

Telecom Notice of Consultation CRTC 2020-366

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

Reply Comments of the First Mile Connectivity Consortium

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Executive Summary

- E1. 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 work focuses on innovative solutions to digital infrastructure and services with and in rural and remote regions and communities across Canada.
- E2. The FMCC’s intervention in these proceedings addressed some key barriers faced by FMCC members regarding access to support structures, and recommendations for regulatory measures to address these issues.
- E3. We note that the tariff approved by the CRTC has not been modified since 2010 and that since then there have been many changes in technologies, user demand, and organizational changes among incumbents who own support structures.
- E4. This submission responds to points raised by other parties in this proceeding. We highlight points of agreement and disagreement. We note that there is little reference to Indigenous providers or regions. We assert that Indigenous representatives must be included on any committees or initiatives to address problems of access to infrastructure, and that need for Indigenous consultation or accommodation must not be considered a rationale for delays.

A. Problems with the current support structure regulatory framework

- E5. We agree with problems raised by other parties with respect to the time to gain access to support structures and the costs of getting access – both of which can affect the ability of organizations to meet funders’ schedule and budget requirements. We also noted comments about how this situation results in reduced efficiency and certainty in managing projects, and unforeseen costs.
- E6. We noted parties’ comments about issues of compliance and enforcement, and that “gatekeepers” of support structures lack incentives to expedite permits and make-ready work. This is particularly the case when carriers are accommodating potential competitors, or when utilities have legitimate concerns regarding safety and internal approval processes.
- E7. There is an imbalance of bargaining power between the controllers of support structures and the access seekers. We agreed with several parties that raised concerns with the current tariff provisions and processes.
- E8. We generally agreed with proposals to implement a standard-form, Commission-approved, mandatory Support Structure Licensing Agreement. We also agreed with suggestions that support structure owners instate a ‘ticketing’ system to track and manage the status of permits.
- E9. We agree with parties that pointed to similar issues affecting related support structures such as ducts and conduit, and the suggestion that any improvements made as the result of this proceeding apply to all such facilities.

B. Make-ready work

- E10. Make-ready work is another critical bottleneck faced by competitive networks attempting to access ILEC support structures. We noted points made by other parties regarding the delays and unnecessary costs that can result from make-ready work. We agree with proposals to streamline the timelines, definitions, and use of contractors for make-ready work.
- E11. We agree with suggestions to consider standards and timelines adopted in other jurisdictions, such as the U.S. and the European Union. This includes the One Touch Make Ready (OTMR) principle approved by the FCC in 2018.
- E12. We agree that current incumbent practices offload much of the cost of pole maintenance and replacement on third parties, and that in rural and remote regions, incumbent owners often have little incentive to remediate poles themselves. We agree with proposals that ILECs should be required to incur costs that should be part of preventative maintenance, rather than push those costs onto competitors.
- E13. We agreed with parties that suggested the Commission enact rules regarding classes of make-ready work and the equitable sharing of pole repair and replacement costs.

C. Spare capacity

- E14. We note several parties that experienced delays or cancellations due to claims of future capacity requirements on the part of ILEC owners of support structures. This situation may be due to the lack of incentives, regulations on procedures, time limits, or repercussions.
- E15. Regulation on these issues is necessary, as are specific time periods for the reservation of spare capacity and a defined set of criteria to determine whether there is spare capacity on a pole. We note proposals for a test that owners must meet to assert a lack of spare capacity, and to document supporting information regarding such applications in a database.

D. Joint-use agreements

- E16. We note the problems raised by several parties regarding joint use agreements between ILECs and electric utilities, including delays, high costs, lack of transparency, and disparities between federal telecommunications and provincial utilities regulations.
- E17. We agreed with proposals that action should be taken to eliminate the advantage that some carriers hold in this regard. These actions could include utilizing standardized agreements and separating pole access functions from communications space management functions. The principle behind these reforms should reflect fair opportunities for pole access by all carriers.
- E18. We agree that public funding for broadband projects should not be used to pay for utility pole replacements or to subsidize telecommunications companies or electrical utilities.

- E19. We note that the major ILECs have preferential agreements with electric utilities for pricing and/or make-ready activities. We believe that the Commission should investigate these arrangements that can increase unwarranted expenses or delays for third parties.
- E20. We noted parties' comments regarding the Commission's jurisdiction, and agree with the recommendation that an inter-agency task force be established involving the Commission and other groups to study this complex issue and make recommendations.
- E21. We acknowledge the complexities regarding standards, permit requirements and regulations required by utility providers and commend the those that for taking steps to ensure transparency and increase efficiencies.

