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April 30, 2007

Via E-mail and Courier

Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa Ontario

Dear Ms. Rhéaume:

Re: Part VII Application by Shaw Cablesystems Limited
seeking access to highways and other public places
within the jurisdiction of the District of Maple Ridge
Our File No. 3195

A. INTRODUCTION AND OVERVIEW

1. This is the Answer of the District of Maple Ridge (the "**District**") to the Application of Shaw Cablesystems Limited ("**Shaw**") dated March 30, 2007 (the "**Application**").
2. Shaw is seeking an Order granting Shaw immediate access to highways and other public places on terms and conditions consistent with Decision 2001-23 and as contained in a template Municipal Access Agreement ("**Shaw's Template MAA**") attached to the Application as Appendix 1 (Application – para. 5(a)).
3. Shaw, on an ex-parte basis, applied for and received an Order abridging the District's time lines for filing its Answer.
4. On the application of the District dated April 16, 2007 (the "**First Adjournment Request**"), the Commission granted an extension to the District to file its Answer to April 30, 2007 and stated further that if the parties resumed negotiations, the Commission would be prepared to

consider a request by both parties for an adjournment (the “**Commission’s April 18th Response**”).

5. On the second adjournment application of the District on April 25, 2007 (the “**Second Adjournment Request**”), the Commission denied the District’s Second Adjournment Request.

B. POSITION OF THE DISTRICT OF MAPLE RIDGE AS TO THE APPLICATION

6. The District seeks an Order from the Commission that the relief sought by Shaw in the Application be denied in its entirety, and further that the Commission direct Shaw to return to negotiations with the District in order to conclude a District/Shaw Municipal Access Agreement (“**MAA**”).
7. In the alternative the District seeks an Order from the Commission that the Application be adjourned generally, and further that the Commission direct Shaw to return to negotiations with the District in order to conclude an MAA.
8. In the further alternative, the District seeks an Order from the Commission that the Application be adjourned until October 1, 2007, on the agreement of the District to give Shaw access to its highways for the purpose of installing its own infrastructure for all projects listed in paragraph 10 of Shaw’s response dated April 17, 2007 (**Answer – Appendix 1**) to the District’s First Adjournment Request, and further that the Commission direct Shaw to forthwith return to negotiations with the District in order to conclude an MAA.

C. BACKGROUND FACTS

9. The District disputes the facts as stated by Shaw in its Application (the “**Facts**”). The District offers the following points of clarification and correction on the Facts. In addition the District provides the following additional facts.
10. In response to paragraph 7 of the Facts, the District states that Shaw did not notify the District or seek permission of the District of any proposal to install its infrastructure in April 2005. Rather in April 2005, the District discovered through its plan checking function that Shaw was intending to install its own infrastructure on the District’s highways without the District’s consent. The District’s April 19, 2005 letter to Shaw confirming this is set out in the Application – Appendix 2.

11. At no time between November 2000 and April 2005 did Shaw seek the District's consent to install any infrastructure in the District.
12. In response to paragraph 9 of the Facts, the District states simply that only after being discovered did Shaw advise the District that it wished to conclude an MAA "within weeks". (Application – Appendix 3)
13. The District agrees with Shaw that between May 2005 and August 2006 there were certain gaps in communication between Shaw and the District. The District disagrees, however, with Shaw's suggestion that the gaps were caused by the District. In response, the District states that those gaps were partially attributable to changes in Shaw personnel dealing with the District. The District also states that in spite of the gaps, it was of the view that negotiations were proceeding in good faith and at no time prior to the January 30, 2007 letter (Application – Appendix 13) did Shaw threaten to commence a Part VII Application.
14. The District was, at all times, aware of Part VII of the *Telecommunications Act*.
15. In response to paragraph 13 of the Facts, the District states that Shaw's allegation that the District "changed its mind and was no longer interested in entering into an interim agreement" is misleading. District staff had agreed to raise this internally to the District, but did not agree to an MOU. The District states that based on what Shaw was telling the District at that time, the District was of the view that the parties could conclude an MAA in relatively short order and thus there was no need for an interim agreement.
16. In response to paragraph 14 of the Facts, the District states that the statement by Shaw that on July 6, 2005 the District "**finally** provided a draft access agreement" is misleading, and the District states that the District had not previously dealt with access agreements, and Shaw, only three months earlier, had intended to install a plant without the District's consent.
17. In response to paragraph 16 of the Facts, the District states that the characterization of the facts by Shaw is misleading, as at that time both parties were of the view that the definitive MAA could be concluded.
18. Other than one brief conversation between Shaw and District staff in March 2006, Shaw did not indicate any sense of urgency to reach an

MAA before the construction season between December 31, 2005 and July 5, 2006.

19. In response to paragraph 21 of the Facts, the District states that it did not advise Shaw that it “claimed to have a revised agreement” but rather the District advised Shaw that the District was close to having a revised agreement.
20. In further response to paragraph 21 of the Facts, the District says that at the July 5, 2006 meeting, the District suggested and Shaw agreed to allow the District to review the City of Richmond/ Shaw MAA (the “**Richmond MAA**”) prior to further discussions.
21. Attached is a copy of the September 27, 2006 e-mail from Shaw to Mr. Andrew Wood, the Municipal Engineer for the District (**Answer – Appendix 2**). In that e-mail, Shaw confirmed its agreement with the District to use the Richmond MAA “as a starting point” in the negotiations between Shaw and the District. In that e-mail Shaw also advised the District that Shaw expected the Richmond MAA to be executed “by Shaw and Richmond in the next week or so”.
22. As confirmed by Shaw in paragraph 24 of the Facts, the Richmond MAA was, in fact, not executed until December 15, 2006. A copy of the Richmond MAA taken from the City of Richmond’s web site is attached to this Answer. (**Answer – Appendix 3**)
23. In light of the paragraphs 15 – 22 above, the District disputes Shaw’s repeated suggestion in the Application that the parties have been in fruitless negotiations for two years as such a position is simply not supported by the facts. Rather the District states that by its own admission (**Answer – Appendix 2**), Shaw agreed to use the Richmond MAA as the precedent document, as the “starting point” between Shaw and the District. Shaw further admits that the Richmond MAA was not executed until December 15, 2006 and thus did not exist until that time. The latter point is confirmed in the March 14, 2007 letter from the District to Shaw. (Application – Appendix 14)
24. In response to paragraphs 22 and 23 of the Facts and as noted by Shaw in its July 26, 2006 letter to the District (Application – Appendix 11), the District concedes that it was reluctant to enter into any form of temporary arrangement with Shaw for several reasons. First, the District was much less experienced in the negotiations around an MAA than was Shaw. Second as the term of Shaw’s proposed MOU was for one year, the District was of the view that executing an MOU would be

a disincentive to Shaw continuing discussions on the definitive MAA. Third, and most importantly, the District was of the view that in light of what it had heard from Shaw about the Richmond MAA negotiations, that that Richmond MAA would soon be finalized and thus any such interim agreement or MOU would not be necessary. Thus the District was of the view during the fall of 2006 that Shaw and the District were in a holding pattern until the Richmond/Shaw MAA was executed.

25. In further response to paragraph 23 of the Facts, the District states that at that time it was of the view that the negotiations were proceeding in a positive direction. The statement by Shaw in its September 1, 2006 letter to the District, (Application – Appendix 12) that Shaw “appreciated the cooperation of the District” confirms that Shaw was of a similar view.

26. Contrary to Shaw’s agreement to use the Richmond MAA as the starting point, the District states that Shaw’s Template MAA that it is asking the Commission to impose on the District (Application – Appendix 1), though similar to the Richmond MAA differs on several key elements, including:

- (a) Shaw removed the requirement that it must notify the District if any routine work is for a project that is equal to or exceeds 500 meters in length in any Service Corridor, or if any routine work involves replacement of surface Equipment with Equipment that is greater than 25% larger than the Equipment it is replacing (**s. 5 of the Richmond MAA – Answer – Appendix 3**);
- (b) Shaw significantly increased the proportionate cost payable by the District in the event of a relocation of Shaw’s Equipment necessitated as a result of a municipal project. In the Richmond MAA, the City must pay the following percentage of costs minus depreciation, salvage and betterment cost factors: 100% for the first 2 years, and then reduced by 20% in each subsequent year if the relocation is required within the first 7 years of the Company’s construction and/or installation of such Equipment. If the relocation is required later than 7 years after such construction or installation, the Company is responsible for the costs.

By contrast, in Shaw’s Template MAA (Application –Appendix 1), Shaw deleted the reduction in costs payable by the District, which reduction was on the basis of depreciation, salvage and betterment cost factors. Shaw also increased the time frame

during which the District is responsible for 100% of the relocation costs from 2 to 5 years. Shaw also increased the time frame during which the District is responsible to pay a percentage of relocation costs from 7 to 10 years (s. 12(b)(ii) of Shaw's Template MAA – Application – Appendix 1).

- (c) Shaw increased the proportionate costs payable by the District in the event of a relocation of Shaw's Equipment installed up to 10 years prior to the date of the MAA, by removing the wording permitting the District to decrease the costs payable on the basis of depreciation, salvage and betterment cost factors (s. 12(b)(iii) of Shaw's Template MAA – Application – Appendix 1).
- (d) Shaw doubled the costs payable by the District in the event of a relocation of Shaw's Equipment required by the District primarily for beautification, aesthetic or other similar purposes, by increasing the amount payable by the District from 50% to 100%. Shaw also removed the wording permitting the District to decrease the costs payable on the basis of depreciation, salvage and betterment cost factors (s. 12(b)(vii) of Shaw's Template MAA – Application – Appendix 1).
- (e) Shaw removed its responsibility to pay all taxes or assessments in the nature of sales taxes, goods and services taxes or value added taxes which may be charged, levied or assessed as a result of the MAA, whether or not such taxes are charged as against the District (**s. 19 of the Richmond MAA – Answer – Appendix 3**).
- (f) Shaw removed the 15% loading factor payable by Shaw for permitting and inspection costs under the Shaw/Richmond MAA (**s.1.1 of Schedule "A" to the Richmond MAA – Answer – Appendix 3**).

Consideration Required

- 27. In answer to paragraphs 14, 25 and 26 of the Facts, the District states that Shaw has inaccurately characterized the purpose and content of the January 26, 2007 phone conversation between Shaw and the District and the general ongoing business discussions that took place between Shaw and the District.
- 28. The District states that the parties were voluntarily discussing mutually advantageous business arrangements right up until January 2007 as

part of the MAA process. The District states that at no time did it refuse to execute an MAA unless Shaw provided some form of "consideration" to the District.

