



## Telecom Notice of Consultation CRTC 2020-366

PDF version

Ottawa, 30 October 2020

*Public record: 1011-NOC2020-0366*

### **Call for comments regarding potential regulatory measures to make access to poles owned by Canadian carriers more efficient**

**Deadline for submission of interventions: 30 November 2020**

[\[Submit an intervention or view related documents\]](#)

*The Commission is concerned, based on submissions received in the proceeding initiated by Telecom Notice of Consultation 2019-406, that untimely and costly access to poles owned by Canadian carriers has negative impacts on the deployment of efficient broadband-capable networks, particularly in areas of Canada with limited or no access to such networks. Therefore, the Commission is initiating a proceeding to identify and implement regulatory measures that will make access to such poles more efficient.*

### **Background**

1. In Telecom Regulatory Policy 2016-496, the Commission stated that it would begin to shift the focus of its regulatory frameworks from wireline voice services to broadband Internet access services. The Commission established the universal service objective that Canadians in urban, rural, and remote areas have access to voice and broadband Internet access services on both fixed and mobile wireless networks.<sup>1</sup>
2. While progress has been made in the improvement of access to broadband networks, there remain challenges, particularly in rural and remote regions of the country. Accordingly, in Telecom Notice of Consultation 2019-406, dated 10 December 2019, the Commission invited parties to identify barriers to building new facilities or to accessing or interconnecting with existing facilities in order to extend broadband-capable networks more efficiently into underserved areas, including areas where, due to a lack of such networks, services do not meet the criteria of the universal service objective.
3. In that proceeding, many interveners raised the fact that untimely and costly access to poles is one of the most significant barriers to the deployment of broadband-capable networks in rural and remote regions of Canada.

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<sup>1</sup> Criteria to measure achievement of the universal service objective include the ability of fixed and broadband Internet access service subscribers to access speeds of at least 50 megabits per second (Mbps) download and 10 Mbps upload.

4. Pursuant to the *Telecommunications Act* (the Act), the Commission has the authority to regulate access to poles that are owned by Canadian telecommunications carriers and, as established in Telecom Decision 2008-62, to poles not owned by a Canadian carrier but to which a Canadian carrier has the right to grant access.

## **Proceeding**

5. In light of the above, the Commission is hereby initiating a proceeding to seek proposals on potential regulatory measures that could facilitate access to poles owned by Canadian carriers (telecommunications poles) or poles to which Canadian carriers control access, which in turn would help accelerate the deployment of broadband-capable networks in regions of Canada with limited or no access to such networks. Some or all of these measures may be implemented by the Commission at the conclusion of this proceeding.

## **Issues to be examined**

### **Support structure services tariffs**

6. In Telecom Decision [95-13](#), the Commission set out a framework for access to the support structures of regulated telephone companies. In that decision, the Commission directed those companies to make their support structures available to telecommunications carriers and cable television undertakings; established uniform rates for the use of poles, strands, and conduits; and directed the companies to issue tariff pages implementing the Commission's determinations. In Order 2000-13, the Commission approved the rates, terms, and conditions of a support structure tariff, as well as a template for support structure licence agreements.
7. In Telecom Decision 2010-900, the most recent review of support structure services, the Commission approved revised rates for the support structure services of some incumbent local exchange carriers (ILECs), including rates associated with poles.
8. Canadian carriers that own poles are currently required, on request and where spare capacity<sup>2</sup> is available, to offer competitive access to those poles pursuant to their tariff. The Commission has approved, for every large ILEC as well as certain of the small ILECs (SILECs), support structure service tariffs that include rates, terms, and conditions for access to poles.<sup>3</sup>
9. In the proceeding initiated by Telecom Notice of Consultation 2019-406, some of those requesting third-party access raised concerns that certain sections of the support structure services tariffs may require modifications. For instance, uncertainties regarding response time to certain third-party requests during the process for

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<sup>2</sup> Spare capacity is the difference between the unused capacity of the support structure and the capacity required by the company to meet its anticipated future service requirements. Unused capacity is the difference between the capacity of the support structure based upon its design limitations and the capacity used by the company to meet its current service requirements plus any capacity previously allocated to a licensee.

