

AMM - MTS

MUNICIPAL ACCESS GUIDELINES

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MUNICIPAL ACCESS GUIDELINES

1.0 Purpose

- 1.1 The purpose of this document is to establish standard policies and procedures regarding municipal rights-of-way for the installation, maintenance, repair and relocation of facilities of MTS Communications Inc. (“MTS”).

2.0 Background Information

- 2.1 Prior to December 31, 1993, MTS had a statutory right under the provisions of *The Manitoba Telephone Act* (Manitoba) (the “MTS Act”) to install and operate its facilities within public rights-of-way. The MTS Act also provided that if MTS was required by a municipality or other public authority to relocate facilities installed within a public right-of-way, MTS was entitled to be paid the costs of such relocation. The MTS Act also gave MTS the right to remove trees, structures and obstructions from public and private rights-of-way and, if MTS caused any damage to property as a result of the exercise of this right, MTS was required to pay compensation for such damage, but only to the owners of private rights-of-way.
- 2.2 Although MTS had a statutory right to install and operate its facilities on public rights-of-way under the MTS Act, MTS endeavoured to obtain consent from the municipality prior to installing its facilities. The General Manual of Administration Policy No. PA-25-05 (Moving Utility Lines Located on Rights-Of-Way) (the “GMA”) established cost sharing arrangements for relocations. In accordance with the GMA, MTS was reimbursed 100% of the costs associated with relocating conduit systems, and 50% of the costs related to the relocation of buried and aerial cable.
- 2.3 The *Telecommunications Act* (Canada) (the “Telecom Act”), which came into law on October 25, 1993 and applied to MTS effective December 31, 1993, superseded certain provisions of the MTS Act. Under the Telecom Act, MTS continues to have the right to enter upon public rights-of-way for the purpose of installing and operating its facilities, provided that MTS obtains consent from the applicable municipal body. The Telecom Act provides that any transmission facilities that were constructed within public rights-of-way prior to a telephone company becoming subject to the Telecom Act are deemed to have been installed with the consent of the applicable municipal body. Following the enactment of the Telecom Act, the allocation of relocation costs set out in the GMA continued to be followed.
- 2.4 On January 7, 1997, MTS ceased to be a Crown corporation pursuant to the provisions of *The Manitoba Telephone System Reorganization and Consequential Amendments Act* (Manitoba) (the “Reorganization Act”). The Reorganization Act provides that MTS has the right to continue to operate and maintain its facilities that were installed pursuant to any previous statutory rights. As the Reorganization Act does not contain any provisions pertaining to the payment of costs incurred by MTS for relocations requested by a municipality or other public body, the cost allocation provisions for relocations set out in the GMA continued to be followed by MTS.

3.0 Consent

- 3.1 The installation of all MTS facilities that were installed within a public right-of-way prior to December 31, 1993 is deemed to have been consented to by the applicable municipality.
- 3.2 Subject to subsection 3.3 of these Guidelines, MTS is required to apply to the municipality for consent to install buried cable, buried pipe, pedestals, cabinets, poles, anchors and other facilities within municipal rights-of-way.
- 3.3 MTS is not required to apply for municipal consent in respect of the following installations or circumstances:
- a) service wires that occupy less than 200 m of a municipal right-of-way, unless the method of construction to cross a road surface is open trench or ploughing using equipment other than a vibratory plough or if the installation involves a pedestal;
 - b) a pedestal that is placed within 0.3 m of the boundary of the municipal right-of-way and that is connected to facilities that are located within an easement on private property;
 - c) aerial cable or wire from an existing pole to an existing pole, or to an existing or new building;
 - d) facilities that are to be placed on a Provincial right-of-way, however, MTS is required to send a letter to the municipality for informational purposes; or
 - e) emergency situations where service has been disrupted and service restoration is required immediately. In these situations, MTS will notify the municipality as soon as possible that emergency work will be taking place. MTS will provide a plan with the information specified in subsection 3.4 of these Guidelines as soon as possible after service has been restored.
- 3.4 MTS will use the application form attached to these Guidelines when applying for municipal consent, and will include a plan with the following information as applicable:
- a) north arrow;
 - b) section township range;
 - c) street/road names and civic addresses;
 - d) existing utilities;
 - e) existing MTS facilities;
 - f) proposed MTS facilities, including alignments from property line; and
 - g) method of construction including depth of burial.
- 3.5 MTS cannot provide customer information to a municipality due to the confidentiality terms and conditions set out in its Terms of Service that are regulated and approved by the CRTC.

