



File No.: 1011-NOC2020-0366

December 18, 2020

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Claude Doucet
Secretary General
Canadian Radio–television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Doucet:

Re: Telecom Notice of Consultation CRTC 2020-366 - *Call for comments regarding potential regulatory measures to make access to poles owned by Canadian carriers more efficient* – Eastlink Submission

1. Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), provides herein its comments in relation to the above noted proceeding.
2. In Telecom Notice of Consultation CRTC 2020-366, *Call for comments regarding potential regulatory measures to make access to poles owned by Canadian carriers more efficient* (the “Notice”), the Commission is initiating a proceeding to seek proposals on potential regulatory measures that could facilitate access to poles owned by Canadian carriers (telecommunications poles), or poles to which Canadian carriers control access, which in turn would help accelerate the deployment of broadband-capable networks in regions of Canada with limited or no access to such networks. Eastlink offers our initial comments regarding these issues below. Eastlink’s failure to comment specifically on certain issues raised in the Notice should not be interpreted as a lack of interest or concern about those issues, nor should they be interpreted in a manner that would be contrary to Eastlink’s interest. Eastlink reserves the right to comment further on these issues throughout the course of this proceeding.
3. As we have stated on the record of numerous proceedings, Eastlink faces ongoing challenges accessing poles owned or controlled by Canadian carriers. Eastlink frequently experiences claims for future use that do not materialize, a lack of transparency when it comes to the methodology used by the ILEC to determine whether spare capacity exists, delays in

completing make-ready work and disputes over responsibility for costs. These challenges impede our ability to expand our wireline and wireless networks. Given the ongoing concerns we have with access to poles, we urge the Commission to establish additional regulatory measures to ensure telecommunications service providers have timely access to support structures.

4. Although the Notice references untimely and costly access to poles owned by Canadian carriers, and the negative impacts that has on the deployment of efficient broadband-capable networks, Eastlink submits that we face similar concerns when it comes to accessing other support structure facilities, including conduits. Eastlink submits that since the ILEC Support Structure Tariff ("Tariff") under consideration governs the use of poles, conduits, strands, anchors and manholes, and related equipment, any improvements made as the result of this proceeding should apply to all such facilities.
5. Furthermore, as part of this proceeding the Commission should also address the ongoing concerns faced by licensees with regards to wireless equipment. The wireless carriers will be increasingly dependent on small cells for the advancement and deployment of their networks, especially with the deployment of 5G. Eastlink submits that the Tariffs, as approved by the Commission, already address the process and rates for attaching licensee equipment whether it be wireline or wireless equipment. The Tariffs also allow ILECs to adjust their Construction Standards if necessary to address any issues that arise regarding specific equipment.
6. Eastlink does not agree with any interpretation of the Tariff that would suggest that small cells should be treated as new attachments (requiring a separate tariff), or that the load and capacity issues or spectral interference would require that they be subject to a separate tariff, as suggested by the ILECs in past proceedings. The current Tariff and related processes already allow for small cell attachments, and issues around spectrum interference can easily be addressed by updates to the Construction Standards, which govern processes around attaching different types of equipment. As such, Eastlink submits that the outcome of this proceeding should apply to all support structures, and related equipment.
7. The ILECs have a regulatory obligation to provide competitors' access to their support structures under the terms and conditions established in the Tariff and Support Structure Agreements (SSA) approved by the Commission. However, they are only required to do so

when spare capacity is available. That is, where capacity exists on a support structure that is not currently in use, or is not reserved by the ILEC to meet their anticipated future needs.

