

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON
MUNICIPALITÉ RÉGIONALE D'OTTAWA-CARLETON

REPORT
RAPPORT

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DATE 19 August 1998

TO/DEST. Co-ordinator
 Corporate Services and Economic Development Committee

FROM/EXP. Environment and Transportation Commissioner

SUBJECT/OBJET **TELECOMMUNICATION COMPANIES - ACCESS TO
REGIONAL RIGHTS-OF-WAY**

DEPARTMENTAL RECOMMENDATIONS

That the Corporate Services and Economic Development Committee and Council approve the following:

- 1. That the approach outlined in this report for managing telecommunication companies' access to Regional rights-of way be adopted;**
- 2. That the condition for interim approval approved by Council on 24 June 1998 relating to MetroNet Communication Inc. being permitted to install but not use plant pending negotiation of a Municipal Access Agreement be rescinded, and that the time frame for the expiration of the interim approval authority related to MetroNet Communications Inc. be extended from 15 November 1998 to 12 months from the date of Council approval of this report.**

BACKGROUND

The recent deregulation of the telecommunications industry by the Federal Government has created the potential for several new companies to request access to the public rights-of-way to install equipment. The limited space to accommodate these new entities, especially in the utility congested urban core area, and the additional costs that will be incurred by municipalities due to this activity poses significant challenges. Controlling the extent of the damage that could be done to road pavements alone is an important element. The old franchise agreement models that treated telecommunications companies the same as non-profit public utilities are no longer valid.

On 25 February 1998, Regional Council approved guidelines to be used by staff in negotiating the terms and conditions of Municipal Access Agreements permitting telecommunications companies access to public rights-of-way. These guidelines included reference to a model municipal access

agreement prepared for this purpose by the Canadian Federation of Municipalities (FCM). Council also endorsed the following five principles developed by the FCM and approved that access to rights-of-way be denied to any telecommunications company that does not agree in writing to these principles:

1. Municipal governments must have the ability to control the number and types of above-ground telecommunication pedestals, kiosks, etc., and the location of underground infrastructure.
2. The use of municipal rights-of-way by telecommunication companies must not impose financial costs on municipal governments and taxpayers.
3. Municipal governments must not be responsible for the costs of relocating telecommunications infrastructure if relocation is required for planning or other reasons deemed necessary by the Municipal Government.
4. Municipal governments must not be liable for any economic loss, legal costs, or physical restoration costs resulting from the disruption of telecommunication services arising out of the actions of a municipal government unless grossly negligent.
5. Municipal governments must receive revenues over and above their direct costs in providing access to rights-of-way as proper compensation for the use of Municipal property for profit.

Staff is currently engaged in negotiations with several telecommunications companies with respect to the formulation of Municipal Access Agreements that are beneficial and fair to both parties. On 24 June 1998, Regional Council approved the following interim approval authority to permit staff to approve road cut applications for MetroNet Communications Group Inc. (MetroNet) on an interim basis pending completion of a Municipal Access Agreement, thus allowing MetroNet to take advantage of the good weather during the 1998 construction season to install plant:

1. That the Environment and Transportation Commissioner be authorized to approve, on an interim basis, the issuance of Road Cut Permits to MetroNet Communications Group Inc. and its affiliates for the purposes of installing telecommunications equipment on Regional rights-of-way;
2. That such approval on an interim basis be subject to terms and conditions acceptable to the Environment and Transportation Commissioner, including the conditions outlined in this report;
3. That the authorization for such approval on an interim basis expire on 15 November 1998.

Several conditions for the interim approval were outlined in the staff report. These included a requirement for the provision of adequate plans; the requirement for MetroNet to agree in writing that any interim approval would be for the purposes of installing equipment only and would not be for the use of the equipment for business purposes; and, to minimize damage to Regional roads, a requirement that MetroNet install extra underground plant capacity that would subsequently be made available to other companies following.

Up to six new telecommunications companies could request access to Regional rights-of-way over the next few years. If each of these entities were permitted to separately trench the rights-of-way to install its plant, the roads involved could be severely damaged and the resulting disruption to residents and businesses could be significant.

