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Spectrum Management and Telecommunications

Revised Frameworks for Mandatory Roaming and Antenna Tower and Site Sharing

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1. Intent

1. Through the release of this paper, Industry Canada hereby announces the decisions resulting from the consultation process undertaken in DGSO-001-12 — [*Proposed Revisions to the Frameworks for Mandatory Roaming and Antenna Tower and Site Sharing*](#).
2. All comments and reply comments received in response to the consultation documents are available on Industry Canada's website at http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/h_sf10204.html.
3. This paper sets out changes to CPC-2-0-17 — *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements* and to CPC-2-0-18 — *Industry Canada's Arbitration Rules and Procedures. Guidelines for Compliance with the Conditions of Licence Relating to Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements* (GL-06) will be rescinded at the time of this publication as relevant text has been incorporated into CPC-2-0-17.

2. Mandate

4. The Minister of Industry, through the *Department of Industry Act*, the *Radiocommunication Act* and the *Radiocommunication Regulations* (the Regulations) and 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 for 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. Policy Objectives

5. The revised conditions of licence have been developed to further facilitate roaming and tower sharing agreements in order to advance the policy objectives of supporting competition, encouraging investment and reducing tower proliferation.

4. Background and Considerations

6. In November 2007, Industry Canada announced its decision to mandate roaming and antenna tower and site sharing in conjunction with the licensing process for Advanced Wireless Services (AWS). The conditions of licence came into effect in November 2008.
7. In March 2012, Industry Canada published DGSO-001-12 — *Proposed Revisions to the Frameworks for Mandatory Roaming and Antenna Tower and Site Sharing* (herein referred to as “the consultation”) to propose changes to the conditions of licence for mandatory roaming and antenna tower and site sharing, as well as to the arbitration rules and procedures. Comments and/or reply comments were received from Bell Mobility (Bell), Bragg Communications Inc. (Eastlink), the Broadcasters Technical Coordinating Committee (BTCC), the Canadian Wireless Telecommunications Association

(CWTA), Data & Audio-Visual Enterprises Wireless Inc. (Mobilicity), E-Comm 9-1-1, MTS Allstream (MTS), Peel Regional Police, the Province of Nova Scotia (Public Safety & Field Communications Office of Department of Transportation & Infrastructure Renewal), the Province of Ontario, Public Mobile, Public Safety Canada and the Centre for Security Science, Rogers Communications (Rogers), the Royal Canadian Mounted Police (RCMP), Saskatchewan Telecommunications (SaskTel), Shaw Communications Inc. (Shaw), SSi Group of Companies (SSi), Tbaytel, TELUS Communications Company (TELUS), TerreStar Solutions Inc. (TerreStar), Quebecor Media Inc. (Videotron), WIND Mobile (WIND) and York Regional Police. The following decisions are a result of that consultation process.

8. Revised conditions of licence and arbitration rules (contained in CPC-2-0-17 and CPC-2-0-18, respectively) are being published in conjunction with this decision paper, reflecting the changes announced herein. These CPCs were also revised to incorporate background information and guidance from GL-06, as well as relevant text from the *Responses to Questions for Clarification on the AWS Policy and Licensing Frameworks*. GL-06 will be rescinded upon publication of CPC-2-0-17, Issue 2.

9. The revised issue of CPC-2-0-17 will apply to any new negotiations commenced by a request for information submitted after March 7, 2013, and the revised Arbitration Rules in CPC-2-0-18 will apply to any arbitration commenced by a notice of arbitration after that date. Negotiations and arbitrations that are ongoing may be completed under the current issues of the CPCs.

Part A

5. Mandatory Roaming

5.1 Application of the Conditions of Licence

10. In the consultation, Industry Canada proposed to modify the conditions of licence for mandatory roaming by removing the distinction between in-territory roaming and out-of-territory roaming and by applying the condition indefinitely. It also proposed to apply the conditions to mobile broadband service (MBS) and broadband radio service (BRS) licensees in the 700 MHz and 2500 MHz bands, respectively.

11. The consultation proposed the following:

“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.”

Summary of Comments

12. The majority of respondents supported the proposed changes to the application of the mandatory roaming condition of licence. Some respondents, however, only supported certain aspects of the proposal. Bell disagreed with the proposal in its entirety, arguing that making changes to the conditions of licence less than halfway through the 10-year licence term would undermine certainty and confidence in future Industry Canada auctions.
13. Rogers, TELUS, WIND, Mobilicity, Public Mobile, Shaw, Eastlink, TerreStar, SSi Micro and Videotron supported removing the distinction between in-territory and out-of-territory roaming whereas Bell, MTS, SaskTel and Tbaytel did not support the proposal.
14. MTS suggested that the proposal would result in only incumbents having any incentive to invest in building out infrastructure, especially in rural and unserved areas. SaskTel noted that in situations where coverage is a marketing differentiator, the operator with the superior coverage will suffer market losses if mandatory roaming must be provided to the competitor, which could lead to revenue losses, impeding the operator's ability to maintain and update high-quality broadband services to high-cost areas.
15. Both MTS and SaskTel argued that the proposal could actually deepen the digital divide between urban and rural Canadians. However, SaskTel did note that it would support roaming conditions being extended to new entrants for an additional ten years.
16. Tbaytel suggested that allowing other carriers to roam on the first-built MBS network could lead to several operational and technical issues, such as loading and congestion problems, and that only out-of-territory roaming should be mandated.
17. SaskTel proposed that mandated roaming be linked to allowing access to unused spectrum and proposed the addition of a "use it or share it" condition of licence. Under such a condition, spectrum that has not been used by a licensee would be made available to facilities owners with home networks that are capable of using the spectrum, in order to support the capacity requirements of all users of that network (including competitors' roaming traffic) and to facilitate broadband services in rural areas.
18. Rogers suggested that concerns raised with respect to network congestion due to increased roaming are exaggerated and should be disregarded. It stated that at no time has the Rogers network been overwhelmed by roaming traffic and suggested that parties could negotiate additional spectrum access as part of a roaming agreement.
19. Most respondents that supported the proposal were in favour of applying the roaming provision indefinitely.
20. TELUS was supportive of extending the provisions to all carriers; however, it noted that in the absence of a time limit or substantive deployment requirements, even the large carriers may have incentives to roam on other networks rather than build their own, particularly in rural areas. TELUS therefore suggested that roaming be extended for renewable five-year periods in order to assess whether adequate build-out has occurred. TerreStar suggested a review every seven years.

21. Rogers suggested that a five-year review and renewal would be redundant since Industry Canada already imposes rollout requirements, reviews the extent to which licensees have satisfied their rollout requirements and renews licences in areas where licensees have made satisfactory progress.
22. MTS suggested that carriers with a rural rollout requirement not be mandated to provide in-territory LTE roaming outside of urban areas for the first five years of their licences. Rogers proposed that the Department require Requesting Operators to cover at least 60% of the population within their entire existing network coverage area at a particular level of service before they are entitled to roaming on the same level of service outside their coverage area. Bell agreed with Rogers' proposal, whereas Eastlink, SSI Micro and Shaw disagreed.
23. Applying the mandatory roaming condition of licence to MBS and BRS licences was supported by most stakeholders, who noted its consistency with the intent of the policy.
24. Public Safety entities that responded generally supported any provisions that would mandate commercial carriers to offer roaming to public safety agencies on their commercial networks. However, they also suggested that before deciding to mandate that public safety agencies offer roaming to commercial carriers, further study is required to understand the implications on security and on availability of capacity to first responders during emergencies.

