



globalive

January 22, 2008

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

Re: Questions related to *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”), submitted on January 11, 2008 certain 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 wishes to reiterate those comments, and to seek clarification on the points raised in those comments, both generally and more specifically as set forth herein.

- Given Globalive’s reasonable concerns regarding the commercial terms likely to move the incumbent wireless carriers, please confirm that the government will direct the incumbents and, if necessary, an arbitrator, as to the basis upon which to determine whether any requested support is not technically feasible, and how the government intends to ensure that “technical feasibility” will be narrowly and strictly interpreted.
- Please confirm, for the sake of greater clarity, that site sharing includes access to co-location and interconnection facilities at commercially

reasonable terms, as well as to the phone room and backhaul facilities incidental to the sites themselves.

- Please confirm and set forth in detail how the government will direct the incumbents and, if necessary, an arbitrator, on the crucial question of what will constitute reasonable commercial terms, as we expect any ambiguity in this regard to be fully exploited by the incumbents. We note in this regard that the Framework states that it is expected that roaming and tower sharing arrangements would be offered at “commercial rates that are reasonably comparable to rates currently charged to others for similar access” but does not say who these others might be or what will be considered similar access. What benchmarks or comparables are anticipated to be used in this regard? While the Framework states that “the arbitrator shall have all necessary powers to determine all of the questions in dispute (including those relating to determining the appropriate terms of the Site-sharing arrangement)”, it does not state whether the arbitrator should look outside Canada. This is a crucial policy-based decision and policy-based direction, and the only such decision and direction consistent with the Framework, in our submission, is that the incumbents and any arbitrator must not base its analysis on comparable rates to those currently charged to others for similar services in Canada’s currently inadequately competitive environment, but rather must be based on terms set forth in appropriate comparable agreements in a more competitive roaming market, e.g., the United States. Please confirm.
- We note that Client Procedures Circular 2-0-03, *Radiocommunication and Broadcasting Antenna Systems*, as drafted, does not simply require proponents of new antenna towers to search for existing sites, it also requires existing site owners to enter into good faith negotiations to share sites. Please clarify the extent to which incumbents will be required to actively (and proactively) cooperate with new licensees to effect the clear intent of CPC-2-0-03. For example, while existing site owners must facilitate sharing sites, will they also be required to maintain and make

available a comprehensive list of such sites as are already extant? Globalive considers this, for example, to be very important, and would encourage the government to require the incumbents to make this information available at the earliest possible opportunity.

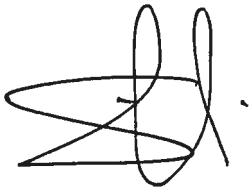
- While respecting the foregoing, please confirm that the terms of roaming and site sharing agreements will be kept dynamic to reflect changes in marketplace pricing. As an example, if data pricing per megabyte declines significantly within a five year period (as generally expected), then wholesale rates 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.
- Please confirm that mandated roaming arrangements will support public WLAN/GSM roaming for parties that have a cellular, PCS or AWS roaming arrangement with Existing Licensees, and that 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.
- Please confirm that 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. Please confirm that a test project plan, if deemed unacceptable by the new entrant, should be eligible for arbitration within thirty days if the parties cannot reach an agreement on such testing plan, and that if there are any delays in implementation of roaming service beyond six months from initial notice of intent to negotiate, then significant and compelling penalties shall 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 ninety 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). Please confirm that this will be established and enforced.

- Please confirm that commercial roaming arrangements between new entrants and third parties with whom the Existing Licensees have existing (or new) roaming arrangements shall 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”).
- Please confirm 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.
- Please confirm that access to OSS systems that are fundamental to providing roaming services must be made available as part of any roaming arrangement.

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

Yours truly,

A handwritten signature in black ink, appearing to read 'Simon Lockie', with a stylized flourish at the end.

Simon Lockie

CHIEF LEGAL OFFICER