

**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*.

**AFFIDAVIT OF DOCUMENTS**

**In Respect of Procedural Order No. 8**

I, Colin McLorg, of the City of Toronto, Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Manager, Regulatory Policy & Relations of Toronto Hydro-Electric System Limited (“THESL”) and therefore have knowledge of the matters to which I depose in this affidavit.
2. THESL has conducted a diligent search of records and I have made all appropriate enquiries of others to inform myself in order to make this affidavit. This affidavit discloses, to the full extent of my knowledge, information and belief, documents as requested in Procedural Order No. 8 that are or have been in THESL’s possession, control or power.
3. I have listed in Schedule “A” all those documents that are in THESL’s possession, control or power that THESL does not object to producing for inspection.
4. I have listed in Schedule “B” all those documents that are or were in THESL’s possession, control or power and that THESL does object to producing because THESL claims that same are privileged and I have stated in Schedule “B” the grounds for each such claim.
5. The schedules to this affidavit are organized into two parts. Part I relates to the Board’s order to produce: “Copies of any presentations or reports provided to the THESL Board

of Directors or THESL senior management in relation to the subjects discussed in the THESL letter to the Board of August 13, 2010. Only materials which were provided to the Board of Directors or senior management during June, July or August 2010 shall be provided at this time.” Part II relates to the Board’s order to produce: “(a) copies of reports, including incident reports and analysis reports, that provide a representative sample of all the reports in support of the contention that wireless attachments impair operations efficiency and present incremental safety hazards to electricity distribution; and (b) any reports on the issues described in paragraphs 42 to 46 of Ms. Byrne’s Affidavit.”

6. Out of an abundance of caution, several of the documents identified in Schedule “A” are being filed with the Board in confidence. While THESL does not object to full disclosure of this information on the record, THESL notes that the information relates to DASCom attachments and as a result CANDAS may want to formally request that some or all of these documents remain in confidence.

SWORN BEFORE ME at the City )  
of Toronto, Province of Ontario )  
this 30<sup>th</sup> day of January, 2012. )

Original signed by Colin McLorg

**COLIN MCLORG**

Original signed by Amanda Klein )

A Commissioner for Oaths, etc.

### **CERTIFICATE OF SOLICITOR**

**I CERTIFY** that I have explained to the deponent,

- (a) the necessity of making full disclosure of all documents responding to Procedural Order No. 8 ; and
- (b) what kinds of documents are likely to be relevant to the requests set out in Procedural Order No. 8.

**Date:** January 30, 2012

Original signed by Amanda Klein

**AMANDA KLEIN**

# **SCHEDULE “A”**

**DOCUMENTS** in THESL’s possession control or power that I do not object to producing for inspection:

<b>PROD</b>	<b>DATE</b>	<b>DESCRIPTION</b>
<b>PART I OF PROCEDURAL ORDER NO. 8</b>		
None applicable.		
<b>PART II OF PROCEDURAL ORDER NO. 8</b>		
1.	June 2007	Industry Canada, “Radiocommunication and Broadcasting Antenna Systems,” (Effective January 1, 2008), Spectrum Management and Telecommunications Client Procedures Circular.
2.	February, 2009	ExteNet Systems, Inc. Distributed Antenna System, Maps, Drawings and Equipment Specifications.*
3.	July 20, 2009	DAScom Antennas / Horizontal clearance (example of operational concern).*
4.	April 13, 2010	Safety concern and non-compliance – incident report.*
5.	April 19, 2010	Photo compilation of non-compliance problems.*
6.	June 8, 2010	Pole loading calculations.*
7.	July 12, 2010	Broken THESL pole with wireless attachment node.*
8.	August 30, 2010	Non-compliance incident report.*
9.	August 31, 2010	Non-compliance incident report.*

\* Filed in Confidence pursuant to the Board’s *Practice Direction on Confidential Filings*.

## **SCHEDULE “B”**

**DOCUMENTS** that are or were in the possession, control or power of THESL that I object to producing on the grounds of privilege:

**(a) Solicitor/Client Privilege**

Documents containing or reflecting confidential professional communications between THESL and its legal advisors directly relating to seeking or receiving legal advice or legal assistance for THESL.

**(b) “Without Prejudice” Communication Privilege**

Documents containing or reflecting communication of a “without prejudice” nature concerning the matters at issue in the within action.

**(c) Litigation Privilege**

Documents prepared for and obtained for the purpose of obtaining or providing advice concerning litigation, or obtaining or providing information or evidence to be used in litigation and in preparation for prosecuting litigation.

<b>PROD</b>	<b>DATE</b>	<b>DESCRIPTION</b>	<b>NATURE OF PRIVILEGE CLAIMED</b>
<b>PART I OF PROCEDURAL ORDER NO. 8</b>			
1.	June 12, 2010	Draft Report of Adonis Yatchew, PhD entitled “Pricing of Attachment Space for Wireless Facilities On Joint-Use Poles” marked as privileged and dated June 12, 2010.	(c)

PROD	DATE	DESCRIPTION	NATURE OF PRIVILEGE CLAIMED
2.	June 17, 2010	Email from Jonathan Wells to Mark Rodger and John Vellone subject “Wireless pole attachments – more info” dated June 17, 2010 containing a summary of his consulting expertise. Attachments: An analysis of FCC Rules regarding pole attachments dated May 27, 2010. Email and attachment forwarded by Mark Rodger to Pankaj Sardana June 17, 2010.	(c)
3.	June 23, 2010	Legal Memorandum from Mark Rodger and John Vellone to Lawrence Wilde dated June 23, 2010 providing advice and legal analysis regarding potential future litigation.	(a)(c)
4.	July 20, 2010	Email from Michael Starkey to Mark Rodger subject “STRICTLY CONFIDENTIAL – NY Analysis” dated July 20, 2010. Attachments: (1) Draft analysis of Michael Starkey of New York rules regarding wireless attachments (undated). (2) New York Public Service Commission’s <i>Proceeding on Motion of the Commission Concerning Wireless Facility Attachments to Utility Distribution Poles</i> 2007 NY PUC LEXIS 235. (3) form of License Amendment and Addendum to Distribution Pole Attachment Agreement of Niagara Mohawk Power Corporation, d.b.a. National Grid. Forwarded by Mark Rodger to Lawrence Wilde on July 20, 2010.	(c)
5.	July 25, 2010	Email from Pankaj Sardana to Michael Starkey and email distribution list titled “NGW” subject “Re: Wireless Attachments + cjm comments on AY piece” dated July 25, 2010. Attachments: (1) Revised draft Report of Adonis Yatchew, PhD entitled “Pricing of Attachment Space for Wireless Facilities On Joint-Use Poles” marked as privileged and dated July 21, 2010 (clean and blacklined).	(c)

