SUBJECT: Creation of Telecommunication Municipal Access Agreement with Bell Canada (PW07132/LS07015) - (City Wide)

RECOMMENDATION:

(a) That the City of Hamilton enter into a Municipal Access Agreement with Bell Canada for the purpose of allowing Bell Canada access to the City’s Public Highways for a term of five years, with the option to renew for up to two consecutive terms of five years each;

(b) That the Mayor and City Clerk be authorized and directed to execute the necessary documents, all documents being in a form satisfactory to the City Solicitor;

(c) That staff report back to the Public Works Committee at the completion of the first five-year term to advise on the renewal of the Agreement.
EXECUTIVE SUMMARY:

This agreement is to address the use of the City’s highways by Bell Canada. It is part of an ongoing process to rationalize and modernize Right of Way (ROW) agreements within the City of Hamilton with all utilities, telecommunication providers and other agencies. This process started with Report PW06095/LS06011 that addressed the harmonization of agreements with Union Gas. Council approved this report at its meeting of August 9, 2006.

Bell Canada and its predecessor companies have been supplying telecommunication services to the City of Hamilton and for parts of the Municipality in excess of 100 years. The City of Hamilton does not have a formal agreement with Bell Canada. Both parties agree that adopting an agreement that outlines the terms and conditions for access to the City’s Public Highways streamlines and coordinates business processes.

Staff has negotiated an agreement that meets the City of Hamilton’s needs and provides mechanisms to address future enhancements. Staff recommends that Council approves the agreement.

It is the purpose of this report to seek council approval to enter into the Municipal Access Agreement with Bell Canada.

BACKGROUND:

The business of Telecommunications services in Canada is regulated by the Canadian Radio-Television and Telecommunication Commission (CRTC). The CRTC implemented deregulation in the Telecommunication industry and that has created the need for access agreements (MAA). Agreements between municipalities and Telecommunication suppliers have evolved over the past ten years based on changing market conditions.

Telecommunication providers require different access techniques to deliver modern telecommunication services, such as internet and broadband access. This agreement is a natural progression of issues that have been addressed through court decisions and directives from the Telecommunication industry regulator, the CRTC.

There is currently a proposed amendment to the “Telecommunications Act” which is Federal legislation. The amendments, as currently drafted, do not meet Municipal interests directly and entering into an agreement allows the City of Hamilton to negotiate reasonable and equitable terms with Bell Canada for access to the City’s highway.

It is recommended that this agreement be executed.

The Proposed Municipal Access Agreement

Staff has negotiated the proposed MAA with Bell Canada that is recommended to Council for its consideration and approval. The proposed MAA reflects the current conditions of access to City highways as decided by Canadian courts and regulatory bodies.

Access to properties owned by the City other than City highways is not part of the scope of this agreement. Any project that proposes to cross City lands other than City highways will require an easement to be negotiated in a form satisfactory to the City of Hamilton.
City staff has negotiated the term of the Agreement to be five years, with options to automatically renew for two additional five year periods if both parties are satisfied with the operation of the agreement. This provides a reasonable opportunity for the City to revisit the terms and conditions of the Agreement since standards in the industry continue to change.

If the proposed MAA with Bell Canada is approved by Council, this agreement will be used as a template to negotiate with other existing Telecommunications providers. It is our intent that all parties accessing the City's highways will be in valid agreements by the end of 2008.

ANALYSIS/RATIONALE:

The current lack of an agreement for relocation of equipment with Bell places the financial responsibility with the City of Hamilton in certain instances. Those costs usually become part of a capital project. For the 2007 Capital Program the City Of Hamilton spent $93,200 relocating Bell poles and plant to facilitate the construction of City projects.

Responsibility for the cost of relocating equipment installed in absence of an agreement is in accordance with the provisions of the Public Service Works on Highways Act. This Provincial legislation (Public Service Works on Highways Act) dictates that the costs are borne equally between the two parties.

Responsibility for the cost of relocating Equipment installed after the execution of this Agreement and within four years of its installation shall be that of the Municipality.

Responsibility for the cost of relocating Equipment in subsequent years shall be based upon the following:

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The City will continue to absorb relocation costs annually until the Bell equipment that has been installed under this agreement is impacted by City projects. At that time the City will then begin to realize the benefits of the above clause. Potentially in a twenty to thirty year period the City will no longer pay Bell relocations costs.

This MAA also provides specific timeframes for the relocation of Bell Plant in anticipation of upcoming City work. Bell must be given sixty days written notice to relocate its plant. This is a favourable condition for the City as construction timelines can be planned using this information.

Bell is now obliged under the terms of this agreement to supply all of its plant information to the City in a form acceptable and usable in our engineering systems. This includes the right of the City to request “as-constructed” records of installations, providing the City a permanent, reliable, record of the installed utilities in its highways.
ALTERNATIVES FOR CONSIDERATION:

One option would be to maintain status quo and to continue to interact with Bell in absence of an agreement.

The above scenario would simply continue the current relations we have with Bell. These issues include liability and indemnity for the City in event of accidents pertaining to Bell construction or infrastructure. Adopting this agreement protects the City from these actions.