8. In Eastlink's experience, it has become common for pole owners to deny applications for access to support structures by claiming no spare capacity, without providing any additional explanation or evidence. On numerous occasions Eastlink has attempted to get information on the methodologies used when determining whether spare capacity exists in attempts to establish a more efficient process going forward, but were denied, with the only explanation provided that spare capacity is assessed on a case-by-case basis. Eastlink submits that to ensure the timely, cost-effective deployment of wireline and wireless networks there should be a defined set of criteria that is used to determine whether there is spare capacity on a pole, and that criteria should be readily available to all licensees. Furthermore, when an ILEC rejects an application on the basis of no spare capacity, they should be required to provide information on why it did not meet the criteria. A requirement for ILECs to be transparent in their claims of no spare capacity will lead to a more fair and efficient process.
9. We have also experienced situations where an ILEC claims no spare capacity due to future use requirements, only to discover later that the capacity had never been used. There are currently no requirements that outline when a support structure owner can claim future use, nor are there any enforcement or recourse mechanisms that can be used for when capacity reservations go unused. Given the inherent challenges with monitoring and enforcing claims of no spare capacity due to future use requirements, Eastlink submits that capacity on a pole should be provided to the pole owner, or the licensee on a first come first served basis. Allowing ILECs to reserve capacity for future use gives them priority access over the support structure, providing them a competitive advantage and the ability to slow down the expansion plans of their direct competitors. Furthermore, the ability to reserve unlimited future use eliminates the incentive for ILECs to ensure they are managing their support structures efficiently.
10. Another issue Eastlink faces when applying to access an ILEC support structure is lengthy timelines for completing the necessary make-ready work. This may be due to delays by the ILEC or may be due to the requirement to receive authorization or approvals for make-ready from both parties that operate under joint use agreements. In addition, we are provided very little information from ILECs on when the make-ready work will be complete. In order to plan

our network deployment efficiently, we often approach the joint-use owner of the pole to get additional information as the ILEC is not willing to provide any information on their proposed timelines.

11. Given the opportunity for delays, and to ensure licensees can deploy their network in an efficient, cost-effective manner, Eastlink submits that the licensee should be given the option to do the make-ready work themselves. In that regard, Eastlink submits that the Commission should establish a process similar to the “one-touch-make-ready” (OTMR) regime for pole attachments established by the Federal Communications Commission (FCC).
12. As outlined in the Notice, in Telecom Decision 2008-62 the Commission found that when Canadian carriers provide access to support structures, including support structures they do not own but for which they have the right to grant permits for access, they are providing a telecommunications services within the meaning of the *Telecommunications Act* and are therefore subject to the Commission’s jurisdiction. Eastlink submits that in many of our serving areas the ILEC has entered into a joint-use agreement with the utility that provides them a gatekeeping role when it comes to the communication space on the utility’s support structure. In these areas, all permit applications must be reviewed by both the ILEC and the utility, providing the ILEC the ability to deny an application for the licensee to attach to a support structure that is owned by the local utility. The ability for the ILEC to insert itself into the permit application process essentially gives them the right to grant permits for access, subjecting them to the Commission’s jurisdiction.
13. Eastlink submits that the most effective way to minimize the concerns with joint-use agreements is to prohibit ILECs from playing a role in the permit approval process. The utility is capable of determining whether spare capacity exists on a pole for the purpose of providing telecommunication services, there is no reason for the ILEC to be involved in the process. Allowing the ILEC to be involved in the approval process essentially gives them unjustified priority access to the communication space on all poles, across the country.
14. In the alternative, the Commission should make a determination in this proceeding that clarifies that in cases where an ILEC has entered into a joint-use agreement that gives them a role as an approver, or any other control over the permit application process, that they be subject to the terms and conditions of the Tariff, and any related CRTC decisions.

15. Providing ILECs the ability to control access to utility support structures without any regulated terms and conditions, is impeding the ability of other carriers to deploy competing high-speed wireline and wireless networks and services on a timely and cost-effective basis.
16. Eastlink provides our initial responses to questions the Commission raised in the Notice below, and we look forward to participating in this proceeding.

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "Marielle Wilson". The signature is written in a cursive style and is placed on a light blue rectangular background.

Marielle Wilson
Vice President, Regulatory

Responses to Questions Posed in the Notice

Eastlink has provided initial responses to the questions below, reserving the right to provide additional comments or clarifications at later phases of this proceeding.

