Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

# Telecom Decision CRTC 2019-19

PDF version

Ottawa, 25 January 2019

*Public record: 8690-C126-201612250*

## City of Calgary – Application concerning a Municipal Rights-of-Way Bylaw and a proposed Municipal Consent and Access Agreement

*The Commission **denies** an application by the City of Calgary (Calgary) for a Commission declaration and a determination that certain telecommunications carriers may rely upon Calgary's Rights-of-Way Bylaw for the performance of their obligations under section 43 of the* Telecommunications Act.

*The Commission **approves with changes** certain terms and conditions of a Municipal Consent and Access Agreement (MCAA) between Calgary and Bell Canada, Rogers Communications Canada Inc., Shaw Communications Inc., TELUS Communications Inc., and Zayo Canada Inc. (Zayo) [collectively, the respondent carriers]. There are certain terms and conditions that the Commission has not approved and requires Calgary and the respondent carriers to negotiate.*

*The MCAA will govern the respondent carriers' access to city structures, service corridors, and other public places in Calgary, enabling the respondent carriers to provide modern telecommunications services throughout the municipality that will benefit residents and businesses.*

### Application

1. The Commission received a Part 1 application from the City of Calgary (Calgary or the City), dated 28 November 2016, in which Calgary requested, among other things,

    - that the Commission issue a declaration and a determination that certain telecommunications carriers (i.e. Bell Canada, Rogers Communications Canada Inc., Shaw Communications Inc., TELUS Communications Inc.,[1] and Zayo Canada Inc. (Zayo)[2] [collectively, the respondent carriers] may rely upon Calgary Bylaw Number 17M2016[3] (to regulate the process for access and use of municipal rights-of-way [ROW], hereafter the ROW Bylaw) for the

[1] In this proceeding, submissions were received from TELUS Communications Company (TCC). However, effective 1 October 2017, TCC's assets were legally transferred to TELUS Communications Inc. and TCC ceased to exist.

[2] Effective 21 June 2018, all obligations related to the Competitive Local Exchange Carrier Tariff that were formerly met by Zayo are being met by its subsidiary, Allstream Business Inc.

[3] *Being a Bylaw of The City of Calgary to Regulate the Process for Access and Use of Municipal Rights-Of-Way*

performance of their obligations under section 43 of the *Telecommunications Act* (the Act);[4] and

- in the event that the Commission declines to issue the above-mentioned declaration, that the Commission approve the terms and conditions of Calgary's proposed Municipal Consent and Access Agreement (MCAA).

2. The Commission received a joint intervention regarding Calgary's application from the respondent carriers, excluding Zayo (hereafter, the Carriers); as well as separate interventions from Zayo, the Federation of Canadian Municipalities (FCM), and the Forum for Research and Policy in Communications (FRPC).

## Issues

3. The Commission has identified the following issues to be addressed in this decision:[5]

- Should the Commission grant the declaratory relief requested by Calgary?

- If the Commission declines to grant the declaratory relief, should it determine the terms and conditions in the proposed MCAA that remain in dispute between the parties?

## Should the Commission grant the declaratory relief requested by Calgary?

### Positions of parties

#### Calgary

4. Calgary submitted that as a municipal corporation,[6] it is responsible for the direction, control, and management of all roads and public places within its municipal limits. Calgary indicated that it currently has arrangements with all utility providers that install and operate their equipment within, and require access to, Calgary's ROW. With respect to the respondent carriers, Calgary submitted that the agreements it entered into with each of these carriers have now expired.

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[4] In a Commission letter decision dated 30 May 2017, the Commission denied a request from the respondent carriers to suspend consideration of Calgary's application while they challenged the constitutional validity of Calgary's ROW Bylaw in the Court of Queens' Bench of Alberta. The respondent carriers excluding Zayo subsequently filed an application to review and vary that letter decision. The Commission denied that review and vary application in Telecom Decision 2017-461.

[5] Following the Commission's findings in this decision, but prior to publication of the decision, the Court of Queen's Bench of Alberta issued *Bell Canada Inc. v. The City of Calgary*, 2018 ABQB 865. In that decision, the Court ruled that Calgary's ROW Bylaw, to the extent it applies to telecommunications services, is beyond Calgary's legislative authority and is invalid. The Court severed the words "telecommunications services" from the definition of "utility provider" in section 3(1) of the ROW Bylaw. Calgary has filed a Notice of Appeal.

[6] pursuant to the *Municipal Government Act*, RSA 2000, c M-26

5. Calgary submitted that rather than this piecemeal approach to managing access to its ROW by utility providers, a single solution was required that applies to all utility providers in a sustainable and fair manner. Thus, the Municipal Council of the City of Calgary passed the ROW Bylaw, which took effect on 1 January 2018.

6. Calgary submitted that the ROW Bylaw was developed taking into account previous Commission decisions concerning access and use of municipal ROW and the Canadian telecommunications policy objectives set out in section 7 of the Act. Calgary added that the ROW Bylaw sets out the terms and conditions of municipal consent, which is obtained through a permitting process that follows the long-established method (i.e. the issuance of a municipal permit) that utility providers must follow to exercise their qualified right of access to municipal ROW pursuant to provincial and federal legislation.

7. Calgary stated that subsection 43(3) of the Act expressly acknowledges municipal jurisdiction over roads and public places, and allows municipalities to provide meaningful consent regarding the installation of facilities on roads and in public places, given that municipalities are liable for managing them. Calgary submitted that subsection 43(3) does not state that consent must be (i) mutual or negotiated, (ii) in a specific form, and (iii) agreed upon between municipalities and telecommunications service providers.

8. Calgary argued that the appeal provision of the ROW Bylaw (section 123) preserves the Commission's discretionary authority for the purpose of subsection 43(4) of the Act.

**The FCM**

9. The FCM submitted that in the Châteauguay case,[7] while the Supreme Court of Canada concluded that telecommunications constitute an area of exclusive federal jurisdiction, it was clear that this conclusion provides only part of the framework that must be considered in the unique context of municipal consent. The FCM submitted that two additional factors must be considered to fully understand the demarcation between municipal authority and a carrier's constitutional immunity:

    i) the explicit limitation on federal immunity created by Parliament through the Act, and

    ii) the general limitations applicable in all matters where the doctrine of interjurisdictional immunity applies.

10. With respect to the explicit limitation created by the Act, the FCM noted that while Parliament granted Canadian carriers the right to use municipal ROW in the public interest, this right was subject to municipal consent, i.e. that municipalities were

[7] *Rogers Communications Inc. v. Châteauguay (City),* [2016] 1 SCR 467, 2016 SCC 23

explicitly entrusted with the role of setting out what they deem to be appropriate conditions of access.

11. The FCM submitted that Parliament did not set out the form that municipal consent should take. The FCM noted that while municipal access agreements (MAAs) have been widely used, nothing in the Act prevents municipalities from granting consent in other ways, including through the adoption of a bylaw, that do not interfere with the Commission's dispute resolution role.

12. With respect to the doctrine of interjurisdictional immunity, the FCM submitted that even when a matter is deemed to be subject to the federal government's interjurisdictional immunity, local legislative intervention is not inhibited. The FCM submitted that the Supreme Court of Canada reiterated this notion in the Châteauguay case. In the FCM's view, Calgary's ROW Bylaw fits within the constitutional framework established by the Supreme Court and Parliament, and it does not impair the carriers' operations.

13. Finally, the FCM submitted that Calgary is not the first municipality to opt for a legislated form of consent instead of relying on a negotiated alternative. ROW bylaws have been used to set out the conditions of access and a permitting process for all entities, including telecommunications carriers, that occupy municipal ROW in Edmonton, and more recently, in Toronto. Despite being in place for relatively long periods of time, neither of these bylaws has been challenged by the carriers that operate in these jurisdictions – many of which also operate in Calgary – either as unconstitutional actions or as inappropriate means of municipal consent.

14. The FCM cited paragraph 51 of Telecom Regulatory Policy 2009-150, in which the Commission noted that telecommunications companies must comply with all laws, including municipal bylaws and building permit processes, to the extent that such compliance does not change the terms and conditions of any MAA between the parties.

#### The FRPC

15. The FRPC supported Calgary's application and ROW Bylaw on the grounds that they generally comply with Parliament's telecommunications policy for Canada and with previous Commission decisions. In particular, the FRPC was of the view that telecommunications carriers, and not taxpayers, should be responsible for the costs associated with carriers' access to and use of Calgary's assets, including its roads and sidewalks.

#### The Carriers

16. The Carriers submitted that the Commission's assertion in Telecom Decision 2017-461 that "the Alberta Court [Court of Queen's Bench of Alberta] is not being asked to decide on what constitutes a valid form of municipal consent for the purpose of subsection 43(3) of the Act or to resolve disputed terms of access" was an error in

fact and, because there continued to be a risk of conflicting determinations on this matter, an error in law.

17. The Carriers submitted that, notwithstanding their submission that there were *prima facie* errors in fact and in law in Telecom Decision 2017-461, they were providing their comments on Calgary's application.

18. With respect to Calgary's submission on the form of consent, the Carriers noted that in Telecom Decision 2017-461, the Commission indicated that for the purpose of disposing of Calgary's Part 1 application, it would assume the ROW Bylaw to be both constitutional and within Calgary's jurisdiction, and that it would therefore address only the statutory issues relating to the Act. The Carriers submitted that although they remained concerned that this approach may lead to conflict and potential appeals, it would be prudent for the Commission to refrain from making a determination on whether a bylaw is an appropriate form of consent.

