

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

Submission 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. We are pleased that the Commission has initiated this new proceeding to review and renew ILEC support structure tariffs, particularly since the last review of such rates was determined through Telecom Decision 2010-900, released 10 years ago.
- E3. The COVID-19 pandemic has exposed rifts in our social and economic fabric. The effects of systemic racism are pervasive, as telecommunications corporations have historically made business decisions that negatively impact Indigenous remote and rural communities. It is time for the CRTC to establish and enforce regulations that will enable Indigenous providers to deliver equitable, affordable and community-owned and operated telecom services.
- E4. The following submission addresses some key barriers faced by FMCC members regarding access to support structures, and recommendations for regulatory measures to address these issues. We have followed the organization of topics in paragraphs 6 to 24 of Telecom Notice of Consultation CRTC 2020-366. We include reference to specific questions in our responses.

A. Support structure services tariffs

Replace existing Tariffs

- E5. FMCC member organizations often experience delayed and costly access to poles. Although we recognize that the Commission has approved support structure service tariffs, these tariffs have not been modified since 2010 (CRTC 2010-900). There have been many changes in technologies and user demand in the past decade. Tariffs are very complex -- it is difficult to even locate the relevant sections that would apply to pricing of pole or conduit access for our members.
- E6. In addition to per pole charges, our members have had to pay additional construction, repair, maintenance and upgrading fees.
- E7. Therefore, we believe that the tariffs for support structures adopted in 2010 need to be completely revised and replaced with new tariffs. These tariffs need to be clear, comprehensive and fair to all parties, without hidden or excessive additional charges.

Delays and Deadlines

- E8. Delays in providing information about support structure access charges and in approving access can significantly result in small providers underestimating costs in funding proposals,

and make it impossible to meet project deadlines or develop an operational plan to sustain their projects over time.

- E9. **Where the CRTC has jurisdiction, it should require information regarding the costs for all aspects of the use of support structures to be clearly and simply stated, predictable, and transparent to third party users – and in particular, small and non-profit providers.**
- E10. The Commission must recognize deadlines for both individual steps of the permitting process AND for the overall permitting process. We propose that the CRTC permit guidelines should specify: one timeline for each step in the permitting process (e.g. 90 days or three months per step); and one timeline for the entire process (e.g. all permitting steps must be completed within 1 year).
- E11. **Third party providers should be able to file a complaint with the Commission over unwarranted delays. The Commission should have the authority to fine the ILEC or SILEC if specified time periods are exceeded.**
- E12. **The permit approval process should be standardized. A model template could be developed for permit applications.**

B. Make-ready work: (Q3, Q4, Q5)

- E13. FMCC members may not know what the ‘make-ready’ costs will be on a project because the owners of support structures do not always provide a firm estimate. Sometimes support structure owners also fail to provide adequate explanation for continuous and repeated delays, or the explanations given for such delays are unreasonable.
- E14. These issues are important for our members because government funders have made it clear that they want to see these projects up and running within months. Climate considerations in the North further impact planning timelines.
- E15. **Owners of support structures must maintain clear and current information on the state of their infrastructure. They must also be required to make publicly available associated costs to repair/maintain it, which should be subject to review by the CRTC.**
- E16. **Incumbents should be required to provide information on conditions of poles and responsibilities for preparation work and maintenance in a standard format, including timelines. A model template could be developed.**
- E17. **In cases where infrastructure must be repaired or upgraded, owners should share these costs -- as well as maintenance -- with third parties, as both parties will benefit.**

C. Spare capacity: (Q6, Q7)

E18. While incumbents often conclude that there will be little future demand in remote and Northern regions, they may also decide to reserve pole or conduit space for future upgrades or replacements. They may therefore greatly increase costs for third party providers who may have to install additional (and redundant) support structures.

E18. Incumbents should reserve pole or conduit space for future upgrades or replacements for no more than five years. Incumbents should provide access to conduit at wholesale prices.

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

E19. Due to the estimated high costs of access, FMCC members typically budget between \$300 and \$1,000 per utility pole, if not more, for the support structures joint usage authorization process. The cost of access to utility poles also typically increases over time, sometimes on an annual basis.

E20. FMCC members have experienced differences between the pricing for access to ILEC poles and for utility and municipal poles, the latter of which are typically set by provinces or local bodies. Similar discrepancies are seen with respect to timelines.

E21. We urge the Commission to invoke its authority to provide oversight on access to support structures wherever possible.

E22. We note that the Broadcasting and Telecommunications Review (BTLR) Panel recommended an amendment to the *Telecommunications Act* to: “[E]mpower the CRTC to review and vary the terms and conditions of access to the support structures of provincially regulated utilities, to ensure non-discriminatory arrangements” (p.26, emphasis added).

E23. We agree with the BTLR Panel’s proposed changes to the *Telecommunications Act* concerning support structures. We also urge the Commission to immediately investigate all plausible solutions to coordinate between federal, provincial and municipal jurisdictions.