Discussion

25. In response to Bell's comments that adopting changes during the licence term undermines confidence in the auction process and creates uncertainty in the market, Industry Canada notes that the Minister has the authority to change conditions of licence at any time, but does not do so without careful consideration and consulting stakeholders as appropriate. As such, the consultation set out in DGSO-001-12 outlined proposed changes and provided an opportunity to all stakeholders to offer input.
26. The consultation paper proposed that extending the in-territory roaming provisions would provide additional time to new entrants in order to build out their own networks, while maintaining service where they had not yet deployed within their licensed areas, thereby minimizing the potential impact on their customers. It was also noted that applying this requirement to all licensees would benefit all parties where they lack adequate coverage.
27. These changes, including removing the distinction between in-territory and out-of-territory roaming, were proposed to support competition. Therefore, implementing a delay or requiring a certain level of service prior to having access to mandated roaming, as suggested by some respondents, could result in significant delays in accessing LTE networks for consumers. It is expected that carriers will extend their LTE networks and that licensees providing roaming will be financially compensated through the roaming rates they charge for providing these services.
28. The consultation paper also suggested that extending the current provisions indefinitely would recognize the importance of ongoing national coverage, while relying on market forces and the higher costs associated with reliance on roaming to ensure that it is more profitable for carriers to continue to build out where economically feasible. Extending roaming provisions indefinitely would also result in greater certainty for licensees.

29. Industry Canada notes that the provisions will apply for as long as the condition of licence is in force; therefore, inclusion of the term “indefinitely” is not considered necessary. Furthermore, it is noted that the requirement for technical feasibility is already included in the subsequent section of the conditions of licence. The duration of each roaming agreement, as well as the terms contained therein, are to be negotiated between the parties with recourse to arbitration.

30. Regarding SaskTel’s proposal to include a new “use it or share it” condition of licence, it is noted that the capacity concerns raised by SaskTel, should these occur, could be mitigated in numerous other ways that rely more strongly on market forces, such as developing agreements with other licensees or using frequencies in other spectrum bands to increase network capacity. Furthermore, it is noted that where roaming traffic is high, there will be commensurate revenues, and that where costs are higher (for example, in remote areas), commercial terms may be different.

31. However, with respect to access to unused spectrum generally, as announced in SMSE-002-12 — *Policy and Technical Framework Mobile Broadband Services MBS – 700 MHz Band and Broadband Radio Service (BRS) – 2500 MHz Bands*, Industry Canada intends to undertake a review of the *Policy for the Provision of Cellular Services by New Parties (RP-19)*. RP-19 allows third parties to apply to use spectrum in certain geographic areas where services are not being offered by the current licensee.

32. MBS and BRS licensees are expected to offer services similar to those provided by Cellular, PCS and AWS licensees. Broadening the scope of mandatory roaming to include MBS and BRS licensees would provide consistency across similar licences. It is expected that MBS and BRS licensees will develop networks at varying rates, and by broadening the roaming requirement to include these bands, advanced mobile services will be offered more widely, regardless of the customer’s service provider.

33. To reflect the expanded scope of mandatory roaming, which will apply to carriers across all their licensed service areas, the following modification will be applied to the conditions of licence:

“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 (Host Network) ~~when out of range of the Home Network~~, wherever technically feasible.”

34. This change provides the opportunity for operators to negotiate access to the best possible geographic coverage of roaming for their customers at a quality and at a level of service comparable to the Home Network, regardless of the spectrum band or underlying network technology used.

35. While this change increases the possible scope of the condition, it is in the licensees’ best interest to minimize their customers’ roaming traffic.

36. While some public safety agencies raised issues surrounding roaming in the 700 MHz MBS spectrum band, Industry Canada has not yet initiated detailed consultations to establish the technical and licensing framework for 700 MHz spectrum designated for public safety broadband use. As such, these comments are premature and spectrum designated for public safety use is not presently within the scope of this condition.

37. Given the ongoing evolution in mobile broadband services, and in order to continue to advance the policy objectives of the tower sharing and roaming policy, Industry Canada will closely monitor the effectiveness of the policy. Further changes or adjustments to the roaming provisions will be considered, and/or additional action will be taken as necessary.

Decision

A-1: The conditions of licence for mandatory roaming will be modified as follows:

The conditions of licence described below will apply to all Licensees in the Cellular, Personal Communications Services (PCS), Advanced Wireless Services (AWS), Mobile Broadband Service (MBS) and Broadband Radio Service (BRS) bands.

The Licensee must provide automatic digital roaming (roaming) by way of Roaming Agreement(s) on all of its networks in the Cellular, PCS, AWS, MBS and BRS bands in all of its licensed service areas to any other Licensee in these bands, including a provisional licence winner in accordance with a licensing process in these bands (A Requesting Operator).

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 (Host Network), wherever technically feasible.

5.2 Seamless Communications Hand-off¹

38. In the consultation, Industry Canada indicated that it did not intend to change the provision with respect to seamless communications hand-off, described in the Conditions of Licence for Mandatory Roaming:

“Roaming does not require communication hand-off between home and host networks such that there is no interruption of communications in progress.”

Summary of Comments

39. Rogers, Bell, TELUS and SaskTel supported Industry Canada’s proposal, whereas others — Public Mobile, Eastlink, Shaw and WIND — suggested that Industry Canada should change the requirement to mandate seamless communications hand-off.

40. Those which supported no change to the seamless hand-off requirement indicated that it is technically complex, not always feasible and costly to implement, due to the continuous modifications that would be required as carriers expand their networks. Rogers noted that the parties which would like a reconsideration of the seamless hand-off requirement have not provided any evidence that it is technically feasible in the context of domestic roaming. Bell and TELUS agreed.

¹ Various terms are used in other jurisdictions to describe the ability to provide seamless communications hand-off.

41. According to WIND, incumbent claims regarding costs and technical feasibility were overstated. Shaw noted that unless seamless hand-off is mandated, incumbents “will refuse to supply this capability and thereby preserve a fundamental competitive disadvantage for competitors.”

42. Mobilicity and Eastlink suggested that if seamless hand-off is technically and economically feasible between parties, it should be negotiated in good faith. Both respondents suggested that Industry Canada should encourage incumbents to, at a minimum, assess the technical feasibility and the cost of seamless hand-off.

Discussion

43. As discussed in the consultation, Industry Canada is not aware of any other country that mandates seamless communications hand-off and although it exists between carriers in certain areas, it is not a standard term in roaming agreements or technically essential for the implementation of a roaming agreement.

