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

# Telecom Regulatory Policy CRTC 2023-31

PDF version

References: 2020-366 and 2020-366-1

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## Regulatory measures to make access to poles owned or controlled by Canadian carriers more efficient

### Summary

The Commission is making a number of determinations to facilitate access to poles owned by Canadian carriers (telecommunications poles) or poles to which Canadian carriers control access, which in turn will help accelerate the deployment of broadband-capable networks in regions of Canada with limited or no access to such networks.

The Commission, among other things,

- establishes specific timelines for each step of the access permitting process, taking into consideration the number of poles that need to be accessed, and recognizing that some special circumstances, particularly those outside of the incumbent local exchange carrier's (ILEC) control, may necessitate a certain flexibility in the timelines;
- **determines** that new parties seeking access to poles (attachers) are not responsible for the costs associated with corrective works, to the extent that the poles or third-party equipment were out of compliance with construction standards prior to the receipt of the new attachment request;
- **determines** that the ILECs are prohibited from denying an application due to the lack of capacity caused by a pole not being up to construction standards;
- **directs** the ILECs to enter into good-faith negotiations with potential attachers to find mutually beneficial solutions to upgrade poles with a lack of spare capacity;
- provides attachers the possibility of carrying out the simple make-ready work described in the make-ready work estimate themselves, or have it done through an approved contractor;
- establishes a one-touch make-ready regime which, under certain conditions, would allow the ILECs and attachers to perform make-ready work on facilities, and on behalf of other parties with facilities already attached to a pole;
- allows installation before make-ready work is completed and temporary workaround solutions for installing attachers' facilities on poles;

- **directs** the ILECs to identify to the attacher whether the removal or rearrangement of facilities would create sufficient capacity beyond the capacity reserved by the ILEC for future use; if it would, the ILEC cannot deny the application and must remove or rearrange the facilities, or allow for the removal or rearrangement by a third party;
- **directs** the ILECs to provide detailed reasoning to the attacher and to the Commission when denying an attacher's application due to the lack of spare capacity;
- **directs** the ILECs to file reports with information regarding pole access requests with the Commission on a quarterly basis;
- **determines** that the ILECs' support structure service tariffs and the Commission's determinations in this decision apply to joint-use poles, specifically poles owned partially or wholly by the ILEC, as well as the elements of other poles on which the ILECs exercise any involvement or control, or for which they control access; and
- **determines** that provisions granting priority access and reserved capacity do not apply in situations where the ILEC manages the communications space for a utility company but is not the owner of the pole and is not in a reciprocal agreement to share the costs of the pole.

The Commission **directs** the ILECs to file, for Commission approval, revised tariff pages for their support structure service tariffs reflecting the Commission's determinations in this decision by **3 April 2023**.

The Commission also encourages provincial and territorial governments that have not yet established coordination tables between them and telecommunications service providers for facilitating the implementation of government-funded Internet service programs to implement such an initiative, and to consider all telecommunications infrastructure deployment projects, including small-cell deployment, and a broader participation from telecommunications service providers and other relevant stakeholders in these coordination tables.

## Introduction

1. Poles support the steel wires (strands) on which a telecommunications carrier's fibre or copper cables are attached. Poles have varying sizes and capacity, and they typically support both carrier and electric utility company facilities.
2. Under the *Telecommunications Act* (the Act), the Commission has the authority to regulate access to support structures, such as poles, owned by a Canadian carrier. In Telecom Decision 2008-62, the Commission determined that such authority extends to support structures not owned by the carrier but to which the carrier has the right to grant access. The Commission's authority does not include regulating access to support structures owned by third parties that are not also Canadian carriers, such as provincially regulated utility companies, nor does it extend to transmission lines situated on private land.

3. An incumbent Canadian carrier that owns poles is required, on request and where spare capacity is available, to offer competitive access to these poles pursuant to a Commission-approved tariff. At present, the Commission has approved rates, terms, and conditions for access to the poles and conduits owned by large and certain small incumbent local exchange carriers (ILECs).[1]

4. In Telecom Notice of Consultation 2019-406, the Commission invited parties to identify barriers to building new facilities or to accessing or interconnecting with existing facilities for the purpose of extending broadband-capable networks more efficiently into underserved areas. Underserved areas includes areas where, due to a lack of broadband-capable networks, Internet services do not meet the criteria of the universal service objective.[2] In the proceeding initiated by Telecom Notice of Consultation 2019-406, many interveners raised the fact that untimely and costly access to poles was one of the most significant barriers to the deployment of broadband-capable networks in rural and remote regions of Canada.

## Background

5. In Telecom Decision 95-13, the Commission set out a framework for access to the support structures of regulated telephone companies. In that decision, the Commission directed those companies to make their support structures available to telecommunications carriers and cable television undertakings; established uniform rates for the use of poles, strands, and conduits; and directed the companies to issue tariff pages implementing the Commission's determinations. In Order 2000-13, the Commission approved the rates, terms, and conditions of a support structure service tariff for the ILECs[3] to adopt, as well as a template for support structure licence agreements (SSAs).

6. In Telecom Decision 2008-17, the Commission set out a revised regulatory framework for wholesale services and a definition of public good services, i.e. services that provide an important social benefit. The Commission considered that engaging in the construction of duplicate support structure facilities would result in an inefficient use of public and private resources and would be an inconvenience to the public. Accordingly, the Commission determined that support structure services are to be classified as public good services and are, therefore, mandated.

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[1] While certain small ILECs have support structure service tariffs, this decision focuses on the regulatory framework applying to the large ILECs, namely Bell Aliant Regional Communications, Limited Partnership; Bell Canada; Bell MTS Inc.; Northwestel Inc.; Saskatchewan Telecommunications (SaskTel); Télébec, Société en commandite (Télébec); and TELUS Communications Inc. (TCI). Accordingly, instances of "the ILECs" in the context of determinations refer to those seven entities.

[2] In Telecom Regulatory Policy 2016-496, the Commission established the universal service objective: that Canadians in urban, rural, and remote areas have access to voice and broadband Internet access services on both fixed and mobile wireless networks.

[3] These ILECs are Bell Canada (including former Island Telecom Inc.; Maritime Tel & Tel Limited; New Brunswick Telephone Company, Limited; MTS NetCom Inc.; NewTel Communications Inc., and Télébec), Northwestel, and TCI (including former BC TEL, Edmonton Communications Inc., and Québec-Téléphone). SaskTel's support structure service tariff and SSA were approved in Order 2000-604.

7. In Telecom Decision 2010-900, the Commission approved revised rates for the support structure services of some ILECs. In that decision, the Commission confirmed the pricing methodology used in Telecom Decision 95-13 for the ILECs' support structures, where ILEC costs for the structures themselves are treated as fixed costs and are assessed on an embedded cost basis – that is, using historical accounting costs, which are costs representing the monetary value invested in these assets as recorded in the company's books (also known as net book value).

## Telecom Notice of Consultation 2020-366

8. In Telecom Notice of Consultation 2020-366, the Commission initiated a proceeding to seek proposals on potential regulatory measures that could facilitate access to poles owned by Canadian carriers (telecommunications poles) or poles to which Canadian carriers control access, which in turn would help accelerate the deployment of broadband-capable networks in regions of Canada with limited or no access to such networks.

9. The Commission received interventions from large ILECs (Bell Canada, Saskatchewan Telecommunications [SaskTel], and TELUS Communications Inc. [TCI]); competitors (small ILECs, cable carriers, and other telecommunications service providers [TSPs] that use the ILECs' support structures to provide broadcasting and telecommunications services [also referred to as attachers or licensees]); TSP and other stakeholder associations; utility companies; provincial and regional governments; and one individual.

## Issues

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

    - Access to telecommunications poles
    - Access to spare capacity
    - Dispute resolution
    - Poles under joint-use agreements
    - Other issues identified by parties

## Access to telecommunications poles

### Permit application process

#### Background

11. The tariffed process for TSPs to access poles to deploy telecommunications facilities is similar to other existing permitting processes, such as for a city's assessment of a construction project within city rights-of-ways, or the process put in place by rail companies to allow rail crossings by carriers.

12. Currently, ILECs are responsible for all the steps of the process, with the exception of the installation of facilities by the attacher. General conditions of access to the ILECs' support structures can be found in the Support Structure Service section of an ILEC's general tariff. Once access is granted, ILECs and attachers also have to enter into an SSA, which is subject to prior approval of the Commission. The SSA goes more into details as to the obligations and rights of both parties.

13. While there are currently some timelines to respond to an access application in the ILECs' support structure service tariffs, there is no time limit for applications to access 50 or more poles, or for applications in remote areas or areas impacted by unusual conditions, which are not clearly defined.

14. The data provided by large ILECs in this proceeding show that a significant proportion of applications to access fewer than 50 poles are not granted in the timelines specified in the current tariff (maximum of 30 days), with many applications taking more than 90 days for the access to be granted.

**Positions of parties**

15. The Canadian Communication Systems Alliance (CCSA), Cogeco Communications Inc. (Cogeco), the Eastern Ontario Regional Network, the First Mile Connectivity Consortium (FMCC), the Independent Telecommunications Providers Association (ITPA), Rogers Communications Canada Inc. (RCCI), the Southeastern BC Regional Connectivity Committee, and Xplornet Communications Inc. (Xplornet), expressed the need to modify the current support structure service tariffs in order to minimize permitting delays and increase certainty for their planning and execution of broadband deployment across Canada.

16. Beanfield Technologies Inc. (Beanfield), the CCSA, the FMCC, Shaw Communications Inc. (Shaw), and Xplornet submitted that they were in favour of the Commission setting specific timelines for each step of the permitting process to ensure the timely deployment of networks. SaskTel also supported establishing a reasonable deadline for make-ready work to allow for efficient connection to poles.

17. The ITPA also submitted that the tariffs should specify processing timelines for applications involving more than 50 poles.

18. Electricity Canada (formerly known as the Canadian Electricity Association or CEA) argued that there are many elements outside the pole owner's control that can affect the timing of permitting and make-ready work. It also raised the option of a fixed timeline approach, but only as best practice guidelines for turnaround times.

19. Bell Canada argued that the current timelines within the tariffs are reasonable. It also noted that the vast majority of complaints with respect to delays have focused on delays to complete make-ready work, which holds up an attacher's ability to deploy its facilities.

20. TCI argued that it is not feasible to impose a strict timeline on applications that contain large-volume requests or that involve support structures in remote areas due to the magnitude of the request and the number of unknowns.

**Commission's analysis**

21. Parties seeking access to telecommunications poles generally agreed that delays associated with the permit application process are critical bottlenecks to accessing support structures. Many complaints by attachers relate to the fact that there are currently no timelines for responses to applications for more than 50 poles, nor for the completion of make-ready work. Based on the record of the proceeding, it appears that the lack of timelines is the main cause of delays in the permitting process. ILECs have very little incentive to accelerate the process to allow competitors to access their support structures, while being granted a competitive advantage in the delaying of the deployment of competitors' networks, if not actively, at least by being passive in their processing of access applications.

22. The Commission recognizes that implementing and respecting firm timelines for make-ready work would be challenging for ILECs, since factors that are out of their control, such as third-party consultations and work by utilities, can cause unexpected delays and prevent them from respecting these timelines. However, the Commission considers that achievable and well-defined timelines that allow for reasonable exceptions have the potential to support a faster deployment of high-speed networks, increase competition, and contribute to more efficient access to poles, thus serving the public interest.

23. ILECs' transparency and accountability during the permitting process would be greatly improved by imposing timelines, particularly if they had to report and explain any delay at each stage of the process.

24. Some parties pointed to the decisions made by the United States Federal Communications Commission (FCC) in its proceeding entitled "Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment" as a possible model to follow.[4] In its decisions, the FCC implemented specific timelines for each step of the access to poles process, including for the performance of the make-ready work. The Commission is of the view that the situation in Canada is sufficiently similar to that in the United States in terms of geographic perspective (challenges in rural and remote areas) and competitive environment (few incentives, or even disincentives, for ILECs and utility companies to speed up deployment of third-party networks) such that the implementation of timelines would also be appropriate, taking into consideration and making exceptions for elements that are outside the control of ILECs.

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[4] See the FCC's Third Report and Order and Declaratory Ruling in the matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment.

25. Because any stage of the process that lacks a specific deadline represents an opportunity for delay, the Commission **determines** that each step of the access permitting process should have a defined timeline, taking into consideration the number of poles that need to be accessed and recognizing that some special circumstances, particularly those outside of the ILECs' control, may necessitate a certain flexibility in the timelines. These timelines should particularly consider the make-ready work, which is the most problematic and delay-prone step in the process of accessing ILECs' poles.

26. Specific timelines will be discussed further below.

## Make-ready work

### Definitions and categorization of make-ready work, including corrective work

#### *Background*

27. Make-ready work was identified as a serious barrier to broadband deployment in Canada due to the delays and costs related to this type of work.

28. There is currently no standalone definition of make-ready work in the ILECs' tariffs. It has to be inferred from the Make-Ready Charge definition.[5]

#### *Positions of parties*

29. Attachers saw the definition inferred from the ILECs' support structure service tariffs as being too broad and a contributing factor to the excessive delays and costs they face. Many of them argued that this leads to large ILECs charging attachers for work that they feel they should not have to bear the cost of, and delays for work that they should not be responsible for.

30. Attachers claimed that the current situation allows ILECs to charge them for work that is not related to their access requests or for work that ILECs are already compensated for through the tariffed access rates.

31. Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron) submitted that not only is a definition of make-ready work a necessity, but definitions of simple make-ready work and complex make-ready work are also needed. Videotron added that distinct sub-categories of corrective work also needed to be defined. It argued that these definitions are essential to eliminate the vagueness that currently prevails,

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[5] "Make-Ready Charge" is defined in the ILECs' tariffs as follows: "A charge, based on the expense incurred and where appropriate using hourly labour rates specified in the Company's Tariff, applies for any material used and for **any work performed on, in or in proximity to the Company's Support Structures or on the Company's or Joint-User's facilities, including, but not limited to, any additional investment or advance planned investment or reinforcement required, in order to meet the Licensee's requirements for Support Structure Service.** In individual cases, with the mutual agreement of the Company and the Licensee, the Licensee may perform make-ready work at its own expense." (Emphasis added)

and would put an end to the practice of large ILECs taking advantage of make-ready work to have attachers bear the full cost of bringing their support structures up to standard.

32. Most parties, including attachers and large ILECs, supported Videotron's proposition to include definitions of make-ready work and corrective work, as well as their sub-categories, in the tariffs, sometimes with minor modifications or precisions.

***Commission's analysis***

33. The Commission considers that the current lack of definitions is contributing to delays in attachers gaining access to poles, and attachers being charged for costs they should not be responsible for.

34. Providing specific definitions in the support structure service tariffs will ensure that attachers are held responsible only for the work and costs associated with their access requests. As such, it is important to introduce a clear demarcation between the work required on poles to meet construction standards (corrective work) and all other types of make-ready work.

