EB-2011-0120

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by Canadian Distributed Antenna Systems Coalition for certain orders under the *Ontario Energy Board Act, 1998*.

NOTICE OF MOTION

Toronto Hydro-Electric System Limited ("THESL") will make a Motion to the Ontario Energy Board (the "Board") on a date and at a time to be determined by the Board.

THE MOTION IS FOR:

1. An Order of the Board under Rule 23.03 of the Board's *Rules of Practice and Procedure* directing CANDAS (the "Applicant") to provide further and better responses to THESL interrogatories Nos. 1(d) and (e), 18(a), 19(d), and 50 and CEA interrogatories Nos. 19(b), 33, and 60 (collectively, the "**Disputed IRs**").

THE GROUNDS FOR THE MOTION ARE:

2. On December 9, 2011, the Board determined at page 2-3 of its Decision and Order on the CANDAS and CCC motions (the "**Motion Decision**") that the following issues will guide the Board in determining the relevance of disputed interrogatories:

   (a) Does the CCTA decision apply to the attachment of wireless equipment, including DAS components, to distribution poles?

   (b) If the answer to (a) is no, then should the Board require distributors to provide access for the attachment of wireless equipment, including DAS components, to distribution poles?

   (c) If the Board requires distributors to provide access for the attachment of wireless equipment, including DAS components,

> *under what terms and conditions should those arrangement be governed?*

3. The Board goes on to conclude at page 9 of the Motion Decision that "information related to all attachments which facilitate wireless communications in any form is relevant to the proceeding" and based on this conclusion the Board ordered THESL to, among other things, identify the parties that currently have wireless attachments on THESL's poles; provide THESL's master agreement with each party; and to **identify the price for the wireless attachments**.

4. Because the Board has determined that the price charged for wireless attachments is relevant to this proceeding, THESL submits that the information requested in the Motion Decision cannot be considered by the Board in a vacuum.

5. CANDAS has applied for an order of the Board to impose a regulated price of $22.35 per pole per year on distributors for wireless attachments. CANDAS has then repeatedly refused to respond to the Disputed IRs that were intended to help the Board assess whether this rate is consistent with the market rates otherwise paid for similar attachments in the competitive wireless siting market.

6. THESL submits that this information is directly relevant given that there is evidence already on the record that there is a significant gap between the Board-regulated rate of $22.35 and the competitive market rates for wireless attachments.

7. For example, THESL has filed the evidence of industry expert Mr. Michael Starkey who at pages 53-55 of his affidavit provides that:

> "Rates clearly vary dramatically depending upon the location, elevation, anticipated coverage available, access to power/fiber and numerous other factors. Indeed, consultants who negotiate arrangements for, and management of, these types of leases

> abound. Unfortunately, as is the case in competitive markets, rates, terms and conditions agreed to between suppliers and consumers are often confidential or difficult to obtain.
>
> […]
>
> In summary, prices differ substantially depending upon the variables I described above, but range from $500-$800 per month on the low side to $5,000 per month on the higher side for the more traditional tower and rooftop access. For example, the City of Chicago currently assess fess of $1,654 and $3,307 per pole, per year for use of light poles and traffic signals, respectively."

8. For the proposed 780 node Toronto DAS Network, the difference when annualized between these competitive market rates and the subsidized regulatory rate CANDAS is seeking is vast. Put simply, CANDAS members are seeking to profit from regulatory arbitrage by gaining a direct subsidy from THESL and an indirect subsidy from THESL's ratepayers.

9. It is in this context that THESL and the CEA sought, through the Disputed IRs, to obtain evidence directly from Extenet and Public Mobile about comparable competitive market rates they have paid to attach wireless attachments in comparable circumstances.

10. The Disputed IRs were filed on August 9, 2011 and were responded to by CANDAS before CANDAS had the opportunity to consider the specific concerns raised by THESL and the CEA in their intervenor evidence filed September 2, 2011. In an effort to save the Board's the time with unnecessary motions THESL first asked CANDAS to reconsider many of the Disputed IRs in light of the THESL and CEA evidence during the technical conference.[1]

11. On November 16, 2011, in response to Undertaking JTC1.3, CANDAS did provide some limited updates to its original interrogatory responses,

[1] See the Technical Conference Transcript at Pages 53-54.

but in respect of the Disputed IRs that were the subject of this undertaking "CANDAS maintains its objections to the remaining interrogatories identified by THESL."

12. THESL submits that the information requested through the Disputed IRs is directly relevant to this proceeding. The information is entirely consistent with the pricing information ordered by the Board in its December 9, 2011 Motion Decision and is directly relevant to the question set out in the Board's letter dated September 14th, 2011 which makes it clear that: "The Board is of the view that the question of whether the current Board-approved attachment rate applies to wireless attachments is appropriately part of this proceeding."

13. THESL submits that by refusing to answer the Disputed IRs, CANDAS is making it difficult for the Board to assess this question and to consider whether the Board's regulated rate of $22.35 per pole per year is grossly insufficient when compared against competitive wireless attachment rates.

14. THESL submits that the Board's *Practice Direction on Confidential Filings* provides a comprehensive procedure for the filing of confidential materials during proceedings at the Board. If CANDAS' concern is that the material is confidential, it may seek to invoke this procedure, but it is not open to any party, including CANDAS, to withhold such directly relevant information from the Board.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

15. Exhibit "A": THESL interrogatories Nos. 1(d) and (e), 18(a), 19(d), and 50 and CANDAS' Response;

16. Exhibit "B": CEA interrogatories Nos. 19(b), 33, and 60 and CANDAS' Response;

17. Exhibit "C": Excerpt of the Technical Conference Transcript related to the Disputed IRs;

18. Exhibit "D": CANDAS Response to Undertaking JTC1.3;

19. Exhibit "E": Excerpt of the December 9, 2011 Motion Decision; and

20. Exhibit "F": The Board's September 14, 2011 Letter.

21. Such further evidence as counsel may submit and the Board allow.

All of which is respectfully submitted this 22nd day of December 2011.

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Counsel to THESL

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Kirsten Walli
Board Secretary

Tel.: 416-481-1967
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AND TO: HELEN NEWLAND, COUNSEL FOR CANDAS
AND TO: INTERVENORS OF RECORD IN EB-2011-0120

EXHIBIT “A”

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Borden Ladner Gervais

August 9, 2011

Delivered by Email and RESS

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street
Ste. 2701
Toronto ON M4P 1E4

Dear Ms. Walli

Re: Interrogatories of Toronto Hydro-Electric Systems Limited ("THESL")
Canadian Distributed Antenna Systems Coalition ("CANDAS") Application
OEB File No.: EB-2011-0120 -

We enclose THESL's interrogatories in the above noted matter pursuant to the Board's Procedural Order No. 1.

Yours very truly,

BORDEN LADNER GERVAIS LLP

J. Mark Rodger

Encl.

copy to: Pankaj Sardana, THESL
Helen T. Newland, CANDAS counsel
Kristi Sebalj, OEB counsel
Intervenors in EB-2011-0120

TOR01: 4701664: v1

EB-2011-0120

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by the **Canadian Distributed Antenna Systems Coalition** for certain orders under the *Ontario Energy Board Act*, 1998.

