March 31, 2014

Director, Spectrum Management Operations  
Industry Canada  
235 Queen Street  
Ottawa, Ontario  K1A 0H5

Dear Sir or Madam:

SUBJECT: RAILWAY INDUSTRY COMMENTS - CANADA GAZETTE, PART I, FEBRUARY 2014, CONSULTATION ON AMENDMENTS TO INDUSTRY CANADA’S ANTENNA TOWER SITING PROCEDURES (DGSO-001-14)

Industry Canada issued Client Procedures Circular CPC-2-0-03, Issue 4, Radiocommunication and Broadcasting Antenna Systems, on January 1, 2008 which provides the rules that apply for locating antenna systems in Canada. In February 2014, Industry Canada initiated a public consultation process on proposed amendments to Client Procedures Circular CPC-2-0-03. Canadian National Railway Company (“CN”) and Canadian Pacific Railway Limited (“CP”) (collectively the “Railways”) appreciate the opportunity to comment on Industry Canada’s proposed amendments and its invitation to comment on any other suggested changes to CPC-2-0-03 that relate to the updates. The Railways further appreciate Industry Canada’s recognition of the distinction between different industries and their respective uses of radio telecommunications and would like to provide additional information on our distinct profile and footprint.

The current tower siting requirements oblige the Railways to research local procedures and processes, consult multiple local land use authorities for each location, provide a public notification, respond to the public’s objections and allow the public to provide reply comments, a process that may take 120 days or more. Written concurrence must be obtained. The process is longer if there are objections. The dispute resolution process may lead to a decision by Industry Canada, an extension, or a referral to an alternative dispute resolution process, none of which have defined timeframes under the procedure. Objections and a request for a dispute resolution must be based on “reasonable and relevant grounds” an example of which is to examine if an alternate location is possible. While exemptions exist, they are effectively obviated by the requirement to consult even when an exemption applies for additional prudence.
The proposed amendments increase these already onerous consultation requirements by requiring additional labeling for notices, to be mailed or hand delivered, and special treatment for seasonal residences. The proposed amendments clearly focus on the telecommunications and broadcasting industry and their increasing encroachment on residential areas; however, it is our submission that they cast too broad a net and impose an unduly onerous consultation burden on other industries such as the railroad industry that do not have the same profile or footprint.

Prior to commenting specifically on CPC-2-0-03, it is useful to provide a short description of the Railways and of the regulatory framework governing their safety and service obligations.

A. **Company Background**

CN employs over 20,000 people in the operation of its rail network. With approximately 20,600 route-miles of track, CN serves all major Canadian markets. Its operations span Canada from the Atlantic to the Pacific Ocean, serving the ports of Vancouver, Prince Rupert, Montreal and Halifax and the key cities of Toronto, Calgary and Edmonton. Additional information about the company is available at [http://www.cn.ca/en/about-cn.htm](http://www.cn.ca/en/about-cn.htm).

CP employs over 16,000 people and operates approximately 14,700 route miles of track in six provinces and over 1100 communities, providing service in all major Canadian ports and cities. Additional information about the company is available at [http://www.cpr.ca/en/Pages/Default](http://www.cpr.ca/en/Pages/Default).

B. **The Railways' Regulatory Framework: Safety and Common Carrier Obligations**

Pursuant to section 92 paragraph 10 (a) of *The Constitution Act of 1867*, railways extending beyond the limits of a Province fall under the legislative authority of the Parliament of Canada. Parliament has enacted a number of statutes specifying the regulatory framework governing the construction, operation, safety and service requirements for federally regulated railways.

Part III of the *Canada Transportation Act* S.C. 1996, c. 10, (CTA) is the part of the statute that deals with the construction of railways and sets out the powers of railway companies in this respect. Section 87, CTA defines a “railway” as including "communications or signaling systems and related facilities and
equipment used for railway purposes”. This definition recognizes that communications, signaling systems and facilities related to communications constitute an integral component of railways and their operation. They are at the core of the railways’ function as they are necessary to ensure safe operations.

