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March 6, 2009

Peter Hill
Director, Spectrum Management Operations
Industry Canada
Radiocommunications and
Broadcasting Regulatory Branch
300 Slater Street
Ottawa, Ontario
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RE : Industry Canada's Letter of February 17, 2009 regarding Complaints of Non-Compliance related to the Conditions of Licence with respect to Mandatory Tower and Site Sharing – Comments of Quebecor Media Inc.

Dear Mr. Hill,

Quebecor Media Inc. (QMI), on behalf of itself and its wholly-owned affiliates Videotron Ltd. (Videotron) and 9193-2962 Quebec Inc. (9193), is pleased to provide the following comments on the matters raised in the Department's letter of February 17, 2009 (the February 17 Letter).

9193 was the largest new entrant winner in the Department's 2008 Advanced Wireless Services (AWS) spectrum auction, capturing seventeen licences covering the entirety of the Province of Quebec and much of Eastern and Southern Ontario, for a total purchase price of $555 million. These licences took effect on December 23, 2008.

Videotron has committed to investing between $800 million and $1 billion over the next four years (including the auction payments made by 9193) in the construction and launch of a state-of-the-art 3G wireless network in Quebec and part of Ontario. This initial network build-out is expected to require the activation of several hundreds of cell sites, a significant fraction of which we believe could reasonably involve site sharing arrangements with incumbent wireless carriers.

Clearly, QMI and its affiliates have a considerable stake in the Department's wireless policy framework generally, and in the current consultation specifically.

Introduction

From the release of its initial AWS policy framework in November 2007, the Government of Canada has demonstrated its willingness to take positive action to encourage the emergence of greater competition in the Canadian wireless marketplace. This pro-competition policy framework rests on three pillars, each of which is essential to its success: (a) the set-aside of a meaningful quantity of AWS spectrum for qualified new entrants; (b) the mandated offering of inter-carrier voice and data roaming services; and (c) the mandated sharing of wireless antenna towers and sites.

The first of these pillars was erected in the AWS auction rules themselves, and is perpetuated through time-limited licence transfer restrictions in the AWS conditions of licence. The second and third pillars were erected in November 2008 through the publication of 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* (CPC-2-0-17), which laid out detailed rules for mandated roaming and antenna and site sharing, and formally incorporated these rules into the conditions of licence applicable to all licensees in all bands who are radiocommunication carriers under the *Radiocommunication Act*. CPC-2-0-17 also incorporated by reference a set of mandatory arbitration rules and procedures laid out in companion Client Procedures Circular CPC-2-0-18 *Industry Canada's Arbitration Rules and Procedures* (CPC-2-0-18).

While all three pillars of the Government's wireless policy framework can be amply justified on their pro-competitive merits alone, the third pillar – mandated sharing of antenna towers and sites – brings with it the additional merit of reducing the adverse environmental impacts from needless tower proliferation.

Sadly, and as described in further detail below, at least some incumbent wireless carriers have elected to consciously undermine the process for mandatory tower and site sharing by seizing whatever alleged ambiguity exists in the current rules and turning it to their advantage. Through these short-sighted and anti-competitive actions, these incumbent carriers are rendering the site sharing process inoperable, thereby forcing new entrants to build new towers in many locations where they would not otherwise be required. This abusive posture (a) greatly lengthens the new entrants' network construction horizons, (b) increases start-up costs incurred by new entrants to the wireless services marketplace, (c) unnecessarily degrades the visual environment, and (d) adds undue friction to the relationship between the wireless industry and municipal land use authorities.

In the comments that follow, we will (a) review the Department's proposals for reinforcement of its mandated tower and site sharing process, (b) relate these proposals to Videotron's own experience, and (c) call upon the Department to take meaningful and enforceable action against non-compliant incumbent carriers. We will also describe a problem that has arisen in Videotron's discussions with a potential provider of roaming services, and will call upon the Department to issue a clarification to the roaming rules to remove this opportunity for abuse.

Time Lines for Antenna Tower and Site Sharing Process

Request for a preliminary technical information package (PIP)

In the February 17 Letter, the Department proposes that a request for a PIP should include at a minimum the Licensee's site reference number (if available), site address and/or geographical coordinates and Requesting Operator's reference number.

QMI notes that site addresses are not always readily available, particularly for rural sites, and that Licensees are not always forthcoming with these addresses, even at the PIP response stage. It would therefore be unreasonable to require a Requesting operator to provide the site address in its PIP requests. QMI also notes that the provision of geographical coordinates is not required to identify a site, once the Licensee's site reference number has been provided.