E. Dispute resolution

- E22. We agree with several parties that there is a need for a timely and effective dispute mechanism under the Commission's supervision. The Commission should create such a mechanism tailored to support structure access issues, and focused on an accessible, impartial and timely process (e.g. it should include an expedited dispute resolution mechanism).
- E23. All steps in the dispute resolution process should have short, well-defined timelines. One model that might be explored is the FCC's "accelerated docket system".
- E24. Fairness and transparency on the part of all owners of support structures is required. Mechanisms should be put in place for multi-stakeholder coordination and dispute resolution.
- E25. The Commission should build on existing initiatives, and should complement rather than displace local solutions.
- E26. Any such committees or initiatives must include representatives from TSPs serving rural, remote, Northern and Indigenous regions.

G. Other issues:

Standards

- E27. The consistency and transparency of safety and engineering standards should be improved. Transparency is necessary in applying standards.

General comments

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. As noted in our Intervention, FMCC member organizations, and other small service providers, continue to face significant barriers to the deployment, operation and sustainability of telecommunications facilities and services. Our intervention is based on the experiences of FMCC members, which consist of small, non-profit organizations that have been set up to provide telecommunications services to Indigenous communities in rural, remote and Northern regions. These contexts are very different from those of large-scale commercial telecommunications service providers -- as noted by the CCSA, there is a very significant imbalance of bargaining power between large Canadian pole owners and independent TSPs (para 80).
3. We are pleased that the Commission has initiated this new proceeding to review and renew ILEC support structure tariffs. This submission responds to points raised by other parties in this proceeding regarding potential regulatory measures to make access to poles owned by Canadian carriers more efficient.
4. Our original intervention pointed out that the tariff approved by the CRTC has not been modified since 2010 (CRTC 2010-900), and that since then, there have been many changes in technologies and user demand, as well as changes in organization and/or ownership of some of the incumbents that our members rely on to access support structures.
5. Cogeco identifies some of these trends: “the availability of public funds for competitors through various broadband-capable network expansion funding programs, combined with the accelerated deployment of deep fibre for wireline and wireless networks, the extensive investments in 5G equipment and applications, and consumers’ growing need for bandwidth for work-from-home and school-from-home purposes” have resulted in increased demand for broadband (para 4). The use of fibre to meet these needs has grown dramatically by large ILECs and regional and small ISPs, for both delivery of broadband to communities and for FTTH to households and businesses.
6. We also agree with Cogeco that accessing poles, conduits, towers and sites in a fair, efficient and timely manner is essential to increase the supply of universal service objective-level services in all regions of Canada, and to reduce the costs associated with extending broadband-capable networks, primarily in underserved areas.

A. Problems with the current support structure regulatory framework

7. Many parties in this proceeding have identified problems responding to this increased demand: **time** to gain access to poles and other infrastructure and **costs** of getting access. Delay in gaining access can itself increase costs, and has caused some providers to be unable to meet funders' schedule and budget requirements, as we noted in our submission. In addition, uncertainty about timing and costs result in reduced efficiency in managing projects and unforeseen costs. ECN summarizes the significant challenges involved in the process of obtaining structure attachment permits: "The whole structure attachment process within our specific [regional FTTH] project has been extremely frustrating, time consuming, and costly, even though supported by experienced and well-established engineering consultancy firms and construction companies" (para 5). We **agree** with ECN's statement that these challenges are further compounded in more remote communities (para 7).
8. Similar to the experience of FMCC members, CCSA points to a lack of certainty for "independent TSPs to estimate either the cost or the duration of planned broadband network builds...[which] has a profound negative impact on the ability of independent TSPs to develop accurate project proposals for funding...[or] to invest or secure third-party investment in their planned network building projects" (para 7). CCSA's members have also experienced delays up to two years from initial permit applications (para 7).
9. Eastlink notes similar challenges:

