

Canada Gazette Notice No. DGRB-010-07

**Consultation on Proposed Conditions of Licence to Mandate
Roaming and Antenna Tower and Site Sharing and to
Prohibit Exclusive Site Arrangements**

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Comments
of

Bell Mobility Inc.

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Executive Summary

E1. Bell Mobility Inc. (Bell Mobility) provides the following comments in response to *Canada Gazette* Notice No. DGRB-010-07 - *Consultation on Proposed Conditions of Licence to Mandate Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements* dated 8 December 2007.

E2. Bell Mobility relies, in providing these comments, on its 23 years of experience in operating mobile cellular and PCS networks in the Canadian wireless market. Bell Mobility has also relied on its extensive experience and involvement with the development of Canada's wireless regulatory regime.

E3. Despite the Department's contention that its AWS Policy Decision relies on market forces to the maximum extent feasible, the AWS Policy Decision along with this Consultation represents a surprising and dramatic regulatory intrusion into the Canadian wireless industry which has been forborne since 1993.

E4. In its consideration of the issues in this Consultation, Industry Canada has to recognize that wireless networks were developed using shareholder equity and that providing new entrant access to that infrastructure: (1) confers an enormous benefit on the entrant; (2) if the government's intention to rely on market forces is to have validity, then government's significant intervention, as represented by its AWS Policy Decision, in a long forborne, competitive market has to be to the minimum extent necessary; (3) the mandated use by competitors of assets secured through shareholder equity has to be appropriately compensated; and (4), if the principle of reliance on market forces to the maximum extent feasible is to have any meaning, any such intervention has to be subject to strict sunset dates.

E5. Bell Mobility's proposed conditions of licence (CoL) regarding Mandatory Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements reads as follows (use of underlining indicates primary areas of changed text):

1. Licensees must facilitate sharing of antenna sites, including rooftops, and supporting structures ("Site(s)") and not cause or contribute to the exclusion of other radiocommunication antenna operators ("Operator(s)") from gaining access to Sites. Without limiting the generality of the foregoing, where a 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, where it is within the Licensee's capability to do so, to waiving that portion of the agreement to facilitate a request to share. Further, Licensees must

not enter into or renew agreements that exclude other Operators from using a Site. Notwithstanding the preceding, it is realized that "rooftops" require the approval of the property owner/manager to effect sharing in such cases. In the event that the property owner/manager does not agree to the sharing request, it is recognized that this is beyond the control of the Licensee. Licensees however will not be prohibited from using rooftops in those instances where the refusal for sharing originates with the property owner/manager.

2. Licensees must share where technically feasible and where it does not degrade the licensee's network except where national security concerns exist or the Site is used solely for personal enjoyment. Industry Canada will adjudicate disputes regarding technical feasibility.

3. In order to fulfill the condition of sharing in accordance with this licence, the Licensee must respond to a request to share by any other Operator within 120 days as follows:

- a. In the event that the request to share is technically feasible, the Licensee must provide the requesting Operator with a response and an offer to enter into a sharing agreement. The department expects that Site-sharing arrangements would be offered at commercial rates that are reasonably comparable to rates currently charged to others for similar access.
- a. In the event that the request to share is not technically feasible, the Licensee must provide the requesting Operator with a response detailing the reasons why it is not feasible (accompanied by any applicable technical information) in accordance with CPC-2-0-03.

4. Site-sharing arrangements will be negotiated expeditiously and in good faith. If after 180 days from the initial request, the Licensee and the Operator requesting a Site-sharing arrangement cannot agree to the terms of the arrangement, the Licensee must agree to submit the matter to an arbitrator as agreed upon by the parties in accordance with the provisions of the applicable provincial arbitration legislation. The Licensee agrees that the arbitrator 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 arrangement and those relating to procedural matters under the arbitration) and that any arbitration under this section shall be legally binding. The Licensee must participate fully in such an arbitration and follow all directions of the arbitrator in accordance with any arbitration agreement or with the applicable legislation. At any time, the Licensee and the Operator requesting antenna tower and site sharing may agree to specific terms with regard to submitting their dispute to an arbitrator and may withdraw their arbitration, on agreed terms, so long as they agree to a Site-sharing arrangement

5. All costs associated with analysing and responding to a new entrant request for mandatory tower/site sharing will be detailed and invoiced to the applicable new entrant. Existing tenants of antenna tower/site installations will directly invoice applicable new entrants for any work on their part necessitated by the new entrant request.

E6. Bell Mobility's proposed conditions of licence regarding Mandatory Roaming reads as follows (use of underlining indicates primary areas of changed text):

Licensees must offer automatic digital roaming on their cellular, PCS and AWS networks as follows:

1. Roaming is to be offered:

a. Where technically feasible to all cellular (800 MHz), PCS (1.9 GHz) and AWS (1.7 and 2.1 GHz) Licensees outside of their licensed area, for the 10-year term of AWS licences;

b. To new entrants in their non-built licensed areas for a period of 5 years.

c. To national new entrants who have satisfied the 5-year roll-out requirements outlined on their licence, as determined by Industry Canada, for an additional 5 years.

2. In order to fulfill the condition of offering roaming in accordance with this licence:

a. Roaming includes digital voice and data connectivity. Data connectivity includes e-mail and SMS;

b. To qualify for either in-territory or out-of territory roaming, as a specific new entrant CoL, new entrants must: (1) have built-out their local AWS wireless network and must be able to offer service to a minimum of 50% of the minimum population coverage specified in the five year Roll-out Targets; and (2) roam, on incumbent cellular and PCS networks, via means of a multi-band handset (i.e. incorporating the AWS band in the new entrant's chosen technology plus the band or bands (i.e. digital 800 MHz only, 1.9 GHz only, or a combination of both digital 800 MHz and 1.9 GHz as determined by the new entrant).

c. Roaming does not include providing access to new entrants within their build area for the purposes of capacity off-load or quality enhancement.

d. When requested, Licensees will provide an offer to enter into a roaming arrangement to provide roaming services on reasonable terms within 120 days. Industry Canada expects that roaming would be offered at commercial rates that are reasonably comparable to rates that are currently charged to others for similar services; and

e. Roaming arrangements will be negotiated expeditiously and in good faith. If after 180 days from the initial request, the Licensee and the party requesting a roaming arrangement cannot agree to the terms of the roaming arrangement, the Licensee must agree to submit the matter to an arbitrator as agreed upon by the parties or in accordance with the provisions of the applicable provincial arbitration legislation. The Licensee agrees that the arbitrator shall have all necessary powers to determine all of the questions in

dispute (including those relating to determining the appropriate terms of the roaming arrangement and those relating to procedural matters under the arbitration) and that any arbitration under this section shall be legally binding. The Licensee must participate fully in such an arbitration and follow all directions of the arbitrator in accordance with any arbitration agreement or with the applicable legislation. At any time, the Licensee and the party requesting roaming may agree to specific terms with regard to submitting their dispute to an arbitrator and may withdraw their arbitration, on agreed terms, so long as they agree to a roaming arrangement.

f. All costs associated with responding to a new entrant request for mandatory roaming will be detailed and invoiced to the new entrant.

