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

Telecom Decision CRTC 2019-316

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City of Gatineau – Terms and conditions of a municipal access agreement with certain carriers

*The Commission **approves with changes** certain terms and conditions of a municipal access agreement (MAA) between the City of Gatineau (Gatineau) and Bell Canada, Cogeco Communications Inc., Rogers Communications Canada Inc., TELUS Communications Inc., and Videotron Ltd. (collectively, the Carriers).*

The MAA will govern the Carriers' use of Gatineau's municipal rights-of-way to provide modern telecommunications services that will benefit both residents and businesses.

Background

1. The Commission's powers under sections 42 to 44 of the *Telecommunications Act* (the Act) cover the settlement of disputes between a Canadian telecommunications common carrier or distribution undertaking[1] (hereafter, "carrier") and a municipality concerning the terms and conditions of access by the carrier to municipal rights-of-way (ROWs) for the purpose of constructing, maintaining, or operating transmission lines.

Application

2. The Commission received an application from the City of Gatineau (hereafter, the City or Gatineau), dated 13 April 2017, in which Gatineau requested approval of the terms and conditions of a proposed municipal access agreement (proposed MAA) with Bell Canada, Cogeco Communications Inc.,[2] Rogers Communications Canada Inc. (RCCI),[3] TELUS Communications Inc. (TCI)[4] and Videotron Ltd.[5] (collectively,

[1] As these terms are understood for the purpose of subsections 42(1) and 43(1) of the Act.

[2] In this proceeding, submissions were received from Cogeco Cable Inc. and Cogeco Connexion Inc. As of 14 January 2016, Cogeco Cable Inc. has been operating as Cogeco Communications inc.

[3] Previously, Rogers Communications Partnership (RCP). RCP ceased to exist on 1 January 2016. All of RCP's business activities, including its assets and liabilities, are now held by RCCI.

[4] In this proceeding, submissions were received from TELUS Communications Company (TCC). However, effective 1 October 2017, TCC's assets were legally transferred to TCI and TCC ceased to exist. For ease of reference, "TCI" is used in this decision.

[5] In this proceeding, submissions were received from Videotron G.P. However, effective 29 December 2017, all of Videotron G.P.'s assets and were transferred to Videotron Ltd., and Videotron G.P. ceased to exist. For ease of reference, "Videotron Ltd." is used in this decision.

the Carriers). Gatineau indicated that it had been in negotiations with the Carriers in the previous few years, but that some aspects still had not been agreed upon.

3. As part of this proceeding, which has been the subject of a few procedural twists and turns,[6] Gatineau and the Carriers (hereafter, the parties) were given an opportunity to submit arguments concerning the provisions in dispute of the proposed MAA. Over the course of these exchanges, the parties were able to reach an agreement on the wording of many provisions. The Commission is not required to make a determination concerning the provisions that the parties have agreed upon; it has to decide on the remaining unsettled issues.

Issues

4. Many issues have been raised on the record of this proceeding. In the following paragraphs, the Commission will address four issues:

    - Work requiring (or not requiring) a permit
    - Reimbursement for relocation costs
    - Reimbursement for bypass costs
    - Fees for issuing and renewing municipal approvals

5. The Commission's conclusions concerning the other terms and conditions that are still in dispute are set out in the Appendix to this decision.

6. As part of its analysis, the Commission generally took into account the principle of cost neutrality that was first established in Telecom Decision 2001-23 (the Ledcor/Vancouver decision). According to this principle, costs directly related to the presence of a carrier's infrastructure on municipal ROWs should be absorbed by the carrier, not by municipal taxpayers. However, the Commission has recognized in the past that, under specific circumstances, such as the relocation of a carrier's equipment at the request of the municipality, it is appropriate to depart from this principle in assigning responsibility for costs.

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[6] In particular, on 3 May 2017, the Carriers requested that the Commission stay the analysis of Gatineau's application until the Superior Court of Quebec ruled on the constitutionality of Gatineau's municipal bylaw number 718-2012. The Commission sent the parties a procedural letter dated 30 May 2017, in which it denied the stay request. On 16 June 2017, the Carriers filed a review and vary application concerning the 30 May 2017 procedural letter. The Commission denied the review and vary application in Telecom Decision 2018-30.

7. In addition, since the terms and conditions of the proposed MAA are largely based on the Model Municipal Access Agreement (Model MAA),[7] the Commission refers to provisions of the Model MAA in its amendments to some of the wording in the proposed MAA.

Work requiring (or not requiring) a permit

Positions of parties

8. Paragraph (a) of section 3.1 of the proposed MAA (which is consistent with the Model MAA and is not in dispute) stipulates the following:

> Subject to Section 3.2, Work Within the ROWs by the Company is subject to the authorization requirements of the Municipality as set out in Schedule B.

