



## Telecom Regulatory Policy CRTC 2009-150

Ottawa, 19 March 2009

### **MTS Allstream Inc. – Application regarding a Municipal Access Agreement with the City of Vancouver**

File number: 8690-M59-200707721

*In this decision, the Commission grants MTS Allstream permission to access the highways and other public places in Vancouver, subject to the rates, terms, and conditions set out below.*

#### **Introduction**

1. On 24 January 2005, MTS Allstream Inc. (MTS Allstream) filed an application with the Commission requesting permission to construct transmission facilities in Vancouver subject to the terms and conditions of a Municipal Access Agreement (MAA).
2. On 8 April 2005, MTS Allstream requested that the Commission issue its decision before 1 May 2005, or, alternatively, that the Commission issue a decision on an interim basis, as the company required access to a municipal right-of-way located at Station Street in order to construct a transmission line.
3. The Commission denied MTS Allstream's specific request for interim relief in Telecom Decision 2005-26. The Commission did, however, issue an interim order granting MTS Allstream permission to construct the Station Street line subject to various conditions.
4. On 1 September 2005, the Commission issued a letter to MTS Allstream and the City of Vancouver (the City) in which it set out guidelines on what would be considered appropriate terms and conditions for an MAA and recommended that these parties resume negotiations. The Commission stated that in the event that the parties were not able to reach agreement within 60 days, either party could advise the Commission of the status of the negotiations and the Commission would establish further process to allow for a full record to be developed.
5. Since the Commission's 1 September 2005 letter, MTS Allstream has made two requests to the City for access to city streets.<sup>1</sup> The first request was for street access at 750 Cambie Street, and the second request was for street access at 1441 Creekside Drive. Based, in part, on the Commission's comments in its 1 September 2005 letter, the City granted its consent to MTS Allstream for the proposed construction work at these two locations by a "retroactive letter" on the basis that such access would be governed by a future access agreement between the parties.
6. Further, since 1 September 2005 the parties proposed various versions of an MAA that would provide the company with long-term, city-wide access to all city streets and city-owned bridges and viaducts.

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<sup>1</sup> Since 1 September 2005, MTS Allstream has made two requests of City Council; one took 13 days for City approval, and the other took 43 days.

7. On 15 May 2007, MTS Allstream filed an application with the Commission advising that, while the parties had been able to reach agreement on a number of contentious issues, negotiations with the City had broken off. MTS Allstream sought an order from the Commission, pursuant to section 42 and subsection 43(4) of the *Telecommunications Act* (the Act), granting permission to construct transmission facilities on, over, under, or along highways and other public places within Vancouver subject to the conditions contained in a long-term, city-wide MAA proposed by MTS Allstream, or to the MAA proposed by the City as amended by MTS Allstream, or to such other conditions as the Commission may determine.
8. On 4 July 2007, the Commission issued a letter to MTS Allstream and the City, in which it set out a further process to address MTS Allstream's 15 May 2007 application.
9. The public record of this proceeding, which closed on 10 April 2008, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### **Issues**

10. The Commission has identified the following issues to be addressed in its determinations:
  - A. The Commission's jurisdiction to rule on MTS Allstream's application.
  - B. The terms and conditions that are in dispute
    - i. Inclusion of "other public places" in a long-term, city-wide MAA;
    - ii. Cost impacts of an MAA;
    - iii. Relationship between a City municipal street access bylaw and an MAA;
    - iv. Loading factor to be used on rates, and the level of several rates and charges to be included in an MAA; and
    - v. Specific wording to be used for the remaining disputed articles or provisions in the MAA.

#### **A. The Commission's jurisdiction**

11. The City argued that the sole basis for MTS Allstream's application is that it has been unable to negotiate a long-term, city-wide MAA with the City. The City argued that the Commission does not have the jurisdiction to mandate a long-term, city-wide MAA that would cover all city streets, highways, and other public places. The City submitted that the plain meaning of subsection 43(4)<sup>2</sup> of the Act, both in the broader context of section 43 and the provisions of the Act as a whole, and the legislative history of subsection 43(4), establishes that the jurisdiction conferred on the Commission under the provision is limited to the resolution, on a case-by-case

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<sup>2</sup> Subsection 43(4) of the Act states that "Where a Canadian carrier or distribution undertaking cannot, on terms acceptable to it, obtain the consent of the municipality or other public authority to construct a transmission line, the carrier or distribution undertaking may apply to the Commission for permission to construct it and the Commission may, having due regard to the use and enjoyment of the highway or other public place by others, grant the permission subject to any conditions that the Commission determines."

basis, of a specific dispute between a carrier and a municipality with respect to the carrier's access to a specific municipal highway or other public place for the purpose of constructing a transmission line.

12. In the City's submission, the plain language of subsection 43(4) of the Act contemplates a dispute concerning a specific transmission line given the reference to a singular line rather than to "transmission lines." The City argued that subsection 43(4) of the Act applies only to disputes regarding a transmission line in view of the statutory requirement that the Commission consider the impact the construction of the transmission facility will have on the use and enjoyment of the public place by others before granting access to a carrier.
13. The City argued that the legislative history of subsection 43(4) of the Act supports the view that this provision only confers on the Commission the power to deal with a specific dispute between a carrier and a municipality about access to specific municipal streets or other public places for the installation of a specific transmission line. In the City's view, the fact that Parliament removed the previous requirement to file a plan of the highway or other public place should not, alone, be interpreted as evidence of Parliament's intention to fundamentally change the Commission's jurisdiction.
14. The City contrasted the Commission's adjudicative powers under subsection 43(4) of the Act with its regulatory powers under the Act pursuant to, for example, sections 29 and 32. The City argued that if Parliament had intended to give the Commission the ability to prescribe terms and conditions in MAAs, it would have used language in subsection 43(4) that resembled the language in sections 29 and 32 of the Act.
15. MTS Allstream argued that the City's interpretation of subsection 43(4) of the Act runs counter to the jurisprudence related to statutory interpretation. MTS Allstream referred to the Supreme Court of Canada's (SCC) decision in *Bell Canada v. Canada (C.R.T.C.)*<sup>3</sup> where the SCC stated

The powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its purpose. Although courts must refrain from unduly broadening the powers of such regulatory authorities through judicial law-making, they must also avoid sterilizing these powers through overly technical interpretations of enabling statutes.
16. MTS Allstream also argued that such interpretation is contrary to the case law relating to this particular provision, noting that the Commission's power to grant the relief sought has been confirmed by the Commission itself as well as the Federal Court of Appeal (FCA). MTS Allstream referred to the FCA's rulings in *Federation of Canadian Municipalities v. AT&T Canada Corp.*<sup>4</sup> and *City of Edmonton v. 360Networks Canada Ltd.*<sup>5</sup> confirming the broad discretion of the Commission pursuant to subsection 43(4) of the Act to fix the conditions of access. MTS Allstream also pointed to Telecom Decision 2007-100 granting to Shaw Cablesystems Ltd. the type of relief being sought by MTS Allstream.

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<sup>3</sup> [1989] 1 S.C.R. 1722.

<sup>4</sup> [2002] F.C.J. No. 1777; 2002 FCA 500.

<sup>5</sup> 2007 FCA 106, leave to appeal to the SCC denied.

17. MTS Allstream submitted that the City's interpretation of subsection 43(4) of the Act, i.e., prohibiting the Commission from granting permission on a city-wide or long-term basis to a carrier to construct facilities in municipal rights-of-way from time-to-time, would severely restrict the Commission's ability to exercise its broad discretion to "fix conditions of access so as to implement the objectives of the Act contained in section 7."<sup>6</sup> MTS Allstream submitted that this would lead to a situation in which the Commission is never permitted to establish the conditions of access on a going-forward basis and would make adjudication inefficient and ineffective, potentially resulting in the proliferation of applications for access to the Commission - each in respect of a specific facilities build – an overwhelming burden on carriers, municipal authorities, and the Commission.
18. MTS Allstream argued that the City's interpretation of subsection 43(4) of the Act as applying only to a dispute concerning a single transmission line is untenable given the general rule of statutory interpretation, codified in the *Interpretation Act*,<sup>7</sup> that drafting in the singular does not necessarily mean that the legislator intended to exclude the plural.
19. With regard to the legislative history of subsection 43(4) of the Act, MTS Allstream submitted that no weight should be given to the fact that Parliament was silent when it removed the requirement to submit construction plans with an application.
20. MTS Allstream argued that for the Commission to fulfill its statutory duty to have due regard to the use and enjoyment of the property by others, the Commission is not required to obtain and review evidence of the impact of specific construction in every case. The company submitted that the Commission exercises due regard by ensuring that carriers follow municipal planning and permitting processes in respect of actual builds; by imposing such a requirement, the Commission is positively exercising its authority pursuant to subsection 43(4) of the Act.

#### **Commission's analysis and determinations**

21. The Commission notes that the parties have acknowledged that municipalities, including the City, have historically negotiated MAAs with individual carriers as the process by which they have given their consent to the construction, operation, and maintenance of carriers' transmission lines on highways and other public places. The Commission also notes that the parties confirmed that a long-term, city-wide MAA would be preferable to resource-intensive and inefficient individual applications to the Commission regarding particular transmission lines.
22. The Commission notes that while the parties have attempted in the past five years to agree on the terms and conditions in an MAA, they have failed to do so. In the Commission's view, further negotiations between the parties cannot be expected to be productive.
23. The Commission considers that, as set out in its 1 September 2005 letter, the inability to secure a long-term, city-wide MAA with the City would place MTS Allstream at a significant disadvantage with respect to carriers who enjoy more favourable access to rights-of-way. In addition, as stated in that letter, the Commission considers that

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<sup>6</sup> *Federation of Canadian Municipalities v. AT&T Canada Corp.*, *supra*, at paragraph 28.

<sup>7</sup> R.S.C. 1985 c. I-21, s. 33(2).