E7. Bell Mobility also offers its comments on the commercial arbitration process below, in a separate section dealing with arbitration issues, but notes here that it recommends the use of a three person arbitration tribunal in those instances where reference to arbitration is required.

INTRODUCTION

1. Bell Mobility Inc. (Bell Mobility) provides the following comments in response to *Canada Gazette* Notice No. DGRB-010-07 - *Consultation on Proposed Conditions of Licence to Mandate Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements* dated 8 December 2007 (the Consultation).

2. At page 4 of Industry Canada's Consultation the Department (IC or the Department) invited comments on its proposed Conditions of Licence (CoL) and specifically requested comments on three issues namely:

1. Are the timelines for responding to requests to share and roam and for submitting agreements that have not been finalized to an arbitrator appropriate? Are there other timelines that should be considered?

2. Specific provisions regarding arbitration may vary from province to province. Would it be useful to adopt a national code such as the ADR Institute of Canada's National Arbitration Rules in default of any specific arbitration agreement? Are there any special provisions which should be made applicable to the arbitrators concerning sharing and roaming?

3. Are there any other licence conditions required to facilitate sharing and roaming?

3. Throughout these comments Bell Mobility provides its response concerning questions 1 and 3 above. In this regard, Bell Mobility also provides proposed alternative CoL to govern

mandatory tower/site sharing as well as to govern mandatory roaming. Bell Mobility's comments on the issues raised concerning question 2 above, are provided in a separate section dealing with arbitration process issues. In all cases Bell Mobility relies, in providing these comments, on its 23 years of experience in operating mobile cellular and PCS networks in the Canadian wireless market. Bell Mobility has also relied on its extensive experience and involvement, over that timeframe, with the development of Canada's wireless regulatory regime.

Context of Bell Mobility's Submission

Canada's Wireless Regulatory Regime

4. On 28 November 2007 Industry Canada released *Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range*. (AWS Policy Decision) which will govern the May 2008 AWS Spectrum auction. The AWS Policy Decision included government's decision to mandate wireless antenna tower and site sharing as well as voice and data automatic digital roaming.

5. Coincident with the release of the AWS Policy Decision, IC also initiated this Consultation to consider the appropriate CoL to support the new mandated antenna tower and site sharing and mandated roaming policies. The Consultation identifies that it will be necessary to modify incumbents' existing cellular and PCS licences, which includes PCS spectrum licences awarded through the 2001 PCS auction, to reflect the new mandated policies deemed required by the Department as a result of the forthcoming AWS spectrum auction.

6. Despite the Department's contention that its AWS Policy Decision relies on market forces to the maximum extent feasible, the AWS Policy Decision along with this Consultation represents a surprising and dramatic regulatory intrusion into the Canadian wireless industry which has been forborne since 1993.

7. In his Official Auction Announcement on 28 November 2007, regarding one of the issues raised in this Consultation, the Minister stated that:

Tower sharing is common in the telecommunications industry today, much the same way telephone poles are shared. To make our goal of more competition achievable, we want to ensure that new entrants have the same opportunities and the same access to networks and infrastructure as existing providers have had in the past and have today: no more and no less.

8. Bell Mobility notes that this statement is factually incorrect and ignores the distinctly different regulatory frameworks, as well as the reasons for the distinction, which have been developed for the wireless and wireline industries in Canada. In this regard, it is important that the significant regulatory distinction between the circumstances applicable to providing competitor access to the previously monopoly wireline infrastructure (e.g. access to telephone poles and other essential facilities) and that of the competitive wireless industry (e.g. access to wireless towers and network coverage through mandated roaming), be recognized and reflected in IC's consideration and adjudication of the significant issues under review in this Consultation.

9. The Department's AWS Decision states that even facilities-based wireless new entrants require access to certain facilities of incumbents. The CRTC, however, has consistently found that no essential facilities exist in the wireless market. Almost ten years ago, in Telecom Order 98-1092, November 3, 1998 paragraph 27, the CRTC noted that:

. . . In particular, in contrast to the wireline market, facilities-based entry was the initial form of competition in the wireless market. The Commission considers that the cellular and PCS markets are sufficiently competitive such that it cannot be said that facilities are monopoly controlled or cannot be economically or technically duplicated. As a result, none of the wireless providers can be said to have dominant market power or to control bottleneck or essential facilities. Accordingly, the Commission considers that wireless networks are not essential facilities as suggested by certain parties.

10. Further, from the earliest days of competitive wireless service in Canada the application of rigorous CRTC costing methodologies as well as comprehensive inter-corporate transaction reporting requirements between ILECs and their wireless affiliates ensured that the networks of ILEC affiliated wireless entities were built using shareholder equity and were not cross-subsidized by revenues derived from regulated operations.

11. Consequently, it is incorrect to compare the sharing of non-monopoly "wireless towers", which have always been provided in a competitive environment, with rules which were designed to give competitor access to "wireline telephone poles" in what was then a monopoly environment.

12. The CRTC addressed this issue further in Telecom Order 98-1092 when it noted that:

23. The Commission notes that several parties argued that the policies in Decisions 92-12 and 94-19 [decisions addressing the introduction of competition in the wireline markets] implicitly apply to wireless service providers. In the Commission's view, however, the public interest considerations referred to in Decision 92-12 are not directly applicable in the current proceeding. The Commission notes that conditions existing in the wireless market are substantially different than those which existed in the wireline market when these issues were addressed. Preceding the Commission's findings in Decision 94-19, local exchange services were monopoly provided. Thus, all customers had to obtain their long distance services via the monopoly local network. Decision 92-12 ensured that customers could use the long distance carrier of their choice on an equal access basis through the monopoly local network.