"Eastlink faces ongoing challenges accessing poles owned or controlled by Canadian carriers. Eastlink frequently experiences claims for future use that do not materialize, a lack of transparency when it comes to the methodology used by the ILEC to determine whether spare capacity exists, delays in completing make-ready work and disputes over responsibility for costs. These challenges impede our ability to expand our wireline and wireless networks" (para 3).
10. FCM states that "the regulatory framework for attachment to existing poles can be so unworkable – in terms of access, cost, risk, and liabilities – that communities may be obliged to turn to new engineering works altogether" (FCM, para 7). Similar issues were raised by EORN, which noted varying and uncertain costs related to factors outside of their control, such as significant differences of pole make ready costs (which varied from \$20 - \$30 per meter) (para 10).
11. Teksavvy also raises the issues of compliance and enforcement: "...the incumbents are not subject to any meaningful deterrent for non-compliance with the response timelines set out in the support structure tariffs. Without appropriate and timely consequences for non-compliance, the incumbents have very little incentive to adhere to the timelines that are prescribed by the tariffs (para 10)"
12. One of the key issues identified by several parties is that "gatekeepers" lack **incentives** to expedite authorizing permits and make-ready work (or carrying it out). Carriers have no interest in accommodating potential competitors, and utilities have legitimate concerns about safety in accessing electricity poles as well as their own bureaucratic procedures.

13. An imbalance of bargaining power exists between the support structure controller and the access seeker. The support structure controller is the steward of an “essential service”. The access-seeker requires access to that service in order to deploy facilities—and it is not in the public interest that the access-seeker instead construct additional facilities in parallel.
14. Therefore, we **disagree** with TELUS that “the support structure framework is working well and is not in need of significant amendment” (para 6). Rather, as Rogers emphasizes “[u]nder the current tariff provisions and processes, Bell Canada (“Bell”) and TELUS Communications Inc. (“TELUS” and collectively, the “ILECs”) are able to deny and delay access to their support structures with impunity” (para 2).
15. We **agree** with Shaw’s summary of shortcomings with the ILEC support structure regime: “(a) mandated permit application response times are subject to abuse and gamesmanship, (b) some applications for support structure access are exempt from mandated response times, (c) a lack of firm timelines for make-ready work, (d) a lack of accountability for capacity-based access denials, and (e) dispute resolution mechanisms that are ineffective” (para 4).
16. One of the most striking examples of conflict of interest involves TELUS and BC Hydro:

“BC Hydro and TELUS share about 85 per cent of the poles that support BC Hydro’s electricity distribution wires and equipment. Almost all of these poles are jointly owned by BC Hydro and TELUS....

Each Pole has an allocation and use of space for TELUS’ purposes. When a third-party carrier applies to TELUS for access to the 24 inch TELUS-managed portion of a Pole, TELUS is required to evaluate the request under the safety, technical, engineering, indemnity and other requirements worked out between TELUS and BC Hydro. TELUS may also impose additional requirements of which BC Hydro is unaware. In some instances, TELUS is unable to accept a request without performing make ready work that can only be done by BC Hydro. In such a situation, TELUS submits a request to BC Hydro to provide a cost estimate and schedule for the make-ready work. BC Hydro reviews and provides a make-ready cost estimate and a proposed schedule to TELUS.

If, after receiving that information from TELUS, the third-party carrier decides to proceed, TELUS submits a request to BC Hydro to do the work. BC Hydro then informs TELUS when the work is complete.

Once the make-ready work, if any, is complete and all the other requirements are met, TELUS issues to the third-party carrier a permit authorizing the equipment to be attached to the TELUS-managed portion of the Pole” (BC Hydro, paras 4, 9-11).
17. Clearly, TELUS has no incentive to expedite the permit process of a competitor, nor to request that BC Hydro expedite the make-ready work which only Hydro is authorized to carry out.
18. BC Hydro further states that: “There may be consultation requirements that have an impact on timelines. For example, First Nation consultation or archeological / heritage monitoring may be required, which may take additional time depending on the circumstances, and may

impact timelines for the applicable government agencies to approve applications.” (para 12(b)). While we appreciate BC Hydro’s recognition of First Nations, we assert that the need for consultation can be addressed in establishing timelines, rather than as a rationale for avoiding them.

19. FMCC notes that Bell Canada blames organizations that have received broadband funding for its delays: “...we needed to address the recent influx of less experienced government broadband funding award recipients in order to improve the quality of permit applications submitted by these licensees and ultimately help them deliver their projects” (para 7). We find these comments condescending and contrary to evidence that other providers have also experienced delays seeking to access Bell infrastructure in Quebec.

20. Concerning possible solutions, we **agree** with Beanfield:

“The issues raised in respect of support structure access in the TNC 2019-406 proceeding, and continued in this one, require resolution through adoption of a standard approach to support structures that will reduce uncertainty and delays.