19. The Carriers indicated that there is no consent in this case, only a unilateral imposition of terms with which they do not agree. The Carriers argued that this aspect of Calgary's application is therefore factually unfounded and that Calgary was seeking an irrelevant determination. The Carriers submitted that in the event that a carrier cannot gain access to a highway or another public place at terms acceptable to it to construct a transmission line, it can apply to the Commission for permission to construct the line pursuant to subsection 43(4) of the Act. The Carriers argued that Calgary's interpretation of section 43 of the Act seems to skip a critical component: the interplay between a carrier's statutory remedy to refer to the Commission if a municipality does not consent on acceptable terms and the provisions of a municipal bylaw.

20. The Carriers submitted that with respect to section 123 of the ROW Bylaw, both the meaning and the constitutionality of that section were before the Court of Queen's Bench of Alberta.

**Calgary's reply**

21. Calgary stated that by alleging that the Commission has made an error in fact in Telecom Decision 2017-461, the Carriers appear to be refusing to accept and acknowledge the Commission's jurisdiction to treat Calgary's application. Calgary noted that with respect to the Commission's statement in Telecom Decision 2017-461 that it would address only the statutory issues related to the Act, instead of providing a legal analysis on those statutory issues, the Carriers argued that (i) because they did not agree with the terms of the ROW Bylaw, there was no actual consent; (ii) the relief Calgary sought was irrelevant; and (iii) the determination Calgary sought would not resolve the dispute.

22. Calgary submitted that the Carriers' logic was flawed and that the question before the Commission was whether the Carriers can rely upon the ROW Bylaw for the purpose of compliance with or performance of their section 43 obligations, including obtaining municipal consent under subsection 43(3) of the Act.

23. Calgary argued that the Carriers also mischaracterized and erroneously interpreted subsection 43(3) of the Act in their claim that the Commission's determination on Calgary's application is entirely irrelevant if the carrier does not agree with the terms therein.

24. Calgary submitted that the Commission (see Decision 2001-23 and Telecom Regulatory Policy 2009-150) and the courts (see *Barrie Public Utilities v. Canadian Cable Television Assn.*, [2003] 1 SCR 476) have repeatedly interpreted and treated subsection 43(3) of the Act as qualifying Canadian carriers' access and creating an obligation for carriers to obtain municipal consent prior to the construction, maintenance, and operation of transmission lines.

25. Calgary submitted that a carrier's objection to any consent terms of a municipality may be relevant for the purpose of subsection 43(4) of the Act; however, Calgary argued that it was irrelevant whether or not the Carriers agreed with the terms of the ROW Bylaw since that was not the issue before the Commission.

26. Finally, Calgary submitted that the Carriers have provided no reasonable basis for the Commission to deny its application.

**Commission's analysis and determinations**

27. The Commission's powers under sections 42 to 44 of the Act relate to the resolution of disputes between a carrier and a municipality on the terms and conditions of the carrier's access to the municipality's ROW. In cases where a Canadian carrier cannot obtain consent from the municipality to construct a transmission line on terms acceptable to it, the carrier can request an order from the Commission for permission to construct the line, under terms that the Commission considers appropriate. Likewise, a municipality can seek a Commission order against a carrier, for example, prohibiting the construction, maintenance, or operation of a transmission line except as directed by the Commission. In both cases, it is within the Commission's discretion whether to grant such an order and to determine the terms and conditions.

28. The Commission considers that the fact that the respondent carriers do not wish to rely on the terms of the ROW Bylaw is directly relevant to whether the declaratory relief sought by Calgary should be granted. As noted above, under the Act, if a Canadian carrier is unable to obtain consent from a municipality to construct a transmission line on terms acceptable to it, the carrier has the right to apply to the Commission for permission, and the Commission may grant such permission on the terms and conditions it determines to be appropriate, taking into account the use and enjoyment by others of the property. The Commission considers it reasonable and

appropriate to accept the Carriers' statement that they do not accept the terms and conditions of the ROW Bylaw.

29. The Commission considers that the question raised by Calgary, namely, whether the respondent carriers can rely on the ROW Bylaw for the purpose of section 43 of the Act, is hypothetical given that the Carriers have stated that they do not accept the terms of that bylaw. Whether or not Calgary can give its consent by means of the ROW Bylaw is likewise hypothetical based on the facts of this case. In the Commission's view, the declaratory relief sought by Calgary would serve little or no purpose, since it will not resolve the disagreement between the parties regarding the terms and conditions governing access to highways and other public places in Calgary for the purpose of constructing transmission lines.

30. In the circumstances of this case, the Commission considers that it would not be appropriate to grant the declaratory relief sought by Calgary. The Commission therefore **denies** Calgary's request for a declaration that the respondent carriers may rely upon the ROW Bylaw for the performance of their obligations under section 43 of the Act.

## If the Commission declines to grant the declaratory relief, should it determine the terms and conditions in the proposed MCAA that remain in dispute between the parties?

### Background

31. During the proceeding, the Carriers and Calgary agreed on the language of a number of MCAA provisions and to delete certain provisions. Accordingly, the Commission is not required to consider these matters. In this decision, the Commission has examined the matters that remain in dispute between the parties.

32. In the body of this decision, the Commission will address the following issues:

- the definitions of the terms "City Structure" and "Service Corridor",
- the allocation of costs associated with municipality-initiated facility relocations,
- fees, and
- the request from the Carriers to strike information from the record.

33. The Commission's determinations on the remaining disputed terms and conditions are set out in the Appendix to this decision. The Appendix sets out several provisions on which the Commission has determined that the parties are to negotiate. The Commission **directs** the parties to file a joint report with the Commission, within **120 days** of the date of this decision, on the results of these negotiations. Upon receiving the joint report, if the parties have not reached a negotiated agreement, the Commission will rule on any outstanding issues.

## Definitions of the terms "City Structure" and "Service Corridor"

### Positions of parties

34. Calgary proposed the following definitions for the terms "City Structure" and "Service Corridor" in its proposed MCAA:

> "City Structure" means any one or more of the following that is located Within a Service Corridor:
>
> i. City-owned bridge or viaduct or tunnel;
>
> ii. pedestrian overpass or underpass;
>
> iii. infrastructure other than (i) or (ii) above that is owned by The City and for which The City in its sole discretion grants access to the Company for installation of the Company's Equipment, and includes, but is not limited to, stormwater infrastructure as referenced or described in Appendix 6;
>
> "Service Corridor" means a street, lane, highway, light rail transit corridor (excluding transit infrastructure or equipment located Within the light rail transit corridor), general public utility easement, or other Public Place located within the City of Calgary, and owned by The City, but excludes a City Structure;

35. With respect to these definitions, the Carriers were of the view that "Service Corridor" should broadly define all public ROW and public places within the City and that they should all be subject to the same approval regime, consistent with the Model MAA. The Carriers submitted that bridges, viaducts, tunnels, overpasses, and underpasses are part of a "highway" and should not be treated any differently than other roads or highways within the City. The Carriers added that the parties should not be required to negotiate and/or seize the Commission for another set of terms applicable to these places. Accordingly, the Carriers proposed the following definitions for "City Structure" and "Service Corridor":

> "City Structure" means infrastructure other than a Service Corridor that is owned by The City and for which The City in its sole discretion grants access to the Company for installation of the Company's Equipment, and includes, but is not limited to, storm water infrastructure.
>
> "Service Corridor" means a street, lane, highway, City-owned bridge or viaduct or tunnel, pedestrian overpass or underpass, light rail transit corridors, general public utility easements, and other Public Places located within the City of Calgary, and owned by the City.

36. In reply, Calgary argued that with respect to the Carriers' definition of "City Structure," "highway" is not a defined term in the Act. Calgary indicated that in the proposed MCAA, as with previous MAAs, it has differentiated City Structures

from Service Corridors (referred to as “Right-of-Way” in the previous MAA) in order to recognize the specific structural engineering requirements of a bridge or tunnel that must be taken into consideration when determining whether or not access can be granted.

#### Commission’s analysis and determinations

37. The distinction proposed by Calgary between the definitions of “Service Corridor” and “City Structure” is critical. For example, (i) subsection 2.02(d) of the MCAA states that the Agreement does not constitute consent to access a City Structure, except if the City grants such consent upon an application by a carrier; and, (ii) under section 4.02, Calgary in its sole discretion could refuse a carrier access to a City Structure. Accordingly, under the proposed MCAA, Calgary would have the right to refuse carriers access to places falling under the definition of “City Structure.”

38. The MAAs that the Commission has previously dealt with have not provided distinct definitions and associated provisions for different types of “highways or other public places,” as Calgary proposed in its MCAA. In past decisions, such as Telecom Regulatory Policy 2009-150 (hereafter, the Vancouver decision) and Telecom Decision 2016-51 (hereafter, the Hamilton decision), the Commission has limited the application of MAAs to highways, roads, and the like, and has excluded other places that could be found to be “other public places” but were unknown at the time, since that term is potentially broad and requires interpretation on a case-by-case basis.

39. The MAAs that the Commission has ruled on generally apply equally to a wide range of highways, roads, public thoroughfares, and the like. For example, in the Vancouver decision, the associated MAA applied equally to streets, lanes, highways, and other service corridors, including bridges and viaducts, in Vancouver. Similarly, in the Hamilton decision, the associated MAA applied equally to highways, streets, road allowances, lanes, bridges, and viaducts in Hamilton. By contrast, Calgary’s proposed MCAA contains different rules for bridges, viaducts, and pedestrian infrastructure.

40. While the Commission recognizes that the word “highway” is not defined in the Act, as noted by Calgary, the Commission considers that the term “highway” is generally understood to encompass, at a minimum, thoroughfares of all types available for use by the public. In the Commission’s view, the term “highway” encompasses, for example, bridges and viaducts, which Calgary excluded from its definition of “Service Corridor” and included in its definition of “City Structure.”

