

WHAT THE DICKENS IS A MUNICIPAL ACCESS AGREEMENT?

BY


Tracey Anastacio, City of Markham

&

Ed Plant, T.E.P. R-O-W Co-ordination Inc.



AGENDA

1. What is an MAA?
 2. Background about how MAA's were developed.
 3. The basic building blocks of an MAA.
 4. Some additional clauses to consider.
 5. Some good features found in some MAA's.
 6. Q & A
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WHAT IS AN MAA?

An “Access Agreement, for a facility, means a written agreement between a facility owner and a facility user, or between facility users, for access to a facility”. (definition from www.lawinsider.com/dictionary/access-agreement)

Municipalities are “facility owners”, through provincial acts and through natural person powers. Municipalities “own” road rights-of-way, utility rights-of-way, and titled lands.

WHAT IS AN MAA?

MAA's are comprehensive legal agreements outlining responsibilities and requirements for all parties involved (utility, municipality & 3rd parties).

MAA's grant access to municipal rights-of-way so that a party can "construct, maintain, and operate" their equipment within those rights-of-way. MAA's are often in place with Utilities.



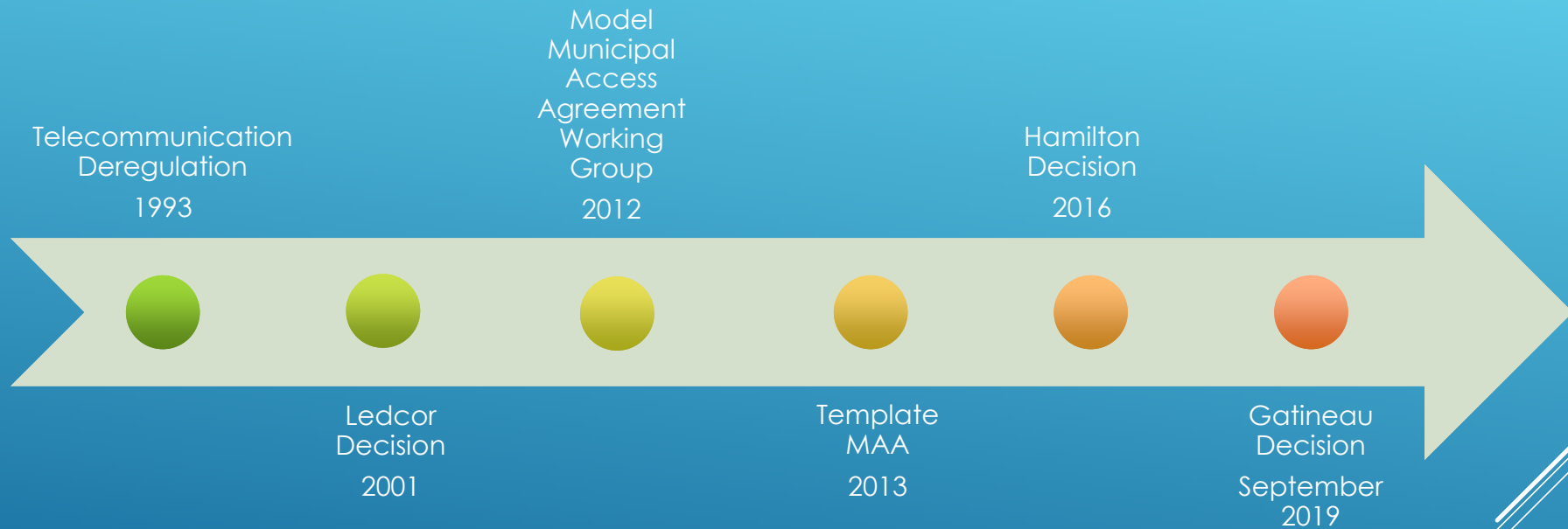
WHAT IS AN MAA?

MAA's differ from other types of access agreements (building access, road access, service & access agreements, etc.)

Some MAA's are "site-specific", applying to a single location or area (i.e. road crossing, series of crossings or a particular road).



BACKGROUND ON HOW MAA'S WERE DEVELOPED?



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Other major decisions include:

- MTS Allstream v. Edmonton – Edmonton's LRT Tunnels (2005-36)
- Toronto v. MTS Allstream and Calgary v. MTS Allstream (2005-46 & 47)
- Maple Ridge v. Shaw Cablesystems Limited (2007-100)
- Baie-Comeau v. TELUS Communications Company (2008-91)
- Wheatland County v. Shaw Cablesystems Limited (2008-45)

BACKGROUND ON HOW MAA'S WERE DEVELOPED?

Other major CRTC or Court decisions include:

- MTS Allstream v. Vancouver (2009-150)
- Shaw Cablesystems Limited v. BC Ministry of Transportation and Infrastructure (2009-462)
- Rogers Communications Inc. v. Châteauguay (2016 Supreme Court of Canada 23)
- Canada Post Corporation v. Hamilton (2016 Ontario Court of Appeal 767)

BACKGROUND ON HOW MAA'S WERE DEVELOPED?

After 1993 telecommunication de-regulation, many municipalities began to use MAA's to grant access to carriers.

MAA's formats differ across the country. Some municipalities used their existing agreement pre-deregulation templates, while others created new legal templates to address the change.

MAA's are used for other utility purposes where exclusivity is not needed.



BACKGROUND ON HOW MAA'S WERE DEVELOPED?

Parties were not always in agreement with contents of the proposed MAA's.

Starting in the 1990's, a series of appeals were made to the Canadian Radio-Television and Telecommunications Commission (the CRTC).

The CRTC ruled on these appeals and the decisions affected the format and content of the MAA's.

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BACKGROUND ON HOW MAA'S WERE DEVELOPED?

Some decisions were appealed to the Supreme Court of Canada, such as the *City of Edmonton vs MTS Allstream* case. Other decisions are currently under appeal.

The CRTC decisions have both elements in favour of the telecommunication companies, and elements in favour of the municipalities.



BACKGROUND ON HOW MAA'S WERE DEVELOPED?

Due to the number of appeals, a Model Municipal Access Agreement Working Group (MAWG) was formed by the CRTC in 2012. The CISC-MAWG's task was:

".. to develop a non-binding model Municipal Access Agreement, to be used as a resource document, that provides benefits to both Canadian carriers and municipalities by encouraging accountability, local coordination, predictability, lower personnel costs in terms of time and money, and entry into new small markets on a more efficient basis, while allowing for customization to permit negotiation and incorporate unique circumstances."

BACKGROUND ON HOW MAA'S WERE DEVELOPED?

The CISC-MAWG involved representatives from the telecommunication companies, FCM, and member municipalities.

Consensus on many of the important topics could not be reached, therefore, the final Model MAA had many flaws.


The result:

- ➔ more appeals
- ➔ more CRTC decisions
- ➔ more appeals of those decisions.

BASIC BUILDING BLOCKS OF AN MAA

MAA's were influenced by the final Model MAA and by recent CRTC and Court decisions.

Each agreement should contain preambles that confirm the legal authority of the parties.
Preambles vary based on regional situations.

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BASIC BUILDING BLOCKS OF AN MAA

Preamble example 1


WHEREAS the Company is a “Canadian carrier” as defined in subsection 2(1) of the *Telecommunications Act (Canada)* (the “Act”) or a “distribution undertaking” as defined in subsection 2(1) of the *Broadcasting Act (Canada)* (“Broadcast Act”);

AND WHEREAS the Company is regulated by the Canadian Radio-Television and Telecommunications Commission (“CRTC”);

BASIC BUILDING BLOCKS OF AN MAA

Preamble example 2


AND WHEREAS, in order to provide telecommunications or broadcasting services the Company wishes to enter on Municipal Rights-of-Way for the purpose of constructing, maintaining, operating and removing equipment, in, on, over, under, along or across the Municipal Rights-of-Way within the city of XXXX and owned by or under the direction, control and management of the City;



BASIC BUILDING BLOCKS OF AN MAA

Preamble example 3


AND WHEREAS, in accordance with the *Telecommunication Act*, the Company must obtain the City's consent to the occupancy and use of the Municipal Rights-of-Way consisting of constructing, maintaining, operating and removing its equipment in, on, over, under, along or across the Municipal Rights-of-Way;



BASIC BUILDING BLOCKS OF AN MAA

Preamble example 4

AND WHEREAS the City is willing to consent to the non-exclusive use and occupancy of the Municipal Rights-of-Way on the terms and conditions contained in this Agreement provided that such use and occupancy will be in such a manner that it will not unduly interfere with the City's use of the Municipal Rights-of-Way, the City's utility service requirements, or any rights or privileges conferred by the City to other persons not a party to this Agreement;



BASIC BUILDING BLOCKS OF AN MAA

Lots of legal talk, right? Yes, but it is what's needed – and this type of wording is common across Canada.

The preambles are usually followed by a series of definitions. Some important ones include:

- Alignments
- Attachment
- Emergency
- **Equipment**
- Municipal Purpose
- **Municipal Rights-of-Way**
- Permits
- **Work**


BASIC BUILDING BLOCKS OF AN MAA

Some other basic parts of an MAA include:

- **Grant of Access / Manner of Work**
- Term
- Payment
- **Permits**
- **Work on Rights-of-Way**
- **Relocation (and most importantly, who pays for them)**
- Abandonment
- **Maintenance and Repair**
- Locating (or Plant Verification)
- Utility Co-ordination (PUCC's in some areas)
- Hazardous Substances
- Environmental Liability
- Emergency
- Indemnification

BASIC BUILDING BLOCKS OF AN MAA

And:

- As-built drawings or mapping
 - Insurance
 - Termination
 - Failure to Perform
 - Assignment
 - Arbitration
 - Taxes
 - Compliance with Laws
 - Notice
 - General legal clauses
 - Signature blocks
 - Schedules of Fees (for permits, approvals, administrative fees, etc.)
 - Dispute resolution
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BASIC BUILDING BLOCKS OF AN MAA

Some big financial considerations also include:

- **Permitting and inspection fees**
 - **Pavement degradation fees**
 - Base / annual approval fees
 - Security deposits
 - Work around costs
 - Lost productivity costs
 - Load factors
 - GST / HST charges
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SOME ADDITIONAL CLAUSES TO CONSIDER

Some MAA's include clauses that can be beneficial, such as:

- Temporary Connections
- Attachments by an Attaching Third Party
- Removal of Graffiti
- Legislative Change
- Municipal Consent in New Subdivisions
- Maintenance of Street Furniture and Maintenance of Above Ground Cabinets
- Fee adjustments
- Manhole adjustments

SOME OTHER GOOD FEATURES

To address some local conditions and/or municipal concerns, some MAA's include the following as:

- Requirements to provide additional conduit for the Municipality's use or the use of other carriers
- Use of Service Corridors and City Structures
- Access to Bridges
- Guidelines for Safe Construction in the Proximity of Low Impact Development Source Control Practices for Stormwater Infrastructure
- Clarification on Small Cell and/or 5G deployments (typically not allowed under MAA's)
- Joint trenching (3-party or 4-party trenching including municipal involvement)

WHAT TO NOT INCLUDE IN AN MAA

Some carriers want certain clauses in the MAA's with them. Some cities have included clauses on the following topics, but they should be negotiated exceptions instead of standard wording. These include:

- Confidentiality clauses – utility alignments should be disclosed, not hidden.
- Exclusivity
- Access to titled municipal lands and/or buildings
- Access to other public infrastructure like sewer systems, LRT tunnels, etc.

SOME ONTARIO & FEDERAL LEGISLATION OF NOTE

- *Electricity Act*, 1988, S.O. 1998, c-15, Sched. A., s. 41 & 42;
- *Municipal Franchises Act*, R.S.O. 1990, c. M.55, s.3 & s.9
- *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Sched. B., s. 101
- *Public Service Works on Highways Act*, R.S.O. 1990, c. P.49, Definitions, s.2 & s.3
- *Municipal Act*, 2001, S.O. 2001, c. 25, 391(1) and 2001 O.Reg. 584/06
- *Telecommunications Act*, s. 43, s. 44



WHAT THE DICKENS IS A MUNICIPAL ACCESS AGREEMENT?

We have covered a lot today. If you have any further questions, or require clarification on any item, we encourage you to contact us today, or later via email.

Tracey Anastacio, City of Markham
tanastacio@markham.ca

Ed Plant, T.E.P. R-O-W Co-ordination Inc.
ed@tepro.com