Support structure tariffs

Q1. Identify aspect(s) of the support structure service tariffs of ILECs or SILECs that, if modified, would have the greatest impact on timely and competitive access to telecommunications poles. More specifically:

- i. Identify the specific section(s) of the tariffs.**
- ii. Demonstrate, with examples, how the section(s) identified contributes to untimely and/or costly access to telecommunications poles.**
- iii. Propose modifications to the sections identified in the answer to Q1 (i) above.**
- iv. Explain how the proposed modifications would contribute to more efficient access to telecommunications poles.**

1. In response to the Commission's questions below Eastlink has identified a number of concerns we have with accessing ILEC and joint-use support structures. This includes a lack of timelines associated with the make-ready process, a lack of information provided when a support structure owner denies access on the basis of no spare capacity, concerns we have with ILECs getting priority access over support structure by having the ability to reserve future use indefinitely, and the concerns we have with the gatekeeping roles ILECs play with regards to joint-use agreements. All of these concerns would require modifications to the Tariff. Eastlink provides below some examples of the Tariff sections that should be addressed, and we reserve the right to provide further comment at later stages of this proceeding.

2. For example:

- Bell's Tariff Item 901.4 (e) requires that where Spare Capacity is not available, the Company will identify on or with the Application form the reasons why. As further outlined below, when an ILEC denies our application on the basis of no spare capacity we rarely get a response other than "no spare capacity" and attempts to get additional information on how the determination of no spare capacity was made are denied. As such, we submit that the Commission should modify the Tariff provision to specify the information that is required when rejecting an application on the basis of no spare capacity, this should

include the current load on the pole, the capacity of the pole, and the methodology and any other factors that the ILEC uses to determine whether spare capacity exists.

- The definition of Spare Capacity should also be modified to remove reference to the capacity required by the Company to meet its anticipated future service requirements. As further explained below, given the inherent challenges with monitoring and enforcing claims of no spare capacity due to future use requirements, Eastlink submits that capacity on a pole should be provided to the pole owner, or the licensee on a first come first served basis. Similarly Bell Tariff Item 901.3 (d) which allows the Company to have priority access to Support Structures in order to meet its anticipated future service requirements should be deleted.
 - Eastlink submits that to ensure ILECs adhere to the Tariff provisions and timelines the Commission should consider imposing enforcement mechanisms such as quality of service obligations that are subject to a rate rebate plan. Without any consequences for failure to meet their regulatory obligation Eastlink is concerned that the current delays, and lack of transparency will continue.
3. Furthermore, to ensure that licensees have a timely resolution to any disputes that arise from an ILEC's failure to adhere to the Tariff provisions and timelines, the Commission should establish a dispute resolution process that allows issues to be dealt with on an expedited basis.

Make-ready work

Q2. Should there be a maximum amount of time within which owners of telecommunications poles must complete make-ready work? If so, suggest what the maximum amount of time should be and when that time period should start. If not, provide rationale.

4. Eastlink often experiences delays in accessing support structures due to make-ready work not being completed in a timely manner. This may be due to the ILEC not responding in a timely manner, or may be due to the requirement to receive authorization or approvals for make-ready work from both parties that operate under joint use agreements. For example, in certain circumstances Eastlink has waited for over a year for the required make-ready work to be completed.
5. In addition, we are provided very little information from ILECs on when the make-ready work will be complete. To ensure we can plan appropriately, we often approach the joint-use owner of the pole to get additional information on the make-ready work timeline as the ILEC is not willing to provide this information. At the very minimum the pole owner should provide the licensee a schedule as to when make-ready work will be complete and a detailed breakdown of all make-ready costs. Failure to provide this basic level of information has a significant negative impact on the licensees' ability to effectively plan and manage their network deployment. Furthermore, the Commission has already stated that it expects ILECs to provide a breakdown of its make-ready charges, for example in Telecom Decision 2004-29 *Access to TELUS Communications Inc.'s support structures in the City of Kamloops*, "the Commission reminds TCI that it should, as a matter of practice, provide a sufficiently detailed breakdown of its costs, in response to a licensee's application for access to TCI's support structures in order to allow the licensee to understand what make-ready work is required and to assess the validity of the make-ready charges. Such a breakdown should include a statement as to what portions of the work can be performed by the licensee."¹ Despite this clear directive, Eastlink receives very little detail with regards to the necessary make-ready charges. In addition, any attempts we have made to request doing the make-ready work ourselves have been denied.

