



globalive

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Reply to Comments re: 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 pleased to reply to comments on the above-captioned DGRB-010-07 (the "Framework"). Given the significant and varied input with respect to the recommended conditions of license and the arbitration process, we will focus our comments on items which we believe advance the policy objective of maximizing the economic and social benefits that Canadians derive from the use of the spectrum resource.

Generally, the incumbent Licensees' comments attempt to shape and narrow the interpretation of the recommended Conditions of License regarding Mandated Roaming and Antenna Tower and Site Sharing to their benefit. Our comments will focus on the recommendations made by parties which align with the policy objectives through supporting timely and sustainable entry of new AWS entrants into the wireless market.

The following conditions of license were proposed by Industry Canada:

Conditions of License for Mandatory Antenna Tower and Site Sharing and Prohibition of Exclusive site Arrangements:

Globalive, in response to comments received through January 22nd, recommends the following modified Conditions of Licence (noted through underlining or cross-outs):

1. *Licensees must facilitate sharing of antenna sites, including rooftops, and supporting structures/infrastructure ("Site(s)") and not cause or contribute to the exclusion of other radiocommunications antenna operators ("Operator(s)") from gaining access to Sites. Without limiting the generality of the foregoing, where a Licensee is party to an agreement that includes a provision excluding any other Operators from the use of a Site and/or the right to maintain communication equipment on premises, then, in order to facilitate the sharing of Sites, the Licensee must consent to waiving that portion of the*

agreement to facilitate a request to share. Further, Licensees must not enter into or renew agreements that exclude other Operators from using a Site.

The above modifications reflect input and clarification provided by Globalive and other parties to ensure that it is understood that Site covers access to critical components of the infrastructure to facilitate the ability to offer on-net services, and in effect to reduce the need for in-territory roaming in an expedited manner.

2. *Licensees must share where technically feasible Sites, with a preference for AWS new entrants, except where national security concerns exist or the Site is used solely for personal enjoyment.*

Given the policy objectives, the ability of Licensees to reserve for their own use, and /or work in cooperation with other existing Licensees to inhibit entry of new entrants, and/or to maximize roaming revenue, we believe it is essential that AWS new entrants, all other things being equal, be provided with priority access to Sites.

3. *In order to fulfill the condition of sharing in accordance with this licence, the Licensee must respond to a request to share by any other Operator within 30 days as follows:*
 - a. *In the event that the request to share is technically feasible, the Licensee must provide the requesting Operator with a response and an offer to enter into a sharing agreement. The department expects that Site-sharing arrangements would be offered at commercial rates that are reasonably comparable to rates currently charged to others for similar access.*
 - b. *In the event that the request to share is not technically feasible, the Licensee must provide the requesting Operator with a response detailing the reasons why it is not feasible (accompanied by any applicable technical information) in accordance with CPC-2-0-03.*
4. *Site-sharing arrangements will 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 the CRTC for arbitration. ~~an arbitrator as agreed upon by the parties in accordance with the provisions of the applicable provincial arbitration legislation.~~ The Licensee agrees that the CRTC 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 and those relating to procedural matters under the arbitration) and that any arbitration under this section shall be legally binding. The Licensee must participate fully in such an arbitration and follow all directions of the CRTC arbitrator in accordance with any arbitration agreement or with*

the applicable legislation. 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.

We have noted that the CRTC in its comments has suggested “that it is best positioned to act as an arbitrator of disputes associated with mandated roaming and antenna tower and site sharing (point 3 in their filing), and that it would be pleased to do so in order to assist with the furtherance of the government’s stated aim of improving competition and innovation in the wireless market.”

Given the CRTC’s experience in dealing with telecommunications service providers, its existing competitive dispute process, and the recommendations of the Telecommunications Policy Review Panel which suggested that the CRTC be asked to perform management and regulatory functions relating to spectrum (point 8 of CRTC submission), we support this recommendation.

We believe that having one organization with the expertise, and the knowledge of all roaming and site sharing disputes will better serve as a clearinghouse for any arbitration and this process should facilitate an expeditious and equitable process. We believe that the arbitration process managed by a well informed party can effectively deal with issues and build case precedence which can add value in the context of the actual real world new AWS deployments.

With respect to technical feasibility issues for roaming and site sharing, to the extent the CRTC lacks expertise in these areas, we expect the CRTC to engage independent experts or utilize resources available from Industry Canada who can, on a timely basis, competently assist in arbitration issues.

We note that Primus and Look Communications also recommend the CRTC as the arbitrator for mandatory roaming and site sharing.

We support the position put forward by TELUS and MTS Allstream that suggests Final Offer Arbitration to encourage parties to advance reasonable offers during negotiations. We support the arbitration framework as outlined by MTS Allstream in their January 22 submission point 36(f), except that the procedural timeline for the arbitration should not exceed forty calendar days (as opposed to the sixty days recommended by MTS Allstream).