41. The Commission also acknowledges Calgary’s argument that certain infrastructure, such as a bridge, viaduct, tunnel, or pedestrian overpass or underpass could involve different engineering requirements. The Commission considers, however, that these differences do not justify the exclusion of this type of infrastructure from key provisions of the MCAA; instead, these differences can be addressed as part of the permitting process.

42. Accordingly, the Commission considers that Calgary's definition of "Service Corridor" is too narrow in scope, and its definition of "City Structure" is correspondingly too broad in scope. The Commission considers that bridges, viaducts, tunnels, pedestrian paths, light rail transit corridors (excluding transit infrastructure or equipment located within the light rail transit corridor), and general public utility easements are generally understood to fall within the phrase "highway or other public place." The Commission notes, however, that the terms and conditions applicable to those types of locations may not necessarily be appropriate for other types of places, such as cemeteries and parklands. The definition of "Service Corridor" therefore would not automatically apply to other public places, except as agreed upon by the parties.

43. In light of the above, the Commission determines that the definitions of "City Structure" in paragraph 1.01(k) and "Service Corridor" in paragraph 1.01(nn) to be included in the MCAA between Calgary and the respondent carriers are to read as follows:

> 1.01(k) "City Structure" means infrastructure other than a Service Corridor that is owned by The City and for which The City in its sole discretion grants access to the Company for installation of the Company's equipment, and includes, but is not limited to, stormwater infrastructure.
>
> 1.01(nn) "Service Corridor" means a street; lane; highway; City-owned bridge, viaduct, or tunnel; pedestrian overpass or underpass; as well as light rail transit corridors (excluding transit infrastructure or equipment located Within the light rail transit corridor); general public utility easements; and other Public Places located within and owned by the City of Calgary as determined by both parties on a case-by-case basis.

## Allocation of costs associated with municipality-initiated facility relocations

### Positions of parties

44. Calgary proposed a ten-year sliding scale approach similar to the one that the Commission approved in the Vancouver decision. Under this approach, the percentage of the relocation costs to be paid by Calgary is determined by the number of years from when the assets were originally installed, diminishing to 0% after year 10.

45. The Carriers submitted that regardless of the age of the equipment at issue, any relocation is expensive and labour-intensive and should not be undertaken unless it is necessary. As well, any relocation clause should recognize the costs imposed on carriers to relocate their equipment and ensure that Calgary considers alternatives to relocations where possible. The Carriers added that conversely, they recognize that they should share in relocation costs when a relocation is the most efficient means to achieve a legitimate municipal purpose other than beautification. The Carriers submitted that they were proposing a cost-sharing model that (i) applies to all

relocation requests, (ii) provides predictability for planning purposes, and (iii) removes the administrative burden of determining the age of all plant affected in a relocation.

46. The Carriers proposed that the MCAA should allocate costs for relocations equally between Calgary and the carriers, subject to the conditions that (i) the costs associated with any relocation of facilities installed, despite Calgary having warned the carrier in advance that such installation would be subject to a relocation due to planned city work as per its Capital Works Plan, should be borne entirely by the carrier; and (ii) relocations for the purpose of beautification, aesthetics, and other similar purposes should be borne entirely by Calgary. In the Carriers' view, this would best promote efficient relocations and recognize the costs incurred by a carrier to relocate its equipment to accommodate a municipal request.

47. The Carriers submitted that with a sliding scale approach such as that proposed by Calgary, they would be entitled to receive compensation for relocating their equipment only for a defined period of time. They submitted that such an approach was built on the assumption that once the time period of the sliding scale has passed, compensating the carrier would result in unjust enrichment resulting from the carrier benefiting from the extended life of its assets due to the replacement of old equipment with new equipment during the relocation. The Carriers indicated that when the sliding scale reaches zero, municipalities no longer have any incentive to pursue alternative options that reduce costs or that avoid relocation. The Carriers submitted that they have experienced issues with municipalities that have requested highly expensive relocations to be undertaken because the municipalities expected that only older equipment was at issue.

48. The Carriers submitted that a 50/50 split would (i) minimize the administrative burden of sliding scales, (ii) provide project certainty for planning purposes, (iii) minimize disputes, and (iv) ensure that all parties are involved. The Carriers indicated that for major projects for which that split was unfair one way or another, due to, for example, other sources of funding, it is open to Calgary to apply to the Commission to establish the conditions to bury or alter the route of any transmission line.

49. In reply, Calgary submitted that relocation costs for City-initiated requirements to relocate should include all physical costs (labour, materials, and equipment) as well as depreciation, betterment, and salvage costs. Calgary indicated that over time, the Commission has clarified that a sliding scale approach to apportioning costs is the preferred approach. Calgary added that the only changes that should be made in this section of its proposed MCAA were that the sliding scale should reflect that set out in the MAA between Hamilton and Bell Canada pursuant to the Hamilton decision, including a time period of 16 years.

**Commission's analysis and determinations**

50. In making its determinations on this issue, the Commission has applied the principle of cost neutrality, i.e. that costs directly related to a carrier's infrastructure should be paid by the carrier, not municipal taxpayers. The Commission first addressed this principle in Decision 2001-23, in which the Commission addressed an MAA dispute involving Ledcor Industries Limited and the City of Vancouver (hereafter, the Ledcor decision).

51. In the Ledcor decision, the Commission indicated that the following factors would generally be relevant in allocating relocation costs between the carrier and the municipality:

    - who has requested the relocation (i.e. the municipality, the carrier, or a third party);

    - the reason for the requested relocation (e.g. safety, aesthetics, or to better serve customers); and

    - the date on which the request is made compared to the date of original construction (e.g. whether the request is made a considerable length of time after the original construction, or very shortly thereafter).

52. In Telecom Decision 2008-91, as well as in the Vancouver and Hamilton decisions, the Commission recognized that it may be appropriate to deviate from the principle of cost neutrality in certain circumstances, such as when the costs are incurred as a result of municipality-initiated relocation of facilities. The sliding scale approach applied in the Vancouver and Hamilton decisions introduced a deviation from the cost neutrality principle in the first few years, with the allocation of 100% of the relocation costs to the municipality.

53. The sliding scale approach reflects the view that the municipality should know, based on its planning processes, whether the infrastructure it is authorizing to be installed will have to be relocated in the near future. Under this approach, the level of the municipality's responsibility diminishes over time with a corresponding increase in that of the carriers, in recognition of the fact that with each additional year, it becomes more difficult for the municipality to foresee whether relocation will be required. The principle of cost neutrality is once again applied after a certain number of years when the municipality can no longer be reasonably responsible for any of the relocation costs.

54. The Commission considers that a sliding scale approach is appropriate in the case of the present MCAA, consistent with past Commission decisions and the parties' familiarity with this approach.

55. Regarding the length of time of the sliding scale, in the circumstances of this case, the Commission considers that a 16-year sliding scale, as proposed by Calgary, is appropriate. With the 16-year period, Calgary would assume responsibility for the costs for any relocations it initiates for a longer period of time than the 10-year sliding scale that Calgary had originally proposed.

56. Accordingly, the Commission determines that section 3 of Appendix 1 of the MCAA is to read as follows:

> In the case of a Municipality-initiated requirement to relocate a Company facility, the following schedule is to be used to allocate costs directly attributable to such relocation. These costs include, but are not limited to, depreciation, betterment, and salvage costs.

| Year(s) After Installation of Equipment | Percentage of Relocation Costs Paid by Municipality |
|---|---|
| 1 | 100% |
| 2 | 100% |
| 3 | 100% |
| 4 | 90% |
| 5 | 80% |
| 6 | 70% |
| 7 | 65% |
| 8 | 60% |
| 9 | 55% |
| 10 | 45% |
| 11 | 40% |
| 12 | 35% |
| 13 | 30% |
| 14 | 20% |
| 15 | 10% |
| 16 | 5% |
| 17 onwards | 0% |

57. Consistent with the Commission's determinations in Telecom Decision 2007-100, Telecom Regulatory Policy 2009-150, and the Hamilton decision, the Commission determines that section 9 of Appendix 1 of the MCAA is to read as follows:

> Where costs directly attributable to a Municipality-initiated requirement to relocate a Company facility are incurred as a direct result of work undertaken by or on behalf of the Municipality for beautification, aesthetics, or other similar purposes, such costs are to be entirely borne by the Municipality. These costs include, but are not limited to, depreciation, betterment, and salvage costs.

## Fees

### Positions of parties

58. In its initial application, Calgary proposed a loading factor[8] and fees that would apply to carriers associated with the following:

- alignment,
- per-metre approval,
- inspection,
- lost parking,
- pavement degradation, and
- site rehabilitation.

59. In their answer to Calgary's application, the Carriers requested that Calgary provide a list of all the fees it deems applicable under its proposed MCAA, as well as the applicable permit fees under Calgary's Municipal Guidelines, and that Calgary demonstrate that the proposed fees are causal to the carriers' work, including a cost study for each type of fee.

60. In reply, Calgary stated that its initial submission reflected the fees that Calgary City Council approved in January 2015, but that those fees were revised on 28 November 2016. Therefore, Calgary requested that the Commission consider revised fees, including new fees for the following items:

- application submission,
- utility alignment permit,
- per-metre approval,
- plan review (optional),

[8] A loading factor is a charge applied in the form of a percentage to known costs that allows for the recovery of indirect and variable common costs or costs that are so small that the process to determine them accurately would be disproportionately difficult or complex.

- plan data entry (optional),
- as-built drawing compliance,
- on-site inspection, and
- environmental compliance plan.

61. Calgary stated that certain fee items were removed, namely for pavement degradation, lost parking, site rehabilitation – excavation permits, and a loading factor of 20%.

62. Further, Calgary stated that some fees for some items, such as excavation and degradation, are not included in the MCAA, but are listed separately in Street Bylaw 20M88.

