

January 19, 2021

FILED VIA: GCKEY

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 Reply Comments

1. Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), has reviewed the comments filed by other parties under Telecom Notice of Consultation 2020-366 *Potential regulatory measures to make access to poles owned by Canadian carriers more efficient* (the “Notice”) and herein provides our reply comments. Eastlink’s failure to comment specifically on certain issues raised in the Notice or by intervenors should not be interpreted as lack of interest or concern about those issues, nor should they be interpreted in a manner which would be contrary to Eastlink’s interests.
2. In the Notice, the Commission initiated a proceeding to seek proposals on potential regulatory measures that could make access to poles owned by Canadian carriers (telecommunications poles), or poles to which Canadian carriers control access more efficient which would help accelerate the deployment of broadband-capable networks in regions of Canada with limited or no access to such networks.
3. As outlined in our initial comments, Eastlink faces ongoing challenges accessing support structures owned or controlled by Canadian carriers, which increases both the cost and the time required to complete our network deployment. Our primary concerns with the current regime are delays in completing make-ready work, pole owners including maintenance and

upgrade costs into their make-ready costs, 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, and the role ILEC's play in the approval process for joint-use agreements. Many of the comments filed in this proceeding by network builders reveal similar concerns. It is evident that the current support structure framework is negatively impacting the deployment of wireline and wireless network infrastructure.

4. Given the ongoing concerns we and other interveners have outlined, it is clear that changes to the regime are required to ensure the timely and cost-effective deployment of broadband infrastructure.

Make-Ready Work

5. A number of parties to this proceeding, including Eastlink, have highlighted numerous concerns with the current make-ready process, including the time it takes ILECs to complete necessary make-ready work, and excessive make-ready charges.

Make-Ready Timelines

6. Eastlink often experiences delays in accessing support structures due to make-ready work not being completed in a timely manner. Although the ILEC Support Structure Tariff ("Tariff") outlines the response times for Applications which vary depending on the project size, there are no associated timelines for the completion of make-ready work. Upon receiving approval of our Application, Eastlink is rarely provided any information on when the make-ready work will be complete, nor are we provided any updates on the make-ready progress as we wait to complete our network deployment. As stated in our initial submission, there have been certain circumstances in the past where we have waited for over a year for the required make-ready work to be completed. In this example, Eastlink reached out to the ILEC on 10 separate occasions asking for an update on this project. Some of these requests went unanswered, while others received a vague response which did not provide any definitive timelines. Seeking additional information is made even more challenging as these requests often go through a third-party portal who then have to reach out to the ILEC to get additional information, causing further delays to the process. These delays and lack of information make it extremely difficult to effectively plan the implementation of network projects and more importantly make it difficult

to properly set customer expectations on network expansion plans or upgrades in a given area.

7. Eastlink submits that the most effective way to expedite the necessary make-ready process is for the Commission to establish a process similar to the “one-touch-make-ready” (OTMR) process for pole attachments established by the Federal Communications Commission (FCC). This framework would allow licensees such as Eastlink to complete the necessary make-ready work themselves leading to more efficient and cost effective network deployments.

8. Many parties to this proceeding have proposed allowing licensees to complete their own make-ready work as an effective means of decreasing the time and cost it takes for licensees to deploy their infrastructure. In their intervention Rogers Communications Canada Inc. (“Rogers”) advocated for the use of OTMR, stating, “Consistent with the FCC’s One Touch Make-Ready rules, Rogers believes that the most, and arguably only, effective means of addressing the make-ready access barrier and enabling timely access to poles, is to allow third party attachers to perform their own make-ready work using approved contractors”¹. Shaw Cablesystems G.P. (“Shaw”) submits that “Once make-ready work design is completed (either by the Licensee or the owner), the licensee should determine whether they will undertake the make-ready work or whether they will have the owner undertake the work. The licensee would be able to balance cost, timing and other considerations if permitted to choose between utilizing its own labour force, a contractor or the owner. This would create a more competitive environment for the work, decreasing the time and cost of network deployment by licensees”². Bell Canada (“Bell”) is also exploring the use of OTMR stating that it had recently “...launched a trial with a limited number of licensees of a One Touch Make Ready (OTMR) process which would allow the licensee to complete all make-ready work that is within our control themselves, through approved contractors, with the exception of work that requires services cutovers or is otherwise deemed to be a high risk at our discretion”³.

