



## **BACKGROUND**

Frontier Networks Inc. (Frontier) is a telecommunications company which develops and manages fibreoptic networks. They expressed interest in obtaining a Municipal Access Agreement (MAA) to operate within the HRM Right of Way as is required by the Telecommunications Act. This is a new agreement; this company has not previously operated in the municipal right of way.

## **DISCUSSION**

The purpose of this agreement is to allow this company access while protecting the municipality's interests by not passing on any costs of their operation to the municipal taxpayer. This is achieved by setting terms and conditions for access, and by ensuring the municipality is collecting all causal costs associated with the presence of the telecom's infrastructure.

The agreement does not allow Frontier to freely construct its network in the right of way; it is still required to get permits for the individual work it is doing in the street right of ways, much the same as other telecommunications companies, utilities, and contractors.

The agreement includes a requirement for Frontier to pay annual fees to HRM. The Canadian Radio and Telecommunications Commission (CRTC), in its 2001 Leducor vs. Vancouver decision, ruled municipal access fees should be tied to causal costs. This means that set fees must reflect costs incurred by a municipality resulting from a telecommunication company's activities in the right-of-way, such as engineering, administrative and legal costs and associated overheads otherwise not captured through permits. Staff suggest the proposed fixed annual fee is a reasonable estimate of yearly causal costs, and are consistent with guidelines established by the Federation of Canadian Municipalities in "Dealing with Telecom Companies: Protecting Municipal Rights-of-Way". A full copy of the guide can be viewed here: <https://bit.ly/2ASKLEZ>.

Negotiations with Frontier progressed quickly. The proposed agreement document is largely similar to the 2013 agreement between HRM and Internetworking Atlantic, therefore terms are similar to those of other MAA's which are currently in force and approved by Council.

## **FINANCIAL IMPLICATIONS**

The fixed fee, which is based on estimated impacts of utility infrastructure on the municipality not captured through municipal permit fees, has been determined to be \$7,350. This will, therefore, result in a revenue increase annually in R112-4912, Right of Way Approval - Signs and Encroachments.

## **RISK CONSIDERATION**

There are no significant risks associated with the recommendations in this report. The risks considered rate low. To reach this conclusion, consideration was given to operational risks associated with a new telecom installing infrastructure in the road. Given the terms and conditions, as well as the annual fee being collected, the full causal costs to the municipality should be recovered.

## **COMMUNITY ENGAGEMENT**

Community Engagement, as described by the Community Engagement Strategy, is not applicable to this Process.

**ENVIRONMENTAL IMPLICATIONS**

There are no Environmental Implications associated with this report.

**ALTERNATIVES**

Committee could recommend to Regional Council not to endorse the agreement. This is not recommended.

**ATTACHMENTS**

1. Draft Municipal Access Agreement between HRM and Frontier Networks Inc.

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A copy of this report can be obtained online at or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Christopher Davis, P. Eng., Supervisor, Right of Way Services, 902.490.7462

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This Municipal Access Agreement made this     day of                                     , 2018.

BETWEEN:

**FRONTIER NETWORKS INC.**  
(hereinafter referred to as “FRONTIER”)

Of the One Part

-and-

**HALIFAX REGIONAL MUNICIPALITY**  
(hereinafter referred to as “HRM”)

Of the Second Part

**WHEREAS** by resolution of Halifax Regional Municipality Council passed at its meeting of \_\_\_\_\_, 2018, Council approved the execution of this Municipal Access Agreement (MAA) for telecommunication facilities constructed and used by FRONTIER on, over, under and along HRM streets;

**AND WHEREAS** HRM has declared a Pole-Free Zone in the downtown core, as depicted in the map included as Schedule A to this Municipal Access Agreement (the Pole-Free Zone) and FRONTIER intends to place new telecommunications facilities underground within the Pole-Free Zone;

**THE PARTIES HERETO AGREE AS FOLLOWS:**

**1. Grant**

- (a) HRM hereby grants to FRONTIER a non-exclusive right to occupy HRM streets with telecommunications facilities in accordance with the following terms.

**2. Term**

- (a) The term of this Agreement begins on the date of execution and continues until December 31, 2023 (the “Term”).
- (b) The Term automatically renews for further 5 year terms until terminated by notice of termination at least 6 months prior to the end of the Term.
- (c) Notwithstanding this Subsection 2(b), either party may, at any time after the first year of the Agreement, upon 6 months written notice, require that the parties renegotiate this Agreement.