A review of section 95 of the CTA clearly demonstrates that Parliament intended to provide railway companies with extensive powers to enable railways to discharge the obligations imposed on them to accommodate all traffic offered for carriage. Indeed, railway companies may construct canals, watercourses and divert watercourses or roads. Railway companies may also divert pipes and poles and make drains or conduits under land adjoining the railways and do anything else necessary for the operation of the railway. While in the exercise of these powers, railway companies are required to do as little damage as possible. These wide ranging powers conferred on railway companies nevertheless underscore the range of action deemed necessary for these companies to safely and efficiently operate a railway.

Having been provided with these powers, the Act then imposes on railway companies the obligation to transport all of the goods offered for carriage on their railway (cf. sections 114-116 CTA). In other words, a railway company may not choose the type of goods it wishes to carry – it must carry all goods, including dangerous goods. Railway customers who are dissatisfied with the level of service provided by a railway company may file a complaint with the Canadian Transportation Agency. If the Agency concludes that a railway company is not meeting its service obligation to the customer, the Act provides the Agency with the authority to order that “specific works be constructed or carried out” and fix the timeframe for doing so to allow the railway company to meet its obligations.

The Railway Safety Act R.S.C., 1985, c. 32 (RSA) provides the regulatory framework for the safe operations of railways in Canada. The Act recognizes, as one of its main objectives, the responsibility of railway companies “to demonstrate, by using safety management systems and other means at their disposal, that they continuously manage risks related to safety matters”. The Act obliges railway companies to properly maintain their networks, including “signals or other like devices that facilitates railway operations”. Under section 19 of the RSA, railways are required to abide by rules adopted by the Minister of Transport, namely the Canadian Railway Operating Rules (CROR), which require railways to have radio communications available at all times to individuals operating trains, performing track maintenance or carrying out any other function that is essential to safe railway operation. Essential installation
and upgrading of radio communications systems are key examples of such safety critical infrastructure maintenance.

Safety considerations are imperative as the recent tragedy at Lac Mégantic has unfortunately reminded all stakeholders all too well.

D. **Railway Comments**

In support of the cell towers placement rules, the consultation document refers to the “tremendous growth” in the mobile phone industry and “increased proximity to and encroachment of residential neighborhoods”. It is the Railways’ submission that the fact pattern referred to in respect of the wireless services providing service to all Canadian consumers is completely different from the fact pattern applicable to the railway industry as discussed below.

The growth in demand for wireless services has created a need for commercial wireless service providers to install numerous new cell towers. The placement of these towers in sensitive places within communities has been questioned by residents.

It is important to note at the outset that the need for radio communications for the Railways is not for commercial supply of telecommunications or cellular services as is the case for commercial wireless service providers. The Railways’ need for radio communication is strictly for the safe and efficient operations of the railway, matters that are mandated by the CTA and the RSA.

**Railways use of Radios – Safety Purpose not Commercial:**

The Railways use radios, both fixed and mobile, to dispatch trains, provide train movement authorizations, control track switching, monitor the status of switches and trains and to communicate this information back to Rail Traffic Control. Radio communications also support wayside devices used to detect defects and collect critical safety-related information on system status in real time. The radios transmit this information to the train crew who then can take a variety of actions such as stopping the train or engaging quickly in maintenance, repairs and equipment replacement to prevent serious incidents, including derailments that could affect railway property, personnel and the general public. These local radios are part of an integrated telecommunications system that then relays local information back to Rail Traffic Control for action. In turn, the radio communications system is an integral component of the Railways’ Safety Management Systems.
As such the railways rely heavily upon radio facilities to support railway operations, which are vital to the Canadian economy. These communications capabilities are critical to the continued efficient operation of the nation-wide rail network and to ensuring the safety of employees and the public.

Location of Towers:

It is important to note that unlike the telecommunications industry, the Railways’ radio communication towers are not increasingly encroaching on residential neighbourhoods. The Railways operate and deploy radio communications facilities on their own Rights-of-Way and in rail yards which are existing industrial corridors and properties dedicated to supporting safe and efficient railway operation. These are industrial corridors that also deploy other similar types of infrastructure such as signaling equipment, masts and cabinets that supply power and cabling to support railway operations. Radio communications are used by the Railways to promote safe and efficient railway operations.

