



ADMINISTRATIVE REPORT

Report Date: November 13, 2012
Contact: Neal Carley
Contact No.: 604.873.7360
RTS No.: 009799
VanRIMS No.: 08-2000-20
Meeting Date: November 27, 2012

TO: Vancouver City Council

FROM: General Manager of Engineering Services

SUBJECT: Municipal Access Agreements with Shaw Communications Inc. and Rogers Communications Inc.

RECOMMENDATION

THAT the General Manager of Engineering Services and the Director of Legal Services be authorized to conclude negotiations and execute and deliver legal agreements with Shaw Communications Inc. and Rogers Communications Inc., to permit them to install and operate telecommunications network under City streets, on terms and conditions generally described in this report, and such other terms and conditions satisfactory to the General Manager of Engineering Services and Director of Legal Services.

FURTHER 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.

REPORT SUMMARY

This report seeks Council's approval to enter into Municipal Access Agreements with Shaw Communications Inc. ("Shaw") and Rogers Communications Inc. ("Rogers"). Utility companies are permitted to build and operate telecommunication networks within City streets under the Street Utilities By-law, or terms and conditions established in a Municipal Access Agreement ("MAA"). While the City's preference is to grant such access under the Street Utilities By-law, both Shaw and Rogers have indicated their preference is to move forward with MAA's. The City is strongly committed to the equitable treatment of all utility companies wishing to access City streets and as such, an existing MAA with MTS Allstream in accordance with a ruling by the Canadian Radio-television and Telecommunications Commission ("CRTC") would serve as a template for both Shaw and Rogers.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

Section 290 of the *Vancouver Charter* provides that no person may excavate in or damage a street except under terms and conditions imposed by Council. To date, Council has permitted utility companies access to City streets, to build and operate equipment, under terms and conditions established in Municipal Access Agreements and Street Utilities By-law.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The General Manager of Engineering Services RECOMMENDS approval.

REPORT

Background/Context

This report seeks Council's approval to enter into a separate Municipal Access Agreement ("MAA") with Shaw Communications Inc. ("Shaw") and Rogers Communications Inc. ("Rogers"), to permit them to build and operate telecommunications network within City streets.

The regulatory system by which the City allows telecommunication companies access to City streets has undergone numerous changes over the past decade, following rulings by the CRTC. The most significant being the 2001 Ledcor Industries Limited ("Ledcor") v. Vancouver decision, in which the CRTC established a series of principles which shifted a substantial part of the costs of installing telecommunications infrastructure to municipalities, and the subsequent 2009 MTS Allstream Inc. ("MTSA") v. Vancouver decision which clarified many of the Ledcor principles, essentially restoring the balance and permitting municipalities to recover certain costs from companies accessing City streets.

The CRTC, in its 2009 decision, imposed an MAA on both MTSA and the City, establishing the terms under which MTSA could gain access to City streets, as well as the costs that the City would be permitted to recover. Concurrent to the CRTC proceedings with MTSA, the City, in its efforts to create an equitable environment for all utility companies and streamline the approval process to reduce both Industry and City costs, enacted the Street Utilities By-law ("By-law") on October 18th, 2011.

Strategic Analysis

Shaw and Rogers have contacted City staff requesting access to City streets to expand their telecommunication networks, and it is in the best interests of the City that such access be granted for provision of service to its residents and businesses, in support of our commitment to economic development in the City.

The City's preference is to grant access to City streets under the By-law. Concurrent with the request, the Federation of Canadian Municipalities ("FCM") and its municipal membership are currently working with the Canadian Wireless Telecommunications Association ("CWTA") in developing a non-binding model MAA, under the auspices of the CRTC. While there has been progress in its development, both Shaw and Rogers have indicated their preference is to move

forward with an MAA based on the MTSA MAA, as opposed to either the bylaw or pending-model MAA.

Should Council not authorize entering into MAA's or should any party be unsuccessful in negotiating an agreement, the CRTC may intervene and impose an agreement upon the City and telecommunication company, for the whole of the network, as it sees appropriate.

The City is strongly committed to the equitable treatment of all utility companies wishing to access City streets and as such, the current MTSA MAA would serve as a template for both Shaw and Rogers agreements, and would generally include the following:

- Reimbursements to the City of costs associated with the installation and operation of utility equipment, including but not limited to, plan review & administration, inspection, pavement degradation, and relocation costs; and
- Insurance requirements, indemnity and release provisions.

Implications/Related Issues/Risk (if applicable)

Financial

A key guiding principle is to treat all utility companies equally under the MAA or the Street Utilities By-law. As such, the fee schedule for both Shaw and Rogers MAA's will be aligned with the current fees from the MTSA MAA including an annual adjustment based on Vancouver CPI, and set at a level expected to recover certain costs incurred by the City as a result of new utility installations. The fees in the MAA will also be aligned with those in the Street Utilities By-law as outlined in a concurrent report, *2013 Engineering Fees* report.

By finalizing the MAA with Shaw, the City will also recover outstanding fees owed by Shaw (\$300,000) from interim letter agreements, for work permitted by the City since 2008.

CONCLUSION

Staff recommends that Council authorize the City to enter into Municipal Access Agreements with Shaw Communications Inc. and Rogers Communications Inc., as generally described in this report, permitting them to install and operate telecommunications networks within City streets.

* * * * *