#### Commission's analysis and determinations

63. The Carriers did not have an opportunity to comment on Calgary's revised fee schedule, nor did Calgary file a cost study for each fee item as the Carriers requested.

64. Street Bylaw 20M88 authorizes City of Calgary staff to set and charge fees in connection with the granting of authorization to excavate or break up the surface of a street; however, the actual fees are not listed in that bylaw.

65. The Commission considers that it would not be appropriate to approve the revised fee schedule, since the schedule may not list all the applicable permits, and the types and amounts of all applicable fees. Further, there is insufficient information on the record of this proceeding for the Commission to assess whether the fees listed in the fee schedule are based on causal costs that Calgary incurs when carriers construct, maintain, and operate transmission lines in municipal ROW.

66. Accordingly, the Commission declines to rule on Calgary's revised proposed fee schedule at this time. Calgary and the respondent carriers should negotiate all the applicable permits and fees to be included in Appendix 2 to the MCAA and report to the Commission on the results of their negotiations.

67. In light of the above, the Commission **directs**

- Calgary and the respondent carriers to negotiate the terms and conditions of the schedule of permits and fees to be included in Appendix 2 to the MCAA;
- Calgary to provide the respondent carriers, within **20 days** of the date of this decision, a list and a description of all applicable permits and fees that the respondent carriers may be required to acquire and pay under the MCAA, and any available cost study associated with a proposed fee; and
- Calgary and the respondent carriers to file a joint report with the Commission, within **120 days** of the date of this decision, on the results of their negotiations with respect to the application of permits and fees under the MCAA.

68. Upon receiving the joint report, if Calgary and the respondent carriers have not reached a negotiated agreement, the Commission will rule on any outstanding issues.

### The request from the Carriers to strike information from the record

#### Positions of parties

69. The Carriers submitted that Calgary acted in a way that is contrary to the Commission's direction and the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* by including in reply new evidence and comments related to MCAA discussions held in 2014 between the respondent carriers and Calgary on a "without prejudice" basis. The Carriers therefore requested that the Commission strike this material from the record of the proceeding.

70. Calgary objected to the Carriers' request, submitting that as the party that filed the Part 1 application, it was entitled to respond to the Carriers as it saw fit. Calgary argued that the Carriers' request lacked supporting details and reference to specific sections of Calgary's reply, and that the Carriers were attempting to have a substantial portion of Calgary's reply struck from the record.

#### Commission's analysis and determinations

71. With respect to the MCAA discussions held in 2014, the Commission agrees that since these discussions were conducted on a "without prejudice" basis, it would not be appropriate, in the circumstances of this case, to take them into consideration in its determinations. Moreover, this material does not necessarily reflect current positions and is not relevant to the resolution of the current dispute.

72. With respect to the Carriers' claim that Calgary filed new evidence, the Carriers did not specify to which section of Calgary's reply they were referring. Further, although Calgary should have provided full support for its proposed terms and conditions, in some instances, certain information that Calgary provided assisted the Commission in understanding the fees it proposed to charge the Carriers.

73. In light of the above, the Commission has struck from the record the references that Calgary included in its reply to discussions held in 2014 on a "without prejudice" basis. Accordingly, the Commission has not considered such references in the course of its decision making on this matter.

## Conclusion

74. In light of all of the above, the Commission grants the respondent carriers permission to construct transmission lines in Calgary on the terms and conditions set out above and in the Appendix to this decision.

75. The approval set out above does not preclude Calgary and the respondent carriers from agreeing to different terms and conditions, and any such agreed-upon terms or conditions do not require Commission approval.

## Policy Direction

76. The Policy Direction[9] states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the Policy Direction.

77. In compliance with subparagraph 1(b)(i)[10] of the Policy Direction, the Commission's findings in this decision advance the policy objectives set out in paragraphs 7(a), (b), (c), (e), (f), and (h) of the Act.[11] Because the parties have reached an impasse and further negotiations cannot be expected to be productive, except as otherwise directed in this decision, market forces alone cannot be relied on to achieve the policy objectives. Consistent with subparagraph 1(a)(ii), in pronouncing upon only those conditions of access that were in dispute between the parties, the Commission relied on regulatory measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives. In light of the foregoing, the Commission considers that its determinations in this decision are consistent with the Policy Direction.

Secretary General

## Related documents

- *The City of Hamilton, the Federation of Canadian Municipalities, and the City of Calgary – Application to review and vary Telecom Decision 2017-388 regarding clause 13(b) of the Municipal Access Agreement between the City of Hamilton and Bell Canada*, Telecom Decision CRTC 2018-277, 8 August 2018
- *Application to review and vary the Commission's 30 May 2017 letter decision denying certain telecommunications carriers' request to suspend the City of Calgary's application regarding municipal access*, Telecom Decision CRTC 2017-461, 20 December 2017

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[9] *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

[10] Subparagraph 1(b)(i) states that the Commission, when relying on regulation, should use measures that, among other things, specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with the Policy Direction.

[11] The cited policy objectives of the Act are 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; (e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada; (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and (h) to respond to the economic and social requirements of users of telecommunications services.

- *Clause 13(b) of the Municipal Access Agreement between the City of Hamilton and Bell Canada regarding the vertical location of underground facilities*, Telecom Decision CRTC 2017-388, 27 October 2017
- *City of Hamilton – Terms and conditions of a Municipal Access Agreement with Bell Canada*, Telecom Decision CRTC 2016-51, 10 February 2016
- *MTS Allstream Inc. – Application regarding a Municipal Access Agreement with the City of Vancouver*, Telecom Regulatory Policy CRTC 2009-150, 19 March 2009
- *Application by the City of Baie-Comeau regarding the costs to relocate TELUS Communications Company's telecommunications facilities*, Telecom Decision CRTC 2008-91, 19 September 2008
- *Shaw Cablesystems Limited's request for access to highways and other public places within the District of Maple Ridge on terms and conditions in accordance with Decision 2001-23*, Telecom Decision CRTC 2007-100, 25 October 2007
- *Ledcor/Vancouver – Construction, operation and maintenance of transmission lines in Vancouver*, Decision CRTC 2001-23, 25 January 2001

