

**Reply Comments of
QUEBECOR MEDIA INC.
to Industry Canada
in Response to
Canada Gazette Notice No. DGRB-010-07**

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

February 7, 2008

Table of Contents

1.	Introduction to QMI's Reply Comments: The National Incumbents are not Acknowledging the Decisions Already Made by Industry Canada	1
2.	The Authority of the Minister to Modify Licence Conditions.....	5
3.	Tower and Antenna Site Sharing: The Incumbents' Proposed Schedules Could Already be Perceived as a Refusal to Abide by Future Licence Conditions	9
	3.1 Commercial Negotiations Should Proceed Quickly.....	10
	3.2 On the Matter of Technical Feasibility Disputes.....	12
4.	Mandated Roaming: The Incumbents are Still Living in 1996 !	15
	4.1 The Public Interest Requires that the Bell-Telus Roaming Agreement be Made Public.....	19
	4.2 Comments Regarding the Definition of a New Entrant.....	20
	4.3 Other Comments Related to Mandated Roaming.....	22
5.	The Arbitration Process	24
	5.1 General Statement.....	24
	5.2 Response to Certain Specific Comments.....	25

1. Introduction to QMI's Reply Comments: The National Incumbents are not Acknowledging the Decisions Already Made by Industry Canada

These reply comments are provided to Canada's Minister of Industry by Quebecor Media Inc. (QMI), in response to Canada Gazette Notice No. DGRB-010-07 "Consultation on Proposed Conditions of Licence to Mandate Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements".

QMI notes that the original comment procedure set up by Industry Canada (IC) in DGRB-010-07 did not include a round of reply comments.

The issues related to tower and antenna site sharing and to mandated roaming had already been discussed and reviewed in detail during the initial consultation under Notice No. DGTP-002-07 "Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services" leading to Notice No. DGTP-007-07 "Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range", wherein IC laid out the ground rules for the current auction and new mobile licence conditions.

DGTP-007-07, after careful consideration by IC, concluded with the proper decision to introduce new license conditions for sharing of towers and antenna sites as well as mandated digital roaming to ensure that increased competition can be introduced in the Canadian mobile market to the benefit of all Canadian consumers.

However, the three national incumbent mobile carriers requested and obtained a round of reply after sending a letter to IC claiming that "the Consultation is addressing matters which are of considerable business, technical and operational complexity"¹.

¹ Bell Canada Letter to IC , January 15, 2008

QMI notes that other significant incumbent mobile carriers such as SaskTel and MTS Allstream, who, similar to the three national incumbents, also own antenna sites which they would be required to share and who would also be required to offer roaming on their own mobile networks, did not request a round of reply comments in light of the alleged “complexities” raised by this consultation. QMI notes that SaskTel and MTS Allstream have just as many years of experience as Bell (i.e. 23, as highlighted at page 1 of the Executive Summary to Bell’s January 22 comments) in operating mobile networks and they do not perceive the same level of difficulty in sharing antenna sites nor in implementing seamless digital roaming for a variety of services.

After reviewing the comments provided by the three national incumbent mobile carriers on January 22, QMI respectfully submits that these comments are essentially a masquerade with the sole objective of causing substantial delays in the AWS auction process via unproductive changes in the license conditions for mobile operators.

More delays and changes will create uncertainty in the business plans of new entrants and the impact of these delays and changes could be that these business plans would have to be scaled back significantly or simply cancelled.

Rogers and Bell are seeking to revisit the same issues addressed in the DGTP-002-07 consultation, and are simply not acknowledging the decisions already made by IC in the AWS policy framework that emerged from this consultation.

IC must not fall prey to this blatant attempt at jeopardizing the AWS auction process.

QMI notes that DGTP-007-07 clearly states that **“The policy decisions contained in this paper are final.”** (at page 2, emphasis added).

For the purpose of providing a proper framework for these reply comments, QMI believes it is useful to recall the three questions originally posed by IC in DGRB-010-07 as part of the current consultation:

- “1. Are the timelines for responding to requests to share and roam and for submitting agreements that have not been finalized to an arbitrator appropriate? Are there other timelines that should be considered?”*
- 2. Specific provisions regarding arbitration may vary from province to province. Would it be useful to adopt a national code such as the ADR Institute of Canada's National Arbitration Rules in default of any specific arbitration agreement? Are there any special provisions which should be made applicable to the arbitrators concerning sharing and roaming?”*
- 3. Are there any other licence conditions required to **facilitate sharing and roaming?**” (emphasis added)*

QMI highlights that IC has requested inputs and suggestions from industry participants to **facilitate sharing and roaming, not hinder them.**

The comments submitted by the three national incumbents are aimed at hindering, slowing and even stopping sharing and roaming as opposed to facilitating them.

