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

Telecom Decision CRTC 2020-61

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City of Terrebonne – Application regarding certain terms and conditions of a draft 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 Terrebonne (Terrebonne) 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 Terrebonne'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, a carrier) and a municipality concerning the terms and conditions of access by the carrier to municipal rights-of-way for the purpose of constructing, maintaining, or operating transmission lines.

2. In recent years, the City of Terrebonne (the City, or Terrebonne) has negotiated, on a case-by-case basis, the conditions applicable to the occupation of public rights-of-way in its territory with Bell Canada, Cogeco Communications Inc.,[2] Rogers Communications Canada Inc. (RCCI),[3] TELUS Communications Inc. (TCI),[4] and Videotron Ltd.[5] (collectively, the Carriers). These conditions would eventually be included in a municipal access agreement (MAA) between the parties. However, certain elements were not included in the agreement in principle.

[1] As these terms are understood for the purposes 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 TELUS Communications Inc. (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 operations were transferred to Videotron Ltd., and Videotron G.P. was subsequently dissolved. For ease of reference, "Videotron Ltd." is used in this decision.

3. On 12 May 2017, the Commission received an application by Terrebonne in which the City requested approval of certain terms and conditions of an MAA that it wants to enter into with the Carriers. The file was subsequently suspended several times at Terrebonne's request and with the consent of the Carriers, because of negotiations that were taking place between the parties.

Application

4. On 6 November 2018, the file was reactivated at Terrebonne's request. Terrebonne stated that it and the Carriers had agreed to request the reactivation of the file and were submitting only those clauses that remained in dispute, to be settled by the Commission.

5. The Commission is not required to make a determination concerning the provisions that the parties have agreed upon; rather, it has to decide on the remaining unsettled issues. As of 12 May 2017, the parties were able to reach an agreement over certain provisions. However, the following clauses remain in dispute:[6]

    - Section 3, subsection 3.3 – Submission of plans
    - Section 3, subsection 3.4 – Amendments when issuing municipal consent
    - Section 3, subsection 3.5 – Temporary installations
    - Section 4, subsection 4.7 – As-built drawings
    - Section 5, subsection 5.5 – Repairs carried out by the Municipality
    - Section 7, subsection 7.4 – Bypass costs
    - Section 7, subsection 7.5 – Relocation
    - Section 11, subsection 11.2 – Municipality not responsible
    - Schedule A, section 1 – Fees for issuing and amending municipal consents
    - Schedule A, section 2 – Pavement degradation costs
    - Schedule C, section 1 – Reimbursement of relocation costs
    - Schedule C, section 2 – Equipment affected by the Municipality's Capital Works Plan
    - Schedule C, section 3 – Beautification

[6] Parties submitted documents in French. For ease of reference, translations of the proposed clauses are provided.

Issues

6. Many issues have been raised on the record of this proceeding. In this decision, the Commission will address the following issues:

    - Clauses specific to this decision;
    - Clauses also addressed in Telecom Decision 2019-316.

Clauses specific to this decision

Section 3, subsection 3.3 – Submission of plans

Positions of parties

7. Terrebonne proposed the following wording for subsection 3.3:

> The Company must, when municipal consent is required by this Agreement, submit the following documents to the Municipal Engineer:
>
> (a) construction plans of the proposed work, showing the locations of the existing equipment and facilities and proposed changes, as well as the boundaries of the municipal area in which the work will take place;
>
> (b) all other relevant plans, drawings and other information as may help the Municipal Engineer for the purposes of issuing municipal consent; and
>
> (c) all plans depicting the vertical coordinates (Z value) of the new underground facilities (metres above sea level).

8. The Carriers, however, proposed the following:

> The Company must, when municipal consent is required by this Agreement, submit the following documents to the Municipal Engineer:
>
> (a) construction plans of the proposed work, showing the locations of the existing equipment and other facilities, the proposed changes, and the boundaries of the municipal area in which the work will take place;
>
> (b) all other relevant plans, drawings, and other information that the Municipal Engineer may reasonably consider for the purposes of issuing municipal consent; and
>
> (c) any plans depicting the vertical coordinates (Z value) of the new underground facilities, expressed as metres below ground level.

9. Terrebonne stated that the increased number and the complexity of underground facilities in public rights-of-way requires that municipalities learn more about the equipment installed in their public right-of-way sub-soil. The City added that expressing vertical coordinates for existing equipment relative to sea level is very useful when identifying the installation

location of underground facilities and that, in an urban context like that of Terrebonne, vertical coordinates must systematically be expressed relative to sea level for new underground facilities.

10. The Carriers indicated that they are not opposed to submitting plans in support of municipal consent, as required by this agreement. However, they disputed the requirement that the plans indicate vertical coordinates relative to sea level (as requested by the City) rather than ground level.

11. The Carriers also argued that, as stated in Telecom Decision 2017-388, the fees associated with expressing vertical coordinates relative to sea level are much higher than those for expressing vertical coordinates relative to ground level.

12. According to the Carriers, the clause in question covers the rights and obligations of the parties upon submission of a request for consent. At that stage, unless the situation is urgent, work has not begun. Only the proposed depth of the equipment would therefore be useful in analyzing the plans, since a number of circumstances could arise that would slightly change the final placement. Vertical coordinates expressed relative to ground level are therefore more than sufficient to enable the City to analyze the plans submitted in order to coordinate interventions based on current work.

13. The Carriers added that if the City believes that in some cases it is necessary to receive plans with coordinates expressed relative to sea level, the current MAA should at the very least propose an escalation process to enable the parties to determine the City's true needs. As a last resort, if absolutely necessary, the City should cover at least 50% of the fees required to obtain the Z value.

Commission's analysis and determinations

14. Terrebonne argued that it requires measurement relative to sea level in subsection 3.3 of the agreement project in order to learn more about the equipment installed in public right-of-way sub-soil. However, it did not indicate why a measurement relative to sea level, rather than ground level, was necessary to assess a request for municipal consent.

15. Similarly, another clause in the draft agreement that is in dispute, subsection 4.7, includes the company's obligations and responsibilities to supply, after work is completed, as-built drawings for infrastructure work or underground equipment that include the facilities' vertical data. The relevant section indicates that the plans will facilitate the municipal engineer's planning tasks and the issuing of future municipal consents.

16. Furthermore, the parties agree that a number of circumstances can arise after municipal consent is issued, and that such circumstances could result in slight changes to the final placement of underground equipment.

17. In a letter dated 27 May 2019, Commission staff asked Terrebonne to provide additional information about the vertical coordinates of underground facilities. Terrebonne's replies to staff's questions stated that the City always asks for vertical coordinates expressed relative to sea level for projects involving underground work, but never receives this information from

the Carriers or other contractors. Instead, Terrebonne usually receives this information relative to ground level.

18. However, Terrebonne stated that it has always obtained the coordinates expressed relative to sea level for major municipal work carried out by its engineering and special projects department, upon installation of the equipment and at its own cost. There have been approximately a dozen projects per year in the last three years. Terrebonne indicated that during those three years, approximately 100 small projects per year were carried out by other city departments and involved underground work. Terrebonne was not, however, able to specify for exactly how many projects it had asked for vertical data for underground facilities, nor for how many it had obtained such data.