<b>PROD</b>	<b>DATE</b>	<b>DESCRIPTION</b>	<b>NATURE OF PRIVILEGE CLAIMED</b>
6.	July 23, 2010	Email of Michael Starkey to Colin McLorg, John Vellone, Adonis Yatchew, Pankaj Sardana Lawrence Wilde, Mark Rodger, and Jim Webber subject "Starkey Draft 1" dated July 23, 2010. Attachments: (1) Draft Report of Michael Starkey dated July 30, 2010.	(c)
7.	July 25, 2010	Email from Pankaj Sardana to Michael Starkey, NGW and Jim Webber subject "Re: Starkey Draft 1" dated July 25, 2010. Attachments: (1) Revised draft Report of Michael Starkey dated July 30, 2010 (clean and blackline).	(c)
8.	July 30, 2010	Email from John Vellone to Michael Starkey, Colin McLorg, Adonis Yatchew, Pankaj Sardana, Mark Rodger, Lawrence Wilde and Jim Webber entitled "Re: Starkey Draft 1 and THESL Draft 2" dated July 26, 2010. Attachments: (1) Revised draft Report of Michael Starkey dated July 30, 2010 (clean and blackline). Mr. Vellone added to the report the markings "Strictly Privileged and Confidential (prepared in anticipation of litigation)."	(c)
9.	August 2, 2010	Email from Adonis Yatchew to Michael Starkey, NGW and Jim Webber dated August 2, 2010. Attachment (1) Revised draft Report of Adonis Yatchew, PhD entitled "Regulation of Wireless Facilities on Joint-Use Poles" marked as privileged and dated August 2, 2010.	(c)
10.	August 10, 2010	Email from Mark Rodger to NGW dated August 10, 2010. Attachment: Memorandum from Michael Starkey to Mark Rodger marked as strictly confidential entitled "FCC Regulatory Framework: Wireless Pole Attachments" dated August 10, 2010.	(c)

<b>PROD</b>	<b>DATE</b>	<b>DESCRIPTION</b>	<b>NATURE OF PRIVILEGE CLAIMED</b>
11.	August 12, 2010	Email from Mark Rodger to Lawrence Wilde dated August 12, 2010 titled "FW: CRTC regulation of wireless attachments". Attachments: (1) Draft Memorandum from Adonis Yatchew to Mark Rodger entitled "CRTC Regulation of Wireless Attachments to Telecoms" dated August 13, 2010.	(c)
12.	August 16, 2010	Email from Mary Byrne to NGW subject "Fwd: Pole Attachments Survey – Updated" dated August 16, 2010. Attachments: (1) Report entitled "Pole Attachments Survey 2010" (undated).	(c)
<b>PART II OF PROCEDURAL ORDER NO. 8</b>			
13.	January 20, 2010	Briefing Note entitled "Briefing Note - TH/Public Mobile" prepared by Lawrence Wilde dated January 20, 2010.	(a)(c)
14.	January 27, 2010	Report titled "Draft Board Report on Extenet/Dascom – Summary of Wireless Antennae Attachments" dated January 25, 2010 prepared by Mary Byrne for Ivano Labricossa.	(c)
15.	January 27, 2010	Draft Legal Memorandum from Martin Scisizzi to Lawrence Wilde and Shauna Hoare on the subject of "Toronto Hydro – THESL Pole Attachment" dated January 27, 2010 and marked "Privileged and Confidential" and providing legal advice in contemplation of potential litigation.	(a)(c)
16.	January 27, 2010	Legal Memorandum from Mark Rodger to Lawrence Wilde and Shauna Hoare on the subject of "THESL – LDC Pole Attachment Issues" dated January 27, 2010 marked as confidential and providing legal advice in contemplation of potential litigation.	(a)(c)

<b>PROD</b>	<b>DATE</b>	<b>DESCRIPTION</b>	<b>NATURE OF PRIVILEGE CLAIMED</b>
17.	January 27, 2010	Report titled “Briefing Report” and “Draft Board Report on Extenet/DasCom” last updated January 27, 2010 prepared by Mary Byrne and Brad Harper for Ivano Labricossa last updated January 27, 2010.	(c)
18.	January 28, 2010	Draft Legal Memorandum from Martin Scisizzi to Lawrence Wilde and Shauna Hoare on the subject of “Toronto Hydro – THESL Pole Attachment” dated January 28, 2010 and marked “Privileged and Confidential” and providing legal advice in contemplation of potential litigation.	(a)(c)
19.	January 28, 2010	Untitled report providing a detailed analysis of legal issues in connection with the DASCom dispute prepared by Lawrence Wilde and dated January 28, 2010.	(a)(c)
20.	January 29, 2010	Legal Memorandum from Richard Austin to Mark Rodger and Christine Long titled “THESL – LDC Pole Attachment: Wireless Service Providers and the Telecommunications Act” dated January 29, 2010.	(a)(c)
21.	January 29, 2010	Draft Legal Memorandum from Martin Scisizzi to Lawrence Wilde and Shauna Hoare on the subject of “Toronto Hydro – THESL Pole Attachment” dated January 29, 2010 and marked “Privileged and Confidential” and providing legal advice in contemplation of potential litigation.	(a)(c)

