



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Date: June 27, 2006
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VanRIMS No.: 06-3200-10
Meeting Date: July 11, 2006

TO: Vancouver City Council

FROM: General Manager of Engineering Services

SUBJECT: Interim Municipal Access Arrangements - Shaw Cablesystems Limited.

RECOMMENDATION

- A. THAT the General Manager of Engineering Services and Director of Legal Services be authorized to conclude negotiations and execute and deliver a series of legal agreements with Shaw Cablesystems Limited, to permit it to extend its telecommunications network under City streets by installing ducts in various new locations, on terms and conditions generally as described in this report, and such other terms and conditions satisfactory to the General Manager of Engineering Services and Director of Legal Services.
- B. THAT no legal rights or obligations will arise or be created by Council's adoption of Recommendation A unless and until all legal documentation has been executed and delivered by the respective parties.

GENERAL MANAGER'S COMMENTS

The General Manager of Engineering Services RECOMMENDS approval of A and B.

COUNCIL POLICY

Where Council's pre-existing standing authority for the execution of contracts by City staff is not applicable, specific Council authorization is required.

PURPOSE

This report seeks Council approval for staff to negotiate arrangements with Shaw Cablesystems Limited to allow them to build various additions to their telecommunications duct system on terms as described in this report.

BACKGROUND

Shaw Cablesystems Limited is best known as providing cable television service in western Canada, having acquired the network previously owned by Rogers, but the depth of their telecommunications interests goes much beyond that including, by example, internet and digital telephone service.

The regulatory system governing access by telecommunication companies to City lands changed significantly in 2001 as a result of a ruling by the Canadian Radio-television and Telecommunications Commission - the Ledcor Decision, a ruling that was upheld by the Federal Court of Canada. The Ledcor Decision and a number of subsequent CRTC decisions have eroded the ability of municipal governments to administer publicly owned lands. The Federation of Canadian Municipalities, the City of Vancouver and other municipalities are presently involved in legal proceedings on the issues raised by these CRTC decisions.

The FCM is preparing a submission to Industry Canada requesting amendments to the Telecommunications Act to more fairly represent the municipal interests. Further, Vancouver is submitting a resolution to be debated at the upcoming Union of BC Municipalities Convention this fall.

City of Vancouver staff is currently preparing a utility bylaw to regulate all utilities in City streets. A draft of this bylaw will be presented to Council in the near future, plus it will be circulated to the industry for comment.

In the meantime, it is still necessary for the City to grant access to the companies to City streets in a timely manner. Until City Council approves a long term policy for access to City streets by utility companies, interim, short-term agreements are sought, either for specific locations as and when required, or on a City wide basis.

A number of telecommunications companies have been signing these agreements but, earlier in 2005, two companies, one of which was Shaw, petitioned the CRTC seeking longer term access agreements and terms as proposed in the Ledcor decision.

In September 2005, the CRTC released its decision. In summary, the decision required the City to conclude negotiations with the named companies on a new MAA within 60 days on terms guided by the Ledcor decision and including a 15 year term. These agreements have yet to be concluded but the parties are working cooperatively toward a conclusion. The terms of these agreements are expected to be very similar to the proposed City bylaw.

In the meantime, we are still required to provide the companies access to City streets. Shaw have been continuing with their work by contracting with another telecommunications company that has chosen to sign a MAA with the City, Urban Networks, but both Shaw and City staff would prefer an arrangement that would see Shaw operating under their own agreement.

Therefore, while work is continuing on negotiating a new MAA, staff is recommending that we proceed with interim City-wide arrangements, making this work retroactively subject to the anticipated new MAA.

DISCUSSION

As noted, we are in the process of negotiating a long term agreement with two companies (and the bylaw will apply to all others). Pending the outcome of those negotiations, we propose a series of letter agreements with Shaw, signed individually for each project, which would make works built under this arrangement retroactively subject to the terms and conditions of the anticipated long term agreement.

We have entered into one such arrangement with another telecom company, MTS Allstream, for a single specific location.

There is very little risk in proceeding with this arrangement. Should we be unsuccessful negotiating the anticipated long term agreement, either of two things will happen:

1. Shaw and the City will enter into a site specific MAA for work done under this arrangement, or
2. The CRTC may intervene and impose an agreement upon the City for the whole of the Shaw network, which would include this work.

FINANCIAL IMPLICATIONS

There is a minor financial benefit having the work that is the subject of this report is retroactively covered by the future MAA since we would be able to capture a number of fees (e.g. Plan Review Fees, Inspection Fees) that we are currently not able to collect.

CONCLUSION

Staff recommends that Council approve an interim arrangement to facilitate Shaw Cablesystems Limited installing various unspecified extensions to their telecommunications network in Vancouver, as generally described in this report.

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