



February 7<sup>th</sup>, 2008

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

Sent via email: [AWS@ic.gc.ca](mailto:AWS@ic.gc.ca)

**Look Communications Inc. Response to Comments on the Proposals in:**

**Canada Gazette, Part I, Vol. 141, No. 49 – December 8, 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**

Dear Director:

Look Communications Inc. ("Look") is pleased to provide continuing input to the consultation process detailed in the notice "*Consultation on Proposed Conditions of Licence to Mandate Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*" (the "Consultation"). This letter is a result of reading the January 22, 2008 submissions by both Incumbents and potential New Entrants to the above noted Industry Canada Consultation.

It is our hope that these additional comments on the Consultation submissions to Industry Canada, as set out in the attached Appendix A, will assist Industry Canada in drafting its final policy decisions for the auction rules, mandatory roaming and mandatory antenna tower and site sharing. Look's management and technical group remain available to discuss any or all of these matters in greater detail.

We look forward to continuing to work with Industry Canada as it continues its review of these important matters.

Yours truly,

A handwritten signature in blue ink, appearing to read "Owen Scicluna", written over a light blue horizontal line.

Owen Scicluna  
Director of Engineering & Operations  
Look Communications Inc.

[oscicluna@team.look.ca](mailto:oscicluna@team.look.ca)

416.788.6936

Attachment

---



## A. Background

These comments are written in response to the Incumbent's (Telus, Rogers and Bell) submissions to Industry Canada dated January 22, 2008.

Our comments will express a view on the Incumbents as one group since Look is of the belief that the Incumbents are acting in concert with their apparent and unprecedented threats of litigation against Industry Canada. Listed below are just a few of our observations:

1. It appears that each of the Incumbents feels the need to include in their comments to Industry Canada that the Government of Canada does not have the authority to effect the policy and licence changes proposed in DGRB-010-07 regarding mandatory roaming and antenna tower and site sharing;
2. The tone of the Incumbents' response clearly warn all parties, including the Government of Canada, Industry Canada and the New Entrants, that they will use whatever legal means are available to them to prevent the Government of Canada from implementing the proposed AWS policies, guidelines and conditions of licence; and
3. The apparent threats of litigation, while possibly intended to deter both the Government of Canada and Industry Canada from implementing the proposed policy and licence changes, will make a New Entrant who is planning to bid in the AWS Auction in May 2008 reluctant to do so as a result of the unresolved questions described below.

## B. Issues

It is Look's belief that the following questions will need to be resolved in order for the Government of Canada to balance its dual objectives of maximizing the auction proceeds while ensuring increased competition in the Canadian telecommunications landscape.

1. Will the New Entrant be purchasing a spectrum license from the Government of Canada that will be wrapped up in lengthy litigation that will prohibit access to mandatory roaming and antenna tower and site sharing until the litigation is eventually resolved?
2. Will the licensing fees paid by a New Entrant be held by the Government of Canada while this potential litigation proceeds through the Federal Courts?
3. If the conditions of licence are disputed within the Federal Courts, or New Entrants experience delays in antenna tower and site access or roaming arrangements, it appears to be inconsistent that the New Entrants will be obligated to fulfill their conditions of licence regarding timelines while the litigation continues. In such a scenario, will the New Entrants be obligated to adhere to:
  - a. The five year timeframe to rollout a network in the home territory?
  - b. The ten year timeframe to rollout a network outside of the home territory?
  - c. The five year limitation on mandatory roaming within the home territory?
  - d. The ten year limitation on mandatory roaming outside of the home territory? and
  - e. The ten year licence period that commences on the date that the AWS or PCS licence is issued?
4. How can New Entrants determine the value of their license and finalize business plans and obtain financing if they suspect that the Incumbents will delay their rights by asserting:
  - a. *"Our Towers do not have the capacity"; or*
  - b. *"It is not technically feasible to roam on my network or use my antenna towers and sites"; or*
  - c. *"It will take approximately six to twelve months to determine whether we have any capacity available"; or*
  - d. *"If you are going to roam on my network, 'normal commercial terms' will be a Take-or-Pay contract and you should also be aware that our network has no excess capacity given our future plans".*

### C. Suggested Solutions to Potential Issues

There have been a number of very good submissions to Industry Canada and in particular, those put forth by MTS Allstream and Niagara Networks. Their suggestions regarding arbitration timing and the publication of roaming and tower and site information in advance of the auction are a few of the well reasoned suggestions that both the Government of Canada and Industry Canada should consider implementing to protect the licence rights of New Entrants.

#### **Additional solutions include:**

1. Industry Canada, on behalf of the Government of Canada, should require the Incumbents to clearly disclose the capacity and technical data of their antenna towers and sites and networks in advance of the application deadline of March 10, 2008;
2. All applicants to the AWS Auction should be required to sign an agreement that binds them to adhere to the new policies and guidelines outlined by the Government of Canada and/or Industry Canada including all conditions of licence;
3. All Applicants to the AWS Auction should agree that any conflicts or interpretations arising from these new policies, guidelines or conditions of licence will be adjudicated by the CRTC and will be binding unless overruled by the Cabinet of the Government of Canada;
4. All Applicants to the AWS Auction should sign a declaration agreeing to the arbitration timelines similar to those described by the New Entrants such as Niagara Networks;
5. All Applicants should agree to all conditions of licence for the AWS Auction, and any amendments to existing PCS or Cellular licences, which impose specific financial, operational and licensing penalties for lack of adherence to the policies, guidelines, timelines or other conditions of licence that accompany the AWS, PCS or Cellular licences;
6. The conditions of licence regarding the timelines for network build-out, roaming and the duration of the spectrum licence should commence from the later of:
  - a. The date on which the AWS or PCS spectrum licence is issued;
  - b. The date on which tower or site sharing agreements become effective; or
  - c. The date on which roaming agreements become effective.



## D. Conclusion

It is Look's belief from the tone, actions and suggestions of the Incumbents that they remain prepared to do whatever is required to delay the implementation of any policies, guidelines or conditions of licence that are advantageous to the New Entrants. The Government of Canada, through Industry Canada, must be prepared to avoid a similar situation to the CLECs where the ILECs, in the absence of clearly defined policies coupled with lengthy time delays, were able to undermine the financial and operational efficacy of the CLECs thereby forcing them into financial peril and positioning them for eventual acquisition by the Incumbents. The cable industry also used similar tactics with the ISPs when access was granted to the cable companies' networks.

As a result of these two clearly defined examples where a lack of well-established policies and guidelines led to the demise of the New Entrants, we respectfully submit that all these issues noted above must be addressed prior to the application deadline of March 10, 2008 thereby enabling an auction process whereby:

1. New Entrants will know exactly what they are purchasing for their stakeholders;
2. The Incumbents will clearly understand that spectrum is owned by the Government of Canada and any legal manoeuvring or gamesmanship will not be tolerated at the expense of the Canadian mobile customers, the New Entrants, the Government of Canada or the Canadian taxpayers; and
3. The AWS auction will set a benchmark for:
  - a. Full disclosure;
  - b. Agreement in advance between the AWS applicants and the Government of Canada with respect to policies, guidelines, timelines and conditions of licence; and
  - c. Clear and concise financial and operational penalties for lack of adherence to policies, guidelines, timelines and conditions of licence.

Respectfully submitted.

END OF DOCUMENT