Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2018-277

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The City of Hamilton, the Federation of Canadian Municipalities, and the City of Calgary – Application to review and vary Telecom Decision 2017-388 regarding clause 13(b) of the Municipal Access Agreement between the City of Hamilton and Bell Canada

*The Commission **denies** an application from the City of Hamilton (Hamilton), the Federation of Canadian Municipalities, and the City of Calgary (collectively, the Applicants) to review and vary Telecom Decision 2017-388 regarding clause 13(b) of the Municipal Access Agreement between Hamilton and Bell Canada. The Commission finds that the Applicants have failed to establish that there is substantial doubt as to the correctness of the original decision.*

Background

1. The Commission originally established the provisions of a Municipal Access Agreement (MAA) between the City of Hamilton (Hamilton) and Bell Canada in Telecom Decision 2016-51.

2. However, Hamilton and Bell Canada disagreed on the interpretation of clause 13(b) of the MAA, which pertains to location information that Bell Canada provides to Hamilton regarding the company's underground facilities. Following a proceeding initiated by Telecom Notice of Consultation 2017-66, the Commission revised clause 13(b) in Telecom Decision 2017-388. The revised wording is set out in the Appendix to this decision.

Application

3. The Commission received an application from Hamilton, the Federation of Canadian Municipalities, and the City of Calgary (collectively, the Applicants), dated 8 February 2018, in which they requested that the Commission review and vary Telecom Decision 2017-388. Specifically, the Applicants submitted that the Commission's addition of the words "other public places" and "public parks" in footnotes was an error, and that the revised clause 13(b) wording sets out an unworkable process and is contrary to the Commission's long-standing jurisprudence on the issue of causal costs. The Applicants also requested an oral hearing to address the matter.

4. The Commission received a joint intervention regarding the application from Bell Canada, Cogeco Connexion Inc., Quebecor Media Inc., Rogers Communications Canada Inc., Shaw Cablesystems G.P., and TELUS Communications Inc. (collectively, Bell Canada et al.); as well as separate interventions from the City of Gatineau and the City of Montréal.

Review and vary criteria

5. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would use to assess review and vary applications filed pursuant to section 62 of the *Telecommunications Act* (the Act). Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to (i) an error in law or in fact, (ii) a fundamental change in circumstances or facts since the decision, (iii) a failure to consider a basic principle which had been raised in the original proceeding, or (iv) a new principle which has arisen as a result of the decision.

Issues

6. The Commission has identified the following issues to be addressed in this decision:

    - Should the Commission hear oral submissions regarding the matters raised in the application?

    - Does the term “other public places” set out explicitly in footnote 1 and referred to indirectly in footnote 2 of Telecom Decision 2017-388 raise substantial doubt as to the correctness of that decision?

    - Does the Commission’s rewording of certain elements of clause 13(b) raise substantial doubt as to the correctness of Telecom Decision 2017-388?

Should the Commission hear oral submissions regarding the matters raised in the application?

Positions of parties

7. The Applicants requested an oral hearing to provide evidence and arguments on the issue of clause 13(b). The Applicants submitted that the application presented difficulties of a technical nature involving geodetic mapping, plotting, land surveying, engineering, and construction, which cannot necessarily be represented clearly in the form of application materials. The Applicants submitted that the aim of an oral hearing is to provide the Commission with an opportunity to ask the parties questions, to hear directly from the parties, and to bring into focus any issues that remain unclear.

Commission’s analysis and determinations

8. In addition to the present proceeding, the Commission has considered clause 13(b) in two related proceedings, which led to Telecom Decisions 2016-51 and 2017-388. The

records of these proceedings have provided a substantial and sufficient amount of evidence and arguments regarding the relevant issues, including from Bell Canada and Hamilton.

9. Accordingly, the Commission determines that an oral hearing is not required to address the application.

Does the term "other public places" set out explicitly in footnote 1 and referred to indirectly in footnote 2 of Telecom Decision 2017-388 raise substantial doubt as to the correctness of that decision?