MTS Allstream should be able to plan the orderly build out of its network with sufficient commercial certainty to recover its investments in its network. The Commission notes that the long-term planning of carriers necessarily takes into consideration depreciation of facilities. The Commission notes that, for the purpose of carriers' tariff filings for regulated services, it has approved accounting plant lives of 16 to 22 years for buried and/or underground fibre-optic and copper cabling.

24. The Commission considers that short-term access agreements do not provide sufficient commercial certainty to allow MTS Allstream to complete effective long-term planning, and may affect its ability to enter into long-term service agreements with customers.
25. As noted in its 1 September 2005 letter with respect to the scope of access agreements, the Commission considers that access arrangements that are limited to specific sites or sets of sites may be problematic to a carrier due to the extreme difficulty in predicting which sites it might need to serve its existing and potential customers. Under such circumstances, if MTS Allstream were to win a contract, it might not know its financial exposure until it had negotiated a site-specific agreement with the City, making it difficult for the company to prepare an accurate bid and determine its long-term business planning. This situation would place MTS Allstream in a position where it had minimal bargaining power with the City and force the company to accept terms of access that are unacceptable to it.
26. The Commission considers that long-term access agreements may create commercial uncertainty for municipalities, in that they may not be able to recover all their future costs associated with the installation of carriers' transmission facilities. However, the Commission notes that the MAA in question would allow for renegotiation of at least certain fees every five years.
27. The Commission notes that, pursuant to section 43 of the Act, MTS Allstream has a qualified right to construct, operate, and maintain its transmission lines, subject only to due regard to the use and enjoyment of others. The company must first obtain the consent of the municipality before accessing its highways or other public places to construct transmission lines. However, Parliament provided for a dispute resolution mechanism in cases where a carrier is unable to obtain consent on terms that it considers acceptable, thus precluding municipalities from unilaterally imposing terms and conditions of a carrier's access to its highways and other public places.
28. Given that it appears that the parties will be unable to conclude an MAA on mutually agreeable terms, absent a Commission resolution of the current dispute, MTS Allstream would have to accept the MAA on the City's terms, unless it were willing to resort to site-specific agreements each time it wishes to construct a transmission line. Alternatively, MTS Allstream could accept the terms of any bylaw passed by the City governing access by utilities to City property. Thus, if the Commission lacks the jurisdiction to resolve disputes regarding the MAA, the result could be that the City would in effect have the power to impose the terms and conditions of access on MTS Allstream in a unilateral fashion. At the very least, MTS Allstream's negotiating power would be severely restricted. In the Commission's view, this result runs counter to the framework established by Parliament in sections 42 to 44 of the Act.

29. The Commission agrees with the City that the dispute resolution powers of the Commission in subsection 43(4) of the Act stand in contrast to its regulatory powers under other provisions of the Act such as sections 29 and 32. The Commission's powers under subsection 43(4) of the Act are triggered only where there is a dispute between the parties regarding the terms and conditions under which carriers will be granted consent for the purpose of construction of transmission lines, and necessarily incidental matters, and the carrier files an application seeking resolution by the Commission. Nevertheless, it is clear that the scope of the Commission's discretion under subsection 43(4) of the Act to resolve a dispute is to be interpreted in a broad manner, empowering the Commission to set conditions of access so as to implement the telecommunications policy objectives set out in section 7 of the Act (the policy objectives).<sup>8</sup> More generally, the FCA has interpreted sections 42 to 44 of the Act as providing a "comprehensive and exclusive code for regulating carriers' access to public places for the purposes of constructing, maintaining and operating transmission lines."<sup>9</sup>
30. In the Commission's view, an interpretation that would preclude it from resolving disputes in relation to conditions of access contained in MAAs, as put forward by the City, would unduly narrow the scope of the Commission's discretion. Given that MAAs have historically been the principal vehicle for the municipalities' consent and the terms and conditions governing access by carriers to highways and other public places for the purpose of construction of transmission lines, and that such agreements continue to be the most effective and efficient approach, the Commission considers that precluding it from resolving the type of dispute in question would carve out of the Commission's jurisdiction a fundamental power.
31. Accordingly, the Commission considers that the interpretation suggested by the City would be inconsistent with the broad manner in which the courts have interpreted section 43 of the Act as it would limit the Commission's ability to resolve disputes between municipalities and carriers regarding access to highways and other public places for the purpose of carriers' transmission lines and to impose such conditions as are necessary to further the policy objectives.
32. Furthermore, the Commission agrees with MTS Allstream that the City's argument that subsection 43(4) of the Act is limited to disputes involving a transmission line on a specific highway or other public place is inconsistent with the general rule of statutory interpretation, as codified in the *Interpretation Act*, that words in the singular include the plural. According to this rule of statutory interpretation, the term "a transmission line" should be read to include multiple transmission lines.
33. In light of all of the foregoing, the Commission concludes that neither the words in section 43 of the Act nor the statutory context suggest that Parliament intended that this general rule of statutory interpretation ought not to apply.

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<sup>8</sup> *Federation of Canadian Municipalities v. AT&T Canada Corp.*, *supra*, where the FCA stated at paragraph 17: "In exercising that power [subsection 43(4)] the CRTC has a broad discretion to design terms that will best advance the public policies identified in *the Act*." See also *MTS Allstream Inc. v. The City of Toronto* [2006] F.C.J. No. 1812 2006 FCA 385, leave to appeal to SCC denied. Further, in considering whether the fee imposed by the Commission was appropriate, the FCA, in *Rogers v. New Brunswick*, 2007 FCA 168 at paragraph 5, stated that the Commission has "broad statutory discretion" to set a fee charged to carriers for the use of highways and other public places for the purpose of carriers' transmission lines.

<sup>9</sup> *City of Edmonton v. 360Networks Canada Ltd.*, *supra*.

34. The Commission also rejects the City's argument that the legislative history of subsection 43(4) of the Act supports the view that this provision only applies to a transmission line on a specific highway or other public place. If anything, the removal in subsection 43(4) of the Act of the requirement to file a plan of the highway or other public place showing the location of the lines, wires, and poles reflects an intention to broaden the type of dispute that could be entertained pursuant to that provision. In any event, the Commission notes that in requiring that the plan show the location of the lines, wires and poles, the predecessor provisions explicitly contemplated that the application could relate to multiple transmission lines.
35. Finally, with respect to the City's argument that the Commission cannot grant the order that MTS Allstream seeks and, at the same time, discharge its statutory duty to have due regard to the use and enjoyment of the property by others, the Commission notes that the conditions of access that remain in dispute between the parties generally govern the manner by which the parties are to be compensated under various different scenarios, the liability to be assumed by each party in various scenarios, and various procedures applicable to the parties under the agreement. As such, these types of access conditions would not have a specific impact on the use and enjoyment of the property by others.
36. Furthermore, while these matters in dispute do not specifically concern the use and enjoyment of the property by others, the Commission notes that other terms of the MAA agreed to by the parties do address this issue. For example, as agreed to by both parties, the MAA provides for a permit process. The Commission notes in particular that the City stated that "[a] Commission order must allow for a permitting or approval process that gives the City a degree of discretion with respect to [MTS Allstream's] requests to build its facilities on City property..." The Commission notes that as part of the permitting process, the MAA specifically provides that work by MTS Allstream, in its design, timing, and otherwise, must not unduly interfere with the public use and enjoyment of the property; must meet certain design and construction standards; and must be accompanied by a traffic plan ensuring appropriate pedestrian movement, safe public access, public safety, and convenience. In addition, the MAA provides for temporary and permanent restoration and proper clean-up following such work. Accordingly, the MAA addresses the impact, if any, on the use and enjoyment of the property by others of work related to MTS Allstream's transmission lines.
37. Based on the foregoing, the Commission rejects the City's arguments that it would be unable to satisfy the requirement to have due regard to the use and enjoyment by others in resolving the dispute regarding various aspects of the long-term, city-wide MAA in question.
38. The Commission finds that MTS Allstream has attempted and failed to obtain the City's consent on terms the company finds acceptable to access City highways and other public places for the purpose of its transmission lines. In addition, the Commission notes that the parties have not yet agreed upon the final conditions of the City's consent to MTS Allstream's access to Station Street, Cambie Street, and Creekside Drive to construct transmission lines. The Commission also notes that the MAA would determine the terms and conditions that apply to these transmission lines, and would apply to other transmission lines currently in place.

39. In light of all of the foregoing, in the circumstances of this case, the Commission considers that it has the necessary jurisdiction to consider and dispose of the matters in dispute in this proceeding.
40. The Commission notes that it is not pronouncing upon those conditions upon which the parties have mutually agreed, which include a 15-year term for the MAA. With regard to the conditions of access in dispute between the parties, the Commission sets out its determinations below. These determinations were made based on the record of this proceeding, having due regard to the use and enjoyment of the property by others (as discussed above) and, as required pursuant to section 47 of the Act, with a view to implementing the policy objectives set out in section 7 of the Act, including in particular paragraphs 7(a), (b), (c), (e), (f), and (h).
41. *The Commission grants MTS Allstream permission to construct its transmission facilities on, over, under, or along highways and other public places, as defined in this decision, within Vancouver, subject to the terms and conditions set out below by the Commission and those already agreed to by the parties.*

## **B. The terms and conditions that are in dispute**

### **i. The inclusion of "other public places" in a long-term, city-wide MAA**

42. The parties generally agreed that the MAA should apply to Vancouver streets, lanes, highways, and other service corridors, including bridges and viaducts, but disagreed as to whether it should apply to "other public places." The City argued that the Commission lacks the jurisdiction to require it to enter into a long-term MAA, particularly one that would apply to "other public places." MTS Allstream argued that carriers have a right under section 43 of the Act to access highways and other public places and that the City could always make an application to the Commission regarding access to such property. MTS Allstream submitted that the analytical approach of the Commission in Telecom Decision 2005-36 to determine what constitutes an "other public place" is the correct approach and has been upheld by the FCA. The parties' arguments regarding the Commission's jurisdiction to approve an MAA that applies to "other public places" are generally as set out in the previous section of this decision.
43. In addition, the City submitted that the terms and conditions of the proposed MAA are oriented to highways and these terms and conditions may not be appropriate for "other public places."
44. The Commission notes that while it has set out its analytical approach to interpreting "other public place" in Telecom Decision 2005-36, its application of that term depends on the particular facts of each case. The Commission also notes the City's argument that it is difficult to know with certainty whether the terms and conditions applicable to public places in the nature of highways will necessarily be appropriate for access to other types of public places. In the circumstances of this case, including for example, the MAA in question, Vancouver's size, and the potential breadth and scope of "other public places," the Commission is not prepared to determine at this time the conditions applicable to all such "other public places" for the term of the MAA. Accordingly, to the extent that the parties disagree in the future as to whether a particular location is an "other public place" or whether the terms and conditions in the MAA are appropriate for such other public place, an application may be made to the Commission for



resolution of the dispute. The Commission notes that the terms and conditions contained in the MAA apply to access by MTS Allstream only to those "other public places" in relation to which the parties are in agreement, thus obviating the need for the parties to enter into a new agreement for any such "other public place."