3.0 Consent – cont'd

- 3.6 MTS will submit a consent application to the municipality a minimum of ten (10) days prior to a scheduled meeting of the municipality's Council. The municipal Chief Administrative Officer ("CAO") will ensure that the application is placed on the agenda for the Council meeting. The municipality will use its best efforts to reach a decision on MTS's application at the meeting.
- 3.7 The municipality will advise MTS, within five (5) business days following the Council meeting, as to whether MTS's application was approved, rejected or not discussed.
- 3.8 When third party demands require MTS to act quickly to install facilities, MTS will contact the municipal CAO for a priority approval. The CAO will proceed with obtaining priority approval through discussions with the necessary municipal authorities, and will advise MTS, within five (5) business days from the receipt of MTS's priority approval request, as to whether MTS's priority application has been approved or rejected. Priority approvals are anticipated to be a rare occurrence, and MTS will provide the reasons for the priority in its application.
- 3.9 Subject to subsection 3.1 above, MTS will be liable and responsible for the relocation of all facilities that are installed by MTS without the required municipal consent.

4.0 Compensation

4.1 Application Fees

- 4.1.1 At the municipality's discretion, an administration fee may be appropriate in relation to some consent applications submitted by MTS for the installation of facilities within a municipal right-of-way.
- 4.1.2 Any administration fee assessed by a municipality should be in a small amount in the range of \$50 to \$100, as typically the work involved in the review and approval of a consent application consists of administrative duties of a clerical nature and may or may not include a site visit.
- 4.1.3 Since MTS's requirement for the installation of facilities within a municipal right-of-way frequently is for the benefit of municipal constituents, this should be taken into consideration when determining if an administration fee will be required.
- 4.1.4 If additional work is required by the municipality in order to review and approve a consent application, the municipality may assess a fee in excess of the amount specified in subsection 4.1.2 of these Guidelines. Should such additional work be required, the municipality will inform MTS of the requirement for such additional work, and MTS and the municipality will agree on the applicable application fee.

4.0 Compensation – cont’d

4.2 Forced Plant Moves

4.2.1 Municipalities are expected to have planning windows that typically span five (5) to ten (10) years for projects of a magnitude that would require the relocation of MTS facilities. If a municipality, at the time of MTS’s request for the municipality’s consent to install facilities, does not identify that future relocation will be required, it is expected that no relocation of MTS’s facilities will be required in the first five (5) to ten (10) years after the installation of the facilities.

4.2.2 For a period of five (5) years after the installation of MTS facilities pursuant to a municipal consent, all costs associated with the relocation of such facilities at the request of the municipality will be the responsibility of the municipality. Following this period, a sliding scale of responsibility for relocation costs for the next five (5) year period will apply. Subject to subsection 4.2.6 of these Guidelines, after the ninth (9th) year from the date of installation, MTS will be responsible for all costs associated with the relocation of such facilities. This allocation of responsibility recognizes that since telecommunications facilities typically continue in operation for several decades, MTS will be responsible for the costs associated with relocations for most of the useful life of the facilities.

4.2.3 Subject to subsection 4.2.6 of these Guidelines, the relocation costs associated with the relocation of MTS facilities that (i) are installed after June 1, 2003 and (ii) are relocated at the request of a municipality will be allocated as follows:

<u>From Date of Construction</u>	<u>Municipality Portion</u>	<u>MTS Portion</u>
Five (5) years or less	100%	0%
More than five (5) years to six (6) years	80%	20%
More than six (6) years to seven (7) years	60%	40%
More than seven (7) years to eight (8) years	40%	60%
More than eight (8) years to nine (9) years	20%	80%
More than nine (9) years	0%	100%

4.2.4 Subject to subsection 4.2.6 of these Guidelines, the relocation costs associated with the relocation of MTS facilities that (i) are installed prior to June 1, 2003 and (ii) are relocated at the request of a municipality will be allocated as follows:

<u>Municipality Portion</u>	<u>MTS Portion</u>
0%	100%

4.2.5 When a third party, other than a municipality and/or its contractor(s), requires the relocation of MTS facilities for its/their own work or for work to be done by the municipality (such as a right-of-way access driveway), the allocation of the relocation costs shall be negotiated and agreed between the third party and MTS.