Moreover, the comments provided by the three national incumbents clearly denote confusion on their part between what should be a licence condition and what rules and guidelines should be developed as part of a normal conduct of business for these activities. As an example, we point to Bell’s suggested clause stipulating that “All costs associated with responding to a new entrant request for mandatory roaming will be detailed and invoiced to the new entrant” (from page 23 of Bell’s January 22 comments). Clearly, these matters would be part of the commercial negotiations between parties, and would be resolved by an arbitrator if a dispute arose.

Rogers commits a similar error when it requests at paragraph 95 of its January 22 comments that the following clause be added to the conditions of licence on roaming: *“When requested, a licensee who is receiving mandated automatic digital roaming must provide quarterly and annual forecasts of expected traffic on a per market basis to its roaming provider. The licensee will be responsible to compensate the roaming provider for any losses it suffers due to a shortfall in the forecasted traffic or due to substantial coverage.”* Again, clearly, this clause would more properly be part of commercial negotiations between the parties and would be resolved by an arbitrator if a dispute arose.

In conclusion, QMI believes that IC should dismiss the bulk of the comments submitted by the three national incumbent mobile carriers as they are in full contradiction with established government policy and will only serve to limit the activities of new entrants in the Canadian mobile telecommunications industry.

Notwithstanding the lack of credibility of the comments submitted by the three national incumbents, QMI nevertheless provides its reply in the following sections.

Please note that failure by QMI to address any of the comments made by other parties does not imply our agreement. QMI submitted comments on January 22 wherein it indicated its full support for the licence conditions put forward by IC with minor modifications to their formulation.

2. The Authority of the Minister to Modify Licence Conditions

Before QMI responds to the comments submitted on January 22 as they relate to sharing of antenna sites and mandated roaming, we would like to address the statements made by both Rogers² and Bell³ that the Minister of Industry does not have the authority to amend their existing conditions of licence.

QMI notes that the new antenna site sharing and roaming conditions to be added to the license conditions of cellular, PCS and AWS licenses are being imposed after extensive consultation with the industry.

Mandated roaming was explicitly put forward for consultation by IC in the process initiated by Notice No. DGTP-002-07 in February 2007 and extensively debated by the commenting parties. Specifically, the following questions had been asked by IC in February 2007:

“The Department invites comments on mandating incumbent mobile wireless operators to offer roaming services – to both competing and non-competing Canadian carriers – to foster the development of competitive wireless communication services.

Comments are invited on the extent to which the lack of mandated roaming could be a barrier to entry into the wireless market.

Comments are sought on what services should be included in any mandated roaming and to what specific frequency band(s) roaming should apply.

Comments are sought on the mechanisms that would best implement the policy objectives regarding roaming”.

² Comments of Rogers Communications Inc. on Canada Gazette Notice No. DGRB-010-07, paragraph 3.

³ Comments of Bell Mobility on Canada Gazette Notice No. DGRB-010-07, paragraph 21.

Regarding mandated tower sharing, in 2003 Industry Canada commissioned Professor David A. Townsend, Faculty of Law, University of New Brunswick, to investigate issues related to tower co-location and sharing. One of the six questions to be investigated as part of the mandate of Professor Townsend was stated as “How and to what extent can tower sharing be utilized in order to reduce the total number of towers?” The final report of Professor Townsend, was published in December 2004.

In May 2007, several industry participants also submitted comments on tower sharing in response to Notice No. DGTP-002-07. For example, as part of its response to this Notice, QMI submitted that tower sharing is similar to sharing telephone and utility poles, which has been normal practice in wireline communications for many years, and further provided documentation regarding the negative environmental impact of multiple towers closely located.

On June 28, 2007, IC also released new antenna siting and approval procedures entitled CPC-2-0-03 “Radiocommunication and Broadcasting Antenna Systems, Issue 4”. The accompanying press release from IC states that *“The Department has carefully reviewed the recommendations contained in the reports prepared by Professor David A. Townsend and by the Telecommunications Policy Review Panel (TPRP), and has developed improved procedures in consultation with industry and community stakeholders”*.

Evidently, both mandated roaming as well as tower and antenna site sharing have been the subject of extensive consultation by Industry Canada with all industry participants.

