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December 19, 2007

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

Dear Sir:

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

I. Introduction

1. We were retained by Wheatland County (the "County" or the "Municipality") to review their access and work agreement and provide assistance in their negotiations with Shaw Cablesystems Limited ("Shaw"). We have been involved in this matter since August 2007. Our office was involved in drafting revisions to the County's Municipal Access Agreement ("MAA") with Shaw on the basis of discussions with and proposals from Shaw.
2. We were surprised that at this early stage of negotiations, Shaw has brought a Part VII Application pursuant to sections 42 and 43 of the *Telecommunications Act* and *Part VII of the CRTC Telecommunications Rules and Procedures* for an order from the Commission granting it access to the County's highways in order to construct, operate and maintain a transmission line. On this basis and from Shaw's conduct during negotiations, we question whether Shaw ever intended to act in good faith in negotiating an access agreement with the County or simply intended to pressure the County under threat of this litigation into an access agreement unfair to the County.
3. According to the County's records, the County was approached by Shaw in April or early May seeking access to the County's highways, and in particular Range Road 264, in order to install transmission facilities for servicing the Lakes of Muirfield development, located within the County. In this regard, the County has never denied Shaw access to its rights-of-way, subject to the terms and conditions set out in the County's Right-of-Way Access Bylaw (the "Bylaw") or the negotiated MAA.

4. Throughout these short negotiations with Shaw, the County has acted in good faith and was of the understanding that an agreement regarding the terms of the MAA was near. Furthermore, the only provisions that Shaw initially took issue with was in regards to the County's condition that underground utility providers in County highways be a member of Alberta One Call. It was this issue that the County and the developer of the Lakes of Muirfield, Muirfield Land Corp. (the "Developer"), believed they were near resolving. It was not until October 2007 that the County was aware of any other concerns Shaw had with regards to its MAA, and such concerns were never elaborated to the County until it received Shaw's Part VII Application on November 19, 2007 (i.e. the redlined version of the MAA).
5. During the County's negotiations, Shaw threatened the County in late September 2007 that a Part VII Application was imminent. After receiving this notice, the County and Shaw had undertaken further discussions regarding the Alberta One Call membership issue and the Developer had discussions with both Shaw and the County to have Shaw register its lines under its Alberta One Call membership. This proposal was being considered by the County and looked to be a possible resolution. However, soon after the CRTC's release of Telecom Decision CRTC 2007-100, *Shaw Cablesystems Limited's request for access to the highways and other public places within the District of Maple Ridge on terms and conditions in accordance with Decision 2001-023* ("Decision 2007-100"), and unbeknownst to the Developer and the County, Shaw filed and served its Part VII Application.
6. It is evident that Shaw has not undertaken its negotiations with the County in good faith. We submit that Shaw's Part VII Application is unnecessary at this time and an abuse of the Commission's processes and jurisdiction. Without Shaw being open with the County regarding all its concerns and its position with resolving such differences, it was not possible for the County to negotiate with Shaw, in order to come to reasonable terms and conditions of access. In addition, the Lakes of Muirfield are in its very early stages of development, with no occupants anticipated until April or May 2008, leaving ample time to allow for further negotiations regarding the MAA. In the alternative that negotiations of the terms and conditions of the MAA were not possible and it was necessary for Shaw to gain access to the County's highway, Shaw still had such consent subject to the terms and conditions set out in the Bylaw.
7. The County seeks a dismissal of Shaw's Part VII Application as a whole. In the alternative, the County submits that the only issue to be resolved by the Commission at this time is the Alberta One Call membership condition, as this has been the only clear dispute between the County and Shaw, and the only matter that raises the Commission's jurisdiction. In this regard, the County seeks the Commission to confirm the condition of Alberta One Call as being a reasonable term of consent to access the County's highways for the purposes of telecommunications transmission lines. The County seeks a dismissal of the remainder of the Application to allow for further negotiations of the terms and conditions of the MAA that are reasonable and agreeable to both the County and Shaw.