Positions of parties

10. The Applicants submitted that during the proceeding that led to Telecom Decision 2016-51, Hamilton objected to the inclusion of the term "other public places" in the MAA. Hamilton had argued that the term should not be included since unique circumstances exist for lands that are owned by the city but are outside established rights of way (ROWs) captured by its proposed wording, such as cemeteries. Hamilton submitted that its proposed MAA primarily deals with access to established municipal ROWs (e.g. highways, streets, and roads), not other public places. It further indicated that other public places, such as cemeteries and parklands, are dealt with and managed separately by Hamilton's Real Estate division.

11. The Applicants noted that the Commission did not include the term "other public places" in the recitals to the MAA established in Telecom Decision 2016-51. The Applicants noted, however, that the term was included in footnote 1 of Telecom Decision 2017-388, which reads as follows:

> An MAA sets out the terms and conditions of a carrier's access to highways and other public places under a municipality's jurisdiction that is required to provide telecommunications services, including broadcasting distribution services, to the public.

12. The Applicants also submitted that the term was referenced indirectly in footnote 2, because it refers to places (public parks) that could be described as "other":

> A right of way is a section of land where access is open to anyone who may need to travel through it. In a municipal context, this includes roads, sidewalks, and public parks.

13. The Applicants argued that both references were included in error and that, therefore, the Commission should amend the above-noted footnotes to (i) ensure that they are consistent with Telecom Decision 2016-51, and (ii) avoid future conflict between the parties with respect to this issue.

14. Bell Canada et al. submitted that the language in the footnotes was not intended to describe the MAA in place between Bell Canada and Hamilton, but was a general description that tracks the language set out in the Act, which refers to "highways and other public places." Bell Canada et al. submitted that the descriptions were entirely

accurate, and had no impact on the substance of the decision. The company submitted that, accordingly, there is no substantial doubt as to the correctness of Telecom Decision 2017-388.

Commission's analysis and determinations

15. In footnote 1 of Telecom Decision 2017-388, the Commission used the term "other public places" to help define MAAs in a general sense. This definition reflects the language used in subsection 43(2) of the Act.[1] Similarly, in footnote 2 of that decision, the Commission defined ROWs in a general sense.

16. The references to "other public places" and "public parks" in Telecom Decision 2017-388 do not change the wording of the recital set out in Telecom Decision 2016-51, have no impact on the substance of Telecom Decision 2016-51, and do not change the wording of the MAA established in Telecom Decision 2016-51.

17. In light of the above, the Commission finds that the Applicants have failed to demonstrate that the use of "other public places" in footnote 1 and "public parks" in footnote 2 raises substantial doubt as to the correctness of Telecom Decision 2017-388.

Does the Commission's rewording of certain elements of clause 13(b) raise substantial doubts as to the correctness of Telecom Decision 2017-388?

18. The Applicants submitted that there was substantial doubt as to the correctness of Telecom Decision 2017-388 due to some of the Commission's revised wording.

Reference to "Equipment" and use of the words "With respect to underground facilities"

Positions of parties

19. The Applicants submitted that by using the words "With respect to underground facilities" in the third sentence of the reworded clause 13(b), the Commission made an implied distinction between aboveground and underground facilities – the implication being that the preceding portion of the reworded clause pertains to aboveground facilities only. They submitted that this distinction becomes the basis for the creation of two separate regimes for the apportionment of costs. Further, they argued that the creation of a distinction between aboveground and underground facilities is both confusing and unnecessary because aboveground facilities are never the subject of elevation requests.

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[1] Subsection 43(2) of the Act states the following: Subject to subsections (3) and (4) and section 44, a Canadian carrier or distribution undertaking may enter on and break up any highway or other public place for the purpose of constructing, maintaining or operating its transmission lines and may remain there for as long as is necessary for that purpose, but shall not unduly interfere with the public use and enjoyment of the highway or other public place.