¹ Telecom Decision 2004-29 *Access to TELUS Communications Inc.'s support structures in the City of Kamloops*, para. 48

6. Given the opportunity for delays, and to ensure licensees can deploy their network in an efficient, cost-effective manner, Eastlink submits that rather than establishing the maximum amount of time within which owners of telecommunications poles must complete make-ready work, which would vary depending on the type of make-ready work required and the size of the project, the licensee should be given the option to do the work themselves. In that regard, Eastlink submits that the Commission should establish a process similar to the “one-touch-make-ready” (OTMR) regime for pole attachments established by the Federal Communications Commission (FCC). According to the Public Notice issued by the FCC on May 20, 2019, the new regime allows the attacher to perform all work to prepare a pole for a new attachment². A framework that allows licensees to complete all necessary make-ready work would lead to a more timely and cost-effective deployment of broadband services.

Q3. Should parties requesting access to telecommunications poles be permitted to commence preparatory work on the poles if the owner does not meet a relevant timeline established in the support structure service tariff (assuming that all permit applications include capacity plans prepared by a duly authorized engineer which validate the safety of the proposed installations)? Provide rationale.

7. Eastlink submits that the best way to improve the make-ready process is to implement a framework that provides licensees the option to complete all of the necessary make-ready work themselves. Allowing licensees to commence preparatory work on the poles if the owner does not meet a relevant timeline could be used as an enforcement mechanism in the event that the ILEC does not meet the relevant timelines, however Eastlink submits that it would be much more efficient to allow licensees to do the work themselves.
8. In any case, licensees should not suffer loss or time delay on projects due to the inactions or omissions of the pole owners. Without any consequences for not completing the required make-ready work within the established timelines, pole owners have no incentive to ensure the work is completed in a timely manner.

² 34 FCC Rcd 3657 (5)

Q4. Should all occupants of a telecommunications pole be responsible for the costs associated with the maintenance required to keep the pole at its optimum capacity? Provide rationale.

9. Eastlink submits that maintenance costs are included in the pole attachment rates. As the pole owner it is up to the ILEC to ensure it is conducting the proper maintenance to keep the pole at its optimum capacity. No additional fees should apply.

Q5. When a telecommunications pole requires repair or replacement, should all current occupants, as well as any party requesting access that necessitates an upgrade, be required to share the costs? Provide rationale.

10. As the owner of the pole, it is the ILEC's responsibility to ensure it is conducting proper maintenance and that it is adhering to current construction standards. Eastlink submits that if a pole requires repair or replacement because it has not been properly maintained, or requires changes as the result of modifications to construction standards, or upgrades that are not in relation to the licensees' attachment, it should be the responsibility of the pole owner, who is compensated on a monthly basis for the use of their poles. Other tenants on the support structure should not be responsible for upgrade costs that are not related to work caused by their equipment.

11. Furthermore, if pole owners can pass along upgrade costs to licensees by way of increased make-ready costs, there may be an incentive to delay maintenance activity. Eastlink has experienced instances where the ILEC does not appear to have maintained the pole, and have instead imposed the upgrade costs on us in the form of additional make-ready costs in response to a permit application.

12. As the incumbent pole owner will receive the ongoing benefit of ownership over the pole, ongoing attachment fees from third party attachers, and discretionary decision making power in regards to how they apply these fees for the ongoing maintenance of the pole, licensees should not be required to share the costs of pole repairs or replacements.

Spare capacity

Q6. When access to telecommunications poles is denied due to a lack of spare capacity, should the pole owner be required to provide the party requesting access with supporting documentation, stating the current load on the poles, the amount of capacity reserved by the owner for its own future use, and giving the date by which the owner intends to use that capacity? Provide rationale.