Pending changes to the Telecommunications Act may not address all Municipal interests. In spite of lobbying efforts by the Federation of Canadian Municipalities all the changes suggested to the new Telecommunication Act that were favourable to Municipalities may not be implemented. As such an agreement with the Bell under terms mutually agreed upon will protect the City’s interests directly.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

FINANCIAL: If adopted the City will receive a fee of $5,000 annually from Bell. Having a single favourably negotiated agreement will provide a stable base to the City moving forward.

STAFFING: There are no staffing implications

LEGAL: Legal Services has assisted and directed negotiations with the telecommunications provider, and recommends that the City enter into the agreement.

POLICIES AFFECTING PROPOSAL:

This agreement aligns with the Public Work strategic plan by integrating business planning processes between Bell and the City Of Hamilton. The agreement formalizes the relationships and defines timelines for relocations of equipment, provides for a more integrated sharing of data and the return of as constructed to the City for recording purposes.

The agreement aligns with the financial goals of the Public Works strategic plan as well by defining relocation costs allowing for more effective use of capital and obtaining annual fees.

RELEVANT CONSULTATION:

Consultation with the Managers of Construction and Design sections within the Capital Planning and Implementation Division of Public Works has led to their agreement of this arrangement.

Consultation with Legal Services and Risk Management has led to the proposed new MAA. Legal Services has assisted in negotiating all aspects of contract law. Risk Management has negotiated the elements regarding liability and indemnity to the Cities’ satisfaction.
CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
Continued delivery of an essential utility is maintained.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
A sustainable utility network provides cohesive supply of telecommunications services. All work performed under this agreement meets all Provincial Environmental requirements.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported. A co-ordinated effective utility network that allows access from all properties in accordance with development standards enhances the economic well being of Hamilton.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No
By following provincial guidelines and City driven development guidelines we enhance the delivery of this public service.

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No
MUNICIPAL ACCESS AGREEMENT

THIS AGREEMENT made this day of , 2007 hereinafter called "The Effective Date".

BETWEEN:

CITY OF HAMILTON,
hereinafter called the "Municipality"

- and -

BELL CANADA
hereinafter called the "Company"
WHEREAS the Company is a Canadian carrier as defined in section 2 of the Telecommunications Act, S.C. 1993, c.38, as amended or is a distribution undertaking as defined in subsection 2(1) of the Broadcasting Act, S.C. 1991, c.11, as amended (collectively “Canadian Carrier”);

AND WHEREAS the Company wishes to construct, install and maintain wires, fibre-optic cables, ducts, conduits, manholes and other accessories, structures and equipment (collectively, the “Equipment”) in, on, under, over, along or across highways, streets, road allowances, lanes, bridges, or viaducts of the Municipality (singularly a “Highway” and collectively, the “Highways”);

AND WHEREAS, pursuant to section 43 of the Telecommunications Act, S.C. 1993, c. 38 the Company requires the Municipality’s consent to construct its Equipment in, on, under, over, along or across the Municipality’s Highways;

AND WHEREAS the Municipality is willing to permit the use of its Highways where, in its judgment, such use will not interfere with its own service requirements and the public use of the Highways including the consideration of the economy, safety or any rights or privileges previously conferred or hereafter conferred by the Municipality by contract or otherwise on others not parties to this Agreement to use any of the Highways;

AND WHEREAS the Company acknowledges that it must not unduly interfere with the public use, enjoyment and safety of the Highways and must share the use of the Highways with
other providers of services to the public when occupying and using the Highways as described herein;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which by each of the parties hereto is hereby acknowledged, the Municipality and the Company each agree with each other as follows:
Defined Terms

1. In this Agreement, unless the context otherwise specifies or requires, the following terms shall have the respective meanings specified or referred to below and grammatical variations of such terms shall have corresponding meanings:

(a) "Affiliate" means an affiliated body corporate as defined in the Canada Business Corporations Act, as well as any partnership or other unincorporated association in which the Company or any of its affiliated bodies corporate (as so defined) has a controlling interest.;

(b) "Agreement" means this Municipal Access Agreement;

(c) "Attach" or "Attachment" means the use of, or connection to, the Equipment of the Company by a Third Party;

(d) "Commissioner" means the General Manager of Public Works who has responsibilities for Highways within and under the jurisdiction of the Municipality, or the person designated by him or her or such other person as may from time to time be designated by the Council of the Municipality;

(e) "Contractor" includes subcontractors, workers, suppliers and material men;

(f) "Equipment" means the Company's wires, fibre-optic cables, ducts, conduits, handholes, manholes and any other accessories, structures, transmission facilities and equipment;
(g) "Hazardous Substance" means any hazardous substance and includes, but is not limited to electromagnetic or other radiation, petroleum products and by-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any applicable law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal;

(h) "Letter of Credit" means a letter of credit in the form approved by the Municipality and issued by a chartered bank;

(i) "Municipality's Costs" means the Municipality's or its agent's, actual time, material and an overhead cost equal to fifteen (15) percent of the total actual cost, of such time and material;

(j) "Road Occupancy Permit" means the Municipality's document which grants conditional approval for applicants to occupy and/or access a Municipality's Highway to perform Work;

(k) "Telecommunications" has the same meaning as under Section 2 of the Telecommunications Act;

(l) "Third Party" means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transforee or personal representative thereof that attaches to the Company's Equipment under an agreement with the Company but does not include direct users of the Company's Services; and
(m) "Work" means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, adjustment or other alteration of Equipment in, on, over, along, under, above or across a Highway.

