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COMMUNICATIONS INSTALLATIONS ON REGIONAL PROPERTY POLICY UPDATE

(Regional Council at its meeting on January 22, 2009, adopted this report as follows:

1. ***Adopt the staff report dated December 10, 2008; and***
2. ***Staff provide a further report to the Committee on the implications of requiring proponents to examine the possibility of locating their equipment on Regional property, or possibly other publicly-owned property, prior to applying for approval to install their equipment on private property.)***

The Finance and Administration Committee recommends that the following report dated December 10, 2008, from the Commissioner of Environmental Services and the Regional Solicitor, be referred to Council for consideration.

1. RECOMMENDATIONS

It is recommended that:

1. The Regional Policy entitled "Communications Installations on Regional Property" dated March 8, 2001 be updated in the form attached hereto as *Attachment 1* such that:

   (a) The Region adopt a new fee structure for telecommunications licenses on Regional property and facilities, excluding underground fibre installations and installations on Regional roads and road allowances, as set forth in this Report.

   (b) The Region's form of Telecommunications Structure Licence Agreement be amended to reflect the new fee structure as well as incorporating other contractual terms and provisions, as set forth in this Report.

   (c) The Commissioner of Environmental Services be authorized to execute, on the Region's behalf, Telecommunications Structure Licence Agreements respecting licenses of equipment on the Region's elevated water storage tanks and related facilities.

   (d) The Commissioner of Corporate Services be authorized to execute, on the Region's behalf, Telecommunications Structure Licence Agreements respecting licenses of equipment on Regional administrative buildings and related facilities.

(e) The Regional Solicitor report in the first quarter of each year on the status of Telecommunications Structure Licence Agreements with third parties for the previous calendar year.

(f) Non-profit organizations, area municipalities, government agencies, Housing York Inc., the York Regional Police, and other police services installing equipment for the purpose of enabling interoperability with the York Regional Police, and amateur radio service clubs involved in emergency management planning, as approved by the Region's Emergency Management Branch, be exempt from payment of license fees.

2. PURPOSE

The purpose of this Report is to update the Regional Policy entitled "Communications Installations on Regional Property" dated March 8, 2001 pertaining to the installation of telecommunications equipment by third parties on Regional property, including elevated water storage tanks, buildings and facilities, but excluding underground fibre installations and installations on Regional roads and road allowances. The updated Policy will set forth the new fee structure for telecommunications licenses granted on or after January 1, 2009 as well as delineate revised signing authorities and responsibilities.

3. BACKGROUND

Radio communication is a Federally regulated field

Radio communication would not work without antennas which, to function effectively, are often supported by towers or other tall structures (e.g. buildings; water towers). Radio communication is a Federally regulated field, in which the federal Minister of Industry approves and issues licences, approves sites on which antennae systems will be installed and approves antenna-supporting structures. Industry Canada's role is to ensure the orderly and efficient operation of radio communications in Canada. Proponents seeking to install antenna systems are required by Industry Canada's Client Procedures Circular CPC-2-0-03 Issue 4 (Effective January 1, 2008) as a first step, to investigate the feasibility of sharing or using existing infrastructures.

Communications Installations on Regional Property Policy needs updating for current industry practices

On March 8, 2001, Regional Council approved and adopted a policy entitled "Communications Installations on Regional Property", which expanded the ambit of the

1996 policy pertaining to telecommunications licensing on Region's facilities to other structures besides elevated water storage tanks. That policy also proposed a fee structure which is currently in place for licenses by third parties on Regional facilities. It is necessary to update the policy to reflect the proposed new fee structure. It is prudent to update the signing authorities for telecommunications license agreements in light of the reorganization of the Transportation and Works Department in 2008.

Existing fee structure for telecommunications licenses does not reflect current industry practices

The fee structure established in the 2001 policy set a base amount of $10,000 with an annual increment of 5%. In 2008, the current annual fee was $14,071.00. The growth in the telecommunications industry since 2001 and the fact that space is now at a premium for such facilities makes it necessary to establish a fee structure reflective of current market factors and to cover the Region's increasing costs surrounding the granting of these licenses to private and public sector third parties.

Region retained a Consultant to research market pricing and practices

Following a request for proposals process in 2008, the Region retained the services of View Communications Inc. to research and provide market pricing for telecommunications tower rental generally in the Greater Toronto Area as well as report on protocols and practices in use. View Communications was also asked to review the Region's current Telecommunications Structure Licence Agreement. Based upon View Communications' research, staff have analyzed the advantages and disadvantages of three possible fee structures.

