



## STAFF REPORT ACTION REQUIRED

### Municipal Access Agreement for Telecommunication Installations – Atria Networks L.P.

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| <b>Date:</b>             | May 13, 2009                              |
| <b>To:</b>               | Public Works and Infrastructure Committee |
| <b>From:</b>             | General Manager, Transportation Services  |
| <b>Wards:</b>            | All Wards                                 |
| <b>Reference Number:</b> | Ts09097te.top                             |

#### SUMMARY

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This report seeks Council approval to enter into an Agreement with Atria Networks L.P., to enable this telecommunications firm to install and maintain fibre optic cables, conduit and ancillary plant in City of Toronto streets pursuant to the terms and conditions negotiated to address City interests.

#### RECOMMENDATIONS

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##### Transportation Services recommends that City Council:

1. approve entering into a Municipal Access Agreement with Atria Networks L.P. to authorize the construction, installation, maintenance and operation of a telecommunications network comprising fibre optic cables, conduit and ancillary plant in the City of Toronto public highways, generally under the terms and conditions as set out in this report and such other terms and conditions as may be satisfactory to the City Solicitor and General Manager, Transportation Services.

##### Financial Impact

Entering into the proposed Municipal Access Agreement will not result in any direct financial costs to the City. The applicant will be responsible for any costs incurred by the City due to construction, installation, maintenance and operation of its plant in City streets in accordance with the City's usual permitting process.

## **DECISION HISTORY**

City Council, at its meeting of September 22, 23, 24 and 25, 2003, adopted, as amended, Clause No. 71 in Report No. 9 of the Policy and Finance Committee entitled “Supreme Court of Canada Decision – Leave to Appeal Application – Canadian Radio-Television and Telecommunications Commission (CRTC) Decision 2001-23 Terms and Conditions for Access to Municipal Property by Telecommunications Carriers.” The Clause contained a confidential joint report (September 8, 2003) from the Commissioner of Works and Emergency Services and the City Solicitor, and resulted, among other things, in instructions to staff concerning discussions with telecommunications companies requesting changes to agreements with the City. This decision also provided the framework for staff to develop a template agreement to be used as a basis for discussions with new companies wishing to have access to City streets in the future. City Council has authorized a number of such Agreements with companies over the past five years, based on this template model.

Atria Networks L.P. has approached the City and negotiated for consent to access the municipal public highway. The firm is agreeable to the terms and conditions as discussed in the following which contain minor refinements to the template.

## **COMMENTS**

Atria Networks L.P. was formed in 2005 through the merger of two utility telecom companies (Kitchener and Guelph). Atria has grown provincially through mergers and acquisitions of hydro utility telecom subsidiaries that have served their respective communities for over 10 years. It owns and operates a network comprising some 4,300 km of fibre optic cable in municipalities including Ottawa, Waterloo Region, York Region, Hamilton, Barrie, Guelph, Cornwall and Orangeville.

Atria obtained the fibre optic assets of PowerStream, the hydro utility serving York Region, in 2007. Their fibre assets currently terminate at Steeles Avenue. The company initially wishes to extend its network to secure customer opportunities in the northern areas of the City, where it indicates that fibre capacity is currently not available from Toronto-based suppliers or the available technology from these suppliers does not support the technology the customer is seeking. Atria’s client base comprises the non-residential public, enterprise and carrier sectors, and its fibre network provides broadband services for internet access, point-to-point connections and IT continuity.

Atria has acknowledged the difficulties and disruption that can result from construction in densely populated corridors and suburban areas, and will employ alternative methods to deploy its network wherever possible (use of carrier to carrier relationships; attachment to existing poles; use of existing spare duct capacity).

Atria Networks L.P. is registered with the CRTC as a Non-Dominant Carrier.

## Summary of Key Terms

The standard Municipal Access Agreement proposed by staff for Atria Networks L.P., as with similar companies, includes the following provisions that establish the roles and responsibilities of the parties regarding work in the public highway and protection of the City's interests:

1. The standard term granted by the City for access to public highways is 15 years, with an option of renewal for a further five years by mutual consent.
2. The City will not at the present time charge the company a fee in the nature of a landbased licence or lease fee for the use of the public highways during the term, unless in future it is permitted by law, including Provincial or Federal legislation and/or a future binding decision (CRTC, court), to do so, in which case, the fee shall reflect rates then charged by the City for the use for similar purposes in the public highways.
3. The company shall be obliged to pay all applicable taxes, levies, charges, etc.
4. All work done by the company within the public highway is subject to the City's standard requirements for persons doing construction or otherwise occupying the public highway (i.e., submission of permit applications, pre-approval of plans, issuance of permits, provision of security, warranty of temporary restoration, submission of as-built drawings, etc.). All work is to be done to the satisfaction of the General Manager in accordance with City policies.
5. The company shall, prior to construction, post financial security in the form of a letter of credit sufficient to secure payment of the estimated total cost of the repair and restoration of the public highways.
6. The company will participate in joint planning and co-ordinating processes to reduce disruption and damage to the public highways and at all times will be a member of a "locate" service.
7. The company shall pay all required permit and construction fees, including but not limited to the cost of permanent restoration carried out by the City, and acknowledges that the City is currently undertaking a study to identify any unrecovered costs, including pavement degradation and work around costs, incurred by the City as a result of the activities of persons doing construction within the public highways, including Canadian Carriers and that the City intends in future to impose a standard fee to recover such costs. The company has agreed to pay the City's additional reasonable work-around costs related to the repair, maintenance or construction of City facilities due to the presence of the company's plant.
8. The company agrees that in order to avoid disruption of the public highway, it shall make every effort to first establish whether another company has available

- support structure capacity which is, in the opinion of the General Manager, reasonable and feasible for use by the company. Similarly, where the company has excess capacity, it shall disclose such excess capacity to others and make it available on such terms as may be agreed. The company also agrees, where space is available, to make every effort to enter into a sublease or other arrangement to utilize the Pipe System (decommissioned downtown high pressure water conduit owned by the City and leased/managed by MTS Allstream Inc.).
9. At the option of the City, prior to the commencement of any work, the company agrees upon request to install additional ducts on behalf of the City with the City paying the incremental cost incurred by the company with no mark-up for profit for such installation. The City would subsequently own such plant.
  10. Any future relocation of the company's plant that may be required for a bona fide municipal purpose is subject to a sliding scale of cost allocation. The City would pay for relocations for the first three years after issuance of the permit, with the company thereafter assuming an increasing share of the cost over time. After 10 years, 100 per cent of the cost of relocation is the responsibility of the company.
  11. Insurance, including general liability, in the amount of \$10 million per occurrence, and "all risks" property insurance on a full replacement basis, is required in a form satisfactory to the City.
  12. The company shall indemnify and save harmless the City with respect to any claims or losses incurred as a result of the construction, operation and maintenance of the network and the use of the public highways, except in the event of damage or injury due to the gross negligence or wilful misconduct of the City. The City shall not be liable for any damage to the network however caused where the company has failed to provide "as-built drawings" or accurate locate information as requested.
  13. The agreement contains commercial provisions satisfactory to the City Solicitor and the General Manager, Transportation Services, including requiring the City's consent for assignment of the agreement in the event that control of the company changes, default provisions, termination provisions and related remedies.
  14. The consent granted by the City is non-exclusive, applies on an "as-is" basis and does not convey a property interest in the public highways.

The City Solicitor has participated directly in the negotiations and has reviewed this report.

## **CONTACT**

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## **SIGNATURE**

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