

Data & Audio-Visual Enterprises Wireless Inc.

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March 6, 2009

Radiocommunication and Broadcasting
Regulatory Branch
Industry Canada
300 Slater Street, 15th floor
Ottawa, Ontario
K1A 0C8

Attention: Peter Hill
Director
Spectrum Management Operations

Dear Mr. Hill:

Re: Comments regarding Specific Issues relating to the Application of CPC-2-0-17

1. Thank you for your letter of February 17, 2009 requesting comments related to the application of CPC-2-0-17. Data & Audio-Visual Enterprises Wireless Inc. ("DAVE Wireless") is pleased to submit the following comments on the issues raised by the Department.
2. DAVE Wireless was the winner of some 10 AWS licenses across Canada covering 10 of the 13 largest urban areas in the country, for a total of approximately \$243 million. These licenses took effect on February 11, 2009. Our network build and subsequent roll out is underway, and we look forward to serving the Canadian public as quickly as possible. With our entrance into Canada's telecommunications sector comes much needed investment, innovation and jobs, which given the current economic environment, couldn't come at a more crucial time for our fellow Canadians. Clearly, we have a deep interest in the Department's policies regarding the wireless industry, and more specifically, those relating to Site-Sharing and Roaming.
3. We share the frustration and concern expressed by several of our fellow wireless new entrants, as the incumbent wireless carriers seem to be focused on frustrating the process and intent of the Department, as opposed to moving forward to build Canada's telecom infrastructure together, and leaving competitive bantering to the marketplace where it belongs.

4. We refer back to Industry Canada's initial comments in the *Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range* of November 2007 relating to roaming and site sharing, specifically that "The department agrees that mandated roaming is important to promote competition and supports the orderly development of radiocommunication in light of the policy objectives of the *Telecommunications Act*" and that "Industry Canada has concluded that it is in accordance with the orderly development and efficient operation of radiocommunication in Canada to mandate antenna tower and site sharing..." and applaud the Department's continued efforts to enforce these valid policy objectives upon incumbent operators.

TIME LINES FOR ANTENNA TOWER & SITE SHARING PROCESS

Request for a Preliminary Information Package

5. DAVE Wireless suggests that site sharing requests should include the site reference number (if known) or at a minimum, the site address and geographical coordinates.

Response to a request for preliminary technical information

6. DAVE Wireless agrees that one week is a sufficient response time for a licensee to deliver a preliminary technical information package to a requesting operator with respect to site sharing. DAVE Wireless further submits that the one week time period for the sharing of preliminary information should also apply to requests regarding technical information relating to roaming as well, as we have experienced delays well in excess of one week.

Site Access

7. DAVE Wireless agrees that a one week period is sufficient for a licensee to grant access to a particular site.

RESERVATIONS FOR FUTURE USE

8. In the context of the preliminary technical information package, the Department has proposed that only **imminent future use** should be considered, and specifically that imminent use be clearly identified in the licensee's annual capital plan. Further the Department suggests that in circumstances where space is being reserved for a third party, such information should be part of the preliminary technical information package where the third party has a contract in place and fees are being paid. In such a situation, the Department suggests the requesting operator can consider approaching the third party to discuss access to that space.
9. Under normal circumstances this proposal would be adequate to facilitate fair and equitable site sharing. However, we do not believe this approach will be effective given current behaviour and circumstance as we can anticipate efforts on the part of licensees to

blur the definition of imminent future use under their capital budgets. Therefore, we would suggest a more specific and objective proposal, namely: If there is current space on a tower, and a requesting operator makes a definitive proposal to enter into a leasing agreement to use that tower, licensees should have a maximum of 30 days to place equipment having a bona fide use¹ on that tower. Failing such an installation, the requesting operator should be provided immediate access to that tower.

REQUIREMENTS FOR CONFIDENTIALITY

10. DAVE Wireless agrees that non-disclosure agreements should be generic in nature and should not include provisions that are unique to a single operator or group. By way of example, DAVE Wireless has been asked by licensees to agree to exclusive negotiations as part of an NDA. At a minimum, we submit that such a request is somewhat inappropriate as it appears to be an indirect way of using the preliminary technical information package as negotiating leverage. In addition, negotiating with each licensee exclusively will unnecessarily delay the process, and further restrict the ability of a new entrant to receive economic and reasonable terms from a licensee. DAVE Wireless also agrees that the signing of a non-disclosure agreement is not a reason to delay providing a preliminary technical information package.

REQUIREMENTS FOR EXCLUSIVITY IN AGREEMENTS

11. As part of our discussions with licensees regarding nationwide roaming, it has become increasingly clear that certain incumbents are attempting to force exclusivity provisions upon requesting operators such that they would be unable to enter into roaming agreements with any other carrier. Incumbent carriers seem unwilling to enter into roaming agreements at all without the insertion of such exclusivity.
12. DAVE Wireless expresses great concern with this approach, as the incumbents appear to be taking advantage of their current inequality of bargaining power to force uncompetitive terms on new entrants. We believe suggesting that it's "exclusivity or nothing" is contrary to the spirit of the Department's Mandatory Roaming Policy, and will significantly hamstring the ability of new entrants to enter the market on a reasonable competitive footing. We strongly suggest that the Department take action to prevent licensees from forcing such provisions upon new entrants who require roaming as an essential part of their consumer proposition, and may only be able to secure roaming from only one licensee.

RATES AND DISCLOSURE RELATED TO ROAMING

13. In light of the desire of licensees to execute exclusive and onerous roaming agreement clauses, we would also suggest that the Department consider amending CPC-2-0-17 to

¹ A "bona fide use" should be defined as "functioning equipment used for a demonstrable purpose in accordance with the licensee's annual capital plan for the current year". The rationale behind this proposal relates to the fact that third party sources have indicated licensees have already begun to deploy non-functioning, obsolete equipment on towers to frustrate the "future use" aspect of the site-sharing policy.

consider the disclosure of any roaming agreement reached between any parties in a similar fashion to what occurred in the United States regarding interconnection agreements between carriers, whereas the government in that country acted as a “clearing house” of rates and agreement terms so that the process for new entrants was fair, and not conducted in a vacuum. Further, such rates and terms could be used to improve the arbitration process, should it be relied upon by any party.

Thank you for the opportunity to comment on this important policy discussion.

Yours truly

A handwritten signature in black ink, appearing to be 'SLY', with a long horizontal flourish extending to the right.

Stewart Lyons
DAVE Wireless

cc. Heather Hall
Manager, Emerging Networks