INTERROGATORIES OF
TORONTO HYDRO-ELECTRIC SYSTEM LIMITED
(on the evidence of the Applicant, CANDAS)

August 9, 2011

BORDEN LADNER GERVAIS LLP
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Counsel to Toronto Hydro-Electric System Limited

Toronto Hydro-Electric System Limited ("THESL") submits the following interrogatories of the Canadian Distributed Antenna Systems Coalition ("CANDAS"). CANDAS is a coalition of three Canadian member companies: ExteNet, Public Mobile and DAScom. Any reference in these IRs made to CANDAS or the Applicant should be understood to mean CANDAS as a collective, and/or any one of the CANDAS member companies.

I. Application[1]

1. *Reference: p. 4 and 21, paras. 2.8, 2.9 and 7.10*

At p. 2.8, CANDAS states that: "Moreover, Canadian carriers who require access to power poles to enable their wireless networks are now effectively precluded from entering the market. This is either because they are unable to obtain pole access at all, or because the terms and conditions of such access are completely indeterminate or subject to such uncertainties as to prelude the requisite capital investments. If left unchecked, the ability of electricity distributors to use their monopoly power to unduly discriminate among Canadian carriers by unilaterally deciding who may have access to regulated assets and who may not, will materially and adversely affect the development of a competitive wireless industry in Ontario." (emphasis added)

Later, paragraph 7.10, CANDAS states that "As a result of the continuing delays in permit processing and the uncertainty as to when the Toronto DAS Network would be 100 percent completed, Public Mobile decided to launch its new Toronto service using "temporary" Macro Cell Sites. Accordingly, Public Mobile, ExteNet and DAScom agreed to terminate arrangements for the committed use of the Toronto DAS Network by Public Mobile. Although Public Mobile is still interested in utilizing DAS technology for portions of its network in Toronto, it will not commit to do so unless and until it receives credible assurances, including assurances that THESL will grant timely and long-term pole access for node and fibre attachments."

[1] As filed April 21, 2011.

(a) Please describe in greater detail all of the other alternatives available to Canadian carriers - such as Public Mobile - to the Toronto DAS Network solution proposed by ExteNet and DAScom.

(b) From the evidence of CANDAS, it appears that Public Mobile is currently using a "Macro Cell Site" alternative to the Toronto DAS Network. Please provide particulars on how a Macro Cell Site approach can be used to provide service to Canadian carriers.

(c) Who are the vendors from whom Canadian carriers - such as Public Mobile - that can purchase "Macro Cell Site" service? Rogers? Bell? Telus? American Tower? Crown Castle? Please identify any others.

(d) What is the total cost being paid by Public Mobile for use of the Macro Cell Site alternative for coverage in the exact service area that is proposed to be covered by the Toronto DAS Network?

(e) What is the difference in total cost between Public Mobile's "Macro Cell Site" alternative currently being used by Public Mobile and the forecasted costs of the Toronto DAS Network proposed by ExteNet and DAScom?

(f) Please specify and provide the relevant particulars regarding Public Mobile's likely use of a DAS network, how many nodes it would require within its current business planning period, where those nodes would be located, and what proportion of its traffic volumes would be handled through such a network.

2. *Reference: p. 9, para. 3.11*

CANDAS states "That the parties' settlement on this issue was reached after "considerable discussion" and resulted in universal access by all Canadian carriers (with only the Bell Canada carve out) is significant. As appears from the THESL Letter, THESL now takes the position that the CCTA Order does not apply to wireless attachments because there was no discussion about such attachments during the CCTA

II. Written Evidence of George Vineyard[2]

18. ExteNetExteNet *Reference: p. 4, Q. 5*

Mr. Vineyard states that "ExteNet Systems has entered into approximately 80 attachment agreements with over 35 utilities, most of which involve attachment to power poles."

(a) Please provide a copy of each such attachment agreement.

(b) Please provide the highest, lowest and average monthly pole rental rates. Please separately provide the upfront charges, make ready fees and any other non-recurring charges associated with each sites covered by the 80 attachment agreements.

(c) Please also identify the number of agreements that ExteNet Systems, or any other member of CANDAS, has entered into which allow for the attachment of DAS antennas and other equipment to facilities other than power poles or lampposts.

19. *Reference: p. 4 and 6, Q. 5 and 6 (also paragraph 6.2 of the Application)*

CANDAS states that "ExteNet and its parent company have significant experience in the design and construction of DAS networks."

Mr. Vineyard states that "...ExteNet Systems has entered into approximately 80 attachment agreements with over 35 utilities, most of which involvement attachment to power poles." And "Given that attachment rates are a matter of public record....."

(a) When (and in what jurisdiction) was ExteNet Systems' first transaction involving a wireless attachment?

(b) Aside from the proposed Toronto DAS Network, what other DAS networks does ExteNet Systems operate in North America?

[2] As filed July 26, 2011.

i. please indicate with reference to the nearest city, state or province, the jurisdiction in which each DAS network is located;

ii. for each of these networks, please indicate what percentage of all of the wireless attachments that constitute that network rely on distribution utility poles to attach to, and what percentage rely on attachments to other types of infrastructure (traffic lighting pole, side of building, rooftop, macro cell tower, stand alone tower, billboards, signage, etc.); and

iii. for each DAS network, please describe the specific other infrastructure being used by ExteNet for its wireless attachments.

(c) In respect of these 80 attachment agreements, what percentage of ExteNet Systems wireless attachments are mounted strictly within the 2ft communications space of the distribution poles, what percentage are mounted in part within the 2ft communications space and in part outside of that space, and what percentage are mounted entirely outside of the 2ft communications space, and finally what percentage would be classified as pole top antennas?

(d) Please provide all wireless attachment pricing information paid by ExteNet Systems over the past five years in respect of each of the networks noted in your response to the questions above.

20. *Reference: p. 6 and 9, Q. 6 and 10*

Mr. Vineyard states that "ExteNet acknowledges and accepts that telecommunications attachments to electricity distribution poles should be accommodated and carried out in a manner that: (i) is fully compliant with all applicable safety regulations; (ii) does not interfere with the primary function of the pole owner, i.e., the reliable delivery of power to electricity customers; and (iii) does not impose incremental costs or burdens on rate-payers that are not recovered in rates (e.g. by requiring construction of additional pole

50. *Reference: p. 8, Q. 12*

Mr. O'Shaughnessy describes a process by which Public Mobile first moved to temporary macro sites, and then from those macro sites to permanents structures. In particular, he states that "Public Mobile decided to switch to traditional Macro Cell Site strategy, installing antennas on building rooftops and special-purpose towers…It is now incurring the cost of upgrading each temporary Cell Site to a permanent structure." and that "…Public Mobile has incurred the increased cost of building rooftop Macro Cell Sites as mentioned earlier."

(a) Please identify the precise date on which Public Mobile made this decision to switch to its Macro Cell Site strategy.

(b) Please provide the location of each of the "Macro Cell Sites", and please indicate whether and to what extent each site is located on a roof top, balcony, special-purpose structure or other location (specify if other).

(c) Regarding the response to (b), please also provide the coverage area for each site and describe the propagation characteristics of the antennas used at each site.

(d) Please identify the date on which Public Mobile began to utilize the traditional Macro Cell Sites.

(e) Please provide copies of the agreements entered into by Public Mobile associated with the said Macro Cell Site strategy including pricing paid by Public Mobile for these attachments.

(f) Please provide the particulars that demonstrate whether and to what extent the coverage area intended to be supported by the Toronto DAS Network (as originally conceived) differs from the coverage area supported by the Macro Cell Sites, including all reports, analyses, studies, working papers, memoranda, correspondence, and other documents

(g) Please provide the particulars that describe the costs that Public Mobile incurred to install the Macro Cell Sites, including all reports, analyses, studies, working papers, memoranda, correspondence, and other documents.

