

## **Legal Advice Regarding Rogers' Application to Canadian Radio-Television and Telecommunications Commission**

**Date:** October 2, 2024

**To:** City Council

**From:** City Solicitor

**Wards:** All

### **REASON FOR CONFIDENTIAL INFORMATION**

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This report contains advice or communications that are subject to solicitor-client and litigation privilege.

### **SUMMARY**

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Rogers Communications Canada Inc. ("Rogers") and the City of Ottawa ("Ottawa") have been negotiating the terms of a municipal access agreement ("MAA"), an agreement containing the terms upon which Rogers is permitted to install, maintain, and replace its infrastructure in the municipal right-of-way.

Rogers filed an application with the Canadian Radio-Television and Telecommunications Commission ("CRTC") on the basis that it was not able to reach agreement with Ottawa as to some important terms of the MAA; it asks the CRTC to approve Rogers' preferred terms in the MAA and require Ottawa to incorporate those terms in their MAA.

The City is also in the process of negotiating a new MAA with Rogers regarding the installation, maintenance, and replacement of its infrastructure in the public highway in Toronto. Some of the proposed terms in the MAA between Rogers and Ottawa are the same as or similar to terms proposed by Rogers in respect of its MAA with the City.

Confidential Attachment 1 provides further information and advice regarding Rogers' CRTC application.

### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in the Confidential Attachment;
2. City Council authorize the public release of the confidential instructions to staff contained in Confidential Attachment 1, at the discretion of the City Solicitor; and
3. City Council direct that the confidential information contained in Confidential Attachment 1 remain confidential in its entirety as it contains advice which is subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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The financial impacts are identified in Confidential Attachment 1.

## **DECISION HISTORY**

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None.

## **COMMENTS**

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### **Rogers' Application to the CRTC**

On July 29, 2024, Rogers filed an application with the CRTC under section 43(4) of the *Telecommunications Act*. Rogers' position is that the negotiations between Rogers and the City of Ottawa, which began in 2020, regarding the terms of their MAA reached an impasse. Rogers' application asks the CRTC to impose Rogers' preferred terms in the MAA between Rogers and Ottawa. Among other things, Rogers' application raises issues with respect to:

- A. what municipal work may constitute "beautification" and whether the definition of this term should be included in the MAA, which is potentially significant because the issue of whether work is being done for beautification as opposed to for some other municipal purpose has a bearing on how the cost of relocating telecommunication infrastructure is shared between Rogers and the municipality;
- B. the terms on which Ottawa must pay for the relocation of Rogers' infrastructure depending upon the age of the infrastructure, whether the infrastructure is within or affixed to some other infrastructure owned by a third party, or whether the relocation is temporary or permanent;
- C. the definition of "service corridors" within which Rogers may be permitted to place infrastructure; and
- D. the application of municipal by-laws relating to permits and fees to its activities.

Rogers has not disclosed the entirety of the draft MAA between Rogers and Ottawa and has requested that the CRTC keep the draft MAA confidential. The CRTC has been asked to consider whether the draft MAA should be public. The City has delivered a written submission in support of the request that the MAA be public on the basis that potential intervenors cannot properly evaluate the various issues raised in Rogers' CRTC application without reviewing the proposed terms Rogers is seeking to impose on Ottawa. As of the date of this report, the CRTC has not yet ruled on the confidentiality of the draft MAA between Rogers and Ottawa.

### **Potential Impact of the Application on the City**

Legal Services has consulted with Transportation Services and Engineering & Construction Services to identify potential impacts the proposed terms that Rogers has made publicly available may have on the City. These are discussed in Confidential Attachment 1.

### **CONTACT**

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Michele A. Wright, Director, Litigation, Legal Services, Telephone: 416-392-7229, Email: [Michele.A.Wright@Toronto.ca](mailto:Michele.A.Wright@Toronto.ca)

Jessica Harrison, Solicitor, Litigation, Legal Services, Telephone: 416-394-4018, Email: [Jessica.Harrison2@Toronto.ca](mailto:Jessica.Harrison2@Toronto.ca)

### **SIGNATURE**

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Wendy Walberg  
City Solicitor

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### **ATTACHMENTS**

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1. Confidential Attachment 1 - Confidential Information