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**VIA EMAIL**

March 7, 2017

Ms Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319, 27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Ms Walli:

**Re: Review of Miscellaneous Rates and Charges (EB-2015-0304)  
Wireline Pole Attachment Charges**

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This letter is submitted to the Board on behalf of Rogers Communications Canada Inc., Cogeco Connexion Inc., Tbaytel and BH Telecom Corp. (collectively, the “**Carriers**”) in respect of the Board’s Pole Attachment Working Group (“**PAWG**”) and the process for reviewing the methodology for setting the wireline pole attachment rate. The purpose of this letter is to express the Carriers’ concerns with the PAWG process, and to seek clarification and direction from the Board on the process that will be conducted to ensure that the procedural rights of all stakeholders are respected before any substantive recommendations or further decisions are made in respect of pole attachment rates, including the methodology used to set the rates and the inputs to that methodology.

**Background on the PAWG**

The PAWG was established on February 9, 2016, with a mandate that included a review of the methodology for setting pole attachment rates.<sup>1</sup> The genesis of the PAWG follows two recent pole attachment decisions in which the Board decided that, rather than considering or hearing evidence on the appropriate rate-making methodology, it would defer the matter to the PAWG.<sup>2</sup> The participants selected to the

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1 Letter of the Board dated February 9, 2016, Review of Wireline Pole Attachment Charges (EB-2015-0304).

2 Hydro Ottawa Limited, Decision EB-2015-0004, February 25, 2016; Hydro One Networks Inc., Decision EB 2015-0141, August 4, 2016.

PAWG included the Carriers, representatives from several LDCs, and two ratepayer groups.

The PAWG met four times over an eight-month period. The Carriers attended all four meetings. At the fourth meeting, Board staff advised that there would be no further meetings and, soon thereafter, circulated a table of issues requesting that all participants provide their comments using no more than 1,000 characters per issue. The Carriers submitted their summary comments on March 3, 2017.<sup>3</sup>

We understand that, on the basis of these limited comments, Board staff intend to prepare a report that will include recommendations on a rate-making methodology, approaches for estimating cost inputs to the methodology, and the possibility of a new province-wide rate based on “average” costing data and an annual adjustment factor. No details have been provided on what process will follow the issuance of the report.

### **PAWG spent very little time on methodology**

As stated above, a core task of the PAWG was to review the rate-making methodology. In reality, very little time was spent on this principle issue. Instead, the majority of the time was spent discussing the collection of costing data from the LDCs, reviewing various aggregations and permutations of that data, and considering an alternative costing model introduced by Nordicity.

In fact, the focus of the PAWG shifted, at the direction of Board staff, from a review of methodology to a consideration of a province-wide “default” rate. The proposed default rate is based on untested costing data that was collected from the LDCs in the PAWG process. Board staff’s assessment of this rate also appears to be based on the recent rates established for Hydro One, Hydro Ottawa and Toronto Hydro. The latter is troublesome given that (i) the Hydro One and Hydro Ottawa decisions expressly refrained from considering methodology, deferring this issue to the PAWG; and (ii) the rate for Toronto Hydro was approved by a settlement decision that neither addressed nor approved the methodology or any of Toronto Hydro’s costing inputs.<sup>4</sup>

To the extent methodological issues were discussed, participants simply tabled their positions on a summary and anecdotal basis. There was no requirement to provide supporting evidence that could be tested and challenged by other parties.

### **PAWG did not allow for submission and testing of relevant evidence**

The PAWG process provided no opportunity for participants to present or test expert or lay evidence on numerous critical issues, including evidence on the approach to allocating common or shared costs of a pole, and such related matters as the weight and stress placed on a pole by different types of attachers and the disparities between

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3 A copy of these comments is attached.

4 Toronto Hydro-Electric System Limited, Decision on Settlement Proposal (EB-2014-0116), July 23, 2015.

the rights and obligations of third party telecom attachers versus the rights and obligations of the LDC pole owner and Bell Canada.

Other issues for which there was no opportunity to submit evidence include (i) the methodology for excluding power-specific assets from pole costs; (ii) the proper attribution of “neutral” costs; (iii) the appropriate treatment of vegetation management; and (iv) the inputs to and methodologies for determining administrative costs and productivity loss costs. These issues all have a significant effect on the pole attachment rate.

### **PAWG did not allow participants to test costing data collected from the LDCs**

Much of the data submitted by LDCs to the PAWG (as well as the underlying inputs and assumptions used to generate the data) were not even disclosed to the rest of the Group. Further, none of the assumptions, inputs to those assumptions and resulting cost estimates were tested or challenged through interrogatories and cross-examination.

What data was disclosed showed significant differences in cost estimates among the LDCs. These significant differences and inconsistencies remained unexplained. More generally, there was no clear of understanding how cost inputs should be estimated and, as result, what the numbers do or might represent. In our view therefore, the data cannot be relied upon at this juncture for the purpose of setting a pole attachment rate.

### **Conclusion and relief sought**

In the absence of a complete evidentiary record and an opportunity for all interested stakeholders to test that record through interrogatories and cross-examination (and the ability to submit argument in excess of 1000 characters on material issues), there is no basis for trying to reach a consensus on any issue. Nor is it possible to make recommendations or determinations in accordance with the principles of procedural fairness and evidence-based decision-making.<sup>5</sup>

The Carriers note that, in this regard, the Board recently asserted in a filing with the Ontario Court of Appeal that the PAWG process for determining the pole attachment rate methodology, and the hearing of “evidence” under that process, would not deprive parties of their procedural rights to be heard, but would in fact *enhance* their procedural rights.<sup>6</sup> We respectfully submit that this has not been our experience with the PAWG process.

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5 By contrast, the Board proceeding leading up to its 2005 decision in which it set a province-wide rate of \$22.35 afforded all of the necessary procedural rights. RP-2003-0249 (March 7, 2005).

6 Factum of the Respondent, Ontario Energy Board (Motion for Leave to Appeal), Court of Appeal for Ontario, Court File No. M47071 (February 28, 2017), para. 56.

We understand that the PAWG process was limited by time and budget constraints. However, these constraints do not justify ignoring fundamental and essential procedural and evidentiary requirements. Nor do they justify supplanting the PAWG's core objective of reviewing the rate-making methodology with a proposal for a new province-wide rate – a rate that is based on incomplete and untested inputs, as well as earlier Board decisions that expressly refrained from considering methodology.

For these reasons, the Carriers seek direction and clarification from the Board on the process that will be used to ensure that issues relating to the pole attachment rate for Ontario LDCs are addressed on a fair, efficient and timely basis and, consistent with this, clarification that recommendations and determinations will not be rendered based on the PAWG process.

Yours truly,



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Director, Municipal and Industry Relations  
Corporate Affairs  
Rogers Communications

- c. Michael Lesychyn, OEB PAWG  
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