Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Order CRTC 2025-215

PDF Version

Reference: Part 1 application posted on 2 August 2024

Gatineau, 26 August 2025

Public record: 8690-R28-202404201

City of Ottawa – Procedural request relating to Rogers Communications Canada Inc.'s application

Summary

The Commission helps resolve disputes between telecommunications service providers and municipalities regarding access to municipal rights-of-way to facilitate the deployment of telecommunication services to Canadians.

On 29 July 2024, Rogers Communications Canada Inc. (Rogers) filed an application designating as confidential certain elements of the Municipal Access Agreement (MAA) between it and the City of Ottawa (the City), including the terms of that agreement and the proposed amendments.

In response to Rogers' application, on 21 August 2024, the City requested that the Commission direct Rogers to disclose the draft MAA between Rogers and the City. The City stated that the documents designated as confidential by Rogers did not meet the confidentiality criteria under section 39 of the *Telecommunications Act*. The City was also of the view that public interest in the draft MAA's disclosure, which would improve transparency and allow interested persons to provide more fulsome comments on the record of this proceeding, outweighs any potential harm to Rogers.

Negotiations between the parties for a new MAA started in November 2020 but reached an impasse due to disagreements over cost-sharing for infrastructure relocation, rights-of-way, compliance with local and provincial standards, and other conditions. Rogers asked the Commission to set fair terms for access in these disputed areas.

In this decision, the Commission finds that disclosure of the disputed and related terms in Schedule A and Schedule B of Rogers' application will allow for an open and transparent process to establish fair terms of access. Schedule A contains the draft MAA, along with amendments and comments from the City and Rogers. Schedule B contains Rogers' proposed wording for various provisions of the MAA, as well as a summary of the rationale for its proposed wording. Disclosing only the terms on which parties are seeking a determination, rather than all terms and conditions of the draft MAA – which would be of limited benefit, will enable parties to provide fulsome comments and help the Commission provide clear guidance for future MAAs.

A dissenting opinion by Commissioner Ellen C. Desmond is attached to this order.

Canada

Background

1. On 29 July 2024, Rogers Communications Canada Inc. (Rogers) filed an application for reasonable terms of access to highways and other public places in the City of Ottawa (the City). In its application, Rogers designated certain elements of the draft Municipal Access Agreement (MAA) it proposed to enter into with the City as confidential, including the terms and conditions and proposed amendments.

Procedural request

2. On 21 August 2024, the Commission received a procedural request from the City requesting that the Commission direct Rogers to disclose a copy of the draft MAA between Rogers and the City that is at issue in the application mentioned above.

3. In a letter dated 17 September 2024, the Commission issued a request for information (RFI) asking Rogers, the City, and all other parties to the proceeding to justify their respective positions regarding disclosure of the draft MAA. The letter also instructed parties to explain why and how the resulting specific direct harm would or would not outweigh the public interest in disclosure.

Positions of parties

4. On 24 September 2024, the City submitted that the information in appendices A and B of Rogers' application does not fall under one of the exceptions to the presumptive rule favouring public disclosure under sections 38 and 39 of the *Telecommunications Act* (the Act). The City argued that the information designated as confidential by Rogers is general in nature, does not reveal sensitive operational or strategic data, and is essential for the meaningful participation by other stakeholders in the public proceeding.

5. The City emphasized the strong public interest in disclosure, citing past Commission decisions where similar information was made public. The City also submitted that the financial components of the draft MAA do not create a competitive advantage or disadvantage for any carrier, and that the disclosure of the full record would contribute to improving efficiency in ongoing and future MAA negotiations between municipalities and carriers across Canada.

6. On 24 September and 4 October 2024, Rogers submitted that the draft MAA provisions should be designated as confidential under paragraphs 39(1)(b) and (c) of the Act, and that the information they contain is not of a general nature, but rather commercially and competitively sensitive.

7. In response to the City's argument citing the disclosure of similar MAAs in previous proceedings, Rogers stated that those proceedings had been initiated by municipalities rather than carriers, and in some instances, involved negotiations conducted with a consortium of carriers, unlike the present proceeding. Rogers emphasized that MAAs between the City and different carriers can vary, and that the public disclosure of Rogers' access terms – but not its competitors' – is likely to prejudice its competitive position. Rogers argued that this potential harm outweighs any public interest in disclosure.

8. Rogers submitted there is no public interest in disclosing the information it designated as confidential. In Rogers' view, the City, as the primary party to the proceeding, already has full access to the relevant materials. Therefore, Rogers argued that there is no legal or procedural justification for requiring additional disclosure to interested persons for them to participate meaningfully.