# Appendix to Telecom Decision CRTC 2019-19

## Commission's determinations on the remaining disputed terms and conditions

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| Recitals D and E | *Keep wording as proposed by Calgary in its proposed MCAA.* | Calgary's proposed wording is consistent with the wording of Recitals A, B, and C. |
| 1.01(a) | "Abandoned Equipment" means Equipment of the Company identified in the annual Abandoned Infrastructure list submitted by the Company, which the Company has determined is no longer required for its operations; | Calgary agreed to the Carriers' wording as long as an annual Abandoned Infrastructure list is maintained. The wording specifies an annual Abandoned Infrastructure list. |
| 1.01(d) | *Keep wording as proposed by Calgary in its proposed MCAA.* | The Carriers agreed to Calgary's proposed wording subject to revisions to the definitions of "City Structure" and "Service Corridor" in subsections 1.01(k) and 1.01(nn), respectively. |
| 1.01(e) | Parties to negotiate the wording of this clause and the Alignment Guidelines themselves. | The Alignment Guidelines were provided in draft form in this proceeding. The proposed Alignment Guidelines contain many provisions that would contradict terms and conditions of the MCAA.<br><br>The Alignment Guidelines are not consistent with the MCAA and should set out the processes and the information required by Calgary to be consistent with the MCAA. |
| 1.01(g) | *Keep wording as proposed by Calgary in its proposed MCAA.* | Given that the definition in subsection 1.01(e) contains a reference to "Alignment Guidelines", which is to be negotiated, the Carriers agreed to Calgary's proposed wording |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| | | subject to any changes to subsection 1.01(e). |
| 1.01(h) | "As-Built Drawings" means the drawings provided to The City by the Company showing all plans and specifications of the Alignment in addition to any changes to such plans and specifications made on site during installation, and may include all of the following:<br>(i) the location of the Work, including plan view with offset distances from property lines, profiles, typical cross-sections and other industry standard location information;<br>(ii) construction methods and materials; and<br>(iii) physical aspects of the Equipment, including the configuration, number and size of pipes, ducts, chambers and manholes; | A requirement to provide elevation data at the time of as-built drawings could affect the Carriers' costs. However, from time to time, Calgary requires elevation data. In such cases, the data can be obtained as recommended under section 13.06 of the MCAA.<br><br>While the Carriers did not define "other industry standard location information" that would be used for location purposes, such details should be discussed between the parties. |
| 1.01(j) | "Capital Works Coordinating Committee" or "CWCC" means The City's committee that coordinates the Work of all utility companies who are or wish to be located in Service Corridors for the purpose of minimizing any disruption caused by such Work; | Calgary agreed to the deletion of "and manages" as proposed by the Carriers.<br><br>The additional wording proposed by the Carriers is not necessary, since the MCAA requires all parties to act reasonably. See section 1.10. |
| 1.01(m) | "Confidential Information" means information considered proprietary by either Party that is delivered or disclosed pursuant to the Agreement and identified as "confidential", and may include any and all material, data and information (regardless of form and whether or not patentable or protectable by copyright) that is not available to the | The disclosure of diagrams depicting the locations of telecommunications networks could harm the reliability and integrity of the networks. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| | public such as technical and business information, financial plans and records, marketing plans, business strategies, trade secrets, present and proposed products and information related to Third Party attachments. | |
| 1.01(r) | "Emergency" means an unforeseen situation where immediate action must be taken to:<br>(i). preserve the environment;<br>(ii). preserve public health;<br>(iii). preserve safety;<br>(iv). address an outage of utility services, including telecommunication utility services to multiple customers; or<br>(v). to reinstate or protect an Essential Service; | Temporary service drops provide the respondent carriers with the ability to address an individual customer or connectivity issue (see section 5).<br><br>Interruptions to multiple customers constitute an emergency.<br><br>Regarding the addition of the words "of either party" as proposed by the Carriers, see the definition of "Essential Service" in subsection 1.01(u). |
| 1.01(t) | "Equipment" means the transmission and distribution facilities owned by the Company, comprising fibre optic, coaxial or other nature or form of cables, pipes, conduits, poles, ducts, manholes, handholds and ancillary structures and other related telecommunications facilities (as that term is defined in the Act) within a Service Corridor or within a City Structure. | This definition limits the scope of the MCAA to equipment owned by the respondent carriers.<br><br>It would not be appropriate to include affiliates, since they were not party to the proceeding.<br><br>Different considerations may apply to wireless companies, which have not been contemplated in the MCAA.<br><br>Given that the placement of cellular towers is not the subject of MAAs between municipalities and Canadian carriers but is the responsibility of Innovation, Science and Economic Development Canada, it is not appropriate to include the wording |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| | | put forth by Calgary with respect to the inclusion of wireless equipment. |
| 1.01(u) | "Essential Service" includes any one or more of the following:<br>(i). the transmission of energy (including natural gas, steam or electricity);<br>(ii). the supply of water;<br>(iii). the removal or carrying of wastewater and stormwater;<br>(iv). the provision of traffic control;<br>(v). the re-instatement of City 9-1-1 emergency centre call-in service; and<br>(vi). basic telecommunication services as determined by the CRTC; | Access to basic telecommunications services as essential services is necessary for daily life and business as the digital economy expands in Canada. |
| 1.01(v) | *Keep wording as proposed by Calgary in its proposed MCAA.* | The respondent carriers are required to comply with Calgary's permitting processes to the extent that such processes are enforceable against the respondent carriers and do not impose terms that are inconsistent with those of the MCAA. |
| 1.01(w) | "Fees" means the fees and charges as set out in Appendix 2, as may be amended only by the agreement between the Parties hereto, or as set out in the Agreement; | This is consistent with the Commission's decision requiring (i) parties to negotiate all fees, and (ii) that all fees be listed in Appendix 2 of the MCAA. |
| 1.01(y) | Remove. | This clause is not necessary given that the terms and conditions of the MCAA remain in full force until a new agreement is reached, as set out in section 3.04. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| 1.01(z) | *Keep wording as proposed by Calgary in its proposed MCAA.* | The Carriers agreed subject to a clarification of fees. As the Commission has determined, fees are to be identified and negotiated between the parties. |
| 1.01(bb) | Remove. | If the moratorium is required to ensure that a roadway that has been recently paved or rebuilt is not immediately disturbed again, to ensure the proper settlement of the roadway, then this provision contradicts Calgary's proposed wording under section 6.06, which would allow a carrier to break up or to disturb the surface of a newly improved Service Corridor during the moratorium period at the sole discretion of the Director.<br><br>As the Commission determined for subsection 6.03(b), Calgary may require a carrier to restore a Service Corridor that has been repaved or overlaid two years prior to the date of issuance of a permit. Nonetheless, it is important for the respondent carriers to be active in the Capital Works Coordinating Committee. |
| 1.01(cc) | "Municipal Guidelines" means applicable municipal bylaws, rules, policies, standards, protocols or procedures, and guidelines that are applicable to the Company. | The respondent carriers are required to comply with the Municipal Guidelines to the extent that such Guidelines are enforceable against the respondent carriers and do not impose terms that are inconsistent with those of the MCAA. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| 1.01(dd) | Parties to negotiate subject to the requirement that deviations in the placement of the equipment be minimal and do not have a material impact on Calgary. | To enforce compliance, Calgary would need to have a specific measurement. However, this provision requires Calgary to be reasonably flexible if equipment is installed outside the location that Calgary approved but within a reasonable margin of error and without a material impact on Calgary. |
| 1.01(ff) | *Keep wording as proposed by Calgary in its proposed MCAA.* | There are concrete roads and sidewalks that should be restored based on an agreed-upon amount.<br><br>See subsection 1.01(ll). |
| 1.01(ii) | Remove. | This definition of "Public Place" is incorporated into the definition of "Service Corridor." |
| 1.01(jj) | *Keep wording as proposed by Calgary in its proposed MCAA.* | This wording reflects situations where Calgary may require the equipment to be relocated.<br><br>Calgary should not be responsible for acquiring private property for the relocation of the respondent carriers' equipment. |
| 1.01(kk) | "Relocation Notice" means a written notice given by The City to the Company identifying the specific location and reason for the Relocation and directing the Company to Relocate the Equipment designated in the notice to another reasonable location in the Service Corridors or City Structures, as the case may be, in accordance with Appendix 1 – Relocations; | A respondent carrier should be informed of the reason for the relocation in accordance with Appendix 1. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| 1.01(ll) | "Restore" or "Restoring" or "Restoration" means the permanent restoration of:<br>(i). a paved or concrete surface and/or sub-surface of a Service Corridor, which the Company has excavated, broken up or otherwise disturbed, to meet the standards as outlined in the Road Standards Specifications of The City for the surface or sub-surface (as applicable); or,<br>(ii). a City Structure or Service Corridor other than the surface and/or sub-surface of a service corridor, to its original condition, such condition being the same condition, or substantially the same condition as it was prior to any Work being performed by the Company; | Due to the modified definitions of "City Structure" and "Service Corridor" as determined by the Commission, new wording is required. Once a surface is excavated, broken up, or otherwise disturbed, it is impossible to bring the surface back to the original condition. |
| 1.01(uu) | *Keep wording as proposed by Calgary in its proposed MCAA.* | The Carriers agreed, subject to their comments on section 5.03. |
| 1.02 | *Keep wording as proposed by Calgary in its proposed MCAA*, except delete Appendices 3, 5, and 6. | These are the Appendices that remain in the MCAA and they will have to be re-numbered. |
| 1.10 | **Parties to act reasonably.** Each Party shall at all times act reasonably in the performance of its obligations and the exercise of its rights and discretion under this Agreement. | A general reasonableness clause that applies to both parties is appropriate to maintain the relationship between the parties. |
| 2.01 | *Keep wording as proposed by Calgary in its proposed MCAA.* | This provision clarifies that any equipment that Calgary does not approve but that is now within Calgary's city limits is included in the MCAA, and any city infrastructure that is not described in the definitions of |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| | | "Service Corridor" or "City Structure" is excluded from the MCAA. |
| 2.02 | *Keep wording as proposed by Calgary in its proposed MCAA*, except delete (e). | Parties agreed to subsections 2.02(a), (b), (c), and (f).<br><br>Subsection 2.02(d) is appropriate given the revised definition of "City Structure".<br><br>Subsection 2.02(e) has been deleted because consent can be granted pursuant only to the MCAA and not to the Municipal Guidelines. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| 3.04 and 3.05 | **Obligations and rights upon termination or expiry of Agreement.** Notwithstanding any other provision of this Agreement, if this Agreement is terminated (other than in accordance with Section 3.03) or expires without renewal, then, subject to the Company's rights to use the Service Corridors pursuant to the Telecom Act and, unless the Company advises The City in writing that it no longer requires the use of the Equipment:<br>(a) the terms and conditions of this Agreement shall remain in full force and effect until a new municipal access agreement (a "New Agreement") is executed by the Parties; and<br>(b) the Parties shall enter into meaningful and good faith negotiations to execute a New Agreement and, if, after six (6) months following the expiry of this Agreement, the Parties are unable to execute a New Agreement, then either Party may apply to the CRTC to establish the terms and conditions of the New Agreement. | This wording replaces Calgary's proposed wording for sections 3.04 and 3.05.<br><br>Calgary agreed to delete the definition of "Elective Process" in subsection 1.01(q).<br><br>When the MCAA has expired and the parties have not reached a new agreement, some mechanism must be in place to govern the relationship between the parties.<br><br>The Carriers' proposed wording with respect to obligations and rights upon termination or expiry of the MCAA is reasonable since<br>• it puts a limit of six months after the expired agreement during which the parties are to reach a new agreement. Failing this, either party may apply to the Commission to establish terms and conditions.<br>• the terms and conditions of the MCAA remain in full force, which addresses Calgary's concerns about liability and fees. |
| 4.01 | *Keep wording as proposed by Calgary in its proposed MCAA.* | Calgary has the authority to grant access to the respondent carriers, failing which they may apply to the Commission for access. |
| 4.02 | *Keep wording as proposed by Calgary in its proposed MCAA.* | The Carriers agreed, subject to the amendment to the definition of "City Structures". |
| 4.04 | Remove. | It is inappropriate for Calgary to attempt to restrict a respondent carrier's ability to perform any |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| | | work to incent compliance with the MCAA. Compliance can be incented in other ways, such as through section 7.02. |
| 4.05 | Notwithstanding Section 4.01 and any other provisions of this Agreement, to the extent that any of the Municipal Guidelines are inconsistent with the terms of this Agreement and/or Legislation, the Company shall not be required to comply with such Municipal Guidelines. | The respondent carriers are required to comply with the Municipal Guidelines to the extent that such Guidelines are enforceable against the respondent carriers and do not impose terms that are inconsistent with those of the MCAA and/or applicable legislation. |
| 4.06 | *Keep wording as proposed by Calgary in its proposed MCAA.* | The Carriers agreed, subject to their proposed amendments to the definitions of "Service Corridor" and "City Structure". |
| 4.08 | *Keep wording as proposed by Calgary in its proposed MCAA* with the following added wording:<br><br>"subject to the Act, as well as the CRTC's jurisdiction and decisions." | Calgary, as owner of a City Structure or a Service Corridor, must be able to determine its needs to place necessary infrastructure within a right of way to access its facilities (e.g. traffic signals, fire halls, and other City buildings).<br><br>However, Calgary's power to grant access cannot be unduly preferential. |
| 4.10 | **Coordination of Work.** When **reasonably** possible, the Company must coordinate the scheduling of Work in conjunction with The City and all other users of the Service Corridors and City Structures. Coordination of Work involves membership in and attendance at the CWCC, efforts to participate in Common Builds whenever reasonably possible, the submission of construction schedules as required to facilitate inspections by The City, and | Through this wording, the Commission is attempting to make effective use of limited space in the service corridors and city structures, recognizing that the respondent carriers may not be able to coordinate the scheduling of work or participate in common builds, where such activities might be possible but not reasonable. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| | participation in joint planning efforts with The City and other utilities. | Reference to "Moratorium" was removed since the definition of Moratorium Period has been deleted from subsection 1.01(bb). |
