

**Board Staff IRRs on Reply Report of
Patricia D. Kravtin**

**Application by the
Canadian Distributed Antenna Systems
Coalition**

EB-2011-0120

January 6, 2012

1. **Reference:** Executive Summary of Evidence - Paragraph 3 - Second Bullet: "Space on utility poles is not a scarce resource in any true economic sense; pole space is non rivalrous in consumption and characterized by readily available capacity under normal utility operating practices."

Questions:

- a) The CCTA decision assumes allocation of a finite 2' space on the pole for communication lines. Some of the previously submitted evidence indicates the height of DAS antennas to be slightly greater than 2'. Isn't it true that pole space can be considered nonrivalrous only as long the available capacity far exceeds the demand? In view of the finite space earmarked for communication lines on the poles and considering mounting of a single DAS antennas would use up most if all of the communication space on the pole, could you elaborate why you believe the pole space to be "nonrivalrous" in the context of installation of communication infrastructure?
 - b) Are there any regulatory jurisdictions in North America that allow unlimited space on pole lines for installation of communications infrastructure? Please specify.
2. **Reference:** Executive Summary of Evidence - Paragraph 3 – Third Bullet: "The utility pole owner, by virtue of its natural monopoly, is in a position to artificially limit and control access to its network of poles despite the relative ease with which the utility can accommodate additional attachments through the make-ready process – the cost of which is fully reimbursable to the utility by the incremental attacher."

Questions:

- a) Could you provide the context in which the phrase "relative ease" is used in the above paragraph. For example, if the make ready work involves a pole change-over in an existing line with multiple power and communication circuits with a taller pole using live-line work techniques and on a street busy with vehicular traffic, don't you think the make ready work would involve quite difficult and risky tasks?
 - b) Has Ms. Kravtin made any determination of the planning and construction resources of a utility that might be required for a pole change-over such as described in Question 3? If so, please comment on the results.
3. **Reference:** Executive Summary of Evidence - Paragraph 3 – Last Bullet: "Valid safety or operational concerns regarding wireless attachments – as with attachments of any kind – can be (and generally are) addressed in existing objective standards and procedures and non-discriminatory terms and conditions of attachment."

Question:

- a) Do you know of any existing standard approved for use in a Canadian or US electricity regulatory jurisdiction for installation of DAS antennas on an overhead power line?
Would it be possible for you to provide us a copy of the approved standard?

4. **Reference:** Paragraph 14: "A competitive market analysis generally must begin with the proper definition of the relevant market. Conclusions reached as to the existence of market power (or lack thereof) are highly sensitive to the manner in which the relevant market is defined. From an economics perspective, the concept of substitutability lies at the heart of a competitive market analysis. Two products (or services) are considered to be in the same relevant market if they are close substitutes. On the demand side, this is measured by the extent to which buyers shift their consumption in response to a change in relative price, quality, or other competitive variable"

Question:

- a) It appears that in the CCTA ruling, a uniform pole rental charge of \$22.35 per year per communication attacher was set by the Board based on the assumption that different communication attachments will use approximately equal pole space within the 2' space allocated for communication lines. Considering installation of DAS antennas on poles would occupy significantly more space in relation to the communication wire-line installations, in a fair and competitive market, shouldn't the antenna installers be required to pay a higher price? What would be a valid argument against the Board setting a higher rate for installation of DAS antennas on the poles, in proportion to the space occupied by them?

5. **Reference:** Paragraph 14: "For the reasons discussed below, the various wireless siting alternatives identified by Dr. Yatchew and Mr. Starkey as constituting the relevant input market (e.g., rooftops, towers, building walls, street furniture, assorted decorative fixtures, billboards, signage, and the like) would not pass a valid price elevation test, i.e., would not place any material constraint on the monopolist's (THESL's) ability to raise pole attachment prices for wireless carriers seeking to effectively compete in the provision of telecommunications services."

Questions:

- a) Has your team conducted any market research which would indicate the level of price elevation that would result from installing DAS antennas on various siting alternatives to poles i.e. rooftops, towers, building walls, street furniture, assorted decorative fixtures, billboards, signage etc.?
- b) Please clarify whether the intended meaning of this paragraph is:

- a. that a wireless carrier would prefer the utility pole as a location, and be willing to pay the monopolist's rate, even if the price for location on a utility pole were materially higher than the price for locating on the other structures mentioned in paragraph 14; or
- b. that the regulated pole attachment rate is so low relative to the rate that might be demanded by non-utility locations, that the pole attachment rate might be raised materially without making the other locations desirable to the wireless carrier.

If neither of these statements accurately interprets the meaning, please clarify in other words.

6. **Reference:** Paragraph 28: "New entrant telecommunications carriers are directly competing against incumbent telephone companies and cable operators but, increasingly, also with electric distribution utilities, their affiliates and/or companies in which the utility has an interest, whether by ownership or through contractual arrangements."

Question:

- a) Is this statement intended to refer specifically to an interest of THESL, an affiliate, or its shareholder? If so, please describe the nature of that interest.

7. **Reference:** Paragraph 22: "The utility receives revenue from the combination of make-ready and other direct fees plus the rental rate, which is in excess of the associated incremental costs it incurs, thus providing it (and ratepayers) with a contribution to the cost of providing core electric distribution service that it otherwise would not have, but for use of available pole capacity;"

Questions:

- a) Is it your understanding that make-ready and other direct fees recover only the costs actually incurred? If so, how do so such fees contribute to the recovery of other costs?
- b) If the charge structures set in place to apply to wireline attachments are not sufficient to recover the full costs associated with accommodating a wireless attachment, would it not be the case that the utility and its customers become worse off?

8. **Reference:** Paragraph 22: "With more potential space available on the pole to accommodate additional uses and/or users, the utility can realize additional sources of revenue;"

Question:

- a) Is the intended meaning of this paragraph that the communication space on the new pole would exceed the presently allowed communication space of two feet?

9. **Reference:** Paragraph 21: “For use of this otherwise available space and load-bearing capacity on utility poles, third party attachers are paying well in excess of the incremental costs associated with their occupancy, including a fair return on the utility’s investment.”

Question:

- a) Please clarify whether the assertion is based on:
 - a. Ontario cost data assembled or reviewed by Ms. Kravtin;
 - b. Cost data from other jurisdictions assembled or reviewed by Ms. Kravtin; or
 - c. Another basis (specify).

10. **Reference:** Paragraph 23: “The sharing of the utility’s pole network – an asset that has historically been paid for and maintained primarily using ratepayer dollars – allows for more effective utilization of the asset, and hence a means of effectively enhancing the return on ratepayer dollars.”

Question:

- a) Would not the shared use of structures other than utility poles provide for more effective utilization of those assets and enhance return to their owners? If there is a difference in the way the economic argument should be applied in that case, please explain it.

11. **Reference:** Paragraph 27: “This economic reality strongly supports a regulatory policy that mandates the same, non-discriminatory right to access utility poles to telecommunications attachments and/or attachers, without regard to the technology or mix of technologies employed or any other particular aspect of the carrier’s business model.”

Question:

- a) Please clarify whether, in your view, “the same, non-discriminatory right to access” necessitates the application of the same rates and charges to all telecommunications attachments or attachers.