20. The Applicants also submitted that the word “Equipment,” which was a defined term in Hamilton’s MAA with Bell Canada, included facilities such as ducts and manholes, which were only ever placed underground.[2] They argued that since the costs associated with aboveground facility elevation requests (which never occur) are to be paid by Bell Canada, but the definition of those aboveground facilities included references to underground facilities (which are subject to the 50/50 cost-sharing regime between Bell Canada and Hamilton), the rewording of clause 13(b) as currently drafted is unworkable, and therefore requires modification.

21. Bell Canada et al. submitted that the use of the term “Equipment” in the first two sentences of clause 13(b) creates no interpretative confusion. They submitted that these sentences clearly set out a general principle that applies to all equipment, and the remainder of the clause provides further specific terms and conditions that apply to underground facilities, a subset of the equipment referenced in the first two sentences. Accordingly, Bell Canada et al. submitted that the Applicants’ request should be dismissed.

Commission’s analysis and determinations

22. Regarding the term “Equipment,” this term is used throughout the MAA established in Telecom Decision 2016-51, but there are instances in which a specific subset of equipment is identified. For example, clause 15, which is titled “Additional Ducts or Cables,” applies to ducts and cables only, not to all the pieces of equipment covered by the general term “Equipment.” Accordingly, the term “Equipment,” as used in the first and second sentences of clause 13(b), applies to both aboveground and underground facilities. There is no distinction between the two types of facilities.

23. With respect to the Applicants’ argument concerning the creation of the two separate regimes for the apportionment of costs, the Commission is of the view that the wording of clause 13(b) is workable and clear. In clause 13(b), the 50/50 cost-sharing arrangement applies to underground facilities only, and applies only after the three-step process that the Commission set out in clause 13(b) has been followed when Hamilton requires further details from Bell Canada regarding the location of the company’s underground facilities.

24. The use of the words “With respect to underground facilities” in the third sentence of clause 13(b) indicates that the sentence applies to a specific subset of the equipment referred to earlier, such as manholes, buried conduits, and ducts, and is intended to distinguish the type of facilities to which the third sentence applies (i.e. underground facilities) from the two preceding sentences, which apply to all equipment.

25. Further, the words “such as” precede a description of the characteristics of the design information and survey detail for the location information that Bell Canada is to

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[2] The term was defined in the MAA as follows: “Equipment” means the Company’s wires, fibre-optic and coaxial cable, ducts, conduits, handholes, manholes, pedestals and any other accessories, structures, transmission facilities and equipment.

provide to Hamilton. These words denote an example list, not a definitive or exhaustive list of the design information and survey detail.

26. In light of the above, the Commission finds that the Applicants have failed to demonstrate that there is substantial doubt as to the correctness of the original decision due to the inclusion of "Equipment" and "With respect to underground facilities" in the first three sentences of clause 13(b).

Use of the word "conflicts"

Positions of parties

27. The Applicants expressed concern with the inclusion of the word "conflicts" in the following three-step process set out in clause 13(b) [the three-step process]:

> … When a request is made for further information on the location of underground facilities, the Company and the Municipality are to proceed as follows:
>
> > First, the Company and the Municipality are to discuss and try to resolve any potential design and/or construction conflicts.
> >
> > Should the matter not be resolved through discussions, the Company is to provide markups of drawings to indicate the location of its existing underground facilities in the area of the proposed project giving rise to the request for information on the location of underground facilities.
> >
> > As a last resort, if the prior methods are not sufficient to resolve the conflicts, the Company is to undertake field investigations to verify the location of these underground facilities.

28. The Applicants submitted that the Commission misunderstood how requests for elevation data arise, specifically, why this data is needed and when these requests are made.

29. The Applicants submitted that it was not in the context of a "conflict" that elevation data requests are made, but only when a carrier's facility is known to be on the potential path of works, and its elevation is unknown (where those facilities exist in three-dimensional space).

30. The Applicants argued that the Commission's direction that parties discuss conflicts therefore appeared to be the result of a misapprehension of the problem (a lack of elevation information) and its only solution (the acquisition of new information that neither party has without further study). The Applicants submitted that there was no conflict in such instances, there was only the necessity of knowing a piece of missing information that neither party has and the question of which party should pay for the acquisition of that new, necessary information.