19. Terrebonne did not demonstrate that it obtained the vertical coordinates of underground facilities for all of its own underground projects. Accordingly, Terrebonne also did not demonstrate that it obtained such measurement relative to sea level in every case. Terrebonne thus failed to demonstrate that it had obtained vertical coordinates for underground facilities expressed relative to sea level for its own projects that require underground work, with the exception of major municipal projects. For those projects, the coordinates were not obtained during the planning stage of the work. Therefore, the Commission notes that vertical coordinates expressed relative to sea level rather than ground level do not seem to be necessary for the purpose of assessing requests for municipal consent.

20. The Carriers further argued that the cost of obtaining vertical coordinates relative to sea level are much higher than those associated with obtaining vertical coordinates relative to ground level, and Terrebonne did not disagree with this statement.

21. Since there is an additional burden associated with obtaining measurements relative to sea level rather than ground level, and since those measurements do not seem to be necessary in order to assess requests for municipal consent, the Commission considers that the provision of vertical coordinates expressed in relation to sea level is an unreasonable requirement for obtaining municipal consent.

22. The Carriers proposed that, for circumstances in which the City deems it necessary for plans to be submitted with coordinates expressed in relation to sea level, the MAA include an escalation procedure to enable the Carriers to confirm the City's needs, and that, as a last resort and if deemed absolutely necessary, the City cover at least 50% of the cost of obtaining the Z value. Given its finding in the previous paragraph, the Commission considers this information to be neither useful nor appropriate at the stage of submitting plans for the purpose of obtaining municipal consent.

23. In light of the above, the Commission **approves** the following wording proposed by the Carriers for subsection 3.3 of the MAA:

> **Submission of plans.** The Company must, when municipal consent is required by this Agreement, submit the following documents to the Municipal Engineer:

(a) construction plans of the proposed work, showing the locations of the existing equipment and of other facilities, the proposed changes, and the boundaries of the municipal area in which the work will take place;

(b) all other relevant plans, drawings and information that the Municipal Engineer may reasonably consider for the purposes of issuing municipal consent; and,

(c) all plans depicting the vertical coordinates (Z value) of the new underground facilities, expressed as metres from ground level.

Section 3, subsection 3.4 – Amendments when issuing municipal consent

Positions of parties

24. Terrebonne proposed the following wording for subsection 3.4:

> The Municipality may, in the event of conflict with its own plans or projects because of public health and safety, existing infrastructure, road construction, or the proper functioning of public services, request amendments to the plans referred to in subsection 3.3.

25. The Carriers, however, proposed the following:

> The Municipality may, in the event of conflict with its own plans or projects because of public health and safety, existing infrastructure, road construction or the proper functioning of public services, request amendments to the plans referred to in subsection 3.3, provided that they are, in the Company's opinion, commercially reasonable.

26. Terrebonne indicated that it acts in the public interest and that it must be presumed to be acting in good faith in the public interest. In this respect, it does not weigh the commercial desirability of installing underground facilities. The objective of its analysis is to achieve the safe, organized, and effective coexistence of underground facilities.

27. Terrebonne submitted that it fulfils a sort of fiduciary duty that benefits all occupants of the public rights-of-way, including the Carriers. This fiduciary duty, which is exercised in good faith, cannot and should not be compromised by private commercial interests which, by definition, cannot consider all of the variables that the City considers in pursuit of the aforementioned objectives.

28. The Carriers are not opposed to the possibility of Terrebonne requesting amendments to the project submitted for any of the reasons stated in subsection 3.4. They request that the wording be modified to specify that the City's request must not be so commercially unreasonable that the Company cannot carry out the planned project or has to bear excessive or disproportionate costs.

29. According to the Carriers, the clause proposed by the City suggests that amendments to plans and projects could be required simply because of existing infrastructure, road construction, or public work. In such cases, the Carriers are not solely responsible for the increased costs. The

criterion of “commercial reasonableness” that they propose would ensure a balance and prevent unfair or excessive requests.

Commission’s analysis and determinations

30. The wording proposed by Terrebonne is similar to that of subsection 3.5 of the model MAA, whereas the additional wording proposed by the Carriers is not included in the model MAA. To support their proposed addition, the Carriers indicated that they would not be solely responsible for the increase in costs for their plans and projects caused by existing City infrastructure, road construction, or public works. The Carriers were concerned with the possibility that the amendments requested by the City could prevent the Carriers’ projects from being implemented or could drastically or disproportionately increase their costs.

31. Subsection 3.5 of the model MAA states that the municipality may request amendments to a carrier’s plan or even refuse to issue a permit if there is a conflict with one of the municipality’s mandates, including for reasons of public safety and health, conflicts with existing infrastructure, proposed road construction, or the proper functioning of public services, when these reasons have been identified in writing to the carrier by the municipality. However, section 2 of Schedule C of the model MAA states that the company must assume all costs of moving its equipment within the period covered by the municipality’s capital works plan (CWP) if the carrier requests municipal consent despite having been notified in writing by the municipality that its equipment would be affected by the CWP.

32. The Commission considers that the wording of the model MAA also suggests that it would be reasonable for carriers to be required to adjust their projects due to existing municipal infrastructure, or to road construction and public works provided for in the municipality’s CWP, contrary to the opinion expressed by the Carriers. The Commission notes, however, that the Carriers’ proposed additional wording would give them sole power to determine whether the City’s requests for amendments are reasonable. The additional wording also suggests that the Carriers could require Terrebonne to issue consent without amending the plan referred to in subsection 3.3 if the Carriers find that Terrebonne’s requested amendments are not commercially reasonable. The Commission considers this to be contrary to the notion that it would be reasonable for the Carriers to be responsible for changing their projects according to the City’s mandate.

33. Finally, the Commission notes that the subsection in question states that Terrebonne may “request” amendments to the Carriers’ plans, which seems to allow for discussion between Terrebonne and the Carriers as to whether the requested amendments are reasonable, as necessary. The Commission nevertheless considers that the Carriers’ concerns would be allayed if the clause indicated that the city could request amendments that are reasonable and take into account the carrier’s concerns. The Commission considers that questions regarding the reasonableness of a request should be treated on a case-by-case basis by the parties, and notes that section 14 of the proposed MAA provides for a dispute resolution mechanism.

34. In light of the above, the Commission **approves** the following wording proposed by Terrebonne for subsection 3.4 of the MAA with amendments, shown in bold type and italics, as follows:

> The Municipality may, ***acting in a reasonable manner and in consideration of the Company's concerns***, in the event of a conflict with its own plans or projects, for reasons of public health and safety, existing infrastructure, road construction, or the proper functioning of public services, request amendments to the plans referred to in subsection 3.3.

Section 3, subsection 3.5 – Temporary installations

Position of parties

35. Terrebonne proposed the following wording for subsection 3.5:

> With respect to temporary installations, the Company must comply with the following:
>
> (a) wires and cables that cross rights-of-way must do so with adequate vertical clearance and must not lie on the ground;
>
> (b) temporary connections must be removed within a reasonable time frame (e.g. by the next construction season);
>
> (c) the Company must remedy any conditions deemed unsafe by the Municipality within a certain time frame; and
>
> (d) the Company must not, under any circumstance, trespass in the airspace of adjacent or nearby properties.

36. The Carriers proposed the following:

> With respect to temporary installations, the Company must comply with the following:
>
> (a) wires and cables that cross rights-of-way must do so with adequate vertical clearance and must not lie on the ground;
>
> (b) temporary connections must be removed within a reasonable time frame (e.g. by the next construction season); and
>
> (c) the Company must remedy any condition deemed unsafe by the Municipality within a reasonable, established time frame given the nature of the equipment and facilities.

