



Telecom Decision CRTC 2008-45

Ottawa, 30 May 2008

Shaw Cablesystems Limited's request for access to highways and other public places in the County of Wheatland, Alberta

Reference: 8690-S9-200716334

In this Decision, the Commission grants Shaw Cablesystems Limited access to highways and other public places in Wheatland County, pursuant to subsection 43(4) of the Telecommunications Act. The Commission also sets out the terms and conditions of a municipal access agreement that will govern that access.

Introduction

1. On 19 November 2007, Shaw Cablesystems Limited (Shaw) filed an application with the Commission. Shaw sought an order for access to highways and other public places within the County of Wheatland, Alberta (the County) to construct, maintain and operate its transmission lines and related communications network facilities. Shaw requested that such access be granted under a Municipal Access Agreement (MAA) in accordance with the principles set out in Telecom Decision 2001-23 (the Leduc Decision).
2. The record of the proceeding closed on 11 April 2008 with the filing of Shaw and the County's reply comments. Each party submitted a draft MAA along with its reply comments. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Issues

3. The Commission has identified the following issues to be addressed in its determination:
 1. Should the Commission make a determination with respect to Shaw's request for access pursuant to section 43 of the *Telecommunications Act* (the Act)?
 2. What should the terms and conditions of the MAA between Shaw and the County be?
 3. Should Shaw be required to be a member of Alberta One-Call?
1. **Should the Commission make a determination with respect to Shaw's request for access pursuant to section 43 of the Act?**
4. The Commission notes that Shaw and the County have been trying to negotiate access for over a year. With the exception of the County's position that Shaw be required to obtain membership with Alberta One-Call, a third-party buried facilities locate service, the County indicated that many of the issues raised by Shaw in its application were new and therefore the

Commission should grant the parties an opportunity to engage in further negotiations. In response to the County's submission, the Commission, by letters dated 22 February 2008 and 2 April 2008, suspended the Shaw application for over a month to allow for further negotiations.

5. The Commission considers that Shaw and the County have had a reasonable opportunity to negotiate an MAA that would allow Shaw access to any highway or other public place in Wheatland for the purpose of constructing, maintaining or operating its transmission lines. The Commission notes that the proposed time for the beginning of occupancy in the new development that Shaw seeks to extend its services to has already occurred with no agreement being reached between Shaw and the County. Accordingly, the Commission considers it appropriate to grant Shaw, or any of its affiliated companies that are Canadian carriers or distribution undertakings, permission to construct transmission lines in the County of Wheatland, pursuant to section 43 of the Act.
6. The Commission notes, however, that its powers under section 43 of the Act are subject 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).
7. The Commission considers that, for the reasons noted in paragraphs 38 to 42 of Telecom Decision 2007-100, its decision to grant Shaw and any of its affiliated companies that is a Canadian carrier or a distribution undertaking, permission to construct, maintain and operate transmission lines in Wheatland under section 43 of the Act as set out above is consistent with the Policy Direction.

2. What should the terms and conditions of the MAA between Shaw and the County be?

8. In order to set the terms and conditions of the MAA between Shaw and the County, the Commission has used a similar approach to the one it took in Telecom Decision 2007-100.
9. The Commission notes that the majority of the sections, subsections, and paragraphs of each party's proposed MAA are identical in wording. Therefore, given that there is no disagreement between Shaw and the County in these areas, they are to be included in the terms and conditions of Shaw's access within the County.
10. The Commission notes that for the minority of terms and conditions which were not identical in both MAAs, it used the County MAA as its reference. The terms and conditions that were not identical are as follows: the Preamble, sections, subsections and paragraphs 2; 6; 7; 7(a); 7(b); 7(c); 7(d); 7(g); 7(j); 7(k); 7(l); 7(1)(v); 8(e); 11; 16(a); 16(b); 16(b)(ii); 16(b)(iii); 16(b)(v) to (vi); 17; 19; 20; 21; 23; 29; 46(c); 48; 67; and 68.