9. Schedule B of the proposed MAA lists work for which Gatineau requires permits or notices. According to the schedule, companies must obtain municipal consent and provide Gatineau with notice for the following three types of work when no excavation work is required:[8]

- installation of aerial plant (excluding aerial service drops);
- replacement of existing above-ground equipment without adding more plant or increasing the size of existing plant (pole replacements excluded); and
- pulling cable through an existing underground duct.

10. Gatineau noted that these three activities should be deemed to be examples of construction of transmission lines requiring municipal consent within the meaning of subsection 43(3) of the Act. For example, the addition of a fibre optic network in an existing underground duct is not routine work, since this entails the addition of a transmission line. Gatineau submitted that obtaining a permit or consent is required in these situations, because it has a right to be informed of the risks and costs associated with the presence of equipment, and because the value of the equipment may have to be considered should a relocation request be made.

11. Section 3.2 of the proposed MAA identifies routine work that companies may perform in the City for which no permit is required. This section is consistent with the corresponding section in the Model MAA, except for part of the text that Gatineau amended. Under these amendments (in relation to the Model MAA), when a carrier adds equipment, it must either obtain a permit from Gatineau (e.g. municipal consent)

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[7] The Model MAA was drafted by the CRTC Interconnection Steering Committee (CISC) working group and approved by the Commission in Telecom Decision 2013-618. It is a non-binding instrument designed to help parties reach mutually acceptable MAAs.

[8] The proposed MAA provides for the need to obtain a permit when excavation work is required.

or waive all compensation to which it may be entitled in the event of a potential relocation of the equipment upon Gatineau's request.

12. The Carriers opposed these amendments and submitted that Gatineau must pay the costs of its relocation requests even if equipment installed by a carrier has not received municipal consent. They submitted that the mere construction of a transmission line requires the consent of a municipality under subsection 43(3) of the Act and that they fail to see how the addition of a cable to an existing strand or underground duct could be deemed to be the construction of a transmission line.

13. The Carriers argued that the Act gives them the right to construct equipment and keep it in place and, once installed, the possibility to maintain and modify their equipment without obtaining municipal consent. In their view, it goes without saying that carriers modify their transmission lines very frequently.

14. The Carriers indicated that the Commission has recognized in the past that no consent is required when a construction activity planned by a carrier does not unduly interfere with public use and enjoyment of the site, as indicated in the Ledcor/Vancouver decision. They claimed that none of the three above-mentioned activities would interfere with public use and enjoyment of the site, since the activities do not require excavation work or completely interrupt road traffic. They are routine activities and work that the Carriers must perform without restraint in order to be able to operate their networks effectively.

15. The Carriers specified that working without restraint does not mean proceeding without informing Gatineau. They have agreed to obtain a road occupancy permit[9] should they want to install aerial plant (excluding aerial service drops) and to advise Gatineau if they replace above-ground equipment without adding more plant or significantly increasing the size of existing plant, as well as if they pull cable through an existing underground duct. The Carriers added that having been so advised, Gatineau could choose to inspect the equipment in question.

16. With respect to Schedule B of the proposed MAA, the Carriers also disagreed with replacing the expression "equipment that is significantly larger" with "equipment that is larger", and the expression "without significantly increasing the size of existing plant" with "without increasing the size of existing plant". They claimed that Gatineau's proposed wording would place them under obligation to obtain municipal consent for all work intended to replace above-ground equipment with larger equipment.

17. Gatineau submitted that it was deleting inaccurate, vague, and ambiguous terms that make it impossible to fully apply the provisions in question.

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[9] A road occupancy permit means a permit issued by a municipality authorizing a carrier to conduct work, including any activity that involves a deployment of its workforce, vehicles, or other equipment in a municipal ROW when performing the work.

18. The Carriers explained that these expressions are not inaccurate and that, rather, removing the adverb “significantly” in both instances alters their meaning.

Commission’s analysis and determinations

19. The Commission considers that the obligation to obtain a municipal permit should be tied to the Carriers’ obligation to prevent all interference with public use and enjoyment of the site.

20. In this context, in Telecom Decision 2007-100 (the Maple Ridge decision), the Commission determined that Shaw Cablesystems Limited could carry out routine work if there was no need to excavate or break the surface of any service corridor in the District of Maple Ridge, British Columbia, without applying for a municipal permit. The company also had to notify the municipality if any routine work involved the replacement of surface equipment with equipment that was more than 25% larger than the equipment it was replacing.

21. With respect to the three activities in Schedule B for which the obligation to obtain a permit (or a waiver of any compensation to which a carrier may be entitled in the event of a potential relocation upon Gatineau’s request) is being challenged, according to the proposed MAA, the installation of aerial plant (excluding aerial service drops) seems to require both written consent from the City, with or without conditions, and a road occupancy permit. The Carriers were not opposed to a requirement for a road occupancy permit, in keeping with the Model MAA. The Commission considers that the obligation to obtain a road occupancy permit is sufficient for this work and that the process of obtaining such a permit would constitute notification to Gatineau of the work.