<b>PROD</b>	<b>DATE</b>	<b>DESCRIPTION</b>	<b>NATURE OF PRIVILEGE CLAIMED</b>
22.	January 31, 2010	Email from Martin Scisizzi to Lawrence Wilde, Mark Rodger, Linda Bertoldi, Daniel Zacks, and Shauna Hoare subject "Toronto Hydro Pole Attachments" dated January 31, 2010 providing a legal contractual analysis. Attachment: (1) City of Toronto Staff Report titled "Municipal Access Agreement for Telecommunication Installations – DAScom Inc" dated May 19, 2009.	(a)(c)
23.	February 9, 2010	Email from Brad Harper to NGW dated February 9, 2010. Attachments: (1) Report titled "THESL and Quebec Hydro - 3 <sup>rd</sup> Party Attachment Agreement and Process Differences" (undated).	(c)
24.	March 26, 2010	Report titled "Briefing Report - Extenet/DAScom/Pole Attachments" prepared by Lawrence Wilde dated March 30, 2010.	(a)(c)
25.	March 26, 2010 to July 18, 2011	Permit Statistics Reports prepared by Brad Harper and sent to NGW on a periodic (approximately weekly) basis beginning on March 26, 2010 and continuing to July 18, 2011.	(c)
26.	May 21, 2010	Legal Memorandum from Mark Rodger and John Vellone to Lawrence Wilde entitled dated May 21, 2010 containing legal advice and analysis prepared in contemplation of anticipated litigation.	(a)(c)
27.	May 31, 2010	Email from Lawrence Wilde to Martin Scisizzi dated May 31, 2010 entitled "Attachment Permit Statistics Weekly Updated May 28, 2010". Attachments: (1) Various correspondence re: Permit Statistics reports. (2) Permit Statistics Reports (undated).	(c)

<b>PROD</b>	<b>DATE</b>	<b>DESCRIPTION</b>	<b>NATURE OF PRIVILEGE CLAIMED</b>
28.	August 11, 2010	Report titled "2010 Mid-Year 3 <sup>rd</sup> Party Attachment Update" prepared by Brad Harper and dated August 11, 2010.	(c)
29.	February 15, 2011	Report titled "Briefing Report" and "Draft Board Report on Extenet/Dascom" prepared by Mary Byrne and Brad Harper for Ivano Labricossa and updated February 15, 2011.	(c)
30.	April 19, 2011	Powerpoint presentation titled "Cogeco Pole Attachments" and dated April 19, 2011 providing an executive briefing on the Cogeco and DASCom disputes and consequences for litigation.	(c)
31.	May 12, 2011	Report titled "Briefing Note – TH/Cogeco" prepared by Lawrence Wilde dated May 12, 2011 providing legal analysis in preparation for contemplated litigation.	(c)(a)
32.	May 18, 2011	Report titled "Briefing Note – TH/Cogeco" prepared by Lawrence Wilde dated May 18, 2011 providing legal analysis in preparation for contemplated litigation.	(c)(a)

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## **TAB A1**



**Industry  
Canada**

**Industrie  
Canada**

**CPC-2-0-03**

**Issue 4**

**Released: June 2007**

**Effective: January 1, 2008**

**Spectrum Management and Telecommunications**

**Client Procedures Circular**

# **Radiocommunication and Broadcasting Antenna Systems**

**(Formerly CPC-2-0-03 - Environmental Process, Radiofrequency Fields and  
Land-Use Consultation)**

**Aussi disponible en français - CPC-2-0-03**

**Canada**

Comments and suggestions may be directed to the following address:

Industry Canada  
Radiocommunications and  
Broadcasting Regulatory Branch  
300 Slater Street  
Ottawa, Ontario  
K1A 0C8

Attention: DOSP

Via e-mail: [spectrum\\_pubs@ic.gc.ca](mailto:spectrum_pubs@ic.gc.ca)

All Spectrum Management and Telecommunications publications are  
available on the following website at: <http://strategis.gc.ca/spectrum>.

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## **1. Introduction**

Radiocommunication and broadcasting services are important for all Canadians and are used daily by the public, safety and security organizations, government, wireless service providers, broadcasters, utilities and businesses. In order for radiocommunication and broadcasting services to work, antenna systems including masts, towers, and other supporting structures are required. There is a certain measure of flexibility in the placement of antenna systems which is constrained to some degree by: the need to achieve acceptable coverage for the service area; the availability of sites; technical limitations; and safety. In exercising its mandate, Industry Canada believes that it is important that antenna systems be deployed in a manner that considers the local surroundings.

### **1.1 Mandate**

Section 5 of the *Radiocommunication Act* states that the Minister may, taking into account all matters the Minister considers relevant for ensuring the orderly development and efficient operation of radiocommunication in Canada, issue radio authorizations and approve each site on which radio apparatus, including antenna systems, may be located. Further, the Minister may approve the erection of all masts, towers and other antenna-supporting structures. Accordingly, proponents must follow the process outlined in this document when installing or modifying an antenna system. Also, the installation of an antenna system or the operation of a currently existing antenna system that is not in accordance with this process may result in its alteration or removal and other sanctions against the operator in accordance with the *Radiocommunication Act*.

### **1.2 Application**

The requirements of this document apply to anyone (referred to in this document as the proponent) who is planning to install or modify an antenna system regardless of the type of installation or service. This includes, amongst others, Personal Communications Services (PCS) and cellular, fixed wireless, broadcasting, land-mobile, licence-exempt and amateur radio operators. As well, parts of this process contain obligations that apply to existing antenna system operators.

### **1.3 Process Overview**

This document outlines the process that must be followed by proponents seeking to install or modify antenna systems. The broad elements of the process are as follows:

1. Investigating sharing or using existing infrastructure before proposing new antenna-supporting structures.
2. Contacting the land-use authority (LUA) to determine local requirements regarding antenna systems.
3. Undertaking public notification and addressing relevant concerns, whether by following local LUA requirements or Industry Canada's default process, as is required and appropriate.
4. Satisfying Industry Canada's general and technical requirements.

It is Industry Canada's expectation that steps (2) to (4) will normally be completed within *120 days*. Some proposals may be excluded from certain elements of the process (see Section 6). It is Industry Canada's expectation that all parties will carry out their roles and responsibilities in good faith and in a manner that respects the spirit of this document.

## **2. Industry Canada Engagement**

There are a number of points in the processes outlined in this document where parties must contact Industry Canada to proceed. Further, anyone with any question regarding the process may contact the local Industry Canada office<sup>1</sup> for guidance. Based on a query by an interested party, Industry Canada may request parties to provide relevant records and/or may provide direction to one or more parties to undertake certain actions to help move the process forward.

