



August 16, 2006

**By E-Mail and Fax**

Director General  
Telecommunications Policy Branch  
Industry Canada  
16<sup>th</sup> Floor, 300 Slater Street  
Ottawa, Ontario  
K1A 0C8

Re: Canada Gazette Notice Dated June 17<sup>th</sup>, 2006 (Vol. 140, No. 24)

Dear Director General:

Yak Communications (Canada) Inc. ("Yak") is filing the following comments with respect to Canada Gazette Notice Dated June 17<sup>th</sup>, 2006 (Vol. 140, No. 24) pertaining to an order under section 8 of the Telecommunications Act – *Policy Direction to the Canadian Radio-Television and Telecommunications Commission*.

Yours truly,

Benjamin D. Rovet  
Corporate and Regulatory Counsel  
Yak Communications (Canada) Inc.

Attachment

**IN THE MATTER OF CANADA GAZETTE NOTICE  
DATED JUNE 17, 2006 (VOL. 140, NO. 24)  
PERTAINING TO AN ORDER UNDER SECTION 8 OF  
THE TELECOMMUNICATIONS ACT – POLICY  
DIRECTION TO THE CANADIAN RADIO-TELEVISION  
AND TELECOMMUNICATIONS COMMISSION**

**Comments of Yak Communications (Canada) Inc.**

**August 16, 2006**

## I. Introduction

1. Yak Communications (Canada) Inc. ("Yak") is pleased to submit the following comments with respect to the proposed policy direction to the Canadian Radio-television and Telecommunications Commission (the "Commission").
2. Yak is a wholly-owned subsidiary of Yak Communications Inc., a publicly traded company. Yak is the primary operating company of Yak Communications Inc. and both are headquartered in Toronto. A second operating company, Yak Communications (America) Inc. provides long-distance services in the United States. Yak Communications Inc.'s annual consolidated revenues are approximately \$110 million, the majority of which are derived from the Canadian dial-around long distance market.
3. Yak began offering service in Toronto and Montreal in 1999 and today provides service throughout Canada. The company operates a private leased line network and it owns its own gateway switches. Yak has a customer base of approximately 900,000 users and the company estimates that it is the largest supplier in the Canadian dial-around long-distance market. Yak has expanded its portfolio of to include a 1+ long distance product, a dial-around toll service available to cellular phone subscribers, postpaid consumer phone card products and a VoIP product. In July 2003, Yak purchased Argos Telecom Inc. from AT&T Canada, thereby giving it a presence in the small business telecommunications market.
4. Yak is one of the few remaining competitors in Canada that is independent of an incumbent wireline or cable company. As the telecommunications market has become increasingly concentrated in Canada, the role of remaining independent operators such as Yak has become increasingly important in ensuring that consumers really do have a meaningful choice of competitive alternatives for telecommunications services.
5. As noted by the Department of Industry in its Regulatory Impact Analysis Statement accompanying the proposed policy direction, the Telecommunications Policy Review Panel (the "Panel") recommended that the Governor in Council issue a policy direction under section 8 of the *Telecommunications Act* to guide the CRTC. The proposed policy direction draws heavily from the proposal recommended by the Panel in its Final Report of March 2006 (the "Report").
6. One of the matters addressed by both the Panel and the proposed policy direction relates to the future of wholesale services that are made available from incumbent operators. New carriers and competitive operators depend on such wholesale services. They also face substantial barriers to developing their own network infrastructure that could act as an alternative source of physical network connectivity.
7. The proposed policy direction calls, in section 1(c)(ii), for a CRTC review of the regulatory framework pertaining to wholesale services. As will be explained below, we recommend that this provision be amended so that the review also take into account not just the future of wholesale services, but also the impediments faced by operators in constructing network infrastructure. In that way, any CRTC review will not be undertaken in a vacuum, but rather will recognize that encouraging the construction of more network infrastructure is a multi-faceted problem and should be tackled as such.

## **II. To Encourage Network Development, Attention Should Be Paid To Regulatory Impediments/Enablers And Not Just A Narrow Focus On Mandated Wholesale Services**

8. The Report calls for a series of enabling measures to promote network development by carriers. These measures are desirable in their own right. Implementing these enablers, and thus resolving the impediments that these enablers address, will help to remedy the concerns identified in the Report and echoed in the Regulatory Impact Analysis Statement that "Canada has not remained at the leading edge of technological development and deployment in key emerging technologies, such as wireless and broadband." But these enablers are also particularly valuable because they will compensate to some extent for any curtailment of wholesale services (which the Panel also favoured in order to promote network development). As such, the implementation of these measures is exceedingly important to new carriers and competitive operators as they contemplate constructing their own network facilities. These measures can be divided into three categories: technical enablers, spectrum enablers and investment enablers, which are summarized below.