Q7. Should there be a limit on the amount of time for which a pole owner can reserve spare capacity? If so, provide, with rationale, suggestions on the maximum amount. If not, provide rationale.

Q8. Should there be a limit on the amount of capacity a pole owner can reserve for future use? If so, provide, with rationale, suggestions on the maximum amount of capacity to be reserved. If not, provide rationale.

13. The ILECs have a regulatory obligation to provide competitors' access to their support structures under the terms and conditions established in the Tariffs and Support Structure Agreements approved by the Commission. However, they are only required to do so when spare capacity is available. That is, where capacity exists on a support structure that is not currently in use, or is not reserved by the ILEC to meet their anticipated future needs.

14. There are no consistent guidelines or standards that an ILEC must follow when determining whether spare capacity exists, nor are there any requirements to provide further information or documentation to support a claim of future use. Although the Tariff requires ILECs to identify on or with the Application form why spare capacity is not available, Eastlink typically only receives a response of "no spare capacity", or "reserved for future use." Any attempts we have made to gather additional information including details on the methodology used to determine spare capacity have been denied.

15. For example, for one project Eastlink's application was denied on four separate occasions, with "no spare capacity" being the only reason provided. In order to minimize the number of applications we submit to an ILEC, Eastlink typically reviews a location prior to submitting an application, and will only submit an application when we think there is a high likelihood of success. As such, upon being denied access multiple times Eastlink followed up to request detailed information on the methodology used to determine that there was no spare capacity

available. We explained that having this sort of information would help us better understand the evaluation criteria that was being used, saving both parties considerable time in the future. In response we were told that they could not provide us with the standard that was followed when determining whether there was spare capacity, and that each application is reviewed on a case-by-case basis, considering various factors.

16. Without any additional information provided to competitors there is no way for third party attachers to verify a claim of no spare capacity or reservation for future use, essentially providing the ILECs full discretion on when and where it will allow competitors to access their support structures, significantly impacting a competitor's ability to expand services and undermining competition. The current regulatory regime grants ILECs priority access to support structures, and essentially provides them full discretion to delay or deny a competitor's ability to expand their network.
17. Eastlink submits that detailed information on the current load on the pole, along with the methodology and factors that the ILEC uses to determine whether spare capacity exists should be required to facilitate a fair and efficient process. Furthermore, a standard methodology should be established and used by all ILECs to ensure consistency, and to ensure that all competitors are being treated equal. The current Tariff requirements are too vague, and are difficult to enforce, making the permit application process much more costly and time-consuming than necessary.
18. The ability for ILECs to reserve capacity for future use gives them an undeniable competitive advantage. Under the current regulatory regime, the ILECs have the ability to reserve capacity for future use indefinitely, without any requirement to provide any evidence or concrete plans that outline how and when they will use this capacity. In fact, it would be difficult for the Commission to impose a requirement for ILECs to provide more detailed information to licensees as information about their future expansion plans will likely be considered competitively sensitive information. Even if ILECs were required to provide additional information, it would be very difficult to monitor and verify that the capacity is being used within the planned timelines. Eastlink has encountered multiple instances where an ILEC has reserved capacity for future use that has not materialized.

19. Given the inherent challenges with monitoring and enforcing claims of no spare capacity due to future use requirements, Eastlink submits that capacity on a pole should be provided to the pole owner, or the licensee on a first come first served basis. Allowing ILECs to reserve capacity for future use gives them priority access over the support structure, providing them a competitive advantage and the ability to slow down the expansion plans of its direct competitors. Furthermore, the ability to reserve unlimited future use eliminates the incentive for ILECs to ensure they are managing their support structures efficiently.
20. When an ILEC inappropriately claims no spare capacity, or reserves capacity for future use there is not much the licensee can do other than attempt to have the issue resolved at the CRTC. The Commission has recognized it may have to intervene to resolve disputes related to spare capacity, for example in Telecom Order 2000-13 *Rates set for access to telephone companies' support structures*, wherein they state: “where disputes arise over whether spare capacity is available, therefore, the Commission may place the onus on the companies to justify their current and anticipated requirements, where they state they have no spare capacity on any particular support structures³.” Although the CRTC has recognized the need to resolve disputes about spare capacity in past decisions, the reality is that a dispute resolution process that requires one party to file an application with the CRTC is time consuming, and inefficient. This is especially problematic when applying to attach to a support structure, as licensees would typically be in the middle of a project, or have a request for service from an end-user that would require them to gain access in a timely manner. If the only recourse for disputes about spare capacity or future use is to escalate matters to the CRTC, it is likely to have significant impacts on the licensees’ ability to service its end-users, or expand their service.