35. In order to add clarity in the tariffs, make-ready work should specifically refer to, and be limited to, the necessary work to create space to accommodate new facilities on a pole. The record of this proceeding also supports defining complex work, either corrective or make-ready, as work reasonably likely to cause a service outage or facility damage. Additionally, the Commission finds it is appropriate to limit the definition of simple make-ready work to the communications space of a pole, as put forth by several interveners.

36. The definition of make-ready work proposed by Videotron, which is very similar to the definition adopted by the FCC, received strong support from the non-ILEC interveners. Therefore, it should form the basis of the definition that is added to the tariffs.

37. Likewise, and given that most parties are also in agreement, Videotron's proposed definitions of simple and complex make-ready work form a strong basis for definitions to be added in the tariffs. However, Bell Canada's proposal to define simple make-ready work as work that is not complex simplifies the definitions and could prevent possible ambiguities.

38. As suggested by RCCI, further identifying types and examples of make-ready work that should fall under the complex or simple categories is a good way to bring additional clarity.

39. With regard to the definition of corrective work, the Commission considers it appropriate to include Videotron's concept that its purpose is to "correct pre-existing anomalies on the Company's support structures."

40. In light of the above, the Commission **directs** the ILECs to revise their support structure service tariffs to include the following definitions:

> "**Make-ready work**" is defined as the modification or replacement of a pole, or of the strands or equipment on the pole, to accommodate additional facilities on the pole or the strands.
>
> "**Complex make-ready work**" is defined as transfers and work that would be reasonably likely to cause a service outage or facility damage, or includes work in the electrical space.
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> "**Simple make-ready work**" is defined as any make-ready work required outside the electrical space that is not complex make-ready work.
>
> "**Corrective work**" is defined as any work required to correct pre-existing anomalies resulting in non-compliance with applicable Construction Standards by a Support Structure or the attachments thereon.
>
> "**Complex corrective work**" is defined as any work required to correct pre-existing anomalies resulting in non-compliance with applicable Construction Standards by a Support Structure or the attachments thereon that would be reasonably likely to cause a service outage or facility damage, or that is beyond the skill set of the licensee or contractor, such as work in the electrical space, as reasonably determined by the pole owner.
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> "**Simple corrective work**" is defined as any corrective work required outside the electrical space that is not complex corrective work.

41. For additional clarity, the Commission provides the following examples of simple and complex make-ready work:

- Simple make-ready work
    - tree-trimming;
    - adding anchors and guys;
    - rearranging, transferring, and moving third-party strand, overlashed facilities, and other equipment, provided splicing of active cabling is not required and the equipment is not a wireless antenna;
    - removing existing cabling and equipment that has clearly been abandoned or has been identified as abandoned by the owner of the cabling or equipment; and
    - all other work that does not reasonably pose a risk of outages or damage to structures or facilities and is not prohibited by an electrical utility company on a joint-use pole.
- Complex make-ready work
    - pole replacement, including installation of the new pole, transfer of existing attachments to the new pole, and removal of the old pole;

- work that is not permitted by an electrical utility company with joint-use rights to use the pole; and
- work that poses a reasonable risk of outages or damages to structures or facilities, including splicing of active cabling and movement of wireless antenna.

**Allocation of the costs of make-ready work and corrective work**

***Background***

42. The current definition of the make-ready charge in the support structure service tariffs does not differentiate between the costs that an ILEC can pass on to an attacher to prepare a pole to accommodate a new attachment and the costs to bring a pole that is the subject of an access application in compliance with applicable construction standards.

43. Because of this lack of differentiation, ILECs, in accordance with current tariff provisions, can pass on costs attributable to corrective work to attachers as long as they can determine that these costs are "in order to meet the Licensee's requirements for Support Structure Service."

***Positions of parties***

44. Most interveners, except Bell Canada and TCI, submitted that pole owners should be responsible for maintaining their pole infrastructure in compliance with construction standards and should assume all related costs.

45. They also argued that as a general matter, the ILECs' costs of maintaining their support structures are included in the costs that are recovered through the Commission's methodology for setting pole access rates.

46. Bell Canada and TCI were of the view that routine maintenance work is the responsibility of the pole owner. However, they argued that the costs for corrective work to bring an existing pole to applicable construction standards in order to fulfill a pole attacher's request should be borne by the attacher requesting such access, given that the review and cost are driven by their request.

47. Should Bell Canada and TCI be required to absorb such costs, they argued that it would inevitably result in an advancement of investments caused by a competitor request. Thus, the current costing methodology would have to be reviewed, and the result of this costing exercise would most likely lead to a significant increase in access rates.

***Commission's analysis***

48. The Commission is of the view that the principle that third-party access should not result in the advancement of investment for ILECs applies only to the investment

and construction of support structures, not to maintaining existing poles to construction standards.

49. Therefore, the argument made by Bell Canada and TCI regarding the difference between ongoing scheduled maintenance and what they call “on-demand” maintenance due to an access application should be dismissed. ILECs are being compensated for the maintenance of their poles through the tariffed access rates and, thus, they should bear the responsibility to keep them up to construction standard. A pole not being up to standard is not the result of an access request; therefore, it should not be the responsibility of the party seeking access to cover the costs.

50. While the Commission acknowledges that ILECs may not be fully compensated for their maintenance costs solely through the attachment rates, it considers this appropriate, because a portion of the costs can be allocated to the pole owner’s operations as well. It therefore follows that attachers should not bear the full burden of the pole maintenance costs.

51. Moreover, ILECs can file a new cost study for support structure services if they believe that rates are no longer just and reasonable. Failing to do so, ILECs cannot impose additional charges to attachers in order to increase the compensation for a category of costs already covered in the tariffed rates.

52. This approach would be similar to the declaration made by the FCC in this matter in its Third Report and Order and Declaratory Ruling:

> New attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment.

53. Additionally, keeping the poles up to construction standard is consistent with the telecommunications policy objectives set out in section 7 of the Act (the policy objectives), notably supporting the orderly development of the telecommunications system and enhancing the resiliency of the telecommunications system.

54. Further, given that an ILEC is currently able to charge potential attachers for corrective work following an application for attachment, it has an incentive to delay corrective work until an application is received. Moreover, the current tariffs allow ILECs to refuse an access request without having to provide further details. Therefore, to prevent anti-competitive behaviour, ILECs should not be able to deny an application due to the lack of capacity caused by a pole not being up to construction standards, and they should have to bring all poles subject to an attachment request to such standards, at their own cost.

55. In light of the above, the Commission **determines** that new attachers are not responsible for the costs associated with corrective work, to the extent that poles or third-party equipment are not in compliance with construction standards. This would not only be consistent with the policy objectives, but would also prevent ILECs from

seeking additional compensation for a service for which they are already compensated through tariffed rates.

56. In addition, the Commission **directs** the ILECs to amend the definition of Make-Ready Charge in their support structure service tariffs to the following:

> A charge, based on the expense incurred and where appropriate using hourly labour rates specified in the Company's Tariff, applies for any material used and for any Make-Ready work performed on, in or in proximity to the Company's Support Structures or on the Company's or Joint-User's facilities but excluding any costs incurred to correct pre-existing Construction Code violations by the Support Structure(s) or any existing cables, equipment or other facilities on the Support Structure(s). For further clarity, the charge must not include any costs defined as "corrective costs" in accordance with this tariff.

57. Moreover, in order to prevent ILECs from simply denying an application which would require corrective work at their own cost, the Commission **directs** the ILECs to amend their support structure service tariffs indicating that an access application cannot be denied due to lack of capacity that could be remediated by performing corrective work, with this corrective work to be performed at the ILEC's cost.

## Pole replacement

### Background

58. There are two main reasons for pole replacement: (i) the pole is at the end of its life due to rotting, significant cracks, woodpecker damage, etc.; or (ii) the pole is not deemed strong enough or tall enough to accommodate more loading.

59. There is currently no specific direction on pole replacement or cost-sharing policy for pole replacement in the ILECs' support structure service tariffs.

### Positions of parties

60. The Public Interest Advocacy Centre (PIAC), SaskTel, and TekSavvy Solutions Inc. (TekSavvy) recommended that the cost of any upgrade that is truly required to accommodate a new attacher should be shared equally between the pole owner and the attacher. The rationale behind this proposal is that the pole owner and the attacher are the primary beneficiaries of the upgrade (including an upgrade involving pole replacement).

61. Beanfield; Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); Cogeco; RCCI; Shaw; TBayTel, Videotron, and Xplornet proposed different ways to split the costs of pole replacement between the attacher and the pole owners. Some proposals took into consideration the depreciation of the pole, while others considered the different types of cost that a pole replacement includes and how they should be shared.

62. These parties shared the view that the pole owner should be fully responsible for replacing a pole that is at the end of its life or not up to construction standards.

63. Bell Canada and TCI indicated that if a pole has to be replaced outside of a planned regular maintenance program, then the costs should be borne by the attacher requesting access.

#### Commission's analysis

64. If a pole has deteriorated to the point that it does not meet safety and construction standards, and thus prevents the installation of new attachments, the pole owner should be responsible for the costs to remediate the situation, which constitutes corrective work.

65. While Bell Canada and TCI submitted that they are not required to accelerate pole deployment to satisfy demand by third parties or that it would constitute an advancement of their investments, the Commission finds that it is an incorrect interpretation of paragraph 11 of Telecom Decision 2010-900 with respect to maintenance of the poles and the performance of corrective work.

66. Requiring ILECs to perform corrective work, including pole replacement when a pole is at the end of its life, does not infringe on the principle that third-party access should not result in, or advance the timing of, construction of the support structures.

67. In these situations, the driver for the poles having to be replaced is due to either the pole being at the end of its useful life or the lack of adequate maintenance; in both cases, it is the pole owner's responsibility to remediate the situation.

68. In light of the above, the Commission **directs** the ILECs to amend their support structure service tariffs to state that an ILEC cannot decline to replace a pole, at its own cost, if the lack of capacity to accommodate a new attachment is due to the fact that the pole does not respect safety and construction standards, as reflected in the above definition of corrective work.

69. With regard to instances where a pole meets construction standards but would still have to be replaced to accommodate additional loading, the Commission finds that these situations are different, because the access request is the trigger for pole replacement or upgrade. The Commission considers that this type of work is to be considered as make-ready work, rather than corrective work, since it has to be performed to accommodate additional facilities on the pole.

70. However, contrary to other types of make-ready work where the attacher is the only beneficiary of the work, and thus the only party responsible for the cost, the pole owner will also benefit from the new structure. A new pole has a service life of 30 to 40 years, and the owner will be able to not only use it for its services, but also rent space at tariffed rates.

71. Therefore, the Commission considers that it would be unreasonable for the attacher to be required to pay the full cost of the replacement as is often the case currently. SaskTel suggested that a 50/50 split of the costs between the pole owner and the new attacher would be a fair and simple approach similar to joint-use agreements it has in place with some electrical utility companies. PIAC also suggested such an approach, while other parties suggested alternative cost-sharing methodologies, such as those factoring in the level of depreciation of the pole. Further, the main reason why the tariffed access rates are relatively low, compared to some access rates charged by utility companies for access to their poles, is because ILECs are under no obligation to create additional capacity to accommodate new attachments.

72. The Commission considers that while requiring pole owners to replace their poles may warrant a review of the costing methodology, a cost-sharing approach based on good-faith negotiation could lead to mutually beneficial outcomes for attachers and pole owners.

73. Therefore, the Commission **directs** the ILECs, as a condition under section 24 of the Act, to enter into good-faith negotiations with potential attachers to find mutually beneficial solutions to upgrade poles with a lack of capacity. Furthermore, the Commission **determines** that insisting that a single attacher assume more than 50% of the total pole replacement costs, including the costs associated with the relocation of facilities, would in most instances not constitute good-faith negotiation.

74. Finally, in order to monitor the effectiveness of the approach described above, the Commission **directs** the ILECs, pursuant to sections 24 and 37 of the Act, to provide information about each instance where they elected not to replace a pole in order to create additional capacity to accommodate a new attacher. This information is to be provided as part of the quarterly mandatory reporting to the Commission discussed in the Dispute resolution section below. The information must include the name of the requesting attacher, the location of the pole(s), and any supporting evidence or arguments that it fulfilled its obligation to negotiate in good faith before declining the request. Commission staff will provide additional details to ILECs via letter.

## Performance of make-ready work by attachers and authorized contractors

### Background

75. Current support structure service tariffs allow for attachers, or their approved contractors, to perform make-ready work. However, multiple parties have indicated that this work is typically only permitted in a limited number of access requests.

### Positions of parties

76. Parties generally agreed that the cost of make-ready work is the sole responsibility of the attacher. Several argued in favour of letting attachers, or their approved contractors, instead of solely the ILECs, perform make-ready work.

77. The Federation of Canadian Municipalities, the ITPA, and Zayo Group, LLC (Zayo) commented that attachers, or their approved contractors, should be permitted to perform make-ready work when a pole owner does not meet a defined maximum time period.

78. Given the possibility of delays, Eastlink submitted that attachers should be given the option to do the work themselves. This would ensure that attachers can deploy their networks in an efficient, cost-effective manner.

79. Beanfield, Bell Canada, Cogeco, Eastlink, RCCI, SaskTel, Shaw, TBayTel, TekSavvy, and Videotron argued that it should not be necessary to wait for an attempt by the pole owner to complete the make-ready work if the attacher, or its approved contractor, is capable of doing the work itself. With the exception of Bell Canada, these parties were of the view that attachers should have the choice to either perform the work themselves or rely on the ILECs to do so.

80. TCI argued that the pole owner should always have the final right of determining what work will be carried out, as well as when and by whom.

81. In addition to arguing for the right for attachers, or their pre-approved contractors, to perform simple make-ready work, TekSavvy and Videotron submitted that the ILECs should be directed to create a virtual database containing all of the ILECs' operational and technical reference materials (listed by province), including a company's construction standards to which attachers must have access.

82. RCCI and TekSavvy also commented that ILECs should be directed to create and maintain a virtual database containing a list of approved contractors that are allowed to perform make-ready work.

83. Bell Canada submitted that there should be a time limit for attachers to perform make-ready work as a way to prevent them from delaying the completion of make-ready work in order to block other potential attachers' access requests.

#### Commission's analysis

84. Allowing attachers to perform make-ready work would provide them with more control over the timing of installing support structure attachments and would ultimately accelerate the deployment of broadband-capable networks.

85. Due to the health and safety concerns associated with complex make-ready work and to reduce the duration and frequency of service downtime, the nature of the work to be performed by attachers or their approved contractors should be limited to simple make-ready work.

