



Hamilton

2016 ROW Conference

Hamilton CRTC perspective

City of Hamilton – 2016 Mission Statement

To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.



Hamilton

Hamilton CRTC application

Long standing discussion on Telcos– 1903 Deputation report

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Council of Canada shall order the crossing of the railway at or near the west end of the said foot bridge to be protected, such protection shall be at the expense of the Railway Company, and also that the Company will extend and keep open, as long as necessary, the culvert under their tracks between Ferguson avenue and the former Hamilton and Northwestern Railway line.

4. That as the Grand Trunk Railway Company are about to construct a track connecting their main line with the track mentioned in the first paragraph hereof, and crossing Strachan street at a point where it would be impossible to make a satisfactory passageway for vehicles, no order be made for the building of a bridge for vehicles over the Grand Trunk Railway tracks on the line of Strachan street, but that upon the construction and completion of the bridge and passageway mentioned in the last preceding paragraph, and upon its being opened and maintained by the Company for public use, the Grand Trunk Railway Company may, entirely at their own expense, close that portion of Strachan street lying between the easterly and westerly boundaries of their railway tracks as at present existing and as proposed to be constructed.

REPORT OF THE DEPUTATION TO OTTAWA RE LEGISLATION IN REGARD TO TELEPHONE AND TELEGRAPH COMPANIES.

To His Worship the Mayor and Aldermen of the City of Hamilton:

GENTLEMEN.—

The undersigned members of the deputation appointed to attend at Ottawa, on behalf of this City, to confer with the Honorable Minister of Justice for Canada on the subject of the proposed legislation of the Dominion Parliament with regard to telephone and telegraph companies, respectfully report that they attended two meetings, at the Russell House, of the representatives of various cities and towns of the Dominion, and of the executive of the Union of Canadian Municipalities, when the various phases of the proposed legislation were fully discussed.

The accompanying memorandum was drawn up by your representatives, and after full consideration was almost unanimously approved by the members present. It was then read and was presented to the Minister of Justice as embodying your views and those of other municipalities represented.

After an attentive hearing of the deputation the Minister stated that in any legislation which might be passed, everything possible would be done to protect the rights of municipalities, and said that he would lay before the members of the Cabinet this memorandum and all other materials presented to him, and would communicate his answer at an early day to the Secretary of the Union of Canadian Municipalities.

The undersigned respectfully ask your approval of the memorandum submitted.

S. D. BIGGAR, *Chairman of Finance.*

Hamilton, Feb. 9th, 1903.

F. MACKELCAN, *City Solicitor.*

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Ottawa, 5th February, 1903.

MEMORANDUM SUBMITTED TO THE MINISTER OF JUSTICE BY REPRESENTATIVES OF THE CITY OF HAMILTON RESPECT- ING THE PROPOSED LEGISLATION ON THE SUBJECT OF TELEPHONE COMPANIES.

It is submitted that in any measure that may be passed by the Dominion Parliament, provisions should be inserted to the effect following:

1. That no telephone system should be established or any existing system extended in any city or town without the consent by by-law of the Council of the municipality, which should have power to impose such terms, conditions and restrictions as to the use of its streets, the placing of poles and conduits and of wires and other appliances, in all streets and public places, and the rates of service to be charged, as the municipal council deem reasonable.

2. That any company having a trunk line should be compelled to permit any local telephone company or any municipality owning a telephone system to use such trunk line for long distance messages or conversations, and to transmit the messages or permit the use of its long distance system for such conversations upon terms to be mutually agreed on between the local company or municipality and the owners of the long distance line, or in the event of their failure to agree, then upon such terms as might be imposed by order of the Governor General in Council, and that such trunk line company shall upon like terms deliver to or through such local telephone company any messages received for it or its customers over the trunk line or permit conversations to be had from the trunk line through or over the lines of the local telephone company.

3. It would be still better in the public interest that the Dominion Government should own and control all the long distance lines, and permit them to be used by all local telephone systems under a reasonable tariff of rates to be fixed by the Government.

4. Provision should be made that all telephone companies incorporated by or under the authority of the Parliament of Canada should be subject to the expropriation of their local systems by the municipalities in which they are respectively situated, upon such terms and conditions as may be imposed by the legislature of the province in which any of such systems may be located.

5. That the lines of any telephone company now existing or hereafter established shall be placed underground in any city or town in such manner and to such extent as the Council of the city or town may by by-law require, the terms and conditions upon which such change in the companies lines shall be made to be determined by by-law of the Council, subject to appeal to the High Court of Justice of the Province if they are deemed by the company to be oppressive or unreasonable.

6. It should be declared in the proposed Act that nothing therein contained shall be so construed as to extend the existing rights of any telephone companies or as recognizing that such companies now have rights, independently of the consent or control of the local municipalities in which their lines are constructed.



