Telecommunications and municipalities

Shared goals for a connected future

FCM’s written submission to the Senate Transport and Communications Committee study on the three federal communications statutes

February 14, 2019
Dear Committee Members:

On behalf of the Federation of Canadian Municipalities (FCM), I would like to present to you our written submission in response to your study on how the three federal communications statutes can be modernized.

With close to 2000 members, FCM represents over 90% of the Canadian population, including Canada’s largest cities, hundreds of small urban and rural communities in all provinces and territories, as well as 18 provincial and territorial municipal associations. With respect to telecommunications, FCM has been actively engaged in the development and dissemination of best practices for over 25 years.

As the order of government closest to businesses and residents, municipalities understand that the future success of their communities is largely dependent on internet connectivity. Municipalities recognize the positive effects that modern communication services have on local businesses and citizens; as such, FCM has been a staunch advocate for municipal interests in telecommunications and in ensuring that all Canadians, no matter where they live, have access to fast and reliable internet.

Municipalities have always been and remain motivated and committed partners to facilitate the timely, orderly and cost-effective deployment of communications infrastructure in Canada. Municipalities play a pivotal logistical role as the owners and managers of the right-of-way space where telecommunication infrastructure in Canada is installed. This role is often misunderstood and yet it is central to achieving the federal government’s objectives, particularly as the national deployment of 5G and small cell technologies is set to begin. FCM’s submission therefore highlights the key elements of the municipal role and how this role can be optimized for the benefit of all stakeholders. Specifically, the submission makes the following recommendations, as well as identifies opportunities for improvement within the current system:

- Develop a national broadband strategy, with elements that enhance accountability, transparency and cooperation between federal agencies, orders of government and with industry to improve broadband service across the country, as well as better ensure universal access to emerging technologies at affordable rates for consumers.

- Maintain municipalities’ legislated role in managing public space for the benefit of all users, a task no other entity can perform—operationally or legally. Achieving national connectivity objectives must build on and enhance the long-standing partnership with municipalities.

- Maintain the integrity of the local taxpayer and do not indirectly transfer costs onto the municipal tax base.

- Maintain the wording of sections 43 and 44 of the Telecommunications Act.
• Maintain the jurisdiction between the CRTC and ISED in the governance of small cells.
• Clarify the responsibilities of ISED and the CRTC over broadband in order to facilitate the implementation of a national broadband strategy.

The past 25 years of collective experience and best practices have demonstrated that there are opportunities to achieve the government’s policy goals through improved collaboration, joint development and dialogue that balances all interests. As new technologies continue to emerge and be deployed, municipalities are willing partners in ensuring access for all Canadians.

If you have any questions regarding this submission or want further information on the examples used herein, please contact Hardave Birk, Government Relations Advisor, at 613-907-6331 or hbirk@fcm.ca.

Sincerely,

[Signature]

Vicki-May Hamm
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FCM President
Introduction

The Federation of Canadian Municipalities (FCM) has been the national voice of municipal governments and the only national association of its kind since its creation in 1901. With respect to telecommunications and radiocommunication specifically, FCM has been actively engaged in the development and dissemination of best practices, as well as ensuring universal access to modern services, since the introduction of a competitive marketplace took place some 25 years ago.

As the order of government closest to businesses and residents, municipalities are keenly aware that the future growth and prosperity of the communities they represent is predicated on connectivity. Municipalities see the immediate difference access to modern communication services can make—in some cases ensuring the very economic viability of entire communities.

Municipalities play a pivotal logistical role as the owners and managers of the right-of-way space where most telecommunication infrastructure in Canada is installed. This role is often misunderstood and yet it is central to achieving the federal government’s objectives, particularly as the national deployment of 5G and small cell technologies is set to begin. FCM’s submission will therefore highlight the key elements of the municipal role and how this role can be optimized for the benefit of all stakeholders.

FCM’s submission focuses on matters where the municipal sector is best positioned to contribute to the Senate Committee’s process.