**ii. The cost impacts of an MAA**

45. The City expressed concern that with an MAA that had a term of fifteen years there could be significant changes in technologies, construction methodologies, practices, and cost structures over that period of time. The City also expressed concerns over its ability to revise the rates and charges included in an MAA to allow for inflationary increases, and thus proposed that an MAA should provide a mechanism for the included rates to be adjusted for inflation. The City suggested that these rates could be adjusted by the consumer price index (CPI) every 31 December. With regard to unanticipated costs, the City suggested that, in the event of a dispute, it should be permitted, under the MAA, to apply to the Commission for a determination on the City's ability to recover costs.
46. With respect to the City's submission that any order by the Commission should be limited to the construction of MTS Allstream's facilities using the conventional trench and duct construction method, the Commission considers that it would be inappropriate to preclude the possibility for more efficient and effective construction methods pursuant to the MAA in question. Further, the Commission considers that the construction method would be addressed through the permitting process. In the case where the parties are unable to agree with respect to construction methods, an application could be made to the Commission under subsection 43(4) of the Act.
47. The Commission agrees that one of the consequences of a long-term agreement would be that the rates and charges could become outdated due to the impact of inflation and/or unanticipated costs. The Commission considers that while there is a need for certainty that a long-term MAA provides, there is also a need for an MAA to stay current. The Commission, therefore, considers that an MAA should provide for the rates and charges to be adjusted on December 31 of each year, based on the Vancouver CPI, as published by Statistics Canada, and that all fees should be able to be renegotiated at five-year intervals during the term of an MAA, if so desired by either party.
48. The Commission is of the view that either party to the agreement can file an application with the Commission at any time, if it considers that an MAA does not include costs or cost impacts that would need to be recovered and were not known or could not otherwise have been anticipated at the time that the parties entered into an MAA, or if the parties are unable to reach agreement on any costing issues that the MAA allows to be negotiated or recovered during the term of the MAA.

**iii. Relationship between a City municipal street access bylaw and an MAA**

49. MTS Allstream expressed concerns with the City's intention to pass a street utilities access bylaw to regulate all the utilities in Vancouver that would supersede an MAA between MTS Allstream and the City. MTS Allstream stated that this arrangement would be unconstitutional, noting a recent court case of *TELUS Communications Company v. City of*

*Toronto*.<sup>10</sup> MTS Allstream also indicated that it had concerns with the wording used in several clauses within the proposed MAA, providing revised wording for articles 3.2(h), 4.3, 8.1, and 14.9.

50. The City stated that it was never its intention to replace an MAA with the street utilities access bylaw, and pointed to section 2.2 of the proposed bylaw, which indicated that if MTS Allstream entered into an MAA with the City, the bylaw would not be applicable to the works covered by the agreement. The City indicated that it had some concerns with MTS Allstream's proposed wording, and thus proposed its own wording.
51. The Commission notes the City's intention that its municipal streets access bylaw will not be applicable where there is an in-place MAA with the company. The Commission further notes that, consistent with its previous statements,<sup>11</sup> telecommunications companies must comply with all laws, including municipal bylaws and building permit processes, to the extent that such compliance does not change the terms and conditions of any MAA between the parties.
52. The Commission will deal with the disputed wording in the particular MAA provisions in question in the Attachment to this decision.

**iv. Loading factor to be used on rates and the level of several rates and charges to be included in an MAA**

*Application of a loading factor*

53. MTS Allstream and the City agreed that the loading factor (which allows for the recovery of indirect and variable common costs) should apply to all cost-based fees, and that the fee amounts in the MAA or approved by the Commission should include the monetary amounts of the loading factor. Where the City uses invoices for compensation based on actual costs incurred, the loading charges, included in the total costs, should be identified separately. MTS Allstream further stated that the loading factor should not apply to lost parking meter revenue.
54. The Commission agrees that the loading factor for the recovery of indirect and variable common costs should be applied to the City's costs of using its own labour forces. However, the loading factor should not apply to lost parking meter revenue recovery as it would be inappropriate to mark up revenue amounts with expense items.

*Magnitude of the loading factor*

55. The City proposed a loading factor of 20 percent intended to recover indirect and variable common costs applicable to telecommunications carriers and not recovered through any other fees. The City argued that variable common costs must be estimated based on a logical causal link and are not directly measurable.

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<sup>10</sup> *TELUS Communications Company v. City of Toronto*, 2 March 2007 (Ontario Superior Court of Justice), Court File No. 06-CV-310774-PD3.

<sup>11</sup> For instance, the Commission's 1 September 2005 letter referenced above.

56. MTS Allstream proposed a loading factor of 9 percent, comprised of 4 percent for variable common costs,<sup>12</sup> and 5 percent for a modest recovery of indirect costs. MTS Allstream argued that the City's proposed loading factor is entirely arbitrary, in that the City only provided a list of the claimed indirect and variable common costs, and submitted that many of these costs are not causal, are likely to be negligible, or are already subject to recovery through other means.
57. The Commission notes that MTS Allstream, in arriving at its proposed loading factor, arbitrarily assumed a modest amount for the recovery of the City's indirect causal costs, and calculated the percentage for the recovery of variable common costs from out-of-date information provided in the record of a 1999 proceeding. As this approach results in a proposed loading factor which is partly arbitrary and partly based on information that is out of date, the Commission is not persuaded that MTS Allstream's analysis provides a reasonable estimate of the appropriate loading factor.
58. The City provided a list of the costs elements that would be recovered by a loading factor and indicated that each of them was causal to the construction, maintenance, and operation of telecommunications transmission lines or other facilities in the City's streets or rights-of-way. The City indicated<sup>13</sup> that it had not conducted a detailed study or analysis of the cost elements and calculations, but instead proposed a loading factor which reflects its current cost structure and is consistent with its approach with other utilities. In addition, the Commission notes the City's assurances that the costs included in the loading factor are not recovered through any other fees. In light of the foregoing, the Commission determines that a 20 percent loading factor is reasonable.

*Plan review and inspection fees*

59. The Commission notes that, in Decision 2001-23, it approved a fee structure for plan approval and inspections, which comprised a flat fee of \$341.55 for projects of 20 metres or less, a flat fee of \$1,127 for projects in excess of 20 metres, and a per-metre charge of \$8.67.
60. The Commission notes that during negotiations for a new MAA, the City proposed separate fees for plan approval and inspections. The Commission also notes that the parties agreed to an inspection fee of \$65 per day, per city block plus loading, which would apply from the day the work commenced to the day it is completed. The Commission notes that the inspection fee, including the loading factor approved in this decision, will be \$78.00 per day, per city block.
61. The City proposed plan approval fees, which include a 20 percent loading factor, of a one-time flat fee of \$600 for projects of 20 metres or less, a one-time flat fee of \$1,800 for projects in excess of 20 metres, and a one-time fee of \$12 per metre. The City noted that the approach used in determining these rates is that used by Bell West in Alberta in its negotiations with a number of municipalities, and that these rates are now being used extensively by many municipalities. With the exception of the inspection fees,<sup>14</sup> the City noted that this approach is consistent with the Commission's approach in Decision 2001-23.

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<sup>12</sup> The 4 percent for variable costs was based on information provided in the proceeding initiated by Telecom Public Notice 99-25.

<sup>13</sup> Response to interrogatory City of Vancouver(MTS Allstream)13Nov07-23(b), (c), and (e).

<sup>14</sup> The City and MTS Allstream have agreed to a separate fee for inspections.

62. The City noted that these fees have increased since 2001 because of significant changes, such as wage inflation, complexity of installations, and increased demands on the Permits group for traffic management of construction, and the coordination of construction work. The City noted that it had tested the proposed Bell West rates on its current statistics<sup>15</sup> and found that the proposed fees would result in a shortfall of approximately 17 percent. Despite this shortfall, the City proposed that the Bell West rates be used in an MAA with MTS Allstream.
63. MTS Allstream submitted that the proposed plan approval fees are considerably higher than the fees approved in Decision 2001-23, and that the City did not provide any costing information. MTS Allstream noted the City wants to recover its costs associated with its five personnel in the Permits group, which amounts to a cost recovery model rather than a recovery of causal costs.
64. MTS Allstream argued that based on its analysis of the City's budgeted amounts and resource requirements from the 2000 costing analysis and the workload reduction in the total number of building permits (34 percent), a 2 percent increase (plus loading factor) on the Decision 2001-23 approved rates should be sufficient.
65. The Commission is not persuaded that the MTS Allstream analysis to update the 2000 costing analysis properly reflects the significant changes that the City has since encountered. The Commission notes MTS Allstream's concerns about the methodology used by the City for the proposed plan approval fees. However, the Commission also notes that the City has proposed these rates despite its view that they do not recover all of its Permits group costs. In the circumstances of this case, the Commission considers that the use of rates developed by Bell West, which have been accepted by a number of municipalities, is reasonable.
66. Accordingly, the Commission determines that the plan review fee structure is reasonable, and the rates, which include a 20 percent loading factor, to be used for MTS Allstream's telecommunications projects in Vancouver are
  - a one-time flat fee of \$600 for projects of 20 metres or less;
  - a one-time flat fee of \$1,800 for projects in excess of 20 metres; and
  - a one-time fee of \$12 per metre.