HAMILTON

Hamilton CRTC application

Genesis of application:

- 2007 MAA had expired, notice given in 2011
- 2007 MAA had no performance mechanism
- Hamilton required a compliance provision
- Bell required 2 major elements
 - Baie Comeau relocation matrix only
 - Definition of “work” being the moment in time that Bell was actually working.
- The City and Bell were unable to bridge these issues
- This resulted in an application to the CRTC in Aug 2014

CRTC 2016-51 – Hamilton
Application to the CRTC



Hamilton CRTC application

The Objectives in summary addressed the need for :

- Cost certainty for Cities
- ROW management and planning is enhanced
- Carrier has defined predictable rules
- Meaningful consequences for actions



Hamilton CRTC application

Cost related discussion review

Appendix D of our CRTC Submission outlined our 4 cost categories

1. Permit related costs
2. Pre-engineering costs
3. Direct project related costs for relocation of utility infrastructure
4. Work around charges that include time spent on capital and operating projects by City staff



Hamilton

Hamilton CRTC ruling

From CRTC 2016-51

The principles applied by the Commission to resolve disputed terms of access

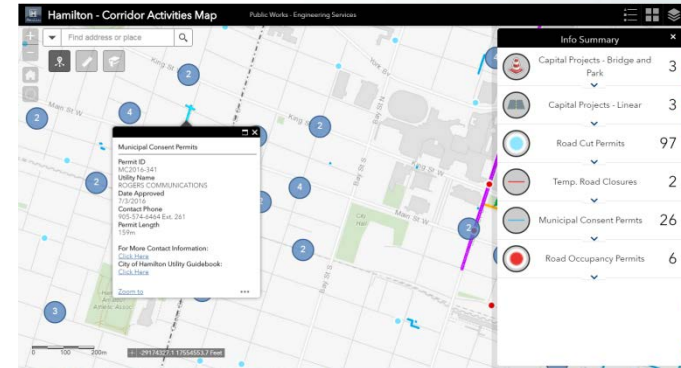
11. ...This includes the principle of cost neutrality, i.e. that costs directly related to a carrier's infrastructure should be paid by the carrier, not municipal taxpayers. The Commission has acknowledged, however, in both Telecom Decision [2008-91](#) (the Baie-Comeau decision) and Telecom Regulatory Policy [2009-150](#) (the Vancouver decision) that it is appropriate to deviate from this principle in certain instances, such as when the costs are incurred as a result of municipality-initiated relocation of facilities.



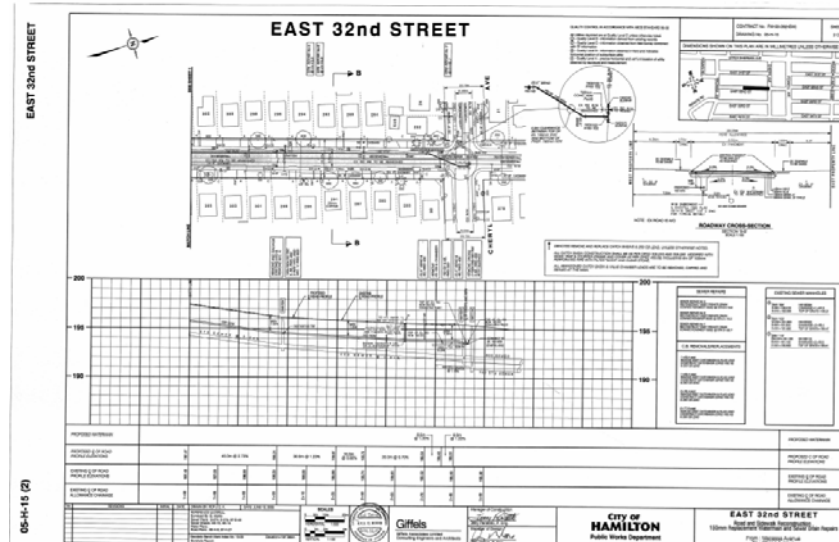
Hamilton CRTC ruling

Cost related discussion review

Category 1 Costs (permitting) are unique to each City and need to be understood then captured and recovered.



Category 2 Costs related to pre-design, design, field verification were addressed in Sections 13 and 18.



Hamilton CRTC ruling

Cost related discussion review

Category 3 Costs are the “new” relocation matrix that extends to 17 years. This matrix is greater than our 2007 MAA terms of 10 years, but however provides a hard stop at 17 years.

All infrastructure prior to 2000 is not subject to any relocation cost sharing. Important to note that an adjustment is treated in the same manner

Category 4 Costs relate to work around charges that occur on Municipal projects.