24. By contrast, local wireless services are not monopoly-provided. Wireless customers have always had an alternative choice in terms of wireless access.

. . .

25. AIReach argued that the facilities of the wireless carriers required by new entrants for the purpose of interconnection, equal access, unbundling, and co-location are essential bottleneck facilities. The Commission notes that in Decision 97-8 it found that to be essential, a facility, function, or service must meet all three of the following criteria: (1) it is monopoly controlled; (2) a Competitive Local Exchange Carrier (CLEC) requires it as an input to provide services; and (3) a CLEC cannot economically or technically duplicate it. Facilities that meet the definition are subject to mandatory unbundling and mandatory pricing.

26. While this finding applies to CLECs in the particular context of local exchange competition, the Commission is of the view that it is also, in substance, applicable in the current context. The fact that AIReach may need access to these facilities or functions to offer its proposed service does not of itself make them essential. The fact that there are several facilities-based wireless providers in the market and none is compelled to rely upon the other for the facilities at issues demonstrates that these facilities are not monopoly controlled and, therefore, do not meet the definition set out above. . . .

27. The Commission notes that it used the concept of essential facilities to provide for competitors' interconnection with the dominant wireline providers' networks to allow the evolution of facilities-based competition in the local and long distance wireline markets. As previously noted, the circumstances that exist in the wireline industry are different from those prevailing in the PCS and cellular markets. In particular, in contrast to the wireline market, facilities-based entry was the initial form of competition in the wireless market. The Commission considers that the cellular and PCS markets are sufficiently competitive such that it cannot be said that facilities are monopoly controlled or cannot be economically or technically duplicated. As a result, none of the wireless providers can be said to have dominant market power or essential facilities. Accordingly, the Commission considers that wireless networks are not essential facilities as suggested by certain parties.

28. In view of the competitive nature of the wireless market, the Commission has developed, through numerous decisions, a different regulatory regime for

wireless services. In particular, in Regulation of Mobile Wireless Telecommunications services, Telecom Decision CRTC 96-14, 23 December 1996, the Commission forbore from regulating the rates, terms and conditions for the provision of cellular, PCS and ESMR services due to its determination that these markets were sufficiently competitive to protect consumers. (Emphasis added)

13. The fundamental point here is that the Department, in its consideration of the issues in this Consultation, has to recognize that wireless networks were developed using shareholder equity and that providing new entrant access to that infrastructure: (1) confers an enormous benefit on the new entrant; (2) if the government's intention to rely on market forces is to have validity, then government's significant intervention, as represented by its AWS Policy Decision, in a long forborne, competitive market has to be to the minimum extent necessary; (3) the mandated use by competitors of assets secured through shareholder equity (i.e. as represented by affiliated and non-affiliated incumbent wireless networks) has to be appropriately compensated; and (4) if the principle of reliance on market forces to the maximum extent feasible is to have any meaning, any such intervention must be subject to strict sunset dates.

Revisions to Existing Licences are Improper

14. The Minister's proposal to amend the conditions of licence for previously issued wireless licences to impose mandatory antenna tower and site sharing, to prohibit exclusive site arrangements and require mandatory roaming are improper based on the following principles: the Minister failed to consider (and is acting in direct contravention of) his express representations and commitments made prior to the 2001 Auction of PCS licences and binding conditions incorporated into those licences, and subsequently incorporated into the Company's non-auctioned cellular and PCS licences, that he will only amend these licences on an "exceptional basis" and that such condition does not apply in the current circumstances. These points are briefly amplified in the following paragraphs.

15. The proposed amended conditions of licence are improper. They violate prior contractual commitments of the Crown and Minister and conditions of licence applicable to the Company's PCS and cellular licenses as described in the following paragraphs.

16. As part of the process in which the Company successfully bid upon PCS licenses in the 2001 Auction, the Company and Her Majesty the Queen in Right of Canada entered into a Deed of Acknowledgement in relation to the 2001 PCS spectrum auction, which provides:

"In consideration of the Minister of Industry ("Minister") holding an auction in accordance with the Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range dated June 28, 2000, the Minister's approval of the Applicant's participation in the auction, and other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged by the Applicant and the Minister, the Applicant covenants and agrees ..."¹

17. The associated consideration to the Company also included the promise of the Minister that his authority to amend the terms and conditions of the PCS Licences pursuant to s. 5(1)(b) of the *Radiocommunication Act* "would be exercised on an exceptional basis, and only after full consultation" (the "Commitment").

18. The Commitment was set out in the final *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range*² released by the Minister before the 2001 spectrum auction was held and set out the terms and conditions that would attach to each PCS Licence obtained through the auction.

19. This condition of licence was subsequently incorporated as a condition into all PCS and Cellular Spectrum Licences, including those not awarded through a competitive spectrum auction, under a revision dated November 1, 2005.³ This condition of licence is valid and still binding and in force today as follows:

Licence Conditions for PCS and Cellular Spectrum Licences

The following conditions of licence apply to licensees for radio frequency spectrum licensed through a First-Come, First-Serve (FCFS) or competitive process for cellular or PCS spectrum in the 2 GHz frequency range. It should be noted that the licence is subject to relevant provisions in the *Radiocommunication Act* and the *Radiocommunication Regulations*. For example, the Minister continues to have the power to amend the terms and conditions of spectrum licences (paragraph 5(1)(b) of the *Radiocommunication*

¹ *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range, June 28, 2000, Appendix 5.*

² *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2GHz Frequency Range, PCS-2 GHz, June 28, 2000, p. 43: "It should be noted that the licence is subject to relevant provisions in the Radiocommunication Act and the Radiocommunication Regulations. For example, the Minister continues to have the power to amend the terms and conditions of the spectrum licence (paragraph 5(1)(b) of the Radiocommunication Act). Such powers would be exercised on an exceptional basis, and only after full consultation."*

³ See: Attachment to a November 8, 2005 Letter from Jan Skora, "*Conditions for PCS and Cellular Spectrum Licences (Updated November 1, 2005)*" at: http://www.ic.gc.ca/epic/site/smt-gst.nsf/en/h_sf02092e.html#licenceconditions

Act.) Such powers would be exercised on an exceptional basis and only after consultation. (Emphasis added)

20. It can be seen that these still-valid and binding contractual commitments and conditions of licence would be violated if the Minister were to amend the conditions of licence as proposed. Exceptional or extraordinary circumstances, according to the June 28, 2000 policy and licensing procedures, would include such things as a change in the international spectrum allocation or an overriding policy need relating to a national security issue.⁴ No exceptional circumstances have been cited by the Minister, and in any event, no such circumstances exist. "Exceptional circumstances" are defined as conditions which are out of the ordinary course of events; unusual or extraordinary circumstances.⁵ To repeat: none exists here.