II. Facts

8. According to the County's records, Shaw contacted the County in April or early May, 2007, requesting access to Range Road 264 to install a fibre optics line to provide service to a new development, the Lakes of Muirfield, near the Hamlet of Lyalta, located in the County.
9. On May 1, 2007, County Council approved Shaw's request for access to the highways by Resolution 07-244, which stated as follows:

REINHARDT MOVED approval be given to Shaw Cablesystems to install a fibre optic line in the right of way on the east side of Range Road 264 from Highway 1 north 9.5 km to the Lakes of Muirfield development, for high speed internet connections, subject to Shaw Cablesystems becoming a member of Alberta One Call and signing the appropriate agreement for this project with the County. Carried.

Attached as Schedule "A" is a copy of the May 1, 2007 Council minutes.

10. The County sent a copy of its then MAA to Shaw's Contract Administrator, Fiona McMillin, for review and discussion. Discussions by email ensued between Ms. McMillin and County staff during the months of June and July regarding revisions to the Agreement. The proposed revisions dealt primarily with Alberta One Call and Shaw's request that this obligation be replaced with its own DIGSHAW service. The only other issue raised by Shaw was a request for the inclusion of a provision excluding consequential damages between the parties. From these negotiations, the County on July 7, 2007, received a copy of the MAA with comments and revisions by Shaw. Attached as Schedule "B" and "C", respectively, are the County's initial MAA and the MAA with Shaw's revisions and comments.
11. On July 17, 2007, Shaw appeared before County Council making a presentation on its DIGSHAW locate service. Shaw indicated that it was not willing to join Alberta One Call, but rather insisted that the County agree to using Shaw's locate system, DIGSHAW.
12. On July 20, 2007, after consulting with the County's Public Works Superintendent, the County's Executive Committee passed a motion that Council hold off on Shaw's proposals regarding the use of DIGSHAW, in order to allow for further discussions and negotiations. The Executive Committee still had concerns regarding the reliance and effectiveness of DIGSHAW over the use of a one call service provider. After this decision, further discussions regarding Alberta One Call membership took place between County staff and Shaw's Contracts Administrator, Ms. McMillin.
13. In late July 2007, Shaw submitted a proposal and provided the County with a signed copy of the County's original MAA, with only one amendment – removing the condition that Shaw become a member of Alberta One Call with the acknowledgement that Shaw would use its DIGSHAW service. This proposed MAA is attached as Schedule "D". The original MAA, which Shaw agreed to and signed, placed 100% of relocation costs on the contractor (i.e. Shaw) and provides full indemnity to the County for any damage, loss or claims by a third party. Shaw did not provide any concerns with the other terms and conditions of this MAA.