Specifically, FCM will speak to the following issues:

• the pivotal role played by municipalities in ensuring the safe, timely and cost-effective deployment of communications infrastructure;
• the fundamental importance of protecting the local taxpayers, including how this relates to access to rights-of-way and other municipal assets;
• several suggestions on how to achieve system-wide cost savings; and,
• recommendations on federal oversight and administration.

One of FCM’s roles has been advocating for means of addressing the national connectivity gap. FCM is therefore pleased to share suggestions with the Committee on this fundamental issue and explore opportunities to improve the operational deployment of emerging technologies.

Part I: Universal access and affordability

Universal access is still an elusive goal and innovative, coordinated efforts are required to fill the connectivity gap. This is due, in part, to the fact that since deregulation of the telecommunications market in 1993, access to the latest technology, as well as the ability to benefit from a competitive marketplace, have been largely driven by market forces. The private sector—incumbents and new providers alike—have focused their efforts on the more lucrative, denser urban markets. While this is understandable, in a country as vast and sparsely populated as Canada, this leaves hundreds of communities—over two million residents across the country—without basic communication services such as high-speed internet.

Even within a single municipality, access to services can vary greatly between communities. In Ottawa ON, for example, the core of the city enjoys full access to the latest services and a competitive marketplace, while several suburban neighbourhoods have good access but only through a single provider. In the
municipality’s vast rural rim, several communities still have little to no access to the latest technology.

These disparities are the reflection of structural variances between dense urban, suburban and rural markets and the limitations of competitive market forces to serve many Canadians. To achieve true universal access—and maintain affordability—new solutions must be developed for contexts where market economics make deployment of new services technically and commercially unattractive. As the country prepares for the next wave of large-scale deployment—through 5G and small cells—the problem will only be exacerbated if system-wide solutions are not developed.

**Moving beyond aspirational goals: Developing a National Broadband Strategy**

**FCM recommendation: Develop a national broadband strategy, with elements that enhance accountability, transparency and cooperation between federal agencies, orders of government and with industry to improve broadband service across the country, as well as better ensure universal access to emerging technologies at affordable rates for consumers.**

Broadband internet access is now an essential service. Businesses need it to innovate, compete and grow. Reliable broadband is vital to public safety, public services and local institutions like health care and education, and connectivity contributes positively to Canadians’ everyday quality of life. Achieving universal access to broadband is not yet complete and as new technologies, such as 5G and small cells, continue to emerge, the country will face similar difficulties in ensuring universal access to these services as well.

FCM has long advocated for increased federal involvement in developing the telecommunications infrastructure that is critical to the social, cultural and economic vibrancy of Canada’s rural, northern and remote communities. As the existing aspirational goals have not worked, a more coordinated and assertive approach is needed to ensure that all Canadians can get the broadband internet services they need in a timely fashion.

A clear national broadband strategy, with greater accountability, transparency and cooperation between federal agencies, orders of government and the industry, would help to improve broadband service across the country as well as providing best practices to ensure universal access to emerging technologies. The following principles should guide such a strategy:

- Establish long-term and predictable funding that allows for an accelerated roll-out of broadband in underserved areas;
- Establish clear targets for both fixed and mobile services;
- Invest in both backbone and last-mile infrastructure;
- Prioritize projects that address affordability; and,
- Require transparency in the selection of projects and in the evaluation of project outcomes.

Communities also need broadband services that are consistent and reliable and meet their needs at an affordable price. For this reason, the federal government should ensure that the CRTC’s mandate of an unlimited data option or fixed broadband services is fully implemented.

Other key industry standards for broadband quality should be evaluated, such as latency, packet loss, jitter and redundancy. Northern and remote communities need improved redundancy to prevent gaps in essential communication services. The federal government should establish targets for mobile broadband access in rural areas and make available necessary spectrum for rural and remote communities to access wireless broadband, and in particular, 5G wireless technology. It is important for provisions to be included to incentivize and encourage carriers...
to increase broadband and cellular coverage in rural, remote and northern communities.

