

SaskTel Response to:

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') is pleased to provide the following comments regarding the Mandated Roaming and Mandated Antenna Tower and Site Sharing conditions of licence. In these comments, SaskTel notes several critical challenges which companies face when assessing the technical viability of sharing requests. These challenges include the need to carefully assess sharing requests and the scarcity of resources available to do this work, especially in situations where significant volumes of sharing requests are received.

In these comments SaskTel proposes certain adjustments to Industry Canada's timelines which will allow the industry to better respond to the challenges described while still meeting the needs of all stakeholders in a timely manner. These changes include adjustments to the time frames proposed and a methodology for processing bulk tower sharing requests.

Finally, SaskTel responds to the Department's question regarding the arbitration process and notes several items related to the mandatory roaming condition of licence.

Introduction:

Pursuant to Gazette Notice No. DGRB – 010-07 ('the Notice'), SaskTel is pleased to submit the following comments regarding the Mandated Roaming and Mandated Antenna Tower and Site Sharing conditions of licence. SaskTel notes that the Department proposes to add the Mandated Tower and Site Sharing conditions of licence to spectrum licences, all radio licences, and all broadcasting certificates, and we also note that the proposed Mandated Roaming conditions of licence will be applied to all cellular, AWS, and PCS licences. SaskTel has reviewed the policy decisions made by Industry Canada in *Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range* ('the AWS policy framework') and understands that the Department's decision to mandate both the provision of digital roaming (for both voice and data services) and the sharing of antenna towers and sites, where feasible, is not open to debate. SaskTel commends the Department for allowing the industry to provide input into the administrative rules governing how these policy decisions will be implemented.

In these comments SaskTel first outlines the challenges the company faces when evaluating requests to share facilities and the company's concerns with potential AWS auction outcomes. Next, SaskTel provides input to the Department's specific questions regarding the new conditions of licence. Finally, SaskTel provides additional comment regarding conditions which could further facilitate roaming and sharing.

Assessing Sharing Requests

When assessing the feasibility of sharing a particular tower the owner must consider the physical capabilities of the tower; existing and planned uses of the tower; and the environmental and esthetic concerns of the public.

Specifically, the owner must assess:

- Whether the tower is sufficiently robust to safely tolerate the weight of the equipment which the requesting party wants to place on it;
- Whether antenna space is available at a position which meets the needs of the requesting party;
- Whether antennas placed as the requesting party desires would violate the frequency aperture of any existing or planned antennas on the tower;
- Whether the electromagnetic radiation produced in the vicinity of the tower will still be within acceptable safety thresholds if the request is approved, and
- Whether the proposed installation will cause or suffer interference to or from existing equipment installations at the site.

It is critical that an assessment of the feasibility of sharing a particular tower incorporate future uses of that tower. One of Industry Canada's considerations when deciding to mandate tower sharing where feasible was a desire to reduce the number of towers built, thus addressing public concerns. Any feasibility assessment which is capable of approving a tower sharing request without considering pre-existing future requirements will not meet this objective as the party whose requirements were ignored may now be required to build a new tower. Of course, it is also critical that the assessment of future requirements be based on tangible evidence of future plans so that a tower owner is not able to unilaterally block access to a tower or site for other users. SaskTel proposes that the future requirements considered be those which are contained in documented network plans and/or third party requests and will arise within a known time frame of not more than five years.

Due to the complexities described above, there are a limited number of resources within SaskTel and the industry who are experienced with the specialized nature of tower placement and sharing request assessment. In addition, SaskTel uses independent third party experts to perform a great deal of the engineering and structural analysis work required. As this is a specialized area of expertise, there are a limited number of companies available in Canada to perform this work.

SaskTel does not describe these challenges in order to object to the Department's decision to mandate tower sharing and roaming as conditions of licence. Rather, SaskTel notes these challenges to illustrate the care which must be taken in approving facilities sharing agreements and the specialized understanding which must be developed in order to accurately assess the feasibility of sharing requests. Given the issues described, SaskTel has concerns with the timelines by which the Department has proposed the parties must come to a sharing agreement or go to arbitration. These concerns are exacerbated by the potential outcome of the AWS auction. SaskTel believes that it is quite possible that the auction will result in the emergence of either a fourth national wireless service provider or of new regional providers in the Canadian market. In either event, SaskTel expects that these new carriers would rely to a great extent on roaming and tower sharing agreements. In this scenario, SaskTel expects large bulk requests for tower sharing will be received by SaskTel and other facility owners. SaskTel simply does not have the capacity to respond to a large bulk request in the timelines proposed. SaskTel anticipates that the third party experts which the company uses may also not have the capacity to respond within these timelines, given the national demands which would be placed on their services.