14. The County sought a legal opinion regarding its MAA and assistance in its negotiations with Shaw. Brownlee LLP was retained in this regard. Based on our legal opinion, the County revised its MAA and passed Right of Way Access Bylaw No. 2007-83 on August 21, 2007. The intent of the Bylaw is to provide access to any utility provider seeking access in accordance with the terms and conditions of the Bylaw or a negotiated MAA, such as the template Agreement attached as Schedule "D" to the Bylaw, containing like terms and conditions. These terms and conditions were primarily drafted on the basis of the County's original MAA (the same agreement provided initially to Shaw and that was revised and signed by Shaw as a proposal to the County). The Bylaw and template MAA are attached to Shaw's Part VII Application.
15. On August 21, 2007, the Developer proposed that Shaw be members of both DIGSHAW and Alberta One Call, with 2 locate calls being required, as a means of having both parties come to an agreement. At or soon after this proposal, Shaw was notified of the Bylaw and revised MAA.
16. During these early negotiations, it is our understanding that the Developer dealt with Laurie Templeton at Shaw, who is the Manager of Government and Regulatory Affairs for Alberta and Saskatchewan. After August 2007, all discussions with the County and the Developer by Shaw were with Chris Ewasiuk, Director of Access for Shaw based in Victoria, B.C.
17. On September 14th, 2007, Mr. Ewasiuk spoke with the County's Chief Administrative Officer, Jennifer Deak, ("CAO") and other key County Staff in regards to the negotiation of the MAA and the County's Bylaw.
18. Despite the County's efforts to conduct further negotiations, on September 20, 2007, the County received a letter from Shaw indicating its disagreement with the condition of Alberta One Call, on the basis that Shaw's DIGSHAW service provides the same or substantially the same service, and threatened to bring a Part VII Application to the CRTC if the County did not agree to Shaw's earlier proposed MAA by September 28, 2007. Shaw also indicated that it had concerns with the County's condition on indemnification, relocation, excess conduits and removal of facilities, but did not, and never did, provide any further specific details or revised wordings of such terms. See letter attached to Shaw's Application.
19. On October 1, 2007, the County sent a reply to Shaw indicating its position on Alberta One Call membership and of the County's willingness to continue negotiations with Shaw over the terms and conditions of an agreeable MAA. The County also indicated in this letter that in no way does the County deny Shaw access to its rights-of-way, provided that it abides by the terms and conditions set out in the Bylaw or by a negotiated MAA. See the County's reply letter attached to Shaw's Application.
20. The County received a letter from Shaw on October 3, 2007 requesting a meeting with Council. Given that the County was approaching their Municipal Elections in the middle of October, the County's CAO brought this letter to the attention of the County's Municipal Planning Commission (the "MPC") on October 9, 2007. It was moved that Shaw's letter be

received as information at this time and to refer Shaw to Council's earlier resolution and motion, approving access on the terms and conditions of the MAA, which include Alberta One Call membership.

21. On October 15, 2007, the County's CAO advised Mr. Ewasiuk of Council's directions regarding Shaw's request and Council's earlier resolution and motion approving access on the terms and conditions of the MAA, which include Alberta One Call membership.
22. Meanwhile, County staff continued to have discussions with the Developer and Shaw regarding Shaw's transmission lines being registered with Alberta One Call through the Developer's Alberta One Call membership. It was both the County's and the Developer's understanding that this arrangement looked to be satisfactory to all the parties involved. In fact, the County was in the process of drafting such revisions to its MAA to provide to Shaw for their consideration.
23. Before the County was able to bring this matter back to Council and allow for further negotiations with Shaw on registering the subject lines through the Developer's membership in Alberta One Call, the County was served with Shaw's Part VII Application on Monday, November 19, 2007.
24. On December 10, 2007, J & T Boxer Contracting Ltd. contacted the County by letter, indicating that it had been contracted by Shaw to install new conduit and fibre optic cable on the east side of Range Road 264 and were providing the County notice that it will be calling for locates immediately and beginning construction as soon as the week of December 17th, 2007. The County replied by letter dated December 12, 2007 indicating that Shaw was provided consent to enter into the right-of-way, subject to Shaw either entering into a MAA or in accordance with the terms and conditions of the Bylaw (both which include the obligation to be a member of Alberta One Call). Attached as Schedules "E" and "F", respectively, are J & T Boxer Contracting Ltd.'s notification letter and the County's reply.
25. As a side note, the County brought a resolution to its Alberta Association of Municipal Districts and Counties' (AAMDC) Zone meeting regarding the lobbying of the provincial government to have mandatory registration of underground utility providers with Alberta One Call, for presentation as a Resolution at the AAMDC's annual conference. This Resolution was heard on November 20, 2007 at the AAMDC's annual convention and was unanimously passed.
26. The Lakes of Muirfield is a planned 700 home, gated community, which will have an 18 hole golf course (the first 9 holes to be completed this summer and the last 9 holes in the summer of 2009). There will be a total of 180 lots available in phase 1.
27. At the time of submitting this Answer to the Commission, the Lakes of Muirfield has 8 show homes completed and 25 spec homes under construction by 4 builders. The Developer expects the show homes to be open in February 2008, but does not anticipate any homes being occupied until April or May 2008 at the earliest. The majority of the residential development will not be completed construction for several months or years ahead.