Allowing alternative options to fill connectivity gaps

In order to close the connectivity gap, particularly in markets that are less financially-attractive to market forces, some municipalities have decided to become carriers themselves. A number of others across the country are currently exploring the possibility of doing the same, either individually or in regional groups, either directly or through arms-length not-for-profit entities. As a variant to this model, certain municipalities are even considering options to take on the up-front cost of installing the fiber and equipment for open access networks that can then be leased to any ISP carriers to provide services. As the federal government considers revisions to the framework, the changes should not prevent the implementation of creative solutions such as the entry of new, public-sector players and public-private sector partnerships into the marketplace.

Improving affordability through operational cost-savings

In addition to policy approaches to support the federal government’s objectives as they relate to service affordability, FCM is of the view that there are a number of opportunities to achieve cost-savings at the operational level. These are detailed in Part II below.

Part II: Infrastructure deployment and asset governance

Building on the critical role of municipalities: The key to achieving national objectives

FCM recommendation: Maintain municipalities’ legislated role in managing public space for the benefit of all users, a task no other entity can perform—operationally or legally. Achieving national connectivity objectives must build on and enhance the long-standing partnership with municipalities.

Understanding the vital municipal role—today and tomorrow

Across the country, the vast majority of telecommunications infrastructure is located within municipal rights-of-way (ROWs)—the space comprised of the roadway, sidewalks, boulevards, ditches, and portions of many front lawns. This is not only true of more traditional equipment and broadband technology now being deployed, but all indications are that this space will become even more critical for future technology.

Indeed, wireless technology is only wireless for the ultimate user. Technically, it still relies entirely on physical connections to function. Just as macro cell towers are linked by cables to their respective networks, pilot projects
currently underway for 5G demonstrate how each small cell requires an individual connection to a power source as well as a physical link to the carrier’s underground telecommunications infrastructure. With few exceptions, these links will take place within ROWs, regardless of where the small cell itself is attached.

Hooking up to an underground network sounds deceptively simple. As we go about our daily lives, walking, riding public transit, driving or cycling, we seldom take stock of the great number of activities that share the ROWs we rely on. Yet, by simply taking a moment to observe our surroundings, we can quickly realize the vital role played by municipal ROWs and how complex and congested these corridors can be, particularly in urban centres. Every major street and intersection in Canada, is criss-crossed by thousands of metres of wires, cables, ducts and conduits—each crossing one another as they wind their way from a client’s home or place of business to some final destination: a switching centre, a sewage treatment plant, a water filtration plant, a gas distribution centre, fire suppression systems, etc.

In addition to municipal services, ROWs are occupied by many other essential utilities that enjoy a conditional right to access municipal ROWs under various provincial and federal statutes. Balancing the resulting needs and demands that compete for this space, be it at grade, above or below ground, is not only a vital role of every municipal public works department in the country, it is a legislatively obligated requirement.

It is therefore not surprising that, even in cases where utilities enjoy a legislated right to use the ROW, this right is explicitly subject to municipal approval, consent, or at a minimum, agreement on the location of the installation. Generally, all utilities as a matter of course, apply for and obtain municipal permits for work on the public ROW. This gives utilities the assurance that they will be able to access these vital corridors for their purposes and recognizes the inescapable reality that, in such a complex environment, someone must play a central coordination role. In the specific case of telecommunications, the importance of the municipal role has been recognized and explicitly incorporated into the legislative scheme since its very first iteration was adopted by Parliament in 1899.

