



January 22nd, 2008

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and REGULAR MAIL**

Director
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Industry Canada
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**Re: *Canada Gazette*, Part I, November 28, 2007, 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**

Attached please find the comments of Bragg Communications Inc., carrying on business as EastLink ("EastLink"), in response to *Canada Gazette* notice DGRB-010-07.

EastLink believes that, in order for mandated roaming and antenna tower and site sharing to be successful, many operational issues must be resolved. Further details regarding the measures we believe are required to achieve this objective are provided in the attached documentation.

We appreciate the opportunity to provide our views to Industry Canada, and look forward to reading the final conditions of licence.

Yours very truly,

Lee Bragg

Co-CEO
EastLink

LB/fp
Enclosure

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

Introduction

1. Bragg Communications Inc., and its predecessor companies, have been offering communications services in the Maritimes for over 30 years and currently offer cable television, local and long distance telephone and High Speed Internet services to residents and businesses in Nova Scotia, Prince Edward Island and parts of New Brunswick under the “EastLink” brand. More recently, as a result of its acquisitions of Persona Communications Corp. and Amtelecom Cable Limited Partnership, Bragg Communications Inc. has expanded and now offers communications services in all 10 Canadian provinces.
2. As noted in the comments filed by EastLink on May 25, 2007, and June 27, 2007, in relation to *Canada Gazette* notice DGTP-002-07, EastLink considers itself a prime example of the benefits that competition has brought to the wireline telephony market. EastLink believes that its presence as a competitor has not only increased choice for Maritime residents and businesses, but has also played a significant role in increasing the quality of the services and products available to consumers. EastLink now wants to see the same value and innovation brought to the wireless telephony market.
3. Generally, EastLink supports the proposals set out in *Canada Gazette* notice DGRB-010-07 and appreciates that the government has recognized the importance of establishing rules to enable new entrants to enter the wireless markets in order to improve upon competition within that industry. In *Canada Gazette* notice DGRB-010-07, Industry Canada (the “Department”) has specifically requested comments on the conditions of licence it proposed for the purposes of implementing mandatory roaming and antenna tower and site sharing. EastLink believes that both of these measures are key to abolishing the significant barriers to entry that exist for potential new entrants to the wireless market. Accordingly, EastLink has proposed herein those changes to the proposed conditions of licence that it believes are necessary to ensure the success of those initiatives.

Executive Summary

4. EastLink’s proposals can be summarized as follows:

Roaming - EastLink agrees with Industry Canada that the ability to roam on the incumbents’ networks is essential for new entrants if they are going to compete effectively. EastLink also believes that, in order to offer a truly competitive service, a new entrant must not only be able to roam on the incumbents’ networks, but, must also be able to offer its subscribers, where possible, the same services and applications they receive in their home service area when they are roaming. Otherwise, the quality of service offered by new entrants and, as a result, their ability to compete, will be significantly impacted. Accordingly, EastLink has

proposed the following additions to the condition of licence to ensure that mandatory roaming is truly successful:

- (a) Because some of the advanced services available today (as well as many of those to be implemented in the years to come) are not adequately supported on 2G networks, mandated roaming should include the ability of new entrants to roam on incumbents' 3G networks (where available) so that new entrants' customers will not lose access to advanced services when roaming.
- (b) Mandated roaming should include support for applications available on both the incumbent's and the new entrant's networks so that the new entrant's subscribers do not lose access to advanced mobile services when roaming.
- (c) Mandated roaming should include handovers so that new entrants' subscribers do not face dropped calls when leaving their nominal or home coverage area.
- (d) The conditions of licence should define the expected incumbent collaboration with respect to management of the evolution of the border between new entrants' home networks and adjacent incumbent networks. Otherwise, as a new entrant's network expands, its subscribers may be forced to roam prematurely and/or may experience dropped calls, negatively impacting the quality of service experienced by the new entrant's subscribers when using its service within these newly expanded fringe areas.