DISCUSSION

Deregulation is placing existing telecommunication companies such as Bell Canada and Rogers Cablesystems in competition with new players such as MetroNet. To avoid giving an unfair business advantage to one entity over another it is important that the Region treat all existing and future players equally. To deal with this, the following approach is proposed:

1. All telecommunication companies currently using Regional rights-of-way and all telecommunication companies requesting to use Regional rights-of-way be requested to provide agreement in writing with the FCM principles approved by Council on 25 February 1998.
2. At the same time, all telecommunication companies currently using Regional rights-of-way and all telecommunication companies requesting to use Regional rights-of-way be requested to indicate their agreement in writing to negotiate and enter into a new Municipal Access Agreement with the Region.
3. Concurrently with the above, all telecommunication companies be requested to provide written disclosure of all third parties using or, to their knowledge, planning to use, under agreement with the telecommunications companies, the telecommunication companies' plant in Regional rights-of-way.
4. In the case of telecommunication companies wishing to access the Regional rights-of way for the first time, subject to receipt of the written requirements denoted by 1, 2 and 3 above and pending the successful negotiation of a Municipal Access Agreement, the Environment and Transportation Commissioner be authorized to approve, on an interim basis for a period of six months following the date of receipt of the written requirements, the installation and use of plant on Regional rights-of-way with this interim approval subject to terms and conditions as determined by the Environment and Transportation Commissioner. These may include the provision of detailed plans for review and circulation purposes and the provision of extra plant capacity that would subsequently be made available to those companies following.
5. That those telecommunication companies already occupying Regional rights-of way without a Municipal Access Agreement dated later than 01 September 1998, be informed that any existing Municipal Access Agreements or equivalent with the Region are being terminated by the Region effective 01 January 1999 and that, subject to receipt of the written requirements denoted by 1, 2 and 3 above and pending the successful negotiation of a new Municipal Access Agreement, the Environment and Transportation Commissioner be authorized to approve, on an interim basis for a period of 12 months following the date of Council approval of this report, the installation and use of plant on Regional rights-of-way with this interim approval subject to terms and conditions as determined by the Environment and

Transportation Commissioner. These may include the provision of detailed plans for review and circulation purposes and the provision of extra plant capacity that would subsequently be made available to those companies following.

6. Should a Municipal Access Agreement not be in place and approved by Regional Council at the end of the time frames denoted by 4 and 5 above, and in the absence of any extensions approved by Regional Council, the interim authority for the Environment and Transportation Commissioner would expire and no further approvals would be issued for the installation and use of plant by the companies involved.

In view of the above and in view of MetroNet's written agreement to the five FCM principles in writing and, since it is expected that the current negotiations will successfully culminate in a formal agreement, and to put MetroNet on a more equal footing with established telecommunications companies with respect to access to Regional rights-of-way, it is proposed that the previous condition for interim approval approved by Council on 24 June 1998 relating to MetroNet being permitted to install but not use plant pending negotiation of a Municipal Access Agreement be rescinded. In addition, the time frame for the expiration of the interim approval for the issuance of approvals to MetroNet should be extended from 15 November 1998 to 12 months from the date of Council approval of this report.

This report deals with just one group occupying Regional rights-of-way i.e. the telecommunication companies. The legislative framework associated with non-telecommunication companies is similar in many respects and staff will be pursuing initiatives regarding this group in due course. Work has already commenced, in co-ordination with the Area Municipalities, with respect to formulating a Municipal Access Agreement with Consumers Gas.

CONSULTATION

The consultation process is not applicable.

FINANCIAL IMPLICATION

The entry of new telecommunications companies into the local market will be beneficial to the Region's economy. At the same time, the significant burden that these companies will impose on public resources and infrastructure must be recognized. There is clear justification for the Region to seek fair and reasonable terms for permitting these companies access to the public rights-of-way. These terms would include financial compensation for allowing a public asset to be used for profit making purposes.

*Approved by
M. J. E. Sheflin, P. Eng.*

LAR/ms