29. The District further says that right up to receipt of the letter from Shaw on January 30, 2007 (Application – Appendix 13), the District was of the view that the parties were moving forward in good faith on all matters of concern to the parties. The District also states that Shaw, of its own free will was voluntarily at the table with the District discussing business aspects that could jointly benefit both parties right up until the end of January 2007 as part of its overall discussion on the MAA.
30. In further response to paragraph 25 of the Facts the District says that the facts alleged do not reflect what took place during that January 26, 2007 telephone conversation. Attached to this Answer (**Answer – Appendix 4**) is a copy of the contemporaneous notes taken by the Chief Administrative Officer for the District, Mr. Jim Rule, in connection with his January 26, 2007 phone conversation with Shaw's Mr. Jean Brazeau. The District states that the notes make it clear that the parties were discussing the business end of the transaction as part of the MAA negotiations. The notes indicate that Mr. Brazeau was going to review Mr. Rule's request for access to Shaw's fibre and get back to Mr. Rule in the week following the January 26, 2007 phone conversation. The notes indicate that Mr. Brazeau even went so far as to suggest that Shaw "may be able to create a better deal in our [Shaw's] lease rate".
31. In response to paragraph 26 of the Facts, the District says that the January 30, 2007 letter from Shaw (Application – Appendix 13) came as a complete surprise to the District and that that letter does not accurately reflect the position of the parties at that time. In response to Mr. Brazeau's January 30, 2007 letter, Mr. Rule sent a clarification letter. (Application – Appendix 14)
32. Thus right up until receipt of the January 30, 2007 letter from Shaw, the District says that it was of the view that Shaw and the District were voluntarily discussing mutually advantageous business arrangements.
33. In response to paragraph 27 of the Facts, the District states that the District's staff commitment to have a "revised MAA within one week" was made in error as that staff person was unaware that the District was in the process of retaining new legal counsel to assist in the negotiations of the MAA.

34. The District's rationale for retaining new legal counsel was, in part, as a further gesture of good faith as the new legal counsel had just successfully negotiated the Richmond MAA and, as well, the City of New Westminster/Shaw MAA.
35. In further response to paragraph 27 of the Facts, the District again states that it has never stated that the provision of fibre optic cable was a prerequisite to the successful conclusion of the MAA.
36. In response to paragraph 29 of the Facts, the District states that in light of the facts set out above, Shaw's characterization that negotiations have been ongoing for two years is misleading.
37. In answer to paragraph 30 of the Facts, the District's solicitor made a request of Shaw on April 16, 2006 that it agree to adjourn the Application generally and return to the negotiating table on the MAA. (**Answer – Appendix 5**)
38. In response to the solicitor's April 16, 2007 request, Shaw refused to agree to the adjournment unless the District immediately entered into a Memorandum of Understanding, a condition that neither District staff nor its solicitor could legally agree to.

Access to District's highways and other public places

39. In response to the Facts in general, the District states that other than the April 2005 work, Shaw has never requested consent of the District to install its own infrastructure. Thus in response to the list of missed opportunities listed in paragraph 9 of Shaw's letter to the Commission dated April 17, 2007 (**Answer – Appendix 1**), the District states that until receipt of that letter, it was not aware of these lost opportunities.
40. The District further states that Shaw has no current application before the District for a permit to install infrastructure.
41. In addition, the District has no record of Shaw applying for or being refused a permit to obtain access to District highways for any work, including those set out in paragraph 9 of its April 17, 2007 letter to the Commission.
42. The first the District heard of Shaw's immediate need for access to the projects listed in paragraph 10 of Shaw's April 17 2007 letter to the Commission letter (**Answer – Appendix 1**) was the receipt of that letter on April 17, 2007. At no point prior to that date had Shaw either sought

the District's consent for these projects or even made mention of the need to have immediate access for those projects.

43. The District also states that it has never prevented Shaw from accessing, maintaining or upgrading its infrastructure in the District.

Facts subsequent to the Filing of the Application

APRIL 19, 2007

44. In response to Commission's April 18th Response, the District e-mailed Shaw on April 19, 2007, requesting a meeting to commence negotiations on an MAA. (**Answer – Appendix 6**)
45. In response, Shaw advised the District that Shaw was available to meet, but only if the District was "prepared to sign an MOU, [...] granting Shaw immediate access while negotiations on an MAA proceed". (**Answer – Appendix 7**)
46. In response, the District advised Shaw that:
- (a) in the time frames given by the Commission, the MOU was an impossibility as such required municipal Council approval;
 - (b) such a condition was, in our view, unnecessary and inconsistent with the direction of the Commission's April 18, 2007 letter to the parties;
 - (c) as the July 2006 MOU had a one year term on it, it was more restrictive than what Shaw had verbally offered to the District just three days previously; and
 - (d) the District was still prepared to meet on April 23 or 24, 2007 to restart the negotiations on the MAA. (**Answer – Appendix 8**)
47. In response, Shaw restated its refusal to negotiate further with the District, unless the District agreed to sign the MOU. (**Answer – Appendix 9**)

APRIL 22, 2007

48. The District understands that the entire premise of Shaw's Part VII Application was based on urgency and the need for immediate access to allow Shaw to construct its own duct work during "the summer construction season". This is confirmed in the letter from Shaw to the Commission on April 4, 2007. (**Answer – Appendix 10**)

49. Based on that understanding, the District made an offer (the “**Offer**”) to Shaw on April 23, 2007. Under that Offer, the District would consent to Shaw’s access to each and every project that Shaw had identified in paragraph 10 of Shaw’s April 17, 2007 letter to the Commission (**Answer – Appendix 1**) on the conditions set out in the District’s e-mail to Shaw. (**Answer – Appendix 11**)
50. Shaw effectively rejected the District’s Offer, when on April 23, 2007 it wrote that:
- “Shaw is prepared to accept the terms of the **proposal...with the following modifications** [emphasis added]:
- In addition to the projects listed in paragraph 10 of our April 17th letter, any other projects that come forward to Shaw between now and October 1st must also be approved;
- define Shaw's "work" as "Constructing, maintaining, operating, repairing and removing the Company's wires, cables, ducts, conduits, pedestals, vaults, manholes and other accessories, structures and other related telecommunications facilities on, over, under, along or across those highways and other public places within the District of Maple Ridge."; and
- If an agreement is not reached by October 1st, the District will only withdraw its consent for already approved Work where there is an alternative arrangement available for the provision of Shaw's services to the development affected by the permit (i.e. Telus). (NOTE: it is possible that a project would be too far along in the planning process that Shaw's requirements could not be met by Telus) (**Answer – Appendix 12**)
51. In response to Shaw’s modifications (**Answer – Appendix 12**), the District responded by noting that it appears that Shaw was now demanding that before it would return to negotiations, the District must sign a District-wide Interim Agreement (**Answer – Appendix 13**). It should be noted that the reference in Appendix 13 to the “second” modification should have been to the “first” modification.

52. Shaw responded seeking clarification of the District's position. (**Answer – Appendix 14**)
53. The District responded noting that the purpose of the District's Offer was to address Shaw's immediate access issues and allow the parties to return to negotiations on the larger issue of negotiating the MAA over the course of the next five months without prejudice to Shaw's ability to bring its Part VII application back to the CRTC at any time after October 1, 2007. (**Answer – Appendix 15**)
54. Shaw responded by stating that: "We regret that the District does not want to entertain an interim access arrangement that would allow us to re-start negotiations. After trying for two years to obtain a substantive response from the District, we hoped that some progress had been made today. However, that does not appear to be case. Let us know if anything changes." (**Answer – Appendix 16**)

Other Facts

55. District staff remain deeply involved in the potential freshet/flooding crisis facing the District.
56. Neither the MOU nor the Interim Access Agreement that Shaw has demanded that the District sign prior to Shaw's returning to the negotiating table are negotiated agreements. Shaw originally provided these agreements to the District as agreements for discussion between the parties. However, no significant discussions on them have ever taken place.
57. Shaw has no current application before the District for installation of Shaw infrastructure. The relief that Shaw is seeking in the Application makes no reference to any particular project but rather seeks general access to "highways and other public places".
58. While an MAA has not yet been concluded, Shaw has not produced a single example of being denied access to the District highways for installation of new infrastructure. Certainly the District is not aware of any such instance.
59. The District has and remains committed to negotiating the MAA with Shaw consistent with the principles set out in Decision CRTC 2001-23, 25 January 2001 (the "**Ledcor Principles**").

D. THE DISTRICT'S POSITION ON THE FACTS

60. Shaw has shown no evidence of urgency.
61. In making the Offer, the District intended to address each and every immediate access concern identified by Shaw in its April 17, 2007 letter to the Commission (**Answer – Appendix 1**).
62. Shaw unreasonably refused the Offer.
63. Shaw has not produced any evidence of being denied access to the District highways to maintain or upgrade existing equipment or infrastructure. No such refusals have occurred.
64. The District was unaware of any work pending by Shaw until it received Shaw's letter on April 17, 2007. Within one week, the District consented to Shaw constructing all infrastructure necessary for the work identified in Shaw's letter upon Shaw's agreement to adjourn the Application until after October 1, 2007 and Shaw's commitment to return to the negotiating table with the District.
65. Shaw's actions are inconsistent with the Relief sought in the Application.
66. The District has done everything in its power to get Shaw back to negotiating the MAA.
67. All the District is asking in return is that Shaw, in good faith, return to the table to negotiate a District-wide MAA.
68. As the District could not enter into an MOU or interim agreement in the time frame before it, Shaw's offer was in effect not an offer at all.
69. Even if the District could legally have executed the MOU or the Interim Agreement in the time permitted, it would have been reluctant to do so for five reasons, being:
- (a) First, the District is of the view that the MAA can be concluded within the next four months.
 - (b) Second, the District would like to approach the MAA unencumbered by other agreements.

- (c) Third and most important, neither the MOU nor the interim agreements that Shaw has demanded the District sign were negotiated between the parties. The District has never agreed to the terms of those agreements. As a result, prior to agreeing to sign either of those agreements, it is reasonable to assume that negotiations would have to take place.
- (d) Fourth, the District has retained new solicitors, who have not had any opportunity to review the interim agreement proposed by Shaw.
- (e) Fifth, requiring the District to enter into an interim agreement or MOU is not pled by Shaw in its Application and thus is not a matter before the Commission.

E. ANSWER OF THE DISTRICT OF MAPLE RIDGE

a. The Commission should deny the Application as the negotiations between the parties were proceeding based on the principles set out in Decision CRTC 2001-23, 25 January 2001 (the "Principles")

- 70. The District is, and always has been ready, willing and desirous of negotiating a comprehensive MAA with Shaw in accordance with the Principles.
- 71. The Principles do not, in any way, preclude business discussions between the District and Shaw.
- 72. From April 2005 to January 26, 2007 the parties, in good faith, met to attempt to both finalize an MAA and negotiate mutually advantageous business terms.
- 73. In the fall of 2006 the parties agreed to use the Richmond MAA as their starting point. This point in time was in reality the starting point of meaningful negotiations between the parties.
- 74. Shaw should not be allowed to renege on its agreement.
- 75. The Richmond MAA is consistent with the Principles.