Antenna tower and site sharing - EastLink agrees with Industry Canada that access to antennas and supporting structures is a significant barrier to entry into the wireless markets. As a result, EastLink fully supports Industry Canada's decision to require antenna tower and site sharing, and proposes the following changes to the conditions of licence to ensure that this policy achieves its objectives:

- (a) EastLink agrees that the 30 day and 90 day timeframes proposed by Industry Canada are appropriate for the first set of negotiations that take place between two parties with respect to tower and site access. However, EastLink submits that, because the result of these initial negotiations is, generally, a master agreement that can apply to all subsequent requests for tower and site access, a much shorter timeframe would be appropriate for requests that are made after a master agreement is in place.
- (b) To prevent tower owner/operators from being able to reject sharing requests for technical reasons that could be resolved through cooperation between the parties, EastLink proposes amendments to the conditions of licence that would permit the party requesting access to determine whether it is willing to undertake the work necessary to make sharing feasible and, if that is the case, that would require the tower owner/operator to cooperate with all such efforts. Additionally, EastLink proposes that a mechanism be developed to expeditiously resolve any disputes relating to whether sharing is technically feasible.

- (c) EastLink proposes that the conditions of licence expressly state that licensees' obligation to "facilitate" sharing goes beyond a requirement that they not interfere with other parties' efforts and includes an obligation to undertake commercially reasonable efforts to assist such parties.
- (d) EastLink is concerned that new entrants may be forced to invest significant (and unnecessary) time and money in expanding or modifying licensees' towers if a mechanism is not put in place to prevent licensees from reserving unreasonable amounts of space on their towers for their future use. Accordingly, EastLink has proposed four possible mechanisms through which this issue could be addressed.
- (e) EastLink proposes amendments to the conditions of licence to ensure that no party is granted preferential access rights (i.e., access requests should be dealt with on a first come, first served basis, and the same technical constraints should be applied to all parties.)

Arbitration - Because most wireless service providers operate in numerous provinces and will contract with service providers who, likewise, operate in different provinces, a national code is EastLink's preferred alternative as it would allow for greater certainty and consistency. Additionally, EastLink proposes that the Department set out explicit timeframes for each step in the arbitration process, to ensure that the process moves along at an expeditious pace.

Additional Issues - EastLink requests that the Department consider communicating to municipalities that the Department, in CPC-2-0-03, has implemented a new procedure aimed at discouraging the proliferation of towers by requiring the sharing of tower space by multiple carriers and that any restrictions placed on the height of tower structures by municipalities may undermine the success of the Department's initiative, as well as compromising the success of new entry into the wireless market.

Roaming

5. In *Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range* (the "Policy Framework"), the Department concluded that it would require, where technically feasible, cellular, PCS and AWS licensees to offer automatic digital roaming on their networks for a specified period of time and at commercial rates. As previously noted by the Department, mobile services have become an important service to many Canadians and it is imperative that all networks be fully integrated into the national telecommunications networks.¹ Moreover, as indicated by the Department, the value of mobile services is closely related to the coverage of the network and any new entrants will be at a considerable disadvantage in relation to the established service providers unless they are given the ability to establish themselves via mandated roaming on the incumbents' networks.²

¹ See page 24 of *Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services*.

² See page 8 of the Policy Framework.

6. EastLink submits that, in order to offer a truly competitive service, a new entrant must not only be able to roam on the incumbents' networks, but, must also be able, when possible, to offer its subscribers the same services and applications they receive in their home service area, both within and outside of the new entrant's licensed area. Accordingly, if the incumbent network on which a new entrant's customers are roaming is able to support the offering of certain advanced services and applications already supported by the new entrant on its own network, then, EastLink submits, the roaming requirements must include support for those services and applications. EastLink believes that present roaming agreements likely include such provisions. Moreover, such a requirement would be analogous to the principle that currently prohibits the incumbent wireline telephony carriers from offering themselves an undue preference in relation to their competitors in terms of the services they support when competitors are using the incumbents' networks to deliver their services. It would also ensure that new entrants can offer a service that is not limited due to lack of bargaining power within the territories where they are roaming.
7. With the foregoing principles in mind, EastLink has reviewed the conditions of licence proposed by the Department and, while EastLink believes that they are a good foundation, EastLink submits that there are other issues that must be addressed to ensure that mandatory roaming is truly successful. Such measures include: (a) mandated roaming on 3G networks where possible; (b) support for applications available on both home and roaming networks; (c) handovers between networks to ensure call continuity; and (d) management of network borders. Each of these items is discussed in greater detail below.