As a result, QMI recommends that the Department amend this proposal to require only the Licensee's site reference number and the Requesting Operator's reference number.

Response to a request for a PIP

In the February 17 Letter, the Department proposes that within a week of receiving a complete request for a PIP, the Licensee is expected to produce a response including as a minimum: tower loading profile including imminent future use (see *Reservations for Future Use* below) and contracted third-party lease agreements, compound layout, tower foundations design, Transport Canada and/or NAV Canada form, site lease summary as well as site access information, such as contact, procedure and any specific restriction relating to a site visit.

QMI agrees with this proposal, and we call upon the Department to finalize it with the utmost urgency.

As a Requesting Operator, Videotron has submitted, since July 2008, just over 300 requests for PIPs to the three largest incumbent wireless carriers. However, although it is a condition of licence that Licensees must negotiate with a Requesting Operator in good faith, with a view to concluding a site-sharing agreement in a timely manner, approximately 18% of these requests for PIPs still remain unanswered, some after more than 180 days. In the cases of the two most deficient wireless carriers, even where Videotron has received answers to its requests for PIPs, the average response time has been nearly 95 days.

There is no conceivable justification for such delays, other than as part of a blatant strategy to profit from the absence of a fixed timeline so as to delay the sharing process as much as possible, and cause new entrants to incur unnecessary costs. Remarkably, one of the two most deficient wireless carriers has even acknowledged to Videotron that in the case of a framework sharing agreement it has in place with another carrier, PIPs are generally provided with two days of request.

The only effective remedy to such obvious bad faith is the imposition of a fixed PIP response timeline. In our view, a response period of one week, as proposed by the Department, is fully commensurate with the preliminary nature of the information being provided. We further

support the Department's proposal that this deadline apply to all cases regardless of workload. Experience has unfortunately shown that any provision for exceptions due to workload will be abused to the maximum extent possible.

On a related matter, we also call upon the Department to take specific action to address the matter of revisions to PIPs. In recent weeks, two of the large incumbent carriers have begun to modify PIP responses previously sent to Videotron in order to reserve additional space for future use by themselves and their preferred partners. This practice is clearly prejudicial to new entrants, not to mention administratively wasteful, and must be stopped. If allowed to continue, this practice would render meaningless the fixed response timelines being contemplated by the Department, and would also stand in direct contradiction to the rules discussed below on the reservation of space for future use.

Site access

In the February 17 Letter, the Department proposes that a Licensee should grant access to a site to a Requesting Operator within one week of the request. Extenuating circumstances, such as access to a remote location, could justify a short delay.

QMI agrees with this proposal.

Reservations for Future Use

In the February 17 Letter, the Department proposes that only "imminent future use" be considered in the context of a PIP, and that "imminent" include only those plans which are clearly and specifically identified in the Licensee's annual capital plan. The Department further proposes that where the Licensee is reserving space on a tower because there is a plan to install equipment on the tower in the longer term, the companies would be expected to deal with this during the negotiation of their commercial arrangements. In addition, any space reserved on a tower for future use by a third party where a contract is in place and fees are being paid, should be identified as part of the PIP. In this situation, the requesting carrier can consider approaching the third party to discuss access to that space.

QMI believes that these proposals will add necessary structure and clarity to discussions about future needs, and we support them in their entirety.

In the more than 240 PIPs Videotron have received to date, there is a strong tendency on the part of the incumbent carriers to reserve considerable tower space for what appear to be long term needs. We question both the reasonableness of these future needs and the necessity of reserving space for them now. We also note that an open-ended ability to reserve space for future needs is an obvious way for existing carriers to bypass their sharing obligation.

Providing a precise and verifiable definition of imminent future use, and including only such use in PIPs, will in our view bring needed discipline to the mandatory tower and site sharing process. Coupled with a prohibition on PIP revisions, as discussed in the preceding section on responses to requests for PIPs, we are confident this measure will lead to meaningful negotiations between Licensees and Requesting Operators.

For greater clarity, however, we recommend that the Department amend its proposed wording to direct that space reservations may be included in a PIP for a specific tower only where a contract is in place and fees are being paid with respect to that specific tower. Without this clarification, parties to a framework sharing agreement may attempt to claim that the payment of a generic reservation fee justifies the reservation of space throughout an entire network.

