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7 February 2008

Mr. Peter Hill  
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Dear Mr. Hill:

Subject: *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, 8 December 2007 (Gazette Notice No. DGRB-010-07)*

MTS Allstream Inc. (MTS Allstream) is in receipt of comments dated 22 January 2008 from parties interested in the issues identified in *Consultation on Proposed Conditions of Licence to Mandate Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements, Canada Gazette Notice No. DGRB-010-07 (DGRB-010-07)*.

Pursuant to the procedures set out in the Notice in relation to DGRB-010-07 dated 22 January 2008, MTS Allstream is pleased to provide the reply comments herein.

Yours truly,

*Original signed by Teresa Griffin-Muir.*

Attachment

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

**Notice No. DGRB-010-07**

**Reply Comments of  
MTS Allstream Inc.**

**7 February 2008**

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## I. INTRODUCTION

1. MTS Allstream Inc. (MTS Allstream) is in receipt of comments dated 22 January 2008 from parties interested in the issues identified in *Consultation on Proposed Conditions of Licence to Mandate Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*, Notice No. DGRB-010-07 (DGRB-010-07).<sup>1</sup>
2. Pursuant to the procedures set out in the Notice in relation to DGRB-010-07 dated 22 January 2008, MTS Allstream is pleased to provide the reply comments herein.
3. Any failure on the part of MTS Allstream to respond to any submission or argument raised by other parties does not constitute agreement on the part of MTS Allstream with such submission or argument, where to do so would be contrary to the interests of MTS Allstream.
4. At the outset, MTS Allstream notes that it has not addressed in every instance the submissions of parties in their initial comments on issues that fall outside of the scope of DGRB-010-07. For example, Bell Mobility Inc. (Bell Mobility), Rogers Communications Inc. (RCI) and TELUS Communications Company (TELUS) (collectively, the "Big 3") make numerous submissions that if accepted, would effectively reverse the Minister's policy decision to mandate roaming and site sharing. In addition, these parties also made submissions on the amount of AWS spectrum designated for new entrant roll-out requirements and issues relating to the design of the upcoming AWS spectrum auction. The proceeding in DGRB-010-07 is concerned with the manner in which the conditions of mobile wireless spectrum licences should be amended in order to give effect to the Minister's prior policy decisions. MTS Allstream and other parties should not be forced to address matters that indirectly attack the Minister's prior policy decision to mandate site sharing and roaming.

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<sup>1</sup> *Consultation on Proposed Conditions of Licence to Mandate Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*, Gazette Notice No. DGRB-010-07 *Canada Gazette*, Part I, 8 December 2007, pages 3385-3389, as amended by *Update on Clarification Questions for the AWS Policy Framework and Deadline Extension for the Consultation on Proposed Conditions of Licence (DGRB-010-07)*, Gazette Notice DGRB-012-07, *Canada Gazette*, Part I, 13 December 2007 and the Notice dated 22 January 2008 that provided for reply comments.

**A) Summary of Reply Comments on the Implementation of Mandatory Roaming**

5. In relation to roaming, the submissions of the Big 3 clearly demonstrate how resistant they are to providing mandated access. Their arguments in relation to the implementation of mandated roaming are devoted to creating pre-conditions to roaming and tinkering with defined terms, such as "new entrant", for the sole purpose of creating barriers to the implementation of roaming as mandated by the Minister. These Big 3 submissions are self-contradictory, confusing and out of scope. These submissions belie the true intent with which the Big 3 are likely to approach both the negotiation and implementation of the mandated roaming requirement. Acting on this intent, roaming (and site sharing) will likely be significantly delayed as a result, MTS Allstream submits that it is necessary to provide by way of conditions of licence that the mandated roaming conditions of licence, shall remain in force for a full five or ten years (as applicable) following the effective date of a concluded roaming agreement or the actual implementation of roaming in accordance with such agreement, whichever is later.
6. With respect to pre-arbitration timelines in relation to roaming, parties generally agreed that a timeline of between 60 and 120 days from the date of an initial roaming request was an acceptable timeline within which the parties should attempt to reach agreement on written terms for a roaming arrangement. Certain incumbent licensees required slightly longer<sup>2</sup> timelines while certain prospective new entrants requested shorter timelines.<sup>3</sup> On balance, MTS Allstream submits that the Department's original proposal of 90 days from the date of an initial roaming request strikes a reasonable balance between the desire to ensure that roaming arrangement be negotiated expeditiously while at the same time providing adequate time for parties fully explore the possibility of reaching agreement without resort to formal dispute resolution.
7. In relation to the rates that an incumbent licensee may charge in order to provide roaming, MTS Allstream notes that the Big 3 have variously suggested that as incumbent licensees, they should be entitled to invoice new entrants for certain unspecified and inchoate "up-front" costs associated with the provision of roaming, as

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<sup>2</sup> See for example, Bell Mobility (180 days).

<sup>3</sup> See for example, Shaw Communications Inc. (45 days).

well as charging rates that fully recover any and all costs, including certain unspecified capital investments required in order to provide roaming. MTS Allstream submits that reasonable costs incurred by the incumbent licensee in the provision of roaming to new entrants, should be reflected in the rates proposed by the incumbent licensee, and hence, subject to negotiation and final arbitration under the proposed Arbitration Framework failing a negotiated agreement. MTS Allstream would strongly object to the inclusion of any cost-recovery based pre-conditions that would defer or delay the operation of the fixed timelines as proposed in the Department's proposed conditions of licence.

8. Assuming that the parties are not able to agree on the terms of a roaming agreement without resorting to arbitration, MTS Allstream submits that the Department should clearly set out its expectations with respect to the maximum amount of time that the parties and the arbitral panel may take in order to reach a final decision on the issues submitted to arbitration.
9. Based on MTS Allstream's review of the other parties' comments on roaming issues, it has made certain discrete amendments to its proposed conditions of licence. A consolidated version of MTS Allstream's proposed roaming conditions of licence as well as a blacklined version showing all proposed changes to the conditions of licence originally proposed by the Department in DGRB-010-07 is attached at Schedule 1 of these reply comments.

**B) Summary of Reply Comments on Implementation of Antenna Tower and Site Sharing**

10. The initial comments of other parties in relation to site sharing have referenced divergent timeline proposals, the effectiveness of the Department's proposed "waiver of exclusivity" condition of licence, technical feasibility issues and how these should be resolved, the handling of requests involving multiple sites and the incumbent licensee's costs of entering into site sharing arrangements.
11. In relation to the parties' divergent timeline proposals, the different permutations and combinations suggested by the parties evidences a need for clarity not only with respect to the timelines but also as to each of the steps in the process and the respective roles

and responsibilities of incumbent licensees and new entrants in that process.

MTS Allstream submits that incumbent licensees have already developed and currently operate in accordance with detailed procedures for site sharing. Detailed procedures such as those already in existence should form the basis of express conditions of licence setting out the steps, roles and responsibilities and associated timelines for a site sharing request.

12. In reference to the remaining site sharing issues touched upon by other parties' initial comments, MTS Allstream discusses these points in the section on antenna tower and site sharing and has proposed certain consequential amendments to its original proposed conditions of licence as follows:
  - a) clarification of the "waiver of exclusivity" condition of licence;
  - b) treatment of incumbent licensee's future or anticipated needs at existing sites;
  - c) special procedures, timelines and a requirement for a Master Site Sharing Agreement when dealing with requests involving more than ten (10) sites; and
  - d) an administration fee applicable to each site for which a formal request to share has been submitted by a new entrant.
13. A consolidated version of MTS Allstream's proposed site sharing conditions of licence as well as a blacklined version showing all proposed changes to the conditions of licence originally proposed by the Department in DGRB-010-07 is attached at Schedule 2 of these reply comments.

**C) Summary of Reply Comments on an Appropriate Arbitration Framework**

14. MTS Allstream welcomes the Canadian Radio-television and Telecommunications Commission's (CRTC) voluntary proposal that it be selected as the arbitral body before whom disputes relating to the appropriate terms and conditions of mandatory roaming and site sharing should be resolved. Apart from the necessary modification that this would entail to the Arbitration Framework proposed in its initial comments, MTS Allstream reiterates its view that the Minister's stated objective of seeing roaming

and site sharing arrangements entered into in an expeditious manner will only be achievable through the imposition of a uniform code of procedure that clearly spells out key aspects of the procedural framework in which such arbitrations should take place, including production obligations, rights of appeal and the "final offer" arbitration model originally proposed by MTS Allstream.

15. MTS Allstream submits that based on the preliminary disclosure obligations of incumbent licensees, the prohibition on pre-conditions or restrictions on site sharing and roaming, and the final offer arbitration model proposed by MTS Allstream (and TELUS), 90 days is an appropriate timeframe within which the CRTC could reach a final arbitral decision on any issues standing in the way of reaching a roaming or site sharing arrangement.
16. A consolidated version of MTS Allstream's amended Arbitration Rules may be found at Schedule 3 of these reply comments.

## **II. PRELIMINARY OBSERVATIONS AND MINISTERIAL AUTHORITY**

17. Several parties have raised issues that are outside the scope of DGRB-010-07 or more fundamentally, attempt to reverse the policy decisions made by the Minister in the AWS Auction Policy.
18. It should not be open to parties who take issue with the Minister's policy decision to mandate tower sharing and roaming<sup>4</sup> to attempt to reverse that policy decision through the DGRB-010-07 process. DGRB-010-07 is a proceeding to consider how best, both in terms of effectiveness and timeliness, to implement the policy decisions made by the Minister – it is not the appropriate forum for disputing the policy decision itself. Further, the parties attacking the Minister's decision to mandate roaming and site sharing were consulted extensively pursuant to Gazette Notice proceedings<sup>5</sup> and have thus had their

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<sup>4</sup> See 22 January 2008 comments for TELUS, pages 2 to 4; RCI, paragraphs 3 to 12; and Bell Mobility, paragraphs 5 to 29.

<sup>5</sup> The process that led to the policy decisions made by the Minister in *DGTP-007-07 - Policy Framework for the Auction of Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range* was initiated on 16 February 2007 by the release of *Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services*, Canada Gazette Notice *DGTP-002-07*. Interested parties were given a deadline to provide comments by 25 May 2007, and an additional opportunity to provide reply comments by 27 June 2007.

opportunity to attempt to persuade the Minister to exercise his discretion otherwise. The Minister has clearly decided to amend the conditions of licence only after broad-based and extensive consultation with the industry and members of the public. MTS Allstream and other parties should not be forced to address matters that directly attack those policy decisions.