37. Terrebonne submitted that it exercises its right to manage public rights-of-way judiciously. For safety reasons, Terrebonne must be allowed to establish specific time frames. Paragraph (c) specifies that time frames regarding unsafe conditions are based on urgency. According to the City, it would be operationally unacceptable to delegate to the Carriers the power to decide whether a certain time frame is appropriate on the basis of variable considerations that are unrelated to safety, as deemed by the City, according to its data.

38. Terrebonne added that safety is not negotiable and that it must ensure, so as to not incur liability, that its public rights-of-way do not put residents' safety at risk. Its civil obligation and public liability cannot depend on the Carriers' goodwill or on their assessment of a situation in light of their financial concerns at the time.

39. Terrebonne also argued that paragraphs (a), (b), and (d) are necessary to ensure the safety of individuals and assets with respect to temporary facilities.

40. In response, the Carriers stated that their temporary facilities rarely, if ever, malfunction and that there is therefore no reason for the MAA to include clauses with such restrictive wording.

41. The Carriers argued that in exceptional circumstances, their temporary connections may be on the ground (e.g. if a customer is served by underground facilities and something breaks). This would be the only way to maintain service for customers. However, as worded by Terrebonne, the clause would not allow this.

42. The Carriers stated that they are not opposed to the MAA recognizing Terrebonne's right to advise a carrier of situations that it deems unsafe, so the parties can try to find a reasonable, safe solution while allowing service to be re-established through temporary connections.

43. According to the Carriers, the City seems to believe that, given its position, it has a specific duty to ensure public safety, and that this duty is more important than that imposed on the Carriers by the federal legislator to ensure the provision of essential services, as set out in the Canadian telecommunications policy. According to the Carriers, the City expects it to be assumed that it will exercise its rights and obligations in good faith, and the Carriers have no reason to doubt this. In turn, the City must also assume that the Carriers will exercise their rights in good faith in order to protect the provision of an essential service, when it deems a facility to be necessary for this purpose.

Commission's analysis and determinations

44. The Commission considers it appropriate that the time frame established to remedy any situation that the Municipality deems unsafe should serve the public interest above all. The Commission also notes that the parties appear to agree.

45. The parties agreed on the definition of the word "emergency" in paragraph 1.1(b) of the proposed MAA, as follows:

> "Emergency" means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of either of the Parties.

46. The Commission considers that paragraph (c) would provide the parameters needed to establish a time frame that would be in the public interest if it referred to the notion of emergency as defined in the proposed MAA.

47. However, the parties disagreed on whether paragraph (d) should be included with the wording proposed by Terrebonne, as follows:

> (d) the Company must not, under any circumstances, trespass in the airspace of adjacent or nearby properties.

48. The Commission finds that the use of the word "trespass", rather than another word such as "occupy", implies that the Carriers' temporary facilities would be a nuisance in the airspace. If the Carriers' temporary facilities were in fact a nuisance, they could pose a risk to public safety. Therefore, the Commission considers the version of paragraph (d) proposed by Terrebonne to be appropriate.

49. In light of the above, the Commission **approves** paragraph (c) with the following amendments, in bold type and italics, as follows:

> (c) the Company must remedy any conditions deemed unsafe by the Municipality within a certain time frame, ***according to the urgency of the situation, as defined in paragraph 1.1(b)***; and

50. The Commission also **approves** the inclusion of Terrebonne's proposed paragraph (d).

Section 4, subsection 4.7 – As-built drawings

Positions of parties

51. Terrebonne proposed the following wording for subsection 4.7:

> No later than 90 days after work is completed, the Company must provide the Municipal Engineer with as-built drawings of infrastructure work or underground equipment. These drawings must be detailed enough to establish the plan, profile and dimensions of the equipment installed in the public municipal rights-of-way. These drawings will be used only to help the Municipal Engineer to plan and issue municipal consent. The confidentiality of the information in the as-built drawings must be protected as far as is reasonable, may be shared only with those who require it for the aforementioned purpose, and must under no circumstances be used for any purpose other than the aforementioned one or combined with other information.

52. The Carriers proposed the following:

> No later than 90 days after work is completed, the Company must provide the Municipal Engineer with as-built drawings of infrastructure work or underground equipment. These drawings must be detailed enough to support the plans submitted with the request for municipal consent and must include the Z value expressed in relation to ground level in order to establish the plan, profile, and dimensions of the equipment installed in the public municipal rights-of-way. These drawings will be used only to help the Municipal Engineer plan and issue municipal consent. Reasonable measures must be taken to protect the confidentiality of the information in the as-built drawings; the drawings may be shared only with those who require them for the aforementioned purpose, and must under

no circumstances be used for any purpose other than the aforementioned one or combined with other information.

53. Both parties referred to the arguments they submitted to support their positions regarding subsection 3.3 of section 3 – Submission of plans. They stated that these arguments also support their positions on this section.

54. The Carriers also stated that although the City wishes, in all cases, to obtain the vertical coordinates of underground facilities expressed in relation to sea level, it has never addressed the following points:

    - why vertical coordinates expressed in relation to sea level are always required;

    - the technical difficulties the City faces as a result of using vertical coordinates expressed in relation to ground level[7] rather than sea level. For example, the true extent to which excavation work would be affected if it were based on vertical coordinates expressed in relation to ground level[8] rather than sea level; and

    - why the City wishes to establish a different system from that used with other public utility companies, which are not required to provide vertical coordinates expressed in relation to sea level.

55. The Carriers also argued that obtaining vertical coordinates expressed in relation to sea level upon the installation of underground facilities would require an investment of tens of millions of dollars across the country. This investment would include the cost of buying, maintaining, and calibrating equipment, training employees, etc. They argued that without proof or a solid reason from Terrebonne supporting its request, or proof that vertical coordinates expressed in relation to sea level are more precise, there is no justification for the City to require such investment by the Carriers.

56. Terrebonne added that street levels may rise or fall over the years based on repair work carried out by the City or by occupants of the public domain (e.g. the Carriers). By using sea level, fluctuations in street level are virtually eliminated, increasing the safety of private and public underground facilities in the event of potential activity by the City or a third party occupant. Knowing the Z value is of considerable benefit to all occupants and stakeholders and could decrease the costs associated with damage or shifting. At the very least, it would decrease the uncertainty that often surrounds the depth of underground facilities. Terrebonne also stated that its objective is to build new conduits without needing exploratory wells: conduits with coordinates expressed in relation to sea level would not require exploratory wells to identify the exact location.

57. Regarding the Carriers' costs on a national scale for systematically obtaining vertical coordinates for underground facilities expressed in relation to sea level, Terrebonne argued

[7] The Carriers referred to vertical coordinates expressed in relation to "street" level. The term "ground level" is used here for consistency between the two parties.

[8] *Idem*

that these costs should not influence the Commission's decision. Terrebonne argued that its request should be treated as specific to the City of Terrebonne, for its needs, and with the sole purpose of ensuring sound management of the occupation of its rights-of-way.