44. While Industry Canada continues to encourage that seamless hand-off be negotiated between parties, mandating these types of arrangements is not considered necessary for the advancement of Industry Canada’s stated policy objectives.

Decision

<p>A-2: Consistent with the proposal, Industry Canada is not implementing changes to conditions of licence for mandatory roaming with respect to seamless communications hand-off.</p>

5.3 Responding to Requests for Information

45. Industry Canada proposed to modify the mandatory roaming conditions of licence specifying that the Licensee must respond to a request for preliminary information by a Requesting Operator within two weeks.

46. The time frame of “within two weeks” was applied to the mandatory tower sharing framework in 2009 as part of GL-06 at the request of stakeholders in order to improve clarity, and has now been proposed for the mandatory roaming conditions of licence in order to establish the same level of clarity for the negotiation of roaming agreements.

Summary of Comments

47. The majority of respondents supported Industry Canada’s proposal to specify the response time to “within two weeks,” noting that it is a reasonable time frame when the information is readily available and also that it could reduce potential delays. SaskTel disagreed with the proposed change, suggesting instead a four-week time frame.

48. Mobilicity suggested that the two-week time frame also apply to any request for additional technical information, (not only the preliminary information), in order to assist the development of a roaming proposal.

Discussion

49. As noted above, the proposed edit was suggested in order to provide the same level of clarity for roaming negotiations as for tower sharing. There was broad support for this proposal, and Industry Canada reminds parties that timelines can be adjusted if both parties agree.

50. In regards to comments suggesting that the two-week response time apply to all requests for technical information, it is noted that not all steps in the process have set timelines as it is considered that this would be overly restrictive. However, Licensees are reminded that they can initiate binding arbitration if an agreement has not been reached within the time frames described in the conditions of licence.

Decision

A-3 Consistent with the proposal, the conditions of licence for mandatory roaming will be modified as follows:

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 a preliminary information package (PIP) to the Requesting Operator that includes preliminary technical information, such as technical data, engineering information, network requirements and other information relevant to formulating a Roaming Proposal.

5.4 Roaming Rates and Technical Feasibility

51. No changes were proposed to the text regarding roaming rates or technical feasibility.

52. Comments were received regarding roaming rates, and these are addressed in Section 7.3. No comments were received suggesting changes to the wording of the section on technical feasibility.

5.5 Good Faith Negotiations

53. The conditions of licence state that:

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

54. No changes were proposed to this text.

Summary of Comments

55. While some parties (Bell, Rogers, TELUS and Shaw) supported Industry Canada's proposal to not change the wording on negotiating roaming agreements in good faith, others suggested some changes.

56. WIND indicated that the wording of the condition is insufficient, given the unequal bargaining power of parties and one-sided time pressures.

57. Similarly, Mobilicity noted that there are significant imbalances in negotiating power between parties. It suggested that Industry Canada set out clear and explicit guidelines where ambiguities exist or multiple interpretations can be made. It also suggested that the requirement to act in good faith should be extended beyond the negotiation stage to also include both the performance and the implementation of roaming (such as planning, testing and implementation).

Discussion

58. The conditions of licence outline the timelines for particular steps of the process to develop a roaming agreement while clearly describing Industry Canada's expectations with respect to good faith negotiations. Decision A-3 has provided additional direction for parties in this regard.

59. Industry Canada does not consider it necessary to extend the obligation to act in good faith beyond the negotiations of the agreement, because once a commercial agreement is reached, contract law is used to enforce terms agreed to between the parties. Licensees may choose to include specific clauses in their agreements in order to address any issues that they anticipate encountering during the terms of their contracts.

60. As described in the conditions of licence, if an agreement cannot be reached within the stipulated timelines, the matter can be addressed through arbitration in accordance with *Industry Canada's Arbitration Rules and Procedures*.

Decision

<p>A-4 Consistent with the proposal, Industry Canada is not making any changes to the text in the conditions of licence for mandatory roaming with respect to good faith negotiations.</p>

5.6 Timelines for Roaming Negotiations

61. In the consultation, Industry Canada noted that given the experience many stakeholders have with the negotiation process, 60 days should now be sufficient to determine whether a negotiated settlement is likely or whether arbitration will be required. Industry Canada therefore proposed to modify the conditions of licence to allow arbitration to be initiated after 60 days instead of the currently specified 90 days, noting that parties may agree to continue negotiations beyond these timelines.

Summary of Comments

62. Rogers supported Industry Canada's proposal and stated that where parties are negotiating in good faith, they will usually agree to continue negotiations until an agreement is successfully concluded.

Changing the timeline to 60 days would allow Requesting Operators to refer matters to arbitration much earlier if required.

63. Mobilicity, Shaw, TerreStar, SSI Micro and Public Mobile also supported the proposed change. Eastlink agreed, but suggested that the change would do little to address timing and cost issues associated with arbitration.

64. TELUS, Bell and SaskTel did not support the change, noting negotiations are complex and can often take longer than 60 days. SaskTel suggested that unrealistic deadlines may lead to arbitration becoming the default position, which would increase costs for all parties and also increase the total time required for agreements to be reached.

Discussion

65. Industry Canada notes that, in practice, it may take longer than 60 days to reach a roaming agreement in certain cases. However, it is anticipated that reducing the amount of time before arbitration can be triggered, along with reduced arbitration timelines (see Part C), could further expedite roaming agreements without negatively affecting negotiations as parties can still agree to extend their negotiations.

Decision

A-5 Consistent with the proposal, Industry Canada is amending the timelines in the conditions of licence for mandatory roaming as follows:

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.

5.7 Other Issues Relating to Mandatory Roaming

66. In the consultation paper, stakeholders were invited to submit recommendations for other changes that could further increase the effectiveness of mandatory roaming.

Exclusivity clauses

67. Shaw, WIND and Eastlink urged Industry Canada not to allow exclusivity clauses in roaming agreements. Shaw argued that incumbents often require that new entrants roam exclusively on a particular network, and that this requirement is limiting for new entrants from a commercial perspective.

68. Eastlink suggested that where exclusivity clauses currently exist, carriers should be required to waive them.
69. TELUS and Rogers stated that such clauses should not be prohibited outright, and that parties should be allowed to negotiate their own agreements and seek either exclusive or non-exclusive arrangements as they see fit. It was argued that exclusive roaming agreements normally provide a greater volume of roaming minutes and allow parties to agree upon reduced roaming rates and terms that mutually benefit both parties.
70. Exclusivity arrangements can be a commercial term negotiated into a roaming agreement. As stated by Rogers and TELUS, parties may use these clauses to negotiate preferable rates or other terms.
71. Depending on the context of an agreement, exclusivity may or may not be beneficial to either or both parties. This issue may be taken into consideration by the parties or by an arbitrator, if necessary, to determine if it is reasonable given the context of the agreement in its entirety. Parties can be directed to pursue this issue through arbitration, as is the case for all other commercial terms of their negotiations, if they are unable to reach an agreement.
72. Flexibility with respect to renegotiation of terms prior to the expiry of the Roaming Agreements is also considered in the context of the overall agreement. Industry Canada does not intend to intervene in order to force renegotiation of Roaming Agreements in this respect.
73. In consideration of the above discussion, changes will not be made to specifically address exclusivity clauses.