QMI further notes that the licence conditions of Rogers and Bell were amended in 1995 when they were issued PCS spectrum to ensure they would offer analog roaming onto their networks and to set up a rule that incumbents could not deploy their PCS network until they had concluded such a roaming agreement with a new entrant. In other words, license conditions were modified with the full intent of supporting entry of new competitors into the Canadian wireless market, a situation similar to the current context.

IC refers to these 1995 licence condition modifications in the policy framework for the upcoming AWS auction as follows: *“To allow the new entrants to establish themselves, mandated roaming on the analogue cellular network was made a condition of licence on the PCS licence of cellular incumbents. Also, a rule was established whereby incumbent cellular operators could not deploy PCS until they had concluded a roaming arrangement with a new entrant or until all new entrants had obtained such an arrangement”*⁴.

Modifying licence conditions to bring additional entry into the mobile market is an accepted industry practice and the Minister has full authority to do so now, as was done in the past.

QMI notes, in this regard, that Bell and Rogers’ allergy to ministerial amendments to spectrum licence conditions appears to be a rather recent development. Numerous prior instances can be found where the Minister of Industry amended the licence conditions attached to spectrum licences held by Bell and/or Rogers, with no apparent opposition on the part of these companies. A non-exhaustive list of these amendments includes the following:

- i) By way of letters issued on or about November 1, 2005⁵, all PCS and cellular licensees (whether the licences in question were attained by comparative selection or by auction) had removed from their licence conditions a clause imposing a Spectrum Aggregation Limit on their spectrum holdings. Interestingly, the removal of this clause was an essential pre-requisite for Rogers to purchase Microcell, reducing the number of national wireless players in Canada from four to three.

⁴ Notice No. DGTP-007-07 “Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range”, page 8.

⁵ A sample letter can be found on the IC website at http://strategis.ic.gc.ca/epic/site/smt-gst.nsf/en/h_sf02092e.html, under “Licence Conditions”.

- ii) In Gazette Notice No. DGRB-005-03 (December 20, 2003), the mechanism for the payment of spectrum licence fees by incumbent cellular and PCS licensees was fundamentally restructured, and these licensees were granted enhanced privileges related to spectrum transferability and divisibility.
- iii) In Gazette Notice DGTP-002-06 (March 30, 2006), fixed Multipoint Communications Systems (MCS) licensees, including Inukshuk, a joint venture of Bell and Rogers, were granted the option to exchange their existing spectrum licences for new spectrum licences, the latter permitting the deployment of mobile wireless services in this band, subject to certain conditions.

3. Tower and Antenna Site Sharing: The Incumbents' Proposed Schedules Could Already be Perceived as a Refusal to Abide by Future Licence Conditions

The three national incumbent mobile carriers are adamant that the 90-day timeline proposed by IC before a dispute regarding tower and antenna site sharing goes to mandatory arbitration is too short and unworkable.

Rogers proposes a timeline yielding 210 days before moving to mandatory arbitration. Rogers even argues that the 210 days timeline is only workable if the level of demand for tower sharing does not significantly increase from today's level.

Bell's proposed schedule yields 180 days before mandatory arbitration, double IC's timeline.

Telus appears to break ranks with the other two national incumbent carriers and indicates that a 90-day timeline for commercial negotiations seems reasonable, but this timeline would apply only after there is agreement on technical issues.

The January 22 comments of the national incumbent carriers seem to imply that IC suffered from inadequate knowledge of the issues surrounding tower and antenna site sharing when it put forward its proposed 90-day deadline. However, later in their comments, both Rogers and Bell argue exactly the opposite. At paragraph 22 of its comments, Rogers states that "*All issues of technical feasibility should not be arbitrated but rather should be referred to Industry Canada, which has a great deal of expertise in these matters*". Similarly, Bell indicates that disputes related to technical feasibility should be referred to IC and proposes such language in its revised condition of licence related to sharing (see paragraph 50 of Bell's comments).

QMI had originally proposed a 60-day timeline before going to mandatory arbitration in its submission to IC in May 2007. In its January 22 comments, QMI accepted IC's proposed 90-day timeline.

QMI considers that the timelines and needlessly elaborate processes submitted by the national incumbent carriers have a single objective: **first delay, followed by further delay and then by more delay**, to hinder rather than facilitate sharing of towers and antenna sites. The proposed timelines will effectively scuttle IC's policy objectives in mandating tower and antenna site sharing.