III. Comments on the Commission's Jurisdiction

28. It is agreed that pursuant to section 43 of the *Telecommunications Act* the Commission has the jurisdiction to adjudicate disputes regarding the terms of access by a carrier or distribution undertaking to highways and other public places for the purpose of constructing a transmission line. However, this jurisdiction should only be exercised once negotiations between a municipality and a carrier have been fully exhausted and a dispute regarding the terms and conditions arises. The Commission's jurisdiction to adjudicate disputes should not be abused and resorted to by telecommunication carriers in order to avoid full good faith negotiations and to undermine a municipality's rights and interests in its highways and other public property.
29. The Commission should not be brought into negotiating terms and conditions of access too hastily. Parties should make solid efforts, act reasonably and in good faith, in attempting to resolve disagreements over the terms and conditions of access. The Commission's adjudicative process should only be exercised and relied upon as a last resort where the terms and conditions of access are clearly in dispute, and in order to prevent a denial of access. The Commission's jurisdiction and adjudicative process should not be abused for the purpose of providing telecommunication carriers a means to gain access to municipal rights-of-way on their own, unreasonable, and one-sided terms and condition, with no regard to the interests of other users of the rights-of-way.
30. The Commission must undertake a balancing act when exercising its adjudicative authority. This is clearly recognized by the Commission in Telecomm Decision CRTC 2001-23, *Ledcor/Vancouver – Construction, operation and maintenance of transmission lines in Vancouver* (“Decision 2001-23”) at paras 150-151:

...where a carrier cannot obtain consent from a municipality on acceptable terms, the Commission may grant the permission “subject to any conditions that the Commission determines” (section 43(4) of the Act). The only qualification in the subsection with respect to the scope of the Commission's jurisdiction is that the Commission must have due regard to the use and enjoyment of the highway or other public place by others.

The Commission notes that, under section 43, carriers have a qualified right to enter and break up any highway or other public place for the purpose of constructing, maintaining or operating their transmission lines, subject to a duty not to unduly interfere with the public use and enjoyment of the highway or other public places. [Emphasis added]

31. The Federal Court of Appeal also acknowledged this principle in the appeal of Decision 2001-23 in *Federation of Canadian Municipalities v. AT&T Canada Corp.*, [2003] 2 F.C. 379 [“Ledcor Decision”]. In particular, Justice of Appeal Letourneau states in the majority's decision that in exercising its expertise and adjudicative discretion, the Commission “has to strike a delicate balance between public, private and municipal interests” (at para. 28).