Standard Roaming Agreements

74. WIND suggested that the conditions of licence should be reinforced with a standard roaming agreement and that exceptions or deviations from this model could be reviewed by the CRTC, as is the case with wireline agreements.
75. In addition, Eastlink suggested that all roaming agreements in Canada should be required to be at least as favourable as the GSMA standard roaming agreements, though licensees would be free to mutually negotiate additional agreeable terms.
76. Industry Canada will not be imposing a standard agreement given that the conditions of licence are not meant to impose specific terms on licensees, but rather, to set out a framework for negotiation with recourse to arbitration. Arbitration is available, if necessary, as a way to assist in finalizing agreements based on market terms and rates.

Part B

6. Mandatory Tower and Site Sharing

6.1 Application of the Conditions of Licence

77. Currently, the conditions apply to radiocommunication carriers, which are a subset of service providers. Industry Canada proposed to expand the application of the conditions of licence to all radiocommunication service providers. Both of these terms are defined in the *Radiocommunication Regulations*.²

Summary of Comments

78. Respondents were divided on this issue. SSi, MTS, Mobilicity, Shaw, Public Mobile, WIND, Terrestar, Rogers and Bell supported the proposal, whereas the BTCC, TELUS, Videotron, SaskTel and seven public safety entities³ were opposed.

79. Many of those which supported the proposal indicated that it made sense to have more towers available for sharing and that the proposal would promote the tower and site sharing policy objectives.

80. All of the public safety entities that provided comments in the consultation expressed concern with the proposal. In particular, they highlighted security risks associated with their towers' information being made public and with granting access to their protected sites to multiple licensees' subcontractors.

81. Other parties that were opposed to the proposal expressed concern that requiring carriers to share their towers with all service providers could reduce or eliminate opportunities for carriers to share certain towers or sites.

82. No comments were received from those radiocommunication service providers that would be newly impacted by the proposed change.⁴

Discussion

83. The mandatory tower sharing condition of licence was originally applied to radiocommunication carriers in order to promote competition in the commercial mobile market while also reducing tower proliferation.

² The *Radiocommunication Regulations* (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-96-484/>) define a radiocommunication carrier as "a person who operates an interconnected radio-based transmission facility used by that person or another person to provide radiocommunication services for compensation," whereas a radiocommunication service provider is defined as "a person, including a radiocommunication carrier, who operates radio apparatus used by that person or another person to provide radiocommunication services for compensation."

³ The seven public safety entities who were opposed to the proposal included E-Comm 9-1-1, the Province of Nova Scotia (Public Safety & Field Communications Office of Department of Transportation & Infrastructure Renewal), the Province of Ontario, Public Safety Canada and the Centre for Security Science, the Royal Canadian Mounted Police and York Regional Police.

⁴ These licensees generally offer dispatch or 2-way radio services and usually require fewer towers than carriers.

84. Most issues with tower sharing have been raised by carriers — in particular, by AWS new entrants. No comments were received from the subset of radiocommunication service providers that would be newly impacted by the proposed expansion of this condition of licence. In addition, the majority of towers subject to heightened public concern continue to be those used by carriers to provide commercial wireless telecommunications services.

85. Because the majority of broadcasters and public safety entities are not service providers or carriers, the mandatory tower sharing provisions of CPC-2-0-17 would generally not apply to them under the existing condition or the proposed revision. However, stakeholders should note that before building a new antenna-supporting structure, Industry Canada requires that all proponents first consider sharing, modifying or replacing an existing antenna system as outlined in the tower siting policy, CPC-2-0-03, *Radiocommunication and Broadcasting Antenna Systems*.⁵ CPC-2-0-03, which applies to all authorized users, directs owners and operators of existing antenna systems to respond to a request to share in a timely fashion and to negotiate in good faith to facilitate sharing where feasible.

86. In consideration of the above, expanding mandatory tower and site sharing to all service providers is unlikely to have a significant impact on advancing the policy objectives. Therefore, an expansion to cover all service providers will not be implemented.

87. However, a minor change is being made. The term “radiocommunication carrier” is being replaced with “telecommunications common carrier” to ensure consistency with the *Telecommunications Act* and related regulations. Industry Canada notes that both terms have a similar definition.

⁵ See CPC-2-0-03, *Radiocommunication and Broadcasting Antenna Systems* (<http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08777.html>).

Decision

B-1 The conditions of licence for mandatory tower sharing will be modified as follows:

The mandatory tower and site sharing conditions of licence will apply to all Licensees in all bands who are telecommunications common carriers as defined in the Telecommunications Act.

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 telecommunications common 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.*

The Licensee must share its Sites containing antenna-supporting structures, where technically feasible, when requested to do so by any other telecommunications common carrier as defined in the Telecommunications Act or by a provisional licence winner who will be operating as a telecommunications common carrier in accordance with a licensing process (“A Requesting Operator”).

6.2 Increased Monitoring and Accountability of the Tower Sharing Conditions of Licence

88. In Section 5.8 of the consultation paper, Industry Canada proposed the establishment of semi-annual reporting on the tower sharing agreements that had been reached and on the progress of ongoing negotiations. This reporting, using a standardized format, would permit Industry Canada to accurately monitor and assess the effectiveness of tower sharing negotiations.

89. Industry Canada also proposed, in Section 5.6 of the consultation paper, that all licensees be required to make detailed tower information available so that those looking to share could quickly find a tower. In addition to specific details regarding the tower (such as location, type and height, etc.), the proposed data elements included a tower loading profile indicating spaces reserved for imminent future use as well as the date each space was identified as such.

Summary of Comments

90. SSi, Mobilicity, Shaw, Videotron, Public Mobile, WIND, Terrestar and Rogers supported the proposal for semi-annual reporting. Many noted that the proposal would add an element of accountability to the process and would be a useful tool for Industry Canada to encourage ongoing compliance of the conditions of licence. WIND and Videotron suggested that the proposed list of data

elements would not be a significant burden, as many licensees already track this information. Shaw wanted assurances that the information collected would not be made public, given that it contains competitively sensitive information. In contrast, Rogers suggested that it should be made public so that other parties could be aware of the licensees that are not complying with the conditions of licence.

91. Public Mobile suggested that rate data be added to the reporting requirement, whereas Mobilicity and WIND requested that future use information be collected — specifically, all future use reservation dates as well as confirmation of whether the equipment was, in fact, installed by the appropriate date. Both Public Mobile and Mobilicity suggested that the timelines for future use reservations were too long. Rogers, however, disagreed and noted that a period of less than 18 months is not consistent with capital planning and deployment.

92. SaskTel, TELUS, MTS, Eastlink and Bell were opposed to the proposed semi-annual report, citing concerns regarding the sensitive nature of the information, the increased administrative requirements and the limited commensurate benefits. In addition, some respondents indicated that they do not, and cannot, track all of the information proposed. TELUS asked for six months' notice prior to the requirement taking effect. A number of respondents also requested further guidance on standardized terms.