Municipalities are the only entity capable—technically or legally—of carrying out this vital role for the benefit of all users. More importantly, in order for these corridors to function efficiently and effectively, they require proper long-term planning, as well as active daily management by municipal officials. To get a sense of the magnitude of the task, it is not rare to see some 30 different users vie for space within a single ROW corridor. Municipalities therefore ensure that:

- all users are afforded access to install, operate, and maintain their equipment;
- physical conflicts and overlaps are avoided to minimize costs, for all users, particularly when accessing their own equipment;
- various safety regulations are respected—such as horizontal and vertical separation requirements between sensitive equipment like gas pipes or water and sewer lines;
- personal safety risks to workers and to the general public are minimized;
- risks of accidental breakages and service disruptions are minimized;
• space will continue to be available to meet the evolving needs of the utilities and the community in the long term;
• road closures are reduced and traffic disruptions and congestion are minimized;
• infrastructure deployment of all types meets aesthetic considerations and requirements for the general good of the community; and,
• ROWs can increasingly be used and adapted to play a role in combatting climate change (urban forest, rainwater retention, heat island reduction, etc.).

Data, planning and accountability

To fulfill their central coordination role, and ensure municipal ROWs function for the benefit of all utilities that have a legislated conditional right of access to the space, municipalities must gather key pieces of data from all users. This data is essential to manage the space effectively and is typically obtained through a municipality’s permitting process.

The permit process also allows municipal officials to perform crucial verifications each time a utility—including carriers—wants to perform work within the ROW, particularly when the work involves installing new equipment. Municipal verification includes checking for short-term and long-term conflicts with future municipal and/or provincial projects (thereby reducing the need for relocations in the future), identifying conflicts in time and space with other users of the ROW and assisting in resolving those conflicts, and minimizing disruptions to the public. Hundreds of ROW permits are issued by individual municipalities each year—thousands in some cases.

The built-in accountability of this approach ensures that each utility bears the full cost of its projects without transferring these costs to other utilities or to the local taxpayer. The permitting process also allows the municipality to follow-up on individual permit applications to make sure the proposed work a) is done safely, b) that it is completed, and c) that each site is properly reinstated. Even with the current level of municipal oversight, significant deficiencies frequently occur. Continued use of municipal approval and accountability systems are therefore essential if the ROW space is to work for the benefit of all utilities, particularly in a context where emerging technological needs make it clear that demand for the space will only increase across the country in the coming years.

Speed of deployment

Carriers, like all ROW users, rely on the timely, orderly and cost-effective deployment of their equipment. Individual permit processes and processing times understandably vary across the country but a review of the relevant data in any Canadian municipality will show that municipal permit processing systems currently meet the demands of industry. There are no examples of any substantial operational delays caused to utilities by the way municipalities manage the ROW space.

Delays on individual permits can arise because of technical issues and the operational complexities of limited space and competing requests to access the ROW. A carrier’s conduit, for example, might have to be realigned to go above or below a watermain. These operational considerations occasionally require plan revisions, further information, etc., but there are no systemic issues within the municipal sector that pose a barrier to the national deployment of telecommunications infrastructure. In fact, it is in the best interests of a municipality and its citizens to work with carriers to help ensure deployment occurs in a timely way to allow for increased services to residents and businesses alike.

Looking to the future, such as the requirements to successfully deploy 5G technology when carriers are ready to do so, municipal officials across the country have demonstrated their ability to work with carriers to get the job done. That said, municipalities feel that through better dialogue, information sharing, and cooperation, the speed of the deployment process could be
improved and it could be made more cost-effective. This point is further developed below.

**Protecting local taxpayers**

FCM recommendation: Maintain the integrity of the local taxpayer and do not indirectly transfer costs onto the municipal tax base.

**The principle**

Deploying telecommunications infrastructure generates costs: roadways are cut, lawns are excavated, trees are damaged, and increased congestion complicates future work for all utilities. Keeping the local taxpayer whole has been a central tenet of the telecommunications framework established by the CRTC since the introduction of a competitive marketplace in 1993. This central principle is as relevant today as it was 25 years ago.