9. The Report recommends the following technical enablers:

- (a) strengthened CRTC powers to resolve disputes and order access to support structures on public or private property, including structures owned by electrical utilities, municipalities and other parties (R. 5-1 an 5-2)
- (b) strengthened CRTC powers to resolve disputes and order access to all public property (R. 5-4)
- (c) empowering the CRTC to regulate sharing of transmission towers and to resolve disputes regarding tower access (R. 5-5)
- (d) empowering the CRTC to prohibit wireless carriers from entering into exclusive rooftop arrangements, and to resolve disputes between building owners and wireless carriers as to terms of rooftop access (R. 5-6)
- (e) empowering the CRTC to establish binding guidelines for access by carriers to multi-tenant buildings (R. 5-7), leading to the establishment of such guidelines
- (f) empowering the CRTC to resolve disputes, including access disputes, between carries and owners of multi-tenant buildings (R. 5-8)
- (g) permitting resellers to become CLECs, and thus attract the benefits and obligations of CLECs (R. 3-30)
- (h) Strengthening the CRTC's powers to enforce its regulatory requirements by granting the CRTC the power to levy administrative monetary penalties when these regulatory requirements are breached (R. 9-13)

10. The Report also calls for important changes in spectrum management. This is another exceedingly important issue for new carriers and competitive operators. Spectrum is a key enabler of network development. In this regard, it is noteworthy that Richard Wiley, a former head of the FCC, emphasized in the Panel's public hearings that getting spectrum policy "right" is the most single most important policy initiative the Panel could take. Among the Panel's recommended spectrum-related enablers that are particularly important to new carriers and competitive operators are the following:

- (a) ensuring that adequate spectrum is available to meet demand (R. 5-9(a))
- (b) elimination of barriers to secondary markets in spectrum (R. 5-9(d))
- (c) recovery and "refarming" of unused or under-utilized spectrum that has been previously assigned (R. 5-9(e))
- (d) regulatory mechanisms to assign scarce spectrum so as to enable new entrants and competitive operators (R. 5-9(h))

11. The Report also calls for loosening foreign investment restrictions, initially for smaller operators and new entrants, and eventually for all carriers (Report, pgs. 11-23, 24). This is another exceedingly important enabler for new entrants and competitive operators as they contemplate raising the financing for the deployment of network infrastructure. In fact, the current rule, which deters investment in facilities-based carriers, is completely contrary to the Panel's emphasis on encouraging carriers that undertake their own infrastructure development.

12. Yak strongly encourages policy makers to move quickly to implement these enabling measures: technical, spectrum and investment. Each and every one of them is welcome, and indeed essential, to foster network development, particularly by new entrants and competitive operators. Of particular importance is prompt action on the spectrum and investment enablers.

13. If these enabling measures are put in place, then new entrants and competitive operators will be in a better position to handle any curtailment of mandated wholesale services. On the other hand, if the CRTC begins to curtail mandated wholesale services, and the enabling measure are not in place, the position of new entrant will be negatively impacted. Given the many difficulties faced by new carriers and competitive operators in building their businesses, as evidenced by the demise of so many carriers in recent years, policy makers should be reluctant to take any steps that jeopardize the ability of new carriers and competitive operators to move forward.

14. We recognize that the Panel called for the curtailment of wholesale service over a period of years. That delay could allow time for at least some of the enablers to be put in place. But there is no assurance that that will be the case. Indeed, once the CRTC starts to curtail wholesale services, the impetus to implement the enablers, some of which will require legislative action, may well diminish.

15. Accordingly, it is important that the CRTC and other policy makers recognize the linkage between the curtailment of wholesale services and the reduction in impediments to developing network infrastructure. Any curtailment in the availability of mandated ILEC-supplied wholesale

services should only be undertaken when the enablers to further network infrastructure development are in place. That way, new carriers and competitive operators will have the proper tools to build their networks as the alternative, namely incumbent-supplied wholesale services, are reduced.

### III. THE PROPOSED POLICY DIRECTION

16. In line with our recommendation set out above, Yak urges that any policy direction by the Government to the CRTC should not lead to the premature curtailment of wholesale services, and it should recognize the importance of the timely implementation of regulatory enablers to network infrastructure development.

17. The provision of the proposed policy direction that is relevant to wholesale services is found in section 1(c)(ii) which states as follows:

With a view to providing increased incentives for innovation, investment in and construction of competing network facilities, [the Commission] should conduct a review of its regulatory framework regarding mandated access to wholesale services, in order to determine the extent to which mandated access to wholesale services that are not essential services should be phased out and the appropriate pricing of mandated services to encourage investment and innovation in network infrastructure.

18. Although the proposed policy direction calls on the CRTC to review the regulatory framework for wholesale services, the proposed policy direction does not explicitly address the importance of implementing the regulatory enablers to also encourage investment and innovation in network infrastructure as we described above. In our view, any Commission's review should consider these enablers in order that the Commission can be in a position to assess the linkage between implementation of these enablers and any future curtailment of wholesale services. As such, we recommend that that the Government amend section 1(c)(ii) of the policy direction as follows:

With a view to providing increased incentives for innovation, investment in and construction of competing network facilities, [the Commission] should conduct a review of its regulatory framework regarding mandated access to wholesale services and the impediments faced by carriers seeking to develop such competing network facilities, in order to determine the extent to which mandated access to wholesale services that are not essential services should be phased out and the appropriate pricing of mandated services, and such other measures that may be desirable, in order to encourage investment and innovation in network infrastructure.

19. Such an amendment will help to ensure that the Commission's review encompasses a full consideration of the issues relating to incentives for innovation, investment in and construction of competing network facilities.