IV. Commission's Jurisdiction in this MAA

32. The County submits that Shaw is attempting to abuse the Commission's jurisdiction and processes by forcing a MAA, rather than undertake negotiations with the County, that is not only to Shaw's sole advantage, but also to undermine the property rights of the County over its rights-of-way. Shaw's conduct during negotiations with the County was clearly in bad faith, with no intention of trying to come to an agreement over reasonable terms and conditions of access. This is clear in that Shaw failed, neglected or refused to provide the County with any clear position or proposed rewording of terms and conditions of the MAA it found unacceptable prior to this Part VII Application.
33. Shaw claims at paragraph 22 of its Application that it has not been able to obtain consent from the County to construct a transmission line in a highway on terms acceptable to it. It also asserts that access to municipal rights-of-way has been a barrier to entry and local competition and that in order for Shaw to plan orderly build-out of their networks they require certainty of access.
34. The County has never denied Shaw access to its rights-of-way, and in particular Range Road 264. The County has consented to Shaw's request for access as early as May 1, 2007, and has continued to do so even up to Shaw's contractor's request in December, 2007. As well, the County's Bylaw ensures access to its rights-of-way by telecommunication providers and ensures equitable treatment of all users of the rights-of-way, including in regards to damage prevention and maintaining integrity and quality of underground utility infrastructure.
35. The County was not aware of what terms of consent Shaw finds acceptable (except for its disagreement with membership in Alberta One Call), until it was served with Shaw's Part VII Application with its redlined MAA. It is not possible for the County to negotiate in good faith with the intention of coming to agreeable and acceptable terms and conditions of access without the full disclosure and understanding of Shaw's position on the County's proposed MAA. Not to mention a number of terms and conditions in the County's MAA were included in Shaw's proposed MAA (which the County refused due to the Alberta One Call issue), including the indemnity of the County and acceptance of 100% of the relocation costs.
36. The County submits that negotiations between Shaw and itself were not at a standstill and did not require this Part VII Application to resolve the MAA. In fact, prior to being served with this Part VII Application, the County and the Developer thought that there was progress and a possible resolution to Shaw's concern over Alberta One Call membership. Without exact knowledge of Shaw's other concerns with the MAA, the County had the belief that the finalization of the MAA with Shaw was a possibility in the near future.
37. In the event that the Commission finds that it has jurisdiction, the County submits that the only matter clearly at dispute between Shaw and the County and which the Commission may have jurisdiction to decide on is the issue regarding utility coordination and membership of Alberta One Call.

V. Terms and Condition of MAA

38. The County submits that this Part VII Application by Shaw is unwarranted as there has been no denial of access, nor full negotiations regarding the terms and conditions of access. As such, this Application should be dismissed to allow for further negotiations to continue between the County and Shaw. In the alternative that the Commission finds Shaw's Application to be within its jurisdiction, the County submits that the only dispute for which the Commission has clear jurisdiction to adjudicate at this time is regarding the condition requiring membership in Alberta One Call. In that regard, the County seeks the Commission to order Shaw to enter the County's MAA with the obligation of Alberta One Call membership.
39. The County notes that it was not aware of Shaw's particular concerns and acceptable wording of terms and conditions of the MAA. At no time during the negotiations with Shaw did it provide the County with any clear indication of its numerous issues with the MAA that have been raised with this Application, except for its disagreement with the term requiring Shaw to be a member of Alberta One Call.
40. The County submits that Shaw's Part VII Application is clearly intended to abuse the Commission's adjudicative function and jurisdiction to set a MAA that is clearly in its favour and to avoid negotiations with the County. Shaw has cited Decision 2007-100 extensively in its submission, in the attempt to justify the Commission's jurisdiction to set the terms and conditions of a MAA without negotiations. The County submits that this is clearly contrary to the Commission's jurisdiction, Decision 2007-100 and Decision 2001-23. Both Decision 2001-23 (and affirmed by the Ledcor Decision) and Decision 2007-100 indicate that they do not create binding principles on future negotiations regarding access to municipal rights-of-way. As such, the Commission should dismiss Shaw's reference and reliance on these decisions.
41. The County is surprised with Shaw's position on a number of these terms and conditions as they were exactly the same or substantially similar in the County's initial MAA and in Shaw's proposed MAA, provided during the early negotiations. The County is also of the position that some of these terms and conditions would have been negotiable and potentially resolvable through further good faith discussions as a result of trade offs and compromises – as is expected during normal negotiations of an agreement. Such matters could have been and can still be dealt with between the parties. There is no need to have this matter brought before the Commission provided that Shaw returns to the negotiation table and acts reasonably and in good faith.
42. Despite the above, the County submits that its MAA and the terms and conditions of its Bylaw are reasonable and consistent with the CRTC principles and objectives.
43. Given that the only clear dispute between the County and Shaw to date has been the condition of utility coordination and membership in Alberta One Call, the County will now turn to this reasonable condition of access.