Mandated Roaming on 3G Networks

8. EastLink submits that new entrants should be allowed to roam on incumbents' 3G networks (where available) before attempting an Inter-System Handover (ISHO) to 2G where 3G is not available. This will ensure that, as discussed above, new entrants' subscribers have access to the same services, applications and quality of service when they roam as they do in their home service area.
9. Today, some advanced services (e.g., video services and high speed Internet) are not as well supported on 2G networks as they would be on 3G networks. As a result, relegating new entrants' customers to 2G networks when they roam will substantially decrease their user experience and severely hinder new entrants' ability to compete with the incumbents. Moreover, because most new applications and services being developed today and in the future will be developed for 3G networks, this problem will only grow worse as time goes on.

Support for Applications Available on Both Home and Roaming Networks

10. EastLink submits that support for applications or advanced services (such as Presence, Unicast, Broadcast Mobile TV, Push to X, SMS, MMS, etc.) should be included as part of mandated roaming where technology permits and both parties support the relevant applications in their home network. Unless this support is mandated, EastLink believes that new entrants will be at a considerable disadvantage compared to the incumbents. Currently, because their networks cover huge portions of Canada, and some of them have favourable roaming

agreements in place to cover the remaining areas, the incumbents' customers have access to all of their services in a significant portion the country. EastLink submits that new entrants must be able to offer a similar quality of service if they are to compete effectively. However, EastLink fears that, if Industry Canada does not require licensees to include support for applications as part of their roaming agreements, new entrants will not have sufficient bargaining power to insist upon the inclusion of such a requirement and, as a result, new entrants' subscribers will not have access to advanced mobile services (e.g., video capabilities) when roaming. This, in turn, will significantly hinder new entrants' ability to compete.

Handovers

11. EastLink submits that the ability of new entrants to perform handovers to the networks of their roaming partners is vital to the success of roaming arrangements (for both "in-territory" and "out-of-territory" automatic digital roaming). Handovers allow subscribers to move seamlessly from the coverage area of one tower to the coverage area of another tower without losing connectivity. Without handovers to roaming partners, an active call is dropped when a subscriber leaves the nominal or home coverage area of their carrier, and must be re-established on the roaming network once the phone has completed its scan of available networks (this implies redialing the number after interruption of the connection). If new entrants are unable to provide handovers to their subscribers, quality of service and customer experience will be greatly impacted and new entrants will be prevented from competing effectively.
12. Since it is easier and to the advantage of the incumbents to provide new entrants with roaming that does not include handovers, EastLink submits that the Department must include provisions requiring handovers (where technology permits) within the conditions of licence. EastLink believes that most existing roaming agreements involving contiguous networks include handovers.³ As such, EastLink submits that requiring licensees to provide handovers to all roaming partners is reasonable.

Management of Network Borders

13. In parallel with a provision for handovers (as discussed in the preceding section), EastLink submits that a process also needs to be established between incumbents and new entrants to manage the evolution of the network borders between new entrants' home networks and adjacent incumbent networks. A cellular network is not something fixed in time or something that gets built and then remains unmodified thereafter. Operators everywhere are constantly investing in their networks, expanding them and improving them based upon the feedback received from their users. Thus, as new entrants deploy and expand their wireless networks, their border with adjacent networks (i.e., the location where the new entrant's network ends and its subscribers must roam on the adjacent incumbent network) is likely to evolve and expand frequently. This means that the area where customers have access to the services and applications available on their home

³ For instance, EastLink understands that the roaming agreements between the incumbents and their US roaming partners include the provision of handovers. It is also highly probable that the roaming agreement between Bell and Telus includes such provisions.

network will continue to expand, but the ability of new entrants' subscribers to use these newly expanded areas of their home network and experience adequate quality of service is dependent on the incumbents' cooperation in managing this border so that new entrants' customers do not experience dropped calls and are not prematurely forced to roam because the incumbent has not updated its network to reflect the new border. Therefore, in order for new entrants to be in a position to offer the same quality of service to their subscribers that is currently available to the incumbents' customers, a process needs to be established with the incumbents to manage the evolution of adjacent network borders as the new entrant network expands. It is highly probable that Bell and Telus have a similar arrangement, either within their mutual roaming agreement, or as a separate agreement. As such, EastLink submits that the conditions of licence must define the expected incumbent collaboration in such matters as part of the mandated roaming provisions.