21. The Minister having validly exercised his discretion to determine only to amend PCS and cellular licences in exceptional circumstances cannot today make such licence amendments in the absence of exceptional circumstances.⁶ For all of these reasons the proposed amendments to the PCS and cellular conditions of licence are improper and must be withdrawn.

The Department's AWS Policy Decision

22. Bell Mobility is concerned by the Department's AWS Policy Decision. Not only is the Decision a significant departure from both domestic and international trends in advanced spectrum management practice and procedure, it is also inaccurate and represents bad public policy in a number of instances. Examples of these inaccuracies or policy errors are identified in bold italics below followed by Bell Mobility's related comments.

"The government is making 105 megahertz (MHz) of radio spectrum available..."

23. Bell Mobility notes that implicit in much of the AWS Policy Decision is the belief that all spectrum is equal. The Department incorrectly references the existing spectrum (i.e. cellular and PCS) licences held by incumbent carriers as if they are perfectly substitutable for AWS spectrum licences. In this regard, the Department also mistakenly suggests that the AWS band

⁴ *Policy and Licensing Procedures for the Auction of Additional PCS spectrum in the 2GHz Frequency Ranges*, page 13.

⁵ *Black's Law Dictionary*, 5th Ed.

⁶ See, for example: *Mount Sinai Hospital Centre v. Quebec (Minister of Health and Social Services)*, [2001] 2 S.C.R. 281.

is the same as the PCS Expansion Band, which they treat the same as the 1670-1675 Band, which is why it claims that 65 MHz is available for all to bid on and only 40 MHz is set-aside.

24. In fact, the PCS Expansion Band as well as the 1670-1675 band, as the Department acknowledged in its February 2007 Licensing Consultation (Licensing Consultation), is distinct from the 90 MHz core AWS band. As the Department noted in its Licensing Consultation, the primary objective of the entire exercise is to licence the 90 MHz of AWS core spectrum while it merely used the convenient availability of the Consultation to award available PCS Expansion and 1670-675 band spectrum. Consequently, for all intents and purposes almost half of the available AWS core spectrum is set-aside for potential new entrants. Incumbent carriers, however, with three existing national networks supporting millions of customers are limited to only 50 MHz of AWS core spectrum on which they can bid.

To be eligible for the set-aside, a new entrant is defined as holding "...less than 10 percent of the national wireless market based on revenue."

25. Eligibility for the set-aside is determined by share of industry revenue without any reference to whether firms actually already have spectrum licenses in particular geographic territories. The set-aside is purportedly aimed at facilitating the acquisition of spectrum by entrants, yet somehow an entity can hold spectrum in large parts of the country and still obtain the benefits of the set-aside in areas where it is an incumbent carrier. Accordingly:

- a. Under the AWS Policy Framework, SaskTel and MTS are treated as new entrants in their home territories where they hold a high share of the wireless business (81% and 61%, respectively).
- b. Bell Mobility holds no spectrum in Saskatchewan or Manitoba has no market share in those provinces, and yet is ineligible for the set-aside AWS licenses in those provinces.

Service Area Tiering is larger for set-aside blocks (i.e. a combination of Service Areas 2 and 3), than for non-set-aside blocks (i.e. Service Area 3 only)

26. Bell Mobility submits that it is inappropriate to assign the larger Tier 2 service area license sizes to set-aside blocks for potential new entrants while restricting the incumbent AWS spectrum block to smaller Tier 3 service areas. New entrants may or may not develop national wireless networks. The three largest incumbents however already operate national wireless networks providing service to millions of existing customers throughout Canada. The Department got it right in its 2001 PCS auction policy when it adopted Tier 2 service areas for all

auctioned spectrum noting that this would also accommodate any regional new entrants. This error significantly reduces the ability of the incumbent carriers to acquire AWS spectrum licences in the most spectrally efficient manner. A key consideration for the Department, by virtue of its spectrum management stewardship, should be to ensure the most spectrally efficient use of this finite national resource. This has not been accomplished in the Department's AWS Policy Decision.

" ... the FCC mandated out-of-territory roaming in the U.S. market for all commercial mobile radio services."

27. The Department does not mention that broadband data services were not included in the FCC's August 2007 roaming mandate. This is only being considered at the present time. Currently, the FCC's August 2007 roaming mandate includes some data services such as SMS, but not, as mentioned, broadband data.

28. Further, the Department should not rely on the FCC mandate as a perfect precedent for its roaming decision. Unlike the AWS Policy Decision, under FCC rules, a carrier is not entitled to roaming within its licensed areas or areas where they have access to spectrum rights e.g. through spectrum leasing. The rationale for this policy was that the FCC did not want to remove the licensee's incentive, in an area where the carrier has licenses, to build out its network. The inclusion of in-licensed-area roaming rights suggests that the Department is not concerned about whether entrants build their networks expeditiously. If they move slowly, or lack the capital to build immediately, it could be many years before consumers receive the benefits of the 40 MHz of AWS spectrum that has been set-aside.

"For all spectrum being made available, the department may decide not to reduce the opening bid and in this event, the spectrum may remain unassigned to be re-auctioned at a later date."

29. As noted in these comments, considerable value is being conferred on new entrants to encourage and facilitate their entry into the Canadian wireless market. This includes, in Bell Mobility's opinion, a considerable tax payer subsidy, should any new entrants be licensed through the set-aside mechanism in addition to mandated access to the shareholder equity funded facilities of the incumbent carriers. In light of this, Bell Mobility submits that rather than warehousing spectrum that could be put to productive use by incumbent carriers, if the minimum bid for new entrant licences is not met in the first phase of the auction, incumbent carriers should be permitted to bid on that spectrum immediately.