*Pavement degradation fee*

67. The City proposed a fee schedule for pavement degradation based on a detailed cost study that it conducted after its original proposed rates were not accepted by MTS Allstream during negotiations. The City noted that its proposed rates include full cost recovery and the maintenance costs for various types of repairs over the life of road surfaces where construction has occurred.

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<sup>15</sup> Statistics relate to the current estimated number of projects and length of plant installed.

68. MTS Allstream disagreed with the City's cost study assumptions.<sup>16</sup> It submitted its own pavement degradation fee schedule, which assumed a lower incidence of crack repair, incorporated historical information provided by the City on the proportion of potential cracks actually repaired, and adjusted for early street failures.<sup>17</sup>
69. The City argued that the methodology used by MTS Allstream in its cost study was flawed. It submitted that the crack return rate was not based on any evidence or supporting rationale and that, while MTS Allstream adjusted for early street failure, it did not include an adjustment for late street failure. The City also argued that the limit placed by MTS Allstream on the proportion of cracks that had actually been repaired in the past is wrong and inconsistent with prospective Phase II costing principles.
70. The Commission notes that the fee schedule first proposed by the City was the schedule developed by Bell West, a competitive local exchange carrier, and that the City proposed these rates even though it considered that they would not fully recover its costs. The Commission notes that the City was hopeful that the use of the Bell West rates would result in an expeditious resolution of the issue of pavement degradation fees.
71. The Commission notes that the parties could not agree on a pavement degradation fee schedule, and that the proposed rates by each party vary by a factor of approximately 10. The Commission has significant concerns with the pavement degradation fees proposed by both parties. The Commission is concerned with the correctness and the arbitrary nature of the assumptions used by MTS Allstream, and that the small sample sizes used by the City may not be a statistically representative sampling of repairs that would have to be made due to MTS Allstream's facilities installation work.
72. The Commission notes that the Bell West-developed pavement degradation fees presently being used by a number of municipalities and telecommunications carriers fall nearly in the middle of the rates proposed by the parties. The Commission considers that the Bell West fee schedule, as proposed by the City during negotiations, is a reasonable compromise.
73. Accordingly, the Commission determines that the following pavement degradation fees, which include a 20 percent loading factor, are to be used for MTS Allstream's facilities in Vancouver:

<b>Pavement Age</b>	<b>Pavement Degradation Fee (cost per square metre)</b>
0 to 5 years	\$50.00
6 to 10 years	\$40.00
11 to 15 years	\$30.00
16 to 20 years	\$20.00
over 20 years	\$10.00

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<sup>16</sup> MTS Allstream also noted that the sample size of the City's cost study was very small, and thus not representative. As an example, the sample size for crack return of patches was eight, and for slot grind repairs was two.

<sup>17</sup> Street failure occurs when the roadway has deteriorated such that the entire surface must be removed and replaced.

### *Relocation costs*

74. The City proposed a sliding scale for its share of the relocation costs for a City-initiated requirement to relocate MTS Allstream facility. The City noted that it is unusual for it to request facilities to be relocated within the first five years of construction, as it attempts to plan ahead of the City's current three-year capital plan cycle.
75. MTS Allstream proposed a revised sliding scale, noting that the City typically works within a five-year planning horizon, and submitted that its proposed schedule provided a strong incentive for the City to plan effectively within that horizon. MTS Allstream requested that, consistent with Telecom Decision 2007-100, relocations for beautification, aesthetics, or other similar purposes should be borne 100 percent by the City.
76. The City opposed this revision to the sliding scale, noting that its capital planning cycle is three years. The City also disagreed with MTS Allstream's request that relocation costs required for beautification, aesthetics, or other similar reasons be borne by the City. The City requested that if MTS Allstream's sliding scale proposal is accepted by the Commission, depreciation, salvage, and betterment costs should be deducted from the costs charged to the City.
77. The Commission notes that both the City and MTS Allstream agreed that a sliding scale for the sharing of relocation costs is appropriate, but they did not agree on what this sliding scale should be. The Commission considers that there is some merit in MTS Allstream's cost sharing proposal as it provides a strong incentive for the City to plan effectively. However, the Commission notes the City's submission that it is required by provincial legislation to follow a three-year capital planning cycle. The Commission also notes the City's comment that it is unusual for it to require relocations within the first five years of facility installation. The Commission is of the view that within the three-year capital planning period the City should generally be aware of which streets will be subject to relocation activities. The Commission, therefore, considers it appropriate for the City to bear 100 percent of any relocation costs incurred within the first three years of a facility installation.
78. The Commission considers that past the initial three-year planning period, there may be increasing uncertainty as to the City's future project requirements. At the same time it will take a period of time for MTS Allstream to recoup its investment in the installed transmission facilities. The Commission is of the view that it would be reasonable for MTS Allstream to be able to recover its investment within a 10-year time frame. The Commission, therefore, considers it appropriate to use a sliding scale that ends after 10 years from the time of the facility installation.
79. The Commission is also of the view that costs associated with relocation for beautification, aesthetics, or other similar purposes should be the sole responsibility of the City as it is within the City's discretion to conduct projects of this nature.
80. The Commission considers that depreciation, salvage, and betterment costs are part of the transmission facilities investment made by MTS Allstream and should, therefore, be included in the relocation costs.

81. Accordingly, the Commission determines that in the case of a City-initiated requirement to relocate an MTS Allstream facility, the relocation costs must include the depreciation, betterment, and salvage costs and that the schedule to be used for MTS Allstream facilities in Vancouver, which does not apply to relocations for beautification, aesthetics, or other similar purposes, is as follows:

<b>Year</b>	<b>Percent of Cost Borne by the City</b>
1	100
2	100
3	100
4	90
5	80
6	65
7	50
8	35
9	20
10	10
11	0

*Lost productivity compensation*

82. The City proposed foregoing the application of a 15 percent loading factor on plan approval and inspection fees approved by the Commission in Decision 2001-23 if it could recover such items as transit operating delays, lost parking meter revenues, and routine lost productivity costs that could not be linked to a specific carrier and be itemized and invoiced to that carrier.
83. The City proposed that lost productivity costs attributable to new work of a particular carrier be recovered from that carrier via written documentation (i.e. by invoice). This documentation would describe the costs being recovered, including, but not limited to,
- the location of the alignment for such new work;
  - a description of the City work, including the affected sewage lines, conduits, ducts, pipes, or any other utilities located in the trench;

- an explanation of the nature of the interference caused by the carrier's facilities in completing the new work; and
- an itemized breakdown of the City's additional costs, including, but not limited to, labour, supplies, equipment, and applicable loading factors.

84. MTS Allstream submitted that, if the City's proposal is to be used for the recovery of lost productivity, there must be a requirement for the City to provide additional information to reduce the potential for abuse. MTS Allstream submitted that the City should be required to establish the legitimacy of the cost elements and the methods and data sources used. MTS Allstream suggested that, in order for carriers to understand the sorts of activities that they could be charged for and to have confidence in the lost productivity invoices submitted to them, they must understand the frequency and magnitude of lost productivity invoices. MTS Allstream indicated that this could be accomplished by the City developing and documenting a systematic approach to arriving at truly causal lost productivity costs, including all necessary procedures, methodologies, data collection mechanisms, time reporting systems, and time and motion studies.
85. MTS Allstream submitted that an alternative would be to develop a one-time, up-front fee that would be assessed against specific carrier builds. MTS Allstream suggested that this charge would capture the present worth of causal lost productivity costs, and could be developed on the basis of a per lineal meter fee. MTS Allstream argued that this approach would be conceptually straightforward and similar to Phase II costing methodologies. At the same time, MTS Allstream noted that it may involve some non-trivial data requirements and there may be unavoidable elements of complexity in the methodologies, but these would be no more complex than the alternative approaches. MTS Allstream further noted that there would have to be a mechanism for the fees to be updated on an annual basis for expected inflation and productivity improvements in the City's activities.
86. The City disagreed with the company's up-front fee proposal, and submitted that it was a new and far more complex approach than what it has proposed, and it could not be based on a simple variable, such as the area of cut pavement or length of a build, as suggested by MTS Allstream.
87. The Commission agrees that MTS Allstream's alternative proposal would be a new approach for the City which, as recognized by MTS Allstream, would require some non-trivial data requirements and complex methodologies. The Commission is of the view that this approach would place onerous and complex requirements on the City that could be avoided through the separate invoicing methodology that the City proposed. The Commission, therefore, rejects MTS Allstream's alternative proposal and determines that the City may separately invoice MTS Allstream for its causal lost production costs directly related to MTS Allstream's facilities located on City property.
88. The Commission agrees with MTS Allstream that the City should provide more information to support its lost productivity costs. Therefore, the Commission determines that the City should provide MTS Allstream with, at least, the following information at the time of the invoice:



- the methodology and data sources used by the City to determine the various cost elements included in calculating causal lost productivity costs; and
- the methodology and data sources used by the City to determine the amount of causal lost productivity costs, including all necessary procedures, data collection mechanisms, time reporting systems, and time and motion studies.