Commission's analysis and determinations

58. The issue in dispute is how the Z value will be expressed upon completion of the work. The way the Z value is expressed is also in dispute in subsection 3.3 of the proposed MAA, which concerns the plans submitted in support of the request for municipal consent. For requests for municipal consent, the Commission rejects Terrebonne's proposal that vertical coordinates expressed in relation to sea level, rather than ground level, should be provided as a matter of course. The Commission considers this to be an unreasonable obligation since (i) a measurement expressed in relation to sea level does not seem necessary to assess requests for municipal consent, and (ii) the burden associated with obtaining measurements expressed in relation to sea level is comparatively higher than that for measurements in relation to ground level.

59. As specified in subsection 4.7 of the proposed MAA and approved by the parties, as-built drawings serve only to help the municipal engineer plan and issue municipal consent for future projects. Whereas the Carriers are not opposed to systematically submitting vertical coordinates for their facilities upon completion of the work, the Commission considers that it may not be reasonable to always require that these values be expressed in relation to sea level.

60. In Telecom Decision 2017-388, the Commission determined that Bell Canada must provide the City of Hamilton (Hamilton), upon request and only when reasonably necessary, the vertical coordinates of its underground facilities when Hamilton is in the pre-design stage. The Commission also determined that Bell Canada must provide vertical coordinates in the format chosen by Hamilton only if the parties have been unable to agree on another solution. The Commission further determined that in such a case, the costs associated with field investigations should be divided equally. The Commission supported its decision by stating, among other things, that this would ensure that Hamilton requests vertical coordinates only when they are indeed reasonably necessary, while encouraging Bell Canada to retain coordinate information that is as precise as possible when installing underground facilities. The Commission reached this decision after a public hearing (Telecom Notice of Consultation 2017-66), in which the following points were demonstrated and considered:

    - MAAs rarely include obligations to provide vertical coordinates for underground installations.

    - The information that Hamilton previously obtained from Bell Canada for pre-design purposes was sufficient in most cases, since in over 88 per cent of projects with underground work during the three years prior to the Commission's decision, the City of Hamilton did not need to obtain this information from Bell Canada.

    - For pre-design needs, Hamilton requested vertical coordinates for underground facilities only when they were reasonable necessary.

- Given the growing number and complexity of underground facilities in public rights-of-way, municipalities consider it increasingly important to obtain vertical coordinates.

- Bell Canada must pay to install its facilities in Hamilton's public rights-of-way, and it is appropriate for Hamilton to pay certain fees to obtain the information it deems necessary.

61. As stated in paragraph 19 of this decision, Terrebonne did not demonstrate that it had, in a significant number of cases, obtained vertical coordinates for underground facilities expressed relative to sea level for its own projects with underground work, aside from major municipal projects. The Commission is of the opinion that this indicates that Terrebonne does not require vertical coordinates expressed relative to sea level for all underground equipment.

62. In light of the above, the Commission finds it appropriate that the questions raised by the dispute regarding subsection 4.7 of the proposed MAA be addressed in a manner consistent with the Commission's determinations in Telecom Decision 2017-388. The Commission therefore **approves** the wording proposed by the Carriers, with the following amendments in bold type and italics, as follows:

> No later than 90 days after work is completed, the Company must provide the Municipal Engineer with as-built drawings for infrastructure work or underground equipment. The drawings must be detailed enough to support the plans submitted with the request for municipal consent and must include the Z value expressed relative to ground level in order to establish the plan, profile, and dimensions of the equipment installed in public municipal rights-of-way. These drawings will be used only to help the Municipal Engineer plan and issue municipal consent. Reasonable measures must be taken to protect the confidentiality of the information in the as-built drawings; the drawings may be shared only with those who require them for the aforementioned purpose, and must under no circumstances be used for any purpose other than the aforementioned one or combined with other information.
>
> ***To help the Municipal Engineer plan and issue municipal consent, the Municipality may request additional information on the vertical coordinates of underground facilities, where such information is reasonably necessary. In the event that such a request is made, the Company and the Municipality must proceed as follows:***
>
> - ***The Company and the Municipality must try to agree on a solution.***
>
> - ***If the Parties are not able to agree on a solution, the Company must undertake field investigations to verify the location of its underground facilities.***
>
>   - ***The vertical coordinates must be provided in the format chosen by the Municipality (e.g. depth expressed in relation to ground level or in metres above sea level) and to the level of accuracy agreed upon by the Municipality and the Company.***

- ***The costs associated with field investigations must be shared equally between the Municipality and the Company.***

Section 5, subsection 5.5 – Repairs completed by Municipality

Positions of parties

63. Terrebonne proposed the following wording for subsection 5.5:

> Where:
>
> (a) the Company fails to complete a temporary repair to the full satisfaction of the Municipality within 72 hours of being notified in writing by the Municipality, or such other period as may be agreed to by the Parties; or
>
> (b) the Company and the Municipality agree that the Municipality should perform the repair,
>
> then the Municipality may effect such work as is necessary to perform the repair and the Company will pay the Municipality's costs for performing the repair.

64. The Carriers, however, propose the following:

> Where:
>
> (a) the Company fails to complete a temporary repair to the full satisfaction of the Municipality within 72 hours of being notified in writing by the Municipality, or such other period as may be agreed to by the Parties; or
>
> (b) the Company and the Municipality agree that the Municipality should perform the repair,
>
> then the Municipality may effect such work as is necessary to perform the repair and the Company will pay the Municipality's causal costs for performing the repair.

Commission's analysis and determinations

65. Terrebonne stated that it was of the opinion that all causal costs can and must be included in the costs to be reimbursed to the City under this section. Therefore, the Commission considers that the Carriers' proposal to amend the expression "costs" that was initially proposed to "causal costs" addresses Terrebonne's concerns.

66. The Commission **accepts** the wording proposed by the Carriers.

Section 7, subsection 7.5 – Relocation

Positions of parties

67. Terrebonne proposed the following wording for subsection 7.5:

> For the purposes of this section, "relocation" means work involving the permanent removal of all equipment from its current location, or the modification, installation or relocation of equipment, including adjusting manhole covers, which changes the equipment's placement or location. The relocation can be aerial, underground, or from aerial to underground
>
> a) within the same service corridor or the same public right-of-way, or
>
> b) from its (current) location to another service corridor or another right-of-way.

68. The Carriers objected to the inclusion of subsection 7.5, because they found it difficult to rationalize the usefulness and the relevance of making a distinction between the terms "déplacement" and "relocalisation".[9]

Commission's analysis and determinations

69. The Carriers are opposed to the inclusion of subsection 7.5 because they do not find it useful. They also suggested that the wording proposed by Terrebonne could exclude situations in which relocations are "from underground to aerial". However, they did not indicate that including the subsection in question would be to their detriment.

70. In the proceeding that led to Telecom Decision 2019-316, the City of Gatineau (Gatineau) proposed the same wording, and the Carriers were opposed to it for the same reason. However, the Carriers failed to point out that the wording appeared to exclude situations that might arise.

71. In Telecom Decision 2019-316, the Commission decided to keep the wording in question and used the following rationale to support its decision:

> 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.

72. The wording proposed by Terrebonne is identical to the one approved by the Commission for Gatineau. As was the case for Gatineau, the proposed agreement for Terrebonne also uses the two French terms "déplacement" and "relocalisation" without defining their meaning in section 1 of Schedule C. However, it appears as though the wording, "The relocation can be aerial, underground, or from aerial to underground" may exclude situations that may potentially arise, as pointed out by the Carriers. For instance, it may exclude situations in which the relocation is "from underground to aerial". The Commission considers that the wording in question provides a non-exhaustive list of examples of relocations that fit into the definition expressed in the first sentence of the subsection. Therefore, while the amendment

[9] Note that this applies to the French text exclusively.

suggested by the Carriers is not entirely necessary, it would not be to their detriment to adopt it and it would then provide a more detailed list of examples.