**3. Fees**

Commencing upon execution of this agreement, FRONTIER agrees to pay an annual fee (the “Annual Fee”) of \$7,350.00 upon the commencement of each new calendar year to cover the causal costs incurred by HRM as a result of FRONTIER activities under this Agreement including, but not limited to the administration of this Agreement, Halifax Utility Coordinating Committee meetings, and planning and co-ordination processes.

#### **4. Permits**

- (a) FRONTIER shall obtain Utility permits and Streets and Services permits in accordance with the normal HRM permit process, and shall pay the permit fees and comply with HRM’s published construction requirements.
- (b) The permit fees referenced in subsection 4(a) consist of
  - i. a Streets & Services Permit application fee;
  - ii. where the installation requires a street cut, a non-refundable pavement impact fee as identified in By-law S-300 and Administrative Order 15; and
  - iii. where the installation requires a street cut, FRONTIER shall provide a security deposit, in accordance with the provisions of By-law S-300, to guarantee the restoration of the street to the satisfaction of the Engineer.

#### **5. Project Phasing**

- (a) Should the timing of the work prove to be disruptive given other street or related activities or in the event of a large project, the Engineer may determine the timing of the Project or may issue permits on a phased basis. Simultaneous construction by open cut on different streets or street blocks may be limited by the Engineer. Every effort will be made by the Engineer to respect the proposed project timetable as set by FRONTIER.

#### **6. HRM “Pole Free Zone”**

- (a) FRONTIER will place new telecommunications facilities underground within the Pole-Free Zone, using existing underground conduit or by building new conduit.
- (b) In instances where FRONTIER and HRM agree that it is unreasonable for FRONTIER to place new telecommunications facilities underground taking into consideration factors including, but not limited to cost, near-term plans to place the facilities of all utilities underground, and the length of the proposed installation, HRM will grant FRONTIER approval to install above-ground telecommunication services or facilities in the designated Pole-Free Zone. In such instances,

FRONTIER agrees that, upon ninety (90) days' notice, FRONTIER shall relocate the above-ground telecommunication services or facilities and place them underground at its cost.

- (c) The foregoing is not intended to derogate from HRM's power under the Telecommunications Act, as set out in Section 44, with respect to underground wiring.

## **7. Infrastructure Location**

- (a) HRM shall be the final approval authority for the location of all underground facilities, installation specifications as such specifications relate to street standards and the number and types of aboveground telecommunications facilities such as pedestals, again in relation to the management of HRM streets. In exercising such approval, HRM and FRONTIER agree that HRM's purpose is not to impose any standards that relate to the telecommunications infrastructure per se.

## **8. Relocations**

- (a) Upon receipt of written notice from HRM that FRONTIER telecommunication services or facilities must, for bona fide municipal reasons, be relocated, FRONTIER shall at its cost commence and diligently work to relocate its telecommunication facilities within a timeframe acceptable to HRM, having consideration for the complexity and nature of the work required to complete the relocation and to minimize the potential for service losses or interruptions that may affect FRONTIER customers.
- (b) If the relocation requested by the municipality is for the benefit of a Third Party, FRONTIER shall not bear the costs of the relocation, and the municipality shall require the Third Party to pay all the costs thereof, in advance.

## **9. Third Party Attachments**

- (a) FRONTIER shall have the right to allow a Third Party to attach to its facility and to charge and recover a fee from the Third Party provided that the Third Party has a valid MAA with the Municipality.

## **10. Record Drawings**

- (a) FRONTIER shall provide record drawings as to location to HRM at its cost in hard copy and electronic format compatible with the HRM Geographic Information System (GIS) as directed by the HRM GIS Manager, within 60 days of completing the installation of any of the equipment either above or below ground.

## **11. Emergency**

- (a) In the event of an emergency, and only after making a reasonable and good faith effort to contact FRONTIER, the municipality may take any measures deemed necessary for public safety or the public interest with respect to the FRONTIER facilities, that may be required as the municipality, acting reasonably, shall determine.
- (b) FRONTIER shall provide to the HRM Engineer a list of emergency contact personnel available at all times and shall ensure that the aforementioned list is always current.

## **12. Halifax Utility Coordinating Committee**

- (a) FRONTIER shall participate in and become a member of the Halifax Utility Coordinating Committee (HUCC).