19. In any event, the Minister clearly has the statutory power to amend conditions of licence for cellular, PCS and broadcast certificate or any other holders of licences issued pursuant to section 5 of the *Radiocommunication Act*. In this regard, Bell Mobility and RCI contend that notwithstanding paragraph 5(1)(b) of the *Radiocommunication Act*, the Minister is bound to exercise his paragraph 5(1)(b) powers only in cases akin to a national emergency or that he cannot do so because it would affect certain contractual rights of licensees.
  
20. It is highly questionable whether in law, the Minister can bind himself not to exercise a power that is expressly granted to him by statute, namely and in the words of the statute itself, the power to amend the terms and conditions of any licence, certificate or authorization "taking into account all matters that the Minister considers relevant for ensuring the orderly establishment or modification of radio stations and the orderly development and efficient operation of radiocommunication in Canada." In any event, there is no *prima facie* case that the Minister has in fact made or given any undertaking not to exercise his paragraph 5(1)(b) powers except in cases of national emergency. First, the issued conditions of licence say no more nor less than what the Act provides, in that the "exceptional basis" in which the Department has stated in prior policy documents the Minister may exercise his paragraph 5(1)(b) powers are within the Minister's sole discretion. Second, the reference to national emergencies referred to in Bell Mobility's initial comments was made not by the Minister but by Departmental officials and was in reference to the "extraordinary circumstances" in which the Minister would exercise his section 40 powers under the *Radiocommunication Regulations* (as

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The current consultation process established in DGRB-010-07 will require consequential amendments to *Radiocommunication and Broadcasting Antenna Systems*, Client Procedures Circular 2-0-03, Issue 4, (CPC-2-0-03). CPC-2-0-03 was released on 27 June 2007, with an implementation date of 1 January 2008. It was developed in part by the National Antenna Tower Review Report, completed and submitted to Industry Canada by Professor David A. Townsend on 6 December 2004, as well as the recommendations of the Telecommunications Policy Review Panel Report, 22 March 2006.

distinct from the "exceptional basis" upon which the Minister would exercise his paragraph 5(1)b) powers under the *Radiocommunication Act*. Thus, the Departmental clarification only applied to the exercise of the Minister's powers pursuant to section 40 of the *Radiocommunication Regulations* to revoke frequency assignments. Nothing so drastic is occurring here. Finally, full and repeated public consultations preceded the Minister's decision to amend CPC-2-0-03, his decision to mandate roaming and site sharing, and is currently underway in this proceeding. The findings of the Minister in these cumulative processes provide a sound basis for the Minister to have concluded, in his sole discretion, that this is an appropriate case for him to exercise his express statutory power to amend licensees' conditions of licence.

21. With respect to RCI's contention that statutory powers cannot be exercised where their exercise impinges on private contractual rights, MTS Allstream notes that the *ATCO* decision cited by RCI is clearly distinguishable. In that case, the Alberta Energy and Utilities Board read in or implied a power that was not expressly granted by statute. In the instant case, the Minister is merely exercising a power that is expressly granted to him, to amend conditions of licence in order to ensure the orderly establishment or modification of radio stations and the orderly development and efficient operation of radiocommunication in Canada.
22. Having noted the state of competition in the terrestrial mobile wireless industry and determined that the degree and level of competition were insufficient, it would be illegal for the Minister to decline to exercise his authority to amend licence where he has otherwise determined that the public interest in increased competition demands such amendments.

### **III. ROAMING**

23. There appears to be a consensus among parties that the Department's proposed 30/90 day timelines in relation to roaming are reasonable. On the other hand, the Big 3 have introduced a whole spate of proposed restrictions on roaming that are quite obviously designed to delay the provision of roaming, increase the number of disputes between the parties as to when and how roaming should be provided, enable the charging of discriminatory rates under the veil of confidentiality, increase the commercial

rates at which roaming should be provided to new entrants and overall effectively degrade the end-customer experience for new entrants' retail customers.

**A) Timelines**

24. A majority of parties had no comment with respect to the 30-day timeframe within which an incumbent licensee must respond to an initial request for roaming with a detailed offer. MTS Allstream notes that in its initial comments, it submitted that in the case of roaming, 30 days from the date of an initial request was a reasonable timeline within which an incumbent licensee should be required to respond with a Term Sheet or draft agreement setting out all material terms and conditions (including a representation and warranty as to the non-discriminatory nature of the rates) upon which the incumbent licensee would be prepared to enter into a roaming arrangement with the new entrant. MTS Allstream also submitted that as part of the incumbent licensee's first offer or response, the incumbent licensee should be required to disclose and provide a copy of all existing Term Sheets or agreements in relation to roaming.
25. MTS Allstream notes that certain parties sought variations to the Department's proposed timelines in relation to the negotiation period following an incumbent licensee's first offer or response to an initial request for roaming (ranging from as little as 30 days<sup>6</sup> to as much as 150 days<sup>7</sup>). Assuming that MTS Allstream's original proposed conditions of licence in relation to the minimum requisite elements of the incumbent licensee's first offer and in relation to the disclosure and production obligations of the incumbent licensee are adopted and implemented by the Minister, MTS Allstream submits that the 60-day negotiation period following an incumbent licensee's first offer to enter into a roaming agreement represents a reasonable compromise that balances the need for expediency on the one hand and the desirability of allowing for sufficient time for the parties to explore consensual resolution of issues, on the other.

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<sup>6</sup> See Niagara Networks, 22 January comments, section 1.0, page 4. See also Shaw Communications Inc., 22 January comments, paragraph 16, where Shaw suggests that an incumbent licensee should respond to an initial request for roaming within 10 days and that a Master Agreement should be negotiated within 45 days after the incumbent licensee's initial request, for a negotiation period of only 35 days.

<sup>7</sup> See Bell Mobility, 22 January comments, paragraph 64 at page 23, where Bell Mobility states that the initial offer is to be made within 30 days after a request and arbitration is to occur within 180 days. However, Bell Mobility's initial comments in regards to roaming timelines is confusing in that they actually suggest two different timelines. At page 3 of Bell Mobility's initial comments, Bell Mobility states that an offer is to be made 120 days after an initial request and arbitration is to occur after 180 days.

26. In addition to the foregoing, MTS Allstream submits that the Department should clearly set out its expectations with respect to the maximum amount of time that the parties and the arbitral panel may take in order to reach a final decision on the issues submitted to arbitration. MTS Allstream submits that based on the preliminary disclosure obligations of incumbent licensees, the elimination of issues relating to pre-conditions and restrictions on roaming, and the final offer arbitration model espoused by MTS Allstream and TELUS, 90 days between the initiation of arbitration and the final arbitral decision provides for adequate time for resolution of outstanding issues by way of arbitration.

**B) Disclosure and Production of Roaming (and site sharing) Agreements**

27. The Big 3 have proposed that the negotiation and arbitration of roaming and site sharing arrangements should occur under the shroud of confidentiality. MTS Allstream, on the other hand, has proposed rules that would promote transparency and openness regarding the terms and conditions under which roaming is offered by incumbent licensees to each other and to others.
28. MTS Allstream reiterates the strong policy rationale for mandating the production and disclosure of existing arrangements between incumbent licensees and incumbent licensees and third parties. Transparency and openness in relation to these terms and conditions is consistent with the reality that the Canadian mobile wireless market is lacking in competition and that the operation of "market forces" alone would provide no incentive whatsoever to incumbent licensees to enter into roaming arrangements with new entrants.
29. However, MTS Allstream has since reconsidered the need for incumbent licensees to disclose all roaming arrangements (which would include roaming arrangements between incumbent licensees and U.S.-based providers). MTS Allstream considers that only roaming arrangements between incumbent licensees and other Canadian licensees need be disclosed in order to achieve the objective of granting roaming rights to new entrants that are reasonably comparable to similar arrangements with other Canadian licensees.

**C) Costs and Rates for Roaming**

30. In relation to the rates that an incumbent licensee may charge in order to provide roaming, MTS Allstream notes that the Big 3 have variously suggested that as incumbent licensees, they should be entitled to invoice new entrants for certain unspecified and inchoate "up-front" costs associated with the provision of roaming, as well as charging rates that fully recover any and all costs, including certain unspecified capital investments required in order to provide roaming. In response, MTS Allstream notes that all incumbent licensees currently provide roaming on their cellular or PCS networks, both to other Canadian incumbent licensees and to non-Canadian operators. The cost to the incumbent licensee of allowing another new entrant to roam would not entail significant additional capital investment or cost. Whatever reasonable costs are incurred by the incumbent licensee in the provision of roaming to new entrants should be reflected in the rates proposed by the incumbent licensee, and hence, subject to negotiation and final arbitration under the proposed Arbitration Framework failing a negotiated agreement. MTS Allstream would strongly object to the inclusion of any cost-recovery based pre-conditions that would defer or delay the operation of the fixed timelines as proposed in the Department's proposed conditions of licence.
31. Under the Department's proposed conditions of licence, issues relating to the appropriate rate have been subjected first to negotiation and second, to arbitration subject to the principle that rates be reasonably comparable to the rates that are currently charged to other licensees for similar services. These roaming rates, in turn, will be borne by end-customers of new entrants. Quite obviously, *these end-customer rates will have to be competitive in the retail market, in order for mandated roaming to have its intended effect, namely to increase competition in the retail wireless market.* In light of the intended purpose of mandated roaming, MTS Allstream submits that it would be inconsistent with the intent and purpose of the Ministerial decision to mandate roaming that allows incumbent licensees to charge new entrants higher rates for roaming, which would necessarily make new entrants less competitive, on the basis of the usual market-based arguments of contract length, volume commitments and the

extent of the network that the new entrant would be roaming on in comparison with allied or other established licensees.<sup>8</sup>

#### **D) Quality and Scope of Roaming**

32. Aside from the issues in relation to roaming that are highlighted above, the Big 3 have made a number of submissions in their initial comments that broadly fall under the heading of attempts to reverse the Minister's decision to mandate roaming. MTS Allstream, in its initial comments, proposed that roaming provided to new entrants must be non-discriminatory and equivalent in the sense that the quality of services available to the new entrant's subscribers via roaming must be equivalent to that provided to the incumbent licensee's own end-customers and other mobile wireless providers. In these reply comments, MTS Allstream notes that several other parties have also indicated that non-discrimination is implicit in the Minister's decision to mandate roaming in furtherance of increased competition in the wireless mobile telephony markets in Canada.<sup>9</sup>
33. In contrast, the Big 3, Bell Mobility and RCI in particular, have advanced "definitions" of roaming and new entrants that are all designed to delay and hinder mandated roaming. The manifold pre-conditions and "clarifications" sought by the Big 3 will no doubt result in numerous battles over the type of roaming to be provided and whether or not a particular entrant is considered by the incumbent licensee to be "eligible" for roaming. None of these pre-conditions or clarifications is justifiable in light of the Minister's decision to mandate full digital roaming both in-territory and out-of-territory, for the specified number of years.
34. MTS Allstream submits that to accept the incumbent licensees' submissions in this regard would denude the Minister's policy decisions of their intended effect. As discussed above, the intent and purpose behind the Minister's decision to mandate full digital roaming both in-territory and out-of-territory is to ensure that the service quality experience of a new entrant's customers is equivalent to that of incumbent licensees. In

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<sup>8</sup> See, for example, SaskTel's submissions on rate differentials that it would apply as between customers based on contract length, volume commitments and whether the party wishing to roam wishes to roam over the entire network or only on selected portions of the network.

