

SaskTel Reply Comments:

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

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Executive Summary:

Saskatchewan Telecommunications (“SaskTel” or “the Company”) is pleased to provide the following reply comments regarding the Mandated Roaming and Mandated Antenna Tower and Site Sharing conditions of licence.

In its reply comments SaskTel responds to comments made regarding the Department’s specific questions. SaskTel then touches on certain topics raised by others which go beyond the questions asked in the Consultation but which SaskTel feels must be addressed. SaskTel is not providing full response to all of the extraneous issues raised since the Company understands that the Consultation is intended “to obtain input regarding the necessary conditions to implement the policies of mandatory roaming and mandatory antenna tower and site sharing”¹ and not to debate policy decisions already made by the Department.

SaskTel continues to believe that enhancements to the Department’s proposed timelines are required and urges the Department to adopt either the Company’s proposals or another methodology which recognizes the challenges encountered in assessing the technical feasibility of sharing a tower.

SaskTel has modified its arbitration proposal to take into account the issues raised by other respondents.

SaskTel also provides reply to several items related to the mandatory roaming condition of licence. In particular, SaskTel strongly urges the Department to clearly define what is meant by Sharing and by Roaming and to reject the attempted redefinition of these terms.

Finally, SaskTel urges the Department to resist attempts to introduce economic regulation of a competitive industry. The proposed conditions of license require that reasonably comparable rates be offered in reasonably comparable circumstances. The Department should go no further.

¹ Canada Gazette, Part I, November 28, 2007, Notice No. DGRB-010-07, paragraph 2

Introduction:

SaskTel has read with interest the comments submitted by parties interested in the Consultation initiated by Industry Canada in Canada Gazette, Part I, November 28, 2007, Notice No. DGRB-010-07 ("the Consultation") and submits the following reply comments.

Parties providing comment included the ADR Institute of Canada ("ADR"); Bell Mobility Inc. ("Bell Mobility"); the CRTC; Bragg Communications Inc., carrying on business as EastLink ("EastLink"); Globalive Communications Corp. ("Globalive"); Jaguar Wireless; Look Communications Inc. ("Look"); Mobilexchange Ltd ("Mobilexchange"); MTS Allstream Inc. ("MTS Allstream"); Niagara Networks; Primus Telecommunications Canada Inc. and Globility Communications Corporation ("Primus and Globility"); Quebecor Media Inc. ("QMI"); Rogers Communications Inc. ("Rogers"); Shaw Communications Inc. ("Shaw"); TELUS Communications Company ("TELUS"); TeraGo Networks; the Canadian Association of Broadcasters ("CAB"); the Canadian Broadcasting Corporation ("CBC"); certain provincial and municipal government organizations and a number of public safety organizations.

Within SaskTel's reply comments, unless otherwise stated, a reference to any of the above-listed parties is a reference to that party's 22 January 2008 comments, provided in response to the Consultation. Failure of SaskTel to address specific assertions made by any of the respondents should not be construed as acceptance of such assertion, where acceptance would be inconsistent with the interests of SaskTel.

In its reply comments SaskTel responds to comments made regarding the Department's specific questions regarding timelines and arbitration. SaskTel then touches on certain topics raised by others which go beyond the questions asked in the Consultation but which SaskTel feels must be addressed.

Timelines

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?

The larger, more experienced, communication companies, plus several others, submitted that the timelines proposed by the Department were insufficient for parties to come to agreement on tower and site sharing or roaming agreements². A number of other industry participants and potential participants felt that the timelines proposed should be shortened³.

As background to its response to these comments and to explain its own proposal, SaskTel would like to share the Company's understanding of the manner in which the new conditions of license will impact established facility owners.

SaskTel believes that, even with the new conditions of license, there will be a limited number of new roaming agreements signed. These agreements will be accompanied by extensive negotiations and may require arbitration to finalize terms, at least for the initial agreements. However, these agreements will allow new entrants to cover large territories with a single agreement. Once the new competitive landscape becomes clearer and some initial roaming agreements have been concluded, it is unlikely that new roaming agreements will be a frequent occurrence. For instance, SaskTel would expect to sign only one roaming agreement (with potential periodic updates) with any party wishing to roam on the Company's network. SaskTel submits that arbitration introduces a further procedural step in reaching a roaming agreement. Although arbitration should be maintained as a step of last resort, it would not be helpful to introduce short timelines prior to this step. Rather than reducing the overall timeline, such a measure is likely to

² Bell Canada, paragraph 46, 64; Canadian Electricity Association, paragraph 15, 16; CBC, page 2; Government of Ontario, page 3; Rogers page 5-12; TELUS, page 14

³ Jaguar Wireless, question 2; Look, page 4; Niagara Networks, page 1; Shaw, paragraphs 9-16; TeraGo Networks, paragraph 8

guarantee that more roaming agreements will go to arbitration and will thus take longer to resolve than if more time had been allowed before the arbitration step.