4.0 Compensation

- 4.2.6 Municipalities will provide MTS with a minimum of four (4) months written notice prior to the date on which the relocation of MTS facilities is required. If written notice is provided less than four (4) months but more than one (1) month before this date, and subject to subsection 3.8 of these Guidelines, the municipality will be responsible for either 50% of the cost or the cost set out in subsection 4.2.3 of these Guidelines, whichever is greater. If the municipality provides less than one (1) month written notice, the municipality will be responsible for 100% of the relocation costs.
- 4.2.7 If the municipality requires MTS to relocate its facilities immediately due to an emergency situation, MTS will use its best efforts to undertake the relocation in a timely fashion. In such circumstances, the allocation of the relocation costs will be discussed and agreed upon by the parties after the emergency situation has been rectified.
- 4.2.8 The relocation costs associated with the relocation of MTS facilities will be determined based on either of the following considerations:
- a) The cost to install the same facilities at another location, which costs consist of labour, materials and expenses, less a depreciation allowance if the life of the existing facilities is being extended, and less any salvage value.
 - b) An estimate of the labour cost to physically move the existing facilities to a new location based on unit costs agreed to by the parties.

4.3 Damage Liability

- 4.3.1 Each of the municipalities and MTS must contact the other party before any construction work is undertaken in accordance with subsection 7.8 of these Guidelines.
- 4.3.2 If either party's facilities are damaged due to the acts, omissions or wilful misconduct of the other party or a third party, that party is legally responsible for the costs of repairing or replacing the damaged facilities. This includes any damage that may occur when the party undertaking the construction work fails to call the other party before this work is commenced.
- 4.3.3 Neither party will permit third parties to damage its facilities without requiring such parties to assume liability for the repair costs. This requirement recognizes that unless such liability is assumed, third parties will be inclined to undertake construction activities without due regard for existing facilities. As this would increase the number of damage occurrences, MTS and/or the municipality would incur unnecessary additional expenses and customers would experience service interruptions.

5.0 Dispute Resolution

- 5.1 In the event a dispute arises that a municipality cannot resolve with MTS's Access Provisioning Manager or Service Area Manager, the municipality may escalate the dispute to the individuals specified below, commencing with the individual specified in subsection 5.1(a) and proceeding to each subsequent level until the dispute has been resolved to the mutual satisfaction of the parties.
- a) Manager Network Implementation – 941-4766
 - b) General Manager Network Engineering – 941-4464
 - c) Senior Vice-President Network Services – (416) 640-9230
- 5.2 In the event a dispute arises that MTS cannot resolve with a representative of a municipality, then MTS may escalate the dispute to the Council of the municipality.
- 5.3 Nothing in these Guidelines is intended to limit the right of any municipality or MTS or the jurisdiction or authority of the Canadian Radio-television and Telecommunications Commission ("CRTC") under the Telecom Act concerning access, construction or compensation issues in relation to municipal rights-of-way. Either MTS or a municipality may apply to the CRTC to resolve any such issues at any time.

6.0 Exceptions and Interpretation of the Guidelines

6.1 Exceptions

- 6.1.1 In the event a municipality or MTS encounters an issue that is not covered by these Guidelines, the issue may be referred to the Director of Policy and Communications (the "Director") of the Association of Manitoba Municipalities (the "AMM") by submitting a written request to the Director. The Director shall refer the request to the chair of a committee (the "Chair") that is comprised of representatives of the AMM and MTS (the "Committee"). The Chair shall be a member of the AMM.
- 6.1.2 The Chair will call a meeting of the Committee to discuss the request within thirty (30) days of receipt of the written request to determine the course of action in relation to the request.
- 6.1.3 The Committee may determine that it will develop a practice or procedure to address the request, in which event these Guidelines will be amended to include such practice or procedure.
- 6.1.4 The Committee will advise the parties of its determination in relation to the request referred to it. Where any such determination entails an amendment to these Guidelines, the Committee will distribute a revised copy of the Guidelines to all municipalities and to MTS.