<sup>3</sup> Commission-approved rates, terms, and conditions can be viewed on the Commission's [Tariff Applications](#) web page.

authorizing access to telecommunications poles have in some instances resulted in significant delays, which have in turn impacted the timely deployment of broadband networks by third parties.

10. Also, the Commission notes that some of those requesting third-party access are concerned that owners of telecommunications poles may not always provide sufficient justification when refusing an attachment permit or may unevenly require make-ready work. For instance, some pole owners may impose timelines on third parties for the completion of make-ready work, but not impose such timelines on themselves. In other cases, pole owners may grant themselves exemptions to requirements for make-ready work by allowing their equipment to be added to poles that require such work but deny similar exemptions to third parties, or they may impose all make-ready costs on third parties. Furthermore, since owners benefit from improvements resulting from make-ready work, there is a question of whether they should incur some of the costs.
11. In addition, there may be a lack of incentive for some owners of telecommunications poles to carry out adequate maintenance, increasing the likelihood that make-ready work will be necessary when a third party requires access.
12. The Commission therefore invites parties to provide specific proposals on how the ILECs' and SILECs' support structure services tariffs, or any other relevant regulations, could be modified in order to improve and facilitate access to telecommunications poles. This should include, but not be limited to, specific regulatory approaches that would prevent access authorization processes and make-ready work requirements from becoming an impediment to timely and affordable access to poles.
13. In light of submissions received as part of this proceeding, the Commission will evaluate whether, or how, the ILECs' and SILECs' support structure tariffs are to be modified to promote timely and affordable access to telecommunications poles, and whether other regulatory changes may be warranted. The Commission will also evaluate whether other carriers that own telecommunications poles should be required to file support structure tariffs. The Commission may implement such changes at the conclusion of the proceeding.

#### **Spare capacity**

14. The Commission's direction, in Telecom Decision 95-13, that regulated telephone companies make their support structures available to telecommunications carriers and cable television undertakings is conditional on the availability of spare capacity.
15. In Order 2000-13, the Commission noted that there have been disputes regarding the legitimacy of claims that no spare capacity is available, and indicated that it might place the onus on the pole owner to justify current and anticipated requirements when such disputes arise.
16. In the proceeding initiated by Telecom Notice of Consultation 2019-406, it was noted that there are currently no benchmarks for how long a pole owner can reserve spare capacity, no limitations on the amount of spare capacity an owner can reserve, and no consequences if the capacity is not utilized. Furthermore, mechanisms for third parties

to obtain supporting evidence of an owner's claim that no spare capacity is available can be time-consuming. Consequently, an owner's claim that capacity is restricted because of its own plans to use that capacity may result in third parties not being granted access to telecommunications poles in a timely fashion, if at all.

17. The Commission invites parties to this proceeding to provide specific potential regulatory solutions that would address the issue of access to telecommunications poles being denied or delayed due to spare capacity issues. This may result in changes to the current regulatory framework regarding capacity reservation, including, for example, changes to support structure service tariffs, or the establishment of new policies.

### **Joint-use agreements**

18. It was established in *Barrie Public Utilities v. Canadian Cable Association*<sup>4</sup> that the Commission does not have jurisdiction over the terms of access to poles owned by electric utility companies.
19. However, some ILECs have the authority to grant access to poles they do not own by way of joint-use agreements<sup>5</sup> with pole owners, such as electric utility companies. Such agreements allow two parties to share poles, for example when one party owns the majority of the poles in a certain region, or when two parties have collaborated on the construction of a pole.
20. In Telecom Decision 2008-62, the Commission found that when Canadian carriers provide access to support structures, including support structures they do not own but for which they have the right to grant permits for access, they are providing a telecommunications service within the meaning of the Act and are therefore subject to the Commission's jurisdiction.
21. In the proceeding initiated by Telecom Notice of Consultation 2019-406, it was brought to the Commission's attention that some carriers that are parties to joint-use agreements may use their position to act as gatekeepers of the access to electric utility poles, which may impede the deployment of competing broadband-capable networks.
22. In light of the foregoing, the Commission invites parties to propose specific measures by which the Commission could ensure that access to poles that are subject to joint-use agreements is not denied or delayed in an unreasonable or discriminatory way. Based on those submissions, the Commission will evaluate in this proceeding whether, or which, regulatory changes may be warranted.