76. Shaw, unilaterally and without prior notice to the District, terminated good faith negotiations with the District and commenced the Application shortly after agreeing to proceed with negotiations based on the then recently executed Richmond MAA.
77. Since commencing the Application, contrary to the Principles, Shaw has steadfastly refused to negotiate an MAA with the District.
- b. The Commission should deny the Application as it is premature - Shaw has not been denied access to the District's highways
78. Other than the infrastructure Shaw attempted to install in 2005, without the District's consent, there is no evidence before the Commission that Shaw has been denied access to the highways and public places of the District.
79. Shaw takes the position that it has been forced to use Telus infrastructure and pay rent to Telus for such usage but has produced no evidence that it ever applied to the District for the District's consent for a single project. Shaw never asked the District for its consent for the lost opportunities referred to paragraph 9 Shaw's April 17, 2007 letter to the Commission. (**Answer – Appendix 1**)
80. The District says that the characterization of the facts by Shaw is self-serving as it ignores the fact that Shaw has never made the District aware of any other needs that it has had to install infrastructure. Shaw has made no other "requests" for access consent.
81. The District has never prevented Shaw from accessing, maintaining or upgrading its infrastructure in the District nor from placing its infrastructure in Telus' plant.
82. The District made the Offer to address Shaw's urgent needs to install its own infrastructure.
83. The fact that, to date, the District has only agreed to the access set out in its Offer should not be misconstrued as the District's refusing access to other needs of Shaw. Such a conclusion would penalize the District for not guessing what Shaw's needs were. Upon being made aware of Shaw's needs, the District agreed, within one week, to permit Shaw to have access. This was done solely as a gesture of the District's good faith in this matter.

c. The Commission should deny the Application as Shaw's actions since filing the Application are inconsistent with the Relief sought in the Application

84. Shaw seeks an order from the Commission to impose a definitive MAA on the District yet has since filing its Application steadfastly refused to negotiate same without an interim agreement.
85. Shaw has not sought an order from the Commission for interim access.
86. By demanding that the District execute an interim agreement of general application, Shaw is, in effect, seeking final relief under the guise of an interim agreement.
87. In demanding that the District execute a unilaterally imposed interim access agreement prior to negotiating an MAA, Shaw has completely reversed the position it argued before the Commission in the Vancouver/Shaw Decision from September 1, 2005 (the "**Vancouver/Shaw Decision**"). In the Vancouver/Shaw Decision, Shaw argued and the Commission agreed that it was "appropriate for Shaw to enter into a long-term access agreement with Vancouver," and that an interim access agreement was inappropriate. By contrast, in the Application, Shaw has gone to some length to stress its frustration at the District's refusal to execute an interim agreement or Memorandum of Understanding.

d. The Commission should deny the Application, as it is simply an attempt by Shaw to bypass good faith negotiations with the District

88. As of September 2006 the Parties agreed to use the Richmond MAA as their template for an MAA.
89. At best, the actions of Shaw since the fall of 2006 cannot be construed as actions made in good faith. Shaw was voluntarily at the table discussing business terms with the District as part of the MAA discussions. They gave every indication that mutually advantageous business terms were a possibility.
90. Shaw's unilateral termination of those discussions was a significant and abrupt change in its direction, caught the District off guard, and, in the District's submission, was not done in good faith having regard to the status of the negotiations.

91. On the other side, the District submits that its agreement to use the Richmond MAA as a template and its recent action of retaining experienced legal counsel are both signs of its good faith.
92. By commencing its Application and subsequently introducing the hurdles of executing a one-sided, non-negotiated MOU or interim agreement as a condition of Shaw returning to negotiations, Shaw has failed to negotiate in good faith.
93. Shaw's failure to negotiate in good faith is contrary to the Principles and the directions of the Commission in many related decisions.
94. While Shaw has extensive experience in negotiating and appearing before the Commission on issues of access, the same cannot be said for the District. The fact that the District is proceeding cautiously (Application – Appendix 14) should be encouraged by the Commission and not serve as grounds by Shaw to commence a Part VII application.
- e. The Commission should deny the Application as the Commission does not have jurisdiction to determine terms of a long-term municipal access agreement between Shaw and the District and in particular the Commission has no jurisdiction to order the District to be bound by the Shaw Template MAA (Application – Appendix 1)
95. For the purpose of this proceeding, the District acknowledges the Commission's jurisdiction to order the District to permit Shaw to have access to District Highways.
96. The District however, does not concede that the Commission has the jurisdiction to impose contractual terms on the District as is sought by Shaw in its Application, or at all.
97. The District submits that the Commission does not have the jurisdiction to impose and should not impose on the District the terms set out in Shaw's Template MAA, especially when those terms are contrary to the agreement by Shaw to use, as a starting point, the Richmond MAA.
98. Contrary to the Vancouver/Shaw Decision, the District submits that sufficient time has not passed for the District "to be in a position to enter into a long-term, general application MAA".

e. In the alternative, the Commission should adjourn the Application either generally or to a specific date, without prejudice to either the District or Shaw

99. While the District is of the view that Shaw has not met the test imposed by the Commission for the Commission's intervention in this Application, in the alternative, the District submits that the Application should be adjourned and further that Shaw be directed to return to negotiations of an MAA with the District.
100. The District is committed to concluding an MAA in the next two to four months.
101. Adjourning the Application is not prejudicial to the interests of either party and at the same time is, in the District's submission, consistent with the spirit, if not the direction given by the Commission in the Commission's April 18 Response, as well as the Ledcor Principles.
102. It is because of the Commission's April 18th Response that the District felt compelled to make its Second Adjournment Request.

ALL OF WHICH IS RESPECTFULLY SUMMITTED BY MICHAEL R. McALLISTER ON BEHALF OF THE DISTRICT OF MAPE RIDGE THIS 30TH DAY OF APRIL, 2007.

NOTICE

This answer is made by Michael R. McAllister of Murdy & McAllister, Two Bentall Centre, 1155-555 Burrard Street, P.O. Box 49059, Vancouver, British Columbia, V7X 1C4, solicitor for the respondent the District of Maple Ridge.

TAKE NOTICE that pursuant to section 61 of the *CRTC Telecommunications Rules of Procedure*, the applicant is permitted to mail or deliver a reply to this answer to the Secretary General of the Canadian Radio-television and Telecommunications Commission, and to serve a copy of the reply on the respondent or his solicitor by May 10th, 2007.

Service of a copy of the reply may be effected by personal delivery or by ordinary mail. In the case of service by personal delivery, it may be effected at the address set out above.



Filed Via E-Pass

April 17, 2007

Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON

Dear Ms. Rhéaume:

Re: Part VII Application by Shaw Cablesystems Limited (Shaw) seeking access to highways and other public places within the jurisdiction of the District of Maple Ridge – CRTC File No. 8690-S9-200704900

1. Shaw is in receipt of a letter dated April 16, 2007 from solicitors for the District of Maple Ridge (the District). In the letter, Mr. McAllister requests that the Commission adjourn the above-noted Part VII application (the Application), or, in the alternative, extend the deadline for the District to file its Answer to the Application.
2. For the reasons set out below, Shaw strongly opposes the request for an adjournment. In light of the fact that Mr. McAllister only received the Application materials April 14, 2007, however, Shaw would not oppose a short extension of the deadlines for Answer and Reply, to April 23, 2007 and April 27, 2007, respectfully.
3. Shaw reserves the right to respond the District's allegations more fully in its Reply Comments. The failure to address any of the allegations set out in the District's letter of April 16 should not be construed as agreement with those allegations.

No grounds for an adjournment

4. Shaw submits there is no basis for an adjournment of the Application. While Mr. McCallister claims in his letter of April 16 that “DMR is, and always has been, ready, willing and desirous of negotiating a comprehensive MAA with Shaw,” the evidence provided as part of the Application clearly suggests otherwise. Adjourning the Application and forcing the parties “back to the negotiating table” would not be in the public interest.
5. Shaw takes particular issue with the suggestion that it filed the Application in an attempt to bypass its obligation to carry out good faith negotiations with the District. The documents filed in support of the Application demonstrate Shaw’s good faith efforts to reach an agreement with the District over the last two years.
6. Indeed, Shaw’s preference has always been to obtain a negotiated solution. The Application was filed only after it became apparent that the District would not execute a Municipal Access Agreement (MAA) without some form of consideration over and above the causal costs the municipality incurs from Shaw’s use of rights-of-way. In the circumstances, the District left Shaw with no choice but to seek regulatory intervention.
7. If it is true that the District does not expect some form of consideration in return for executing the MAA, as Mr. McAllister’s letter suggests, then the District should have no issue with the Commission ordering access on the terms and conditions set out in Shaw’s proposed MAA, which largely reflects the Agreements reached with the Cities of Richmond and New Westminster.
8. Mr. McAllister’s letter also suggests that there is no urgency to Shaw’s Application, noting that “DMR has no current application before it from Shaw”. This statement is misleading. The reason that Shaw has not filed any permit applications with the District since 2005 is that the District clearly stated in its correspondence of July 13, 2005 (attached to the Application as Appendix 7) that “in keeping with our letter and previous discussion, the District will not issue a

permit until an access agreement is in place”. Given the District’s firm position, Shaw has not considered it to be an efficient use of its time and resources to apply for permits in the absence of an executed MAA.

9. As stated in the Application, Shaw has been unable to lay its own cable in underground facilities in Maple Ridge. This has had a material impact on Shaw’s ability to serve existing and potential customers and has undermined the Commission’s goal of implementing facilities-based competition in Maple Ridge. The following is a list of subdivision projects in the District where Shaw has been forced to use TELUS facilities to serve its customers:

Project	Type	Address	Units
VE-3947	SFU	23060 117th Ave, Maple Ridge	6
VE-3112	SFU	MCCLURE DR W/O 248TH ST	51
VE-3338	SFU	Industrial & 103rd Ave, Maple Ridge	36
VE-3471	SFU	137TH AVE + 229 A ST, Maple Ridge	55
VE-3981	SFU	11755 232nd St, Maple Ridge	8

Total missed lots: 156

10. The following projects are pending. Shaw still has an opportunity to work with the developer to install its own ducts in these projects, but only if it is able to obtain immediate access to these properties:

Project	Type	Address	Units
VE-3152	SFU	24222 & 24246 102nd Ave, Maple Ridge	2
VE-3182	SFU	12212 228th St, Maple Ridge	4
VE-3297	SFU	108 Ave & 240 St, Maple Ridge	107
VE-3522	SFU	104TH Ave + 247TH St, Maple Ridge	72
VE-3664	SFU	Donovan Ave & 216th St, Maple Ridge	4
VE-3982	SFU	Zeron Ave & 239/240th St, Maple Ridge	26
VE-4208	SFU	20194/20197 McIvor Ave, Maple Ridge	51
VE-4238	SFU	136th Ave & Loop Rd & Foreman Dr,	80
VE-4260	SFU	245 & 245B St, Maple Ridge	10
VE-4288	SFU	240th St & 101 Ave, Maple Ridge	57
VE-4675	SFU	102nd Ave & 242nd St, Maple Ridge	24
VE-4816	SFU	Kanaka Way & 237th St, Maple Ridge	35

Total Lots where duct still possible: 472

11. With the summer construction season rapidly approaching, some projects are in jeopardy unless Shaw can promptly confirm its plans with the developer. Subject to weather conditions, availability of contractors and other factors, all of these projects will likely begin within 30 days. Adjourning the Application and sending the parties back to the negotiating table would only prolong the impasse and virtually guarantee that the construction deadlines would be missed. Shaw would be forced yet again to use its competitors' facilities to serve its own customers.
12. In light of all of the above, Shaw reiterates its request that the Commission grant the relief outlined in the Application on an expeditious basis.