22. With respect to the two other activities, that is, the replacement of above-ground equipment and pulling cable through an existing underground duct, the proposed MAA provides that either municipal consent or merely a notice may be required, depending on whether the carrier waives all compensation to which it may be entitled in the event of a potential relocation of the equipment upon Gatineau’s request. The Commission considers that these two activities do not usually interfere unduly with public use and enjoyment of sites, since they do not require excavation work or a complete interruption of road traffic. Accordingly, a notice is sufficient for these activities.

23. As confirmed by Gatineau in this proceeding, requests to relocate telecommunications equipment are relatively rare. In addition, it is reasonable to presume that, in most cases where a carrier performs work fitting the description of the three activities in question, the size of plant would not be increased to such an extent that it would have a major impact on the costs of a potential future relocation.

24. Administrative procedures for obtaining a municipal permit require time and money on the part of the Carriers. Consequently, the terms and conditions that Gatineau would like to impose in certain cases involving the addition of equipment could delay

routine work required to maintain and operate telecommunications networks effectively or deprive the Carriers from compensation by Gatineau for the relocation of equipment requested by the City. Gatineau should not use its permit requirements to refuse work needed to provide telecommunications services for its residents for the sole purpose of avoiding potential relocation costs. In this sense, the Carriers' desire to notify Gatineau of this work, enabling the City to obtain the necessary information from the Carriers before submitting a relocation request, seems to help alleviate the City's concerns.

25. The Commission considers that Gatineau's concerns do not warrant imposing a comprehensive obligation on the Carriers to obtain municipal consent each time they need to carry out work that fits the description of the three activities in question. Likewise, the Carriers should not have to choose between obtaining municipal consent each time and waiving the compensation to which they may be entitled in the event of a potential relocation of equipment upon Gatineau's request.

26. In the same vein, with regard to Gatineau's proposed wording related to replacing above-ground equipment and increasing the size of plant, these activities should not unduly interfere with public use and enjoyment of the site. Further, in the Maple Ridge decision, the Commission determined that, even in the case of routine work requiring the replacement of above-ground equipment with equipment that is at least 25% larger than the equipment it is replacing, notification to Maple Ridge was sufficient.

27. Accordingly, the Commission determines that the wording of Schedule B of the proposed MAA must include the expressions "the replacement of existing above-ground equipment with equipment that is significantly larger" and "the replacement of above-ground equipment without adding more plant or significantly increasing the size of existing plant (pole replacements excluded)".

28. In light of the above, the Commission retains the wording proposed by the Carriers for section 3.2 of the proposed MAA, as follows:

> **No Permits for routine Work.** Notwithstanding Section 3.1, and as indicated in Schedule B, the Company may, with advance notice as required by the Municipality's traffic management policies, and without first obtaining a Permit:
>
> (a) utilize existing ducts or structures of the Equipment;
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> (b) carry out routine maintenance and field testing to its Equipment; and
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> (c) install and repair Service Drops;
>
> provided that in no case shall the Company break up or otherwise disturb the physical surface of the ROW without the Municipality's prior written consent.

29. The Commission **approves** the following for the sections in dispute in Schedule B of the proposed MAA:

    - Keep the adverb “significantly” in the following wording: “the replacement of existing above-ground equipment with equipment that is significantly larger”;

    - The Carriers are required to provide notification only, by keeping the adverb “significantly” in the following wording: “the replacement of above-ground equipment without adding more plant or significantly increasing the size of existing plant (pole replacements excluded)”;

    - The Carriers are required to provide notification only with respect to the following wording: “pulling cable through an existing underground duct” when the work does not involve breaking up or otherwise disturbing the physical surface of municipal ROWs;

    - The Carriers are required to obtain road occupancy permits only for “the installation of aerial plant (excluding aerial service drops)”.

Reimbursement for relocation costs

Positions of parties

30. In section 1 of Schedule C of the proposed MAA, Gatineau proposed a 10-year sliding scale (based on the number of years since the asset was installed) for reimbursing costs by the City related to the relocation of the Carriers’ equipment when the City requests the relocation as part of a municipal project.

31. The Carriers indicated that they should pay a fair share of relocation costs when moving equipment is the most effective way of achieving a legitimate municipal objective aside from beautification, aesthetics, or any other similar goal. However, they pointed out that with the sliding scale proposed by Gatineau, a carrier’s right to be compensated for relocating its equipment is time-limited. When sliding scales come to an end, municipalities no longer feel the need to consider alternate solutions that would reduce costs or avoid having to request a relocation.

32. The Carriers argued that regardless of the age of the assets in question, the relocation of telecommunications equipment is a complex, costly, and labour-intensive operation (especially in the case of next-generation networks such as fibre optic networks). As a result, it is crucial for the Carriers that such relocations be imposed only when absolutely necessary.