## **3. Use of Existing Infrastructure (Sharing)**

This section outlines the roles of proponents and owners/operators of existing antenna systems. In all cases, parties should retain records (such as analyses, correspondence and engineering reports) relating to this section.

Before building a new antenna-supporting structure, Industry Canada requires that proponents first explore the following options:

- consider sharing an existing antenna system, modifying or replacing a structure if necessary;
- locate, analyze and attempt to use any feasible existing infrastructure such as rooftops, water towers etc.

Proponents are not normally expected to build new antenna-supporting structures where it is feasible to locate their antenna on an existing structure, unless a new structure is preferred by land-use authorities.

Owners and operators of existing antenna systems are to respond to a request to share in a timely fashion and to negotiate in good faith to facilitate sharing where feasible. It is anticipated that 30 days is reasonable time for existing antenna system owners/operators to reply to a request by a proponent in writing with either:

- a proposed set of reasonable terms to govern the sharing of the antenna system; or
- a detailed explanation of why sharing is not possible.

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<sup>1</sup> Please refer to Radiocommunication Information Circular 66 (RIC-66) for a list of addresses and telephone numbers for Industry Canada's regional and district offices. RIC-66 is available via the Internet at: <http://strategis.ic.gc.ca/epic/internet/insmt-gst.nsf/en/sf01742e.html>.

#### **4. Land-use Authority and Public Consultation**

##### **Contacting the Land-use Authority**

Proponents must always contact the applicable land-use authorities to determine the local consultation requirements unless their proposal falls within the exclusion criteria outlined in Section 6. If the land-use authority has designated an official to deal with antenna systems, then proponents are to engage the authority through that person. If not, proponents must submit their plans directly to the council, elected local official or executive. Proponents are expected to establish initial formal contact with the land-use authority in writing in order to mark the official commencement of the *120-day* consultation process.

Proponents should note that there may be more than one land-use authority with an interest in the proposal. Where no established agreement exists between such land-use authorities, proponents must, as a minimum, contact the land-use authority(ies) and/or neighbouring land-use authorities located within a radius of three times the tower height, measured from the tower base or the outside perimeter of the supporting structure, whichever is greater. As well, in cases where proponents are aware that a potential Aboriginal or treaty right or land claim may be affected by the proposed installation, they must contact Industry Canada in order to ensure that the requirements for consultation are met.

##### **Following the Land-use Authority Process**

Proponents must follow the land-use consultation process for the siting of antenna systems, established by the land-use authority, where one exists. In the event that a land-use authority's existing process has no public consultation requirement, proponents must then fulfill the public consultation requirements contained in Industry Canada's Default Public Consultation Process (see Section 4.2). Proponents are not required to follow this requirement if the LUA's established process explicitly excludes their type of proposal from consultation or it is excluded by Industry Canada's criteria. Where proponents believe the local consultation requirements are unreasonable, they may contact the local Industry Canada office in writing for guidance.

##### **Broadcasting Undertakings**

Applicants for broadcasting undertakings are subject to Canadian Radio-television and Telecommunications (CRTC) licensing processes in addition to Industry Canada requirements. Although Industry Canada encourages applicants to consult as early as practical in the application process, in some cases it may not be prudent for the applicants to initiate public and municipal/land-use consultation before receiving CRTC approval, as application denial by the CRTC would result in unnecessary work for all parties involved. Therefore, assuming that the proposal is not otherwise excluded, broadcasting applicants may opt to commence land-use consultation after having received CRTC approval. However, broadcasting applicants choosing this option are required, at the time of the CRTC application, to notify the land-use authority with a Letter of Intent outlining a commitment to conduct consultation after receiving CRTC approval. If the land-use authority raises concerns with the proposal as described in the Letter of Intent, applicants are encouraged to engage in discussions with the land-use authority regarding their concerns and attempt to resolve any issues. See Broadcasting Procedures and Rules, Part 1 (BPR-1), for further details.

#### 4.1 Land-use Authority Consultation

Industry Canada believes that any concerns or suggestions expressed by land-use authorities are important elements to be considered by proponents regarding proposals to install, or make changes to, antenna systems. As part of their community planning processes, land-use authorities should facilitate the implementation of local radiocommunication services by establishing consultation processes for the siting of antenna systems.

Unless the proposal meets the exclusion criteria outlined in Section 6, proponents must consult with the local land-use authority(ies) on any proposed antenna system prior to any construction with the aim of:

- discussing site options;
- ensuring that local processes related to antenna systems are respected;
- addressing reasonable and relevant concerns (see Section 4.2) from both the land-use authority and the community they represent; and
- obtaining land-use authority concurrence in writing.

Land-use authorities are encouraged to establish reasonable, relevant, and predictable consultation processes<sup>2</sup> specific to antenna systems that consider such things as:

- the designation of suitable contacts or responsible officials;
- proposal submission requirements;
- public consultation;
- documentation of the concurrence process; and
- the establishment of milestones to ensure consultation process completion within *120 days*.

Where they have specific concerns regarding a proposed antenna system, land-use authorities are expected to discuss reasonable alternatives and/or mitigation measures with proponents.

Under their processes, land-use authorities may exclude from consultation any antenna system installation in addition to those identified by Industry Canada's own consultation exclusion criteria (Section 6). For example, an authority may wish to exclude from public consultation those installations located within industrial areas removed from residential areas, low visual impact installations, or certain types of structures located within residential areas.

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<sup>2</sup> Industry Canada is available to assist land-use authorities in the development of local processes. In addition, land-use authorities may wish to consult Industry Canada's guide for the development of local consultation processes.

## 4.2 Industry Canada's Default Public Consultation Process

Proponents must follow Industry Canada's Default Public Consultation Process where the local land-use authority does not have an established and documented public consultation process applicable to antenna siting. Proponents are not required to follow Industry Canada's Default Public Consultation Process if the land-use authority's established process explicitly excludes their type of proposal from public consultation or it is excluded by Industry Canada's criteria (see Section 6). Industry Canada's default process has three steps whereby the proponent:

1. provides written notification to the public, the land-use authority and Industry Canada of the proposed antenna system installation or modification (i.e. *public notification*);
2. engages the public and the land-use authority in order to address relevant questions, comments and concerns regarding the proposal (i.e. *responding to the public*); and
3. provides an opportunity to the public and the land-use authority to formally respond in writing to the proponent regarding measures taken to address reasonable and relevant concerns (i.e. *public reply comment*).