9. We note however that the trial Bell refers to in their submission is only available to select licensees operating in their Quebec serving area. They submit that if their trial is successful in Quebec they will “explore our ability to replicate the process across the nation in

¹ Rogers Intervention, para 23.

² Shaw Intervention, para 56.

³ Bell Intervention, para 9.

collaboration with the various electrical utility companies we work with”⁴. We further note that Bell is suggesting that licensees go through a six-month qualifying period where the Company shall allow the licensee and/or contractor to conduct OTMR for certain permit requests at the Company’s discretion.⁵ Eastlink submits that any change to the support structure regime that results from this proceeding must be applied equally to all poles owned by Canadians carriers, and all licensees who access those poles to ensure regulatory symmetry. Although we appreciate why Bell would want to conduct a trial to establish the correct processes, they should not be able to decide who is able to take advantage of a new regime that has the ability to significantly improve the timelines associated with accessing support structures. Furthermore, we do not agree with Bell’s proposal that “once a licensee has demonstrated its ability to complete its own make-ready work, we should have the ability to only conduct work on the licensee’s behalf at our discretion.”⁶ Eastlink submits that licensees should not be denied access to Bell’s support structure because they do not have the labour force, or are not able to secure a contractor in any particular location. We note that in certain more rural and remote areas, there may be a limited number of contractors available, all of which may have an existing relationship with Bell. We are concerned that allowing Bell to have the discretion to determine whether it will conduct make-ready work, if requested, will ultimately lead to further disputes.

10. Eastlink submits that it should be up to the licensee to determine whether they want to conduct the make-ready work themselves, in that respect we agree with the following modification to section 901.3 (s) of Bell’s Tariff as proposed by Rogers in Appendix B:

Where the Licensee elects in writing at the time it submits its Application to the Company, the Licensee may use the one-touch make-ready (OTMR) process to complete Make-Ready required to make Spare Capacity available for the attachments requested in the Application. OTMR allows the Licensee to use an Approved Contractor to perform Make-Ready required to make capacity available for the attachments requested in the Application. The Application in this case shall include a certified description of the Make-Ready as well as a detailed estimate of the costs of correcting pre-existing Construction Code violations or, if required, of replacing Support Structure(s), to make Spare Capacity available.

⁴ Bell Intervention, para 55.

⁵ Bell Intervention, para 51.

⁶ Bell Intervention, para 54.

11. In addition to the ability for licensees to complete any necessary make-ready work themselves, the Tariffs should include maximum timelines for any work the ILEC is responsible for conducting either because the licensee does not have the resources to conduct it themselves, or if it falls outside of the work permitted under an OTMR regime. We note that, a number of parties to this proceeding have submitted that timelines are required for the completion of make-ready work to prevent unnecessary delays. In this regard, Eastlink supports the timelines proposed by Rogers in the 'Maximum Time to Complete Make-Ready' table included as paragraph 33 of their intervention. Eastlink agrees that these timelines should apply whenever the ILEC has the ability to perform or control the performance of make-ready in the space.
12. However, given the difficulty with monitoring and enforcing compliance with maximum timelines established under the Tariff, the introduction of an OTMR regime is the most efficient way to significantly improve the current the make-ready process.
13. In their intervention Bell outlines the efforts they have made over the past several months in Quebec to review the support structure permit application and make-ready processes⁷. While Eastlink applauds Bell's recognition of the issues that need to be addressed and the efforts they have made to improve access to support structures, we submit that the challenges faced by licensees must be reviewed at a national level and any resultant changes need to apply to all pole owners and licensees across the country. Eastlink notes that the collaborations efforts Bell is making are in conjunction with TELUS Communications Inc. ("TELUS"), Hydro Quebec, and the Government of Quebec. Based on the information Eastlink has reviewed, it is not clear whether any licensees are participating or were invited to participate in this collaboration. As is evident based on the record in this proceeding, it is the licensees who are faced with the most challenges in accessing support structures, and therefore should be an active participant in any committee established to improve the process.