73. In light of the above, the Commission **approves** the wording proposed by Terrebonne, with the following amendment, shown in bold type and italics:

> For the purposes of this section, "relocation" means work involving the permanent removal of all equipment from its current location, or the modification, installation or relocation of equipment, including adjusting manhole covers, which changes the equipment's placement or location. The relocation can be aerial, underground, ***~~or~~*** from aerial to underground***, or from underground to aerial***
>
> a) within the same service corridor or the same public right-of-way, or
>
> b) from its (current) location to another service corridor or another right-of-way.

Section 11, subsection 11.2 – Municipality not responsible

Positions of parties

74. Terrebonne proposes the following wording for subsection 11.2:

> Except for claims or losses arising, in whole or in part, by fault of the Municipality and its agents, the Municipality shall not:
>
> (a) be liable, either directly or indirectly, for any damage to the equipment howsoever caused; or
>
> (b) be liable to the Company for any losses whatsoever suffered or incurred by the Company,
>
> on account of any actions or omissions of the Municipality under this Agreement.

75. The Carriers were of the opinion that this clause is redundant.

Commission's analysis and determinations

76. The Carriers are opposed to the inclusion of subsection 11.2 because they do not find it useful. However, they did not state that its inclusion could be to their detriment.

77. The wording proposed by Terrebonne is almost identical to the wording found in the model MAA, except for the words "negligence or wilful misconduct", which are replaced by the word "fault".

78. In the proceeding that led to Telecom Decision 2019-316, the Carriers accepted the inclusion of wording identical to that proposed by Terrebonne on the basis of the reasons provided by Gatineau in its observations to the effect that [translation] "a fault is a fault, whether it is intentional or not."

79. The Commission notes that the use of the term “fault” rather than the term “negligence or wilful misconduct” was not a subject of dispute between the parties in the Terrebonne case.

80. In light of the above, the Commission **approves** the inclusion of the wording proposed by Terrebonne.

Schedule A, section 1 – Fees for issuing and amending municipal consents

Positions of parties

81. Terrebonne proposed the following wording for section 1 of Schedule A:

- Permit to conduct work in public rights-of-way (except for conduits longer than 20 metres): $321 (plus taxes);
- Permit to conduct work including excavation in public rights-of-way for the addition of conduits longer than 20 metres: $750 (plus taxes);
- Additional fees for work including excavation of more than 20 metres: $10.50 per linear metre (plus taxes);
- Additional fees during the winter (15 December to 15 April): $107 (plus taxes).

82. The Carriers proposed the following:

Fee for issuing municipal approvals (including the inspection):

- Conduits that are 20 metres or shorter: $_____ (plus applicable taxes)
- Conduits that are longer than 20 metres: $____ (plus applicable taxes)

83. Terrebonne proposed a rate schedule based on an analysis prepared by KPMG (the KPMG report). However, the Carriers stated that the rates should be established through a formal cost study, which would be based on causal costs and other components. The Carriers therefore request that the Commission carry out a cost study to ensure that Terrebonne’s proposed rates are acceptable.

84. Terrebonne indicated that it is neither useful nor reasonable to ask the City to provide a breakdown of causal costs that it considers to be directly connected to the services in question.

85. The Carriers argued that the KPMG report, which served as a basis for the schedule that the City is referring to, does not justify the licensing fees proposed by Terrebonne. They submitted that it simply describes a methodological tool made up of Excel files that should allow municipalities to better assess and document the source of causal costs for managing requests. The Carriers argued that a formal cost study must be carried out by the City so that the Commission can ensure that the proposed rates are based on analyses from a formal cost study.

Commission's analysis and determinations

86. Similar arguments were made in the application by Gatineau. In Telecom Decision 2019-316, the Commission considered that the process that enabled Gatineau to calculate more precisely the causal costs associated with issuing municipal consent would be complicated and onerous, and would require access to much more detailed information. It considered that the investment necessary would not be justified because the rate proposed by Gatineau compared favourably with others that the Commission had approved. The Commission therefore approved the following rates proposed by Gatineau:

    Fee for issuing municipal approvals (including the inspection):

    - Conduits that are 20 metres or shorter: $385
    - Conduits that are longer than 20 metres: $773 plus $10 per linear metre
    - Work carried out from 15 December to 15 April: add $112

87. Although the Carriers requested that the Commission carry out a cost study to ensure that the rates proposed by Terrebonne are acceptable, they did not argue that the rates in question were unreasonable.

88. The Commission considers that a cost study is not the only way to verify whether the proposed rates are reasonable. To this end, the rates proposed by Terrebonne are generally lower than those that the Commission recently approved for Gatineau. They are also lower than the rates that the Commission approved for the City of Vancouver (Vancouver) in 2009, which have not been updated.

89. For the same reasons as stated in Telecom Decision 2019-316, the investment required for the cost component study is neither justified nor necessary to support a decision in favour of Terrebonne's proposed rates.

90. As a result, the Commission **approves** the rates schedule proposed by Terrebonne concerning the fees for issuing and renewing municipal approval.

Schedule A, section 2 – Pavement degradation costs

Positions of parties

91. Terrebonne proposed the following wording for Schedule A, section 2:

    These fees are charged to the Company only if the Company fails to repair the pavement after carrying out the work under subsections 5.2 and 5.3 of the Agreement.

    Pavement degradation fees (per square metre)

    0 to 5 years: $59.75

    6 to 10 years: $47.80

11 to 15 years: $35.85

16 to 20 years: $23.90

92. The Carriers proposed that their rates be established based on Terrebonne's cost study. They also proposed that, for the moment, the agreement not include these rates, which would instead be negotiated by the parties later, once Terrebonne is ready to carry out a cost study.

93. Terrebonne initially indicated that its proposed rates were established based on techniques it generally uses in normal conditions for all repairs on its roads. However, the City later indicated that it had used the rates that the Commission approved in Telecom Regulatory Policy 2009-150 concerning Vancouver, adjusted using the yearly consumer price index (CPI) in Quebec as of the date the decision was published.

94. The Carriers argued that Terrebonne's proposed rates are unacceptable because the rates approved in Telecom Regulatory Policy 2009-150 reflect causal costs specific to Vancouver, whereas:

- the cost of living is much higher in Vancouver than in Terrebonne;
- Vancouver's weather conditions have less of an impact on the useful life of pavement than Terrebonne's; and
- the technical difficulties of the work, and therefore its costs, are greater in downtown Vancouver than in downtown Terrebonne.

95. The Carriers added that even if Terrebonne is basing its rates on the useful life of the pavement, it did not address certain elements, such as (i) the impact of the first excavation on the useful life of the pavement (which would directly affect the rates for subsequent work); and (ii) the effects of repeated excavations on the life of the pavement.

Commission's analysis and determinations

96. The rates that Terrebonne used, adjusted using the yearly CPI in Quebec as of the date the decision was published, are the same rates that Bell West Inc. (Bell West),[10] a competitive local exchange carrier operating in the west of Canada at that time, proposed to Vancouver in 2004 in a draft MAA. In Telecom Regulatory Policy 2009-150, the Commission noted that the rates established by Bell West in 2004 were being used at that time by many municipalities and telecommunications undertakings; that the rates had initially been proposed by Vancouver during negotiations, even though, according to Vancouver, they did not enable it to fully recover its costs; and that the rates fell approximately in the middle between the rates proposed by MTS Allstream and those ultimately proposed by Vancouver.

