POWER FACILITIES vs TELECOM FACILITIES ON JOINT USE POLE

BELL AND HYDRO ONE AGREEMENT
Supplement to Issue #17

A. Pole costs must be adjusted to reflect the joint-use pole-sharing arrangement between the LDCs and Bell Canada.

1. In the view of the Carriers, a just and reasonable pole attachment rate cannot be determined without a full understanding and appreciation of the joint use pole-sharing arrangement between an LDC and Bell Canada, the incumbent telephone carrier in the Province of Ontario. To ignore or misunderstand this relationship would allow the LDC to over-recover its common costs by a significant margin, at the expense of the rate-paying telecom attachers, and would result in an unfair and unreasonable rate.

2. As we understand it, this joint use relationship is, for all intents and purposes, a partnership in which Bell and the LDC have agreed to share both poles and costs (as well as other functions and operations related to the poles). Perhaps the best example is the contractual relationship between Bell and Hydro One. As Hydro One explained in its OEB pole rate proceeding, Bell and Hydro One have entered into a historical "contract of convenience" under which they provide access to one another's poles at <u>no</u> cost.[1]

3. In the simplest terms, Bell and Hydro One have effectively said to one another - "instead of us both building duplicate infrastructure, you build a bunch of poles in *these* geographic areas, we will build a bunch of poles in *these other* geographic areas, and we will use each other's poles as required".

4. Under this mutually-beneficial arrangement, each party has built a certain number of poles but has access to a much larger population of poles at no additional cost. Of the joint population of poles, Hydro One owns and is responsible for approximately 60% and Bell owns and is responsible for approximately 40%.[2]

5. Hydro One does not pay Bell an occupancy fee to attach to Bell's poles. Similarly, Bell does not pay Hydro One an occupancy fee to attach to Hydro One's poles. Instead, Bell has made a contribution "in kind" by building a whole bunch of poles and making them available to Hydro One for no charge.

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1 We believe that although Hydro Ottawa and Bell do not have a joint use arrangement whereby the each provide access to one another's poles at no charge, Hydro Ottawa and Bell may achieve a similar result under their reciprocal arrangement, but have been unable to confirm this due to non-disclosure of the reciprocal agreement. In its pole rate hearing before the OEB, Hydro Ottawa advised that it charges Bell the same pole attachment rate that it charges third party telecom attachers. What it refused to disclose, however, is how much it charges Hydro Ottawa to attach to Bell-owned poles.

2 As we understand it, the ownership share was negotiated when Bell had a telephone monopoly, and has not changed despite the introduction of third party telecom attachers and changes in the number of, and rates charged to, third party attachers by Bell and Hydro One.

6. Hydro One asserts that, when calculating the telecom pole attachment rate, it took into account Bell's contribution by including the number of Bell attachments in the average number of telecom attachers per pole. While this line of reasoning appears to make sense and, indeed the Board was swayed by it in its decision approving the Hydro One pole attachment rate, it is misleading and not sustainable; primarily for the reason that Bell is not, and cannot be treated as, a *rate-paying* attacher.

7. Unlike Rogers and other third party telecom attachers, Bell does not pay an ongoing annual pole attachment fee. Rather, it is a "partner" with Hydro One that has agreed to share in the costs of building support structures (*i.e.*, poles) to carry each other's respective communications and electricity lines. As partners and co-owners of the joint-use poles, Hydro One and Bell have control over their pole costs, the pole location, the timing of pole replacement or removal, and the allocation and use of space on the pole. They also have the ability to generate revenues from the provision of space on their poles. The rate-paying telecom attachers, on the other hand, are mere tenants and enjoy none of these rights or privileges.

8. By not charging Bell a pole attachment fee but including Bell with the actual rate-paying attachers, Hydro One is saying that the capital contribution Bell has made to the joint inventory of poles is in lieu of, or a proxy for, the pole attachment rate it would otherwise have to pay. In effect, the approach assumes that Bell's contribution would always equal the pole attachment rate, no matter what that may be.

9. But that is not possible. To wit, in its original rate application, Hydro One sought to replace a rate of $22.35 with a new rate of $37.05 (which the Board originally approved). Then, when the Carriers sought to review and vary that decision, Hydro One sought approval for a variety of rates before finally settling on $70.04 – almost twice the rate it had asked for in its original application.