93. Views were mixed on the frequency for the submission of the report, ranging from quarterly to annually.

94. In response to Industry Canada's proposal that all licensees make detailed tower information available, some respondents were generally supportive but many raised concerns. Public Mobile, Mobilicity and WIND suggested that the proposal did not include enough information to be collected. TELUS, Rogers, Bell, Videotron and SaskTel suggested reducing the required elements, as they believe some information is commercially sensitive and confidential (such as future use reservations and third party leases). Public safety entities were concerned by the potential security risk a database could introduce.⁶

95. MTS, SaskTel, Rogers, TELUS and Eastlink commented that much of the tower information that is proposed to be captured in the database is not currently maintained by all of the licensees. WIND, however, suggested that collecting less data than was included in the proposal would not be as useful, nor would it remove the need to submit a preliminary information package (PIP) request.

96. TELUS, Rogers, Eastlink and SaskTel were opposed to making information available, arguing that doing so for all their towers and updating this information monthly would be onerous and expensive for those with hundreds of sites. It was also noted that this initiative would have only a limited effect on response times, and that many sites never receive a request for sharing.

Discussion

97. The consultation noted that requiring licensees to report on certain key data points could allow Industry Canada to monitor negotiations and may encourage efficiencies in the process, as licensees would be tracking the same information and reporting in a standardized format. Industry Canada has

⁶ As described in Section 6.1, the majority of public safety entities are not licensed as carriers; therefore, this condition of licence would generally not apply to those licensees.

requested similar data in the past. This data was valuable in developing proposals to improve the current process. The consultation proposed that carriers be required to submit the following data elements:

- 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; and
- the date that an agreement was reached or the date and reason why the request was withdrawn/denied.

98. By standardizing and collecting data on a regular basis, Industry Canada will be in a position to assess the ongoing effectiveness of the tower sharing policy and to determine whether tower sharing negotiations continue to improve as well as whether the intended policy objectives continue to be advanced. Based on this information, adjustments can be considered in the future if necessary. Therefore, consistent with the proposed elements indicated above, licensees will be required to regularly report on specific data elements. A standardized template, along with instructions, will be sent to licensees shortly after the release of this decision paper. These documents will also be posted on Industry Canada's Spectrum Management and Telecommunications website.⁷ Regular reports will initially be required on a semi-annual basis. A report will not be required if there has been no change to the requested data since the previous reporting period. Industry Canada will notify licensees in advance of any changes to these reporting requirements.

99. With respect to comments raised regarding future use reservations, there is still no consensus as to the time frame for imminent future use, and no new evidence was provided as to why the current timelines should be changed.⁸ The current timelines will therefore remain unchanged.

100. However, in order to address concerns raised regarding future use reservations and to increase licensees' accountability, a new requirement is being introduced. Effective immediately, each time a licensee's response to a Requesting Operator includes a reservation for imminent future use, the licensee will be required to submit a copy of the PIP to Industry Canada. This requirement will also apply to any subsequent modifications made during the negotiation process. Not only will this new requirement improve licensees' accountability to accurately identify future use reservations, but it will also provide Industry Canada with the ability to review relevant material should concerns be raised. It is not anticipated that this change will significantly increase the administrative requirement on licensees, given that the information is already being collected and provided to Requesting Operators.

101. At this time, making information public regarding future use is not considered necessary in order to advance the stated policy objectives; however, this decision may be revisited if Industry Canada determines such action is needed to increase the effectiveness of the policy.

⁷ Refer to the Framework for Mandatory Roaming and Antenna Tower and Site Sharing webpage (http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/h_sf10290.html).

⁸ The current timelines for future use reservations were the subject of much discussion when the conditions of licence were first being developed.

102. The data collected by Industry Canada thus far shows that the timelines continue to improve and that the number of agreements signed is also increasing. In addition, internal processes have been implemented, and those seeking to share have begun prioritizing requests. Furthermore, it is recognized that some information included in the database, at the network level, could disclose commercially sensitive information regarding deployment and network upgrades. As a result, the proposal to make information available on all towers will not be implemented at this time; however, carriers will be required to report on the number of towers and sites in their network and the degree of sharing in their network. As is the case with the reporting on tower sharing requests noted above, a standardized template, along with instructions, will be sent to licensees shortly after the release of this decision paper. The documents will also be posted on Industry Canada's Spectrum Management and Telecommunications website.⁹ This information will provide Industry Canada with valuable data to assess whether tower sharing continues to improve.

103. The mandatory tower and site sharing requirements, in conjunction with the requirements to consider existing infrastructure as set out in CPC-2-0-03, are expected to continue to contribute to significant levels of sharing. Industry Canada will reconsider the implementation of a tower sharing database and pursue additional action if acceptable improvements to the levels and time frames for sharing do not continue to be shown.

Decision

B-2 The following text will be added to the conditions of licence for mandatory tower sharing:

- The Licensee must submit regular reports to Industry Canada, upon request, on the status of antenna tower and site sharing negotiations and on the number of sites and degree of sharing in their network. Reports will initially be required on a semi-annual basis detailing the preceding six-month period. Licensees must submit reports to Industry Canada using a standardized template, available on Industry Canada's Spectrum Management and Telecommunications website. Reports will not be required if there has been no change to the requested data since the previous reporting period. The reports must be sent via email to rts-ipp@ic.gc.ca.

- The Licensee must provide Industry Canada with a copy of any PIP that includes reservations for imminent future use. A copy of the initial PIP, as well as any subsequent changes made to these reservations during the negotiations, must be submitted to Industry Canada via email at rts-ipp@ic.gc.ca.

6.3 Responding to Requests for Information

104. The consultation proposed to incorporate text that clarifies the phrase "in a timely manner" directly from GL-06 into the conditions of licence in order to indicate that licensees are required to respond to a tower sharing request within two weeks of receiving it. Additional text proposed to be incorporated from GL-06 would specify 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."

⁹ Refer to the Framework for Mandatory Roaming and Antenna Tower and Site Sharing webpage (http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/h_sf10290.html).

Summary of Comments

105. The majority of respondents that commented on this issue supported the proposal (SSi, MTS, Mobicity, Shaw, Public Mobile, WIND, Terrestar, Rogers, Videotron and Bell), whereas SaskTel and TELUS disagreed.

106. Those that supported the proposal agreed that clarifying the text could speed up the process and would be consistent with Industry Canada's tower sharing objectives. MTS generally supported the two-week response time; however, it was concerned that requests could be delayed if sites are not correctly identified.

107. SaskTel opposed the proposal, suggesting instead that four weeks would be a more appropriate time frame in which to provide a PIP response. However, SaskTel noted that it has only received one such request since the condition of licence came into effect and that the request was subsequently withdrawn.

108. TELUS raised concerns about meeting the timelines when a large number of requests are received. In these situations, TELUS requests that parties agree on prioritized sites and that the highest-priority sites could be responded to within the required two-week response time. Bell supported TELUS' comments. Public Mobile also supported the emphasis that TELUS placed on prioritization; however, it noted that this is something that carriers should already be doing to facilitate sharing.

