

**Report to/Rapport au :**

**Finance and Economic Development Committee  
Comité des finances et du développement économique**

**and Council / et au Conseil**

**June 19, 2012  
19 juin 2012**

**Submitted by/Soumis par : Nancy Schepers, Deputy City Manager; Directrice  
municipal adjointe, Planning and Infrastructure/Urbanisme et infrastructure**

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CITY WIDE / À L'ÉCHELLE DE LA VILLE

Ref N°: ACS2012-PAI-INF-0008

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**SUBJECT: BIRCH HILL TELECOM CORPORATION MUNICIPAL ACCESS  
AGREEMENT**

**OBJET : ENTENTE D'ACCES AUX ROUTES MUNICIPALES – BIRCH HILL  
TELECOM CORPORATION**

**REPORT RECOMMENDATION**

**That the Finance and Economic Development Committee recommend Council  
approve entering into a Municipal Access Agreement with Birch Hill Telecom  
Corporation as described in this report.**

**RECOMMANDATION DU RAPPORT**

**Que le Comité des finances et du développement économique renvoi au Conseil  
pour son approbation l'entente d'accès aux routes municipales conclue, telle que  
décrite dans le présent rapport, entre la Ville d'Ottawa et Birch Hill Telecom  
Corporation.**

**BACKGROUND**

A request has been received by Birch Hill Telecom Corporation to install  
telecommunications plant within the City rights-of-way. Birch Hill is a registered  
telecommunications provider with the Canadian Radio-Television and  
Telecommunications Commission (CRTC).

Birch Hill Telecom Corp. is a Canadian-owned, CRTC-registered Non-dominant Carrier. They are a facilities based provider of fibre-optic cable and network connectivity. They are planning to build, maintain and operate a fibre-optic network and associated network infrastructure within the City of Ottawa.

Birch Hill currently does not have a Municipal Access Agreement (MAA) with the City of Ottawa. The purpose of this report is to seek approval to enter into a MAA with Birch Hill that would allow them to install telecommunications equipment within City rights-of-way.

## DISCUSSION

Telecommunication and utility companies generally have a statutory right to use municipal streets, but this is subject to the consent of the municipality. The process, terms and conditions for granting Municipal Consent are embodied in a legal document called a Municipal Access Agreement (MAA). In 2001, Council directed staff to negotiate MAAs with telecommunications companies on the basis of the following five right-of-way management principles developed by the Federation of Canadian Municipalities (FCM).

1. In pursuance of bona fide purposes, municipal governments must have the ability to manage the occupancy and uses of rights-of-way, including the establishment of the number, type and location of facilities, while taking into account applicable technical restraints.
2. Municipal governments must recover all costs associated with occupancy and use of the rights-of-way by other parties.
3. Municipal governments must not be responsible for the costs of relocating facilities situated along municipal rights-of-way if relocation is for bona fide municipal purposes.
4. Municipal governments must not be liable for losses associated with the disruption of services or with damage to property as a result of the usual municipal activities or the activities of other parties along municipal rights-of-way.
5. Recognizing that rights-of-way have value, municipal governments must receive full compensation for the occupancy and use of municipal rights -of-way by other parties.

Council's approved policy is that the issuance of road cut permits is subject to a telecommunications company accepting these five principles and agreeing to negotiate an MAA, with one exception. The exception relates to a Decision of the Canadian Radio-Television and Telecommunications Commission (CRTC) and the Supreme Court of Canada and does not allow municipalities to charge a fee in excess of costs.

Recent decisions of the CRTC have provided the industry with guidance on the elements to be included in a model agreement. Based on this information, the City has developed a model MAA. The final agreement with Birch Hill will be based on the model and refined by specific issues relating to the company's plans and needs.

As part of the MAA, Birch Hill has agreed to pay the City an annual cost recovery fee of \$5,000 as compensation for costs incurred by the City due to the installation of its equipment and its presence in City streets. These costs are above and beyond the costs covered by the Road Cut Permit, the costs of software for Circulation of applications and the costs of modifications to the Central Registry Plans maintained by the City, which will be billed to Birch Hill at the time of use or application.

#### RURAL IMPLICATIONS

At this time Birch Hill is only planning to install telecommunications equipment in the urban area of the City.

#### CONSULTATION

No public consultation has been undertaken regarding this agreement. This agreement is in accordance with the policy approved by Council.

#### COMMENTS BY THE WARD COUNCILLOR(S)

There are no specific Ward Councillor comments as this is a City-wide issue.

#### LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendation in this report.

#### RISK MANAGEMENT IMPLICATIONS

There are no risk implications to implementing the recommendations of this report.

#### FINANCIAL IMPLICATIONS

As part of the agreement, Birch Hill will pay the City an annual Municipal Access Agreement fee of \$5,000; this revenue will affect the annual operating status of Infrastructure Services.

#### ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

#### TECHNOLOGY IMPLICATIONS

There are no technology implications associated with this report.

CITY STRATEGIC PLAN

This report aligns with the City Strategic Plan in support of Service Excellence and Economic Prosperity by providing residents and businesses with more options for telecommunications and supporting competition in the telecommunications industry.

TERM OF COUNCIL PRIORITIES

This report aligns with the City Strategic Plan in support of Service Excellence and Economic Prosperity by providing residents and businesses with more options for telecommunications and supporting competition in the telecommunications industry.

SUPPORTING DOCUMENTATION

There is no supporting documentation.

DISPOSITION

City Clerk and Solicitor Department – Legal Services Branch to finalize negotiations and execution of the Municipal Access Agreement for Birch Hill Telecom Corporation.