

January 19, 2021

VIA Intervention Comment Form

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

Dear Mr. Doucet,

Subject: 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 – Reply Comments

1. The Canadian Communication Systems Alliance (“CCSA”) speaks for independent communications distributors – smaller broadcasting distribution companies, telephone companies and ISPs – across Canada. CCSA represents more than 100 companies operating from sea to sea to sea, including across the North.
2. CCSA submits these Reply Comments pursuant to the procedure set out in Telecom Notice of Consultation CRTC 2020-366-1. CCSA reserves the right to comment on other issues, which are not treated here, as this proceeding progresses.
3. In its Initial Comments in this matter, CCSA commended certain recent regulatory initiatives made by the FCC to the Commission’s attention. Those initiatives included:
 - a One-Touch Make-Ready (“OTMR”) regime whereby the attacher, who has the incentive to work quickly, is empowered to perform the work of “simple attachments” in the communications space on a pole rather than wait for the pole owner – who often has an incentive to delay – to do that work;

- firm, accelerated deadlines and associated deeming provisions for the various stages of the attachment permitting process under both the FCC’s prior rules and the new OTMR regime;
 - confirmation of the principle that permit applications are not required for overloading on existing strand;
 - prohibition of “blanket bans” on access to space on a pole such that the reasons given by the pole owner for denial of access must respond to the specific nature and facts of the application for attachment; and
 - prohibition of pole owners from applying their negotiating power to require an attacher to give up rights to which the attacher is entitled under the rules without the attacher obtaining a corresponding benefit.
4. CCSA also referred to a model proposed by ACA Connects to the FCC for equitable sharing of pole repair and replacement costs based on the fundamental principle, as stated by the FCC, that “new attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment”.
5. CCSA has seen considerable support in the initial comments of other parties to this proceeding for the principles and mechanisms described above. We discuss those key aspects of those submissions under the following headings:
- Make-Ready Procedures and Costs;
 - Safety and Standards;
 - Permitting Process Deadlines;
 - Reservation of Capacity; and
 - Dispute Resolution.

Make-Ready Procedures and Costs

6. CCSA notes that many commenters have supported some form of mechanism whereby the attacher would be permitted to proceed with make-ready work, using approved or qualified contractors, for “simple” work in the telecommunications space of a pole.
7. Notably, Rogers, like CCSA, proposed adoption of the key features of the OTMR framework recently implemented by the U.S. FCC.¹
8. Beanfield commented that “seekers should be permitted to undertake minor make-ready work themselves.”²
9. SaskTel noted that it “permits the attaching party or their contractors to complete make-ready work and requires that they complete the work to the applicable standards.”³
10. TekSavvy stated that: “Access seekers should be allowed to conduct their own make-ready work, as a right provided by the tariffs of all incumbents”⁴ while Shaw said: “licensees should be permitted to complete make-ready work with their own labour force or contractors”.⁵
11. Perhaps the strongest indication of support for this approach as an effective means of reducing delays to network deployment is Bell Canada’s advice that it has, itself, been trialing an OTMR solution for such work “with the exception of work that requires services cutovers or is otherwise deemed to be a high risk at our discretion.”⁶
12. Bell’s approach would also permit the applicant to “conduct make-ready work on behalf

¹ Rogers Intervention, “SUMMARY TABLE OF PROPOSALS” at pp. 3-4.

² Beanfield Intervention at para. 21.

³ SaskTel Intervention at para. 8.

⁴ TekSavvy Intervention at para. E9.

⁵ Shaw Intervention at para. 6.

⁶ Bell Intervention at para. 9

of other attachers on the pole.”⁷

13. In view of those various comments, it appears that there is fairly broad consensus that some form of OTMR mechanism could be a highly effective means of reducing attachment delays.
14. Again, CCSA recommends that the Commission review the FCC’s regulation in this area as a possible model for a corresponding Canadian framework.
15. With respect to the costs of pole remediation and replacement, many commenters noted that pole maintenance costs are intended to be captured in the monthly pole rental fees.⁸
16. In this respect, CCSA again urges the Commission to adopt, as a basis for regulation, the principle stated by the FCC that: “ new attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment”.
17. The Commission should also take care to ensure that the regulatory framework does not permit pole owners to double-recover maintenance costs in the form of both the monthly rental fees and invoices to attachers for make-ready work.