Once decided, this standard approach should be reflected in all support structure tariffs—with respect to both ducts and poles, and to both carrier-owned and carrier-managed support structures alike. Further, this standard approach should be one that electrical utilities can apply and adopt, in advance of any legislative changes that provide for the Commission to exercise greater jurisdiction in this area.

Beanfield therefore urges the Commission to take a broad-based approach to developing these common standards for reducing the considerable friction, and considerable harms to competition, that frustrate access to support structures...[T]here is an immediate role for the CRTC in developing a clear set of principles that any utilities tariff should, in respect of its treatment of communications facilities attachments, pursue” (paras 9-11).

21. To streamline the permitting process, we **agree** with CCSA’s proposal to implement a standard-form, Commission-approved, mandatory Support Structure Licensing Agreement (para 9).

22. We also **agree** with Community Fibre Company’s proposal that support structure owners institute a ‘ticketing’ system to track and manage the status of permits. As noted in their submission:

“This would allow third-party carriers to ensure that all documents related to a given permit are uploaded and received by the incumbent, instead of having to wait and make a number of additional emails and phone calls to request updates confirming that documents were received” (para 68).

23. Finally, as noted in our submission, and by Rogers, Beanfield, and CNOC among others -- while the focus of this proceeding is on poles, similar issues also affect **ducts** and **conduit**, and other support infrastructure. We **agree** with Eastlink that “...since the ILEC Support Structure Tariff (“Tariff”) under consideration governs the use of poles, conduits, strands,

anchors and manholes, and related equipment, any improvements made as the result of this proceeding should apply to all such facilities” (para 4).

B. Make-ready work: (Q3)

24. As Rogers points out, make-ready work is another critical bottleneck for the deployment of competitive networks on ILEC support structures. “If a permit requires make-ready work to be performed, the ILEC generally presents a single dollar amount as the cost estimate for make-ready work.... The attacher has two options: agree to pay these costs or find an alternative route. If the attacher agrees to pay the make-ready charges, there is no cap on the time taken by the ILEC to complete make-ready work – meaning that this work can take an indefinite period of time and a backseat to the ILEC’s own competitive network deployments.” (para 4)
25. Shaw points out that “make-ready work is riddled with opportunities for delays and unnecessary costs.” We **agree** with Shaw’s proposals that in order to curb these delays and costs: (a) there should be timelines for each step of the make-ready work process, (b) make-ready work should have a definition with a narrow scope so that other work such as maintenance cannot be disguised as make-ready work, and (c) licensees should be permitted to complete make-ready work with their own labour force or contractor.
26. FCM notes that there is currently no coordination mechanism to ensure that when a permit request has advanced to the stage of make-ready work: “The absence of firm timelines or a coordination mechanism allows ILECs to create their own timelines for make-ready work, heightens uncertainty, and increases the overall cost of deployment” (para 8). This statement aligns with the experiences of FMCC members. Eastlink adds “we are provided very little information from ILECs on when the make-ready work will be complete” (para 10).
27. We **agree** with Beanfield that: “far from re-inventing the wheel, the Commission should have regard for standards and timelines adopted in other jurisdictions which have confronted the same issue” (para 18). Concerning other jurisdictions, Rogers notes that both the European Union and the U.S. have recognized the imperative of support structure rules that facilitate deployment of wireline broadband and 5G networks. Its “United States and European Union Best Practices Report” should be a valuable resource to the Commission and to parties in this proceeding. (para 7 and App. A).
28. We **agree** with CCSA’s proposal to adopt the One Touch Make Ready (OTMR) principle approved by the FCC in 2018 “whereby the attacher, who has the incentive to move quickly, is able to perform simple make-ready work in the telecommunications space on a pole, subject to notice requirements and other safeguards needed to ensure the quality of the make-ready work.” (CCSA Recommendation 1)
29. The FCC states:

“... new attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment. Although [pole owners] have sometimes held new attachers

responsible for the costs of correcting preexisting violations, this practice is inconsistent with our long-standing principle that a new attacher is responsible only for actual costs incurred to accommodate its attachment.”¹