## **13. Liability and Indemnification**

- (a) Except for the willful misconduct or gross negligence of HRM, FRONTIER agrees that HRM is not responsible for any damage to FRONTIER assets for any losses, claims, charges, damages and expenses whatsoever suffered by FRONTIER on account of the actions of HRM its agents or employees working in, under, over, along, upon and across its streets and roads or other HRM owned property.
- (b) FRONTIER covenants and agrees to indemnify and save harmless HRM's agents, officers, elected officials, employees and assigns from any and all losses, claims, including any claim for injurious affection, charges, damages and expenses which HRM may at any time bear, sustain or suffer, by reason, or on account of the placement, installation, relocation, maintenance or use of FRONTIER equipment in, on, under, over, along or across a street or road, except where such losses or claims occur as a result of HRM's willful misconduct or gross negligence.
- (c) FRONTIER will, upon demand and at its own sole risk and expense, defend any and all suits, actions or other legal proceedings to which section 13(b) applies, which may be brought or instituted by third parties against HRM on any such claim, demand or cause of action, and will pay and satisfy any judgment or decree which may be rendered against HRM for any all legal expenses incurred in connection therewith.
- (d) FRONTIER's obligation to indemnify and save harmless HRM in this section 13 shall survive the termination of this Agreement.
- (e) Notwithstanding any provision contained in this Agreement, HRM and FRONTIER shall not be liable to each other in any way for indirect, punitive, reliance or consequential losses or damages, including but not limited to damages for economic loss, however caused or contributed to, in connection with this

## Agreement

### **14. Insurance**

- (a) FRONTIER shall maintain insurance in sufficient amount and description as will protect FRONTIER and HRM from claims for damages, personal injury including death, and for claims from property damage which may arise from FRONTIER's operations within HRM property under this Agreement, including by FRONTIER's agents or employees while engaged in the work of placing, maintaining, renewing or removing the equipment within HRM streets and such coverage shall include all costs, charges and expenses reasonably incurred with any injury or damage.

### **15. N.S. Occupational Health & Safety Act**

- (a) FRONTIER agrees to comply with the requirements of the Nova Scotia Occupational Health & Safety Act and all regulations enacted pursuant thereto. Specifically, FRONTIER agrees to exercise the due diligence required by the Nova Scotia Occupational Health & Safety Act by ensuring that, to the extent possible, its requirements are followed by its employees, contractors or agents.

### **16. Breach**

- (a) The Municipality and FRONTIER agree that should FRONTIER or HRM materially fail to carry out any of the terms, covenants and conditions herein contained or default in any of its obligations under the terms hereof and fail within thirty (30) days after receiving written notice from the other party to correct any such failure capable of correction, then this Agreement may, at the option of the non-defaulting party, thereupon be terminated by giving written notice to be effective upon receipt, provided that FRONTIER shall continue to be liable to HRM for all payments due and obligations incurred under the Agreement prior to such termination.

### **17. Termination**

- (a) If this Agreement is terminated by HRM for reasons outlined in section 16, all the unfulfilled covenants, indemnities and obligations of FRONTIER hereunder shall survive such termination.

### **18. Notices**

- (a) Any notice required or permitted to be given hereunder or any tender or delivery of documents may be given by personal delivery or, if other than the delivery of an original document, by facsimile transmission to:

HRM: Halifax Regional Municipality  
P.O. Box 1749  
Halifax, NS B3J 3A5  
Attention: Legal Services

FRONTIER: Frontier Networks Inc.  
530 Kipling Avenue  
Toronto (Etobicoke) Ontario, Canada, M8Z5E3  
Attention: Luigi Calabrese, President

#### **19. Entire Agreement**

- (a) This Agreement is the entire agreement between HRM and FRONTIER regarding the subject of this Agreement and it can be amended or supplemented only by a document executed in writing by both HRM and FRONTIER.

#### **20. Binding**

- (a) This Agreement benefits and binds HRM and FRONTIER, their assigns and the successors of each of them.

#### **21. Waiver**

- (a) 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 this Agreement operates as a waiver of any other breach of this Agreement.
- (b) The parties to this Agreement shall be entitled to resort to any remedies available to them in law or in equity in some or all combination in their discretion. No delay or failure of either party to exercise any right or remedy will operate as a waiver thereof, except where specifically provided therein to the contrary.

#### **22. Time**

- (a) Time shall be of the essence of this Agreement and of each and every part hereto.

#### **23. Interpretation**

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

#### **24. Conflict of Laws**

- (a) This Agreement shall be construed and enforced in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable herein and the parties

irrevocably attorn to the jurisdiction of the Courts of Nova Scotia.

IN WITNESS WHEREOF the proper officers of the parties hereto have duly executed this Agreement on the day and year first above written.

**FRONTIER NETWORKS INC.**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name:  
Title:

**HALIFAX REGIONAL MUNICIPALITY**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Municipal Clerk

Schedule A  
HRM Pole-Free Zone