Discussion

109. The proposals described above incorporate decisions from GL-06 directly into the conditions of licence in order to clarify the process and to have relevant decisions and guidance contained within one document going forward. The proposal did not introduce any new requirements, and most respondents supported the clarification.

110. As noted above, some concerns were raised regarding prioritization. Some parties have already addressed the issue of multiple requests on their own by prioritizing sites, and others are encouraged to do so. Regarding the concerns raised by MTS in relation to the identification of sites, Industry Canada notes that it is in the best interest of both parties to quickly and accurately identify the site under consideration, and that a Responding Licensee should immediately inform a Requesting Operator if it is unable to identify the site requested by the information submitted.

Decision

B-3 The conditions of licence for mandatory tower sharing will be modified as follows:

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 a preliminary information package (PIP) from a Requesting Operator as follows:*

*- The following information must be included in the PIP response where it is available to the Responding Licensee: the unique sharing request identifier assigned by the Requesting Operator; tower loading profile, including imminent future use** and the summary of existing leases; contracted third party lease arrangement contacts; compound layout; tower foundation design and Transport Canada and/or NAV Canada form(s); as well as site access information, such as contact, procedure and any specific restriction related to a site visit. The PIP response must also include other information relating to the site relevant to formulating a Proposal to Share that the Licensee has in its possession or control.*

- 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 PIP request will be considered complete if it contains, at a minimum, a unique sharing request identifier assigned by the Requesting Operator and two of the following: (1) the Licensee's site reference number, (2) the site address or (3) geographical coordinates. Some of this information may be available from Industry Canada's Spectrum Direct website (<http://www.ic.gc.ca/eic/site/sd-sd.nsf/eng/Home>). Information may also be obtained from the Licensee.*

*** See Part A, Section 2.2 of CPC-2-0-17 for specifics regarding this provision.*

6.4 Tower Sharing Rates and Technical Feasibility

111. No changes were proposed to the text regarding tower sharing rates or technical feasibility.

112. Comments regarding tower sharing rates were received, which are addressed in Section 7.3. No comments were received suggesting changes to the wording of the section on technical feasibility.

6.5 Good Faith Negotiations

113. In the consultation, Industry Canada proposed an editorial change to incorporate text from the background section of CPC-2-0-17 directly into the conditions of licence.

“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.”

114. No new text was proposed.

Summary of Comments

115. Respondents did not raise significant concerns regarding this section. Mobilicity did, however, note that the requirement for good faith negotiations should not apply solely to concluding a Site Sharing Agreement in a timely manner, but also to any additional matters associated with the performance obligations under the conditions of licence once the agreement is in place.

Discussion

116. The proposal that expands upon the phrase “good faith negotiations” is editorial in nature and does not introduce any new requirements.

117. With respect to Mobilicity’s comment, Industry Canada finds that the existing conditions of licence clearly state that “Licensees must negotiate with a Requesting Operator in good faith, with a view to concluding a Site Sharing Agreement in a timely manner.” Once a commercial agreement is reached, it is expected that contractual obligations will be enforced between the parties. Licensees may choose to include specific clauses in their agreements to address any issues that they anticipate encountering during the term of their contract.

Decision

B-4 The conditions of licence for mandatory tower sharing will be modified 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. In order to be considered as negotiating in good faith, Responding Licensees must offer access to ancillary equipment and services at commercial rates that are reasonably comparable to rates currently charged to others for similar access.

6.6 Timelines for Tower Sharing Negotiations

118. Given the experience that many stakeholders have with the negotiation process, Industry Canada noted in the consultation that 60 days should now be sufficient to determine whether a negotiated settlement is likely or whether arbitration will be required. Industry Canada therefore proposed to modify the conditions of licence to allow arbitration to be initiated after 60 days instead of the currently specified 90 days, noting that parties may agree to continue negotiations beyond these timelines.

Summary of Comments

119. Most respondents supported the revised timeline; however, SaskTel and MTS were opposed and Rogers proposed slight modifications to certain steps in the timelines. Specifically, Rogers suggested extending the deadline for responses to a Proposal to Share from 30 days to 45 days, but retaining the 60-day timeline to complete the negotiation. According to Rogers, this extension would give Responding Licensees additional time, whereas Requesting Operators can still move to arbitration after a total of 60 days if they feel an agreement is not close.

120. SaskTel noted that a 60-day deadline is only reasonable to meet with licensees that it already has another arrangement with, and 90 days is needed for a new party. MTS is opposed to having a shorter timeline because, in its experience, proposals are often incomplete. MTS also suggested revising the current wording to specifically list, within the conditions of licence, all items that should be required in a Proposal to Share before it is considered complete: all anticipated hydro, shelter and fibre/cabling requirements. In the reply comments, TELUS agreed with MTS.

Discussion

121. Industry Canada notes that, in practice, it may take longer than 60 days to reach a tower sharing agreement in certain cases. It is anticipated that reducing the amount of time before arbitration can be triggered from 90 to 60 days, along with reducing timelines for the arbitration process itself (see Part C), could further expedite tower sharing agreements without negatively affecting negotiations, as parties are likely to agree to extend their negotiations if they believe progress is being made and some additional time is required to reach an agreement.

122. While Rogers' suggested edit would not increase the proposed timelines, it may reduce the amount of time that the Requesting Operator has to consider the Offer. Rogers' proposal will therefore not be implemented.

Decision

B-5 The conditions of licence for mandatory tower sharing will be modified as follows:

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.

6.7 Outstanding Offers to Share

123. In the consultation, Industry Canada proposed a new condition of licence to address the issue of outstanding Offers to Share as follows:

“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.”

Summary of Comments

124. The majority of respondents supported the proposal; however, WIND requested assurances that the proposed wording not be interpreted as an automatic acceptance of the Offer by the Requesting Operator.

125. Eastlink suggested that this issue does not require Industry Canada's intervention and that it should be left up to licensees to enforce.

Discussion

126. The data received from licensees during the initial phase of the review supports claims that many Offers to Share remain outstanding for an extended period, as a large percentage of all outstanding offers had been pending for more than six months.

127. Outstanding offers can delay negotiations with other parties, as licensees may hold space on the tower unnecessarily. These outstanding offers may also be limiting the effectiveness of the framework. As such, allowing the Responding Licensees to cancel outstanding offers could improve the effectiveness of the framework by encouraging continued dialogue and/or by releasing tower space for other parties.

128. The new condition of licence was proposed in order to improve the efficiency of the tower sharing process by not having spaces on a tower unnecessarily reserved for extended periods of time. This condition only requires a Requesting Operator to confirm its continued interest in a site within 60 days of receiving an Offer to Share so as not to unnecessarily block access by another party.

129. Text will be added to CPC-2-0-17 to indicate that a response may simply be an acknowledgement by the Requesting Operator that additional time is required to consider the Offer. It does not require that the Offer be accepted within 60 days.