Request for an Extension

13. Shaw notes that the primary issue in this proceeding is the District's requirement that Shaw provide consideration in exchange for entering into an MAA. This is not an engineering issue and therefore the District should be able to prepare its Answer without unduly diverting the engineering staff from dealing with the flooding situation in Maple Ridge.
14. Nevertheless, as noted earlier, Shaw would not oppose a short extension to the deadlines in this proceeding. Shaw proposes that the District be required to file its Answer by April 23, 2007 and Shaw would file its Reply by April 27, 2007.

Sincerely,



Jean Brazeau

cc. District of Maple Ridge

END OF DOCUMENT

Andrew Wood

From: Chris Ewasiuk [chris.ewasiuk@sjrb.ca]
Sent: September 27, 2006 1:54 PM
To: Andrew Wood
Cc: Jean Brazeau; Jim Narayan
Subject: Shaw-Maple Ridge MoU and MAA
Attachments: FINAL Shaw-Richmond MAA Sept 27 06.DOC; Maple Ridge Memorandum of Understanding.doc

Hello Andrew. Please find attached a copy of the Municipal Access Agreement adopted by the City of Richmond Council on Monday evening. This agreement will be executed by Richmond and Shaw in the next week or so.

Also enclosed is Memorandum of Understanding as discussed at our meeting last month.

As requested by the District, Shaw will enter into negotiations with the District of Maple Ridge to establish a Municipal Access Agreement using the Richmond agreement as a starting point. In the interim, Shaw requests that the MoU be executed immediately by the District.

Please call us so we can discuss the next steps.

Thanks Andrew.

Chris

Chris Ewasiuk | Manager, Government Affairs - BC
Shaw Communications Inc. | 861 Cloverdale Ave | Victoria, BC V8X 4S7
Phone: (250)475-7212 | **Fax:** (250) 475-7289 | **Cell:** (250) 516-5861
ACCOUNTABLE BALANCE CUSTOMER FOCUSED INTEGRITY LOYALTY POSITIVE, CAN DO ATTITUDE TEAM PLAYER

APPENDIX "3"

Municipal Access Agreement

THIS AGREEMENT made this ___ day of _____, 2006

BETWEEN:

CITY OF RICHMOND

6911 No. 3 Road
Richmond, British Columbia
V6Y 2C1

(the "City")

of the First Part

AND:

SHAW CABLESYSTEMS LIMITED

Suite 900, 630 – 3rd Ave SW
Calgary, Alberta
T2P 4L4

(the "Company")

of the Second Part

WHEREAS:

- (a) The Company is a "Canadian carrier" as defined in the *Telecommunications Act* (Canada) ("Telecom Act") and a "distributing undertaking" as defined in the *Broadcasting Act* (Canada) ("Broadcast Act");
- (b) **AND WHEREAS**, for the purpose of its telecommunications and broadcast distribution undertakings within the City of Richmond, the Company requires to enter on, over, under, along or across those highways and other public places (for the purpose of this Agreement "public places" shall include use of highways and rights-of-way for the purpose of public utilities) within the jurisdiction of the City (collectively, the "Service Corridors") from time to time for the purpose of constructing, maintaining, operating, repairing and removing the Company's wires, cables, ducts, conduits, pedestals, vaults, manholes and other accessories, structures and other related telecommunications facilities (as that term is defined in the *Telecommunications Act* (collectively, the "Equipment") in, on, over, under, along or across the Service Corridors;
- (c) **AND WHEREAS**, the City is the public authority having jurisdiction over the Service Corridors;
- (d) **AND WHEREAS**, the Company must obtain the City's consent to enter on and use the Service Corridors for the purpose of constructing, maintaining, operating, repairing and removing the Equipment in, on, over, under, along or across the Service Corridors;

- (e) **AND WHEREAS**, the Company must not unduly interfere with the public use, enjoyment and safety of the Service Corridors and must share the use of the Service Corridors with other providers of services to the public (the Company and all such providers hereinafter collectively called "Service Providers") when occupying and using the Service Corridors;
- (f) **AND WHEREAS** the City is willing to consent to the occupancy and use of the Service Corridors by the Company for the purpose of construction, operation, maintenance, repairing and removal of the Equipment in, on, over, under, along or across the Service Corridors having due regard to the safety, use and enjoyment of the Service Corridors by others, as described above;
- (g) **AND WHEREAS** the City and the Company have agreed that it would be mutually beneficial to outline the terms and conditions pursuant to which such consent shall be provided by the City to the Company in the form of a non-exclusive right;

NOW THEREFORE in consideration of the promises and mutual covenants herein contained and such other good and valuable consideration the receipt of which is hereby acknowledged and agreed to by the parties, the City and the Company each agree with the other as follows:

Scope of City Consent

- 1. The City hereby consents to the Company, on a non-exclusive basis, entering on and breaking up the Service Corridors for the purpose of the Company's occupancy and use of the Service Corridors and for constructing, operating, maintaining, repairing and removing its Equipment in respect of its telecommunications and broadcast distribution undertakings, subject to the terms and conditions hereinafter set forth and in accordance with all applicable federal, provincial and municipal statutes, laws and by-laws or other applicable rules and regulations.
- 2. The Company may access and use the Service Corridors in accordance with the terms of this Agreement for the purpose of exercising its rights under section 1 of this Agreement.

Authorization of Work

- 3. Subject to sections 4 and 5, the Company shall not excavate, break up or otherwise breach the surface of any Service Corridors for the purpose of constructing, maintaining, operating, repairing or removing any of its Equipment in, on, under, over, along or across any Service Corridors (collectively called "Work") without first:
 - a) obtaining a permit from the City's General Manager, Engineering & Public Works with regard to the proposed location of said Works (the "Alignment");
 - b) providing detailed engineering plans in accordance with the City's Drafting Standards showing the proposed location and description of the Equipment;
 - c) providing all required information and obtaining all required municipal construction and/or other permits normally required by the City prior to commencing any Work; and

- d) providing such other information as the City's General Manager, Engineering & Public Works may reasonably require.

Emergency Work

- 4. Notwithstanding section 3, the Company may carry out work in an emergency or situation of necessity, involving any Equipment or the activities of the Company on, over, under, along or across any Service Corridor, including any Alignment, which constitutes a danger or potential danger of bodily injury or substantial damage to property provided that, the Company shall use reasonable effort to provide advance notice to the City prior to commencing any emergency repair Work. If advance notice cannot be provided by the Company, the Company shall provide notice to the City as soon as reasonably possible thereafter.

Routine Work

- 5. Notwithstanding section 3, the Company may carry out routine maintenance, field testing, subscriber connections, removal and such other work required for the Equipment as well as placing and splicing existing support structure where there is no need to excavate, break up or otherwise breach the surface of any Service Corridor without seeking a permit from the City; provided that, the Company will notify the City if any routine work involves replacement of surface Equipment with Equipment that is greater than 25% larger than the Equipment it is replacing or if any routine work is for a project that is equal to or exceeds 500 meters in length in any Service Corridor.

Condition of Work

- 6. All Work conducted by the Company in a Service Corridor is subject to the following conditions:
 - a) it shall conform to all applicable federal, provincial and municipal statutes, laws and by-laws or other applicable rules and regulations, including, but not limited to, the specific terms identified in the City's permits and the provisions of this Agreement;
 - b) all Work shall be conducted and completed to the satisfaction of the City's General Manager, Engineering & Public Works, acting reasonably, including use of sound engineering practices and adhering to City policies relevant to engineering matters;
 - c) the portions of the Equipment which pass over or under existing utilities or cross beneath streets shall be placed in a carrier pipe or be encased in concrete;
 - d) if the Company breaks the surface of a Service Corridor, it shall repair and restore the surface of the Service Corridor to substantially the same condition it was at before such Work was undertaken by the Company and to the satisfaction of the City's General Manager, Engineering & Public Works, acting reasonably. If the Company fails to repair and restore a Service Corridor to the reasonable satisfaction of the City's General Manager, Engineering & Public Works within ten (10) business days of being notified by the City, the City may effect such

repairs and the Company shall pay reasonable normal City costs related thereto in accordance with Section 23 hereof;

- e) if the City, acting reasonably, requires the Work to be stopped due to a danger or threatened danger to public safety, Company shall cease all such Work forthwith upon receipt of notice from the City. Within three (3) business days of issuing a stop Work order under this section, the City shall provide the Company with written reasons for such order; and
- f) subject to section 12 of this Agreement, the Company is responsible for all costs for the Work.

Company Representations

- 7. The Company represents and warrants to and covenants and agrees with the City that:
 - a) all Work undertaken by the Company within any Service Corridor shall be carried out actively and diligently, in a good and workmanlike manner, in accordance with sound engineering practices and in a manner that shall:
 - (i) not damage or materially interfere with the equipment, property and improvements of the City or other Service Providers, over, under or adjacent to the Service Corridors;
 - (ii) minimize the disruption of the surface and subsurface of the Service Corridors; and
 - (iii) not unduly interfere with the public use and enjoyment of the Service Corridors.
 - b) after completion of any Work, the Company shall restore the Service Corridor to as good a condition as it was before the commencement of such Work and leave the Service Corridor in a sanitary, neat, tidy and safe condition, free of earth, gravel, debris or other materials with may have been placed by the Company on the surface of the Service Corridor, all to the satisfaction of the City's General Manager, Engineering & Public Works, acting reasonably;
 - c) the Company shall not suffer or permit any builders or other lien to be filed or registered against the Service Corridors or other City-owned property;
 - d) if this Agreement is terminated by the City, all the unfulfilled covenants, indemnities and obligations of the Company hereunder shall survive such termination until the Equipment is removed or abandoned;
 - e) the City has made no representations or warranties as to the state of repair of the Service Corridors or the suitability of the Service Corridors for any business, activity or purpose whatsoever and the Company hereby agrees to take the Service Corridors on an "as is" basis; and
 - f) the Company shall at all times maintain the Equipment in a safe condition and good state of repair.

Drawings

8. The Company shall provide "as built" drawings in hard copy and electronically to the City within two (2) calendar months of completing the installation of any new Equipment.

Equipment Locates

9. The Company shall, at no cost to the City, provide locations of its Equipment within twenty-four (24) hours of receiving a request by the City in the case of an emergency and within three (3) business days of receiving a request by the City in all other cases.