Term

2. This Agreement shall be subject to approval by the City Council and upon such approval shall be deemed effective (The Effective Date) and shall, unless earlier terminated in accordance with this Agreement, terminate five (5) years after the first day of the month in which the Agreement is deemed effective. This Agreement shall automatically renew for up to two (2) consecutive renewals of five (5) years each unless either the Municipality or the Company gives written notice of its intention not to renew to the other party not less than six (6) months prior to the expiration of this Agreement or any renewal term of this Agreement and all rights and privileges hereunder shall come to an end, save and except for the continued operation of Equipment as described in Section 43, Termination, provided that notwithstanding such termination the Company shall continue to be liable to the Municipality for all payments due and obligations incurred hereunder prior to the date of such termination, and without limiting the above, the Company shall continue to be liable for its obligations pursuant to Sections 16, 18-24, 26, 27-34, 35 and 36-37 of this Agreement.
Use of the Municipality’s Highways

3. The Municipality hereby agrees to provide its consent to the Company to use the Highways for its Work subject to the terms and conditions hereinafter set forth in this Agreement and in accordance with all applicable federal, provincial and municipal statutes, laws and by-laws or other rules and regulations pertaining to the application and use of the Highways or the Equipment, provided that said provincial and municipal statutes, laws and bylaws or other rules and regulations are not in conflict with the applicable federal statutes or regulations or with this Agreement.

4. The Company shall not construct, install or lay any of its Equipment in, on, under, over, along or across a Highway without first obtaining the written consent of the Commissioner with regard to the proposed location of the Equipment in, under, over, above and across the Highway and secondly providing plans to the Commissioner, setting out the location of the Equipment in the Highway. The Company acknowledges and agrees that the Municipality may refuse to grant its consent with regard to any proposed location for reasons in the sole discretion of the Commissioner, acting reasonably. The Commissioner shall make a good faith effort to provide and approve alternative suggestions, wherever possible, for routing the Equipment within the Highway to assist the Company in its efforts to facilitate the construction of its Equipment.

5. Prior to commencing work of any kind in, on, under, over, along or across a Highway, including the construction, installation, maintenance and removal of its Equipment, the Company shall obtain the prior written consent for such work from the Commissioner
and the Commissioner may establish the terms and conditions under which the work may be conducted by the Company. As a condition of such consent, the Municipality may, at its sole discretion, acting reasonably, require that the Company submit detailed engineering plans to the Commissioner with respect to the work to be conducted on a Highway. This Section does not apply where the Company utilizes existing duct banks or similar structures and no physical disruption or changes to the Highway or its use is required; however, in such cases, the Company shall notify the Commissioner at least twenty-four (24) hours in advance of such work.

6. Despite Section 4 and Section 5, the Company may carry out routine maintenance, field testing and subscriber connections without the consent of the Municipality, but in no case shall it carry out any physical disruption or change to the Highway or its use, without the Municipality’s prior written consent, not to be unreasonably withheld. In the event of an emergency, the Company shall be permitted to carry out such remedial work as is reasonably necessary to restore or maintain its essential service.

Conditions of Work

7. All work conducted by the Company on a Highway including, without limitation, construction, excavation, installation, maintenance and removal of its Equipment, is subject to the following conditions:

(a) all work shall be conducted and completed and the Highways restored to the satisfaction of the Commissioner, at the Commissioner’s sole discretion, acting
reasonably, and in accordance with this Agreement and all laws, by-laws and the
Municipality’s policies, as amended from time to time;

(b) the portions of the Equipment which pass over or under existing utilities or which
cross beneath streets shall be placed in a carrier pipe or be encased in concrete
and shall not place substantial point loading or bear directly on any existing pipe,
conduit or structure and shall where practicable be constructed or installed in a
trenchless method where the Equipment crosses a paved roadway unless
otherwise approved by the Commissioner;

(c) if the Company breaks the paved surface of a Highway, it shall forthwith
temporarily repair and restore the surface of the Highway to substantially the
same condition it was in before such work was undertaken by the Company in
accordance, without limitation, with the Municipality’s Procedure for the
Installation of Utilities on Road Allowances, as amended from time to time, and
to the reasonable satisfaction of the Commissioner, acting reasonably. If the
Company fails to temporarily repair and restore a Highway to the satisfaction of
the Commissioner within twenty-four (24) hours of being notified by the
Municipality, the Municipality may affect such repairs and charge all of the
Municipality’s Costs related thereto to the Company. Despite the foregoing, the
Company shall immediately advise the Municipality of any paved surface of a
Highway requiring restoration work and such permanent restoration work shall be
carried out by the Municipality and the Municipality’s Costs related thereto shall
be paid by the Company forthwith upon receipt of an invoice from the
Municipality, accompanied by the necessary supporting documents. The Municipality shall use its best efforts to render its invoice to the Company within 6 months of completion of the said restoration work;

(d) notwithstanding the foregoing, in the case of emergencies, and after first making a reasonable attempt to contact the Company, the Municipality reserves the right to make repairs immediately and recover the Municipality’s Costs of such repairs;

(e) if the Municipality requires the construction, excavation, installation, maintenance or removal of the Equipment to be stopped for any reasonable reason, the Company shall cease all such construction, installation, maintenance, or removal of the Equipment forthwith upon receipt of notice from the Municipality. Within two (2) business days of issuing a stop work order under this subsection, the Commissioner will provide written reasons for such order to the Company, and make best efforts to advise the Company as to when the stop work order will be lifted;