<sup>9</sup> See 22 January 2008 comments for Shaw Communications Inc., paragraph 13 and Bragg Communications carrying on business as EastLink, paragraphs 6 to 13.

turn, the expectation and overall policy objective of the government in this sector is to increase competition in terms of the number of providers and the types of services available to end-customers. Through their bewildering array of proposed restrictions on and pre-conditions to roaming, Bell and RCI are bringing a collateral attack on the very decision made by the Minister to mandate full digital roaming both in-territory and out-of-territory.

35. In addition, DGRB-010-07 is a process whereby the Department has invited comments on how to implement the policy decisions contained in the AWS Auction Policy. The merits of mandated roaming and site sharing have already been fully debated and consulted upon in the process leading up to the AWS Auction Policy and CPC-2-0-03, Issue 4. Thus, the entire spate of submissions from the Big 3 attempting to curtail the Minister's decision to mandate roaming is clearly out of process.
36. Furthermore, it is apparent that many of the overlapping restrictions proposed by the Big 3 are self-contradictory and if applied, would result in the absurdity that no new entrant could possibly qualify for roaming. For example, how could a new entrant satisfy the restriction that new entrants have network in a given geographic area in order to roam<sup>10</sup> while at the same time not have a network<sup>11</sup>?
37. The proposed restriction that would limit roaming to new entrants that provide multi-band handsets to all end-customers<sup>12</sup> or the proposal that incumbent licensees be entitled to refuse to provide the network border information necessary to ensure that calls are not dropped midstream as an end-customer traverses network boundaries (the so-called "hand-off" restriction), are transparently intended by the Big 3 to increase the new

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<sup>10</sup> For example, Bell Mobility has proposed that in order to qualify for either in-territory or out-of territory roaming, new entrants must 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." See Bell Mobility, 22 January comments, paragraphs 57-60.

<sup>11</sup> For example, Bell Mobility has proposed that "[r]oaming does not include providing access to new entrants within their build area for the purposes of capacity off-load or quality enhancement." See Bell Mobility, 22 January comments, paragraph 60. See also RCI, 22 January comments, paragraphs 47 to 50, where RCI states that it should not be obligated to provide roaming to a carrier within that carrier's own network coverage footprint and that as soon as an entrant has established a footprint in an area, the incumbent's network should not be available.

<sup>12</sup> For example, Bell Mobility submits that in order to roam on incumbent cellular and PCS networks, new entrants must provide their end-customers with multi-band handsets, defined as handsets "incorporating the AWS band in the new entrants' chose 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)." See Bell Mobility, 22 January comments, paragraphs 57 to 60.

entrant's costs or to cause annoyance and disruption to the new entrant's end-customer and therefore loss of business to the new entrant.

38. By way of further particulars in relation to Bell Mobility and RCI's proposed restrictions on hand-offs, this service is currently routinely provided by Bell Mobility and TELUS to each other and between incumbent licensees and providers along the Canada-U.S. border. Thus, there is nothing "new" from a technical perspective with offering this service.<sup>13</sup> It is also misleading for the incumbents to suggest that hand-offs require network upgrades or significant capital investments. All that is required is a minimal degree of cooperation and coordination on the part of the incumbent licensee to share information as to the exact boundaries of the incumbent's serving territory. The very essence of roaming is to provide seamless and continual service coverage for end-customers whether they are physically located within or without the serving territory of their home provider. To carve out hand-offs as suggested by the Big 3 evinces the nebulous degree of cooperation that they will bring to the negotiating table without regulatory compunction.
39. With respect to restrictions proposed by Bell Mobility and RCI to prevent roaming from being used for capacity off-load or quality enhancement, MTS Allstream submits that it will be technically infeasible for new entrants to implement this restriction. More importantly, even if it were possible to do so, implementing these restrictions would result in a far poorer customer experience for end-customers of new entrants and therefore, would be contrary to the Minister's policy decision to mandate roaming.
40. MTS Allstream, therefore, disagrees in the strongest terms with the open-ended restrictions on roaming proposed by the Big 3, none of which are set out in the Minister's decision to mandate roaming. Rather and consistent with its initial comments in this proceeding, MTS Allstream reiterates that just as roaming must be offered at comparable rates to those that the new incumbent licensees provide to their best roaming customers, the nature and quality of roaming services should not discriminate on the basis of the identity of the end-customer's home provider. Whatever incumbent

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<sup>13</sup> Thus, contrary to RCI's views, roaming that includes hand-offs would not establish new technical obligations on incumbent licensees. See RCI 22 January 2008 comments, paragraphs 51 to 57. The FCC restrictions cited by RCI in this regard are more than 10 or more years old and reflect the standards and practices that were in place in the United States at that time.

licensees are providing to each other in relation to roaming should be provided to new entrants on reasonably comparable terms that are consistent with the Minister's stated intention of increasing market entry and competition in wireless markets. In addition, as the industry standards on roaming evolve and improve over time with technological advances and standard adoption in the industry, these same improvements must be flowed through to new entrants.

41. The Big 3's submissions to restrict roaming belie their lack of good faith to actually negotiate and implement mandated roaming. To the extent that the Big 3 resist the implementation of the mandated roaming requirement by whatever means, it is conceivable that there would be significant delay in the actual implementation of roaming. In other words, there is a distinct possibility that roaming agreements will either not be in place or that roaming will not be implemented by the incumbent licensee for quite some time after the licensing of a new entrant. As a result, MTS Allstream proposes that conditions of licence must clarify that the mandated roaming condition applies for a full five or ten years from the effective date of an agreement or the actual date upon which service is turned up, whichever is later. This rule will have the salutary effect of encouraging incumbent licensees and new entrant alike to conclude and implement an agreement as soon as possible.

#### **IV. ANTENNA TOWER AND SITE SHARING**

##### **A) Steps, Roles and Responsibilities in the Site Sharing Process**

42. The Department in DGRB-010-07 requested parties' views on the timelines for a typical site sharing request. In response, the parties submitted a wide array of divergent and conflicting "timeline" proposals. A careful review of parties' proposals reveals that over and above superficial disagreements on the amount of time to be taken between the initial request and the incumbent licensee's initial response, the more fundamental differences between the parties lies in the identification of steps in the site sharing process and the assignment of responsibility for each of those steps as between the incumbent licensee and the new entrant.

43. The confusion surrounding the steps in the process and the assignment of roles and responsibilities in the fulfillment of each of those steps also leads to confusion and ambiguity relating to issues of technical feasibility and the apportionment of costs of site sharing. In practice, if each incumbent licensee is permitted to create its own site sharing procedures, disagreements on how these procedures dovetail with the conditions of licence proposed by the Department will entail delayed access and therefore, delayed roll-out of competition in the Canadian wireless mobile telephony market.
44. In order to avoid such delay, MTS Allstream submits that the conditions of licence adopted by the Department and the Minister must clearly set out each of the steps in the process for handling a site sharing request and clearly delineate which party shall be responsible for each step.
45. In this regard, MTS Allstream notes that incumbent licensees have over twenty years of experience in setting up antenna tower and rooftop sites and almost as many years of experience in entering into site sharing arrangements. As a result, incumbent licensees generally know what technical information is required in order to determine both the technical feasibility and cost of a proposed site sharing arrangement. SaskTel, Eastlink and MTS Allstream's initial comments mirrored this collective body of knowledge as well as the procedures currently in place.
46. Having reviewed the submissions of all parties, including the submissions of the Big 3 in relation to the timelines and procedures that should be applicable to site sharing requests, MTS Allstream submits that it would be in the best interests of competition and end-customers in general for the conditions of licence to more explicitly set out the information the incumbent licensee shall be responsible for providing and conversely the information that the requesting new entrant shall be responsible for providing, as follows:
  - Within 10 days of an Operator's initial request, the Licensee shall respond with a Preliminary Information Package (PIP) for each site. The PIP shall include the following information:
    - Site specific drawings showing buildings, elevations and geographical coordinates of Licensee's existing site;
    - Tower profile and as-built drawing(s) (as applicable);

- Formal Request for Sharing Form identifying *all* information required by the Licensee in order to prepare a complete draft agreement or Term Sheet for site sharing. The Department's expectations as to what may reasonably be required by Licensees from requesting Operators are set out in CPC-2-0-03, as amended from time to time. Should the Licensee require additional information over and above what is described in CPC-2-0-03 in the case of a particular Site installation, the Licensee shall provide to the requesting Operator a detailed justification including technical justification for such additional information requirements.<sup>14</sup>
  - Standard Agreement Terms and Conditions;
  - Licensee's list of approved engineering and rigging firm(s) to be used for the structural analysis and eventual installation;
  - Licensee's future requirements and timelines and detailed technical justification for same.
- The requesting Operator shall formalize its initial request to share by providing the following information in response to the Licensee's PIP:
    - The administrative fee as determined by the Department (and as set out in CPC-2-0-03, amended from time to time) that is payable for each Site for which sharing is sought;<sup>15</sup>
    - a completed Request for Tower Sharing Form including all information reasonably requested by the Licensee in its PIP.

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<sup>14</sup> MTS Allstream notes that it would be desirable to make consequential amendments to CPC-2-0-03, if MTS Allstream's proposed conditions of licence are adopted. MTS Allstream recommends that the information requirements that may be imposed by a licensee for purposes of finalizing and initial request to share be set out in CPC-2-0-03 as amended as a consequence of this proceeding. MTS Allstream submits that the following information requirements are currently routinely and reasonably required by incumbent licensees:

- Complete list of equipment, specifications, the intended use and purpose, frequencies, antennas, and transmission lines;
  - antenna type, number placement, height and azimuth;
  - where equipment is to be housed;
  - a complete package of all reports and drawings (identifying material and methods of installation) by suppliers approved by Licensee (stamped engineering drawings);
  - list of contracted services to be used;
  - confirmation of design adherence to CSA S-37 standard;
  - agreement to submit of post construction reports and drawings (as-built);
  - type of building including foundations (drawings);
  - environmental reports if required;
  - schedule of work;
  - departmental and Transport Canada approvals (if required);
  - identification of site and project contacts during construction; and
  - evidence of insurance if required by Licensee;

<sup>15</sup> See discussion below in these MTS Allstream reply comments regarding the incumbent licensee's reasonable costs of site sharing.