89. The Commission notes the City's comments that it would be willing to forego the 15 percent loading factor on the plan review and inspection fees if it was permitted to explicitly bill MTS Allstream for lost productivity and foregone parking meter revenues. The Commission notes its determination to permit the City to invoice MTS Allstream separately for causal lost productivity costs, and that it has dealt with foregone parking meter revenues elsewhere in this decision. Accordingly, the Commission determines that the 15 percent loading factor (to recover routine lost productivity costs and foregone parking meter revenues) shall not be applied to the plan review and inspection fees related to MTS Allstream facilities in Vancouver.

*Foregone parking meter revenue*

90. The City claimed that it loses revenue when parking meters are taken out of service for the construction activities of telecommunications carriers, noting that the magnitude of this lost revenue depends on the hourly meter rate, the number of hours the meters are out of service, and the occupancy rate of the available parking meters.
91. The City submitted that the occupancy rate should be equal to the sum of the number of paid meters and the number of parking violators divided by the total of the number of meters less the number of out-of-order meters less the number of hooded meters. The City noted that parking violators should be included in the occupancy rate calculation as they generate significant revenue in fines from the occupancy of metered space.
92. MTS Allstream and the City subsequently agreed that the number of hooded meters should not be included in this calculation, as they do not generate revenue.
93. MTS Allstream argued that the number of parking violators should not be included in the occupancy rate calculation as the revenue from parking tickets is not parking meter revenue, and the City has not provided any required details to calculate foregone parking ticket revenue. Further, MTS Allstream argued it would be inappropriate to compensate the City for what is essentially an illegal activity.
94. MTS Allstream noted that, in Decision 2001-23, the Commission stated that while it expected that the City would lose revenue when parking meters are taken out of service, a reasonable estimate of the causal impact must represent the net loss and not the gross loss. MTS Allstream, therefore, submitted that the estimate of foregone parking meter revenue must reflect not only foregone revenues but also any reduction in the cost of collecting and managing parking meter revenue caused by a reduction in the number of revenue generating parking meters.

95. The City submitted that there are no cost reductions when parking meters are taken out of service since the number of parking meters hooded on a daily basis is small and typically these meters are only out of service for part of the day, resulting in usage by the public during the balance of the day. Therefore, collection staff must continue to collect from hooded meters and collection routes cannot be constantly adjusted to bypass the precise meters that are hooded for a short period of time. In fact, the City submitted that there are additional costs incurred for the erection of signage and the hooding of meters that it should be allowed to recover, plus loading factor, under the principles established in Decision 2001-23.
96. The Commission notes that both parties agreed on the methodology for calculating the foregone parking meter revenue, but disagreed on the determination of the occupancy rate to be used in that calculation. In particular, the parties could not agree on the inclusion of the number of parking tickets in the occupancy rate calculation.
97. The Commission notes that the City's approach would only consider the loss in parking ticket revenue for the parking meters taken out of service during construction activities. The Commission considers that there is also the potential that a reduction in parking meters available during construction activities could lead to increases in illegal parking at other locations. If the principle of including parking ticket revenue is to be considered, the Commission is of the view that the net impact of both parking ticket revenue loss and gain must be taken into account.
98. Given that there is no evidence on the record for the net impact (losses or increases) of parking ticket revenue due to MTS Allstream's construction activity, and that it is inappropriate to only account for the loss in parking ticket revenue without consideration to potential associated increases in such revenue, the Commission determines that the number of parking violators should not be included in the calculation of the occupancy rate used in the calculation of foregone parking meter revenue.
99. The Commission notes the parties' comments related to cost reductions when parking meters are taken out of service due to construction activities. The Commission agrees in principle with MTS Allstream that any cost reductions causal to the company's construction activities must be taken into account in the determination of foregone parking meter revenue, including any cost savings associated with the reduced costs in collecting and managing parking meter revenue. However, the Commission agrees with the City that, in practice, there may not be significant cost reductions due to the small number of meters taken out of service and the relatively short time periods that meters are out of service. The Commission, therefore, determines that it is not necessary to take into consideration any potential cost reductions for the parking meters taken out of service due to MTS Allstream's construction activities.
100. The Commission notes the City's comments on additional costs related to erecting signs and hooding meters when they are taken out of service for MTS Allstream's construction activities. The Commission considers that these activities and costs are causal to MTS Allstream's construction activities, and the City should be able to recover these costs. As such, the Commission determines that the City can invoice MTS Allstream for these costs with a 20 percent loading factor. The City's invoices must include the appropriate detailed supporting rationale for each such cost item.

#### **v. Specific wording to be used for the remaining disputed articles or provisions in the MAA**

101. The Commission notes that the parties were unable to reach agreement on the wording to be used for a number of other provisions in the MAA. The Commission's determinations on the wording for these articles are set out in the Attachment to this decision. The Attachment also includes, for reference purposes, the wording for those articles to which the parties came to agreement during the course of this proceeding.

#### **Policy direction**

102. With reference to the Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction), the Commission notes that it has found that the parties have reached an impasse and that further negotiations cannot be expected to be productive. Accordingly, the Commission considers that market forces cannot be relied on to achieve the policy objectives. Further, in pronouncing upon only those conditions of access that were in dispute between the parties, the Commission relied on market forces to the maximum extent feasible in order to achieve those objectives. Finally, the Commission notes that its determinations were made in furtherance of the policy objectives identified in paragraph 40 of this decision. In light of the foregoing, the Commission considers that its determinations in this decision are consistent with the Policy Direction.

Secretary General

#### **Related documents**

- *Shaw Cablesystems Limited's request for access to highways and other public places within the District of Maple Ridge on terms and conditions in accordance with Decision 2001-23*, Telecom Decision CRTC 2007-100, 25 October 2007
- *Part VII application by MTS Allstream Corp. seeking access to Light Rail Transit (LRT)lands in the City of Edmonton*, Telecom Decision CRTC 2005-36, 17 June 2005
- *Request by MTS Allstream Inc. for interim permission to construct transmission lines in Vancouver*, Telecom Decision CRTC 2005-26, 27 April 2005
- *Ledcor/Vancouver – Construction, operation and maintenance of transmission lines in Vancouver*, Decision CRTC 2001-23, 25 January 2001
- *Terms and conditions for access to municipal property in the City of Vancouver*, Telecom Public Notice CRTC 99-25, 3 December 1999

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
Preamble Background (C)	The City is the public authority which owns the service Corridors and the City Structures and is responsible for the control and management of the Service Corridors and City Structures and in exercising such jurisdiction acts reasonably and as required by law.	MTS Allstream and the City agreed to this wording during the course of the proceeding.
1.1(c)	"Application Documents" means all of the plans, specifications and other information requested by the City Engineer for the approval by the City Engineer of New Work.	It is preferable to have the definitions for the entire agreement (including appendices and attachments) in one location at the front of the Agreement.
1.1(r)	"Losses" means in respect of any matter, all direct losses and does not include indirect and consequential losses unless other wise specified in this Agreement.	MTS Allstream and the City agreed to this wording during the course of the proceeding.
1.1(y.1)	"Public Place" means a public place as agreed to by the parties.	See the Commission's determinations in the body of the decision.
1.1(aa)	"Service Corridor" means a street, lane, highway, service corridor or other Public Place located within the City of Vancouver, but excludes a City Structure.	The Commission considers that leased property could, depending on the circumstances, constitute a public place.
1.1(ee)	"Unavoidable Delay" means any circumstances beyond a party's control, such as by example strikes/lockouts, embargoes, acts of God, war or other strife.	MTS Allstream and the City agreed to this wording during the course of the proceeding.
3.2(h)	(h) constitute approval, or waiver of approval, of the work under any by-law of the City or under any laws of a Public Body; or	MTS Allstream and the City agreed to add a clause to Article 8.1 in lieu of changes to this Article.
4.1	The Company covenants and agrees to pay to the City all direct causal costs incurred by the City and associated with New Work undertaken or proposed to be undertaken by the Company and approved by the City in accordance with this Agreement, including the Fees set out in Appendix 4.0 <i>Fees</i> . At any time, and from time to time, the City may invoice the Company for any Fees attributable to New Work based on the New Work completed to date.	The Commission has determined that the City may directly invoice MTS Allstream for lost productivity costs and unanticipated costs, so long as these invoices are supported with proper documentation.

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
4.2	n/a	The Commission agrees with MTS Allstream that all items dealing with the level of rates and charges should be included in one location. Therefore, this clause should be moved to Appendix 4.
4.3	<p>The Company's obligations to pay money under this Agreement are additional to, and not in substitution for, all other amounts payable by the Company to the City by separate agreement or by-law. By way of example only, and all without limiting the general scope of this section, the Company remains separately liable to pay all applicable amounts due from time to time pursuant to:</p> <ul style="list-style-type: none"> <li>(a) The Street &amp; Traffic By-law for each Parking Clearance Permit, Temporary Special Zone Permit and Special Zone Permit issued;</li> <li>(b) The Parking Meter By-law;</li> <li>(c) The Noise Control By-law; and</li> <li>(d) Any separate agreement between the Company and the City.</li> </ul>	The issue of the relationship of the MAA and bylaws will be dealt with in Section 8.1, as agreed to by the parties.
4.4 – 4.9	Move to Appendix 4.	The Commission notes that the City was agreeable to MTS Allstream's request to move these articles to Appendix 4.
5.1	<p>The Company will maintain comprehensive general liability insurance in sufficient amounts and description as will protect the City from claims for damages, personal injury including death, bodily injury and property damage which may arise under this Agreement, including but not limited to the construction, maintenance or operation of the Equipment in, on, under, over, along and across the Service Corridors or on City Structures and the following applies to the comprehensive general liability insurance:</p> <p>.....</p> <ul style="list-style-type: none"> <li>(b) The insurance policy will be with an insurer authorized to carry on business in the Province of</li> </ul>	MTS Allstream and the City agreed to this wording during the course of the proceeding.