E24. The CRTC should meet with CAMPUT (Canada’s association of utility regulators) and the Canadian Energy Regulator (CER) to determine how joint permitting processes for telecom use could be streamlined, and how pricing can be kept reasonable in order not to render rural broadband unaffordable. These meetings should include considerations of the specific contexts of Indigenous peoples.

E. Dispute Resolutions

E25. We have reviewed the Dispute Resolution processes as described in Broadcasting and Telecom Bulletin 2019-184. We were not previously aware of the availability of these

procedures. We would like access to any documentation on disputes that have been resolved using these procedures -- particularly where small or non-incumbent providers were involved.

E26. We are also unaware of how a service provider should file a complaint about issues such as those discussed in this proceeding, or initiate a dispute with the Commission. FMCC members that they are unaware of whom they can contact at the Commission and how they can file a complaint about delays, unfair practices and pricing, and other matters.

E27. The CRTC should post information on its website specifically concerning how providers can contact Commission staff, file complaints, and initiate disputes concerning excessive delays, unfair practices, inadequate maintenance or quality of service, unjustifiable pricing or changes in prices, or other matters.

E28. The Commission should put in place a clear process that third-party organizations can use to report problems and request remedies concerning access to support structures. One possibility could be by establishing an ombudsperson.

F. Other Issues: Database on Infrastructure

E29. There is no general documentation available regarding the condition of infrastructure in communities. A database of publicly accessible information would therefore be very useful.

E30. The Commission should establish a database of publicly available information associated with various infrastructure types, including the location and condition of support structures. This database should be reviewed and updated on an annual basis.

G. Other Issues:

Standards

E31. Varying standards between utility and telecommunications pole requirements such as pole height may impede network installation. Poles should be a standard height and constructed to handle multiple attachments, even if third-party attachments are not immediately required.

E32. Telecommunications projects will benefit from some standardization of requirements. When in doubt, the standard endorsed by the Standards Council of Canada (SCC) can be used.

Alternative support structures – Trenching, Conduit and “Dig Once” Policies

E33. Support structures for broadband include not only poles and towers, but also conduit. Public funds for infrastructure projects such as road construction or upgrades should require the installation of conduit for fibre and other infrastructure, with access ducts every few kilometres. These support structures should be made open access.

E34. The CRTC and ISED should point out to other infrastructure funding entities that this approach will result in overall cost-savings of public funds.

E35. The CRTC should endorse a ‘dig once’ policy in collaboration with other infrastructure developers, such as governments, utility companies, Indigenous governments, and road builders.

Indigenous Jurisdiction

E36. Jurisdictional issues regarding support structures (and corresponding rights-of-way) should be addressed with reference to Indigenous Lands and Jurisdiction, and Treaty and Aboriginal Rights. Reference in the *Telecommunications Act* to “bodies and levels of government” and public authorities must include Tribal and other Indigenous governments.

E37. Land planning processes must recognize Indigenous governments and include Indigenous land and treaty rights. Poles and buried conduit are largely on First Nations land or on unceded land. Indigenous networks have a right to access these poles and conduit without obstruction.

E38. We draw attention to the U.S. Federal Communications Commission’s (FCC) *Tribal Government Engagement Obligation*, and propose that similar requirements should be imposed by the CRTC.

E39. Specific language concerning Indigenous land and treaty rights and procedures required to access land, “passive infrastructure” such as rights of way, poles, and ducts, as well as other telecommunications equipment. This includes the right to approve construction of transmission lines or support structures on Tribal or other Indigenous lands.

E40. Existing rights-of-way agreements involving Indigenous lands and communities are outdated and should be updated. Many of these rights-of-way agreements were written in the 1960s/70s, before the formal recognition of Indigenous lands and jurisdiction, and Aboriginal and Treaty Rights.

E41. In the spirit of reconciliation, meaningful consultation and informed consent, agreements concerning support structures and rights of way on Indigenous lands must be updated to address requirements for access and compensation for Indigenous communities or governments.

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. FMCC member organizations, and other small service providers, continue to face significant barriers to the deployment, operation and sustainability of telecommunications facilities and services. Numerous participants in the CRTC 2019-406 proceeding – including the FMCC – noted barriers in access to support structures owned by third parties, including varying standards, delays in obtaining access, and pricing for preparatory works, leases, and maintenance.
3. 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. We are pleased that the Commission has initiated this new proceeding to review and renew ILEC support structure tariffs, particularly since the last review of such rates was determined through Telecom Decision 2010-900 , released 10 years ago.
4. We also recognize that the COVID-19 pandemic has exposed rifts in our social and economic fabric. FMCC is supportive of the efforts of many for-profit, urban-based telecommunications corporations to address systemic racism by diversifying their boards and management. However, the effects of systemic racism are more pervasive, as these corporations have historically made business decisions that negatively impact remote and rural communities. The outcomes of investment, management and operational decisions result in unintended consequences for people living in these communities, such as limiting the development and sustainability of local employment, maintaining high costs of service, and restricting access to bandwidth and data. Indigenous communities know what telecommunication services are required to serve their needs. That is one of the many reasons they have established organizations to build their own networks to provide local employment as well as affordable communications services. It is time for the CRTC to establish and enforce regulations that will enable Indigenous providers to deliver equitable, affordable and community-owned and operated telecom services.
5. The following submission addresses some key barriers faced by FMCC members regarding access to support structures and recommendations for regulatory measures to address these issues. We have followed the organization of topics in paragraphs 6 to 24 of Telecom Notice of Consultation CRTC 2020-366. We include reference to specific questions in our responses.