86. With regard to the proposal to authorize attachers to perform make-ready work only when ILECs do not meet certain timelines, this could have the unintended consequence of ILECs purposely not meeting timelines in order to delay access to poles. To mitigate this possibility, and because attachers are responsible for the cost

of make-ready work, they should always have the option to perform simple make-ready work once their access request has been reviewed and authorized by the pole owner. Moreover, given that some attachers may not have the expertise, access, or resources to perform the work in all cases, attachers should also retain the right to request that the pole owner complete the work at the attacher's cost.

87. Another consideration raised is the need for a time limit for attachers to perform make-ready work as a way to prevent any form of capacity reservation. This would be to prevent attachers from not acting in a timely manner as a means to block other potential access requests that could have been completed sooner.

88. Given that the work performed by attachers would be limited to simple make-ready work, a 60-day limit to complete the work should be sufficient for projects under 200 poles, and 65 days for projects beyond 200 poles. The 60-day period is more permissive than the time limit for ILECs to complete make-ready work outlined below. This is to account for potential delays for attachers that may have less experience performing or contracting this type of work, while the 65-day period is consistent with the timeline proposed for ILECs. The Commission considers these timelines appropriate and sufficient to prevent undue capacity reservation on the part of the attachers.

89. Accordingly, the Commission **directs** the ILECs to amend their support structure service tariffs to include a provision requiring them to offer licensees the possibility of carrying out the simple make-ready work described in the make-ready work estimate themselves, or through an approved contractor.

90. The Commission also **directs** the ILECs to amend their support structure service tariffs to include the following provisions:

    - The Licensee must inform the ILEC of its decision whether or not to carry out make-ready work within an appropriate number of days of receipt of the make-ready work estimate.
    - Once the Licensee has confirmed to the ILEC its decision to carry out the make-ready work, the Licensee shall complete it within 60 calendar days for projects involving fewer than 200 poles, or 65 calendar days for projects involving 200 poles or more.

91. With respect to the number of days within which the Licensee must inform the ILEC of its decision whether or not to carry out make-ready work following the receipt of the make-ready work estimate, the Commission is of the preliminary view that 30 days would be appropriate.

92. The Commission considers that attachers' make-ready work would be facilitated by easy access to up-to-date lists of approved contractors. Similarly, attachers having access to all of the ILECs' relevant and up-to-date operational and technical reference materials and construction standards would not only increase the safety of network deployments, but would also facilitate the efficient and timely performance

of make-ready work by attachers or their approved contractors. The Commission considers it reasonable for this information to be made available within 30 days following the approval of the tariff. With regard to keeping the information up to date, the Commission considers that when operational and technical reference materials and construction standards are updated or added to the database, they should be made available at least 30 days before they are implemented or put into force.

93. Consequently, the Commission **directs** the ILECs to amend their support structure service tariffs to include provisions requiring them to create, maintain, and regularly update virtual databases containing (i) a list of approved contractors that are allowed to perform make-ready work, and (ii) all of their operational and technical reference materials and construction standards relating to access to support structures.

94. The Commission **determines** that these databases are to be available by province and territory, to which attachers must have easy access within **30 days** of the tariff's approval. Information pertaining to amended or new operational and technical reference materials and construction standards must be added to the database at least **30 days** before they are implemented or put into force.

95. In order to increase the pool of authorized contractors and facilitate the performance of make-ready work, the Commission also considers that ILECs should allow attachers to request pre-approval of their own preferred contractors, and that such approval should not be unreasonably withheld, subject to conditions, or delayed. To achieve this, it is reasonable to require ILECs to review contractors within a certain number of days. Given the limited record on this point, the Commission issues the preliminary view that a deadline of 30 days following receipt of the attacher's written request is appropriate and would allow for focused comments when the tariff is being finalized. In cases where the ILEC is not able to approve a contractor, the ILEC should be required to provide the contractor and attacher comprehensive written reasons for the denial, in addition to possible corrective measures to remediate the situation and obtain approval. These terms and conditions would ensure that requests for contractor approval are not denied arbitrarily or in an untimely manner. At the same time, they would ensure that an ILEC has sufficient time to perform its due diligence and determine whether the contractor is qualified to perform make-ready work on telecommunications poles.

96. Therefore, to facilitate the approval process to perform make-ready work and make it more transparent, the Commission **directs** the ILECs to amend their support structure service tariffs to include provisions requiring them to

    - approve or deny an access request by an attacher or a contractor within an appropriate number of days of receiving a complete written request; with respect to the number of days to be included in the tariff, the Commission is of the preliminary view that 30 days would be appropriate; and

- provide the contractor and attacher comprehensive written reasons as part of any formal denial of a request to approve a contractor, as well as possible corrective measures to remediate the situation and obtain approval.

## Timelines for all stages of the pole access process by ILECs

### Background

97. Current support structure service tariffs contain limited provisions regarding timelines for ILECs for the processing of applications to access telecommunications poles, and none for the execution of make-ready work.

### Positions of parties

98. Numerous attachers expressed frustration regarding the delays and uncertainties caused by make-ready work and suggested that the Commission add specific timelines for simple and complex make-ready work to the tariffs. On the other hand, large ILECs and utility companies mostly opposed adding timelines, arguing that many factors affecting make-ready work are beyond their control.

99. Beanfield, the CCSA, Cogeco, the Federation of Canadian Municpalities, Iristel Inc. (Iristel), Shaw, Xplornet, and Zayo expressed the view that the Commission should set timelines for each step of the make-ready work process to ensure the timely completion of make-ready work and thus the timely deployment of networks. Some of them filed specific timeline proposals while the others remained more general.

100. RCCI, SaskTel, TekSavvy, and Videotron proposed specific timelines for make-ready work, some of which were based on the current FCC timelines. These proposals varied according to the nature of the work (i.e., simple or complex) and the number of poles in an application.

101. Connexion Matawinie, the Eastern Ontario Regional Network, the ITPA, the Municipalité régional de comté d'Argenteuil and Fibre Argenteuil inc. (collectively, Argenteuil), and TBayTel were in favour of a fixed timeline for performing make-ready work. The majority of them were of the view that ILECs should be given a maximum of three months or 90 days to complete the work.

102. Eastlink submitted that rather than establishing the maximum amount of time within which pole owners must complete make-ready work, which would vary depending on the type of make-ready work required and the size of the project, the attachers should be given the option to do the work themselves.

103. RCCI's proposed timelines also provided for exceptional extensions for "good and sufficient cause," with notification to and as agreed to by the permit applicant. A third-party delay, where the ILEC can demonstrate that it has proceeded with due diligence, might qualify for such an extension.

104. Bell Canada, Electricity Canada, and TCI argued that it is impractical to prescribe time limits for make-ready work, given the breadth of external factors beyond the ILEC's control that can influence the timing of completion.

#### Commission's analysis

105. The Commission considers that well-defined and clearly stated timelines would provide enhanced clarity and certainty to all parties and would be an efficient tool to prevent unjustified delays and their accompanying uncertainties and costs.

106. To be effective, timelines should address the current lack of provisions in the support structure service tariffs regarding make-ready work. Doing so would provide a framework creating more certainty for potential attachers and limit delays.

107. Data provided by Bell Canada and TCI show that applications not requiring make-ready work are processed mostly in accordance with the current tariffs' deadlines. The main issue raised by competitors is the lengthy delays arising when applications require make-ready work.

108. To illustrate the extent of the delays, below is a summary of the data filed by the two companies regarding the average time to process applications requiring make-ready work:

**Table 1: Bell Canada – Average time to process applications not requiring make-ready work[6]**

| Year | Number of poles | Number of days |
|---|---|---|
| **2019** | 20 poles or fewer | 14 days |
| | 21-50 poles | 28 days |
| | Over 50 poles | 49 days |
| **2020** | 20 poles or fewer | 16 days |
| | 21-50 poles | 50 days |
| | Over 50 poles | 83 days |
| **2021** | 20 poles or fewer | 15 days |
| | 21-50 poles | 25 days |

[6] The tariffed timelines for an application for 20 poles or fewer is within 15 calendar days, within 30 days for requests involving more than 20 poles but fewer than 50 poles, and "to be determined" based on specifics of the request for 50 poles or more.

| | | |
|---|---|---|
| | Over 50 poles | 35 days |

**Table 2: Bell Canada – Average time to process applications requiring make-ready work**

| Year | Number of poles | Number of days |
|---|---|---|
| **2019** | 50 poles or fewer | 362 days |
| | Over 50 poles | 536 days |
| **2020** | 50 poles or fewer | 282 days |
| | Over 50 poles | 335 days |
| **2021** | 50 poles or fewer | 129 days |
| | Over 50 poles | 204 days |

**Table 3: TCI – Average time to process applications requiring make-ready work (British Columbia, 2019-2020)[7]**

| Number of poles | Number of days |
|---|---|
| 50 poles or fewer | 254 days |
| Over 50 poles | 502 days |

109. The Commission recognizes that, for Bell Canada, the situation improved significantly in the latter part of the 2019-2021 period. These improvements are likely linked to measures adopted by Bell Canada, such as temporary work-around solutions to speed up the access process, following discussions and coordination efforts at the Quebec "table de concertation," which stemmed from the Government of Quebec's objective of connecting all residents of the province to broadband Internet by fall 2022.

110. That being said, the Commission remains concerned over the lack of justification provided by ILECs for delays in processing pole access applications, and the duration of these delays, especially where some of the attachers have to meet deadlines in order to qualify for various grants destined to accelerate the connection of all Canadians to a broadband network.

[7] TCI only filed partial data on completion timelines for applications not requiring make-ready work.

111. Moreover, attachers currently have no guarantee that Bell Canada will maintain its measures or remain as cooperative once the political, regulatory, and legal pressures to connect all Quebec households have subsided. Thus, the Commission seeks to ensure that improvements continue and are made throughout Canada.

112. While there are multiple factors that could influence the completion of make-ready work and that are outside of ILECs' control, such as make-ready work to be performed by utility companies, permits and other third-party approvals, consultation with Indigenous communities, and emergency situations, there are steps in the process that are almost always in the ILECs' control. For steps where delays could be caused by factors outside the ILECs' control, timelines should include provisions for exceptional extensions for good and sufficient cause, with notification to and as agreed to by the permit applicant. For example, a third-party delay would likely qualify for such an extension if the ILEC can demonstrate that it has proceeded with due diligence.

113. Moreover, imposing a single timeline for make-ready work would fail to recognize the varying degrees of complexity of the work required, and the number of poles that are the subject of the access applications. Most parties that proposed timelines have taken these factors into consideration, and the necessity of creating a framework that considers the complexity and the extent of the make-ready work to perform.

114. To further encourage ILECs to comply with timelines, some provisions inspired by current FCC regulations should be added to the tariffs. More specifically, if a pole owner does not respond to an application request by the allotted time for assessing the completeness of an application, the application should be deemed approved. In the same way, if an ILEC exceeds the allotted time to complete a survey and grant or deny access, the application should be deemed approved, and the attacher allowed to proceed with the installation of its equipment without delay. However, and as mentioned above, ILECs should be allowed to extend the timelines for any step in the access process (including these two steps) if they can demonstrate a good and sufficient cause for an extension. In cases where an ILEC indicates that delays will exceed timelines, with justification, attachers not satisfied with the justification provided by an ILEC to demonstrate that a delay is due to circumstances beyond its control could use the Commission's dispute resolution processes to resolve the issue. These processes are discussed further below.

115. The Commission also considers that new timelines for ILECs should not have the unintended consequence of discouraging attachers from performing make-ready work themselves. Attachers have the most incentives to minimize delays in deployment of broadband networks, and they should be part of the solution by being able to take into their hands portions of the access process. Thus, timelines for ILECs to perform the make-ready work should not be too short, otherwise, not seeing an advantage of doing the work themselves, attachers could potentially only rely on ILECs for this work.

116. Based on the record of the proceeding, which includes discussion on the FCC's current framework for pole access, the Commission considers that the timelines currently in the tariffs with respect to applications for 50 or fewer poles not requiring make-ready work should remain unchanged (15 days for 20 or fewer poles, and 30 days for 21 to 50 poles), and that two new categories of applications (51 to 200 poles, and 201 poles or more) should be added to the tariffs to replace the current category (over 50 poles) for which there are currently no timelines. As most applications are for access to 50 poles or fewer, the Commission is of the view that the FCC's categories – fewer than 300 poles, up to 3,000 poles, and over 3,000 poles – are insufficiently granular for the Canadian context.

117. The timelines for these two new categories for applications not requiring make-ready work should consider the work to be done by the ILECs to assess the applications and complete a survey of the poles included in the applications. Proposals by different parties and, to some extent, the current FCC framework, offer insights and a basis on which to set fair and reasonable timelines.

118. For all categories of applications, timelines for make-ready work should vary depending on the nature of the work (simple or complex) and provide sufficient time to complete the work in a safe manner.

119. Accordingly, the Commission **directs** the ILECs to amend their support structure service tariffs to include the following provisions:

    - Replace the current timelines for pole access applications with the timelines, in calendar days, detailed in the tables below:

**20 poles or fewer**

| Step / Type of make-ready work | No work | Simple | Complex |
|---|---|---|---|
| Assess application | 5 days | 5 days | 5 days |
| Complete a survey of poles & grant or deny access | 10 days | 10 days | 10 days |
| Send detailed, itemized estimate of charges | N/A | 10 days | 15 days |
| Complete make-ready work | N/A | 15 days | 30 days |
| **Total** | **15 days** | **40 days** | **60 days** |

**21 to 50 poles**

| Step / Type of make-ready work | No work | Simple | Complex |
|---|---|---|---|
| Assess application | 10 days | 10 days | 10 days |
| Complete a survey of poles & grant or deny access | 20 days | 20 days | 20 days |
| Send detailed, itemized estimate of charges | N/A | 15 days | 15 days |
| Complete make-ready work | N/A | 30 days | 45 days |
| **Total** | **30 days** | **75 days** | **90 days** |

**51 to 200 poles**

| Step / Type of make-ready work | No work | Simple | Complex |
|---|---|---|---|
| Assess application | 10 days | 10 days | 10 days |
| Complete a survey of poles & grant or deny access | 50 days | 50 days | 50 days |
| Send detailed, itemized estimate of charges | N/A | 15 days | 15 days |
| Complete make-ready work | N/A | 45 days | 75 days |
| **Total** | **60 days** | **120 days** | **150 days** |

**201 poles or more**

| Step / Type of make-ready work | No work | Simple | Complex |
|---|---|---|---|
| Assess application | 10 days | 10 days | 10 days |
| Complete a survey of poles & grant or deny access | 90 days | 90 days | 90 days |
| Send detailed, itemized estimate of charges | N/A | 15 days | 15 days |
| Complete make-ready work | N/A | 65 days | Good-faith negotiations |
| **Total** | **100 days** | **180 days** | **115 days + good-faith negotiations** |

- With regard to the step “Assess application,” indicate that when a pole owner that is in receipt of an application does not respect timelines to respond to the potential attacher (5 to 10 days, based on the number of poles), the application will be deemed approved.

- With regard to the step “Complete a survey of poles and grant or deny access,” indicate that when a pole owner exceeds the allotted time to respond to the potential attacher (10 to 90 days, based on the number of poles), the application will be deemed approved and the attacher will be allowed to install its facilities.

- Provide for extensions for good and sufficient cause, with notification to and as agreed to by the permit applicant. Indicate that events beyond the control of the ILEC, such as third-party delays, where the ILEC can demonstrate that it has proceeded with due diligence, should qualify for such an extension. In cases where an ILEC indicates that delays will exceed timelines, with justification, attachers not satisfied with the ILEC’s justification that a delay is due to circumstances beyond its control could use the Commission’s dispute resolution processes to resolve the issue.

## One-touch make-ready work

### Introduction of a one-touch make-ready work regime

#### *Background*

120. The current make-ready work process can be tedious when attachments from multiple parties have to be rearranged to create capacity for a new attachment. It can lead to long delays as every attacher (including the ILEC) must send out its own approved contractor to move only its respective attachment. Each contractor must also schedule its work so as not to conflict with other contractors performing make-ready work, and take into account other local factors, such as weather, traffic, and work such as road paving.

121. One way to minimize these delays would be to introduce a one-touch make-ready (OTMR) regime where a pole owner or an attacher could use a single crew to perform all the necessary make-ready work, including moving all attachments (i.e., those of ILECs, the attacher, and/or third-party attachers) on a pole on a single visit to create additional capacity. The FCC implemented an OTMR regime in 2018.

#### *Positions of parties*

122. Overall, parties agreed that a new OTMR regime has the potential to reduce delays and to facilitate access to telecommunications poles. The introduction of an OTMR regime was seen as an effective means of addressing the make-ready work access barrier and enabling timely access to poles.

123. While it supported the introduction of an OTMR regime, Bell Canada argued that licensees should only be allowed to conduct OTMR work if the work is not likely to require service cutovers, splicing, or other work that would risk damaging facilities. In addition, Bell Canada indicated the need to amend the tariffs to include a definition of OTMR. There were no objections to Bell Canada's arguments.

#### *Commission's analysis*

124. In light of the unanimous support from parties for an OTMR regime in Canada, the Commission considers that an OTMR regime could significantly reduce delays, and at least some of the frustration caused by make-ready work because attachers, who have the most incentives to proceed quickly, could be actively involved in the process.

125. Allowing attachers to perform the make-ready work on behalf of the pole owner, and any other party with facilities already attached to a pole has two major benefits. First, the reduction of the delays caused by the current need for multiple authorized crews to complete the work (i.e., one crew per attacher, including the ILEC). In an OTMR regime, the attacher could send just its authorized crew to perform all the work, thus enabling a faster deployment of networks. Second, an OTMR regime would most likely decrease the cost of the work due to the simplification of the process and the inherent savings associated with a significantly reduced number of workers/crews.

126. As discussed above regarding make-ready work, the Commission considers that attachers should have the choice to either perform the work themselves, or have the ILECs complete the work at the attachers' cost. The same should apply under an OTMR regime. The difference would be that ILECs, attachers, or authorized contractors would also be able to move pre-attached facilities of other parties to create capacity for a new attachment.

127. There was consensus among parties that only simple make-ready work should be performed under an OTMR regime. As noted by parties, any complex work requiring service cutovers, splicing, or other work that risks damaging facilities should be left to the ILECs or to the utility company, especially if there is work to be done in the electrical space of the pole.

128. In light of the above, the Commission **determines** that it will implement an OTMR regime, and that this regime should use the FCC's OTMR regime as a model to define specifics (e.g., timeline for notice to affected parties).

129. The Commission **directs** the ILECs to amend their support structure service tariffs to include an OTMR regime which, under certain conditions, would allow ILECs and/or attachers to perform make-ready work on facilities, including on behalf of other parties with facilities already attached to a pole.

130. The Commission also **directs** the ILECs to amend their support structure service tariffs to include the following definition:

> **"One-touch make-ready (OTMR)"** is defined as a process whereby the Company or a Qualified Contractor performs simple make-ready work with respect to an approved permit request, including on behalf of the Company and other occupants of the structure. For greater certainty, support structures installed or modified pursuant to the OTMR process shall remain the property of the Company.

#### OTMR contractor approval process

##### *Background*

131. There is a need for a certification process to ensure that participants in the OTMR process are qualified for such work, which will minimize the safety risks associated with OTMR work performed on poles by non-ILECs (i.e., attachers or contractors).

##### *Positions of parties*

132. RCCI proposed that ILECs should maintain a list of approved contractors and allow new contractors to be added to this list if the attacher can provide evidence that the contractor has the necessary training and expertise and complies with applicable health and safety, operational, and insurance requirements. RCCI also indicated that the ILECs should be directed to set out any criteria that must be met to obtain such approval.

133. Beanfield, Bell Canada, Eastlink, RCCI, Shaw, and Videotron either proposed or supported amendments to the ILECs' tariffs to include definitions of approved or qualified contractors. The approval process included in these proposed amendments varied, and included the following:

- providing evidence that the contractor satisfies applicable health and safety, operational, and insurance requirements;
- successfully completing a six-month trial period;
- being certified by the Commission or its delegate of meeting the technical, insurance, and experience criteria approved by the Commission from time to time; and
- applying for and successfully completing a certification process with respect to their ability to conduct certain types of make-ready work.

134. Electricity Canada indicated that from an electrical industry perspective, there is an initial probation period that is generally not a fixed period of time but rather a certain number of specific tasks/projects that a contractor must successfully complete to be certified.

135. The FMCC submitted that the criteria for OTMR certification should be set and enforced by the Commission, not by an ILEC.

136. TekSavvy proposed a set of criteria for certification: (i) completion of a three-month OTMR work trial during which the licensee or contractor completes OTMR work on at least one pole; or (ii) completion of OTMR work on 10 poles, whichever occurs first.

137. TCI proposed a qualification process that focuses on the past performance of the licensee, and argued that it should have the sole and final authority to determine whether OTMR certification should be denied to a licensee.

***Commission's analysis***

138. As previously discussed, the Commission has directed the ILECs to keep, maintain, and make easily accessible a list of authorized contractors for simple make-ready work. The Commission considers it appropriate to use the same approach for OTMR work.

139. Proposals that would have the Commission certifying contractors for OTMR work would not be efficient or practical, since this capacity would have to be developed, and would likely duplicate the processes that currently exist in the industry.

140. Furthermore, the process for contractors to be OTMR-approved should be simple and transparent, and take into consideration health and safety, operational (such as past non-compliance issues), and insurance requirements.

141. To ensure safe deployment of networks, the Commission considers it reasonable to allow ILECs the possibility to decertify contractors or prohibit them from conducting OTMR work should they be deemed unable to safely do so. However, this process should be fair and transparent. Thus, ILECs should provide comprehensive written reasons for the denial, in addition to possible corrective measures to remediate the situation and obtain approval.

142. Therefore, the Commission **directs** the ILECs to amend their support structure service tariffs to include the following:

> **"Qualified Contractor**" is defined as a contractor that has applied for and successfully completed a Company-designated certification process with respect to their ability to conduct certain types of make-ready work. Upon completion of the certification process to ascertain whether the contractor satisfies applicable health and safety, operational and insurance requirements, either the contractor will be approved and considered a Qualified Contractor for that type of work, or the qualification shall be denied with written reasons to support such a denial, as well as possible corrective measures for the Contractor to undertake to remediate the situation and obtain approval.

> The Company must maintain a reasonable list of Qualified Contractors who are permitted to carry out make-ready work on behalf of a Licensee. In the event that a Licensee wishes to use a contractor not on the list, the Licensee must notify the Company in writing, at least thirty (30) calendar days in advance of such contractor commencing work. If the Licensee provides evidence that the contractor satisfies applicable health and safety, operational and insurance requirements, the Company shall confirm the contractor is a Qualified Contractor.

143. The Commission also **directs** the ILECs to include a provision in their support structure service tariffs requiring them to manage the list of qualified contractors, update it regularly, and make it easily accessible to attachers within **30 days** of the tariff's approval.

#### Installation before make-ready work and temporary workaround solutions

##### *Background*

144. In certain cases where it would be safe to do so, the deployment of networks could be accelerated if attachers were able to proceed to the installation of their facilities on telecommunication poles before the necessary make-ready work is completed.

145. In a similar way, temporary workaround solutions could be considered in situations where make-ready work will not be completed in a reasonable time frame due to factors beyond the control of the attacher.

##### *Positions of parties*

146. Bell Canada submitted that it had announced a new process that will allow for the installation of an attachment on a support structure before the completion of any make-ready work. It indicated that the process will minimize inter-party engineering disputes while maintaining safeguards.

147. Bell Canada also highlighted that it had initiated a trial of a new process in Quebec that allows attachers to propose temporary workaround solutions so that they can deploy their facilities pending the completion of make-ready work on a problematic pole. Bell Canada submitted that temporary workaround solutions should be considered a last resort where make-ready work will not be completed in a reasonable time frame due to factors beyond the control of the attacher.

148. RCCI submitted that Bell Canada's trial in Quebec should be extended to ILEC support structures throughout the rest of Canada.

149. Bell Canada proposed a process whereby an attacher will be required to file an engineer's report attesting to the absence of safety issues before and after the installation of its equipment. Videotron argued that there is no reason to file a second engineer's report because Bell Canada will inspect the equipment once the

installation is complete, and requiring a second report will add an unnecessary administrative burden for attachers.

150. TekSavvy and Videotron were of the view that an ILEC must allow the attacher to install a temporary workaround solution without delay or conditions, upon the attacher's presentation of a risk analysis completed and signed by an engineer. They also argued that all operational processes relating to access to poles should be codified in the support structure service tariff and not left to the ILEC's discretion.

151. TCI submitted that having a contractor carry out the work in the absence of a review and approval by the owner could increase the risk of non-compliance and safety concerns, since it could interfere with the facilities of other licensees on the support structure and other planned work.

***Commission's analysis***

152. The Commission considers that, conditional on an engineer's sign-off, allowing attachers to install their facilities prior to the completion of make-ready work could help accelerate the deployment of broadband networks in Canada. The Commission also notes that following discussions and coordination efforts at the Quebec "table de concertation," Bell Canada put in place a new process of this type.

153. In cases where make-ready work will not be completed in a reasonable time frame, if an attacher can present a risk analysis completed and signed by an engineer demonstrating the safety of a temporary workaround solution, ILECs should allow the attacher to proceed with this solution without delay or other conditions. This would ensure that delays to deploying broadband-capable networks would be minimized, while not jeopardizing the safety of the support structure for the workers and the public.

154. The temporary nature of the workaround solutions should be well understood by attachers. It is reasonable to expect attachers making use of a temporary solution to remove the solution as soon as the necessary make-ready work has been completed and its network deployment can be made permanent.

155. The Commission considers that requiring attachers to file an engineer's report attesting to the absence of safety issues following the installation of its equipment would duplicate work, since the ILECs' current process allows for the inspection of work once it is completed.

156. The Commission is also of the view that allowing for temporary workarounds, with engineer sign-offs, is a measure that could safely streamline the attachment process and, as such, should not only be encouraged, but required.

157. Thus, the Commission **directs** the ILECs to amend their support structure service tariffs to include the following language:

> When make-ready work will not be completed within prescribed timelines, or when deployment can safely be performed before make-ready work is complete, upon the determination by the Company that sufficient capacity is available, and upon filing of a risk analysis signed by a professional engineer demonstrating its safety and conformity to applicable construction standards, the Company shall, within 10 days, unconditionally grant the permit for access to a support structure and allow the Licensee to install its facilities prior to completion of the make-ready work. Any temporary workaround solution shall be removed at the cost of the Licensee during the course of the installation of a permanent solution as part of make-ready work.

#### Limitation of liability

##### *Background*

158. The limitation of liability in the ILECs' SSAs is an issue in the context of attachers being allowed to perform make-ready work and the implementation of an OTMR regime where third parties are allowed to work on attachments or poles they do not own. It also has an impact on the ILECs' willingness to allow attachers to determine, in certain situations, as to whether installations can be completed without an engineer's sign-off.

##### *Positions of parties*

159. Bell Canada argued that the limitation of liability in its SSA, as currently approved by the Commission, does not protect it adequately for it to consider removing the requirement for an engineer's certification (as Hydro-Québec has done) in certain situations. As such, Bell Canada proposed that a new section 6.1.1 be introduced in the SSAs.

160. TCI indicated that this limitation of liability clause is required for the reasons set out by Bell Canada. Similarly, enacting an OTMR regime cannot be considered gross negligence or wilful conduct, as contemplated in section 6.1 of the SSAs, on the part of the pole owner in a process managed entirely by the attacher and in which a pole owner is not involved. It argued that OTMR work cannot be implemented without this legal safeguard for pole owners.

161. Cogeco, Electricity Canada, the ITPA, PIAC, and SaskTel found the liability modification suggested by Bell Canada reasonable.

162. RCCI submitted that it is essential that the ILECs face the same liability for damages they cause to third-party attachments when performing make-ready work as third-party attachers. All third-party attachers must also have the same protections as the ILECs for damages caused by OTMR work. Thus, RCCI proposed minimal revisions to the provisions in the SSAs to address liability issues arising from OTMR work, including a new paragraph in section 6.

163. Eastlink and Videotron submitted that under no circumstances should the SSA protect Bell Canada from liability in instances of gross negligence or wilful misconduct; therefore, they submitted that Bell Canada's proposed section 6.1.1. is inappropriate. Eastlink and Videotron agreed with RCCI's proposed amendments to the liability provisions as a more balanced approach.

164. TekSavvy indicated that the Commission should reject Bell Canada's proposal and instead limit an attacher's scope of liability to direct damages flowing from an intentional tort or negligence associated with the attacher's conduct on or around the telecommunications pole.

***Commission's analysis***

165. It is important to find the right balance between the attachers' liability and the pole owner's responsibility, with the objective being to incentivize all parties to facilitate the deployment of telecommunications facilities in a safe and efficient way.

166. Therefore, ILECs must have the assurance that allowing attachers to perform any kind of work on or around their support structures will not result in damage to the structures, serious issues to the ILECs' networks, or the ILECs being deemed responsible for issues caused by factors outside their control. More importantly, the safety of the workers and the public should be the priority.

167. Moreover, holding attachers responsible for their actions will incentivize them to follow construction standards and safety regulations, and ILECs should bear the same liability for damages they cause to third-party attachments when performing make-ready work as third-party attachers.

168. The proposed amendments made by Bell Canada strike an appropriate balance between the responsibilities of the attacher and of the pole owner. ILECs will continue to be held responsible in instances of gross negligence or wilful misconduct, and bear the same liability for damages they cause to third-party attachments when performing make-ready work as third-party attachers. The same will apply for attachers.

169. Therefore, the Commission **directs** the ILECs to amend their SSAs to include the following:

> 6.1.1 For the purposes of section 6.1 of this agreement, processes developed in good faith for the purposes of accelerating access to structures, including with respect to OTMR work by the Company or third-party licensees, shall not, in and of themselves, be considered gross negligence or wilful acts of the Company which restrict the application of section 6.1. The Licensee, having fully assessed any potential risks and responsibility arising from participating in such processes, assumes all such risks and responsibility for any damages or liability accruing to the Company, the Licensee or a third party as a direct or indirect result of its participation, provided that nothing in this provision restricts the

Company's liability for negligence or wilful misconduct in the performance of work, including OTMR on its own behalf or in fulfilling its obligations in respect of any processes developed in good faith for accelerated access to Support Structures.

#### Increase in the minimum level of insurance coverage

##### *Background*

170. The insurance clause in section 7.2 of the SSAs requires attachers to subscribe to a minimum level of insurance coverage of $2 million.

##### *Positions of parties*

171. Bell Canada and TCI submitted that the insurance clauses should be amended to match the $10 million level of coverage that municipalities typically require in municipal access agreements.

172. TCI added that the insurance policy could be more for larger projects, and that depending on the details of the OTMR work, the insurance clause in the SSAs may need to be revised to ensure appropriate insurance coverage is available.

173. TekSavvy submitted that neither Bell Canada nor TCI provided any evidence to support the amendment proposal and justify an increase to the minimum level of insurance coverage to $10 million.

##### *Commission's analysis*

174. The Commission is of the view that the large ILECs did not provide sufficiently compelling arguments to justify increasing the minimum level of insurance coverage required in the SSAs.

175. However, the Commission intends to monitor the situation, particularly in light of the potential effects of competitors' increased involvement in performing make-ready work. Should TSPs encounter insurance-related issues in the future, they could then refer the matter to the Commission.

176. The Commission therefore **determines** that the minimum level of insurance coverage will not be increased.

## Access to spare capacity

### Background

177. In Telecom Decision 95-13, the Commission directed telephone companies to make their support structures available to telecommunications and cable television undertakings, conditionally, if spare capacity was available. In that decision, the Commission applied a different pricing methodology (net book value) to determine

the ILECs' support structure service rates than it typically uses to establish rates for wholesale services.

178. In the proceeding initiated by Telecom Notice of Consultation 2019-406, the Commission noted that there are currently no benchmarks for how long a pole owner can reserve spare capacity, no limitations on the amount of spare capacity an owner can reserve, and no consequences if it does not use the capacity.

### Positions of parties

179. Competitors generally submitted that priority access and reservation of spare capacity for future use on telecommunications poles should either be eliminated or have defined time limits. These parties submitted that the current framework that allows ILECs to reserve capacity indefinitely is unjust and not in the interest of the public. They added that when ILECs deny access in order to reserve capacity, generally the extent of the information they provide is "no capacity" and that more information should be provided upon denial.

180. RCCI submitted that since there are no limits on how much capacity can be reserved, or for how long, ILECs are able to reserve capacity in response to an access request from a competitor. Further, RCCI argued that even if there were such limits, there is no means of effectively enforcing them. It added that denials without any detail or supporting information prevent parties from redesigning networks to use the capacity that is available. RCCI indicated that, in many cases, the ILECs claimed that they had no capacity when, in fact, this was not the case.

181. RCCI submitted that the only effective means of ensuring timely and non-discriminatory access to ILEC support structures would be to remove the ILECs' ability to reserve capacity for future use. The majority of cable carriers and competitors, including Cogeco, Eastlink, TekSavvy, Videotron, and Xplornet, echoed this view.

182. A number of parties noted specific examples where project deployments were delayed or cancelled due to lack of spare capacity.

183. Multiple parties, including Beanfield, the CCSA, Cogeco, Eastlink, the FMCC, the ITPA, RCCI, Shaw, TekSavvy, and Xplornet, submitted that attachers should receive detailed reasons and supporting evidence for permit denials. Iristel, RCCI, Shaw, and TekSavvy submitted that tariffs should be revised to require reasons for permit denials and the lack of spare capacity. In addition, RCCI submitted that the permit denials cannot be assessed or challenged without supporting evidence, and that there is currently no effective means to dispute a denial.

184. The ILECs submitted that the current tariffs are fair and reasonable with regard to spare capacity and that no amendments are necessary. They submitted that support structure owners must retain their ownership and priority access rights for the use and management of their structures, and such rights include the right to retain sufficient unused capacity to meet current and anticipated service requirements.

185. Bell Canada submitted that in Telecom Decision 2010-900, the Commission denied ILEC proposals for other costing methodologies when setting ILEC support structure rates. This determination was made on the basis of ILEC priority access and the fact that "third-party demand for ILEC support structures does not result in, or advance the timing of, construction of the structures themselves." The company argued that eliminating priority access to capacity on poles or imposing time limits with respect to planned future use would inevitably result in third-party access requests causing the advancement of investments.

186. As such, Bell Canada submitted that any change to priority access requirements would first require a complete review of the support structure costing framework, using a different costing methodology than is used today and, in its view, would likely result in a material increase in rates.

**Commission's analysis**

187. The two large ILECs denying access due to their poles having no spare capacity are Bell Canada and TCI. Bell Canada and TCI submitted, in confidence with the Commission, the number of requests to access company-managed poles that are denied due to lack of spare capacity. Within the national context, the Commission finds that only a small number of access requests are denied due to a lack of spare capacity. Bell Canada and TCI also submitted specific evidence of a number of service rollouts that were possible due to their ability to reserve capacity on their poles. The Commission finds that these examples support their arguments regarding the importance of the ability to reserve capacity for future use and demonstrate that at least a portion of denials are for legitimate reasons.

188. Moreover, the Commission finds Bell Canada and TCI's arguments regarding the costing implications of removing pole owners' ability to reserve capacity on their poles compelling. As Bell Canada and TCI noted, the current costing methodology assumes that pole owners have the ability to reserve capacity and that, therefore, investments will not be advanced. This principle was clearly outlined in Telecom Decision 95-13 and reaffirmed in Telecom Decision 2010-900. If this provision were removed, a change to the costing methodology may be necessary, such as transitioning to standard Phase II costing used for the majority of other wholesale services. This would likely require a follow-up proceeding and could result in a material increase in rates for attachers.

189. In order to promote fairness and transparency, when ILECs deny access to poles due to a lack of spare capacity because they are reserving it for future use, the onus should be on the ILECs to demonstrate that they have performed an assessment of the poles in question, and have clear and specific plans to use the capacity in question. In performing this assessment, the ILECs should be required to evaluate whether there are abandoned, obsolete, or unused facilities on the poles, or whether facilities can be rearranged to accommodate additional attachments. In cases where the removal or rearrangement 34acilityies would create sufficient capacity beyond the capacity reserved by the ILEC for future use, ILECs must remove or rearrange

the facilities, or allow for the removal or rearrangement by a third party, as part of make-ready work.

190. Furthermore, when an ILEC denies an application due to a lack of spare capacity, the ILEC should be required to notify the Commission, providing certain details, as well as any other relevant information that may not have been shared with the attacher due to the commercially sensitive nature of the information.

191. As noted by Bell Canada and TCI, network buildouts are planned on a long-term basis, ranging from one to five years. The Commission considers that when ILECs deny an attacher's request due to reserved capacity, ILECs should also be required to file specific information regarding plans and timelines for network deployment with the Commission to justify their claims of future use.

192. In light of above, as part of the ILEC's assessment of applications for attachment, in cases where there is insufficient spare capacity, the Commission **directs** the ILECs to amend their support structure service tariffs to include a provision requiring them to identify to the attacher whether the removal or rearrangement of facilities would create sufficient capacity, beyond the capacity reserved by the ILEC for future use. The tariffs must also include a provision indicating that if the removal or rearrangement of facilities would create sufficient capacity, the ILECs must remove or rearrange them, or allow for their removal or rearrangement by a third party as part of make-ready work (rather than deny the application).

193. Furthermore, pursuant to sections 24 and 37 the Act,[8] the Commission **directs** the ILECs to provide detailed reasoning to the attacher and to the Commission when denying an application due to a lack of spare capacity, including

- the maximum and current loading of the structure;
- allocation of the existing capacity to demonstrate why the determination of "no spare capacity" was made;
- the capacity reserved for the ILEC's own future use, as well as the nature and a clear description of that future use (e.g., network deployment); and
- the date when the ILEC expects to use the spare capacity it has reserved.

194. The above reasoning is to be provided to attachers and the Commission within the prescribed timelines for assessing applications set out in the tables in paragraph 119,

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[8] Section 24 of the Act states that the offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission. Subsection 37(1) of the Act states that the Commission may require a Canadian carrier (a) to adopt any method of identifying the costs of providing telecommunications services and to adopt any accounting method or system of accounts for the purposes of the administration of this Act; or (b) to submit to the Commission, in periodic reports or in such other form and manner as the Commission specifies, any information that the Commission considers necessary for the administration of this Act or any special Act.

and included in the quarterly reporting to the Commission discussed in the Dispute resolution section below.

195. In addition, the ILECs must file in confidence with the Commission information regarding plans and timelines for network deployment, and any other relevant information that may not have been shared with the attacher due to the commercially sensitive nature of the information.

## Dispute resolution

### Background

196. The Commission has established processes for the resolution of disputes arising under either the *Broadcasting Act* or the *Telecommunications Act*. Pursuant to Broadcasting and Telecom Information Bulletin 2019-184, disputes that involve one issue – or, in exceptional cases, several closely related issues – will lend themselves to the Commission's dispute resolution processes.

197. The Commission offers a number of other dispute resolution processes, including staff-assisted mediation, final offer arbitration, expedited hearing, non-binding staff opinion, and consensus-based problem solving.

### Positions of parties

198. Many parties noted the importance of Commission-led dispute resolution processes for dealing with conflicts related to pole access. These comments generally came from TSPs that claimed to have difficulty accessing ILEC-owned poles.

199. These parties submitted that improved Commission-facilitated dispute resolution processes specifically for disputes over access to poles would allow them to deploy their facilities more efficiently, thereby providing better services to end-users.

200. Shaw submitted that attachers need a simple and quick process to address day-to-day permitting and network deployment issues. It argued that regulatory oversight would minimize ILECs' likelihood of gaming the system. However, in cases where the parties have a legitimate difference of opinion on an aspect of support structure access, Shaw submitted that there needs to be a process in place that is quick and accessible and drives network deployment. This view was expressed by the majority of competitors.

201. The ILECs were generally of the view that the current mechanisms available to parties are sufficient. SaskTel submitted that the processes established in Broadcasting and Telecom Information Bulletin 2019-184 are sufficient to deal with support structure disputes that require Commission intervention, and that no modification or augmentation is warranted.

202. A number of parties proposed new processes that would aid attachers.

203. RCCI proposed both a new highly abbreviated dispute resolution process before an expert third party, as well as limited amendments to the procedures established in Broadcasting and Telecom Information Bulletin 2019-184 to expedite resolution of support structure disputes.

204. Shaw submitted the Commission could establish a "CRTC Support Structure Access Quick Response Desk" that a pole owner or attacher could contact to resolve disputes and disagreements related to specific applications and network deployment issues. Commission staff would engage an independent third-party telecommunications support structure expert, the cost of which would be shared by the disputing parties, unless otherwise determined by the independent expert, who would bring together representatives of the disputing parties within two business days of either party requesting assistance for a time-limited audio or video conference. The conference would incorporate the tabling of any written evidence by the disputing parties, following which the independent expert would issue a binding decision to the disputing parties within 24 hours.

205. Several parties, including the CCSA, the FMCC, and Videotron, supported RCCI's and Shaw's proposals.

206. The FMCC submitted that it was previously unaware that dispute resolution procedures were available. In addition, it submitted that it was unaware of how a service provider should file a complaint on issues or how to notify the Commission of a dispute. The FMCC further submitted that due to members not being aware of a formal complaint mechanism, its members have been forced to negotiate these issues on a project-by-project basis.

207. The FMCC requested that the Commission set up a briefing for Indigenous providers to address how they may file dispute resolution requests and other questions they may have concerning Commission procedures. It added that the Commission should post information on its website explicitly concerning how providers can contact Commission staff, file complaints, and initiate dispute resolution processes concerning excessive delays.

208. Shaw submitted that the Commission could initiate some form of oversight of the support structure access regime. This oversight could take the form of requiring annual reporting by ILECs of their permit application processing (e.g., how many permits were received, response times, approvals, and denials) and costs; tracking of when spare capacity is and is not available and why; and tracking of make-ready work identification, design, completion, and approvals for placement by attachers.

209. Bell Canada disagreed with proposals from parties to eliminate the dispute escalation process required under the SSAs. Bell Canada submitted if the parties cease to have an obligation to try to resolve their dispute themselves, it will inevitably result in more administratively burdensome disputes brought before the Commission than would otherwise be the case. Furthermore, it questioned whether the Commission

has the jurisdiction to delegate to Commission staff, or a third-party expert, the power to make binding decisions.

### Commission's analysis

210. While some parties submitted that the Commission's current dispute resolution processes are insufficient, no evidence was provided to support these claims.

211. The Commission finds the proposals put forth by RCCI and Shaw that involve the Commission delegating its powers to third parties to make decisions to be unfeasible, since the Commission does not have the power to appoint any party to make such determinations.

212. The Commission considers that the enhancements to the framework being implemented as part of this proceeding are significant, and therefore considers it appropriate to first test these changes in conjunction with the current dispute resolution framework and assess overall effectiveness prior to contemplating making any changes to the dispute resolution framework.

213. In addition, the mechanisms outlined in Broadcasting and Telecom Information Bulletin 2019-184 continue to be available to parties should they choose to engage them to assist in disputes regarding access to poles.

214. With regard to the FMCC's concerns related to the lack of awareness of the Commission's dispute resolution mechanisms, the Commission will explore proactive outreach opportunities with Indigenous groups and stakeholders to enhance the awareness of dispute resolution mechanisms.

215. That being said, the Commission is of the view that additional oversight in this area is warranted. As put forth by Shaw, the Commission considers that requiring ILECs to file quarterly reports concerning their permit application processing for access to poles would serve as an effective preventative measure, since it would require ILECs to operate with a higher level of transparency and accountability during the pole attachment process. This type of reporting would also enable the Commission to continue monitoring the effectiveness of the revised pole access framework. Should the reports indicate that the measures are not sufficiently effective, the Commission could pursue further regulatory measures.

216. In addition to the case-by-case reporting set out in the Access to spare capacity section of this decision, the Commission **directs** the ILECs to file reports containing information regarding pole access requests with the Commission on a quarterly basis. The reports are to include, and may not be limited to, the number of pole attachment requests received, the number of requests approved, the number of requests denied, the reasons for denials, and the number of days in which permits are processed, reported and organized by province. Commission staff will provide additional details to the ILECs via letter.

## Potential measures to ensure compliance

### Positions of parties

217. TekSavvy submitted that the ILECs are not subject to any meaningful deterrent for non-compliance with the response timelines set out in their support structure service tariffs. TekSavvy argued that without consequences, ILECs have little incentive to adhere to the timelines in the tariffs, with a significant proportion of permit applications submitted to the ILECs not granted within the existing response times.

218. TekSavvy recommended that a mechanism that would award an automatic credit to attachers that have not received a response within the timelines be included in the tariffs. TekSavvy explained that the amount of credit should begin at a pre-set amount (e.g., 10%) and increase incrementally (e.g., by an additional 10%) with each additional passing work week in which a response has not been provided, up to a maximum amount (e.g., 50%). TekSavvy submitted that the credit could then be applied to monthly recurring charges for support structure access services for a period that is equivalent to the total length of time that it took for the ILEC to issue a response to an application for access to support structures. If a credit would apply to a portion of a month, that credit should be deemed to apply to the entire month.

219. TekSavvy submitted that the proposed mechanism would deter non-compliance with the response timelines for permit applications. Further, it would incent ILECs to avoid unnecessary delays, lessen costly and inefficient case-by-case intervention by the Commission, and provide compensation to attachers that have been harmed by delays in the application process. TekSavvy submitted that the mechanism would only require minimal adjustments to the ILECs' billing platforms. Parties such as Beanfield, the FMCC, the ITPA, and Videotron supported this proposal.

220. Bell Canada, SaskTel, and TCI opposed TekSavvy's proposed system of credits because it would amount to the application of a new penalty regime. They argued that it would be very costly and complicated to implement and manage, and would ultimately create an incentive for support structure owners to cut corners in order to respond to requests faster, which may compromise public safety. RCCI also opposed this proposal.

221. TekSavvy submitted that the Commission should address non-compliance by parties that violate the proposed make-ready timelines in the SSAs by imposing administrative monetary penalties (AMPs), which would be an effective deterrent against discriminatory conduct. TekSavvy submitted that implementing AMPs does not require prolonged Part 1 application proceedings, since the Act provides for the designation of persons with authority to issue a notice of violation. Accordingly, TekSavvy submitted that the Commission's AMP framework can be leveraged in the context of expedited dispute resolution processes involving make-ready work timelines. TekSavvy indicated that penalties should be set at a sufficiently high level to encourage ILECs to change their conduct. RCCI and Videotron supported the proposed measure.

222. Eastlink proposed, instead of a system of credits, to impose enforcement mechanisms such as quality of service obligations that are subject to a rate rebate plan, and the imposition of AMPs to deter non-compliance.

223. Cogeco, Shaw, and TbayTel argued that after the deadline, if make-ready work has not been completed, the attachers should be given access to the support structures to install their equipment, under certain conditions (on a case-by-case basis), or that the attachers should be able to complete any telecommunications make-ready work required from the pole owner's approved contractor and proceed with the construction.

### Commission's analysis

224. The record of this proceeding suggests that there have been instances of uncompetitive behaviour by the large ILECs. While some of the large ILECs' activities and behaviour could be characterized as being anti-competitive, given the lack of clarity and the wide discretion granted to ILECs by the current support structure service tariffs, it is unlikely that all of this behaviour is non-compliant with the current pole access framework.

225. The Commission considers that the enhancements being implemented as part of the current proceeding will significantly improve access to poles by competitors, which include providing competitors and the ILECs more clarity in terms of definitions and responsibilities; allowing competitors to undertake some types of make-ready work themselves; and provisions to limit the ILECs' discretion to deny access requests, and when they do, requiring fulsome justification of such denials. Given the significant changes to the framework, the ILECs should be given the opportunity to adjust their processes to the revised framework. Moreover, the Commission considers that it would be appropriate to monitor and assess the effectiveness of the various measures through additional reporting requirements discussed in the previous section prior to introducing new compliance measures.

226. With that in mind, the Commission finds that TekSavvy's proposal of a system of credit lacks detail, would be complicated to manage, and would likely be costly to implement. The Commission also considers that implementing presumptive AMPs at this time would be premature, and notes that parties can raise issues before the Commission on a case-by-case basis.

227. The Commission therefore reaffirms that its current processes are available to resolve disputes regarding pole access. In addition, the Commission will actively monitor the ILECs' implementation of the changes to the pole access framework. Finally, although the Commission will not be implementing presumptive AMPs, the general AMP provisions under the Act still apply and this remains a regulatory tool that the Commission can use when pertinent.

## Poles under joint-use agreements

### Background

228. ILECs and utility companies typically use each other's poles to deploy their facilities. To do so, they can enter into joint-use agreements for the sharing of their infrastructure, including capital and maintenance costs. Under these joint-use agreements, a pole can be owned by either the ILEC or the utility company, but they reciprocally access each other's poles to deploy their respective networks, or they can have joint ownership of poles.

229. ILECs can also enter into licence agreements with utility companies. Under these agreements, the support structures are owned by one entity, and the other parties requesting access to the poles typically do not own support structures to offer in any form of a reciprocal arrangement. Utility companies can also have an arrangement with ILECs where the ILEC manages access to utility company-owned poles, typically for attachments in the communications space of the pole.

230. In Telecom Decision 95-13, the Commission expressed the view that it was in the public interest to minimize the number of support structures through joint use of the structure, regardless of their ownership. The Commission further noted that many telephone companies and utility companies have joint ownership of support structures with arrangements in place where each partner contributed to the capital investment. The Commission found that these arrangements appeared to have functioned adequately and saw merit in parties seeking to share in the capital investment and maintenance cost.

231. In *Barrie Public Utilities v. Canadian Cable Association*,[9] the Supreme Court of Canada established that the Commission does not have jurisdiction over the terms of access to poles owned by electric utility companies.

232. In Telecom Decision 2008-62, the Commission found that when Canadian carriers provide access to support structures, including support structures they do not own but for which they have the right to grant permits for access, they are providing a telecommunications service within the meaning of the Act and are therefore subject to the Commission's jurisdiction.

233. In the proceeding initiated by Telecom Notice of Consultation 2019-406, it was brought to the Commission's attention that some carriers that are parties to joint-use agreements may use their position to act as gatekeepers of the access to electric utility poles, which may impede the deployment of competing broadband-capable networks.

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[9] [2003] 1 S.C.R. 476

234. As such, in Telecom Notice of Consultation 2020-366, the Commission invited parties to propose specific measures by which the Commission could ensure that access to poles that are subject to joint-use agreements is not denied or delayed in an unreasonable or discriminatory way.

### Positions of parties

235. Cable carriers that commented on the matter were of the view that when the ILECs are engaged in providing access to a support structure, regardless of ownership of that structure, the Commission has jurisdiction to regulate their conduct.

236. Cable carriers also submitted that allowing the ILECs to be involved in the access process for utility company-owned poles provides them unjustified priority access on these poles and enables them to delay or deny access to poles that they do not own. RCCI submitted that by refusing or delaying approval for a competing carrier to attach its facilities to joint-use poles owned in whole or in part by a third party, or imposing unnecessary or discriminatory terms on such access, an ILEC is conferring an undue preference on itself and an unjust disadvantage on the competing carrier. RCCI and Shaw submitted that the Commission should eliminate any preferential terms the ILECs may have by virtue of either jointly owning the support structure or being designated the manager of the communications space on the pole, including priority access rights.

237. Cogeco proposed that the ILECs be precluded from having the right to review permit applications and approve third-party attachments on joint-use poles owned by utility companies. It further submitted that the Commission should determine that the ILECs are not allowed to enter into joint-use agreements with utility companies. Cogeco submitted that instead, each carrier should be required to enter into a Commission-approved standard licence agreement and to file them publicly. Beanfield, RCCI, and Shaw also proposed that the Commission require the ILECs to file all agreements between themselves and utility companies and make a public version of these agreements available.

238. Eastlink submitted that the Commission should prohibit ILECs from playing a role in the permit application process for utility-owned poles or, in the alternative, clarify that in cases where an ILEC has entered into a joint-use agreement that allows it to approve or provides it with any other control over the permit application process, that the ILEC be subject to the terms and conditions of the support structure service tariff and any related Commission decisions. Similarly, RCCI submitted that to the extent an ILEC is permitted to play a role in the process of approving third-party attachments to poles or portions of poles that the ILEC does not own, the tariff restrictions to that conduct should apply, including provisions related to spare capacity, make-ready work, and timelines. Shaw submitted that if the utility company wants a carrier to manage access to poles by other carriers, such an arrangement should be under a separate service arrangement solely focused on the management of the communications space of the pole and not be part of the joint-use agreement.

239. The CCSA submitted that third-party attachers should be able to rely on a single entity, the carrier with authority over telecommunications attachments, for all permit applications. It added that the Commission should mandate that any joint-use agreement provide complete authority for approval of telecommunications attachments, including those outside the communications space, to the ILECs.

240. Shaw and Xplornet submitted that access to poles and other utility company support structures should be brought under Commission jurisdiction so that a broad, comprehensive, and consistent regime of support structure access can be established regardless of who owns the pole. Cogeco also submitted that the terms of access to joint-use support structures should be the same for all carriers and should be applied to all support structures, whether owned by a utility company or a Canadian carrier, since it would ensure the fair treatment of all occupants of support structures and prevent anti-competitive behaviour from the ILECs.

241. Videotron submitted that it has experienced situations where Bell Canada has denied it access to Bell Canada strands because the utility company-owned pole did not comply with Bell Canada's construction standards. In these situations, Videotron submitted that an ILEC must not interfere with the responsibilities of utility company pole owners, and must limit itself to applying the norms, standards, and practices of the utility company.

242. Videotron also noted that the joint-use agreements between Hydro-Québec and Bell-Canada/TCI provide that each party should inquire as to the other's needs when planning new pole deployments. It submitted that this provision provides an unjustifiable and anti-competitive advantage to the ILECs because attachers do not have access to this information. To address this, Videotron proposed that the Commission require Bell Canada and TCI to (i) request Hydro-Québec to remove from the joint-use agreements with the two ILECs the confidentiality clause that prevents parties from disclosing the details about support structure network extensions; (ii) share with attachers their plans for the deployment of new joint-use poles within five business days of their filing with Hydro Québec; and (iii) allow attachers to submit advance requests for access to poles identified in the new pole deployment plans.

243. The large ILECs provided comments on the applicability of their support structure service tariffs to utility company-owned poles, replies to some of the competitors' proposals, and information on some of the joint-use agreements they have in place with utility companies.

244. Bell Canada submitted that the Commission does not have jurisdiction over the terms of access to poles owned by utility companies; therefore, it cannot set terms of access to these poles, directly or indirectly, through an ILEC's joint-use agreement with the utility company. Bell Canada also submitted that some of the joint-use agreements between itself and utility companies contain clauses giving Bell Canada priority or preferred access. It further submitted that based on the arrangement the company has with NB Power, the utility company is involved in the review of each

permit application and ultimately authorizes or denies an application. Bell Canada added that as a joint-use pole owner with NB Power, Bell Canada does not follow the same process as third-party attachers, i.e., the company is not required to request NB Power's permission to attach to NB Power-owned joint-use poles if the attachment is within the communications space.

245. TCI submitted that its tariff contemplates access to poles that are either owned or controlled by TCI under a joint-use agreement, and that, regardless of whether TCI wholly owns the pole or manages space on the pole under a joint-use agreement, the company considers that the terms of its tariff apply, including all terms, conditions, and rates. TCI also submitted that the joint-use agreements it has with utility companies do not expressly give TCI priority access to reserve capacity for future use, nor do they prohibit such reservation. However, TCI submitted that it has priority access to support structures it owns or controls, pursuant to its tariff, to meet its current service and anticipated future service requirements.

246. TCI further submitted that the proposal to forbid ILECs from managing the communications space on a utility company support structure would mean that the tariffs would no longer apply and that the Commission would have no say on terms, rates, and other issues related to utility company-owned poles. This could also result in prohibiting telecommunications attachments because some utility companies have no expertise in managing communications space.

247. SaskTel submitted that the joint-use agreements that it has with utility companies do not contain any provisions that would allow SaskTel to manage administration of pole access by third parties. As such, third parties are required to negotiate agreements with the utility companies in a manner similar to SaskTel for access to this pole infrastructure. It further submitted the joint-use agreements that it has with utility companies do not contain any provisions that give SaskTel priority access or any preferred access to reserve capacity for future use.

248. BC Hydro and the Government of Quebec were of the view that rules established by the Commission must respect provincial jurisdiction and not effectively regulate the utility companies, which would be outside the Commission's authority.

249. BC Hydro submitted that about 85% of poles that support its electricity distribution equipment are shared with TCI, and that within the terms of the arrangement, TCI manages a 24-inch portion of each pole. BC Hydro argued that the Commission cannot and should not seek to regulate the portion of the poles managed by BC Hydro, but only TCI's conduct in how it manages its 24-inch space on each pole. It further submitted that there is no mechanism allowing TCI to impose timelines on BC Hydro for make-ready work.

250. The Government of Quebec was of the view that the Commission should not regulate the conditions of access to the support infrastructure of electricity utility companies under provincial jurisdiction. The Government of Quebec also indicated that the Commission's view that Canadian carriers are providing a

telecommunications service within the meaning of the Act, and are therefore subject to the Commission's jurisdiction when they grant access to support structures that they do not own but for which they have the right to grant access permits, is based solely on the Commission's interpretation of the Act and does not take into account the division of legislative powers.

251. PIAC submitted that TSPs and utility companies are subject to various layers of federal telecommunications regulation, provincial energy regulation, and private joint-use agreements, which raises constitutional law issues for the Commission. It submitted that the Commission has jurisdiction to regulate telecommunications poles and perhaps joint-use telecommunications poles, but not hydro poles, and likely not joint-use hydro poles. It was therefore of the view the Commission should address Parliament in its final decision, and recommend that Parliament establish a federal-provincial working group on pole access.

### Commission's analysis

252. Consistent with its conclusions in Telecom Decision 2008-62, the Commission is of the view that when Canadian carriers provide access to support structures, they are providing a telecommunications service within the meaning of the Act. The Commission also considers that given that Canadian carriers can provide such access to poles that they own or partially own, and to support structures that they do not own but for which they have the right to grant permits for access, these access services are therefore subject to the Commission's jurisdiction, no matter who owns the underlying support structure.

253. In light of this, and the fact that support structure access service is a longstanding tariffed service, the ILEC support structure service tariffs and the Commission's determinations in this proceeding should apply to the poles owned, or partially owned, by the ILECs. Moreover, the ILECs' tariffs and the Commission's determinations in this proceeding should also apply to the elements over which the ILEC provides support structure services on structures it does not own, if it exercises any involvement or control over access to those structures. This would allow for the measures established in the current proceeding to apply to the greatest extent possible, taking into account the limits of the Commission's jurisdiction, to poles used to deploy telecommunications networks.

254. The Commission also considers that provisions pertaining to spare capacity, where the ILECs have priority access to their support structures to meet their current and anticipated service requirements, should apply in situations where the costs of the support structures are shared between the ILECs and the utility company (hereafter referred to as shared-cost poles). As discussed above in the Access to spare capacity section, there is a compelling argument that removing the ILECs' priority access or the ability to reserve capacity would require a review of the costing methodology under which pole access rates are established, which would likely result in rate increases for attachers. The Commission considers that these arguments also apply to shared-cost poles.

255. However, in situations where the ILEC manages the communications space for a utility company but is not the owner of the poles and is not in a reciprocal agreement to share the costs of the support structure (non-shared-cost poles), the ILEC should not have priority access or the ability to reserve capacity on these poles, because the concerns expressed above do not apply to these poles. Furthermore, there is little policy rationale that would support allowing the ILECs the ability to reserve capacity or to have priority access on non-shared-cost poles. In addition, allowing the ILECs to benefit from these provisions on non-shared-cost poles they manage for a utility company would give them an undue preference, because these measures represent unnecessary and discriminatory terms that create an unjust disadvantage for the competing carrier in the provision of pole access.

256. In light of the above, the Commission **determines** that the ILECs' support structure service tariffs and the Commission's determinations in this decision apply to joint-use poles, specifically poles owned partially or wholly by the ILECs, as well as the elements of other poles on which the ILECs exercise any involvement or control, or for which they control access.

257. The Commission also **determines** that provisions granting priority access and reserved capacity do not apply in situations where the ILEC manages the communications space for a utility company but is not the owner of the pole and is not in a reciprocal agreement to share the costs of the support structure.

258. The Commission **directs** the ILECs to amend their support structure service tariffs to remove existing terms that allow priority access or the ability to reserve capacity on poles that they do not own and for which they are not in a reciprocal agreement to share the costs of the support structure.

259. The Commission also **directs** the ILECs to remove such terms from their joint-use agreements for poles that they do not own and for which they are not in a reciprocal agreement to share the costs of the support structure. The ILECs have **six months** from the date of this decision to implement this measure, including renegotiating any affected joint-use agreements, as appropriate.

260. With respect to the proposal that the ILECs should be prohibited from entering into joint-use agreements with utility companies, the Commission considers that the efficient sharing of capital and maintenance costs, and avoidance of duplicative infrastructure, are currently facilitated by the agreements between the ILECs and utility companies. Attachers also benefit from these costs savings, since these costs are taken into account in the Commission-approved rates for support structure service.

261. The Commission is also of the view that utility companies have the discretion to mandate an agent to manage access requests to their poles and recognizes that the ILECs, even in situations where they do not own the poles, have the expertise and resources required to perform such duties.

262. Given the above, and the fact that such a measure would affect all poles under joint-use agreements, the Commission considers that preventing all joint-use agreements between the ILECs and utility companies, or prohibiting the ILECs from managing access to utility-owned poles, would likely be unduly disruptive and overly broad. More focused measures, such as those established above in this proceeding, could more appropriately address the main challenges third parties are facing in accessing poles. As such, the Commission will not implement such a measure at this time.

263. With respect to the proposal that all agreements between the ILECs and utility companies be filed with the Commission, the systematic filing and review of all joint-use agreements would not be instrumental to monitor compliance with Commission determinations in this decision. Instead, the ILECs are required to comply with a range of new measures, as established in previous sections of this decision, including reporting requirements. Therefore, this measure is not warranted at this time.

264. With respect to Videotron's proposals pertaining to joint-use agreements between Hydro-Québec and Bell Canada/TCI, the Commission cannot compel, directly or indirectly, Hydro-Québec or any other utility company to disclose the details of extensions to its network. New pole deployment plans could be commercially sensitive and, in such cases, should remain confidential. The Commission considers that the measures established in this decision, notably with respect to timelines for access requests, the sharing of costs for pole replacement, and the ILECs being responsible for corrective work costs, will contribute to levelling the playing field between the ILECs and competitors, foster competitive neutrality, and make access to poles by competitors more efficient and timely. As such, the Commission is not implementing these measures.

265. With respect to Videotron's assertion that Bell Canada is denying access to its strands on utility company-owned poles on the basis that the pole does not comply with Bell Canada's construction standards, no other competitor indicated that they experienced the same issue. There is insufficient information on the record of this proceeding for the Commission to appropriately assess whether this practice constitutes a recurrent issue or is anecdotal, or whether the Commission should address this matter. As such, the Commission is not addressing this issue at this time.

266. However, the Commission notes that the filing requirements pertaining to pole access requests established above are to include the number of requests denied as well as reasons for denial. These reports will help the Commission to better assess whether further investigation of this issue, or any other matter, would be warranted in the future.

## Other issues identified by parties

### Establishing a Centre of Excellence

#### Background

267. As part of new initiatives to increase the efficiency of access to poles, Bell Canada established a Technical Assistance Centre (Centre of Excellence). New attachers can call a toll-free number to receive advice from qualified personnel regarding the support structure authorization process and on particular issues associated with their permit applications.

#### Positions of parties

268. Videotron submitted that the current regulatory framework for access to support structures does not contain any measures to establish and maintain a working dialogue between the large ILECs and attachers. Videotron recommended that the Commission direct the large ILECs to adopt measures to address the gap in the dialogue, including

- the establishment of an administrative committee (on a provincial basis) with representatives of the large ILECs, attachers, and Commission staff; and
- holding of information and training sessions when ILECs issue any new technical, operational, or administrative directives for licensees.

269. Videotron also submitted that the Commission should (i) require Bell Canada to maintain the Centre of Excellence permanently, since there is currently no guarantee that the centre will be maintained; and (ii) establish a similar Centre of Excellence, which would lead to the establishment and maintenance of a working dialogue between large ILECs and attachers across the country.

270. Shaw and TekSavvy supported Videotron's proposed measures. Specifically, TekSavvy submitted that the measures would be useful in the context of an OMTR regime and be beneficial in minimizing permit application denials and issues related to make-ready work.

#### Commission's analysis

271. Parties that commented on the issue agreed that there should be a working dialogue between the ILECs and attachers. The Commission considers that, on its face, a Centre of Excellence could provide attachers with a more simplified and direct contact with ILECs to inquire about the permit application process and technical issues.

272. However, since Bell Canada's Centre of Excellence has only been recently implemented, there is a lack of supporting information on whether attachers are benefitting from the service. As such, while the Commission sees merit in this

initiative, it would be appropriate to gather more information before considering requiring Bell Canada to maintain its Centre of Excellence permanently and requiring other ILECs to establish a similar initiative. Nonetheless, the Commission considers that it would be beneficial for the company to continue with this initiative and for other ILECs to implement similar technical assistance centres.

273. In light of the above, the Commission encourages Bell Canada to continue to operate its Centre of Excellence for the support structure authorization process and encourages other ILECs to consider implementing similar technical assistance centres.

## Provincial coordination tables

### Background

274. Shortly after parties raised concerns with respect to pole access in their interventions to Telecom Notice of Consultation 2019-406, a coordination table with the participation of Bell Canada, the Government of Quebec, Hydro-Québec, and TCI was created to support the deployment of projects that offer high-speed Internet service to businesses and citizens in rural areas of the province.

275. The coordination table is responsible for facilitating the implementation of government-funded Internet service programs according to proposed timelines. In particular, it is responsible for

- monitoring the progress of the projects and adherence to timelines;
- developing and implementing initiatives to reduce delays and costs; and
- resolving issues related to the field deployment of projects benefiting from the programs.

276. Bell Canada also attends regular meetings through the coordination table to review attachers' priorities, conduct field visits, brainstorm solutions to particular roadblocks, and implement solutions to release permits. In addition, Bell Canada is in regular contact with the Government of Quebec and various attachers to review the progress of their projects.

### Positions of parties

277. The Government of Quebec submitted that one of the goals of the coordination table is to reduce the time required to obtain approval for permit applications and the time required for construction. Further, the Government of Quebec submitted that the mandate of the coordination table does not include the analysis and evaluation of existing tariffs and emphasized that the Commission must respect provincial constitutional jurisdictions, specifically those relating to construction standards, worker safety, and the operation of electric utilities.

278. TCI submitted that the coordination table in Quebec has been useful to ILECs and attachers to resolve issues specific to broadband projects funded by the Government of Quebec and not issues faced by owners of other projects.

279. TCI also noted that it participates in a number of coordination tables in Alberta and British Columbia. In Alberta, quarterly meetings take place between EPCOR Utilities Inc., Shaw, and TCI to discuss issues such as pole replacements and relocations, as well as compliance with construction standards. TCI further submitted that the local coordination tables make support structure access more efficient for all parties and provide a forum to resolve potential disputes.

280. Argenteuil submitted that although progress has been made with the creation of the coordination table, they are eager to see tangible results. They also encouraged the establishment of permanent Canada-wide coordination tables.

281. The CCSA submitted that independent TSPs and the CCSA's members have not been invited to the coordination table in Quebec.

282. Shaw submitted that coordination tables should have Commission oversight to ensure the productivity of these committees and to ensure that disputes and issues are addressed quickly and effectively.

#### Commission's analysis

283. The Commission does not have the authority to require utility companies or provincial governments to join a coordination table. However, given the success of local coordination tables and the progress being made with the Quebec coordination table, this type of initiative would likely be beneficial in other areas. Furthermore, the scope of these tables could be expanded to address all types of telecommunications infrastructure deployment projects, such as small-cell deployment, which is expected to increase in the coming years, and to include other TSPs and stakeholders that could benefit from the initiative.[10]

284. In light of the above, the Commission encourages Bell Canada and TCI to continue participating in coordination tables.

285. In addition, the Commission encourages provincial and territorial governments that have not yet established coordination tables to implement the initiative as part of their broadband deployment strategies.

286. Furthermore, the Commission encourages these coordination tables to consider all telecommunications infrastructure deployment projects, including small-cell

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[10] A small cell is a radio access point with low radio frequency power output, a small footprint, and short range. Small cells can be deployed indoors or outdoors, and in licensed, shared, or unlicensed spectrum. Small cells complement the macro network to improve coverage, add targeted capacity, and support new services. There are various types of small cells, with varying range, power, and size, according to use.

deployment, and to include broader participation from TSPs and other relevant stakeholders.

## Small cells

### Background

287. In Telecom Decision 2014-77, the Commission determined that the Support Structure Service item of TCI's General Tariff should be modified to read that a licensee is not required to apply for a permit to place strand equipment on its own cable on strand leased from TCI.[11]

288. In Telecom Regulatory Policy 2021-130, parties were asked to comment on small-cell attachments and the existing ILEC support structure service tariffs. The Commission determined that parties did not provide adequate evidence to demonstrate that small cells are sufficiently different from Wi-Fi deployment. As a result, the Commission was unable to render a decision as to what, if any, modifications to the existing tariffs, including permit requirements, are warranted for small-cell attachments.

### Positions of parties

289. TCI submitted that Shaw is attaching small-cell wireless facilities on TCI's support structures without notifying TCI what equipment is being used, when it is being attached, and to what structures it is being attached. TCI argued that Shaw's actions are inconsistent with Telecom Decision 2014-77 because a small cell is not "strand equipment" as defined in the support structure service tariff, and that the determinations made in Telecom Decision 2014-77 only apply in respect of Wi-Fi devices.

290. Further, TCI submitted that a small cell is attached directly onto the ILEC strand and thus consumes spare capacity on the strand. Without a permitting process, TCI argued that there is no way of knowing the exact weight being added to its structures, and whether such additions, when combined with current and pending facilities, could compromise the safety and integrity of the structure as well as the safety of anyone working on them.

291. TCI therefore requested that the Commission clarify that an existing wireline attachment permit does not allow a licensee to bypass a new permit to place small cells on that same support structure.

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[11] Strand equipment is communications-related equipment inserted into cabling located on strand.[12] Tower and site sharing services are arrangements that permit wireless carriers to install their wireless equipment on other parties' structures. Under ISED's tower and site sharing framework, tower and site sharing is mandated for all wireless carriers, where technically feasible. See CPC-2-0-17 — *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements* for more details.

292. Shaw submitted that in Telecom Decision 2014-77, the Commission determined that there was no basis on which to require permits for strand equipment inserted into cabling attached to TCI strand and that TCI's tariff should be modified to provide that a licensee is not required to obtain a permit to attach strand equipment. Shaw argued that the Commission used broad terminology in referencing strand equipment, indicating that the Commission's determination applied to all equipment attached to strand, not just Wi-Fi access points. Shaw also submitted that the weight of a small cell is comparable to other strand equipment such as fibre nodes.

293. Shaw further submitted that the current proceeding is about access to poles, and that TCI should not be seeking to effectively appeal a previous Commission decision through this proceeding.

294. Bell Canada submitted that the tower and site sharing rules established by Innovation, Science and Economic Development Canada (ISED) apply to the siting of antenna systems, including on an ILEC's support structures.[12] It added that the *Radiocommunication Act* provides the Minister of Innovation, Science and Industry with exclusive jurisdiction on the matter. Bell Canada submitted that Shaw and TCI should therefore use the arbitration process established by ISED to resolve their dispute.

295. Eastlink and TekSavvy submitted that small-cell attachments on support structures fit within the current tariff processes.

296. RCCI submitted that it would not address the specific issue of access to poles for the attachment of wireless equipment, including small cells, because this issue was not raised in Telecom Notice of Consultation 2020-366.

**Commission's analysis**

297. The current proceeding stemmed from a proceeding that was focused on investigating issues related to rural broadband deployment (Telecom Notice of Consultation 2019-406). Although the current proceeding addresses poles in all areas, it was not focused on issues associated with urban densification, and therefore small cells were not explicitly included in the scope of the proceeding.

298. The Commission intends to launch a proceeding to comprehensively address the issue of the placement of wireless facilities, including small cells, on ILEC support structures.

299. That future proceeding will enable the Commission to develop a fulsome record on which determinations with respect to the placement of small cells on ILEC support

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[12] Tower and site sharing services are arrangements that permit wireless carriers to install their wireless equipment on other parties' structures. Under ISED's tower and site sharing framework, tower and site sharing is mandated for all wireless carriers, where technically feasible. See CPC-2-0-17 — *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements* for more details.

structures can be made. In addition, a proceeding targeted to these issues will allow all interested parties an opportunity to participate and voice their concerns on the issue.

300. As a result, the Commission will not render a decision on small cells at this time.

## Applying tariffs to non-ILEC TSPs that own poles

### Background

301. Non-ILEC TSP support structure owners, such as cable carriers, are not required to have Commission-approved tariffs for their support structures.

302. Some parties shared concerns about non-ILECs not being included in the regulatory framework pertaining to support structures.

### Positions of parties

303. Bell Canada and TCI submitted that any request to access non-ILEC support structures must be negotiated with the owner, and that they have been denied access to certain non-ILEC support structures. TCI submitted that the non-ILECs' access rates are much higher than tariffed ILEC rates.

304. TCI argued that the Commission has not provided a reason for the distinction between non-ILECs and ILECs, and that exempting cable carriers and other non-ILECs from the access regime for poles, conduits, and other wireline support structures is not competitively neutral because only ILECs are required to grant access. Furthermore, TCI commented that by applying the support structure access regimes to only ILECs, the Commission gives an undue preference to non-ILEC carriers, which is contrary to subsection 27(2) of the Act. TCI also argued that the exemption is contrary to the 2006 Policy Direction,[13] and the policy objective set out in paragraph 7(f) of the Act that "regulation, where required, [be] efficient and effective."

305. Bell Canada and TCI submitted that the Commission should mandate access to non-ILEC-owned support structures within its jurisdiction at the same rates and conditions as the ILEC in a given territory. TCI further submitted that this would reduce the disparity of rules regarding support structures and avoid duplication of support structures while expediting building of broadband-capable networks.

306. Shaw and TekSavvy opposed bringing all TSP support structures within the support structure regime, because it ignores the significant power imbalance of ILECs owning a majority of support structures.

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

#### Commission's analysis

307. The Commission is of the view that the distinction in the regulation applying to ILEC and non-ILEC support structures exists because ILECs own or control the vast majority of poles through their historical role as monopoly carriers. As a result, the support structure regime was imposed via tariffs and functioned via obligations on the ILECs. Previous reviews of the support structure regime have not considered including non-ILEC TSPs because the issue was not raised during those reviews. In the current proceeding, no evidence was submitted that would indicate that this issue is significant or anti-competitive, or creates a market distortion. In addition, the Commission has received few, if any, complaints in the past related to the poles of non-ILEC TSPs.

308. There is insufficient evidence on the record of this proceeding for the Commission to assess whether to apply tariffs to non-ILEC support structures, including whether there has been enough demand for access to non-ILEC support structures from licensees to justify a change to the regulatory framework.

309. Therefore, the Commission **determines** that it would not be appropriate to apply tariffs and establish rates for non-ILECs TSPs at this time.

### Conduits

#### Background

310. Conduits are support structure equipment consisting of reinforced passages or openings capable of containing communications facilities.

311. Although this proceeding focuses primarily on access to poles, some parties expressed concerns with regard to access to conduits.

#### Positions of parties

312. Eastlink, Iristel, Shaw, and TekSavvy submitted that issues that plague access to poles exist for access to other support structures such as conduits. For example, Shaw submitted that there are similar issues with regard to permit processing timelines for access to conduits and spare capacity. Iristel argued that access to poles could be of limited use if access to conduits is denied in areas where poles cannot be used, such as bridges, overpasses, or areas near runways or landing strips.

313. Shaw proposed a similar timeline for the processing of applications for conduit installations as that proposed for pole attachments. Shaw also suggested that the language in the support structure service tariffs be strengthened so that specific and measurable criteria are used to determine the availability of conduit spare capacity.

314. Eastlink submitted that since the tariffs under consideration govern the use of poles, conduits, strands, anchors, manholes, and related equipment, any improvement made

as a result of this proceeding should apply to all such facilities. The FMCC supported Eastlink's proposal.

315. TekSavvy proposed that the Commission initiate a separate follow-up or show cause proceeding to consider whether the regulatory measures found to be appropriate for telecommunications poles should also be applied more broadly to other categories of support structures. Beanfield, the FMCC, and RCCI supported TekSavvy's proposal.

#### Commission's analysis

316. The current proceeding focuses on access to poles, and there is not enough information on the record to assess the regulatory frameworks pertaining to other types of support structures, nor to assess whether the issues raised with respect to conduits as part of this proceeding justify a follow-up or a show cause proceeding.

317. Since the rates, terms, and conditions in the support structure service tariffs also govern the use of conduits, the improvements proposed throughout the proceeding including spare capacity and measures to improve communications may also indirectly help improve access to conduits.

318. The Commission notes that parties may file an application with the Commission at any time to consider these issues in more detail if they deem it appropriate.

319. Accordingly, the Commission will not render a decision on access to conduits at this time.

### Approval for overlashing

#### Background

320. Overlashing is the process of physically tying additional cables around the cables that are already attached to a pole. In some cases, this allows for the expansion of capacity of existing facilities while reducing construction disruption and associated expense.

321. Some parties sought clarification on how overlashing is considered in the support structure service tariffs.

#### Positions of parties

322. The CCSA submitted that members have routinely faced bureaucratic obstacles for simple overlashing work and argued that the support structure service tariffs do not require a permit application for overlashing work. It further submitted that the Commission should confirm that the pole owner may not require an attacher to obtain Commission approval for overlashing work.

323. TekSavvy recommended that the Commission direct the large ILECs to adopt terms and conditions in their tariffs allowing attachers to conduct overlashing work without obtaining prior approval from the pole owner, which is similar to a requirement

codified by the FCC. TekSavvy also recommended that attachers provide 15 days' notice of their intent to conduct overlashing work, indicating that during this period, the pole owner could conduct its own analysis of the overlashing request.

324. TCI submitted that it (i) has removed certain restrictions on overlashing existing fibre, (ii) is providing more opportunity to spin attachers' cable over some existing fibre, and (iii) is in the process of revising the guidelines on defining capacity.

#### Commission's analysis

325. While there is little information on the record of this proceeding regarding whether overlashing work can be done without ILEC approval, the Commission considers that such work that will not disrupt the provision of services and should be considered to be routine maintenance work. In addition, since overlashing work is done as part of the replacement of existing facilities and cables, and does not consume additional capacity on the support structure, such work should not require a permit application.

326. In light of the above, the Commission **determines** that overlashing work is considered to be routine maintenance and a permit application is not required for this type of work, as per the support structure service tariffs.

## Conclusion

327. In summary, the Commission has determined in this decision that a number of measures are needed to facilitate access to poles owned by Canadian carriers (telecommunications poles) or poles to which Canadian carriers control access.

328. Therefore, Commission **directs** the ILECs to modify their support structure service tariffs as follows (for ease of reference, the relevant paragraphs of this decision are shown in parentheses):

- Add the approved definitions (paragraph 40).
- Amend the definition of Make-Ready Charge (paragraph 56).
- Add a provision indicating that an application for access to poles cannot be denied due to lack of capacity that could be remediated by performing corrective work, with this corrective work to be performed at the ILEC's cost (paragraph 57).
- Add a provision stating that an ILEC cannot decline to replace a pole, at its own cost, if the lack of capacity to accommodate a new attachment is due to the fact that the pole does not respect safety and construction standards (paragraph 68).

- Add a provision requiring the ILEC to offer licensees the possibility of carrying out the simple make-ready work described in the make-ready work estimate themselves, or through an approved contractor (paragraph 89).

- Add the approved provisions regarding timelines for make-ready work (paragraph 90).

- Add provisions requiring the ILEC to create, maintain, and regularly update virtual databases containing (i) a list of approved contractors that are allowed to perform make-ready work, and (ii) all of their operational and technical reference materials and applicable construction standards (paragraph 93).

- Add provisions requiring the ILEC to approve or deny an access request by an attacher or a contractor within an appropriate number of days of receiving a complete written request, and provide comprehensive written reasons for any denial, along with possible remediation measures (paragraph 96).

- Add the tables and provisions regarding ILEC timelines for pole access applications (paragraph 119).

- Add a provision regarding a one-touch make-ready regime, including the approved definition for such a regime (paragraphs 129-130).

- Add the approved definition of Qualified Contractor (paragraph 142).

- Add a provision regarding a list of qualified contractors. This list must be made available to attachers within **30 days** of the tariff's approval (paragraph 143).

- Add the approved language regarding the installation of attachments prior to the completion of make-ready work and temporary workarounds (paragraph 157).

- Add a provision requiring the ILECs, where there is insufficient spare capacity, to (i) identify to the attacher whether the removal or rearrangement of facilities would create sufficient capacity, beyond the capacity reserved by the ILEC for future use; and (ii) indicate that if the removal or rearrangement of facilities would create sufficient capacity, the ILECs must remove or rearrange them, or allow for their removal or rearrangement by a third party, as part of make-ready work (paragraph 192).

- Remove provisions that give the ILECs priority access or the ability to reserve capacity on poles that they do not own and for which they are not in a reciprocal agreement to share the costs (paragraph 258).

329. The tariff pages containing the above-noted changes must be filed with the Commission by **3 April 2023**.

330. The Commission also **directs** the ILECs, as conditions under sections 24 and 37 of the Act, to

- enter into good-faith negotiations with potential attachers to find mutually beneficial solutions to upgrade poles with a lack of capacity (paragraph 73);

- provide information about each instance where they elected not to replace a pole in order to create additional capacity to accommodate a new attacher, as part of their quarterly mandatory reporting to the Commission (paragraph 74);

- provide detailed reasoning to the attacher and to the Commission when denying an application due to a lack of spare capacity (paragraph 193); and

- file in confidence with the Commission information regarding plans and timelines for network deployment, and any other relevant information that may not have been shared with the attacher due to the commercially sensitive nature of the information (paragraph 195).

331. The Commission further **directs** the ILECs to

- modify their SSAs to include new section 6.1.1 regarding limitation of liability (paragraph 169); and

- remove from their joint-use agreements provisions that give the ILECs priority access or the ability to reserve capacity on poles that they do not own and for which they are not in a reciprocal agreement to share the costs. The ILECs have **six months** from the date of this decision to implement this measure, including renegotiating any affected joint-use agreements, as appropriate (paragraph 259).

332. In addition, the Commission **directs** the ILECs to file quarterly reports, with data to be collected beginning on **3 April 2023**, and the filing date for the first report to be communicated by letter at a later time, with the following information:

- where applications for pole access were denied due to spare capacity, detailed reasons for the denial (paragraph 193); and

- details on pole access requests (paragraph 216).

333. The Commission encourages Bell Canada to continue to operate its Centre of Excellence and encourages other ILECs to implement similar initiatives (paragraph 273).

334. The Commission also encourages

- Bell Canada and TCI to continue participating in coordination tables (paragraph 284);

- provincial and territorial governments that have not yet established coordination tables to implement the initiative as part of their broadband deployment strategies (paragraph 285);

- provincial and territorial coordination tables to consider all telecommunications infrastructure deployment projects, including small-cell deployment, and to include broader participation from TSPs and other relevant stakeholders (paragraph 286).

335. Finally, the Commission determines that

- it will not impose tariffs or set rates for access to poles owned by non-ILEC TSPs;

- it will not render a determination on conduits in this decision; and

- overlashing work is considered to be routine maintenance and a permit application is not required for this type of work.

## Policy Directions

336. The 2006 Policy Direction requires that the Commission, in implementing the telecommunications policy objectives set out in section 7 of the Act, rely on market forces to the maximum extent feasible as the means of achieving the policy objectives. Further, when relying on regulation, the Commission should use 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.

337. Additionally, the 2019 Policy Direction[14] provides that when the Commission exercises its powers and performs its duties under the Act, it should consider how its decisions can promote competition, affordability, consumer interests, and innovation. Moreover, the Commission should, in its decisions, demonstrate its compliance with the 2019 Policy Direction and should specify how those decisions can, as applicable, promote competition, affordability, consumer interests, and innovation.

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

338. The Commission considers that its determinations in this decision advance the policy objectives set out in paragraphs 7(a), (b), (c), and (f) of the Act.[15]

339. The Commission considers that, in an environment where ILECs currently benefit from significant advantages as pole owners, its determinations in this decision directly contribute to the development of a more equitable pole access framework for all attachers in all regions of Canada, including in rural and remote areas, and foster competitive neutrality by attenuating the ILECs' advantages. The Commission also considers that its determinations help support the development of competition in the communications services market. This, in turn, could contribute to lower prices, since barriers to entry are being reduced by enabling attachers to deploy their networks in a more efficient and timely manner, and investments in network deployment are being promoted by ensuring fair allocation of costs between ILECs and competitors. The Commission further considers that its determinations are efficient and proportionate to their purpose while minimally interfering with competitive market forces given that they are promoting transparency, information sharing, and collaboration between all stakeholders.

340. The Commission therefore considers that, in accordance with subparagraphs 1(a)(ii), 1(b)(ii), and 1(b)(iv) of the 2006 Policy Direction and subparagraphs 1(a)(i), (ii), (iii), and (v) of the 2019 Policy Direction, its determinations in this decision (i) are efficient and proportionate to their purpose and interfere with competitive market forces to the minimum extent necessary to meet the policy objectives noted above; (ii) neither deter economically efficient competitive entry into the market nor promote economically inefficient entry; (iii) ensure the technological and competitive neutrality of those arrangements or regimes, to the greatest extent possible; (iv) encourage all forms of competition and investment; (v) foster affordability and lower prices, particularly when TSPs exercise market power; (vi) ensure that affordable access to high-quality telecommunications services is available in all regions of Canada, including rural areas; and (vii) reduce barriers to entry into the market and to competition for TSPs that are new, regional, or smaller than the incumbent national service providers.

Secretary General

## Related documents

- *Review of mobile wireless services*, Telecom Regulatory Policy CRTC 2021-130, 15 April 2021

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[15] The cited policy objectives 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; and (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.

- *Call for comments regarding potential regulatory measures to make access to poles owned by Canadian carriers more efficient*, Telecom Notice of Consultation CRTC 2020-366, 30 October 2020; as amended by Telecom Notice of Consultation CRTC 2020-366-1, 18 November 2020
- *Call for comments regarding potential barriers to the deployment of broadband-capable networks in underserved areas in Canada*, Telecom Notice of Consultation CRTC 2019-406, 10 December 2019; as amended by Telecom Notices of Consultation CRTC 2019-406-1, 20 December 2019; and 2019-406-2, 21 April 2020
- *Practices and procedures for dispute resolution*, Broadcasting and Telecom Information Bulletin CRTC 2019-184, 29 May 2019
- *Modern telecommunications services – The path forward for Canada's digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Shaw Communications Inc. – Application concerning the administration of TELUS Communications Company's tariff for support structure service*, Telecom Decision CRTC 2014-77, 20 February 2014
- *Review of the large incumbent local exchange carriers' support structure service rates*, Telecom Decision CRTC 2010-900, 2 December 2010; as amended by Telecom Decision CRTC 2010-900-1, 9 December 2010
- *Rogers Cable Communications Inc. – Application to review and vary part of Telecom Decision 2007-75*, Telecom Decision CRTC 2008-62, 16 July 2008
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008
- *Saskatchewan Telecommunications Inc. – Tariffs and associated form agreements*, Order CRTC 2000-604, 29 June 2000
- *Rates set for access to telephone companies' support structures*, Order CRTC 2000-13, 18 January 2000
- *Access to telephone company support structures*, Telecom Decision CRTC 95-13, 22 June 1995