(f) the Company is responsible for all construction, excavation, installation, maintenance and removal of its Equipment including the cost of such work;

(g) the Company shall comply with municipal tree protection requirements in place at the time such work is undertaken and shall not cut down or trim trees or the roots of trees on any Highway without the prior permission of the Commissioner;

(h) the Company shall take all reasonable measures, to the satisfaction of the Municipality, to clean, remove or conceal graffiti or other unauthorized marks in a timely manner from Equipment. In this regard, the Company will within two (2)
working days' notice from the Municipality, in the case of graffiti which is considered offensive or inflammatory, remove or conceal such graffiti from Equipment. Graffiti which is not considered offensive is to be removed within five (5) working days of notice from the Municipality or within such other time period as mutually agreeable to the parties. In the event the Company does not remove or conceal the graffiti in accordance with this section, the Municipality may take such steps as it deems reasonable and necessary to remove or conceal the said graffiti and shall charge the cost of the removal or concealment to the Company; and

(i) the Company is responsible to ensure all Contractors, working on behalf of the Company, are clearly identified with placards. As well, the Company shall ensure that all Contractors are working in accordance with current municipal standards, labour legislation and will obtain any other permits as may be reasonably required from time to time.

Work of the Company to be in Conformity with all Applicable Laws

8. The Company shall, in performing any and all Work in connection with this Agreement, ensure:

(a) that its employees and contractors are qualified;

(b) that safe work practices are used in carrying out the Work;

(c) that any and all of its employees, agents and contractors, at all times, comply with all applicable laws, the *Workplace Safety Insurance Act, 1997*, the *Occupational*
Health and Safety Act and the Canadian Labour Code Part II, or any amendments or additions thereto and all applicable environmental laws; and

(d) all Work shall be in accordance with applicable law.

Representations and Warranties

9. The Company represents and warrants to and covenants and agrees with the Municipality that:

(a) after completion of any work related to the construction, excavation, installation, maintenance, repair, replacement or removal of the Equipment, the Company shall notify the Commissioner of such work and leave the Highway in a neat, tidy, and safe condition and free from nuisance, all to the satisfaction of the Commissioner acting reasonably;

(b) the Company shall not suffer or permit any lien to be filed or registered against a Highway. In this regard and subject to any existing rights of the Company or consents granted to the Company by the Municipality any instrument claiming an estate, interest, property right or lien against the Highway or property owned by the Municipality shall be removed from title to the Highway, by the Company, within twenty (20) days following notice from the Municipality to the Company of the existence of the instrument or the Company shall have commenced the process of removing the instrument from title to the Highway and be diligently pursuing the removal within the twenty (20) day period referred to above. If the Company fails to discharge or vacate any instrument claiming an estate, interest,
property right or lien within twenty (20) days, then in addition to any other right or remedy of the Municipality, the Municipality may discharge or vacate the instrument by paying into Court the amount required by statute to be paid to obtain a discharge, and the amount so paid by the Municipality together with all costs and expenses including solicitor’s fees (on a solicitor and his client basis) incurred in connection therewith shall be due and payable by the Company to the Municipality on demand;

(c) the Municipality has made no representations or warranties as to the state of repair of the Highways or the suitability of the Highways for any business, activity or purpose whatsoever and the Company hereby agrees to take the Highways on an “as is” basis;

(d) it is a company in good standing under the applicable corporate and bankruptcy laws;

(e) the Company will agree to circulate and obtain related approvals for all its permit applications to the Public Utilities Coordinating Committees (“PUCC”) of the Municipality;

(f) the Company shall apply for and maintain active membership in the PUCC of the Municipality and bear a reasonable share of its proportionate costs related to the operation of any utility plan registries maintained in connection with the work of such committees, provided such utility plan registry is generally accepted in the industry and where such operation is agreed to by the Company, in accordance
with the cost-sharing arrangement established by such committees from time to
time; and

(g) the Company will indemnify and save harmless the Municipality from any claims,
demands, causes of action, loss, costs or damages, legal fees and disbursements
that the Municipality may suffer, incur or be liable for, resulting from the
Company providing inaccurate locations of its Equipment, or construction of
equipment in a non-approved location;

Supply of Information

10. Upon request of the Municipality at the time of municipal consent application, the
Company shall provide at its expense to the Municipality, within two months of
completing the construction or installation of any of the Equipment or at any time
thereafter, “as constructed” record drawings in an electronic format compatible with the
Municipality’s utility mapping system. Upon request from the Company, digital ortho-
imagery and/or mapping may be provided by the Municipality at the Company’s expense.

11. The Company shall, at the request of the Commissioner, provide to the Municipality, in a
format satisfactory to the Municipality a listing of the location of all the Equipment
installed, altered, relocated, or removed by it, or on its behalf in the Highways to the date
of such request.
12.  (a) Upon receiving a request from the Municipality, or its authorized agent the Company shall, at no cost to the Municipality, provide locations of its Equipment:

(i) within 2 hours in the event of an emergency where the Municipality has either on-site representation or provides a contact number for a representative so that the locate can be completed in the affected area, using reasonable best efforts;

(ii) within a reasonable time to be agreed upon by the Company and the Municipality in all other cases;

(b) the locations provided by the Company to the Municipality for pre-design shall contain sufficient design information and survey detail as required by the Commissioner, acting reasonably; and

(c) the Company shall be a member in good standing at all times of the utility locate notification system used in Ontario from time to time during the term of this Agreement.