Bell Mobility's response to the Department's Supplementary Consultation regarding Conditions of Licence for Mandatory Antenna Tower and Site Sharing and Prohibition of Exclusive Site Arrangements and Mandatory Roaming

30. In the following sections Bell Mobility addresses respectively: (1) CoL regarding mandatory antenna tower and site sharing and prohibition of exclusive site arrangements; (2) CoL regarding mandatory roaming; and (3) related arbitration issues raised in the Department's Consultation.

31. However, as a preliminary comment, Bell Mobility notes that the Department's AWS Policy Decision will unavoidably generate significant, and in some cases unforeseen, capital and operational costs for incumbent carriers to accommodate the wide-ranging provisions of the Department's decision. In this regard, any new entrants that result from the AWS auction will have been given, based on the provisions of the Department's AWS Policy Decision, significant material advantages in the form of mandated access to key aspects of the incumbents' wireless networks in addition to the substantial public subsidy provided by virtue of the new entrant set-aside policy.

32. In the circumstances, given these substantial benefits provided to new entrants, Bell Mobility submits that the entire costs of accommodating any new entrant requests must be borne upfront and wholly by the new entrants taking advantage of either the mandatory tower/site sharing or mandatory roaming provisions of the Department's AWS Policy. Further, these costs should be detailed and immediately invoiced to the applicable new entrants. In this regard, as addressed further below, determining the "technical feasibility", particularly with respect to mandatory tower/site sharing, will require the involvement of existing tenants of tower/site owners in undertaking radiofrequency interference studies in addition to structural loading studies required of the tower/site owner licensee. Bell Mobility submits that these parties, i.e. existing tenants of the licensee, should also be permitted to immediately invoice the applicable new entrant(s) for any such work directly attributable to the new entrant's sharing request.

Mandatory Antenna Tower and Site Sharing and Prohibition of Exclusive Site Arrangements – General Comments

33. At page 1 of the Consultation, the Department states that in the AWS Policy Decision, the Minister announced his decision to mandate antenna tower and site sharing, and to prohibit exclusive site arrangements for all licensees. The Consultation further noted that:

Since these policy measures require amendments to existing conditions of licence or other authorizations, this consultation is being undertaken to obtain input regarding the necessary conditions to implement the policies of mandatory roaming and mandatory antenna tower and site sharing, including the prohibition of exclusive site arrangements. Consequential amendments to Client Procedures Circular 2-0-03, Radiocommunication and Broadcasting Antenna Systems (CPC-2-0-03) may also be effected pursuant to this consultation exercise.

It should be noted that these conditions of licence would not supplant nor obviate any existing or pending rulings, decisions, or tariffs approved by the Canadian Radio-television and Telecommunications Commission (CRTC) or any existing agreements between licensees insofar as they are consistent with this policy.

34. Regarding CPC-2-0-03, Bell Mobility submits that it will be critically important that the Department revise CPC-2-0-03 to reflect the new policy before tower/site sharing, either with other incumbents or new entrants, commences. An appropriately revised CPC-2-0-03 will be the primary procedural document relied on by licensees, municipalities, residents, broadcasters and now potential new entrants to govern the proposed installation and subsequent approval or denial of wireless antenna towers and sites throughout Canada. Bell Mobility submits that, in the absence of an appropriately revised CPC-2-0-03, which provides fundamental guidelines and timeframes for all involved parties, the Department's proposed sharing policy will be a recipe for chaos.

35. As the Department notes in the Consultation, a revised version of CPC-2-0-03 has just come into effect (i.e. January 2008) reflecting deliberations pursuant to Industry Canada's National Antenna Tower Policy Review. A key part of that process were detailed government – industry consultative meetings which resulted in substantial changes to the Department's initial draft CPC-2-0-03 resulting from the National Antenna Tower Policy Review. It became clear, during the course of those deliberations, that the involvement of the appropriate wireless and broadcasting licensee (i.e. real estate) resources as well as municipal authorities involved in the site approval process, is critical to producing a revised CPC that is both realistic and workable. Bell Mobility submits that the same process, i.e. government – industry consultative meetings,

should be utilized to produce a revised CPC-2-0-03 reflecting the Department's new mandated sharing policy.

36. Bell Mobility further notes that while the AWS Policy Decision mandates wireless tower and site access it unequivocally does not require incumbents to make access available to their antennae systems nor to in-building wireless distribution systems.

37. At page 2 of the Consultation, the Department states that:

Aside from questions of technical feasibility, it is recognized that coming to a negotiated business agreement can delay roaming and sharing. Therefore, the proposed conditions which follow state that where it is technically feasible, but where licensees cannot finalize negotiations, parties will submit their business disputes to independent binding arbitration in order to finalize the matter. (Emphasis added)

38. Bell Mobility will address issues related to the arbitration process below. In this case however we note that the initial step to sharing involves the question of "technical feasibility". This can involve various issues ranging from the structural integrity of an existing site to safely accommodate additional antennae, to issues involving radiofrequency interference with both the site owner/licensee or tenants already on the structure or site.

39. While the Department's proposed arbitration process deals with the business disputes related to antenna tower and site sharing, it has to be identified who will arbitrate disputes based on disagreement over "technical feasibility" which includes structural capability. Bell Mobility submits that the Department, by virtue of its spectrum engineering expertise, is the appropriate body to address disputes related to technical matters.

Comments on the Specific CoL Relating to Mandatory Tower/Site Sharing

40. Proposed mandatory tower/site sharing CoL (1), page 2 of the Consultation proposes that:

Licensees must facilitate sharing of antenna sites, including rooftops, and supporting structures ("Site(s)") and not cause or contribute to the exclusion of other radiocommunication antenna operators ("Operator(s)") from gaining access to Sites. Without limiting the generality of the foregoing, where a 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. Further, Licensees must not enter into or renew agreements that exclude other Operators from using a Site.

41. Bell Mobility notes that building owners and/or property managers are obviously a critical party regarding the use of rooftops for placing wireless sites. It is not within Bell Mobility's capability to facilitate the sharing of rooftops in instances where the building owner and/or property manager is the party which is denying access to others for a variety of reasons, e.g. structural loading or future plans for the rooftop.

42. Consequently, where the building owner and/or property manager is the party denying access to another licensee, it may not be within Bell Mobility's capacity to "waive" that portion of the agreement to facilitate a sharing request.

43. Proposed mandatory owner/site sharing CoL (2), page 2 of the Consultation proposes that:

Licensees must share where technically feasible except where national security concerns exist or the Site is used solely for personal enjoyment.

