



Telecom Decision CRTC 2010-566

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Ottawa, 12 August 2010

Yak Communications (Canada) Corp. – Application regarding the disconnection of digital network access services in Regina and Saskatoon

File number: 8622-Y6-201004663

In this decision, the Commission denies an application by Yak that SaskTel be required to process orders issued by Yak to disconnect retail digital network access DS-1 services in Saskatchewan prior to the removal of all of its competitor digital network DS-1 access services at the same locations.

Introduction

1. The Commission received an application from Yak Communications (Canada) Corp. (Yak), dated 15 March 2010, requesting that the Commission (a) direct Saskatchewan Telecommunications (SaskTel) to process orders to disconnect retail digital network access (DNA) DS-1 services issued by Yak, and (b) require SaskTel to credit Yak for any amounts charged as a result of delays in processing these orders.
2. The Commission received comments from SaskTel. The public record of this proceeding, which closed on 26 April 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Background

3. In *Competitor Digital Network Services*, Telecom Decision CRTC 2005-6, 3 February 2005, as amended by Telecom Decision CRTC 2005-6-1, 28 April 2006 (Telecom Decision 2005-6), the Commission approved, among other things, the wholesale rates to be charged for competitor digital network (CDN) services. Further, the Commission determined that the incumbent local exchange carriers (ILECs) should be compensated through their deferral account for revenue reduction caused by competitors migrating from retail to wholesale services.
4. Since SaskTel did not have sufficient funds in its ongoing deferral account, the Commission directed that SaskTel's CDN rates would only apply to new demand¹ and that competitors may not migrate any of their existing retail-rated digital network services demand to wholesale CDN services – referred to below as "the migration rule."

¹ The phrase "new demand" would apply to any new demand for these services made by competitors after the date of Telecom Decision 2005-6, i.e., 3 February 2005.

Is Yak's proposed disconnection of DNA services inconsistent with the migration rule? If so, is the migration rule anti-competitive and inconsistent with the Policy Direction?²

5. Yak indicated that (a) prior to the issuance of Telecom Decision 2005-6, it had installed 15 DNA DS-1 services in each of Regina and Saskatoon, and (b) in February 2007, it installed an additional 7 CDN DS-1 access services in each city to meet new demand. Citing a recent decline in its business, Yak indicated that it wanted to remove 4 DS-1 access services from each of these cities, and that it had specifically chosen to remove the DNA services.
6. Yak argued that since it had retained its CDN services for a three-year period, the disconnection of its DNA services should not be ruled a migration; in Yak's view, this was merely a removal of surplus service capacity.
7. Yak also argued that if it was determined that the migration rule applied in this circumstance, then the rule is anti-competitive and discriminatory since none of Yak's competitors that began operating in Saskatchewan after 2005 were mandated to subscribe to any DNA services. Further, Yak argued that the migration rule would be inconsistent with the Policy Direction, which requires that the Commission rely on market forces to the maximum extent feasible.
8. SaskTel submitted that competitors could not use CDN additions and removals to circumvent the migration rule, regardless of the intervening time period.
9. SaskTel further submitted that no new toll-only competitors had entered the market in Saskatchewan since 2005. SaskTel argued that Yak was not mandated to keep its current access arrangements and could obtain co-location space for its switches or purchase channelized DS-3 access circuits – options that would not contravene the migration rule.

Commission's analysis and determinations

10. The Commission notes that Yak had 15 DS-1 access services in each location at the time Telecom Decision 2005-6 was issued. The Commission considers that Yak's request to disconnect DNA services that comprised part of the company's demand in each city prior to the issuance of Telecom Decision 2005-6, while retaining its CDN services which had been installed post-February 2005 for new demand, would constitute a migration of that prior demand to the CDN services.
11. The Commission concludes that, while the additional demand beyond the initial 15 DS-1 access services at either location qualifies as CDN, the migration rule requires that 15 of the total or remaining services continue to be rated as DNA. As such, the CDN services in Regina should be disconnected prior to any of the DNA

² *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

services being disconnected in that city, and the same would apply to the disconnection of CDN and DNA services in Saskatoon. Accordingly, disconnection of Yak's 4 DNA DS-1 services in each location, as requested by Yak, would be inconsistent with the migration rule summarized in paragraph 4 above.

12. With regard to Yak's argument that the migration rule is anti-competitive and inconsistent with the Policy Direction, the Commission notes that the migration rule applies equally to all the ILEC's competitors within the province of Saskatchewan that had DNA services prior to the issuance of Telecom Decision 2005-6. Further, the Commission notes that the lower wholesale rates which apply to all new demand are intended to assist those competitors to address competitive disadvantages when competing with SaskTel.
13. Further, the Commission notes that if competitors were permitted to replace their retail DNA services with the wholesale CDN services, SaskTel would receive less revenue for these same services while, as noted above, other ILECs were compensated for the migration from DNA to CDN through their deferral accounts.
14. The Commission concludes that the migration rule for SaskTel's digital network services/CDN services is not anti-competitive and is consistent with the Policy Direction.
15. Consequently, Yak's request to require SaskTel to credit it for any amounts charged as a result of delays in processing its orders is moot.
16. In light of all of the above, the Commission **denies** Yak's application.

Secretary General