- The requesting Operator's response to the Licensee's PIP shall constitute a formal request to share.

47. Subject to the comments and additional proposed conditions of licence applicable to requests involving multiple sites below, all other timelines and steps would be as proposed by MTS Allstream in its initial 22 January comments.

#### **B) Requests Involving Multiple Sites**

48. SaskTel has suggested that for requests that involve access to more than a certain threshold number of sites (5 in the case of SaskTel), the timelines set out in the Department's proposed conditions of licence not apply and instead, that a Master Agreement be negotiated in which timelines would be negotiated (or arbitrated absent agreement) between the parties.

49. MTS Allstream believes that SaskTel's proposals in this regard are, in principle, reasonable. Certainly this proposal offers a workable and reasonable alternative that is preferable to RCI's or Bell Mobility's submissions. The latter have simply suggested that an incumbent licensee could shut down or refuse to process site sharing requests once certain minimal thresholds are reached.<sup>16</sup> On the other hand, forcing parties to site sharing arrangements to negotiate and conclude a Master Site Sharing Agreement in all cases,<sup>17</sup> regardless of the number of antenna towers and sites to which the new entrant would likely seek access in a given incumbent territory, would subject both incumbent licensees and new entrants to unnecessary effort and expense.

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<sup>16</sup> Bell Mobility has suggested that it be entitled to refuse to process more than 12 requests per six month period (see Bell Mobility, 22 January 2008, paragraph 49). RCI has suggested that no timelines whatsoever be provided where the volume of requests is 150 per cent greater than current request volumes or where a request concerns multiple sites (without elaborating on what the timelines should be in that case) (see RCI 22 January 2008, paragraph 24). These proposals would obviously bring the prospect of establishing site sharing arrangements especially in the lead up to and following the award of AWS spectrum licences to a grinding halt, thereby negating the very objectives sought by the Minister in mandating antenna tower and site sharing.

<sup>17</sup> Eastlink and Shaw, in their 22 January comments, have both suggested that Master Site Sharing Agreements or omnibus Memoranda of Understanding should be negotiated between all incumbents and new entrants, regardless of the volume of sites in the incumbent licensee's operating territory to which the new entrant would be seeking access.

50. Consequently, MTS Allstream proposes that the following conditions of licence be added in order to provide for a process that would apply to requests involving more than *ten* (10) antenna tower or rooftop sites:

- Notwithstanding the timelines and procedures provided above, where a given request for site sharing involves more than ten (10) Sites,
  - Within 30 days of such an initial request, the Licensee shall provide a written draft Master Site Sharing Agreement incorporating all relevant and material terms and conditions upon which it would be prepared to grant access to the Sites subject to the request. The Licensee may identify sets of Sites by various tower or location types and propose different rates, terms and conditions accordingly. 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. The Licensee's proposed timelines for sharing of each Site or subset of Sites will be identified in the draft Master Site Sharing Agreement or in Schedules incorporated by reference thereto.
  - If after ninety (90) days of a request to share more than ten (10) Sites, 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 in accordance with the arbitration provisions of the conditions of licence.

51. All other conditions applicable to site sharing would continue to apply to requests to share multiple sites.

**C) Waiver of Exclusivity Provisions in Incumbent Licensee's Site Leases or Licences**

52. With the exception of RCI, no other party has indicated that as licensees, they intend to resist requirements to waive exclusivity provisions granted in their favour under leases or licences for antenna tower or rooftop sites. MTS Allstream notes, however, that several parties have pointed to provisions in leases or licences that would necessitate seeking the consent of a third party (landlord, lessor or licensor) prior to granting access to the rights obtained by the licensee under the terms of the lease or licence. It is MTS Allstream's understanding that typically, third party landlords, lessors or licensors

would welcome the additional revenue that might be generated by a site sharing request, so in practice, nothing may stand in the way of a new entrant gaining access to a given site where such a consent requirement exists. However, should there be a consent requirement, either on the part of the third party or the incumbent licensee, MTS Allstream proposes that incumbent licensees must take whatever commercially reasonable steps are necessary to either consent or seek the landlord/licensor/lessor's consent to the assignment, sublicense or sublease of rights under the lease or licence or must negotiate such modifications of its lease/licence with the landlord/licensor/lessor, where a provision of the lease/licence is the sole impediment to a site sharing arrangement.

53. Eastlink has proposed specific language in this regard, which MTS Allstream hereby adopts, amended as follows:

- As applicable, Licensees shall be required to make all commercially reasonable efforts to consent to or to seek the consent of third party landlords, lessors or licensors to assignment, sublease or sublicense of real property or *in personam* rights of access to antenna tower or other sites.

#### **D) Technical Feasibility**

54. The issue of determining the technical feasibility of a proposed site sharing request and the extent to which technical feasibility issues can reasonably be raised by incumbent licensees in opposition to a sharing request is closely related to the issues of process dealt above in relation to MTS Allstream's discussion of the procedural steps to be taken by the incumbent licensee and new entrant.

55. With clearly delineated steps and clear allocation of roles and responsibilities between the incumbent licensee and the new entrant, there should be very few Safety Code 6, electrical safety or indeed radiocommunication frequency interference issues that cannot be resolved.<sup>18</sup> Any irresolvable or unforeseen technical issues could likewise be

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<sup>18</sup> In MTS Allstream's experience, so-called radio frequency interference issues between mobile wireless telephony providers are in the vast majority of cases easily overcome provided the carriers involved cooperate in good faith. To wit, currently, there are many instances in which cellular and PCS licensees have placed cellular (800 MHz) and PCS (1900 MHz) antennae on each others' structures. Also, since AWS spectrum is distinct from

resolved in the unique circumstances of any given site sharing request via arbitration. However, MTS Allstream notes that the only valid technical reason upon which a site sharing request could conceivably be refused will likely arise in situations where a given new entrant sharing request is purportedly in conflict with the incumbent licensee's own future tower or site usage plans.

56. In relation to the potential for a current site sharing request conflicting with the incumbent licensee's own future needs, MTS Allstream concurs with Eastlink's submission that instances of purported conflict between current sharing requests and the incumbent licensee's future needs may well be used by incumbent licensees to oppose, resist and delay the implementation of sharing requests. MTS Allstream also concurs with Eastlink that as long as there is currently room on a given antenna tower or other structure for the new entrant's antenna, future incumbent licensee needs should not be relevant. Rather, the conditions of licence should provide that:

No incumbent Licensee shall be entitled to refuse to share a Site on the grounds of future networks plans and capacity needs.

Where there is spare capacity on an existing structure or site at the time that a request for site sharing is made, the request for site sharing may not be refused by the incumbent licensee.

Should an incumbent licensee require additional capacity on the structure or site that necessitates upgrade to the structure or site or that are technically infeasible with the Operator in place, then the Licensee shall

- provide one year's advance written notice of such requirement, along with detailed network planning technical justification to the Operator;
- The Operator shall have the option of removing its facilities and equipment from the affected site or shall pay for the incumbent's costs (minus any engineering and third party consultant's costs) of construction for additional capacity up to and including the total amount of capacity taken up by the Operator pursuant to the site sharing arrangement for the site in question.

**E) Big 3 Requests for Up-Front Payment or Commitment to Pay for Incumbents' Costs of Site Sharing:**

57. Each of the Big 3 have requested that conditions of licence require new entrants to commit to pay or to satisfy invoices detailing the incumbent's costs of entering into site sharing arrangements as a pre-condition to finalizing a request for site sharing.<sup>19</sup> MTS Allstream submits the proposed condition of licence above which clarifies that it would be the requesting new entrant who would be responsible for engaging and paying for all third party engineering reports, studies and analyses will remove a great deal of the uncertainty and open-ended costs that could conceivably be claimed by the incumbent licensee. Admittedly, the incumbent will still incur certain costs associated with the processing and administration of site sharing requests, however, these costs are minimal. These costs could be addressed through application of a pre set standard "administrative fee" established by the Department in a decision resulting from this proceeding or in CPC-2-0-03 as amended in conjunction with the DGRB-010-07 decision. This administrative fee would be payable by the requesting new entrant at the same time that it submits a formal request for site sharing that contains all of the information requirements identified in a PIP for a given site. Industry Canada could issue periodic revisions to the acceptable administration fee to reflect inflation and or any other factors that it considers relevant.

**V. ARBITRATION**

58. Several parties have suggested that the CRTC serve as an arbitrator, including Primus and the CRTC itself. MTS Allstream agrees with these parties that the CRTC has the expert staff and commissioners to resolve both technical and economic issues between incumbents and new entrants. Another positive aspect of appointing the CRTC as an arbitrator is that there would be consistency of decisions since the same decision-maker would be deciding all roaming and site sharing disputes. Establishing the CRTC as the arbitrator also reduces delay, since the parties will have one less thing to argue over with

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<sup>19</sup> See Bell Mobility Inc, 22 January 2008, page 19, paragraph 50, TELUS Communications Company, 22 January 2008, Attachment 1, subsection 3. RCI did not request the ability to invoice new entrants and satisfaction of such invoices as a pre-condition to site sharing. However, RCI does state at paragraph 98 of its 22 January comments that the "requesting party shall be responsible for paying the licensee an amount equal to the value of the premium paid by the licensee for the foregone rights" [to exclusivity], but there is nothing on paying costs incurred by the Licensee."

respect to the administration of the arbitration. CRTC has experience providing mediation services on an expedited basis, so is familiar with the processes necessary in order to engage in expedited, private dispute resolution.

59. In addition, there would be no need to split the case by having technical issues resolved by one decision-maker and have commercial rates issues resolved by another. The reality is that there are no technical issues that should stand in the way of a site sharing or roaming arrangement. In regards to roaming, the Minister has already decided what types of roaming must be provided by incumbents. As submitted above, the Department should not leave up to "negotiation" the quality of the roaming provided by the incumbents. To do so would doom mandated roaming to inevitable delay. The experience on the wireline side of new entrants who fought endless definitional battles over what constitutes a given essential service proves this point. So there should not be any so-called technical issues regarding the scope and quality of roaming services that have been mandated left for resolution or such issues should be kept to an absolute minimum so as to ensure that the Minister's mandated five and ten-year roaming periods are not whittled away as incumbents use the very process of negotiation and arbitration to effectively deprive new entrants of the mandated roaming period.
60. In regards to antenna tower and site sharing, technical issues that would stand in the way of a given sharing arrangement are easily separated into three distinct categories: (a) physical interference; (b) electrical safety and (c) structural safety. Of these, no physical or electrical safety issues can reasonably be used to render a sharing request unfeasible. Even structural safety issues are resolvable via contractual arrangements as to how future demand by the incumbent or by other third parties will be negotiated and paid for. Viewed in this light, there is no way to separate out the so-called "technical" issues from the commercial ones. It all comes down to a question of the reasonable present and future costs of a sharing request.
61. A dispute resolution regime that allows incumbent licensees to split their case by having so-called technical issues resolved by one body and the remaining terms resolved by the other would represent a serious flaw in the regime. Issues of technical feasibility are inextricably intertwined with the appropriate rates, terms and conditions under which both site sharing and roaming, but site sharing in particular may be offered. To allow

split cases would spell delay, in that commercial terms could likely not be resolved absent resolution of technical issues, if the case were allowed to be split. These issues should be heard and resolved simultaneously, by the same, preferably expert, tribunal.

