Industry Canada Spectrum Management and Telecommunications

DGSO-001-14,
Consultation on Amendments to Industry Canada’s Antenna Tower Siting Procedures

Comments

of

Bell Mobility

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1.0 INTRODUCTION

1. In accordance with the procedure set out in Industry Canada Notice DGSO-001-14, Consultation on Amendments to Industry Canada’s Antenna Tower Siting dated 1 March 2014 (the Notice), Bell Mobility (Bell or the Company) is pleased to present its views on the Department’s proposed updates to Industry Canada’s Client Procedures Circular CPC-2-0-03 Radiocommunication and Broadcasting Antenna Systems, Issue 4.

2. Before responding to the specific questions set out in the Notice, the Company wishes to make some general policy comments.

3. Bell is of the view that the existing procedures as set out in CPC 2-0-03 (hereafter the CPC) together with the newly negotiated CWTA/FCM protocol template are effective and meet all concerns and do not require further amendment.

4. Bell observes that many of the concerns that have been raised by members of the public during public consultations with respect to tower siting are primarily related to health, safety and property values. While these issues continue to dominate the majority of public consultations and in many cases minimize the discussion on land-use planning that is the primary focus of this public consultation, Bell believes that with respect to issues such as health and safety, that the CPC should be amended to provide clear direction to land-use authorities that matters related to health and safety be referred to Health Canada.

5. As the Department is well aware, on 28 February 2013, the Federation of Canadian Municipalities (FCM) and the Canadian Wireless Telecommunications Association (CWTA) released a joint antenna siting protocol template (hereafter "protocol template"). The outcome of this collaborative effort was a document that could be easily implemented by land-use authorities by the addition of local siting preferences. The agreed protocol template requires proponents to consult on elements of tower placement and operation that are not subject to consultation under the CPC. Bell agreed to the increased public and municipal consultation elements through the CWTA with the understanding that in the event of a disagreement with the land-use authority upon the implementation of the protocol template, that the Department would be available to provide guidance for either the carrier or the land-use authority.

6. The protocol template requires the land-use authority to customize and implement the protocol template which is typically done via a resolution from its Council or executive board.
The protocol template was not designed to be utilized by a land-use authority unless the land-use authority formally adopts the document. Certain land-use authorities prefer to use a pre-existing locally drafted protocol. Some land-use authorities have developed and implemented custom protocols even after having the benefit of the CWTA/FCM protocol template.

7. After the protocol template was agreed upon by CWTA members, Bell aligned its site acquisition processes with the intended spirit of the document and implemented a governance process to review exempt sites to be constructed in urban areas. The result is Bell already consults on many towers below 15 metres. It should be noted, that adoption of this thorough review resulted in many municipal and/or public consultations for proposed telecommunications sites in municipalities that had not adopted the CWTA/FCM protocol template as their protocol.

8. Bell would like to reiterate, that the processes contained in the Department's existing Client Procedures Circular together with the CWTA/FCM protocol template, were effective and did not require further amendment. However, Bell is pleased to provide the following comments to the Department's consultation on this subject.

9. Bell will respond to Industry Canada's proposed updates to the CPC in the order that they appear in the consultation document.

2.0 SPECIFIC COMMENTS

Section 5.1 Antenna Siting Procedures

Proposed Update to Section 1.2 of CPC-2-0-03

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. This includes telecommunications carriers, businesses, governments, Crown agencies and the public. Anyone who proposes, uses or owns an antenna system must follow these procedures. The requirements also apply to those who install towers or antenna systems on behalf of others or for leasing purposes ("third party tower owners"). As well, parts of this process contain obligations that apply to existing antenna system owners.

Section 5.2 Industry Canada's Default Public Consultation Process

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. **Public notification of an upcoming consultation must be clearly marked, making reference to the proposed antenna system, so that it is not misinterpreted as junk mail. The notice must be sent by regular mail or be hand delivered. The face of the envelope must clearly indicate that the recipient is within the prescribed notification radius of the proposed antenna system.**

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 systems 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. **Height is measured from the lowest ground level at the base, including foundation, to the tallest point of the antenna system. Any attempt to artificially reduce the height (addition of soil, aggregate, etc.) is unacceptable.**

10. Bell fully supports the Departments proposal to use a clearly marked notification package. As part of Bell's continued efforts to improve upon the quality and appearance of public notifications, Bell has been developing a well marked public notification package that is self contained and does not require the use of an envelope. The document would be completely self contained and neatly fold into a ready to be mailed clearly marked notification package.