33. According to the Carriers, a model for allocating responsibility for payment of relocation costs should not only recognize the high costs they must bear when they are required to move their equipment, but also encourage municipalities to always give preference to solutions other than relocation where possible.

34. The Carriers proposed a 50/60 model for allocating responsibility for payment of relocation costs, i.e. Gatineau reimburses 50% of the costs for relocating installed structures and equipment, and 60% of related labour and engineering costs, regardless of the age of the equipment in question.

35. The Carriers indicated that such a model, applicable to all relocation requests, would be fair for both parties and enhance forecasting in project planning. According to the Carriers, the sliding scale approach may result in a heavy administrative burden, and their proposal would eliminate the risk of disputes related to both the age of the equipment affected by a relocation and costing based on the age of that equipment.

36. The Carriers argued that their proposed 50/60 model does not contradict previous Commission decisions, including the Ledcor/Vancouver decision, since in that decision, the Commission did not impose any criteria concerning the allocation of relocation costs; the parties were free to negotiate or adopt a model that was easy to manage. The Carriers indicated that other municipalities, without giving examples, have agreed with them to adopt a cost allocation model based on fixed percentages that is identical or similar to the 50/60 model.

37. According to Gatineau, the sliding scale approach is customary, has been retained by the Commission in previous decisions and is also used in many MAAs entered into in Canada. Gatineau argued that sliding scales do not give the Carriers ownership rights but rather a right to limited access to municipal ROWs, and, further, that they must relocate their equipment when required to do so.

38. Gatineau noted that the Carriers' proposed model is new and seems to have never been submitted to the Commission. Gatineau added that the model is inappropriate because it is unfair and does not comply with the Commission's criteria, such as the cost neutrality principle. If the proposed model were adopted, this principle would never be adhered to.

39. Gatineau submitted figures demonstrating the evolution of its financial risk with respect to sharing relocation costs. It argued that according to the Carriers' proposed model, its financial risk would increase over the years, regardless of whether the costs associated with the equipment were amortized, given that the age of the equipment would no longer be a consideration for an increasingly larger asset. According to Gatineau, the Commission has nevertheless recognized that the age of the equipment must be taken into account, and that the cost neutrality principle for municipalities should eventually be adhered to.

40. According to the Carriers, the figures submitted by Gatineau are both simplistic and vague; thus, they completely lack probative value. In the Carriers' view, the hypothesis that the figures attempt to support (that reimbursing a carrier beyond a certain period of time would lead to unjust enrichment) is flawed.

Commission's analysis and determinations

41. As indicated above, the Commission first established the cost neutrality principle in the Ledcor/Vancouver decision, and it applied that principle again in subsequent decisions. However, in those decisions, the Commission recognized that, in some circumstances, departing from this principle is appropriate when assigning responsibility for costs.

42. When a municipality requests that a carrier relocate its equipment as part of a municipal project, the Commission determined in the Ledcor/Vancouver decision that it would generally consider it appropriate to take into account the following factors in allocating the responsibility for costs between the carrier and the municipality:

    - the party that requested the relocation (i.e. the municipality, the carrier, or a third party);

    - the reason for the requested relocation (e.g. safety reasons, aesthetic reasons, or to better serve customers); and

    - when the request was made in relation to the date of construction (e.g. whether the request was made a considerable length of time after the original construction or very shortly after that time).

43. Use of the sliding scale approach represents a departure from the cost neutrality principle in the initial years, when the municipality is responsible for all costs stemming from the relocation of telecommunications equipment. The reasoning is that, in its planning, the municipality should know whether the installation of infrastructure it authorizes will need to be relocated in the near future. Given that every year it becomes increasingly difficult for the municipality to predict whether a relocation will be required, the sliding scale approach reduces the municipality's level of responsibility over time. After an established number of years, the municipality is no longer responsible for relocation costs, hence the return of the application of the cost neutrality principle for the municipality.

44. Gatineau indicated that if the Commission applied the 50/60 model proposed by the Carriers, the cost neutrality principle would not be adhered to, since Gatineau would remain responsible for a large part of the costs regardless of the length of time that had passed since the equipment was installed.

45. The Commission considers that the sliding scale approach, as applied in previous decisions, is appropriate in the case of the proposed MAA, since it provides for a return to the cost neutrality principle after a given period of time, for both Gatineau and taxpayers.

46. As indicated above, the Carriers indicated that the sliding scale approach can result in a heavy administrative burden. However, they failed to demonstrate the magnitude of these difficulties, given that this approach has been used for many years under a number of other agreements.

47. With respect to the term of the sliding scale, the Commission considers that it is appropriate to adopt the same duration of 16 years that it approved in Telecom Decision 2016-51 (the Hamilton decision) and just recently in Telecom Decision 2019-19 concerning the City of Calgary. According to this scale, Gatineau will share relocation costs for a longer period of time, and the Carriers will be able to recover costs over a longer period of time.