62. For similar reasons of consistency, parties to roaming and site sharing disputes should be subject to a uniform set of arbitral rules. This will avoid uncertainty and the potential for conflict as to the administration of the arbitration.
63. To gloss over this issue at this point because it is the easier route to take now, will simply doom the process to inevitable delay. MTS Allstream appears to be the only party to have proposed a uniform set of arbitral rules applicable to arbitrations pursuant to licensees' conditions of licence. These rules take into consideration the premium to be placed on expeditious resolution of roaming and site sharing issues, the power and informational disadvantage of new entrants and the fundamental principle that these services have had to be mandated by reason of the absence of market forces that would incent incumbents to provide roaming and site sharing.
64. Subject to MTS Allstream's endorsement of the appointment of the CRTC as arbitrator of all issues concerning the terms and conditions upon which site sharing and roaming should be offered to new entrants, MTS Allstream stands by its initial set of proposed arbitral rules and would commend these again to the Department. However, should the Department decide to modify any aspect in particular of the arbitral rules proposed by MTS Allstream, MTS Allstream wishes to draw the Department's particular attention to four key aspects of the arbitral rules that would, in MTS Allstream's view, be inviolable elements of any arbitral regime appropriate to the wireless mobile telephony context. If the Department and the Minister are committed to mandated roaming and site sharing arrangements being implemented in an effective and timely manner, the arbitration framework must, at a minimum, incorporate the following four key aspects of MTS Allstream proposed Arbitration Rules:
  - a) final offer model of arbitration;
  - b) explicit discovery and production rules;
  - c) arbitration timelines; and

d) appeal rights.

65. It bears noting that none of the Big 3 have attempted to clear up any of the foregoing, except appeal rights, which they confirm should be available at up to four different levels.

**A) Discovery and Production**

66. Bell and RCI content themselves with allowing the parties to negotiate these rules prior to engaging in arbitration. TELUS states that these should be subject to strict confidentiality provisions. To the contrary, there is no reason, in the five year and ten year mandated period, for the rates, terms and conditions upon which the incumbents currently provide roaming and site sharing to remain confidential, nor for the terms that are entered into as a result of negotiations and arbitral rulings under the proposed conditions of licence to remain confidential. Untold resources and legal fees will be spent arguing about what information should be confidential, and how to protect it. This is simply not warranted in the environment that has necessitated mandated sharing. It is in the public interest that mandated sharing and roaming occur without delay. Transparency of existing incumbent arrangements will facilitate the establishment of mandated roaming and site sharing.

**B) Rights of Appeal**

67. RCI and Bell Mobility have suggested up to four different levels of appeal – first to a panel of retired judges on all issues and then secondly to the Court on issues of law or jurisdiction. A decision of a provincial superior court could be appealed, in turn, to the provincial Court of Appeal and ultimately, to the Supreme Court of Canada. During the entire time that an appeal remains pending, presumably, no roaming or site sharing would occur, since there is no agreement in place to do so. Such unrestricted rights of appeal are likely to defer market entry and hence, competition, for years. Indeed, it is quite conceivable that it would take longer than the five years during which in-territory and out-of-territory roaming have been mandated for all such appeals to be exhausted.
68. MTS Allstream submits that the ability to appeal to four different levels is excessive and could endanger the Minister's stated purpose of achieving roaming and site sharing on

an expeditiously negotiated basis. As a result, MTS Allstream, in its proposed Arbitration Framework, has provided that no appeal shall lie from the arbitral decision.

69. In any event, MTS Allstream submits that pending appeal, roaming and site sharing must be provided by the incumbent licensee in accordance with the terms of the CRTC's final decision, subject to any decision on appeal on issues affecting the rates upon which such services are to be provided.<sup>20</sup>

### **C) Timelines for Arbitration**

70. The Big 3, not surprisingly, are silent on the issue of timelines applicable to the conduct of the arbitration itself. Under their proposals, the parties may well arbitrate a given agreement for months and years on end. Add to that the unlimited rights of appeal advocated by these incumbent licences, and the true intent of the Big 3 shines through – their interests lie in delaying for as long as possible the actual implementation of roaming or site sharing. On the other hand, certain prospective new entrants seek very short timelines of 30 days for the arbitral panel to reach its decision on any given sharing or roaming request. MTS Allstream reiterates its original proposal, which is that the time between referral to arbitration and a final arbitral decision should not exceed 90 days.
71. Furthermore and as alluded to above, MTS Allstream proposes that in order to encourage incumbents and new entrants alike to conclude and implement an agreement as soon as possible, the conditions of licence applicable to roaming be amended to provide that roaming shall be provided for a full five or ten years from the effective date of an agreement or the actual date upon which service is turned up, whichever is later.

### **D) Final Offer Arbitral Model**

72. MTS Allstream concurs with TELUS that an appropriate arbitration model for the types of agreements that are required to be concluded between incumbents and new entrants seeking roaming and site sharing is final offer arbitration. In the context at hand, the arbitrator is not determining a dispute as to the interpretation of an existing contract, but rather, assisting the parties in creating such a contract. This model is also the most

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<sup>20</sup> The ADR Institute made this proposal in its 22 January comments. In essence, the ADR institute has proposed that there shall be no stay of execution of an arbitral decision pending appeal.

conducive to convincing the parties to make reasonable offers from the start, rather than starting from a position of unreasonableness. In turn, MTS Allstream believes that final offer arbitration will lead to the speediest resolutions.

## SCHEDULE 1

### **MTS Allstream's Final Consolidated Proposed Conditions of Licence as per Reply Comments**

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

Where the conditions of licence refer to a "new entrant" or "national new entrant," definitions can be found in the document entitled *Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range* (November 2007).

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

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 five years commencing on the effective date of a concluded roaming agreement between the Licensee and the new entrant or the date on which roaming in accordance with a concluded roaming agreement is implemented, whichever is later, and
  - (c) to national new entrants who have substantially met the five-year roll out requirements outlined on their licence, as determined by Industry Canada, for an additional five years to the timeframe identified in paragraph (b) above.
- 2) In order to fulfill the condition of roaming in accordance with this licence:
  - (a) Roaming services offered by the Licensee must include digital voice and data services, such as Internet access, e-mail, and other data services and includes all services required to fully support the provision of digital voice and data services, as well as the provision of inter-network connectivity as required to support automatic seamless digital roaming and the exchange of pertinent network information between the Licensee and the mobile wireless operator ("Operator") requesting access to roaming in a timely fashion and on an ongoing basis.
  - (b) Roaming services offered by the Licensee should provide end-customers of all Operators with whom the Licensee has entered into a roaming or other arrangement with the same level and quality of services, including coverage, voice quality and speed of data transmission of services, as

that provided by the Licensee to its own end-customers or to end-customers of other Operators and must not discriminate based on the identity of the Operator to whom the end-customer is subscribed. Where roaming is not technically or commercially feasible, alternative arrangement to allow new entrant Operators to extend their network reach and to permit additional competition shall be provided by the Licensee where feasible. The feasibility of alternative arrangements will be determined in part by the service arrangements already established between the Licensee and other Operators.

- (c) The Licensee must provide roaming services to requesting Operators, including sub-licensees, at commercial rates that are reasonably comparable to the rates that are currently charged to others for similar services.
- (d) Within thirty (30) days of an initial request for roaming from a requesting Operator, the Licensee must provide a written draft agreement or Term Sheet incorporating all relevant and material terms and conditions upon which it would be prepared to grant roaming. The Licensee must include in this draft agreement or Term Sheet a representation that the services that will be provided to the requesting Operator will be of the same level and quality, as defined above, as services offered to its own end-customers or to end-customers of other Operators with whom the Licensee has entered into a roaming arrangement and that the rates offered by the Licensee are reasonably comparable to rates currently charged to others for similar services.
- (e) Also within thirty (30) days of an initial request for roaming from a requesting Operator, the Licensee shall provide to the requesting Operator a copy of all of its current offers, Term Sheets and agreements with Operators other than the requesting Operator that are Canadian licensees in relation to roaming or alternative arrangements.
- (f) The Licensee shall negotiate roaming arrangements with any requesting Operator expeditiously and in good faith.
- (g) If after ninety (90) days from the initial request for roaming from an Operator, the Licensee and the requesting Operator 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 arbitration framework set out in [Industry Canada's Arbitration Rules for Licence, Certificate or Authorization Holders]. In either instance, 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 rates, terms and conditions of the roaming arrangement and those relating to procedural matters under the applicable arbitration framework and that any arbitration under this section shall be legally binding. The Licensee must participate fully in

such arbitration and follow all directions of the arbitrator in accordance with the applicable arbitration framework. At any time prior to arbitration, the Licensee and the requesting Operator 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.

(Blacklined Version Showing Changes from Departmental Proposed Conditions of Licence as per DGRB-010-07)

**Department's ~~MTS Allstream's~~ Final Consolidated Proposed Conditions of Licence as per ~~DGRB-010-07~~ Reply Comments**

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

Where the conditions of licence refer to a "new entrant" or "national new entrant", definitions can be found in the document entitled *Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range* (November 2007).

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

1. Roaming is to be offered:
  - (a) ~~To~~ to all cellular, PCS and AWS Licensees outside of their licensed area, for at least the 10-year term of AWS licences;
  - (b) ~~To~~ to all new entrants, in their licensed areas, for a period of 5 ~~five~~ years commencing ~~with the date of issuance of their licence;~~ on the effective date of a concluded roaming agreement between the Licensee and the new entrant or the date on which roaming in accordance with a concluded roaming agreement is implemented, whichever is later, and
  - (c) ~~To~~ to national new entrants who have substantially met the 5 ~~five~~-year roll-out requirements outlined on their licence, as determined by Industry Canada, for an additional 5 ~~five~~ years to the timeframe identified in paragraph (b) above.