Emergency Contacts

10. The Company shall provide to the City's General Manager, Engineering & Public Works a list of twenty-four (24) hour emergency contact personnel for the Company and shall ensure that the aforementioned list is always current.
11. The City shall provide to the Company a list of twenty-four (24) hour emergency contact personnel for the City and shall ensure that the aforementioned list is always current.

Relocation of Equipment

12.

- a) Notice

In the event the City requires the Company to relocate its Equipment as may be required by the City to comply with safety standards or accommodate any relocation, installation, modification, repair, construction, upgrading or removal of City facilities or for its own municipal purposes or, including, without limitation, for the benefit of a private entity or the purpose of public interests, the City agrees to provide to the Company at least one hundred eighty (180) calendar days written notice of the proposed relocation, and any alternate Alignment to accommodate the relocation of the Company's Equipment. In the event a reasonable alternate Alignment to accommodate the Company's Equipment is available, the Company, upon receipt of notice of the request for relocation shall relocate such Equipment with the Service Corridors or perform any other work in connection with its Equipment as may be required by the City.

- (b) Allocation of Costs

Subject to section 12 (b) (vi), the responsibility for the cost of City-initiated Equipment relocation shall be allocated as follows:

- (i) For any Equipment constructed and/or installed in the Service Corridors after the date of this Agreement and where Company has made application to construct and/or install the Equipment within any Service Corridor after the City had indicated to the Company in its Five Year Capital Works Plan as being required for municipal purposes and Company nevertheless constructs and/or installs its Equipment in such Service Corridor, Company shall be responsible for all of its relocation costs.

(ii) For any Equipment constructed and/or installed in the Service Corridors after the date of this Agreement which is required to be relocated as a result of any municipal project not identified by the City in the City's current Five Year Capital Works Plan, the percentage of costs paid for by the City, minus depreciation, salvage and betterment cost factors, shall be 100% for the first two years and then reduced by 20% in each subsequent year if the relocation is required within the first seven (7) years of the Company's construction and/or installation of such Equipment, and thereafter such costs shall be paid for by the Company. The City shall promptly provide the Company with each new Five Year Capital Works Plan.

(iii) For Company Equipment constructed and/or installed in the Service Corridors up to 10 years prior to the date of this Agreement the City will be responsible to reimburse the Company 50% of the Company's costs to perform the work to relocate its Equipment minus depreciation, salvage and betterment cost factors. The Company will be responsible for all of the remaining costs to relocate its Equipment.

(iv) For Company Equipment constructed and/or installed in the Service Corridors more than 10 years prior to the date of this Agreement, the Company will be responsible for all of the costs to relocate its Equipment.

(v) Each of the parties agree that special circumstances may arise with respect to specific location approvals whereby it may be appropriate for the parties to mutually agree to waive the above-noted provisions and to negotiate alternative arrangements. These alternative arrangements shall be agreed upon in writing prior to Equipment location being approved.

(vi) If relocation is the result of any projects and/or work of a third party, the City will include the cost of relocating the Company's Equipment with the construction costs required in the City's servicing agreement with such third party and such amounts shall be charged to and payable to the Company by such third party prior to any relocation work by the Company and the City agrees to assist the Company, when or if required, to recover its costs from the third party for the work to relocate its Equipment. Notwithstanding any provision contained hereunder to the contrary, the City shall not require the Company to relocate its Equipment until the Company has received the full amount for its costs to perform any work to relocate the Equipment.

(vii) Notwithstanding any other provision of this Section 12, in the event the City requires the Company to relocate its Equipment primarily for beautification, aesthetic or other similar purposes, the Company shall pay 50% and the City shall pay 50% minus depreciation, salvage and betterment of the Company's costs related to the relocation of the Company's Equipment.

Liability

13. The Company shall indemnify and save harmless the City from and against all actions, causes of action, proceedings, claims and demands brought against the City, and from and against all losses, costs, damages or expenses suffered or incurred by the City, by reason of any damage to property, including property of the City or any third party, or

injury, including injury resulting in death, to persons, including the employees, servants, agents, licensees and invitees of the City or any third party, caused by, resulting from or attributable to the negligent or willful act or omission of the Company or any of its employees, servants, agents, licensees or invitees.

14. The City shall indemnify and save harmless the Company from and against all actions, causes of action, proceedings, claims and demands brought against the Company, and from and against all losses, costs, damages or expenses suffered or incurred by the Company, by reason of any damage to property, including property of the Company or any third party, or injury, including injury resulting in death, to persons, including the employees, servants, agents, licensees and invitees of the Company or any third party, caused by, resulting from or attributable to the negligent or willful act or omission of the City or any of its employees, servants, agents, licensees or invitees.
15. Notwithstanding anything contained in this Agreement, the City and the Company shall not be liable to each other in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement or with any Equipment or Service Corridor governed hereby.

Term of Agreement

16. Unless otherwise terminated in accordance with the terms of this Agreement, the initial term of this Agreement shall commence on _____ and shall continue for a period of five (5) years. This Agreement shall automatically renew for two (2) successive five (5) year periods, and for successive one (1) year periods thereafter, subject to the renegotiation of the fees set out in Schedule "A", if applicable or unless the City or the Company give written notice of cancellation to the other not less than three (3) months prior to the end of the initial term or any renewal term. For the purpose of this Agreement the initial term and any subsequent renewal terms shall be collectively referred to as the "Term".

Payments to City

17. The Company covenants and agrees to pay the City the costs and fees specified in Schedule "A" which is attached to and forms part of this Agreement and which are therein described and defined as Causal Costs, including, for certainty, Lost Productivity Costs, Permitting and Inspection costs and Pavement Degradation Fees .

Taxes and Utilities

18. Any fees paid by the Company pursuant to this Agreement are not in lieu of any business or property value taxes which are properly assessable in respect of the Company's improvements or operations, and the Company shall pay all such taxes to the taxing authority having jurisdiction including the Local Government Act Section 353.2. The Company shall also be responsible for the payment of the cost of all services and utilities consumed in respect of the Company's operations.
19. All taxes or assessments in the nature of sales taxes, goods and services taxes or value added taxes which may be charged, levied or assessed as a result of this Agreement, whether or not such taxes are charged, levied or assessed as against the City, shall be the responsibility of the Company, and the Company shall on written demand by the City, pay to the City any and all such taxes. The Company shall not be obligated to pay such taxes to the City as

contemplated in this Section if the Company shall have delivered to the City a statutory declaration evidencing that the Company is a registrant pursuant to any such tax legislation and as such, the City is not liable to remit any such sales taxes to any taxing authority.

Security

20. If requested by the City, security in the form of a Letter of Credit, or other security acceptable to the City's General Manager, Engineering & Public Works, acting reasonably, shall be deposited with the City to ensure performance of the Company's road restoration work for each permit for Work obtained from the City's General Manager, Engineering & Public Works pursuant to section 3 hereof. The security will be released by the City to the Company upon acceptance of the road restoration work by the City's General Manager, Engineering & Public Works. The security shall be in a form of a Letter of Credit in the amount of \$50,000.00.

Company Event of Default

21. The occurrence of any of the following events shall constitute a "Company Event of Default":
 - a) if any amount due and payable hereunder by the Company to the City remains unpaid for a period of thirty (30) calendar days after written notice from the City to the Company, the amount thereof is not in *bona fide* dispute, the City has given the Company a further thirty (30) calendar days notice of its default in payment and the Company has failed to pay such amount within such thirty (30) calendar day period;
 - b) if the Company has failed to perform a material non-payment obligation hereunder other than as a result of an event of *force majeure* as described in section 41, the City has given the Company written notice of such failure and such failure has continued for a period of forty-five (45) calendar days after such notice from the City; provided, however, that if such a failure is capable of being cured but cannot reasonably be cured within such forty-five (45) calendar day period, and the Company is prosecuting such cure with diligence, such longer time period as may be necessary to complete such cure if the same is prosecuted with due diligence; or
 - c) if a proceeding in respect of the Company under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors Arrangement Act* (Canada), the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or other similar rules or laws of right benefit or for dealing with the rights of debtors and creditors (ii) the appointment of an interim receiver, receiver, receiver and manager or liquidator over a substantial portion of the assets of the Company, or (iii) any enforcement of or realization upon any security over any portion of Equipment of the Company has occurred.

Remedies Upon Company Events of Default

22. Upon the occurrence of a Company Event of Default the City may take such action as it determines, in its sole discretion, to be necessary to correct any default by the Company hereunder and recover its reasonable costs incurred in curing such Company Event of

Default and pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including specific performance.

23. If the Company fails to complete the relocation of the Equipment in accordance with section 12 or fails to repair the Service Corridors or do anything else required by the Company pursuant to this Agreement in a timely and expeditious manner to the satisfaction of the City's General Manager, Engineering & Public Works, acting reasonably, the City may, but is not obligated to, at its option complete such relocation or repair and the Company shall pay the cost of such relocation or repair to the City forthwith plus an overhead equal to fifteen percent (15%) of such cost and, in default of payment thereof, the amount of such cost with interest at the rate of one percent (1%) per annum above the prime lending rate of the Canadian Imperial Bank of Commerce carrying on business in the City shall be due and payable by the Company to the City upon receipt by the Company of an invoice setting out such costs and interest.

Dispute Resolution

24. The parties will attempt to resolve any dispute arising out of this Agreement promptly through discussions at the operational level. In the event a resolution is not achieved, the disputing party shall provide the other party with written notice of the same and the parties shall attempt to resolve such dispute between senior officers who have the authority to settle such dispute. All negotiations conducted by such officer shall be confidential and shall be treated as compromise and settlement negotiations. If the parties fail to resolve such dispute within thirty (30) calendar days of the non-disputing party's receipt of the written notice, either party may initiate legal proceedings and/or submit the matter to the Canadian Radio-television Telecommunications Commission for resolution.

Termination

25. Upon termination of this Agreement for any reason:
 - a) the Company and the City shall enter into meaningful negotiations for a new Agreement; and
 - b) the Company shall notify the City if the Company no longer requires any pedestals, vaults, and structures located above the surface of the ground in any Alignment (collectively, the "Surface Equipment") and, at the request of the City, the Company shall, within a reasonable period of time after such request, remove any Surface Equipment it no longer requires. Upon removal of the Surface Equipment by the Company, it shall forthwith repair any damage resulting from such removal and restore the Service Corridor to substantially the same condition in which they existed prior to the removal. If the Company fails to remove the Surface Equipment it no longer requires and restore the Service Corridor as contemplated by this section, the City may complete the removal and restoration and charge all direct costs incurred to the Company. The Company agrees that the insurance policy referred to in Sections 33 and 34, hereof, shall remain in full force and effect until all of the Surface Equipment not required by the Company is removed as requested by the City in accordance with this section.

26. Notwithstanding the expiry or earlier termination of this Agreement each party shall be liable to the other party for all of its respective obligations incurred hereunder prior to the date of such termination.