### Public Notification

1. Proponents must ensure that the local public, the land-use authority and Industry Canada are notified of the proposed antenna system. As a minimum, proponents must provide a notification package (see Appendix 2) to the local public (including nearby residences, community gathering areas, public institutions, schools, etc.), neighbouring land-use authorities, businesses, and property owners, etc. located within a radius of three times the tower height, measured from the tower base or the outside perimeter of the supporting structure, whichever is greater. For the purpose of this requirement, the outside perimeter begins at the furthest point of the supporting mechanism, be it the outermost guy line, building edge, face of the self-supporting tower, etc.
2. It is the proponent's responsibility to ensure that the notification provides at least **30 days** for written public comment.
3. In addition to the minimum notification distance noted above, in areas of seasonal residence, the proponent, in consultation with the land-use authority, is responsible for determining the best manner to notify such residents to ensure their engagement.
4. In addition to the public notification requirements noted above, proponents of antenna-supporting structures that are proposed to be 30 metres or more in height must place a notice in a local community newspaper circulating in the proposed area.<sup>3</sup>

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<sup>3</sup> The notice must be synchronized with the distribution of the public notification package. It must be legible and placed in the public notice section of the newspaper. The notice must include: a description of the proposed installation; its location and street address; proponent contact information and mailing address; and an invitation to provide public comments to the proponent within **30 days** of the notice. In areas without a local newspaper, other effective means of public notification must be implemented. Proponents may contact the local Industry Canada office for guidance.

### Responding to the Public

Proponents are to address all reasonable and relevant concerns, make all reasonable efforts to resolve them in a mutually acceptable manner and must keep a record of all associated communications. If the local public or land-use authority raises a question, comment or concern relating to the antenna system as a result of the public notification process, then the proponent is required to:

1. respond to the party in writing within **14 days** acknowledging receipt of the question, comment or concern and keep a record of the communication;
2. address in writing all reasonable and relevant concerns within **60 days** of receipt or explain why the question, comment or concern is not, in the view of the proponent, reasonable or relevant; and
3. in the written communication referred to in the preceding point, clearly indicate that the party has **21 days** from the date of the correspondence to reply to the proponent's response. The proponent must provide a copy of all public reply comments to the local Industry Canada office.

Responding to reasonable and relevant concerns may include contacting a party by telephone, engaging in a community meeting or having an informal, personal discussion. Between steps 1 and 2 above, the proponent is expected to engage the public in a manner it deems most appropriate. Therefore, the letter at step 2 above may be a record of how the proponent and the other party addressed the concern at hand.

### Public Reply Comments

As indicated in step 3 above, the proponent must clearly indicate that the party has **21 days** from the date of the correspondence to reply to the response. The proponent must also keep a record of all correspondence/discussions that occurred within the **21-day** public reply comment period. This includes records of any agreements that may have been reached and/or any concerns that remain outstanding.

The factors that will determine whether a concern is reasonable or relevant according to this process will vary but will generally be considered if they relate to the requirements of this document and to the particular amenities or important characteristics of the area surrounding the proposed antenna system. Examples of concerns that proponents are to address may include:

- Why is the use of an existing antenna system or structure not possible?
- Why is an alternate site not possible?
- What is the proponent doing to ensure that the antenna system is not accessible to the general public?
- How is the proponent trying to integrate the antenna into the local surroundings?
- What options are available to satisfy aeronautical obstruction marking requirements at this site?
- What are the steps the proponent took to ensure compliance with the general requirements of this document including the *Canadian Environmental Assessment Act* (CEAA), Safety Code 6, etc.?

Concerns that are not relevant include:

- disputes with members of the public relating to the proponent's service, but unrelated to antenna installations;
- potential effects that a proposed antenna system will have on property values or municipal taxes;
- questions whether the *Radiocommunication Act*, this document, Safety Code 6, locally established by-laws, other legislation, procedures or processes are valid or should be reformed in some manner.

#### **4.3 Concluding Consultation**

The proponent may only commence installation/modification of an antenna system after the consultation process has been completed by the land-use authority, or Industry Canada confirms concurrence with the consultation portion of this process, and after all other requirements under this process have been met. Consultation responsibilities will normally be considered complete when the proponent has:

1. concluded consultation requirements (Section 4.1) with the land-use authority;
2. carried out public consultation either through the process established by the land-use authority or the Industry Canada's Default Public Consultation Process where required; and
3. addressed all reasonable and relevant concerns.

#### **Concluding Land-use Authority Consultation**

Industry Canada expects that land-use consultation will be completed within **120 days** from the proponent's initial formal contact with the local land-use authority. Where unavoidable delays may be encountered, the land-use authority is expected to indicate when the proponent can expect a response to the proposal. If the authority is not responsive, the proponent may contact Industry Canada. Depending on individual circumstances, Industry Canada may support additional time or consider the land-use authority consultation process concluded.

Depending on the land-use authority's own process, conclusion of local consultation may include such steps as obtaining final concurrence for the proposal via the relevant committee, a letter or report acknowledging that the relevant municipal process or other requirements have been satisfied, or other valid indication, such as the minutes of a town council meeting indicating LUA approval. Compliance with informal city staff procedures, or grants of approval strictly related to zoning, construction, etc. will not normally be sufficient.

Industry Canada recognizes that approvals for construction (e.g. building permits) are used by some land-use authorities as evidence of consultation being concluded. Proponents should note that Industry Canada does not consider the fact a permit was issued as confirmation of concurrence, as different land-use authorities have different approaches. As such, Industry Canada will only consider such approvals as valid when the proponent can demonstrate that the LUA's process was followed and that the LUA's preferred method of concluding LUA consultation is through such an approval.

### **Concluding Industry Canada's Default Public Consultation Process**

Industry Canada's Default Public Consultation Process will be considered concluded when the proponent has either:

- received no written questions, comments or concerns to the formal notification within the *30-day* public comment period; or
- if written questions, comments or concerns were received, the proponent has addressed and resolved all reasonable and relevant concerns and the public has not provided further comment within the *21-day* reply comment period.