9. Rogers further indicated that, if the Commission determines that the draft MAA in Appendix A does not meet the confidentiality threshold, it would withdraw Appendix A from its application and file a new appendix that includes only the disputed terms.

10. On 26 August 2024, the City of Mississauga, the Regional Municipality of York, and the Town of Newmarket (the Municipalities) filed a joint intervention in support of the City's request for disclosure of the draft MAA. They stated that the City's experience reflects similar challenges they have encountered in their own negotiations with Rogers and other major telecommunications carriers. The Municipalities emphasized that having access to the full record would enable them to provide more tailored and substantive submissions when participating in the proceeding.

11. On 24 September 2024, Quebecor Media Inc., on behalf of Freedom Mobile Inc., Videotron Ltd., and VMedia Inc. (Quebecor) filed a response to the Commission's RFI, objecting to the disclosure of the draft MAA. Quebecor stated that the information should be designated as confidential, pursuant to section 39 of the Act. It added that disclosure of the MAA would cause serious and direct harm to Rogers and could potentially also cause harm to the City. In Quebecor's view, the harm caused by the disclosure of sensitive commercial and financial information would impact providers' competitive positions, outweighing any public interest in disclosure.

12. On 24 September 2024, the City of Toronto filed an intervention in support of the City's request to disclose the draft MAA. The City of Toronto noted that Rogers' redaction of the entire MAA is not targeted, citing sections 38 and 39 of the Act. It added that the draft MAA should be made available to persons who may have an interest in the proceeding, and that disclosure is therefore in the public interest.

Commission's analysis

13. Subsection 39(1) of the Act sets out the types of information that can be designated as confidential by a person who submits it to the Commission:

> (a) information that is a trade secret;
>
> (b) financial, commercial, scientific or technical information that is confidential and that is treated consistently in a confidential manner by the person who submitted it; or
>
> (c) information the disclosure of which could reasonably be expected
>
> (i) to result in material financial loss or gain to any person,
>
> (ii) to prejudice the competitive position of any person, or

(iii) to affect contractual or other negotiations of any person.

14. Paragraph 39(4)(a) of the Act gives the Commission the authority to disclose or require the disclosure of information designated as confidential during a proceeding if it determines that the disclosure is in the public interest. As indicated in *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*, Broadcasting and Telecom Information Bulletin CRTC 2010-961, 23 December 2010, as amended by Broadcasting and Telecom Information Bulletin CRTC 2010-961-1, 26 October 2012, the Commission will consider whether the information would be likely to result in specific direct harm and whether that harm outweighs the public interest in disclosure. Where the specific direct harm does not outweigh the public interest in disclosure, the Commission will generally require that the information be disclosed.

15. The Commission has reviewed all parties' submissions and has assessed whether there is any specific direct harm likely to result from the disclosure of the information designated as confidential and whether any such harm outweighs the public interest in disclosure.

16. While the Commission recognizes that disclosure may have an impact on Rogers' commercial and competitive interests, it considers that the public interest and the need for parties to access a fulsome record regarding the disputed terms outweigh this concern. Disclosure of the disputed terms of the MAA will foster an open and transparent proceeding, enable informed participation by interested persons, and assist the Commission in developing a better understanding of the matters being considered.

17. However, parties are not seeking a determination on all the terms and conditions of the draft MAA. Disclosing the terms that are not in dispute would be of limited benefit. Any submissions regarding those terms are unlikely to assist the Commission in better understanding the matters that are being considered in this proceeding. Consequently, the Commission does not consider it necessary to disclose the remaining terms and conditions to advance the public interest.

18. To minimize any potential harm to Rogers, disclosure should be limited to the disputed and related terms and conditions in the draft MAA, and the definitions section.

Conclusion

19. In light of the above, the Commission directs Rogers to publicly disclose by **2 September 2025** the entirety of Appendix B to Rogers' application and the following portions of the draft MAA found in Appendix A to Rogers' application:

- sections 1, 2.1, 2.3, 4.1, 5.1, 5.3, 5.4, 5.7, 6.5, 6.10, 6.12, 9.2, 9.3, 11, 14.3, 14.4, 14.5, 14.11, 14.13, 15, 17.1, 17.2, 17.3, 19, 22.1, 23, 25, 30.2, 30.3, and 33;
- subsections 6.1(a), 6.1(c), 6.3(b), and 6.3(e); and
- schedules A and B.