Successors and Assigns

27. This Agreement shall be binding upon and shall inure to the benefit of the Company and the City and their respective successors and assignees. For the purposes of this Agreement, "successors" of a party shall include any person, firm, corporation, or other entity which at any time, whether by merger, acquisition, purchase, or otherwise, shall acquire all or substantially all of the such party's assets located in Richmond, BC. The Company may assign this Agreement during the Term to an "affiliate", as that term is defined in the *Canada Business Corporations Act* (Canada) and shall provide advance written notice to the City of such assignment.
28. In the event of assignment of the Agreement by the Company to someone other than an "affiliate", the Company shall seek the City's prior written consent, which consent cannot be unreasonably withheld, and shall remain liable under this Agreement in all respects up to the assignment date and the City may require the assignee to enter into an agreement to assume all obligations under this Agreement as of the assignment date.
29. Despite section 28, the Company may pledge the rights granted by this Agreement as security without the consent of the City to any person directly or indirectly providing financing to the Company but such pledge shall not release the Company from its obligations and liabilities under this Agreement.

Ownership

30. No use of a Service Corridor under this Agreement shall create or vest in the Company any ownership or property rights in a Service Corridor, and the Company shall be and remain a mere non-exclusive licensee of the Service Corridor and, subject to the abandonment of Equipment referred to in section 39, placement of the Equipment in a Service Corridor shall not create or vest in the City any ownership or property rights to the Equipment and the City hereby acknowledges the Company's ownership of the Equipment.

Non-Exclusivity

31. Nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement to use any Service Corridor in accordance with the City's legal authority.

Workers' Compensation Board

32. The Company agrees that it shall at its own expense procure and carry or cause to be procured and carried and paid for, full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject of this Agreement. The Company agrees that for any work or service which is the subject of this Agreement, it is the Principal Contractor for the purposes of the Workers' Compensation Board Industrial Health and Safety Regulations for the Province of British Columbia. The Company shall abide by all applicable Workers' Compensation Board safety rules and shall ensure that all applicable Workers'

Compensation Board safety rules and regulations are observed during the performance of any works which are subject to this Agreement, not only by the Company but by all subcontractors, workers, materialmen and others engaged in any such works. Prior to commencement of any such works, the Company shall complete and file a "Construction Notice of Project" with the Workers' Compensation Board and shall, if requested by City, provide a copy of the same to the City confirming that the Company shall be the Principal Contractor responsible for coordination of safety and health under the Works' Compensation Board Industrial Health and Safety Regulations.

Insurance

33. The Company shall maintain Comprehensive General Liability Insurance and Automotive Liability Insurance (both owned and non-owned units) in sufficient amount and description as will protect the Company and the City from claims for damages, personal injury including death, and for claims from property damage or loss which may arise from the Company's operations in the City under this Agreement, including the installation, maintenance, operation, relocation or removal of the Equipment on or in the Service Corridors or any act or omission of the Company's agents or employees while engaged in the work of installing, maintaining, repairing, replacing, operating, relocating, or removing the Equipment.
34. In addition to the foregoing the Company covenants and agrees that:
- a) the limits of liability under the Comprehensive General Liability Insurance for personal injury, bodily injury and property damage combined shall be for not less than Five Million (\$5,000,000.00) Dollars for each occurrence;
 - b) the City shall be added as an additional insured under the Comprehensive General Liability Insurance;
 - c) a Cross Liability clause shall be made part of the Comprehensive General Liability Insurance;
 - d) the Comprehensive General Liability Insurance shall extend to cover the contractual obligations of the Company as stated within this Agreement;
 - e) the limits of liability under the Automotive Liability Insurance for personal injury, bodily injury and property damage combined shall be for not less than Three Million (\$3,000,000.00) Dollars for each occurrence or incident;
 - f) all policies shall provide that they cannot be cancelled, lapsed or materially changed to the adversity of the City without at least thirty (30) calendar days notice to the City by registered mail; and
 - g) upon execution of this Agreement the Company shall file with the City a certificate or certificates of insurance and shall thereafter provide such certificates of insurance upon request by the City.

Utility Coordination

35. The Company agrees to participate in any utility coordinating committees or forums as may be established by the City, and to pay its proportionate share of the reasonable costs of the administration of such forums. The City and Company agree that as part of such

committee the parties will consider such matters as capacity needs as they relate to the use of the Service Corridors by all Service Providers.

Third Party Equipment

36. In all cases where the Company shares ownership or other rights with a third party in respect of any Equipment situated in, on, over, under, along or across an Alignment occupied or used by the Company under this Agreement, the Company shall remain responsible for performing all of its obligations under this Agreement, as if it is the sole owner of the Equipment. In its agreements with third parties the Company will include provision that third parties comply with all applicable federal, provincial and municipal statutes, laws and by-laws or other applicable rules and regulations.

Occupational Health and Safety and Traffic

37. The Company shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all health and safety laws including any regulations requiring installation of safety devices or appliances, and any applicable traffic laws or regulations (collectively "Safety Rules"). The City may, on twenty-four (24) hours written notice to the Company, or sooner if in the reasonable opinion of the City the likelihood of harm to persons is imminent, suspend Work performed by or on behalf of the Company on that portion of the Equipment located in, on, under, along or across Service Corridors where it has been confirmed that the Company has not complied with the Safety Rules or because conditions of imminent danger to public safety exists that would likely result in injury to any person. Such suspension shall continue until the lack of compliance or danger is eliminated.

Environmental Responsibility

38. The Company agrees to assume all environmental liability, including but not limited to liability for clean up of any hazardous substances which it brings to or causes to be brought to any Alignment it occupies and uses hereunder. For the purpose of clarity, the Company is not liable for any hazardous substances which may or are present in, on, under, along and/or around the Service Corridors which were not brought to or caused to be brought to said Service Corridors by Company or which were brought by any party who the Company is not responsible for at law. For the purpose of this section 38, "hazardous substance" means any hazardous substance and includes, but is not limited to, radiation, petroleum products and byproducts, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal.

Obsolete Equipment

39. The Company shall notify the City promptly when it abandons Equipment situated in, on, over, under, along or across the Service Corridors. Upon such notification, the City may thereafter, at any time, require the Company to remove abandoned Surface Equipment within a specified period of time, being no less than ninety (90) days from the date of the City's notification, failing which the City may remove the abandoned equipment at the Company's cost and expense or, at the City's discretion the abandoned Surface

Equipment shall be deemed to have been abandoned by the Company and title thereto shall vest in the City. In the event the Company notifies the City that it proposes to abandon Equipment located under a Service Corridor and in the City's opinion acting reasonably, such equipment is in a poor, dilapidated or deteriorating physical condition and constitutes a hazard to persons or property, is an imminent threat to public safety or interferes with the efficient management and operation of the Service Corridor, the Company shall, at the request of the City, remove such buried abandoned Equipment from the Service Corridor.

Notice

40. Any and all notices required or permitted to be given hereunder shall be in writing and may be sufficiently given by personal delivery, mail or by fax transmission to the City at the following address:

City of Richmond
6911 No. 3 Road
Richmond, British Columbia V6Y 2C1
Attention: General Manager, Engineering & Public Works
Fax Number: (604) 276-4197

And to the Company at the following address:

Shaw Cablesystems Limited
Suite 900, 630 – 3rd Ave SW
Calgary, Alberta T2P 4L4
Attention: Vice President, Operations
Fax: (403) 750-4501

With Copy to:
Legal Department
Fax: (403) 716-6544

Any notice may also be given by prepaid registered mail mailed within the Province of British Columbia and such notice if delivered by mail shall be effective five (5) calendar days following the date of mailing, except in the event that there shall be a disruption in postal services at the date of mailing, in which case notice shall be effective by personal delivery or a facsimile transmission as stated above.

Force Majeure

41. Neither of the parties will be liable for failing to perform any of its respective obligations, covenants and agreements herein contained (excepting always obligations, covenants or agreements to pay), if failure, damage or loss is caused by an event of force majeure including acts of God or of the enemies of Canada, fire or other casualty, war, disaster, riots, strikes, walk-outs or other disturbances or for any other causes beyond the control of the party seeking relief and any date affected thereby shall be extended for the number of days equal to that number of days during which any such event is operative.

Confidentiality

42. During the term of this Agreement, the City may be entrusted with confidential information which the Company may be required to provide to the City hereunder, such

confidential information may include but is not limited to, information relating to the Equipment and the Work, the "as-built" drawings provided by the Company to the City hereunder, or such other information the Company considers of a competitive nature respecting the Company's customers, Equipment, material and its business operations. Except as required by law, including, without limitation, the Freedom of Information and Protection of Privacy Act, the City agrees that it will not use such confidential information for any purposes whatsoever except in the performance of this Agreement, and it shall not disclose any such confidential information to any third party whomsoever unless such disclosure is consented to in writing by the Company or is otherwise required by law and then only after the City has provided written notice of such requirement to the Company. The Company may, at its discretion, seek a protective order preventing such disclosure. The obligation of the City to keep such information confidential is necessary to protect the trade, commercial and financial interest of the Company. The City acknowledges and agrees that any breach whatsoever of the covenants, provisions and restriction contained in this section 42 by the City shall cause, and shall be deemed to be a breach of the City's obligations to the Company hereunder which may cause serious damage and injury to the Company which may not be fully or adequately compensated by monetary damages. The parties accordingly agree, that in addition to claiming damages the Company may seek interim and permanent equitable relief, including without limitation, interim, interlocutory and permanent injunctive relief, in the event of any breach of obligation of confidentiality described herein. All such rights and remedies shall be cumulative and in addition to all other rights and remedies shall be cumulative and in addition to all other rights and remedies whatsoever to which the Company may be entitled. Notwithstanding the foregoing, in the event the City is required pursuant to the *Freedom of Information and Protection of Privacy Act* to disclose the confidential information of the Company the City agrees to promptly notify the Company of the matter of disclosure.

Miscellaneous

43. Independent Contractors. The relationship of the Company and the City established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed:
 - a) to give either party the power to direct or control the day-to-day activities of the other;
 - b) to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or
 - c) to allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.
44. This Agreement is the entire Agreement between the City and the Company regarding the subject of this Agreement and it can be amended or supplemented only by a document executed in writing by both the City and the Company.
45. The Company and the City acknowledge that it is in the Company's best interest to enter into municipal access agreements which have consistent terms and conditions. The Company will use reasonable commercial efforts to ensure that the terms and conditions

contained in municipal access agreements between Company and any other municipality in British Columbia are consistent in all material respects with the terms and conditions contained herein.

46. This Agreement benefits and binds the City and the Company and the successors of each of them.
47. If any term of this Agreement is found to be invalid, illegal, or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from this Agreement and the rest of this Agreement remains in force unaffected by that finding or by the severance of that term.
48. This Agreement creates contractual rights only between the City and the Company and not an interest in the Service Corridors and the Company covenants and agrees with the City that the Company shall desist always from any registration of this Agreement or of any right howsoever arising under it.
49. No alleged waiver or breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No waiver by a party of any breach of this Agreement operates as a waiver of any other breach of this Agreement.
50. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
51. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of British Columbia and the laws of Canada which may be applicable to a party in the Province of British Columbia.
52. The use of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.
53. This Agreement contains the entire understanding between the parties hereto relating to the subject matter contained herein and supercedes any and all prior agreements, arrangement, communications or representations, whether oral or written.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their duly authorized representatives.

On behalf of the **City of Richmond**

Mayor

Clerk

On behalf of: **Shaw Cablesystems Limited**

Name & Title: _____

Name & Title: _____

Schedule "A"
to the Municipal Access Agreement made _____, 2006 between the City of
Richmond and Shaw Cablesystems Limited

A. Definition of Causal Costs

"Causal Costs" include the costs described herein, which are incurred by the City as a direct result of the presence and/or the proposed installation of any of the Company's Equipment including but not limited to the construction, maintenance or operation of the Equipment in, on, under, over, along and across the Service Corridors.

B. Definition of Lost Productivity

"Lost Productivity Costs" means those significant additional costs incurred by the City that are identifiable and directly attributable to the presence of the Company's Equipment on, over, under, along or across Services Corridors in relation to the construction, installation, repair, replacement, extension or maintenance of sewage lines, conduits, ducts and pipes owned by the City.

C. Costs General:

Permitting and Inspection Costs

- 1.1 The following fees plus a loading factor of 15% are charged to recover the costs of the City reviewing and circulating Company applications, issuing permits and inspecting the Company's restoration work in any Alignment:
- (a) Five Hundred Dollars (\$500.00) for each permit involving twenty (20) meters or less for any Work authorized pursuant to Section 3 of this Agreement; and
 - (b) an additional Five Hundred Dollars (\$500.00) for each one hundred (100) meters or part thereof in excess of the first twenty (20) meters referred to in (a), above.
- 1.2 The fees outlined above in subsections (a) and (b) are 2005 rates and shall be adjusted annually on December 31 of each year commencing in [2006], based on a percentage increase equal to the Consumer Price Index Variation as set out in the Canadian Economic Observer published by Statistics Canada, and expressed as a percentage rate per annum, calculated and compounded annually for each and every year of the Agreement. If the change in the Consumer Price Index is a negative sum for any given year then the change in the base rate for that year shall be zero.

Pavement Degradation Fees

2. In instances where the Company excavates, breaks up or otherwise breaches the surface of any Service Corridor, the Company will contribute to the cost of the pavement degradation based on the total area of pavement excavated and such amount will be payable within thirty (30) days of completing the restoration of the applicable Service Corridor, on a one time project basis, in accordance with the following table:

Age of Street in Years Since Last Paved as determined by the City	Fee Per Square Meter of Excavation
0 – 5 Years	\$40.00
6 – 10 Years	\$30.00
11- 15 Years	\$20.00
16 – 20 Years	\$10.00
21 Years or greater	\$ 0.00

Lost Productivity

3. The Company agrees that, from time to time, the City may incur Lost Productivity Costs. Where the City has incurred Lost Productivity Costs the Company covenants and agrees to pay to the City the Lost Productivity Costs within forty five (45) days of receipt of an invoice thereof, provided that the City has provided reasonable written documentation substantiating Lost Productivity Costs, including, but not limited to:
- (a) the location of the Company’s Equipment;
 - (b) a description of the City work, including, the sewage lines, conduits, ducts and pipes affected and any other utilities located in the trench;
 - (c) an explanation of the nature of the interference caused by the Company’s Equipment; and
 - (d) an itemized breakdown of the Lost Productivity Costs including, but not limited to labour, supplies, equipment and applicable loading factors and evidence of the Company’s pro-rated share of such costs as allocated amongst the various Service Providers or such other persons located in the Service Corridor with the Company’s Equipment.
4. If the Company disputes the Lost Productivity Costs, including but not limited to the prorated share thereof or whether the Company should be responsible for such costs (the “Dispute”), such Dispute shall be addressed under Section 24 (Dispute Resolution) of this Agreement.

APPENDIX "4"

Jan /26/07

- I spoke to Mr. Sean Brogan at SHAW & he is going to review my request for access to other files & get back to me next week.
- He felt they may be able to create a better deal on our leave rate!
- He indicated that he may have to kick this up stairs & I said fine.

APPENDIX "5"

MURDY & McALLISTER

BARRISTERS & SOLICITORS

TELEPHONE (604) 689-5263
FAX (604) 689-9009

TWO BENTALL CENTRE
1155 - 555 BURNARD STREET
P.O. BOX 49059
VANCOUVER, CANADA V7X 1C4

April 16, 2007

Via Email

Jean Brazeau
Shaw Cablesystems Limited
Suite 900, 630-3rd Avenue S.W.
Calgary, Alberta
T2P 4L4

Dear Sir:

Re: Part VII Application by Shaw Cablesystems Limited
Seeking access to highways and other public places
Within the jurisdiction of the District of Maple Ridge
Our File No.3195

Further to my letter sent to you this morning, our subsequent phone conversation with Chris Ewasiuk and your follow up email, your position is completely unreasonable. Your suggestion of agreeing to an adjournment only if the District immediately signs an Memorandum of Understanding (the "MOU") is, in reality, not an offer at all. I will outline my rationale below.

Firstly, as the District's written materials to your application must be served on the Commission on Thursday, there would be no time to negotiate the MOU. Secondly, I have not even seen a copy of your draft MOU. Thirdly, and most importantly, given the potential flooding crisis facing the District, I know that I will not be able to receive proper instructions in the next several days.

Yours truly,

MURDY & McALLISTER



Michael R. McAllister

MRM/ky

cc. Chris Ewasiuk, Director Access Arrangement

APPENDIX "6"

Michael McAllister

From: Michael McAllister
Sent: Thursday, April 19, 2007 8:33 AM
To: 'Chris Ewasiuk' (E-mail)
Subject: Maple Ridge MAA

Chris,

Are you and Jean available to meet in Maple Ridge first thing next Tuesday or Wednesday morning to discuss the MAA?
From the District's point of view Wednesday is the preferred date.

If you have any agenda items for the meeting please advise.

Michael

Michael McAllister
Murdy & McAllister
Barristers & Solicitors
Two Bentall Centre
1155-555 Burrard Street
P.O. Box 49059
Vancouver, Canada V7X 1C4
Tel: (604) 689-5263 Fax: (604) 689-9029

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APPENDIX "7"

From: Chris Ewasiuk [mailto:chris.ewasiuk@sjrb.ca]
Sent: Thursday, April 19, 2007 10:48 AM
To: Michael McAllister
Cc: Jean Brazeau
Subject: RE: Maple Ridge MAA

Michael, Shaw is available to meet with the District on the afternoon of Tuesday, April 24th if the District is prepared to sign an MoU, substantially in the form that we provided to the District in July, 2006, granting Shaw immediate access while negotiations on a MAA proceed.

Chris

APPENDIX "8"

Michael McAllister

From: Michael McAllister
Sent: Thursday, April 19, 2007 3:58 PM
To: 'Chris Ewasiuk'
Cc: Jean Brazeau
Subject: RE: Maple Ridge MAA

Importance: High

Gentlemen

What is it going to take to get Shaw to simply return to the negotiating table? The District in good faith retained us to assist in this matter. The District in good faith, and in accordance with the direction of the CRTC, wants to get back to that table. Your conditional offer is unnecessary and, in our view inappropriate in the circumstances.

Your proposal is even more restrictive than what you proposed to me on the phone earlier this week. You will recall stating that Shaw was looking for the District to execute and MOU that would only be valid for a short time period. You specifically mentioned six months! What you have now asked the District to sign is a MOU with a term of one year. This is definitely not progress and, with all due respect, not negotiating in good faith.

I have no instructions on signing an MOU and as you no doubt know, such approval to enter into any such an agreement must come from the District's Council. Such approval will not be possible before next Tuesday.

So as you are aware, next Tuesday and Wednesday are the only days I am available next week. In my view you have given the District no option here.

If you have a change in heart, please advise us by noon tomorrow. If we do hear from you by then we will have no alternative but to provide the Commission with an update on this issue.

Kind Regards,

Michael

Michael McAllister
Murdy & McAllister
Barristers & Solicitors
Two Bentall Centre
1155-555 Burrard Street
P.O. Box 49059
Vancouver, Canada V7X 1C4
Tel: (604) 689-5263 Fax: (604) 689-9029

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APPENDIX "9"

From: Chris Ewasiuk [mailto:chris.ewasiuk@sjrb.ca]
Sent: Thursday, April 19, 2007 5:16 PM
To: Michael McAllister
Cc: Jean Brazeau
Subject: RE: Maple Ridge MAA

Michael,

Shaw appreciates the efforts that you are making to establish some progress in the negotiation of an MAA between the District of Maple Ridge and Shaw.

Shaw has stated on numerous occasions that it is prepared to make the MAA retroactive to permits issued in an interim period. In the hopes of avoiding an application to the CRTC, Shaw further indicated in our letter of March 19, 2007 that it was prepared to provide a Certificate of Insurance and, if required, a Letter of Credit equal to the value of any roadway restoration that we would be required to undertake as part of our work during an interim period. We also recognize that the District would not want an interim access arrangement to become a permanent state of affairs, so we are prepared to place a specific deadline on the interim access arrangement.

Given that two years have passed since we first engaged the District in the negotiation of an MAA, we believe it is reasonable to request that access now be granted to Shaw on an interim period until a final MAA is executed.

If the District of Maple Ridge is prepared to take that step, Shaw will respond in kind.

Thanks Michael.