13. Each party shall provide to the other party a list of southern Ontario emergency contact personnel who shall be available at all times and shall ensure that the aforementioned list is current.

**Excess Capacity**

14. Within ten (10) days of receiving a submission for proposal for Work from the Company, the Municipality may submit a request for the installation of additional ducts and/or cabling on behalf of the Municipality at the same time the Work is installed. Provided
the request does not unduly delay the completion of the proposed Work, the costs associated with the supply and installation of the additional ducts and/or cabling will be the responsibility of the Municipality and be based on the proportionate costs incurred by the Company, including design and engineering costs, in installing the additional ducts and/or cabling. Upon installation and payment in full to the Company, the additional ducts and/or cabling will become the property of the Municipality.

Fees

15. The Company covenants and agrees to pay to the Municipality upon execution of this Agreement, and annually thereafter on the anniversary date of the execution of this Agreement, an annual fee in the amount of five thousand dollars ($5,000) plus applicable Federal Goods and Services Taxes and any other applicable taxes.

16. The Company covenants and agrees to pay to the Municipality all applicable amounts, including application fees, permit fees, including excavation or road occupancy permit fees and charges. The Municipality shall give notice to and consult with the Company with respect to any increase in such fees or the application thereof. In the event that the Highways are assessed in the future as a direct result of the Company’s use of the Highways, the Company agrees to indemnify the Municipality for any taxes due and payable by the Municipality as a result of this assessment.
17. The Company and the Municipality shall pay simple interest at the Prime Rate plus two percent (2%) per annum on all amounts required to be paid under this Agreement, from the due date until payment in full, both before and after judgment.

**Relocation of Equipment**

18. Upon receipt of no less than sixty (60) days written notice from the Municipality or other time as is reasonable, having consideration for the complexity and nature of the Work required to complete the relocation and to the minimizing of the potential for service losses or interruptions that may affect the Company’s customers, the Company shall relocate or commence to relocate its Equipment within a Highway, or perform any Work in connection with the Highway as may be required by the Municipality for municipal purposes or at law. In cases of emergency, after first making a reasonable attempt to contact the Company and obtain an Equipment locate, the Municipality may take any measures deemed necessary for public safety or the public interest with respect to the Equipment that may be required in the circumstances as the Municipality shall in its sole discretion determine, and the Company shall forthwith reimburse the Municipality for all actual expenses thereby incurred which are directly related to the Equipment. The Municipality will make a good faith effort to avoid damage to the Equipment affected by the relocation and to assist the Company in its efforts to ensure uninterrupted service to its customers.

19. If the Company fails to complete the relocation of the Equipment in accordance with the above Section or fails to repair the Highways in a timely and expeditious manner to the
satisfaction of the Commissioner, acting reasonably, the Municipality may, but is not obligated to, at its option complete such relocation or repair and the Company shall pay the cost of such relocation, repair, removal, restoration or other work to the Municipality 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 Municipality’s principal financial institution carrying on business in the Municipality shall be due and payable by the Company to the Municipality upon receipt by the Company of an invoice setting out such costs and interest.

20. The Municipality will make a good faith effort to provide and approve alternative suggestions, wherever possible, for re-routing the Equipment within the Highway affected by the relocation to assist the Company in its efforts to facilitate the uninterrupted provision of services to its customers.

21. Responsibility for the cost of relocating Equipment installed prior to the execution of this Agreement shall be in accordance with the provisions of the Public Service Works on Highways Act.

22. Responsibility for the cost of relocating Equipment installed after the execution of this Agreement and within four years of its installation shall be that of the Municipality.

23. Responsibility for the cost of relocating Equipment in subsequent years shall be based upon the following:
24. Notwithstanding the provisions of the previous subsections the following seven exceptions may apply:

(a) Special circumstances may arise with respect to a specific relocation whereby the parties may mutually agree to negotiate alternative cost sharing arrangements. Such alternative arrangements shall be agreed upon in writing by both parties prior to approval of a new location;

(b) The Company will be totally responsible for the cost of relocation if it installs Equipment despite the Municipality’s notification to the Company, at the time of the Company’s application, that because of projects scheduled within the Municipality’s five year plan the Company will be required to relocate its Equipment within the period referred to in the previous subsections;

(c) Where a particular project is funded by someone other than the Municipality or the Company and that funding allocates a specific amount to cover the cost of utility relocation, including that of the Company, then the Municipality and the Company shall apply such allocation to the cost of relocation. Any deficiency in the external funding for utility relocation shall be made up in accordance with subsections 21, 22 and 23;
(d) The Municipality shall be under no financial responsibility for costs incurred by the Company to obtain a private easement outside of the Highway resulting from relocations or adjustments;

(e) The Company shall be solely responsible for any costs and expenses associated with the relocation of any Equipment by the Company and initiated at the Company’s sole behest;

(f) In no event shall the Municipality be responsible in any way for costs incurred for relocating Equipment for which the Equipment is not installed in the location approved by the Municipality; or

(g) The Company will not be responsible for the cost of the relocations requested by parties other than the Municipality or relocations not required for municipal purposes.

| Letter of Credit |

25. Upon the Municipality’s request, the Company shall provide to the Municipality security for the performance of its obligations consisting of a Letter of Credit in an amount that represents the Municipality’s costs for restoration of the Company’s pending Work, and naming the Municipality as beneficiary for a one (1) year period after completion of the proposed Work in the Municipality’s Highway. If requested by the Municipality, the Letter of Credit shall be provided prior to starting the proposed Work and shall be in a form satisfactory to the Municipality.
Liability and Indemnification

26. (a) The Company shall, at all times, defend, indemnify and save harmless the Municipality from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Company operating, constructing, and maintaining its Equipment in the Municipality, or utilizing its Equipment for the delivery of its services to Third Parties or users, provided that the Company shall not be required to indemnify or save harmless the Municipality from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damages to any property, resulting from the negligence or wrongful act of the Municipality, its servants, agents or employees.