30. We **agree** with the CCSA that this approach simplifies the process and recognizes that the attacher has the incentive to proceed expeditiously. We note that several other parties agree with CCSA including the BC Broadband Association, CANOC, CanWISP, and ITPA. Eastlink also endorses OTMR.
31. In general, we **agree** with CCSA’s other recommendations concerning timelines, deadlines, and transparency.
32. Concerning pole maintenance, as CCSA writes: “Current incumbent practices offload much of the cost of pole maintenance and replacement on new attachers...[U]nder current conditions, pole attachment costs alone can amount to as much as half the cost of a TSP’s new network build” (para 7).
33. We **agree** with FCM’s statements regarding aging pole infrastructure in rural and remote regions: “...incumbent owners/operators often have little incentive to remediate poles in these areas. Allowing the full cost of remediation to parties considering attaching new fibre-based services in rural communities further undermines the business case for doing so” (para 8).
34. We further **agree** with Iristel that “ILECs should be required to incur costs that should be part of preventative maintenance rather than to push these onto competitors. For example, the cost of replacing an aging pole in need of replacement clearly benefits the ILEC and other existing tenants and should not be borne exclusively by a competitor who is trying to complete a network deployment. As such, the tariffed cost paid by the competitor to the ILEC should encompass cost of maintaining the support structures. An analogy is of a tenant renting an apartment. The tenant pays monthly rent and if there are any problems with the apartment, the landlord must correct the problems at their expense. It is assumed that the cost of rent covers occasional maintenance activities” (para 13).
35. Community Fibre points out that Bell Canada may defer remedial work on its own poles, while requiring it of third parties. We **agree** with Community Fibre Company’s recommendation that: “the Commission must enact rules recognizing that there are classes of make-ready work which can be deferred. Where make-ready work can be safely deferred, third-party attachers must be granted the same benefits as the incumbent provides itself. To do otherwise is to provide an unfair competitive advantage to the incumbent over non-dominant carriers.” (para 38).
36. More generally we **agree** with CCSA’s recommendation that the Commission make regulations or policy statements regarding the equitable sharing of pole repair and replacement costs based on the approach raised by ACA Connects in proceedings at the

¹ Removing Barriers to Infrastructure Investment: Third Report and Order and Declaratory Ruling” FCC 18-111, WC Docket No. 17-84, WT Docket No. 17-79, August 3, 2018, para. 121

FCC². CCSA writes that this approach is “based on the fundamental principle, as stated by the FCC, that ‘new attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment’” (para 7).

C. Spare capacity: (Q6, Q7)

37. We **agree** with ITPA that “optimal use of ILEC support structures such as telephone poles is an important public interest issue. Such optimal use ensures that the need for the installation of parallel pole lines is greatly diminished” (para 13).

38. EORN points to at least two cases where projects were canceled or significantly delayed because their applications to upgrade from cable to fibre were blocked by incumbent carriers on joint access pole sections – despite engineering analysis showing sufficient capacity was in place (para 13).

39. Eastlink submitted they have experienced similar claims for future capacity requirements on the part of ILEC owners of support structures:

“We have also experienced situations where an ILEC claims no spare capacity due to future use requirements, only to discover later that the capacity had never been used. There are currently no requirements that outline when a support structure owner can claim future use, nor are there any enforcement or recourse mechanisms that can be used for when capacity reservations go unused... 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 plans of their direct competitors. Furthermore, the ability to reserve unlimited future use eliminates the incentive for ILECs to ensure they are managing their support structures efficiently” (para 9).

40. The underlying issue is again lack of incentives. Without any regulations on procedures, time limits, or repercussions, why should incumbents release spare capacity to potential competitors? For example, Eastlink states:

“In Eastlink’s experience, it has become common for pole owners to deny applications for access to support structures by claiming no spare capacity, without providing any additional explanation or evidence. On numerous occasions Eastlink has attempted to get information on the methodologies used when determining whether spare capacity exists in attempts to establish a more efficient process going forward, but were denied, with the only explanation provided that spare capacity is assessed on a case-by-case basis” (para 8).

² ACA Connects, “In the Matter of Accelerating Wireline Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84: ACA Connects Comments”, September 2, 2020 [hereinafter *ACA Connects Pole Replacement Costs*].