44. Bell Mobility assumes that this CoL includes all licensees and operators subject to the Department's siting policies including, for example, federal, provincial, municipal and utilities in addition to wireless licensees and broadcasters. As previously indicated, "technical feasibility" will be an issue to be addressed separately from the business aspects (i.e. rates, contract terms, etc.)

45. Proposed mandatory tower/site sharing CoL (3), pages 2-3 of the Consultation proposes that:

In order to fulfill the condition of sharing in accordance with this licence, the Licensee must respond to a request to share by any other Operator within 30 days as follows:

- a. In the event that the request to share is technically feasible, the Licensee must provide the requesting Operator with a response and an offer to enter into a sharing agreement. The department expects that Site-sharing arrangements would be offered at commercial rates that are reasonably comparable to rates currently charged to others for similar access.
- b. In the event that the request to share is not technically feasible, the Licensee must provide the requesting Operator with a response detailing

the reasons why it is not feasible (accompanied by any applicable technical information) in accordance with CPC-2-0-03.

46. The requirement to determine the technical feasibility of a sharing request, an unavoidable first step in the mandatory sharing process, makes it impossible that such requests can be uniformly turned around within a 30 day timeframe. As noted previously, in addition to the tower/site owner, other tenants (e.g. other licensees, utilities, government agencies, etc.) may already be co-located on the tower/site and they will be have to be contacted and required to undertake their own technical studies related to the proposed addition of another antenna array operating in the AWS frequency bands. Bell Mobility proposes that a more realistic turn around timeframe, given the need to frequently consult with other tenants, would be 120 days from the date of the request. Similarly, engineering studies, requiring detailed input from the requesting party, will have to be undertaken to determine the structural capability of the tower/site to safely accommodate additional antenna array both in terms of compliance with Health Canada's Safety Code 6 as well as in terms of structural integrity. Similarly, in those cases where a request to share is found not to be technically feasible, the tower/site owner will be required to collate the input from other tenants in the event that it is the presence of other tenants which directly results in the determination of the request not being technically feasible.

47. Proposed mandatory tower/site sharing CoL (4), at pages 3 of the Consultation proposes that:

Site-sharing arrangements will be negotiated expeditiously and in good faith. If after 90 days from the initial request, the Licensee and the Operator requesting a Site-sharing arrangement cannot agree to the terms of the arrangement, the Licensee must agree to submit the matter to an arbitrator as agreed upon by the parties in accordance with the provisions of the applicable provincial arbitration legislation. The Licensee agrees that the arbitrator 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 arrangement and those relating to procedural matters under the arbitration) and that any arbitration under this section shall be legally binding. The Licensee must participate fully in such an arbitration and follow all directions of the arbitrator in accordance with any arbitration agreement or with the applicable legislation. At any time, the Licensee and the Operator requesting antenna tower and site sharing may agree to specific terms with regard to submitting their dispute to an arbitrator and may withdraw their arbitration, on agreed terms, so long as they agree to a Site-sharing arrangement.

48. Based on our comments above concerning determination of technical feasibility, Bell Mobility submits that 180 days from the initial request is a more realistic threshold to trigger submission of the matter to arbitration.

49. Bell Mobility also notes that, as a practical consideration, the ability of tower and site owners to accommodate multiple requests for sharing on multiple towers and sites, even in the more reasonable timeframes proposed in these comments, is subject to the actual number of requests ultimately received. This will especially be a factor if multiple new entrants are licensed and all are building out their networks in a relatively short and concurrent timeframe. Bell Mobility submits that the Department in revising CPC-2-0-03 should cap the number of requests that a tower/site owner is expected to accommodate, for example no more than 12 new requests in a six month period.

50. Given all the above comments, Bell Mobility submits that a more appropriate mandatory tower/site sharing CoL would read as follows (use of underlining indicates primary areas of changed text):

1. Licensees must facilitate sharing of antenna sites, including rooftops, and supporting structures ("Site(s)") and not cause or contribute to the exclusion of other radiocommunication antenna operators ("Operator(s)") from gaining access to Sites. Without limiting the generality of the foregoing, where a 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, where it is within the Licensee's capability to do so, to waiving that portion of the agreement to facilitate a request to share. Further, Licensees must not enter into or renew agreements that exclude other Operators from using a Site. Notwithstanding the preceding, it is realized that "rooftops" require the approval of the property owner/manager to effect sharing in such cases. In the event that the property owner/manager does not agree to the sharing request, it is recognized that this is beyond the control of the Licensee. Licensees however will not be prohibited from using rooftops in those instances where the refusal for sharing originates with the property owner/manager.

2. Licensees must share where technically feasible and where it does not degrade the licensee's network except where national security concerns exist or the Site is used solely for personal enjoyment. Industry Canada will adjudicate disputes regarding technical feasibility.

3. In order to fulfill the condition of sharing in accordance with this licence, the Licensee must respond to a request to share by any other Operator within 120 days as follows:

- a. In the event that the request to share is technically feasible, the Licensee must provide the requesting Operator with a response and an offer to

enter into a sharing agreement. The department expects that Site-sharing arrangements would be offered at commercial rates that are reasonably comparable to rates currently charged to others for similar access.

- b. In the event that the request to share is not technically feasible, the Licensee must provide the requesting Operator with a response detailing the reasons why it is not feasible (accompanied by any applicable technical information) in accordance with CPC-2-0-03.

4. Site-sharing arrangements will be negotiated expeditiously and in good faith. If after 180 days from the initial request, the Licensee and the Operator requesting a Site-sharing arrangement cannot agree to the terms of the arrangement, the Licensee must agree to submit the matter to an arbitrator as agreed upon by the parties in accordance with the provisions of the applicable provincial arbitration legislation. The Licensee agrees that the arbitrator 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 arrangement and those relating to procedural matters under the arbitration) and that any arbitration under this section shall be legally binding. The Licensee must participate fully in such an arbitration and follow all directions of the arbitrator in accordance with any arbitration agreement or with the applicable legislation. At any time, the Licensee and the Operator requesting antenna tower and site sharing may agree to specific terms with regard to submitting their dispute to an arbitrator and may withdraw their arbitration, on agreed terms, so long as they agree to a Site-sharing arrangement

5. All costs associated with analysing and responding to a new entrant request for mandatory tower/site sharing will be detailed and invoiced to the applicable new entrant. Existing tenants of antenna tower/site installations will directly invoice applicable new entrants for any work on their part necessitated by the new entrant request.

