



**STAFF REPORT
ACTION REQUIRED**

**CRTC Notice of Consultation 2011-614 – Model
Municipal Access Agreement - City of Toronto
Intervention**

Date:	October 17, 2011
To:	City Council
From:	City Solicitor
Wards:	All
Reference Number:	

SUMMARY

This report has been prepared for submission directly to City Council in order to obtain authority for the City Solicitor to file an intervention and participate on behalf of the City of Toronto in response to Notice of Consultation 2011-614 entitled "Proceeding to consider a model Municipal Access Agreement" issued by the Canadian Radio-television and Telecommunications Commission ("CRTC"). A copy of the Notice is attached to this report for the information of City Council.

Due to the timing of the issuance of the Notice (September 23, 2011) and the deadline for intervenor submissions (November 18, 2011), there is no opportunity for committee consideration of this report prior to consideration by City Council. **It is essential that Council consider this matter at its meeting of October 24 and 25, 2011 in order to provide the City Solicitor with timely instructions.**

This proceeding concerns issues of importance to the City of Toronto as it will be identifying and considering the issues to be addressed in future municipal access agreements (MAAs) between municipalities and telecommunications and cable TV companies seeking access to municipal highways and other property for the purpose of constructing and operating their networks.

RECOMMENDATIONS

The City Solicitor recommends that City Council:

1. Authorize the City Solicitor to seek intervenor status for the City of Toronto to participate in the process before the Canadian Radio-television and Telecommunications Commission arising from Notice of Consultation CRTC 2011-614 entitled ""Proceeding to consider a model Municipal Access Agreement".
2. Direct that the City Solicitor, in consultation with the General Manager, Transportation Services and other City staff as required, make submissions and otherwise participate in the proceeding as necessary to protect the interests of the City of Toronto and also assist and co-ordinate with the Federation of Canadian Municipalities and other municipal intervenors.

IMPLEMENTATION POINTS

Legal Services staff has been in contact with other FCM members to discuss the CRTC Notice and begin the formulation of strategy and submissions in response. The City Solicitor shall work with the General Manager, Transportation Services and other City staff to prepare submissions which not only address the City's interests but also complement and support the submissions of the FCM and other municipal intervenors.

FINANCIAL IMPACT

The recommendations in this report are not expected to have any direct financial cost implications. In the event that there are any financial implications to the City of Toronto as a result of a CRTC decision in the Notice proceeding, the City Solicitor or other City staff as appropriate shall report to City Council to seek further instructions.

ISSUE BACKGROUND

Under the Federal *Telecommunications Act*, telecommunications carriers and distribution undertakings (i.e. cable TV companies) may enter onto highways and certain other municipal property for the purposes of installing, operating and maintaining transmission lines used for the provision to the public of telecommunications services. Where a company cannot get access on terms acceptable to it, it may apply to the CRTC to grant the permission on such terms and conditions as it may determine. The City of Toronto has participated in a number of past proceedings before the CRTC respecting the terms and conditions to be included in MAAs between telecommunications companies and municipalities for the use of municipal property by those entities, and the CRTC's jurisdiction to determine such conditions.

Past CRTC decisions and subsequent decisions of the Federal Court of Appeal and the Supreme Court of Canada have held that the determination of MAA terms and conditions by the CRTC is part of the federal government's exclusive jurisdiction over telecommunications matters and that these decisions are therefore binding on the municipalities to which they apply. The City of Toronto has therefore developed a standard form of MAA which staff believe provides a reasonable balance between the principles established in past CRTC decisions and the City of Toronto's responsibilities as the municipal property owner and regulator of activities within the public highways and on other types of municipal property. In particular, the City's standard MAA requires that the companies must follow the City's standard permit processes and, as permitted under past CRTC decisions, reflects the requirement that municipalities should be compensated for "causal costs" which they incur due to the activities of the companies. This would include costs for plan review, inspections, pavement degradation and temporary and permanent pavement repairs.

COMMENTS

On September 23, 2011, the CRTC issued Notice of Consultation 2011-614, entitled "Proceeding to consider a model Municipal Access Agreement". The Notice of Consultation contemplates a two part process as follows:

- 1. Call for Comments:** The CRTC is requesting comments from interested parties as to what considerations and policy matters, including responsibilities and commitments, the municipality and the company should deal with and agree upon in order for the company to access public property for the purposes of constructing, maintaining, and operating transmission facilities. The Notice anticipates that the types of matters to be considered will likely include the length of the agreement term, liability issues, recovery of municipal costs and costing methodologies, public safety issues and any other issues which may have arisen and have not been addressed by past CRTC decisions in this area.
- 2. CISC Steering Committee:** The CRTC intends to establish an "ad hoc CRTC Interconnection Steering Committee (CISC) working group" to develop the access terms and conditions to be included in the model MAA, based on principles and guidance established by the CRTC as a result of the first step in the process. While not indicated in the notice, it is assumed that this working group would include municipal representation.

The process as set out in the Notice requires that interested parties file submissions by **November 18, 2011** requesting intervenor status and also addressing the issues raised by the Notice. The Notice then contemplates a further process for the exchange of interrogatories and the filing of final written arguments and replies by **March 6, 2012**. The CRTC has indicated that it expects to issue a decision within four months of that date. As indicated above, the CISC working group will then apparently have the task of considering actual provisions based on that decision.

Given that the City of Toronto has developed its own MAA for use in this area, this proceeding clearly raises the concern that a decision could result in the establishment of new principles which would require the City to change its standard template to reflect a new set of CRTC guidelines and possibly a federally-mandated “model MAA” document. It is therefore important that the City of Toronto participate directly in the proceeding and also assist the FCM in order to see that municipal interests are protected.

CONTACT

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SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENT

Attachment 1 – Telecom Notice of Consultation CRTC 2011-614, “Call for comments – Proceeding to consider a model Municipal Access Agreement” (Ottawa, 23 September, 2011)