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
	<p>British Columbia, with an insurance company maintaining at least a Best "A" Rating, and will provide that the City will be given 30 days prior written notice of any material change, lapse or cancellation that is applicable to the City and will reduce the coverage afforded by the insurance policy, which notice to the City will be by registered mail, identifying the name of the Company and any other relevant identifier.</p> <p>.....</p> <p>(d) The comprehensive general liability policy will remain in full force and effect at all times during the Term, will be on an occurrence basis form; will include the City as additional insureds; and will include all extensions of coverage customarily included in such a policy, including without limitation the following coverages:</p> <ul style="list-style-type: none"> <li>(i) Blanket Contractual Liability;</li> <li>(ii) Cross Liability Clause;</li> <li>(iii) Contingent Employer's Liability;</li> <li>(iv) Broad Form Property and Completed Operations; and</li> <li>(v) Non-owned Automobile Liability.</li> </ul>	
6.1	<p>The Company now indemnifies the City from and against all Losses incurred by the City as a result of any claim, action, suit or proceeding based on a claim of injury to the person or property of any third party:</p> <ul style="list-style-type: none"> <li>(a) If such claim is as a result of the wilful misconduct or negligence of the Company, its Employees or its Contractors; or</li> <li>(b) If such claim is directly caused by the Company, its Employees or its Contractors in the course of completing a restoration of a Service Corridor in accordance with Appendix 1 – <i>New Work in Service Corridors</i>; or</li> <li>(c) If such claim is directly caused by the Company, its Employees, or its Contractors in the course of repairing any damage to the City's property in accordance with Section 8.3; or</li> </ul>	<p>MTS Allstream and the City agreed to this wording during the course of the proceeding.</p>

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
	(d) If such claim is directly caused by the Company, its Employees or its Contractors in the course of bringing any products or goods which are Hazardous Substances in, on, under, along, across, or around the Service Corridors or the City Structures.	
6.2(b)	<p>The following procedure will apply if the City becomes aware of any claim to which an indemnity in Section 6.1 applies:</p> <p>.....</p> <p>(b) Subject to Section 6.2(d), the Company will have the right, at its expense, to participate in or assume control of the negotiation, settlement or defence of the claim and, in this event, the Company will reimburse the City for all of its Losses (subject to Section 6.3(b)) that may result from such claim.</p>	The Commission considers that the wording proposed by MTS Allstream clarifies the intent of the City to be reimbursed for its losses in the event that MTS Allstream participates in the negotiation, settlement, or defence of a claim against the City.
6.4 (new)	The City and MTS Allstream to agree on specific wording in accordance with the Commission's comments.	The Commission agrees with MTS Allstream to the addition of a provision like Article 6.4, provided that this new Article applies equally to both parties.
8.1	<p>(a) The Company will at all times during the Term comply with all applicable federal, provincial and municipal statutes, laws and by-laws, or other applicable rules and regulations in its performance of Work under this Agreement.</p> <p>(b) Notwithstanding sections 3.2(h), 4.3, 8.1(a), 14.9 and any other provisions of this Agreement, to the extent that any by-laws of the City, or any rules, regulations or permitting processes imposed by the City, are inconsistent with the terms of this Agreement, the Company shall not be required to comply with such by-laws, rules, regulations, or permitting processes.</p>	The Commission considers that since the MAA will apply to work performed in relation to transmission lines currently in place, as well as to transmission lines to be constructed, compliance by MTS Allstream with all laws should apply to all Work, and not just New Work. The Commission considers that the MAA shall take precedence over any conflicting bylaw of the City, or any rules, regulations, or permitting processes imposed by the City. Accordingly, compliance by MTS Allstream with a bylaw of the City, or any rules,

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
		regulations, or permitting processes imposed by the City, is required to the extent that such compliance does not conflict or add to the terms and conditions in this Agreement.
8.3	<p>If any of the City's property is damaged by the Company or its Employees, beyond the damage to the City's property that is inherent to the New Work and is contemplated in the City's approval of the New Work in accordance with Appendix 1 or Appendix 2 as the case may be, the Company will notify the City Engineer immediately of the damage and the City Engineer will elect and will notify the Company in writing within 48 hours whether or not the City will repair the damage. If the City Engineer elects to have the Company do the repairs, the Company will carry out the repairs at its sole cost, without improvements and only to the condition prior to the damage, in a manner approved by the City Engineer within such time as is specified by the City Engineer. If the City Engineer elects to have the City do the repairs or the Company fails to complete the repairs within the time specified by the City Engineer, the City may carry out the repairs at the Company's sole cost, provided:</p> <p>(a) The costs will be in accordance with the City's normal practices and procedures; and</p> <p>.....</p>	The Commission notes that the parties agreed to the revised wording with the exception of the wording in (a). The wording included here addresses the City's concerns.
8.4(a)	To the extent required by law, the Company is responsible for carrying and paying for full Workers' Compensation Board coverage for itself and all of its Employees and others engaged in providing services under this Agreement. For WorkSafeBC purposes, the Company will be the Prime Contractor (as defined in the <i>Workers Compensation Act</i> of British Columbia) for any work or service which is subject to and which the Company performs under this Agreement, including work which is undertaken by subcontractors, workers, material men and all others engaged in such work on behalf of the Company;	This wording takes into account the wording agreed to by the parties and addresses the concerns expressed by MTS Allstream.



Article No. (City MAA)	Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)	Commission Comments
	<p>subject to the provisions of sections 5 and 6 of this Agreement, the Company accepts all responsibilities of the Prime Contractor as outlined in the City's Multiple-Employer Workplace/Contractor Coordination Program (2003), <i>Workers Compensation Act</i> (Part 3), and British Columbia Regulation 296/97 Occupational Health &amp; Safety Regulation, as amended or replaced and as relating to the work or service of the Company under this Agreement; and the City may, acting reasonably, consider any violation of the <i>Workers Compensation Act</i> and its regulations by the Company as Prime Contractor as a material breach of this Agreement, and as such subject to the cure period and process set out at Section 9.1 of this Agreement.</p>	
8.5	<p>To the extent required by law, the Company and the Company's Contractors must conform to all health and safety laws and practices, including any regulations requiring installation or adoption of safety devices, or appliances. The City may, with or without advance notice to the Company, suspend New Work by the Company on the affected portion of the Service Corridor or City Structure, as the case may be, if there appears to be a failure to install such devices or because conditions of immediate danger exist that would be likely to result in injury to any person including a danger because of poor traffic management by the Company. During the suspension period, the City may permit the Company to continue to work on the Equipment or the affected portion thereof only to the extent necessary to correct the default or failure, but the Company will not be entitled to resume other work until the default or failure is corrected.</p>	<p>MTS Allstream and the City agreed to this wording during the course of the proceeding.</p>
8.8	<p>The Company will, at no cost to the City, provide line and elevation of the Equipment within the Alignments, if such information is available, within five (5) business days of receiving a request for same from the City, unless the reason for the request is the result of an emergency in which case the information will be provided within 24 hours.</p>	<p>The Commission considers that MTS Allstream should be solely responsible for providing all the information on the location(s) of its Equipment on City property.</p>

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
	<p>For work performed prior to the execution of this Agreement, where line or elevation information within the Alignment is not available to the Company, the Company, at its own expense, will employ whatever means available to obtain such information, upon written request by the City, and provide such requested information to the City within an agreeable time frame. If the Company is unable to provide either the line or elevation information within an agreeable time frame, the City may invoice the Company for any costs incurred by the City in determining the line or elevation of the Equipment within the Alignments.</p> <p>For any New Work within the Alignments where the Company is unable to provide to the City the line or elevation information requested in accordance with the City's New Work guidelines/standards, as provided by the City to the Company upon execution of this Agreement, because such information is not available to the Company, the City may invoice the Company for any costs incurred by the City in determining the line or elevation of such Equipment within the Alignments.</p>	
8.10	<p>The Company agrees to participate in any utility coordinating activities and to pay its proportionate share of the costs of the administration of such utility coordinating activities.</p>	<p>The Commission notes that the City agreed with the wording provided by MTS Allstream with a note that the MTS Allstream template agreement included "any" utility coordinating committees.</p>
9.1(a)	<p>This Agreement may be terminated by the City by written notice delivered to the Company upon the occurrence of one of the following events or default:</p> <p>(a) The Company fails to pay any amount payable pursuant to this Agreement within 30 business days of written notice by the City that the Company is in default of its obligation, unless the Company has, in good faith, disputed in writing the amount payable pursuant to this Agreement.</p>	<p>MTS Allstream and the City agreed to this wording during the course of the proceeding.</p>

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
9.1(b)	The Company is otherwise in default of any material obligation under this Agreement and the default is not cured within 60 business days after written notice from the City specifying the nature of the default, provided that if the breach is of a nature that with reasonable resources and diligence, would require more than 60 business days to remedy, then the Company will not be in default if, immediately after receiving notice of the breach the Company embarks on a diligent and continuous course of remedial action which results in the expeditious cure of the breach;	MTS Allstream and the City agreed to this wording during the course of the proceeding.
9.1(c)	The Company unduly interferes with the public (including Service Providers) use or enjoyment of the Service Corridor or City Structure and does not rectify such interference within 15 days of being notified by the City of the occurrence of such undue interference, provided that if the breach is of a nature that with reasonable resources and diligence, would require more than 15 business days to remedy, then the Company will not be in default if immediately after receiving notice of the breach, the Company embarks on a diligent and continuous course of remedial action which results in the expeditious cure of the interference;	The Commission notes the parties agreed to the 15 business-day period. The Commission considers that it is reasonable and appropriate to include in this clause an allowance for a cure to take place after the 15 business-day period if it is not possible to complete it within that time. This is consistent with the approach taken with other clauses in the Agreement.
9.2	A party to this Agreement may terminate this Agreement on 180 days written notice delivered to the other party if that other party defaults under any of its material obligations under this Agreement and fails to correct or take all reasonable steps to cure the default prior to the expiry of the 180-day period.	MTS Allstream and the City agreed to this wording during the course of the proceeding.
9.3(a)	The request is for reasons of safety or other legitimate uses of the Alignment that require the removal of the Equipment.	MTS Allstream and the City agreed to this wording during the course of the proceeding.
9.3(b)(ii)	(b) If the Company fails to remove said Equipment and has not applied to the Canadian Radio-television and Telecommunications Commission in relation to the City's request within the specified time, the City may, at its option:  .....	The Commission considers that MTS Allstream has the right to seek recourse from the Commission with regard to any City request to remove Equipment and no action should be taken by the City until the Commission issues its ruling on