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

- (a) ~~The~~ The Roaming services offered by the Licensee must include digital voice and data services, such as Internet access, e-mail, and other data services; ~~and includes all services required to fully support the provision of digital voice and data services, as well as the provision of inter-network connectivity as required to support automatic seamless digital roaming and the exchange of pertinent network information between the Licensee and the mobile wireless operator ("Operator") requesting access to roaming in a timely fashion and on an ongoing basis.~~
- (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~~ Roaming

services offered by the Licensee should provide end-customers of all Operators with whom the Licensee has entered into a roaming or other arrangement with the same level and quality of services, including coverage, voice quality and speed of data transmission of services, as that provided by the Licensee to its own end-customers or to end-customers of other Operators and must not discriminate based on the identity of the Operator to whom the end-customer is subscribed. Where roaming is not technically or commercially feasible, alternative arrangement to allow new entrant Operators to extend their network reach and to permit additional competition shall be provided by the Licensee where feasible. The feasibility of alternative arrangements will be determined in part by the service arrangements already established between the Licensee and other Operators.

(c) The Licensee must provide roaming services to requesting Operators, including sub-licensees, at commercial rates that are reasonably comparable to the rates that are currently charged to others for similar services;~~and.~~

(d) Within thirty (30) days of an initial request for roaming from a requesting Operator, the Licensee must provide a written draft agreement or Term Sheet incorporating all relevant and material terms and conditions upon which it would be prepared to grant roaming. The Licensee must include in this draft agreement or Term Sheet a representation that the services that will be provided to the requesting Operator will be of the same level and quality, as defined above, as services offered to its own end-customers or to end-customers of other Operators with whom the Licensee has entered into a roaming arrangement and that the rates offered by the Licensee are reasonably comparable to rates currently charged to others for similar services.

(e) Also within thirty (30) days of an initial request for roaming from a requesting Operator, the Licensee shall provide to the requesting Operator a copy of all of its current offers, Term Sheets and agreements with Operators other than the requesting Operator that are Canadian licensees in relation to roaming or alternative arrangements.

~~(e) — Roaming arrangements will be negotiated~~ (f) The Licensee shall negotiate roaming arrangements with any requesting Operator expeditiously and in good faith.

(g) If after ninety (90) days from the initial request for roaming from an Operator, the Licensee and the party requesting a roaming arrangement ~~Operator~~ 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 arbitration framework set out in [Industry Canada's Arbitration Rules

for Licence, Certificate or Authorization Holders]. In either instance, 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 rates, terms and conditions of the roaming arrangement and those relating to procedural matters under the applicable arbitration), framework 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~~arbitration framework. At any time prior to arbitration, the Licensee and the ~~party~~ requesting ~~roaming~~Operator 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.

## SCHEDULE 2

### **MTS Allstream's Consolidated Proposed Conditions of Licence for Mandatory Antenna Tower and Site Sharing and Prohibition of Exclusive Site Arrangements as per Reply Comments**

1. Licensees must facilitate sharing of antenna towers and sites, including rooftops, and supporting structures ("Sites") and not cause or contribute to the exclusion of other radiocommunication antenna operators ("Operators") from gaining access to Sites. Without limiting the generality of the foregoing,
  - (a) 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;
  - (b) as applicable, Licensees must consent to or in a commercially reasonable manner, seek the consent of third parties to the assignment, sublease or sublicense of rights of access to Sites pursuant to any agreement or arrangement to which the Licensee is a party; and
  - (c) further, Licensees must not enter into or renew agreements that exclude other Operators from using a Site.
2. Licensees must share their Sites where technically feasible, except where national security concerns exist or where the Site is used solely for personal enjoyment.
3. No Licensee shall be entitled to refuse to share a Site on the grounds of future network or capacity plans or needs where there is spare capacity on a Site at the time that an initial request for Site sharing is made. Should a Licensee require additional capacity on a Site that necessitates upgrades to the Site or that are technical infeasible with the Operator in place, then the Licensee shall
  - (a) provide to the Operator affected, one year's advance written notice of such requirement, along with detailed network planning and technical justification therefore;
  - (b) the Operator shall have the option of removing its facilities and equipment from the affected Site or shall pay for the Licensee's costs (minus any engineering and third party consultant's costs) of construction of additional capacity on the Site up to and including the total amount of capacity taken up by the Operator pursuant to a Site sharing arrangement for the Site in question.

4. In order to fulfill the condition of Site sharing in accordance with this licence, the Licensee must respond to an initial request to share a Site by any other Operator within ten (10) days of an Operator's initial request, as follows:

- (a) the Licensee shall provide a Preliminary Information Package (PIP) for each Site to the requesting Operator. Each PIP shall include the following information:
  - o Site specific drawings showing buildings, elevations and geographical coordinates of Licensee's existing Site;
  - o Tower profile and as-built drawing(s) (as applicable);
  - o Formal Request for Sharing Form identifying all information required by the Licensee in order to prepare a complete draft agreement or Term Sheet for Site sharing. The Department's expectations as to what may reasonably be required by Licensees from requesting Operators are set out in CPC-2-0-03, as amended from time to time. Should the Licensee require additional information over and above what is described in CPC-2-0-03 in the case of a particular Site installation, the Licensee shall provide to the requesting Operator a detailed justification including technical justification for such additional information requirements.
  - o Standard Agreement Terms and Conditions;
  - o Licensee's list of approved engineering and rigging firm(s) to be used for the structural analysis and eventual installation; and
  - o Licensee's future requirements in relation to the Site and timelines and detailed technical justification for same.

5. The requesting Operator shall formalize its initial request to share by providing the following information in response to the Licensee's PIP:

- o the administrative fee as determined by the Department [and as set out in CPC-2-0-03 as amended from time to time] that is payable for each Site in relation to which the requesting Operator has requested Site sharing;
- o a completed Request for Tower Sharing Form including all information reasonably requested by the Licensee in its PIP.

6. The requesting Operator's response to the Licensee's PIP shall constitute a formal request to share.

7. Within thirty (30) days of an initial request from an Operator, the Licensee must provide to the requesting Operator a copy of all of its current offers, Term Sheets and agreements in relation to Site sharing.
8. In order to fulfill the condition of Site sharing in accordance with this licence, the Licensee must respond to a formal request to share a Site by any other Operator within thirty (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 Site sharing agreement. The Licensee must provide a written draft agreement or Term Sheet incorporating all relevant and material terms and conditions upon which it would be prepared to grant access to a Site or Sites, as the case may be. 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. Disputes concerning the feasibility of Site sharing will be resolved by way of arbitration as provided in paragraph [10] below.
9. The Licensee shall negotiate a Site sharing arrangements with any requesting Operator expeditiously and in good faith.
10. If after ninety (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 or in accordance with the arbitration framework set out in [Industry Canada's Arbitration Rules of Licence, Certificate and Authorization Holders]. In either instance, 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 rates, terms and conditions 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 arbitration and follow all directions of the arbitrator in accordance with the applicable arbitration framework. At any time prior to arbitration, the Licensee and the requesting Operator may agree to specific terms with regard to submitting their dispute to an arbitrator and may withdraw their arbitration, on agreed terms.
11. Notwithstanding the timelines and procedures provided for at paragraphs [4, 5, 6 and 8] above, in the case of a request for Site sharing involving more than ten (10) Sites,
  - (a) Within 30 days of such an initial request, the Licensee shall provide a written draft Master Site Sharing Agreement incorporating all relevant and

material terms and conditions upon which it would be prepared to grant access to the Sites subject to the request. The Licensee may identify sets of Sites by various tower or location types and propose different rates, terms and conditions accordingly. 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. The Licensee's proposed timelines and procedures for sharing of each Site or subset of Sites will be identified in the draft Master Site Sharing Agreement or in Schedules incorporated by reference thereto.

- (b) If after ninety (90) days of a request to share more than ten (10) Sites, the Licensee and the Operator requesting the Site sharing arrangement cannot agree to the terms of the arrangement, the Licensee must agree to submit the matter to an arbitrator as provided for at paragraph [10] above.

(Blacklined Version Showing Changes from Department's Proposed Conditions of Licence as per DGRB-010-07)

~~Industry Canada proposes to add the following conditions of licence for mandating antenna tower and site sharing and prohibiting exclusive site arrangements to all spectrum licences, radio licenses and broadcasting certificates. ("Licensees").~~ **MTSA's Proposed Conditions for Mandatory Antenna Tower and Site Sharing and Prohibition of Exclusive Site Arrangements as per Reply Comments**

~~4-1.~~ Licensees must facilitate sharing of antenna towers and sites, including rooftops, and supporting structures [~~"Site(s)"]~~ ["Sites"] and not cause or contribute to the exclusion of other radiocommunication antenna operators [~~"Operator(s)"]~~ ["Operators"] from gaining access to Sites. Without limiting the generality of the foregoing,

(a) \_\_\_\_\_ 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:~~

(b) \_\_\_\_\_ as applicable, Licensees must consent to or in a commercially reasonable manner, seek the consent of third parties to the assignment, sublease or sublicense of rights of access to Sites pursuant to any agreement or arrangement to which the Licensee is a party; and

(c) \_\_\_\_\_ further, Licensees must not enter into or renew agreements that exclude other Operators from using a Site;

~~2-2.~~ Licensees must share their Sites where technically feasible, except where national security concerns exist or where the Site is used solely for personal enjoyment;

~~3.~~ \_\_\_\_\_

3. \_\_\_\_\_ No Licensee shall be entitled to refuse to share a Site on the grounds of future network or capacity plans or needs where there is spare capacity on a Site at the time that an initial request for Site sharing is made. Should a Licensee require additional capacity on a Site that necessitates upgrades to the Site or that are technical infeasible with the Operator in place, then the Licensee shall

(a) \_\_\_\_\_ provide to the Operator affected, one year's advance written notice of such requirement, along with detailed network planning and technical justification therefore;

(b) \_\_\_\_\_ the Operator shall have the option of removing its facilities and equipment from the affected Site or shall pay for the Licensee's costs (minus any engineering and third party consultant's costs) of construction of additional capacity on the Site up to and including the total amount of capacity taken up by the Operator pursuant to a Site sharing arrangement for the Site in question.