31. For these reasons, the Applicants submitted that the Commission's reference to parties resolving design and construction conflicts should be struck from clause 13(b)

because at the stage at which such information is requested, it is not known whether there is any design or construction conflict. They also submitted that the reference to Bell Canada providing markups of drawings should be struck because in almost every case, the parties already have this type of information in two-dimensional form.

32. Bell Canada et al. submitted that the intention of the three-step process is to ensure that parties work together to limit the need for vertical location information and to minimize the financial burden associated with obtaining this information.

33. In Bell Canada et al.'s view, having discussions to determine whether the parties can arrive at a solution that does not require costly field investigations, or that minimizes the number of field investigations, to determine the vertical coordinates of underground infrastructure was a completely appropriate first step for parties to follow in situations where a potential conflict may occur. Further, Bell Canada et al. submitted that requiring Bell Canada to provide a markup of its infrastructure at the location in question serves as a safeguard to double-check that parties are all using the same plans for existing infrastructure.

34. Accordingly, Bell Canada et al. submitted that there was no reason to doubt the correctness of this element of clause 13(b).

Commission's analysis and determinations

35. The three-step process is the process for Hamilton and Bell Canada to follow when the location information for underground facilities provided by Bell Canada to Hamilton (as a result of a request under the first two sentences of the clause) for pre-design purposes does not contain sufficient design information and survey detail, and Hamilton requests further information on the location of the underground facilities.

36. The Commission is of the view that the Applicants have taken the concept of "conflict" out of context to the rest of the meaning of the sentences in which it was used.

37. Based on the record of the proceeding that led to Telecom Decision 2017-388, requests for vertical coordinates for underground facilities appear to be relatively rare. While Hamilton argued that vertical coordinates of underground facilities for pre-design purposes provide a level of detail that may be useful, it also indicated that in over 88% of the jobs involving subsurface work in the past three years, it did not need such information from Bell Canada, indicating that the level of detail Hamilton currently obtains from Bell Canada for pre-design purposes is sufficient in most instances. Therefore, it was reasonable for the Commission to conclude that, in instances where vertical coordinates are requested, Bell Canada and Hamilton are to discuss and try to resolve any potential design and/or construction conflicts.

38. Further, the Commission used the concept of "conflict" not in the general sense of a serious disagreement or argument between parties but rather to depict circumstances in which discussions between the parties might assist in reaching solutions to

determine the vertical coordinates of underground infrastructure. Discussions may serve as a safeguard to ensure that parties are all using the same plans for existing infrastructure and to ensure that parties are clear on the level of accuracy when performing a field investigation. Further, labelling such circumstances as "conflict" or "potential conflict" in the clause does not detract from the purpose of including the three-step process in the clause, which is to encourage the parties to discuss and determine the best method to address the particular circumstances.

39. In light of the above, the Commission finds that the Applicants have failed to demonstrate that there is substantial doubt as to the correctness of the original decision due to the inclusion of the word "conflicts."

Reference to "depth of cover"

Positions of parties

40. The Applicants expressed concern with the Commission's inclusion of "depth of cover" in the three-step process:

> The vertical coordinates are to be provided in the format chosen by the Municipality (such as depth of cover or metres above sea level)…

41. The Applicants submitted that the Commission's use of the term appears to legitimize that type of measurement as a potentially acceptable form of data concerning elevation, and should therefore be struck from clause 13(b). They noted that in a previous submission, Hamilton stated that it does not need or use measurements for depth of cover, which is not an acceptable form of measurement from a planning perspective, since the measurement (i) results in significant inaccuracies that grow over time, (ii) can lead to accidents in the field of work, and (iii) is not part of the accepted industry practices relating to locating subsurface facilities.

42. Bell Canada et al. argued that the term has no impact on the operation of clause 13(b) or the substance of the associated decision. Further, Bell Canada et al. submitted that the reference to "depth of cover" creates no obligation on Hamilton to obtain this information.

