March 31, 2014

Mr. Peter Hill
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Canada Gazette, Part I, February 28, 2014, Gazette Notice DGSO-001-14 – Consultation on Amendments to Industry Canada’s Antenna Tower Siting Procedures

Dear Mr. Hill:

The Federation of Canadian Municipalities (“FCM”) appreciates the opportunity to provide comments on the consultation paper entitled Consultation on Amendments to Industry Canada’s Antenna Tower Siting Procedures (Gazette Notice DGSO-001-14).

FCM has been the national voice of municipal government since 1901. With 2,000 member municipalities, FCM represents the interests of municipal governments on policy and program matters that fall within federal jurisdiction. Members include Canada’s largest cities, small urban and rural communities, and 18 provincial and territorial municipal associations.

FCM has actively participated in previous updates to Canada’s cell tower placement rules, including the 2004 National Antenna Tower Policy Review, and has also facilitated the development of best practices currently utilized by municipal governments across Canada.

Most recently, FCM collaborated with the Canadian Wireless Telecommunications Association to develop the FCM/CWTA Antenna System Siting Protocol template (“the FCM/CWTA template”). Released in February 2013, the FCM/CWTA template addresses limitations within Industry Canada’s current antenna siting rules (CPC-2-0-03, Issue 4, effective January 1, 2008, “the CPC”), most importantly the exclusion from public consultation for new towers less than 15 metres in height.

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I was pleased to attend the February 5, 2014 announcement by Industry Minister James Moore of changes to Industry Canada's Antenna Tower Siting Policy, building upon the best practices established in the FCM/CWTA template.

The comments contained herein respond to the consultation questions identified in DGSO-001-14. FCM asks the Department to consider several additional recommendations to the CPC.

**Proposed Update to Section 1.2 of the CPC**

FCM agrees with the proposed update, and in particular, the additional application to “third party tower owners.” Local governments expect all tower owners to abide by municipal pre-consultation, notification and public consultation processes. The proposed update will eliminate any potential conflicts regarding the application of the CPC to third party owners.

**Proposed Update to Section 4.2 of the CPC**

FCM welcomes Industry Canada’s intent to clarify the public notification requirements in the Default Public Consultation Process and ensure that notification packages are not misinterpreted as junk mail. This is consistent with the FCM/CWTA template, which specifies that notification must be sent by regular mail or hand delivered using a standardized description of the contents to be included on the outside of the envelope.

FCM also agrees with Industry Canada’s decision to clarify how the height of new towers is to be measured. These changes will prevent proponents from avoiding public notification and consultation requirements through the use of artificially reduced height measurements.

**RECOMMENDATION:** Given the new consultation requirement for new towers less than 15 metres in height, FCM recommends that the prescribed distance for public notification in the CPC be revised to include a minimum distance. This will ensure that adequate notification takes place for shorter towers, especially in neighbourhoods with large lot subdivisions. Section 4.2 of the CPC could be expanded to read (proposed addition is underlined):

**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 or [minimum distance to be determined by the Department], whichever is greater, 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.
Although the FCM/CWTA template allows individual municipalities to determine a prescribed distance for public notification, footnote #3 in the template does advise that “existing municipal protocols have adopted a range of prescribed distances, e.g. six times the height of the proposed tower, a minimum of 100 metres, a minimum of 120 metres.” We recommend that the Department adopt a minimum distance for notification within this range.

Proposed Update to Section 4.4 of the CPC

FCM supports the inclusion of a three-year post-consultation construction time limit. This clarification harmonizes the CPC with the FCM/CWTA template.

Proposed Update to Section 6 of the CPC

While the current version of the CPC (in effect January 1, 2008) made significant progress in involving communities in the antenna siting process, the exclusions set out in Section 6 remained a major concern for municipalities prior to the launch of the FCM/CWTA template in February 2013. It is widely understood that proponents routinely failed to heed Industry Canada’s recommendation that “it may be prudent for the proponents to consult the LUA and the public even though it meets an exclusion noted above [in Section 6].” If fact, the exclusion for new antenna systems less than 15 metres above ground level was, in FCM’s view, consistently abused as 14.9 metre towers were constructed without consultation in communities across Canada.

In order to eliminate these types of abuses, municipalities using the FCM/CWTA template may now require proponents to follow the full pre-consultation, notification and public consultation requirements for “excluded” towers (i.e. those under 15 metres). This solution has addressed a major source of conflict between municipalities and proponents and has greatly improved the level of collaboration in antenna siting. For these reasons, FCM welcomes the proposed updates to Section 6 of the CPC.