3.1 Commercial Negotiations Should Proceed Quickly

Rogers' incredible assertion (at paragraph 26 of its January 22 comments) that its proposed 210-day timeline before proceeding to tower sharing arbitration is 'aggressive' by industry standards should be received as persuasive evidence of the lack of incentive on the part of Rogers to engage in meaningful negotiations. In making such a statement, Rogers has provided proof that IC's policy, as currently formulated, is not only appropriate but essential.

QMI submits that tower and antenna site sharing takes place on a routine basis in a number of jurisdictions. Tower and antenna site sharing has been a way of life for mobile carriers in the US for many years. In December 2006, PCIA - The Wireless Infrastructure Association published a "Model Wireless Telecommunications Ordinance" which provides parameters including timelines regarding the siting of wireless telecommunications facilities within a municipality⁶. For purposes of information and comparison only, here are some examples of the timelines proposed to ensure quick resolution of potential disputes:

⁶ See <http://www.pcia.com/>.

- After 10 business days of the receipt of an application, either inform Applicant that its application is incomplete or schedule a review meeting within 30 days of the application.
- The administrator must issue a written decision granting or denying the request within 15 days of the meeting. Failure to issue a written decision constitutes a denial and the Applicant may go directly to appeal the decision.
- If the application is denied, the Applicant has 30 days to appeal the decision.

This means that a denied application to share a tower could go to appeal within 30 days (10 business days plus 15 days) versus 90 days as proposed in IC's licence conditions.

QMI strongly argues that the 90-day timeline already included in IC's proposed licence conditions is very generous and that there is definitely no need to extend it any further.

Furthermore, even though the proposed licence conditions clearly state that services to be provided to other mobile carriers must be at negotiated commercial rates, Rogers and Bell do not appear to realize that these services represent a business and revenue opportunity for them. This is nowhere more evident than in the statement made at paragraph 24 of Rogers' comments that *"This timetable [for tower sharing discussions] is only valid under the current volume of sharing requests. When future volumes are greater than 150% of current volumes, incumbents must be given the flexibility to negotiate alternative timelines with requesting parties."* Further at paragraph 28, Rogers states that *"Rogers currently processes 15-20 tower sharing requests per month nationally.... If a large number of requests are received, additional resources will be required. In this event, **the timelines will have to be relaxed and Rogers will need to hire additional resources and to charge additional application fees to pay for these resources**"* (emphasis added).

Contrary to these comments, under normal business conduct, one would expect that Rogers' expertise in tower sharing would be enhanced with increased demand, efficiency gains in business processes would be achieved, and the cost and timeline required to service each demand would actually decrease rather than increase.

QMI highlights that sharing of towers for wireless communications is of itself a significant business opportunity. Instead of recognizing this fact, Rogers remains intent on hindering rather than facilitating tower and antenna site sharing.

Below is an excerpt of information reprinted from the American Tower web site⁷, a major tower operator in the United States, which clearly highlights that their objective is to serve their customers as quickly and as easily as possible:

“Collocation Process

Your business requires quick turnaround times, high quality, flexibility and responsiveness. American Tower’s streamlined collocation process makes getting sites on air quick and easy.

Our project management model of processing collocations allows us to deliver enhanced customer service. Once you submit a collocation application, an Assistant Project Manager (APM) will be assigned to your account. Our geographically aligned APMs serve as the single point of contact for customers throughout the collocation process, providing regular project updates and answers to questions along the way.”

American Tower reported a net income of more than \$59M in IIIQ 2007 on total revenues of \$367M, a very lucrative operation indeed.

3.2 On the Matter of Technical Feasibility Disputes

Rogers and Bell both propose that all technical feasibility issues be addressed by IC itself as opposed to being addressed by an independent arbitration process.

QMI strongly disagrees with this proposal.

⁷ See <http://www.americantower.com/atcweb>.

Notwithstanding the high expertise of IC in matters related to spectrum and antenna siting, QMI does not believe that IC is equipped to handle these issues in a timely manner, as arbitrators are, nor do we believe that such activities should be part of IC's responsibilities.

The arbitration process is very well suited to handling disputes related to both technical and commercial matters, as QMI indicated in its January 22 comments.