Decision

B-6 The following text will be added to the conditions of licence for mandatory tower 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.

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

130. Stakeholders were invited to submit other suggestions for changes that could help further facilitate tower and site sharing. A number of these issues were beyond the scope of this consultation, whereas others dealt with specific operational concerns between two licensees — issues which are already adequately addressed in the conditions of licence. Parties are encouraged to contact Industry Canada directly for clarification on such issues.

Processing Fees

131. In the comments received, Rogers requested that tower owners be permitted to charge processing fees in order to discourage frivolous requests.

132. In 2009, Industry Canada addressed the issue of whether a licensee could require a “one-time document preparation charge” as per the conditions of licence. At that time, Industry Canada responded to all AWS licensees, highlighting that the default expectation of the conditions of licence is that parties are responsible for their own costs at each step of the process. Therefore, tower owners may not charge fees for the application or processing prior to the acceptance of an Offer to Share.

Part C

7. Arbitration

7.1 Arbitration Timelines

133. CPC-2-0-18 outlines approximate timelines for a variety of steps in the procedures so that arbitration does not unnecessarily delay a final agreement. In total, up to 98 days is allotted to complete an oral hearing, and up to 80 days is allotted for a written hearing.

134. In the consultation, Industry Canada proposed to reduce the total approximate time required to complete both types of hearings: from up to 98 days to up to 85 days for an oral hearing, and from up to 80 days to up to 65 days for a written hearing.

Table 1:

Proposed Revised Arbitration Timelines	Approximate Timelines (calendar days)	
	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

Summary of Comments

135. The majority of the respondents that commented on this issue were in favour of the proposed changes to reduce the timelines, whereas a few respondents were opposed.

136. WIND supported the proposal; however, it requested a more detailed breakdown of how the timeline reductions will affect the individual arbitration steps. It noted that the proposed revised timelines only provided totals, without any further breakdown, while the Arbitration Rules originally specified timelines for sub-steps (e.g. three business days to obtain the list from ADR Chambers, another seven days to consider the list, etc.).

137. Public Mobile and Videotron both agreed with the proposal, but indicated that the timelines could be reduced even further.

138. TELUS and Bell did not support reducing the timelines, suggesting that the proposal is based on comments from licensees who have yet to test the current process. TELUS also believes that the timelines are already tight given that these are such complex issues. SaskTel, which noted it does not have experience with the arbitration process, believes that the timeline reductions might be aggressive.

139. In its reply comments, Videotron noted that the Arbitrator would still have the power to extend deadlines, if necessary, and cited the large number of stakeholders that supported the reduction in timelines as justification for why it is needed.

Discussion

140. The proposed changes to the approximate timelines set out in the Arbitration Rules are intended to improve the effectiveness of the arbitration process. Industry Canada continues to believe that the proposed timelines would still allow sufficient time for the Arbitrator to make a well-considered ruling. Furthermore, the key reduction is in the appointment of the tribunal, hence reduced time for the actual process is minimal.

141. As noted by WIND in its comments, Industry Canada did not provide a breakdown in the consultation of timelines for each sub-step within the process (e.g. obtaining the list of arbitrators, considering the list, selecting an arbitrator). Changes have now been made to the sub-steps and have been broken down as follows:

Table 2:

Appointment of tribunal where no agreement exists	Approximate Timelines	Approximate Timeline
Obtain list from ADR Chambers	3 2 days*	Up to 10 calendar days
Consider list	7 3 days*	
Select Arbitrator	1 day*	
Complete selection of Arbitral Tribunal	2 1 day*	

* Denotes business days.

142. Licensees are reminded that the timelines outlined in the Arbitration Rules in CPC-2-0-18 are all approximate. Each step of the process should generally be completed within the totals specified. Furthermore, at the discretion of the Arbitrator, adjustments can be made depending on the specific

circumstances 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.”¹⁰

Decision

C-1 The approximate timelines in the Arbitration Rules will be reduced as per Tables 1 and 2 above: up to 85 days for oral hearings and up to 65 days for written hearings. The appropriate changes will also be made to Rules 9.1, 9.3, 11.5 and 11.6.

7.2 Arbitration Rules

143. The consultation proposed the following changes to the Arbitration Rules:

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.”

Summary of Comments

Rule 2.1 – Consolidating Disputes

144. All respondents that commented on this issue were in favour of the proposed change.

145. Rogers, Mobilicity, Eastlink, Videotron, MTS and TELUS requested that Industry Canada provide further clarification regarding the conditions under which disputes involving more than one agreement would be consolidated.

Rule 11.8 – Provide Information on Comparable Rates and Terms

146. Most respondents supported the proposed clarification.

147. However, some respondents (Bell and TELUS) raised concerns about the confidential nature of the information. Others (WIND, Eastlink, Videotron and Rogers) noted that the information is critical to the process and supported the release of some or all of the information to parties in the proceeding.

¹⁰ See *Industry Canada’s Arbitration Rules and Procedures* (<http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09079.html>).

New Rule 12.5 – No Binding Precedent

148. The majority of respondents supported this proposal, but some clarification was requested as to whether or not past arbitrations will become available for parties to use as guidelines or comparables.

149. TELUS opposed the proposed text, suggesting that this text would undermine Rule 6.5 which states that “summaries or extracts from final decisions will be recorded and retained.” TELUS believed it would be inefficient not to use these decisions as binding precedents, as awards can form the basis of agreements for similar future sites with other parties. In the reply comments, Eastlink supported this comment from TELUS.

Discussion

150. The changes proposed in this section do not introduce new requirements; they simply clarify the existing requirements.

151. The majority of respondents supported all three proposals, and Industry Canada notes that the Arbitration Rules provide the Arbitrator with the discretion to address a range of issues and questions that may arise. Although the results are not binding, they may continue to be taken into consideration in another hearing when the Arbitral Tribunal deems it relevant.

Decision

C-2 The Arbitration Rules will be modified as follows:

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. At the discretion of the Arbitral Tribunal, disputes relating to more than one Site Sharing Agreement or Roaming Agreement may be heard together.

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):

While the Arbitral Tribunal may consider a previous award under Rule 6.5, an award does not create a binding precedent under these Rules.

7.3 Rates

152. The consultation did not propose any changes to the conditions of licence that require roaming and tower sharing agreements to be offered at commercial rates that are reasonably comparable to rates currently charged to others for similar access. When parties cannot agree on rates or terms contained in agreements, they have recourse to arbitration.

Summary of Comments

Roaming

153. Rogers, Bell, TELUS and Videotron supported Industry Canada's proposal to maintain the status quo on rates, noting that rate negotiation has been successful given that all new entrants that have launched services have roaming agreements in place. They feel that offering rates lower than what was negotiated would deter new entrants from extending their own networks.

154. Rogers stated that it has entered into a number of one-way domestic agreements with new entrants which demonstrates that roaming is being provided at commercial rates. They further stated that because roaming is to be offered at commercial rates instead of at artificially low rates, licensees have an incentive to invest in and build networks in order to avoid roaming charges.

