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Your File#:
Our File#: 71075-0085/BAS/LIR

February 26, 2007

Mr. Robert Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Dear Sir:

RE: Part VII Application by Shaw Cablesystems Limited seeking an order granting access to highways and other public places in Wheatland County, Alberta

1. Further to the CRTC's letter of February 22nd, 2008 and Shaw Cablesystems Limited ("Shaw") reply letter of the same date, Wheatland County (the "County") wishes to indicate its support to the CRTC's direction for further negotiations of the Municipal Access Agreement ("MAA") and to reply to the allegations of Shaw.
2. The County confirms that it and Shaw have undertaken discussions regarding Shaw's Part VII Application and access to the County's rights of way for the Lakes of Muirfield development. These discussions began with Shaw's request on January 2nd, 2008 to meet with the County on a confidential, closed door basis, without legal counsel. Acting in good faith, the County was agreeable to meeting with Shaw. However given that the matter was in litigation before the CRTC, it was the County's position that such discussions take place on the record to ensure any cooperative measures are made aware to the CRTC. In addition, in order to protect the County's interests, the County indicated to Shaw that any proposed resolutions are subject to the County's solicitors' review and County Council approval. This is evident by the County's letter of January 9th, 2008. In that letter and in a follow up letter of January 17th, 2008, the County requested Shaw to provide an agenda regarding this meeting. These letters are attached for your reference.
3. On January 21st, 2008, Shaw sent a reply indicating the agenda for the meeting. The proposed agenda included the following topics: "(1) The underground locate and staking

process; and (2) Providing services to Lakes of Muirfield.” Note that the proposed agenda did not indicate any interim proposal or memorandum of understanding, in replacement of a MAA.

4. Given the above and in an attempt to efficiently use the time of this meeting, it was the County’s understanding that the main issue of concern with Shaw dealt with the Alberta One Call membership and use of DIGSHAW. Nonetheless, the County sent a letter to Shaw on January 21st, 2008, seeking clarification regarding the numerous other matters that Shaw raised in its Part VII Application. The County was informed in a subsequent phone call with the assistant for Terry Medd, Vice President Operations for Shaw, that the numerous issues will be discussed by Mr. Medd at the meeting. In follow up, the County sent a letter to Shaw on January 21st, 2008 seeking clarification on whether the resolution of Shaw’s two agenda items would result in a withdrawal of the other matters in the Part VII Application to the CRTC.
5. On January 23rd, 2008, Wheatland County Executive Committee – which included the Reeve Ben Armstrong, Deputy Reeve Shirley Reinhardt, County Manager Jennifer Deak and County Landman Steve Nedoshytko (the County) – met with Terry Medd, Vice President Operations of Shaw. During these open discussions, Shaw focused much on its attention on the issue of the membership and use of Alberta One Call versus DIGSHAW. It was clear from this meeting that the main issue of concern for Shaw is the Alberta One Call membership (given Mr. Medd’s acknowledgment in this meeting that the reason for the Part VII Application was because of the Alberta One Call membership condition and that Shaw would not agree to the Alberta One Call membership term due to the fear of creating a precedence; in addition, there has been Shaw’s willingness to sign the County’s original Work and Access Agreement, which contains a number of the same provisions as the County’s current MAA, subject to the removal of Alberta One Call and inclusion of DIGSHAW). It was clear from this meeting that the County and Shaw are not likely to resolve this issue without the assistance of the CRTC. For your reference, we have attached the County’s minutes from this meeting.
6. However, at this meeting there was no significant discussion regarding Shaw’s other concerns with the County’s MAA and the other matters in its Part VII Application. At this meeting, the County requested Mr. Medd to provide a list of the other issues with the MAA so that the County and Shaw could negotiate these smaller issues. Mr. Medd agreed to this proposal.
7. On January 28th, 2008, the County received Shaw’s proposed Memorandum of Understanding to provide it access to the County’s rights of way prior to negotiating and finalizing a Municipal Access Agreement. The Memorandum seeks approval for access to

all of the County's rights of way and other public property on limited terms and conditions (not just those necessary for the Lakes of Muirfield development), a joint submission for suspension of the Part VII Application, and an agreement to continue negotiations regarding the MAA.