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<sup>4</sup> [2003] 1 S.C.R. 476

<sup>5</sup> A joint-use agreement is an agreement between two parties, typically a telecommunications carrier and an electric utility company, that provides for the reciprocal right to use the structure of the other party. A joint-use agreement may also give the party who does not own the poles the authority to grant third-party access to poles that are owned by the other party to the agreement.

## **Dispute resolutions**

23. The Commission considers that it is important to have well-designed and timely dispute settlement mechanisms in place for the resolution of disputes arising under the Act. The Commission has the power to resolve issues between parties by way of Part 1 applications and alternative dispute resolution processes, as described in Broadcasting and Telecom Information Bulletin 2019-184.
24. The Commission invites parties to submit specific proposals on how the Commission's current dispute resolution processes can be improved in order to expedite and streamline the resolution of disputes regarding access to telecommunications poles. This could result in changes to the Commission's current practices and procedures for dispute resolution.

## **Call for comments**

25. The Commission hereby invites parties to comment on the issues raised above, as well as the specific questions outlined below.
26. When responding, parties should include all necessary rationale and supporting evidence. The Commission will review the matters raised in this proceeding in light of the policy objectives set out in section 7 of the Act and will take into consideration the 2006 Policy Direction<sup>6</sup> and the 2019 Policy Direction.<sup>7</sup> Parties should also take the policy objectives and policy directions into account and address their relevant aspects, as applicable.
27. Additionally, parties to this proceeding are invited to provide submissions on any other specific regulatory measures they believe the Commission should implement in order to make access to telecommunications poles more efficient.

## **Support structure tariffs**

Q1. Identify aspect(s) of the support structure service tariffs of ILECs or SILECs that, if modified, would have the greatest impact on timely and competitive access to telecommunications poles. More specifically:

- (i) Identify the specific section(s) of the tariffs.
- (ii) Demonstrate, with examples, how the section(s) identified contributes to untimely and/or costly access to telecommunications poles.
- (iii) Propose modifications to the sections identified in the answer to Q1 (i) above.
- (iv) Explain how the proposed modifications would contribute to more efficient access to telecommunications poles.

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<sup>6</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

<sup>7</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

### **Make-ready work**

Q2. Should there be a maximum amount of time within which owners of telecommunications poles must complete make-ready work? If so, suggest what the maximum amount of time should be and when that time period should start. If not, provide rationale.

Q3. Should parties requesting access to telecommunications poles be permitted to commence preparatory work on the poles if the owner does not meet a relevant timeline established in the support structure service tariff (assuming that all permit applications include capacity plans prepared by a duly authorized engineer which validate the safety of the proposed installations)? Provide rationale.

Q4. Should all occupants of a telecommunications pole be responsible for the costs associated with the maintenance required to keep the pole at its optimum capacity? Provide rationale.

Q5. When a telecommunications pole requires repair or replacement, should all current occupants, as well as any party requesting access that necessitates an upgrade, be required to share the costs? Provide rationale.

### **Spare capacity**

Q6. When access to telecommunications poles is denied due to a lack of spare capacity, should the pole owner be required to provide the party requesting access with supporting documentation, stating the current load on the poles, the amount of capacity reserved by the owner for its own future use, and giving the date by which the owner intends to use that capacity? Provide rationale.

Q7. Should there be a limit on the amount of time for which a pole owner can reserve spare capacity? If so, provide, with rationale, suggestions on the maximum amount. If not, provide rationale.

Q8. Should there be a limit on the amount of capacity a pole owner can reserve for future use? If so, provide, with rationale, suggestions on the maximum amount of capacity to be reserved. If not, provide rationale.

### **Joint-use agreements**

Q9. How can the Commission, within the limit of its jurisdiction, best minimize the challenges that parties face when trying to access poles that are subject to a joint-use agreement?

Q10. When a Canadian carrier is authorized by way of a joint-use agreement to approve third-party attachments to poles owned by a utility company, should this authority be limited to the pole space that is assigned exclusively for the attachment of communication facilities? Provide rationale.

