



## STAFF REPORT ACTION REQUIRED

### MTS Allstream Lease of Decommissioned Underground Pipe System – End of Term Renewal

<b>Date:</b>	November 4, 2013
<b>To:</b>	Public Works and Infrastructure Committee
<b>From:</b>	General Manager, Transportation Services
<b>Wards:</b>	All Wards
<b>Reference Number:</b>	p:\2013\ClusterB\Tra\NorthYork\pw13110.docx

#### SUMMARY

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The term of a 15-year lease agreement with the telecommunications firm MTS Allstream Inc. ("Allstream") for use of a City-owned decommissioned pipe system in the City's downtown core to house its fibre optics network infrastructure expired in August 2012. The Agreement also contains license provisions which allow the company to provide, maintain and operate its network infrastructure within the City streets beyond the pipe system.

City Council and the Public Works and Infrastructure Committee previously considered companion reports submitted by Transportation Services and the City Solicitor describing the telecom network, outlining how the regulatory landscape had evolved over the term of the agreement and setting out an end-of-term action plan, including various options (Item PW2.6).

In these reports, Council directed staff to negotiate the lease renewal and report back on the proposed terms and conditions. This report seeks Council approval to enter into an agreement with Allstream for the renewal of the pipe system lease and to enable the company 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.

## **RECOMMENDATION**

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### **The General Manager of Transportation Services recommends that:**

1. City Council approve entering into separate agreements with MTS Allstream for the renewal of the "Lease of City Decommissioned Underground Pipe System" and a Municipal Access Agreement to authorize the construction, installation, maintenance and operation of a telecommunications network in the City of Toronto public highways, generally on the terms and conditions as set out in this report and such other terms and conditions as may be satisfactory to the General Manager, Transportation Services in a form satisfactory to the City Solicitor.

### **Financial Impact**

The lease portion of the Agreement will result in payment to the City of an annual fee of \$11.00 per metre of installed cable applicable to Allstream and \$6.00 per metre for third parties, subject to annual inflation. Based on Allstream's current 17 kilometre network, this should generate approximately \$187,000 annually.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

City Council, at its meeting of April 12 and 13, 2011, in considering the item, "MTS Allstream Lease of Decommissioned Underground Pipe System – End of Term Action Plan", directed the General Manager, Transportation Services and the City Solicitor to engage in negotiations with MTS Allstream for the renewal of the lease and license, and report back to the Public Works and Infrastructure Committee on the proposed terms and conditions of renewal.

Reference link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.PW2.6>

## **ISSUE BACKGROUND**

In 1997, the City of Toronto entered into a 15-year Agreement, with what is now the telecommunications firm MTS Allstream, for the "Lease of City Decommissioned Underground Pipe System and Licence of the Use of the City Rights-of-Way", for the purpose of deploying, maintaining and operating a fibre optics-based, competitive telecommunications network. The Agreement term expired in August 2012, and given the options, Council clearly directed staff to negotiate the continued use of the pipe system by Allstream.

## **COMMENTS**

Through the early and mid-1990s, the Government of Canada was engaged in an extensive revamp of the framework for provision of telecommunications service in Canada to open up competition in long distance and local phone service. At the same time, new digital technologies were introduced and an emerging demand for bandwidth was increasing exponentially. The Canadian Radio and Television/Telecommunications Commission (CRTC), pursuant to its authority under the Telecommunications Act, adopted a model of "facilities-based competition". In other words, competitive carriers were encouraged to build their own networks as an alternative to using the facilities of the traditional incumbent carriers.

Around this time, City staff recognized that a decommissioned high-pressure water pipe system in the downtown core may have potential to be adapted for reuse as a conduit network to carry fibre optic cable and facilitate the roll-out of telecommunications networks. This was also seen as a key economic development initiative for the City. Thus, although dormant for decades, an opportunity was seized to convert the system into a potentially valuable City asset.