Commission's analysis and determinations

43. The Commission listed two examples of formats for vertical coordinates, "depth of cover" and "metres above sea level," in clause 13(b). In addition, the vertical coordinates are to be provided in a format chosen by Hamilton. Accordingly, the Commission finds that the Applicants have failed to demonstrate that there is substantial doubt as to the correctness of the original decision due to the inclusion of the term "depth of cover."

Reference to "level of accuracy"

Positions of parties

44. The Applicants submitted that, by including the following wording in the three-step process, the Commission made the level of required accuracy a matter of discussion between the parties each time elevation data was requested:

> The vertical coordinates are to be provided… within a level of accuracy agreed upon by the Municipality and the Company.

45. The Applicants noted that in the proceeding that led to Telecom Decision 2017-388, Hamilton provided the Commission with several documents regarding the applicable industry standard pertaining to elevation data. The Applicants submitted that the Commission should order the use of objective and predicable pan-North American standards concerning the accuracy of underground facilities, thus reducing the potential for delay by avoiding unnecessary conflict.

46. Bell Canada et al. submitted that the wording in question is a further safeguard that the Commission appropriately added to the three-step process. Bell Canada et al. submitted that for a given project, the level of accuracy and extent of field investigation can have a significant impact on the cost of performing the field investigation work and, as Hamilton noted in its submissions in the proceeding that led to Telecom Decision 2017-388, varying degrees of accuracy could be required in different contexts, ranging from around 25 to around 100 millimetres. In Bell Canada et al.'s view, it is appropriate for parties to discuss what level of field investigation is necessary in order to resolve the potential conflict, especially if the intention is to share a portion of the costs associated with Hamilton's survey work for its construction projects.

Commission's analysis and determinations

47. The level of required accuracy for vertical coordinates to be agreed upon by the parties is part of the three-step process in clause 13(b) that applies when the location information provided by Bell Canada to Hamilton for pre-design purposes does not contain sufficient design information and survey detail, and Hamilton requests further information, when such information is reasonably necessary.

48. As noted above, based on the record of the proceeding that led to Telecom Decision 2017-388, actual requests to provide vertical coordinates for underground facilities appear to be relatively rare. Furthermore, Hamilton indicated that in over 88% of the jobs involving subsurface work in the past three years, it did not need such information from Bell Canada.

49. Therefore, in instances where the level of accuracy could affect costs, and given that varying degrees of accuracy could be required in different contexts (based on Hamilton's own submission), it was reasonable for the Commission to conclude that the level of required accuracy for vertical coordinates should be agreed upon by the parties in the relatively uncommon instances where the level of detail provided by Bell Canada for the pre-design process is not sufficient.

50. In light of the above, the Commission finds that the Applicants have failed to demonstrate that there is substantial doubt as to the correctness of the original decision due to the determination that vertical coordinates are to be provided within a level of accuracy agreed upon by Hamilton and Bell Canada.

Apportionment of costs between Bell Canada and Hamilton

Positions of parties

51. The Applicants noted that in paragraphs 34 and 35 of Telecom Decision 2017-388, the Commission provided two rationales for the 50/50 cost-sharing arrangement between Bell Canada and Hamilton with respect to obtaining vertical coordinates of underground facilities:

> 34. […] This would help ensure that Hamilton requests vertical coordinates only when truly reasonably necessary, and should also encourage Bell Canada to keep the most detailed coordinate information possible when installing underground facilities
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> 35. Further, this approach recognizes that there is a cost to Bell Canada of having its facilities installed in Hamilton's ROWs, while also recognizing that it is appropriate that there be a certain cost to the city for obtaining data that it considers to be necessary. Finally, this approach is consistent with other provisions of the MAA, such as clause 9(d)[3] under which costs are shared equally.

52. The Applicants submitted that while the Commission's first rationale in support of the 50/50 cost-sharing arrangement was meant to restrict elevation data requests to those that are "truly" necessary, the proper limiter for such requests is already provided by the concepts of "reasonableness" and "necessity." Further, the Applicants noted that in accordance with the MAA, Bell Canada may object if it believes that any request is either unreasonable or unnecessary, or may even apply to the Commission for a determination concerning any such request.

