

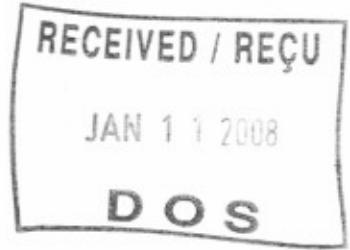


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January 11, 2008

Director, Spectrum Management Operations
Radiocommunications and Broadcasting Regulatory Branch
Industry Canada
300 Slater Street
Ottawa, Ontario
K1A 0C8

Re: Canada Gazette, Part I, 2007-11-28, Notice DGRB-010-07
Consultation on Proposed Conditions of Licence to Mandate
Roaming and Antenna Tower and Site Sharing and to Prohibit
Exclusive Site Arrangements

Further to the above cited Canada Gazette Notice, the Canadian
Radio-television and Telecommunications Commission is pleased to
submit the following comments in respect of the provisions governing
binding arbitration.

Yours sincerely,

Robert A. Morin
Secretary General

Encl.

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Canada
05-06-31

Submissions by the CRTC regarding *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*

1. The Canadian Radio-television and Telecommunications Commission (CRTC) is pleased to provide the following submissions in response to *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*, Canada Gazette Part I, Vol. 141, No.49, 8 December 2007 (the Notice).
2. The CRTC notes that while the Notice solicited comments on three issues, the CRTC wishes to provide submissions only with respect to the second issue, the provisions governing binding arbitration of any disputes arising out of the implementation of the proposed conditions of licence imposed under the *Radiocommunication Act*.
3. The CRTC suggests that it is best positioned to act as an arbitrator of such disputes and that it would be pleased to do so in order to assist with the furtherance of the government's stated aim of improving competition and innovation in the wireless services market.
4. The CRTC believes that, while the proposed arbitrations would take place pursuant to conditions of licence imposed under the *Radiocommunication Act* and not under the *Telecommunications Act*, the CRTC's expertise in telecommunications and dispute resolution would be valuable in allowing it to arbitrate any disputes in a timely and efficient manner.
5. The CRTC has many years of experience dealing with telecommunications services and telecommunications service providers. The CRTC is familiar with the wireless services market and the industry players in that market. The CRTC would be able to undertake any arbitration pursuant to the proposed conditions of licence without the need for the same learning curve that an arbitrator who lacked its experience would face.
6. The CRTC regularly adjudicates competitive disputes relating to agreements between telecommunications service providers and/or relating to access by telecommunications service providers to each other's network infrastructure. In addition, the CRTC continues to adjudicate disputes regarding access to public rights of way, access to telecommunications support structures and access to multiple-unit dwellings. The CRTC notes that these types of disputes are in many ways analogous to the types of disputes likely to arise with respect to national roaming agreements and antenna tower and site sharing under the proposed conditions of licence.

7. The CRTC suggests, therefore, that arbitrating any disputes arising under the proposed conditions of licence would be a natural extension of the CRTC's expertise in resolving telecommunications disputes.
8. The CRTC also notes that using its expertise in this fashion would be consistent with the recommendations of the Telecommunications Policy Review Panel which had suggested that the CRTC be asked to assume management and regulatory functions relating to spectrum while Industry Canada would direct spectrum policy.
9. With respect to the issue raised by the Notice with respect to the proper framework for such arbitrations, the CRTC suggests that such arbitrations would best be undertaken under the applicable provincial and territorial arbitration legislation.
10. The CRTC notes that, as any arbitration will take place pursuant to conditions of licence under the *Radiocommunication Act*, it would not be able to use any of its statutory powers under the *Telecommunications Act* nor would parties be able to avail themselves of any appeal routes under the *Telecommunications Act*.
11. The CRTC believes, therefore, that using the provincial and territorial legislative framework will provide parties to the arbitration with more clarity and certainty regarding the process and structure of the arbitration and in particular the method for enforcing the arbitration awards.
12. The CRTC would suggest that further clarity could be provided by including within the conditions of licence a method for determining which provincial or territorial arbitration legislation should be used with respect to any particular arbitration. The CRTC suggests that the parties to any dispute under the conditions of licence should be permitted to select the applicable provincial or territorial arbitration legislation. In the absence of an agreement between the parties, the applicable legislation should be the legislation in force in the province or territory where the complainant has its head office located.