VI. Utility Coordination and Membership with Alberta One Call (Sections 10 to 12)

44. The County submits that this is a reasonable term and condition of access that treats all users of the rights-of-way equally, is clearly supportive of the objectives of the *Telecommunications Act* and is beneficial to all parties that have an interest in the use of public rights-of-way, including the public and its safety, the telecommunications industry and Shaw's infrastructure.
45. Section 10 of the MAA requires Shaw to obtain membership, at its sole cost, with Alberta One Call.
46. One call locate service providers are a widely recognized and utilized best practice in the area of damage prevention and utility coordination in the utility and digging industries. It is an industry practice accepted and recognized by the Alberta Damage Prevention Council, the Canadian / American Public Works Association, the Common Ground Alliance (a non-profit organization of stakeholders in damage prevention in the United States), the Alberta Road and Heavy Construction Association, and the Rural Utilities Safety Association, just to name a few. Membership in Alberta One Call is an industry standard in Alberta, as well as, for example, Ontario, British Columbia, and the majority of the states in the United States (in fact, most states have mandatory legislation requiring membership in their respective one call services). In fact, other associations and organizations even advocated for mandatory membership in Alberta One Call and the passing of legislation by the Government of Alberta to this effect. This includes the AAMDC (representing all rural municipalities in Alberta) and the Multi-Stakeholders Damage Prevention Legislative Task Force (which represented most buried utility industries, the digging community, and both rural and urban municipalities). See the "Damage Prevention Process in Alberta", published by the Alberta Damage Prevention Council which can be found under "Resources/Publication" on the Alberta One Call website [www.alberta1call.com].
47. These industry best practices include the responsibility of buried facility operators registering with a one-call centre. The benefit for buried facility operators is that they need only belong to a single call centre, which will notify them of ground disturbance activities to ensure its infrastructure is protected and maintained. The benefit of such services for the digging community is that of efficiency and effectiveness in that only one call is required to obtain locates and to ensure their disturbance of the ground can be done safely and not cause damage to buried facilities. For a municipality, requiring membership with a one call service provides it greater ability to ensure buried facilities in the increasing complexity of underground utility networks are in order and to ensure safety of not only members of the digging community undertaking excavation but also of the public (for example, if an unregistered line is accidentally damaged, cutting off telephone services to a community, which is important in the event of an emergency).
48. Alberta One Call is a non-profit corporation whose mission "is to prevent damage to buried facilities through education, advocacy, public awareness and dependable, cost-effective communication and exchange of information between members and those intending to disturb the ground." Alberta One Call's primary function is that of a utility notification

service; it is a single point of contact for some 650 operators of buried facilities in the Province of Alberta. Alberta One Call undertakes extensive advertising and awareness campaigns in the amount of \$600,000 annually on the importance to “call before you dig”, that benefit all its members, the digging community and the public. Each year, Alberta One Call process some 450,000 locate requests, including 150,000 locate requests in the Cities of Edmonton and Calgary alone. Members of Alberta One Call pay a one time membership fee of \$1000 plus are invoiced for \$2 per locate request.