53. The Applicants argued that the fact that "z" coordinates were not necessary in every engineering or planning situation does not make them any less critical than "x" and "y" coordinates, when needed. For this reason, the Applicants submitted that Bell Canada should be required to pay for the elevation data for the same reason it pays for the acquisition of "x" and "y" coordinates – because they are necessary.

54. The Applicants added that there was nothing before the Commission during the Telecom Notice of Consultation 2017-66 proceeding, or throughout the long history on this matter, that could support a concern that Hamilton has ever made, or would

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[3] Clause 9(d) states the following: (Conditions of Work) On-going inspections, and/or follow-up monitoring, of the Company's installations and Work, for conformance with the terms and conditions of a Road Occupancy Permit, may be conducted by the Municipality, as the Municipality deems reasonably necessary, at a cost shared equally between the City and the Company.

ever make, an unreasonable and unnecessary request for elevation data from Bell Canada.

55. With respect to the second rationale, the Applicants submitted that clause 9(d) divides responsibility for secondary costs between the municipality and the carrier, which does not offend the cardinal principle from Decision 2001-23 (the Ledcor decision)[4] that causal costs incurred by a municipality due to the presence or placement of telecommunications facilities in the ROW should be borne by the carrier. The Applicants argued that, in contrast, the aim of clause 13(b) is inextricably and directly tied to the carrier's presence in the ROW. The Applicants argued that the fact that "z" coordinates were not needed or requested with the same degree of regularity or frequency as other location information should not detract from the fact that the clause squarely aims to recoup a direct caused cost.

56. For the above reasons, the Applicants submitted that the Commission's rationales in support of the 50/50 cost-sharing arrangement must fail because they are unsound and not congruent with the remainder of Hamilton's MAA with Bell Canada, or the Commission's own jurisprudence on the issue of causal costs.

57. Bell Canada et al. submitted that if the Commission were to review and vary the cost-sharing formula for field investigations, it should be either (i) to remove the obligation for Bell Canada to provide vertical coordinates entirely, in favour of Hamilton obtaining this information through the request for proposal (RFP) process for new municipal infrastructure projects; or (ii) to require only that Bell Canada pay a fair proportion of the costs to perform field investigations and to ensure that the owners of other utilities being located through the same processes are also required to contribute in a fair manner.

58. Bell Canada et al. submitted that if the Commission does not review and vary Telecom Decision 2017-388 in this manner, then the cost-sharing model, as currently set out, should be maintained.

59. Bell Canada et al. submitted that in the present circumstances, the Commission has provided reasons why the costs associated with field investigations to obtain vertical coordinates represent such a circumstance where it is appropriate to deviate from causal costs. Bell Canada et al. further submitted that the Applicants have advanced no argument to demonstrate that there was substantial doubt as to the correctness of the Commission's determinations, and that their arguments should be dismissed.

60. The Applicants replied that Bell Canada et al.'s position that requests for vertical coordinates should be included in the RFP process was contrary to the standards of the industry and incongruent with the fact that carriers are responsible for the costs of providing location information, including (for many of them) elevation data. The

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[4] In the Ledcor decision, the Commission found the causal costs principle to be the appropriate means for the City of Vancouver to use to recover the causal costs it incurred when carriers construct, maintain, and operate transmission lines in municipal ROWs.

Applicants argued that Bell Canada et al.'s position turns the logic of causal costs on its head. They submitted that the costs of locating Bell Canada's facilities result directly from the company's presence in the ROW, and not from the fact that others use the ROW; accordingly, Bell Canada, and not other parties, should pay.

61. The Applicants further submitted that carriers like Bell Canada are playing a game of low-risk chance by not capturing elevation data for facilities at the time of making installations, thus receiving a tremendous up-front cost saving.