41. We **agree** with interveners who state that such regulation is necessary. Tbaytel notes that: “It does not seem reasonable for a structure owner to block out areas of a pole for a use that is speculative or several years into the future. Similar to the processes for gaining access to tower structures, applicants for access should still be allowed to apply for access while including a pole owner’s future requirements into the make ready assessment process.” (para 17).
42. Some propose specific time periods for reservation of spare capacity. We also note innovative solutions such as FCM’s proposal regarding a test that owners must meet to assert a lack of spare capacity: “a presumption that lack of space capacity is not a reason for refusing access, except where the owner of a telecommunication pole can rebut this presumption with documentation establishing urgency, necessity, or safety considerations” (para 8).
43. Innovative proposals by Beanfield, including a database, merit consideration:
- “First, when a user is refused to an access-seeker because the relevant capacity has been reserved, the reserving facility owner should be required to provide supporting documentation to the pole owner and lodge this in a Commission-database, as described above. The information and documentation would be treated as confidential until the end of a specified reservation period. But its lodging with the Commission would enable rapid subsequent dispute resolution, and better enable the Commission to prevent over-reservation by support structure owners.
- Second, and relatedly, support structure owners that exceeded a specified number of unused reservations within a period should be subject to deterrent penalties, similar to those attached to existing quality-of-service regulation” (paras 30-31).
44. Eastlink proposes that: “there should be a defined set of criteria that is used to determine whether there is spare capacity on a pole, and that criteria should be readily available to all licensees. Furthermore, when an ILEC rejects an application on the basis of no spare capacity, they should be required to provide information on why it did not meet the criteria” (para 8).
45. Community Fibre emphasizes the potential of technology to free up capacity: “In regions where Spare Capacity is limited, an approach to migrate service from copper telephone lines to fibre should be undertaken. Fibre optic cables weigh significantly less than obsolete copper telephone cables. The replacement of obsolete copper with fibre will free up Spare Capacity” (paras 53-54). Later, they note: “Reserving Spare Capacity for obsolete copper phone lines does not serve the public interest” (para 57).
46. We believe that these innovative proposals should be explored along with time limits for reserving capacity.

D. Joint-use agreements: (Q9, Q10, Q11)

47. Several interveners describe problems with joint use agreements between ILECs and electric utilities including delays, high costs, lack of transparency, and disparities between federal telecommunications and provincial utilities regulations. For example:

“Eastlink submits that in many of our serving areas the ILEC has entered into a joint-use agreement with the utility that provides them a gatekeeping role when it comes to the communication space on the utility’s support structure. In these areas, all permit applications must be reviewed by both the ILEC and the utility, providing the ILEC the ability to deny an application for the licensee to attach to a support structure that is owned by the local utility. The ability for the ILEC to insert itself into the permit application process essentially gives them the right to grant permits for access, subjecting them to the Commission’s jurisdiction” (para 12).

48. We **agree** with Shaw that steps should be taken to eliminate the advantage that some carriers hold by virtue of either jointly owning the support structure or being designated the manager of the communications space on the pole. Shaw outlines a plan that will simplify the process “by (i) utilizing standardized agreements; and (ii) separating pole access functions from communications space management functions” (para 8).

49. We **agree** with Shaw that the ultimate goal is to shift from a regime where a carrier may gain advantages by being the manager of a utility owned pole to one that would provide a fair opportunity to all carriers for access to the pole.

50. We **agree** with EORN that scarce public funding for broadband projects should not be going to pay for utility pole replacements, especially for those that should be addressed as part of normal maintenance by a for profit company.

51. We **also agree** with several interveners who point out that public funds used to deploy broadband infrastructure and services should not be used to subsidize telecommunications companies or electrical utilities.

52. The BC Utilities Commission notes that utility ratepayers should not cross-subsidize telecommunications customers; FCM similarly argues that “universal broadband access, and the publicly funded mechanisms that support this objective, should not be the means to remediate the consequences of chronic infrastructure underfunding by ILECs” (para 8). BC Hydro cautions the Commission that there may be knock-on implications for BC Hydro and its ratepayers if the CRTC imposes additional obligations on TELUS:

“BC Hydro is also concerned that any additional obligations imposed on TELUS may result in increased costs for BC Hydro, such as a need for additional human and technical resources in the areas of design, standards and project delivery, and make ready work. These costs would ultimately be borne by BC Hydro’s electricity ratepayers” (para 6).

53. BC Hydro adds:

“The Pole arrangements between BC Hydro and TELUS are carefully calibrated. In return for sharing the physical pole infrastructure, and its associated risks and costs, BC Hydro and TELUS have accommodated each other’s operational needs” (para 7).

However, we note that this statement ignores the issues of how additional providers may also be fairly accommodated.