| 4.11 | **Stoppage of Work.** The City may order the stoppage of the Work for any bona fide municipal purpose or cause relating to public health and safety or any circumstances beyond its control. In such circumstances, The City shall provide the Company with a verbal order and reasons to stop the Work and the Company shall cease the Work immediately. Within two (2) business days of the verbal order, The City shall provide the Company with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, The City shall advise the Company immediately that it can commence the Work. | Calgary's proposed wording is too broad for a stop work order. A stop work order has planning and financial implications, and should be issued only for instances relating to public health and safety or any circumstances beyond Calgary's control. The last sentence imposes on Calgary an obligation to immediately advise a respondent carrier that once the reasons for the stoppage of work have been resolved, the respondent carrier may resume work. |
| 4.13 | *Keep wording as proposed by Calgary in its proposed MCAA*, except delete (d). | Given the definition of "Emergency", respondent carriers should not be required to obtain Calgary's prior written approval with respect to undertaking work within a Service Corridor or City Structure. |
| 4.14 | **Relocation of Equipment.** If The City requires the Company to Relocate its Equipment for bona fide municipal purposes, The City will send the Company a Relocation Notice and, subject to Section 4.15, the Company must perform the Relocation and any other required and associated Work within 180 calendar days thereafter or such other time as may be agreed to by the Parties having regard to the schedules of the Parties and the nature of the Relocation required. | An alternative time period to the 180 days for performing the relocation work should be agreed to by the parties. The wording related to Calgary's efforts is taken from the Model MAA and ensures that Calgary will endeavor to help the respondent carriers find a solution for the relocation of equipment. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| | **The City's efforts.** The City will make good faith efforts to provide alternative routes for the Equipment affected by the relocation to ensure uninterrupted service to the Company's customers. Once the Company has provided The City with all information The City requires to enable it to process a Permit application, The City shall provide, on a timely basis, all Permits required to allow the Company to relocate the Equipment. | |
| 4.17 | Parties to negotiate. | While Calgary should not be responsible for the relocation costs of third-party telecommunications equipment, Calgary should not be able to exclude responsibility or liability for damages to that equipment. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| 4.18 | *Keep wording as proposed by Calgary in its proposed MCAA.* | Pursuant to the incumbent local exchange carriers' Support Structure Service tariffs, a third party (licensee) is required to enter into a Support Structure Licence Agreement (SSL), which requires the third party to (i) comply, at the third party's sole expense, with all the laws, statutes, bylaws, codes, ordinances, rules, orders, and regulations in force from all governmental authorities; and (ii) obtain and maintain any and all permits, licences, official inspections, or any other approvals and consents required for the placement or operation of the third party's equipment structures.<br><br>This provision is required for respondent carriers that are not incumbent local exchange carriers since they do not have a Commission-approved Support Structure Service Tariff or an SSL that ensures that they have arrangements with any third party. |
| 5.01 | *Keep wording as proposed by Calgary in its proposed MCAA.* | If the third party is placing its own equipment in its own alignment to access the support structure of another carrier, the third party would seek its own utility alignment, enabling Calgary to engage directly with any third party.<br><br>If a respondent carrier has permitted a third party to attach equipment to its own, other than pursuant to a |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| | | Commission-approved tariff or agreement, the respondent carrier must ensure that it has arrangements with the third party that set out the requirements of the SSL.<br><br>Calgary is to update the link contained in the provision. |
| 5.03 | **Routine Work.** The Company may, without The City's consent, enter within the Service Corridors and carry out routine Work such as:<br>(a) utilizing existing conduits or similar structures of the Equipment;<br>(b) maintenance and field testing of Equipment; and<br>(c) installation and repair of aerial Service Drops or buried Service Drops that do not cross a road or break the hard surface of a service corridor, or testing subscriber connections;<br>(d) if such Work does not require the Company to excavate, break up or otherwise disturb the surface of any Service Corridor. | The Carriers' proposed wording is similar to section 3.2 of the Model MAA, except that the Carriers did not include the following wording: "provided that in no case shall the Company break up or otherwise disturb the physical surface of the ROW without the Municipality's prior written consent..."<br><br>This wording recognizes that the respondent carriers are entitled to maintain and operate their networks without consent, while giving Calgary knowledge of where there is excavation. With respect to service drops, rather than a permitting process, a notification process as the Commission determined for section 5.10 meets Calgary's need for knowledge of such equipment. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| 5.05 | *Keep wording as proposed by Calgary in its proposed MCAA.* | The respondent carriers are required to comply with the Municipal Guidelines and applicable legislation to the extent that such requirements are enforceable against the respondent carriers and do not impose terms that are inconsistent with those of the MCAA. |
| 5.07 | *Keep wording as proposed by Calgary in its proposed MCAA*, except for the last paragraph, which will read as follows:<br><br>"If The City rejects an application under (a), (b), (c), (d), or (e) above, The City will provide written reasons why the Work has been rejected and will make reasonable efforts to determine an alternate route for the proposed Alignment." | The Carriers' proposal to remove the words "subject to workloads" is reasonable since the respondent carriers require some form of assurance that their operations will not be disadvantaged by Calgary.<br><br>Parties are to negotiate Alignment Guidelines pursuant to subsection 1.01(e). |
| 5.09 | **Submission of As-Built Drawings.** The Company must submit As-Built Drawings to The City within 90 days following completion of installation of Equipment. The As-Built Drawings submitted by the Company must be in the same format as and reflect the design approved in the Application.<br><br>The confidentiality of the "As-Built" drawings must be protected through reasonable measures and must not be shared beyond those who require it to facilitate The City's conduct of planning and issuance of work permits, nor must they be used for any other purpose or combined with other information. | The Carriers' proposed wording on "the design as approved" provides clarity. Calgary would have all the information it required, which is incorporated into the Alignment permit at the time of approval.<br><br>Calgary agreed to the 90 days but only if the language remains regarding the non-provision of the as-built drawings and the equipment being deemed non-compliant. Without this provision, Calgary would be unable to obtain the as-built drawings or enforce the requirement for the respondent carriers to provide the as-built drawings. The 90 days allow the respondent carriers time to |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| | If The City has not received As-Built Drawings from the Company within 90 calendar days following completion of installation of the Equipment, The City will cancel the Alignment and any installed Equipment will be considered Non-Compliant Equipment.<br><br>The above requirements to submit As-Built Drawings will be strictly enforced by The City on and subsequent to 1 January 2018. | provide the as-built drawings through construction peaks and valleys, given their concerns about an alignment being cancelled and equipment being deemed non-compliant.<br><br>The Carriers' proposed wording on the protection of the "As-Built Drawings" is consistent with the treatment of the non-disclosure of diagrams [see subsection 1.01(m)].<br><br>The date of enforcement of the As-Built Drawings requirement should apply only with respect to this MCAA. |
| 5.10 | **Service Drop.** The Company may, without advance notice and without The City's prior written consent, install and repair Service Drops, provided that in no case shall the Company break up or otherwise disturb the physical surface of the service corridor. The Company will notify The City of the installation of Service Drops that do not require a permit through the online reporting system by sending an email to utilitylineassignments@calgary.ca, on a monthly basis, and indicating whether a service drop is permanent or temporary.<br><br>If possible, a Service Drop should be placed perpendicular to the backbone of the Company's existing Equipment.<br><br>A temporary Service Drop must be removed from the Service Corridor within which it has been placed within one year of the day on which it was placed, and the Company must notify The City through its online system of | Application of the alignment permitting process to service drops is extremely burdensome from a cost and administrative perspective, given that service drops are installed on a real-time basis by service technicians and the installation location may not be known until the technician is on site.<br><br>Calgary should have knowledge of the service drops that are installed.<br><br>Therefore, the wording of the definition of a "service drop" in subsection 1.1(j) of the Model MAA is appropriate, with the added requirement of notification through the online reporting system mentioned in this section, which could be used to report the installation of service drops that do not require a permit. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| | the removal of the temporary Service Drop within one year of its placement. If confirmation of removal of the temporary Service Drop is not received by The City by such date, the temporary Service Drop will be deemed Non-Compliant Equipment. | The Carriers generally agreed on the first paragraph regarding temporary service drops, except for one change.<br><br>The notification requirement addresses Calgary's concern that temporary service drops may remain for years.<br><br>The Commission has revised Calgary's proposed wording to be consistent with the first part of this section.<br><br>Non-compliant equipment is addressed in section 7.02. |
| 5.11 | Remove. | The proposed wording does not make clear what a temporary service drop is, i.e. it does not describe what "temporary" means.<br><br>Section 5.12 (which is combined with section 5.10) addresses the length of time for which a service drop can be considered temporary. |
| 5.12 | Remove. | This section has been combined with section 5.10. |
| 5.13 | **Inspections.** On-going inspections for conformance with the terms and conditions of a Permit will be conducted by The City at a cost shared equally between The City and the Company.<br><br>When non-conformance with the terms and conditions of a Permit is found, The City will notify the Company of the defects and charge the Company based on the expense incurred for the inspection. | Calgary needs to ensure compliance with the terms and conditions of a permit. An inspection clause should incent the respondent carriers to perform accurate work, but should also incent Calgary not to conduct inspections unnecessarily.<br><br>While the Carriers proposed wording from Bell Canada's Support Structure Service Tariff item 901.3(l), they did not propose the wording of that item |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
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| | The Company will correct such defects within a time period specified by The City, to be no less than ninety (90) days following written notification of the Company of the defects. The Company will notify The City within seven (7) calendar days of the defect being corrected. After the specified notification period expires, The City may re-inspect the Company's work and, if the defects have not been corrected to The City's reasonable satisfaction, The City may have such defects corrected or may remove the Company's Facilities and terminate any associated Permit for the affected Facilities, provided that the Company has given written notice that it prefers removal to correction. Charges based on expense incurred will apply. | regarding a time limit for the correction of any non-compliance. A time limit would be appropriate for the respondent carriers to correct defects.<br><br>The 90 days to correct is consistent with incumbent local exchange carriers' Support Structure Service tariffs.<br><br>Non-compliant equipment is addressed in section 7.02. |
| 5.14 | *Keep wording as proposed by Calgary in its proposed MCAA* with the following added wording:<br><br>"The City shall not be entitled to rely on deviations that are minimal and do not have a material impact on The City, financial or otherwise, to determine that equipment does not comply with the Alignment to engage items (i) or (ii) above." | Immaterial deviations should not be used to impose costs or penalties on a respondent carrier. |
| 5.15 | **Notice for Inspections.** If The City gives the Company notice that it will carry out an on-site Inspection as described above in Section 5.14, the Company must give The City ten (10) calendar days' notice prior to completion of the Work to allow for scheduling of the Inspection.<br><br>The City shall advise the Company at least 24 hours in advance of the date of | Calgary's proposed wording is administratively burdensome should Calgary decide to inspect after first indicating that it would not inspect.<br><br>Calgary agreed to the changes of notice to 24 hours and to be done by 3 p.m., but not to a 2-hour window for the time of the inspection. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| | inspection and provide a 4-hour window for the time of the inspection. If the inspector does not arrive within the 4-hour window, the Company may close the trench and complete the Work.<br><br>In any event, if the inspector does not arrive on or before 3:00 p.m. on the day that the Inspection is scheduled, the Company may close the trench and complete the Work. | |
| 6.01 | **Obligation to Repair and Restore.** Prior to the completion of Work, if the Company has excavated, broken up or otherwise disturbed a Service Corridor and/or a City Structure, the Company must either:<br>(a) complete the Restoration of the Service Corridor and/or City Structure in accordance with Municipal Guidelines as may be applicable; or<br>(b) if weather limitations or other external conditions beyond the control of the Company do not permit the Company to complete a Restoration to a Service Corridor, temporarily repair the Service Corridor by backfilling and applying a temporary asphalt patch to the area of the cut that:<br>i. returns the surface to a safe and useable condition;<br>ii. is level with the surface of the surrounding or adjacent Service Corridor; | Appendix 5 to the MCAA has been deleted; therefore, the Carriers' proposed wording for subsection 6.01(a) is appropriate.<br><br>The requirements in subsections 6.01(b)(i) and (ii) are sufficient to ensure that acceptable temporary work is completed. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| 6.02 | **Temporary Repair.** If the Company completes a temporary repair to the Service Corridor under Section 6.01, the Company must replace the temporary repair with a Restoration within a reasonable period of time as agreed to by the parties. | Neither party should have sole discretion. |
| 6.03 | **Permanent Road Restoration.**<br><br>If the Company has excavated, broken up or otherwise disturbed the surface of a Service Corridor,[12] the requirements for the Company completing the road restoration work will vary depending on if and when pavement has been recently repaved or overlaid, as follows:<br>(a) if pavement has been repaved or overlaid during the five-year period immediately prior to the date of issuance of the Permit, then The City may require that the Company grind and overlay the full lane width of pavement in the ROW;<br>(b) if pavement has been repaved or overlaid during the two-year period immediately prior to the date of issuance, then The City may require that the Company grind and overlay the full width of the pavement in the Service Corridor;<br>(c) in either subsections (a) or (b) above, if Third Parties, including The City, as a provider of services to the public, has excavated, broken up or otherwise disturbed the pavement to be ground and | The Carriers have proposed wording from section 5.2 of the Model MAA.<br><br>The definition of a Moratorium Period has been deleted in subsection 1.01(bb).<br><br>The restoration requirements taken from the Model MAA provide sufficient incentive for the respondent carriers to avoid working on newly paved roads, unless necessary. |