(h) Please provide the particulars that describe the costs Public Mobile incurred to upgrade "each temporary Cell Site to a permanent structure", including all reports, analyses, studies, working papers, memoranda, correspondence, and other documents.

(i) Please describe the extent to which each of the permanent antenna towers, sites or structures discussed are shared with other wireless providers in Toronto.

(j) Please provide the location of each permanent structure and indicate whether the site is located on a roof top, balcony, special purpose structure or other location (specify if other).

(k) Regarding the response to (i), please provide the coverage area for each site and describe the propagation characteristics of the antennas used at each site.

(l) Please provide the particulars that demonstrate whether and to what extent the coverage area intended to be supported by the Toronto DAS Network as originally conceived differs from the coverage area supported by the permanent structures, including all reports, analyses, studies, working papers, memoranda, correspondence, and other documents

(m) Please provide the particulars that demonstrate whether and to what extent the call carrying and data capacities intended to be supported by the Toronto DAS Network (as originally conceived) differs from the call carrying and data capacities supported by the permanent structures – please include with such particulars all reports, analyses, studies, working papers, memoranda, correspondence, and other documents.

(n) Regarding the response to (l), please also identify and describe the extent to which Public Mobile is currently capacity-constrained in that it is unable to provide call carrying and/or data related services to it current customer base in Toronto.

(o) Please provide the particulars that describe the costs (both initial costs and on-going monthly expenses) Public Mobile would have incurred for its part in the construction of the Toronto DAS Network had it been completed (as originally conceived), including all reports, analyses, studies, working papers, memoranda, correspondence, and other documents.

51. *Reference: p. 9, Q. 12*

Mr. O'Shaughnessy states that "The loss of the Toronto DAS network opportunity, delayed Public Mobile's Toronto market launch by six months (to May 2010), resulting in a related loss of market share."

(a) Please provide the particulars that describe "the loss of market share" referred to here, including all reports, analyses, studies, working papers, memoranda, correspondence, and other documents.

(b) Please provide Public Mobile's current market share in Toronto and/or the market relevant to Mr. O'Shaughnessy's statement.

(c) Absent completion of the Toronto DAS Network, is it Public Mobiles intention to withdraw from the Toronto wireless market?

(d) If the answer to (c) is yes, please provide the particulars in support of this position, including all reports, analyses, studies, working papers, memoranda, correspondence, and other documents.

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FILED ELECTRONICALLY AND VIA COURIER

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August 16, 2011

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
PO Box 2319, 27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli:

RE: Application by Canadian Distributed Antenna Systems Coalition ("CANDAS");
Board File No.: EB-2011-0120

We represent CANDAS in connection with its application to the Board regarding access to the power poles of licensed electricity distributors for the purpose of attaching wireless telecommunications equipment ("**Application**").

In accordance with Procedural Order No. 1, CANDAS is filing the Responses to Interrogatories of Toronto Hydro-Electric System Limited.

CANDAS will file two paper copies of the above-noted evidence tomorrow.

Yours very truly,

(signed) H.T. Newland

HTN/ko

cc: Mr. George Vinyard
ExteNet Systems, Inc.
Mr. Mark Rodger
Borden Ladner Gervais
All Intervenors

EB-2011-0120

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by the **Canadian Distributed Antenna Systems Coalition** for certain orders under the *Ontario Energy Board Act*, 1998.

RESPONSES TO INTERROGATORIES OF
TORONTO HYDRO-ELECTRIC SYSTEM LIMITED
(on the evidence of the Applicant, CANDAS)

August 16, 2011

I. Application[1]

Questions:

1. *Reference: p. 4 and 21, paras. 2.8, 2.9 and 7.10*

At p. 2.8, CANDAS states that: "Moreover, Canadian carriers who require access to power poles to enable their wireless networks are now effectively precluded from entering the market. This is either because they are unable to obtain pole access at all, or because the terms and conditions of such access are completely indeterminate or subject to such uncertainties as to prelude the requisite capital investments. If left unchecked, the ability of electricity distributors to use their monopoly power to unduly discriminate among Canadian carriers by unilaterally deciding who may have access to regulated assets and who may not, will materially and adversely affect the development of a competitive wireless industry in Ontario." (emphasis added)

Later, paragraph 7.10, CANDAS states that "As a result of the continuing delays in permit processing and the uncertainty as to when the Toronto DAS Network would be 100 percent completed, Public Mobile decided to launch its new Toronto service using "temporary" Macro Cell Sites. Accordingly, Public Mobile, ExteNet and DAScom agreed to terminate arrangements for the committed use of the Toronto DAS Network by Public Mobile. Although Public Mobile is still interested in utilizing DAS technology for portions of its network in Toronto, it will not commit to do so unless and until it receives credible assurances, including assurances that THESL will grant timely and long-term pole access for node and fibre attachments."

(a) Please describe in greater detail all of the other alternatives available to Canadian carriers - such as Public Mobile - to the Toronto DAS Network solution proposed by ExteNet and DAScom.

(b) From the evidence of CANDAS, it appears that Public Mobile is currently using a "Macro Cell Site" alternative to the Toronto DAS Network. Please provide particulars on how a Macro Cell Site approach can be used to provide service to Canadian carriers.

(c) Who are the vendors from whom Canadian carriers - such as Public Mobile - that can purchase "Macro Cell Site" service? Rogers? Bell? Telus? American Tower? Crown Castle? Please identify any others.

[1] As filed April 21, 2011.

(d) What is the total cost being paid by Public Mobile for use of the Macro Cell Site alternative for coverage in the exact service area that is proposed to be covered by the Toronto DAS Network?

(e) What is the difference in total cost between Public Mobile's "Macro Cell Site" alternative currently being used by Public Mobile and the forecasted costs of the Toronto DAS Network proposed by ExteNet and DAScom?

(f) Please specify and provide the relevant particulars regarding Public Mobile's likely use of a DAS network, how many nodes it would require within its current business planning period, where those nodes would be located, and what proportion of its traffic volumes would be handled through such a network.

Responses:

(a) The Application and the written evidence in the record contain sufficient detail as to the limited alternatives available to wireless carriers and demonstrate that such alternatives are not the equivalent of a DAS network solution. To the extent that this Interrogatory seeks greater detail about a specific network project or a particular carrier network, the information requested is not relevant to the issues raised by the Application. Moreover, production of this information would be unduly onerous relative to its probative value, if any.

(b) See response to THESL 1(a).

(c) See response to THESL 1(a).

(d) The information requested is not relevant to the issues raised by the Application.

(e) The information requested is not relevant to the issues raised by the Application.

(f) ~~The information requested is not relevant to the issues raised by the Application.~~Public Mobile does not have the information required to answer this interrogatory in relation to the City of Toronto. As a result of DAScom's inability to attach the wireline cabling required to provide network connectivity to the installed wireless nodes on THESL's poles, the contract between Public Mobile and ExteNet Canada was terminated. DAScom's inability to attach the wireline cabling required to provide wireline connectivity to and from the installed wireless nodes was the direct result of THESL's failure to process Cogeco's wireline attachment applications in a timely fashion.