In the following sections, which address Industry Canada's specific questions, SaskTel proposes a revised framework which alleviates the concerns expressed above and allows the industry to be thorough and objective in the assessment of various requests while not negatively impacting any potential sharing agreements. Each section begins with a restatement of the Department's question, in bold, followed by SaskTel's comments.

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?

SaskTel has excerpted the timelines proposed by Industry Canada in Gazette Notice DGRB-010-07 as follows:

Tower and Site Sharing:

- *The Licensee must respond to a request to share by any other Operator within 30 days with either an offer to enter into a sharing agreement or a response detailing the reasons why the request is not feasible (accompanied by any applicable technical information) in accordance with CPC-2-0-03.*
- *Site-sharing arrangements must be negotiated expeditiously and in good faith. If after 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. At any time, the Licensee and the Operator requesting antenna tower and site sharing 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 Site-sharing arrangement.*

Roaming:

- *When requested, Licensees must provide an offer to enter into an arrangement to provide roaming services on reasonable terms within 30 days.*
- *Roaming arrangements must be negotiated expeditiously and in good faith. If after 90 days from the initial request, the Licensee and the party requesting a roaming arrangement cannot agree to the terms of the roaming arrangement, the Licensee must agree to submit the matter to an arbitrator. At any time, the Licensee and the party requesting roaming 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.*

SaskTel commends the Department for its insistence that negotiations be conducted expeditiously and in good faith and agrees with the imposition of timelines to ensure that both parties remain motivated to negotiate in this manner. However, SaskTel must reiterate the importance of doing thorough sharing feasibility assessments and the scarcity of the skilled resources required to do these assessments. These factors mean that, although agreement should be reached expeditiously, the time allocated for that expeditious agreement must be increased.

SaskTel notes that when a company is expanding its operating area, through either roaming arrangements or tower and site sharing agreements, that company has a large volume of work to complete in addition to the negotiation of sharing agreements. Rolling out service to a new area will assuredly take more than 90 days. SaskTel submits that the new conditions of licence provide new entrants with the certainty that they will be able to sign roaming agreements at commercial terms and that they will be able to share tower space where technically feasible. Given this certainty, the entrants will be able to move ahead with other tasks without waiting for the conclusion of all such agreements. Therefore, while expeditious agreement remains important, the timelines proposed by the Department can be lengthened somewhat. SaskTel proposes that the Department's rules be modified as follows.

The deadline for reaching a mutually satisfactory roaming agreement should be expanded to 120 days. After 120 days, if both parties agree that negotiations are proceeding on a satisfactory basis, they should not be required to go to arbitration. In addition, the language which states that the parties "*may withdraw their arbitration, on agreed terms, so long as they agree to a roaming arrangement*" should be modified so that it does not require the parties to reach a roaming agreement. There are other reasons, such as changes in business plans, which could lead parties to mutually agree to exit the arbitration process without reaching a roaming agreement. They should be allowed to do so.

The proposed timelines for reaching tower and site sharing agreements are problematic for three reasons. The first is that the assessments of technical feasibility are done by third party specialists and the tower owners cannot dictate timelines. The second is that, especially if new national players emerge, SaskTel anticipates bulk tower sharing requests. Bulk tower sharing requests will strain the resources of both the tower owners and the third-party companies who evaluate technical feasibility. In such a situation, the proposed timelines are unachievable. Finally, even on smaller tower sharing requests, the timelines provided are not sufficient. SaskTel therefore proposes the following alternative timelines.

For sharing requests involving access to no more than 5 towers, the tower owner must respond to the receipt of an official request within 21 days in one of two ways.