[12] The term "ROWs" from the Model MAA's definition is being replaced with the term "Service Corridor" to be consistent with the terminology used in the rest of Calgary's proposed MCAA.

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
|---|---|---|
| | overlaid, the costs of that grind and overlay will be apportioned between the Company and the Third Parties on the basis of the area of their respective cuts;<br>(d) The City will not require grind and overlay under subsections (a) or (b) above for road restoration work involving:<br>i. service connections to buildings where no other reasonable means of providing service exists and the Company had no requirement to provide service before the new pavement was placed;<br>ii. Emergencies; and<br>iii. other situations deemed by The City Engineer to be in the public interest; and<br>(e) if The City has required the Company to grind and overlay under either subsections (a) or (b) above, the Company will have no obligation to pay Pavement Degradation fees under Appendix 2[13] in relation to that pavement. | |
| 6.05 | **Repairs or Restoration Completed by The City.** The City may carry out the work to perform and complete a temporary repair or a Restoration, or both, and the Company must pay The City's reasonable and verifiable full costs of completing such repair or Restoration if: | It is reasonable that the parties may come to an agreement on a time period other than 90 days.<br><br>This wording does not change liability. If there is no other agreed-upon time period, the respondent carriers have to correct the breach within 90 days. |

[13] The term "Appendix A" from section 5.2 of the Model MAA is being replaced with the term "Appendix 2" to be consistent with the terminology used in the rest of Calgary's proposed MCAA.