48. In the Hamilton decision, the Commission addressed the issue of the duration of the sliding scale, taking into account the shortest length of the useful life of Bell Canada's assets, in the context of modern telecommunications networks. The Commission considered that a sliding scale over 16 years more accurately reflected the mutual benefits derived from the partnership between the carrier and the municipality, without placing undue limitations on either party in planning future investments. The Commission considers that the same conditions apply in the present case.

49. Accordingly, the Commission determines that section 1 of Schedule C should read as follows:

> In the case of a requirement by a municipality to relocate a carrier's equipment, the following schedule is to be used to allocate the costs directly attributable to such relocation. These costs include, among others, those related to depreciation, betterment, and recovery.

Year(s) after installation of the asset	Proportion of relocation costs to be paid by the municipality
1	100%
2	100%
3	100%
4	90%
5	80%
6	70%
7	65%
8	60%
9	55%
10	45%
11	40%

12	35%
13	30%
14	20%
15	10%
16	5%
17 onwards	0%

If notice of relocation is given after the end of the 16th year since the equipment in question was installed, the carrier shall be solely responsible for all equipment relocation costs.

Reimbursement for bypass costs

Positions of parties

50. Section 7.4 of the proposed MAA stipulates the following:

> **Bypass costs.** When the municipality can avoid relocating the carrier's equipment during municipal work but must bypass the carrier's equipment, the carrier must reimburse the municipality for the bypass costs, up to the amount of relocation costs that it would have had to reimburse in accordance with section 7.3.[10]

51. Gatineau argued that this clause is part of its right to recover costs directly related to the presence of the Carriers' telecommunications equipment on municipal ROWs.

52. The Carriers opposed the inclusion of this provision. In their view, it goes against the right that the Act affords them to access, occupy, and maintain their equipment on municipal ROWs. Specifically, they indicated that subsection 43(2) of the Act grants them the right to enter on and break up any highway or other public place for the purpose of constructing, maintaining, or operating their transmission lines, as well as to undertake work, including digging, and to remain there for as long as is necessary for that purpose. The only limitation is that a carrier must not unduly interfere with the public use and enjoyment of the highway or public place.

53. According to the Carriers, this right is not subject to municipal consent; it is dominant and restricts the property rights of municipalities on highways and other public places. The Carriers argued that municipalities should not be reimbursed for costs they incur because of the presence of telecommunications facilities on municipal ROWs. Moreover, municipalities are already indirectly reimbursed for these costs due to the benefits derived from the presence of those facilities.

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[10] Section 7.3 concerns the reimbursement by the municipality of relocation costs incurred by the carrier according to the principles, methods, and procedures established in Schedule C of the proposed MAA.

54. Gatineau indicated that even if the Carriers recognize that they must assume their fair share of responsibility for relocation costs, they refuse to accept their fair share of responsibility for the costs of bypassing their equipment if this could be an alternate solution to relocation.

55. Gatineau referred to past Commission decisions and argued that the presence of the Carriers' telecommunications equipment on municipal ROWs should not cost the City anything, and that if the City incurs additional costs stemming from the need to bypass the equipment during legitimate municipal work, it has the right to recover the costs as causal costs. It also noted that section 7.4 of the proposed MAA limits additional costs that could be incurred by the Carriers to the relocation costs they should incur on the basis of a 10-year sliding scale.

Commission's analysis and determinations

56. In accordance with subsection 43(2) of the Act, municipalities are required to deal with the presence of telecommunications equipment on municipal ROWs, which afford many benefits to local residents and businesses, as well as to the municipal government itself.

57. This mutually beneficial cohabitation requires that when a municipal project comes into conflict with the legitimate location of telecommunications equipment, alternate solutions to carriers' obligation to relocate their equipment should always be considered. Consequently, the requirement to relocate equipment, which often results in substantial costs for the carrier, should be imposed only in rare cases.

58. If the Commission accepts Gatineau's proposal to impose bypass costs on the Carriers, this would not encourage the City to plan its work in such a manner as to reduce costs for all parties involved. The City could thus obtain compensation each time it encounters the Carriers' facilities as part of a municipal project (depending on the age of the equipment), which, at the very least, would give the City little incentive to seek alternate or less costly solutions and could lead to a greater number of instances in which the Carriers would be called upon to incur substantial equipment relocation or bypass costs.

59. As a result, the imperative that has led the Commission in the past to find that carriers should share in or pay in full the costs of relocating their equipment at a city's request as part of a municipal project does not apply when there are one or more alternative solutions and when relocation can be avoided (including when the municipality plans to bypass the carrier's equipment).

60. Accordingly, the Commission determines that section 7.4 of the proposed MAA should be eliminated.

Fees for issuing and renewing municipal approvals

Positions of parties

61. In its submissions, Gatineau proposed new fees for issuing and renewing municipal approvals (sections 1 and 2 of Schedule A of the proposed MAA) for 2018 that are higher than those proposed for 2017 as part of its application. Furthermore, section 4 of Schedule A of the proposed MAA provides for an annual adjustment of fees on 1 January each year based on the consumer price index (CPI) established by Statistics Canada for the province of Quebec in the previous 12 months.