Make-Ready Costs

14. Eastlink submits that the licensee should only be responsible for make-ready costs for work that is necessary to provide the licensee the required capacity. The licensee should not be

⁷ Bell Intervention, para 3-10 and 36-45

charged for any make-ready costs related to upgrading or replacing a pole that has not been maintained, or upgrading or replacing a pole that is not compliant with current construction standards. Eastlink is often charged excessive make-ready charges, which we often have to accept as disputing the charges will only further delay our network deployment.

15. Interveners generally agree that consistent with the approach for any asset, it is the responsibility of the pole owner to ensure the structure is regularly and properly maintained and meets the necessary construction standards. The ILEC should not be entitled to collect a monthly rate from the licensee which includes payment towards the ongoing maintenance of the pole, and then upon failure to do so, charge the licensee the full cost of replacing that pole through make-ready costs. This concern was raised by Shaw in their submission, wherein they state "... in addition to the maintenance costs included in the pole attachment rates, licensees often bear costs of maintenance of the poles through payment of make-ready costs that include maintenance type work. A pole owner realizes the benefit of maintenance completed as part of make-ready work but contributes nothing to those costs. Such maintenance costs should be borne by the owner and shared amongst all current occupants through the pole attachment rate.⁸" Additionally Rogers submits that, "The current tariffs require the third party seeking to attach to bear all the costs of the new pole. This means that the permit applicant pays the full costs of the new pole and thereafter pays ongoing pole attachment fees. Meanwhile the ILEC benefits, at no cost, from the new pole, both for its own support structure requirements and from monthly attachment revenues. Thus, the third party attacher is required to subsidize the ILEC's support structure costs and revenues – a result that is neither just nor reasonable"⁹.

16. To ensure that licensees are only charged make-ready costs that relate to work that is necessary in order to provide the required capacity, Eastlink agrees with parties to this proceeding who suggest that make-ready charges need to be well defined, and should exclude any work necessary to correct pre-existing deficiencies, to ensure the support structure adheres to current construction standards or to replace a pole that has not been

⁸ Shaw Intervention, para 63.

⁹ Rogers Intervention, para 46.

properly maintained¹⁰. To address this concern Eastlink agrees with the definition proposed by Shaw on page A-6 in Appendix A to their submission:

Make-ready Work is work required to add load capacity to Support Structures when required by a Licensee where the existing load capacity of the structures is not adequate to support the current requirements of the owner and the load requirements of a Licensee in an Application but does not include maintenance, replacement or repairs of deficiencies to Support Structures, those being work and costs undertaken by the Company. Make-ready Work may be undertaken by either the owner or the Licensee.

17. Another concern Eastlink outlined in our initial comments was the lack of information included in make-ready invoices, which we must approve before any work is performed. It is not uncommon for make-ready invoices to only include the total amount owed, without a breakdown of the costs with our requests for further detail often denied. Given the difficulty we have experienced trying to get clarification, and the need to proceed in a timely manner with the required make-ready work, Eastlink is often forced to accept make-ready charges without having a full explanation on exactly what work is being performed. ILECs should be required to provide an itemized list of the required make-ready costs so the licensee can properly review the charges, and determine whether they fall within the definition of make-ready.

Spare Capacity and Claims for Future Use

18. As outlined in our initial comments, Eastlink is concerned with the lack of guidelines or standards an ILEC must follow when determining whether spare capacity exists. While the current Tariff provisions make it clear that ILECs have a regulatory obligation to provide competitors access to their support structures under the terms and conditions of the Tariff and Support Structure Agreements (SSA) where spare capacity exists, there is no standard methodology that is used by ILECs to determine the current capacity on a pole. 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. This provides the ILEC

¹⁰ Rogers Intervention para 24, Shaw Intervention para 57, Cogeco para 25-28 and response to Question 4.

full discretion in determining whether capacity exists without having to provide any explanation or evidence to support their claim. The lack of consistency in the approach taken by the ILECs, and the lack of detail on the methodology used to determine whether spare capacity exists make the Tariff requirements difficult to enforce, and make the permit application process much more costly and time-consuming than necessary.