QMI highlights that at page 23 of its January 22 comments, MTS Allstream has made a similar recommendation, as follows: *“Disputes concerning the feasibility of site sharing will be resolved in accordance with Arbitration Framework.”*

Furthermore, QMI agrees with the following recommendation from the ADR Institute of Canada Inc. in its January 22 comments as they relate to commercial disputes, namely: *“we recommend that a condition of the licence should require the sharing of the infrastructure whether or not the compensation is agreed, so long as either party has the right to commence the arbitration process.”*

The numerous other comments of the national incumbent mobile carriers related to the detailed implementation of tower sharing are not relevant to conditions of licence. Examples of such comments are that mandated tower sharing does not apply to sharing of “secure compounds, equipment shelters or closets”⁸. These issues will be determined via the development of industry best practices and on a case by case assessment. In some cases, sharing of such facilities may be necessary, in others not.

Business best practices can and will need to be established, a process which will take good faith from all parties and time once mandated tower and antenna site sharing is in place. As another example, QMI includes in these industry best practices the development of standardized information requirements to deem that site sharing applications are complete.

⁸ Telus January 22 comments, page 15.

Finally, given that site exclusivity is generally in favour of the incumbent, we fail to see how the lack of authority of the Minister can be argued by Rogers on the basis of the decision of the Supreme Court in *Atco Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*.

4. Mandated Roaming: The Incumbents are Still Living in 1996 !

The comments of Rogers and Bell regarding mandated roaming can be summarized rather succinctly: mandated roaming should only apply to digital voice services and to Short Message Service (SMS), services which date back to the launch of PCS services in Canada in December 1996, almost twelve years ago. Furthermore, there should be no hand-off between networks.

Of course, this would imply that Canadian consumers would not fully benefit from their mobile services (such as accessing the Internet with their mobile handset) when they travel across Canada, but would fully benefit when they travel to the US or abroad, an unacceptable situation already referred to by IC in its call for comments in February 2007.

For example, it is already the case, and has been for some time, that Rogers or Bell customers can use mobile Internet or e-mail access on their Blackberry terminals when they travel to the US. In the roaming proposals submitted by Rogers on January 22, Canadian clients of new entrants would not have mobile Internet or e-mail access when roaming on Rogers' network in Canada.

Such an irrational and punitive approach is wholly unnecessary. No one is asking the incumbents to deploy wireless technology they have not already deployed. More precisely, roaming for enhanced data services does not imply that carriers must upgrade their network infrastructure and support all enhanced services offered by other carriers requesting roaming services. At page 11 of its January 22 comments, QMI clearly stated *“It is also QMI’s understanding that under these licence conditions, roaming will be provided for all services and for different generations of mobile technologies (such as 3G or HSPA), subject to the availability of a particular technology in the territory of the roaming partner.”*

With respect to the current status of mandated roaming in the United States and current roaming discussions at the FCC, QMI highlights that automatic roaming and seamless hand-off are mandated as a common carrier obligation and that the FCC is currently reviewing additional roaming requirements such as mobile Internet and mobile broadband data as part of a current consultation.

Rogers quotes extensively the FCC 1996 report entitled “Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Report and Order and Third Notice of Proposed Rulemaking” to claim that the FCC has “explicitly excluded any requirement for hand-off between networks” (see paragraph 53 and 54 of Rogers’ comments, among others). The above report is referred to as the “Third NPRM”.

However, in August 2000, in a Memorandum Opinion and Order, the FCC “terminated consideration of the automatic roaming issues raised in the Third NPRM, **finding that subsequent developments in the market and technology had rendered the record stale**”⁹ (emphasis added).

The FCC subsequently initiated a new proceeding on automatic roaming rules.

Rogers curiously fails to discuss the FCC’s reexamination of these issues.

On August 16, 2007, eleven years after the documents referred to by Rogers, the FCC issued “In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265. REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING” wherein the FCC stated at paragraphs 1 and 2:

*“1. In this Report and Order, we clarify that **automatic roaming is a common carrier obligation for commercial mobile radio service (CMRS) carriers, requiring them to***

⁹ FCC 07-143, paragraph 11.

provide roaming services to other carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Communications Act. We reiterate the Commission's earlier determination that roaming is a common carrier service because roaming capability gives end users access to a foreign network in order to communicate messages of their own choosing. Thus, the provision of roaming is subject to the requirements of Section 201, 202, and 208 of the Communications Act.