8. Upon review of this proposal, the County rejected Shaw's proposed Memorandum of Understanding. It is the County's opinion that unless the County backs down with its position on the Alberta One Call membership and accepts DIGSHAW, this issue will not be resolved. Based on the representations of Mr. Medd on January 23rd, 2008, it is the County's opinion that the Alberta One Call membership is the main issue of concern with Shaw and the reason for the Part VII Application.
9. As an act of good faith and to encourage further negotiations, the County proposed a counterproposal with Shaw that the County's MAA be signed in its current form subject to the CRTC deciding the issue of Alberta One Call and as a sign of good faith, Shaw withdrawing the other grounds of its Part VII Application. This letter of February 6th, 2008, provides Shaw with the County's position and was to bring forth further discussion on the terms and conditions of an acceptable MAA. It is the County's position that this is a reasonable proposal given Shaw's willingness in the summer of 2007 to sign the County's original Work and Access Agreement, which contained the same or similar wording of conditions of consent to access the rights of way as the County's MAA (see the County's Answer to the Part VII Application for more details on the above).
10. Rather than provide the County with a list of issues that were negotiable or agreeing the County's counterproposal, Shaw in its letter of February 18th, 2008 rejected the County's counterproposal and took a step backwards from its position on January 23rd, 2008 and refused to discuss or negotiate the smaller issues of concern with the MAA as stated in the Part VII Application. Furthermore, Shaw provides disparaging remarks to the County, alleging wrong legal advice and interpretation of the law, when no such argument or position in the County's earlier correspondence with Shaw indicates any incorrect interpretation of the law. This, in our view, is a clear attempt by Shaw to bully the County into accepting Shaw's position as being the only reasonable resolution, which in our opinion, is clearly not an act of good faith.
11. The County was pleased to receive the CRTC's letter of February 22nd, 2008 indicating the suspension of the Part VII Application for the purpose of allowing for good faith negotiations on the issues of the MAA. This is exactly what the County has been attempting to achieve through its discussions with Shaw throughout the last two months. Although to date the County has not received a list of the other issues with the MAA that Shaw is willing

to discuss, the County is still willing to return to the negotiation table to try and settle the other smaller matters related to the MAA.

12. The County has taken the position during the discussions to date with Shaw that the Alberta One Call issue remains to be the main issue of dispute and the one matter that is not likely to be resolved between the parties. However, it has not refused to negotiate or discuss the other issues of concern with Shaw. Given the above and in order to expedite the access to the County's right of way, the County proposed to Shaw that it sign the County's MAA and withdrawal all other grounds in its Part VII Application, save for the Alberta One Call issue. This was in no way an ultimatum or final proposal as alleged and depicted by Shaw in its reply to the County and to the CRTC. To the contrary, the County expected that Shaw would come forth with a list of negotiable issues regarding the MAA, which it agreed to provide following the meeting and which to date the County has not received.
13. The County is agreeable to continuing good faith negotiations regarding the terms and conditions of the MAA, subject to the CRTC deciding on the issue of Alberta One Call. It is for this reason that the County encourages and supports the CRTC's suspension of the Part VII Application and order for further good faith negotiations.
14. The County submits that there is still ample time to resolve this dispute through good faith, on the record, negotiations between the parties in accordance with the CRTC's proposed schedule in its letter of February 22nd, 2008 and that Shaw's request for an interim or final determination at this time be rejected.

Sincerely,
On Behalf of Wheatland County,

BROWNLEE LLP

PER:


for BARRY A. SJOLIE

LIR/

Cc: Wheatland County
Attention: Jennifer Deak, Chief Administrative Officer

Shaw Cablesystems Limited
Attention: Jean Brazeau, Vice-President Telecommunications Regulatory Affairs

Alberta One Call Coporation
Attention: Robert R. Chisholm, President

Alberta Association of Municipal Districts and Corporations
Attention: Gerald Rhodes, Executive Director & Donald Johnson, President

Rural Utilities and Safety Association
Attention: Bryan Bespalko, President

Alberta Damage Prevention Council
Attention: Lee Travis, Chairman

Alberta Public Works Association
Attention: Darwin Durnie, President

Alberta Roadbuilders and Heavy Construction Association
Attention: Dennis Locking, Member of Board