49. Alberta One Call is substantially different than DIGSHAW, which has little or no public awareness aspect to its operations and does not provide the advantage of economies of scale that a one call service does. Shaw indicates that only its launch of DIGSHAW in 2003 involved any communication directed at the digging community. Alberta One Call undertakes extensive marketing and advocacy each year. Alberta One Call also undertakes significantly more number of locate calls than DIGSHAW. In Shaw’s Application, it indicates that DIGSHAW handled approximately 50,000 requests last year. It is not clear if this is for throughout the Province or just an area of. However, compared to the significantly more number of requests handled by Alberta One Call, it questions how many ground disturbances where Shaw transmission lines exist occurred without a call to DIGSHAW – putting not only Shaw’s infrastructure at risk, but also Shaw’s customers and their quality and level of service.
50. It is the County’s understanding that Shaw has never been a member of Alberta One Call, despite its suggestion in paragraph 30 of Shaw’s Application. Shaw Fibrelink (an affiliated corporation of Shaw) was a member for a short period of time, which was a requirement in its access agreement with the Government of Alberta to install a fibre optic line along Highway 2 for the Alberta Supernet. It is also the County’s understanding that Shaw Fibrelink has since terminated its membership with Alberta One Call and as such, is in breach of its access agreement with the Province. Given Shaw’s limited experience with Alberta One Call, the County submits that Shaw’s comments regarding the unnecessary costs and inefficiency of this one call service on Shaw’s operation should be disregarded.
51. Membership in Alberta One Call is not a hindrance to the telecommunication industry nor does it affect Shaw’s competitiveness. The majority of telecommunication providers operating in the Province of Alberta are members of Alberta One Call, including Alberta Supernet, Allstream Inc., Bell Canada, Bell West Inc., Cable TV of Camrose Inc., Cold Lake Fibre Ltd., Group Telecom, KBS TV, Lonkar Services Ltd., Monarch Communications Inc., Norwestel Inc., Norwestel Cable Inc., Persona Communications Inc., Rohl Geomatics Inc., and TELUS Communications Company. Shaw’s competitors voluntarily register with this one call centre and incur the same type of nominal locate costs. These telecommunication providers have undertaken such costs of Alberta One Membership and have not been economically or competitively hindered by such membership.
52. The County submits that membership in a one call service is an industry standard that is reasonable to impose as a condition of access and does not in anyway effect Shaw’s operations, competitiveness or ability to operate its telecommunication services. Shaw alleges that membership in Alberta One Call “would substantially increase [its] costs and

would not provide any additional benefits to Shaw or the Municipality.” If anything, membership in Alberta One Call enhances Shaw’s telecommunication services by ensuring reliability and integrity of its system by minimizing damage of its infrastructure. In terms of its benefit to the County and other users of the rights-of-way, use of a single source for locates simplifies the process and ensures proper and efficient use of the growingly complex underground facilities. It also prevents damage and injuries for the digging community and other buried facility operators who may be unaware of Shaw’s presence.

53. With respect to the Governor in Council’s *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534 (cited in Shaw’s Application at para. 23), membership in Alberta One Call is compatible with s.1(a)(ii) in using regulation measures that interfere with the operation of competitive market forces to the minimum extent possible given that such membership is a common industry practice and advances the policy objectives of s. 7(a), (b), (c) and (h) of the *Telecommunications Act*:

7. It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada’s identity and sovereignty and that the Canadian telecommunications policy has as its objectives

(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;

...

(h) to respond to the economic and social requirements of users of telecommunications services;
[Emphasis added].

54. Furthermore, it is common practice for telecommunication carriers to become members of a one call service under municipal access agreements. This is not a new concept. In the CRTC’s decision of *Ontario Sewer and Watermain Construction Association’s request for enforceable request response standards*, Decision 2004-17, TELUS Communications Inc. “stated that most Ontario municipalities with whom it signed MAAs to expand its network required that the MAA specify that TCI be a member of a one-call organization” (at para. 33). Bell Canada also submitted that “telephone and cable system operators have a vested interest in minimizing damage to their underground facilities” and in that decision opposed Commission imposed standards for locates as this would undermine the services provided by Ontario One Call (at para. 22).