6.0 Exceptions and Interpretation of the Guidelines – cont'd

6.2 Interpretations

- 6.2.1 A municipality or MTS may request the Chair of the Committee to provide an interpretation of these Guidelines in relation to a particular issue.
- 6.2.2 If the Chair calls a meeting of the Committee, the Committee will review the request and will provide its determination in relation to the requested interpretation.
- 6.2.3 The Chair of the Committee will provide a response to the request within thirty (30) days of receipt of the request.

7.0 Construction/Engineering Standards and Practices

- 7.1 MTS generally uses three (3) methods of construction, consisting of open trench, ploughing and pipe pushing. Any combination of these methods, or all three (3) methods, may be used in relation to a particular project.
- 7.2 MTS generally does not excavate road surfaces and uses the pipe pushing method of construction when crossing a municipal right-of-way. However, MTS will use a rubber tire vibratory plough to install service wires across municipal roads. The vibratory action of this equipment enables the plough shear to produce a thin slit in the ground for the installation of the service wire and then causes the ground to close over the slit, resulting in minimal ground disturbance. MTS will not use a larger wire or cable plough or open trench across a municipal road unless it has obtained the prior approval of the municipality.
- 7.3 MTS's first choice is to install its facilities on an easement granted by a private property owner.
- 7.4 Where MTS must install its facilities within a municipal right-of-way, MTS's first choice is to install its facilities as close to the edge of the boundary of the right-of-way as possible. The second choice is to install the facilities at the toe of the grade slope.
- 7.5 MTS will install its poles, anchors and pedestals as close to the boundary of the right-of-way as possible.
- 7.6 A municipality and MTS each will install its facilities a minimum of 1.0 m away from the other party's facilities unless otherwise agreed, except for any facilities that must be installed a minimum of 1.5 m away from an MTS fibre cable.
- 7.7 A municipality and MTS will contact each other when a project is scheduled in order to review existing facilities, proposed plans for the area and potential conflicts. Wherever possible, each party will try to accommodate the other party's facilities to avoid conflicts and relocations.

7.0 Construction/Engineering Standards and Practices – cont'd

7.8 A municipality and MTS will call each other before construction is undertaken a minimum of forty-eight (48) hours prior to the commencement of construction in order to obtain a locate of the other party's facilities. MTS's "Call Before You Dig" service must be contacted by calling 941-7267 in the city of Winnipeg, and 611 or 1-888-365-1172 outside of the city of Winnipeg.

7.9 MTS will endeavour to install its facilities at the depths specified below, however, MTS cannot guarantee the depths of its facilities after the installation of these facilities has been completed due to changes in the ground elevation that may occur as a result of the activities of a municipality or a third party:

Fibre cable – 1.5 m

Distribution Fibre Cable within Urban Areas – 1m (Part of MTS Fibre to the Home Project)

Copper cable (main cable) – 1.0 m

Service wire – 0.45 m

7.10 MTS will ensure that all overhead facilities are installed according to the clearances and separations set out in its corporate practices that are based on CSA requirements.

7.11 If requested by a municipality as specified in an application form submitted by MTS, MTS will contact the municipality a minimum of forty-eight (48) hours prior to the start of construction. In emergency situations where service restoration is required, MTS will notify the municipality as soon as possible that emergency work will be taking place.

7.12 MTS will install its facilities at the depth, alignment and method of construction as set out in MTS's application as approved by the municipality. If there is a change in the design of the facility during construction, MTS will seek the approval of the municipality as soon as possible after the construction is completed, which will include submitting to the municipality a revised plan identifying the changes that have been made.

7.13 Upon completion of construction, MTS will restore the area to the condition that existed prior to the start of construction. MTS will warrant this restoration work for a period of one (1) year after completion of the construction.

8.0 Effective Date

8.1 These Guidelines will come into effect on June 1, 2003.