

June 6, 2022

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, as modified by Telecom Notice of Consultation 2020-366-1 - *Call for comments regarding potential regulatory measures to make access to poles owned by Canadian carriers more efficient* – Eastlink Final Comments

1. Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), has reviewed the comments and responses to requests for information 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 final comments.
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. Parties to this proceeding generally agree that one of the most effective ways to accelerate the deployment of broadband capable networks is for the Commission to establish a “one-touch-make-ready” (OTMR) process for pole attachments. This will lead to a significant improvement in the make-ready process, and will help address some of the delays faced by licensees. To help address excessive make-ready costs, the Commission should specify that licensees are only responsible for make-ready costs associated with work that is necessary

to provide the capacity they are requesting. Licensees should not be responsible for costs related to pole upgrades or replacements that are a result of changes to construction standards, or deficiencies due to a lack of proper maintenance.

4. Licensees also agree that ILECs should not be able to enter into joint-use agreements that provide them the ability to deny a permit application for poles they do not own. 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. 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.
5. In order to improve the permitting process, the tariffs should also be updated to include a common methodology that will be used by all ILECs to determine whether spare capacity exists on a pole. This will help minimize the discretion ILECs have in rejecting a permit due to claims of no spare capacity. Further, support structure owners should be required to detail the reasons why a permit application was rejected based on the standard methodology, including the current load and capacity of the pole. To ensure licensees have timely and equitable access to support structures, capacity on all poles should be provided 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 of their direct competitors.
6. Lastly, Eastlink supports an expedited dispute resolution process that provides licensees a simple and efficient way to resolve issues related to support structure access. The most effective way to ensure ILECs adhere to their regulatory obligations would be to amend the Commission's expedited process for support structure related issues so that a decision would be issued within 30 days of the close of the proceeding.
7. Eastlink submits that given the ongoing concerns we and other intervenors have outlined on the record of this proceeding, it is clear that additional regulatory measures are required to ensure the timely and cost-effective deployment of broadband infrastructure. Eastlink's failure to comment 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.

Make-Ready

8. A number of parties to this proceeding have identified concerns with the make-ready process, including significant delays in the time it takes for ILECs to complete make-ready and excessive make-ready charges.
9. In Eastlink's case we have examples where we have waited over a year for the required make-ready work to be completed. As evidenced by the ILECs response to (CRTC)26Apr21-4 lengthy make-ready wait times appear to be common across the country, with the average time to complete make-ready for a project of less than 50 poles varying from 100 to close to 300 days depending on the province. Further, licensees are 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. This makes it extremely challenging to manage our network, and makes it impossible to provide our customers any information on when they might access our services. This is especially problematic in areas where we have received government funding for broadband deployment which is dependent on meeting mandated timelines.
10. The majority of parties to this proceeding, including ILECs, agree that the most effective way to expedite the completion of any necessary make-ready is for the Commission to establish a OTMR process for pole attachments. In order to successfully implement the process, the tariff should clearly outline the types of make-ready work that fall within the OTMR process. This includes updating the tariffs to include clear definitions of "simple make-ready work" and "complex make-ready work". All work that is classified as "simple make-ready work" should be eligible for the OTMR process and can be completed by an approved contractor. This would include work where existing attachments can be rearranged, transferred or replaced without reasonable risk of interruption of service or damage to facilities or do not require the involvement of the electrical utility. To minimize ILEC discretion and potential disputes, we agree with detailing a list of make-ready work that are presumably "simple" and "complex" as proposed by Rogers in response to (CRTC)26Apr21-8. Complex make-ready should be the responsibility of the pole owner, and be subject to mandated timelines.

11. Further, the OTMR process should be available across the country. We note, for example, that Bell is proposing to list the territories where OTMR is available¹. Eastlink submits that to ensure equitable treatment for all licensees, the process should be available to all licensees regardless of their serving areas. However, there may be certain circumstances where it is more appropriate and efficient for the pole owner to do simple make-ready work. This would include rural and remote areas where the licensee does not have their own labour force, and there are a limited number of contractors available. As such, the licensee should be given the opportunity to elect to use the OTMR process when they submit their permit application, but they should not be forced to do so. ILECs should not be permitted to include any language in their tariff that requires licensees to conduct OTMR, or allows them the discretion to determine whether OTMR is permitted as Bell is proposing to include in 901.5(a)(5)² or as suggested by TELUS in their response to (CRTC)26Apr21-12.
12. If a licensee elects to use the OTMR process, they would be responsible for completing the necessary pole surveys and determining whether spare capacity exists on the pole. The survey results would include an assessment as to whether simple or complex make-ready is required. The licensee would provide this information along with their permit application to the pole owner. Upon approval, the licensee would engage an approved contractor to complete the necessary make-ready work. The licensee would be responsible for notifying impacted parties of the start date and the nature of the make-ready work that may impact their attachments, and again upon completion of the work to provide them with the opportunity to inspect and address any concerns.
13. In their initial submission Bell proposed a qualification process for approved contractors wishing to conduct OTMR that would include a six-month trial period. Bell has subsequently acknowledged that “different types of make-ready work activities require different types of qualifications”, and that “licensees may make use of contractors that are already qualified to conduct certain types of work which makes a six month trial period inappropriate in some cases”³. As a result, they have removed the 6 month trial period and are suggesting that the licensees and/or their contractor must be qualified pursuant to Bell’s own certification process. Although we agree with Bell’s assessment that their previously suggested 6 month trial period

¹ Bell Canada (CRTC)26Apr21-12 Page 1, definition One Touch Make Ready (“OTMR”).