11. Bell recommends, that the Department reconsider the absolute requirement to utilize an envelope provided that use of a self contained folded notification package is properly and clearly marked as it would be if an envelope were to be used.

12. Bell generally supports the Department's proposed defined criterion for measuring the height of a proposed tower installation.
Section 5.3 Post-Consultation Construction Time Limit

Proposed New Section 4.4 to be added to CPC-2-0-03

Whether the proponent followed a land-use authority’s process or Industry Canada's default public consultation process, construction of an antenna system must be completed within three years of conclusion of consultation. After three years, previous consultations will no longer be deemed to be valid.

13. Bell generally supports the Department's proposed application of a time limit on concurrence. However, Bell is of the view, that the land-use authority should ultimately have the opportunity to review the concurrence statement along with any changes to the composition of the local area and determine whether an effective time period of more than three years is warranted.

14. In many jurisdictions, the municipality has the power in legislation to extend development approvals beyond the initial approval period. There are circumstances where the surrounding land-uses have not changed within three years, and as such it would be appropriate for concurrence to extend beyond a three-year period of time.

15. Bell recommends that as Municipalities are responsible for current and future land-use planning considerations that they are afforded a certain amount of discretion to evaluate and review situations when it may be appropriate to extend concurrence beyond three years on a case-by-case basis.

Section 5.4 Exclusions

Proposed Update to Section 6 of CPC-2-0-03

All proponents must consult the land-use authority and the public unless a proposal is specifically excluded. Individual circumstances vary with each antenna system installation and modification, and the exclusion criteria below should be applied in consideration of local circumstances. Consequently, it may be prudent for the proponent to consult even though the proposal meets an exclusion noted below. 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's marking and lighting requirements for the proposed structure.
The following proposals are excluded from land-use authority and public consultation requirements, but must still satisfy the General Requirements outlined in Section 7:

- **New Antenna Systems**: where the height is less than 15 metres above ground level. This exclusion does not apply to antenna systems to be used by broadcasting undertakings or telecommunications carriers;

- **Existing Towers**: modifications may be made, or the tower may be replaced, to facilitate sharing or the addition of antennas, provided that the total height increase is no greater than 25% of the height of the initial antenna system installation.\(^\text{Footnote6}\) No increase in height may occur within one year of completion of the initial construction;

- **Non-Tower Structures**: antennas on buildings, water towers, lamp posts, etc. may be installed provided that the height of the structure is not increased by more than 25%; and

- **Temporary Antenna Systems**: used for special events or emergency operations and must be removed three months after the start of the emergency or special event.

No consultation is required prior to performing maintenance on an existing antenna system.

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

Height is measured from the lowest ground level at the base, including foundation, to the tallest point of the antenna system. Any attempt to artificially reduce the height (addition of soil, aggregate, etc.) will not be taken into account in the measurement.

16. It is Bell's view that the exemption criteria should be consistent and apply to all commercial/public operators of antenna systems. While Bell understands that it is the Department's desire to allow for public consultation on all new ground mounted sites that are under 15 metres in height it should also be noted, that any tower site regardless of use has the same general impact to a given area. Bell therefore, does not necessarily agree with the proposed amendment by the Department under "New Antenna Systems" to limit the application of the exclusion only to operators of antenna systems related to telecommunications or broadcast undertakings from land-use authority and public consultation requirements.

17. Temporary antenna systems installed at a height of less than 15 metres have been used in the past to provide capacity relief on an interim basis while the approval process is being completed for a permanent antenna system. In the absence of exemption criteria, carriers will no longer have the ability to provide temporary relief for network capacity issues that are not characterized as a special event, or an emergency. Bell recommends that carriers be permitted
to install temporary antenna systems using structures that are not affixed to the ground by permanent means for periods of up to three months. Carriers would nevertheless need to take into consideration and fully recognize that individual circumstances vary with each temporary antenna system installation and the proposed exclusion criteria for non-temporary and non-emergency sites should be applied in consideration of local circumstances.