New Antenna Systems

FCM strongly supports the removal of the 15 metre height exclusion for broadcasting undertakings and telecommunications carriers, which extends the provisions in the FCM/CWTA template to municipalities that defer to Industry Canada’s Default Public Consultation Process.

RECOMMENDATION: For the sake of clarity, the Department should include a footnote indicating that while new amateur radio installations remain excluded under this section of the CPC, amateur radio operators are nonetheless expected to abide by the general requirements of the CPC, and ensure that the antenna style of a new installation is appropriate for the lot size and location.

While the FCM/CWTA template similarly excludes amateur radio operators from the definition of “proponent,” the template does indicate that a “Municipality may wish to apply this Protocol to amateur radio operators or, alternatively introduce a separate review process for amateur radio installations.”
Existing Towers

FCM supports the proposed clarification regarding additions to existing towers, and would recommend the following explanatory footnotes in order to fully harmonize the CPC with the FCM/CWTA template.

RECOMMENDATION: The Department should include a footnote clarifying that the exclusion for replacement of existing towers only applies if the replacement is more or less equivalent to the original design and location. Any significant modifications conducted in the course of replacing an existing tower would constitute an unreasonable application of the exclusion, and will therefore require public notification and consultation.

RECOMMENDATION: The Department should include a footnote clarifying that any additions to towers less than 15 metres in height that were initially installed without consultation under the previous version of the CPC will require public consultation and notification if the resulting total tower height is 15 metres or greater.

RECOMMENDATION: Footnote #6 in the proposed update should be expanded to clarify the meaning of “total height increase”:

6 Initial antenna system installation refers to the system as it was first consulted on or installed. For example, a 20 metre tower may be increased by a total of 5 metres (25% of the initial tower height) before requiring consultation. This may occur through one increase of 25%, or through separate phases totalling, but not exceeding, 25%.

Non-Tower Structures

While FCM agrees that public notification and consultation should be limited to new freestanding antenna systems (i.e. antenna towers), we recommend that Industry Canada provide municipalities that defer to the CPC with the option of being notified of the characteristics of building/structure-mounted antennas prior to construction.

RECOMMENDATION: The definition of “Non-Tower Structures” in Section 6 of the CPC should be expanded to allow for the option of municipal (but not public) notification, based on Section 4.2.1 of the FCM/CWTA template:

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%, although proponents must verify whether the land-use authority would like to be notified of all non-tower installations (including location, description of proposed screening or stealth design measures, etc.) prior to construction; and

This additional language will allow municipal staff to be aware of the location and characteristics of non-tower structures in the community, if so desired. This is particularly important in municipalities with high-density residential neighbourhoods where there are limited sites that can support freestanding towers and which are likely to be served almost exclusively by non-tower installations.
Proposed Update to Section 7.4 of the CPC

FCM does not have any comments regarding the proposed update to Section 7.4.

Additional Recommendation – Section 5 of the CPC

FCM encourages the Department to address one additional issue related to the commencement of the formal 120-day consultation process.

Section 5 of the FCM/CWTA template describes pre-consultation “as one of the most important elements in the antenna siting process as it generally occurs at a point before the Proponent is committed to a site or design.” In order to allow for meaningful preliminary consultation, pre-consultation is therefore excluded from the 120-day consultation period. Rather, the pre-consultation and proposal submission requirements outlined in Sections 5 and 7 of the FCM/CWTA template must be met before the 120-day period commences.

RECOMMENDATION: The first paragraph of Section 4 of the CPC should be revised to read:

*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, and to discuss local preferences regarding antenna system siting and design in the community. 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. The 120-day consultation period commences only once proponents have formally submitted in writing all plans required by the land-use authority, and does not include preliminary discussions with land-use authority representatives.

This additional requirement would reinforce the importance of an open dialogue between proponents and municipalities before lease agreements have been signed between proponents and landowners (in which case there is little to no ability for meaningful municipal input). Although pre-consultation can require additional time over and above the 120-day public consultation period, it is likely to reduce (if not eliminate) significant disagreements during the formal consultation process, and in turn, the frequency of impasses. Municipalities wishing to develop a standardized process for pre-consultation can refer to the best practices identified in the FCM/CWTA template, which will continue to be an important complement to an updated CPC.
In closing, thank you again for the opportunity to share FCM’s views on the update to Canada’s Antenna Tower Siting Procedures. We fully support of the proposed regulatory changes that address long-standing concerns of the municipal sector, in particular the elimination of the exclusion from consultation for towers less than 15 metres in height.

Should you have any questions regarding the substance of our recommendations, please contact Daniel Rubinstein, FCM Senior Policy Advisor at drubinstein@fcm.ca or 613-907-6294.

Sincerely,

Brock Carlton
Chief Executive Officer

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