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
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| | (a) the Company fails to complete a temporary repair or Restoration to the satisfaction of The City within 90 calendar days of being notified in writing by The City, or such other period as may be agreed to by the Parties, that either:<br>i. the Company has not completed the temporary repair or Restoration within the time period allowed by The City, acting reasonably;<br>ii. the Company has not completed the temporary repair or Restoration to the satisfaction of The City, acting reasonably; or<br>(b) the Company and The City agree that The City will perform the temporary repair or Restoration, as applicable. | |
| 6.06 | Remove. | The definition of Moratorium Period in subsection 1.01(bb) has been deleted.<br><br>This section has been combined with section 6.03. |
| 7.01 | **List of Company's Equipment.** On or before the last day of February of each and every year, the Company must provide (consistent with the formatting requirements set out in the Municipal Guidelines) to The City, a complete list of all Abandoned Equipment identified by the Company in the previous calendar year, including the location of the Abandoned Equipment. | The requirement to provide a list of all service drops is not necessary because section 5.10 requires the respondent carriers to notify Calgary of installations.<br><br>The wording changes proposed by the Carriers clarify that abandoned equipment is equipment abandoned in the previous year.<br><br>The date on which the equipment |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
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| | | was abandoned in the previous year is not necessary.<br><br>Calgary agreed to delete the last paragraph of its proposed wording. |
| 7.02 | *Keep wording as proposed by Calgary in its proposed MCAA.* | Calgary's wording is clear and sets out the steps to be taken when non-compliant equipment is discovered. If Calgary finds non-compliant equipment that it requires to be moved, Calgary will notify the respondent carrier. The respondent carrier may keep its non-compliant equipment in the alignment until the City needs it moved. The respondent carrier will then have to move the equipment at its expense.<br><br>The Carriers' proposed wording addresses only active construction.<br><br>The Carriers, in their proposed wording, agreed that Calgary should not have to pay for the relocation of non-compliant equipment. |
| 7.03 | *Keep wording as proposed by Calgary in its proposed MCAA*, except for the content on the regime for providing an Abandoned Equipment Removal Certificate, which is to be deleted. | The parties agreed on the wording of the first two paragraphs and the last paragraph.<br><br>The regime for providing an Abandoned Equipment Removal Certificate is undefined.<br><br>Contrary to the Carriers' position, underground abandoned equipment would have to be removed only if Calgary has approved plans to re-open the site |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
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| | | where the abandoned equipment is located; therefore, there would not be unnecessary excavation.<br><br>As set out in subsection 7.01(b), the respondent carriers are to provide a list of abandoned equipment on or before the last day of February of each year. Given that this list is provided early in the new year while it is still winter, a notification of 90 days following the February date seems reasonable, since the time for removal would then be in March, April, or May of the same year. |
| 7.04 | *Keep wording as proposed by Calgary in its proposed MCAA.* | The wording provides for an efficient use of Service Corridors and City Structures. The reasons for the changes in the definitions of "Service Corridors" and "City Structures" are set out above. |
| 7.05 | Remove. | In view of section 43 of the Act, if there is capacity to build, as reasonably determined by Calgary through the permitting process, there should not be a pre-determined limit on access to Service Corridors. |
| 8.01 | **Fees.** The Company must pay to The City all Fees set to recover causal costs, as set out in Appendix 2. | This a combination of the wording proposed by both parties. The Ledcor decision set out the causal cost principle.<br><br>All fees are to be identified and negotiated. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
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| 8.02 | *Keep wording as proposed by Calgary in its proposed MCAA.* | Parties agreed to the wording of this provision except for the number of days. With the new electronic application system that Calgary launched on 3 April 2017, the respondent carriers will be able to identify within 30 days which permits are being invoiced. |
| 8.03 | Remove. | This provision is redundant, given the Commission's determination that Calgary is to list all the fees in the MCAA. Any separate agreement between Calgary and a respondent carrier would set out the fees payable. |
| 9.01 | Parties to negotiate. | While each respondent carrier need not negotiate this provision separately, a requirement for insurance should be set out in the MCAA. |
| 10.01-10.05 | Parties to negotiate, with reciprocal provisions for the respondent carriers. | There must be reciprocal limitations of liability. |
| 12.01 | *Keep wording as proposed by Calgary in its proposed MCAA.* | The Carriers agreed to Calgary's proposed wording, subject to the inclusion of "as-built drawings" in the definition of Confidential Information in subsection 1.01(m) and their proposed changes to section 5.09 relating to the protection of as-built drawings, which have been incorporated. |
| 13.02 | Parties to negotiate as part of the liability provisions. | There is too much room for interpretation with the use of the word "nuisance". |
| 13.03 | **Notification of Damage.** If any of The City's property is damaged by the Company or its Employees, beyond the damage to the City's property that is inherent to the Work and is contemplated in The City's approval of | Calgary agreed to the Carriers' proposed language but only with respect to compliant equipment. If the respondent carriers place their equipment in the wrong place, |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
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| | Work in accordance with the Agreement, the Company will notify The City immediately of the damage and The City will have the right to elect and will notify the Company in writing within 48 hours whether or not The City will repair the damage. If The City fails or neglects to give a notice of election within the time specified, The City will be deemed to have elected to have The City do the repairs. If The City elects to have the Company do the repairs, the Company will carry out the repairs at its sole cost, without improvements and only to the condition prior to the damage, in a manner approved by The City within such time as is specified by The City. If The City elects or is deemed to have elected to have The City do the repairs or the Company fails to complete the repairs within the time specified by The City, The City may carry out the repairs at the Company's sole cost, provided:<br>(a) the costs will be in accordance with The City's normal practices and procedures; and<br>(b) the invoice submitted by The City to the Company to recover such reasonable and verifiable costs will specify in reasonable detail the amounts allocated.<br>If any of the Company's Equipment, other than non-compliant equipment, or other property is damaged by The City or its Employees while carrying out The City's work Within a Service Corridor or City Structure, The City will notify the Company immediately of the damage by contacting one of the Company's 24-hour emergency contact | Calgary should not be liable for repair costs. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
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| | personnel as provided in the list described in Section 13.08.<br><br>The Company will carry out the repairs of the damage caused by The City at The City's sole cost, provided:<br><br>(a) the costs will be in accordance with the Company's normal practices and procedures; and<br><br>(b) the invoice submitted by The Company to The City to recover such reasonable and verifiable costs will specify in reasonable detail the amounts allocated. | |
| 13.06 | **Locates.** The Company agrees that, throughout the Term it shall, at its own cost, record and maintain adequate records of the locations of its Equipment. Each Party shall, at its own cost and at the request of the other Party (or its contractors or authorized agents), physically locate its respective facilities by marking the ROW using paint, staking or other suitable identification method ("Locates"), under the following circumstances:<br><br>(a) in the event of an Emergency, within two hours of receiving the request or as soon as practicably possible, following which the requesting Party will ensure that it has a representative on site (or alternatively, provide a contact number for its representative) to ensure that the area for the Locates is properly identified; and | The wording covers situations where Calgary and third parties require equipment location information.<br><br>With respect to situations where Calgary requires elevation data, the costs to acquire this information should be shared 50/50 to be consistent with Telecom Decisions 2017-388 and 2018-277. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
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| | (b) in all other circumstances, within a time reasonably agreed upon by the Parties or pursuant to the procedures of Alberta OneCall or the locate service of the Company.<br><br>**Provision of Mark-ups.** The Parties agree to respond within 15 Business Days to any request from the other Party for a mark-up of municipal infrastructure or Equipment design drawings showing the location of any portion of the municipal infrastructure or Equipment, as the case may be, located within the portion of the service corridor[14] shown on the plans (the "Mark-ups"), and shall provide such accurate and detailed information as may be reasonably required by the requesting Party.<br><br>In situations where the mark-ups for underground facilities provided by the Company to The City and which The City requires for pre-design/planning purposes, do not contain sufficient design information and survey detail, the Company is to undertake field investigations to verify the location of these underground facilities. The vertical coordinates are to be provided in the format chosen by The City (such as depth of cover or metres above sea level) and within a level of accuracy agreed upon by The City and the Company. The City and the Company are to each pay 50% of the costs associated with the field investigations. | |

[14] The term "ROWs" from the Model MAA's definition is being replaced with the term "Service Corridor" to be consistent with the terminology used in the rest of Calgary's proposed MCAA.

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
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| 13.07 | *Keep wording as proposed by Calgary in its proposed MCAA.* | Consistent with the definition of Municipal Guidelines, the respondent carriers are required to comply with such Guidelines to the extent that they are enforceable against the respondent carriers and do not impose terms that are inconsistent with those of the MCAA. |
| 16.01 and 16.02 | *Keep wording as proposed by Calgary in its proposed MCAA*, with the addition of section 16.03, Continued Performance, as follows:<br><br>Except where clearly prevented by the nature of the Dispute, The City and the Company agree to continue performing their respective obligations under this Agreement while a Dispute is subject to the terms of section 16. | The Carriers' proposed wording with respect to Continued Performance is appropriate to ensure that all other obligations under the MCAA continue, notwithstanding any dispute.<br><br>With respect to Calgary's concern that it cannot let other similar work continue until a dispute regarding poor planning, safety risks, or failure to provide as-built drawings has been resolved, Calgary can address planning issues under section 4.10, safety issues under section 4.11, and as-built drawings under section 5.09 of the MCAA. |
| Appendix 1, section 1 | Remove. | Allocation costs for relocation are either addressed elsewhere in the MCAA or are subject to negotiations. Deletion of this section will avoid any confusion. |
| Appendix 1, section 2 | *Keep wording as proposed by Calgary in its proposed MCAA.* | This a reasonable exception to the allocation of realignment costs, since carriers would be aware of the planned relocation within the three-year time period. |
| Appendix 1, section 4 | *Keep wording as proposed by Calgary in its proposed MCAA.* | Calgary should have the discretion to relocate equipment and recover from the respondent carrier the costs for relocating the |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
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| | | equipment if the respondent carrier has not responded to Calgary's relocation request appropriately according to the provisions of the MCAA. |
| Appendix 1 – 4.1, new section proposed by the Carriers | Parties to negotiate. | The Commission does not have enough information from parties on this issue. |
| Appendix 1, section 5 | **City not responsible for Third Party Relocation Costs.** Unless otherwise agreed to between The City and the Third Party, in no event shall The City be responsible under this Agreement for:<br>(a) the costs of the Company to relocate Equipment at the request of a Third Party; or<br>(b) the costs of relocating the facilities of a Third Party installed on or in the Equipment.<br>**Company not responsible for Third Party Relocation Costs.** Unless otherwise agreed to between the Company and the Third Party, in no event shall the Company be responsible under this Agreement for:<br>(a) the costs of the Company to relocate Equipment at the request of a Third Party under this Agreement; or<br>(b) the costs of relocating the facilities of a Third Party, The City or an Affiliate of The City installed on or in the Equipment. | The MCAA should not attempt to set out respondent carriers' obligations regarding third parties. The Carriers' wording is similar to sections 4 and 5 of Schedule C of the Model MAA.<br><br>The Carriers added the word "Affiliate" under (a) regarding the cases where a respondent carrier would not be not responsible for third-party relocation costs. However, it is not clear whether "affiliate" refers to the carrier's affiliate or the City's affiliate; therefore, the word has been removed. |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
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| Appendix 1, section 7 | **Equipment affected by Municipality's Capital Works Plan.** Prior to the issuance of a Permit, The City will advise the Company in writing whether the Company's proposed location for new Equipment will be affected by The City's 3-year capital works plan (the "Capital Works Plan"). If The City advises that the new Equipment will be so affected and the Company, despite being advised of such, requests The City to issue the Permit, then The City may issue a conditional Permit stating that, if it requires, pursuant to any project identified in the Capital Works Plan as of the date of approval, the Company to relocate the Equipment within 3 years of the date of the Permit, the Company will be required to relocate the Equipment at its own cost, notwithstanding Section 1. | The Carriers' proposed wording sets out the regime for identifying potential conflicts with Calgary's three-year capital works plan and how relocation costs are addressed in such circumstances. The three-year time frame is consistent with the time frame Calgary proposed in section 2 of Appendix 1.<br><br>Calgary's wording assumes that other resources identifying Calgary's work are up to date. |
| Appendix 1, section 8 | Remove. | Consistent with Appendix 1, section 5. |
| Appendix 3 | Remove. | Section 3.04 sets out the process that would apply when the MCAA expires. |
| Appendix 4 | *Keep wording as proposed by Calgary in its proposed MCAA*, except for the fees. | The respondent carriers are required to address sustainability issues. |
| Appendix 5 | Remove. | Not required. Pursuant to the MCAA, the respondent carriers are required to comply with the Municipal Guidelines, as defined, to the extent that such Guidelines are enforceable against the respondent carriers and do not impose terms that are inconsistent with those of the MCAA. |
| Appendix 6 | Remove. | Applications for permits approved by Calgary for work in an |

| Section no. (Calgary's proposed MCAA) | Section wording as determined by the Commission | Commission rationale |
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| | | alignment should contain all the necessary construction standards/requirements/conditions related to the work that is being approved. |