A. Support structure services tariffs

Replace existing Tariffs

6. We agree with the Commission's statement that "Untimely and costly access to poles is one of the most significant barriers to the deployment of broadband-capable networks in rural and remote regions of Canada". This has certainly been the case for FMCC providers.
7. We recognize that "the Commission has approved, for every larger ILEC as well as certain of the small ILECs (SILECs), support structure service tariffs that include rates, terms, and conditions for access to poles" (CRTC 2020-366, para 8).
8. However, concerning pricing for access to poles owned by CRTC-licensed carriers, we note that the tariff approved by the CRTC has not been modified since 2010 (CRTC 2010-900). There have been many changes in technologies and user demand in the past decade. Further, there have been changes in organization and/or ownership of some of the incumbents that our members rely on to access support structures.
9. The tariffs are very complex and cover the entire operations of the large incumbents. It is difficult to even locate the relevant sections that would apply to pricing of pole or conduit access for our members. Therefore, we decline to address the questions on specific sections and modifications of the tariffs in Q1.
10. In addition to per pole charges, our members have had to pay additional construction, repair and upgrading fees. For example, we know of organizations paying more than \$25,000 to an incumbent provider to upgrade and repair aerial support structures.
11. Third-party users of support structures must pay additional (and ongoing) maintenance charges, including exceedingly high ancillary costs for basic activities such as snow clearance.
12. In some cases, third parties have been forced to pay for old support structures that should have been fully depreciated long ago. For example, as one FMCC provider asked "If a pole is 50 years old, should rent still be charged and collected?"
13. Therefore, we believe that the tariffs for support structures adopted in 2010 need to be completely revised and replaced with new tariffs. These tariffs need to be clear, comprehensive and fair to all parties, without hidden or excessive additional charges.
14. The process for approval of changes also needs to be changed. It is not sufficient for ILECs to simply request that new pages with different rates be substituted in the existing tariffs. As PIAC stated concerning the complexities of funding mechanisms, a reset is required: "Without such fundamental changes to the Commission's approach, this proceeding, and its

second call for funding applications, risk only being so much moving of deck chairs on the ‘Titanic’.”¹

- 15. RECOMMENDATION: The tariffs for support structures approved in 2010 (CRTC 2010-900) need to be replaced with new tariffs that take into consideration changes in technologies and increased demand for services, including in rural and remote regions and consequences of the Commission’s decision that broadband is a basic service to be delivered to all Canadians. The methodologies for calculating prices, including for ancillary activities, should be revised and simplified. Providers that will be affected by proposed changes after tariffs are adopted should be notified with sufficient time to respond to ILEC and SILEC proposals.**

Delays and Deadlines

16. We are also concerned that delays in providing information about support structure access charges and in approving access can significantly result in small providers underestimating costs in funding proposals, and make it impossible to meet project deadlines or develop an operational plan to sustain their projects over time.
17. In Telecom Notice of Consultation 2020-366 the CRTC notes: “Uncertainties regarding response time to certain third-party requests during the process for authorizing access to telecommunications poles have in some instances resulted in significant delays, which have in turn impacted the timely deployment of broadband networks by third parties” (para 9).
18. At present, costs to lease assets and additional charges are frequently not provided until after infrastructure construction is completed, and are often very high (or require years of remediation work which significantly delays project completion). This lack of information can result in project delays and budget overruns. We note the significant additional challenges in regions with short construction seasons, such as Northern regions.
- 19. RECOMMENDATION: Where the CRTC has jurisdiction, it should require information regarding the costs for all aspects of the use of support structures to be clearly and simply stated, predictable, and transparent to third party users – and in particular, small and non-profit providers. This information should include deadlines for owners of support structures to provide information on costs of access to assets and other related costs.**
20. FMCC member organizations have indeed faced significant delays before they are granted access permits for support structures. Impacts on projects due to such delays can be enormous. In several cases organizations have been forced to wait from 12 to 24 months to get a permit before construction work could begin – a problem compounded in regions with short construction seasons.

¹ Intervention of the Public Interest Advocacy Centre (“PIAC”) on: Potential Barriers to the Deployment of Broadband-Capable Networks in Underserved Areas in Canada (7 May 2020).