Safety and Standards

18. CCSA acknowledges the concerns stated by utilities such as the CEA and BC Hydro regarding their own responsibilities to ensure safety.⁹
19. In that respect, CCSA notes that the FCC paid close attention to safety concerns by limiting OTMR to “simple” work conducted in the telecommunications space of the pole.

⁷ Bell Intervention at para. 35.

⁸ See, e.g. SaskTel Intervention at para. 11, TekSavvy intervention at para. E1, Xplornet intervention at para. 5

⁹ See, e.g. CEA Intervention at para. 17

20. As BC Hydro noted, “there may be circumstances that are wholly within the ambit of TELUS’ management of its 24 inches of Pole space where TELUS uses approved contractors that can also be retained by third-party carriers to do certain work that would have been done by TELUS.”¹⁰
21. Many of the attachments sought by independent TSPs, as they extend and upgrade their networks are in the nature of “simple” work to be conducted only in the telecommunications space. CCSA submits, again, that implementation of an OTMR mechanism could safely accelerate a great many of the attachments that are needed.
22. One issue that was raised repeatedly – and which is tightly related to safety issues – is the nature of the standards which apply and the consistency with which those standards are applied. The issue is important and, as Beanfield put it, “the Commission ought to attend to [s]tandards before tariffs”.¹¹
23. Cogeco recommended, first, that CSA standards should be used uniformly and, second, that there should be “[s]ymmetrical application of standards”.¹²
24. Referring to the 2012 Common Technical Standard, Cogeco claims that “ILECs have been abusing the Standard” and recommends that “it would be better to abandon the Common Technical Standard imposed by pole owners, and instead apply the CSA standards.”¹³
25. That comment goes to questions about the consistency and transparency of applicable standards across Canada’s multi-jurisdictional environment.
26. Perhaps the more important issue, however, is fair and consistent application of the

¹⁰ BC Hydro Intervention at para. 17.

¹¹ Beanfield Intervention at para. 6.

¹² Cogeco Intervention at para. ES6.

¹³ *Ibid.*

standards.

27. As Iristel put it:

The industry is well aware that pole owners and tenants are not abiding by the same rules as it comes to makeready work. Pole owners will in effect allow themselves to install new cable without the burden of upgrading the infrastructure with only the most essential make-ready work, but as soon as a tenant requires access, anchors either need to be changed, added or reburied and all this make-ready work, even the most minor work, is required to be completed before the tenant is granted access.¹⁴

28. CCSA hears this same story, time and again, from its own members. CCSA strongly recommends that the Commission take steps, first, to clearly define which safety and constructions must apply in all parts of the country and, second, to ensure that the applicable standards are transparent to all.

Permitting Process Deadlines

29. In its initial comments, CCSA said that it, “cannot emphasize enough that any stage of the process which lacks a defined deadline represents an opportunity for delay and for imposition of costs on the attacher”.¹⁵

30. The comments of many intervenors reflect that concern. FMCC said: “The Commission must recognize deadlines for both individual steps of the permitting process AND for the overall permitting process.”¹⁶ Beanfield said: “Each milestone within the process should be held to a strict timeline.”¹⁷

¹⁴ Iristel Intervention at para. 26.

¹⁵ CCSA Initial Comments at para. 46.

¹⁶ First Mile Connectivity Consortium Intervention at para. E10.

¹⁷ Beanfield intervention at para. 17. See, also, Xplornet Intervention at para. 5: “Timelines should be established for all steps in the pole access process”; Shaw Intervention at para. 6: “there should be timelines for each step of the make-ready work process”

31. Process deadlines must be meaningful. TekSavvy recommended “a mechanism that requires incumbents to award credits to access seekers when response times are not met. The quantum of the award should be proportionate to the delay.”¹⁸
32. CCSA submits that the deadlines for each step of the permitting process and for the process overall should be aggressive. Those deadlines must be both enforceable and enforced.
33. Again, CCSA commends the FCC’s rules and deadlines, both for OTMR and non-OTMR attachment process deadlines as a useful model to adopt.