In the case where the public responds within the *21-day* reply comment period, the proponent has the option of making further attempts to address the concern on its own, or can request Industry Canada engagement. If a request for engagement is made at this stage, Industry Canada will review the relevant material, request any further information it deems pertinent from any party and may then decide that:

- the proponent has met the consultation requirements of this process and that Industry Canada concurs that installation or modification may proceed; or
- the parties should participate in further attempts to mitigate or resolve any outstanding concern.

### **5. Dispute Resolution Process**

The dispute resolution process is a formal process intended to bring about the timely resolution where the parties have reached an impasse.

Upon receipt of a written request, from a stakeholder other than the general public, asking for Departmental intervention concerning a reasonable and relevant concern, the Department may request that all involved parties provide and share all relevant information. The Department may also gather or obtain other relevant information and request that parties provide any further submissions if applicable. The Department will, based on the information provided, either:

- make a final decision on the issue(s) in question, and advise the parties of its decision; or
- suggest the parties enter into an alternate dispute resolution process in order to come to a final decision. Should the parties be unable to reach a mutually agreeable solution, either party may request that the Department make a final decision.

Upon resolution of the issue under dispute, the proponent is to continue with the process contained within this document as required.

## 6. Exclusions

For the following types of installations, proponents are excluded from the requirement to consult with the LUA and the public, but must still fulfill the General Requirements outlined in Section 7:

- maintenance of existing radio apparatus including the antenna system, transmission line, mast, tower or other antenna-supporting structure;
- addition or modification of an antenna system (including improving the structural integrity of its integral mast to facilitate sharing), the transmission line, antenna-supporting structure or other radio apparatus to existing infrastructure, a building, water tower, etc. provided the addition or modification does not result in an overall height increase above the existing structure of 25% of the original structure's height;
- maintenance of an antenna system's painting or lighting in order to comply with Transport Canada's requirements;
- installation, for a limited duration (typically not more than 3 months), of an antenna system that is used for a special event, or one that is used to support local, provincial, territorial or national emergency operations during the emergency, and is removed within 3 months after the emergency or special event; and
- new antenna systems, including masts, towers or other antenna-supporting structure, with a height of less than 15 metres above ground level.

Individual circumstances vary with each antenna system installation and modification, and the exclusion criteria above should be applied in consideration of local circumstances. Consequently, it may be prudent for the proponents to consult the LUA and the public even though the proposal meets an exclusion noted above. Therefore, when applying the criteria for exclusion, proponents should consider such things as:

- the antenna system's physical dimensions, including the antenna, mast, and tower, compared to the local surroundings;
- the location of the proposed antenna system on the property and its proximity to neighbouring residents;
- the likelihood of an area being a community-sensitive location; and
- Transport Canada marking and lighting requirements for the proposed structure.

Proponents who are not certain if their proposed structure is excluded, or whether consultation may still be prudent, are advised to contact the land-use authority and/or Industry Canada for guidance.

## 7. General Requirements

In addition to roles and responsibilities for site sharing, land-use consultation and public consultation, proponents must also fulfill other important obligations including: compliance with Health Canada's Safety Code 6 guideline for the protection of the general public; compliance with radio frequency immunity criteria; notification of nearby broadcasting stations; environmental considerations; and Transport Canada/NAV CANADA aeronautical safety responsibilities.

### 7.1 Radio Frequency Exposure Limits

Health Canada has established safety guidelines for exposure to radio frequency fields, in its Safety Code 6 publication, entitled: *Limits of Human Exposure to Radiofrequency Electromagnetic fields in the Frequency Range from 3 kHz to 300 GHz*.<sup>4</sup> While the responsibility for developing Safety Code 6 rests with Health Canada, Industry Canada has adopted this guideline for the purpose of protecting the general public. Current biomedical studies in Canada and other countries indicate that there is no scientific or medical evidence that a person will experience adverse health effects from exposure to radio frequency fields, provided that the installation complies with Safety Code 6.

It is the responsibility of proponents and operators of installations to ensure that all radiocommunication and broadcasting installations comply with Safety Code 6 at all times, including the consideration of combined effects of nearby installations within the local radio environment.

For all proponents following Industry Canada's Default Public Consultation Process, the proponent's notification package must provide a written attestation that there will be compliance with Safety Code 6 for the protection of the general public, including consideration of nearby radiocommunication systems. The notification package must also indicate any Safety Code 6 related signage and access control mechanisms that may be used.

Compliance with Safety Code 6 is an ongoing obligation. At any time, antenna system operators may be required, as directed by Industry Canada, to demonstrate compliance with Safety Code 6 by (i) providing detailed calculations, and/or (ii) conducting site surveys and, where necessary, by implementing corrective measures. Proponents and operators of existing antenna systems must retain copies of all information related to Safety Code 6 compliance such as analyses and measurements.

### 7.2 Radio Frequency Immunity

All radiocommunication and broadcasting proponents and existing spectrum users are to ensure that their installations are designed and operated in accordance with Industry Canada's immunity criteria as outlined in EMCAB-2<sup>5</sup> in order to minimize the malfunctioning of electronic equipment in the local surroundings. Broadcasting proponents and existing undertakings should refer to Broadcasting

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<sup>4</sup> Safety Code 6 can be found on Health Canada's website at:  
[http://www.hc-sc.gc.ca/ewh-smmt/pubs/radiation/99ehd-dhm237/index\\_e.html](http://www.hc-sc.gc.ca/ewh-smmt/pubs/radiation/99ehd-dhm237/index_e.html).

<sup>5</sup> For more information see EMCAB-2, entitled: *Criteria for Resolution of Immunity Complaints Involving Fundamental Emissions of Radiocommunications Transmitters* available on Industry Canada's Spectrum Management and Telecommunications website at: [www.strategis.ic.gc.ca/epic/internet/insmt-gst.nsf/en/sf01005e.html](http://www.strategis.ic.gc.ca/epic/internet/insmt-gst.nsf/en/sf01005e.html).

Procedures and Rules - Part 1, *General Rules* (BPR-1) for additional information and requirements<sup>6</sup> on this matter.

Proponents are advised to consider the potential effect that their proposal may have on nearby electronic equipment. In this way, they will be better prepared to respond to any questions that may arise during the public and land-use consultation processes, or after the system has been installed.