21. **K-Net** notes that when Bell was building fibre in Northwest Ontario, the Bell build experienced delays when asking for permits. In Wabigoon First Nation, this resulted in a 3-year delay to provide service. During a Connect to Innovate (CTI) funded Bell project in Wabaseemoong First Nation, there were delays of over a year after asking Bell for updates, despite the fact Bell had been funded to build the fibre. Again, the reason given for the delay was permits.
22. Agreements for access to support structures should therefore be concluded in a timely manner. As noted above, delays in obtaining access pose especially challenging barriers in the North where the construction season is short and construction costs are high.
23. The Commission must recognize deadlines for both individual steps of the permitting process AND for the overall permitting process. We recognize that the permitting process takes some time to administer, given that initial applications, updates, and final permits must be reviewed and approved. At the same time, to support efficient and effective deployment of telecommunications infrastructure, the permitting process should not be too onerous for third-party providers.
24. Therefore, we propose that the CRTC guidelines should specify: one timeline for each step in the permitting process (e.g. 90 days or three months per step); and one timeline for the entire process (e.g. all permitting steps must be completed within 1 year). As an example:

90-day deadline	Step 1: Initial application	Step 2: Address any maintenance/repairs	Step 3: Access request
6 months	Overall process deadline		

25. The CRTC should provide a mechanism for providers seeking to secure permits to report any delays when this deadline is exceeded, and should have the power to sanction delinquent entities with fines or other penalties.
26. **RECOMMENDATION: The CRTC should set targets for the maximum time period to complete agreements on access to support structures. It should enforce timely issuance of access permits by support structure owners. It should also urge other third-party owners to abide by these deadlines. This should include recognition of individual steps in the permitting process, as well as the overall permitting process. (Q2)**
27. **RECOMMENDATION: Third party providers should be able to file a complaint with the Commission over unwarranted delays. The Commission should have the authority to fine the ILEC or SILEC if specified time periods are exceeded. Also see below, paras 67-73.**
28. The delays we have discussed above can result in cost overruns and missed project deadlines for providers that have received public funding based on a specific budget and timeline to complete the project. Many third parties who access support structures note that the lack of predictability with respect to accessing permits negatively impacts attempts to meet tight

timelines set out by government funders. Therefore, additional government funding may be required.

29. **RECOMMENDATION: The Broadband Fund should provide supplemental funding for rural and remote infrastructure projects in cases where funded projects must absorb additional costs, such as access to support structures, due to circumstances beyond the control of small and non-profit service providers.**
30. **RECOMMENDATION: The permit approval process should be standardized. A model template could be developed for permit applications regarding which factors contribute to the cost of developing an application for a permit.**

B. Make-ready work: (Q3)

31. Third parties such as FMCC members may not know what the ‘make-ready’ costs will be on a project because the owners of support structures do not always provide a firm estimate. Despite the absence of this firm cost information, third parties are expected to assume responsibilities for all cost overruns related to a project at the time they sign a contribution agreement.
32. Also, sometimes support structure owners fail to provide adequate explanation for continuous and repeated delays, or the explanations given for such delays are sometimes unreasonable. For example, in one case a permit was not granted in a timely fashion by the support structure owner because it was the only entity authorized to conduct repairs. Despite repeated requests, the owner took a year to complete the repairs, and the leasing organization paid for the work to be done.
33. In some cases involving the installation of fibre, incumbent telcos will ask a First Nations project to pay for poles, but those same telcos will not do repairs on the installation of their own cables. For example, we know of a case where a non-profit service provider was required to move a cable belonging to an incumbent because the cable was installed incorrectly. As a result, the organization not only suffered a delay in the project, but also had to pay to fix the cable installation.
34. **First Nations Education Council (FNEC)** stated that whenever they go into communities, they discover poles are often old and poorly maintained. According to FNEC, it appears that in some cases the telcos do not even know the condition of the poles in the communities.
35. **Atlantic Canada’s First Nations Help Desk** also notes the complexity and costs small providers face:

“Throughout the Atlantic there are some poles that are “owned” by the Bell entities and many more that are owned by the power companies, such as NB Power. Each pole, of course, has a lifespan and therefore needs to have a sustainable way of being replaced if they rot or get broken. I think the rate was around \$3.10/pole/year... there are only so

many companies with bucket trucks and the capacity to do repairs so we tried to engineer a collaborative approach.

The next issue was whether our fibre strand needed to be physically isolated from other strand on the poles. If the decision had been made that it did have to be isolated, that would have meant that metal strand would have to be added between the poles in many locations and that engineering costs, make ready work, plus the cost of the metal strand would have made it where we simply could not have completed the work for under the million dollar project budget. Probably the added weight of the metal strand, or available space on existing poles would have also tipped the scale so that more new poles would have had to have been “planted”.

Bell Aliant allowed us to over-lash our fibre over theirs.... , if anything bad happens to a pole they pretty much have to fix our fibre while they are fixing theirs. That kind of short circuited discussions of paying for ongoing maintenance.”