The “cost-neutrality” principle, the elements of the cost-recovery formula, and how these are to be calculated now form part of well-established practices throughout the country. While the cost-recovery methodology does not provide for all cost elements generated by the carriers’ work and presence within municipal ROWs to be completely recovered, it has provided predictability and transparency to all stakeholders and is generally deemed to be workable.

In a competitive marketplace, where different carriers offer different services to different clienteles, ensuring that the market bears the costs of providing the targeted services is sound public policy. Furthermore, municipalities still operate within a tightly constraining fiscal framework. As it stands, the municipal tax base has inherent geographical limitations and limited flexibility as a public policy tool. Unlike federal or provincial taxation powers, there is little room for creative fiscal solutions and costs can only be borne locally—they cannot be shared broadly to achieve national or regional policy objectives. This is particularly relevant in the context of achieving universal access in small, remote communities.

**ROW permit fees and causal costs**

Federally-regulated carriers are no different in this regard than any other utility that provides services essential to the functioning and well-being of the community: drinking water, natural gas, sewage treatment, electricity, stormwater management, fire suppression, federally-regulated pipelines, etc. With respect to permit fees, it should be pointed out that municipalities work strictly on a cost-recovery basis. Fees are used to cover the staff costs and other resources required to make the system work effectively. Additional costs—beyond permit fees—are only billed to carriers in accordance with the CRTC’s “causal cost” calculation methods, and they do not differ fundamentally from cost elements borne by other utilities.

**Non-ROW assets and market value**

There is a significant difference between municipal ROWs and other assets owned by municipalities. Municipalities cannot charge “rent”—or an equivalent—for the use of their ROW space for installations permitted under s.43 of the *Telecommunications* Act. This principle was established by the CRTC in its very first decisions arising from the introduction of a competitive marketplace for telecommunications. Although municipalities need and want the latest services, and would therefore not be prone to preventing the deployment of communications equipment by charging unreasonable rents, the CRTC’s rationale has been made clear. Where the ROW is the only means of access to a customer, or the only suitable location for equipment to provide a certain service, allowing municipalities to charge an economic rent could result in a financial veto of sorts.

However, FCM is of the view that the rationale that underpins this approach to ROWs does not apply to other assets. Outside the ROW space, when carriers can choose from a number of possible assets to install equipment, they must negotiate with the asset’s owner and come to mutually-agreeable terms. FCM submits that, in this context, municipalities should maintain the
same status as every other asset owner. Where access to a structure has value to a carrier, it should not matter whether it is privately or publicly owned. In all cases, the market value of that access should form part of the equation.

Singling out municipal assets for different treatment would be the equivalent of asking municipalities to subsidize the carriers’ profits. Municipalities, like other asset owners, make investments to build and maintain their assets. These investments are identical to the ones made by private owners and, as such, should be entitled to the same economic treatment. In addition, outside the ROW space itself, no other utility can require access to a municipality’s assets without coming to an agreement that includes the market value of this preferred location to that utility.

In short, in a context where there is a significant need nationwide to invest in the most basic infrastructure—public transit, roads, bridges, sewers and drinking water—it is difficult to argue that Canadians should accept a larger property tax bill in order to help fund the services of for-profit telecommunications carriers. Importantly, however, this does not mean that system-wide savings cannot be achieved. In fact, as outlined below, municipal experience demonstrates that there are several opportunities to reduce system-wide expenditures to the benefit of everyone, including carriers and consumers.

Working together to achieve system-wide cost savings

Anyone who lives in a larger city has witnessed this scenario: a carrier breaks up a roadway to install its equipment. Weeks later, another carrier will excavate a new pit to install its own network, followed by a third, afterwards. The municipal sector’s collective experience shows that there are a number of simple but highly-effective ways of streamlining deployment of telecommunications equipment that would yield system-wide cost savings. These savings would benefit carriers, municipalities and, ultimately, Canadian consumers.

The suggestions put forward by FCM are not solutions that naturally lend themselves to a legislative solution. However, FCM is of the view that these hold the most potential with respect to developing best practices that would improve the “on-the-ground” reality, speed up deployment and reduce costs.