62. In support of these new proposed fees for 2018, Gatineau submitted financial data based on the methodology described in a study conducted in 2011 by KPMG upon request by the Union des municipalités du Québec (hereafter, the KPMG study).

63. The Carriers indicated that the KPMG study cannot be used to justify Gatineau's proposed new fees for 2018, since that document is simply a description of a methodological tool for assessing and determining municipalities' causal costs. They added that they had no information regarding the source and reliability of the financial data submitted by Gatineau and that they were thus unable to assess its probative value. Moreover, with regard to the fees that Gatineau proposed in its application for work carried out between 15 December and 15 April, the Carriers indicated they had difficulty seeing how an analysis of work carried out during the winter warranted the addition of fees.

64. The Carriers listed several problems with Gatineau's proposed fees, such as fees that increase faster than inflation, values attributed to certain costs including indirect costs, and the absence of a factor to take into account productivity gains from which Gatineau should have benefited over the years.

65. The Carriers added that inspections of their work could reveal problems of which the City might not otherwise become aware, and that this should be taken into account in its calculations.

66. The Carriers argued that the Commission should ensure that the financial data submitted by Gatineau stems from a formal cost study based on measurements of time and movement. They thus asked the Commission to take the following measures:

    - direct Gatineau to submit or, if applicable, conduct a formal cost study establishing the validity of the financial data it submitted; and
    - change the procedure for this proceeding to enable the Carriers to analyze and comment on the cost study that Gatineau will submit.

67. Gatineau explained that the amount of $385 for ducts that are 20 metres long or less is based on a municipal bylaw related to the pricing of various municipal services that applies to all businesses it deals with, except telecommunications carriers and energy utilities. Gatineau indicated that the additional fees for work between 15 December

2017 and 15 April 2018 were for excavation work and were based on the fact that, during that period, pavement work was temporary, leading to a subsequent inspection and numerous complaints from residents.

68. Gatineau asked the Commission to refuse the Carriers' request to obtain a cost study. Gatineau specified that the calculation methodology used in the KPMG study was in keeping with the fundamental concepts recognized by the Commission, such as those in Bell Aliant Regional Communications, Limited Partnership and Bell Canada's 2009 Regulatory Economic Studies Manual.

69. Gatineau contested the problems listed by the Carriers. It argued that its expenses generally increase faster than inflation and that the increase in its fees was related to its higher expenses, not necessarily to inflation.

70. Gatineau added that technological improvements (and productivity gains) involve investments whose costs must be taken into account and that the cost of a permit generally increases over time despite technological advancements. In addition, Gatineau noted that in the Ledcor/Vancouver decision and in Telecom Regulatory Policy 2009-150 concerning MTS Allstream[11] and the City of Vancouver, the Commission approved fees that were, for the most part, greater than those that Gatineau had proposed in its application.

Commission's analysis and determinations

71. For costs to comply with Phase II principles, they must be prospective (i.e. based on the future, since sunk costs are not included) and incremental (i.e. only costs that change following a project are taken into account). These prospective, incremental costs are also known as causal costs.

72. The Commission notes that the KPMG study on causal costs was submitted by Gatineau not to justify the amounts requested, but rather to demonstrate that the use of that methodology validated the fees that the City was proposing.

73. With regard to the additional fees in winter, the KPMG study notes that authorization and inspection efforts are greater in the winter. Typically, according to the study, winter excavation means that carriers must use temporary pavement in the winter and return in the spring to lay down permanent pavement. As a result, a municipal technician needs to inspect the work twice.

74. Regarding the Carriers' argument concerning productivity gains stemming from technological improvements in terms of office automation, it is very difficult to quantify the impact, which may be negligible. It is also unclear to what extent municipalities' overall costs are influenced by these improvements, since, in the process for assessing requests for municipal approval, a large share of the relevant fees are for urban planning or technical support expertise, inspections, etc. A more in-depth study would be needed to clearly understand the impact, and the Commission considers that this is not warranted in this proceeding.

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[11] Now Bell MTS, a division of Bell Canada.

75. It is also difficult to quantify how inspections of the Carriers' work could benefit Gatineau to such a significant extent as to help reduce the cost of issuing municipal approvals. The Carriers did not submit any concrete examples in support of this argument.

76. The Commission considers that the process for more accurately calculating the causal costs associated with Gatineau issuing a municipal approval would be complex and onerous, and would require access to much more detailed information. In this proceeding, Gatineau submitted appropriate responses to the Carriers' questions regarding the calculation methodology and financial data it used. After reviewing all the information, the Commission is of the view that Gatineau submitted reasonable costs and that such a process is not warranted in this case.