Land-use authorities should be prepared to advise proponents and owners of broadcasting undertakings of plans for the expansion or development of nearby residential and/or industrial areas. Such expansion or development generally results in the introduction of more electronic equipment in the area and therefore an increased potential for electronic equipment to malfunction. By keeping broadcasters aware of planned developments and changes to adjacent land-use, they will be better able to work with the community. Equally, land-use authorities have a responsibility to ensure that those moving into these areas, whether prospective residents or industry, are aware of the potential for their electronic equipment to malfunction when located in proximity to an existing broadcasting installation. For example, the LUA could ensure that clear notification be provided to future prospective purchasers.

### 7.3 Proximity of Proposed Structure to Broadcasting Undertakings

Where the proposal would result in a structure that exceeds 30 metres above ground level, the proponent is to notify operators of AM, FM and TV undertakings within 2 kilometres, due to the potential impact the physical structure may have on these broadcasting undertakings. Metallic structures close to an AM directional antenna array may change the antenna pattern of the AM broadcasting undertaking. These proposed structures can also reflect nearby FM and TV signals, causing 'ghosting' interference to FM/TV receivers used by the general public.

### 7.4 Canadian Environmental Assessment Act

Industry Canada requires that the installation and modification of antenna systems be done in a manner that complies with appropriate environmental legislation. This includes the CEAA and local environmental assessment requirements where required by the CEAA.

Proponents will ensure that the environmental assessment process is applied as early as is practical in the planning stages. This will enable proponents and other stakeholders to consider environmental factors in any decisions that may be made. As part of their environmental assessment, proponents are to give due consideration to potential environmental impacts including cumulative effects.

Proponents are advised to view the current CEAA exclusion list<sup>7</sup> to see if their proposed installation meets the requirements to be excluded from assessment under the CEAA.

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<sup>6</sup> BPR-1 - Part I: General Rules can be found on the Spectrum Management and Telecommunications website at: <http://strategis.ic.gc.ca/epic/internet/insmt-gst.nsf/en/sf01326e.html>.

<sup>7</sup> The CEAA exclusion list can be found at <http://laws.justice.gc.ca/en/C-15.2/SOR-94-639/index.html>.

If not excluded, the proponent must first notify the local Industry Canada office which will direct the proponent on how to proceed with an environmental assessment. At this point, the proponent must not proceed with any construction related to the proposal.

Where the proposal requires assessment under the CEAA, the proponent must either:

- abandon the proposal; or
- participate in the environmental assessment process as established under the CEAA.

Should the environmental assessment identify that there is the potential for an adverse environmental effect, the proponent will be required to describe the effect and propose mitigation measures. Through an environmental assessment, careful consideration may be given to potential adverse environmental effects during the planning stages. This makes it possible to introduce measures which permit the project to proceed while protecting the environment.

Should any significant adverse environmental effect become apparent at any time during the installation, all construction must be stopped, regardless of whether the installation was excluded from environmental assessment.

For all proponents following Industry Canada's Default Public Consultation Process, the proponent's notification package must provide written confirmation of the project's status under the *Canadian Environmental Assessment Act*.

In those situations where an environmental assessment is required, Industry Canada will post a notification of the commencement of the assessment on the Canadian Environmental Assessment Registry website.<sup>8</sup> This will help to ensure that all interested parties, including the general public, are aware of an assessment from the outset. The notification will include the name, location and a summary description of the project, and identify the project proponent(s) and federal department(s) directly involved in the assessment. Other pertinent documents will be placed on the Internet site as the assessment proceeds, including all public notices, decisions and information about follow-up programs. Should mitigation measures be identified further to the assessment, Industry Canada will ensure that the project does not proceed unless these measures are adequately addressed.

In addition, proponents are responsible to ensure that antenna systems are installed and operated in a manner that respects the local environment and complies with other statutory requirements such as the *Canadian Environmental Protection Act*, the *Migratory Birds Convention Act* and the *Species at Risk Act*, where applicable.

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<sup>8</sup> The Canadian Environmental Assessment Registry website can be found at: [http://www.ceaa-acee.gc.ca/050/index\\_e.cfm](http://www.ceaa-acee.gc.ca/050/index_e.cfm).

## 7.5 Aeronautical Safety

Proponents must ensure their proposals for any antenna system are first reviewed by Transport Canada and NAV CANADA.

Transport Canada will perform an assessment of the proposal with respect to the potential hazard to air navigation and will notify proponents of any painting and/or lighting requirements for the antenna system. NAV CANADA will comment on whether the proposal has an impact on the provision of their national air navigation system, facilities and other services located off-airport.

As required, the proponent must:

1. submit an Aeronautical Obstruction Clearance form to Transport Canada;
2. submit a Land-use Proposal Submission form to NAV CANADA;
3. include Transport Canada marking requirements in the public notification package;
4. install and maintain the antenna system in a manner that is not a hazard to aeronautical safety; and
5. retain all correspondence.

For those antenna systems subject to Industry Canada's Default Public Consultation Process, the proponent will inform the community of any marking requirements. Where options are possible, proponents are expected to work with the local community and Transport Canada to implement the best and safest marking options. Proponents should be aware that Transport Canada does not advise Industry Canada of marking requirements for proposed structures. Proponents are reminded that the addition of, or modification to, obstruction markings may result in community concern and so any change is to be done in consultation with the local public, land-use authority and/or Transport Canada, as appropriate.

### References and Details

Aeronautical Obstruction Clearance forms are available from any Transport Canada Aviation Group Office. Both the Aeronautical Obstruction Clearance form (#26-0427) and a list of Transport Canada Aviation Group regional offices are available on the Transport Canada website.<sup>9</sup> Completed forms are to be submitted directly to the nearest Transport Canada Aviation Group office. (Refer to Canadian Aviation Regulations, Standard 621.19, Standards Obstruction Markings).