36. In remote regions, it is expensive for telecommunications providers to fly in to perform their own make-ready work \ for a fibre-to-the-home (FTTH) build. It is incumbent upon the telcos to respond to a make-ready request, but there is always the risk that many weeks and months could pass by before the telcos come to the community to perform this work. Therefore, parties requesting access to telecommunications poles should be permitted to commence preparatory work on the poles if the owner does not meet a relevant timeline. (Q3)
37. Government funders have made it clear that they want to see these projects up and running within months. However, there are climate considerations in the North– risk of frostbite, weather conditions, etc. Work should start as soon as the temperature is above freezing. In most remote communities, which tend to have fewer than 500 poles, a month should be sufficient to complete the make-ready work. (Q2)
38. **RECOMMENDATION: Owners of support structures must maintain clear and current information on the state of their infrastructure. They must also be required to make publicly available associated costs to repair/maintain it. These costs should be subject to review by the CRTC.**
39. **RECOMMENDATION: Incumbents should be required to provide information on conditions of poles and responsibilities for preparation work and maintenance in a standard format, including timelines. A model template could be developed to be used in agreements including specified time periods to complete make ready work. (Q2)**
40. In Telecom Notice of Consultation CRTC 2020-366, the Commission states: “Since owners benefit from improvements resulting from make-ready work, there is question of whether they should incur some of the costs” (para 10).
41. FMCC opposes actions (or inactions) by incumbents and other owners of support structures that may indirectly provide funds for the general maintenance of their network and/or support

structures. Owners of support structures benefit when third-party fibre projects finance repairs, maintenance and upgrades.

42. Support structures in some rural, remote, Northern and Indigenous communities are not adequately maintained by their owners. This impacts the ability of organizations to utilize these structures to deploy broadband projects. In some cases, owners of support structures will conduct repairs only when a request has been made by a new user to repair every pole in an entire network.
43. **RECOMMENDATION: In cases where infrastructure must be repaired or upgraded, owners should share the costs these costs as well as maintenance with third parties as both will benefit. Repairs should not be charged to third parties if the equipment is fully depreciated or is already damaged. (Q4)**

C. Spare capacity: (Q6, Q7)

44. The Commission notes that: “There are currently no benchmarks for how long a pole owner can reserve spare capacity, no limitations on the amount of spare capacity an owner can reserve, and no consequences if the capacity is not utilized” (para 16).
45. While incumbents often conclude that there will be little future demand in remote and Northern regions, they may also decide to reserve pole or conduit space for future upgrades or replacements. They may therefore greatly increase costs for third party providers who may have to install additional (and redundant) support structures.
46. **RECOMMENDATION: Incumbent owners of poles and conduit should reserve unused capacity for no more than five years. Incumbents that fail to allow third parties to access that capacity after it has been installed for five years should be subject to sanctions such as fines.**
47. Another relevant issue is access to dark fibre. Incumbents should provide access to unused fibre strands at wholesale prices so that third parties can provide services without having to install redundant fibre or conduit. (We also discuss this issue in paras 80-84 below).
48. **RECOMMENDATION: Incumbent owners of dark fibre should be required to make it available at tariffed wholesale rates to third parties.**

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

49. Due to the estimated high costs of access, FMCC members typically budget between \$300 and \$1,000 per utility pole, if not more, for the support structures joint usage authorization process. A small community with 500 poles that wishes to deploy FTTH would therefore have to plan to spend up to \$500,000 just for authorization to access these poles.

50. We agree with numerous interveners in CRTC 2019-406 who noted the disparities between access to ILEC-owned structures under the jurisdiction of the CRTC, and access to utility and other poles over which the Commission has no authority. There are differences between the pricing for access to ILEC poles and for utility and municipal poles, the latter of which are typically set by provinces or local bodies. FMCC members have experienced these difficulties.
51. For example, in northern Manitoba **Clear Sky Connections** does not use Manitoba Hydro's poles to avoid the monthly or annual rate for use.
52. FNEC explains that in Quebec, there is a centralized system called DUSS (demande d'utilisation des structures de soutènement) that is used to register and manage pole access. However, there is limited communication between parties involved in DUSS (such as TSPs, pole owners and third parties), which puts the onus on groups like FNEC to monitor and follow up with DUSS. As well, although there are rules and policies to follow, there does not seem to be any monitoring or enforcement of those rules.
53. Concerning pricing for access to utility poles, several providers note that attachment rates are generally significantly higher for provincial utility poles than ILEC poles. This pricing disparity is a major barrier in Ontario, where prices to access Hydro One poles are set by the Ontario Energy Board. See *Report of the Ontario Energy Board: Wireline Pole Attachment Charges*.² These price increases are particularly onerous for small northern providers. FMCC member Western James Bay Telecom Network (WJBTN) notes that Hydro One prices have increased from \$22.35 in fall 2018 per annum per pole attachment to \$43.63 per pole. Several other providers in this proceeding serving Ontario have cited the impact of this increase to more than \$43.
54. WJBTN points out how the high costs it must absorb this year (2020) are affecting the organization's ability to provide affordable telecommunications services to residents of the rural/remote communities of Western James Bay. For WJBTN:

“The issue isn't whether we can access the poles...it's whether we can afford the 100 percent increase in attachment fees.” The implications are significant, as now WJBTN faces the necessity of increasing its proposed broadband rates to its customers in remote low income communities.

“We are trying to hold the line at \$150 per month for the end-user. However, our pole attachment fees are now double for the 100 or so poles we had in each community. These poles were used for the fibre run that serves our anchor institutions [health clinic, school, Band office, etc.]