19. TELUS' response to Question 6 in the Notice highlights why a standard approach to determining whether spare capacity exists is necessary. In their response TELUS submits the following, "There is no reason to require the pole owner to track reserved capacity and document the rationale for reserving anticipated and required capacity. TELUS regularly participates in meetings with its licensees regarding the use of support structures and when necessary, the Commission can adjudicate disputes on a case by case basis in a timely manner."¹¹ Eastlink submits that TELUS' response outlines the concerns we have with the current process, whereby the ILEC can reject an application on the basis of no spare capacity without having any requirement to provide any information on how they made this determination. The reluctance by TELUS to provide this information suggests that they may not track current capacity nor do they follow a standardized process for documenting their permit rejections, providing them full discretion to reject a permit for competitive gain. Although TELUS indicates that they regularly participate in meetings with licensees, it has been Eastlink's experience that gathering meaningful additional information from TELUS on why a permit application has been rejected has been challenging. For example, Eastlink requested additional information on why a permit request to place our stand on a TELUS pole was denied, and the only response we received from TELUS was that it is "policy". Eastlink is not privy to the additional policy documents TELUS uses when determining whether spare capacity exists. Eastlink submits that it is much more efficient to have clearly defined criteria than having to reach out to the ILEC every time we need additional clarity.

20. To correct this undue preference, Eastlink submits that the Tariffs should be updated to include a common methodology that will be used by all ILECs to determine whether spare capacity exists on a pole. Furthermore, when a permit application is rejected on the basis of no spare capacity, the pole owner should be required to outline in detail the reasons why including the current load on a pole, the capacity of the pole, and the methodology used to determine no spare capacity existing. Without the requirement to properly assess and

¹¹ TELUS Intervention, response to Question 6, page 31

document their reasons for rejecting the Application, Eastlink is concerned that ILECs will continue to use their discretion with licensees having no ability to validate this claim.

21. In addition we submit that capacity should be provided to pole owners or licensees 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. The ability to reserve unlimited future use also eliminates the incentives for ILECs to ensure they are managing their support structures efficiently.

22. A number of parties to this proceeding¹², including Eastlink, have proposed modifying the definition of Spare Capacity to remove reference to the capacity required by the Company to meet its anticipated future service requirements as it would ensure equitable access to support structure. TELUS' submission highlights why this modification is necessary as they claim that they should have the ability to reserve capacity on their support structures for three to five years in order to ensure that it has sufficient capacity to deploy all spectrum that it acquires¹³. If pole owners are permitted to reserve capacity for 3-5 years because they may get additional spectrum at an upcoming auction that they may want to reserve in the future, it will effectively eliminate any possibility licensees have to expand their wireless network. As opposed to the current regime which provides an undue competitive advantage to the pole owners, a first-come, first-served regime will lead to a more efficient deployment of broadband services by all carriers. As appropriately outlined by Shaw, "A first-come, first-served environment for support structure access would encourage investment and deployment of network by all carriers by shortening time-to-market and increasing planning and coordination for support structure use, ultimately leading to a more efficient deployment of competing services to Canadians"¹⁴. Eastlink submits that this modification is preferred over establishing maximum timelines for which ILEC's can claim future use as that will be impossible to effectively monitor and enforce.

Joint-Use Agreements

¹² Rogers Intervention para 60, Shaw Intervention para 69, Cogeco Question 7 page 23

¹³ TELUS Intervention, Question 7 page 31

¹⁴ Shaw Intervention, para 75

23. As outlined in our initial submission, ILECs should be prohibited from entering into joint-use agreements with the local utility that provides them with a gatekeeping role when it comes to the communication space on the utility's support structure. In our serving areas it is a common requirement for all permit applications 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. They are also able to delay the permit application process, as they appear to be of the view that since they are not the owner of these poles, they do not need to adhere to the terms and conditions as outlined in the Tariff. In delaying or denying permit applications, ILECs are providing themselves an undue preference, and are directly impacting their competitors' ability to expand their services. Our concerns with the joint-use agreements are shared by a number of parties to this proceeding. For example, Rogers outlines the delays they experience in New Brunswick due to the role Bell Canada plays as an "unregulated gatekeeper over access to NB Power joint use poles"¹⁵. The information provided by Rogers indicates that they were generally able to get approval from NB Power the same day, whereas they had to wait up to 253 days to receive approval from Bell, well outside the timelines mandated by Bell's Support Structure Tariff. Eastlink faces similar delays in accessing NB Power poles, and other joint-use poles throughout Atlantic Canada.

