



June 26, 2006

**By E-Mail and Courier**

Ms. Diane Rhéaume  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Dear Ms. Rhéaume:

Re: "Aliant Telecom and Bell Canada Application to Revise the *Telecommunications Fees Regulations*"

Pursuant to section 59 of CRTC Telecommunications Rules of Procedure, Yak Communications (Canada) Inc. ("Yak") is filing the following answer to the Aliant Telecom and Bell Canada Application to Revise the *Telecommunications Fees Regulations*.

Yours truly,

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

Attachment

**BEFORE THE CANADIAN RADIO-TELEVISION AND  
TELECOMMUNICATIONS COMMISSION**

**Aliant Telecom Inc. and Bell Canada  
Application to Revise the  
*Telecommunications Fees Regulations***

**COMMENTS OF  
YAK COMMUNICATIONS (CANADA) INC.**

**June 26, 2006**

1. Pursuant to Part VII of the Commission's Rules of Procedure, Yak Communications (Canada) Inc. (Yak) files the following Comments in response to an Application, dated May 26, 2006, filed by Aliant Telecom Inc. and Bell Canada (Bell), requesting revisions to the Telecommunications Fees Regulations.

2. In its Application Bell claims there is a "need to resolve the inequities of the current regulations, establish appropriate service standards with regards to regulatory activities, and undertake a review of the Commission's cost structure". In this submission, Yak will focus on the alleged inequities of the current regulations.

### **Bell's Proposal is Vague and Deficient**

3. Bell has taken the position that the current telecommunications fees regulations are inequitable and it is "imperative that the Commission move quickly to resolve the inequities". As far as Yak is aware, Bell's Application is the first proposing amendments to the fee structure, since the reaffirmed the regulations in Public Notice CRTC 2000-75. No explanation is offered by Bell why changes are "imperative" or why the Commission must "move quickly" to change a regime which has been in place for approximately ten years.

4. If an urgency existed and if it was imperative that amendments be introduced, Yak would expect Bell to provide a well developed alternative to the existing mechanism. Unfortunately, Bell's Application does not provide the basic elements such as how the mechanism should work or who should be required to pay the telecommunication fees.

5. Bell does not offer a specific proposal to replace the current fees regulations but suggests that:

A more equitable approach would be one similar to that used to determine contribution payments. Under such an approach telecommunications fees would be payable by all telecommunications service providers and on a consistent base of revenues, i.e.. their total Canadian Telecommunications Service Revenues (CTSR).

6. The Application does not identify the similarities or the differences between the mechanism currently used to determine contribution payments and any new mechanism that may be used to determine telecommunications fees. However, Bell's suggestion that Canadian Telecommunications Service Revenues (CTSR) is the base on which service providers pay contribution and should be used for telecommunication fee payments is incorrect and misleading.

7. CTSR represents a service provider's gross telecommunications revenues, net of non-Canadian revenues. Contribution, on the other hand is assessed based on revenues net of i) contributions payments received, ii) inter-carrier payments, iii) retail internet service revenues, iv) retail paging service revenues, v) terminal equipment revenues, and vi) certain revenues derived from service bundles. Once these amounts are netted from the CTSR, the result is a service provider's contribution-eligible revenues, which is then used to calculate contribution payments. Contribution payments calculated on a contribution-eligible revenue base is a significantly different revenue base and produces much different results than a CTSR based mechanism, which Bell appears to be proposing for telecommunications fees.

8. Deduction of the items identified above is critical to avoid double counting and a disproportionate collection of contribution from resellers.

9. Rates for services leased by resellers from ILECs are based on the costs of providing a service, including telecommunications fees associated with a service. Therefore, whenever a reseller leases services from an ILEC, the reseller pays the telecommunications fees embedded in the rates. If inter-carrier payments are not deducted from the revenue base for the telecommunications fees calculation, a reseller would pay the fees once on the revenues it receives for the provision of the service to customers and a second time in the rates paid to ILECs for lease of services.

10. In Telecom Decision 2000-745, the Commission stated that "telecommunications service providers should be allowed a deduction for inter-carrier payments to avoid double-counting the revenue". Bell's apparent failure to adjust for inter-carrier payments in its CTSR approach would result in telecommunication fee overpayments by resellers.

11. Double counting and overpayment would be a significant problem for companies such as Yak that lease proportionately more services from ILECs and other carriers. In the October 2005 Report to the Governor in Council, the Commission reported that inter-carrier payments represented 17% of competitors' 2004 local, long distance, data & private line and Internet revenues. The Report also shows that inter-carrier payments for leased long distance services represented 48% of competitors' 2004 long distance revenues. These companies, including Yak, pay almost one-half of their long distance revenues as inter-carrier payments, primarily to ILECs. Included in these substantial inter-carrier payments are telecommunications fees that are embedded in the rates for leased services. Without deductions for inter-carrier payments, a significant level of double payment would occur.

12. Bell's new telecommunications fee mechanism is also vague about who would be required to pay. The current regime requires carriers, which file tariffs, to pay telecommunications fees. Bell has taken the position that the existing formula is inequitable because "the scope of organizations that drive regulatory activity and costs is much broader than those service providers that file tariffs"<sup>1</sup>. Bell also states:

...it is clear that non-tariff filing telecommunications service providers (e.g., Internet service providers, Municipal Electric Utilities, over the top VoIP providers, resellers, alternative providers of long distance) and interest groups that are not telecommunications service providers (e.g., industry associations like IMCAIP and UTC Canada, consumer groups like PIAC, municipalities, and special interest groups like telemarketers) are driving a large and growing proportion of the Commission's telecommunications costs.<sup>2</sup>

13. The logical conclusion of Bell's argument is that the formula will not be equitable until all of the organizations that drive regulatory activity and costs are required to contribute to the recovery of the costs.