Antenna Tower and Site Sharing

14. As noted by the Department in the Policy Framework, the proliferation of towers is of concern to many Canadians and the reports of the Telecom Panel and the National Antenna Tower Policy Review indicate that there are compelling social and economic reasons to mandate antenna tower and site sharing.⁴ As a result, the Department has updated CPC-2-0-03, *Radio Communications and Broadcasting Antenna Systems*, effective January 1, 2008, to require that, before building a new antenna supporting structure, parties must consider sharing an existing supporting structure or attempting to use other existing infrastructure.
15. EastLink notes that, in addition to limiting the proliferation of towers, tower and site sharing also alleviates the upfront capital requirements that new entrants face when deploying cellular infrastructure. Access to antennas and supporting structures is a significant barrier to entry into the wireless markets. A new entrant who has successfully obtained necessary spectrum will be severely limited in its ability to establish a service if it cannot access antennas and support structures on reasonable terms and conditions and within reasonable timeframes.
16. In light of all of the foregoing, EastLink believes that mandatory tower and site sharing is crucial to the success of new entrants and fully supports the Department's decision to require antenna tower and site sharing. However, having reviewed the conditions of licence proposed by the Department, EastLink submits that, in order for mandated tower/site sharing to be truly successful, there are several technical and operational considerations that must be addressed. The most critical of these issues are discussed below.

Timeframes

17. EastLink agrees that the 30 day and 90 day timeframes established by Industry Canada are appropriate for the first agreements negotiated between two parties. Typically, when a party signals its interest in sharing a tower structure owned by another party, the tower owner/operator sends a preliminary information package

⁴ See page 9 of the Policy Framework.

to the requesting party, which normally includes CAD drawings of the structure (with actual antennas and equipment installed) as well as an indication of the space the tower owner/operator wants to reserve for its own future use. This takes approximately 15 to 20 business days, although, at times, it will take longer. EastLink submits that, to ensure that the process moves along expeditiously, the Department should explicitly state in the conditions of licence that a licensee must provide this information package within 30 days. After reception of this preliminary information package, the requesting party then performs the engineering of its proposed installation, taking into consideration the equipment actually installed on the tower, the future needs of the tower owner/operator and its own needs and requirements. This engineering is, of course, compliant with all codes and regulations in place and many technical aspects must be considered. Typically, this engineering takes another 15 to 20 business days. Thus, before an official sharing request is filed by the party requesting access, significant time has already elapsed. Then, the party requesting access submits its sharing request, including the appropriate plans, to the tower owner/operator and must wait for approval. It is at this juncture that delays of 6 to 12 months may arise, depending on the circumstances. EastLink submits that, in order for tower sharing to work, such delays cannot be permitted to occur. As a result, we are in full agreement with Industry Canada's conclusion that the tower owner/operator should be mandated to respond to the requesting party's sharing request within 30 days of receiving the request. If this does not occur, it is highly unlikely that the parties will be successful in negotiating an agreement within 90 days, as required by the conditions of licence.

18. Additionally, EastLink submits that the conditions of licence should recognize that, once this first agreement is negotiated, it can apply to all tower and site access that takes place between the parties (i.e., separate negotiations are not required for each tower or site). For example, it is EastLink's understanding that, today, when tower access is negotiated between two operators, a master agreement is normally negotiated with a detailed fee schedule (often on a per antenna basis) and other terms that are applicable to all tower sharing agreements between the 2 operators. The fee schedule is also normally mutual, whether operator A wants to share a tower with operator B, or vice-versa. Accordingly, EastLink submits that, 90 days after the very first tower sharing request is made by a new entrant to an incumbent, a master agreement or a memorandum of understanding should be in place detailing the fee schedule and other terms that will apply to all tower sharing agreements between both parties, both with respect to present sharing requests and future sharing requests. Therefore, the incumbents should not be permitted to subject new entrants to unnecessary delays by using the 30 day and 90 day timeframes for subsequent sharing requests. EastLink submits that a much shorter timeframe would be appropriate for such negotiations because the majority, if not all of the issues between the parties will have been addressed in the master agreement. Accordingly, EastLink submits that the conditions of licence should be amended to provide a shorter timeframe for subsequent sharing requests between two operators who have a master agreement in place between them.