[10] Bell West was established in 2002 and consisted of several assets that were established in the late 1990s. It competed with Telus Corp. in its home territory by selling telecommunications services to companies. In 2004, Bell Canada purchased from Manitoba Telecom Services Inc. the 40% of Bell West's shares that it did not already hold.

The Commission considered this to be a reasonable compromise in a situation where the parties were unable to agree.

97. In the context of negotiations in which Terrebonne chose not to carry out a cost study to support its proposed rates, the Commission considers it to be reasonable that Terrebonne used the rates that the Commission approved for another municipality as the basis for calculating its current rates. However, Terrebonne did not submit any arguments to show that pavement repair work costs in Vancouver were similar or comparable to those in Terrebonne and that, as a result, these rates were a reasonable starting point for calculating the current rates in Terrebonne. Terrebonne and Vancouver face different realities. For example, the following elements could potentially result in a cost discrepancy between the two cities: the organization and development of urban spaces, the density of underground facilities, the frequency and nature of underground work, the cost of living, salaries, weather conditions, and the cost of materials and equipment. The Commission finds it likely that these differences would result in the cost of pavement repair work being lower in Terrebonne than in Vancouver. As a result, the Commission considers that the rates used by a municipality with a similar economic environment to that of Terrebonne would be a more appropriate basis for comparison.

98. The Commission has yet to be asked to address the topic of reasonable pavement degradation fees for a municipality that is similar in size to Terrebonne and in the same region as Terrebonne. The Commission nevertheless notes that the fees it approved in Telecom Decision 2007-100 could be a more reasonable basis for comparison than those approved in Telecom Regulatory Policy 2009-150. Telecom Decision 2007-100 concerned the City of Maple Ridge (Maple Ridge), which is located in the Greater Vancouver Regional District. In that decision, the Commission approved the rates from a MAA negotiated in 2006 between Shaw Cablesystems Limited and the City of Richmond (Richmond). The Commission chose Richmond's rates although Maple Ridge proposed higher rates that were in line with the rates that were being negotiated in Vancouver at the time and the same as the rates that the Commission later approved for Vancouver in Telecom Regulatory Policy 2009-150. The Commission considers the economic environment of Terrebonne, in terms of logistical and other factors, to be closer to those of Maple Ridge and Richmond than to that of Vancouver. The Commission considers that, in the absence of costs that are unique to Terrebonne, the rates approved in Telecom Decision 2007-100 would be a more reasonable basis for comparison for current rate calculations than those approved in Telecom Regulatory Policy 2009-150.

99. The Commission notes that in the proceeding that led to Telecom Decision 2007-100, Shaw was open to applying the Richmond MAA rates since, according to Shaw, a study to validate the rates would be very expensive and complicated for a community the size of Maple Ridge. The Commission notes that Maple Ridge and Terrebonne are similar in size, and considers that the same concern should influence the Commission in its decision. The Commission is concerned by the fact that Terrebonne may not be able to carry out a proper cost study in the medium term, which would perpetuate the uncertainty regarding the rates that Terrebonne should charge the Carriers for failing to carry out pavement repair work following their intervention, as per the proposed MAA. The Commission finds that this invalidates the Carriers' proposal.

100. In light of the above, the Commission has determined the pricing based on the rates it approved for Maple Ridge in Telecom Decision 2007-100 and adjusted them for Quebec inflation. The Commission notes, however, that in the absence of exact and current costs, the calculation for inflation based on CPI variance as established by Statistics Canada is a widely recognized method for updating the costs.

101. Accordingly, the Commission **approves** the following rates. They consist of the rates it approved for Maple Ridge in Telecom Decision 2007-100, adjusted for Quebec inflation since October 2007.[11]

Pavement Age	Rates
0–5 years	$47.93
6–10 years	$35.95
11–15 years	$23.96
16–20 years	$11.98
21 years and over	N/A

Schedule C, section 2 – Equipment affected by the Municipality's Capital Works Plan

Positions of parties

102. Terrebonne proposes the following wording for subsection 2 of Schedule C:

> Prior to granting municipal consent, the Municipality will advise the Company in writing whether the Company's proposed location for installing new equipment will be affected by the Municipality's 3-year capital works plan (the "Capital Works Plan"). If, after having been notified that the new equipment will be so affected, the Company applies for the Municipality's consent, the Municipality may grant conditional municipal consent stating that if the Municipality requires the Company, pursuant to any project identified in the Capital Works Plan as of the date of approval, to relocate the equipment within 3 years of the date of issuance of the permit, the Company will be required to relocate the equipment at its own cost, notwithstanding section 1.

103. The Carriers propose the following:

> Prior to granting municipal consent, the Municipality will advise the Company in writing whether the Company's proposed location for installing new equipment will be affected by the Municipality's annual capital works plan (the "Capital Works Plan"). If, after having been notified that the new equipment will be so affected, the Company applies for the Municipality's consent, the Municipality may grant conditional municipal consent stating that if the Municipality requires the Company, pursuant to any project identified in the Capital Works Plan as of the date of approval, to relocate the equipment within 1

[11] Inflation calculated based on CPI for Quebec since October 2007. Source: Statistics Canada. Table 18-10-0004-01 Consumer Price Index, monthly, not seasonally adjusted,

year of the date of issuance of the permit, the Company will be required to relocate the equipment at its own cost, notwithstanding section 1.

104. Terrebonne indicated that under the *Cities and Towns Act* (CQLR, c. C-19), it must adopt a three-year capital works plan (CWP) every year, and that it acknowledges that, for a three-year period, it is responsible for all equipment relocation costs for permits that were issued in that period.

105. Terrebonne shared the CWP with the Carriers and is of the opinion that the information in it is sufficient to allow the Carriers to plan their work on an annual basis.

106. The Carriers indicated that the decision to identify public rights-of-way on which capital works will be carried out in no way ensures that the work will actually be carried out. There are too many uncertainties that could prevent the work from proceeding, including the City's ability to obtain the necessary funding (e.g., if government grants are no longer available, or if public money has been used to carry out other emergency work).

107. The Carriers emphasized that the addition of a three-year street rights-of-way plan, which is revised every year, represents a significant new potential threat to telecommunications carriers and could cause their work on affected rights-of-way to be postponed indefinitely. Ultimately, the biggest impact will be on telecommunications service users.

108. Lastly, the Carriers argued that their proposed one-year time frame is much more appropriate and strikes a fair balance between the rights and obligations of the two entities (the City and the affected Carrier), which both provide essential services to the public. By revising its CWP every year, the City knows with much greater certainty what work it will actually be able to carry out in the coming year, so that the affected Carriers, and ultimately the users, are not held hostage.

Commission's analysis and determinations

109. In the paragraphs concerning section 1 of Schedule C of the MAA (paragraphs 121 to 124 below), the Commission adopts Terrebonne's proposed wording that relocation costs be reimbursed using a sliding scale whereby the City is responsible for 100 per cent of relocation costs when it requires that a Carrier's equipment be relocated in the three years following its installation. As of the fourth year, the City's responsibility is gradually reduced until it is responsible for 0% of the costs in the 17th year. This approach is consistent with the Commission's decision in Telecom Decision 2019-316 for Gatineau. This approach is also consistent with the position taken in Telecom Decision 2016-51 concerning Hamilton's responsibility to be reasonably certain, during its planning process, whether the infrastructure it authorizes to be installed will be relocated in the short term.