The consultation document states: “The main objective of the antenna siting procedures is to facilitate an open, transparent process … while ensuring that the associated infrastructure is deployed responsibly by allowing for local input into antenna siting decisions.” However, the Railways’ have an extremely limited ability to re-locate the towers elsewhere than the site originally selected. The Railways’ tower siting decisions are dictated by engineering propagation studies that determine where the tower should be located and at what height near the attribute it is monitoring to perform its function and by technological specifications that ensure fully reliable radio communications. Hence there is no “reasonable and relevant” objection with respect to the location of the tower that could possibly supersede railway safety and a lengthy consultation and dispute resolution process to validate a location would not only be an inefficient use of resources for all parties involved, but inconsistent with the specific railway operational requirements.

Safety Needs – overriding concern:

Unlike the telecommunications industry, railway facilities and infrastructure build must be implemented with a certain urgency in most instances and Industry Canada’s procedures are inconsistent with such expeditious antenna structure deployment. The proposed amendments maintain the 120 plus days consultation timeframe.

The determination of what local notification regulations apply for over one thousand municipalities across Canada through which the Railways pass, or
when Industry Canada’s default public consultation process would apply, is a lengthy and time consuming process. Industry Canada’s default public consultation process is identified as “a minimum”, however states that “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”. This ambiguity obviates the exclusion and lacks the certainty and the predictability necessary for safe railway operations. The proponent is left not understanding what its obligations are and when they have been discharged.

The length of the process together with the lack of predictability and certainty in the outcome is inconsistent with the immediate safety and service obligations placed on the Railways by the RSA and the CTA.

E. **Specific Comments**

The Railways agree with the proposed amendments with the exception of the citations below where they respectfully request further exemptions:

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

The Railways appreciate the recognition that the telecommunications and broadcasting industries have a different footprint than other industries. The Railways respectfully request that this exclusion be extended to allow installation of all new antenna systems and towers, and all modifications to and replacements of existing towers, on railway property defined as the Railways’ Rights-of-Way and rail yards, to be exempt from local notification. The Railways would continue to follow the proposed local notification requirements for all installations of towers over 15 meters located off of its property and all Nav Canada and Transport Canada requirements for towers on and off of its property. Note that such an exemption would have a natural limitation as extremely large towers, with correspondingly large foundations, cannot be built on the Right-of-Way. Being outside this industrial corridor, the consultation process would then apply.

"**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. No increase in height may occur within one year of completion of the initial construction;
The Railways concur with the principle, however, factoring in the proposed exemption for all installations on its Right-of-Way above, would like to see the modification/replacement exemption only apply off of its Right-of-Way and rail yards and be increased to 100% for the railways to enable 40 foot poles to be replaced with 80 foot poles. This will occur as existing legacy pole-line technology, mainly 30-40 foot poles, is replaced with 60-75 foot monopoles to support more modern radio communications systems.

F. **Conclusion**

In conclusion, the Railways submit that their situation and footprint are completely different from the one applicable to commercial wireless and cell phone service providers and warrant a tower siting approach that reflects these differences. For these reasons, the Railways submit that an exemption for new tower construction on its property, for modifications and replacements to existing towers off of its property up to 100% and its commitment to comply with all Nav Canada and Transport Canada requirements on and off its property, strike a reasonable balance between the public’s right to be consulted and the Railways’ legal obligations to provide safe and efficient rail service and have radio service available at all times. The Railways note that Industry Canada encourages local land use authorities to grant exemptions for industrial areas and hence submit that such an exemption would be consistent with this aspect of Industry Canada’s policy.

Should you have any questions or need further information regarding this matter, please contact Jean Patenaude at: Telephone: 514 399 5496; Email: Jean.Patenaude@CN.CA or Joe Van Humbeck at: Telephone: 403 319 6530; Email: Joe_VanHumbeck@cpr.ca.
Sincerely,

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and

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