³ Telecom Order 2000-13 *Rates set for access to telephone companies' support structures*, para 33.

Joint-use agreements

Q9. How can the Commission, within the limit of its jurisdiction, best minimize the challenges that parties face when trying to access poles that are subject to a joint-use agreement?

Q10. When a Canadian carrier is authorized by way of a joint-use agreement to approve third-party attachments to poles owned by a utility company, should this authority be limited to the pole space that is assigned exclusively for the attachment of communication facilities? Provide rationale.

Q11. When a Canadian carrier is authorized by way of a joint-use agreement to approve third-party attachments to poles owned by a utility company, should all obligations relating to the review, approval, or denial of the requests be the same as those in the support structure tariffs for poles owned by the carrier? Provide rationale.

21. In many of Eastlink's serving areas the ILEC has entered into a joint-use agreement with the utility that provides them with a gatekeeping role when it comes to the communication space on the utility's support structure. In these areas, all permit applications have to be reviewed by both the ILEC and the utility, providing the ILEC the ability to deny an application for the licensee to attach to a pole that is owned by the local utility. The ability for the ILEC to insert itself into the permit application process for the utility is unregulated, and provides the ILEC a significant competitive advantage over the licensee.

22. A requirement to submit an application to both parties also delays the process, as the utility will not even consider the application until it has been reviewed by the ILEC, this alone doubles the timelines for reviewing an application. Furthermore, because the ILEC is not the owner of the pole, they are not subject to the terms and conditions of the Tariff. As such, the ILEC can delay a competitor's project by not providing their response to the utility in a timely manner. Eastlink submits that the ILECs should not be able to use a joint-use agreement as a means to provide themselves an undue preference, and directly impact their competitor's ability to expand their services.

23. Although the ILEC does not have the ability to directly grant a permit for support structures they do not own, the joint-use agreements in place have provided them with the ability to approve, or deny an application. Eastlink submits that the most effective way to minimize the challenges that parties face when trying to access poles that are subject to a joint-use agreement is to prohibit ILECs from playing a role in the permit approval process. The utility is capable of determining whether spare capacity exists on a pole for the purpose of providing telecommunication services, there is no reason for the ILEC to be involved in the process. Allowing the ILEC to be involved in the approval process essentially gives them unjustified priority access to the communication space on all poles, across the country.
24. In the alternative, the Commission should make a determination in this proceeding that clarifies that in cases where an ILEC has entered into a joint-use agreement that gives them a role as an approver, or any other control over the permit application process, that they be subject to the terms and conditions of the Tariff, and any related CRTC decisions. This would include any improvements made to the process as a result of this decision, such as a requirement to provide detailed information on why spare capacity is not available, and the inability for ILEC's to reserve capacity for future use.
25. Furthermore, it has been Eastlink's experience that it is not uncommon for the ownership for specific poles to switch between the ILEC and the local utility, without our knowledge, giving us limited visibility into who actually owns a specific pole. Given this uncertainty over pole ownership, having different rules apply to poles owned by the ILEC, and poles that the ILEC does not own but has the ability to control, could lead to a situation where the ILEC may claim that the pole is owned by the utility to avoid adhering their regulatory requirements. To that end, to avoid different sets of regulations between the ILEC and the local utility Eastlink fully supports transferring the jurisdiction over electric utility poles to the CRTC, through changes to the definition of transmission facilities under the *Telecommunication Act*.

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