4. ANALYSIS AND OPTIONS

Option 1 – Flat Fee is the Region's current fee structure

The Region has a flat fee structure in place today. As stated above the fee increases annually 5% and in 2008 it was $14,071.00.

Advantages:	Disadvantages:
• Easy to understand	• Discourages efficient use
• Easy to administer	• Does not reflect value of elevated tanks by licensees
• Easy to change	• Does not reflect use (e.g, installation of additional antennae)
• Consistent with other municipalities' practices	

This option is not recommended because it is a disincentive to licensees to utilize the space more efficiently.

Option 2 – Fee-for-use is complicated to administer for Regional staff

The use of a Region's site for installation of antennae has a number of components. Installation of antennae atop an elevated water storage tank, for example, requires i) space for electronic equipment, ii) cables in the access tube to connect the antennae to the equipment at the base, iii) antennae on the tank, iv) access to electrical power, and v) periodic access to the tank, equipment and antennae. There could be a fee for each of these five use components, a single fee for only one of the components, or some combination.

Advantages:

- Creates positive incentives for licensees to use the site efficiently
- Reflects value of a particular site – payments increase as use increases
- Encourages removal of unused equipment

Disadvantages:

- Requires monitoring by the Region to detect changes in use
- More difficult to administer (fees need to be calculated, explained to the carrier, and invoiced)
- Calibration of fees is difficult

This option is not recommended because it would be extremely time-intensive to evaluate each of the licensee's proposed designs to determine if the installation could be completed using less space, fewer cables, fewer or different antennae or reduced electrical power.

Option 3 – Hybrid Fee Structure which blends elements of the flat fee and fee-for-use structures is the recommended option

A hybrid fee structure captures some of the elements of the flat fee and fee-for-use fee structures. It entails a base fee charged for the use of a location plus the application of fees for one or more of the components identified in Option 2. The hybrid fee structure can be designed to recover a greater proportion of the revenues from the flat fee *or* from fee-for-use. A hybrid fee structure combines many of the advantages of the flat fee and fee-for-use structures, described under Options 1 and 2.

Advantages:

- Consistent with existing industry practices
- Creates positive incentives for licensees to use the site efficiently
- Reflects value of a particular site – payments increase as use increases
- Provide an incentive to remove unused antennae

Disadvantages:

- Requires monitoring by the Region to detect changes in use
- More difficult to administer (fees need to be calculated, explained to the carrier, and invoiced)

Recommended 2009 Fee Structure

The following hybrid fee structure for new license agreements entered into from 2009 forward is recommended:

Recommended Fee Description:	Recommended Fee:
• Annual fee per telecommunications site	$ 10,000
• Annual Fee per antenna	$ 640
• Application fee for new installations, and for modification to existing installations	$ 2,000

The annual fee and the annual fee per antenna will increase each year by 5%, commencing in 2010. The Application fee would be shared equally by Legal Services and the Regional branch, as the case may be, who has responsibility for the particular installation.

Proposed hybrid fee structure will generate revenues which approximate those collected by the Region from licensees in 2008

The fee structure is designed to generate revenues which approximate those collected by the Region from licensees in 2008, as shown in Table 1.

Table 1
Estimated Impact of Proposed Fee Structure

Licensee	Total Antennae	Total Site Licenses	2008 Revenue with existing fee structure	2008 Revenue with new fee structure	% Change
Carrier A	76	19	$267,349	$237,880	-11.0%
Carrier B	67	5	$70,355	$92,210	31.1%
Carrier C	42	5	$70,355	$76,880	9.3%
TOTAL	185	29	$408,059	$409,070	0.1%

Notes to table:
Assumes that all license agreements in place as of January 1, 2008 remain until the end of the year, and that no new licenses are introduced.
Assumes no antennae are added or removed after introduction of the new fee structure.
Excludes any application fee revenue associated with proposed changes submitted by licensees to the Region.
Excludes revenues associated with the application fees.

Proposed fee structure provides incentive for licensees to become more efficient in the use of antennae

The purpose of the fee per antenna is to provide an incentive for licensees to become more efficient in the use of antennae. The flat fee portion is designed to encourage the use of fewer sites. As Table 1 illustrates Carrier A has proportionally more sites than antennae and it will see a reduction of its aggregate fees with the new fee structure. Introduction of the proposed fee structure is timely with the expected arrival of new wireless service providers. The recommended fee structure will provide an incentive to licensees to make an efficient use of our limited space.