(b) The rights to indemnity provided for in this Section shall survive the expiration or any termination of the Agreement.

(c) Despite anything contained in this Agreement, the Municipality and the Company shall not be liable to each other in any way for special, incidental, indirect or consequential losses, including damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement or the Highway even if advised of the possibility thereof.
Insurance

27. The Company shall maintain insurance in an amount and description as set out below to protect the Company, and the Municipality as Additional Insured solely with respect to liability arising out of the negligence of the Company, its employees, agents and contractors, from claims for damages, personal injury including death, and for claims from physical damage to tangible property which may arise from the Company’s operations or Work or failure to do work in the Municipality under this Agreement, including without limitation the Company’s use or maintenance of the Equipment on or in the Highways or any act or omission of the Company’s agents or employees while engaged in excavating, placing, maintaining, renewing or removing the Equipment and such coverage shall include all costs, charges and expenses reasonably incurred for any injury or damage for which the Company is responsible in law.

28. The Company shall obtain and maintain at its own expense the following policies of insurance:

(a) Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, and contingent employer’s liability coverage, having an inclusive limit of not less than $4,000,000 per occurrence and an annual aggregate limit of not less than $4,000,000 for products and completed operations and subject to the following;
(i) where the description of the project, supply or Work provides for or contemplates:

(I) the use of explosives for blasting, or;

(II) vibration from pile driving or caisson work, or

(III) the removal or weakening of support of any property, building or land whether such support be natural or otherwise,

explosion, collapse and underground (XCU) coverages shall be included and same shall be noted on the certificate of insurance;

(ii) coverage shall be included for pollution from "hostile fires".

(iii) non-owned automobile liability limit of not less than $1,000,000 per accident in respect of automobiles rented or otherwise not owned by the Company for a period not exceeding 30 days that are used or operated on its behalf for the provision of services under this Agreement.

(iv) Coverage shall include Cross Liability and Severability of Interest clauses.

(v) The Municipality and those for whom it is responsible in law, shall be added as an Additional Insured but solely with respect to liability arising out of the negligence of the Company, its
employees, agents and contractors.

(b) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than $2,000,000 per accident in respect of the use or operation of vehicles owned or leased by the Company for the provision of services under this Agreement.

(c) The required insurance limits for comprehensive general liability and automobile insurance may be composed of any combination of primary and excess (or ‘umbrella’) insurance policies.

(d) Environmental Impairment Liability Insurance, covering accidental pollution arising from the Work in an amount of not less than $2,000,000 per claim or per occurrence,

(e) The Company shall maintain Property insurance, as may be applicable, with respect to physical loss or damage (including fire, theft, burglary, etc.) of its own property and property in its care, custody and control,
including its equipment, tools and stock, used in connection with the
Agreement. Such Property insurance shall be written on a replacement
cost basis of said property, repairs, additions or equipment being installed,
otherwise being handled or stored on or off premises, and include a waiver
of subrogation against the Municipality.

(f) Errors and Omissions liability insurance on a claims made basis with an
aggregate insured limit of $2,000,000 covering economic damages
specifically arising from errors & omissions in the rendering of
professional services under this Agreement.

29. The insurance policies required to be maintained by the Company shall be:

(a) primary to the extent of the Municipality’s rights as Additional Insured
and shall be placed with insurers maintaining a minimum A.M. Best “A“
rating that is licensed to carry on business in Ontario;

(b) be maintained continuously during the course of carrying out of the Work;

(c) provided that at least 30 days prior written notice (15 days in the case of
automobile liability insurance and 10 days in the event of non-payment of
premiums) shall be given to the Municipality by the Insurer before policy
cancellation, or termination or material change of insurance coverage to 
the detriment of the Municipality.

30. Any insurance coverage acquired under the Agreement shall in no manner discharge, restrict or limit the liabilities assumed by the Company under the Agreement. The dollar limit of insurance coverage shall not be limited by the dollar amount of the Agreement.

Proof of Insurance and Claims Protocol

31. The Company shall deposit with the Municipality prior to the execution of this Agreement certificates of insurance as well as renewal certificates thereafter.

32. The Company shall not do or omit to do anything that would impair or invalidate the Insurance policies.

33. Delivery to and examination or approval by the Municipality of any certificates of insurance or other evidence of insurance shall not relieve the Company of any of its indemnification or insurance obligations under the Agreement. The Municipality shall be under no duty either to ascertain the existence of or to examine such certificates of insurance or to advise the Company in the event such insurance coverage is not in
compliance with the requirements set out in the Agreement.