As a further consequence and as stated in the evidence of Mr. Brian O'Shaughnessy at p.8, Q.12, Public Mobile abandoned its plans to use distributed antenna system (DAS) technology and redesigned its network based on macrocell technology. The ability of Public Mobile or of any other mobile wireless carrier to rely on innovative, smaller-cell, mobile wireless deployment technologies of their choosing in Toronto to achieve blanket outdoor coverage, will depend on the outcome of this proceeding.

II. Written Evidence of George Vinyard[2]

Questions:

18. *ExteNet* Reference: p. 4, Q. 5

Mr. Vinyard states that "ExteNet Systems has entered into approximately 80 attachment agreements with over 35 utilities, most of which involve attachment to power poles."

(a) Please provide a copy of each such attachment agreement.

(b) Please provide the highest, lowest and average monthly pole rental rates. Please separately provide the upfront charges, make ready fees and any other non-recurring charges associated with each sites covered by the 80 attachment agreements.

(c) Please also identify the number of agreements that ExteNet Systems, or any other member of CANDAS, has entered into which allow for the attachment of DAS antennas and other equipment to facilities other than power poles or lampposts.

Responses:

(a) Attached as Schedule 18(a)-1 and Schedule 18(a)-2 are two redacted copies of representative attachment agreements between ExteNet Systems and utility companies. Set forth in the table below is information regarding all the attachment agreements between ExteNet Systems and utility companies.

[2] As filed July 26, 2011.

Questions:

19. *Reference: p. 4 and 6, Q. 5 and 6 (also paragraph 6.2 of the Application)*

CANDAS states that "ExteNet and its parent company have significant experience in the design and construction of DAS networks."

Mr. Vinyard states that "...ExteNet Systems has entered into approximately 80 attachment agreements with over 35 utilities, most of which involvement attachment to power poles." And "Given that attachment rates are a matter of public record....."

(a) When (and in what jurisdiction) was ExteNet Systems' first transaction involving a wireless attachment?

(b) Aside from the proposed Toronto DAS Network, what other DAS networks does ExteNet Systems operate in North America?

(i) please indicate with reference to the nearest city, state or province, the jurisdiction in which each DAS network is located;

(ii) for each of these networks, please indicate what percentage of all of the wireless attachments that constitute that network rely on distribution utility poles to attach to, and what percentage rely on attachments to other types of infrastructure (traffic lighting pole, side of building, rooftop, macro cell tower, stand alone tower, billboards, signage, etc.); and

(iii) for each DAS network, please describe the specific other infrastructure being used by ExteNet for its wireless attachments.

(c) In respect of these 80 attachment agreements, what percentage of ExteNet Systems wireless attachments are mounted strictly within the 2ft communications space of the distribution poles, what percentage are mounted in part within the 2ft communications space and in part outside of that space, and what percentage are mounted entirely outside of the 2ft communications space, and finally what percentage would be classified as pole top antennas?

(d) Please provide all wireless attachment pricing information paid by ExteNet Systems over the past five years in respect of each of the networks noted in your response to the questions above.

Responses:

(a) ExteNet Systems constructed its first DAS network in the state of Michigan beginning in 2004.

(b)

(i) ExteNet Systems does not and will not operate the proposed Toronto DAS Network, which at this time is not in operation. The following table provides summary information with respect to the outdoor DAS networks currently being operated or monitored and maintained by ExteNet Systems, directly or through its operating subsidiaries, in the United States:

States where ExteNet Systems Outdoor DAS Networks Are Located	Number of Outdoor DAS Networks	Number of Outdoor DAS Networks with Any Nodes Attached to Structures Other than Utility Poles, Streetlight Poles, or Traffic Signal Standards
California	6	1 (building that also houses the hub facility)
Florida	1	0
Illinois	8	0
Massachusetts	9	0
Michigan	4	0
Nevada	1	1 (standalone poles placed by ExteNet Systems)
New York	2	0
Pennsylvania	1	0
Rhode Island	3	0
Texas	3	0

To the extent that the interrogatory purports to require a much more detailed answer, the information requested is not relevant to the issues raised by the Application; moreover, production of this information would be unduly onerous relative to its probative value, if any.

(ii) The foregoing table indicates the numbers of outdoor DAS networks in each jurisdiction in which any meaningful portion of the DAS antennas and DAS-related equipment (excluding fibre optic cabling installed in conduits) are attached to facilities other than power poles, streetlight poles (including lampposts) or traffic signal standards for purposes of any outdoor DAS network deployment. To the extent that the interrogatory purports to require a much more detailed answer, the information

requested is not relevant to the issues raised by the Application; moreover, production of this information would be unduly onerous relative to its probative value, if any.

(iii) Except as otherwise described above, no meaningful portion of any of the referenced outdoor DAS networks involves attachments to any infrastructure other than utility poles in the public rights of way or in utility easements, streetlight poles or traffic signal standards. For purposes of this response, "no meaningful portion" means that CANDAS is not aware of any such exceptions but could not absolutely rule out all exceptions without requiring ExteNet Systems to conduct an onerous and burdensome search of all of its documentation. To the extent that the interrogatory purports to require a much more detailed answer the information requested is not relevant to the issues raised by the Application; moreover, production of this information would be unduly onerous relative to its probative value, if any.

(c) See the Table at THESL 18(a) for information regarding the number of ExteNet Systems' attachment agreements with electric utilities in the United States that permit pole-top antenna attachments (before taking into account any changes in such agreements or related utility or state regulatory policies related to the FCC Decision 11-50 dated April 7, 2011 (Application, Tab 22)). ExteNet Systems does not have information or a method for determining the precise percentages of wireless attachments that are mounted within, without or partly within and partly without the communications space, which is not properly characterized as "the 2ft communications space" on the electric utility poles to which its DAS nodes are affixed. As discussed and described elsewhere in the responses to these interrogatories and the Board Staff Interrogatories, DAS antennas and all associated DAS node equipment are virtually never designed to fit entirely within the communications space, which would be needlessly disruptive to the pole owner and other attachers. Instead, equipment other than the DAS antenna is typically mounted below the communications space and the antenna, if not mounted on the top of the pole (in which case all of the DAS node equipment would be located outside the communications space), is typically mounted on an extension arm affixed within the communications space on the pole. To the extent that the interrogatory purports to require a much more detailed answer the information requested is not relevant to the issues raised by the Application; moreover, production of this information would be unduly onerous relative to its probative value, if any.

(d) The information requested is not relevant to the issues raised by the Application; moreover, production of this information would be unduly onerous relative to its probative value, if any.

Questions:

50. *Reference: p. 8, Q. 12*

Mr. O'Shaughnessy describes a process by which Public Mobile first moved to temporary macro sites, and then from those macro sites to permanents structures. In particular, he states that "Public Mobile decided to switch to traditional Macro Cell Site strategy, installing antennas on building rooftops and special-purpose towers...It is now incurring the cost of upgrading each temporary Cell Site to a permanent structure." and that "...Public Mobile has incurred the increased cost of building rooftop Macro Cell Sites as mentioned earlier."

(a) Please identify the precise date on which Public Mobile made this decision to switch to its Macro Cell Site strategy.

(b) Please provide the location of each of the "Macro Cell Sites", and please indicate whether and to what extent each site is located on a roof top, balcony, special-purpose structure or other location (specify if other).

(c) Regarding the response to (b), please also provide the coverage area for each site and describe the propagation characteristics of the antennas used at each site.

(d) Please identify the date on which Public Mobile began to utilize the traditional Macro Cell Sites.