11. Where the terms and conditions were not identical in both MAAs, the Commission evaluated the differences in wording. As a result, the Commission has either selected the wording from one of the MAAs, or has proposed alternate wording.
12. Set out below are the selections the Commission has made for those provisions that were not identical in both MAAs, with reasons for each selection.
13. In regard to the second paragraph of the Preamble, the Commission selects the wording in the Shaw MAA but without reference to Telecom Decision 2005-36. The Commission notes the County's concerns regarding different considerations that would need to be taken into account for work done in "other public places." The Commission considers that the County could address such concerns in the specific permit issued, pursuant to section 3 of the MAA.
14. The Commission selects section 6 of the Shaw MAA. The Commission notes that routine work is defined, in section 6, as work that does not involve excavation, break up or otherwise breaching the surface of any rights-of-way. The Commission notes that many of the subsections of section 7 are in relation to work that would require excavation, break up or breach of the surface. The Commission considers that the reference to only the relevant subsections of section 7, as proposed in the Shaw MAA, provides greater clarity to the MAA.
15. The Commission selects the County MAA for section 7 without the references to "Routine Work." The Commission considers that the subsections of section 7, which are applicable to routine work have been specifically identified in section 6. The Commission notes that with the references to routine work removed from section 7, as selected by the Commission, the differences between the Shaw MAA and the County MAA are materially insignificant.
16. The Commission selects paragraph 8(e) of the Shaw MAA. The Commission notes that the words, "...or in accordance with Section 35 of this Agreement" are not included in the County MAA. However the County did not raise any issues with Shaw on this section. The Commission considers that adding the above text to the MAA provides clarity.
17. The Commission selects paragraph 16(a) of the County MAA. The Commission considers ninety days to constitute a reasonable period for notice for relocation. The Commission considers the additional wording proposed in the Shaw MAA, with regards to third party access permits and workforce requirements, introduces uncertainty and, therefore, should not be included in the MAA. In the event such situations arise, they should be dealt with through negotiations.
18. The Commission selects subparagraph 17(b)(ii) of the Shaw MAA to replace subparagraph 16(b)(ii) of the County MAA, which provides for the allocation of costs for relocating equipment. The Commission considers that, consistent with its determination in Telecom Decision 2007-100, the Shaw MAA is appropriate as the longer terms provide an incentive for effective planning on the part of the County.

19. The Commission selects subparagraphs 17(b)(iii), (iv) and (v) of the Shaw MAA to replace subparagraph 16(b)(iii) of the County MAA. Consistent with the Commission's determination in Telecom Decision 2007-100, the Commission considers that the County should not be responsible for relocation costs if it did not grant permission and was not provided the opportunity to inspect the installations.
20. The Commission selects the wording in subparagraph 16(b)(v) of the County MAA. The Commission notes that the language in this section provides that the County would assist, to the extent of its lawful authority, in negotiations and collection of payments, prior to any relocation work by Shaw.
21. The Commission notes that the County and Shaw were not able to agree on the terms and conditions of relocation due to an emergency. The Commission does not consider the proposed wording in either MAA effectively addresses this situation. The Commission considers the following text should replace subparagraph 16(b)(vi) of the County MAA:

The Company shall, at no cost to the Municipality, provide relocation of its Equipment within twenty-four (24) hours of receiving a request by the Municipality in the case of an emergency where public safety is a concern.

22. The Commission considers that a twenty-four hour response addresses the urgency of the situation. The Commission is of the view that the Company should be held responsible for the costs associated with the relocation of its equipment. The Commission considers it appropriate that the equipment owner be afforded the opportunity to relocate its own equipment.
23. The Commission selects section 17 of the County MAA with the removal of the last sentence regarding liability. The Commission notes that similar terms were included in the MAA that was the subject of Telecom Decision 2007-100.
24. The Commission selects the wording in sections 19 through 21 of the County MAA. The Commission considers it appropriate that Shaw be obligated to pay for all taxes and services. The Commission further notes that any disputes on such matters should be dealt with, by the County and Shaw, on a case by case basis.
25. The Commission generally selects the text of section 22 of the Shaw MAA with a minor change to replace section 23 of the County MAA. The Commission notes that the proposed wording in the Shaw MAA provides that the removal of abandoned equipment located under the rights-of-way be tied to the County's five-year capital plan and where the equipment poses an imminent danger to public safety. The Commission considers that the proposed wording is not in the best interest of public safety. Accordingly, the Commission replaces the "and" condition with an "or" condition, such that removal of buried equipment be required at the County's request if it is tied to the County's five-year plan or poses an imminent danger to public safety. The Commission considers that it is appropriate that Shaw be responsible for the costs associated with the removal of equipment. Accordingly, the Commission recommends replacing the second sentence of section 22 of the Shaw MAA with the following one:

Upon such notification, the Municipality may, at any time, require the Company to remove the abandoned pedestals, vaults, and structures located above the surface of the ground in any Rights-of-Way hereunder (collectively, the "**Surface Equipment**") within a specified period of time, being no less than ninety (90) days from the date of the Company's notification, failing which the Municipality may remove such Equipment at the Company's cost and expense or, at the Municipality's discretion, the Surface Equipment shall be deemed to have been abandoned by the Company and title thereto shall vest in the Municipality.

