Site, such as drawings, surveys, technical data, engineering information, future requirements, lease provisions and other information relating to the site relevant to formulating a Proposal to Share that it has in its possession or control; and
 - upon reasonable notice by the Requesting Operator, the Licensee shall facilitate access to the site so that a formal Proposal to Share can be formulated.

*** A preliminary request for technical information will be considered complete if it contains, at a minimum, two of the following: (1) the licensee’s site reference number (2) the site address (3) geographical coordinates.**

²⁰ The [Radiocommunication Regulations](#) defines a “radiocommunication service provider” as “a person, including a radiocommunication carrier, who operates radio apparatus used by that person or another person to provide radiocommunication services for compensation.”

4. The Licensee must respond to a Proposal to Share from a Requesting Operator within 30 days as follows:
 - (a) The Licensee must provide the Requesting Operator with a response in writing and an offer to enter into a Site Sharing Agreement (**Offer to Share**). Industry Canada expects that Site Sharing Agreements, including access to ancillary equipment and services, will be offered at commercial rates that are reasonably comparable to rates currently charged to others for similar access;
 - (b) In the event that the Licensee believes that the Proposal to Share is not technically feasible, the Licensee must provide the Requesting Operator with a response detailing the reasons why it considers that site sharing is not feasible (accompanied by any applicable technical information) and submit that evidence to Industry Canada as directed if the Requesting Operator requests that Industry Canada review the reasons provided by the Licensee in accordance with this condition.
5. Notwithstanding the Licensee's initial response, if Industry Canada reviews the matter of technical feasibility under 4(b) above and finds that sharing is technically feasible, then the Licensee will respond to the Proposal to Share with an offer to enter into a Site Sharing Agreement in a timely manner.

New Provision

If within 60 days, the Licensee has not received a response from the Requesting Operator to an Offer to Share, the Licensee may treat the Offer to Share as withdrawn with no further obligations.

6. Licensees must negotiate with a Requesting Operator in good faith, with a view to concluding a Site Sharing Agreement in a timely manner. **In order to be considered to be negotiating in good faith, Responding Licensees must offer access to ancillary equipment and services at reasonable commercial rates.**
7. If after **60 days** from the date that the Licensee receives a Proposal to Share, the Licensee and the Requesting Operator have not entered into a Site Sharing Agreement or have not agreed to any interim arrangement, the Licensee must submit or agree to submit the matter to arbitration in accordance with Industry Canada's Arbitration Rules and Procedures, as amended from time to time. The Licensee shall agree that the arbitral tribunal shall have all necessary powers to determine all of the questions in dispute (including those relating to determining the appropriate terms of the Site-Sharing Agreement and those relating to procedural matters under the arbitration) and that any arbitral award or results under this condition of licence shall be final and binding with no right of appeal, subject to applicable provincial or territorial legislation. The Licensee must participate fully in such arbitration and follow all directions of the arbitral tribunal in accordance with Industry Canada's Arbitration Rules and Procedures and any arbitration procedures established by the arbitral tribunal.

New Provision

8. The Licensee must provide to Industry Canada a standardized report containing all tower sharing requests initiated/received, including:

- the unique site identifier,
- site location details (latitude/longitude and civic address),
- name of tower owner or licensee requesting to share.
- the date that the preliminary information package (PIP) request was sent or received,
- the date that a Proposal to Share was sent or received,
- the date that an Offer to Share was sent or received,
- the date that an agreement was reached or the date and reason why the request was withdrawn/denied.

The report is to be submitted to Industry Canada semi-annually (end of March and September) every year.

New Provision

9. For each site where the licensee operates an antenna mounted on an antenna-supporting structure (the tower), the licensee must make the tower information listed below available to all parties that may be interested in seeking a sharing agreement, in addition to Industry Canada. Licensees must provide any updates on a monthly basis.

- (1) unique site identifier (standardized to also identify tower owner)
- (2) site location details (latitude/longitude and civic address)
- (3) tower height and type (monopole, self-support, etc.)
- (4) a tower-loading profile, including all antennas on the tower, spaces reserved for imminent future use and the summary of existing leases
- (5) for space reserved for imminent future use, the date on which the space was identified as such
- (6) contracted third party lease arrangement contacts
- (7) compound layout
- (8) tower foundations design
- (9) Transport Canada and/or NAV CANADA form(s)
- (10) site access information, such as contacts, procedures, and specific restrictions related to a site visit.