An agreement for the lease of the decommissioned water pipe and a license for the use of public highways beyond the pipe system was signed in 1997 (subsequently amended in 1998 to allow expanded coverage throughout the amalgamated City of Toronto) with the firm called Metronet Communications Group, now MTS Allstream. This was the culmination of an extensive RFP process. The Agreement had a 15-year term, with expiry at the end of August, 2012. In addition to Allstream deploying its own network within the pipes, it was also originally envisaged that the pipes would be managed by Allstream for use by other carriers on a sublease basis. However, for a variety of reasons - the most significant being economic - this element of the agreement did not develop as originally planned.

### **Description of the System**

The decommissioned high pressure water pipe system, comprising about 17 km in total length, was originally installed in the downtown core area as fire-fighting system, generally in the area bounded by Front Street, Bathurst Street, Queen Street West and Jarvis Street, with a northward extension as far as Dundas Street in the vicinity of City Hall/Eaton Centre. Although initial sections date back to the mid-1800's, the system, comprised of large cast iron pipe with associated valves and connections, was generally intact and in reasonably good condition. The inside diameter of the pipes varied generally from 200mm (8 inch) to 500mm (20 inch) enabling the placement of a number of "innerducts" to accommodate several fibre optic lines. The pipes are somewhat deeper than typical telecom installations at 1.8m to 2.2m. There were no lateral connections into buildings.

As the system was leased on an "as-is" basis, the terms of the Agreement established that the successful proponent was responsible for all work and associated costs to refurbish the pipe system and facilitate its conversion to a viable telecom duct network. This included removal of rust build-up in the pipes, replacement of cut and missing sections, connection of laterals into buildings, removal of water valves and chambers, placement of innerduct, and construction of access chambers and ancillary plant for telecom network use. Allstream has made a substantial investment over the years to refurbish the system and expressed its clear desire to pursue the lease renewal, taking account of the prevailing regulatory and market conditions.

## **Summary of Key Terms**

The proposed renewal agreements include lease provisions for the pipe system and standard Municipal Access Agreement conditions for use of City streets proposed by staff and acceptable to Allstream that establish the roles and responsibilities of the parties regarding work in the public highway and protection of the City's interests:

1. The renewal term for both agreements will be 15 years, with an option of renewal for a further five years by mutual consent. The terms of the agreement shall be reviewable in years 5 and 10 with respect to any changes required to conform with applicable changes in legislation or CRTC/Court decisions.
2. The Company will pay the City an annual lease fee for the use of the pipe system in the amount of \$11.00 per metre of installed cable in the pipe system, subject to annual inflation increase. Similarly, the City will also receive an annual lease fee of \$6.00 per metre for all third party cable installed in the pipe system. This rate was negotiated taking into account market rates in other jurisdictions and tariff rates charged by utilities. Staff concludes that the recommended amount represents a favourable compensation package in the current environment.

The City will not at the present time charge the company a fee in the nature of a land-based 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. It is the goal of the City to encourage third party use of the pipe system as a means of minimizing disruption and cutting of the streets. In this regard, Allstream will make available up to three (3) innerducts within the Pipe System for use by third parties.

5. Allstream is responsible for administration, management and all costs related to refurbishment, maintenance and ongoing operation of the pipe system (no cost to the City).
6. 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, Transportation Services in accordance with City policies.
7. 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.
8. 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.
9. 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, pavement degradation fees and lost productivity costs (as defined in the Agreement) incurred by the City as a result of the Company's work in the street., subject to immediate review in the event of a applicable changes in legislation or CRTC/Court decisions.
10. 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.
11. 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 5 years after issuance of the permit, with the company thereafter assuming 50 percent of the cost up to 10 years. After 10 years, 100 percent of the cost of relocation is the responsibility of the company. For equipment installed prior to the Agreement date (September 1, 2012) the company shall pay 100% of the costs of relocation where the permit was issued more than 15 years prior and 50% of relocation costs where the permit was issued less than 15 years prior.
12. Insurance, including general liability, in the amount of \$5 million per occurrence, and "all risks" property insurance on a full replacement basis, is required in a form satisfactory to the City. The City may, at any time and in its sole discretion, require the amount of coverage be increased to \$10,000,000 per occurrence or claim if required.

13. 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 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.
14. 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.
15. The consent granted by the City for use of the public highways beyond the pipe system is non-exclusive, applies on an “as-is” basis and does not convey a property interest in the public highways.

## **CONTACT**

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## **SIGNATURE**

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