The demand for tower and site sharing agreements will be quite different from the demand for roaming agreements discussed above. Tower and site agreements are site specific. Each site presents unique conditions and challenges and requires its own technical assessment. SaskTel believes that there may be a small number of parties requesting such sharing agreements, but that each party will have numerous locations where they wish to share facilities and that such requests may take the form of large bulk requests for many locations at one time or of many smaller requests over time as a network is rolled out or augmented. (SaskTel has already noted, in its 22 January 2008 comments, the Company's concern with the potential impacts of bulk requests and provided a proposed method of handling such requests.) Tower and site sharing requires a much more individualized analysis with the parties agreeing to sharing on a site by site basis.

With respect to financial terms for these agreements it is possible that, as noted by EastLink in paragraph 18 of its submission, a master agreement specifying rates, terms and conditions for various tower types and location types could be negotiated with the first sharing request between two parties. However, while this type of agreement would remove rates as a point of debate in subsequent tower and site sharing agreements, it would not have a significant effect on the timelines required to come to individual site agreements. This is because the true point of contention in tower sharing requests is likely to be the technical feasibility of the request. A master rates agreement would not impact the time required to assess the technical feasibility of sharing at each tower or negotiations regarding cost recovery, should modifications be required. SaskTel notes, for instance, EastLink's description of the engineering analysis required to assess technical feasibility⁴. SaskTel notes that the analysis described assumes that resources are immediately available to perform this analysis and does not appear to note that modifications to the applicant's request may result in some iterations of the work described. Both of these factors will add to the time requirements noted by EastLink.

⁴ EastLink, paragraph 17

SaskTel commends the Department for its insistence that negotiations be conducted expeditiously and in good faith. However, SaskTel submits that the proposed timelines for reaching agreements are too constrictive. Roaming agreements will be far-reaching agreements reached on an infrequent basis and can be allotted a more reasonable amount of time before being submitted to arbitration (which is likely to cause even more delay). Tower and site sharing agreements require technical diligence, may require education of new industry participants and utilize scarce resources including those of third parties. The Department should adopt a methodology, such as that proposed by SaskTel, which acknowledges these considerations while requiring facility owners to move expeditiously with regard to the factors which they have control over. The Department should also incorporate consideration of the treatment of bulk tower sharing requests into this condition of license. Many respondents have noted that the large tower sharing requests, which may arise with the emergence of a new national carrier, will require specialized treatment and cannot be handled in the same manner as sharing requests that arise out of organic network growth.

Arbitration

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?

In its 22 January comments, SaskTel supported the adoption of provincial arbitration processes, noting that a national process would likely result in the emergence of one national 'center of arbitration', thus causing hardship to regional service providers not located in close proximity to that center. This hardship would arise both in the form of additional expense required for company personnel to attend arbitration hearings and in a lack of accessibility to the arbitration process. Other respondents supported the adoption of a national code, although there were varying opinions on whether the arbitrator should be Industry Canada, the CRTC or some other entity. SaskTel has read the arguments of those supporting a national code and is willing to support such a code, given that the

arbitration proceedings are held in the territory of the respondent to a roaming or sharing request.

ADR, on page 3 of their submission, recommended that sharing should be required even before compensation is agreed. SaskTel submits that this recommendation seems to ignore the fact that, even though the rate proposed may be commercially reasonable and ultimately be accepted by an arbitrator, the applicant may not be willing to pay this amount. It is unreasonable to require parties to progress further on a roaming or sharing agreement until compensation is agreed to.

SaskTel continues to believe that Industry Canada contains knowledgeable resources that are best positioned to mediate in disputes regarding technical feasibility. SaskTel recommends that Industry Canada continue to be the final arbitrator on technical disputes.