Industry Canada recommended the following:

Conditions of Licence for Mandatory Roaming

The Globalive proposed modified licence conditions are as follows (again, noted through underlining or cross-outs):

Where the conditions of licence refer to a "new entrant" or "national new entrant", definitions can be found in the document entitled Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range (November 2007).

Where technically feasible, Licensees must offer automatic digital roaming on their cellular, PCS and AWS networks as follows:

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 with the same level and quality of service as that provided by the Licensee to its own end-customers;*
 - 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.*
 - d. *Where not technically feasible, a resale arrangement is to be provided at negotiated roaming rates.*

2. *In order to fulfill the condition of offering roaming in accordance with this licence:*
 - a. *The services offered must include digital voice and data services such as Internet access, e-mail, and other data services, and the associated access to inter-network connectivity and data exchange in real time or near real-time as required to support automatic seamless digital roaming and associated provisioning, billing and call control.*
 - b. *When requested, Licensees will provide an offer to enter into a roaming arrangement to provide roaming services on reasonable terms within 30 days. Industry Canada expects that roaming would be offered at reasonable commercial rates that support the policy objectives, and may be based on rates that: are reasonably comparable to rates that are currently charged to others for similar service including markets similar to Canada; are, at a minimum, on most favoured nation (MFN) terms relative to any resale or retail offerings.*
 - c. *Roaming arrangements will 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 the CRTC ~~an arbitrator as agreed upon by the parties or in accordance with the provisions of the applicable provincial arbitration legislation~~. The Licensee agrees that the ~~arbitrator~~ CRTC shall have all necessary powers to determine all of the questions in dispute (including those relating to determining the appropriate terms of the roaming arrangement and those relating to procedural matters under the arbitration) and that any arbitration under this section shall be legally binding. The Licensee must participate fully in such an arbitration and follow all directions of the ~~arbitrator~~ CRTC in accordance with any arbitration agreement ~~or with the applicable legislation~~. At any time, the Licensee and the party requesting roaming may agree to specific terms with regard to submitting their dispute to ~~an arbitrator~~ the CRTC and may withdraw their arbitration, on agreed terms, so long as they agree to a roaming arrangement.

Globalive is generally satisfied that the definition provided by Industry Canada in meeting the policy objectives. However, given the mandate to provide roaming, if it is determined that it is not technically feasible to provide roaming, then mandatory resale of like services, based on roaming rates, needs to be provided. We support MTS Allstream's position that the Enhanced Roaming and Resale Arrangement between Bell Canada and TELUS can and should serve as a benchmark as to what constitutes a technically feasible arrangement.

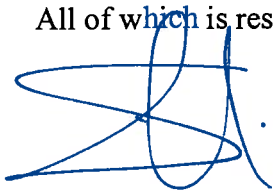
With respect to point 2(a) above, it is imperative that automated digital roaming be mandated at a network level for voice and any data services and in providing such services, the required interconnection and data exchanges must be provided to support provisioning, billing and real time call control. This will permit the new entrant to avail itself of roaming from not only a technical, but also from a commercially operational perspective. For example, Licensees need to provide IS-826 WIN II interoperability to permit real time roaming call management, if required by new entrants.

In point 2(b), Globalive agrees with the comment made by numerous parties that implicit in the decision to mandate roaming is the conclusion that market forces alone would not result in negotiated roaming arrangements that would in effect meet the government's objectives nor likely permit a viable business case for new entrants. We remain concerned that there may be a lack of suitable benchmarks for roaming offered at commercial rates for similar services where such agreements were structured, without a fundamental imbalance of market power, or for which a meaningful and sustainable wireless business model would exist. The commercial arrangements need to be assessed against the context of the policy objectives as well as the unique nature of any existing commercial roaming arrangements. Licensees have an advantage in that they are fully aware of roaming arrangements in effect and the circumstances under which the rates were developed. It is certain that they would be only too willing to benchmark against

their most favourable roaming terms, which may include per Primus' comments, the desperate customer, or a bilateral agreement with inflated rates with balanced traffic that permits revenue maximization strategies.

We believe that the CRTC as arbitrator, following the arbitration process suggested by MTS Allstream as noted above, will add a consistent and more transparent process to roaming negotiations. Mobilexchange Limited, in its comments, recommended the establishment of Most Favoured Nation (MFN) procedures for automatic digital roaming. We believe it is important and reasonable to assume that a new entrant, who is making a significance investment as a wireless operator, should receive MFN pricing relative to any retail, reseller or wholesale customers at a minimum, if not terms equal to the most favourable terms extended to any roaming partner. MFN relative to customers, at a minimum ensures that as a wireless carrier there is no discrimination relative to what the Licensee is prepared to offer to its customers on a commercial basis. This also eliminates any extreme positioning put forward by Licensees in the negotiating process and will facilitate a more productive and timely negotiation and arbitration process.

All of which is respectfully submitted this 7th day of February, 2008.



Simon Lockie

CHIEF LEGAL OFFICER