2. We determine that when a reasonable request is made by a technologically compatible CMRS carrier, a host CMRS carrier must provide automatic roaming to the requesting carrier outside of the requesting carrier's home market, consistent with the protections of Sections 201 and 202 of the Communications Act. We also find that the common carrier obligation to provide roaming extends to services that are real-time, two-way switched voice or data service that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls." (emphasis added)

At Paragraph 5 of the same document, the FCC clearly states that mandated roaming obligations apply to push to talk services and to SMS, because the FCC is "*aware that consumers consider push to talk and SMS as features that are typically offered as adjunct to basic voice services, and expect the same seamless connectivity with respect to these features and capabilities as they travel outside their home networking areas*".

As conditions for roaming obligations, the FCC notes that push to talk and SMS must already be offered by the requesting carrier on its own home network.

QMI considers this approach to be reasonable and in line with its own, as well as with the objective pursued by IC in its proposed licence condition on digital roaming. Voice, including all features such as voice mail and caller ID, as well as all data services normally used by consumers, including SMS, mobile Internet access and mobile video services, are now part of the services Canadian consumers expect from their mobile carriers. And mobility implies roaming.

Canadian mobile consumers are actively and increasingly using mobile video services with their mobile handsets. These services need to be clearly identified in the licence conditions, as proposed by QMI in its January 22 comments.

QMI also proposes that in the case of in-home network coverage roaming, an idle subscriber handset should be able to choose the best available network, either its home network or the network of a roaming partner. QMI believes this approach to be the best and most efficient for all parties involved – the incumbent carrier offering roaming as well as new entrant carrier.

Ensuring that Canadian consumers and businesses can benefit from the full range of voice and data services, including video, when they roam is an important element that needs to be finalized now, **before the application deadline for the AWS auction.**

Canadian consumers and businesses cannot afford to wait for a future review of these issues, already extensively debated since February 2007, which would likely translate into years of further delay, again only serving the purpose of hindering not facilitating roaming.

We reference again, as we did in our January 22 comments, the October 2001 Bell-Telus agreement, which offers a useful template for IC and which states *“The agreement signed today extends and enhances the current roaming arrangement between Bell Mobility and TELUS Mobility. The agreement covers voice and data services at 1.9 GHz and 800 MHz. It also covers the next generation of wireless technology, such as the evolution to 3G or the CDMA2000 path, including 1xRTT deployment. As a result, this reciprocal roaming agreement will speed the delivery of next generation services to Canadians and reduce capital expenditures for both Bell Mobility and TELUS Mobility in offering these services on a national basis.”*¹⁰

¹⁰ Bell Press release, October 17 2001, *“Bell signs wireless agreement with TELUS which will significantly expand access to digital voice and data services across Canada”*.

4.1 The Public Interest Requires that the Bell-Telus Roaming Agreement be Made Public

As part of its January 22 comments, QMI highlighted the fact that in 2001, more than six years ago, Bell and Telus signed a major network sharing and resale agreement covering existing and future services. Certainly, implementation issues related to this agreement have been worked long ago.

QMI submits that in light of the extensive reservations and roadblocks put forward by the three national incumbent mobile carriers with respect to sharing and roaming, the terms and conditions of this agreement should be made public.

This would demonstrate which services are already provided on a digital seamless roaming basis and with hand-offs, thereby providing valuable insight into the types of commitments incumbent carriers are willing to make to each other when entering into roaming agreements.

The other benefit of making the Bell-Telus agreement public would be to launch the development of a database of information regarding the terms, conditions and commercial rates available for roaming services in the marketplace, thereby helping to ensure that new entrants are not subject to undue discrimination in their dealings with the national incumbents; whether this is from the perspective of the range of services offered, the timelines required to conclude agreements, or the prices charged.

In this agreement, Bell and Telus fully recognize the importance of providing customers the ability to roam, not just for existing services but also for next generation services.

QMI therefore argues that it is in the public interest that this Agreement be made public, to shed light on the real network sharing and roaming practices of incumbent mobile carriers between themselves.

4.2 Comments Regarding the Definition of a New Entrant

In its January 22 comments, Rogers has proposed i) extensive changes to the definition of a new entrant and a national new entrant, as already determined by IC, and ii) that these definitions “*should be defined within the conditions of licence themselves*” (paragraph 36).

QMI strongly opposes both proposals.

Firstly, QMI highlights that IC has not requested comments on the definition of a new entrant as part of the current or any other consultation process. IC has already stated that all policy decisions made in DGTP-007-07 are final.

Secondly, in arriving at its definition of a new entrant, IC has correctly and wisely ascertained that in the Canadian mobile market, there are basically two groups of carriers:

1. the three national incumbents, namely Rogers, Bell and Telus, and
2. all the others, including the regional telcos.