For disputes involving compensation, SaskTel supports the creation of a national list of suitable arbitrators, who would utilize national arbitration processes in the territory of the facilities owner.

Other Issues Raised

3. Are there any other licence conditions required to facilitate sharing and roaming?

In response to this question, a number of issues were raised. Some of these issues fall within the scope of the question while others are clearly beyond its scope. Certain respondents go well beyond the scope of both the question and the entire Consultation, asking in certain cases that the notion of mandated roaming and sharing be entirely dropped and in other cases that the concepts of roaming or tower sharing be redefined to imply something entirely different. SaskTel interprets the Department's statement, in

*“Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range”*⁵, that “[t]he policy decisions contained in this paper are final” means exactly that. Therefore, although SaskTel recommended against the mandating of roaming and tower sharing agreements, the Company accepts the fact that these agreements will be mandated. However, SaskTel notes that roaming and tower sharing are specific, clearly understood and limited rights and must not be redefined in the manner some respondents have requested. SaskTel discusses this in more detail below. A number of respondents also took issue with the Department’s decision regarding the definition of a new entrant. Again, SaskTel submits that this definition is not a subject of the Consultation and certainly cannot be changed without notice and in such close proximity to the auction date.

Tower and Site Sharing

Inclusions

Look Communications, on page 13 of Appendix A of their comments, suggests that tower sharing should include “facilities, including space in the equipment shelter, power, antennas and backhaul links (e.g. fiber)”. SaskTel submits that this is far more than is meant by the term ‘tower sharing’. ‘Tower sharing’ is a straightforward and self-explanatory term meaning the sharing of available space on a tower. Although it may be quite obvious that the term does not refer to the additional elements suggested by Look, SaskTel agrees with TELUS⁶ recommendation that the Department clarify the term.

Sharing Available Tower Space Between Competing Users

A number of respondents agreed that the determination of available space on a tower must take into account documented future needs.⁷ SaskTel strongly supports this position. SaskTel reiterates its suggestion that the tower owner’s documented requirements, covering a term of no more than 5 years in the future, be considered. Requests for sharing would then be processed on a first come, first served basis.

⁵ Canada Gazette Notice DGTP 007-07, November 29, 2007

⁶ TELUS comments, page 15

⁷ CAB comments, paragraph 15; CBC, page 3; TELUS comments, page 14

However sharing requests cannot be allowed to reserve space on a tower indefinitely unless the party wishing to share that space has confirmed their intention to use it by making payments to the tower owner.

Documenting Tower Locations

Several respondents requested that lists of tower locations be made available.⁸ Some of these respondents want detailed information on the tower's current uses and capabilities. SaskTel strongly opposes the imposition of such a requirement. Maintaining such detailed information would be an onerous task for information which, in large part, might never be used. In addition, SaskTel cannot possibly document the capabilities of a tower without knowing the uses it would be put to by an unknown number of potential applicants with unknown applications. In addition, SaskTel notes that Industry Canada operates the Spectrum Direct website which allows users to locate cellular and PCS towers.

What is Roaming?

SaskTel strongly agrees with the submissions of Rogers⁹ and TELUS¹⁰ that the Department must clearly define the term 'roaming' and the differences between it and the term 'resale'. Many respondents appear to be trying to redefine 'roaming' to include all services provided to MVNOs through resale agreements, and perhaps even more than that.¹¹ (SaskTel does not know if any MVNO is provided with the gamut of services which Look attempts to define as 'roaming'). SaskTel submits that the new conditions of license are intended to mandate roaming only and that the Department should make no determinations which interfere with the market forces that have already resulted in the creation of a number of resale agreements between various carriers.

SaskTel's understanding of what is meant by a roaming agreement mirrors that outlined by TELUS. That is:

Roaming is an interconnection activity intended to enable a subscriber already served by one carrier's network (home network) to originate or terminate calls on

⁸ Globalive, January 22 comments, page 2; Look, Appendix B, question 10; Niagara, page 2

⁹ Rogers, paragraphs 41-44

¹⁰ TELUS, page 5

¹¹ Globalive, January 22 comments, page 4; Look, Appendix A, page 7;

another carrier's network when out of range of the home network. A subscriber cannot roam unless he or she is already served on another radio access network (and unless the roaming service in question is in fact provided by the home carrier).¹²

Roaming should allow a subscriber of one network provider to be served via the network of another provider when not within the coverage area served by the primary network provider. The subscriber's primary service must be provided on facilities owned by the company with whom they have a commercial relationship, or on the facilities of a network provider who provides the underlying network for the MVNO with which the subscriber has a commercial relationship. The primary network provider may sign roaming agreements with other network providers but these agreements should provide for roaming only outside of the footprint which the primary network provider can reach directly with its own facilities.