4. In order to fulfill the condition of Site sharing in accordance with this licence, the Licensee must respond to ~~a request to share by any other Operator within 30~~ an initial request to share a Site by any other Operator within ten (10) days of an Operator's initial request, as follows:

- (a) the Licensee shall provide a Preliminary Information Package (PIP) for each Site to the requesting Operator. Each PIP shall include the following information:
  - o Site specific drawings showing buildings, elevations and geographical coordinates of Licensee's existing Site;
  - o Tower profile and as-built drawing(s) (as applicable);
  - o Formal Request for Sharing Form identifying all information required by the Licensee in order to prepare a complete draft agreement or Term Sheet for Site sharing. The Department's expectations as to what may reasonably be required by Licensees from requesting Operators is set out in CPC-2-0-03, as amended from time to time. Should the Licensee require additional information over and above what is described in CPC-2-0-03 in the case of a particular Site installation, the Licensee shall provide to the requesting Operator a detailed justification including technical justification for such additional information requirements.
  - o Standard Agreement Terms and Conditions;
  - o Licensee's list of approved engineering and rigging firm(s) to be used for the structural analysis and eventual installation; and
  - o Licensee's future requirements in relation to the Site and timelines and detailed technical justification for same.

5. The requesting Operator shall formalize its initial request to share by providing the following information in response to the Licensee's PIP:

- o the administrative fee as determined by the Department [and as set out in CPC-2-0-03 as amended from time to time] that is payable for each Site in relation to which the requesting Operator has requested Site sharing;
- o a completed Request for Tower Sharing Form including all information reasonably requested by the Licensee in its PIP.

6. The requesting Operator's response to the Licensee's PIP shall constitute a formal request to share.

7. Within thirty (30) days of an initial request from an Operator, the Licensee must provide to the requesting Operator a copy of all of its current offers, Term Sheets and agreements in relation to Site sharing.

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

~~(a)~~ (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 Site sharing agreement. ~~The Department expects that Site-~~  
The Licensee must provide a written draft agreement or Term Sheet incorporating all relevant and material terms and conditions upon which it would be prepared to grant access to a Site or Sites, as the case may be.  
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, ~~and.~~

~~(b)~~ (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 ~~reason~~ reasons why it is not feasible (accompanied by any applicable technical information) in accordance with CPC ~~2-0-03; and 2-0-03.~~  
Disputes concerning the feasibility of Site sharing will be resolved by way of arbitration as provided in paragraph [10] below.

~~4. Site-9.~~ The Licensee shall negotiate a Site sharing arrangements ~~will be negotiated~~ with any requesting Operator expeditiously and in good faith.

10. If after ninety (90) days from the initial request, the Licensee and the Operator requesting a Site- sharing ~~arrangements~~ arrangement cannot agree to the ~~term~~ terms of the 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~~ arbitration framework set out in [Industry Canada's Arbitration Rules of Licence, Certificate and Authorization Holders]. In either instance, 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 rates, terms and conditions 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 arbitration and follow all directions of the arbitrator in accordance with ~~any arbitration agreement or with~~ the applicable legislation arbitration framework. At any time prior to arbitration, the Licensee and the ~~Operator~~ requesting antenna tower and site sharing Operator may agree to specific terms with regard to submitting their dispute to an arbitrator and may withdraw their arbitration, on agreed terms, ~~as long as they agree to a Site sharing arrangement.~~

11. Notwithstanding the timelines and procedures provided for at paragraphs [4, 5, 6 and 8] above, in the case of a request for Site sharing involving more than ten (10) Sites,

- (a) Within 30 days of such an initial request, the Licensee shall provide a written draft Master Site Sharing Agreement incorporating all relevant and material terms and conditions upon which it would be prepared to grant access to the Sites subject to the request. The Licensee may identify sets of Sites by various tower or location types and propose different rates, terms and conditions accordingly. 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. The Licensee's proposed timelines and procedures for sharing of each Site or subset of Sites will be identified in the draft Master Site Sharing Agreement or in Schedules incorporated by reference thereto.
- (b) If after ninety (90) days of a request to share more than ten (10) Sites, the Licensee and the Operator requesting the Site sharing arrangement cannot agree to the terms of the arrangement, the Licensee must agree to submit the matter to an arbitrator as provided for at paragraph [10] above.

## **SCHEDULE 3**

### **CONSOLIDATED PROPOSED ARBITRATION FRAMEWORK**

#### **1. Application and Purpose**

All disputes arising out of or in connection with establishing the terms of a roaming or Site sharing agreement as required by Gazette Notice No. DGRB-010-07 shall be arbitrated and finally resolved pursuant to the Arbitration Rules for Cellular, PCS and AWS Licensees ("the Rules").

The purpose of the Rules is to enable the Licensee and the Operator to achieve a just, speedy and cost effective determination of the terms of a Roaming or Site sharing agreement, and resolve any other issues in dispute that are related to or arise from the establishment of such an agreement.

A failure to comply with the Rules is an irregularity and does not render an arbitration or a step, document or award in the arbitration a nullity.

#### **2. Interpretation**

In the Rules:

"Arbitrator" means one or three Canadian Radio-television and Telecommunications Commission ("CRTC") representative(s) appointed by the CRTC and charged with adjudicating all disputes arising out of or in connection with establishing the terms of a roaming or site sharing agreement under these Rules.

"Chair" means the person elected or appointed to chair the Tribunal.

"Claimant" is the Party commencing the arbitration in accordance with Rule 10.

"Commencement Date" means the date the arbitration is deemed to commence under Rule 10.

"Party" or "Parties" refers to the Claimant and the Respondent.

"Respondent" is the Party responding to the Notice to Arbitrate referred to in Rule 9.

"Rules" mean these Arbitration Rules for Cellular, PCS and AWS Licensees Rules.

"Term Sheet(s)" means the Terms Sheet(s) referred to in Rule 24.

"Tribunal" means either a sole Arbitrator or a panel of Arbitrators, as the case may be, appointed to serve as the Arbitrator or Arbitrators of a dispute pursuant to these Rules.

### **3. Time**

(a) In the Rules, where the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday. In the calculation of time, the first day shall be excluded and the last day included.

(b) The Parties may modify any period of time by agreement.

### **4. Delivery of Documents**

Any document required by the Rules to be delivered may be delivered either by personal delivery, mail, e-mail or facsimile. If delivered by personal delivery, delivery shall be deemed to have been effected on the day of such delivery to a Party at its regular place of business or mailing address or that of its legal counsel where applicable. If delivered by mail, except for confirmation copies of documents delivered by e-mail or facsimile, delivery shall be deemed to have been effected 2 days following the date of mailing. If by e-mail or facsimile, delivery shall be deemed to have been effected when sent. A confirmation copy of any such document shall be delivered by mail in the case of any electronic transmission.

### **5. Communications with Tribunal**

No Party or person acting on behalf of a Party shall have a communication with the Tribunal in the absence of the other Party concerning the substance of the dispute or any contentious matter relating to the proceeding.

**6. Communications between Parties**

Parties to an arbitration under the Rules may deliver any written communications required or permitted under the Rules by personal delivery, by mail, e-mail or by facsimile to a Party at its regular place of business or mailing address. A confirmation copy of such communications shall be sent by mail in the case of any electronic transmission.

**7. Address for Delivery of Documents**

The Parties shall provide to one another a full mailing address, telephone number, facsimile number and e-mail address, as may be applicable.

**8. Waiver of Right to Object**

A Party that knows that any provision of, or requirement under, the Rules has not been complied with and yet proceeds with the arbitration without promptly stating an objection shall, unless the Tribunal otherwise orders, be deemed to have waived its right to object.

**9. Notice to Arbitrate**

A Claimant may submit a dispute to arbitration by delivering a written Notice to Arbitrate to the Respondent at the last known mailing address or place of business of the respondent. The Notice of Request to Arbitrate shall contain:

- (a) the names, place of business or mailing addresses, telephone numbers, fax numbers and e-mail addresses of the Parties to the dispute, if known;
- (b) the Term Sheet;
- (c) a request that the described dispute be referred to arbitration;
- (d) any variation of the Rules which has been agreed by the Parties in writing.

**10. Commencement Date**

The arbitration is deemed to have commenced when one Party ("the Claimant") serves a Notice to Arbitrate on another Party ("the Respondent").

Upon the request of either party, the CRTC shall appoint one or more of its representatives to act as either sole arbitrator or as a panel of three arbitrators.

#### **11. Applicable Law**

The Tribunal shall apply the laws of the Province where the Arbitration is to be held. The arbitration shall be conducted in accordance with these Rules and any applicable arbitration legislation of the place of arbitration.

#### **12. Independence and Impartiality**

(a) Unless otherwise agreed by the Parties, an Arbitrator shall be and remain at all times wholly independent.

(b) An Arbitrator shall be and remain wholly impartial and shall not act as an advocate for any Party to the arbitration.

(c) Every person must, before accepting an appointment as Arbitrator, sign and deliver to the Parties a statement declaring that he or she knows of no circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality and that he or she will disclose any such circumstances to the Parties if they should arise after that time and before the arbitration is concluded.

#### **13. Substitution**

If an Arbitrator refuses to act, is incapable of acting, withdraws from office, is removed from office by order of the court or dies, a substitute Arbitrator shall be appointed by the CRTC.

Where a single Arbitrator or Chair is replaced, any hearings previously held shall be repeated. Where any other Arbitrator is replaced, any hearings previously held may be repeated at the discretion of the Arbitrators.

#### **14. Challenges**

An Arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his or her independence or impartiality, or if he or she does not possess the qualifications agreed upon by the Parties.

A Party who intends to challenge an Arbitrator shall, within 7 days after becoming aware of the appointment, or after becoming aware of any circumstances referred to in this Rule, send a written statement of the challenge and the reasons for the challenge to the Tribunal, if it has been fully constituted. If the challenged Arbitrator withdraws or the other Party agrees to the challenge, the mandate of the Arbitrator terminates.

In the case of an arbitration with a single Arbitrator, if the Arbitrator challenged does not withdraw and the other Party does not agree to the challenge, the single Arbitrator shall decide on the challenge. If there is a three-person panel the Chair, if he or she is not challenged, shall decide the challenge. If the Chair is challenged, all the Arbitrators may decide the challenge.

#### **15. Representation**

Where a Party intends to be represented or assisted by a lawyer, that Party shall, in writing, advise the other Party of the lawyer's name, address, telephone number, facsimile number, e-mail address and the capacity in which he or she is acting at least 15 days before any scheduled hearing or meeting.

#### **16. Place of Arbitration**

The Parties may agree in writing on the place of arbitration. If no place is agreed upon, the place of arbitration shall be at the discretion of the Tribunal. The Tribunal may meet at any other place it considers convenient or necessary for consultation, to hear witnesses, experts or the Parties or for the inspection of documents, goods or other property. Part or all of the arbitration may be conducted by telephone, e-mail, internet or electronic communication if agreed by the Parties.

**17. Language of Arbitration**

The Parties may agree, in writing, on the language of the arbitration. In default of any such agreement the Tribunal may specify the language of the arbitration.

**18. Conduct of the Arbitration**

(a) Subject to these Rules, the Tribunal may conduct the arbitration in the manner it considers appropriate.