24. 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. 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. We note other parties to this proceeding share this view, for example Cogeco Communications Inc. ("Cogeco") states that they are of the view that "a Canadian carrier should never be given the authority, by way of any agreement, to review, approve, condition or reject requests for attachment of communication facilities on support structures owned by a utility company"¹⁶.

25. Alternatively, the Commission should make a determination that an ILEC who has entered into a joint-use agreement is subject to the terms and conditions of the Tariff and any other related CRTC decisions including those that result from this proceeding. Eastlink supports Rogers proposal which states "Rogers proposes that the Commission direct the ILECs, in its

¹⁵ Rogers Intervention, para 71

¹⁶ Cogeco Intervention, response to Question 10, page 26

decision in this proceeding, to comply with the requirements in their approved support structure tariffs when they are allowed, by the Commission, to engage in the process for third party attachments to poles or portions of poles they do not own, including the tariff restrictions relating to Spare Capacity, the timelines and grounds for denial of attachments, and the provision and performance of searches and make-ready, to the extent the ILEC exercises any involvement or control over these matters.¹⁷

26. In our initial comments, Eastlink expressed our support for transferring the jurisdiction over electrical utility poles to the CRTC, through changes to the definition of transmission facilities under the Telecommunications Act. As highlighted by TELUS in their intervention, the current pole attachment rate by the Ontario Energy Board (OEB) is more than double the rate charged by TELUS. This significantly increases the cost of operating, especially in rural and remote areas where we are often required to attach to multiple poles to serve one home. In this respect we agree with TELUS' proposal that the Commission should ask the federal government to consider legislative amendments to bring within its jurisdiction access to provincially-regulated utility infrastructure for the purpose of installing telecommunications equipment¹⁸.

Dispute Resolution

27. Eastlink submits that the best way to minimize ongoing disputes regarding access to support structures, is to update the tariff to include clear definitions of make-ready, establish a OTMR process, establish a standardized process for determining spare capacity, eliminate the ability for ILECs to reserve capacity for future use, and eliminate the ability for ILECs to exercise control over utility poles. That said, even with these improvements disputes will occasionally arise and they will need to be dealt with on an expedited basis.

28. In order to ensure the ILECs adhere to the Tariff and the SSA, including the changes implemented as a result of this proceeding, it is imperative that the Commission have an effective and efficient dispute resolution in place. While there are mechanisms in place today which licensees can utilize, Eastlink submits that due to the nature of the disputes and when

¹⁷ Rogers Intervention, para 81.

¹⁸ TELUS Intervention, para 4.

the problems arise in a network deployment project, these processes do not lead to a quick resolution which is necessary to ensure timely deployment of wireline and wireless networks. Under the current process licensees have to first attempt to resolve the issue with the ILEC, and form a joint committee and it is not until 30 days after the establishment of a joint committee that issues can be brought to the Commission.

29. To resolve the need for an expedited resolution to disputes, parties to this proceeding suggest introducing a number of new measures, including involving a third party with expertise on support structures who would issue a decision within a few days, automatically processing any application related to support structures on an expedited basis without a request from the applicant, and penalties for non-compliance with Tariff obligations. Eastlink supports these proposals as they will incentivize ILECs to comply with their obligations under the Tariff, and will lead to a timely resolution of disputes. The Tariff amendments proposed to improve the process for attaching to support structures will not be effective if there are no additional enforcement mechanisms.

Small Cells

30. Eastlink submits that small cell deployments are an important network component in the continued buildout of a robust LTE network, and will be crucial in our 5G network deployment. Eastlink submits that the Tariffs as approved by the Commission address the process and costs for licensees attaching their equipment (whether wireline or wireless) to ILEC support structures. We do not agree with TELUS' view that small cells be treated as new attachments, or that the nature of these attachments require a completely separate treatment pursuant to the tariff.

31. The current Tariff process already allows licensees to attach power supplies to ILEC support structure which are comparable in size. There is no basis for an entirely new or different approach when considering small cell equipment. However, even if some tweaks or minor adjustments are required, we maintain that they could be achieved by simply addressing them as tariff updates or per appropriate process under the existing tariffs.

Respectfully submitted,

Marielle Wilson

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