

## **Telecom Notice of Consultation CRTC 2020-366**

### **Call for comments regarding potential regulatory measures to make access to poles owned by Canadian carriers more efficient**

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### **Final Reply Comments of the First Mile Connectivity Consortium**

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1. The First Mile Connectivity Consortium (FMCC) is an incorporated independent not-for-profit national association. Our members are First Nations Internet service providers known as “community/regional intermediary organizations.” Our associate members are university and private sector researchers and others interested in Indigenous and community communications and telecommunication services for the public good. Our work focuses on innovative solutions to digital infrastructure and services with and in rural and remote regions and communities across Canada. More details about our members and activities is available: <http://firstmile.ca>
2. We have made several submissions in this protracted proceeding, pointing out the problems that Indigenous providers have in accessing poles and conduit to serve rural and remote communities. We have also proposed solutions to ensure fair, timely, and affordable access to existing poles.
3. We have pointed out that Indigenous providers may also need access to poles owned by electric utilities (“hydro”). We understand that these utilities are under provincial jurisdiction, but we urge the Commission to engage with the provincial regulators with the goal of establishing fair and timely access to utility poles, with common standards across the country.
4. We have also noted that not only is the dispute process at the Commission unsatisfactory, but Indigenous providers do not know it exists, or how to file a complaint or notify the Commission of a dispute. We request that the Commission set up a briefing for Indigenous providers to address how they may file disputes and other questions they may have concerning Commission procedures.
5. Below, we briefly mention some of the recommendations by others that we endorse. We note that they include large competitive providers as well as small providers and consumer and technology advocates. We also note examples of recommendations by major incumbents with which we disagree.

### **General Recommendations**

6. We agree with Beanfield that there are “areas in which the Commission can adopt a symmetrical, principles-based approach that aligns fair costs with incentives; shines a spotlight on areas where incentives and opportunities to self-preference coincide; promotes innovation that does not depend on permissions where more efficient approaches are available; and provides for fast, effective, Commission-led dispute resolution” (Beanfield, Final Comments, 6 June 2022, para 5).
7. We agree with Shaw that the Commission should focus on reforming the current support structure regime by:
  - a. “implementing a One-Touch Make-Ready Work process;
  - b. preventing the abuse of spare capacity determination processes;

- c. eliminating advantages held by carriers that jointly own or have been designated the manager of the telecommunications space of utility poles;
  - d. implementing a time-bound Commission-backed dispute resolution mechanism; and
  - e. [reviewing] construction standards to align with the foregoing updates” (Shaw Final Comments, 6 June 2022, para 5).
8. We strongly disagree with TELUS that: “The record of this proceeding demonstrates that the current regulatory framework, with changes that have been undertaken in the last number of years, is working well” (TELUS, Final Comments, 6 June 2022, para 2).

### **Dispute Resolution**

9. We agree with TekSavvy, Rogers, Videotron, Shaw, Eastlink and others that improved dispute resolution processes are needed to improve the timeliness and efficiency of the support structure service regime for telecommunications poles.
10. However, we note that FMCC members have found it very difficult to determine how to initiate dispute resolution processes.

### **Make-Ready Requirements**

11. We agree with many intervenors that One Touch Make Ready (OTMR) should be adopted to expedite access to existing poles. We agree with Shaw that ILECs can use construction standards and documentation to support structure tariffs that bar or delay licensees from deploying equipment. We therefore agree with Shaw that these documents should be reviewed by the Commission to ensure they are fair and conform to Commission policies and objectives (Shaw, Final Comments, 6 June 2022, para 40).
12. We further agree with CCSA’s recommendation “... that the Commission take steps, first, to clearly define which safety and constructions must apply in all parts of the country and, second, to ensure that the applicable standards are transparent to all” (CCSA, January 19, 2021, para 28).
13. As noted in our earlier submissions concerning OTMR, we disagree with Bell Canada’s proposals that they should be the sole arbiter of contractor suitability and “reasonable” deadlines.
14. As an example of their approach in Quebec, Bell Canada states: “Although the number of poles in permit requests we reviewed in 2021 increased by over 50% compared to the previous year, the average time permit processing times has improved substantially across virtually all categories. Moreover, in 2021 only 2.5% of poles required make-ready work and, with our new processes, only 0.6% of poles had issues resulting in an applicant's

inability to deploy facilities prior to final completion of necessary make-ready work” (Bell Canada, Final Submission, 6 June 2022, para 18).

15. We caution the Commission that to provide a meaningful analysis, Bell Canada must disaggregate the data to show statistics for remote regions in its territory. As we have noted, requirements for make ready work can result in costly delays in rural and remote regions where Bell Canada is not even aware of the condition of its poles.

### **Spare Capacity**

16. We agree with Eastlink and others that: “tariffs should also be updated to include a common methodology that will be used by all ILECs to determine whether spare capacity exists on a pole. This will help minimize the discretion ILECs have in rejecting a permit due to claims of no spare capacity.... Allowing ILECs to reserve capacity for future use gives them priority access over the support structure, providing them a competitive advantage and the ability to slow down the expansion of their direct competitors” (Eastlink, Final Comments, 6 June 2022, para 5).
17. We agree with several intervenors that incumbents should be required to use spare capacity within specific timeframes, after which it could be made available to others. We reject claims by TELUS that: “Given that the ability to reserve capacity is a key ownership right, this would be a fundamental change to the regulatory framework that would expropriate the rights of current owners and equate ownership rights with attachment rights. ... Indeed, changes of this magnitude will cause significant upheaval in the industry, delay the delivery of broadband services to underserved areas and make retail broadband services more expensive” (TELUS, Final Comments, 6 June 2022, para 7). To the contrary, providing access to excess capacity within a reasonable timeframe could accelerate delivery of broadband at affordable prices to underserved areas.

### **Conduits**

18. The problems that affect access to telecommunications poles also exist for access to other support structures such as conduits, including ducts. If the Commission does not address this issue in its decision, we support TekSavvy’s request that the Commission initiate a follow-up or show-cause proceeding to consider whether its determinations in this proceeding should be applied more broadly to other categories of support structures (TekSavvy, Final Submission, 6 June 2022, para E40).

### **Access to Utility Poles**

19. While we agree with Electricity Canada’s advice to the Commission “to use its existing regulatory power to prevent such competitive exclusions and reverse monopolies within the telecommunications sector” (Electricity Canada, Final Comments, 6 June 2022, para 4), we note that only the provinces have jurisdiction over the electricity sector. We urge the Commission to work with the provinces to determine how regulations can be adopted and

enforced to minimize delays and requirements for broadband providers' access to electric utility poles and conduit.

20. We also request that the Commission require telecommunications providers to disclose any agreements they have with utilities for concessionary pricing for access to their infrastructure.

### **Conclusion**

21. We thank the Commission for the opportunity to participate in this lengthy proceeding and look forward to its findings.

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