(e) Please provide copies of the agreements entered into by Public Mobile associated with the said Macro Cell Site strategy including pricing paid by Public Mobile for these attachments.

(f) Please provide the particulars that demonstrate whether and to what extent the coverage area intended to be supported by the Toronto DAS Network (as originally conceived) differs from the coverage area supported by the Macro Cell Sites, including all reports, analyses, studies, working papers, memoranda, correspondence, and other documents

(g) Please provide the particulars that describe the costs that Public Mobile incurred to install the Macro Cell Sites, including all reports, analyses, studies, working papers, memoranda, correspondence, and other documents.

(h) Please provide the particulars that describe the costs Public Mobile incurred to upgrade "each temporary Cell Site to a permanent structure", including all

reports, analyses, studies, working papers, memoranda, correspondence, and other documents.

(i) Please describe the extent to which each of the permanent antenna towers, sites or structures discussed are shared with other wireless providers in Toronto.

(j) Please provide the location of each permanent structure and indicate whether the site is located on a roof top, balcony, special purpose structure or other location (specify if other).

(k) Regarding the response to (i), please provide the coverage area for each site and describe the propagation characteristics of the antennas used at each site.

(l) Please provide the particulars that demonstrate whether and to what extent the coverage area intended to be supported by the Toronto DAS Network as originally conceived differs from the coverage area supported by the permanent structures, including all reports, analyses, studies, working papers, memoranda, correspondence, and other documents

(m) Please provide the particulars that demonstrate whether and to what extent the call carrying and data capacities intended to be supported by the Toronto DAS Network (as originally conceived) differs from the call carrying and data capacities supported by the permanent structures – please include with such particulars all reports, analyses, studies, working papers, memoranda, correspondence, and other documents.

(n) Regarding the response to (l), please also identify and describe the extent to which Public Mobile is currently capacity-constrained in that it is unable to provide call carrying and/or data related services to it current customer base in Toronto.

(o) Please provide the particulars that describe the costs (both initial costs and on-going monthly expenses) Public Mobile would have incurred for its part in the construction of the Toronto DAS Network had it been completed (as originally conceived), including all reports, analyses, studies, working papers, memoranda, correspondence, and other documents.

Responses:

(a)-(o) CANDAS does not understand the relevance of the questions to the issues raised in the application. Moreover, requiring responses to the 15 sub-parts of the question, having regard to the probative value, if any, would be unduly onerous.

EXHIBIT “B”

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by the **Canadian Distributed Antenna Systems Coalition** for certain orders under the *Ontario Energy Board Act*, 1998.

INTERROGATORIES OF
CANADIAN ELECTRICITY ASSOCIATION
(on the evidence of the Applicant, CANDAS)

August 9, 2011

(d) How many attachments were made to the utility infrastructure in each network?

16. At paragraph 6.3, page 15 of the application, reference is made to CANDAS seeking to attach to 790 poles within the City of Toronto.

(a) Are the proposed nodes designed to accommodate multi-carriers?

(b) If yes, how many attachments per pole are contemplated?

(c) Is it one attachment per pole for each piece of equipment described at paragraph 5.1, page 12 of the application, i.e. one antenna and a neutral host piece of equipment for each node/carrier?

(d) How much existing fiber is scheduled to be utilized to support the 790 node deployment?

17. At paragraph 6.6, page 16 of the application, CANDAS states that without access to existing power and lighting poles upon commercially reasonable terms and conditions, neither the Toronto DAS Network, nor any other DAS network deployment in Toronto, would be economically or technically feasible.

(a) Please provide coverage characteristics, broadband capabilities monthly/annual costs, and/or per subscriber costs of DAS to traditional wireless Macro Cell Site based systems.

(b) Please provide any other particulars in support of this statement, including all reports, analyses, studies, working papers, memoranda, correspondence, and other documents.

18. Paragraph 6.7, page 17 of the application discusses the costs of creating a new corridor in Toronto, and notes that construction of a duplicative system of poles within City rights-of-way is not permitted under the terms of the Municipal Access Agreement (the "MAA").

(a) Has any CANDAS member proposed deploying stealth pole/infrastructure to support such a node network to the City of Toronto?

(b) Has any CANDAS member proposed utilizing underground conduit infrastructure to support their fiber network?

19. Public Mobile's use of Macro-Cell Sites is noted at paragraph 7.10, page 21 of the application.

(a) Please confirm that Public Mobile is currently using Macro Cell Sites to serve its customers.

(b) What is the difference in total cost between Public Mobile's "Macro Cell Site" alternative currently being used by Public Mobile and the forecasted costs of the Toronto DAS Network proposed by ExteNet and DAScom?

practices for traditional cable attachments to poles have been essentially stable for many years, even with the introduction of fibre cables (with respect to the attachment aspect). Please comment on the extent that wireless equipment of the type used by ExteNet, and in the industry generally, presents novel situations regarding safety, security, engineering and operational issues.

33. At question 10, page 9 of Vinyard's evidence, he states that "[t]he principal method for avoiding the imposition of costs on utility ratepayers should be the establishment of appropriate rates..."

    (a) Please provide the rates that attachers pay to access utility poles in other jurisdictions as well as the rates that attachers pay in other jurisdictions for attachments to structures other than utility poles.

    (b) Please provide all underlying assumptions to support this response.

34. At question 10, page 9, Vinyard goes on to state that "[s]uch an approach appears to be reflected in the current rates for attachments established by the Board." The evidence alludes to the 2005 CCTA decision when Vinyard references "current rates for attachments established by the Board".

    (a) Please confirm that the CANDAS Application is limited to wireless attachments that can all be contained within the communication space as defined in the CCTA decision.

    (b) If CANDAS believes that there is additional space outside of the communication space where wireless attachments may be placed, please provide the legal basis for that position from the CCTA decision.

35. At question 11, pages 9-10 of Vinyard's evidence, he provides his opinion on the reasonable terms and conditions relating to liability in relation to DAS attachments.

    (a) So that participants in this proceeding may better understand the magnitude of exposure to any possible liability, please provide the approximate value of the apparatus placed in an individual DAS installation (hypothetically, a utility boom truck could accidentally sideswipe some or all of the DAS apparatus on a pole).

36. At question 12, page 10 of Vinyard's evidence, he references apparent discrimination "between wireless and wireless attachments".

    (a) What are the differences observed in such situations?

    (b) Why does ExteNet believe these differences are not valid for a DAS type installation and wireless equipment installations in general?

    (c) What are the engineering, design and equipment differences between a typical DAS attachment and a typical wireline attachment?

not) and notes only 10 of Montreal's 12-15 Videotron DAS nodes are on hydro poles.

(d) If the answer to (a) is no, please explain the alternatives options that exist, including providing the relevant particulars of same.

(e) Please define the term "monopoly-controlled" as it is used in this context.

58. At question 5, page 3 of Boron's evidence, Boron states that "[i]t would be strange indeed if power poles were classified as essential facilities for cable companies and wireline attachers, but not for wireless attachers."

(a) Please define the term "essential facilities" as it is used in this context.

(b) Please explain the extent to which Boron and/or Public Mobile, Inc. view THESL's poles as "essential facilities" within the context of Public Mobile's provisioning of wireless services in and around Toronto.

59. At question 7, page 4 of Boron's evidence, Boron states that "[l]ack of capacity can never justify discriminatory access." If the pole line does not have adequate additional capacity, why is it discriminatory to permit existing wireline attachments to remain and possibly allow their owners some additions, provided that their attachments do not overstress the pole?