However, with fibre to the home, we will have to pay pole attachment fees for every single street for every pole on that street. So instead of paying \$22.35 for 100 poles in each community, we had budgeted for paying \$22.35 each for 500 poles per community

² *Report of the Ontario Energy Board Wireline Pole Attachment Charges*. EB-2015-0304. March 22, 2018.

[total \$ 33,525 for 3 communities], and we had taken that amount into consideration when we arrived at the \$150.00 price.

Now the pole attachment fee has doubled to \$44.70. The pole attachment fees will eventually end up at \$ 44.70 x 500 poles per community x 3 communities = \$67,050. WJBTVN will therefore have to come up with an additional \$33,525 or about \$2.50 per customer per month to cover the increased pole costs.”

55. We also note that Bell Canada apparently has preferential rates with Hydro One. In its Intervention in CRTC 2019-406, ITPA comments: “Hydro One’s pole rental rate has quickly and perversely doubled in the past few years. This rate increase has resulted in a material blow to the operating expenses of all carriers that use Hydro One’s poles, with the notable exception of Bell Canada. Bell Canada has an exclusive pole rental agreement with Hydro One”³ (para 4). Rogers similarly specified that “the current annual rate to attach to a pole in Ontario owned by Bell Canada is \$12.48; the annual rate payable by a competing carrier to attach to an identical pole owned by an electrical utility is \$44.50” (para 25).⁴

56. As Rogers argued: “... competitive carriers do not have the benefit of the pole-sharing arrangements enjoyed by the ILECs and therefore have very little power when it comes to negotiating pole attachment agreements with the electrical utilities. These agreements, which are, for the most part, standard across the industry, are presented with a “take it or leave it’ proposition, leaving the carriers with no choice if they want to use the poles. They are very one-sided and have onerous provisions (in addition to annual fees)” (para 27).

57. RECOMMENDATION: We agree with ITPA that: “The Commission should ... 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” (para 40).

58. Similarly discrepancies are seen with respect to timelines. For example, Xplornet noted in its Intervention in CRTC 2020-406 the high charges for utility pole access set by Ontario Energy Board and stated that time to access utility poles is 6 to 8 times longer than to gain access to ILEC poles” (para 40).

59. The Commission states in this notice that it “...does not have jurisdiction over the terms of access to poles owned by the electric utility companies” (para 18). However it also notes; “In Telecom Decision 2008-62, the Commission found that when Canadian carriers provide access to support structures, *including support structures they do not own but for which they have the right to grant permits for access*, they are providing a telecommunications service

³ Independent Telecommunications Providers Association: *Submission to Call for comments regarding potential barriers to the deployment of broadband-capable networks in underserved areas in Canada – Telecom Notice of Consultation CRTC 2019-406 – Public Record 1011-NOC2019-0406* (7 May 2020).

⁴ Telecom Notice of Consultation CRTC 2019-406 – Call for comments regarding potential barriers to the deployment of broadband-capable networks in underserved areas of Canada – Rogers’ Intervention (7 May 2020).

within the meaning of the *Act* and are therefore subject to the Commission’s jurisdiction” (para 20, emphasis added).

60. RECOMMENDATION: We urge the Commission to invoke the authority in CRTC 2008-62 to provide oversight on access to support structures wherever possible.

61. We recognize that the solution to these issues may not be straight forward; nevertheless, several interveners have proposed various steps to accomplish this goal. Shaw, Rogers, TELUS and others propose legislative solutions to amend the *Telecommunications Act*. ITPA, Cogeco, and others propose co-ordination between the Commission and other authorities. Cogeco proposes that: “The Commission should collaborate with provincial public utility tribunals and municipal utility owners in order to develop and put in place an inter-jurisdictional regulatory framework” (para 82).

62. We note that the Broadcasting and Telecommunications Review (BTLR) Panel recommended an amendment to the *Telecommunications Act* to: “[E]mpower the CRTC to review and vary the terms and conditions of access to the support structures of provincially regulated utilities, to ensure non-discriminatory arrangements” (p.26, emphasis added). The BTLR also states that the scope of access should also include non-discriminatory access to the support structures of provincially regulated utilities (Regulation 36, p. 93).

63. RECOMMENDATION: We agree with the BTLR Panel’s proposed changes to the *Telecommunications Act* concerning support structures. We also urge the Commission to immediately investigate all plausible solutions to coordinate between federal, provincial and municipal jurisdictions.

64. RECOMMENDATION: The CRTC should meet with CAMPUT (Canada’s association of utility regulators) and the Canadian Energy Regulator (CER) to determine how joint permitting processes for telecom use could be streamlined, and how pricing can be kept reasonable in order not to render rural broadband unaffordable.

65. We note that the CER has also established Indigenous Advisory and Monitoring Committees (IAMC) that bring together Indigenous and federal leaders to provide advice to regulators. The CER’s vision is:

“to transform the way we work with Indigenous Peoples, recognizing their unique cultures, knowledge and histories; and endeavor to reflect a renewed Nation- to-Nation relationship based on the recognition of rights, respect, cooperation and partnership. We recognize reconciliation is an ongoing process that occurs in the context of evolving Indigenous-Crown relationships. Sitting around the table with Indigenous communities, we are working to find new ways to co-manage regulatory oversight.... We are also ensuring we equip the communities with the right skills and support to make the changes we envision a reality.”⁵

⁵ See <https://www.cer-rec.gc.ca/en/consultation-engagement/indigenous-engagement/index.html>

66. RECOMMENDATION: The Commission should meet with CAMPUT and CER to discuss the harmonization of joint-use agreements, including with respect to the specific contexts of Indigenous peoples.