Requirements for Confidentiality

In the February 17 Letter, the Department proposes that (a) non-disclosure agreements should be generic in nature and should not include provisions that are unique to a single operator or group, and (b) the signature of a non-disclosure agreement should not be a reason to delay providing a PIP.

QMI agrees with these proposals, and we note that Videotron's initial dealings with at least one incumbent carrier would have been greatly accelerated if the proposed clarifications had been in place and enforced at that time.

The Matter of Enforcement

In the introduction to the February 17 Letter, the Department states that it "is not reviewing the conditions of licence set out in CPC-2-0-17 but is seeking comments on all the issues discussed and the proposals outlined below". The Department then states that subsequent to this consultation phase, it "will establish guidelines to be used when asked to respond to a complaint of non-compliance".

With due respect, we submit that the Department's intentions as just described will not go far enough in countering the conscious efforts of at least some incumbents to undermine the Government's pro-competitive wireless policy framework. Simply put, we have little confidence that the incumbent carriers who have so brazenly opposed both the letter and the spirit of their licence conditions will be greatly swayed by mere guidelines on how to behave better. Unless the Department acts now to make it clear that meaningful sanctions will be applied for non-compliance, we are concerned that at least some incumbents will continue to delay the process with impunity.

As an example of incumbent disregard for their conditions of licence, even prior to the clarifications being considered herein, we note that in those cases where Videotron has received a response to a request for a PIP, it has to date submitted 175 formal Proposals to Share. However, despite an explicit condition of licence requiring the Licensee to respond to Proposals to Share within 30 days: (a) only one of the three large incumbent carriers has made any meaningful effort to meet this deadline; and (b) a total of 84 Proposals to Share remain unanswered beyond 30 days, some for as long as 142 days.

Fortunately, under section 8.7 of CPC-2-0-17, a Requesting Operator's right to submit a given case to arbitration 90 days after making a Proposal to Share is not contingent upon having received a response to its Proposal to Share. This being said, the refusal of at least some incumbents to abide by their explicit conditions of licence should give the Department serious cause for concern.

In light of the above, QMI calls upon the Department to equip itself to take meaningful and enforceable action against any wireless carrier who acts to undermine the tower and site sharing process. To this end, we propose two requirements.

The first requirement will be to incorporate the guidelines considered herein directly into carriers' conditions of licence, by way of a formal amendment to CPC-2-0-17.

The second requirement will be to identify now, as part of the ruling on the current consultation, the specific enforcement measures the Department will pursue if a carrier fails to comply with its newly amended conditions of licence related to tower and site sharing. One such enforcement measure can and should be the withdrawal of a carrier's right to use a specific antenna tower or site for its own purposes if it has failed to comply with its conditions of licence in relation to a request to share that same antenna tower or site.

For the purpose of clarity, it is worth noting that the enforcement measure just proposed will not require a wireless carrier to share any given site. Rather, it will merely require the carrier to engage constructively in the process already established and implemented by the Department to determine whether sharing is appropriate and under what conditions. No party whose intent is to act in good faith should find this approach objectionable.

Request for a Clarification to the Roaming Rules

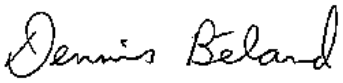
Videotron has entered into detailed discussions with one incumbent wireless carrier with a view to purchasing voice and data roaming services. This carrier refused to commence discussions until Videotron agreed to an exclusivity period for negotiations, and has since taken the position that any final roaming agreement must identify it as Videotron's exclusive provider of roaming services in Canada for a lengthy period of time.

CPC-2-0-17 grants no carrier the right to demand exclusivity in roaming negotiations or agreements. More importantly, any attempt to impose exclusivity as a pre-condition for negotiations or the conclusion of a roaming agreement runs directly contrary to the Department's objective of encouraging greater competition in wireless services in Canada, particularly when technology-specific factors already limit to some extent the scope for a market in roaming services. Finally, a requirement to purchase exclusive roaming services from an incumbent creates a strong disincentive to the building of alliances among new entrants, a strategy which the CPC-2-0-17 rules are explicitly structured to encourage.

In light of the above, QMI calls upon the Department to issue a clarification to the roaming rules stating that no incumbent wireless carrier may make exclusivity a condition of entering into roaming negotiations or concluding a roaming agreement. Parties would nevertheless be free to conclude exclusive roaming agreements on a mutually beneficial basis. We submit that the requested clarification will remove a significant opportunity for anti-competitive abuse on the part of incumbent wireless carriers.

Trusting this is satisfactory, we remain,

Yours truly,



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