

May 7, 2018

Via Email: uebmod@ontario.ca

Manager, Regulatory and Agency Policy Section
Strategic, Network and Agency Policy Division
Ministry of Energy
6th floor, 77 Grenville Street,
Toronto, Ontario
M7A 2C1

Re: Ontario Energy Board (“OEB”) Modernization Review Panel – Call for Comments

1. This submission is provided by the Canadian Communication Systems Alliance, on behalf of its more than 30 members who are independent communications companies operating throughout the Province of Ontario.
2. CCSA has reviewed the submission of Rogers Communications, on its own behalf and that of other telecommunications distributors including CCSA’s Ontario members, in response to the Panel’s call for comments. CCSA fully supports that submission.
3. CCSA wishes to add its own comments on the question of the OEB’s mandate.
4. Prior to 2003, the CRTC set the rates for attachment of telecommunications equipment and plant to all poles, including poles owned by provincial electrical utilities.
5. However, a legal challenge to the CRTC’s authority to set such rates, in the *Barrie Public Utilities* case, led to a decision by the Supreme Court of Canada that, the *Telecommunications Act* did not grant the CRTC jurisdiction to set pole attachment rates for provincially-regulated hydro companies.
6. The OEB’s current oversight over telecommunications attachments to provincially-regulated hydro poles is a result of a statutory interpretation in a Supreme Court

decision. Importantly, that decision was not the result of any deliberate grant of authority by either Parliament or the Provincial Legislature.

7. Moreover, that decision does not represent any consideration, by either federal or provincial legislators, as to whether the matter of telecommunications attachments to hydro poles properly fits within the mandate of a body charged only with the statutory responsibility to ensure that electricity rates are “just and reasonable”.
8. In fact, the matter of telecommunications attachments to hydro poles has nothing to do with the regulation of the energy sector and the distribution of electricity. There is no express provision in the OEB’s statutory mandate that authorizes or permits it to take into consideration the interests of the telecommunications providers who attach to hydro poles.
9. There is no requirement in the OEB’s mandate to consider the needs of the telecommunications providers’ customers or to support broader telecommunications objectives and policy goals such as the deployment of broadband services to underserved rural communities.
10. Nonetheless, the OEB has used its authority as a provincial energy regulator to dramatically affect the operations, growth opportunities and financial viability of federally-regulated telecommunications providers, both large and small.
11. The smaller, rural distributors that CCSA represents are especially hard hit by the OEB’s decisions.
12. That is because, unlike the case in densely populated urban markets, where each hydro pole is typically used to serve a large number of customers, the smaller, rural distributors often have to attach to many poles, over runs of several kilometres, to reach a single customer or a small cluster of residences.
13. By authorizing increases in the order of 130% to prior pole attachment rates, the OEB is actively undermining the federal government’s - and, indeed, Ontario’s - initiatives to extend broadband services to Canadians in rural and remote communities.
14. Again, such increases, multiplied by the large number of poles to which a rural telecommunications provider must attach, present a real threat to the economic viability of a smaller, rural telecommunications provider. At the very least, such

increases present a powerful disincentive to extension of such a provider's existing networks to deliver broadband service to new, presently underserved communities.

15. As an additional practical matter, while the OEB may have extensive experience and in-depth knowledge relating to the energy sector and the setting of rates for the consumption of energy by consumers, it lacks the expertise and experience to deal with the specialized costing mechanics that, traditionally, apply to setting telecommunications pole attachment rates.
16. That lack of expertise and experience has produced results that diverge drastically from all other jurisdictions.
17. For example, the average pole attachment rate in Ontario is roughly double the provincially-set hydro pole attachment rates across the rest of Canada and almost four times the rate set by the CRTC for attachment to a joint use pole owned by a federally-regulated telecommunications undertaking like Bell.
18. In short, the OEB is ill-equipped to deal with telecommunications pole attachment rates. The OEB has a mandate to ensure just and reasonable electricity rates. This mandate does not align with – and even runs counter to – extremely important social and economic development goals that, today, demand the provision of affordable broadband services to citizens and businesses throughout the province and the nation.
19. Many smaller, underserved communities across Ontario are desperate for improved broadband connectivity. They know that without good broadband service, their local businesses cannot thrive and their communities and tax bases will shrink.
20. The OEB's recent actions are undermining provincial and federal government attempts to address that extremely important issue. That is a problem that requires a solution.
21. The sensible solution is to delegate the OEB's authority to set rates for telecom attachments to hydro poles owned by the provincial hydro utilities to the CRTC. That can be done through the issuance of a regulation pursuant to the *Ontario Energy Board Act* by the Lieutenant Governor in Council.



22. CCSA agrees with and strongly supports Rogers Communications' recommendation to do just that.
23. CCSA thanks the Panel for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink that reads "C. J. Edwards". The signature is fluid and cursive, with a long, sweeping underline.

Christopher J. Edwards
Vice-President, Corporate & Regulatory Affairs