

## **EXECUTIVE SUMMARY**

E1. Bell Mobility Inc. (Bell Mobility) provides the following reply 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 has reviewed the comments of parties submitted on 22 January 2008. As noted in our submission, Bell Mobility relies, in providing its comments and these reply comments, on its 23 years of experience in operating mobile cellular and PCS networks in the Canadian wireless market. Bell Mobility also noted that it has also relied on its extensive experience and involvement, over that same timeframe, with the development of Canada's wireless regulatory regime.

E3. The government's AWS Policy Decision has introduced uncertainty into the Canadian wireless market. While clearly the AWS Policy Decision has not impacted wireless forbearance, nor should it given the state of competition in the wireless industry as acknowledged in the AWS Policy Decision, the government has strayed quite far from its philosophy of relying on market forces and streamlining regulation.

E4. As addressed in these reply comments, Bell Mobility, along with other incumbent wireless licensees, do not believe that the Minister has the authority to amend existing conditions of licence, as is being proposed in this instance. In this reply, Bell Mobility comments on the proposed license conditions as though the Minister had the power to amend our licences but nothing in these comments should be taken as a waiver of its rights and Bell Mobility reserves the right to any and all remedies to prevent an unlawful amendment of its licence conditions.

E5. In comparison to the process leading up to the 2001 PCS Auction, the process laid out for the 2008 AWS Auction can only be characterized as one of undue haste. Other parties, including potential new entrants, share this view noting that there will only be a matter of days for potential applicants to analyze, assimilate and make significant financial decisions based on the information, forthcoming only on 27 February 2008, as to whether or not to apply to participate in the AWS auction by 10 March 2008.

E6. Regarding costs, in the circumstances, all costs directly attributable to accommodating the Department's AWS Policy Decision should be borne by any new entrant(s) licensed as a result of that Decision. Incumbent wireless networks are not essential facilities. Therefore, while the AWS Policy Decision mandates access to those networks, all costs incurred as a direct result of accommodating or implementing that Decision, including the costs of arbitration, should be borne by the parties directly benefiting from such mandated access.

E7. New entrants should not be permitted to use mandated roaming for purposes of either capacity off loading or to accomplish quality enhancement within their built area. The specific and only intention of the mandated roaming policy is, for a limited period of time, to facilitate new entry. The normal reciprocal nature of wireless roaming, evident in all existing commercial roaming agreements, is entirely absent. Mandated roaming, in the context of the AWS licensing process, therefore reflects the Department's intention of providing roaming to new entrants while the new entrant licensee builds out its network and not, as proposed by several parties, as a means of extending the coverage of new entrant networks. Logically, therefore, mandated roaming is neither necessary nor required in the built-out footprint of national or regional new entrants resulting from the AWS auction.

E8. As noted in these reply comments the concept of roaming is a well-understood practice in the wireless industry. In that regard, the record of the Consultation is clear that, consistent with the FCC's treatment of roaming as well as with the government's AWS Policy Decision, "roaming" is not "resale".

E9. Further, as in the 1995 PCS licensing process, roaming is accomplished through the use of multi-banded handsets, one band of which is in the new entrant's AWS frequency. Clearly, in order to accomplish the above, the new entrant requires a built-out, operating wireless network and must be marketing its services to customers in that built-out area. Absent that condition, i.e. a built-out wireless network with a customer base, there would exist no customers who would require roaming outside their home network.

E10. Also, and again consistent with the FCC's treatment of roaming, roaming does not include broadband data such as Internet browsing, video downloads or mobile broadcasting nor does it include access to 3G services.

E11. Regarding mandated tower and site sharing, the record of the Consultation as well as the Clarification Question process demonstrates that confusion among key parties is already evident. Bell Mobility strongly urges the Department, for the reasons discussed below, to revise CPC-2-0-03 before any mandated sharing comes into effect. In this way, potential new entrants along with municipalities and other interested parties can participate in the necessary government – industry consultative process that is needed to produce a workable and efficient CPC-2-0-03 which reflects the new mandated site sharing policy.

E12. Bell Mobility repeats and relies upon its submission of 22 January 2008 as it relates to the arbitration of disputes. Accordingly, Bell Mobility recommends the application of a single national arbitration code, the *Commercial Arbitration Act* (CAA), along with arbitration panels that consist of three arbitrators. Bell Mobility does not believe that the CRTC is better positioned, than arbitrators consisting of senior lawyers or retired judges, to arbitrate commercial issues. Bell Mobility is concerned that the CRTC would, by orientation and approach, find it difficult not to apply overly prescriptive regulatory concepts which are actually being scaled back, streamlined or eliminated in the context of wireline regulation in accordance with the Governor in Council's Policy Direction.

E13. Finally, Bell Mobility has included, in the Appendix to these reply comments, its proposed revised conditions of licence regarding mandated roaming and mandated tower and site sharing.