77. In addition, Gatineau's costs proposal is comparable with other costs that the Commission has approved in previous decisions going back many years. The Commission therefore considers that Gatineau should not have to submit additional financial data and/or a cost study.

78. Accordingly, the Commission **approves** the rate structure proposed by Gatineau with regard to fees for issuing and renewing municipal approvals.

79. The Commission **denies** the Carriers' request to direct Gatineau to submit a cost study as part of this proceeding.

Conclusion

80. In light of the above, the Commission **approves, subject to the modifications set out in this decision,** Gatineau's proposed MAA.

81. Gatineau and the Carriers are free to continue negotiating should they wish to depart from the MAA as approved by the Commission. Any modifications thus agreed upon by the parties would not require Commission approval.

2006 and 2019 Policy Directions

82. On 17 June 2019, the Governor in Council registered an *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation* (the 2019 Policy Direction). The 2019 Policy Direction, which took effect on the date of its registration, complements the 2006 Policy Direction[12] and applies to this proceeding. The Commission notes that it is relying on its powers under section 44 of the Act. This provision, when read in conjunction with section 43, requires that the Commission, in addition to considering the policy objectives set out in section 7 of the Act, consider broader policy concerns. Furthermore, the authority provided to the Commission under these provisions is restricted to resolving matters in dispute

[12] *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

between specific persons. As such, the Commission's intervention in the present proceeding indicates an inability to rely on market forces in order to further the implementation of the section 7 policy objectives while also having regard to the broader policy concerns arising in the context of access to municipal ROWs.

83. Accordingly, the Commission considers that its conclusions in this decision serve to further the achievement of the policy objectives set out in paragraphs 7(a), (b), (c), (e), (f), and (h) of the Act.[13] Consistent with subparagraph 1(a)(ii) of the 2006 Policy Direction, in pronouncing upon only those terms and conditions of access that were in dispute between the parties, the Commission relied on regulatory measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.

84. With specific regard to the 2019 Policy Direction, the nature of this proceeding and statutory framework is such that the determinations are not directly targeted at promoting competition, affordability, consumer interests, and innovation. However, by ensuring that carriers can access City of Gatineau ROWs under established terms and conditions that balance the City's needs to manage its ROWs and limit inconvenience to its population resulting from carriers' activities with carriers' need to ensure timely, ongoing, and cost-effective access to these ROWs, the Commission's determinations contribute to the promotion of competition and consumer interests.

85. Specifically, by being able to access municipal ROWs under these conditions, the Carriers will benefit from a more level competitive playing field. By resolving the disputed terms and conditions of access among these entities, the Commission has helped promote the Carriers' ability to complete and upgrade their respective networks over time, thereby promoting the ability to innovate in service delivery and service innovation. All of these matters contribute to consumer interests.

86. In light of all the above, the Commission considers that its determinations in this decision are consistent with the applicable Governor in Council directions.

Secretary General

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[13] The cited policy objectives of the Act are 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; (e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada; (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and (h) to respond to the economic and social requirements of users of telecommunications services.

Related documents

- *City of Calgary – Application concerning a Municipal Rights-of-Way Bylaw and a proposed Municipal Consent and Access Agreement*, Telecom Decision CRTC 2019-19, 25 January 2019

- *City of Hamilton – Terms and conditions of a Municipal Access Agreement with Bell Canada*, Telecom Decision CRTC 2016-51, 10 February 2016

- *CISC Model Municipal Access Working Group – Report on a Model Municipal Access Agreement*, Telecom Decision CRTC 2013-618, 21 November 2013

- *MTS Allstream Inc. – Application regarding a Municipal Access Agreement with the City of Vancouver*, Telecom Regulatory Policy CRTC 2009-150, 19 March 2009

- *Shaw Cablesystems Limited's request for access to highways and other public places within the District of Maple Ridge on terms and conditions in accordance with Decision 2001-23*, Telecom Decision CRTC 2007-100, 25 October 2007

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

Appendix to Telecom Decision CRTC 2019-316

Commission's determinations on the remaining disputed terms and conditions

Section no. of the proposed MAA	Section wording as determined by the Commission	Commission rationale
2.4	*Keep the wording proposed by Gatineau in the proposed MAA.*	Gatineau's proposed wording is consistent with the wording unanimously agreed upon by the members of the CRTC Interconnection Steering Committee in the Model MAA. To the extent that the eligible access right granted to the Carriers under the Act may constitute an "ownership right", this right would be granted by the Act and would not stem from the MAA.
4.2	*Keep the wording proposed by Gatineau in the proposed MAA, with the following changes (in bold italics):* **4.2 Stoppage of Work** The Municipality may order the stoppage of the Work for any *bona fide* ***and valid*** municipal purpose, for any cause relating to public health and safety, for special events, for any circumstances beyond its control, ***or*** for any ***other*** reasonable reason ***having regard*** to the public interest ***related to having*** access to communications services, including 9-1-1 access services. In such circumstances, the Municipality shall provide the Company with a verbal order and the reasons for stopping the Work, and the Company shall cease the Work immediately.	The wording proposed by Gatineau is consistent with what the Commission approved in the Hamilton decision. It is not appropriate to restrict application of this section solely to emergencies or public health and safety situations, as proposed by the Carriers. As amended, the section will ensure that (i) Gatineau can issue work stoppage orders when necessary, notably to ensure public safety, and (ii) the reasons supporting the issuance of such an order are for a valid municipal purpose and take into account the public interest in having continuous access to communications services, including access to 9-1-1 services. Gatineau will not be inclined to issue work stoppage orders on baseless grounds, since these orders would hinder public services, which could (i) lead to a loss of productivity or discontent, (ii) subject the public to a potential hazard, or (iii) with respect to projects that are already under way, congest highways for long periods.