² Bell Canada (CRTC)26Apr21-12 Page 2, 901.5(a)(5).

³ Bell Canada (CRTC)26Apr21-14

is inappropriate, we are concerned with the lack of detail provided on their certification process. Bell provides no information on the standards or qualifications they will require as part of their review, which will unnecessarily complicate and delay the process, and provide Bell the ability to deny certification at their discretion. Instead of a certification process, Bell should be required to maintain a list of approved contractors who are permitted to carry out OTMR. Further, as proposed by Rogers, ILECs should allow new contractors to be added to this list where the third party attacher can provide evidence that the contractor has the necessary training and expertise and complies with applicable health and safety, operational and insurance requirements⁴.

14. In addition to the ability for licensees to complete any necessary make-ready work themselves, the tariffs should also include maximum timelines for any work the ILEC is responsible for either because the licensee does not have the resources to conduct it themselves, or it falls outside the permitted OTMR regime.

Costs

15. As we have stated throughout the record of this proceeding, licensees should only be responsible for make-ready costs associated with work that is necessary to provide the licensee the capacity they are requesting. In no case should the licensee be responsible to pay for costs related to upgrading or replacing a pole that has not been maintained, or any costs associated with upgrades to poles that are necessary to ensure compliance with current construction standards.
16. Parties to this proceeding have expressed concern that ILECs are delaying required maintenance until a licensee requests access in order to charge them the full cost of corrective work necessary to ensure compliance with applicable engineering requirements and construction standards. This view is supported by the ILEC's suggestion that any aspect of the pole that is non-compliant must be corrected at the licensee's cost given the review and cost is driven by their request⁵. Eastlink submits that it is the pole owner's responsibility for ensuring that support structures are maintained, and comply with applicable construction standards. Licensees should not be responsible to pay costs for corrective work simply

⁴ Rogers (CRTC)26April21-14 (a)

⁵ Bell Canada(CRTC)26Apr21-9 (c)

because their application brings a deficiency to the attention of the pole owner. Such a scenario would result in licensees paying a monthly licence fee that already includes a contribution for maintenance, and then upon failure of ILECs to keep the pole up to the appropriate standards, charge the licensee the full cost of replacing that pole through make-ready costs. To ensure that licensees are only charged make-ready costs that relate to work that is necessary to provide the required capacity, the tariffs should clearly outline that make-ready does not include any corrective work, and outline the process and timelines for the efficient completion of corrective work. To that end, Eastlink agrees with the definition of make-ready proposed by Shaw, which specifies that make-ready “does not include maintenance, replacement or repairs of deficiencies to Support Structures, those being work and costs undertaken by the Company”⁶. We also support the approach and timelines for efficient completion of corrective work put forward by Rogers⁷.

Joint-use Agreements

17. Parties to this proceeding have expressed concern about the role ILECs play in approving permit requests for support structures they do not own. Eastlink submits that ILECs should be prohibited from entering into joint-use agreements with local utilities that provide them with a gatekeeping role when it comes to the communication space on the utility’s support structure.
18. Bell’s response to (CRTC)26Apr21-1 highlights the magnitude of this concern. In Atlantic Canada over 93% of all poles currently owned or managed by Bell are subject to joint-use agreements. As noted by Bell, in the Atlantic Region all support structure access requests for Bell non-joint-use poles and for all joint-use poles no matter ownership are reviewed by Bell. Further, Bell manages the communication requests in Atlantic Canada except for Newfoundland and Labrador Hydro joint-use poles where Bell is not involved in the process. Similarly, TELUS’ response to CRTC26Apr21-1 also confirms that the majority of poles that TELUS owns or manages in British Columbia, Alberta and Quebec are also jointly owned or managed.
19. The current approval process provides ILECs a significant competitive advantage over licensees. They are able to directly deny or delay the permit approval process for utility poles

⁶ Shaw Intervention December 18, 2020, Appendix A, page A-6

⁷ Rogers(CRTC)26April21-9 (b)

they do own, and are able to do so without adhering to any of the terms and conditions outlined in the support structure tariff. Even if permit applications are approved on a timely basis, there is still a requirement that they be reviewed by both parties. This alone doubles the timeline for reviewing permit applications. Conversely, as noted by Bell in their reply to (CRTC)26April21-19, as a joint-use pole owner, Bell does not follow the same process as third party attachers. In the case of New Brunswick, they are not required to request NB Power's permission to attach to NB Power-owned joint-use poles if the attachment is within the communication space. Eastlink submits that ILECs that are subject to joint-use agreements already have an advantage by not going through the same permit application process, they should not be able to further grant themselves an undue preference by also having the ability to delay or deny their competitor's request to a pole owned by a utility.