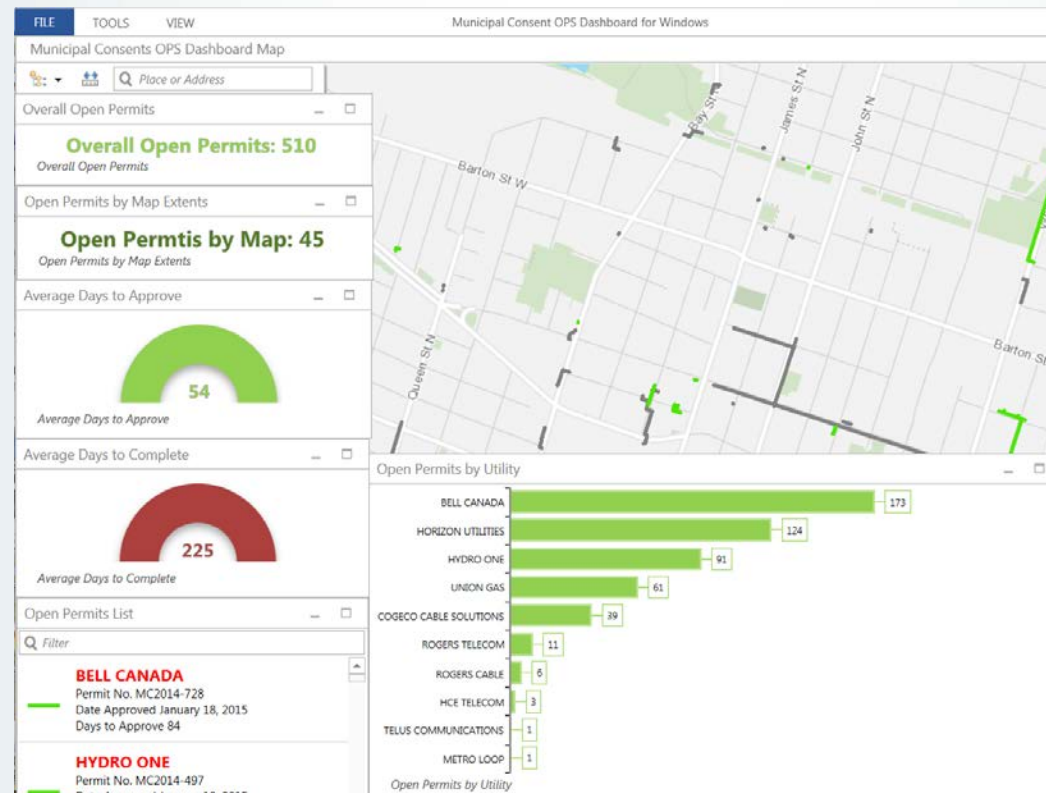
Section 9(l) deals with the obligation of the Telco to support and maintain it’s plant during “Normal Activities” which include all Municipal activities.



Hamilton CRTC consideration

Cost implications versus Permitting timeframes.

Municipal governments usually issue permits in a 30-90 day window yet assume relocation costs for up to 17 years. It's a factor that needs rationalization at each City



Hamilton CRTC ruling

CRTC considered then dismissed Baie Comeau (para's 40 – 52),
Both parties benefit of provision of services.

40. Under the sliding scale approach, there is a complete deviation from the cost neutrality principle in the first few years, when the City is responsible for 100% of the relocation costs. The reasoning is that the City should, within its planning process, reasonably know whether the infrastructure it is authorizing to be installed will have to be relocated within the near future. Considering that with each additional year, it becomes more difficult for the City to foresee whether relocation will be required, the sliding scale approach diminishes the level of the City's responsibility over time. After a set number of years, the City is no longer responsible for any of the relocation costs, meaning the principle of cost neutrality for the City is once again applied.

45. In addition, the Baie-Comeau Model, as applied to an open-ended and forward-looking municipal access agreement, would not give proper recognition to the broader partnership between carriers and municipalities, which benefits both parties. Carriers benefit from having in place the required infrastructure to serve as many customers as possible. As for municipalities, and as the Commission indicated in the Leducor decision, "[the] economic base that such facilities support provides generalized benefits throughout the municipality, attracting industry, creating jobs, increasing tax revenue, etc."



Hamilton CRTC ruling



Other elements of note in CRTC 2016-51

Exclusion of “other public place” like parks, cemeteries, arenas etc.

CRTC clearly signal the Model Access Agreement is not binding.

Creates requirement for detailed estimate and plan on relocations, not to be adjusted without City consent (Sec 26).

CRTC accepts Hamilton objectives for “new provisions governing non-performance. ... good..engineering practices” para 4



Hamilton CRTC ruling

The new Sections 28 and 29 are created to promote compliance:

- First non-compliance is a written notice.
- Second event triggers requirement for resolution plan (includes suspending permit) that both parties agree to.
- The company must supply a letter of credit no less than \$10,000 within 5 days .
- If the issue is not resolved in a 10-day period, the City may commence to fix the issue using the LOC.
- This occurs for every breach.



Hamilton CRTC application

Wrap up

Balanced reasoned ruling, which took into account to significant file presented to it by the City of Hamilton.

- CRTC signals (Para 45) that Telcos must share cost as they benefit
- Creates tools for dealing with non compliance
- Promotes Cost Neutrality as guiding principle
- Defines Normal Activities
- Supports Hamilton's submission of the 4 cost categories.
- Removes confusion around “adjustments”
- Work around charges costs due to existing infrastructure and pre-engineering are re-affirmed.

This ruling re-affirms the requirement for Municipalities to be made whole due to the presence of Telco infrastructure. This is the platform for Hamilton moving forward on all 3rd parties in the ROW.