110. Under section 473 of the *Cities and Towns Act* (CQLR, c. C-19), municipalities in Quebec must, not later than 31 December each year, by resolution, adopt the capital expenditures program (or CWP) of the municipality for the next three fiscal years. This program must be divided into annual phases. It must describe, in respect of the period in question, the object, the amount, and the mode of financing of the capital expenditures the municipality plans to incur for which the financing period exceeds 12 months.

111. The circumstances addressed in section 2 of Schedule C occur when a location in which a carrier proposes to install new equipment will be affected by a project planned in the City's CWP. By informing the carrier that the equipment will be affected, the municipality is no longer responsible under section 1 of Schedule C. If the municipality does not inform the carrier, the municipality is responsible for 100% of the relocation fees.

112. The Commission is of the opinion that the wording proposed by the Carriers for section 2 is not compatible with the Commission's wording in section 1. By adopting, in section 1, a scale whereby Terrebonne is responsible for 100% of relocation costs in the three years directly following equipment installation, the Commission recognizes the City's responsibility to reasonably foresee future relocation needs. The Commission should thus also adopt an equivalent protection period for the City if it is relieved of this responsibility; that is, if it adequately notifies the Carriers, by issuing conditional municipal consent, that their equipment may have to be relocated because of a project planned in the CWP. Terrebonne should not be held responsible for the costs if the Carriers decide to install the equipment as per the conditional municipal consent despite the City's warning. As such, the Commission considers that the wording proposed by the Carriers would place a disproportionate burden on the City.

113. The wording proposed by Terrebonne strikes a fair balance between the City's responsibility to reasonably anticipate the relocation needs of the facilities it authorizes and the Carriers' responsibility to choose whether or not to install equipment that could be moved.

114. In light of the above, the Commission **approves** the wording proposed by Terrebonne.

Other clauses addressed in Telecom Decision 2019-316

115. Telecom Decision 2019-316, related to Gatineau's application for approval of an MAA with the Carriers, was published on 6 September 2019. The proposed Terrebonne and Gatineau MAAs concern the same Carriers and many of the same clauses. In general, if the same clauses were being disputed by the parties, Terrebonne submitted the same arguments as Gatineau, and the Carriers expressed the same opinions in both proceedings.

116. The following three clauses were disputed in the Gatineau file. In the Terrebonne file, the parties made the same proposals and arguments as those made in the Gatineau file, except for the time period of the sliding scale suggested by Terrebonne and the percentage of associated relocation fees covered by the City under the "Reimbursement of relocation costs" clause.[12] The Commission uses the same analyses and makes the same determinations as in the Gatineau file.

[12] Among others, in the Gatineau proceeding, that municipality proposed a sliding scale over 10 years for the reimbursement of costs related to relocating the Carriers' equipment when that municipality requests a relocation because of a municipal project. By comparison, in the present proceeding, Terrebonne proposed a sliding scale over 16 years.

Section 7, subsection 7.4 – Bypass costs

Positions of parties

117. Terrebonne proposed the following wording for subsection 7.4:

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

118. The Carriers did not propose a clause concerning bypass costs, since they were of the opinion that they cannot be required to pay under the legislation and under case law.

Commission's analysis and determinations

119. In Telecom Decision 2019-316, the Commission determined that the subsection concerning bypass fees should be eliminated, because it would not encourage Gatineau to plan its work in such a manner as to reduce costs for all parties involved. The Commission added that the imperative that has led the Commission in the past to determine that carriers should pay part or all of the costs of relocating their equipment at a municipality's request as part of a municipal project did not apply when there were one or more alternative solutions and when relocation could be avoided (including when the municipality plans to bypass a carrier's equipment).

120. For the same reasons as those cited in Telecom Decision 2019-316, which apply accordingly, the Commission determines that subsection 7.4, concerning bypass costs, must be eliminated.

Schedule C, section 1 – Reimbursement of relocation costs

Positions of parties

121. Terrebonne proposes the following wording for section 1 of Schedule C:

> In the case of a requirement by the Municipality to relocate a Company'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.

Number of year(s) after the 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 Company shall be solely responsible for all relocation costs.

122. The Carriers, however, proposed the following:

> When the Municipality requires that the Company's equipment be relocated, the Municipality must pay 50% of the costs of structures and equipment installed for the purposes of the relocation work and 60% of related labour and engineering costs.

Commission's analysis and determinations

123. In Telecom Decision 2019-316, the Commission considered that the sliding scale approach, as applied in previous decisions, was appropriate in the case of the proposed MAA, since it provided for a return to the cost neutrality principle after a given period of time, for both Gatineau and taxpayers. The Commission also found that the Carriers failed to demonstrate the magnitude of their administrative burden associated with using the sliding scale approach, given that this approach has been used for many years under a number of other agreements. The Commission determined that relocation costs would be reimbursed on a sliding scale according to which the municipality is responsible for 100 per cent of the relocation costs when the municipality requires that company equipment be relocated within the first three years of the asset being installed. As of the fourth year, the municipality's responsibility decreases gradually to reach 0 per cent in the 17th year.

124. Terrebonne proposed the sliding scale approach and wording that is in every way identical to what was approved by the Commission in Telecom Decision 2019-316. Furthermore, the proposals and arguments presented by Terrebonne and the Carriers are the same as those presented in that proceeding by Gatineau and the same Carriers. Therefore, for the same reasons as those expressed in Telecom Decision 2019-316, which apply in this case, the Commission **approves** Terrebonne's proposal.

Schedule C, section 3 – Beautification

Positions of parties

125. Terrebonne proposed the following wording for section 3 of Schedule C:

> Notwithstanding sections 1 and 2, the Municipality shall be solely responsible for paying all costs related to equipment relocation if the relocation is for beautification or aesthetic purposes. Such costs include, among others, depreciation, betterment, and recovery costs.
>
> However, the following municipal work shall not be considered to be for beautification or aesthetic purposes:
>
> - constructing and rehabilitating waterworks, sewers, and other urban public utilities;
> - implementing traffic calming measures;
> - constructing and modifying the geometry of roadways and suburban rings for the purposes of urban development, sustainable mobility and safety to meet the transit requirements and multiple uses of the urban public space, such as:
>   - cycling, multifunctional and other active transportation infrastructure.

126. The Carriers, however, proposed the following:

> Notwithstanding sections 1 and 2 of this Schedule, the Municipality shall be solely responsible for paying all relocation costs when the Company's equipment must be relocated because of the Municipality's beautification works. For the purposes of this section, beautification work is considered to be work related to the beautification of public spaces, including repair and development work and the construction of parks, bicycle paths, public spaces and green spaces. Work required by the City for the relocation of equipment that is part of urban public utilities on its property for purely aesthetic purposes, such as relocating poles to back lots and burying wires and other telecommunications installations, is also considered to be beautification work.

Commission's analysis and determinations

127. In Telecom Decision 2019-316, the Commission determined that the wording for this clause would read as follows:

> Notwithstanding sections 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.

128. To support its determination, the Commission stated the following:

> 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.