Limited information from other municipalities was available to compare fees and fee structures

Limited information was gathered regarding fees charged by other municipalities in and around the GTA. The data did indicate that the Region’s proposed fees will be comparable to other regions in the GTA. The private attachment to this report *(see Attachment 2)* provides a comparison with fee structures in other municipalities.

Telecommunications Structure Licence Agreement to reflect new recommended fee structure, practices and protocols

The Telecommunications Structure Licence Agreement has been revised to reflect the new recommended fee structure, as well as refined practices and protocols surrounding licensing by third parties for telecommunications. Table 2 sets out essential terms and provisions contained in the Agreement and highlights important amendments to it.

Table 2
Summary of Essential Terms and Provisions of the Telecommunications Structure Licence Agreement

Section Reference	Description	New or Existing Provision
1	Non-exclusive licence for telecommunications equipment at location described in Schedule “A-1”and for a maximum period of 5 years.	Existing
2	Fees payable shall be set forth in new Schedule “A-3” attached to the Agreement based upon new fee structure.	New

2	Licence of five (5) years shall automatically renew for successive periods of 5 years unless earlier terminated or either party gives notice of non-renewal.	Automatic renewal is new. Five year period is existing term of each licence
5	Licensee shall not assign, transfer or sublease.	Existing
6	Licensee shall obtain and maintain $5 million of insurance (Region’s standard Certificate of Insurance form).	Existing
7	Licensee’s indemnification of the Region.	Existing
13	Licensee must comply with applicable laws, regulations, etc.	Existing
14	Licensee must inform Region of any hazards.	Existing
17(i)(ii) (iii)	Region may request Licensee to suspend its operations until interference with other equipment is rectified or may remove offending equipment.	Existing
17(iv)	Region is not responsible for damage to Licensee’s equipment if conducting maintenance on structure, save in the case of gross negligence.	Existing
17(v)	Region will not be liable for any damages or claims arising from interruptions or delays in the Licensee’s services arising from the suspension of operations or removal of offending equipment.	New
18(i)	Licensee may terminate Agreement or licence upon 60 days’ written notice.	New
18(ii)	Region may terminate Agreement or licence upon one year’s notice in writing if Licensor, acting reasonably, determines it necessary in connection with the operation, maintenance or removal of Region’s infrastructure.	Existing

18(iii)	Region may terminate Agreement or licence forthwith on written notice in the case of overdue payment, bankruptcy, insolvency etc. and where the Region believes extenuating circumstances warrant termination.	Expanded
19	Licensee must remove equipment within 30 days of termination.	Existing
21	Licensee is solely responsible for acquiring and maintaining necessary radio licences to provide wireless services.	New
25	There will be an administrative fee of $2,000.00 for each Telecommunications Request Application Form submitted. Fee will be set forth in Schedule “A-3” (Fee Schedule).	New
Schedule “D”	Protocol for Antennae on Elevated Water Storage Tanks including policies that govern limited space, directions and guidelines re placement of antennae and policies re cabling routes and configuration.	New

5. FINANCIAL IMPLICATIONS

Introduction of the proposed hybrid fee structure will generate revenues to the Region of approximately $409,000 per annum, based upon the assumption that the number of licensed sites and the number of antennae remains consistent with 2008 numbers. New license agreements entered into from 2009 forward will be subject to the following fees:

Annual fee per telecommunications site:	$10,000
Annual Fee per antenna:	$ 640
Fee per application for use of a Region’s site, including an application to add equipment to an existing site:	$ 2,000

The annual fee and the annual fee per antenna will increase each year by 5%.

Any licenses currently in place will remain under the current fee structure until their expiration. Upon renewal the fees will be calculated in accordance with the new hybrid fee structure.

6. LOCAL MUNICIPAL IMPACT

Telecommunications capability is vital to communities in the Region's local municipalities.

7. CONCLUSION

The Regional Policy entitled "Communications Installations on Regional Property" should be updated to establish a new fee structure reflective of current industry practices. Signing authorities for telecommunications licence agreements should be consistent with the Region's organizational structure and assign responsibilities accordingly.

The Region maintains Tower security by ensuring all sites are secured with perimeter fencing. Towers are equipped with security alarm systems and monitored continuously.

In the agreement under Schedule "C" Licensees are required to submit a Certificate of Insurance and Bonding.

For more information on this report, please contact Janis Vanderburgh, Senior Counsel, Legal Services, Ext. 1408.

The Senior Management Group has reviewed this report.

(The private attachment referred to in this clause is enclosed separately.)