10. Yet, during this entire time, Bell's 40% capital contribution towards the inventory of poles available to Hydro One did not change. It was a fixed number and cannot simultaneously be equivalent to multiple rates, whether they are $22.35, $37.05, $70.04 or any other rate Hydro One declared was necessary to recover its costs. In fact, Hydro One admitted that it had not undertaken any kind of analysis to demonstrate a correlation between Bell's capital contribution "in kind" and the pole attachment rate it would otherwise be required to pay.

B. So, how do we take Bell's contribution into account?

11. The simplest way to take into account Bell's contribution is to remove Bell entirely from the picture. As discussed above, it has paid for a portion of Hydro One's poles - it is not a rate-paying attacher, and cannot and should not be treated as such. Therefore, the first step is to deduct 40% from the average embedded cost per pole. This is based on the straightforward logic that Bell has effectively

contributed to or paid for 40% of the costs of all the poles to which Hydro One has access.

12. By way of example, let us assume that Hydro One and Bell have built, collectively, 100,000 joint-use poles that they share. 60% or 60,000 would have been built by Hydro One and 40% or 40,000 would have been built by Bell. Now, if each pole has an installed cost of $1,000, Hydro One would have spent $60 million to install its poles and Bell would have spent $40 million to install its poles.

13. Now, under this pole-sharing arrangement, Hydro One actually has access to both its poles and Bell's poles for a total of 100,000 poles. Therefore, its average installed cost per joint-use pole is $600 ($60 million divided by 100,000).

14. In the Carriers' view, this approach is logical and reasonable. It is also consistent with the approach the CRTC adopted when it most recently set pole attachment rates for the incumbent telephone companies such as Bell (called "ILECs").[3] In that decision, the Commission noted that the ILECs normally share joint use poles with the LDCs and, in order to take into account the LDC's contribution to these poles, the average embedded cost of the ILEC's pole should be reduced by the percent ownership held by the LDC. The Commission stated as follows:

> 33. The Commission notes that in joint-use agreements between ILECs and hydro companies, the ILEC owns a percentage of the total number of joint-use poles and has access to the hydro company's joint-use poles at no cost to the ILEC. The Commission considers that joint-use agreements effectively reduce an ILEC's cost for joint-use poles.
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> 34. Accordingly, the Commission considers it appropriate to determine the percent-communication factor for joint-use poles by using the percentage of the joint-use poles owned by an ILEC relative to the total number of joint-use poles owned by both the ILEC and the hydro company.

15. Therefore, consistent with this approach, we must reduce the embedded cost of an LDC pole by Bell's contribution percentage (which, in the case of Hydro One, would be 40%).

16. Since we are completely removing Bell from the picture, we must also remove Bell's attachments, as well as the number of poles that only have Bell attachments, from the calculation for the average number of telecom attachers per pole. Again, this is because Bell is not being treated as a *rate-paying* attacher.

17. Hydro One advised that their records do not allow it to make this deduction. We imagine that this would be the same for many of the LDCs in Ontario. But as it turns out, it is not necessary to know the number of poles with or without Bell attachments. If we remove Bell completely from the picture, we know that the

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3 Telecom Decision CRTC 2010-900, *Review of the large incumbent local exchange carriers' support structure service rates* (2 December 2010) at paras 33-34.

average number of remaining *rate-paying* telecom attachers must be at least 1.0. (If it were less than 1.0, then it would include poles with ***no*** rate-paying telecom attachers, which would lead to the unintended result of rate-paying telecom attachers paying for poles they do not use. This is an outcome that, in our view, would not be just and reasonable.)

18. Therefore, at a bare minimum, there is 1.0 telecom attacher per pole. That would likely be Rogers. However, given all of the other telecoms with networks deployed across the Province, it can be assumed that the number of telecom attachers per pole is at a minimum slightly greater than 1.0 – say, 1.1.

19. In summary, under this joint-use arrangement, Hydro One has effectively recovered 40% of the upfront costs of its poles from Bell. It should now only recover a portion of the remaining 60% of its common costs from the rate-paying telecom attachers. Any other arrangement would allow it to over-recover its costs.

20. Based on the foregoing, we are of the view that a just and reasonable pole attachment rate cannot be established without taking into account the pole-sharing relationship Bell has with the LDCs and the capital contribution Bell makes in respect of shared joint-use poles.

21. We understand that there are other operational benefits that Bell enjoys vis-à-vis its reciprocal pole-sharing arrangements with the LDCs. These benefits, which can only be confirmed with a disclosure of the underlying agreements, are discussed in the body of our comments.