Section no. of the proposed MAA	Section wording as determined by the Commission	Commission rationale
	Within two (2) business days of the verbal order to stop the Work, the Municipality shall provide the Company with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, the Municipality shall advise the Company immediately that it can commence the Work.	
4.8	*Keep the wording proposed by Gatineau in the proposed MAA.*	Gatineau proposed the same wording as that approved by the Commission in the Hamilton decision (section 27(f) of the MAA proposed by the City of Hamilton). The Carriers indicated that their and Gatineau's wording would both lead to the same outcome, but that their wording is clearer. Gatineau's wording requires, among other things, that the City be reasonably flexible if equipment is installed outside the location approved by the City but within a reasonable margin of error such that there is no material impact on the City (in other words, the margin of error does not require relocation of the equipment). Gatineau is simply specifying that if the City asks for equipment to be relocated, or if the parties encounter other circumstances leading to a change in highway conditions (e.g. when the Carriers' underground equipment moves as a result of work carried out by the City nearby), the parties must act reasonably in allocating responsibility for the costs of relocating the equipment. Consequently, Gatineau's proposed wording addresses the Carriers' concerns and is reasonable.

6.3	*Keep the wording proposed by the Carriers, amended to add an obligation for the parties to be reasonable when the conditions of the municipal ROWs have changed, similar to the wording in section 4.8, as follows (changes are in bold italics):* **6.3 Inaccurate Locates** Where the Company's Locates do not accurately correspond with the location of the Equipment and, as a result, the Municipality is unable to install its facilities within the municipal ROWs in the manner it expected based on the Locates provided by the Company (the "Error"), the Company shall pay the Municipality the direct costs stemming from the Error. An Inaccurate Locate resulting from equipment relocated due to ground movement stemming from, among other things, weather conditions or work or activities carried out by a third party or the Municipality is not an Error. In the event of a disagreement as to the existence of an Error, the parties agree to work together to determine whether or not the Error stems from ground movement or work or activities carried out by third parties or the Municipality. ***If it is determined that the conditions of the municipal right-of-way have changed, the parties agree to be reasonable, including with respect to the allocation of direct costs stemming from the change.***	The specifications added by the Carriers provide examples of what may not constitute an inaccurate locate for which they are responsible. Consequently, these specifications are legitimate. According to the cost causality principle, costs incurred by the City related to an inaccurate locate and stemming from circumstances beyond the Carriers' control (e.g. ground movement or activities by a third party) are attributable to (initially) both the presence of the Carriers' equipment in the municipal ROW and (subsequently) external factors beyond the Carriers' control.

Section no. of the proposed MAA	Section wording as determined by the Commission	Commission rationale
7.5	*Keep the revised wording proposed by Gatineau.*	Although there is no clear difference between the French terms “déplacement” and “relocalisation”, both terms are used in the French version of the proposed MAA, and Gatineau is of the view that this definition could help to avoid potential disputes. Since both terms are used interchangeably in section 1 of Schedule C of the French version of the proposed MAA, including this definition will clarify that both terms have the same meaning.
Schedule C, section 3, Beautification	*Keep only the first paragraph proposed by Gatineau in the proposed MAA, as follows:* **Schedule C: 3. Beautification** Notwithstanding subsections 1 and 2, the Municipality shall be solely responsible for paying all costs related to equipment relocation if the relocation is for a beautification or aesthetic purpose. These costs include depreciation, betterment, and salvage costs.	The Commission has not defined beautification or received dispute settlement requests about this issue. Furthermore, the members of the CRTC Interconnection Steering Committee were unable to reach a consensus on this issue in the Model MAA. In many cases, it is not the nature of the work but, rather, the reason for the work that will be used to determine whether the project is for a beautification or aesthetic purpose or not. Accordingly, it would not be appropriate for the Commission to decide in advance and without knowing the specific context of such projects whether they fall under the category of beautification or not, given the many work projects and the subjective nature of the definition of this work. This section must therefore be negotiated by the parties. If they are unable to reach a consensus, they may continue to resort to the dispute settlement mechanism set out in the proposed MAA.