In order to start the discussion on improving operational issues, FCM is happy to propose the following list of improvements that, in its view, merit consideration:

- Advance notice by carriers of large-scale projects—Deployment of telecommunications infrastructure could be improved with better information sharing at the front end of carriers’ planning processes. Carriers do not routinely share their long-term plans with local officials. Municipalities can understand that, for commercial reasons, a carrier might not want to jeopardize its competitive advantage. However, when a municipality receives little advance notice of a large-scale deployment on its territory, it cannot take measures to ensure resources are in place to respond as expeditiously as possible to carriers’ needs. By the same token, a municipality cannot plan or sequence its own large infrastructure projects in anticipation of a carrier’s future needs, thereby achieving

significant savings for all stakeholders. Notice should be given through the proper process, to municipal staff rather than through political channels.

- **Joint planning**—Deploying new infrastructure (broadband, 5G, etc.) should be planned jointly by carriers wherever possible. Joint or concurrent, coordinated permit applications, for example, are a simple way of reducing duplication of administrative steps (technical circulations, plan analysis, etc.), and their resulting costs and delays. When municipal officials identify opportunities for carriers to work together in order to minimize costs, there is general reticence on the part of the industry. Ways of working together to identify and overcome concerns related to joint planning should be explored. (For an illustration, see the Winnipeg MB Case Study).

- **Jointly building infrastructure**—Having a number of carriers build a single bank of underground ducts at the same time is much cheaper for all involved than a series of individual construction projects in the same location. There are countless opportunities that arise daily across Canada. Developing a framework to foster collaboration on this level holds the potential for significant savings.

- **Sharing infrastructure**—By and large, the industry still operates with the mindset that proprietary control over each piece of infrastructure is essential while this is no longer key to delivering modern services. Developing transparent and systematic means of sharing equipment would be beneficial.

- **Overbuilding future capacity**—In many cases, having carriers overbuild capacity would only add marginal costs—which could be recovered by leasing or selling the space to another carrier. There should be a means of requiring overbuilding where this can remove the need for separate and costly construction projects in the future. It can also allow for increased speed of future deployments, potentially of new or emerging technology.

- **Taking full opportunity of existing systems**—In larger urban centres, where the demand by carriers is greatest, systems are already in place—such as digital mapping—to facilitate large-scale, rapid deployment of telecommunications infrastructure. It is not rare for a municipality to receive, as part of a permit application, hand-drawn sketches or PDF schematics that are not to scale. Educating sub-contractors to take advantage of existing systems would be cost-effective.

- **Systematic removal of abandoned, unused or obsolete equipment**—Carriers keep adding equipment to provide new services but seldom undertake a systematic review of their infrastructure with a view to removing obsolete equipment. This proliferation of equipment within the ROW, without a systematic rationalization, raises costs, impedes progress, and slows deployment speeds. Systematic removal, particularly aligned to other work, coupled with a rapid process to make an objective determination if a piece of equipment remains useful, would greatly help reduce ROW congestion and costs, simplifying the future deployment of emerging technologies.

- **Managing third-party access agreements**—Carriers sometimes decide to grant access to a third party to their equipment located within municipal space, often charging leasing fees for the space. In principle, sharing of infrastructure is beneficial. However, when these agreements are not approved by the municipality and the third-party agreement is undisclosed, this can create significant delays and costs when the relocation of equipment is required. As these are private arrangements, the municipality often has no authority over the third-party and the CRTC has taken the position that it does not have jurisdiction over the matter either. Developing commonly accepted notification practices would prevent costly delays.

- **Exploring training opportunities**—Smaller or more remote municipalities often do not have access to the resources or expertise within
their staff complement—or even the local community—to support deployment in the same way large cities do. Similarly, on the carrier side of the equation, the sophistication of sub-contractors used by carriers also varies considerably. As far as FCM members have been able to ascertain, there are limited formal training opportunities in ROW management. These could help fill expertise gaps, thereby enhancing deployment speeds.