Reasons for Refusing Access

19. The proposed conditions of licence state: “[l]icensees must share where technically feasible except where national security concerns exist or the Site is used solely for personal enjoyment.” EastLink is concerned that this provision is too vague and may provide an opportunity for incumbent tower owner/operators to reject sharing requests as a result of minor technical problems which could easily be resolved. EastLink’s position is that, apart from the national security issues noted by the Department, the likelihood that providing another party with access to a tower will not be technically feasible is very low. EastLink expects that, in the majority of cases, there will be a way to reinforce, replace or extend an existing structure, or add additional filtering equipment, so as to render sharing feasible. As long as the technical requirements related to tower sharing are clearly defined (i.e., compliance with building codes, Navcan and Transport Canada regulations and Radio Frequency isolation requirements), and standard industry practices are observed, most cases will resolve themselves. Accordingly, EastLink proposes that, in those rare cases where a licensee identifies impediments to sharing, the following procedure be observed:
- Consistent with the proposed conditions of licence, where the tower owner/operator believes that access is not technically feasible it would be required to provide the party requesting access (the “requester”) with a response detailing the reasons why access/sharing is not feasible. The response would provide the requester with sufficient information to permit an assessment of the extent of any modifications necessary to render sharing feasible (e.g., by reinforcing, replacing or extending an existing structure, or, through the addition of further filtering equipment).
 - Based on the information provided by the owner/operator, the requester would then have the opportunity to determine whether it wishes to proceed with the necessary modifications, or, whether the extent of the required modifications and the associated costs are so prohibitive as to make sharing of the site/tower impractical or uneconomical. At this stage, owner/operators would be required to work with the requester to establish clear technical requirements and to negotiate arrangements to recover the costs of any necessary modifications.
 - If the requester determines it will proceed with the necessary modifications, the owner/operator would be required to use commercially reasonable efforts to accommodate the requester’s efforts and requests as it proceeds with the modifications.
20. EastLink further proposes that the condition of licence expressly stipulate that the 90 day timeframe for reaching an agreement would not be impacted by this process (i.e., the clock would start running on the 90 day timeframe with the initial sharing request and any subsequent communications or proposals exchanged between the parties with respect to how the technical challenges identified by the licensee will be overcome would NOT be viewed as a new sharing request and would NOT restart the clock on the 90 day timeframe).

21. Finally, EastLink submits that a mechanism must be developed for the expeditious resolution of any disputes with regard to whether site/tower sharing is technically feasible, as well as the extent of the modifications necessary to render sharing technically feasible, and which party should bear the costs associated with those modifications. Absent such a mechanism, new entrants would have no recourse where they believe that a licensee's rejection of their request to share is unreasonable or unfounded

Facilitation of Access by Licensees

22. The proposed condition of licence states:

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.

EastLink submits that the proposed condition of licence is not strong enough, insofar as it only requires non-interference on the part of the licensee. EastLink submits that licensees should be required to undertake commercially reasonable efforts to assist the party requesting access to obtain the consent of the property owner or otherwise facilitate access.

23. For example, EastLink can envision a situation where a tower would be usable, but the available space at the base of the tower would not be sufficient to allow the party requesting access to install its equipment. In such circumstances, the licensee might need to negotiate a modification to its lease with the property owner so that more space could be leased at the tower base to allow the requesting party to install equipment. EastLink submits that, in such cases (and in all cases where the assistance of the licensee is necessary to obtain access), licensees must be required to use all commercially reasonable efforts to expedite such negotiations or take any other actions that are reasonably necessary to facilitate access within the appropriate timeframe.