34. Claims reported to the Company by a third party or by the Municipality shall be promptly investigated by the Company. The Company shall make contact with the Claimant, acting reasonably, within 48 hours of receipt of notice of a claim. The Company shall initiate an investigation of the claim immediately upon notice, and advise the Claimant by letter of its position regarding resolution of the claim, acting reasonably, within 20 Business Days of the notice. The Company shall include in its letter of resolution, acting reasonably, the reasons for its position. Failing acceptance of the resolution by the Claimant of the proposed resolution, the Company agrees to report the claim to its Insurer for further review and response to the Claimant. Failure to follow this procedure shall permit the Municipality to investigate and resolve any claims and offset the resultant costs against any monies due, from time to time, under the Agreement.

WSIB

35. The Company prior to commencing the Work:

(a) (i) shall submit to the Municipality an original Clearance Certificate from the Ontario Workplace Safety and Insurance Board and shall provide additional certificates with respect to such coverage as often as the Municipality deems necessary during the term of the Agreement to ensure
continued good standing with the Workplace Safety and Insurance Board; or

(ii) furnish proof in a form satisfactory to the Municipality from the Workplace Safety and Insurance Board that the Company does not require Workplace Safety and Insurance Board insurance, but in such a case if the Company changes its status during the term of the Agreement so that such coverage is required, the Company shall immediately provide the Municipality with the certificate required under clause (i).

(b) Where a substantial portion of the work to be done under the Agreement is to be carried out by a subcontractor, the Municipality may require the Company to furnish the same evidence as provided under subsection (a).

Environmental Liability

36. The Municipality is not responsible, either directly or indirectly, for any damage to property, including any nuisance or injury to any person, howsoever caused, including death, arising from the escape, discharge, spill or release of any Hazardous Substance resulting from the Company’s use of the Highway. The foregoing release shall not extend to any loss, damage, injury or death caused by the negligence or wilful misconduct of the Municipality, its employees, agents, contractors or those other persons for whom the Municipality is in law responsible.
37. The Company agrees to assume all environmental liabilities relating to its use of the Highway including but not limited to any liability for clean-up of any Hazardous Substance on or under the Highway which arise from:

(a) the operations or Work of the Company in, on, under, over, above, along or across the Highway, or

(b) any Equipment brought in, on, under, above, over, along, or across the Highway by the Company, its contractors, agents or employees or by any person with the express or implied consent of the Company.

The Municipality agrees to provide notice to the Company of any liability arising under this provision in a reasonable period of time after the occurrence.

38. No use of a Highway under this Agreement shall create or vest in the Company any ownership of or property rights in a Highway, and the Company shall be and remain a mere non-exclusive occupant of the Highway and placement of the Equipment in a Highway shall not create or vest in the Municipality any ownership in or property rights to the Equipment.

39. Nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement to use any Highway in accordance with the Municipality’s legal authority.
Legislative Change

40. (a) If at any time subsequent to the parties entering into this Agreement:

(i) the provincial or federal government or a regulatory authority, board or body, including the CRTC enacts or repeals any legislation or regulation, or orders, directs or mandates anything which pertains to the subject matter of this Agreement; or

(ii) there is rendered any decision of a court or tribunal which pertains to the subject matter of this Agreement; then either party (the “Requesting Party”) may notify the other of its intention to require the other party to enter into good faith negotiations to amend this Agreement to conform to such legislation, order or decision or to enter in a new agreement reflecting such legislative or regulatory action, court, tribunal decision or board, as the case may be, within thirty (30) days after written notice (the “Notice”) from the notifying party.

(b) If the parties are unable to re-negotiate the terms and conditions of this Agreement under Section 40(a) at the expiration of the Notice, then the unresolved matters may, with thirty (30) days prior written notice from the requesting party, be referred by the party to the CRTC or any successor authority, or to arbitration for resolution, in accordance with the Ontario Arbitration Act, as amended, or its successor legislation. Subject to the right to refer unresolved matters to the CRTC or to request arbitration, if an amendment or new agreement
is not reached within ninety (90) days from the date on which the Notice was received, either party may terminate this Agreement without further notice and both parties shall fulfill their respective obligations thereafter in accordance with this Agreement.

**Termination**

41. (a) The Municipality and the Company mutually agree that should either party 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 or commence to correct any such failure capable of correction, then this Agreement may, at the option of the non-defaulting party, be terminated by giving written notice to be effective upon receipt, provided that the Company shall continue to be liable to the Municipality for all payments due and obligations incurred under the Agreement prior to such termination.

(b) Despite subsection 41(a), the Municipality may terminate this Agreement immediately and without prior notice in the event that:

(i) the Company becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes voluntarily subject as a debtor to the provisions of the *Winding Up Act, the Companies' Creditors Arrangement Act, the Bankruptcy and Insolvency Act*, as amended from time to time, or any successor legislation;
32. (ii) the Company transfers, assigns, or sublicenses any part or all of its interest in this Agreement other than in accordance with the provisions of this Agreement, or attempts to do same;

42. Upon the termination of this Agreement pursuant to section 41(a) or (b) and in addition to fulfilling its other obligations and rights under this Agreement, the Company shall at its option, remove all or any portion of its aboveground Equipment and access structures, provided such Equipment and access structures are used solely by the Company, from the Highways and, in this event, shall restore the Highways plus any above ground Equipment not removed in accordance with this section at the Company’s expense and to the satisfaction of the Commissioner, acting reasonably.

43. Upon termination of this Agreement by reason of the expiry of this Agreement, the Company shall be entitled to the continued operation of its Equipment on such terms and conditions as are agreed to between the Municipality and the Company provided that notwithstanding such termination the Company shall continue to be liable to the Municipality for all payments due and obligations incurred under the terms of this Agreement and further provided that the Municipality and the Company are unable to agree upon the terms and conditions for the continued operation of the Company’s Equipment, either party may invoke the provisions of Section 44 (Arbitration) herein or refer the matter to the CRTC.
Arbitration

44. (a) Notwithstanding the right of the Company to refer any matter under this Agreement to the CRTC for dispute resolution, in the event of any dispute or disagreement between the parties hereto as to the meaning or interpretation of anything contained in this Agreement or as to the performance or non-performance hereof or as to the respective rights and obligations of the parties hereunder, the parties may agree to refer such dispute or disagreement to arbitration.

(b) The procedure upon an arbitration pursuant to the provisions of subsection 44(b) shall be as follows:

Within twenty (20) days after the written request of either of the parties hereto for arbitration, in the event the parties are unable to agree upon a single, mutually acceptable arbitrator, each of them shall appoint one arbitrator and the two so appointed shall, within twenty (20) days after the expiration of the twenty day period select a third. In case either of the parties hereto fails to name an arbitrator within twenty (20) days after the written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator within twenty (20) days after the expiration of the first twenty day period mentioned above, application shall be made as soon as reasonably possible to any Judge of the Superior Court of Justice for the appointment of a third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded to arbitrators by the *Arbitrations Act*, R.S.O. 1990,
c. A.24 as from time to time amended, or any Act in substitution therefor. The
decision of the said arbitrator or arbitrators (or of a majority of such arbitrators)
shall be final and binding on the parties hereto. However:

(i) either party may appeal an arbitration award to the Courts of the
Province of Ontario on a question of law;

(ii) either party may apply to a court of competent jurisdiction;
    - for an interim measure of protection; or
    - for any order for relief which the arbitrator or arbitrators do not
      have the jurisdiction to provide.

Transfers

45. (a) This Agreement may be sub-licensed, granted, transferred or assigned:

(i) by the Municipality or the Company in whole or in part to any sub-
licensee, grantee, transferee or assignee with the other party’s prior written
consent which consent shall not be unreasonably withheld; or

(ii) by the Company in whole or in part to a parent company, any Affiliate,
subsidiary, partnership, joint venture or any other entity in the context of
any corporate re-organization with notice to the Municipality;

(iii) any sub-licensee, grantee, transferee or assignee shall be bound by the
terms and conditions of this Agreement as those terms and conditions
relate to the interest sub-licensed, granted, transferred or assigned; and

(iv) such sub-license, grant, transfer or assignment shall not release the
Company from its obligations and liabilities under this Agreement until
the Municipality has entered into a satisfactory agreement with the sub-
licensee, grantee, transferee or assignee.

(b) the Company may pledge the license granted by this Agreement as security
without the consent of the Municipality to any person directly or indirectly
providing financing to the Company but such pledge shall not release the
Company from its obligations and liabilities under this Agreement.

Notice

46. 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 Municipality at the following
address:

Office of City Clerk

Attn: Gord McGuire, OLS, OLIP
Senior Project Manager, Survey and Technical Services
City of Hamilton
Public Works
71 Main Street West, 2nd Floor
Hamilton, Ontario L8P 4Y5

and to the Company at the following address:

BELL CANADA
Manager – External Liaison
100 Dundas Street
Floor 4 P
London, Ontario
N6A 4L6

Tel: 519-663-6401
Fax: 519-673-3869
Any notice may also be given by prepaid registered mail mailed within the Province of Ontario 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 followed by receipt of original notice the next business day of transmission as stated above.

Interpretation

47. The Company agrees that it shall pay (if assessed for same) taxes, charges, duties, rates, levies and business taxes in respect solely of the use by it of the Highways pursuant to the rights herein allowed to the Company that may arise pursuant to The Assessment Act of Ontario, as and when the same become due.

48. This Agreement benefits and binds the Municipality and the Company and the successors of each of them.

49. 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 this Agreement and the rest of this Agreement shall remain in force unaffected by the severance of that term.

50. Time shall be of the essence in this Agreement.
51. The relationship of the Company and the Municipality established by this Agreement is that of independent contractors, and nothing in this Agreement shall be construed:

(a) to give either party the power to direct or control the day-to-day activities of the other;

(b) to constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or

(c) to allow either party to create or assume any obligations on behalf of the other party for any purposes whatsoever.

52. 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.

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

54. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, whether written or oral between the parties. Except as provided in this Agreement, there are no conditions, covenants, agreements, representations, warranties, acknowledgments or other provisions, express or implied, collateral, statutory or otherwise, that form part of or affect this Agreement. The execution of this Agreement has not been induced by, nor do any of the parties rely upon or regard as material, any
conditions, covenants, agreements, representations, warranties, acknowledgments, or
other provisions not expressly made in this Agreement.

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

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

SIGNED, SEALED AND DELIVERED

CITY OF HAMILTON

__________________________
Clerk

Date: ______________________

BELL CANADA

Jamie Nightingale
General Manager–Network Provisioning.
I have the authority to bind the Corporation.

Date: 2007-08-28