V. Written Evidence of Brian O'Shaughnessy – July 26, 2011

60. At question 3, page 3 of O'Shaughnessy's evidence, he describes the nature of Public Mobile's interest in the proceeding, including "the creation of a level playing field with our competitors who do have access to power poles in Ontario" and desire for "access to such poles on commercially reasonable terms and conditions".

(a) Please indicate whether and to what extent Public Mobile's competitors use access to utility poles for purposes of constructing, maintaining and/or operating an outdoor DAS in Toronto.

(b) Please identify the difference in compensation paid for wireless attachments associated with tower structures, traffic lights, signage, roof tops, other alternatives CANDAS and/or O'Shaughnessy is aware of, and distribution utility poles.

(c) Since Public Mobile is currently operating in the marketplace with an alternative technology, why is access to utility poles a requirement for "good public policy" and "in the public interest"?

61. At question 9, page 6 of O'Shaughnessy's evidence, he states that four times as many transmission towers, or "Cell Sites" would be required to transmit the frequencies Public Mobile is licensed to transmit.

(a) Is it true that cell towers alone could offer the service that Public Mobile wanted to provide?

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FILED ELECTRONICALLY AND VIA COURIER

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August 19, 2011

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
PO Box 2319, 27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli:

RE: Application by Canadian Distributed Antenna Systems Coalition ("CANDAS");
Board File No.: EB-2011-0120

We represent CANDAS in connection with its application to the Board regarding access to the power poles of licensed electricity distributors for the purpose of attaching wireless telecommunications equipment ("**Application**").

In accordance with Procedural Order No. 1, CANDAS is filing the Responses to Interrogatories of Canadian Electricity Association.

CANDAS will file two paper copies of the above-noted evidence as soon as possible.

Yours very truly,

(signed) H.T. Newland

HTN/ko

cc: Mr. George Vinyard
ExteNet Systems, Inc.
Mr. Mark Rodger
Borden Ladner Gervais
All Intervenors

EB-2011-0120

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by the **Canadian Distributed Antenna Systems Coalition** for certain orders under the *Ontario Energy Board Act*, 1998.

RESPONSES TO INTERROGATORIES OF CANADIAN ELECTRICITY ASSOCIATION (on the evidence of the Applicant, CANDAS)

August 19, 2011

Questions:

19. Public Mobile's use of Macro-Cell Sites is noted at paragraph 7.10, page 21 of the application.

    (a) Please confirm that Public Mobile is currently using Macro Cell Sites to serve its customers.

    (b) What is the difference in total cost between Public Mobile's "Macro Cell Site" alternative currently being used by Public Mobile and the forecasted costs of the Toronto DAS Network proposed by ExteNet and DAScom?

    (c) What is the total cost being paid by Public Mobile for use of the Macro Cell Site in the exact service area that is proposed to be covered by the Toronto DAS Network?

Responses:

(a) ~~The information requested is not relevant to the issues raised in the Application.~~ Public Mobile is currently using macrocell technology to provide service in Toronto.

(b) The information requested is not relevant to the issues raised in the Application. Moreover, CANDAS does not possess the information required to respond to this interrogatory and production of this information would be unduly onerous relative to its probative value, if any.

(c) The information requested is not relevant to the issues raised in the Application.

Questions:

33. At question 10, page 9 of Vinyard's evidence, he states that "[t]he principal method for avoiding the imposition of costs on utility ratepayers should be the establishment of appropriate rates..."

    (a) Please provide the rates that attachers pay to access utility poles in other jurisdictions as well as the rates that attachers pay in other jurisdictions for attachments to structures other than utility poles.

    (b) Please provide all underlying assumptions to support this response.

Responses:

    (a) The information requested is not relevant to the issues in this Application. No party has asked the Board to review and vary the approved pole access rate.

    (b) See response to CEA 33(a).

V. Written Evidence of Brian O'Shaughnessy – July 26, 2011

Questions:

60. At question 3, page 3 of O'Shaughnessy's evidence, he describes the nature of Public Mobile's interest in the proceeding, including "the creation of a level playing field with our competitors who do have access to power poles in Ontario" and desire for "access to such poles on commercially reasonable terms and conditions".

    (a) Please indicate whether and to what extent Public Mobile's competitors use access to utility poles for purposes of constructing, maintaining and/or operating an outdoor DAS in Toronto.

    (b) Please identify the difference in compensation paid for wireless attachments associated with tower structures, traffic lights, signage, roof tops, other alternatives CANDAS and/or O'Shaughnessy is aware of, and distribution utility poles.

    (c) Since Public Mobile is currently operating in the marketplace with an alternative technology, why is access to utility poles a requirement for "good public policy" and "in the public interest"?

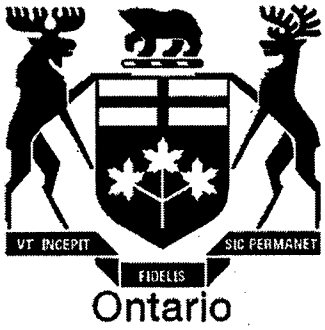
Responses:

(a) See response to THESL 47(b).

(b) The information requested in this question is not relevant. No party to this proceeding is requesting that the Board review and vary the current Board-approved pole access rate.

(c) See the entirety of Mr. O'Shaughnessy's Written Evidence, including without limitation (Q. 10).

EXHIBIT “C”



ONTARIO ENERGY BOARD

FILE NO.: **EB-2011-0120**

VOLUME: **Technical Conference**

DATE: **November 4, 2011**

please?

MR. McCARTHY: Yes, sorry. That was Devin McCarthy.

MR. RODGER: So Kristi, perhaps just before Mr. Starkey resumes, and as I mentioned before the break, to move this thing along, what I've done - and I'll just put it on the record, so everybody is aware of it - is that there's a series of interrogatories that were asked that were all refused by CANDAS, largely on the grounds of not relevant.

Again, just like we asked CANDAS for THESL Interrogatory 50, we just would ask CANDAS to reconsider their answers in light of the evidence that we have put forward and in light of the Board's decisions. And if the answer comes back that -- no change, still irrelevant, then we can deal with that. What the attempt is here is to try to avoid another motion.

So just for the record, the one page that I've handed my friend reads:

> "Interrogatories previously refused by CANDAS and to be reconsidered in light of THESL evidence and subsequent correspondence from the Board."

And the interrogatories in question are from the CEA, No. 14, No. 19, No. 33, No. 50, No. 52 and No. 60. And from Toronto Hydro, 1(d), (e) and (f), 7(a), 13, No. 50 and No. 51(j). Thanks.

MS. NEWLAND: We will endeavour to provide a response as soon as possible, likely also in writing, given the time constraints today.

MS. SEBALJ: I'm just wondering how we want to mark this, whether we want -- you are fine with it just being on the transcript? Do you want an undertaking? Do you want...

MR. RODGER: Why don't we have an undertaking, just to be safe? Then it's recorded.

MS. NEWLAND: Yes, an undertaking to respond one way or the other.

MR. RODGER: Yes.

MS. SEBALJ: Just so that I'm clear, Mark, this is in addition to Question 19, which is the one you raised -- sorry, that was the rate one.

You've included the one that you raise this morning?

MR. RODGER: Yes. That was No. 50.

MS. SEBALJ: So let's mark it as JTC1.3.