Chris

Chris Ewasiuk | Director, Access Arrangement
and British Columbia Government Relations
Shaw Communications Inc. | 861 Cloverdale Ave | Victoria, BC V8X 4S7
Phone: (250)475-7212 | Fax: (250) 475-7289 | Cell: (250) 516-5861 |
Chris.Ewasiuk@sjrb.ca

ACCOUNTABLE BALANCE CUSTOMER FOCUSED INTEGRITY LOYALTY
POSITIVE, CAN DO ATTITUDE TEAM PLAYER



Canadian Radio-television and
Telecommunications Commission

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage
Gatineau, QC J8X 4B1

Conseil de la radiodiffusion et des
télécommunications canadiennes

Mailing Address
Ottawa, ON K1A 0N2

4 April 2007

File No.: 8690-S9-200704900

Vancouver
580 Hornby Street
Suite 530
Vancouver, BC V6C 3B6
(604) 666-2111
TDD: (604) 666-0778
Fax: (604) 666-8322

Edmonton
10405 Jasper Avenue
Suite 520
Edmonton, AB T5J 3N4
(780) 495-3224

Regina
Cornwall Professional Building
2125, 11th Avenue
Suite 103
Regina, SK S4P 3X3
(306) 780-3422

Winnipeg
275 Portage Avenue
Suite 1810
Winnipeg, MB R3B 2B3
(204) 983-6306
TDD: (204) 983-8274
Fax: (204) 983-6317

Toronto
55 St. Clair Avenue East
Suite 624
Toronto, ON M4T 1M2
(416) 952-9096

Montreal
205 Viger Avenue West
Suite 504
Montréal, QC H2Z 1G2
(514) 283-6607

Dartmouth
Metropolitan Place
Suite 1410
99 Wyse Road
Dartmouth, NS B3A 4S5
(902) 426-7997
Fax: (902) 426-2721

BY E-MAIL

Mr. Jean Brazeau
Shaw Cablesystems Limited
Suite 900, 630-3rd Avenue S.W.
Calgary, Alberta
T2P 4L4
jean.brazeau@srb.ca

- and -

Mr. Jim Rule
Chief Administrative Officer
The District of Maple Ridge
11995 Haney Place
Maple Ridge, British Columbia
V2X 6A9
jrule@mapleridge.org

Dear Mr. Brazeau and Mr. Rule:

**Re: Part VII Application by Shaw Cablesystems Limited
seeking access to highways and other public places
within the jurisdiction of the District of Maple Ridge**

In Shaw Cablesystems Limited's (Shaw) application dated 30 March 2007, Shaw has requested, among other things, an order granting Shaw immediate access to highways and other public places in the District of Maple Ridge on terms and conditions consistent with *Ledcor/Vancouver – construction, operation and maintenance of transmission lines in Vancouver*, Telecom Decision CRTC 2001-23, 25 January 2001 (Decision 2001-23) and as contained in the template Municipal Access Agreement (MAA) attached to the application, or to such other conditions as the Commission may determine.

Commission staff notes that in the Application, Shaw noted that it has been trying to negotiate the terms of municipal access with the District of Maple Ridge since April 2005 in order to lay cable in underground facilities in Maple Ridge. Shaw also noted that it has had to operate and maintain its existing

General Inquiries: (819) 997-0313
Toll-free 1-877-249-2782
TDD: 1-877-909-2782
Fax: (819) 994-0218
www.crtc.gc.ca

Canada

transmission lines and related facilities in Maple Ridge without the benefit of an agreement since Shaw acquired the Maple Ridge system assets from Rogers Cable TV Limited in November 2000. Shaw noted that with summer season rapidly approaching, it was imperative that this situation be resolved. Accordingly, Shaw requested an abridged time period for comments and reply pursuant to the *CRTC Telecommunications Rules of Procedure*.

In light of the above, Commission staff considers it appropriate to abridge the time period for comments and reply. Therefore, the District of Maple Ridge must file its comments with respect to the request for relief with the Commission, serving a copy on Shaw, by 19 April 2007. Shaw must file its reply with respect to the request for relief with the Commission, serving a copy on the District of Maple Ridge, by 24 April 2007. The information should also be forwarded to Lynne Fancy, at lynne.fancy@crtc.gc.ca.

Where a document is to be filed or served by a specific date, the document must be actually received, and not merely sent, by that date.

Yours sincerely,

'Original signed by L. Fancy'

Lynne Fancy
A/Director, Competition Implementation and Technology
Telecommunications

cc: J. Mullaney, CRTC (819) 953-5255

Michael McAllister

From: Michael McAllister
Sent: Monday, April 23, 2007 10:45 AM
To: 'Chris Ewasiuk'
Cc: 'Jean Brazeau'
Subject: RE: Maple Ridge/Shaw Municipal Access Agreement

Importance: High

Good morning Chris

As I committed to do, I sought instructions from the District and can advise as follows.

First, as I previously advised you, I cannot get instructions from Council for the District to enter into a MOU in the time frame we face.

Second, your demand for a MOU is, in our view, neither a sign of good faith on the part of Shaw nor is it consistent with the intention of the April 18, 2007 letter from the Commission to Shaw and the District.

Third, and as a statement of its good faith intentions, the District will give Shaw consent to install its own ducts (the "Works") for all of the projects set out in paragraph 10 of your April 17, 2007 letter to CRTC (the "Letter"), ON THE FOLLOWING CONDITIONS:

1. Shaw agrees to immediately adjourn its Part VII application generally, with a commitment not to bring the matter back to the CRTC until after October 1, 2007;
2. Shaw agrees to return to the negotiating table in good faith with the intention of concluding a definitive agreement;
3. The Works, in every aspect, will retroactively be subject to the definitive agreement;
4. Shaw agrees to provide the Certificate of Insurance and Letter of Credit for the Works previously agreed to in Shaw's March 19, 2007 letter to Mr. Jim Rule;
5. Shaw agrees that the Works will be subject to all normal District subdivision and street occupancy requirements;
6. Shaw will provide its response to this offer no later than the close of business today; and
7. Should a definitive agreement not be concluded by October 1, 2007, the District reserves the right to withdraw its consent for those Works for which installation has not begun by that date.

I have no doubt that the last condition will give you pause for thought. So as you are aware, there are two purposes for its inclusion. First, it fits with both the summer construction schedule set out in paragraph 11 of the Letter and your right to bring your Part VII application back to the CRTC. Second, and given what has transpired over the course of the last month, both I and District staff want a sign of good faith from Shaw that Shaw is seriously committed to negotiating the definitive agreement over the course of the next five months.

It should be pointed out that the Works you wish to install in the projects (paragraph 10 of the Letter) is first the District has heard of them!

If you do not accept this offer, I will tomorrow seek an order from the Commission to adjourn Shaw's application generally.

Michael McAllister

Murdy & McAllister
Barristers & Solicitors
Two Bentall Centre
1155-555 Burrard Street
P.O. Box 49059
Vancouver, Canada V7X 1C4
Tel: (604) 689-5263 Fax: (604) 689-9029

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APPENDIX "12"

Michael McAllister

From: Chris Ewasiuk [chris.ewasiuk@sjrb.ca]
Sent: Monday, April 23, 2007 12:16 PM
To: Michael McAllister
Cc: Jean Brazeau
Subject: RE: Maple Ridge/Shaw Municipal Access Agreement

Hello Michael.

Shaw appreciates the good faith shown by the District of Maple Ridge in making the proposal detailed in your email sent to us earlier today.

Shaw is prepared to accept the terms of the proposal made today with the following modifications:

-In addition to the projects listed in paragraph 10 of our April 17th letter, any other projects that come forward to Shaw between now and October 1st must also be approved;

-define Shaw's "work" as "Constructing, maintaining, operating, repairing and removing the Company's wires, cables, ducts, conduits, pedestals, vaults, manholes and other accessories, structures and other related telecommunications facilities on, over, under, along or across those highways and other public places within the District of Maple Ridge."; and

-If an agreement is not reached by October 1st, the District will only withdraw its consent for already approved Work where there is an alternative arrangement available for the provision of the Shaw's services to the development affected by the permit (ie. Telus). (NOTE: it is possible that a project would be too far along in the planning process that Shaw's requirements could not be met by Telus)

As suggested last week, Shaw remains willing to meet with the District as early as tomorrow (Tuesday) afternoon if this modified proposal is acceptable to the District.

Thanks.

Chris

APPENDIX "13"

Michael McAllister

From: Michael McAllister
Sent: Monday, April 23, 2007 12:42 PM
To: 'Chris Ewasiuk'
Cc: Jean Brazeau
Subject: RE: Maple Ridge/Shaw Municipal Access Agreement

Importance: High

Chris

Thank you for responding so quickly. To be blunt, I am stunned by your second modification. The District just offered you an olive branch, one that allows you to proceed with all of your identifiable work and you ask for more! How can you expect the District to agree to such an open ended demand. I will certainly not recommend that they do so.

The only modification that makes any sense is the last one. I will seek instructions on that point.

Michael McAllister
Murdy & McAllister
Barristers & Solicitors
Two Bentall Centre
1155-555 Burrard Street
P.O. Box 49059
Vancouver, Canada V7X 1C4
Tel: (604) 689-5263 Fax: (604) 689-9029

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APPENDIX "14"

Michael McAllister

From: Chris Ewasiuk [chris.ewasiuk@sjrb.ca]
Sent: Monday, April 23, 2007 1:01 PM
To: Michael McAllister
Cc: Jean Brazeau
Subject: RE: Maple Ridge/Shaw Municipal Access Agreement

Michael,

Our prompt reply is a indication of our desire to move things forward.

With respect to the first and second items, perhaps we misunderstood the District's intent or perhaps they misunderstand our position. From Shaw's perspective, the eventual MAA we hope to negotiate will be of general application to "highways and other public places" in the District. We are seeking this general form of access as an interim arrangement while we negotiate a final MAA.

Please detail your concerns with our proposals. The language in the second point is very standard language in MAAs and we do not understand your concern. Please elaborate.

Thanks.

Chris

APPENDIX "15"

Michael McAllister

From: Michael McAllister
Sent: Monday, April 23, 2007 1:42 PM
To: 'Chris Ewasiuk'
Cc: Jean Brazeau
Subject: RE: Maple Ridge/Shaw Municipal Access Agreement

Importance: High

Chris

To answer you question below, you have clearly misunderstood the District's intentions. The whole intention of the offer was to address your urgent situation. Your whole argument on urgency stands on the premise that you need access to the projects listed in the "Letter".

In agreeing to give you that access to those projects, the District was simply attempting to show good faith, let you do what you told CRTC you needed to do immediately and give us all time to get back to the table to negotiate the definitive agreement.

I was not intending to and do not intend at this stage to start negotiating for access for the remainder of the District.

In summary:

Is the District prepared to allow you access to its streets to complete the infrastructure Works set out in paragraph 10 of the Letter?-- YES, on the conditions set out in our earlier offer.

Will the Works for the project be subject to the definitive MAA? YES.

Is the District giving you its consent to do more work that is needed to complete the Works for the projects listed in the paragraph 10 of the Letter?--NO. That will be left to our negotiations over the next several months. I do not believe there is any evidence before the Commission that you have been denied any access to maintain or replace your existing infrastructure.

Are your first two modifications acceptable to the District?-- NO. They have nothing to do with the Works and should rather be part of the definitive agreement negotiations.

My instructions are to advise you that enough is enough. Frankly, as good faith appears to have only been moving in one direction over the past month, I am surprised my client has been as agreeable as it has in making this offer.

I trust that you now fully understand what the District is offering. I will ask again that you provide us with your final position, again by the end of the day today.

Michael

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APPENDIX "16"

Michael McAllister

From: Chris Ewasiuk [chris.ewasiuk@sjrb.ca]
Sent: Monday, April 23, 2007 2:00 PM
To: Michael McAllister
Cc: Jean Brazeau
Subject: RE: Maple Ridge/Shaw Municipal Access Agreement

Michael,

We regret that the District does not want to entertain an interim access arrangement that would allow us to re-start negotiations. After trying for two years to obtain a substantive response from the District, we hoped that some progress had been made today. However, that does not appear to be case. Let us know if anything changes.

Thank you.

Chris