



THE CITY OF
CALGARY

Telecom Notice of Consultation CRTC 2013-551

Review of wholesale services and associated policies

REPLY COMMENTS

to the Canadian Radio-television and Telecommunications Commission

03 December 2014

REPLY COMMENTS

Good morning Mr. Chairman and Members of the Commission:

The City of Calgary thanks the Commission for providing an opportunity for reply. For the record, I am Mary Anne Bendfeld, legal counsel for The City of Calgary. With me are Kelly Hess, to my right, and Dave Basto, to my left.

A. INTRODUCTION

In addition to supporting and responding to the Commission's suggestion of a pilot project for installation of a fibre-to-the-premise network, in its reply today, The City of Calgary ("Calgary") will also address issues raised by TELUS regarding support structures.

B. SUPPORT STRUCTURES

In its discussion of support structures during its presentation to the Commission, Calgary described the structure of Enmax power poles and the 3 installation points available on each pole, one of which belonged to TELUS and 2 of which belonged to Shaw. In response to questioning, TELUS indicated Calgary has options of using lashing as a technique and/or brackets to attach to the Enmax power poles. TELUS' suggestions raise a few questions for Calgary.

First, the poles are privately owned by Enmax, which has been regulated by the Alberta Utilities Commission ("AUC") since 2004. Both TELUS and Shaw have commercial agreements with Enmax for the purpose of occupying the poles and attaching their facilities, which were executed prior to the AUC becoming Enmax's regulator. TELUS communicated to the Commission that it was installing a good proportion of its fibre by lashing the fibre to its copper infrastructure located on the poles. Is TELUS suggesting that it would permit another TSP to lash its fibre to TELUS facilities (TELUS' fibre lashed over TELUS' copper)?

Second, even if TELUS would agree to such an installation (despite maintenance and operational difficulties) would this be allowed under TELUS' agreement with Enmax?

Calgary was required to remove its copper wire from the Enmax power poles pursuant to occupational health and safety legislation. Additional options could not be provided for installation of Calgary's copper wire on new brackets installed elsewhere on the poles. Calgary believes that other TSPs may face similar issues with respect to accessing Enmax power poles; however, if that belief is incorrect, it is inconsistent with Calgary's experience concerning the commercial arrangements regarding access to Enmax power poles. The arrangements between Enmax and TELUS / Shaw are subject to confidentiality protection so we can't be certain what constraints are in the agreements but are told Calgary's access to Enmax power poles is not available.

C. PROPOSED PILOT PROJECT

Calgary acknowledges that the installation of fibre infrastructure presents problems where support structures are inaccessible or exhausted and underground ROW capacity is limited. The suggestion by the Commission of a pilot project for a fibre installation may provide a solution whereby all affected parties could work together to resolve installation issues related to installation of fibre network facilities that provide for multiple TSPs to attach to the infrastructure. It is Calgary's opinion that a pilot project, or a virtual pilot project, would be of considerable benefit to the Commission's understanding of the requirements for a successful fibre-to-the-premise deployment.

To this end, Calgary has the following suggestions that may be considered by the Commission for a proposed pilot project:

- 1. Participants:** We suggest that the pilot project should involve an incumbent local exchange carrier or a cable company (or both), a mid-size or small TSP and a municipality.

The benefit of including a municipality is the ability of the municipality to arrive at collaborative solutions where installation of facilities proposes challenges, such as recently undertaken by Calgary for an incumbent carrier.

For example, Calgary proposed an economical alternative to costly overbuilds, which involved providing a secondary alignment under a sidewalk if the carrier would install excess capacity, at Calgary's cost, which in turn would be owned and potentially licensed by Calgary. The fact that this is the only alignment available other than a costly overbuild of existing facilities demonstrates that there is no more capacity in the ROW for another carrier to install its facilities. A collaborative solution such as this can work to the benefit of all parties, including those not having access to dark fibre.

Although TELUS suggested that Calgary's installation and licensing of dark fibre was akin to developing a monopoly, the proposed solution avoids the development of a monopoly and allows for installation of facilities by other carriers. TELUS referred to the *Ledcor* decision, wherein the Commission did not consider it appropriate that municipalities impose a requirement on carriers to construct capacity beyond their needs or require other carriers to use that capacity rather than constructing their own facilities, to infer that such a request was improper.

However, in the *Ledcor* decision, the Commission "encourage[d] the sharing of facilities and support structures to the greatest extent possible" in "core areas of major urban centres" or where rights-of-way (ROWs) were congested.¹ At the time, the Commission did not have to deal to the same extent with present day concerns regarding installation of new facilities for fibre networks when ROWs are even more congested and many are at capacity. In the decade since *Ledcor*, the telecom industry has evolved and new perspectives may be needed.

2. **Locations:** a pilot should consider both eastern and western regions of Canada so as to provide results from different markets, and proposed deployments in both Greenfield and Brownfield urban areas.

¹ CRTC 2001-23, para. 58.

3. **Architecture:** There are numerous architectures that can be used to construct a fibre-to-the-premise network. As an example, if only one strand of fibre is dropped into the home during deployment, then a monopoly network operator is born. An architecture that drops two or four strands of fibre into the home can support multiple network operators. Architecting to serve only one network operator could potentially foreclose on competition and innovation. A “successful” architecture is one which will meet policy objectives while minimizing environmental impacts and accounting for ROW capacities.
4. **Negotiation of commercial agreements for the pilot:** It would be beneficial for all participating entities to enter into an agreement that governed the terms and conditions of the pilot project. The assignment of a Commissioner in an overseer capacity to assist in the development of such an agreement may be critical to its success. It will ensure the interests of all participants are protected and may expedite the process.
5. **Costs:** A potential pilot could reveal the actual costs of installation across aerial versus underground installations, as well as how such costs vary in eastern and western regions and in Brownfield versus Greenfield urban areas. Actual costs could provide the Commission a benchmark for future cost reference.
6. **Procurement:** The process must take into account municipal requirements to comply with government procurement requirements if municipal money is being contributed or invested into a project that will also benefit a private entity.

Alternatively, a virtual pilot could be undertaken, which would include the same participants, consider the same locations, determine a preferred architecture, contemplate the proposed terms of an agreement and estimate costs. A virtual pilot is an engineering exercise in which a community is designed for fibre-to-the-premise deployment and undergoes the practical steps necessary to construct a fibre-to-the-premise network but does not reach the installation or deployment stage.

By engaging in a “virtual” pilot project, the pilot becomes cost effective and timely while providing an opportunity for engagement with all potential stakeholders. It will also provide a clearer understanding of how the architecture of fibre networks can be designed to meet policy objectives.

In its Reply Comments filed 24 October, Calgary observed that fibre-to-the-premise facilities represent a major upgrade of infrastructure and will likely remain the dominant wire for communications in the 21st century. A project of such magnitude, longevity, cost and impact to society requires greater transparency and involvement with all stakeholders. It is Calgary’s opinion that a project of such significance to the Canadian people merits the due diligence necessary to meet the policy objectives of the *Telecommunications Act*.

We thank the Commission for the opportunity of appearing before you again today to communicate The City of Calgary’s concerns.