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
	(ii) Said Equipment will be deemed to have been abandoned by the Company and title to same will vest to the City.	any such application.
9.4	The parties' rights and remedies under this Agreement may be exercised alone or in any combination or order and are without prejudice to any other remedies at law or in equity, in contract or in tort against the other party.	MTS Allstream and the City agreed to this wording during the course of the proceeding.
10	<p>Article 10 – Equipment</p> <p>10.1 – Shared Facilities The Company shall, subject to the intended purposes of and the rights and privileges granted to the Company herein, use reasonable efforts to share its Alignments and support structures, including viaducts with other Service Providers occupying and using the Service Corridors, with the intent of minimizing the necessity for road cuts, construction and the placement of support structures in the Service Corridors.</p> <p>10.2 – Abandoned Facilities The Company will notify the City promptly when it abandons Equipment situated in a Service Corridor. If the Company fails to use Equipment for three years the City may provide the Company with written notice that the City intends to consider said Equipment to be abandoned. If the Company advises the City in writing within 60 days that the said Equipment has not been abandoned, then such Equipment shall not be considered abandoned. If the Company fails to respond to this notification within 60 days from the date of the notification, then said Equipment will be considered to have been abandoned. Subject to the right of appeal to, and any order made by the Canadian Radio-television and Telecommunications Commission, which order would take precedence over this Section 10.2, on such notification or deemed abandonment, the City may thereafter at any time provide written notice to the Company requiring that the Company remove a specified portion of said Equipment within a</p>	<p>The Commission considers that MTS Allstream's proposed clause for the sharing of facilities should be added to the agreement for the reasons outlined in the article.</p> <p>The Commission agrees with MTS Allstream that telecommunications facilities may remain idle for long periods of time, due to installation of future requirements or the changing dynamics related to customers obtaining services from different competitors. Therefore, the Commission considers that MTS Allstream is the only party that can truly determine if installed equipment is no longer needed.</p>

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
	<p>specified period of time, being no less than 90 days from the date of notice to the Company of the deemed abandonment, provided that:</p> <p>(a) The City will provide the reason for such removal request. For greater certainty, reasons may include, but will not be limited to the following: that removal is required for safety reasons; because the Alignment is required for installations of the City or another Service Provider; or because the Equipment in the Alignment interferes with the construction, maintenance or operation of installations of the City or another Service Provider; and</p> <p>(b) If the Company fails to remove said Equipment within the specified time, the City may, at its option:</p> <p>(i) Remove said Equipment at the Company's expense, payable on receipt of an invoice; or</p> <p>(ii) Said Equipment will be deemed to have been abandoned by the Company and title to same will vest in the City.</p>	
12.1(c)	Deleted.	MTS Allstream and the City agreed to delete this article during the course of the proceeding.
13.3	The Company agrees to reimburse the City for any causal costs and expenses reasonably incurred by the City in assessing, processing or documenting any Assignment. For any invoice provided to the Company for payment of these causal costs, the City agrees to provide sufficient documentation to support its causal costs as set out in any such invoice.	The Commission agrees with the City that it should be able to recover any causal costs for processing any assignment of MTS Allstream's facilities or equipment located on the City's property.
14.9	Subject to Article 8.1(a), nothing contained or implied in this Agreement will derogate from the obligations of the Company under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the Vancouver Charter as amended from time to time	The Commission agrees with the City that with the additions to Article 8.1(a), no changes are required to this Article.

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
	and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, order and regulations, which may be, if the City so elects, as fully and effectively exercised as if this Agreement had not been executed and delivered by the Company and the City.	
Appendix 1, Section B(1)	<p>The City Engineer is under no obligation to approve any New Work, including any Alignment, if the City Engineer is of the opinion, acting in good faith, that:</p> <p>(a) The New Work or resulting use will unduly interfere with the public use and enjoyment of the Service Corridor that is to contain the proposed Alignment;</p> <p>(b) The proposed plans and specifications for the New Work including the excavation plan identifying the proposed area of the cut;</p> <p>.....</p> <p>however in such a case the City Engineer will provide in reasonable detail and in writing, the reasons that the New Work has not been approved and will also make a good faith effort to suggest to the Company alternative means to accomplish the original objective of the proposed New Work.</p>	MTS Allstream and the City agreed to this wording during the course of the proceeding.
Appendix 1, Section B(4)	<p>No approval by the City Engineer of the Application Documents or the New Work will constitute:</p> <p>.....</p> <p>(b) Authorization or permission to interfere in any manner with any existing public or private utility line, system or equipment of any kind, including, without limitation, any pipe, wire, cable, conduit, manhole, handhole or distribution switching or pumping equipment or related support structures other than the Equipment unless expressly authorized by the approval documents issued by the City.</p>	The Commission considers that once the City has given its authorization, it has a reasonable expectation that the New Work will be installed in accordance with the Application Documents.

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
Appendix 1, Section E	<p>Following the granting of approval by the City Engineer for the New Work, the Company will:</p> <p>.....</p> <p>(c) Install the Equipment only in the Alignments, subject to field conditions encountered during the New Work and written approval, including by way of e-mail, by the City Engineer;</p> <p>.....</p>	The Commission considers that given the time constraints that exist during construction activities, a quick approval method is necessary.
Appendix 1, Section F(2)	<p>If, within the applicable time period set out in Section F(1)(e) or F(1)(f), as the case may be, a deficiency in the temporary surface restoration occurs such that the temporary surface restoration does not comply with Section F(1)(a), (b), (c), or (d);</p> <p>(a) The City Engineer may deliver notice setting out the deficiency to the Company and the reasonable timeframe for correcting such deficiency; and</p> <p>(b) The Company must correct such deficiency to the satisfaction of the City Engineer within the reasonable timeframe set out in the notice.</p>	The Commission considers that an assessment of a reasonable time frame would include such factors as, but not limited to, the nature of the deficiency, and its potential to cause personal injury or property damage.
Appendix 1, Section F(3)	<p>If the Company fails to commence or complete correction of the deficiency referred to in the notice from the City Engineer under Section F(2)(a) within the reasonable timeframe identified, or in the event of an emergency, then:</p> <p>.....</p>	The addition of "reasonable" is consistent with the changes made to Section F(2) above.
Appendix 1, Section G(2)	<p>If the Company has excavated, broken up or otherwise disturbed the pavement in any Service Corridor, the requirements for the Company completing the Permanent Restoration will vary depending on if and when pavement has been recently repaved or overlaid, as follows:</p> <p>.....</p> <p>(d) The City will not require grind and overlay under (a) or (b) above for Permanent Restoration involving:</p>	The Commission notes that, except with regard to Article G(2)(d)(i), MTS Allstream and the City had reached agreement on the wording. The Commission considers that the wording it has selected is appropriate as it ensures that where possible MTS Allstream performs its work in conjunction with the City's

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
	<p>(i) Service connections to buildings where no other reasonable means of providing service exists and the Company had no requirement to provide service before the new pavement was placed;</p> <p>(ii) Emergencies; and</p> <p>(iii) Other situations deemed by the City Engineer to be in the public interest.</p> <p>(e) If the City has required the Company to grind and overlay under either (a) or (b) above, the Company will have no obligation to pay Pavement Degradation fees under Section D of Appendix 4, in relation to that pavement.</p>	<p>pavement programs so that pavement cuts are minimized, while at the same time recognizes that MTS Allstream does not have a need to install its facilities until it has customers in the affected areas.</p>
<p>Appendix 2, Section A</p>	<p>The Company acknowledges and agrees that New Work pertaining to a City Structure will be subject to the following additional terms and conditions despite any term to the contrary in this Agreement:</p> <p>.....</p> <p>(c) In the case of New Work on a City Structure that must be carried out by the Company in respect of the Company's existing Equipment in an emergency, the City Engineer will make all best efforts to expedite approval of the New Work.</p>	<p>The Commission expects that in an emergency situation, the City Engineer will take into consideration the nature of the emergency and will respond accordingly with all best efforts to expedite approval of the New Work.</p>
<p>Appendix 2, Section C</p>	<p>The Company at its cost, will, on written notice from the City, remove all or part of the Equipment on a City Structure as designated in such notice and restore the City Structure as near as possible to their original condition:</p> <p>(a) MTS Allstream and the City to develop wording based on the Commission's comments for this article.</p> <p>.....</p>	<p>The Commission considers that when requesting the removal of the Company's equipment, the City should follow the procedures already established in the Agreement including the requirements to provide reason, and the procedures for removal should be subject to an appeal by MTS Allstream to the Commission for an order. Any order of the Commission, as a result of such appeal, would take precedence over Section C(a) of Appendix 2.</p>



<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
Appendix 2, Section F	The Company acknowledges and agrees that Article 13 of this Agreement with respect to the assignment or transfer of the rights and obligations of the Company under this Agreement does not apply to the rights and obligations with respect to Equipment on City Structures and the Company has no right to assign, sublet or otherwise transfer any of its rights or obligations with respect to Equipment on City Structures without the prior written consent of the City, which consent, in the circumstances described in Article 13.2 may not be unreasonably withheld.	The Commission considers that MTS Allstream's argument for its suggested changes is reasonable.
Appendix 3, Section A	The Company will within 90 calendar days of a Relocation Notice (or, in the case of an emergency, sooner if practicable) commence and diligently and continuously work to change the location of any Equipment designated in the notice to some other reasonable location, on, over, or under the surface of the Service Corridors or on the City Structure, as the case may be. For the purpose of this section:  .....	MTS Allstream and the City agreed to this wording during the course of the proceeding.
Appendix 3, Section C	Subject to Section D of this Appendix 3 – <i>Relocations</i> , the responsibility for costs attributable to changing the location of any Equipment pursuant to this Appendix 3 – <i>Relocations</i> will be as follows:  (a) If the Relocation Notice is dated prior to the end of the 10 <sup>th</sup> year following the New Work Approval Date for such Equipment, the City will be responsible for and pay a portion of such costs as follows:  Year 1 – 100% of costs of relocation Year 2 – 100% of costs of relocation Year 3 – 100% of costs of relocation Year 4 – 90% of costs of relocation Year 5 – 80% of costs of relocation Year 6 – 65% of costs of relocation Year 7 – 50% of costs of relocation Year 8 – 35% of costs of relocation Year 9 – 20% of costs of relocation Year 10 – 10% of costs of relocation	See the Commission's determinations in the body of the decision.