14. However, making the formula equitable by requiring all participants who "are driving a large and growing proportion of the Commission's telecommunications costs" is

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<sup>1</sup> Para 17

<sup>2</sup> Bell, paragraph 19

not Bell's proposal. Although Bell does not identify which of the organizations should pay telecommunications fees, Bell does say that it does "not propose that the Commission require retail telecommunications end-users and their representatives to pay fees".<sup>3</sup> No explanation is provided why this exception is made for one group of cost causers but not others, such as interest groups.

15. Bell contends that the telecommunications fees are inequitable because "telecommunications service providers that do not file tariffs and other parties that drive regulatory costs do not pay telecommunications fees"<sup>4</sup>. If Bell is correct, unless and until *all* cost causers are included in the fees formula, the inequity will remain.

16. Other than identifying "all telecommunications service providers"<sup>5</sup> as contributors, Bell has not provided the Commission with any indication of the organizations that should be included in or excluded as payers of telecommunications fees.

17. Broadening the base of organizations required to remit telecommunications fees may not be feasible. The administrative and enforcement costs of collection of telecommunications fees from service providers, other than carriers, and interest groups may exceed the additional fees collected. A "equitable" collection mechanism must also take into account the additional costs it will impose on the Commission, service providers and interest groups captured under any proposed mechanism. Bell's Application fails to adequately address this question.

18. The absence of details about how a revised formula should work and the little information about who would be responsible for paying telecommunications fees renders Bell's Application meaningless.

19. Without a detailed description of the new mechanism proposed by Bell, the Application is not complete, and it is impossible for Yak to assess its merits or to provide comments. Should details become available from Bell through Reply Comments, Yak

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<sup>3</sup> Bell, paragraph 19

<sup>4</sup> Bell, paragraph 11

<sup>5</sup> Bell, paragraph 44

should be provided the opportunity to make an assessment of the proposed mechanism and offer informed comments to the Commission.

### **Broadening the Base is Premature**

20. Bell's Application to include resellers, such as Yak, into the Telecommunications Fees regulatory regime is symptomatic of a trend that works against resellers and in favour of telecommunications carriers.

21. The Commission has maintained different sets of privileges and obligations for carriers and resellers. Among other things, resellers may not interconnect directly with ILECs for the purpose of providing local telephone services; are excluded from exchanging traffic with ILECs and CLECs on a bill and keep basis; may not access the LNP number portability administration centre/service management system; are prohibited from receiving contribution when serving high cost areas; are excluded from obtaining central office codes from the Canadian Number Administrator; do not have the rights of LECs to access buildings or the rights of carriers to access support structures; are denied co-location or leasing unbundled local loops from ILECs; and may not obtain listings for their customers in ILEC directories.

22. In recent years, the Commission has imposed additional obligations on resellers including use of LEC processes for customer transfers; support high cost serving areas through contribution payments; fulfillment of comprehensive 9-1-1 and message relay service obligations; release of telephone numbers for porting when customers move to another service provider; maintaining consumer safeguards and confidentiality; adhering to telemarketing restrictions including rules for unsolicited telecommunications using ADADs, live voice and fax; provision of N-1-1 calling; and providing billing statements and bill inserts in alternative format to subscribers who are blind, on request, and information setting out rates, terms and conditions of a service to subscribers or potential subscribers who are blind.

23. Bell's Application, if approved, would add the requirement to fund a regulatory system, which increasingly imposes regulatory obligations without any of the accompanying privileges. The Commission has described the importance of balancing

regulatory obligations with privileges in a number of different ways. In Telecom Order CRTC 99-5, the Commission said:

...the Commission notes that the framework for local competition, established in Decision 97-8, defined a comprehensive set of privileges and obligations that would apply to LECs. The Commission found that the obligations imposed upon LECs are appropriate in light of the privileges that are in turn accorded to those service providers. The Commission found that the balance thus achieved would best promote efficient and fair competition in the local telecommunications service market. (paragraph 9)

24. Many of the obligations, which were originally imposed on CLECs, are now also the responsibility of resellers. The addition of CLEC obligations, which are frequently costly to introduce and maintain, have come without the addition of carrier privileges for resellers. While the Commission has maintained the balance of privileges and obligations for CLECs, an imbalance now exists for resellers.

25. Yak notes that the Report of the Telecommunications Policy Review Panel recommends extending the regulatory rights of competitive local exchange carriers (CLECs) to include all local telecommunications resellers who agree to accept the related service obligations. If implemented, resellers would be on an equal footing with carriers and then, and only then, would it be appropriate to consider a new requirement for resellers to pay telecommunications fees.

26. In the absence of a renewed balancing of obligations and privileges for resellers, Yak submits it is premature and inappropriate to impose further costs of carrier obligations on resellers.

## **Conclusions**

27. Bell argues that the Commission should amend the telecommunications fees mechanism and says that it is "imperative that the Commission move quickly to resolve the inequities". However, Bell has failed to demonstrate that the changes are "imperative" and it has fallen short in its explanation of how the proposed mechanism could work or who would be responsible for payment of the telecommunications fees. While Bell complains that the organizations that cause regulatory costs do not pay telecommunications fees, Bell also proposes to exempt certain of these organizations without explanation. These serious deficiencies in Bell's Part VII Application render it meaningless.

28. Yak also believes that it is premature to impose additional carrier requirements on resellers. Expanding the base to include resellers should not be considered unless and until the Commission grants companies, such as Yak, the advantages accorded to carriers.

29. For the above reasons, Yak respectfully recommends that the Commission deny Bell's application.

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