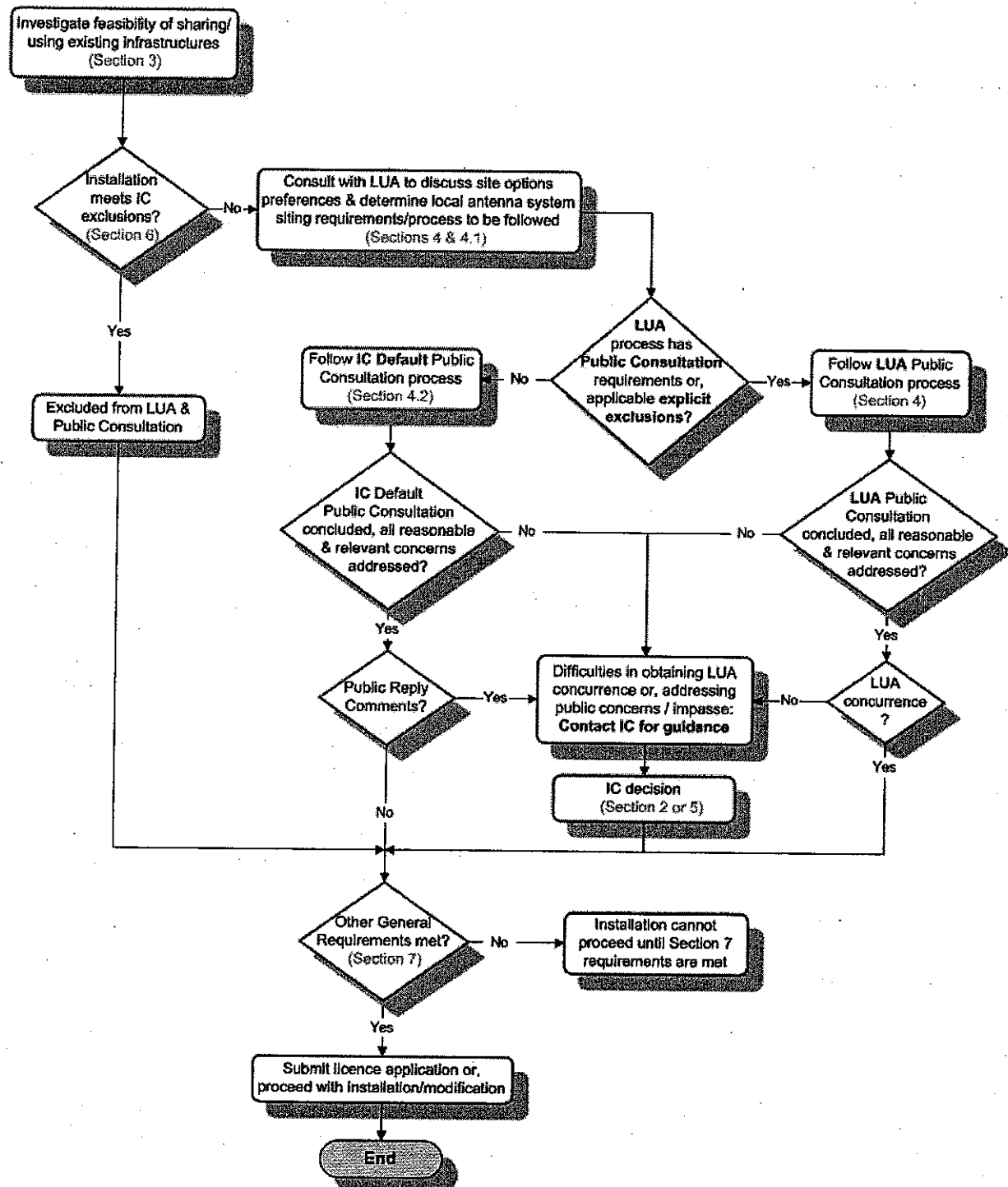
Land-use Proposal Submission forms are available from NAV CANADA<sup>10</sup> and completed forms are to be sent to the appropriate NAV CANADA General Manager Airport Operations (GMAO) office, East or West.

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<sup>9</sup> The Transport Canada website can be found at: <http://www.tc.gc.ca>.

<sup>10</sup> Search keywords "Land-use Proposal" on the NAV CANADA website at: <http://www.navcanada.ca>.

## Appendix 1 - Consultation Flow Chart



## Appendix 2 - Industry Canada's Default Public Consultation Process - Public Notification Package (See Section 4.2)

The proponent must ensure that at least *30 days* are provided for public comment. Notification must provide all information on how to submit comments to the proponent in writing. The proponent must also provide a copy of the notification package to the land-use authority and the local Industry Canada office at the same time as the package is provided to the public.

Notification must include, but need not be limited to:

- (1) the proposed antenna system's purpose, the reasons why existing antenna systems or other infrastructure cannot be used, a list of other structures that were considered unsuitable and future sharing possibilities for the proposal;
- (2) the proposed location within the community, the geographic co-ordinates and the specific property or rooftop;
- (3) an attestation<sup>1</sup> that the general public will be protected in compliance with Health Canada's Safety Code 6 including combined effects within the local radio environment at all times;
- (4) identification of areas accessible to the general public and the access/demarcation measures to control public access;
- (5) the project's status under the *Canadian Environmental Assessment Act*<sup>2</sup>;
- (6) a description of the proposed antenna system including its height and dimensions, a description of any antenna that may be mounted on the supporting structure and simulated images of the proposal;
- (7) Transport Canada's aeronautical obstruction marking requirements (whether painting, lighting or both) if available; if not available, the proponent's expectation of Transport Canada's requirements together with an undertaking to provide Transport Canada's requirements once they become available;
- (8) an attestation that the installation will respect good engineering practices including structural adequacy;
- (9) reference to any applicable local land-use requirements such as local processes, protocols, etc.;

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<sup>1</sup> Example: I, (name of individual or representative of company) attest that the radio installation described in this notification package will be installed and operated on an ongoing basis so as to comply with Health Canada's Safety Code 6, as may be amended from time to time, for the protection of the general public including any combined effects of nearby installations within the local radio environment.

<sup>2</sup> Example: I, (name of individual or representative of company) attest that the radio antenna system described in this notification package is excluded from environmental assessment under the *Canadian Environmental Assessment Act*.

- (10) notice that general information relating to antenna systems is available on Industry Canada's Spectrum Management and Telecommunications website (<http://strategis.ic.gc.ca/antenna>);
- (11) contact information for the proponent, land-use authorities and the local Industry Canada office;  
and
- (12) closing date for submission of written public comments (not less than *30 days* from receipt of notification).