155. SaskTel asked that Industry Canada clarify that all roaming agreements must take into consideration that the cost of providing service to rural versus urban areas should be different due to the additional cost of serving rural areas. Both SaskTel and MTS believe that higher rates should be charged for in-territory roaming in order to help recover the costs of their infrastructure.

156. WIND, Mobilicity, Public Mobile and Eastlink all emphasised that rate regulation is needed since rates are too high and since there is only one key roaming service provider for most new entrants, due to limitations in technology and coverage.

157. A number of respondents also raised concerns regarding Section 2.4 of the Arbitration Rules:

“In applying the Rules, the Arbitral Tribunal shall have regard to market information and relevant economic data in Canada and may consider market information and relevant economic data in other countries in cases where a domestic market for services and equipment does not exist in Canada.”

158. These respondents argued that the Arbitration Rules should allow the Arbitrator to include all relevant market information and economic data, both in Canada and from other countries, primarily because international evidence can be used as comparables for domestic roaming rates. Other respondents suggested that since domestic market information and data are most relevant, international benchmarks should not be considered.

159. WIND, Eastlink and Public Mobile suggested either that Industry Canada establish rules for wholesale roaming rates or that a request be made to the CRTC in order to establish rate regulation.

160. SaskTel suggested that the CRTC act as an Arbitrator on rates and commercial issues, noting that the CRTC has experience in dealing with high-cost service areas and in conducting transparent public dispute resolutions.

Tower Sharing

161. Public Mobile and WIND both indicated that the rates they are being offered are not commercially reasonable. Public Mobile added that, at the time of the consultation, it was collocated on only two incumbent towers, which it attributes to delays and rates that are “uneconomic” for its

business. WIND noted that although the conditions of licence require that commercial rates be offered, this “continues to be problematic and inconsistent with the costing principles applied to other support structures.”

162. According to WIND, the CRTC should become involved in tower sharing rates. It proposed that Industry Canada “acknowledge that disputes as to rates and conditions for tower sharing can also be dealt with by the CRTC, who maintains concurrent jurisdiction over access to support structures.” Rogers disagreed with WIND, stating in its reply comments that “there is no reason why the CRTC needs to become involved in setting tower sharing rates based on costing models. Carriers, landlords and subtenants have been negotiating and coming to agreement on tower sharing terms for over 25 years. It is clear that the reliance on market-based rates remains prudent and comments to the contrary should be dismissed.”

163. Videotron, Mobilicity, TELUS, Bell, Rogers and SaskTel supported maintaining the status quo on rates. Mobilicity acknowledged that tower sharing rates are less of an issue than roaming rates are, as carriers generally enter into more tower sharing agreements than roaming agreements.

164. TELUS indicated that it disagrees with comments made by WIND, Public Mobile and Eastlink, stating that “all are advocating for rate regulation to some degree, violating the fundamental tenet that mandatory tower and site sharing agreements are to be the product of commercial negotiation, with recourse to arbitration should any disputes arise.” Rogers argued that “there is no basis for any of these complaints or changes. While commercial negotiations have at times been vigorous, tower sharing arrangements have overwhelmingly been successfully negotiated. In fact, other licensees are offered the same basic terms Rogers itself pays when it is the tenant.” Bell was also opposed to rate regulation.

Discussion

165. Industry Canada notes that roaming agreements have been successfully negotiated by licensees since CPC-2-0-17 has been established. Nonetheless, parties continue to have recourse to arbitration during negotiations if disagreements arise regarding rates or commercial terms.

166. A number of respondents suggested that Industry Canada or the CRTC be directly involved in arbitration and rate setting, arguing that rates are unreasonable and that the arbitration process is costly, lengthy and cumbersome. Other respondents called for no changes in this regard, stating that rates and terms should be set commercially based on market forces.

167. The CRTC has the authority to set rates and conditions for the provision of telecommunications services within the jurisdiction of the *Telecommunications Act*. Therefore, the CRTC may consider applications relating to rates and terms for matters such as roaming and tower sharing.

168. In regard to comments related to Rule 2.4, Industry Canada concludes that the Arbitration Rules should not prevent an arbitrator from considering all evidence that the arbitrator believes to be relevant. Accordingly, Industry Canada is amending Rule 2.4 to the following:

“In applying the Rules, the Arbitral Tribunal shall have regard to market information and relevant economic data in Canada and ~~may consider market information and relevant economic data in other countries in cases where a domestic market for services and equipment does not exist in Canada.~~”

Decision

C-3 Industry Canada is not changing the conditions of licence with respect to rates. The CRTC has the authority to set rates and conditions for the provision of telecommunications services within the jurisdiction of the *Telecommunications Act*.

Rule 2.4 of the Arbitration Rules will be revised as follows:

In applying the Rules, the Arbitral Tribunal shall have regard to market information and relevant economic data in Canada and in other countries.

7.4 Other Issues Relating to the Arbitration Process

169. In the consultation paper, stakeholders were invited to submit recommendations for other changes that could further facilitate the arbitration process.

Number of Arbitrators

170. Rule 9.2 currently states that “the Arbitral Tribunal shall consist of one arbitrator unless both Parties agree to a three-arbitrator tribunal or the Appointing Committee, at the request of one of the Parties and after hearing submissions from the Parties determines, in its discretion, that three arbitrators should be appointed as the Arbitral Tribunal.” Bell suggested that this rule should be changed from the current default of one arbitrator to three arbitrators. According to Bell, “a three-member panel, working on the basis of a simple majority, brings a greater scope of experience to the matter and diminishes the risk of an unreasonable final ruling.”

171. This issue was considered during the public consultation process when the Arbitration Rules were initially being drafted. During that consultation process, there was no consensus on this issue. At the time, it was noted that many critical and complex arbitrations are decided by a single arbitrator. There are also significant efficiencies to be gained by using one arbitrator, such as cost savings and ease of scheduling.

172. No compelling argument has been provided to change the current rule. The current default of one arbitrator remains.

Alternate Dispute Resolution Mechanism

173. Eastlink suggested that Industry Canada should establish a dispute resolution mechanism similar to processes established by the CRTC. It argued that this would be a less expensive process and that it would place the responsibility for gathering evidence on the incumbent wireless carrier, which has access to its own agreements and would be better positioned to provide such details.

174. Eastlink also suggested that Industry Canada adopt a provision similar to the Federal Communications Commission’s (FCC) data roaming order, which provided the FCC the authority to require that roaming service providers offer data roaming on their proffered terms during the dispute process, subject to possible true-up once the roaming agreement is in place.

175. Industry Canada notes that the arbitration process already provides opportunities for parties to pursue any other dispute resolution mechanism when both parties agree to do so. It also provides latitude to the arbitrator to pursue other means for an agreement, such as mediation and interim awards, before moving to Final Offer Arbitration. As previously mentioned, Industry Canada does not impose commercial terms on parties.

176. In consideration that these alternate approaches are either already available to parties or do not fit within the approach taken by the conditions of licence, changes will not be made to mandate other dispute resolution mechanisms.