SaskTel agrees with Bell Mobility's comment, in paragraph 63, that roaming provides connectivity to customers of another network provider but does not provide underlying features. This connectivity must be provided using the network of the facilities owner as it exists. As stated by TELUS, "it is not reasonable to expect that a carrier would have to incur any significant economic costs and divert resources critical to its own business operations to facilitate another carrier."¹³ SaskTel submits that, if the roaming carrier possesses the necessary switching equipment and the appropriate handsets for roaming to work on the host network as it exists, then roaming should be allowed. If the roaming carrier does not possess these capabilities, then it is up to that carrier to obtain them or to not provide roaming functionality.

One respondent submitted that mandatory roaming should provide access to any international or US roaming which an existing Canadian network provider supplies to its subscribers.¹⁴ SaskTel notes that any such roaming supplied by Canadian network providers is obtained through roaming agreements signed with a third party international or US network provider. Parties wishing to roam in Canada should be free to sign their own roaming agreements with such a party. There can be no obligation for a Canadian

¹² TELUS, page 5

¹³ TELUS, page 15

network owner to provide a roaming carrier with access to a network that the Canadian provider does not control.

Respondents provided varying comments regarding the amount of data functionality which should be provided in a roaming agreement. Bell Mobility submitted that the data included should include only Email and SMS.¹⁵ QMI submitted a much wider definition which included digital clips, mobile TV and all future data services.¹⁶ SaskTel believes, as noted in its original submission, that the new condition of licence must not be used to force a network owner to provide a higher standard of data service to a competitor than the network owner provides to its own customers. As well, the host network should only be required to provide connectivity and bandwidth. Any value-add functionality required to provide these data services must be provided by the roaming carrier.

A number of potential new entrants felt that mandated digital roaming should include the seamless or near-seamless handoff of calls between networks. That is, as a subscriber who is on a call passes from coverage of their primary network provider to a location covered by the tower of their roaming partner there should be a soft handoff with no interruption in the call. Rogers, on the other hand, feels that mandated roaming “should not be more onerous than with the carrier’s current roaming services provided to its international partners” and “should not include hand-offs between the licensee’s and roaming carrier’s networks.”¹⁷

SaskTel concurs with Rogers, and strongly urges the Department not to mandate automated roaming licence conditions which go beyond the functionality provided today between international roaming partners. Near-seamless handoff of calls between networks is often restricted due to technical limitations. As a result, each situation needs to be evaluated on an individual basis rather than mandated. In addition, the network infrastructure required to support hand-offs can be very complex and expensive, which could prove onerous for both parties. SaskTel submits that, if future network improvements allow for network handoffs to be effected in a more economical manner,

¹⁴ Mobileexchange, page 5

¹⁵ Bell, paragraph 63

¹⁶ QMI page 10-11

the roaming party and the host network provider can voluntarily come to an agreement to offer this capability at that time.

Rates

SaskTel is perplexed by the number of potential new entrants who can read the plain language used by the Department to describe its view of the appropriate roaming and sharing rates and still come up with justifications for the Department, the CRTC or some other government intervenor to provide them with artificially low rates. SaskTel submits that the Department has introduced the correct provisions. SaskTel notes the Department's expectation, stated in *Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range* that the new conditions of licence require that "roaming and tower sharing be provided at rates which are reasonably comparable to rates which are currently charged for similar services." SaskTel fully supports this stipulation and the inclusion of very similar words in the proposed conditions of license. The wireless market has not been economically regulated for many years. Mandating roaming and sharing at anything other than reasonable comparable rates would be an unwarranted intrusion into a competitive industry and SaskTel congratulates the Department for not choosing to distort the market in such a manner.

Conclusion

SaskTel believes that the Company's initial comments, amended and enhanced by these reply comments, will allow the new conditions of licence to be implemented fairly and effectively. SaskTel commends the Department for soliciting input into the mechanics of implementing the sharing conditions and looks forward to reading the final conditions of license.

¹⁷ Rogers, paragraph 51