Q11. When a Canadian carrier is authorized by way of a joint-use agreement to approve third-party attachments to poles owned by a utility company, should all obligations relating to the review, approval, or denial of the requests be the same as those in the support structure tariffs for poles owned by the carrier? Provide rationale.

## Procedure

28. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to this proceeding. The Rules of Procedure set out, among other things, the rules for the content, format, filing, and service of interventions, answers, replies, and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), under "[Statutes and regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
29. All ILECS and SILECs that have a support structure services tariff are made parties to this proceeding and may file interventions with the Commission by **30 November 2020**.
30. All electric utility companies are strongly encouraged to participate in this proceeding as they play an important role in accessing poles that can be used for the deployment of telecommunications services.
31. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues by **30 November 2020**. The intervention must be filed in accordance with section 26 of the Rules of Procedure.
32. Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a [template](#) for the accompanying cover letter to be filed by parties, can be found in Telecom Information Bulletin 2011-693.
33. All documents required to be served on parties to the proceeding must be served using the contact information contained in the interventions.
34. All parties may file replies to interventions with the Commission by **21 December 2020**.
35. Parties to this proceeding will have the opportunity to propose requests for information to further the Commission's understanding of the relevant issues. These proposals, the requests for information, and the responses that are ultimately filed will form part of the record of this proceeding. Therefore, parties that wish to request information from other parties may file their proposed questions with the Commission by **15 January 2021**. These proposed questions will be taken into account in the formulation of requests for information.

36. Further processes will be announced via procedural letters and/or updates to this notice at future dates. Those processes will include the dates by which parties are to file final submissions and final replies, if needed.
37. The Commission encourages interested persons and parties to monitor the record of this proceeding, available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), for additional information that they may find useful when preparing their submissions.
38. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line \*\*\*End of document\*\*\* should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
39. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that enable text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
40. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

**by completing the**  
**[\[Intervention form\]](#)**

or

**by mail to**  
CRTC, Ottawa, Ontario K1A 0N2

or

**by fax to**  
819-994-0218

41. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or, where required, service of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
42. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the



deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.

43. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

### **Important notice**

44. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email, or through the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's website. This includes all personal information, such as full names, email addresses, postal/street addresses, and telephone and fax numbers.
45. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
46. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
47. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

### **Availability of documents**

48. Electronic versions of the interventions and other documents referred to in this notice are available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) by using the public record number provided at the beginning of this notice or by visiting the "Consultations and hearings – Have your say!" section, then selecting "our applications and processes that are open for comment." Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.
49. Documents are also available at the following address, upon request, during normal business hours.

Les Terrasses de la Chaudière  
Central Building  
1 Promenade du Portage

Gatineau, Quebec  
J8X 4B1  
Tel.: 819-997-2429  
Fax: 819-994-0218

Toll-free telephone: 1-877-249-2782  
Toll-free TTY: 1-877-909-2782

Secretary General

## Related documents

- *Call for comments regarding potential barriers to the deployment of broadband-capable networks in underserved areas in Canada*, Telecom Notice of Consultation CRTC 2019-406, 10 December 2019; as amended by Telecom Notice of Consultation CRTC 2019-406-1, 20 December 2019; and Telecom Notice of Consultation CRTC 2019-406-2, 21 April 2020
- *Practices and procedures for dispute resolution*, Broadcasting and Telecom Information Bulletin CRTC 2019-184, 29 May 2019
- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Filing of joint supporting interventions*, Telecom Information Bulletin CRTC 2011-693, 8 November 2011
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Review of the large incumbent local exchange carriers’ support structure service rates*, Telecom Decision CRTC 2010-900, 2 December 2010; as amended by Telecom Decision CRTC 2010-900-1, 9 December 2010
- *Rogers Cable Communications Inc. - Application to review and vary part of Telecom Decision 2007-75*, Telecom Decision CRTC 2008-62, 16 July 2008
- *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006
- *Rates set for access to telephone companies’ support structures*, Order CRTC 2000-13, 18 January 2000
- *Access to telephone company support structures*, Telecom Decision CRTC 95-13, 22 June 1995