54. PIAC points out that there is: “an inherent dichotomy regulating utility poles in the public interest. If the CRTC steps in and attempts to regulate joint-use hydro poles unilaterally and sets a rate for joint-use utility pole access that is lower than the ones set by the OEB [Ontario Energy Board], the lower rate will facilitate rural build-out and perhaps reduce service prices for telecom consumers; however, the lower rate may mean power companies are not adequately compensated for the construction and maintenance of their hydro poles, forcing them to increase service prices for electricity consumers” (para 74).

55. PIAC further states that:

“What the Commission has not insisted upon, and which now plagues the various telco competitors in gaining joint-use pole access is a reticence on the Commission’s part to insist on this non-discriminatory requirement being added to joint-use agreements between telco-based ILECs and provincial electrical utilities. That is, the CRTC has generally not seen fit, to our knowledge, to open up joint use agreements between parties like Bell Canada and electrical authorities in, for example, Ontario and New Brunswick, to other competing telcos on identical (or at least fair) terms. There is no principled reason to forbear from such interference now” (para 29).

We would like **clarification** from PIAC on how the CRTC could implement this “interference.”

56. Several parties point out the limit to the CRTC’s jurisdiction concerning utility poles. Some urge the CRTC to seek federal legislation to address the problem. We **agree** with PIAC’s recommendation that an inter-agency task force be established involving the Commission and other groups to study this complex issue and make recommendations:

“PIAC urges the Commission to raise this issue with the relevant federal departments (Intergovernmental Affairs Secretariat, Treasury Board Secretariat, Infrastructure Canada (Rural Economic Development), Innovation Science and Economic Development Canada (including various economic development agencies) as well as provincial governments and request that they form an inter-governmental committee or “Task Force” to work together to resolve the issue of pole access” (para 18).

57. Cogeco submits that the obligations, standards and other conditions related to joint-use support structures should be the same for all facilities-based service providers, and should be indiscriminately applied to all support structures, whether owned by a utility company or a Canadian carrier.

58. We also **agree** with Beanfield's proposal:

“Service providers subject to the Telecommunications Act that enter into joint-use agreements should be required to file these agreements with the Commission and to make portions of them publicly available, as they are required to in respect of MDU agreements. However, it is essential that the Commission develop a support structure framework to which any joint-use agreement into which a telecommunication service provider wishes to enter be held.

Such a framework would provide guidance to a broad range of stakeholders, including electrical utilities and regulators responsible for electricity tariffs, who would be on notice as to the principles that the Commission considers essential and that any such arrangements are required to meet” (paras 39-40).

59. Bell Canada states that electric utility pole rates “are often twice or even more than three times as high as rates for access to our poles.” However, it does not allude to its own preferential agreements on rates for access to utility poles (para A9). Concerning the specific case of pole-sharing agreements that Bell Canada has apparently negotiated in Ontario and Quebec, ITPA explains:

“Specifically in Ontario Canada and Hydro One, the province of Ontario's electricity distribution company, as well as Bell Canada with Hydro-Québec have entered into pole sharing agreements, the terms of which are not available to third parties. Although the ITPA is not privy to the details of these agreements the ITPA believes that any agreement between Bell Canada and another entity that involves a mandated, tariffed wholesale service such as telephone poles, is subject to the Commission's jurisdiction and captured by section 27.(2) of the *Telecommunications Act* (“the Act”) which states: “No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or given an undue preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage” (para 36).

60. We **agree** with ITPA that the Commission should take the opportunity provided by this proceeding to determine whether Bell Canada is giving itself and/or Hydro One or Hydro-Québec an undue or unreasonable advantage over third parties wishing to obtain access to Bell Canada telephone poles. These agreements should be placed on the public record.

61. We recognize the stringent standards, permit requirements and regulations required by utility providers to ensure safety and reliable services in make-ready work, as noted by several interveners including BC Utilities Commission. We acknowledge these complexities and commend the Canadian Electricity Association (CEA) for “taking steps to collaborate with the Telecoms to increase efficiencies, enable more timely access to poles, and ensure transparency” (para 15).

E. Dispute resolution

62. We **agree** with several parties on the need for a timely and effective dispute mechanism under the Commission's supervision. (e.g. CCSA, para 12).