55. By disregarding this condition of access, the Commission will be leaving the door open for other telecommunication providers to establish their own locate services, causing uncertainty and increased cost in the telecommunications industry and digging community. The result of this will only threaten the integrity of the telecommunication networks and increase the possibility of damage and reliability of networks in Alberta and potentially in other provinces.
56. Shaw has little regard for damage prevention for its buried infrastructure. The fibre optic cable, which Shaw is proposing to install in the County's highway, is the most difficult and expensive cable to repair and the cable that, because of its tremendous bandwidth capacity, has the greatest potential for disruption of services. The ability to protect this cable is an important issue, especially when considering the potential value of the consequential damages that could arise – which explains why Shaw, in early negotiations, sought a provision excluding consequential damages.
57. In addition, the only damage prevention organization that Shaw is a member of in Alberta is the Calgary Region Utility Damage Prevention Committee. When invited to participate in other damage prevention organizations and efforts (for example the Government of Alberta's Multi-stakeholder Damage Prevention Legislation Task Force), Shaw has failed, neglected or refused to participate. As well, as stated above, Shaw Fibrelink, an affiliated company of Shaw, lapsed its Alberta One Call membership required under an access agreement with the Government of Alberta – another example of Shaw's disregard for damage prevention and utility coordination. It appears that Shaw would rather threaten the integrity and quality of its telecommunication services than to incur a common business expense in preventing damage to its transmission lines and facilities.
58. The County submits that membership in Alberta One Call is consistent with the Commission's principles of access, minimal regulation, and ensuring high quality and efficiency. Membership in Alberta One Call is a reasonable expectation of all buried utility providers and is a common voluntary practice of most telecommunication providers. As such, should the Commission exercise its jurisdiction to adjudicate conditions of access, the Commission should order Shaw to accept the County's request for membership in Alberta One Call as it is a reasonable condition of access to the County's highway and other public places.

VII. Other Conditions of Access Raised by Shaw

59. In regards to the other terms and conditions of concern raised by Shaw in its Application (and in particular the proposed alternative wordings and specifics regarding concerns), these are new issues to the County and should be left to further negotiations between the parties to resolve. At no point during negotiations did these matters become “disputed” issues and unable to be agreed upon. This is evident by the fact that Shaw never provided any clear positions or any alternative wording for these conditions of consent during negotiations up to the time of this Application. As such, the County submits that such matters are not within the Commission's jurisdiction at this time. It is not the Commission's jurisdiction to arbitrate

the full terms and conditions of a MAA from scratch prior to any negotiation between the telecommunications carrier and municipality.

60. Due to the status of the negotiations with Shaw and the new issues raised by Shaw, the County is not in a position at this time to provide the Commission with its comments regarding such terms and conditions. These are matters that ought to be left to further discussion between the parties. As such, the County requests that these matters be dismissed so as to allow for further good faith negotiations.
61. However, the County does wish to bring to the Commission's attention that a number of these conditions of access were not of concern to Shaw early on during negotiations and were included in Shaw's proposed MAA. In particular, Shaw agreed to undertake 100 percent of the relocation costs of its equipment in the right-of-way, regardless of the reason for the relocation provided that proper notice was provided, and to indemnify the County fully for all third party claims for loss, damages or injury (see section 1 of the main agreement; section 7 of Schedule B "Excavations"; and sections 4 and 11 of Schedule B "Crossing Agreements" of Shaw's proposed MAA under Schedule "D" of this submission). These conditions are similarly worded in the proposed MAA to Shaw and under the County's Bylaw.

VIII. Concluding Comments

62. In conclusion the County seeks the Commission to dismiss Shaw's Part VII Application, or in the alternative, affirm the County's condition of access requiring Shaw to become a member of Alberta One Call is reasonable and shall be imposed on Shaw, and dismiss the remaining matters so as to allow for further negotiations.

Sincerely,
On Behalf of Wheatland County,
Brownlee LLP

Per:



Barry A. Sjolie
LIR/

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

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

NOTICE

This answer is made by Brownlee LLP, 2200 Commerce Place, 10155-102 Street, Edmonton, Alberta T5J 4G8, solicitor for Wheatland County.

TAKE NOTICE that pursuant to section 61 of the *CRTC Telecommunications Rules of Procedure (and the directions on procedure attached hereto, if applicable)*, the applicant is permitted to mail or deliver a reply to this answer to the Secretary General of the Canadian Radio-television and Telecommunications Commission, and to serve a copy of the reply on the respondent or his solicitor by Monday, December 31st, 2007.

Service of a copy of the reply may be effected by personal delivery or by ordinary mail. In the case of service by personal delivery, it may be effected at the address set out above.