Some of the cost-saving suggestions above could have, as an additional benefit, the potential of fostering a more competitive marketplace for consumers. Joint planning, joint construction, equipment sharing are all tools that can remove barriers that delay or prevent other carriers from entering a specific geographical market.

In addition, there is currently no rule or oversight mechanism to prevent carriers from creating local monopolies by cutting up and allocating parts of a municipality to each other. It is not rare, when new subdivisions are being planned, for example, to see one carrier deploy its own exclusive network in one subdivision, while another carrier becomes the sole service provider in another. This practice creates duplication and decreases competitiveness in the market and is not beneficial to taxpayers and consumers.

As far as the direct municipal role is concerned, municipalities play their essential role in safeguarding conditions for a competitive marketplace by managing ROWs in such a way that corridors are preserved for future users and new technology.

### Part III: Federal policy and regulatory oversight

**Governance framework for telecommunications**

**FCM recommendation:** Maintain the wording of sections 43 and 44 of the *Telecommunications Act*.

**Dialogue and problem-solving**

The creation of a competitive telecommunications marketplace in 1993 required ironing out countless details, fine tuning processes, reallocation of resources, as well as developing best practices. Although these changes generated a handful of well-known litigation cases, the reality is that, over the last 25 years, legal disputes have been the exception and, often times, arose as “test cases” for the benefit of carriers as much as municipalities. The decisions—by the CRTC and the Courts - helped determine some of the key parameters of the new, competitive environment created by deregulation. These cases enabled stakeholders to achieve a level playing field and a good degree of predictability.

Outside these few cases, hundreds of municipal access agreements were successfully-negotiated and are currently in place. To that end, FCM has been investing considerable resources in helping municipalities set up viable local relationships with carriers for the benefit of their residents, businesses and institutions. Through initiatives like the pan-Canadian Technical Committee on Rights-of-Way, the recently-updated Handbook on *Telecommunications and Rights-of-Way*, workshops, conferences, presentations, etc., municipalities have led the way in disseminating best practices and creating a positive, mutually-beneficial environment in which the telecommunications industry can operate. This work continues for emerging technologies with FCM’s working group on small cell attachments and the preparation of a handbook aimed at facilitating the deployment of this type of equipment.

FCM is of the view that a collaborative approach is the more effective means of achieving continued improvements in the telecommunications framework. When it comes
to managing operational or logistical issues, federal legislation is not designed to best address the types of issues that carriers, their contractors, and municipal officials manage and resolve on the ground on a daily basis. The municipal sector and the industry can both learn from joint successes—such as the Joint Protocol on Antenna Siting—and from less-productive exercises like the CISC-MAWG process that was followed to develop the “Model MAA” document. These lessons should be harnessed to develop effective means of solving outstanding issues by bringing about meaningful dialogue.

Dispute-resolution

Access to faster, evidence-based and specialized dispute-resolution mechanisms would likely present an improvement on the current framework, particularly for specific operational issues. However, with respect to setting out the terms of longer-term relationships—such as Municipal Access Agreements—incentives to negotiate mutually-acceptable terms should not be diluted. Litigation has been the exception to resolving differences since 1993 and should remain the exception. Changes to the mechanism could be considered if the new process is developed and accessed by mutual consent and equally accessible to all parties. Rights of appeal to the judicial system should be maintained in all cases.

Respecting the constitutional authority of municipalities

Most municipalities in Canada have in place bylaws of general application that regulate various aspects of carriers’ operations. Traffic bylaws, excavation bylaws, tree-protection bylaws—to name a few—apply to all utilities that rely on rights-of-way to deploy their infrastructure. (These are distinct from bylaws adopted by Gatineau QC and Calgary AB with a view of setting the process for granting their municipalities’ “consent” under the Telecommunications Act.) These bylaws play a crucial role in setting a transparent and predictable environment on key operational matters.