UNDERTAKING NO. JTC1.3: TO PROVIDE RESPONSES TO CEA INTERROGATORIES NOS. 14, 19, 33, 50, 52 AND 60, AND TORONTO HYDRO INTERROGATORIES NOS. 1(D), (E) AND (F), 7(A), 13, 50 AND 51(J).

MR. RODGER: Thanks very much.

MS. SEBALJ: So let's resume.

CONTINUED QUESTIONS BY MR. STARKEY

MR. STARKEY: I still have a bunch of questions, so I'm going to speed this up a little bit.

Mr. O'Shaughnessy or Mr. Boron, whichever is best to answer the question, I just wanted to understand a little bit more about the relationship between Public Mobile and ExteNet and DAScom.

EXHIBIT “D”

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November 16, 2011

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
PO Box 2319, 27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli:

RE: Application by Canadian Distributed Antenna Systems Coalition ("CANDAS");
Board File No.: EB-2011-0120

We represent CANDAS in connection with its application to the Board regarding access to the power poles of licensed electricity distributors for the purpose of attaching wireless telecommunications equipment ("**Application**").

CANDAS is filing the Responses to Undertakings given at the Technical Conference held on November 4, 2011. In the Response to Undertaking JTC1.3, where we have provided a reference to CANDAS' prior responses to interrogatories, we have used the following protocol, consistent with the protocol established in our October 26, 2011 filing: *e.g.*, CANDAS (THESL) 1 would be a reference to CANDAS' response to THESL interrogatory number 1 on CANDAS' Application and Written Evidence.

CANDAS will file two paper copies of the above-noted evidence as soon as possible.

Yours very truly,

(signed) H.T. Newland

HTN/ko
Encls.
cc: All Intervenors

Undertaking JTC1.3

To provide a response or refusal to answer the following cited questions: (THESL)–1(d), (e), (f), 7(a), 13, 50 and 51(j) and (CEA)–14, 19, 33, 50, 52, and 60.

Response:

See revised responses for:

- CANDAS(THESL)1(f)
- CANDAS(THESL)7(a)
- CANDAS(THESL)13
- CANDAS(THESL)51(c)
- CANDAS(CEA)19(a)
- CANDAS(CEA)50(a)
- CANDAS(CEA)52

CANDAS maintains its objections to the remaining interrogatories identified by THESL, except for THESL-51(j), for which there is no record.

EXHIBIT “E”

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2011-0120

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by Canadian Distributed Antenna Systems Coalition for certain orders under the *Ontario Energy Board Act, 1998*.

BEFORE: Cynthia Chaplin
Vice Chair and Presiding Member

Ken Quesnelle
Member

Karen Taylor
Member

DECISION AND ORDER

December 9, 2011

THE PROCEEDING

The Canadian Distributed Antenna Systems Coalition ("CANDAS") filed an application on April 25, 2011, subsequently amended by letters dated May 3 and June 7, 2011, seeking the following orders of the Board:

1. Orders under subsections 70(1.1) and 74(1) of the *Ontario Energy Board Act, 1998* (the "Act"): (i) determining that the Board's RP-2003-0249 Decision and Order dated March 7, 2005 (the "CCTA Order") requires electricity distributors to provide "Canadian carriers", as that term is defined in the *Telecommunications Act*, S.C. 1993, c. 38, with access to electricity distributor's poles for the purpose of attaching wireless equipment, including wireless components of distributed antenna systems ("DAS"); and (ii)

directing all licensed electricity distributors to provide access if they are not so doing;

2. in the alternative, an Order under subsection 74(1) of the Act amending the licences of all electricity distributors requiring them to provide Canadian carriers with timely access to the power poles of such distributors for the purpose of attaching wireless equipment, including wireless components of DAS;

3. an Order under subsections 74(1) and 70(2)(c) of the Act amending the licences of all licensed electricity distributors requiring them to include, in their Conditions of Service, the terms and conditions of access to power poles by Canadian carriers, including the terms and conditions of access for the purpose of deploying the wireless and wireline components of DAS, such terms and conditions to provide for, without limitation: commercially reasonable procedures for the timely processing of applications for attachments and the performance of the work required to prepare poles for attachments ("Make Ready Work"); technical requirements that are consistent with applicable safety regulations and standards; and a standard form of licensed occupancy agreement, such agreement to provide for attachment permits with terms of at least 15 years from the date of attachment and for commercially reasonable renewal rights;

4. its costs of this proceeding in a fashion and quantum to be decided by the Board pursuant to section 30 of the Act; and

5. such further and other relief as the Board may consider just and reasonable.

In summary, the issues before the Board are as follows:

1. Does the CCTA decision apply to the attachment of wireless equipment, including DAS components, to distribution poles?
2. If the answer to 1 is no, then should the Board require distributors to provide access for the attachment of wireless equipment, including DAS components, to distribution poles?

3. If the Board requires distributors to provide access for the attachment of wireless equipment, including DAS components, under what terms and conditions should those arrangement be governed?

It is these issues which will guide the Board in determining the relevance of the disputed interrogatories (the "disputed IRs") that are the subject of the motions brought by CANDAS and the Consumers Council of Canada ("CCC").

THE MOTIONS

On October 31, 2011 CCC filed a Notice of Motion for an order of the Board requiring Toronto Hydro Electric System Limited ("THESL") to provide further and better responses to certain CCC IRs. On November 3, 2011, CANDAS filed a similar Notice of Motion in respect of certain CANDAS IRs. CANDAS filed an Amended Notice of Motion on November 8, 2011.

The Board determined that it would hear both motions in writing and provided dates for written submissions in Procedural Order No. 4, issued November 3, 2011.

CANDAS requests that THESL be compelled to provide responsive answers to the following IRs: CANDAS general IRs 1(h), 1(i), 3(d), 5(e), 10(e), (o), (p) and (q), 32 (a) and (b) and CANDAS Byrne IR 15(g)(iv). These IRs in CANDAS' submission are relevant to the issues before the Board and relate to two questions:

- Is THESL's "no wireless" policy justified?
- Is THESL discriminating amongst parties who seek to attach equipment to its poles?

CCC requests that THESL be compelled to provide further and better answers to CCC IRs 1, 2, 3, 4, 5, 6(d) and 7. In CCC's submission, these IRs seek material that is relevant to the issues raised by THESL in its evidence, and the material is necessary to allow a fair and complete examination of THESL's evidence and THESL's position based on that evidence; specifically:

- That the CCTA Order does not apply to wireless attachments;
- That safety is compromised by wireless attachments to THESL's poles; and
- That there are viable market alternatives for hosting wirelsss attachments.

CANDAS General IRs 5(e), 10(e), 10(o), 10(p), 10(q) and 32 and Byrne IR 15(g)(iv)

CANDAS submitted that the information and materials sought in the above referenced IRs are relevant and necessary to understand whether THESL is discriminating amongst parties who seek to attach equipment to THESL's poles.

For each of the IRs listed above, a summary of the submissions of the parties and the findings of the Board are provided below.