Reservation of Capacity

34. Commenters on the issue of how much capacity should be reservable by incumbent pole owners and for how long offered a variety of suggestions with some, such as Xplornet and Rogers, contending that incumbents should not be permitted to reserve capacity at all.¹⁹
35. CCSA again submits that the FCC has implemented a workable rule in this respect. Specifically, as CCSA noted in its Initial Comments, in 2020, the FCC reaffirmed its existing rule, already affirmed in its 2018 Third Order, that:

. . . any denial by the [pole owner] must be issued in writing, and such denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.²⁰

36. We think that such a rule, coupled with access to a quick, effective dispute resolution

¹⁸ TekSavvy intervention at para. E5.

¹⁹ Xplornet Intervention at para. 5. Rogers Intervention, “SUMMARY TABLE OF PROPOSALS” at pp. 3-4.

²⁰ As cited in CCSA Initial Comments at para. 66.

mechanism, should be sufficient to the purpose.

Dispute Resolution

37. As CCSA said in its Initial Comments, access to quick and effective dispute resolution is one of the most important initiatives the Commission can implement and a more streamlined process than is currently available under IB CRTC 2019-184 is required to meet the special urgency of pole attachment issues.²¹
38. We do not agree, as some commenters have suggested, that escalation procedures set out in the Support Service Agreements are sufficient to the need.
39. Commenters who support a more streamlined dispute resolution process include, among others, Eeyou Communications Network, Beanfield, Xplornet, Shaw and Rogers.²² Those commenters offered a variety of proposals for how accelerated dispute resolution should be handled.
40. In this respect, CCSA reiterates its recommendations that the Commission consider:
- delegation of its authority to decide pole access complaints to a special or standing committee of the members charged with a specific mandate to adjudicate such complaints;
 - amendment of the service standards established by Telecom Circular CRTC 2006-11 to include specific timelines for adjudication of pole attachment complaints and issuance of final decisions in such matters, with a deadline for issuance of final decisions no later than 60 days after receipt of a complaint;
 - definition in an amended Information Bulletin concerning “practices and procedures

²¹ CCSA Initial Comments at para. 116.

²² ECN Intervention at para. 8; Beanfield intervention at para. 17; Xplornet Intervention at para. 5; Shaw Intervention at para. 9; Rogers Intervention, “SUMMARY TABLE OF PROPOSALS” at pp. 3-4

for dispute resolution” of “shorter pleading deadlines and other modifications to the procedural rules”, specific to adjudication of pole attachment complaints, as needed to support an overall 60-day decision deadline.²³

Recent Bell Initiatives

41. CCSA acknowledges a number of recent initiatives described by Bell in its Initial Comments, including establishment of a “coordination table with Telus Quebec, Hydro Quebec and the Government of Quebec to support the deployment of projects that offer high-speed Internet to businesses and citizens in rural areas”²⁴, work on construction standards and implementation of certain “help” facilities.
42. Having said that, to our members, “the proof is in the pudding” and as yet, our members have no plates before them. Neither do the independent TSPs or their representatives even have a seat at the “coordination table”.
43. Rather, like Iristel, we note, with some skepticism, that “Bell issued a press release on the same day that the Commission launched this Consultation and issued a follow-up press release on the day that interventions are due for this Consultation.”²⁵
44. Nonetheless, CCSA remains hopeful that Bell’s initiatives will assist in resolution of some of the pole access issues which are the subject of this proceeding and that such initiatives will extend rapidly to help accelerate pole attachments and new network builds in all parts of Canada.

Conclusion

45. CCSA is pleased to see that so many commenters in this proceeding share its view of both the key challenges and the potential remedies that are required to support effective

²³ CCSA Initial Comments at para. 120.

²⁴ Bell Canada Initial Comments at para. 3.

²⁵ Iristel Initial Comments at para. 9.

build-out of network resources to rural and remote areas of this country.

46. CCSA has seen nothing in the initial comments of the intervenors which changes the recommendations it made in its own Initial Comments.
47. We again urge the Commission to carefully review and act upon the recommendations offered in CCSA's Initial Comments.
48. CCSA thanks the Commission for the opportunity to provide these comments in this extremely important proceeding.

Sincerely,



Christopher J. Edwards

Vice-President, Regulatory Affairs

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