The CRTC has explicitly stated, in past decisions, that carriers must comply with local bylaws. Changes to federal legislation should not attempt to circumvent the need to comply with municipal bylaws of general application of this nature.

**Governance framework for small cells**

**FCM recommendation: Maintain the jurisdiction between the CRTC and ISED in the governance of small cells.**

The true benefits of redefining the jurisdiction of these two federal bodies are unclear. As it stands, a framework for telecommunications that functions generally quite well—and has met the needs of municipalities and the industry—has been gradually developed and implemented across the country since 1993. This system has led to the successful negotiation of hundreds of Municipal Access Agreements and there are very few remaining uncertainties. In addition, as mentioned earlier, there is no evidence of systematic barriers to deployment needing to be addressed.

Looking at the antenna side of the infrastructure equation, the municipal sector and the industry, with the help of ISED, have successfully developed a joint protocol to govern antenna sittings, with only a single significant dispute brought before the courts for resolution.

A change of this magnitude and nature would inevitably create system-wide uncertainty. Uncertainty inevitably generates costs as each stakeholder’s roles, obligations, authority, etc., are ironed out. Without arriving at a consensus on what issue this change is meant to address, it is not possible to determine, at this moment, if this change would generate the desired outcome. FCM is of the view that, at a time when resources should be spent on deployment and increasing connectivity, a change in
jurisdiction would create a significant and regrettable distraction.

Clarifying ISED and CRTC responsibilities over broadband

**FCM recommendation:** Clarify the responsibilities of ISED and the CRTC over broadband in order to facilitate the implementation of a national broadband strategy.

There has been ongoing uncertainty about which organization leads federal work to advance broadband in Canada. ISED is mandated to increase high-speed broadband coverage and to foster a strong investment environment for telecommunications services. The CRTC, as an administrative tribunal, regulates and supervises telecommunications in the public interest.

In order to clarify accountabilities and activities, we recommend that ISED be responsible for the development of a comprehensive national strategy, policy setting and ongoing reporting to Canadians on progress toward mandated standards, and for policy and programs to enable faster roll-out of mobile networks in rural areas. ISED should also deliver core funding on a long-term predictable basis, and coordinate with other funding sources to ensure consistency with a national strategy.

This would leave the CRTC responsible for technical data and needs assessments, including a mandate to expanded current communications monitoring activities on the urban versus rural digital divide. FCM recommends the CRTC develop a more robust annual communications monitoring report, including metrics beyond speed, as well as convening key user groups to discuss the needs and challenges of broadband expansion to rural, remote and northern areas. Any funding programs delivered through the CRTC would be a complement to the core funding managed by ISED.

Conclusion

The municipal sector has always been and remains a motivated partner to facilitate the timely, orderly and cost-effective deployment of communications infrastructure. Indeed, as indicated in our submission, the growth and prosperity of municipalities depend on it.

As FCM’s submission demonstrates, this premise is not borne out by 25 years of collective experience. Operational issues are better resolved through dialogue and joint development of best practices.

The consensus/best practices model has been successful in facilitating the deployment of cellular telephone services. The freely-negotiated Antenna Siting Protocol reduced delays and costs associated with transmission antenna installations. FCM is currently planning to produce a handbook of best practices and operational considerations to support the municipal sector in the expedient deployment of small cells.

To move forward in a meaningful way, it would be useful to produce a better-defined list of issues that could be prioritized based on mutually agreed upon objectives, such as rapid deployment of services, public protection, and cost savings. These discussions would ideally take place in a multi-stakeholder forum where ideas can be shared and assessed in a dynamic fashion.

Municipalities look forward to continued engagement with the federal government as regarding the evolution of the telecommunications sector. We share the goal of universal access and rapid deployment of communication services today and as technology continues to change into the future – to benefit Canada as a whole and the communities and citizens within our country. Achieving national connectivity objectives must build on and enhance the long-standing partnership with municipalities.