CANDAS IR 5(e)

Do any third parties currently have any wireless attachments on THESL owned or controlled poles? If yes, provide all applicable agreements regarding these attachments and describe, for each third party,

- *(i) What type of wireless attachment is located on the poles*
- *(ii) The total number of each type of wireless attachment located on the poles*
- *(iii) The attachment rate, and all other applicable fees, paid by such third party*
- *(iv) The permitted term of each wireless attachment*
- *(v) Whether there are also wireline attachments associated with any of the wireless attachments*
- *(vi) The number of associated wireline attachments*

THESL submitted that it has already provided the best information available on the number of non-distribution attachments to THESL poles, including wireless attachments, and noted that the only wireless attachments identified in THESL's database are the DASCom attachments and that the agreement related to these attachments is already on record in this proceeding. THESL added that producing additional information relating to this IR would be unduly onerous to produce relative to its probative value, if any.

The Board finds that certain information and materials sought in these IRs are relevant to the issues in this proceeding. The Board will be determining whether to mandate access for wireless attachments to distributor poles. The Board finds that information as to the other attachments THESL is making (type of attachment and quantity) and under what arrangements those attachments are being made (price and terms and conditions) is relevant to the issues in this proceeding. The Board also recognizes that these various other attachments may or may not be comparable to the wireless

attachments sought by CANDAS. The Board will be able to assess that comparability better if it understands more fully the circumstances that surround these other attachments. THESL has provided evidence related to the potential alternative sites for wireless attachments. Similarly, the Board finds it relevant to understand the other types of attachments on distributor poles for comparison purposes.

THESL has maintained that the only wireless attachments are DAScom attachments. THESL has provided its view that while the TTC attachments on its poles operate using radio frequencies it does not consider them to be "telecommunications" equipment.[1] The Board concludes that THESL's view of what constitutes a wireless attachment may be unduly narrow. The Board concludes that information related to all attachments which facilitate wireless communications in any form is relevant to the proceeding.

The Board will order THESL to:

a) identify the parties (including the TTC and One Zone and any other parties with attachments which facilitate wireless communications) that currently have wireless attachments on THESL's poles;
b) provide THESL's master agreement with each party;
c) identify the price for the wireless attachments (if not covered in b);
d) identify the approximate number of attachments for each party; and
e) identify whether there are associated wireline attachments for the wireless attachments.

CANDAS IR 10(e)

What percentage of the poles currently owned or controlled by THESL have wireless attachments? Please provide a breakdown by pole type and identify the number and type of wireless attachments.

In THESL's submission, the information provided in response to this IR is sufficient for CANDAS to complete its analysis of "scarcity". THESL further submitted that the information relating to the breakdown by pole type, including the number and type of wireless attachments, is not relevant to the matters at issue in this proceeding and would be unduly onerous to produce relative to its probative value, if any.

[1] THESL's response to undertaking No. JTC 1.4 made at the Technical Conference on November 4, 2011

EXHIBIT “F”

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Ontario

BY E-MAIL

September 14, 2011

To: All parties to the Board's hearing of an application by the Canadian Distributed Antenna Systems Coalition ("CANDAS") regarding access to the power poles of electricity distributors for purposes of wireless communications

Re: Board File Number: EB-2011-0120

On September 9, 2011, the Board received a letter from Toronto Hydro-Electric System Limited ("THESL") in response to the Board's letter dated September 7, 2011 and the letter from CANDAS of the same date.

In its letter, THESL acknowledges the Board's treatment of THESL's motion, but identifies what it calls "sequencing questions" that it suggests raise the question of whether a bifurcated and phased proceeding may be the most appropriate method by which to dispose of the CANDAS Application dated April 21, 2011. THESL goes on to indicate that it is seeking the Board's direction on the following:

(a) What matters are at issue and within the scope of this proceeding, by requiring Board staff to prepare and circulate a draft issues list;
(b) The most appropriate procedural path for the proceeding; and
(c) The procedural manner by which the Board will determine any rates that may apply.

THESL's letter also addresses CANDAS' letter of September 7, 2011 and requests that the Board require CANDAS to provide the specific details of its motion regarding objections to certain parts of THESL's evidence.

On September 12, 2011, the Board received letters from representatives of each of the Consumers Council of Canada ("CCC ") and the Canadian Electricity Association ("CEA").

The CCC sought guidance on the scope of the interrogatories for the proceeding in light of the THESL letter of September 9, 2011 and suggested that the Board should resolve what the issues are in the proceeding prior to the required delivery of interrogatories to THESL.

The CEA supported THESL's notion that the proceeding should be considered in two phases, concurred with need for an issues list and requested that the Board should, with respect to CANDAS' indication that it would be challenging certain of THESL's filed evidence, require CANDAS to immediately identify the specific evidence of concern and to provide the grounds for such a ruling in writing well in advance of the upcoming technical conference.

On September 13, 2011, the Board received a letter from the Electricity Distributors Association ("EDA") supporting the request of THESL for the sequencing of the Board's inquiry into the issues raised in the proceeding and for the early settlement of an issues list. The EDA also noted what it called "inconsistencies in the Applicant's position" and asserted that CANDAS had already effectively bifurcated the proceeding by taking the position, as the EDA alleges, that evidence regarding the financial burden, including price, is not relevant. The EDA also suggested that the two days set aside for the oral phase of the hearing would not likely be sufficient.

On September 14, 2011 the Board received a letter from CANDAS responding to the September 9, 2011 THESL letter. In it, CANDAS outlined the issues that flow from its application to the Board and indicated that an issues list is unnecessary and potentially prejudicial to parties that have proceeded based on the application as filed and the process as outlined by the Board. CANDAS also clarified that it is not seeking to vary the current Board-approved attachment rate, but that if the Board determines that the attachment rate approved by the Board in the CCTA proceeding is not applicable to wireless attachments, it could declare the current attachment rate an interim wireless attachment rate, pending an application by distributors for a new rate. On the issue of sequencing, CANDAS indicated that there is no need to amend the current process. Finally with respect to the issue of CANDAS' contention that certain of THESL's evidence is opinion evidence as to whether the CCTA Order applies to wireless attachments, CANDAS asserted that the question of whether this evidence is admissible at all or whether it should be left to argument with respect to the weight appropriately given to the evidence should be left to submissions at the oral hearing.

With respect to the guidance that THESL and other parties seek regarding the matters at issue in the CANDAS proceeding the Board would direct THESL and all parties to the application filed by CANDAS, and in particular, parts (a), (b) and (e) of the relief sought by CANDAS. The Board is of the view that these three heads of relief encompass a review by the Board of the question of whether the CCTA Decision applies, or, in the alternative, whether the Board will amend electricity distributors' licenses to require them to provide access to the power poles of such distributors for purposes of attaching wireless equipment, including wireless components of DAS. With respect to the terms and conditions of access and what an appropriate pole access rate would be, the Board is of the view that the question of whether the current Board-approved attachment rate applies to wireless attachments is appropriately part of this proceeding. If, however, the current rate is not found to apply, the setting of a new rate for wireless attachments may require a new notice and additional evidence to be filed either as part of the current proceeding or in a new proceeding.

The Board has already spoken to the issue of forbearance in its letter of September 7, 2011.

The Board continues to be of the view that, in the absence of an alternative advanced to the Board that is agreed upon by all parties, the procedure as established in the previously issued Procedural Orders and written communications of the Board is appropriate and effective and will stand. As such, all of the issues addressed by THESL in its letter of September 9, 2011, with the exception of forbearance, will be addressed as part of the Board's current procedure in accordance with the application before it.

Finally, with respect to the sufficiency of time at the oral hearing to address all the matters before the Board in this proceeding, the Board notes that it has set aside October 17 and 18, 2011 as two potential additional hearing days in the event they may be required and would ask that the parties keep these dates clear in their calendars.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary