



**CITY OF RICHMOND**


**REPORT TO COMMITTEE**

**TO:** Public Works and Transportation Committee  
**FROM:** Paul H. Lee, P.Eng.  
Manager, Engineering Planning  
**RE:** Utility Access Agreement – Bylaw No. 7259

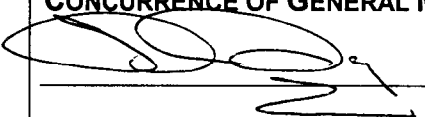
**DATE:** June 19, 2001  
**FILE:** 8060-20

**STAFF RECOMMENDATION**

That the bylaw titled “Federally Governed Telecommunication Company Access to City Road Rights-of-Way Regulation, Bylaw No. 7259” be introduced and be given First, Second and Third readings.

  
Paul H. Lee, P.Eng.  
Manager, Engineering Planning

Att. 1

FOR ORIGINATING DIVISION USE ONLY		
<b>ROUTED TO:</b>	<b>CONCURRENCE</b>	<b>CONCURRENCE OF GENERAL MANAGER</b>
Law .....	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	

## STAFF REPORT

### ORIGIN

Bylaw 6896 was adopted in 1999 and had attached, as Schedule "A", a form of agreement for the use of City of Streets by federally regulated telecommunications firms. The agreement was based on a standard form of agreement recommended by the Federation of Canadian Municipality (FCM) Agreements. The City of Vancouver and Leducor could not agree on the terms of an access agreement and referred the dispute to the Canadian Radio-Television and Telecommunications Commission (CRTC). The CRTC has now ruled on the terms set out in an agreement which were very similar to the master agreement and in almost every area of dispute ruled against the position taken by the FCM and the City.

### FINDINGS OF FACT

In view of this ruling no utility company wishing access to City streets will sign the form of agreement set out in the existing Schedule "A". The CRTC did not allow Vancouver:

1. to charge a rent for the use of their streets;
2. to have the absolute right to have the utility move its' facilities if the City requires it for bona fide municipal purposes;
3. to escape payment of the cost of relocation of the private facilities if the City required their removal; and
4. to have the telecommunications indemnify the City from all liability.

However, staff do not agree with points 2 and 4 and therefore will continue to negotiate inclusion of these clauses (see Schedule "A", Clauses 11, 12 and 13) with Telecommunication companies applying for access within the City.

Staff have recently completed negotiations with GT Group Telecom Services Corp (GT) to allow access to a portion of City streets and have agreed with those clauses to be included in the proposed agreement. This agreement has been negotiated with the company with the CRTC ruling in mind. This agreement will form the basis of future agreements with other companies and a blank version of this agreement is recommended to become the new Schedule "A".

### ANALYSIS

The CRTC ruling was a major set back for Cities in their negotiations with private telecommunications firms that want to use our streets. However this ruling is currently being appealed and if the appeal is successful, Schedule "A" will be amended to reflect any changes required.

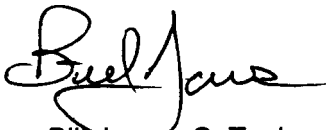
Negotiations with GT have taken a considerable length of time and they have asked staff if they could install a small portion of fibre cable prior to adoption of the bylaw, as they have customers waiting for service. Staff have agreed provided that they sign a form of agreement similar to Schedule "A", pay the application fee set out in agreement, have the design approved and lodge with the City proof of insurance and a letter of Credit in amount sufficient to cover the costs of repair of the streets. If Council adopts the bylaw the Mayor and Clerk will be authorized to sign the agreement after final adoption.

FINANCIAL IMPACT

The City should not be out of pocket for any costs for entering into this agreement, but in light of the CRTC ruling will not be able to charge GT an occupation rent for use of the City's streets. However, the agreement does include administrative permit costs to be paid by the Company in the amount of \$500 for installations of fifty (50) metres or less and an additional \$500 per each one hundred (100) metres or part thereof in excess of the first fifty (50) metres.

CONCLUSION

The form of agreement attached to the bylaw is not the form of agreement that the City would prefer, but in light of the current ruling of the CRTC is one which the City will have to use until there is a successful appeal of the CRTC ruling. Upon final adoption of Bylaw No. 7259, the Mayor and Clerk are authorized to sign future access agreements with Telecommunication companies.



Bill Jones, C. Tech.  
Supervisor, Infrastructure Planning

BJ:pk

CITY OF RICHMOND

**FEDERALLY GOVERNED TELECOMMUNICATION COMPANY ACCESS  
TO CITY ROAD RIGHTS-OF-WAY REGULATION BYLAW NO. 7259**

The Council of the City of Richmond enacts as follows:

**PART ONE: GENERAL PROVISIONS**

- 1.1 Every Federally Governed Telecommunication Company wishing to locate antennas, wires, conduits, cables and other plant on, under or over **City** streets and rights-of-way, must:
- (a) apply in writing to the **General Manager, Engineering & Public Works**, including and specifying:
    - (i) the desired location of the works;
    - (ii) the type of works to be placed;
    - (iii) the purpose of the works; and
    - (iv) the date by which the company wishes to commence installation;
  - (b) enter into an agreement substantially in the form of Schedule A which is attached and forms a part of this bylaw; and
  - (c) lodge all insurance and security required by the **City** and make all payments required to be made by the agreement.
- 1.2 The **General Manager, Engineering & Public Works** must ensure that the proposed works do not interfere with the installation or maintenance of any other **City** utilities.
- 1.3 The Mayor and City Clerk are authorized to enter access agreements which are substantially in the form of Schedule A.

**PART TWO: INTERPRETATION**

2.1 In this bylaw, unless the context otherwise requires:

**CITY**

means the City of Richmond.

**GENERAL MANAGER OF  
ENGINEERING & PUBLIC  
WORKS**

means the person appointed by Council to the position of General Manager of Engineering and Public Works, and includes a person designated as his alternate.

**PART THREE: PREVIOUS BYLAW REPEAL**

- 3.1 Federally Governed Telecommunication Company Access to City Road Rights-of-Way Regulation Bylaw No. 6896 (adopted February 22<sup>nd</sup>, 1999) is repealed.

**PART FOUR: SEVERABILITY AND CITATION**

- 4.1 If any part, section, sub-section, clause, or sub-clause of this bylaw is, for any reason, held to be invalid by the decision of a Court of competent jurisdiction, such decision does not affect the validity of the remaining portions of this bylaw.
- 4.2 This bylaw is cited as “**Federally Governed Telecommunication Company Access to City Road Rights-of-Way Regulation Bylaw No. 7259**”.

READ A FIRST TIME ON:

\_\_\_\_\_

READ A SECOND TIME ON:

\_\_\_\_\_

READ A THIRD TIME ON:

\_\_\_\_\_

ADOPTED ON:

\_\_\_\_\_

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

**THIS AGREEMENT** made this \_\_\_ day of \_\_\_\_\_, 19

**BETWEEN**

(the "City")

**AND:**

(the "Company")

**WHEREAS:**

- (a) The Company operates a communications undertaking by transmitting signals and information through its facilities;
- (b) The Company is regulated by the Canadian Radio-Television and Telecommunications Commission to operate in the area designated in the Company's licence, such area including all or a portion of the land within the boundaries of the City;
- (c) The Company wishes to install and maintain wires, fibre-optic cables, ducts, conduits, manholes and other accessories, structures and equipment (collectively, the "Equipment") in, on, under, over, along and across highways, streets, road allowances, lanes, bridges, viaducts and any other ways open to public use (singularly a "Service Corridor" and collectively, the "Service Corridors") within the City; and
- (d) The City is willing to permit the use of Service Corridors where in its judgment such use will not interfere with its own service requirements and use of the streets including the consideration of the economy and safety and any rights or privileges previously conferred or hereafter conferred by the City by contract or otherwise to others not parties to this Agreement to use any of the Service Corridors;

**NOW THEREFORE** in consideration of the sum of TEN DOLLARS (\$10) paid by each of the parties to the others and of the premises mutual covenants herein contained, the City and the Company each agree with each other as follows:

1. The City hereby agrees to permit the Company to use the Service Corridors for the purpose of installing, maintaining and removing the Equipment subject to the terms and conditions hereinafter set forth and in accordance with all federal, provincial and municipal statutes, laws and bylaws or other rules and regulations pertaining to the application and use of the Service Corridors or the Equipment.

2. The Company shall not install any of its Equipment in, on under, over, along or across a Service Corridor or other Municipal-owned property without first obtaining the written approval of the General Manager, Engineering & Public Works with regard to the proposed location of the Equipment in, under, over, above and across the Service Corridor and second providing plans to the General Manager, Engineering & Public Works, setting out the location of the Service Corridor, copies of which are attached hereto as Schedule "A".

3. Prior to commencing work of any kind in, on, under, over, along or across a Service Corridor or other Municipal-owned property, including the installation, maintenance and removal of its Equipment, the Company shall obtain the prior written approval for such work from the General Manager, Engineering & Public Works and the General Manager, Engineering & Public Works may establish the terms and conditions under which the work may be conducted by the Company. As a condition of such approval, the City may, at its sole discretion, require that the Company submit detailed engineering plans to the General Manager, Engineering & Public Works with respect to the work to be conducted on a Service Corridor or on other Municipal owned property.

4. Notwithstanding Clause 3, the Company may carry out routine maintenance, field testing and subscriber connections on existing equipment within approved service corridors, without the consent of the City, but in no case shall it carry out any excavation without the City's prior consent.

5. All work conducted by the Company on a Service Corridor or other Municipal-owned property, including installation, maintenance and removal of its Equipment, is subject to the following conditions:

- (a) all work shall be conducted and completed to the satisfaction of the General Manager, Engineering & Public Works, at the General Manager, Engineering & Public Works sole discretion;
- (b) the portions of the Equipment which pass over or under existing utilities or cross beneath streets shall be placed in a carrier pipe or be encased in concrete;

- (c) if the Company breaks the surface of a Service Corridor, it shall repair and restore the surface of the Service Corridor to substantially the same condition it was in before such work was undertaken by the Company and to the satisfaction of the General Manager, Engineering & Public Works. If the Company fails to repair and restore a Service Corridor to the satisfaction of the General Manager, Engineering & Public Works within twenty (20) days of being notified by the City, the City may effect such repairs and charge all normal City costs related thereto to the Company in accordance with paragraph 11 hereof;
- (d) if the City requires the installation, maintenance or removal of the Equipment to be stopped for any reason, the Company shall cease all such installation, maintenance, or removal of the Equipment forthwith upon receipt of notice from the City; and
- (e) the Company is responsible for all installation, maintenance and removal of the Equipment including the cost of such work.

6.  
that:

The Company represents and warrants to and covenants and agrees with the City

- (a) after completion of any work related to the installation, maintenance, repair, replacement or removal of the Equipment, the Company shall leave the Service Corridors in a sanitary, neat, tidy and safe condition and free from nuisance, all to the satisfaction of the General Manager, Engineering & Public Works;
- (b) the Company shall not suffer or permit any lien to be filed or registered against the Service Corridors or other Municipal-owned property;
- (c) if this Agreement is terminated by the City, all the unfulfilled covenants, indemnities and obligations of the Company hereunder shall survive such termination; and
- (d) the City has made no representations or warranties as to the state of repair of the Service Corridors or the suitability of the Service Corridors for any business, activity or purpose whatsoever and the Company hereby agrees to take the Service Corridors on an "as is" basis.

7. The Company shall provide "as built" drawings to the City within two months of completing the installation of any of the Equipment in a form specified by the General Manager, Engineering & Public Works.

8. The Company shall, at no cost to the City, provide locations of its Equipment within 24 hours of receiving a request by the City.

9. The Company shall provide to the General Manager, Engineering & Public Works a list of 24 hour emergency contact personnel for the Company and shall ensure that the aforementioned list is always current.



10. Upon receipt of thirty (30) days notice from the City, the Company shall, at its own expense, relocate its Equipment within a Service Corridor, or perform any other work in connection with the Service Corridor as may be required by the City, provided that in cases of emergency, the City may take any measures deemed necessary for public safety with respect to the Equipment that may be required in the circumstances as the City shall determine, and the Company shall reimburse the City for all expenses thereby incurred.

11. If the Company fails to complete the relocation of the Equipment in accordance with paragraph 10 or fails to repair the Service Corridors or do anything else required by the Company pursuant to this Agreement in a timely and expeditious manner to the satisfaction of the General Manager, Engineering & Public Works, the City may, but is not obligated to, at its option complete such relocation or repair and the Company shall pay the cost of such relocation or repair to the City forthwith plus an overhead equal to fifteen percent (15%) of such cost and in default of payment thereof, the amount of such cost with interest at the rate of two percent (2%) per annum above the prime lending rate of the Canadian Imperial Bank of Commerce carrying on business in the City shall be due and payable by the Company to the City upon receipt by the Company of an invoice setting out such costs and interest.

12. The City is not responsible, either directly or indirectly, for any damage to the Equipment that may occur during its installation, maintenance or removal by the Company, nor is the City liable to the Company for any losses, claims, charges, damages and expenses whatsoever suffered by the Company including claims for loss of revenue or loss of profits, on account of the actions of the City, its agents or employees, working in, under, over, along, upon and across its highways and Service Corridors or other Municipal-owned property, whether or not such damages, losses, costs, actions, causes of action, claims, demands, builders liens, liabilities, expenses, indirect or consequential damages (including loss of profits and loss of use) are related in any way to negligence or wilful acts or omissions on the part of the City, its officers, employees or agents.

13. The Company covenants and agrees to indemnify and save harmless the City, its agents, officers, elected officials, employees and assigns from and against all losses, claims, including a claim for injurious affection, charges, damages and expenses which the City may at any time or times bear, sustain or suffer, by reason, or on account of the placement, installation, relocation, maintenance or use of the Equipment in, on, under, over, along or across a Service Corridor, and the Company will, upon demand and at its own sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against the City on any such claim, demand or cause of action, and will pay and satisfy any judgement or decree which may be rendered against the City in any such suit, action or other legal proceeding, and will reimburse the City for any and all legal expenses incurred in connection therewith. The Company's obligation to indemnify and save harmless the City shall survive the termination of this Agreement.

14. This Agreement, shall commence upon the date of execution and shall, unless renewed, terminate 5 years after the first day of the month in which the Agreement is executed. The Agreement shall automatically renew for successive 5 year period without limitation to the number of renewal periods unless either the City or the Company give written notice of cancellation to the other not less than six (6) months prior to the expiration of this Agreement or any renewal term upon which this Agreement shall terminate. On the day so named in such notice, this Agreement and all rights and privileges thereunder, shall come to an end, provided that notwithstanding such termination the Company shall continue to be liable to the City for all payments due and obligations incurred thereunder prior to the date of such termination, unless by mutual agreement, the parties establish terms for discontinuing all provisions for payment and all other obligations incurred under the Agreement being terminated.

15. The Company covenants and agrees to pay to the City an annual licence fee of for each year or portion thereof in which this Agreement is in effect to cover the approval and administration of the Agreement.

16. The Company further this covenant and agrees to pay \$\_\_\_ as a fee for using the Service Corridors.

17. Security in a form acceptable to the City in an amount equal to fifty percent of the construction costs of the installation of the Equipment shall be deposited with the City prior to any construction. The security will be released by the City to the Company upon acceptance of the installation of the Equipment by the General Manager, Engineering & Public Works.

18. The City and the Company mutually agree that should the Company fail to carry out any of the terms, covenants and conditions herein contained or default in any of its obligations under the terms hereof or fail within thirty (30) days after receiving written notice from the City to correct any such failure capable of correction, then this Agreement shall thereupon be null and void and of no affect and the Company shall thereupon remove all its Equipment from the Service Corridors.

19. This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns. The Company shall not assign, transfer or sublet any rights or privileges granted hereunder without the prior written consent of the City.

20. No use of a Service Corridor under this Agreement shall create or vest in the Company any ownership or property rights in a Service Corridor or any other property belonging to the City, and the Company shall be and remain a mere non-exclusive licensee of the Service Corridor and placement of the Equipment in a Service Corridor shall not create or vest in the City any ownership on property rights to the Equipment.

21. Nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement to use any Service Corridor in accordance with the City's legal authority.

22. The Company agrees that it shall at its own expense procure and carry or cause to be produced and carried and paid for, full Workers' Compensation Board coverage for itself and all workers, employees, servants and other engaged in or upon any work.

23. The Company shall maintain insurance in sufficient amount and description as will protect the Company and the City from claims for damages, personal injury including death, and for claims from property damage which may arise from the Company's operations in the City under this Agreement, including the use or maintenance of the Equipment on or in the Service Corridors or any act or omission of the Company's agents or employees while engaged in the work of placing, maintaining, renewing or removing the Equipment and such coverage shall include all costs, charges and expenses reasonably incurred with any injury or damage.

24. In addition to the foregoing the Company covenants and agrees that:

- (a) the limits of liability for Personal Injury, Bodily Injury and Property Damage combined shall be for not less than Five Million (\$5,000,000.00) Dollars for each occurrence;

- (b) the Comprehensive General Liability Insurance shall extend to cover the contractual obligations of the Company as stated within this Agreement; and
- (c) all policies shall provide that they cannot be cancelled, lapsed or materially changed without at least thirty (30) days notice to the City by registered mail; and

25. Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile transmission to the City at the following address:

Fax Number:  
and to the Company at the following address:

with a copy to:

Any notice may also be given by prepaid registered mail mailed within the Province or Territory of \_\_\_\_\_ and such notice shall be effective five (5) days following the date of mailing, except in the event that there shall be a disruption in postal services at the date of mailing, in which case notice shall be effective by personal delivery or a facsimile transmission as stated above.

26. This Agreement is the entire agreement between the City and the Company regarding the subject of this Agreement and it can be amended or supplemented only by a document executed in writing by both the City and the Company.

27. This Agreement benefits and binds the City and the Company and the successors of each of them.

28. If any term of this Agreement is found to be invalid, illegal, or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that finding or by the severance of that term.

29. This Agreement creates contractual rights only between the City and the Company and not an interest in the Service Corridors and the Company covenants and agrees with the City that the Company shall desist always from any registration of this Agreement or of any right howsoever arising under it.

30. No alleged waiver or breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No waiver by a party of any breach of the Agreement operates as a waiver of any other breach of this Agreement.

31. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

32. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of British Columbia and the laws of Canada which may be applicable to a party in the Province of British Columbia.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement by their duly authorized representatives.

The Corporate Seal of the City )  
was hereunto affixed in the presence of: )

)  
)  
)  
)  
\_\_\_\_\_ )

Mayor )

)  
)  
\_\_\_\_\_ )

City Clerk )

)

C/S

The Corporate Seal of the Company )  
was hereunto affixed in the presence of: )

)  
)  
)  
\_\_\_\_\_ )

Authorized Signatory )

)  
)  
\_\_\_\_\_ )

Authorized Signatory )

)

)

C/S