20. To allow interested parties sufficient time to consider the new information to be disclosed, the Commission extends the deadline to supplement or resubmit interventions to **25 September 2025**.

21. The Commission also extends the deadline for Rogers to supplement or resubmit its reply to **2 October 2025**.

22. Issuance of this order was approved by majority decision.

Secretary General

Dissenting Opinion of Commissioner Ellen C. Desmond, K.C.

Background

1. As set out in the majority decision, Rogers Communications Canada Inc. (Rogers) and the City of Ottawa (the City) have been in the process of negotiating a new Municipal Access Agreement (MAA) for several years. To date, the parties have not been able to finalize an agreement.

2. On 29 July 2024, Rogers filed an application seeking assistance from the Commission for the resolution of this dispute and asked that the Commission set fair terms of access. In addition to its Part 1 Application (which sets out the outstanding issues in detail), Rogers also filed:

    - Appendix A, which includes a copy of the draft MAA and its schedules, along with proposed amendments. Also included were comments that were made in the margins of the documents.

    - Appendix B, which sets out Rogers' proposed wording for various provisions of the MAA, as well as a summary of its rationale.

3. Rogers has claimed as confidential its complete filing. The City disputes these claims for confidentiality and has requested that the Commission direct Rogers to make public all of the information.

Legislative framework

4. In disputes of this nature, the Commission is guided by section 39 of the *Telecommunications Act* (the Act), which states, in part, as follows:

> Designation of information
>
> 39 (1) For the purposes of this section, a person who submits any of the following information to the Commission may designate it as confidential:
>
> (a) information that is a trade secret;
>
> (b) financial, commercial, scientific or technical information that is confidential and that is treated consistently in a confidential manner by the person who submitted it; or
>
> (c) information the disclosure of which could reasonably be expected
>
> (i) to result in material financial loss or gain to any person,
>
> (ii) to prejudice the competitive position of any person, or
>
> (iii) to affect contractual or other negotiations of any person.

Disclosure of information submitted in proceedings

39(4) If designated information is submitted in the course of proceedings before the Commission, the Commission may

(a) disclose or require its disclosure if it determines, after considering any representations from interested persons, that the disclosure is in the public interest; and

(b) disclose or require its disclosure to the Commissioner of Competition on the Commissioner's request if it determines that the information is relevant to competition issues being considered in the proceedings.

5. In this instance, Rogers has submitted that the designated information should remain confidential under paragraphs 39(1)(b) and (c). In contrast, the City states that disclosure of the full record is in the public interest as it would contribute to improving efficiency in ongoing and future MAA negotiations, both in this case and in other such disputes.

Analysis

6. As indicated by the majority, the Commission must determine if disclosure of the information would result in specific harm and if any such harm is outweighed by the public interest. The Commission must consider both the competitive interest of parties and the public's right to transparency.

7. My colleagues have determined that certain portions of the draft MAA and the proposed amendments (found in Appendix A and its schedules) together with Appendix B should be disclosed. In their view, placing only the specific terms and submissions that are the subject of dispute on the public record will allow for a more transparent and efficient proceeding. They conclude that disclosure of this information outweighs any competitive harm. I agree with the majority that only the disputed terms and the proposed amendments should be disclosed.

8. However, the majority has also determined that the comments, found in the margins of the draft documents, should equally be placed on the public record. It is on this point that I disagree.

9. These comments, offered by the parties, reflect the good faith negotiations that have been ongoing. They indicate where compromises may be made and which positions may be flexible. They go beyond disclosing the "disputed terms". They are bargaining positions that reflect efforts to reach an agreement.

10. Subparagraph 39(1)(c)(iii) of the Act specifically allows parties to claim confidentiality over information that could be reasonably expected to affect negotiations. In my view, placing these editorial comments and proposed areas of compromise on the public record could reasonably affect the negotiations of the parties, both in this instance and in future negotiations. I am not convinced that disclosure of these comments promotes efficiency. To the contrary, it may drive parties to be tactical in what they produce in the future, setting an

unfortunate precedent. Parties must have confidence that their negotiating positions are not compromised as they move towards a resolution.

11. Disclosure of these bargaining positions gives rise to more harm than benefit, and Rogers should be afforded confidentiality as it relates to these comments.

Conclusion

12. I agree that placing only the disputed terms and the related submissions of the parties on the public record is appropriate. I do not agree that comments, written as margin notes, should be disclosed.