Available and Reserved Tower Space

24. EastLink submits that the conditions of licence should also address issues relating to instances where tower owner/operators reserve future antenna space. EastLink recognizes that tower owner/operators should be allowed to reserve tower space for their own use; however, they must act reasonably when doing so and they must be realistic in terms of their estimates of their future needs. Otherwise, EastLink is concerned that new entrants may be forced to incur unnecessary costs (e.g., to extend the height of a tower that currently has vacant space) and the launch or expansion of their service may be unnecessarily delayed (e.g., as a result of

having to construct a new tower or modify an existing tower). Thus, tower owner/operators may be able to game the system by reserving unreasonable amounts of space on their structures for future use so as to force parties requesting access to invest significant time and money on tower modifications (to create room for the requesting party's equipment), while the tower owner/operator has no real plans to use the space and, in fact, will not make use of the space for years, if at all. As a result, EastLink submits that the Department must provide clear guidelines to tower owners with respect to the set-aside of tower space for future use so as to minimize the ability of the incumbents to game the system and to ensure that the 90 day timeframe for reaching an agreement is not negatively impacted. To that end, EastLink proposes several possible solutions below.

25. Firstly, EastLink proposes that, if a tower owner/operator wants to reserve a portion of the available space on a tower for its future use, the party requesting access (the "requester") would be permitted to immediately use the space on the condition that if, within a set period of time, the tower owner/operator develops a legitimate need for the space, the requester would either: (a) vacate the space and extend or reinforce the structure so that its equipment could be moved to a new location; or (b) assume the costs of adding the appropriate amount of space to the tower to accommodate the tower owner/operator's needs, subject to the condition that the amount of space the requester would be required to add in the future to accommodate the tower owner/operator's needs would be limited to the amount of space to which the requester was granted access. In all such cases, it would be the choice of the requester as to whether it will vacate the space it is currently occupying, or, extend or reinforce the tower so as to accommodate the tower owner/operator's needs.
26. EastLink submits that this approach is reasonable in that the parties requesting access to a tower would only incur costs if the tower owner does actually use the space in the future. If the tower owner never needs the space, the party granted access would not incur any costs, nor would there be any delays resulting from having to add space to the tower. Thus, it eliminates the possibility of unreasonable estimates of futures needs by tower owner/operators, while splitting the risk appropriately between the parties.
27. Alternatively, to address cases where a party who requested space on a tower was forced to extend or reinforce the tower unnecessarily because of the tower owner/operator reserved space for its future use which was not used within a reasonable period of time, EastLink proposes that a condition of licence be added that would require the tower owner/operator to, after five years (or whatever period of time the Department considers to be appropriate), provide a credit to the party who extended or reinforced the tower unnecessarily. EastLink submits that, where all of the space remains unused five years after the sharing request, the credit applied to the requesting party's rent would be in an amount equal to the costs the requesting party incurred in extending or reinforcing the tower to provide additional space for its use. In those cases where the tower owner/operator did use a portion of the reserved space during the five year period, the amount of the credit would be reduced in proportion to the amount of space used.
28. Again, EastLink submits that this approach is reasonable because it recognizes that where, because of the tower owner/operator's actions, a party has been

required to unnecessarily expand or reinforce a tower (causing them to not only incur unnecessary costs, but also to unnecessarily increase the value of the tower owner/operator's asset), they should be compensated accordingly.