63. ECN argues that it is “vital that the processes governing access to support structures be clear and that dispute resolution mechanisms be implemented to enable timely resolution of issues” (para 8). Beanfield similarly notes that “Rapid Commission-staff-led dispute resolution should be readily available to enforce these timelines” (para 17).
64. We **agree** that the Commission should create an independent dispute resolution mechanism tailored to support structure access issues, as proposed by several parties. This mechanism should focus on “an accessible, impartial, and timely process to address narrow access that arise between stakeholders” (FCM, para 6). We **agree** with FCM’s suggestion that: “It should be accessible, agile, flexible, and timely” (para 12).
65. CCSA specifies that the Commission should establish an expedited dispute resolution mechanism which is capable of resolving telecommunications attachment complaints within a matter of days or weeks as a norm and within a maximum of 60 days of the Commission’s receipt of a complaint (Recommendation 14). Shaw has also proposed a Commission-backed dispute resolution mechanism that should reduce the number of disputes as well as help to resolve disputes more quickly.
66. We note CCSA’s point that “the Commission’s staff-assisted mediation processes, which do not have set deadlines, can be never-ending. The Commission should be very careful not to rely on mediation processes which are not time-limited. Rather, it should ensure that all steps in the dispute resolution process have short, well-defined deadlines” (para 123). We also agree with CCSA concerning the need to “ensure that parties who lack power are protected from being denied the benefit of the complaints process by means of process abuses and foot-dragging” (para 122).
67. We note CCSA’s reference to the FCC’s “accelerated docket system.” FMCC recommends that this model be explored as one mechanism for dispute resolution.
68. More generally, we **agree** with CCSA’s point that if Support Structure Agreements and engineering and safety standards are made consistent, set out fully and clearly, and made transparent to all parties, the number and scope of disputes would be greatly diminished; and it would be possible to standardize and simplify the CRTC dispute resolution processes (para 115).
69. Several parties raised concerns similar to those of FMCC regarding the fairness and transparency of decision-making on the part of all owners of support structures: from utilities to ILECs. We **support** the recommendation made by several interveners to establish mechanisms for multi-stakeholder coordination and dispute resolution (e.g. FCM, para 8).
70. As noted by CCSA, the Commission might consider undertaking measures such as reforming the practices/procedures for dispute resolution, amending existing service standards to include timelines for adjudication of complaints and issuance of decisions, and supporting the establishment of a committee mandated to address these issues (para 120). We note that such a committee must include representatives from TSPs serving rural, remote, Northern and Indigenous regions.

71. We **agree** with several parties, including the Federation of Canadian Municipalities (FCM), that the Commission should build on existing initiatives such as the Coordination Committee in Quebec to create a multistakeholder forum to consider these issues.³ As noted by FCM, such an initiative should complement rather than displace local solutions already in place (para 6).
72. FCM notes that not all stakeholders are represented in this Committee. We note that FMCC member organizations based in Quebec may wish to join, such as FNEC. We stress that if the Commission (or other parties) develop similar initiatives elsewhere, they should extend invitations to FMCC members and other Indigenous organizations.

F. Other issues:

Standards

73. We **agree** with CCSA's point that "work be done to improve the consistency and transparency of safety and engineering standards that apply to attachment work so as to avoid the many delays which currently arise from inconsistent application of such standards" (para 11). The experience of CCSA member organizations is similar to that of FMCC members:

"[C]onsistent and transparent engineering and safety standards are so important. It should be the case that, so long as an attacher follows the applicable standards, there should be no impediment to the attacher's performance of simple, low-risk work such as overlashing and placement of subscriber drops. However, our members tell us that it can be difficult to gain access to the standards that the owners apply at any given point in time" (para 55).

74. As with other issues, transparency is also necessary in applying standards:

"In CCSA's assessment, much of the delay and cost associated with 'gamesmanship' and indeed, with innocent inefficiencies in pole attachment administrative processes arise from a lack of consistency and transparency in the various levels of standards and rules that underlie those processes" (para 114).

75. We thank the Commission for the opportunity to contribute to this consultation.

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³ As noted by FCM: "on May 21, 2020, a new Coordination Committee, co-created by Bell, Hydro-Quebec, TELUS and Quebec's Ministry of Economic Development, Innovation and Export Trade was announced" (para 10). See: https://www.economie.gouv.qc.ca/ministere/salle-de-presse/communiqués-de-presse/communiqué-de-presse/?no_cache=1&tx_ttnews%5Btt_news%5D=24633&cHash=c1283da46428dad24b5ec1894cf6c84d For example: <https://cartt.ca/bell-says-its-new-processes-will-speed-access-to-support-structures-in-quebec-as-commission-launches-new-proceeding/>