(b) Each Party shall be treated fairly and shall be given full opportunity to present its case.

(c) The Tribunal shall strive to achieve a just, speedy and cost effective determination of every proceeding on its merits, taking into account Rule 1.

**19. Jurisdiction**

The Tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence, validity or application of these Rules.

**20. No Waiver of Right to Object**

A Party is not precluded from raising a jurisdictional issue by the fact that it has appointed, or participated in the appointment of, an Arbitrator.

**21. General Powers of Tribunal**

The Tribunal may:

(a) order an adjournment of the proceedings from time to time;

(b) make an interim award on any matter with respect to which it may make a final award;

(c) grant such interim measures of protection as it deems appropriate, including an order for security for costs;

- (d) make an award or interim award granting equitable relief, injunctions or specific performance on such terms as may be just;
- (e) order inspection of documents, exhibits or other property;
- (f) at any time extend or abridge a period of time fixed or determined by it, or any period of time required in the Rules, except the time within which the award is to be made, where it considers it just and appropriate in the circumstances;
- (g) request further statements clarifying issues in dispute;
- (h) give such direction with respect to procedural matters having regard to Rule 1;  
and
- (i) request from a court of competent jurisdiction assistance in taking evidence.

## **22. Term Sheets**

At the time of commencement of the arbitration, the Claimant must deliver to the Respondent and the Tribunal a written Term Sheet setting out the material terms and conditions the Claimant seeks to have entered into a Roaming or Site sharing Agreement.

Within 10 days after the Respondent receives the Term Sheet, the Respondent shall deliver to the Claimant and the Tribunal its own Term Sheet which shall be a written response to the Claimant's Term Sheet that either accepts, refuses or modifies the Claimant's terms and adds any additional material terms and conditions the Respondent seeks to have entered into a Roaming or Site sharing Agreement.

The Claimant shall have 5 days from the receipt of the Respondent's Term Sheet to deliver to the Respondent and the Tribunal a reply Term Sheet which shall contain only the acceptance, refusal, or modification of any additional terms introduced in the Respondent's Term Sheet.

If a Respondent fails to deliver its Term Sheet, the Respondent shall be deemed to have accepted the Claimant's Term Sheet. If the Claimant does not deliver a reply Term

Sheet, then the Claimant shall be deemed to have accepted the additional terms introduced by the Respondent.

Each Party shall exchange with its Term Sheet a list of relevant documents in accordance with Rule 26 (Production of Documents) taking into account Rule 1, and shall file this list of documents with the Tribunal. The type, date, author, recipient and subject matter of each document must be specified, where applicable. Documents not so identified may be subject to exclusion from the proceedings at the discretion of the Tribunal.

### **23. Amendment of Term Sheets**

No amendments may be made to the Term Sheets once they have been exchanged by the Parties and delivered to the Tribunal.

### **24. Production of Documents**

(a) Unless the Tribunal otherwise orders, at least 15 days prior to the hearing, or at such other time as the Tribunal may direct, each Party shall disclose all documents relating to the matters in issue in the arbitration that are or have been in the possession, control or power of the Party. Where the Tribunal considers that the disclosure of all such documents is unnecessary, unduly costly or burdensome or for other reasons is inconsistent with Rule 1, the Tribunal may give directions to limit the scope of disclosure of documents.

(b) At a Party's request, the Tribunal shall order the disclosure of any Roaming or Site sharing agreements that are in the possession, control or power of the other Party. The Tribunal may, on motion by a Party, order production for inspection of roaming or Site sharing agreements or other documents that are in the possession, control or power of a person not a Party to the arbitration where the Tribunal is satisfied that the document is relevant and would assist with the determination of the issues in dispute, and where such order is made the Parties may inspect those documents and take copies of them.

**25. Arbitration Hearings**

The Tribunal shall set the dates for any interim hearings or meetings, whether oral or not, and shall, except in cases of urgency, give at least 4 days written notice thereof to the Parties.

**26. Confidentiality**

The Parties, the witnesses and the Arbitrators shall treat all meetings and communications, the proceedings, documents disclosed in the proceeding, discovery and the awards of the Tribunal as confidential, except in connection with a judicial challenge to, or enforcement of, an award, and unless otherwise required by law. Nothing in this Rule shall preclude disclosure of such information to a Party's insurer, auditor, lawyer or other person with a direct financial interest in the arbitration.

**27. Evidence**

The Parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence under oath as the Tribunal may deem necessary to an understanding and determination of the dispute. Strict conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the Tribunal and all of the Parties, except where any of the Parties is voluntarily absent, in default or has waived the right to be present.

The Tribunal shall determine the admissibility, relevance and materiality of the evidence offered and may exclude evidence deemed by the Tribunal to be repetitive.

The Tribunal shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

**28. Witnesses**

The Tribunal may determine the manner in which witnesses are to be examined, and save for a Party or the person nominated as that Party's representative for the purpose

of the arbitration, may require witnesses to absent themselves from an oral hearing during the testimony of other witnesses.

Where the evidence of a witness is presented by written statement or sworn declaration, the Tribunal may order that the witness be present at an oral hearing for cross examination.

## **29. Tribunal's Experts**

If the Parties agree, the Tribunal may appoint one or more independent experts to report on specific issues to be determined by the Tribunal and may require a Party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for its inspection.

The Tribunal shall communicate the expert's terms of reference to the Parties. Any dispute as to the terms of reference or the relevance of the required information, or production of it, shall be referred to the Tribunal for decision. The cost of any such expert shall be borne by the Parties on a basis determined by the Tribunal.

Upon receipt of the expert's report in writing, the Tribunal shall deliver a copy of it to the Parties who shall be given the opportunity to challenge all or any part of the report in a manner determined by the Tribunal.

The expert shall, on the request of a Party, make available to that Party for examination all documents, goods or other property in the expert's possession which the expert has used to prepare the report and shall provide that Party with a list of all documents, goods or other property not in the experts' possession, but which were provided in order to prepare the report, and a description of the location of those documents, goods or other property.

An expert shall, after delivery of the report, be required to attend for the purpose of cross examination on some or all of the contents of that report, unless the Parties agree that such cross-examination is not required.

**30. Default of a Party**

Where a Party, without sufficient cause, fails to appear at a hearing or to produce evidence, the Tribunal may continue the arbitration after satisfying itself that a reasonable attempt has been made to communicate with the defaulting Party. The Tribunal shall make an award based upon the evidence before it.

**31. Offers of Settlement**

At any time before the hearing on the merits, a Party may deliver to the other Party an offer to settle marked "without prejudice" to settle one or more of the terms in dispute. An offer to settle may specify a time within which it may be accepted and it will expire if not accepted within that time.

The Tribunal shall take into consideration the offer, the time at which the offer was made and the extent to which it was accepted when dealing with questions of costs and interest.

The Tribunal may be informed by a Party of the fact that an offer had been made under this rule at the time of making any submission on the question of costs, but not before.

The Parties may not deliver offers on a "with prejudice" basis.

**32. Closure of Hearings**

Where the Parties have, on inquiry, advised they have no further evidence to give or submissions to make, or the Tribunal considers further hearings to be unnecessary or inappropriate, the Tribunal may close the hearings.

On its own motion or on the application of a Party, the Tribunal may, in exceptional circumstances, re-open the hearings to receive evidence or submissions concerning a matter at any time before the issuance of a partial final award or final award concerning that matter.

### **33. Settlement**

The Tribunal may encourage settlement of the dispute and, with the written agreement of the Parties, may order that mediation, conciliation or other procedures be used by the Parties at any time during the arbitration proceedings to encourage settlement.

If, during the arbitration proceedings, the Parties settle the dispute, the Tribunal shall, upon receiving confirmation of the settlement or determining that there is a settlement, terminate the proceedings and, if requested by the Parties, record the settlement in the form of an arbitration award on agreed terms.

### **34. Award**

The Tribunal shall be limited to making its award by selecting either the Claimant's Terms Sheet together with its reply (if any), or the Respondent's Term Sheet. The Tribunal shall make its award in writing and shall deliver to the Parties sufficient originally signed copies of the award for each Party.

Where the Tribunal consists of more than two Arbitrators, the award shall be made by a majority of the Tribunal. Where there is no majority decision, the decision of the Chair of the Tribunal shall be the award.

### **35. Costs**

The Tribunal shall be entitled to fix the costs and expenses of the arbitration, including reasonable legal fees, the costs and expenses of the arbitration and the Tribunal. If costs and expenses are awarded, such costs and expenses shall be made part of the award. 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.

### **36. Amendments and Corrections to the Award**

A Tribunal may, on the application of a Party or on its own initiative, amend or vary an award or interim award to correct:

- (a) a clerical or typographical error;
- (b) an accidental error, slip, omission or other similar mistake; or
- (c) an arithmetical error made in a computation.

An application by a Party to amend or vary shall be made within 15 days after that Party is notified of the award.

An amendment or variation shall not, without the consent of the Parties, be made more than 30 days after the Parties have been notified of the award.

A Party may, within 15 days after being notified of the award, apply to the Tribunal for clarification of the award, and the Tribunal may clarify the award where it considers it appropriate, in which case the clarification becomes part of the award.

A Party may, within 30 days after receiving the award, apply to the Tribunal to make an additional award with respect to claims presented in the proceedings but omitted from the award.

Unless otherwise agreed, the award of the Tribunal shall be final and binding and there shall be no appeal.

### **37. Immunity**

The Tribunal shall not be liable to any Party for any act or omission in connection with any arbitration conduct under these Rules. The Tribunal shall have the same protections and immunity as a Judge of the Superior Court in the province or territory in which the arbitration takes place.

### **38. Timetable for Arbitration**

Within 10 days of the appointment of the Tribunal, the Tribunal shall convene a pre-arbitration meeting of the Parties which may be held by conference telephone call, video conferencing or other electronic means to determine:

- i. a timetable for the conduct and completion of all pre-hearing and preliminary matters in a period not to exceed 60 days from the date of the commencement of the arbitration;
  - ii. the time and place of the hearing; and
  - iii. such other directions as may be necessary.
- (a) Unless agreed by the Parties or ordered by the Arbitrator, there shall be no oral discovery.
  - (b) No transcript of the proceedings shall be required.
  - (c) Sworn statements of evidence shall be filed at the hearing in lieu of examination in chief and shall be subject to cross-examination and re-examination only.
  - (d) The record of the arbitration shall consist of the documents and exhibits produced and filed by the Parties.
  - (e) A date for the hearing of the arbitration shall not be more than 90 days from the date of the commencement of the arbitration, and
  - (f) The Tribunal shall deliver the award and reasons for the award within 10 days from the completion of the hearing.

\*\*\* End of document \*\*\*