18. Bell believes that consultation for sites less than 15 metres should be set at three times the height of the proposed structure and should not exceed the prescribed distance under any protocol. Further, Bell is of the view that the same general principle of three times the tower height circulation radius should equally apply to structures that are greater than 15 metres in height. This circulation radius would be in keeping with the general spirit of the CPC and would provide a reasonable consultation/notification distance to nearby residences.

19. Bell generally supports the more precisely defined criterion for modifying an antenna system as proposed by the Department.

Section 5.5 Canadian Environmental Assessment Act 2012

Proposed Update to Section 7.4 of CPC-2-0-03

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 *Canadian Environmental Assessment Act, 2012* (CEAA 2012), where the antenna system is incidental to a physical activity or project designated under CEAA 2012, or is located on federal lands.

An antenna system may not proceed where it is incidental to a designated project (as described in the *Regulations Designating Physical Activities*), or is otherwise expressly designated by the Minister of the Environment without satisfying certain requirements applicable to designated projects. Therefore, a proponent of this type of project must contact Industry Canada for direction on how to proceed.

Any proposed antenna system on federal land may not proceed without a determination of environmental effects by Industry Canada. In order to assist the Department in making such a determination, proponents must submit a project description to Industry Canada, considering and addressing those elements of the environment described in CEAA 2012, as well as any determination of environmental effects that may have been made by the authority responsible for managing the federal land. Industry Canada may also require further information before it can complete its assessment. Industry Canada will inform the proponent of the results of its determination and may impose conditions related to mitigating any adverse effects after making its determination and/or may need to refer the matter to the Governor-in-Council under CEAA 2012.
Also, notices under Industry Canada's default public consultation process require written confirmation of the project's status under CEAA 2012 (e.g., whether it is incidental to a designated project or, if not, whether it is on federal lands).

In addition to CEAA requirements, proponents are responsible to ensure that antenna systems are installed and operated in a manner that respects the local environment and that complies with other statutory requirements, such as those under the *Canadian Environmental Protection Act, 1999*, the *Migratory Birds Convention Act, 1994*, and the *Species at Risk Act*, as applicable.

For projects north of the 60th parallel, environmental assessment requirements may arise from federal statutes other than the aforementioned Acts or from Comprehensive Land Claim Agreements. Industry Canada requires that installation or modification of antennas or antenna supporting structures be done in accordance with these requirements, as appropriate.

20. Bell's understanding is that it is obligated under law to comply with the Canada Environmental Assessment Act (CEAA) irrespective whether or not it is prescribed in the CPC. Previously, telecommunication sites were largely exempt based on prescribed criteria contained within the CEAA. As has been the case in the past, Bell believes that telecommunication sites will generally continue to have a minimal impact on the lands in which they are located, with a few exceptions.

21. Bell believes that it is therefore appropriate for proponents to continue to evaluate their ability to comply with the CEAA requirements and demonstrate compliance upon request to the Federal Agency responsible for management of the lands under consideration. Once the Federal Agency has been consulted, Bell agrees with the outlined procedure in the CPC to forward the result of the consultation to the Department for its consideration.

### 3.0 CONCLUSIONS

22. As a member of the CWTA, Bell agreed to the development of the CWTA/FCM protocol template and made substantive changes to the way it consults the public and land-use authorities which included consultation on sites that would be considered exempt under the existing CPC guidelines. Bell has further taken upon itself to additionally align our internal business practices to be sensitive to sites that are required in or near residential areas. Bell fully understands and respects the Department's intended interest in expanding the CPC requirements to provide for adequate public consultation on previously exempt structures.
23. Bell further believes that the Department be prepared going forward to provide guidance on a more regular basis to assist in negotiations between carriers and land-use authorities. Moreover in the absence of any excluded tower structures, carriers will be required to consult on all sites where there are no suitable existing structures on which to mount equipment. By volume of proposals alone this will increase the number of municipally challenged sites therefore, the Department should be prepared to receive and offer timely judgment on all received impasse documents.

24. The Company appreciates the opportunity to file these comments.

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