E. Dispute Resolutions

67. We have reviewed the Dispute Resolution processes as described in Broadcasting and Telecom Bulletin 2019-184. We were not previously aware of the availability of these procedures. We would like access to any documentation on disputes that have been resolved using these procedures, especially since they came into force in May 2019, and particularly where small or non-incumbent providers were involved.
68. We are also unaware of how a service provider should file a complaint about issues such as those discussed in this proceeding, or initiate a dispute with the Commission. All references to complaints that we could find on the CRTC website refer to consumer complaints.
69. We have heard from FMCC members that they are unaware of whom they can contact at the Commission and how they can file a complaint about delays, unfair practices and pricing, and other matters such as those addressed in this Notice.
- 70. RECOMMENDATION: The CRTC should post information on its website specifically concerning how providers can contact Commission staff, file complaints, and initiate disputes concerning excessive delays, unfair practices, inadequate maintenance or quality of service, unjustifiable pricing or changes in prices, or other matters they have encountered in dealing with other Telecom Service Providers.**
71. In the past, FMCC member organizations have not been aware of any rules or regulations that govern access to support structures. Also, at present we know of no formal complaint mechanism that providers can use to report the issues related to support structures. FMCC organizations have been forced to negotiate these issues on a project-by-project basis. This variability exists even within a service region; for example, we know of cases where rules applied to certain organizations are not applied to others.
72. There is a requirement for more transparency and a review/complaints process with concerning joint usage of support structures, as well as other issues referred to in this submission.
- 73. RECOMMENDATION: The Commission should put in place a clear process that third-party organizations can use to report problems and request remedies concerning access to support structures. One possibility could be by establishing an ombudsperson who can accept complaints and can review draft contracts.**

F. Other Issues: Database on Infrastructure

74. There is also no general documentation available regarding the condition of infrastructure in communities. This lack of information can result in costs and delays to locate the infrastructure, and assess and document its condition. A database of publicly accessible information would therefore be very useful. It should include:
- Location of dark fibre;
 - **Location and condition of support structures;**
 - Location of towers;
 - Age, condition and capacity of electronics.
75. Information in databases and maps should be reviewed and updated annually. Owners of infrastructure who do not provide annual updates, or who provide erroneous or out-dated information, should be subject to penalties such as fines.
- 76. RECOMMENDATION: The Commission should establish a database of publicly available information associated with various infrastructure types, including the location and condition of support structures. This database should be reviewed and updated on an annual basis, with penalties applied to infrastructure owners that fail to provide accurate and timely information.**

G. Other Issues:

Standards

77. Varying standards between utility and telecommunications pole requirements such as pole height may also impede network installation. In order to run fibre, phone and hydro lines, the poles in the community must be set at a certain height. We note that in some communities in the James Bay region, the poles are below regulation height so that fibre cannot be strung aerially unless the poles are replaced, and replacement costs are significant. Nor can fibre be buried because of frost heaves. (In this terrain, fibre must be buried below the frost line, at a depth of about fifteen feet.)
78. Poles should be a standard height and constructed to handle multiple attachments, even if third-party attachments are not required right away.
- 79. RECOMMENDATION: While we recognize that planning and construction specifications may vary, telecommunications projects will benefit from some standardization of these requirements. When in doubt, the standard endorsed by the Standards Council of Canada (SCC) can be used:**

<https://www.scc.ca/en/standardsdb/standards/7692>

Alternative support structures – Trenching, Conduit and “Dig Once” Policies

80. Support structures for broadband include not only poles and towers, but also conduit. Public funds for infrastructure projects such as road construction or upgrades should require the installation of conduit for fibre and other utilities, with access ducts every few kilometres. These support structures should be made open access, to allow multiple providers to access them and to support network redundancy and path diversity.

81. While road construction is obviously not the CRTC’s responsibility, the CRTC and ISED should point out to other infrastructure funding entities that this approach will result in overall cost-savings of public funds. For example, material costs for conduit are approximately \$2 per metre, and the installation cost is marginal if done at the same time as road construction or installing water or sewer lines, versus a cost of approximately \$25-\$50 per metre when existing roads must be dug up and repaired to lay conduit. Also, climate change is contributing to more wind and ice storms that can damage overhead cable.

82. ‘Dig Once’ policies have been adopted by several states and municipalities in the U.S.⁶ For example, as noted by the North Carolina Department of Information Technology:

“ ‘Dig once’ policies provide ready-made buried conduit, enabling future providers to more easily and cheaply install fibre by threading it through existing conduit.

Installing empty conduit which is relatively inexpensive during construction projects supports future expansion by substantially lowering the expense of digging for providers.”⁷

83. We also endorse the efforts of Indigenous nations and communities to implement their own “dig once” policies if they so wish, and encourage the Commission to support these endeavours.