Conditions of Licence for Mandatory Roaming – General Comments

51. At page 3 of the Consultation, in addressing the Conditions of Licence for Mandatory Roaming, the Department states that:

The conditions of licence described below will apply to all licences in the cellular, PCS and AWS bands.

52. To avoid confusion, Bell Mobility submits that the band designations for the above licences should be specified as indicated in the proposed revisions to the Department's mandatory roaming CoL below.

53. Also at page 3 of the Consultation, in addressing the Conditions of Licence for Mandatory Roaming, the Department states that:

Where technically feasible, Licensees must offer automatic digital roaming on their cellular, PCS and AWS networks as follows:

54. Bell Mobility interprets the phrase "where technically feasible" to mean that, for example, a carrier using a CDMA-based network will not be required to provide roaming to a requesting carrier using other than a CDMA-based network. Another technical issue relates to the additional network capacity required to accommodate the roaming traffic of new entrants. In this regard, the commercial rates applicable to the provision of mandated roaming to new entrants will accommodate any additional capital investment required, in incumbents' networks, to handle the incremental new entrant roaming.

55. Proposed mandatory roaming CoL (1), at page 3 of the Consultation proposes that:

1. Roaming is to be offered:

- a. To all cellular, PCS and AWS Licensees outside of their licensed area, for at least the 10-year term of AWS licences;
- b. To all new entrants, in their licensed areas for a period of 5 years commencing with the date of issuance of their licence; and
- c. To national new entrants who have substantially met the 5-year roll-out requirements outlined on their licence, as determined by Industry Canada, for an additional 5 years.

56. Bell Mobility believes that it will be important to motivate new entrants, whether regional or national, to build-out their networks by sunsetting the in-territory mandatory roaming CoL with a definite time frame as addressed in Bell Mobility's proposed CoL below.

57. Bell Mobility also submits that the requirement to offer roaming must be tied to new entrant AWS network build-out and should therefore reflect the principle that roaming is the provision of temporary access for customers of a home network on the facilities of the visited network. Bell Mobility believes that linking the provision of mandated roaming to the requirement that new entrants must have first made service available to 50% of the minimum population coverage specified in the five year Roll-out Targets, as contained in Annex 2 of the AWS Policy Decision, is appropriate to both trigger the provision of mandated roaming to new entrant licensees while also facilitating achievement of the Department's objective of facilities-based competition.

58. In a similar vein, a key objective of the Department's AWS Policy Decision is to facilitate new facilities-based entry into the Canadian wireless market. In this regard, in-territory roaming is specifically required to assist a non-licensed new entrant while it builds out its newly acquired licensed territory. Bell Mobility notes that while MTS Allstream and SaskTel qualify under the Department's new entrant definition, the fact that both these parties are existing licensees and have fully developed and deployed wireless networks operating within their currently licensed territory obviates the need to provide them with in-territory roaming in that territory.

59. Bell Mobility also submits that roaming should not be a substitute for, or be used by new entrants to avoid, network build-out. As noted above roaming, a well understood concept in the wireless industry, is the provision of temporary service to the customers of one network, e.g. while they are travelling away from home, on the network of another carrier. It stands therefore that new entrants should not be permitted to market or sell their services, outside their licensed area, by means of mandated roaming.

60. It is also important that mandatory roaming not be required to be provided to new entrants within their built-out territory. In this regard, as licensed carriers, the onus should be on the new entrant licensee to construct its network, within its licensed territory, to the extent that it deems necessary to market its services and retain its customers. New entrants therefore should not be permitted to use mandated roaming for the purposes of either capacity off loading or to accomplish quality enhancement within their built area. If such an arrangement were to be permitted, it would enable new entrants to avoid capital investments necessary within their own networks by relying on the mandate roaming policy to adequately market their service. Bell Mobility submits that not requiring the provision of mandatory roaming within the new entrant's built area, will incent new entrants to deploy the facilities-based networks which the Department's AWS Policy Decision seeks to accomplish.

61. Further, Bell Mobility believes that new entrant roamers, as was the case in the 1995 and 2001 PCS licensing processes, must be required to accomplish roaming via multi-banded handsets, i.e. with one such band being in the AWS frequency band that it has won at auction.

62. Proposed mandatory roaming CoL (2), at page 3 of the Consultation proposes that:

2. In order to fulfill the condition of offering roaming in accordance with this licence:

- a. The services offered must include digital voice and data services such as Internet access, e-mail, and other data services;
- b. When requested, Licensees will provide an offer to enter into a roaming arrangement to provide roaming services on reasonable terms within 30 days. Industry Canada expects that roaming would be offered at commercial rates that are reasonably comparable to rates that are currently charged to others for similar services; and
- c. Roaming arrangements will be negotiated expeditiously and in good faith. If after 90 days from the initial request, the Licensee and the party requesting a roaming arrangement cannot agree to the terms of the roaming arrangement, the Licensee must agree to submit the matter to an arbitrator as agreed upon by the parties or in accordance with the provisions of the applicable provincial arbitration legislation. The Licensee agrees that the arbitrator shall have all necessary powers to determine all of the questions in dispute (including those relating to determining the appropriate terms of the roaming arrangement and those relating to procedural matters under the arbitration) and that any arbitration under this section shall be legally binding. The Licensee must participate fully in such an arbitration and follow all directions of the arbitrator in accordance with any arbitration agreement or with the applicable legislation. At any time, the Licensee and the party requesting roaming may agree to specific terms with regard to submitting their dispute to an arbitrator and may withdraw their arbitration, on agreed terms, so long as they agree to a roaming arrangement.

63. Regarding clause (a) above, Bell Mobility submits that the fundamental requirement for roaming is to provide connectivity to customers of the requesting party who are roaming on the Licensee's network. This would include voice and basic data connectivity (i.e. e-mail, SMS). Similarly, mandatory roaming should not include mandated access to the underlying features and/or services provided by the host carrier, e.g. voice mail, caller ID, customer service, etc.).