129. The Commission finds that the same rationale applies in this case and concludes that the wording of the section in question will be the same as in the first section of the wording proposed by Terrebonne.

130. Should the parties disagree as to whether a particular project is in fact for a beautification or aesthetic purpose, they will have the option of calling upon the dispute resolution process set out in the agreement.

Policy Directions

131. The 2019 Policy Direction, which took effect on 17 June 2019,[13] complements the 2006 Policy Direction[14] 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,[15] consider broader policy concerns. Furthermore, the authority conferred on the Commission under these provisions is restricted to resolving matters in dispute between specific persons. Therefore, the Commission's intervention in this 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 rights-of-way.

132. Accordingly, the Commission considers that its determinations 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.[16] 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

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[13] *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, DORS/2019-227, 17 June 2019

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

[15] As per section 47 of the Act.

[16] 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.

their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.

133. 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 the Carriers can access Terrebonne's rights-of-way under established terms and conditions that balance the City's needs to manage its rights-of-way and limit inconvenience to its population resulting from the Carriers' activities with the Carriers' need to ensure timely, ongoing, and cost-effective access to those rights-of-way, the Commission's determinations contribute to the promotion of competition and consumer interests.

134. Specifically, by being able to access municipal rights-of-way 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.

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

Conclusion

136. In light of the above, the Commission **approves** the wording of the clauses, as stated in the appendix to this decision.

Secretary General

Related documents

- *City of Gatineau – Terms and conditions of a municipal access agreement with certain carriers*, Telecom Decision CRTC 2019-316, 6 September 2019
- *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
- *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

Appendix 1 to Telecom Decision CRTC 2020-61

List of clauses approved by the Commission

Section 3, subsection 3.3 – Submission of plans

The Company must, when municipal consent is required by this Agreement, submit the following documents to the Municipal Engineer:

(a) construction plans of the proposed work, showing the locations of the existing equipment and of other facilities, the proposed changes, and the boundaries of the municipal area in which the work will take place;

(b) all other relevant plans, drawings and information that the Municipal Engineer may reasonably consider for the purposes of issuing municipal consent; and,

(c) all plans depicting the vertical coordinates (Z value) of the new underground facilities, expressed as metres from ground level.

Section 3, subsection 3.4 –Amendments when issuing a municipal consent

The Municipality may, acting in a reasonable manner and in consideration of the Company's concerns, in the event of a conflict with its own plans or projects, for reasons of public health and safety, existing infrastructure, road construction, or the proper functioning of public services, request amendments to the plans referred to in subsection 3.3.

Section 3, subsection 3.5 – Temporary installations

With respect to temporary installations, the Company must comply with the following:

(a) wires and cables that cross rights-of-way must do so with adequate vertical clearance and must not lie on the ground;

(b) temporary connections must be removed within a reasonable time frame (e.g. by the next construction season);

(c) the Company must remedy any conditions deemed unsafe by the Municipality within a certain time frame, according to the urgency of the situation, as defined in paragraph 1.1(b); and

(d) the Company must not, under any circumstances, trespass in the airspace of adjacent or nearby properties.

Section 4, subsection 4.7 – As-built drawings

No later than 90 days after work is completed, the Company must provide the Municipal Engineer with as-built drawings for infrastructure work or underground equipment. The drawings must be detailed enough to support the plans submitted with the request for

municipal consent and must include the Z value expressed relative to ground level in order to establish the plan, profile, and dimensions of the equipment installed in public municipal rights-of-way. These drawings will be used only to help the Municipal Engineer plan and issue municipal consent. Reasonable measures must be taken to protect the confidentiality of the information in the as-built drawings; the drawings may be shared only with those who require them for the aforementioned purpose, and must under no circumstances be used for any purpose other than the aforementioned one or combined with other information.

To help the Municipal Engineer plan and issue municipal consent, the Municipality may request additional information on the vertical coordinates of underground facilities, where such information is reasonably necessary. In the event that such a request is made, the Company and the Municipality must proceed as follows:

- The Company and the Municipality must try to agree on a solution.
- If the Parties are not able to agree on a solution, the Company must undertake field investigations to verify the location of its underground facilities.
    - The vertical coordinates must be provided in the format chosen by the Municipality (e.g. depth expressed in relation to ground level or in metres above sea level) and to the level of accuracy agreed upon by the Municipality and the Company.
    - The costs associated with field investigations must be shared equally between the Municipality and the Company.

Section 5, subsection 5.5 – Repairs completed by Municipality

Where:

(a) the Company fails to complete a temporary repair to the full satisfaction of the Municipality within 72 hours of being notified in writing by the Municipality, or such other period as may be agreed to by the Parties; or

(b) the Company and the Municipality agree that the Municipality should perform the repair,

then the Municipality may effect such work as is necessary to perform the repair and the Company will pay the Municipality's causal costs for performing the repair.

Section 7, subsection 7.4 – Bypass costs

Subsection 7.4 concerning bypass costs has been deleted.

Section 7, subsection 7.5 – Relocation

For the purposes of this section, "relocation" means work involving the permanent removal of all equipment from its current location, or the modification, installation or relocation of equipment, including adjusting manhole covers, which changes the equipment's placement or location. The relocation can be aerial, underground, from aerial to underground, or from underground to aerial

a) within the same service corridor or the same public right-of-way, or

b) from its (current) location to another service corridor or another right-of-way.

Section 11, subsection 11.2 – Municipality not responsible

Except for claims or losses arising, in whole or in part, by fault of the Municipality and its agents, the Municipality shall not:

(a) be liable, either directly or indirectly, for any damage to the equipment howsoever caused; or

(b) be liable to the Company for any losses whatsoever suffered or incurred by the Company,

on account of any actions or omissions of the Municipality under this Agreement.

Schedule A, section 1 – Fees for issuing and amending municipal consents

- Permit to conduct work in public rights-of-way (except in conduits longer than 20 metres): $321 (plus taxes);
- Permit to conduct work including excavation in public rights-of-way for the addition of conduits longer than 20 metres: $750 (plus taxes);
- Additional fees for work including excavation of more than 20 metres: $10.50 per linear metre (plus taxes);
- Additional fees during the winter (15 December to 15 April): $107 (plus taxes).

Schedule A, section 2 – Pavement degradation costs

These fees are charged to the Company only if the Company fails to repair the pavement after carrying out the work under subsections 5.2 and 5.3 of the Agreement.

Pavement degradation fees (per square metre)

0 to 5 years: $47.93

6 to 10 years: $35.95

11 to 15 years: $23.96

16 to 20 years: $11.98

Schedule C, section 1 – Reimbursement of relocation costs

In the case of a requirement by the Municipality to relocate a Company'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 Company shall be solely responsible for all relocation costs.

Schedule C, section 2 – Equipment affected by the Municipality's Capital Works Plan

Prior to granting municipal consent, the Municipality will advise the Company in writing whether the Company's proposed location for installing new equipment will be affected by the Municipality's 3-year capital works plan (the "Capital Works Plan"). If, after having been notified that the new equipment will be so affected, the Company applies for the Municipality's consent, the Municipality may grant conditional municipal consent stating that if the Municipality requires the Company, pursuant to any project identified in the Capital Works Plan as of the date of approval, to relocate the equipment within 3 years of the date of issuance of the permit, the Company will be required to relocate the equipment at its own cost, notwithstanding section 1.

Schedule C, section 3 – Beautification

Notwithstanding sections 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.