Commission's analysis and determinations

62. In the Ledcor decision, the Commission established the causal cost principle, which provides that, as a general principle, costs incurred by a municipality due to the presence or placement of telecommunications facilities in municipal ROWs should be borne by the carrier. However, it was not the only costing principle the Commission used in that decision. For example, the Commission accepted the City of Vancouver's (Vancouver) proposed 29.6% loading factor[5] on direct costs to estimate indirect and variable common costs. The Commission also recognized that for some of Vancouver's cost elements, the causal costs were small and the process to determine them accurately would be disproportionately difficult or complex, and considered it appropriate to recognize such costs by way of a 15% loading factor for plan approval and inspection costs.[6] Further, the Commission allowed for the recovery through one-time charges, if such charges could be developed, for costs associated with grinds and overlays.[7]

63. The Commission also set out the factors that it would take into account in allocating costs between the municipality and the carrier, for example, relocation costs.[8] In both Telecom Decision 2008-91 and Telecom Regulatory Policy 2009-150, the Commission considered it appropriate to deviate from the causal cost principle in certain instances, such as when the costs are incurred as a result of municipality-initiated relocation of facilities.

64. In Telecom Decision 2007-8, the Commission considered that while fees for use of highways or other public places for the purpose of constructing, maintaining, or

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[5] A loading factor is applied to cost-based fees to allow for the recovery of indirect and variable common costs, i.e. causal costs that are small and for which the process to determine them accurately would be disproportionately difficult or complex.

[6] The loading factor of 15% on plan approval and inspection costs was established to recover costs for net revenue losses when parking meters were put out of service, costs associated with transit operating delays, and lost productivity for city operations.

[7] Grind and overlay is a technique that involves the removal of the top layer of a paved street by the grinding action of a large machine. After the top later is removed, a new layer of pavement is put in its place.

[8] The factors are (a) who has requested the relocation, i.e. the municipality, the carrier, or a third party; (b) the reason for the requested relocation (e.g. safety reasons, aesthetic reasons, or to better serve customers); and (c) when the request is made vis-à-vis the original date of construction (e.g. whether the request is made a considerable length of time after the original construction or very shortly after that time).

operating transmission lines should, in general, be based on causal costs, in the circumstances of that case, a requirement to develop a fee for Rogers Cable Communications Inc. based on the costs causal to the company's use of provincial highways for its transmission lines would be neither practical nor cost effective, and, therefore, would not be expedient.

65. Where the Commission has not applied the causal costs principle, it has set out its reasons. The Commission's reasons for using the 50/50 cost-sharing mechanism were set out in paragraphs 34 and 35 of Telecom Decision 2017-388.

66. With respect to paragraph 34 of Telecom Decision 2017-388, the Applicants argued that the first rationale (see paragraph 51 above) should fail because the proper limiter for elevation requests was already provided by the concepts of "reasonable' and "necessity," and not only those requests that are "truly" necessary. In response to Commission interrogatories, Hamilton indicated that requests for vertical coordinates were relatively rare (about 11.6% of jobs involving subsurface work). Therefore, the Commission used the term "truly reasonably necessary" to ensure that this percentage would stay relatively the same under a regime where each party is required to pay 50% of the costs. Further, the fact that Bell Canada may object if it believes that any further request for information on the location of facilities is either unreasonable or unnecessary, in accordance with the terms of the MAA, does not alter the reasonableness of the 50/50 cost-sharing arrangement.

67. With respect to the second rationale (see paragraph 51 above), the Applicants objected because clause 9(d) is not about the recoupment of causal costs but rather a secondary cost related to "policing" (i.e. ongoing inspections and/or follow-up monitoring) compliance with the terms of the agreement, which does not offend the cardinal principle from the Ledcor decision that causal costs incurred by a municipality due to the presence or placement of telecommunications facilities in the ROW should be borne by the carrier.

68. The Commission notes that both clauses 9(d) and 13(b) address situations in which Bell Canada's telecommunications facilities are already installed in Hamilton's ROWs. In particular, the "On-going inspections" in clause 9(d) and "request for further information on the location of underground facilities" in clause 13(b) are both connected to the fact that Bell Canada's telecommunications facilities are already installed in Hamilton's ROWs. Clause 9(d) of the MAA sets out an equal cost-sharing arrangement between Bell Canada and Hamilton for inspections and monitoring of Bell Canada telecommunications facilities that are already installed. Therefore, the second rationale in support of the 50/50 cost-sharing arrangement is congruent with the remainder of the MAA, and with the Commission's jurisdiction over costing principles.