64. Given all the above comments, Bell Mobility submits that a more appropriate mandatory roaming CoL would read as follows (use of underlining indicates primary areas of changed text):

Licensees must offer automatic digital roaming on their cellular, PCS and AWS networks as follows:

1. Roaming is to be offered:

- a. Where technically feasible to all cellular (800 MHz), PCS (1.9 GHz) and AWS (1.7 and 2.1 GHz) Licensees outside of their licensed area, for the 10-year term of AWS licences;

b. To new entrants in their non-built licensed areas for a period of 5 years;

c. To national new entrants who have satisfied the 5-year roll-out requirements outlined on their licence, as determined by Industry Canada, for an additional 5 years,

2. In order to fulfill the condition of offering roaming in accordance with this licence:

a. Roaming includes digital voice and data connectivity. Data connectivity includes e-mail and SMS;

b. To qualify for either in-territory or out-of territory roaming, as a specific new entrant CoL, new entrants must: (1) have built-out their local AWS wireless network and must first have provided service to a minimum of 50% of the minimum population coverage specified in the five year Roll-out Targets ; and (2) roam, on incumbent cellular and PCS networks, via means of a multi-band handset (i.e. incorporating the AWS band in the new entrant's chosen technology plus the band or bands (i.e. digital 800 MHz only, 1.9 GHz only, or a combination of both digital 800 MHz and 1.9 GHz as determined by the new entrant);

c. Roaming does not include providing access to new entrants within their build area for the purposes of capacity off-load or quality enhancement.

d. When requested, Licensees will provide an offer to enter into a roaming arrangement to provide roaming services on reasonable terms within 30 days. Industry Canada expects that roaming would be offered at commercial rates that are reasonably comparable to rates that are currently charged to others for similar services; and

e. Roaming arrangements will be negotiated expeditiously and in good faith. If after 180 days from the initial request, the Licensee and the party requesting a roaming arrangement cannot agree to the terms of the roaming arrangement, the Licensee must agree to submit the matter to an arbitrator as agreed upon by the parties or in accordance with the provisions of the applicable provincial arbitration legislation. The Licensee agrees that the arbitrator shall have all necessary powers to determine all of the questions in dispute (including those relating to determining the appropriate terms of the roaming arrangement and those relating to procedural matters under the arbitration) and that any arbitration under this section shall be legally binding. The Licensee must participate fully in such an arbitration and follow all directions of the arbitrator in accordance with any arbitration agreement or with the applicable legislation. At any time, the Licensee and the party requesting roaming may agree to specific terms with regard to submitting their dispute to an arbitrator and may withdraw their arbitration, on agreed terms, so long as they agree to a roaming arrangement.

f. All costs associated with responding to a new entrant request for mandatory roaming will be detailed and invoiced to the new entrant.

Arbitration Issues

65. Concerning arbitration issues, at page 2 of the Consultation, the Department states that:

if no other mode of arbitration is suggested, the matter will be referred to a single arbitrator;

66. Subsequently, at page 5 of the Consultation, the Department poses the following question specifically regarding the arbitration issue:

2. Specific provisions regarding arbitration may vary from province to province. Would it be useful to adopt a national code such as the ADR Institute of Canada's National Arbitration Rules in default of any specific arbitration agreement? Are there any special provisions which should be made applicable to the arbitrators concerning sharing and roaming?

67. Bell Mobility recommends choosing a single national code that will apply to all disputes; in this case, the *Commercial Arbitration Act (CAA)*. Bell recommends the CAA because it is national, it is a statute passed by the Parliament of Canada, it is based on the model law adopted by the United Nations Commission on International Trade Law on June 21, 1985, and it was drafted with specific attention to commercial disputes.

68. Bell Mobility submits that the CAA provides a sound default arbitral structure, but notes that disputes about tower sharing and roaming have unique aspects that will require specific attention. Thus, Bell Mobility recommends that Industry Canada introduce the rules listed below.⁷

69. Finally, Bell Mobility notes the importance to all parties of a fair and impartial tribunal. As such, Bell Mobility submits that the default tribunal panel should consist of 3 arbitrators consisting entirely of senior lawyers and retired judges.

70. These four parts make up Bell Mobility's **Proposed Arbitration Policy**:

1) Parties are free to determine procedure and all details of arbitration.

⁷ As noted Bell Mobility recommends that CAA be the single national code that will apply to all disputes. If Industry Canada chooses ADR as the national code then Bell Mobility submits that, unless the parties agree otherwise, arbitration tribunals should be composed of three (3) arbitrators. Each party shall appoint one arbitrator each and the two arbitrators shall jointly appoint the third arbitrator who shall act as the chair of the tribunal.

2) The Commercial Arbitration Act (R.S., 1985, c.17 (2nd Supp) (CAA) shall apply to any issue not addressed in parties' arbitration agreement. However, the CAA shall not override the set of rules created by Industry Canada in part (4).

3) Parties will have a full right of appeal on questions of law, mixed fact and law and fact to a panel of three retired appellate justices.

4) Industry Canada should adopt the following minimalist rules that apply specifically in the context of arbitration for disputes regarding tower/site sharing and roaming:

- The parties, the witnesses, and the Arbitrators shall treat all meetings and communications, the proceedings, documents disclosed in the proceeding, discovery and the decision of the Tribunal as confidential, except in conjunction with a judicial challenge to, or enforcement of, a decision and unless otherwise required by law.
- No documents, information, evidence, correspondence, proceedings, or awards from one arbitration shall be referenced, referred to, used, or disclosed at a separate arbitration.
- At a party's request, certain evidence, documents, or information solicited by the Tribunal may be disclosed only to the Tribunal and not the other party. In assessing such a request, the Tribunal shall weigh the detrimental harm disclosure may cause to the party making the request against significance of the availability of the information to the other party.
- The arbitrator shall have regard to whether there is available to the applicant an alternative, effective, adequate and competitive means of attaining access to a tower or roaming.
- In making its determination, the Tribunal shall rely on the principle of market forces to the greatest extent possible. Any measures imposed should interfere with market forces to the minimal extent necessary.
- The Tribunal may determine costs. If costs and expenses are awarded, such costs and expenses shall be made part of the decision. The Tribunal shall be entitled to make separate awards for legal costs and the fees and expenses of the arbitration and shall be entitled to apportion costs and expenses between the parties.
- Final decisions may be subject to review by a court of competent jurisdiction on any question of law or jurisdiction.

Conclusion

71. In the interests of ensuring that Canada's wireless infrastructure continues to be developed in a manner which enhances business competitiveness and productivity as well as enhancing the personal security and quality of life for Canadians in general, Bell Mobility respectfully requests that the Department given serious consideration to the significant issues identified in these comments.

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