26. The Commission selects sections 29 and 30 of the County MAA. The Commission notes that the parties, through negotiations, have been unable to agree upon what specifically should constitute a "material obligation." The Commission considers that the Shaw MAA proposed a restrictive definition of material obligation.
27. The Commission selects paragraph 46(c) of the County MAA. The Commission considers that the obligation contained in the MAA to provide the County with information pertaining to material changes should lie with Shaw and not with its insurance company given that the MAA is an agreement between Shaw and the County. The Commission considers the County should be notified of any material changes to Shaw's insurance policy in order to have the opportunity to independently assess whether such changes are within the scope of the MAA.
28. The Commission selects section 47 of the Shaw MAA. The Commission considers that the matters pertaining to this MAA fall within the Commission's jurisdiction and, as such, parties should have the option of bringing such matters to the Commission for resolution.
29. The Commission selects section 67 of the County MAA, with the words "according of law in the Province of Alberta" removed. The Commission notes that the term "force majeure" has specific legal interpretation and the qualifications proposed by the County as well as Shaw should only be included if the parties are able to agree on the words.
30. The Commission selects section 67 of the Shaw MAA to replace section 68 of the County MAA. The Commission does not consider that the requirement upon the County to acquire prior consent from Shaw to disclose confidential information to third parties will unreasonably impede the Municipality from fulfilling its obligations to manage its rights-of-ways. The Commission further considers that Shaw should not be prevented by the MAA to seek relief should a breach of confidentiality as contemplated in this section occurs.

3. Should Shaw be required to be a member of Alberta One-Call?

31. The Commission notes the County's submission that Alberta One-Call registration is beneficial to the digging community¹ as well as to Shaw. The County submitted that due to its extensive public awareness and marketing campaigns, Alberta One-Call is the single point of contact for over 650 operators of buried facilities in the Province of Alberta. The County further

¹ Alberta One -Call, Alberta Public Work Association, Rural Utilities and Safety Association, Alberta Road Builders and Heavy Construction Association commented on the application requesting that the Commission require Shaw to be a member of Alberta One -Call.

submitted that Alberta One-Call handles significantly higher volumes of calls (from the digging community) than Shaw, and ground disturbances that occur without a call to DIGSHAW, Shaw's own locate service, have the potential of putting Shaw's infrastructure at risk.

32. In Telecom Decision 2004-17, the Commission noted that locate processes and procedures were sometimes voluntary while in other instances they were imposed by municipalities. The Commission denied the imposition of mandatory standards specifying the information and the time in which telephone and cable system operators must respond to locate requests. In that Decision, the Commission also considered that imposing additional regulation on telephone and cablesystem operators would be inconsistent with the Commission's goal of reducing regulation, where appropriate, particularly for non-dominant carriers and small incumbent local exchange carriers.
33. The Commission considers that Alberta One-Call membership, unless mutually agreed upon by the parties, should not be a condition of the MAA between Shaw and the County. The Commission considers that to the extent that Alberta One-Call is beneficial to all parties, i.e. the County, the digging community, and Shaw, the parties could continue to engage in negotiations and any agreement between the parties may be included as an amendment to the MAA by mutual consent.
34. The Commission notes that there is no evidence on the record of this proceeding that demonstrates that the DIGSHAW locate system would be less efficient or less reliable than the Alberta One-Call service.
35. Accordingly, the Commission selects section 11 of the Shaw MAA.

Conclusion

36. In light of the above, the Commission grants to Shaw permission to construct transmission lines on highways and other public places in Wheatland County on the terms and conditions set out above, pursuant to subsection 43(4) of the Act.

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 Allstream Corp. seeking access to Light Rail Transit (LRT) lands in the City of Edmonton, Telecom Decision CRTC 2005-36, 17 June 2005*

- *Ontario Sewer and Watermain Construction Association's request for enforceable locate request response standards*, Telecom Decision CRTC 2004-17, 12 March 2004
- *Ledcor/Vancouver – Construction, operation and maintenance of transmission lines in Vancouver*, Decision CRTC 2001-23, 25 January 2001

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