IC has understood that in Canada, as in the US, regional carriers and the network expansion of regional carriers are a critical factor in increasing competition in more markets across the country. This is clearly one of the objectives pursued by IC in offering spectrum on a Tier 3 as well as a Tier 2 basis across Canada.

To ensure that this objective can be met, QMI urges IC to dismiss attempts by Rogers to deny new entrant status to small regional players through manipulation of the new entrant definition.

At paragraph 39 of its January 22 comments, Rogers also puts forward an amendment to IC’s proposed licence conditions on roaming to the effect that “a licensee part of a group of new entrants cooperating to form a national new entrant will no longer be entitled to

out of territory roaming.” At the same time, Rogers lays out a series of conditions intended to operationally define what constitutes “cooperating” among new entrants.

QMI’s forcefully opposes this two-sided and transparent effort to restrict and impede the business planning activities of new entrants.

Firstly, the fact that two or more entities might choose to form an association to participate in the spectrum auction cannot and should not be taken as necessarily resulting in a broader or longer-lasting operational association between the entities in the wireless marketplace. A spectrum acquisition joint venture, for example, may cease to exist once licenses have been acquired by its different participants¹¹, or, alternately, it may continue to operate. Spectrum acquired can be split, partitioned and even sold between new entrants as per the rules in place in Canada.

At the end of the day, no one can be sure who will be the final owner of a given spectrum block after the auction, or with whom this entity may succeed in building an operational association. To permanently deny any one licensee access to out-of-territory roaming on the basis of an association it or a predecessor licensee may have had at some point in time would be unfair and run counter to IC’s own objectives in establishing the roaming licence conditions in the first place.

Secondly, to predefine, as Rogers has attempted, the precise nature of the cooperative efforts that new entrants may wish to undertake in the future to establish themselves as a national new entrant is both unnecessary and unproductive. Wireless is a complex and rapidly evolving industry, characterized by a multitude of different inter-operator service provision, branding and marketing strategies. QMI does not see the value in defining today the sorts of relationships that might constitute meaningful cooperation five years hence.

¹¹ For example, in the 2001 PCS auction, Bell Mobility acquired spectrum on behalf of itself and its affiliates, acting as a form of spectrum acquisition joint venture. The licences were later transferred to the individual companies as per information provided at <http://strategis.ic.gc.ca/epic/site/smt-gst.nsf/en/sf08098e.html>.

QMI therefore urges IC to dismiss the attempts by Rogers to restrict and impede the business planning activities of new entrants. Individual new entrant licensees should each be afforded the benefits of out-of-territory roaming as a generalized pro-competitive measure, and these same licensees should be left to their own innovative devices to create whatever cooperative relationships they feel will allow them to operate as an effective national player, should they so desire. Such an approach is entirely consistent with IC's policy objectives and the rules already established for the AWS auction.

QMI has reproduced below part of the Condition of Licence and reiterates its full agreement with the proposed formulation and with the objectives of Industry Canada.

From Gazette Notice DGRB-010-07:

"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 5 years commencing with the date of issuance of their licence; and*
- c. *To national new entrants who have substantially met the 5-year roll-out requirements outlined on their licence, as determined by Industry Canada, for an additional 5 years."*

4.3 Other Comments Related to Mandated Roaming

IC's proposed conditions of licence imply that new GSM based carriers in Canada would be able to roam using Rogers current monopoly GSM network and that a new entrant using CDMA based technologies would be able to roam either using Bell's or Telus' network. These services should be considered common carriers obligations, as highlighted by QMI in its original submission to DGTP-002-07 in May 2007, similar to the FCC approach.

Changes proposed to the mandated roaming licence condition by the national incumbent carriers will serve only to ensure that the future customers of Canada's new entrant mobile carriers will suffer an inferior level of service when roaming in Canada, as opposed to anywhere else in the world.

Examples of the blatantly obstructive approach to roaming service provision pursued by the national incumbent carriers include Bell's suggestion that a new entrant should qualify for roaming only after it has built out 50% of its 5-year minimum pop coverage requirement (at page 3 of Bell's January 22 comments) and Telus' curious proposal that "*roaming should commence upon completion of construction of a local Tier 4 AWS calling area, not with the issuance of a licence*" (at page 6 of Telus' January 22 comments). Both ideas are transparently intended to forestall the offering of roaming services as long as possible. In specific regard to the Telus proposal, QMI notes that IC has already determined that no Tier 4 licences will be awarded in the upcoming auction, and wonders how one would go about enforcing the measure.