Spare Capacity and Reservations for Future Use

20. Eastlink is concerned about the lack of guidelines and standards that ILECs must follow when determining the current capacity of a pole and whether there is any spare capacity. In response to a permit application, ILECs have a requirement to identify why spare capacity is not available. However, in practice Eastlink typically receives a response of "no spare capacity" or "reserved for future use" with no additional details. To avoid submitting permit applications that are likely to be rejected, Eastlink has requested detailed information on the methodology used by ILECs to determine there was no spare capacity available. In doing so we explained that having this information would help us better understand the evaluation criteria that was being used, saving parties considerable time in the future. In response, we were told that there was no standard or guideline when determining whether there was spare capacity, and that each application is reviewed on a case by case basis considering various factors. This approach does not provide licensees any opportunity to verify a claim of no spare capacity, essentially granting ILECs priority access to support structures, and providing them full discretion to delay or deny a competitor's ability to expand their network. TELUS' response to (CRTC)26Apr21-2 highlights the concern we have with the ILECs' ability to reserve capacity for future use. In 2019, 33% permit applications TELUS received for 50 poles or less in British Columbia, were denied due to a lack of spare capacity. This improved in 2020, with 17% of applications denied due to a lack of spare capacity. Some of these applications were ultimately approved after modifications were made, including make-ready or a revision to the application. Eastlink submits that if the licensee had better insight into the

process that TELUS takes when reviewing permit application, some of these applications would not have been submitted, or they would have been modified to ensure they were approved.

21. The ability to reserve capacity for future use, without any parameters or restrictions around what this means, provides ILECs a further competitive advantage. Under the current regulatory regime 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. Eastlink submits that ILECs are in the position to prioritize their own network deployment over that of their direct competitor, even when their competitor is ready and willing to deploy their network sooner. We agree with Shaw's view that denying a licensee access to support structure because spare capacity is reserved for some future use, possibly years into the future, or some undefined emergency, thus leaving capacity unused while another carrier has a need for such spare capacity now, is neither an efficient nor effective use of public good assets⁸. As a result, parties to this proceeding have suggested that capacity on both new and existing poles be provided to both pole owners and licensees on a first-come, first-served basis. As outlined by Rogers, the elimination of ILEC capacity reservation is the only effective means of ensuring timely and non-discriminatory access to ILEC support structures. Time and capacity limits on support structure reservation are arbitrary and virtually impossible to enforce⁹.

22. In recognition of projects that are fully planned and imminent, Eastlink agrees with Rogers proposal that an ILEC be permitted to exclude from the spare capacity the capacity required to deploy projects that are scheduled to be built out no later than the end of the earlier of the ongoing or next construction season, and are included in the annual capital plan for the period. We further agree that to ensure that ILECs do not abuse this exclusion from spare capacity, they must be required to file their annual capital plans with the CRTC, identifying the support structure capacity required for planned deployments and the deployment schedule¹⁰.

⁸ Shaw(CRTC)26April21-17(b)

⁹ Rogers(CRTC)26April21-17(b)

¹⁰ Rogers(CRTC)26April21-17(b)

Dispute Resolution Process

23. Eastlink maintains that the best way to minimize ongoing disputes regarding access to support structures is to update the tariff to clearly define 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 joint-use policies. We acknowledge that even with these improvements disputes will occasionally arise and there must be mechanisms in place to deal with these issues on an expedited basis. Failure to do so could significantly delay network deployment plans, and potentially leave end-users without access to services.

24. The current dispute resolution process requires licensees to first attempt to resolve the issue with the pole owner, 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. The timelines associated with permit applications and make-ready work along with the current dispute resolution process deter licensees from escalating issues as doing so will only further delay their network deployment. This results in increased costs for licensees as they are either forced to accept unreasonable make-ready charges or change their network deployment plans in order to move forward with their network build.

25. Eastlink supports an expedited dispute resolution process that would provide licensees a simple and efficient way to resolve day-to-day issues. A number of parties have suggested ways to improve the current dispute resolution process, from an expedited CRTC proceeding, to engaging third-party experts. Eastlink is supportive of any improvements to the dispute resolution process that result in a quick and binding decision. The most effective way to ensure ILECs adhere to the decision would be to amend the Commission's expedited hearing process for support structure related disputes. We support the timelines and process proposed by Videotron, whereby the Commission would have 5 days to determine whether or not to hold an expedited hearing, respondents would have 5 days to submit a written submission, and the Commission would have 30 days to issue their response. Although still long, this timeline would be a significant improvement over the dispute resolution process, and would result in a binding decision.

Conclusion

26. In summary, Eastlink submits that the record of this proceeding clearly demonstrates a need for the Commission to introduce additional regulatory measures that would make access to poles owned by Canadian carriers or poles to which Canadian carriers control access more efficient. Eastlink comments throughout this proceeding outline some of the important actions the Commission must take at this time to help address some of the barriers facilities-based providers encounter when trying to expand and maintain our network, which in turn would help accelerate the deployment of broadband-capable networks in regions of Canada with limited or no access.

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

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