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
	<p>(b) If the Relocation Notice is dated after the end of the 10<sup>th</sup> year following the New Work Approval Date for such Equipment, the Company will be solely responsible and pay all the costs of relocation of the Equipment.</p> <p>(c) Notwithstanding (a) and (b) above, the Company will be solely responsible for and will pay all costs of the relocation of the Equipment if, at the time of the New Work Approval Date, the City notified the Company in writing that the planned work of the City would require the future relocation of the Equipment subject to the New Work Approval.</p> <p>(d) Notwithstanding (a), (b), and (c) above, the City will be solely responsible for and will pay all costs of the relocation of the Equipment if the relocation is required due to a City beautification, aesthetic or similar project.</p>	
<p>Appendix 4, Section A</p>	<p>Application Documents review fees:</p> <ol style="list-style-type: none"> <li>1. For New Work in Alignments totalling 20 metres or less, a one time flat fee of \$600.00;</li> <li>2. For New Work in Alignments totalling in excess of 20 metres, a one time flat fee of \$1,800.00</li> </ol> <p>Together with a one-time charge for each application for New Work of \$12.00 per metre of the total length of the Alignments used for such New Work.</p>	<p>See the Commission's determinations in the body of the decision.</p>
<p>Appendix 4, Section B</p>	<p>For each application for New Work, the Company will pay to cover the cost of the inspection of the New Work by the City the amount of \$78.00 per city block for the total length of the Alignment for each day from the commencement of the New Work until the New Work is fully completed, including the Permanent Restoration if the Company elects to complete the Permanent Restoration of any Service Corridor as permitted in Section G of Appendix 1 – <i>New Work in Service Corridors</i>.</p>	<p>See the Commission's determinations in the body of the decision.</p>

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>												
Appendix 4, Section D	<p>Subject to Section G.2(e) of Appendix 1, in instances where the Company excavates, breaks up, or otherwise breaches the surface of any Service Corridor, the Company will contribute to the cost of the Pavement Degradation based on the total area of the pavement excavated and such cost will be payable within 30 days of the completion of the Permanent Restoration of the applicable Service Corridors, on a one time per New Work basis, in accordance with the following table:</p> <table border="1" data-bbox="313 747 1024 1045"> <thead> <tr> <th data-bbox="313 747 716 856">Age of Service Corridor in years since last resurfaced as determined by the City</th> <th data-bbox="724 747 1024 856">Fee per square metre of excavation</th> </tr> </thead> <tbody> <tr> <td data-bbox="313 856 716 894">0 – 5.0</td> <td data-bbox="724 856 1024 894">\$50.00</td> </tr> <tr> <td data-bbox="313 894 716 932">5.1 – 10.0</td> <td data-bbox="724 894 1024 932">\$40.00</td> </tr> <tr> <td data-bbox="313 932 716 970">10.1 – 15.0</td> <td data-bbox="724 932 1024 970">\$30.00</td> </tr> <tr> <td data-bbox="313 970 716 1008">15.1 – 20.0</td> <td data-bbox="724 970 1024 1008">\$20.00</td> </tr> <tr> <td data-bbox="313 1008 716 1045">20.1 or greater</td> <td data-bbox="724 1008 1024 1045">\$10.00</td> </tr> </tbody> </table>	Age of Service Corridor in years since last resurfaced as determined by the City	Fee per square metre of excavation	0 – 5.0	\$50.00	5.1 – 10.0	\$40.00	10.1 – 15.0	\$30.00	15.1 – 20.0	\$20.00	20.1 or greater	\$10.00	See the Commission's determinations in the body of the decision.
Age of Service Corridor in years since last resurfaced as determined by the City	Fee per square metre of excavation													
0 – 5.0	\$50.00													
5.1 – 10.0	\$40.00													
10.1 – 15.0	\$30.00													
15.1 – 20.0	\$20.00													
20.1 or greater	\$10.00													
Appendix 4, Section E (formerly Article 13.3)	Not required.	The Commission is of the view that Article 13.3 should remain in Section 13 - <i>Assignment of the Agreement</i> .												
Appendix 4, Section E (formerly Article 4.2)	<p><b>E. Work Performed by City Forces</b></p> <p>Calculation of the City's costs of doing anything under this Agreement using its own forces is to include, without duplication, that cost plus a loading factor not to exceed 20%.</p> <p>This provision does not apply to work done by City forces in relation to Application Document Review, Inspection or Pavement Degradation under Sections A, B, and C of Appendix 4, or in relation to any other costs or charges under this Agreement that include overhead or administrative costs, or a similar loading factor.</p> <p>The City shall provide an invoice to the Company for work done by City forces which specifically identifies any overhead or administrative costs, or similar loading factors.</p>	The Commission agrees with the City that it should be able to recover its causal costs for work done by its own forces for work that is performed under this Agreement.												

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
Appendix 4, Section F (new)	<p>F. Lost Parking Meter Revenue and Costs</p> <p>For each application for New Work, the Company shall reimburse the City for lost parking meter revenue based upon the following formula for each parking meter put out of service as a result of the New Work:</p> <p>Hourly meter rate X Number of hours out of service X Occupancy Rate</p> <p>Where the Occupancy Rate is calculated as:</p> <p>Number of paid meters/(total number of meters – number of out of order meters – number of hooded meters)</p> <p>The calculation of lost parking meter revenue shall not include an overhead charge or similar loading factor.</p> <p>For each application for New Work, the Company shall reimburse the City for all causal costs, plus a loading factor of no more than 20%, incurred by the City to erect signs and hood parking meters as a result of the New Work.</p> <p>The Company shall pay the City within 45 days of receipt of an invoice for lost parking meter revenue and for the costs incurred by the City for erecting signs and hooding parking meters.</p>	See the Commission's determinations in the body of the decision.
Appendix 4, Section G (new and formerly Article 4.4)	<p>G. Adjustment of Fees</p> <p>Subject to Section H of this Appendix, the fees and charges specified in Sections A, B, C, and D of this Appendix will be adjusted annually on December 31<sup>st</sup> of each year for the Term of this Agreement in accordance with the consumer price index (CPI) for Vancouver as set out in the Canadian Economic Observer published by Statistics Canada.</p>	See the Commission's determinations in the body of the decision.

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
Appendix 4, Section H (new and formerly Article 4.5)	<p><b>H. Renegotiation of Fees</b></p> <p>On or before 6 months before the 5<sup>th</sup> and 10<sup>th</sup> anniversary date of the Effective Date, either party may give notice to the other requesting that any Fee contained in Appendix 4 – <i>Fees</i> will be renegotiated and once the parties agree on the revised fees, they will take effect on the 5<sup>th</sup> and 10<sup>th</sup> anniversary of the Effective Date.</p>	The Commission considers that any of the fees provided for in the MAA should be able to be renegotiated at five-year intervals to reflect changing conditions over the term of the MAA.
Appendix 4, (formerly Article 4.6)	This clause has been incorporated into Appendix 4, Section H above.	n/a
Appendix 4, Section I (new and formerly Article 4.7)	<p><b>I. Currency</b></p> <p>All amounts are payable in Canadian currency.</p>	The Commission agrees with MTS Allstream that this clause should be in the Fees section.
Appendix 4, Section J (new and formerly Article 4.8)	<p><b>J. Transactions Taxes</b></p> <p>The Company will pay all applicable goods and services tax, provincial sales tax and all other value added, sales or other transactions taxes levied by a Public Body having jurisdiction, attributable to:</p> <p>(a) the consent granted by this Agreement; or</p> <p>(b) any amounts paid by the Company pursuant to this Agreement.</p> <p>(collectively, "Transactions Taxes")</p> <p>All amounts set out in this Agreement are exclusive of Transaction Taxes. All Transactions Taxes are recoverable under this Agreement in the same manner as the amounts on which they are based. For greater certainty, Transactions Taxes do not include any amounts levied through a City by-law where such fee is inconsistent with the terms of this Agreement.</p>	The Commission considers that the addition of the last sentence adds clarity to the scope of the agreement in regards to any City bylaws that might otherwise apply to MTS Allstream's equipment installed on City property.

<b>Article No. (City MAA)</b>	<b>Article Wording (as agreed to by the parties in their submissions, or, in the absence of such agreement, as determined by the Commission)</b>	<b>Commission Comments</b>
Appendix 4, Section K (new and formerly Article 4.1)	<b>K. Payments to the City</b>  At any time and from time to time, the City may invoice the Company for any Fees attributable to New Work based on the New Work completed to date.	Wording moved to Appendix 4 – <i>Fees</i> , with no change in the wording.
Appendix 4, Section L (new and formerly Article 4.9)	<b>L. Interest on Arrears</b>  Except where a different rate is specified, the Company will pay simple interest at the Prime Rate plus 5% per annum on all amounts required to be paid under this Agreement, from the due date until payment in full, both before and after judgment.	Wording moved to Appendix 4 – <i>Fees</i> , with no change in the wording.