These ideas should be dismissed, as should the other proposed modifications to the roaming license conditions put forward by Rogers and Bell, the clear objective of which is to hinder rather than facilitate roaming.

QMI also strongly opposes any extension to the 90-day delay before going to mandatory arbitration in the case of disputes regarding roaming. As Telus points out at page 5 of its comments, "*Roaming is a clearly understood industry practice*". Canadian incumbent mobile carriers already offer roaming to their subscribers when out of country, and technical issues and their solutions are well known.

Finally, as already requested by QMI, roaming can and should be implemented as parties enter into arbitration, as any disputes are almost certain to be purely commercial in nature. The question is not if roaming will occur, but under what commercial terms.

5. The Arbitration Process

5.1 *General Statement*

As most participants do, QMI strongly supports the creation of a default set of rules of arbitration that would apply nationally. QMI respectfully submits that in defining what the rules ought to be, IC's primary objectives should be to implement an arbitration process that would provide final resolution expeditiously while preserving basic natural justice principles. QMI reiterates that, with certain adjustments, the Simplified Arbitration Procedure of the National Arbitration Rules of the ADR Institute is best suited to address both of these objectives.

QMI further agrees with the ADR Institute that the rules must be comprehensive and provide clarity on elements essential to the arbitration process, such as:

- a clear definition of the scope of the arbitrator's jurisdiction which should include resolution of commercial and technical disputes;
- a precise timeframe for the entire process with a final decision to be rendered within a pre-defined time period. QMI reiterates that site sharing and roaming are not new realities in the Canadian telecom industry and that disputes (especially commercial ones) should be resolved within a short timeframe considering that the parties will have been discussing the matters in dispute for at least 90 days prior to initiating arbitration;
- a clear and comprehensive set of procedural rules that would ensure proper discovery and promote cost and time efficiency in order to better serve the policy objectives underlying the obligation to offer site sharing and roaming;
- a clear statement that access to facilities should not be delayed by reason of a dispute on commercial matters; and
- a confirmation of applicable law.

QMI has serious concerns that the arbitration process may be used by the three national incumbent mobile carriers to prevent new entrants from having timely access to their infrastructures and, as a result, delaying new entrants time to market. These concerns have been reinforced by the content of their reply in these proceedings. QMI believes that the arbitration rules can have a significant impact on the implementation of the policy objectives pursued by the Minister and urges IC not to implement an overly complex arbitration scheme.

5.2 *Responses to Certain Specific Comments*

QMI would also like to respond more specifically to certain comments made by other participants:

a) Disclosure Obligations

QMI agrees that matters discussed in arbitration must remain confidential in order to favour a more efficient arbitration process. However, QMI strongly disagrees with Bell's suggestion that certain documents may not be shown to the other party. QMI is of the view that the arbitration must allow proper discovery rights and that a party should not be prevented from having access to all information and documentation relevant for the purposes of the arbitration.

b) Appeal and Review

Many participants have suggested that the arbitrator(s)' decision be subject to appeal. QMI believes that a right to appeal is not necessary and does not promote a prompt resolution of a dispute. In any event, QMI believes that appeals should be limited to errors of law. If IC is to grant a right to appeal, QMI urges IC to clarify that, in no circumstances, will the right of appeal stay the decision of the arbitrator while the appeal is pending.

c) Number of Arbitrators

Some participants have suggested an arbitration tribunal of three members and a right of appeal before three arbitrators in order to protect against errors of laws, mixed fact and law and fact. This is unworkable, and inconsistent with accepted standards of arbitral process. QMI believes that this suggestion, if implemented, would create an arbitration process which would be overly complicated and costly, and more importantly, would create an environment which would not favour prompt resolution of the dispute. QMI strongly believes that one arbitrator is sufficient, especially if IC decided to grant a right to appeal.

d) Final Offer Arbitration (or Baseball Arbitration)

QMI agrees with the principle of “final offer” or “baseball” arbitration insofar as it applies to disputes on commercial terms and not technical matters.

e) Applicable Law

QMI agrees with the suggestion that the law applicable to the dispute shall be the provincial law of the province where the facility is being used or located. The parties may however agree to apply a different law to their dispute. We strongly disagree with Rogers’ suggestion that Ontario law be applicable to all disputes. We fail to see the soundness of that proposition for all Canadian telecom industry participants other than Rogers.

All of which is respectfully submitted.