29. In the further alternative, EastLink proposes two more potential solutions that are based on the premise that, as with the wireline telephony and cable industries, there are standards that would be known and employed throughout the wireless industry when a company estimates its future needs with regard to tower and site space. For example, companies would know that, over a certain period of time, they can expect to gain a certain number of customers, or, require a certain amount of additional capacity, and those numbers would translate into a quantifiable need for equipment (and, therefore, space) over that same period of time.
30. Based on this assumption, EastLink proposes that Industry Canada, based on standard industry practices and reasonable expected rates of growth, develop a maximum amount of space that a tower owner/operator can set aside for its future use over a set period of time. Any tower owner/operator seeking to reserve space in excess of this threshold would then be required to justify their estimates to Industry Canada before denying a request for access. To ensure that access requests are not unnecessarily delayed by such a procedure, the conditions of licence would have to specify a short timeframe within which the licensee could apply to Industry Canada for permission to exceed the threshold, as well as provide for a quick response from Industry Canada.
31. EastLink believes that this approach will force tower owner/operators to be reasonable in estimating their future needs because they will not want to incur the costs of proving to Industry Canada that they require an amount of space that cannot be reasonably justified. Moreover, Industry Canada would have the ability to take into account as part of the licence renewal process the fact that certain companies appear to be continually reserving excessive amounts of space for their future use that cannot be justified. Finally, this approach has the advantage of creating certainty for industry participants (via the threshold), while still providing sufficient flexibility to accommodate legitimate business needs that may exceed the threshold.
32. As a final alternative, EastLink proposes that a condition of licence should be added that requires that any reservation of future antenna tower or site space by licensees be reasonable and supportable based on a reasonable assessment of the licensee's future business needs. Simultaneously, a mechanism would be established for the expeditious resolution of disputes as to the reasonableness of the amount of space reserved.

Non-Preferential Access

33. EastLink submits that the conditions of licence with respect to mandatory antenna tower and site sharing should ensure that no parties are granted preferential access rights. To that end, EastLink submits that the conditions of licence should ensure that the following principles are applied:
 - Access requests should be dealt with on a first come, first served basis;

and

- The same technical constraints should be applied to all parties requesting access (e.g., with regard to isolation between antennas, including space and frequency isolation, inter-modulation studies, and structural reinforcement requirements).

Arbitration Procedures

34. The Department requested comments with respect to whether, in light of the fact that arbitration procedures may vary from province to province, it would be useful to adopt a national code such as the ADR Institute of Canada's *National Arbitration Rules*.
35. EastLink submits that a national code would be preferable to an approach that involves reference to the various provincial arbitration statutes. Many wireless service providers ("WSPs") will provide wireless service in multiple provinces and will contract with other WSPs that, likewise, operate in multiple provinces. Accordingly, a framework that uses provincial arbitration statutes may create confusion with respect to which statute is applicable in any given case and may also result in similar disputes between the same parties being dealt with under different provincial statutes at different times and, potentially, with different results.
36. In light of all of the foregoing, and in the interests of creating certainty and consistency in the arbitration process, EastLink submits that a national arbitration framework is the preferred alternative.
37. With regard to whether there are any special provisions which should be made applicable to the arbitrators concerning sharing and roaming, EastLink's main concern is that all disputes be resolved in the most expeditious manner possible, so as not to cause undue delay and/or incur unnecessary costs. Accordingly, EastLink proposes that Industry Canada consider setting out explicit timeframes for each step in the arbitration process (e.g., the appointment of an arbitrator, filing of submissions with the arbitrator). This will ensure that the process moves along at a predetermined pace, eliminating the possibility of one party delaying the process unnecessarily.

Additional Issues

38. While not specifically raised in *Canada Gazette* notice DGRB-010-07, another issue that will potentially create challenges for new entrants is the height restrictions enforced by an increasing number of municipalities across Canada with respect to antenna towers. EastLink understands that municipalities are attempting to mitigate the impact of communication towers on their residents; however, the result of these height restrictions is often that, when multiple operators are seeking to place their equipment in the same area, instead of being able to concentrate their equipment on the same antenna support structure, each operator will be forced to erect its own structure and increase their own site density

in the area, thereby increasing the number of support structures required. Thus, the tower height restrictions may produce the opposite effect to that which is sought.

39. Accordingly, EastLink respectfully requests that the Department consider communicating to municipalities that the Department, in CPC-2-0-03, has implemented a new procedure aimed at discouraging the proliferation of towers by requiring the sharing of tower space by multiple carriers and that any restrictions placed on the height of tower structures may undermine the success of the Department's initiative, as well as compromising the success of new entry into the wireless market.

Conclusion

40. Once again, EastLink wishes to thank the Department for the opportunity to offer comments on the proposed framework. EastLink supports a regime which recognizes the importance of increasing competition to wireless markets and submits that the suggestions and comments set out herein are a reasonable means by which the Department can achieve that objective.

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