84. **RECOMMENDATION: The CRTC should endorse a ‘dig once’ policy in collaboration with other infrastructure developers, such as governments, utility companies, Indigenous governments, and road builders.**

Indigenous Jurisdiction

85. Jurisdictional issues regarding support structures (and corresponding rights-of-way) should be addressed with reference to Indigenous Lands and Jurisdiction, and Treaty and Aboriginal Rights. Section 43(3) of the *Telecommunications Act* states: “No Canadian carrier or distribution undertaking shall construct a transmission line on, over, under or along a highway or other public place without the consent of the municipality or other public authority having jurisdiction over the highway or other public place.” (emphasis added)

⁶ See http://www.csg.org/pubs/capitolideas/enews/cs41_1.aspx

⁷ See: <https://www.ncbroadband.gov/playbook/policy-and-broadband/dig-once-policies/>

86. The *Act* further states in Section 43(4) that: “Where a Canadian carrier or distribution undertaking cannot, on terms acceptable to it, obtain the consent of the municipality or other public authority to construct a transmission line, the carrier or distribution undertaking may apply to the Commission for permission to construct it and the *Commission may... grant the permission subject to any conditions that the Commission determines.*” (emphasis added)

87. Further, the BTRL Panel noted that:

“Consistent with Canada’s federal structure, *governance for passive infrastructure is therefore shared across multiple bodies and levels of government.* (p.89, emphasis added).

Further, “*Municipalities and other public authorities pursue legitimate and important public interests in managing land use and physical assets.* The CRTC’s ability to modify their decisions is conditioned explicitly on having due regard to others’ use and enjoyment of the highway or other public place.” (p.93, *emphasis added*).

88. We note that “bodies and levels of government” and public authorities include Tribal and other Indigenous governments. Therefore, specific language referring to such Indigenous governments must be included in policy, plans and regulations concerning support structures and rights-of-way. This includes access agreements negotiated between carriers and Indigenous governments.

89. Our position is that such land planning processes must recognize Indigenous governments and include Indigenous land and treaty rights. First Nations hold jurisdiction over rights-of-way in their territories; they are not municipal governments. Poles and buried conduit are largely on First Nations land or on unceded land. We assert that Indigenous networks have a right to access these poles and conduit without obstruction.

90. We also draw attention to the *Tribal Government Engagement Obligation* that the U.S. Federal Communications Commission (FCC) requires from carriers receiving subsidies to provide services on Tribal lands. These carriers must demonstrate that they have coordinated with the Tribal government and provide a report documenting the following:

- Needs assessment and deployment planning with a focus on Tribal community anchor institutions;
- Feasibility and sustainability planning;
- Marketing services in a culturally sensitive manner;
- Compliance with Rights of way processes;
- Compliance with Land Use permitting requirements;
- Compliance with Facilities Siting rules;
- Compliance with Environmental Review processes;
- Compliance with Cultural Preservation review processes; and

- Compliance with Tribal Business and Licensing requirements. (p. 7)⁸

91. We propose that similar requirements should be imposed by the CRTC.

92. RECOMMENDATION: Specific language concerning Indigenous land and treaty rights and procedures required to access land, “passive infrastructure” such as rights of way, poles, and ducts, as well as other telecommunications equipment, should be included in any updated regulations concerning support structures.

93. RECOMMENDATION: CRTC regulations should state that the Commission does not have the right to approve construction of transmission lines or support structures on Tribal or other Indigenous lands without the informed consent of the relevant Indigenous government.

94. We note the CRTC’s statements in 2018-377 that it “expects applicants to identify any established or asserted Aboriginal or treaty rights that might be affected by the proposed project and to commit to undertaking any further consultations that may be necessary” (paras 219-224). We also note the CRTC’s statements in 2018-377 that: “The Commission may give special consideration to proposed projects that would serve Indigenous communities”.

95. Existing rights-of-way agreements involving Indigenous lands and communities should be updated. Many were written in the 1960s/70s, before the formal recognition of Indigenous lands and jurisdiction, and Aboriginal and Treaty Rights. For example, in many cases, telecommunications and support structure networks cross Indigenous lands, but the peoples living on those lands cannot access them. Furthermore, members of these Indigenous communities do not receive any compensation from telecommunications service providers for traversing their territories. These issues need to be addressed and remedied.

96. RECOMMENDATION: In the spirit of reconciliation, meaningful consultation and informed consent, agreements concerning support structures and rights of way on Indigenous lands must be updated to address requirements for access and compensation for Indigenous communities or governments.

97. RECOMMENDATION: As noted above (paras 64-66) the Canadian Energy Regulator (CER) has also established Indigenous Advisory and Monitoring Committees (IAMC) that bring together Indigenous and federal leaders to provide advice to regulators. The CRTC should establish a similar mechanism for consulting with Indigenous communications organizations and leaders.

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

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⁸ Form available at: <https://www.usac.org/wp-content/uploads/high-cost/documents/Forms/FCC-Form-481-Template.pdf>.