69. With respect to the Applicants' argument concerning Bell Canada receiving up-front cost savings by not systematically capturing elevation data for its facilities at the time of installation, based on the record of this proceeding and the previous proceedings related to clause 13(b) of the MAA, Hamilton rarely has a need for vertical

coordinates. Thus, obtaining elevation data for all facilities at the time of installation would not appear to be an efficient use of resources.

70. Therefore, in order to ensure that the requests for vertical coordinates would stay relatively the same, it was appropriate for the Commission to put in place a mechanism that shares the costs of obtaining the vertical coordinates of underground facilities equally between the two entities. This reduces the potential cost impact on Bell Canada while providing a mechanism for Hamilton to obtain information that is truly necessary.

Conclusion

71. In light of the above, the Commission denies the Applicants' request for an oral hearing, and finds that they have failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2017-388. Accordingly, the Commission **denies** the application.

Secretary General

Related documents

- *Clause 13(b) of the Municipal Access Agreement between the City of Hamilton and Bell Canada regarding the vertical location of underground facilities*, Telecom Decision CRTC 2017-388, 27 October 2017
- *Clause 13(b) of the Municipal Access Agreement between the City of Hamilton and Bell Canada regarding the vertical location of underground facilities*, Telecom Notice of Consultation CRTC 2017-66, 10 March 2017
- *City of Hamilton – Terms and conditions of a Municipal Access Agreement with Bell Canada*, Telecom Decision CRTC 2016-51, 10 February 2016
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *MTS Allstream Inc. – Application regarding a Municipal Access Agreement with the City of Vancouver*, Telecom Regulatory Policy CRTC 2009-150, 19 March 2009
- *Application by the City of Baie-Comeau regarding the costs to relocate TELUS Communications Company's telecommunications facilities*, Telecom Decision CRTC 2008-91, 19 September 2008
- *Rogers Cable Communications Inc. – Part VII application seeking access to highways controlled by the Department of Transportation of the Province of New Brunswick on terms consistent with* Ledcor/Vancouver – Construction, operation and maintenance of transmission lines in Vancouver, *Decision CRTC 2001-23, 25 January 2001*, Telecom Decision CRTC 2007-8, 8 February 2007

- *Ledcor/Vancouver – Construction, operation and maintenance of transmission lines in Vancouver*, Decision CRTC 2001-23, 25 January 2001

Appendix to Telecom Decision CRTC 2018-277

Clause 13(b) of the MAA between Hamilton and Bell Canada

The locates provided by the Company to the Municipality for pre-design shall contain sufficient design information and survey detail as reasonably required by the Commissioner, such as line and elevation of the Equipment within the alignments.

If the Company is unable to provide either the line or elevation information within an agreed-upon time frame, the Municipality may invoice the Company for any costs reasonably incurred by the Municipality in determining the line or elevation of the Equipment within the alignments.

With respect to underground facilities, if the Commissioner finds that the locates provided by the Company to the Municipality for pre-design do not contain sufficient design information and survey detail, the Municipality may request further information on the location of these facilities, when such information is reasonably necessary. When a request is made for further information on the location of underground facilities, the Company and the Municipality are to proceed as follows:

- First, the Company and the Municipality are to discuss and try to resolve any potential design and/or construction conflicts.

- Should the matter not be resolved through discussions, the Company is to provide markups of drawings to indicate the location of its existing underground facilities in the area of the proposed project giving rise to the request for information on the location of underground facilities.

- As a last resort, if the prior methods are not sufficient to resolve the conflicts, the Company is to undertake field investigations to verify the location of these underground facilities.

    - The vertical coordinates are to be provided in the format chosen by the Municipality (such as depth of cover or metres above sea level) and within a level of accuracy agreed upon by the Municipality and the Company.

    - The Municipality and the Company are to each pay 50% of the costs associated with the field investigations.