- a) If sharing of the facility is not possible due to space limitations, a letter explaining the reasons that sharing is not possible must be issued.
- b) If there is a reasonable chance that sharing is feasible, a conditional approval letter must be issued. The conditional letter will require the requesting party to supply technical drawings detailing the manner in which they wish their equipment to be placed and may require the requesting party to obtain an assessment of technical feasibility from a third party tower analysis expert. The conditional letter will also include a proposed rate schedule for antennas, shelter and other related facilities. Conditions will be considered met upon receipt of a favorable technical assessment, approval of design drawings, agreement to the proposed rates and fulfillment of any other conditions specified. The tower owner must issue a final letter of approval within 21 days of receipt of documentation that all conditions are met.

For bulk requests the parties must, within 60 days, commit to a memorandum of agreement to share towers and agree to specific terms documented within a master licence agreement. This master licence agreement will specify terms for sites within the bulk request, including the rates, terms and conditions for various tower types and location types. It will also divide the overall request into manageable subsets, specifying priority sites and outlining a manageable timeline for assessing each subset. Priority sites, as specified by the requesting party, would be evaluated first. The sites included in each subset and the timelines for that subset will be jointly agreed to by the tower owner, the party requesting access and the independent site evaluator. For each subset of sites, the procedure followed will be the procedure described above for small requests. However, rather than the start date for the conditional approval (or denial) of each site request being set by the initial bulk request date, it will be specified in the timelines contained in a separate schedule developed as an attachment to the master licence agreement.

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?

SaskTel notes that CPC-2-0-03, which came into force on 1 January 2008, contains a dispute resolution process administered by Industry Canada. Industry Canada contains knowledgeable resources that are well positioned to mediate in these disputes. SaskTel recommends that such a mediation process be followed in disputes involving roaming or sharing agreements before such disputes are sent to arbitration.

SaskTel believes that any arbitrator adjudicating cases such as this should be thoroughly knowledgeable in the industry. The process adopted should not result in frequent education requirements for newly appointed arbitrators, which would cause unnecessary delay and expense. Therefore, SaskTel supports the creation of a national list of suitable arbitrators, who would utilize provincial arbitration processes.

SaskTel supports the adoption of provincial arbitration processes because the company believes that any national process developed would 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.

In SaskTel's case, the company only has administrative personnel in the province of Saskatchewan, making it expensive and inconvenient to conduct an arbitration process outside of the province. SaskTel submits that, should a party wish to roam or share towers in Saskatchewan, that party should be willing to attend an arbitration hearing in

Saskatchewan. Conversely, if SaskTel were interested in roaming or sharing towers outside of the province, the company would expect to negotiate agreements and attend arbitration hearings outside of the province.

Other Issues

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

Industry Canada has correctly insisted that roaming must include both voice and data services, where technically feasible. Although the 'technically feasible' qualifier must not become a means of inappropriately restricting competition, this condition of licence must also not be used to force a network owner to provide a higher standard of data service to a competitor with a roaming agreement than the network owner provides to its own customers.

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. SaskTel believes that such a condition allows for the existence of rates which vary between customers and locations depending on tangible differences in circumstances. For instance tower sharing rates could legitimately vary based on ease of access for site installation and maintenance, length of contract, volume commitments and other such factors. Roaming rates could also legitimately vary based on contract length, volume commitments and whether the party wishing to roam wished to do so over the entire network or only on selected portions of the network. SaskTel anticipates that parties wishing to roam on selected portions of a network may wish to roam on the higher cost rural and remote network segments while building facilities in lower cost areas. SaskTel submits that it would be legitimate to recognize the higher maintenance costs and lower utilization rates of such network segments with a higher roaming rate.

SaskTel submits that it is important to ensure that such rates do not vary drastically based on type of cellular technology employed. There are a number of CDMA networks in Canada upon which a CDMA based WSP could choose to roam. However, there is currently only one GSM based network in Canada. SaskTel believes that it is important that a new entrant's choice of GSM or CDMA based technology not be unduly impacted by the terms of potential roaming agreements. Therefore, SaskTel recommends that the question of whether the underlying network which is providing roaming functionality is GSM or CDMA based not be an acceptable reason for pricing differentiation.

Conclusion

SaskTel believes that the adjustments which the company has proposed will allow the new conditions of licence to be implemented fairly and effectively. SaskTel believes that the adjustments will not have a significant impact on the rollout of any new competition in the Canadian marketplace and will enable the industry to provide a more managed and more successful implementation of the sharing conditions. SaskTel commends the Department for soliciting input into the mechanics of implementing the sharing conditions and urges the Department to adopt the changes proposed.