



globalive

January 11, 2008

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

Re: Invitation for Comments in *Canada Gazette, Part I, November 28, 2007, Licensing Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range (DGRB-010-07)*

To whom it may concern,

Globalive Communications Corp., wholly-owning parent company of Yak Communications (Canada) Corp. (collectively, "Globalive"), is please to respond to the above-captioned invitation for comments on the proposed conditions of licence of spectrum set forth in Industry Canada's *Licensing Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range* (the "Framework").

Globalive is generally supportive of the policy recommendations on mandated tower sharing and roaming set forth in the Framework, and views tower sharing and roaming on a mandated and commercially reasonable basis to be absolutely fundamental to the success of any new entrant.

ANTENNA TOWER AND SITE SHARING

With respect to antenna tower and site sharing specifically:

- exclusive site arrangements should be strictly prohibited;
- a 30 calendar day timeline for a *bona fide* response to a request for tower sharing should be established and enforced;
- there should be 90 calendar day timeline (which period should include the initial 30 calendar day response period) within which *bona fide* efforts are required for the parties to come to a commercially reasonable arrangement for tower sharing, following which the issue should be submitted automatically to binding arbitration on an expedited basis (i.e., the arbitrator's binding determination should be made no more than 30 days following the expiry of the 90 day negotiation period, such that the maximum period for a commercially reasonable arrangement shall be 120 days; and
- given Globalive's reasonable concerns regarding the commercial terms likely to move the incumbent wireless carriers, a detailed explanation as to

why and how any requested support is not technically feasible should be required, and “technical feasibility” should be narrowly and strictly interpreted.

For the sake of greater clarity we also assume that site sharing includes access to co-location and interconnection facilities at commercially reasonable terms.

ROAMING

In respect of roaming, we support the timelines set forth above regarding tower sharing. In addition to those comments, Globalive also are of the view that the following need to be addressed:

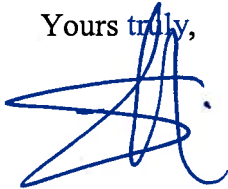
- License conditions must be based on reasonable commercial terms, which need to be defined based not only on comparable rates to those currently charged to others for similar services (and crucially, this comparative set should absolutely not be limited to roaming agreements reached in Canada prior to the new regime, as such existing roaming agreements have arisen in an environment recognized as uncompetitive, as will be readily observed by their terms; instead, the appropriate comparable agreements would be those that arose in a competitive roaming market, e.g., the United States).
- While respecting the foregoing, terms must be dynamic to reflect changes in marketplace pricing. As an example, if data pricing per megabyte declines significantly within a 5 year period (as generally expected), then wholesale rates should be assessed in the context of the then-current market retail pricing and roaming arrangements should reflect bulk purchasing in a roaming arrangement. There should be an expectation of sizable discounts and price protection to the prevailing retail rates for per minute voice and per megabyte data plans.
- Roaming is to support public WLAN/GSM roaming for parties that have a cellular, PCS or AWS roaming arrangement with existing Existing Licensees. Wherever Existing Licensees operate a WLAN network for public use, such Existing Licensees will provide and support roaming to and from the WLAN network to the cellular network with authentication being provided via SIM card or username and password. These roaming arrangements will be used to facilitate data (IP) based applications.
- Where a roaming agreement is in place or being negotiated, an Existing Licensee must provide an expedited time frame to complete any and all required testing. A test project plan, if deemed unacceptable by the new entrant, should be eligible for arbitration within 30 days if the parties cannot reach an agreement on such testing plan. If there are any delays in implementation of roaming service beyond 6 months from initial notice of intent to negotiate, then significant and compelling penalties should be imposed.
- Globalive’s experience with the incumbent carriers in a regulated context has been such that we consider it crucial that all testing should be completed within 90 days of such notice of intent to negotiate (i.e., should

be carried out concurrently with such negotiation and completed prior to any arbitration on the commercial agreement, and that such testing must not be used as an intentional impediment to implementation).

- Commercial roaming arrangements between new entrants and third parties with whom the Existing Licensees have existing (or new) roaming arrangements needs to be expressly permitted, in order to serve as a balance to any less favourable roaming terms currently offered to Canadian mobile virtual network operators (“MVNOs”). Any exclusive arrangements for roaming should be modified, similar to the required changes for support structure agreements.
- An underlying assumption to the foregoing is that any service or device supported in international roaming arrangements will be supported for Canadian roaming arrangements and that Existing Licensees be obliged to use best commercially reasonable efforts to support new services or devices. Existing Licensees should also be mandated to provide international roaming at commercial rates to facilitate broad based service offerings for new entrants.
- Access to OSS systems that are fundamental to providing roaming services must be made available as part of any roaming arrangement.
- Roaming costs are assumed to provide an appropriate capital allocation and therefore it is incumbent upon Existing Licensees to ensure adequate capital is available to meet the needs of new entrants.

All of which is respectfully submitted by Globalive for your review and consideration.

Yours truly,



Simon Lockie
CHIEF LEGAL OFFICER